

# DUTCH CONNECTIONS

A REVIEW OF SUSTAINABLE PROCUREMENT BY THE DUTCH GOVERNMENT, WITH A FOCUS ON PROCUREMENT WITH POTENTIAL IMPACT IN OTHER COUNTRIES THROUGH THE SUPPLY CHAIN



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# 1 INTRODUCTION: PUBLIC PROCUREMENT AND SUPPLY CHAINS

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## 1.1 SUPPLY CHAINS CONNECT US

- What does the new working garment of ambulance personnel have to do with working conditions in a factory in Bangladesh, or with drought in Pakistan?
- What do datacenters of the ministry of Finance have to do with slavery, child labour, deforestation and gorillas in the Democratic Republic of Congo?
- What does office furniture have to do with chimpanzees in natural forests in Cameroon and with global CO<sub>2</sub> emissions?
- What does a child playing on a plaza in a major Dutch city have to do with a child working in a natural stone mining quarry in India or China?

They are connected through the global market. Products and services procured by the Dutch government, including all central and local government, amounted to €73.3 billion Euro in 2015<sup>1</sup>, more than 10% of GDP<sup>2</sup>.

In our interconnected world, supply chains can be very complex. Though demand towards more transparent supply chains is increasing<sup>3</sup>, supply chains are often not yet set up provide such transparency. Raw materials are harvested on farms in Brazil or Vietnam or extracted from mines in the heart of Africa. Intermediate products may be processed in factories in Ethiopia, Bangladesh or China. There is a geographic distance between policy makers, procurement officers and suppliers, and the people working in countries of origin and through the supply chain. Moreover, the line between the cotton field and the military uniform, or between a mine and a datacenter, is rarely straight. Materials travel much further than the distance between field and uniform ‘as the crow flies’.

This can make ‘supply chain risks’ more abstract. Yet such risks are very real to the people that experience them. In 2019, there are still children at work in supply chains linked to our consumption. Some work so many hours or in such difficult circumstances that it harms their development. Directly, because their health is affected through unsafe working conditions.

Or indirectly, limiting time for education, leading to missed opportunities to escape the poverty trap. There are men and women harvesting, mining and processing materials used in coffee, datacenters or military uniforms who do not earn a living wage. They may be trapped in forced labour and/or pressured to let their children work for too long or in unsafe conditions. There are men and women who work with chemicals without adequate protection, some of them becoming seriously ill.



The supply chains of our consumption touch not just people, but also wildlife and entire ecosystems. Forests so rich in biodiversity many would like to visit them, disappear for commodities we import.

<sup>1</sup> [Procurement volume of the Dutch government](#), Significant, 2016

<sup>2</sup> Dutch GDP was €690 billion in 2015 according to [Focus Economics](#)

<sup>3</sup> [What supply chain transparency really means](#), Harvard Business Review, 2019



Species like orang-utans and tigers, mountain gorillas and forest elephants, whose habitat is shrinking as a result of deforestation. Rivers become polluted or dry up (with climate change adding insult to injury) because factories don't filter water, or because cotton plantations take too much water. Valuable trees are cut without replanting or allowing regeneration.

The above can be hard to grasp for individual citizens, though there is increasing awareness about the impact of household consumption. One would expect governments to be especially aware of what is happening in supply chains of goods and service procured by the government, considering both the size of public procurement and the commitments to various international agreement, including the UN Sustainable Development Goals (also known as SDGs or Global Goals), see figure 1 below.

Figure 1: the 17 Sustainable Development Goals<sup>4</sup>



The coalition agreement of the current Dutch government states: *“The government will better utilize its purchasing power to accelerate sustainable transitions, to engage vulnerable groups and to procure goods and services innovatively.”*<sup>5</sup> This indicates that the government indeed does recognize public procurement as a powerful tool to promote sustainable production. The underlying review looks at how Dutch public procurement incentivizes and supports companies to apply due diligence in their supply chains, ultimately aiming to reduce risks to people and nature in other countries.

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## SCOPE AND PURPOSE OF THIS REPORT

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This review is part of a broader evaluation<sup>6</sup> of the Dutch government policy on International Responsible Business Conduct<sup>7</sup> (IRBC) carried out by the Policy and Operations Evaluation Department (IOB) of the Ministry of Foreign Affairs. It aims to assess the effectiveness, efficiency, coherence and relevance of the Dutch IRBC policy carried out between 2012 and 2018. This includes RBC sector agreements<sup>8</sup>, private sector instruments, international activities by the Netherlands on RBC, and RBC activities of embassies.

This review was commissioned by IOB and carried out by Miriam van Gool of EcoValue. The scope includes both national and local governments. The focus is on procurement of goods and services with an impact on people and the environment in other (developing) countries through supply chains. This starts with (but is not limited to) what in Dutch public procurement policy in 2018 are called ‘International Social Conditions’(ISCs), as these directly address supply chain risks and due diligence based on OECD guidelines. However, the ISCs are explored within the broader scope of sustainable procurement policy, by the end of the period under review (2018) called ‘Responsible Public Procurement (RPP)<sup>9</sup>’.

<sup>4</sup> <https://sustainabledevelopment.un.org>

<sup>5</sup> *‘Trusting the future’*, Coalition agreement Rutte III, 2017-2022 (in Dutch: Vertrouwen in de toekomst)

<sup>6</sup> *Mind the governance gap, map the chain*, IOB, 2019

<sup>7</sup> The recently used term by the Dutch ministry of Foreign Affairs is Responsible Business Conduct (RBC). Previously ‘(International) Corporate Social Responsibility’ was used. The Dutch term is (Internationaal) Maatschappelijk Verantwoord Ondernemen (IMVO).

<sup>8</sup> IMVO convenanten in Dutch, see [this website](#) of the SER

<sup>9</sup> The Dutch term currently in use is *Maatschappelijk Verantwoord Inkopen (MVI)*, here translated as *Responsible Public Procurement (RPP)* as ‘responsible’ is a more direct translation, though the term Sustainable Public Procurement is used a.o. on the website of [PIANOo](#).

This was done because a) there are other RPP criteria related to supply chain risks and b) because an analysis of the broader RPP policy provides relevant context, taking a step back and looking at the bigger picture. This report presents findings, conclusions and recommendations based on:

- A reconstruction of the development of incorporating sustainability in the Dutch government’s procurement policy in the period 2012-2018;
- an assessment of the implementation of this policy, with special attention to procurement with potential impact on people and nature in other countries, through the supply chain;
- an attempt to estimate the impact this policy has had, specifically compared to its intentions;
- an assessment of the role of various ministries in policy development and implementation, with a focus on how the OECD guidelines were integrated in public procurement policy.

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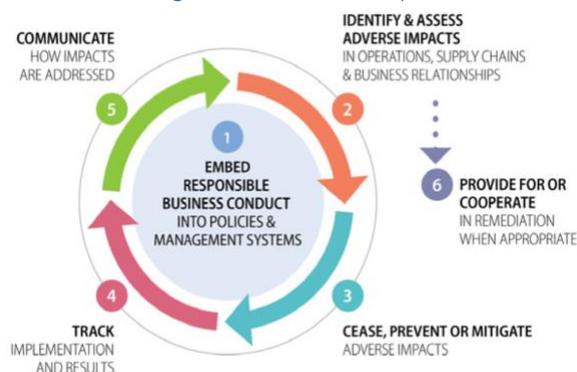
## OECD MNE GUIDELINES AND UNGPS

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The Netherlands is one of 42 countries that adopted the updated OECD Guidelines for Multinational Enterprises in May 2011<sup>10</sup>. The OECD guidelines are recommendations to companies on human and labour rights, environment, consumer interests, corruption, innovation, fair competition and taxes. With its signature, the Dutch government committed itself to promoting the OECD guidelines and expects multinational companies operating in or from the Netherlands to observe them. This includes due diligence throughout supply chains (see the [Epilogue](#) for a shift-in-perspective question as to where supply chains start and end, and about public procurement as a powerful economic actor).

Crucial to Responsible Business Conduct (RBC) proposed by the OECD is the ‘Due Diligence’ process. The 6 steps of the due diligence process are visualized in Figure 2 below.

Figure 2: Visual from the OECD Due Diligence Guidance for Responsible Business Conduct (OECD, 2018)



In 2008 professor John Ruggie, then UN Special Representative for Business and Human Rights, presented the ‘Protect, Respect and Remedy’ policy framework for the relationship between business and human rights. This led to the UN Guiding Principles on Business and Human Rights (UNGPs<sup>11</sup>, also known as the Ruggie Framework). These were unanimously endorsed by the UN Human Rights Council in June 2011. The UNGPs are based on 3 pillars:

- 1) the state duty to protect human rights,
- 2) the corporate responsibility to respect human rights and
- 3) access to remedy for victims of business-related abuses.

Principle 6 under pillar 1 relates directly to procurement and underlines the potential impact of sustainable and responsible procurement: *“States conduct a variety of commercial transactions with business enterprises, not least through their procurement activities.”*

<sup>10</sup> [OECD Guidelines for MNEs](#), Organisation for Economic Cooperation and Development (OECD), 2011

<sup>11</sup> [Guiding Principles on Business and Human Rights](#), UN Human Rights Office of the High Commissioner, 2011



*This provides States – individually and collectively – with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, with due regard to States’ relevant obligations under national and international law.”*

As part of its commitment to the UNGPs, in 2014, the Dutch ministry of Foreign Affairs presented a ‘National Action Plan Business & Human Rights’<sup>12</sup>. This document includes reference to the role of public procurement, notes concerns about effective implementation of human rights-related procurement criteria and announces research to verify alignment with both the OECD Guidelines for MNEs and the UNGPs (this research<sup>13</sup> will be discussed in chapters 4 and 5).

