

Responsible Business Conduct and Better Regulation

An exploratory study of the regulatory burden of due diligence in line with the OECD Guidance on Responsible Business Conduct (RBC) and the Dutch Child Labour (Duty of Care) Act

Final report **v1.0**



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Authors

Peter Bex

Joey van den Hurk

Eline de Koning

Liesbeth Unger (Human Rights at Work)

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Executive summary

Background

The Netherlands endorses the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. This includes voluntary international standards in the field of responsible business conduct. These provide voluntary principles and standards for responsible business conduct in areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. The Dutch government expects businesses to implement the OECD guidelines in their supply chains by identifying, preventing and mitigating risks to society and the environment.

Topic of the report

Despite the efforts of many businesses, evaluations show that only 35% of the approximately 700 largest businesses in the Netherlands explicitly use the OECD Guidelines and the UN Guiding Principles as a frame of reference. Therefore, the Dutch government has decided that, to achieve effective behavioural change among businesses, a mix of mandatory and voluntary measures is necessary. The mandatory measure considered most effective is a broad due diligence obligation, preferably at a European level. A broad European due diligence obligation is preferred over the (Dutch) Child Labour (Duty of Care) Act. However, if an effective and workable proposal will not come about, the necessary building blocks will be at hand to introduce binding measures at national level.

Purpose of the report

The purpose of this report is to identify what businesses must do to comply with (a far-reaching interpretation of) the proposed broad due diligence obligation, the Child Labour (Duty of Care) Act and a general Duty of Care. The impact of regulations on businesses can then be calculated using a methodology that is laid down in the "Handbook Measuring Regulatory Burden" (2018) of the Dutch Ministry of Economic Affairs and Climate Policy.

At its core, this model-based approach uses the so-called Standard Cost Model (SCM). As this is an exploratory study the quantification of the regulatory burden (in euros and FTE) is an initial estimate, based on interviews, rounded, and calculating all due diligence steps which have been interpreted as broadly as possible.

Results of the study

The total estimated average regulatory burden of a blanket approach to a broad due diligence obligation amounts to 0,5 FTE for small businesses, 1,5 FTE for medium-sized businesses and between 3 and 4 FTE for large businesses. In other words, the regulatory burden placed on businesses consists (on average) of 0,5 to (max) 4 FTE. A medium-sized business with 125 employees that conducts business internationally and with exposure to risks of negative consequences and adverse impacts in the supply chain would be expected to dedicate 1,5 FTE to minimising and mitigating those risks.

In addition, the total estimated average regulatory burden of a sectoral or a targeted approach to a broad due diligence obligation are also significant. However, it is important to point out that this burden – which, under the proposals investigated in this study, will be shouldered by business – would otherwise be passed on to workers, society, or the environment. Dedicating capacity to due diligence prevents adverse impacts on and costs for workers, society, and the environment often in countries outside The Netherlands.

Businesses that have voluntarily started the process of due diligence in the past ten years will experience considerably less regulatory pressure than businesses that have not yet started the process of due diligence. It can therefore be argued that the proposed legislative (options) reward socially responsible behaviour.

1 Introduction

Background

The Netherlands endorses the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises¹. This includes voluntary international standards in the field of responsible business conduct (RBC). The Dutch government expects businesses operating abroad to implement de OECD guidelines in their supply chains by identifying, preventing, and mitigating risks to society and the environment. Despite the efforts of many businesses, evaluations show that the existing RBC policy is insufficiently effective: only 35 percent of the approximately 700 largest businesses (in the light of the '90% goal'² in the Netherlands explicitly use the OECD Guidelines and the UN Guiding Principles as a frame of reference. In addition, small businesses are even further behind in applying RBC standards³.

Therefore, the Dutch government has decided that, to achieve effective behavioural change among businesses, a mix of mandatory and voluntary measures is necessary. The mandatory measure considered most effective is a broad due diligence obligation, preferably at European level. The Dutch government is working on building blocks for a due diligence obligation⁴ that can feed into the European policy process. A broad European due diligence obligation is preferred over the (Dutch) Child Labour (Duty of Care) Act. However, if an effective and feasible European proposal will not come about, the building blocks will be ready for a further implementation of the Child Labour (Duty of Care) Act. These building blocks can also be used for a due diligence obligation at the national level⁵.

Objective of the study

The Ministry of Foreign Affairs wants to know what the regulatory burden will look like for the implementation of a broad due diligence obligation (at EU and national level)⁶, the Child Labour (Duty of Care) Act⁷ and a general Duty of Care – and what factors influence the implementation. The results of this research will form the input for the proposal regarding the scope of an obligation. For the Child Labour (Duty of Care) Act, the results may influence the desirability of introducing any exemptions in line with Article 6 of this Act. The Ministry of Foreign Affairs has asked Sira Consulting to conduct a regulatory burden study⁸.

A key part of the OECD's 2005 Guiding Principles for Regulatory Quality and Performance is that countries conduct an ex-ante impact assessment of new regulations and that the results are brought closer to the policy-making process itself.⁹ This then is the objective of the study. The study aims to map the regulatory burden of the building blocks of a broad due diligence obligation, the Child Labour (Duty of Care) Act and a general Duty of

¹ [OECD Guidelines for Multinational Enterprises](#), 2011.

² [Summary](#) report on adherence to OECD Guidelines and UNGPs. Ministry of Foreign Affairs (2020)

³ Research Vision of Businesses. The Terrace (2020) (*Research is written in Dutch*)

⁴ The building blocks of a due diligence obligation are for the moment only building blocks. Meaning that it is not law. The Child Labour (Duty of Care) Act, however, is a law.

⁵ [Management](#) summary new RBC policy. Ministry of Foreign Affairs (2020)

⁶ This study takes the report "Options for enforceable IRBC instruments; Evaluation of legal design and enforcement of enforceable IRBC instruments" (Erasmus University) as the basis for a legal design of broad due diligence obligations.

⁷ [Child Labour Duty of Care](#). Ministry of Foreign Affairs (2017)

⁸ This study provides a simplified representation of a broad due diligence obligation and the Child Labour (Duty of Care) Act. The purpose of the regulatory burden research is to chart the effects of the implementation of the broad due diligence obligation and the Child Labour (Duty of Care) Act.

⁹ Strategy and policies for Better Regulation, OECD 2005.

Care for different sizes of businesses. These costs are set against a benchmark to put the regulatory burden costs in perspective.

Brief overview of the study

For the regulatory burden research, we have conducted a literature review that consisted of tracing and combining (professional) literature, parliamentary documents, reports, and the results of an internet search. We have analysed the OECD Guidelines and the Child Labour (Duty of Care) Act for the expected (positive and negative) consequences with regard to the regulatory burden. We have described how a broad due diligence obligation and the Child Labour (Duty of Care) Act can contribute for promotion, the implementation and execution of the RBC policy. By means of interviews with RBC experts, we have substantiated how businesses can implement the requirements arising from a future due diligence obligation. Based on sources, standard timetables, and hourly rates in the "Handbook Measuring Regulatory Burden" (2018) of the Dutch Ministry of Economic Affairs and Climate Policy, we have drawn up an indicative (model-based) calculation of the expected regulatory burden effects. We have consolidated the results by conducting 30 in-depth interviews with experts and businesses that are (or will be) dealing with the implementation of the OECD guidelines. The study was overseen by a steering group. All results are presented in this report. This report provides a transparent insight into the regulatory burden effects of the broad due diligence obligation and the Child Labour (Duty of Care) Act and is suitable for reporting to the Senate and the House of Representatives.

Research accountability

To provide insight in the regulatory burden of proposed legislation on responsible business conduct, we use the methodology for qualifying and quantifying administrative burdens (AB) and compliance costs (CC) as described in the "Handbook Measuring Regulatory Burden" (2018) of the Dutch Ministry of Economic Affairs and Climate Policy. At its core, this is a model-based approach.

For this modelling exercise we use the so-called Standard Cost Model (SCM). With the aid of this instrument, it is possible to calculate the regulatory burden in an efficient way and comparable manner. The strength of working with the SCM is that it has a great predictive effect. The disadvantage is that the work is based on assumptions. This is unavoidable as the proposed legislation is not yet in force, so actual costs cannot yet be measured, only estimated.

Excerpt from 'Measuring is Knowing' (2008) of the Dutch Ministry of Economic Affairs:

"(...) It is important to note that the (SCM) will at all times remain a theoretical approach to reality. The outcome of an administrative burden measurement for businesses will never be a 100% accurate representation of the actual administrative costs incurred. Nevertheless, the Dutch, English, and Danish experiences to date show that, thanks to this method, businesses can better estimate the use of time and resources with regard to individual regulations than ever before with other research methods."

Reading guide

In chapter 2 we describe the methodology used to quantify regulatory burden (RB). In chapter 3 we describe the (proposed) Dutch policy on RBC, including the legal obligations that arise from said policy, which are further elaborated upon in chapter 4. In chapter 5 we describe the target group(s): here you will find an indication of the number of businesses that could fall under a broad due diligence obligation, the Child Labour (Duty of Care) Act and a general Duty of Care. Chapter 6 contains the calculation of the regulatory burden effects, elaborated in various scenarios. Chapter 7 contains our conclusions.

2 Measuring the regulatory burden of laws and regulations

The impact of regulations on businesses, called regulatory burden, are calculated using a methodology that is laid down in the "Handbook Measuring Regulatory Burden" (2018) of the Dutch Ministry of Economic Affairs and Climate Policy. As part of the Dutch impact assessment system (IAK) for new legislation, all regulatory costs, whether arising from new regulations or changes to existing regulation, must be quantified using this method.

Regulatory burden is defined in the Handbook as the administrative burden and substantive compliance costs that businesses experience as a direct result of legal obligations. It needs to be measured to gain insight in what a normal efficient business would pay in the absence of the regulation. The idea behind mapping and reducing regulatory burden is that businesses will have time to invest in their business if they spend less time and money on regulatory obligations.

Table 1. Explanation of the different costs (Resource 'Handbook Measuring Regulatory Burden')

Administrative burden (AB) are the costs incurred by businesses when complying with those requirements in regulation, which stipulates that businesses must deliver certain information to public authorities or third parties (such as consumers). These requirements are also called information obligations (such as record keeping and reporting costs). It includes inspection costs (i.e., the costs incurred by businesses when facilitating inspections and applying corrections because of the inspection).

Substantive compliance costs (CC) are costs faced by businesses when complying with the material requirements of regulation, which stipulate that businesses must carry out or avoid certain actions or conduct. These requirements are also called content obligations (such as purchase and maintenance costs).

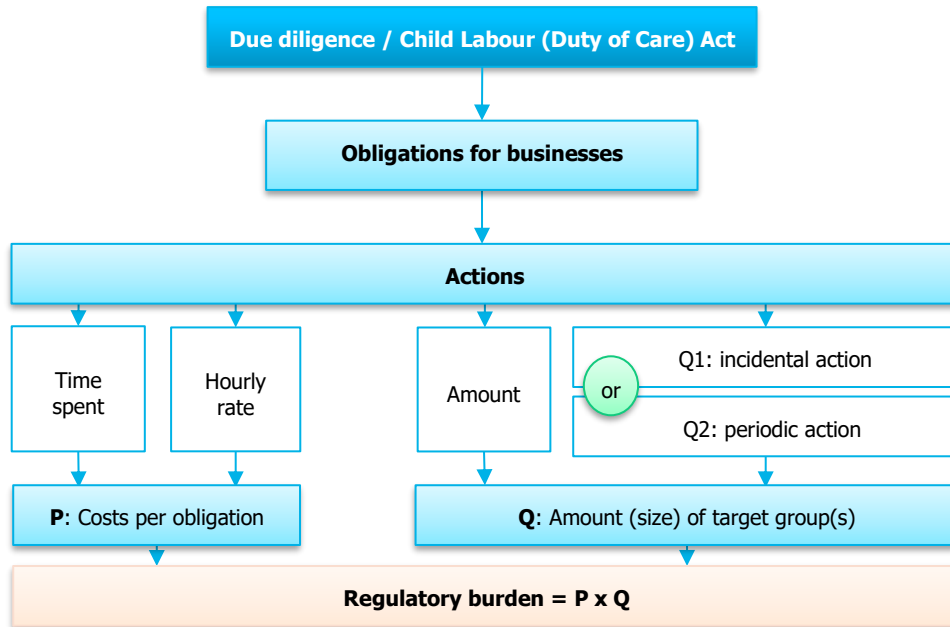
One-off costs are the costs that are only sustained *once* in connection with the businesses adapting to a new or amended (information) obligation. This does not include the costs that a business may have in relation to complying with existing information obligations for the first time (such as the consequence of increased turnover or expansion with new areas of activity in the businesses). As such only the introduction of a new or amended (information) obligations can give rise to one-off costs.

Business-as-usual costs (B-A-U) are costs that businesses incur that are in their own interest and/or costs which would also be made without any obligation stemming from legislation and regulations. B-A-U are explained in more detail on page 18.

Standard Cost Model (SCM)

The SCM is designed to measure the regulatory burden for businesses and is the most widely employed method to do so. The model has been developed to provide a simplified, consistent method for estimating the regulatory burden imposed on businesses because of new law(s) and legislation(s). Although the SCM method is a way of breaking down regulations into a range of obligations and activities that can be measured, it does not focus on the policy objectives of each regulation (i.e., the SCM is neutral toward policy-objectives and whether they are reasonable). For this reason, the SCM method takes a pragmatic approach to measurement and provides estimations that are consistent across policy areas. As such, the measurement focuses only on the activities that must be undertaken to comply with regulation.

Figure 1. The SCM model



Scope of the study

The scope of this exploratory study is to identify what businesses must do to comply with (a far-reaching interpretation of) the proposed broad due diligence obligation, the Child Labour (Duty of Care) Act and a general Duty of Care. To explore this, the first step that needs to be taken is to 'translate' the obligations that are being considered for a broad due diligence obligation and that have been included in the Child Labour (Duty of Care) Act. The proposed or considered obligations need to be translated into concrete activities that businesses need to carry out. Secondly, the costs of these activities need to be calculated to the level of an individual business. How a proposed broad due diligence obligation and the Child Labour (Duty of Care) Act in practice will be implemented, depends to an extent on the size of the business. For this reason, this exploratory study distinguishes between various types of business size (e.g., SMEs, large businesses). Because it is expected that differences will occur due to business activities, representatives of companies in different sectors have been interviewed.

