

**English translation VEUO's position on the Dutch legislative proposal on international responsible and sustainable business conduct (IMVO bill)  
15 February 2023**



Vereniging Effecten Uitgevende Ondernemingen

**Outline**

VEUO envisages a major role for companies and their stakeholders to jointly contribute to sustainable long-term value creation while respecting human rights and the environment.

Dutch companies have traditionally been keen on taking a leading role in this respect. They are generally well-positioned to take the required follow-up steps in this area that is so important to them.

Sustainability touches on strategy, but also on other things that may play an important role in this, such as innovation and cooperation with and between companies - which can also learn from each other in the process.

Sustainability is also a fundamental premise of the OECD guidelines which the Netherlands has subscribed to, as well as the UN human rights and business principles and the IRBC covenants (agreements on international responsible business conduct) based on them.

Where supply and product chains (i.e. upstream and downstream) are concerned, it is important to bear in mind that these are often particularly complex and ramified, which often extend around the globe, and that companies have only limited effect on them.

A proper regulatory framework can also contribute to sustainability. Key principles in this regard include:

- clear standards setting, so that companies know what is expected of them;
- scope for prioritisation, to allow companies to focus their resources and efforts on where they have the greatest impact;
- phasing where possible, in order for companies to actually be given the opportunity to comply with new standards;
- avoiding unnecessary juridification, such as putting in place unfeasible supervisory frameworks or delegating legislation to the courts by using unclear, vaguely formulated standards, thus encouraging litigation;
- at European or even global level if possible, so as to maximise the scope of rules and create a level playing field.

The VEUO is concerned that a plethora of regulations are currently being developed, whose effects are insufficiently identified and whose positive results are extremely uncertain, while leading to a substantial lack of clarity for companies.

In this respect, the VEUO has strong objections to the Dutch legislative proposal on international responsible and sustainable business conduct, as initiated by members of parliament ([IMVO bill](#)), both in its original text and after its adaptation, because it is inconsistent with each of the fundamental principles mentioned above.

The criticism of the VEUO is not isolated, but echoes that of [the Council of State](#), which earlier called introduction of the bill “irresponsible” and “contrary to the principles of legal certainty and proportionality”. The legislative proposal has not been materially amended in response to the massive criticism and, moreover, its proposers have not sought new advice from the Council of State with regard to their amended proposal; for such a far-reaching regulatory framework facing so much criticism, this should be done.

More specifically, the VEUO’s objections pertain to the following aspects of the IMVO bill:

- The IMVO bill anticipates the [Corporate Sustainability Due Diligence Directive](#) currently being developed at EU level, which provides for a uniform European regulatory framework. That EU regulatory framework is already far-reaching and ambitious, and compliance with it will be very challenging for many companies.
- Introducing an even more far-reaching specific Dutch preliminary trajectory now, would be both unwise and unproductive:
  - The bill introduces a general and unlimited duty of care for any company “that knows or *can* reasonably *suspect* that its own activity or *that of its business relations may have adverse effects* on human rights or the environment *in a country* outside the Netherlands” (*italics added*);
  - Companies are thus held responsible for the behaviour of all their “business relations” worldwide, with that term defined as broadly as possible;
  - The proposal pertains to the entire value chain of both suppliers and customers (upstream and downstream); this is not a feasible obligation, because the suppliers chain as well as the customer chain is undefined in scope and time, while companies have limited insight especially with respect to their downstream and often cannot influence it either. Due diligence in this form is only workable in the direct supply chain;
- The bill contains a far-reaching reversal of the burden of proof: if facts are presented that “may suggest” that there is a link between “an adverse effect” on human rights and the environment with “the acts or omissions” of a Dutch company, then that company must prove that it (and its business relations) worldwide have not breached the far-reaching duties of care. While at the same time anyone, wherever they are domiciled or established in the world, can complain about this;
- The discussion often refers to other countries that have already introduced legislation at the national level. However, equivalent regulatory frameworks in Germany and France, for example, are much less far-reaching. Regulatory frameworks in those countries, for example, are limited to the supply chain, and do not provide a basis for or extend civil liability;
- Many of the standards set are unclear, or even incomprehensible. Some of these have already been mentioned. Another aspect is the far-reaching and broadly defined result obligations on the one hand, while on the other hand it requires certain concrete steps “in any event”. Whereas the Explanatory Memorandum seems to suggest that this is precisely how proportionate customisation can be achieved, these are in fact double standards;
- The proposed CO2 emission reduction scheme is also unclear, and does not belong in a regulatory framework such as this, while, moreover, it does not take into account systems

- already in place such as the Emission Trading System (ETS);
- Enforcement is mainly provided for under civil and administrative law, but it will be unclear to courts what companies should be expected to do in terms of duties of care, due diligence and remedial efforts;
  - Finally, the proposal leaves completely open how the government could carry out the comprehensive supervisory tasks assigned to it.

In the VEUO's view, people and the environment do not benefit from this bill, while it does have a clear negative impact on our business climate and thus on prosperity and welfare in the Netherlands. Businesses are an important contributor to this. They should do so with respect for and in balance with their environment. This requires clear legislation. Legal uncertainty on this important subject benefits no one.

It is unproductive for European member states to each develop their own ESG legislation in areas already addressed at EU level. This creates an ineffective and incomprehensible set of mutually different regulatory frameworks, which is also impracticable for companies with establishments in different EU member states.

This is moreover at odds with the European Commission's explicit desire to avoid local regulatory frameworks as much as possible, while the Social and Economic Council of the Netherlands (SER), too, stresses that "an ambitious European policy mix [offers] the best chances to achieve sustainable chains".

Finally, the recently updated Dutch Corporate Governance Code also provides a necessary focus on sustainability and a framework for companies, whereby the company's impact on people and the environment is taken into account.

### **How to proceed now?**

1. It makes sense to reach a European regulatory framework. That is now under consideration in the form of the proposed EU Due Diligence Directive. This is currently the subject of extensive discussions between member states, the European Commission and the European Parliament. There is still room for improvement in that regulatory framework, too, and it is important to focus on this, with due observance of the principles mentioned above.
2. Dutch listed companies, and many other companies that voluntarily use the Code as a guideline, are starting to work with the updated Dutch Corporate Governance Code, and its provisions on sustainability and people and the environment.
3. Clarity is needed soon on the outcome of the announced inquiry into the future of the Dutch Corporate Governance Code and the Monitoring Committee. Both contribute to good corporate governance of Dutch listed and non-listed companies.

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