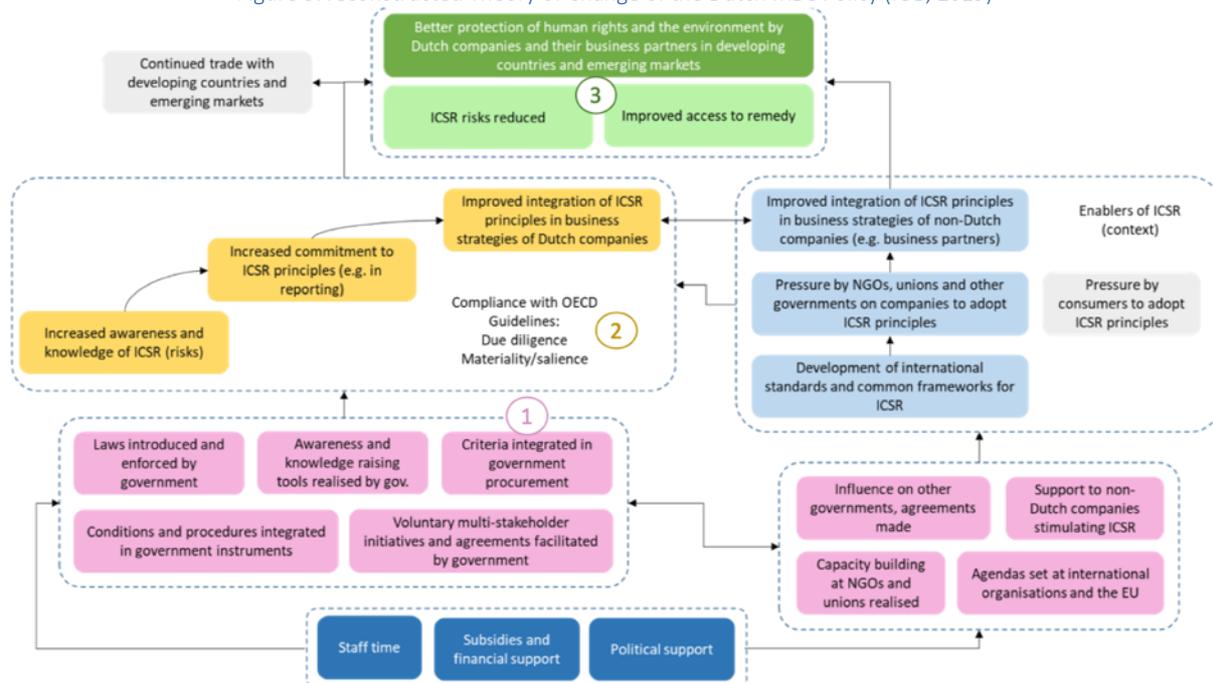
## THEORY OF CHANGE

Public procurement plays an important role in the reconstructed Theory of Change (ToC) of the Dutch IRBC policy. Figure 3 outlines the ToC as developed by IOB for the wider evaluation.

The integration of RBC and due diligence principles into government procurement criteria can be considered as results at output level (1). Related results at output level are laws introduced, translated into procedures and enforced. Public authorities involved in the procurement process need to be aware of and knowledgeable on IRBC risks, which requires effective tools and training.

Public procurement could be linked to another pillar of the Dutch IRBC policy: the sector covenants (in the figure below ‘voluntary multistakeholder initiatives’). Whether procurement policy and implementation are aligned with such sector initiatives is one of the questions to be discussed.

Figure 3: reconstructed Theory of Change of the Dutch IRBC Policy (IOB, 2019)



At outcome level (2), sustainable procurement is expected to lead to improved supply chain due diligence. This decreases the risks that products and services procured by the Dutch government negatively impact people and nature in other countries. In addition to this direct risk reduction, the assumption is that responsible procurement incentivizes change in corporate policies of direct suppliers and stimulates others in the sector to improve their business strategies and practices.

<sup>12</sup> [National Action Plan on Business & Human Rights](#), Ministry of Foreign Affairs, 2014

<sup>13</sup> [Evaluation social conditions in procurement by ministries](#), Berenschot, 2014

Ultimately, the ToC assumes that integration of sustainability in procurement contributes to reduction and mitigation of RBC risks at impact level (3) including access to remedy of (potential) victims.

This review focuses on the question whether results have been achieved at output level (legal framework, policies and procedures, organisation and implementation). The review does not aim to draw conclusions at impact level, as this requires a broader scope of research. It does test the validity of the underlying Theory of Change, explores results at outcome level based on a number of case studies, and assesses the plausibility of results at impact level in the near future.

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## METHODOLOGY

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The research for this review was conducted through a combination of desk research and interviews. The desk research looked into the international context, the European legal framework and national laws and legislation. It reconstructed the development of sustainable procurement policies by reviewing policy papers and communications with Parliament. It took into account evaluations carried out in 2012-2018 and several related expert reports. Finally, the desk research included reports related to the case studies explored in this review: workwear, datacenters, natural stone and timber.

Interviews were held with stakeholders and experts from both public and private sector and civil society<sup>14</sup>. Public stakeholders included representatives from the Dutch ministries of Foreign Affairs (MFA), the ministry of Interior and Kingdom Relations (BZK), the ministry of Economic Affairs and Climate Policy (EZK) and several local governments. Private stakeholders and civil society experts included those with relevant experience in the sectors related to the case studies in chapter 6.

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## STRUCTURE OF THE REPORT

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Chapter 2 describes the legal framework, starting with the relevant European Directives, followed by the Dutch Procurement Law. Chapter 3 aims to describe the intricacies of how public procurement is organised in the Netherlands.

Chapter 4 reconstructs how sustainability criteria were developed and captured in Dutch public policies and procedures in 2012-2018, with special attention to criteria relevant to supply chain due diligence following the OECD Guidelines. Chapter 5 looks at which sustainability criteria (related to supply chain impacts) currently apply in public procurement and when, where and how they are implemented. This includes findings of evaluations carried out during the period under review, and compares results observed with the outputs as intended. Chapter 6 dives deeper into public procurement in four (sub)sectors identified as high-risk for supply chain impacts and where specific tenders have led to new insights.

Before moving to the Conclusions and Recommendations in Chapter 8, Chapter 7 puts the findings of earlier chapters in the context of the broader perspective of Sector Transformation. Finally, an Epilogue returns to the OECD MNE Guidelines and presents one last perspective regarding roles and responsibilities of public procurement in supply chains.

<sup>14</sup> The full list of people consulted can be found in [Annex 4](#).

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## 2 LEGAL FRAMEWORKS

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The main goal of this chapter is to outline the legal framework for public procurement: the Dutch Public Procurement Act, which follows EU Directives. This chapter looks specifically for space within the law to apply conditions regarding environmental and social supply chain risks. The chapter starts by providing context, looking at the volume of public procurement in the EU and globally.

### 2.1 VOLUME OF PUBLIC PROCUREMENT, GLOBALLY AND IN THE EU

*“Governments worldwide spend US\$9.5 trillion annually procuring everything from hospitals and bridges to pencils and brooms”*, according to the World Economic Forum<sup>15</sup>. This is equivalent to about 12% of global GDP. In the EU, the proportion of public investment spent on public procurement is also about 12 % of GDP, or €1.9 trillion each year<sup>16</sup>.

Governments are conscious that better management of these large sums can have major impacts. It can lead to more efficiency - 1% more efficiency would lead to a savings of €20 billion - and to more sustainability. In October 2017, the European Commission presented a public procurement strategy<sup>17</sup> focusing on six policy priorities, of which the first is *‘Ensuring wider uptake of innovative, green and social procurement’*. Other priorities are more professional procurement, increasing access to markets for SMEs; improving transparency and integrity; boosting digital transformation and (also relevant to sustainable procurement) more cooperation to procure together, cross-border.

### 2.2 EUROPEAN DIRECTIVES AND RELATED DUTCH LAW

There are four active EU Directives related to public procurement:

- Directive 2014/23/EU on the award of concession contracts
- Directive 2014/24/EU on public procurement
- Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors
- Directive 2009/81/EC on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security (unchanged since 2009).

The 2014 Directives replaced older Directives from 2004. Of the Directives mentioned above, 2014/24/EU is the generic one on public procurement. The analysis below relates to this Directive.

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#### DUTCH PUBLIC PROCUREMENT ACT, AND DEFENCE AND SECURITY PROCUREMENT ACT

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EU Directives need to be transposed into national law by Member States. The 2004 Procurement Directives were transposed into Dutch law, resulting in the Dutch Public Procurement Act of 2012. This is the generic Dutch law on public procurement by both national and local government. An amendment to incorporate changes of the 2014 EU Directives entered into force on 1 July 2016.

The Directive 2009/81/EC was transposed in the Dutch Defence and Security Procurement Act of 2013 (ADV). In 2018, the Ministry of Economic Affairs and Climate stated<sup>18</sup> that merging of both laws had been considered (as at the time of entering into force of ADV in 2013, it was agreed to consider this question in 2018) but did not find cause to do so.

<sup>15</sup> *“Three myths keeping public procurement stuck in the past”*, [article](#) by World Economic Forum, 2018

<sup>16</sup> [Legal Framework for public procurement](#) as on website of the European Commission

<sup>17</sup> [Public procurement strategy](#) on the website of the European Commission

<sup>18</sup> In a letter to Parliament of 7 February 2018, [KST 32768-11](#)

This is relevant given that a significant portion of spending by Rijksoverheid (€4.2 billion in 2016<sup>18</sup>) is covered by this law, which does not include all articles as referred to below in the 2014/24/EU Directive and in the Dutch Public Procurement Act.

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## PROCUREMENT, TENDERING AND THE EU THRESHOLDS

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The terms procurement and tendering are sometimes used interchangeably. However, the latter is a subset of the former. 'Procurement' is the process of buying goods and services. This may be by buying directly from one supplier, or by 'Tendering', which means presenting multiple suppliers with the option to bid for the contract. Tendering publicly means not just offering the tender to a handful of known suppliers but offering it publicly so all companies (within the EU) can apply.

Directive 2014/24/EU applies to public procurement contracts above EU thresholds (aligned with the WTO's Global Procurement Agreement). In 2018, for central government supply and service contracts this threshold was €144.000 excluding VAT; for decentral government €221.000. For concession contracts and public works (e.g. infrastructure) the threshold was €5.548.000<sup>19</sup>.

Direct procurement from one supplier is in the Netherlands allowed for products and services below €50.000 ex VAT (for Works €150.000). Between €50.000 and the EU threshold, procurement officers have to invite multiple tenderers. Above the EU threshold, the procurement has to be tendered publicly to all companies within the EU.

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## GENERAL PRINCIPLES

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General principles of Directive 2014/24/EU include equal treatment, non-discrimination, mutual recognition, equality of treatment, proportionality and transparency. These principles aim to stimulate fair competition within the EU, avoid favouritism and promote efficiency (avoiding excessive time and costs for both procurement teams and tendering companies).

The Directive recognizes that governments may use procurement to achieve other economic and societal goals (including environmental and social conditions) provided that the general principles are not violated. For example, requirements regarding environmental and social conditions in tender documents should be proportional<sup>20</sup> to the tender.

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## ANALYSIS OF DIRECTIVE 2014/24/EU BY A UK GOVERNMENT BODY

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The Crown Commercial Service of the UK<sup>21</sup> compared 2014/24/EU to the earlier Directive of 2004. They consider the 2014 Directive an improvement, with less bureaucracy, more efficiency and more room to take into account environmental and social issues at the specification stage (when formulating tenders). They specifically mention the following improvements for awarding contracts:

- *Improved rules on social and environmental aspects, making it clear that:*
  - *social aspects can now also be taken into account in certain circumstances (in addition to environmental aspects which have previously been allowed);*
  - *contracting authorities can require certification/labels or other equivalent evidence of social/environmental characteristics, further facilitating procurement of contracts with social/environmental objectives;*
  - *contracting authorities can refer to factors directly linked to the production process.*

<sup>19</sup> EU thresholds on the [website of PIANOO](#)

<sup>20</sup> The Dutch government produced a '[Proportionality Guide](#)' (2016) which provides guidance on how to interpret this principle.