The estimated regulatory burden in this study gives a first insight of the impact for businesses of a proposed broad due diligence obligation and the Child Labour (Duty of Care) Act. It shows which obligations (and which steps in the due diligence process) cause the most pressure on the regulatory burden and how this impacts different target groups. The calculations in this report are supported by data gathered in 30 interviews with businesses and experts.¹⁰ Although this is not a statistically significant sample, it provides a valuable insight in the development of the regulatory burden (and its impact for businesses). The calculation of the regulatory burden provides insight and helps policy makers to minimise unnecessary regulatory burdens while achieving the same policy goals. The model provides the government with three calculated scenarios and may be used to find the optimum between achieving policy goals and managing the regulatory burden.

¹⁰ Findings have been cross referenced and compared to the results of the reports "Study on due diligence requirements through the supply chain" (European Commission, January 2020) and "Quantifying the Cost-Benefits of Due Diligence for RBC" (OECD, 2016).

3 RBC - overview of policy options

At the time of writing there are three strands considered and/or proposed for the Dutch policy on RBC: a broad due diligence obligation (at EU and/or national level), the Child Labour (Duty of Care) Act and a general Duty of Care.

3.1 A broad due diligence obligation

The Netherlands endorses the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. The OECD guidelines aim to promote positive contributions by businesses to economic, environmental, and social progress worldwide. This includes international standards in the field of responsible business conduct (RBC). The core element of the guidelines is that businesses map out risks in their international chains, prevent, mitigate, or stop these risks and communicate about them. This is called 'due diligence'. Due diligence can help businesses avoid and address adverse impacts related to workers, human rights, the environment, and corporate governance that may be associated with their operations, supply chains and business relationships.

The Dutch government proposes a new RBC-policy consisting of a mix of mutually reinforcing measures *"that together lead to effective behavioural change in the leading pack, the peloton and the laggards"*. If businesses operate abroad, the Dutch government expects them to *conduct business responsibly*. This means that businesses should take account of what impact their activities have on people and the planet, worldwide.

The core element of the new policy mix is a broad due diligence obligation. That obligation will primarily be aimed at getting laggards moving by obliging them to do business responsibly (i.e., in accordance with OECD guidelines). The government expects that a broad due diligence obligation will contribute to the creation of a level playing field among Dutch/European businesses. A broad obligation is in line with the OECD guidelines and recognizes that problems do not belong to one sector, nor are they limited to one theme.

Possible requirements under a broad due diligence obligation:

- **Keeping abreast (One-off costs)¹¹**
Businesses need to keep up with new legislation and regulation. In the SCM this is abstracted as a one-off cost to take note of new requirements under the proposed broad due diligence obligation.
- **Increase awareness among employees (One-off costs)**
The proposed broad due diligence obligation requires that businesses assess the risk of negative consequences and adverse impacts in the chain, related (but not limited) to workers' rights (e.g., freedom of association, forced labour, living wage), human rights and the environment. Businesses must take steps to increase awareness among their employees about these issues.
- **Embed RBC into policies and management systems (AB)**
The OECD guidelines require that due diligence be integrated into policies and management systems, for example by publishing a policy document and ensuring that the policy is part of regular business processes such as management meetings and meetings of the board of directors (structural cost).

¹¹ See table 1 Chapter 2 for an explanation of the abbreviations.

- **Identify and assess adverse impacts (CC)**
The OECD guidelines require that adverse impacts and negative consequences in the chain are (continuously) identified and assessed. Businesses are required to identify and prioritize the risks in the (entire) chain (structural cost). This must be regularly updated as businesses and circumstances change.
- **Cease, prevent or mitigate adverse impacts (CC)**
The OECD guidelines require that if there are negative consequences, businesses “*cease (stop), prevent or mitigate*”. Businesses must therefore develop and implement a plan of action with specific measures that stop, prevent and/or minimise adverse impacts and negative consequences (structural cost).
- **Track implementation and results (CC)**
The OECD guidelines require that businesses monitor the practical application, effectiveness, and results of the measures in the action plan. Businesses must monitor the effectiveness of the measures taken (structural cost).
- **Communicate how impacts are addressed (AB)**
The OECD guidelines require that businesses communicate about how negative consequences are tackled. Businesses must therefore report periodically on progress made (structural cost).
- **Provide for or cooperate with remediation when appropriate (CC)**
The OECD guidelines require that businesses provide for or cooperate with remedial measures. Businesses must have an (accessible) complaints procedure.
- **Cooperation with inspection by public authorities (AB)**
The proposed broad due diligence obligation requires businesses to cooperate with the designated inspectorate or regulatory body (inspection costs).¹²

The regulated target group¹³:

- Yet no decision has been taken about the demarcation of the regulated target group. Although the Dutch government is exploring all possible options, three distinct scenarios have been used for the purposes of this study:
 - A blanket approach, which means that all businesses established in the Netherlands will have to comply with the broad due diligence obligation.
 - A sectoral approach, which means that all businesses established in the Netherlands active in specific high-risk sectors will have to comply with the broad due diligence obligation.
 - A targeted approach, which means that only large businesses will have to comply with the broad due diligence obligation.¹⁴

¹² It is assumed that the inspectorate follows the best practice principles described in “OECD Best Practice Principles for Regulatory Policy Regulatory Enforcement and Inspections”, OECD 2014.

¹³ A complete breakdown of the regulated target group is provided in chapter 5.

¹⁴ In accordance with the strategies proposed by the OECD in the report “Reducing the risk of policy failure; Strategies to improve compliance and regulatory effectiveness”, OECD 2000.

3.2 The Child Labour (Duty of Care) Act

The Child Labour (Duty of Care) Act requires businesses to determine whether child labour occurs in their supply chains and set out a plan of action on how to combat it.¹⁵ The legislation aims to prevent goods and services produced with child labour from being delivered to consumers in the Netherlands. Dutch consumers should be able to trust that the businesses from which they purchase products and services are conducting due diligence to prevent child labour from being used in their products and services.

Due diligence under this law means that businesses should first assess whether there is a reasonable presumption that the goods and services to be supplied have been produced with child labour. If the investigation indicates that there is a reasonable presumption that child labour has contributed to the product or service, the company is expected to draw up an action plan in line with the OECD Guidelines for Multinational Enterprises. The expectation is not that businesses provide a guarantee that child labour does not occur in the supply chains, but that businesses do what can reasonably be expected to be done to prevent this from happening in line with the OECD Guidelines. Preventing and eliminating child labour is the goal of the law.

Businesses covered by the law must submit a statement to the regulatory authorities declaring that they have carried out due diligence related to child labour in their supply chains in line with the OECD Guidelines.¹⁶ Businesses only need to submit this statement once; it has a long-term validity. All statements will be published by the regulator.

Obligations under the Child Labour (Duty of Care) Act:

- **Keeping abreast (One-off costs)**
Businesses need to keep up with new legislation and regulation. In the SCM this is abstracted as a one-off cost to take note of new requirements under the Child Labour (Duty of Care) Act.
- **Increase awareness among employees (One-off costs)**
The Child Labour (Duty of Care) Act requires that businesses assess whether there is a reasonable presumption that the goods and services to be supplied have been produced with child labour. Businesses must take steps to increase awareness among their employees about this specific issue (i.e., child labour).
- **Submit a declaration to the supervisory authority (AB)**
The Child Labour (Duty of Care) Act requires businesses to submit the declaration to the supervisory authority immediately after being registered in the commercial register or at the latest six months after the law enters into force. The supervisory authority publishes the declarations in a public register on its website. For companies not registered in the Netherlands, they must submit such declaration within 6 months after the company sold products for the second time to end users in the Netherlands (art. 4.2).
- **Businesses conduct due diligence (CC)¹⁷**
As part of their due diligence, businesses, assess whether there is a reasonable presumption that its goods or services have been produced with the aid of child labour (structural cost) by obtaining information from sources that businesses

¹⁵ The date on which the law enters into force is yet to be determined.

¹⁶ The law applies not only to businesses registered in the Netherlands, but also to businesses from anywhere in the world that deliver their products or services to the Dutch market.

¹⁷ Comparable with the following obligations under the proposed broad due diligence legislation: 1) Identify and assess adverse impacts (CC) and 2) Cease, prevent or mitigate adverse impacts (CC).

can reasonably be expected to know about or consult. In the event of there being such a presumption, businesses draw up and implement action plans in line with international guidelines (ILO-IOE Child Labour Guidance Tool Business). Buying from businesses who submitted a declaration is considered due diligence. When only buying from such businesses, no separate declaration is needed.

- **Cooperation with inspection by public authorities (AB)**
The Child Labour (Duty of Care) Act requires businesses to cooperate with the designated inspectorate or regulatory body (inspection costs).

The regulated target group¹⁸:

- The Child Labour (Duty of Care) Act has demarcated the regulated target group using a blanket approach. All businesses which sell or supply goods or services to Dutch end users will have to comply with the Act. An exemption article is provided in the Act. This study could provide insights into specific categories of businesses that could be exempted from the obligations of the Act.

3.3 A general Duty of Care

On December 8th, 2020, Member of Parliament Voordewind submitted a resolution on a general duty of care to prevent the violation of human rights, labour rights and the environment when trading internationally for all businesses in accordance with the OECD guidelines.¹⁹

A general Duty of Care in line with the OECD Guidelines has yet to be formulated by the Dutch government. It might be along the lines of: *"Businesses must conduct themselves with due care in their supply chain, as may be expected of a reasonably competent and reasonably acting enterprise"*, or *"Every company takes sufficient care of human rights, labour rights and the environment when conducting foreign trade."*

The details of a general Duty of Care would be further elaborated by the civil court in response to cases brought before it. The general Duty of Care could act as safety net if no specific rules or government regulations apply. It is important to note that there exists already a social duty of care ("What is fitting in society") which has been adopted in case law. This social duty of care is made a legal duty of care. Because it concerns a codification of an existing social duty of care, it is expected that no new regulatory burden will arise from a general Duty of Care. An extension of liability is not foreseen (liability already exists based on case law). Converting the social duty of care into a statutory general Duty of Care is unlikely to lead to more civil lawsuits.

Obligations under a general Duty of Care:

- **Keeping abreast (One-off costs)**
Businesses need to keep up with new legislation and regulation. In the SCM this is abstracted as a one-off cost to take note of new requirements under the proposed general Duty of Care.
- **Increase awareness among employees (One-off costs)**
The general Duty of Care requires that businesses conduct themselves with due care. For businesses to act reasonably competent it seems unavoidable that they

¹⁸ A complete breakdown of the regulated target group is provided in chapter 5.

¹⁹ In the Appendix we include the original text describing the general Duty of Care in the explanatory memorandum of the bill on Responsible and Sustainable International Business.

take steps to increase awareness among their employees of the conduct expected of them and the established company protocols.

- **Cease, prevent or mitigate adverse impacts (CC)**

Businesses that know (or can reasonably suspect) that their business activity is detrimental to or can affect the human rights, labour rights or the environment in a negative way in a country outside The Netherlands, are required to take all necessary measures that are reasonable to stop, prevent and/or mitigate these adverse impacts or negative consequences (structural cost).

- **Cooperation with inspection by public authorities (AB)**

The general Duty of Care will most likely rely on civil enforcement (article 6: 162 Civil Code). As such there is no designated inspectorate or regulatory body (no inspection costs).

The regulated target group²⁰:

- The general Duty of Care utilises - by definition - a blanket approach to the demarcation of the regulated target group. As prescribed in the resolution of MP Voordewind all businesses established in the Netherlands will have to comply with the general Duty of Care.

²⁰ A complete breakdown of the regulated target group is provided in chapter 5.

4 RBC - costs per obligation (P)

In this chapter we analyse the effect on time spent and other costs associated with the proposed or considered obligations on RBC. For each of the obligations, we describe (qualitatively) the actions that are required from businesses to meet their legal obligations and provide an estimation (quantitatively) of the costs per action. In the Standard Cost Model that accompanies this report all data and calculations are available.

We recognise that while businesses incur these costs, they might be considered cost savings for society (i.e., it will not be necessary to remediate negative consequences for people and the environment created by the activities of businesses and their partners). However, cost savings of this kind fall outside the scope of this study. We also recognise that there are benefits for businesses that conduct international trade in a responsible manner (e.g. being an attractive employer, access to capital, reputation, professionalization, competitive advantages and goodwill). It is beyond the scope of this study to quantify those benefits. Finally, we recognise that costs can differ enormously, depending on the scale of operations and the complexity of the supply chains and the sector that the business is part of.

4.1 A broad due diligence obligation

The possible requirements under a proposed broad due diligence obligation, the actions required from businesses to meet their obligations and the estimated costs per action:

- **Keeping abreast (One-off costs)**

Businesses are required to keep up with new legislation and regulation.

In addition to the day-to-day obligations that are inherent to running a business, employers must comply with new (or changing) regulatory requirements. For businesses to keep abreast of things, they must stay informed about developments. Keeping up to date with regulatory developments takes time. And RBC takes more time than usual. That is because it is not enough to merely understand the requirements laid down in the proposed broad due diligence obligation. One also must understand the spirit in which the proposal was written. For that, one has to consult the [OECD Due Diligence Guidance](#). This guidance provides practical support to businesses on the implementation of the [OECD Guidelines for Multinational Enterprises](#) by providing plain language explanations of its due diligence recommendations and associated provisions.

Interviews with businesses show that in small businesses the owner or manager is responsible for keeping abreast with new legislation. In medium-sized businesses a management team of (on average) three people (including a director) are responsible. In (very) large enterprises a board of directors (e.g., CEO, COO, CPO, CFO) and a management team of (on average) 4 people are responsible. The proposal and the OECD guidance are complex. According to the "Handbook Measuring Regulatory Burden" (2018) the standard time commitment for complex legislation is (on average) 2 hours per person (page 36). The legal fabric (e.g., subsidiaries) of a large business adds another layer of complexity.