<sup>21</sup> '[A brief guide to the 2014 EU Public Procurement Directives](#)', October 2016, Crown Commercial Service

- *The full lifecycle costing can be taken into account when awarding contracts; this could encourage more sustainable and/or better value procurements which might save money over the long term despite appearing on initial examination to be more costly.*
- *The award of contract must be based on the ‘most economically advantageous tender’ (MEAT). Those procuring can choose ‘lowest price’, but also the ‘best price/quality ratio’, which can include social and environmental criteria provided they relate to the contract.*

PIANOO<sup>22</sup>, the Dutch Public Procurement Expertise Centre, concurs with the Crown Commercial Service. *“The new directives allow tenderers to better use public procurement to achieve strategic, social goals (including environment, innovation, employment, social integration).* Note the word ‘allow’. The 2014 Directive provides various opportunities for contracting authorities to apply environmental and social conditions, but most is not mandatory. We explore key paragraphs in the Preamble of the Directive, and several of its Articles, in the following sections.

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## OBSERVATIONS OF KEY PARAGRAPHS IN THE PREAMBLE OF THE DIRECTIVE

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Directive 2014/24/EU<sup>23</sup> has 138 paragraphs in the ‘Preamble’ (followed by 94 Articles, about which more on the next page). Three paragraphs of the preamble are included as [Annex 1](#), highlighted here given wording on both ambition and limitations of sustainability requirements:

- In §95, the ambition to fully exploit the potential of public procurement to achieve smart, sustainable and inclusive growth is stressed. However, given important differences between individual sectors and markets, the Directive does not consider it appropriate to set general mandatory requirements for environmental, social and innovation procurement, but suggests leaving it to sector-specific legislation to set mandatory objectives and targets.
- §96 notes the concept of lifecycle costing as a way to determine the ‘Most Economically Advantageous Tender’, including costs related to environmental externalities such as pollution throughout the product’s lifecycle, provided this can be monetized and monitored.
- In §97 the Directive underlines that (alongside minimum requirements) contracting authorities should be allowed to use award criteria and contract performance conditions at any stage of the lifecycle of products and works from raw material to disposal. The last two sentences of §97 suggest one limitation: contracting authorities should not be allowed to require general corporate social or environmental responsibility policies as contract clauses or award criteria – such conditions should be linked to the subject-matter (e.g. the product). However, Article 58 of the Directive on Selection criteria (applicable to the tendering party, e.g. the company and not the product) can be interpreted to allow broader RBC requirements. Legal experts note some level of ambiguity and inconsistency in terms of the available policy space; in this case on how different paragraphs and Articles of the Directive should be interpreted and relate to one another.

In conclusion, the preamble actively encourages Member States to exploit the potential of public procurement to achieve sustainability targets and encourages the development of product-specific environmental and social conditions. It supports lifecycle costing, providing important space to address environmental and social supply chain risks. There is some ambiguity on whether, where and how contracting authorities can request company-wide RBC policies during the tendering process (compared to product-specific environmental criteria, on which the Directive is less ambiguous). Finally, the Directive suggests a policy agenda in which Member States develop sector-specific legislation including mandatory targets, rather than general mandatory criteria.

<sup>22</sup> PIANOO is the Dutch Public Procurement Expertise Centre, set up to professionalize procurement and tendering in all government departments, with a view to improving efficiency and compliance with the rules. [www.pianoo.nl](http://www.pianoo.nl)

<sup>23</sup> Directive 2014/24/EU can be downloaded on this [website](#)



Under chapter II of the Directive covering ‘General Rules’, the first article is Article 18 covering ‘Principles of Procurement’. This article has two paragraphs, with the first referring to the principles of treating economic operators equally and non-discriminatory, in a transparent and appropriate manner, and without artificially narrowing competition. The second paragraph of Article 18 covers environmental, social and labour laws and conventions; the text is included in Box 1 below.

Box 1: Article 18.2 of Directive 2014/24/EU

*“Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X<sup>24</sup>.”*



This appears to be the only article where the wording can be read as mandating Member States (*‘shall’*) regarding environmental and social risks, suggesting all procurement (above the thresholds) should take such measures. Later articles of the Directive (Articles 56 on General Principles, 57 on Exclusion, 69 on Abnormally low tenders and 71 on Subcontracting) refer back to Article 18.2, all stipulating circumstances where a contracting authority may decide to exclude a tenderer or not award a contract if a tender does not comply with *‘applicable obligations referred to in Article 18(2)’*.

However, the Directive does not clarify what *‘appropriate measures’* are, nor *‘applicable obligations’*. A legal expert and government representative consulted for this review underlined that given the ambiguity in the current text, this Article (and related Dutch law) could allow policy experiments and benefit from further clarification and elaboration in future revisions and/or additions.

Article 18.2 of Directive 2014/24/EU was transposed in Article 2.81 of the Dutch Public Procurement Act (see Box 2 below). As can be seen, it follows the Directive’s language, and includes subsection a), aiming to ensure contracting authorities supply tenderers with relevant information, so they know what is expected of them following this Article’s section b). Tendering and applicant companies need to declare that they have taken into account environmental, social and labour law obligations, referring back to wording as in the Directive (Article 2.81) and the list of conventions in Annex X.

Box 2: Translation<sup>25</sup> of Article 2.81 of the Dutch Public Procurement Act

- a) *In the tender documents, a contracting authority indicates the body from which tenderers can obtain information about obligations relating to taxes, environmental protection, labour and working conditions that apply in the Netherlands or, if the transactions are outside the Netherlands, that apply in the area or place where the transactions are carried out, and which will apply to those transactions during the performance of the public contract.*
- b) *A contracting authority asks tenderers to indicate that in drawing up their tenders they have taken into account environmental, social and labour law obligations under EU law, national law or collective labour agreements, or under the provisions of international environmental, social and labour law listed in Annex X of Directive 2014/24/EU.*

In Article 2.87 the Dutch law refers back to Article 2.81, stating this as one of ten grounds for exclusion. The contracting authority *“may exclude a tenderer or candidate from participating in a procurement procedure”* if *“the contracting authority can demonstrate by any suitable means that the candidate or tenderer has violated one or more of the obligations referred to in Article 2.81”*.

<sup>24</sup> Annex X is an Annex of Directive 2014/24/EU and refers to the fundamental eight ILO conventions (ILO = International Labour Union,) and four conventions on chemicals that bear environmental and health risks. The full text is included in this report as [Annex 2](#)

<sup>25</sup> Translation by the author of this report, see the original text of [Article 2.81](#) in the Dutch Procurement Act



If these Articles would be enforced and monitored, this in and of itself could stimulate more due diligence of environmental and social risks throughout the supply chain. However, a legal expert consulted for this review notes that Article 2.81 is not often applied. *“It is not enforced, not all procurement officials apply it and most tenderers, and their suppliers are not aware”.*

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## OTHER ARTICLES OF THE DIRECTIVE RELEVANT TO ENVIRONMENTAL AND SOCIAL CRITERIA

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The following Articles of Directive 2014/24/EU describe how environmental and social requirements can be included in different stages of the procurement: as technical requirements (minimum requirements or demands), as award criteria (promoting tenderers to compete on quality including environmental and social sustainability approach and strategy), or as contract clauses (with the intent to have contract managers follow up and engage with the contractant to ensure compliance).

- Article 42 on Technical Specifications stipulates amongst others that specifications may include environmental characteristics, alongside performance or functional requirements.
- Article 67 on Contract award criteria, which elaborates on the Most Economically Advantageous Tender, which allows to weigh other factors than cost only, including qualitative environmental and/or social aspects, linked to the subject-matter.
- Article 70 Conditions for performance of contracts, which explicitly refers to environmental and social conditions as special conditions which contracting authorities may lay down relating to the performance of a contract (provided they are linked to the subject-matter of the contract and were indicated in the call for competition or procurement documents).

Two other articles with relevance to environmental and social supply chain risks:

- Article 68 on Lifecycle costing, which can include not just cost of acquisition, but also of (energy) use, maintenance, collection and recycling costs and of environmental externalities during the lifecycle of product, work or service, provided their monetary value can be determined and verified (explicitly referring to GHG and other pollutant emissions).
- Article 43 on Labels, which indicates that contracting authorities may require (in the technical specifications, the award criteria or the contract performance conditions) specific labels as means of proof, as long as the labels:
  - only concern criteria linked to the subject-matter e.g. product or service procured
  - are objectively and non-discriminatory
  - are established in an open and transparent multi-stakeholder procedure
  - are accessible to all interested parties
  - the label requirements are set by a third party

## 2.3 SPACE IN DUTCH LAW FOR ENVIRONMENTAL AND SOCIAL CONDITIONS IN DIFFERENT PHASES OF PROCUREMENT

Generally, the Dutch Public Procurement Act follows the three 2014 Directives closely. Each of the 2014/24/EU Articles mentioned earlier have been transposed into this Dutch law.

Following the Directive, the Dutch law allows applying environmental and social criteria at different stages of the public procurement process<sup>26</sup>:

- Minimum requirements (aka ‘demands’), included in the technical specifications of the tender, functioning as knock-out criteria.
- Award criteria, used to encourage competition between tenderers on factors such as price and quality, but also including social and environmental criteria.

<sup>26</sup> More information on [this page](#) with an overview of RPP criteria.



- Contract clauses, which the finally chosen contractor will have to comply with (announced in tendering documents and included in the final contract).

In addition to these product-specific criteria tenderers can also specify Selection criteria that are not product- but company-specific. As indicated in [page 10](#), whether these criteria may or may not allow for RBC requirements depends on interpretation of the law.

Later in this review, arguments will be made that the optimal mix of criteria can and perhaps should vary depending on what phase each sector is in (e.g. where in the market transformation towards sustainability). Here we pay special attention to space provided by the law for award criteria and specifically the tool of Best Price Quality Ratio.

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## AWARD CRITERIA AND THE BEST PRICE QUALITY RATIO

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Preamble §89 of Directive 2014/24/EU states award criteria are central to the Directive. In both the EU Directive and the Dutch Public Procurement Act this is done by applying ‘the Most Economically Advantageous Tender’ (MEAT) criterion. There are three ways to apply MEAT:

1. Best Price/Quality Ratio (BPQR)
2. Lowest cost based on cost effectiveness (taking into account product lifecycle)
3. Lowest price

Option 2 is also interesting as it takes into account Lifecycle costing. However, the option that arguably provides the best incentive for tenderers to maximize efforts regarding environmental and social supply chain risks is BPQR (assuming the tool is used to its full potential).

Quality can include technical, functional, innovative and other aspects, but also social and environmental (including the production process, e.g. including supply chain risks). Neither the Directive nor the Dutch Public Procurement Act prescribe percentages when applying the BPQR. Detailed case studies of how award criteria and BPQR are applied will be discussed in [chapter 6](#). As an indication, this review found 20/80% and 40/60% Price/Quality for datacenter tenders and a minimum of 50% for quality (maximum 50% price) in the category plan for workwear (though it should be noted these examples appear more exception than rule at this point in time).

The Best Price Quality Ratio is a particularly interesting tool as it can stimulate tenderers to compete on sustainability, presenting their best arguments for how their offer addresses environmental and social conditions. If the ratio is effectively applied, it can provide an incentive to encourage a sector towards an integrated sustainability approach.

This appears to be especially relevant where the sector has not yet achieved full clarity as to what sustainable production for a given material is (if there is more clarity, this can be defined as a minimum requirement, as for example with sustainably produced timber, see [chapter 6](#)).