Total estimated one-off cost

Business size	P	B-A-U	RB
Small	€ 113,-	€ 0,-	€ 113,-
Medium	€ 340,-	€ 0,-	€ 340,-
Large	€ 1.813,-	€ 0,-	€ 1.813,-

- **Increase awareness among employees (One-off costs)**

The proposed broad due diligence obligation requires that businesses assess the risk of negative consequences and adverse impacts in the supply chain, related (but not limited) to workers (e.g., health and safety, living wage), human rights and the environment. It is unavoidable that businesses must take steps to increase awareness among their employees about these issues.

It is crucial to create awareness among employees when an organisation wants to get a grip on subject matters such as workers’ rights, human rights, and the environment – and not only on what these subject matters encompass, but also what they mean for the operations of their organisation. Because it is difficult to define exactly what due diligence means. It is important to create awareness in a way that appeals to every employee. Indeed, for some functions it is more important than for others. Procurement, legal, risk management and human resources might need (much) more than a one-off training.²¹ The business organisation must take due diligence sufficiently into account, and due diligence –just like any other part of the organisation – must be part of the business operations.

Interviews with businesses show that small businesses instruct staff (Time) and in addition introduce one-off changes to their HR reference materials (e.g., Employee Orientation Program). Editing and printing costs are estimated at € 250,- Likewise, medium-sized businesses instruct staff (Time) and in addition introduce one-off changes to their HR reference materials (e.g., Employee Orientation Program). Editing and printing costs are estimated at € 1.000,- Large enterprises instruct staff (Time) and introduce one-off changes in HR reference materials (e.g., Employee Orientation Program) which costs an estimated € 10.000,-

Onboarding, the process of introducing a newly hired employee into an organization, is a business-as-usual cost. Onboarding, also known as organizational socialization, is an important part of helping employees understand their new position and job requirements. Procurement is a function that needs specific attention. Procurement officers need to have the knowledge and understanding to identify risks in the supply chain. Separate training needs to be provided. The time required for training these professionals is included in the next steps.

Total estimated one-off cost²²

Business size	P	B-A-U	RB
Small	€ 838,-	€ 0,-	€ 838,-
Medium	€ 3.938,-	€ 0,-	€ 3.938,-
Large	€ 21.750,-	€ 0,-	€ 21.750,-

- **Embed RBC into policies and management systems (AB)**

The OECD guidelines propose that due diligence is integrated into policies and management systems, for example by publishing a policy document and ensuring that the policy is part of regular business processes such as management meetings and meetings of the board of directors (structural cost).

Businesses must publish a policy document approved by their board/management in which they commit to due diligence obligations and the principles and standards of the OECD Guidelines. The policy document contains their due diligence plans which relate at least to their core (main) business activities and those of their business relations. Businesses also ensures that their policy, as included in the policy document, is integrated into their management systems

²¹ The time required to train key personnel (e.g., procurement) has been merged with the activities “Identify and assess adverse impacts” and “Track implementation and results”.

²² Business-as-usual costs (B-A-U) are explained in detail on page 18.

and forms part of their regular business process. Finally, businesses ensure that their policy is stated in agreements or (new) contracts with suppliers and other business relations (i.e., it forms part of their negotiated purchase agreements).

Total estimated structural cost per year²³

Business size	P	B-A-U ²⁴	RB
Small	€ 3.400,-	€ 0,-	€ 3.400,-
Medium	€ 13.600,-	€ 6.800,-	€ 6.800,-
Large	€ 40.800,-	€ 20.400,-	€ 20.400,-

▪ **Identify and assess adverse impacts (CC)**

The OECD guidelines propose that adverse impacts and negative consequences of businesses' activities, products, or services and those of its business relationships in the supply chain are (continuously) identified and assessed. Businesses are required to identify and prioritize the risks in the (entire) chain.

Businesses must conduct an inventory of their core business activities and business relationships and analyse and identify the potential and actual risks of adverse impacts resulting from its activities, products, or services and those of its business relationships. Businesses must keep their assessments up to date.

Businesses tend to start their risk assessment at a high level and go deeper with time. Once businesses establish their involvement in potential and actual risks, they have to draw up an action plan to prevent and limit potential and actual adverse consequences of their own activities, products, or services and those of their business relations. Businesses are required to implement their action plan and ensure an adequate response to the potential and actual adverse consequences found. If it is not possible for businesses to immediately address all potential and actual adverse impacts, they may prioritize them based on the severity and degree of likelihood. Once the most serious impacts have been identified and addressed, less severe adverse impacts will have to be addressed. This depends a lot on the type of company not only the size, but also the complexity and number of supply chains. Examples how risk assessments take place:

- Screening of suppliers, potentially with external service providers.
- Prioritizing the first tier, as they have more leverage.
- Prioritizing on spent/volume/countries/type of business.
- Visiting suppliers.
- Human Rights Impact Assessments (large companies).
- Joint risk analysis with the sector, as part of a sector initiative.
- Feedback from external stakeholders.
- Grievance mechanisms (e.g., received complaints).

Total estimated structural cost per year

Business size	P	B-A-U	RB
Small	€ 9.067,-	€ 2.720,-	€ 6.347,-
Medium	€ 31.733,-	€ 9.520,-	€ 22.213,-
Large	€ 68.000,-	€ 20.400,-	€ 47.600,-

▪ **Cease, prevent or mitigate adverse impacts (CC)**

The OECD guidelines propose that if there are negative consequences, businesses "stop, prevent and mitigate". Businesses must therefore develop and

²³ Business-as-usual costs (B-A-U) are explained in detail on pages 17-18.

²⁴ B-A-U average 30%. However, B-A-U differ not only from sector to sector, but also between small and large businesses. For large businesses it is normal to produce policy protocols and documents. Small businesses on the other hand, rarely, if ever, produce policy papers. So, where the production of policy documents might well be B-A-U for large businesses, for small businesses it is anything but.

implement a plan of action with specific measures²⁵ that stop, prevent and/or mitigate adverse impacts and negative consequences (structural cost).

Depending on the type of involvement in an adverse impact, businesses are required to take the following steps:

- a) if the business has caused an adverse impact, the causing activity is to be discontinued.
- b) if the business has contributed to an adverse impact, the contribution is terminated or prevented, or the business uses its influence to prevent and limit residual consequences as much as possible.
- c) if there is a direct link between an adverse impact and the activities of a business relationship, the business uses its influence to prevent and limit the consequences as much as possible or ends the relationship.

If an adverse impact occurs in a business relationship, businesses will not end their relationship until sufficient efforts have been made to prevent or limit the adverse consequences.

Examples of measures taken by businesses are:

- Knowledge sharing (e.g., how to build a certification program).
- Raising the awareness of their business partners, incl. training (e.g., correct use of agro-chemicals or sustainable agriculture techniques).
- Provide suppliers with assistance with change management.
- Evaluating their own purchasing practices.
- Developing long-term relationships with suppliers and scheduling regular stock taking talks.
- Participating in sector initiatives to jointly prevent or mitigate adverse impacts.
- Buying materials, products from certified sources.

Total estimated structural cost per year

Business size	P	B-A-U	RB
Small	€ 18.133,-	€ 5.440,-	€ 12.693,-
Medium	€ 68.000,-	€ 20.400,-	€ 47.600,-
Large	€ 108.800,-	€ 32.640,-	€ 76.160,-

▪ **Track implementation and results (CC)**

The OECD guidelines propose that businesses monitor the practical application, effectiveness, and results of the measures in the action plan. Businesses are required to monitor the effectiveness of the measures taken (structural cost).

Businesses monitor (e.g., audit) the application and effectiveness of their due diligence measures. The assumption is that auditing suppliers or certifying them will improve behaviour. Businesses process the conclusions of their monitoring in their management systems and business processes.

Businesses regularly engage in some (or all) of the following activities:

- Audit their first-tier supply chain.
- Visit their suppliers in order to check.
- Ask for suppliers' self-assessments.
- Commission independent environmental or human rights impact assessments.
- Share data obtained through audits with others in the sector.

²⁵ Such measures may include embedding policy protocols, providing training and technical investments that reduce risks of adverse impacts. It is not unusual for businesses to make a budget available for these measures. However, the proposed legislation does not specify the need for such a budget (nor quantify its size). We therefore work under the assumption that these "out-of-pocket costs" form a compliance surplus (i.e., desirable but required).

Total estimated structural cost per year

Business size	P	B-A-U	RB
Small	€ 9.067,-	€ 2.720,-	€ 6.347,-
Medium	€ 31.733,-	€ 9.520,-	€ 22.213,-
Large	€ 68.000,-	€ 20.400,-	€ 47.600,-

- **Communicate how impacts are addressed (AB)**

The OECD guidelines propose that businesses communicate about how negative consequences are tackled. Businesses must therefore report periodically on progress made (structural cost).

Businesses are required to periodically (e.g., annually) report in a public manner on their policies and measures for due diligence, including the findings from their monitoring activities and the results (effects) of the measures taken. Businesses should clearly show what, if any, progress has been made. To this end businesses must provide information on the measures taken to prevent and limit adverse consequences, except for information of a confidential nature related to competition or security considerations. Businesses should report in an accessible and appropriate manner. Some examples of adequate reporting can be found [here](#) (M&S), [here](#) (Ahold), [here](#) (Nestlé) and [here](#) (Unilever).

However, communication depends on the size of the business and the sector it is active in. Smaller companies and family-owned businesses tend to communicate less and more via the website, rather than a formal report. Participating in multi-stakeholder initiatives usually means reports and transparency is needed. When there are few risks, businesses need to communicate less.

Total estimated structural cost per year

Business size	P	B-A-U ²⁶	RB
Small	€ 4.533,-	€ 453,-	€ 4.080,-
Medium	€ 13.600,-	€ 4.080,-	€ 9.520,-
Large	€ 40.800,-	€ 12.240,-	€ 28.560,-

- **Provide for or cooperate with remediation when appropriate (CC)**

The OECD guidelines require that businesses provide for or cooperate with remedial measures when appropriate.²⁷ Businesses must also have an accessible (and preferably independent) complaints procedure (grievance mechanism).

Businesses provide for or cooperate with remediation when appropriate. Someone involved should be able to file a complaint and submit it to businesses through a properly functioning and accessible complaint procedure.²⁸ If a business has caused or contributed to adverse impact or negative consequences, it will offer or contribute to remediation.

²⁶ B-A-U average 30%. However, B-A-U differ not only from sector to sector, but also between small and large businesses. For large businesses it is normal to publish reports (e.g., on CSR). Small businesses on the other hand, rarely, if ever, produce reports. So, where publishing reports might well be B-A-U for large businesses, for small businesses it is anything but.

²⁷ To date there are few practical examples where businesses provide for or cooperate with remedial measures. Our working assumption is that the number of cases will remain scarce in the foreseeable future. However, when a business does find itself in the situation that it must provide for or cooperate with remedial measures, then it is clear that the situation is so serious (and has escalated to such a point) that it demands an extraordinary amount of capacity and resources to manage and resolve. This is reflected in the estimated average for the required hours.

²⁸ It is an option that businesses organise this jointly (e.g., in a sectoral context).

Total estimated structural cost per year

Business size	P	B-A-U ²⁹	RB
Small	€ 453,-	€ 45,-	€ 408,-
Medium	€ 1.133,-	€ 340,-	€ 793,-
Large	€ 20.400,-	€ 6.120,-	€ 14.280,-

- **Cooperation with inspection by public authorities (AB)**

The proposed broad due diligence obligation requires businesses to cooperate with the designated inspectorate or regulatory body.³⁰

Inspection and supervision are based on a risk analysis³¹ of the sectors and businesses involved, considering their size and position in the supply chain and the seriousness of the potential adverse consequences of their activities. In addition, relevant information about compliance with the due diligence criteria, including concrete reports from those involved, are considered.

Total estimated structural cost per year

Business size	P	B-A-U ³²	RB
Small	€ 91,-	€ 0,-	€ 91,-
Medium	€ 227,-	€ 0,-	€ 227,-
Large	€ 1.360,-	€ 0,-	€ 1.360,-

- **Business-as-usual costs (B-A-U)**

Some legal and regulatory obligations are already so internalized by businesses that no additional costs arise from those obligations. Think of costs that businesses incur that are in their own interest and which would also be made without any obligation stemming from legislation and regulations. These are business-as-usual costs. These costs are not included in the definition of regulatory burden, but they must be mapped out. After a complete picture emerges of the regulatory burden, it is then stated which part concerns business-as-usual costs.

Business-as-usual costs are related to the relative “maturity” of a sector and business. In relation to RBC, we defined nine maturity criteria for businesses:

- FTE available for RBC.
- Familiarity with the most important risks for the sector in which the business is active (and roughly an idea where these risks are located).
- An overview of risky chains and suppliers.
- Request’s business partners to comply with RBC standards (e.g., part of contract or purchasing conditions);
- Risk management system also includes RBC risks.
- Supplier monitoring (auditing) system.
- Appropriate response mechanism when risks arise (e.g., engagement with suppliers, enter a partnership with other companies, training suppliers);
- Ongoing efforts to consult with external stakeholders.
- Ongoing efforts to communicate to external stakeholders (e.g., report).

²⁹ B-A-U average 30%. However, B-A-U differ not only from sector to sector, but also between small and large businesses. For large businesses it is normal to have some form of grievance mechanism. Small businesses on the other hand, rarely, if ever, have an independent complaint procedure. So, where this might well be B-A-U for large businesses, for small businesses it is anything but.

³⁰ Similarly, to remediation, to date there are few examples where businesses need to cooperate with inspectorates on topics of RBC. Our assumption is that the number of cases will remain scarce in the foreseeable future. But should the designated inspectorate intervene, it will take a business significant capacity to comply on short notice. This is reflected in the estimated average for the required hours.

³¹ It is assumed that the designated inspectorate follows the best practices described in “OECD Best Practice Principles for Regulatory Policy Regulatory Enforcement and Inspections”, OECD 2014.

³² Inspection costs are never considered B-A-U.

We defined four maturity criteria for sectors:

- a) Awareness of sector specific risks.
- b) Existence of a national / international partnerships to tackle RBC issues.
- c) Partnership is with stakeholders from outside the sector (e.g., NGOs);
- d) Within the partnership, research (e.g., audit results), is shared and there is an effort to work together to tackle sector specific issues.

The maturity criteria act as indications and contraindications. After an analysis of the relative "maturity" of businesses and sectors we estimate that approximately 30% of all regulatory burden (RB) should be considered business-as-usual costs. Businesses incur these costs of their own volition and in their own interest. They would also be made without any legal obligation.

Business as usual costs are closely related to intrinsic and extrinsic motivation. Sometimes companies feel the need to enhance their reputation, sometimes they are triggered by external pressure (media, NGOs, investors), sometimes it is part of their ethical values, sometimes it is even part of their mission. The higher the intrinsic motivation of a business to engage with RBC, the lower the perceived (externally imposed) burden. And the lower the intrinsic motivation, the higher the perceived (externally imposed) burden. A lack of intrinsic motivation is often closely related to a lack of capacity and a lack of familiarity with the risks in a sector.

▪ **Total costs (P) of broad due diligence obligations**

The table below contains a summary of the total estimated average costs for small, medium-sized, and large businesses.

Total estimated costs³³

Business size	RB classification	One-off costs	Structural costs
Small	AB	€ 113	€ 4.171
	CC	€ 838	€ 29.195
	Total	€ 951	€ 33.365
Medium	AB	€ 340	€ 9.747
	CC	€ 3.938	€ 99.620
	Total	€ 4.278	€ 109.367
Large	AB	€ 1.813	€ 29.920
	CC	€ 21.750	€ 206.040
	Total	€ 23.563	€ 235.960

Interim conclusion

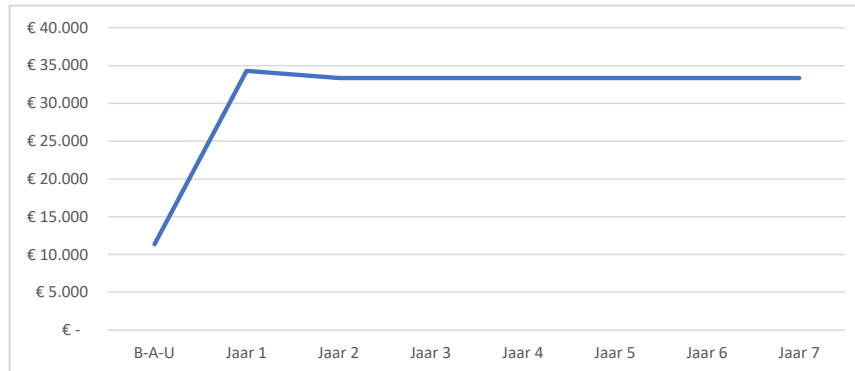
The total estimated average structural RB amounts to 0,5 FTE for small businesses, 1,5 FTE for medium-sized businesses and between 3 and 4 FTE for large businesses.³⁴

³³ All costs have been calculated based on the average rate per hour of € 47,-. Source: Handbook Measuring Regulatory Burden. Except for 'keeping abreast' where the rate per hour averages € 57,-

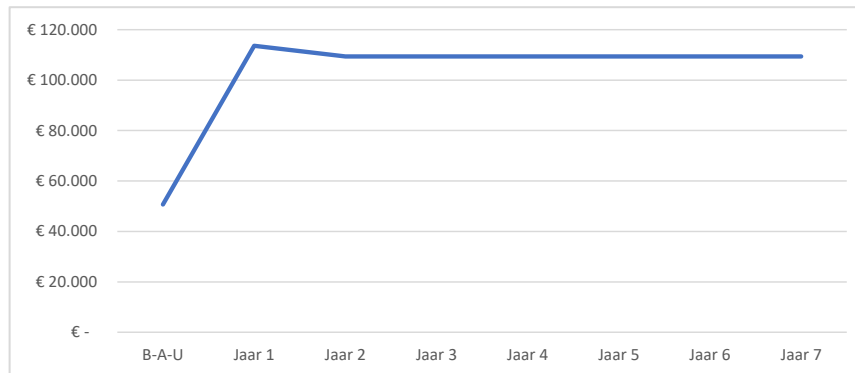
³⁴ One FTE consists of 2.080 hours. The total employer costs for an average employee with a permanent contract are € 64.409,- Source: OECD Input to the Netherlands Independent Commission on the Regulation of Work, 2020.

The figures below provide insight in the development of RB over time. From B-A-U costs to structural cost per year, including one-off costs in the first year.

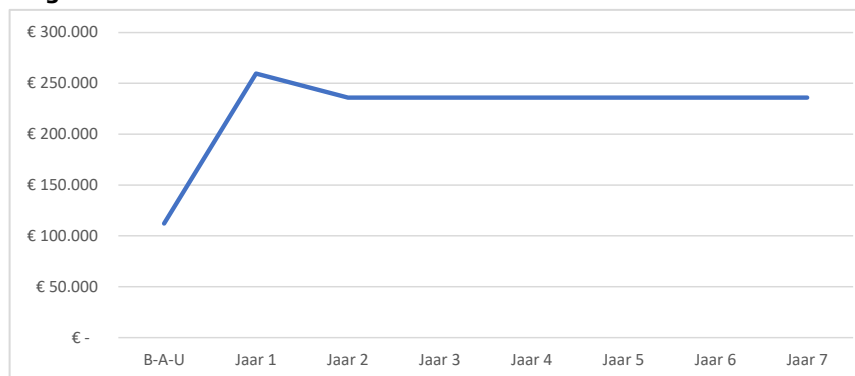
Small business over time



Medium-sized business over time

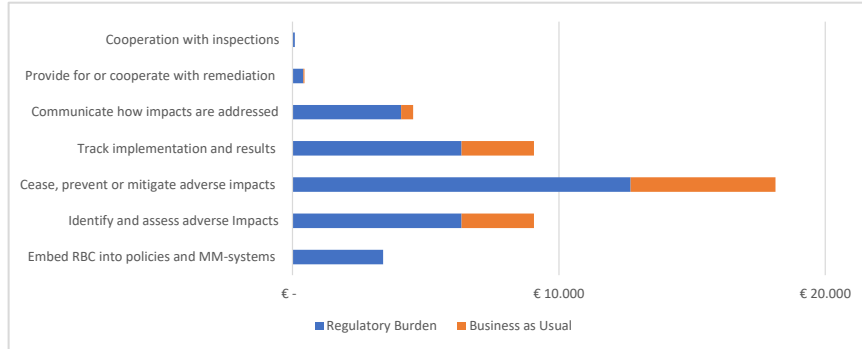


Large business over time

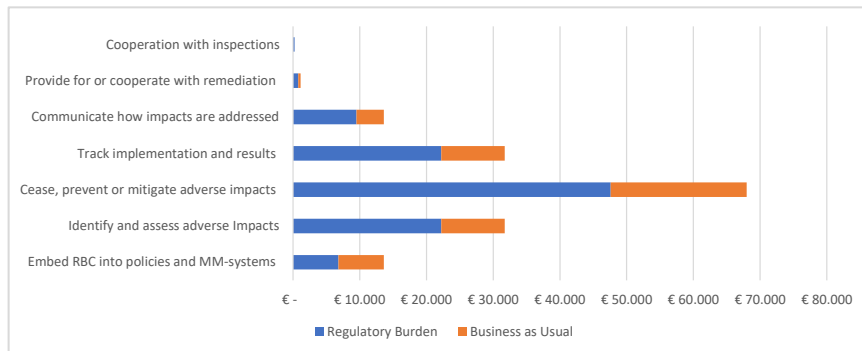


The figures below show the ratio between structural RB and B-A-U per obligation.

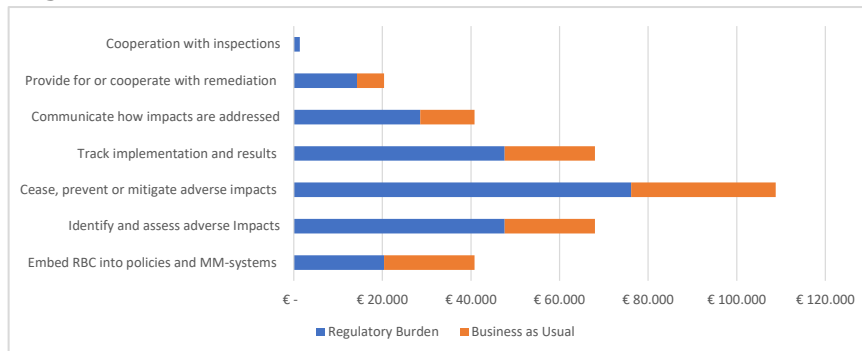
Small business and the ratio between structural RB and B-A-U



Medium-sized business and the ratio between structural RB and B-A-U



Large business and the ratio between structural RB and B-A-U



4.2 Child Labour (Duty of Care) Act

The obligations under the Child Labour (Duty of Care) Act, the actions required from businesses to meet their obligations and the estimated costs per action:

- **Keeping abreast (One-off costs)**

Businesses are required to keep up with new legislation and regulation.

In addition to the day-to-day obligations that are inherent to running a business, employers must comply with new (or changing) regulatory requirements. To keep abreast of things, they must stay informed about current developments. Here specifically, regarding the Child Labour (Duty of Care) Act.

Interviews with businesses show that in small businesses the owner or manager is responsible for keeping abreast with new legislation. In medium-sized businesses a management team of (on average) three people (including a director) are responsible. In (very) large enterprises a board of directors (e.g., CEO, COO, CPO, CFO) and a management team of (on average) 4 people are responsible. The Child Labour (Duty of Care) Act is moderately complex. According to the "Handbook Measuring Regulatory Burden" (2018) of the Dutch Ministry of Economic Affairs and Climate Policy the standard time commitment for moderately complex legislation is (on average) 15 minutes (page 36). The legal fabric (e.g., subsidiaries) of a large business adds another layer of complexity.

Total estimated one-off cost

Business size	P	B-A-U	RB
Small	€ 14,-	€ 0,-	€ 14,-
Medium	€ 43,-	€ 0,-	€ 43,-
Large	€ 227,-	€ 0,-	€ 227,-

- **Increase awareness among employees (One-off costs)**

The Child Labour (Duty of Care) Act requires that businesses assess whether there is a reasonable presumption that the goods and services to be supplied have been produced with child labour. It is unavoidable that businesses must take steps to increase awareness among their employees about this specific issue (one-off cost).

It is crucial to create awareness among employees if an organisation wants to get a grip on the difficult subject of child labour and what this means for the operations of the organisation. It is important to create awareness in a way that appeals to every employee (especially though, with procurement). The business organisation must take the issue of child labour sufficiently into account, and an awareness of the risks regarding child labour in the supply chain must be part of normal business operations.

Interviews show that businesses will instruct staff (Time) and introduce one-off and specific changes (related to the issue of child labour) to their HR reference materials (e.g., Employee Orientation Program). Editing and printing is a one-off cost estimated at € 100,- for small businesses, € 250,- for medium-sized businesses and € 1.000,- for large businesses. Onboarding³⁵, the process of introducing a newly hired employee into an organization, is a business-as-usual cost.

³⁵ Onboarding, also known as organizational socialization, is an important part of helping employees understand their new position and job requirements.

Total estimated one-off cost

Business size	P	B-A-U	RB
Small	€ 232,-	€ 0,-	€ 232,-
Medium	€ 838,-	€ 0,-	€ 838,-
Large	€ 3.350,-	€ 0,-	€ 3.350,-

- **Submit a declaration to the supervisory authority (AB)**

The Child Labour (Duty of Care) Act requires businesses to submit a declaration to the supervisory authority immediately after being registered in the registry of the Chamber of Commerce (or at the latest six months after being registered) that they have acted with due diligence to prevent the goods and services to be supplied being produced with child labour.

Submitting a declaration is a common administrative burden, not unique to the Child Labour (Duty of Care) Act. According to the "Handbook Measuring Regulatory Burden" (2018) of the Dutch Ministry of Economic Affairs and Climate Policy the standard time commitment for the required activities is (on average) 120 minutes for gathering the necessary data, 30 minutes for composing the declaration, 15 minutes to deposit the declaration and another 15 minutes to file all documentation in the company archives (page 36). It seems reasonable to expect businesses to spend a total of 3 hours to deposit a declaration. No different demands are placed on small, medium-sized, or large businesses.

Total estimated one-off cost

Business size	P	B-A-U ³⁶	RB
Small	€ 170,-	€ 0,-	€ 170,-
Medium	€ 170,-	€ 0,-	€ 170,-
Large	€ 170,-	€ 0,-	€ 170,-

- **Businesses conduct due diligence (CC)³⁷**

As part of their due diligence, businesses, must assess whether there is a reasonable presumption that its goods or services have been produced with the aid of child labour (structural cost) by obtaining information from sources that businesses can reasonably be expected to know about or consult. In the event of there being such a presumption, businesses must develop and implement action plans in line with international guidelines ILO-IOE Child Labour Guidance Tool for Business, which follow the steps of the OECD guidelines, specified for child labour. Of the 152 million children involved in child labour globally, it is not expected many are part of global supply chains (except for several known high risk sectors incl. agriculture (food), natural stone, cocoa, coffee, gold, and other minerals).

In the period 2017-2019, Netherlands Enterprise Agency (RVO) has funded 26 projects of businesses that work with NGOs to combat child labour and conduct due diligence.³⁸ Funding has been provided for due diligence and remediation measures. It is plausible that the number of projects subsidised regarding child labour will rise after the Child Labour (Duty of Care) Act comes into force. Likewise, it is plausible that the Child Labour (Duty of Care) Act leads to an increase in awareness and attention which in turn might lead to an increase in the number of cases. Nevertheless, we believe this figure of 26 cases provides a good

³⁶ Submitting a declaration to a supervisory authority is never considered B-A-U.

³⁷ Comparable with the following obligations under the proposed broad due diligence legislation: 1) Identify and assess adverse impacts (CC) and 2) Cease, prevent or mitigate adverse impacts (CC).

³⁸ Worldwide, 152 million children work in child labour. Approximately 70.9% work in agriculture.

starting point when estimating the frequency with which businesses will be required to investigate and draw up and implement an action plan. Therefore, we will work under the assumption that the frequency of yearly cases equals 26.³⁹

The 26 cases are distributed as follows⁴⁰:

- 5 cases among 53.505 small businesses.
- 8 cases among 11.795 medium-sized businesses.
- 13 cases among 3.275 large businesses.