Both minimum requirements and contract clauses have their own validity as sustainability criteria. Moreover, in high-risk sectors an optimally aligned mix of all three criteria may well be the most effective. However, award criteria have a special role to play, especially in high-risk sectors.

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## DUTCH LAW ARTICLE 2.114

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Articles 2.114 and 2.115 of the Dutch Public Procurement Act cover how contracting authorities should award the contract to the ‘Most Economically Advanced Tender’. In principle, they should award based on the Best Price Quality Ratio. If authorities deviate and choose option 2 or 3 above, they have to motivate why in the tender documents.



Moreover, Article 2.114 sections 5 and 6 of the Dutch Procurement Act explicitly allow the government to make Best Price Quality Ratio mandatory for specific categories using an Order in Council<sup>27</sup> (in Dutch: AMvB: Algemene Maatregel van Bestuur). This provides space to Dutch policy makers to make applying the BPQR mandatory when awarding contracts in high-risk sectors.

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## IN SUMMARY

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- There is a Dutch Public Procurement Act in place, last adjusted in 2016, based on three EU Directives (an exception is made for certain procurement by the ministry of Defence, covered by a separate EU Directive and separate Dutch law, the ADV).
- The Dutch Public Procurement Act does provide space to apply environmental and social criteria if they apply to the subject-matter, e.g. the product procured (throughout the lifecycle, from raw materials to disposal of the product).
- Both EU Directives and Dutch law already provide space for more concrete implementation of the policy intentions and sets out a policy agenda:
  - The EU Directive (§95 of the preamble) suggests sector-specific legislation to set mandatory requirements.
  - The Dutch law provides space (in Article 2.114) to mandate application of the Best Price Quality Ratio for specific categories of procurement.
- Though the legal frameworks provide space for applying sustainability criteria to public procurement, neither the Directive nor Dutch law make applying OECD guidelines and/or sustainability criteria mandatory (except for one article that requires compliance with broad conventions but without specificity and appears not consistently implemented). Rather, it is suggested that mandatory requirements should follow from sector-specific legislation.
- The law also allows requiring sustainability certificates, as long as they apply to the product procured and those standards adhere to certain requirements. It remains unclear whether tendering authorities would be able to prescribe or favour tenderers that participate in an RBC sector agreement. It may be useful to explore the space provided in this regard.
- The preamble of the main EU Directive encourages Member States to fully exploit the potential of public procurement to meet EU targets, including those on sustainability, and encourages the use of environmental and social conditions throughout a product's lifecycle. Whether and how company-wide RBC policies can be required depends on how the Directive's preamble and articles are interpreted. This ambiguity in Directive and Dutch law could be improved and clarified in future revisions of the legal frameworks, aimed at optimizing the potential leverage of public procurement to achieve strategic policy goals, including the Sustainable Development Goals.

The assumption of this review is that markets respond best to consistent policies (both in terms of coherent messaging to the market and in terms of scale). A lack of mandatory requirements, plus what appear to be restrictions on company-wide policies, limit the potential to stimulate application of OECD Guidelines. However, the law does provide ample opportunities for policy makers and procurement professionals to apply environmental and social criteria (including those relevant to supply chains) and experiment, testing the limits of the applicable regulations if they wish to do so.

<sup>27</sup> Order in council is in Dutch 'Algemene Maatregel van Bestuur' (AMvB)



# 3 SIZE AND ORGANISATION OF DUTCH PUBLIC PROCUREMENT

This chapter aims to answer the following questions:

- How much does the Dutch government spend on procurement, and how is this distributed across central and local government; how much above and below the EU thresholds?
- How is public procurement in the Netherlands currently organised?

## 3.1 BY THE NUMBERS: >€70 BILLION AND COUNTING

The total volume of Dutch public procurement amounted to €73.3 billion Euro in 2015<sup>28</sup>, more than 10% of GDP<sup>29</sup>. This was over 10% of GDP, and more than 14 times the amount spent on Overseas Development Aid that year.

Figure 4: Estimates of volume of Dutch public procurement as distributed over central and local government

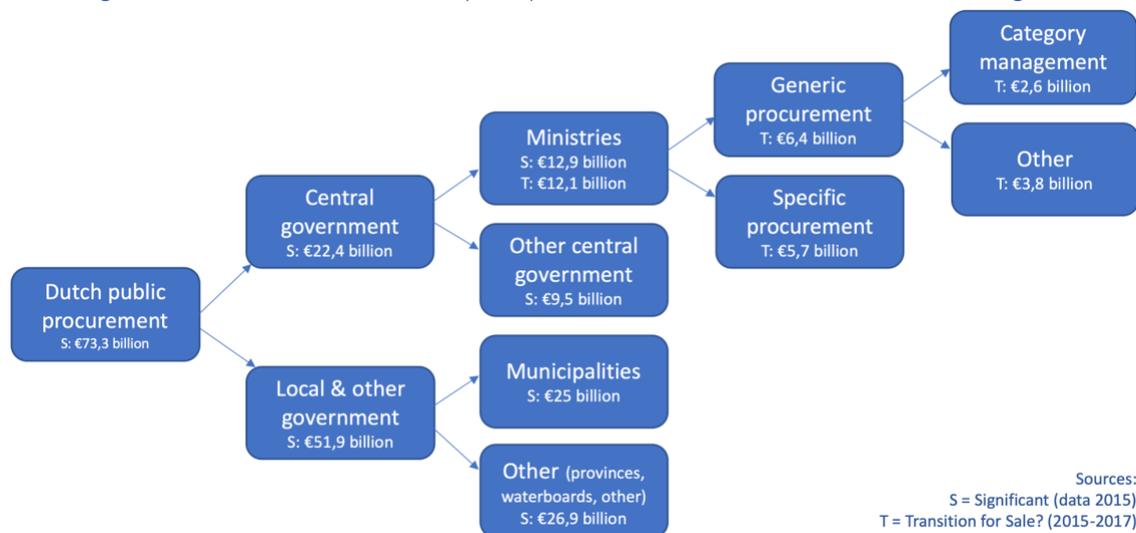


Figure 4 above visualizes procurement volumes (it should be noted that these are estimates and numbers vary per year). As visualized, in 2015 about 30% was procured by central government. The other 70% of procurement was spent by provinces, municipalities, waterboards and other governmental bodies. The amount procured by municipalities (€25 billion) was bigger than that of central government (€22,4 billion). Central government numbers include procurement by the various ministries (in Dutch: ‘Rijksoverheid’), estimated at €12.1 billion on average in 2015-2017<sup>30</sup>. Central government also includes procurement by product boards, universities and privatized government services such as ProRail and the Central Bureau for Statistics.

Of all procurement, 1/3 is estimated to be above the European threshold amount, above which public tendering is mandatory. In the Netherlands, it is also the threshold above which certain supply chain related criteria apply (about which more in Chapter 4).

## 3.2 CENTRAL GOVERNMENT

Public procurement by the Rijksoverheid can be divided into generic and specific procurement. Generic procurement covers products and services that are needed by multiple ministries. Examples are catering, workwear and datacenters.

<sup>28</sup> *Procurement volume of the Dutch government*, Significant, 2016

<sup>29</sup> Dutch GDP was €690 billion in 2015 according to *Focus Economics*

<sup>30</sup> “Transition for sale?”, report commissioned by the ministries of BZK and IenW, March 2019

Specific procurement concerns products only one ministry needs, such as weapons by the Ministry of Defense, or infrastructural works procured by the Ministry of Infrastructure and Water Management. Figure 4 visualizes how the €12,1 billion spent by the Ministries in 2018 is split between generic (€6,4 billion) and specific procurement (€5,7 billion).

An estimated 40% of the generic procurement is organised into category management, as described in the next section. An example of 'other' generic procurement (€3.8 billion/year not covered by category management) is procurement by the government real estate company 'Rijksvastgoedbedrijf'. Procurement by Rijkswaterstaat, responsible for the main infrastructure facilities in the Netherlands such as roads, bridges and waterways, falls under specific procurement.

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## ROLES AND RESPONSIBILITIES OF DIFFERENT MINISTRIES

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Each ministry has a Coordinating Director of Procurement (CDI). The CDIs have a seat in an interdepartmental commission called ICIA (Interdepartmental Commission for Procurement and Tendering), set up to ensure coordination between ministries. The ICIA reports to the IBCR, an interdepartmental commission on the central governments business operations. Ultimately, the IBCR reports to the Secretaries-General (SGO), who in turn report to the Council of Ministers (MR). The box below summarizes responsibilities per ministry.

### Box 3: distribution of responsibilities over different ministerial departments<sup>31</sup>:

- The Ministry of BZK coordinates the central government's business operations, including the central procurement system. The Chief Procurement Officer is from this Ministry. His team draws up government-wide frameworks and guidelines for the operation of the procurement system. The CPO coordinates these within his department and submits them for advice to the Interdepartmental Purchasing and Tendering Committee (ICIA).
- The Ministry of EZK is responsible for negotiations on European procurement legislation and related Dutch laws and regulations. The Ministry of Economic Affairs hosts expertise centre PIANOo. PIANOo has an extensive website<sup>32</sup> and also manages TenderNed, the online platform. Finally, this Ministry is responsible for procurement criteria related to Innovation, access to market for SMEs and for the Energy & Climate transition.
- The Ministry of I&W is responsible for thematically coordinating Responsible Public Procurement, specifically the environmental criteria. They are also tasked with stimulating local government in the uptake of these sustainability criteria. This Ministry takes the lead on major sustainability policy priorities like the Circular Economy and Sustainable Mobility.
- The Ministry of FA is responsible for promoting uptake of international commitments into public procurement policy, including the OECD Guidelines, the UN Guiding Principles and the Sustainable Development Goals.
- The Ministry of SZ&W is responsible for the policy of having more people with an occupational disability find work, and for international agreements promoting decent work.

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## IUCS AND CATEGORY MANAGEMENT

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In recent years, two organisational changes have been made to make generic procurement more coherent and efficient. One is that procurement has become more centralized to be more efficient. The government moved from 350 procurements centres to 20 'Procurement Implementation Centers' (IUC's in Dutch). For specific procurement, there are Specific Procurement Centres (SIC).

<sup>31</sup> From "Transition for Sale?", commissioned by the ministry of Internal Affairs, March 2019

<sup>32</sup> See [www.pianoo.nl](http://www.pianoo.nl) and [www.tenderned.nl](http://www.tenderned.nl)



Another organisational change has been the increasingly broad application of ‘Category Management’ to generic procurement. This means that one department procures a category of products or services on behalf of other departments. The intention is to save costs on efficiency and professionalize procurement by bundling experience, expertise and network with the market. In early 2019, there were 31 such procurement categories<sup>33</sup>, hosted in different parts of the country. For instance, ‘Workwear’ is managed by the Ministry of Defence from an office in Soest. The category ‘Datacenters’ is managed by IUC-North from their headquarters in Groningen.

The process steps of procurement for these centrally managed categories can be summarized as below. It should be noted that not all roles have individuals assigned to them in each category (a procurement officer can also be contract manager). Category teams can have various additional positions, including administrative staff, legal experts, procurement analysts etc.