We estimate that it takes businesses (on average) 400 hours (50 working days) to investigate and draw up and implement an (effective) action plan per case.

Total estimated structural cost per year

Business size	P	B-A-U ⁴¹	RB
Small	€ 2,-	€ 0,-	€ 2,-
Medium	€ 15,-	€ 0,-	€ 15,-
Large	€ 111,-	€ 0,-	€ 111,-

▪ **Cooperation with inspection by public authorities (AB)**

The Child Labour (Duty of Care) Act requires businesses to cooperate with the designated inspectorate or regulatory body.

Inspection and supervision are based on a risk analysis⁴² of the sectors and businesses involved, considering their size and position in the supply chain and the seriousness of the potential adverse consequences of their activities. In addition, relevant information about compliance with the due diligence criteria, including concrete reports from those involved, are considered.

To date there are few examples where businesses need to cooperate with inspectorates on the topic of child labour in third countries.

Our assumption is that the number of cases will remain scarce in the foreseeable future (N/A). Inspections will likely be driven by incidents, litigation, media attention and grievance mechanisms.

▪ **Total costs (P) of Child labour (Duty of Care) Act obligations**

The table below contains a summary of the total estimated average costs for small, medium-sized, and large businesses.

Total estimated costs

Business size	RB classification	One-off costs	Structural costs
Small	AB	€ 14	€ 170
	CC	€ 218	€ 2
	Total	€ 232	€ 172
Medium	AB	€ 43	€ 170
	CC	€ 838	€ 15
	Total	€ 880	€ 185
Large	AB	€ 227	€ 170
	CC	€ 3.350	€ 111
	Total	€ 3.577	€ 281

³⁹ That is, in the period 2017-2019 there were on average 13 cases per year (for a total of 26 cases in two years). Our working assumption is that after the implementation of the Child Labour (Duty of Care) Act the yearly number of cases will settle around 26 (due to increased vigilance). This is a best estimate based on the available data. This could turn out to be an underestimation.

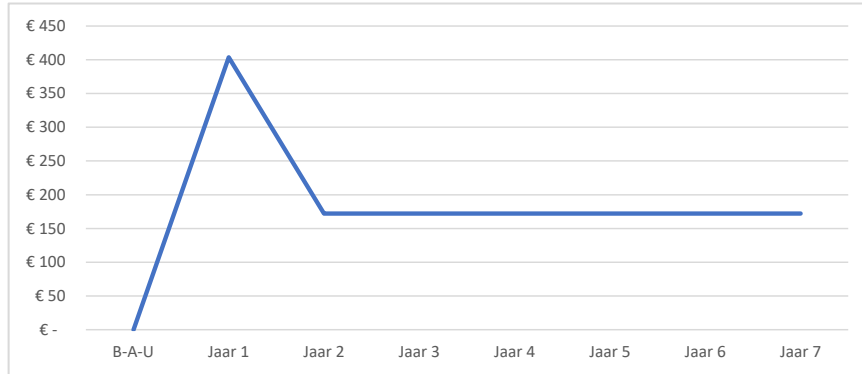
⁴⁰ A complete breakdown of the number of businesses per category (small, medium-sized, and large) can be found in chapter 5.

⁴¹ Cases where goods or services have been produced with the aid of child labour are not B-A-U.

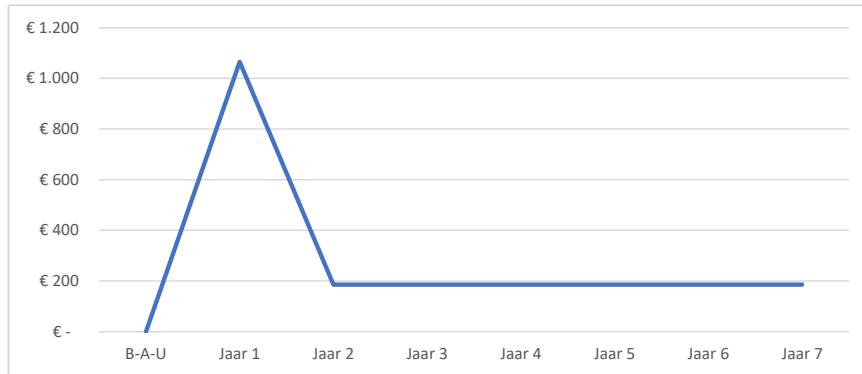
⁴² It is assumed that the designated inspectorate follows the best practices described in "OECD Best Practice Principles for Regulatory Policy Regulatory Enforcement and Inspections", OECD 2014.

The figures below provide insight in the development of RB over time.

Small business over time



Medium-sized business over time



Large business over time



4.3 General Duty of Care

The obligations under a general Duty of Care, the actions required from businesses to meet their obligations and the estimated costs per action:

- **Keeping abreast (One-off costs)**

Businesses are required to keep up with new legislation and regulation.

In addition to the day-to-day obligations that are inherent to running a business, employers must comply with new (or changing) regulatory requirements. To keep abreast of things, they must stay informed about current developments.

Interviews with businesses show that in small businesses the owner or manager is responsible for keeping abreast with new legislation. In medium-sized businesses a management team of (on average) three people (including a director) are responsible. In (very) large enterprises a board of directors (e.g., CEO, COO, CPO, CFO) and a management team of (on average) 4 people are responsible. For most businesses, the general Duty of Care is not complex. According to the "Handbook Measuring Regulatory Burden" (2018) of the Dutch Ministry of Economic Affairs and Climate Policy the standard time commitment for simple legislation is (on average) 3 minutes (page 36). The legal fabric (e.g., subsidiaries) of a large business adds another layer of complexity.

Total estimated one-off cost

Business size	P	B-A-U	RB
Small	€ 3,-	€ 0,-	€ 3,-
Medium	€ 9,-	€ 0,-	€ 9,-
Large	€ 45,-	€ 0,-	€ 45,-

- **Increase awareness among employees (One-off costs)**

The general Duty of Care requires that businesses conduct themselves with due care. For businesses to act reasonably competent they must take steps to increase awareness among their employees *of the conduct expected of them and the established company protocols* (one-off cost).

It is important to create awareness among employees if an organisation wants to get a grip on difficult subject matters and what they mean for the operations of the organisation. Most business organisations create awareness among their employees of the conduct expected of them and the established company protocols through onboarding, training (or coaching) and reference materials. However, onboarding⁴³, the process of introducing a newly hired employee into an organization, is a business-as-usual cost.

As explained, the Netherlands already has a social duty of care ("What is fitting in society") which has been adopted in case law. This social duty of care would – under this proposal – be made a legal duty of care. Because it concerns a codification of an existing social duty of care, it is expected that it is normal for businesses to explain to their employees that they will have to conduct themselves with due care in the supply chain, as may be expected of a reasonably competent and reasonably acting enterprise. We assume therefore that businesses introduce no specific changes to their HR reference materials (e.g., Employee Orientation Program) because of the general Duty of Care. There are no one-off costs.

⁴³ Onboarding, also known as organizational socialization, is an important part of helping employees understand their new position and job requirements. It is common for businesses to raise awareness among their employees of the conduct expected of them and the established company protocols.

- **Cease, prevent or mitigate adverse impacts (CC)**

Businesses that know (or can reasonably presume) that their business activity is detrimental to or can affect the human rights, labour rights or the environment in a country outside The Netherlands, are required to take all measures that they are reasonably able to do that cease, prevent and/or mitigate these adverse impacts or negative consequences (structural cost).

The details of what is (and what is not) covered by the general Duty of Care will be further elaborated by the civil court. That means that in due time the extent of the liability of businesses will be tested in the civil court.⁴⁴ An extension of liability is not foreseen (liability already exists based on case law). Converting the social duty of care into a statutory general duty of care is unlikely to lead to more civil lawsuits. When a judge finds that a business is liable for a detrimental impact on the human rights, labour rights or the environment in a country outside The Netherlands (i.e., the business knew or could reasonably suspect that their business activity was having a detrimental impact) then the court will make said business (partly) responsible for the remediation of grievances. These costs are **not** considered regulatory burden (RB). As such they fall outside the scope of this exploratory study.

- **Cooperation with inspection by public authorities (not applicable)**

The general Duty of Care will most likely rely on civil enforcement (article 6: 162 Civil Code). As such there is no designated inspectorate or regulatory body (no inspection costs).

- **Total costs (P) of the general Duty of Care Act obligations**

The table below contains a summary of the total estimated average costs for small, medium-sized, and large businesses.

Total estimated costs

Business size	RB classification	One-off costs	Structural costs
Small	AB	€ 3	€ 0
	CC	€ 0	€ 0
	Total	€ 3	€ 0
Medium	AB	€ 9	€ 0
	CC	€ 0	€ 0
	Total	€ 9	€ 0
Large	AB	€ 45	€ 0
	CC	€ 0	€ 0
	Total	€ 45	€ 0

⁴⁴ Cases where a civil court intervenes are not B-A-U.

5 RBC – possible target groups (Q)

5.1 About the source data

The number of businesses that is or will be directly or indirectly affected by the policy on responsible business conduct (RBC), and therefore the implementation of a broad due diligence obligation⁴⁵ and the Child Labour (Duty of Care) Act, can be significant⁴⁶. The total regulatory burden depends to a large extent on the number of businesses (based on the size of the business and the sector) that will have to comply with future legislation.⁴⁷ The regulatory burden is measured for three scenarios. The scenarios are explained in §5.2. The three scenarios can be characterised as follows:

1. *Total number of businesses in the Netherlands*: the maximum number of businesses that will be obligated to implement the RBC policy.
2. *Total number of large businesses*: the number of large businesses according to the EU classification and the 90%-goal set by the Dutch MFA⁴⁸.
3. *Total number of businesses in risk sectors*: the number of businesses working within the identified risk sectors⁴⁹.

To form a correct representation of the number of businesses, we use the size of the company in accordance with the EU classification: micro, small, medium, and large⁵⁰. The EU classification is based on three criteria and states that at least 2 out of the 3 criteria must be met based on two consecutive balance sheet dates:

- The value of the assets (in millions of euros).
- The net turnover for the financial year (in millions of euros).
- The average number of employees over the financial year.

However, neither Statistics Netherlands (CBS) nor Eurostat has data available on the value of the assets (in millions of euros) and the net turnover for the financial year (in millions of euros). Statistics Netherlands does have quantitative data of the size of businesses and legal form of businesses. This is based on the number of employees. In this study we use a categorization of businesses *based only on the number of employees*.⁵¹

For the collection of the data, we used the EU classification. The Dutch Ministry of Foreign Affairs (Dutch MFA) has added two additions to this classification, namely Large + (i.e., large businesses under the 90% goal) and Large ++.

⁴⁵ [OECD](#) Guidelines for Multinational Enterprises, 2011.

⁴⁶ Evaluation of the Dutch RBC Agreements 2014-2020 – Are voluntary multi-stakeholder approaches to responsible business conduct effective? KIT Royal Tropical Institute (8 July 2020).

⁴⁷ Of course, the total regulatory burden is also greatly affected by reducing or simplifying obligations, allowing for temporal exemptions (e.g., a transition period), etc.

⁴⁸ According to the EU classification.

⁴⁹ [CSR Sector Risk Assessment](#) – Considerations for dialogue. Commissioned by the Minister for Foreign Trade and Development Cooperation and the Minister of Economic Affairs (2014).

⁵⁰ Book 2 – Legal entities, Section 11 – Exemptions based on the size of the business of the legal entity, Article [395a](#), [396](#) and [397](#). (*translated from Dutch*).

⁵¹ For this exploratory study this is a reasonably reliable approximation. Admittedly, if one were to also use the criteria 'value of assets' and 'net turnover for the financial year' the total number of businesses in each category might have to be adjusted slightly.

Statistics Netherlands explains that the number of businesses has been rounded off to a multiple of five. For this reason, it is possible that the number of the total amount of businesses is not equal to the sum of the numbers. Statistics Netherlands states that the total numbers are accurate but that rounding differences⁵² can occur when there is a detailed breakdown of the sectors. The criteria of the EU classification and the additional classification requested by the Dutch Ministry of Foreign Affairs, and associated values can be found in the table below:

Table 2. EU classification according to company size (incl. classification Ministry of Foreign Affairs)

Company size	Average number of employees	Net turnover	Value of the assets
Micro	< 10	≤ 0.7 million	≤ 0.35 million
Small	< 50	≤ 12 million	≤ 6 million
Medium sized	< 250	≤ 40 million	≤ 20 million
Large	≥ 250	> 40 million	> 20 million
Large +	> 500	> 40 million	> 20 million
Large ++	> 1000	> 40 million	> 20 million

To determine the number of businesses for the three different scenarios, we adhere to the Standard Industrial Classification (SBI) of Statistics Netherlands. The SBI classifies the businesses according to their economic activity⁵³ and gives it an alphabetical and numerical code ('digit'). The first four digits of the SBI are based on the European⁵⁴ and international⁵⁵ database. Based on the categorization of the sectors, we have collected the data of the sectors of the 1st, 2nd, and 3rd digit: this will provide clarity and enough detail about the actual representation of the company size within a sector.

Table 3. Structure of the digits⁵⁶

Digit	Explanation
1 st	Section (sector)
2 nd	Division
3 rd	Group
4 th	Class
5 th	Category
6 th	Subcategory

5.2 The size of target groups - 3 scenarios

5.2.1 Scenario 1: a blanket approach to regulation

The first scenario states that all Dutch enterprises (including SMEs) of every size (small, medium-sized, and large) will have to comply with RBC policy. It means that there will

⁵² CBS: Businesses; company size and legal form. (translated from Dutch).

⁵³ Standard Industrial Classification – Structure: 2^e digit and 5^e digit, 2019.

⁵⁴ Statistical Classification of Economic Activities in the European Community, Rev. 2 (2008), Eurostat.

⁵⁵ International Standard Industrial Classification of All Economic Activities, Revision 4 (2008), Eurostat

⁵⁶ CPA 2008 Introductory Guidelines.

be a general commitment to implement and follow up a future broad due diligence obligation, the Child Labour (Duty of Care) Act and the general Duty of Care.