### 3.3 LOCAL GOVERNMENTS

Local governments include municipalities, provinces, water boards and other local government. Provinces, water boards and other local government in 2015 procured an estimated €26.9 billion. The estimated amount spent by municipalities alone is larger than central government and about twice the amount spent by ministries: approximately €25 billion/year (see [figure 4](#) on page 15).

In general, policies applicable to central government procurement do not immediately apply to local government. Many municipalities have their own public procurement strategies and organisations (though some smaller municipalities work together for more efficiency). Though there is a rationale and history to this reality, diversity in procurement approaches can lead to mixed messages to the market, which could undermine efforts by all governments to achieve sustainability goals.

In chapter 5 we will look more closely at sustainability in procurement by local government in the period under review, 2012-2018. This includes a discussion on the balance between local autonomy and national policy coherence in [§5.5](#) and in Box 11 with ‘Food for Thought on Thorbecke’ in [§5.8](#).

### 3.4 SUPPORT TOOLS FOR PUBLIC PROCUREMENT

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#### PIANOO

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The Dutch government has set up a range of support tools for those involved in public procurement. The first port of call is the website of [PIANOO](#). PIANOo is the expertise centre on public procurement operating under the responsibility of the Ministry of EZK. PIANOo services over 3,500 procurement officials and tendering suppliers. Their website offers information, tools and guidance, including on the current Responsible Procurement Policy, details on criteria and legal frameworks. In addition to their website they share knowledge and experiences through conferences, trainings and workshops. PIANOo also operates TenderNed, the digital tendering platform of the Dutch Government.

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#### TENDERED

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TenderNed was set up by the Ministry of Economic Affairs and Climate. It is a digital procurement system that guides contracting authorities and companies through the procurement process. One of its aims is to make it easier and faster for companies to register, allowing contracting authorities to

<sup>33</sup> *Overview contracts category management*, Rijksoverheid, 4 March 2019.



choose from more and better offers. In early 2019, the website shows 2.023 tendering authorities registered, 36.821 suppliers and 1.174 ongoing tenders.

The platform can also be used by interested parties outside the public and private sectors, such as civil society stakeholders. Above the European thresholds, tenders have to be made public. Below the threshold, some authorities still decide to use the platform.

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## IN SUMMARY

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- Public procurement accounts for approximately 10% of Dutch GDP with a total volume of over €70 billion per year
- The procurement volume of local governments exceeds that of central government
- Ministries have made efforts to increase the efficiency and effectiveness of their procurement by reducing the number of procurement centres from 350 to 20, and by organising generic procurement in part through category management.
- The government has an active expertise centre and an online tendering platform

The efforts made by central government to harmonize part of its public procurement provide opportunities for coordinated sustainable procurement policies. The decentralized procurement of local governments is by definition more fragmented, which can be a hurdle for coherent nationwide public procurement. In the next chapter, we will look into how sustainable procurement policies developed, followed by chapters that analyse how these policies are implemented.



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## 4 SUSTAINABLE PROCUREMENT POLICY DEVELOPMENT, 2012-2018

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This chapter reconstructs how sustainability was incorporated in Dutch public procurement policy. The focus is on sustainable procurement within the scope of this review: due diligence in supply chains in accordance with the OECD Guidelines. It includes special attention to International Social Conditions (ISCs), but also other criteria with potential impact on sustainability across borders.

### 4.1 SUSTAINABLE PROCUREMENT POLICY PRIOR TO 2012

In June 2005, the Dutch Parliament adopted the motion Koopmans/De Krom<sup>34</sup>, calling on the government to “*apply sustainability as a compelling criterion for 100% of the central government procurement by 2010*”. The state secretary for Housing, Spatial Planning and the Environment concluded the votes were cast for: ‘*100%, unless Ministries clearly indicate with progress reports where this could not be applied*. Parliament and cabinet recognized the potential influence of then €30 billion in yearly public procurement, and the expectations of society that the government should act responsibly. The ambition was clear, and is kicked off a range of policies, implementation, critical evaluations, new policies, initiatives and pilots, some of which are still ongoing. In 2007, as part of the Climate Accord between municipalities and ministries<sup>35</sup>, municipalities committed to the same target of applying sustainability as a compelling criterion for 100% of their procurement by the year 2015.

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### ENVIRONMENTAL CRITERIA: FROM 80 TO 45 PRODUCT GROUPS

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Following the adopted motion Koopmans/De Krom of 2005, the governmental agency SenterNovem developed a range of environmental criteria. In this period various stakeholders, including Members of Parliament, expressed concerns. About the wide range of products (risk analyses for 80 product groups), about ambition (criteria seen as not strict enough) and effectiveness (too much focus on tools and too little on output). MPs also repeatedly asked about progress to develop social criteria. In 2009, concerns about the proposed implementation of criteria in 80 product groups were growing. A government Advisory Board advised to find an alternative approach with a lower administrative burden for both private sector and government<sup>36</sup>. That same month, the minister for Housing, Spatial Planning and the Environment decided to limit the scope where environmental criteria would be applied, focusing on 45 product groups where the most impact could be expected. Though the choice to focus is understandable, one Member of Parliament did note: ‘*We assume that not all dropped criteria from those categories have disappeared beyond the horizon for eternity*’.

Some discussion regarding implementation continued, in 2011 leading to Recommendations to government by a coalition of NGOs and business federations<sup>37</sup>, aiming to balance ambition with reduced administrative burden for the private sector. They argued amongst others for more active engagement of government with the private sector, rather than a one-sided presentation of criteria.

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### THE FIRST SOCIAL CRITERIA

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In October 2009, the government presented its first approach to (international) social criteria<sup>38</sup>.

<sup>34</sup> Parliament documents [29300 XI-130](#), [30300 XI-134](#)

<sup>35</sup> [Climate Accord municipalities and ministries 2007-2011](#)

<sup>36</sup> [Administrative burdens and regulatory burden of sustainable procurement](#), Actal, 2009

(Actal was active between 2000 and 2017; since replaced by the ATR, the Advisory Board on Regulatory Burden)

<sup>37</sup> [Advice on Sustainable Procurement](#) by a coalition of de Groene Zaak, MKB Nederland, MVO Nederland, NEVI, VNO-NCW, 2011

<sup>38</sup> Letter to Parliament by three Ministers on Sustainable Development Policy, October 2009, [KST30196-82](#)

The Letter to Parliament emphasized the intention “*to make conscious choices regarding public procurement that increase the markets for sustainable products and set a good example for others*”. Conscious of the discussion regarding administrative burden of environmental criteria, the aim was to make the social criteria as practical as possible for both tendering authorities and companies. Applying the proportionality principle, ministries would apply the social criteria only for large tenders (e.g., above the European thresholds). The government’s choice was:

- to apply a generic approach regarding fundamental labour conditions and human rights, applicable to all public procurement above the European threshold;
- to request additional requirements for a limited number of product groups for which existing supply chain initiatives had been developed (which at the time were still to be decided but thought to include coffee, tea, cocoa, textiles, flowers and natural stone).

The generic approach meant the supplier would choose one of three options (later called ‘regimes’):

1. If the supplier does not foresee any risks, they declare this.
2. If the supplier is aware of risks in the supply chain, but they consider these covered by an existing supply chain initiative, they provide membership details or a certificate.
3. In all other cases, the contracted party is expected to make a reasonable effort to comply: endorse labour standards and human rights, carry out a due diligence analysis on supply chain risks, targeted activities to reduce risk and prevent violations, taking into account signals from society. Urgent action when actual violations are found. Publicly report on supply chain due diligence and international corporate social responsibility, either per contract or in their annual report, in accordance with the recommendation of the Social-Economic Council.

These new social criteria were not minimum requirements or award criteria but contract clauses that would only apply to the winning tenderer in the implementation of the contract. Only recently did a number of procurement teams start experimenting with applying similar due diligence as award criteria (encouraging competition between tenderers, see chapter 6).

Still, even before the revised OECD guidelines of 2011 had been drawn up, the Dutch government was aiming to ensure ‘due diligence’ would be applied where risks would warrant such an approach. After pilots in 2011/2012 these social criteria, by then called Social Conditions, became mandatory in 2013: for procurement by ministries, above the EU threshold. For local government (municipalities, provinces and water board) the Social Conditions were encouraged, but optional.

## 4.2 POLICY DEVELOPMENTS 2012-2018

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### 2012: ENVIRONMENTAL CRITERIA APPLIED, YET FREQUENTLY LACKING AMBITION

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By 2012, environmental criteria were applied frequently to procurement by both central and local government<sup>39</sup>, while social criteria were piloted by certain ministries. As of January 2012, the separate program ‘Sustainable Procurement’ was ended by the ministry of Infrastructure and Environment<sup>40</sup>.

Still, the aim of applying ‘*compelling*<sup>41</sup> sustainability criteria to 100% of procurement by ministries by 2010’ as formulated in motion Koopmans/De Krom of 2005 remained a challenge. The annual report 2012 on Operations Management by the ministry of BZK stated ‘*the goal of this motion was realized in 2011 and 2012*’, yet this interpretation of the state of affairs in 2012 time can be questioned both regarding scope (‘100%’) and ambition (‘compelling’) of the motion.

<sup>39</sup> [Ex post policy evaluation sustainable procurement](#), Ecorys, 2013

<sup>40</sup> Parliamentary document [30196-184](#)

<sup>41</sup> The Dutch adjective was ‘*zwaarwegend*’, literally translated ‘*heavily weighing*’



The annual report by BZK<sup>42</sup> notes: “In 2012 we verified through sampling whether environmental criteria had been applied. This showed that applying environmental criteria is now a standard part of purchasing by ministries of central government”. This was indeed progress that deserves to be recognized, yet it did not yet fulfill the goal of the motion. Though the number of product groups to which environmental criteria applied varied through the years, in 2012 such criteria were not applied to 100% of procurement by ministries. In 2009 the number of product groups to which such criteria would apply was almost halved from the 80 product groups for which such criteria had been developed in 2009. In 2012 the decision was made to further focus on 36 of the 48 product groups for which environmental criteria were then available<sup>43</sup>.

Beyond the scope is the question of ambition and impact. The policy evaluation by Ecorys referenced on the previous page<sup>38</sup> acknowledged that environmental criteria were in 2012 applied to prioritized product groups in the majority of central government tenders, and increasingly also in local government. The report concludes that the new policy succeeded in raising awareness and sometimes led to impact. However, “the positive influence on the environment is potentially much larger than currently has been achieved, if the criteria would be more ambitious”. They based this on interviews with procurement teams and companies and referred research by RIVM<sup>42</sup>. RIVM carried out a quick scan of the prioritized 36 product groups and concluded that in 16 product groups, impact was likely (reduced CO<sub>2</sub> emissions, less use of toxic materials, more efficient resource use) and in two others probable. However, in 18 product groups, impact was considered unlikely because the criteria were not stringent enough to move the market.

The 2005 motion used the term ‘compelling’<sup>36</sup>. Motions are usually carefully worded and one can assume the Members of Parliament wanted to ensure that applying the criteria would weigh heavily on the procurement process, aiming to effectively move markets towards more sustainability. Important progress was made prior to and in 2012, but not yet with the scale and impact intended.