To date it remains unclear if there will be any exceptions. However, for the purposes of this study, we assume that micro enterprises and the self-employed will be *exempted* from a broad due diligence obligation. There are several reasons why this would make sense. First, most businesses in the category micro enterprises are self-employed (or part-time self-employed) professionals or freelancers. They generally work for one or more business clients (i.e., enterprises in the categories small, medium-sized, and large). Second, business dynamics are such that of the hundreds of thousands of businesses (source: [Dutch Chamber of Commerce](#)) that start *and stop* each year, most are concentrated in the category micro enterprises (i.e. there is a large turnover). Third, many businesses in the category micro enterprises are part-time-businesses. Active, for example, in seasonal industries (e.g., gardening services, renting holiday cabins). For micro businesses and the self-employed the idea of a continuous improvement cycle (as envisaged by the OECD Guidelines) is a somewhat abstract concept. The report "Reducing the risk of policy failure" (OECD 2000) points out that non-compliance has as much to do with the *ability* of the target group to comply, as with the *willingness* of the target group to comply. Size related exemptions are common and sometimes considered best practice. In the report "Models to reduce the disproportional regulatory burden on SMEs" (EC, 2007) the European Commission identifies size related exemptions as one of the most effective tools to reduce disproportionate regulatory burden.⁵⁷

The table below shows all Dutch enterprises (including SMEs) of the 1st digit. If the due diligence obligation and the Child Labour (Duty of Care) Act applies to all Dutch enterprises, 1.918.945 businesses will be subject to a regulatory burden.

Table 4. Overview of the total number of Dutch businesses per section

Section (sector)	Total number of businesses
A Agriculture, forestry, and fishing	76.145
B Mineral extraction	515
C Industry	70.860
D Energy Supply	1.830
E Water utilities and waste management	1.875
F Construction industry	205.510
G Trade	251.300
H Transport and storage	50.750
I Hospitality	65.030
J Information and communication	100.160
K Financial services	95.830
L Rental and trade of real estate	28.720
M Specialist business services	371.625
N Rental and other business services	85.490
O Public administration and government services	825
P Education	104.275
Q Health and welfare care	179.540
R Culture, sports, and recreation	116.405
S Other services	112.115

⁵⁷ Other tools are for example reduced or simplified obligations, temporal exemptions (e.g., a transition period), administrative coordination and electronic services.

T Households	25
U Extraterritorial organizations	125
Total	1.918.945
Total minus micro enterprises and the self-employed	68.575
Total of small businesses	53.505
Total of medium-sized businesses	11.795
Total of Large (including Large + and Large ++)	3.275

5.2.2 Scenario 2: a sectoral approach to regulation

The second scenario states that only the Dutch enterprises (including SMEs) of every size (small, medium-sized, and large) that are part of a risk-sector will have to deal with the RBC policy. For risk-sectors it is known that there are (often) problems, such as child labour, in the supply chain. Therefore, these sectors need extra attention to minimise the risks.

The table below shows the total amount of businesses per risk sector of the 2nd digit. If the broad due diligence obligation and the Child Labour (Duty of Care) Act applies to only the (high-)risk sectors, 626.985 businesses will be subject to a regulatory burden. If one excludes micro enterprises and the self-employed this number is 26.275 businesses.

Table 5. Overview of the total amount of businesses in the high-risk sections and divisions⁵⁸

Section and division	Micro	Small	Me- dium	Large	Large +	Large ++
Number of employees	< 10	< 50	< 250	≥ 250	≥ 500	≥ 1000
A.01 Agriculture	72.450	1.945	185	5	5	0
B.06 Extraction of petroleum and natural gas	15	0	10	0	0	0
B.09 Services for mineral extraction ⁵⁹	335	10	15	0	0	0
B.19 Petroleum industry	25	5	10	0	0	0
C.10 Food industry	4.880	865	330	50	20	5
C.11 Beverage industry	915	25	10	0	5	0
C.13 Textile industry	2.330	120	30	5	0	0
C.14 Clothing industry	2.340	35	0	0	0	0
C.16 Wood industry	2.625	235	50	0	0	0
C.17 Paper industry	195	80	70	10	0	0
C.20 Chemical industry	700	165	120	25	15	5
C.24 Basic metal industry	270	65	35	15	0	0
C.25 Metal products industry	11.435	1.370	330	25	5	0
C.26 Electrotechnical industry	1.230	180	70	5	0	5
C.27 Electrical appliance industry	890	155	55	5	5	0
D.35 Energy businesses	1.740	50	25	5	5	10
F.41 General construction and project development	84.240	1.260	260	20	5	5

⁵⁸ Statistics Netherlands uses conventional rounding, hence the large number of zeros.

⁵⁹ The numbers of 'B.09 Services for mineral extraction' and 'B.19 Petroleum Industry' are part of the 3rd digit. Both groups are part of a division that is not entirely considered as a risk-sector nor -division.

F.42 Groundworks, hydraulic engineering, and road construction	10.105	315	95	15	10	10
F.43 Specialized construction	105.780	2.920	415	35	10	10
G.46 Wholesale and trade mediation	69.365	6.445	1.370	120	40	15
G.47 Retail trade (no cars)	134.235	3.960	655	70	50	40
K.64 Banking	80.150	420	65	10	5	10
K. 65 Insurers and pension funds	500	55	40	10	10	15
K.66 Other financial services	13.945	475	90	20	15	0
Total	600.695	21.155	4.335	450	205	130
Total minus micro enterprises and the self-employed						26.275

5.2.3 Scenario 3: a targeted approach to regulation

The third scenario states that only Dutch enterprises with the company size 'large' will have to comply with RBC legislation. There are three variants: a) the EU classification – which states that businesses are considered 'large' with 250 or more employees, b) the 90%-goal: businesses with a size 'large +' have 500 or more employees, and c) businesses with a size 'large ++' have 1.000 or more employees.

The table below shows only the Dutch large enterprises of the 1st digit. If a broad due diligence obligation and the Child Labour (Duty of Care) Act applies to only the large enterprises, 3.275 businesses will be subject to a regulatory burden according to the EU classification⁶⁰, 1.610 businesses following the 90%-goal⁶¹ and 730 businesses with the large ++ variant.

Table 6. Overview of the total amount of large businesses per section

Section	Total amount of businesses ≥ 250 employees	Total amount of businesses ≥ 500 employees	Total amount of businesses ≥ 1000 employees
A Agriculture, forestry, and fishing	15	10	0
B Mineral extraction	0	0	0
C Industry	445	175	55
D Energy Supply	20	15	10
E Water utilities and waste management	25	10	5
F Construction industry	125	55	25
G Trade	375	160	60
H Transport and storage	160	80	35
I Hospitality	50	25	15
J Information and communication	125	45	20
K Financial services	90	55	25

⁶⁰ The EU classification states that a large enterprise has an average number of more than 250 employees (see also table 1).

⁶¹ Moving from providing information to requiring action – a new impulse for international corporate social responsibility. Ministry of Foreign Affairs. (2020, p14, footnote 28). Translation from Dutch.

L Rental and trade of real estate	30	10	0
M Specialist business services	170	80	30
N Rental and other business services	370	185	90
O Public administration / government services	250	125	50
P Education	360	145	70
Q Health and welfare care	600	410	230
R Culture, sports, and recreation	25	10	5
S Other services	30	15	5
T Households	0	0	0
U Extraterritorial organizations	0	0	0
Total	3.275	1.610	730

5.3 Summary table

The table below provides a summary of the total amount of businesses per scenario.

Table 7. Summary of the three scenarios

Scenarios	Total number of businesses	Excluding micro enterprises and the self-employed
Scenario 1: a blanked approach	1.918.945	68.575 ⁶²
Scenario 2: a sectoral approach	626.985	26.275
Scenario 3: a targeted approach (variant ≥250 employees)	3.275	3.275
Scenario 3: a targeted approach (variant ≥500 employees)	1.610	1.610
Scenario 3: a targeted approach (variant ≥1000 employees)	730	730

To be considered one of the largest thousand businesses in the Netherlands, a business has to employ at least an average of [929 employees](#). The total number of employees at the thousand largest companies amounts to more than 3 million. In the fourth quarter of 2020, about 9.0 million (seasonally adjusted) people in the Netherlands were in paid work. It is therefore correct to say that a targeted approach to regulation using the Dutch MFA classification covers *well over a third* of the total labour force in the Netherlands.

⁶² This breaks down into 53.505 small, 11.795 medium-sized and 3.275 large businesses.

6 RBC - regulatory burden (P x Q)

In this chapter we quantify the total regulatory burden for several possible approaches to a broad due diligence obligation (at EU and/or national level), the Child Labour (Duty of Care) Act and a general Duty of Care. As this is an exploratory study the quantification of the regulatory burden is an initial estimate, based on interviews, rounded, and calculating all due diligence steps which have been interpreted as broadly as possible.

6.1 Scenario 1: blanket approach to regulation

6.1.1 A broad due diligence obligation

All enterprises (including SMEs but excluding micro enterprises and the self-employed):

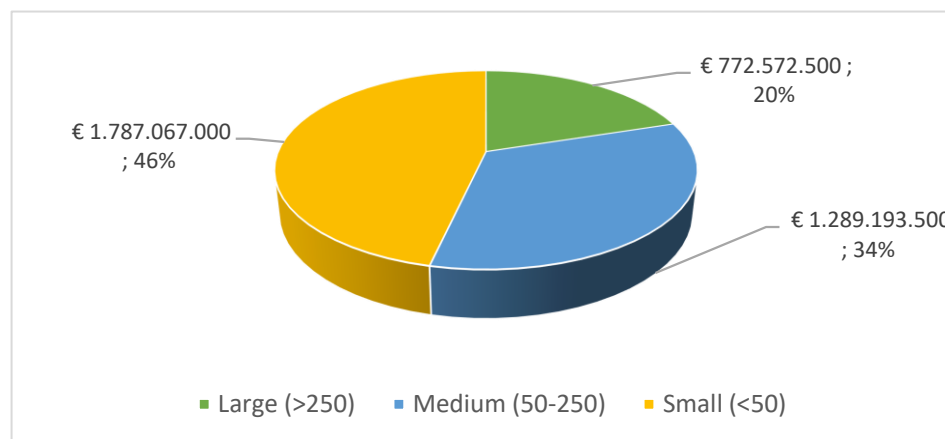
Total structural RB per year [rounded]

Business size	AB	CC	RB	Q	P x Q
Small	€ 4.200	€ 29.200	€ 33.400	53.505	€ 1.787.067.000
Medium	€ 9.700	€ 99.600	€ 109.300	11.795	€ 1.289.193.500
Large	€ 29.900	€ 206.000	€ 235.900	3.275	€ 772.572.500
Total				68.575	€ 3.848.833.000

Total one-off RB [rounded]

Business size	AB	CC	RB	Q	P x Q
Small	€ 100	€ 800	€ 900	53.505	€ 48.154.500
Medium	€ 300	€ 3.900	€ 4.200	11.795	€ 49.539.000
Large	€ 1.800	€ 21.800	€ 23.600	3.275	€ 77.290.000
Total				68.575	€ 174.983.500

The figure below shows the ratio between structural RB and business size.



6.1.2 Child labour (Duty of Care) Act

All enterprises (including SMEs but excluding micro enterprises and the self-employed):

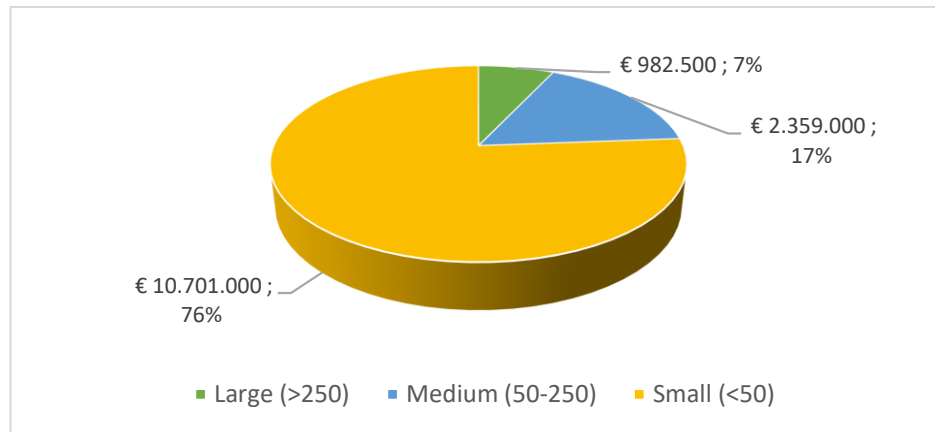
Total structural RB per year [rounded]

Business size	AB	CC	RB	Q	P x Q
Small	€ 200	€ -	€ 200	53.505	€ 10.701.000
Medium	€ 200	€ -	€ 200	11.795	€ 2.359.000
Large	€ 200	€ 100	€ 300	3.275	€ 982.500
Total				68.575	€ 14.042.500

Total one-off RB [rounded]

Business size	AB	CC	RB	Q	P x Q
Small	€ -	€ 200	€ 200	53.505	€ 10.701.000
Medium	€ 50	€ 850	€ 900	11.795	€ 10.615.500
Large	€ 200	€ 3.400	€ 3.600	3.275	€ 11.790.000
Total				68.575	€ 33.106.500

The figure below shows the ratio between structural RB and business size.



6.1.3 General Duty of Care

All enterprises (including SMEs but excluding micro enterprises and the self-employed):

Total structural RB per year [rounded]

Business size	AB	CC	RB	Q	P x Q
Small	€ -	€ -	€ -	53.505	€ -
Medium	€ -	€ -	€ -	11.795	€ -
Large	€ -	€ -	€ -	3.275	€ -
Total				68.575	€ 0

Total one-off RB [rounded]

Business size	AB	CC	RB	Q	P x Q
Small	€ 5	€ -	€ 5	53.505	€ 267.525
Medium	€ 10	€ -	€ 10	11.795	€ 117.950
Large	€ 50	€ -	€ 50	3.275	€ 163.750
Total				68.575	€ 549.225

Note: The proposed broad due diligence obligation and the general Duty of Care overlap. The costs for the duty of care can be considered nil if one already complies with the proposed broad due diligence obligation.