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## 2013: A PIVOTAL YEAR FOR INTERNATIONAL CORPORATE RESPONSIBILITY

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After pilots in 2011 and 2012, in 2013 the Social Criteria became mandatory for procurement by ministries above the European threshold. In April 2013, the Dutch Public Procurement Act entered into force.

More broadly, the year 2013 was a special year for Dutch IRBC policy. Two key policy papers were presented. First the policy paper ‘A World to Gain’<sup>44</sup> by the Minister of Foreign Trade and Development Cooperation. A few months later the policy paper ‘CSR pays off’<sup>45</sup> on behalf of the same department with Economic Affairs.



2013 was also memorable because of the tragedy at Rana Plaza, Bangladesh on 24 April (more under ‘Workwear’ in chapter 6). It made the high risk of human rights violations of people in other countries, working on clothing we wear, painfully visible.

The policy paper ‘CSR pays off’ explicitly mentioned the responsibility of companies to carry out due diligence. The paper referred to the OECD MNE Guidelines, to the UNGPs and the role of governments to support sector risk analyses.

<sup>42</sup> [Annual Report Business Operations](#), Ministry BZK, 2012

<sup>43</sup> [Environmental profit, a quick scan of minimum criteria](#), RIVM, 2013

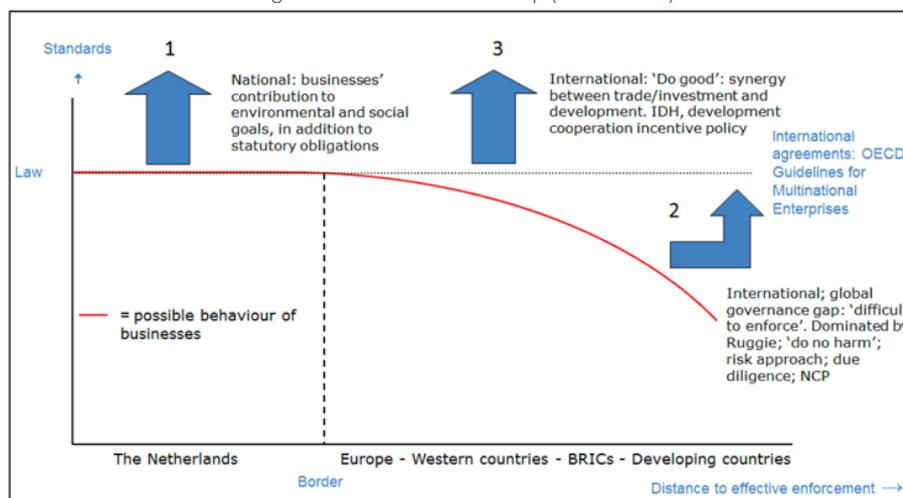
<sup>44</sup> [A World to Gain](#), Ministry of Foreign Trade and Development Cooperation

<sup>45</sup> Parliament document with policy paper ‘[CSR pays off](#)’: 26485-164



A key task for the government, according to the paper, is “*setting a good example, for instance by pursuing a sustainable procurement policy. Government should investigate the extent to which CSR, also at international level, can play a more emphatic role as a criterion for the government’s procurement policy.*” Figure 5 is key in this regard, with better integration of IRBC into procurement policy helping to close the ‘Global Governance Gap’.

Figure 5: the Governance Gap (source: IOB)



## 2014: A YEAR OF RESEARCH AND EVALUATION

In April 2014, the Social Economic Council of the Netherlands (SER) produced its paper ‘*ICSR covenants*<sup>46</sup>. They argued sustainable procurement as indispensable in the ICSR toolbox. The SER voiced concern about the gap between the 100% sustainable procurement ambition and reality: “*Public procurement must be fully based on the OECD guidelines. If the government wants companies to comply with high standards, it must fulfil an exemplary role in this. Feedback from the market indicates, however, that the government still frequently purchases only on price and that CSR criteria often do not weigh heavily on the final award of contract. The SER considers this an undesirable situation that discourages the desired behavioural change in companies.*”

The Sector Risk Analysis announced in the policy paper *CSR pays off* of 2013 was carried out by KPMG who presented their report in September 2014. They identified the 12 high-risk sectors listed in Box 4 below. Based on this, the first covenants were initiated.

Box 4: High Risk sectors identified by the KPMG Sector Risk Analysis of 2014

- |                 |                               |                           |
|-----------------|-------------------------------|---------------------------|
| 1. Construction | 5. Financial sector           | 9. Metal / Electronics    |
| 2. Chemistry    | 6. Wholesale                  | 10. Oil and Gas           |
| 3. Retail       | 7. Timber and paper           | 11. Textiles and clothing |
| 4. Energy       | 8. Agriculture & horticulture | 12. Foods                 |

In October 2014, consultancy Berenschot presented a report<sup>47</sup> evaluating the approach to Social Conditions applicable since 2013, commissioned by the Ministry of BZK in coordination with the ICIA. It concluded most procurement staff were aware the Social Conditions existed, but implementation was not leading to due diligence processes as intended when the process was designed in 2009. The main recommendations by Berenschot are included in Box 5 below. Some recommendations were taken on board, some were not, as will be discussed in § 5.5 and §5.6, starting on [page 39](#).

<sup>46</sup> ‘*ICSR covenants*’, SER, 2014

<sup>47</sup> *Evaluation Social Conditions*, Berenschot, 2014

Box 5: Main recommendations from Berenschot 2014 report ‘Social Conditions in Central Government Procurement Policy’ (summary and translation by the author of this review; the full report can be downloaded [here](#))

1. Bring the Social Conditions more in line with the OECD guidelines. As in the OECD guidelines, go for one regime with due diligence requirement.
2. Strengthen the structure for information gathering and monitoring. Regularly (once every five years) carry out a broad risk analysis. Support the expansion and improvement of existing instruments, such as the ‘RBC Risk Check<sup>48</sup>’ and qualified supply chain initiatives.
3. Ensure Social Conditions are applied in all phases of the procurement process. Build better internal assurance mechanisms. For example, make it mandatory for an expert of the relevant ministry to verify whether the Social Conditions have been applied.
4. Intensify training and education in Social Conditions. Let content and application of the Social Conditions be an integral part of training and education for buyers and contract managers of the national government (both for internal and external courses).
5. Encourage uniform application in local governments: municipalities, provinces and water authorities. Given local governments’ own responsibility and autonomy it is not possible to enforce their application of Social Conditions in the procurement process as in national policy. It is therefore advised to do this by means of covenants with the umbrella organisations of the public sectors.

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## 2015: A 5-YEAR PLAN OF ACTION FOR RESPONSIBLE PUBLIC PROCUREMENT (RPP<sup>49</sup>)

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In 2015, the State Secretary of Infrastructure and Environment sent a 5-year Plan of Action<sup>50</sup> for Responsible Public Procurement (RPP) to Parliament on behalf of four other ministries.

She indicated the 2015-2020 plan had been discussed with local government bodies and the private sector. *“With this plan, RPP is shifting from applying minimum requirements to encouraging and/or inviting suppliers to deliver products and services that are as sustainable as possible”.*

It was also a shift away from the earlier commitment in the Climate Accord of municipalities and ministries of 2011, in which municipalities had committed to 100% sustainable procurement by 2015, just as ministries had committed to the same target by 2010 (see [§4.1](#)).

In the document itself, the strategic ambition is emphasized: *“In this Plan of Action, more than in the past, the possibility of using RPP as an instrument to achieve goals from agreements, covenants and other agreements. Sharing knowledge and best practices is a crucial part of this.”* Examples of policy goals mentioned: *“mitigating climate change, stimulating renewable energy, cyclical use of resources, sustainable use of natural capital, living wage and improved labour conditions”.*

In [§5.5](#) the implementation of this policy and its ambition will be discussed further.

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## 2016: MANIFESTO RESPONSIBLE PROCUREMENT

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In April 2016, an updated version of the Dutch Public Procurement Act (amended to incorporate the 2014 Directives, see chapter 2) entered into force. In December 2016, as an important milestone of the 5-year Plan of Action was the signing of the Manifesto RPP by a range of national and local governments: five ministries, the Union of Waterboards, three provinces and 50 municipalities. Every signatory committed itself to developing their own RPP Action Plan within 6 months of signing.

<sup>48</sup> The website ‘[CSR Risk Check](#)’ is hosted by MVO Nederland

<sup>49</sup> In Dutch, since 2015 the term ‘*Maatschappelijk Verantwoord Inkopen (MVI)*’ was introduced (replacing the earlier ‘*Duurzaam Inkopen*’ or sustainable procurement). The linguistic translation is ‘socially responsible purchasing’, but this can be misleading as the Dutch term refers to CSR and both environmental and social sustainability. Here the term MVI is translated as Responsible Public Procurement (RPP).

<sup>50</sup> [Plan of Action Responsible Public Procurement](#) (RPP 2015-2020), Parliament document 30196-358:

In April 2017, new International Social Conditions (ISCs) became mandatory for procurement by ministries for 10 risk categories, above the EU threshold. Other national and local governments were encouraged to apply ISCs, amongst others through the guidance document for RPP Action Plans. In this new ISC procedure, suppliers can no longer choose the option ‘we do not foresee high-risks and therefore will not carry out due diligence’. This followed the recommendation by Berenschot to go for one regime rather than providing suppliers with the option to check the ‘no risks foreseen’ box.

In the new procedure, if contracting authorities include ISCs as contract clause, the contracted supplier will have no choice but to carry out due diligence (assuming this is enforced). This requires contracted suppliers to carry out a risk analysis of their supply chain, produce mitigation plans and annual reports. The wording on due diligence itself is similar, as already in the first draft of 2009 risk analysis, mitigation plans and reporting were mentioned (see §4.1 on page 20). The difference is that in the new procedure the supplier can no longer choose the option ‘no risks foreseen’.

Policy makers interviewed for this review stressed that the intention was to avoid tenderers would ‘tick the easy box’, e.g. declare that they did not foresee any risks, thereby avoiding what to some appeared a cumbersome due diligence process. With the new ISC procedure, it is government officials that determine for which product groups suppliers have to carry out due diligence.

The policy intention was to focus the new ISCs on high-risk sectors, starting with product groups for which ministries had chosen to apply category management, looking for overlap between these categories and high-risk sectors. Following this rationale, the ICIA, based on a memorandum by the ministry of BZK<sup>51</sup>, decided to limit the scope of where ISCs are mandatory to ten risk categories (for ministries, above the EU threshold). The memorandum suggests evaluating this policy at a later stage. Senior policy officers interviewed for this review have confirmed such an evaluation is underway as of early 2019 and that the 10 risk categories should be seen as a start.

Box 6: 12 High Risk sectors from the SRA of 2014 (see [Annex 3](#)) and 10 risk categories where ISCs are mandatory (for ministries, above the EU threshold) as of April 2017

High Risk sectors from 2014 SRA	ISC risk categories since 2017
1. Construction	1. Workwear
2. Chemistry	2. Catering
3. Retail	3. Paper & Printed Matter
4. Energy	4. Energy (Electricity & Gas)
5. Financial sector	5. Resource Management & Waste Disposal
6. Wholesale	6. Office and computer supplies
7. Timber and paper	7. Laboratories
8. Agriculture and horticulture	8. ICT
9. Metal / Electronics	9. Datacenters
10. Oil and Gas	10. Data connections
11. Textiles and clothing	
12. Foods	

Though the choice to focus on high-risk sectors is valid, the current scope excludes multiple high-risk product groups. The 10 risk categories are narrower than the 12 high-risk sectors from the SRA. Examples are natural stone and timber in buildings and office furniture, and the financial sector. They fit within the sectors in the left column of Box 6 but are not part of the 10 risk categories on the right. More on the current policy on ISCs in §5.3, pages [31-33](#).

<sup>51</sup> Final implementation revised application framework ISCs, Memorandum from Ministry of BZK to ICIA, 27 September 2016



Monitoring is important, as governments can only manage what they measure.

In February 2018, RIVM presented a method to calculate the effect of RPP in eight product groups: company cars, business trips, contract transport (e.g. for scholars), transport services (e.g. taxis), workwear, electricity, solar panels and gas. The findings in the report<sup>52</sup>, which analysed public tenders by central and local government in these eight product groups in 2015 and 2016, offer mixed results:

- a) there is measurable progress on climate and circular economy policy goals, most notably reduction of 4,9 megaton of CO<sub>2</sub> related to procurement of Electricity and Solar panels;
- b) RPP is not always applied, and where it is applied ambition varies greatly;
- c) RPP does not guarantee impact as minimum requirements are not always stringent enough to move the market, and demands and award criteria do not always end up in contracts;
- d) in the limited product groups researched by RIVM (including one where ISCs were mandatory for ministries above the EU threshold), where ISCs were applied, buyers indicate that *'everyone ticks the box by default, there is no follow-up'*. The report suggests this could perhaps change with the new framework, with a stronger emphasis on due diligence (which entered into force in 2017, after the research period for this RIVM report).

These findings will be discussed further in [§5.5](#) which looks at implementation of RPP until 2018.

In June 2018, Parliament adopted a motion by MP Paternotte<sup>53</sup>. The motion notes there is currently no insight into the share of sustainable criteria in tenders and whether these criteria have played a decisive role. It calls on relevant pilots from several departments to include measurable sustainability criteria with a substantial weight or scaling up pilots where they have already taken place. Finally, the motion urges to continue to learn lessons about the effective application of sustainability criteria, and to share such lessons with local government and Parliament.

In November 2018, the Ministries of BZK and I&W launch a new, public website where all current RPP criteria can be found in one place: [www.mvicriteria.nl/en](http://www.mvicriteria.nl/en) Though the website is new and has yet to be evaluated, it comes across as user friendly. Users can quickly find criteria for 46 product groups (see Annex 4 for all product groups). The criteria are mostly environmental, with some relating to health or animal welfare, and with ISCs presented as (optional) contract clause.

Procurement teams of Dutch central and local government can distinguish between a limited number of (company-specific) selection criteria and a wide range of (product-related) minimum requirements, award criteria and contract clauses. Icons in the shape of leaves indicate the ambition level of each criterion: Basic, Significant or Ambitious. In line with the broader RPP policy the criteria are presented as optional: the user of the site can select one or more of twenty or so criteria that surface per product group, based on their own preference. The tool is updated annually.

Though there are benefits for tendering bodies to adapt tenders to their own preferences, the set-up of the tool – allowing users to pick and choose - underlines that the RPP policy provides guidance, but leaves ambition levels, themes and criteria as optional. If all central and local government procuring the same product group would align ambition, themes and RPP criteria applied in their procurement strategy, this would likely lead to a more coherent signal to the suppliers of such products.

By end 2018, another tool was launched with the aim to improve monitoring. It is an RPP self-evaluation tool, linked to TenderNed. This tool will be further discussed in [§5.6](#), which reviews these and other tools developed specifically for RPP.

<sup>52</sup> [The effect of Responsible Public Procurement](#), RIVM, 2018

<sup>53</sup> Parliament document [32440-111](#)



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## IN SUMMARY

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- Prior to 2010, ministries were working towards 100% sustainable public procurement by 2010 following a Parliamentary motion in 2005 (ministries aimed for 100% by 2015).
- Until 2012, the focus was on environmental criteria for a varying number of product groups.
- In 2011 and 2012, Dutch ministries first piloted and by 2013 applied the first social criteria (also known as Social Conditions), aiming specifically for due diligence in supply chains.
- Between 2012 and 2018, environmental criteria evolved to RPP criteria. Most RPP criteria are still environmental, though criteria regarding animal welfare, health and social were added.
- In recent years RPP criteria are updated annually and as of end 2018 the RPP criteria are accessible on the website [www.mvicriteria.nl/en](http://www.mvicriteria.nl/en)
- After an evaluation of the Social Conditions in 2014, the government changed its approach, aiming to make the new ISC framework more effective on due diligence in supply chains (rather than an administrative exercise).
- RIVM concluded in 2018 that measurable progress was made on climate and circular economy policy goals in 2015 and 2016, but also that RPP did not guarantee impact as minimum requirements were not always stringent enough to move the market, and demands and award criteria did not always end up in contracts. They furthermore conclude that where Social Conditions were mandatory, this was not enforced/verified at the contract stage.
- A five-year Plan of Action RPP was launched in 2015, aiming to apply public procurement more strategically to achieve sustainability goals. In 2016, a related Manifesto was signed by local and central governments. With this Plan of Action and Manifesto the government aims to encourage central and local governments to develop and implement their own RPP Action Plans. By mid 2019, over 100 RPP Action Plans were publicly available.
- Since April 2017, the new ISC framework is mandatory for 10 risk categories by ministries, above the EU threshold. This amounts to a small portion of total Dutch public procurement volume, as the ISCs are not mandatory for other central and local government (though they are free to apply them). Moreover, the 10 ISC risk categories cover some, but not all product groups related to high-risk sectors. In line with the policy intention to consider these 10 risk categories as a start, expansion to other product groups is under discussion.
- In the last year, among various efforts to support central and local government are two new online tools: a new website with an overview of all RPP criteria, and a self-evaluation tool.

The period under review has seen significant developments. Sustainable procurement – now called RPP - is encouraged, but often remains optional. Mandatory requirements are limited to a portion of central government tenders. RPP criteria are by 2018 updated annually, but are not available for all high-risk product groups and not always stringent enough to move the market. Strong guidance to achieve more coherence between local and central government procurement appears to be lacking.

In the next chapter, we will evaluate more closely the effectiveness of the RPP related laws, policies, support tools, implementation and monitoring and evaluation.



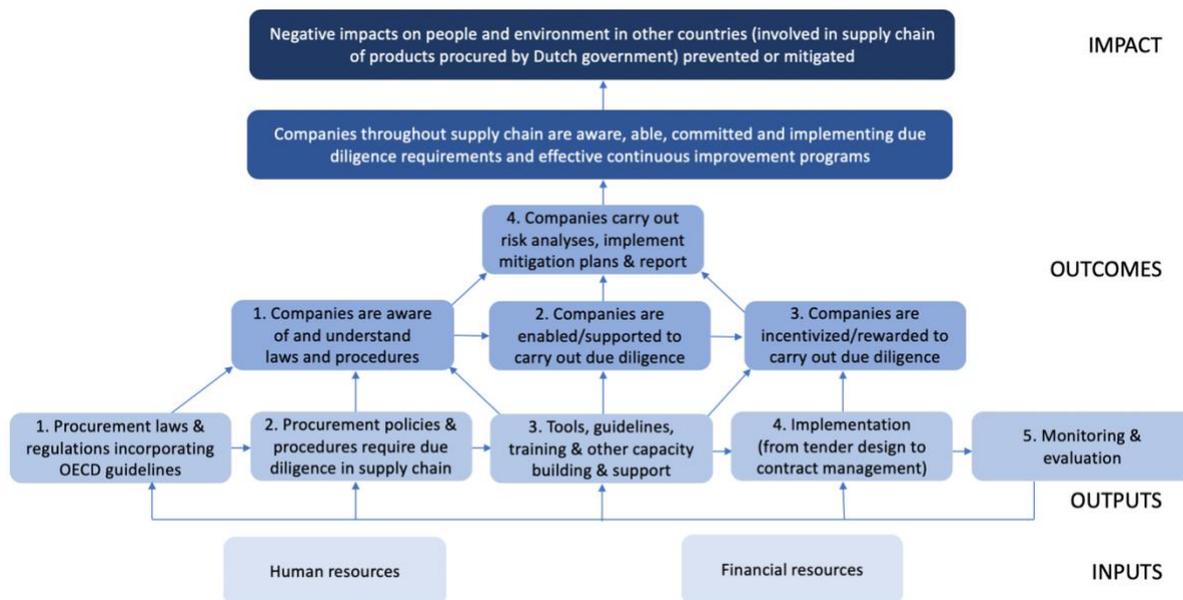
# 5 DUE DILIGENCE IN PUBLIC PROCUREMENT SUPPLY CHAINS

- Do Dutch government laws, policies, support tools and procurement practices incentivize, support and reward companies to apply due diligence in their supply chains?
- Is Dutch public procurement currently aligned with the OECD guidelines and the UNGPs?

## 5.1 THEORY OF CHANGE FOR DUE DILIGENCE IN PUBLIC PROCUREMENT SUPPLY CHAINS

To answer the above questions, a Theory of Change was drafted. A reconstructed ToC specifically for due diligence in public procurement supply chains. In this ToC, visualized in figure 6 below, human and financial resources serve as inputs. This refers to the time and budgets of those responsible to negotiate laws, develop and implement policies and procedures. The level just above are the outputs this review focuses on: laws and regulations, policies and procedures, tools and guidance, implementation and monitoring. In the middle are intended outcomes: behaviour of companies tendering or supplying products to government. The ultimate aim is to achieve impact through the supply chain and prevent or mitigate negative impacts through supply chains<sup>54</sup>.

Figure 6: Reconstructed Theory of Change of Dutch public procurement applying due diligence in supply chains



In the below paragraphs §5.2 until §5.6 we look at the five outputs. The development of laws and policies have been covered in previous chapters, yet in §5.2 and §5.3 we ask questions central to this review. Are these laws, policies and support tools well equipped to inform, support and incentivize companies to apply due diligence? In § 5.4 we discuss what tools and trainings are provided.

In § 5.5, we look at the actual implementation of RPP in general, and due diligence requirements in particular, and in §5.6 we discuss how Monitoring & Evaluation takes place. What happens in reality to incentivize and reward suppliers to apply due diligence regarding supply chain risks?

Who monitors RPP and due diligence public tenders, what key data are gathered to evaluate and ultimately to improve laws, policies, tools and implementation? Finally, in § 5.7 we discuss what the review can conclude about the outcome level (e.g. how companies understand and apply due diligence) and can say about the impact level (through the supply chain to countries of origin).

<sup>54</sup> OECD Guidelines focus on 'do no harm', though Responsible Public Procurement can also be used as a force to do good.