6.2 Scenario 2: sectoral approach to regulation

6.2.1 A broad due diligence obligation

All enterprises in specific high-risk sectors (including SMEs but excluding micro enterprises and the self-employed):

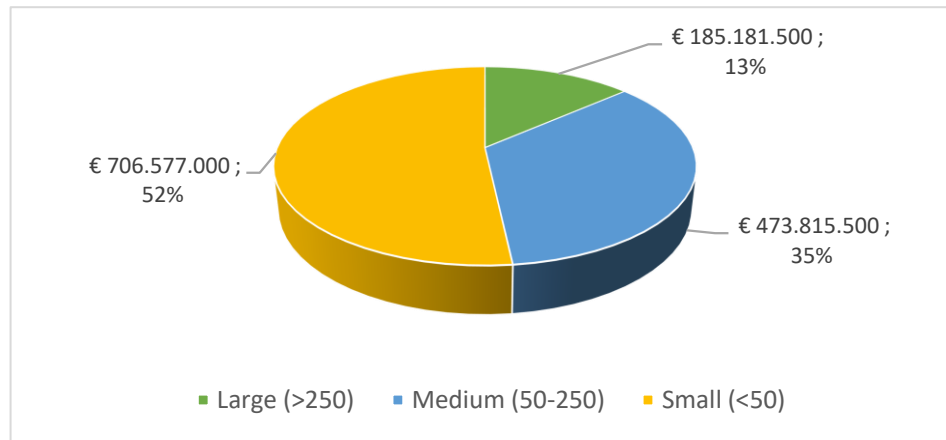
Total structural RB per year [rounded]

Business size	AB	CC	RB	Q	P x Q
Small	€ 4.200	€ 29.200	€ 33.400	21.155	€ 706.577.000
Medium	€ 9.700	€ 99.600	€ 109.300	4.335	€ 473.815.500
Large	€ 29.900	€ 206.000	€ 235.900	785	€ 185.181.500
Total				26.275	€ 1.365.574.000

Total one-off RB [rounded]

Business size	AB	CC	RB	Q	P x Q
Small	€ 100	€ 800	€ 900	21.155	€ 19.039.500
Medium	€ 300	€ 3.900	€ 4.200	4.335	€ 18.207.000
Large	€ 1.800	€ 21.800	€ 23.600	785	€ 18.526.000
Total				26.275	€ 55.772.500

The figure below shows the ratio between structural RB and business size.



6.3 Scenario 3: targeted approach to regulation

6.3.1 A broad due diligence obligation

Only large businesses according to the EU classification:

Total structural RB per year [rounded]

Business size	AB	CC	RB	Q	P x Q
Large (≥250)	€ 29.900	€ 206.000	€ 235.900	3.275	€ 772.572.500
Total				3.275	€ 772.572.500

Total one-off RB [rounded]

Business size	AB	CC	RB	Q	P x Q
Large (≥250)	€ 1.800	€ 21.800	€ 23.600	3.275	€ 77.290.000
Total				3.275	€ 77.290.000

Only large businesses following the 90% goal threshold:

Total structural RB per year [rounded]

Business size	AB	CC	RB	Q	P x Q
Large (≥500)	€ 29.900	€ 206.000	€ 235.900	1.610	€ 379.799.000
Total				1.610	€ 379.799.000

Total one-off RB [rounded]

Business size	AB	CC	RB	Q	P x Q
Large (≥500)	€ 1.800	€ 21.800	€ 23.600	1.610	€ 37.996.000
Total				1.610	€ 37.996.000

Only large businesses with equal or more than 1.000 employees:

Total structural RB per year [rounded]

Business size	AB	CC	RB	Q	P x Q
Large (≥1.000)	€ 29.900	€ 206.000	€ 235.900	730	€ 172.207.000
Total				730	€ 172.207.000

Total one-off RB [rounded]

Business size	AB	CC	RB	Q	P x Q
Large (≥1.000)	€ 1.800	€ 21.800	€ 23.600	730	€ 17.228.000
Total				730	€ 17.228.000

6.4 The impact of regulatory burden on business

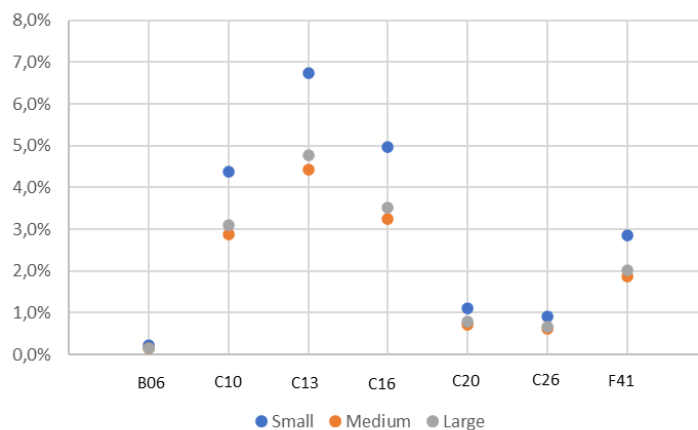
Regulatory burden in itself has little meaning. In this exploratory study we have chosen to compare the calculated regulatory burden with the profit before tax. The Dutch National Bureau of Statistics (Statistics Netherlands) calculates the profitability per sector in their annual Labour and financial data. The last available data is from 2018 and unfortunately not all data is available for all branches. To give an idea of the impact of the regulatory burden on the profitability before tax we selected the sectors as noted in the table below. From the data the total profitability before tax per employee is calculated by dividing the profitability for each sector by the number of employees working within this sector. To come to an average number of employees per company size we assume for small businesses 25 employees, for medium-sized businesses 125 employees and for large businesses 250 employees. For each company size the profitability before tax is then calculated by multiplying the profitability before tax per employee with the number of employees. The table below shows these calculations.

Table 8. Calculation of the profitability per company size

Code	Section division	Profit before tax per employee (2018)	Small (25)	Medium (125)	Large (250)
B06	Extraction of petroleum natural gas	€626.200	€15.655.000	€78.275.000	€156.550.000
C10	Food industry	€30.500	€762.500	€3.812.500	€7.625.000
C13	Textile industry	€19.800	€495.000	€2.475.000	€4.950.000
C16	Wood industry	€26.900	€672.500	€3.362.500	€6.725.000
C20	Chemical industry	€120.800	€3.020.000	€15.100.000	€30.200.000
C26	Electrotechnical	€144.700	€3.617.500	€18.087.500	€36.175.000
F41	General construction	€46.900	€1.172.500	€5.862.500	€11.725.000

The table shows that the profitability before tax of a sector can vary enormously (from € 626.000 to € 19.800 per employee). With caution we can conclude that the impact of the regulatory burden will be different for each sector. The figure below shows this impact as a 'percentage regulatory burden' calculated by dividing the regulatory burdens for small, medium-sized, and large companies by the total profit as calculated in the table above.

Figure 2. Regulatory burden of broad due diligence as percentage of profit (per sector)



The figure shows that larger businesses and/or businesses with high profits will experience only a little impact from the proposed new obligation on due diligence. For example, the profitability of the sectors B06 Extraction of petroleum and natural gas, C20 Chemical industry and C26 Electro-technical industry is so high that the impact of the Regulatory burden will barely exceed 1 percent.

Smaller businesses and/or businesses with low profits will experience a more significant impact on their profitability. For certain sectors C10 Food industry, C13 Textile industry and C16 Wood industry the impact on the percentage is estimated between 4% to almost 7%. We also must bear in mind that these figures are calculated from Statistics Netherlands data that is based on averages. This means that there will always be companies that have no profit or even losses.

Note: In other studies, the regulatory burden is often compared to the annual turnover. This does not give any indication of the impact for a company. Regulatory burden calculated as costs have impact on the profitability of a company and not on their turnover.

7 Conclusions

In this chapter we present the quantitative and qualitative conclusions of our study.

7.1 Quantitative conclusions

7.1.1 Total regulatory burden (RB) of a broad due diligence obligation (3 scenarios):

Scenario 1: a blanket approach to a broad due diligence obligation

- The total estimated average RB amounts to 0,5 FTE for small businesses, 1,5 FTE for medium-sized businesses and between 3 and 4 FTE for large businesses.
- Total structural RB per year

Business size	AB	CC	RB	Q	P x Q
Small	€ 4.200	€ 29.200	€ 33.400	53.505	€ 1.787.067.000
Medium	€ 9.700	€ 99.600	€ 109.300	11.795	€ 1.289.193.500
Large	€ 29.900	€ 206.000	€ 235.900	3.275	€ 772.572.500
Total				68.575	€ 3.848.833.000

- Total one-off RB

Business size	AB	CC	RB	Q	P x Q
Small	€ 100	€ 800	€ 900	53.505	€ 48.154.500
Medium	€ 300	€ 3.900	€ 4.200	11.795	€ 49.539.000
Large	€ 1.800	€ 21.800	€ 23.600	3.275	€ 77.290.000
Total				68.575	€ 174.983.500

Scenario 2: a sectoral approach to a broad due diligence obligation

- Total structural RB per year

Business size	AB	CC	RB	Q	P x Q
Small	€ 4.200	€ 29.200	€ 33.400	21.155	€ 706.577.000
Medium	€ 9.700	€ 99.600	€ 109.300	4.335	€ 473.815.500
Large	€ 29.900	€ 206.000	€ 235.900	785	€ 185.181.500
Total				26.275	€ 1.365.574.000

- Total one-off RB

Business size	AB	CC	RB	Q	P x Q
Small	€ 100	€ 800	€ 900	21.155	€ 19.039.500
Medium	€ 300	€ 3.900	€ 4.200	4.335	€ 18.207.000
Large	€ 1.800	€ 21.800	€ 23.600	785	€ 18.526.000
Total				26.275	€ 55.772.500

Scenario 3: a targeted approach to a broad due diligence obligation (3 options)

- Only large businesses according to the EU classification:
 - Total structural RB per year

Business size	AB	CC	RB	Q	P x Q
Large (≥250)	€ 29.900	€ 206.000	€ 235.900	3.275	€ 772.572.500
Total				3.275	€ 772.572.500

- Total one-off RB

Business size	AB	CC	RB	Q	P x Q
Large (≥250)	€ 1.800	€ 21.800	€ 23.600	3.275	€ 77.290.000
Total				3.275	€ 77.290.000

- Only large businesses following the 90% goal threshold:

- Total structural RB per year

Business size	AB	CC	RB	Q	P x Q
Large (≥500)	€ 29.900	€ 206.000	€ 235.900	1.610	€ 379.799.000
Total				1.610	€ 379.799.000

- Total one-off RB

Business size	AB	CC	RB	Q	P x Q
Large (≥500)	€ 1.800	€ 21.800	€ 23.600	1.610	€ 37.996.000
Total				1.610	€ 37.996.000

- Only large businesses with equal or more than 1.000 employees:

- Total structural RB per year

Business size	AB	CC	RB	Q	P x Q
Large (≥1.000)	€ 29.900	€ 206.000	€ 235.900	730	€ 172.207.000
Total				730	€ 172.207.000

- Total one-off RB

Business size	AB	CC	RB	Q	P x Q
Large (≥1.000)	€ 1.800	€ 21.800	€ 23.600	730	€ 17.228.000
Total				730	€ 17.228.000

7.1.2 The regulatory costs of the Child labour (Duty of Care) Act

- Total structural RB per year

Business size	AB	CC	RB	Q	P x Q
Small	€ 200	€ -	€ 200	53.505	€ 10.701.000
Medium	€ 200	€ -	€ 200	11.795	€ 2.359.000
Large	€ 200	€ 100	€ 300	3.275	€ 982.500
Total				68.575	€ 14.042.500

- Total one-off (incidental) RB

Business size	AB	CC	RB	Q	P x Q
Small	€ -	€ 200	€ 200	53.505	€ 10.701.000
Medium	€ 50	€ 850	€ 900	11.795	€ 10.615.500
Large	€ 200	€ 3.400	€ 3.600	3.275	€ 11.790.000
Total				68.575	€ 33.106.500

7.1.3 The regulatory costs of a general Duty of Care

- Total one-off RB

Business size	AB	CC	RB	Q	P x Q
Small	€ 5	€ -	€ 5	53.505	€ 267.525
Medium	€ 10	€ -	€ 10	11.795	€ 117.950
Large	€ 50	€ -	€ 50	3.275	€ 163.750
Total				68.575	€ 549.225

7.2 Qualitative conclusions

1. The total estimated regulatory burden of a broad due diligence obligation is significant. This exploratory study - and the SCM used - form the basis for a more thorough assessment of the regulatory burden of due diligence obligations. When, in due time, the Dutch RBC policy is translated into legislation, and definite choices have been made regarding the various policy options. This study will provide a reference for a grounded and evidence-based ex ante impact assessment.
2. The regulatory burden placed on businesses consists (on average) of 0,5 to (max) 4 FTE (e.g. a medium-sized business with 125 employees that conducts business internationally and with exposure to risks of negative consequences and adverse impacts in the supply chain would be expected to dedicate 1,5 FTE to minimising and mitigating those risks). It is important to point out that this burden – which, under the proposals investigated in this study, will be shouldered by business – would otherwise be passed on to workers, society, or the environment.

In short, dedicating capacity to due diligence *prevents* adverse impacts on and costs for workers, society, and the environment often in countries outside The Netherlands.
3. It needs to be emphasised that there are also significant benefits for businesses that operate internationally in a responsible manner (e.g., being an attractive employer, access to capital, good reputation, competitive advantages and goodwill).
4. Businesses that have started the process of due diligence in the past ten years, either out of intrinsic or extrinsic motivation, have a higher level of maturity and therefore will experience considerably less regulatory pressure than businesses that have not yet started the process of due diligence. It can therefore be argued that the proposed legislative (options) reward socially responsible behaviour.
5. The due diligence process will be carried out differently by small and medium-sized businesses than by large and listed companies. Businesses in high-risk sectors will have to incur considerably more costs than businesses with relatively few risks. To paraphrase: costs can differ enormously, depending on the scale of operations and the complexity of the supply chains and the sector that a business is part of.
6. The continuous improvement process inherent in the due diligence process means that many costs are structural or at least must be repeated with some regularity. This is in line with the economic model of those businesses that are constantly looking for new markets, new sourcing countries or new suppliers. Companies whose business activities are localised (e.g., active only in the Netherlands or Western Europe), whose supply chains are short and that have long-term business relationships, will face considerably less costs.
7. Although the regulatory burden seems problematic for small and medium-sized businesses, there are also advantages for smaller companies. It is often easier for these companies to have an overview of their supply chain. There are also benefits for these companies, as it can improve their management processes, as well as the transparency that customers increasingly demand. It is especially important for SMEs to be allowed time to comply with the legislation and to be able to experience these benefits for themselves. Many costs can also be reduced through cooperation.
8. The EU classification of company size is based on three criteria and states that at least 2 out of the 3 criteria must be met based on two consecutive balance sheet dates: a) the value of the assets (in millions of euros), b) the net turnover for the financial year (in millions of euros) and c) the average number of employees over the financial year. However, this data is currently not publicly available. It would be very useful if Statistics Netherlands or Eurostat would make this data available.

Appendix

This appendix contains the proposed or floated (tentative) texts for the broad due diligence obligation, the Child Labour (Duty of Care) Act and the general Duty of Care. All texts reference Responsible Business Conduct (RBC).

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II A broad due diligence obligation

The following presents the legal obligations regarding the broad due diligence obligation formulated by the Dutch Ministry of Foreign Affairs. It is stated in (sub-)bullets.

- A company publishes a policy document approved by its board in which it commits to due diligence obligations and the principles and standards of the OECD Guidelines for Multinational Enterprises.
- The policy document contains the due diligence plan of the company which relates at least to the core (main) activities of the company and those of its business relations.
- The company ensures that the policy, as included in the policy document, is integrated into the controlling bodies of the company, the management system, and forms part of the regular business process.
- The company ensures that the policy is stated in agreements or (new) contracts with suppliers and other business relations.
- Businesses conduct an inventory of their core business, activities and business relationships and analyse and identify the potential and actual risks of adverse impacts resulting from its activities, products, or services and those of its business relationships. Businesses keep their assessments up to date.
- The company establishes its involvement in the potential and actual risks and draws up an action plan to prevent and limit potential and actual adverse consequences of its own activities, products, or services and those of business relations.
- The company implements the action plan and ensures an adequate approach to the potential and actual adverse consequences found.
- If it is not possible for the company to immediately address all potential and actual adverse impacts, it will prioritize them based on the severity and degree of likelihood. Once the most serious impacts have been identified and addressed, the company will address the less severe adverse impacts.
- Depending on the form of involvement in an adverse impact, the company takes the following steps:
 - a) if the company has caused an adverse impact, the causing activity is discontinued.
 - b) if the company has contributed to an adverse impact: the contribution is terminated or prevented; or the company uses its influence to prevent and limit residual consequences as much as possible.
 - c) if there is a direct link between an adverse impact and the activities of a business relationship of an enterprise: the company uses its influence to prevent and limit the consequences as much as possible; or the company ends the relationship.
- If an adverse impact occurs in a business relationship, the company will not end this relationship until sufficient efforts have been made to prevent or limit the adverse consequences.
- A company monitors the application and effectiveness of its due diligence measures.
- The company processes the conclusions of this monitoring in its management system and business process.
- A company reports publicly periodically (i.e., annually) on its policies and measures for due diligence, including the findings from the monitor and the results of the measures taken.

- To this end, the company provides information on the measures taken to prevent and limit adverse consequences, except for information of a confidential nature related to competition or security considerations.
- A company reports in an accessible and appropriate manner for everyone.
- The company ensures a properly functioning recovery mechanism or cooperates with this if necessary.
- Someone involved can file a complaint and submit it to the company through a properly functioning recovery mechanism.
- If a company has caused or contributed to adverse consequences, it will offer or contribute to remediation.
- Inspections and supervision are based on a risk analysis of the sectors and businesses, considering their size and position in the supply chain and the seriousness of the potential adverse consequences of their activities; and relevant information about compliance with the due diligence criteria, including concrete reports from those involved.
- In addition to repressive supervision, the supervisor is also authorized to conduct positive supervision.

Administrative fine

The inspection authority is authorized to impose an administrative fine for:

- Failure to have a policy document approved by the board in which it commits itself to the due diligence obligation and the principles and standards of the OECD Guidelines for Multinational Enterprises.
- Not having the policy document that includes an appropriate due diligence plan of the company and which in any case relates to the activities of the company and those of its business relations.
- Failure to establish involvement in the potential and actual risks and failure to establish an action plan to prevent and limit identified potential and actual adverse impacts of its own activities, products, or services and those of business relationships.
- Failure to report on how to deal with adverse consequences.
- Not having a functioning recovery mechanism.

Order subject to penalty

The inspection authority is authorized to impose an order subject to a penalty to:

- Enforce anchoring the policy, as included in the policy document, in the controlling bodies of the company, the management system and the regular business process.
- Conducting an inventory of the business areas, activities and business relationships, and an analysis of the risks of adverse consequences; drawing up an action plan to prevent and limit the identified risks.
- Implementing the action plan and ensuring an adequate approach to the identified potential and actual adverse consequences.
- Ending, mitigating, and preventing adverse consequences.
- Monitoring the application and results of due diligence.
- Offering or contributing to recovery if an enterprise has caused or contributed to adverse consequences.

III Child Labour (Duty of Care) Act

The following presents the legal text of the Child Labour (Duty of Care) Act.

Section 1

Definitions In this Act and the provisions based on it, the following definitions apply:

- a. *child labour*: child labour as referred to in section 2;
- b. *end user*: the natural person or legal person that uses or kst-34506-A ISSN 0921 - 7371 's-Gravenhage 2017 consumes goods or purchases services;
- c. *enterprise*: an enterprise within the meaning of section 5 of the Commercial Register Act or any entity that conducts an economic activity, irrespective of its legal form and the way it is financed;
- d. *supervisory authority*: the supervisory authority to be appointed by order in council;
- e. *binding instruction*: an independent order imposed on account of a violation;
- f. *independent order*: an order to perform certain specific acts, as referred to in section 5:2, subsection 2 of the General Administrative Law Act, issued to promote compliance with statutory provisions;
- g. *Our Minister*: Our Minister for Foreign Trade and Development Cooperation.

Section 2 1.

Child labour means:

- a. any form of work performed within or outside an employment relationship by persons who have not yet reached the age of 18 years and which belongs to the worst forms of child labour, as referred to in article 3 of the Worst Forms of Child Labour Convention, 1999;
- b. if the work is performed in the territory of a State that is party to the Minimum Age Convention, 1973, child labour also means: any form of work that is prohibited by the legislation of that State pursuant to that Convention;
- c. if the work is performed in the territory of a State that is not party to the Minimum Age Convention, 1973, child labour also means:
 - 1°. any form of work performed within or outside an employment relationship by persons who are subject to compulsory schooling or who have not yet reached the age of 15 years, and
 - 2°. any form of work performed within or outside an employment relationship by persons who have not yet reached the age of 18 years, in so far as that work, by its nature or the circumstances in which it is carried out, may jeopardise the health, safety or morals of young persons.

2. Notwithstanding subsection 1 (c), child labour does not include light work as referred to in article 7, paragraph 1 of the Minimum Age Convention, 1973, which is performed for no more than 14 hours per week by persons who have reached the age of 13 years.

Section 3 Supervision 1.

The supervisory authority is charged with supervising compliance with provisions laid down by or pursuant to this Act.

- 2. Every natural person and legal person whose interests are affected by the actions of an enterprise in complying with provisions laid down by or pursuant to this Act can lodge a complaint on this matter with the supervisory authority.
- 3. Only concrete indications of non-compliance with provisions laid down by or pursuant to this Act by an identifiable party will constitute grounds for the submission of a complaint.
- 4. A complaint can be accepted for consideration by the supervisory authority only once it has been disposed of by the enterprise concerned, or six months after the complaint was submitted to the enterprise if the enterprise has not disposed of it.

Section 4 Declaration 1.

- 1. Every enterprise established in the Netherlands which sells or supplies goods or services to Dutch end users must declare that it has acted with due diligence as referred to in section 5 to prevent the goods or services being produced with the aid of child labour. The first sentence applies *mutatis mutandis* to enterprises not established in the Netherlands which sell or supply goods or services to Dutch end users.
- 2. An enterprise must submit the declaration referred to in subsection 1 to the supervisory authority immediately after being recorded in the commercial register. Enterprises that are already recorded in the commercial register must submit the declaration to the supervisory authority within six months after this Act enters into force. An enterprise which is not established in the European part of the Netherlands and is not recorded in the commercial register must submit the declaration to the supervisory authority within six months after the enterprise supplies goods or services to end users in the Netherlands for the second time within a particular year.
- 3. By or pursuant to order in council, exceptions may be permitted regarding the time of submission of the declaration and further rules may be laid down concerning the form and content of the declaration.
- 4. The supply of goods, as referred to in subsection 1, does not include the mere transportation of goods.
- 5. The supervisory authority publishes the declarations in a public register on its website.

Section 5 Due diligence

- 1. An enterprise which, having regard to provisions laid down pursuant to subsection 3, carries out an investigation as to whether there is a reasonable suspicion that the goods or services to be supplied have been produced with the aid of child labour and which, in the event of there being such a suspicion, draws up and implements an action plan acts with due diligence. An enterprise which purchases goods or services from an enterprise that has issued a declaration as referred to in section 4 also acts with due diligence in relation to those goods or services. An enterprise which purchases goods or services only from enterprises that have issued declarations as referred to in section 4 also acts with due diligence and is not required to issue a declaration as referred to in section 4.
- 2. The investigation referred to in subsection 1 involves obtaining information from sources that the enterprise can reasonably be expected to know about and consult.
- 3. Further requirements concerning the investigation and action plan referred to in subsection 1 are to be laid down by or pursuant to order in council, considering the ILO-IOE Child Labour Guidance Tool for Business.

- 4. Our Minister may approve a joint action plan intended to ensure that the enterprises that sign up to it act with due diligence to prevent goods or services from being produced with the aid of child labour, concluded between one or more civil society organisations and workers' or employers' organisations. An enterprise that acts in accordance with a joint action plan approved by Our Minister acts with due diligence.

Section 6

Exemptions Categories of enterprises are to be exempted by or pursuant to order in council from provisions laid down by or pursuant to this Act.

Section 7

Administrative fines

- 1. The supervisory authority may impose an administrative fine for a violation of section 4, subsection 2 not exceeding the amount of a second category fine under article 23, paragraph 4 of the Criminal Code.
- 2. The supervisory authority may impose an administrative fine not exceeding the amount of a sixth category fine under article 23, paragraph 4 of the Criminal Code for:
 - a. failure to comply with the obligation to carry out an investigation or to draw up an action plan, as referred to in section 5, subsection 1;
 - or b. failure to comply with the requirements applicable to the investigation or the action plan, as referred to in section 5, subsection 3.
- 3. Article 23, paragraph 7 of the Criminal Code applies mutatis mutandis to subsections 1 and 2 of this section.
- 4. The supervisory authority does not impose an administrative fine for a violation of provisions laid down by or pursuant to sections 4 and 5 without first having given a binding instruction. The supervisory authority may grant the violating party a period for compliance with the instruction.

Section 8 Suspension of fine

The operation of a decision imposing an administrative fine is suspended until the date on which the period for lodging a notice of objection or application for judicial review expires or, if a notice of objection or application for judicial review has been lodged, until a decision has been made on the objection or judicial review application, respectively.

Section 9 Criminalisation

The following is inserted into section 1 (2°) of the Economic Offences Act in the appropriate place alphabetically: the Child Labour (Duty of Care) Act, section 4, subsection 2 and section 5, subsections 1 and 3, if in the five years prior to the offence, an administrative fine has been imposed under section 7, subsection 1 or 2 of that Act for a similar offence by the enterprise, committed on the instructions of or under the de facto control of the same director.

Section 10 Evaluation

Within five years after this Act enters into force, Our Minister must submit a report to the States General on the effectiveness and impacts of this Act in practice.

Section 11 Transitional provision

This Act does not apply to the supply of goods or services pursuant to an obligation entered before the issue date of the Bulletin of Acts and Decrees in which it is published, until such time as that obligation ceases to apply pursuant to a clause agreed before the issue date of the Bulletin of Acts and Decrees in which this Act is published, but no later than five years after the entry into force of this Act.

Section 12 Entry into force

- 1. This Act enters into force on a date to be determined by Royal Decree, but no earlier than 1 January 2020.
- 2. This Act is to be repealed on a date to be determined by Royal Decree not preceding the submission of the report referred to in section 10.

Section 13 Short title

This Act may be cited as the Child Labour (Duty of Care) Act.

IV General Duty of Care

The following is the original text describing the general Duty of Care in the explanatory memorandum of the bill on Responsible and Sustainable International Business.

A business that knows (or can reasonably suspect) that their business activity is detrimental to or can affect the human rights, labour rights or the environment in a country outside The Netherlands is required to take all measures that it is reasonably able to do that prevent these negative consequences. Insofar as these negative consequences cannot be prevented, the business takes steps that limit, undo, and - if necessary – aid in the recovery and remediation of said negative consequences. If it proves impossible to limit negative consequences the business will cease its business activity as far as reasonably possible can be asked of it (Article 1.2).

Article 1.2 Duty of care for all enterprises

1. An enterprise that knows or can reasonably suspect that their business activity has adverse consequences for human rights, labour rights or the environment in a country outside the Netherlands, is obliged:

- a. to take all measures that are reasonably be required to prevent such consequences.
- b. insofar as those consequences cannot be prevented: to limit these consequences as much as possible, to mitigate them and, if necessary, to arrange for remediation of such consequences.
- c. if those consequences cannot be sufficiently limited: to cease that activity insofar as this can reasonably be required.

2. Adverse consequences for human rights, labour rights or the environment will in any case arise if in the value chain there is:

- a. restriction of freedom of association and collective bargaining.
- b. discrimination.
- c. forced labour.
- d. child labour.
- e. unsafe working conditions.
- f. slavery.
- g. exploitation, or
- h. environmental damage.