## 5.2 LAWS AND REGULATIONS

Does procurement law provide space for and/or mandate suppliers to carry out due diligence on supply chain risks? As discussed in chapter 2, there has been a Dutch Public Procurement Act since 2012, an adapted version of which is valid since 2016. This Dutch law does:

- a) provide space to apply sustainability criteria to public tenders if related to ‘the subject matter of the contract’, e.g. the product, work or service, with some ambiguity regarding space for broader RBC requirements. Relevant to due diligence in the supply chain, such criteria can relate to a product’s entire lifecycle, from raw materials to disposal.
- b) allow procurement officials to request sustainability certificates as a criterion, as long as they apply to the product procured and those standards adhere to certain conditions.
- c) mandate contracting authorities to inform tenderers that they have to declare they have taken into account environmental, social and labour law referring to collective agreements, national law, EU law and international conventions on labour and chemicals (see [Annex 2](#)).

The Dutch Public Procurement Act however, following the EU Directives:

- d) does not prescribe mandatory application of OECD guidelines and/or specific sustainability criteria (except for the generic reference to the EU Annex as mentioned under c) above), suggesting sector-specific legislation should set mandatory objectives and targets.
- e) is ambiguous about allowing company-wide RBC policies as a requirement for tendering companies, not allowing this in product-related criteria, but leaving some space in selection criteria on a tenderer’s capabilities and capacities to carry out the work.

Assuming markets respond best to consistent policies, the lack of mandatory requirements and limited space to require company-wide RBC policies limit the potential of procurement policies to incentivize companies. Still, the law does provide ample space to apply environmental and social criteria at the product level, including impacts throughout the lifecycle of products, including space to promote due diligence in supply chains. Furthermore, the Directive suggests continuing on the path of sector-specific legislation setting mandatory objectives and targets.

## 5.3 PROCUREMENT POLICIES

Do Dutch government policies and procedures require due diligence in supply chains? There are indeed explicit due diligence requirements for suppliers in Dutch procurement policy, in the form of ‘International Social Conditions’ (ISCs). These were developed with OECD due diligence in mind and have evolved in the period under review. However, these ISCs:

- are part of a broader ‘patchwork’ of Responsible Public Procurement themes and among these themes, they are prioritized less frequently than other themes e.g. climate & circular;
- are presented as contract clauses only (not minimum requirements or award criteria);
- focus on social risks in supply chains (not environmental or other OECD related risks);
- were based on criteria developed in 2009, but in the current form valid only since 2017;
- are mandatory only for a small portion of public procurement (optional for the rest);
- are mandatory for a small number of categories, covering some but not all high-risk products.

The below sections describe more in-depth each of the bullet points above.

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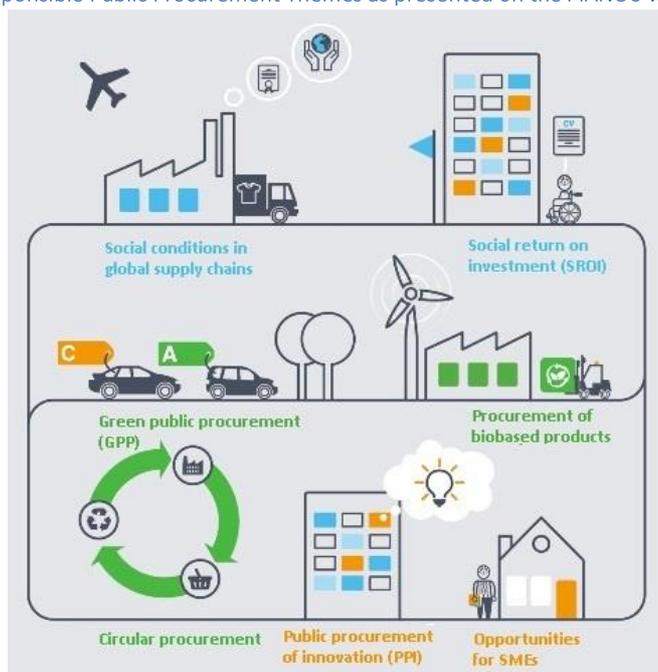
### A PATCHWORK OF POLICIES, WITH ISCS ENCOURAGED BUT OPTIONAL

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Figure 7 below is how the Dutch public procurement information website [PIANOo](#) communicates RPP themes to its stakeholders (public procurement teams and potential tenderers and suppliers).



Figure 7: Responsible Public Procurement Themes as presented on the PIANOo website in 2019



Looking at this image, it appears that each of the themes originated at different points in time. Starting with ‘Green Public Procurement’ referring to environmental criteria (the first of which were developed in 2009). ‘Social conditions in global supply chains’ refers to ISCs and is the theme explicitly looking at (social) supply chain risks and due diligence. Here, ISCs sits next to the theme of ‘Social Return’ which has a different scope: to stimulate employment opportunities for people disadvantaged within the Dutch labour market. ‘Procurement of biobased products’ and ‘circular procurement’ are more recent themes, as are ‘Innovation’ and ‘SMEs’.

If we look at the [RPP criteria website](#), online by end 2018, we see mostly the same themes, though with a slightly different perspective and grouping.

Box 7: Responsible Public Procurement Themes, as on the RPP criteria website in 2019

The themes on which a criterion has a positive impact are indicated for each criterion. The themes are as follows:

- Energy and Climate (Energy)
- Supplies and Raw Materials (Materials)
- Soil and Water (Soil)
- Ecology and Biodiversity (Ecology)
- Health, Welfare and the Living Environment (Welfare)
- Social Chain Aspects (Social)
- Animal Welfare (Animal Welfare)
- The Circular Economy (Circular)
- Biobased Economy (Biobased)

Looking at various policy documents and listening to several interviewees, the circular economy and climate change are themes that are frequently prioritized in recent years. Also, in the letter sent by the State Secretary for Infrastructure & Environment when presenting the RPP Manifesto to Parliament late 2016, she explicitly mentioned the ambition for more than 10% of circular procurement (referring to a Parliamentary motion on the topic). The latest policy document ‘Procurement with Impact’<sup>55</sup> does recognize ISV as one of five priority themes, however while it does include measurable targets for circularity and climate, similar targets for ISV are not (yet) included.

<sup>55</sup> [Procurement with Impact](#), Ministry of BZK, October 2019



Signatories to the RPP Manifesto commit to drafting their own RPP Action Plan within six months after signing, but which themes and targets are included depends on each individual government body's choices. In the guidance document for RPP Action Plans<sup>56</sup> ISCs are simply one of the themes to consider, leaving them encouraged but optional and as of yet infrequently prioritized.

This review observes that climate and circular economy are prioritized more often in Dutch public procurement policy than supply chain risks. To be clear: reducing climate change should be a top priority, and the Dutch footprint can be significantly reduced through more circular design, production and consumption. These themes are vital components of the transition to a sustainable global economy that are finally gaining traction. They are rightfully prioritized and themselves also directly and/or indirectly linked to supply chain risks.

However, this does not take away from the responsibility by the Dutch government regarding supply chain risks following OECD guidelines. With the spotlight on other priorities and a lack of mandatory requirements, there is the unintended risk that supply chain risks are literally out of sight and products procured by governments lead to negative impacts on people and the environment.

There are unintended consequences to making a vitally important theme 'optional'. If one would ask each government body whether they tolerate child or forced labour in supply chains of food they eat or office buildings they work in, the answer would be no. Yet without explicitly including this in RPP Action Plans that risk is very real, as each government body buys products from high-risk sectors.

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### ISCs FORMULATED AS CONTRACT CLAUSE

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The ISCs have, from the first 'social conditions' in 2009 until the new ISC framework in place since 2017, been formulated as contract clauses. The assumption is that by using contract clauses, companies are incentivized to apply due diligence during the contract phase, reporting on risk analyses and (where relevant) improvement plans. The idea is that contract managers monitor this during the contract phase, as many public contracts have deliveries that span multiple years.

There are two concerns about this assumption. One is that, though contract clauses are useful criteria, they can be combined with other criteria earlier on in the tendering process: minimum requirements and award criteria (and perhaps also company-specific selection criteria)<sup>57</sup>. As we will see in chapter 6, some of the best practice cases apply ISCs and related due diligence questions explicitly in the award phase too. Still, if you look on the RPP criteria website, ISCs are only offered as contract clauses. This raises the question whether the current policy focus on the contract phase only is the most effective way to incentivize and reward companies.

Another concern is that from multiple interviews and reports, this review concludes that contract managers currently do not have the time or expertise to carry out the required follow-up. Many of those interviewed explicitly expressed concern about this, including a contract manager well-known in his sector and among procurement teams as a front runner on ISCs, see §6.2 page [55](#).

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### ISC CURRENTLY FOCUS ON SOCIAL ISSUES, NOT OTHER SUPPLY CHAIN RISKS

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When the first version of 'social conditions' were developed, environmental criteria had already been developed for 45 product groups. Perhaps this was the reason why the supply chain conditions focused on social issues only. However, supply chain risks include both environmental and social risks.

<sup>56</sup> [Guidance document](#) RPP Action Plans 2016-2020

<sup>57</sup> See for types of RPP criteria that can be applied in a tendering process [§2.3](#) on page 12, or the description on the [RPP website](#) by PIANOo.



Moreover, the supply chain risks that OECD guidelines refer to also include anti-corruption, consumer interests, science, fair competition and taxation. The Berenschot report of 2014<sup>58</sup> also noted this. This review therefore suggests to broaden ISCs to International Supply Chain Conditions.

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## ISC POLICY EVOLVING, AFTER TEN YEARS STILL UNDER DEVELOPMENT

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The first social criteria were formulated in 2009. After pilots in 2011 and 2012, Social Conditions became policy in 2013. After an evaluation in 2014, new International Social Conditions were agreed upon in 2016 and have been active since 2017. This means that the experience with the new ISCs is fairly recent and covers only the last years of the scope of this review (2017 and 2018). Moreover, in a policy note from 2016<sup>59</sup> to the ICIA, the ministry of BZK indicated that the focus of the new framework on 10 product groups would be a starting point. Government representatives interviewed for this review confirm this and indicate that possible expansion to include more (high-risk) product groups is under discussion in 2019. Though continuous improvement is a relevant concept (see [§7.5](#)), the period of formulating, piloting and adjusting ISC has hence been spread out over a fairly long period, with after ten years a policy where ISCs are mandatory for a small portion of public procurement.

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## ISCS MANDATORY FOR A SMALL PORTION OF TOTAL PUBLIC PROCUREMENT VOLUME

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ISCs are currently mandatory only for a small portion of the overall procurement by the Dutch government, e.g.:

- for public procurement by ministries (as in all RPP, other central government and local government determine their own policies and are encouraged, but not obligated to apply ISCs)
- in 10 'risk categories' falling under generic procurement and category management (identified as related to high-risk sectors, yet not covering all high-risk sectors)
- above the EU threshold (based on an interpretation of Proportionality, one of the guiding principles of both the EU procurement directives and Dutch procurement law).

The rationale behind these policy choices, though each could be debated, is clear (see [§4.2](#) page 24).

What is not immediately clear from the above is how small the portion of Dutch public procurement is, for which ISCs are mandatory. This is visualized in Figure 8, showing estimates of annual expenditures based on data from 2015-2017. Emphasizing these numbers are rough estimates, the conclusion is that ISCs are mandatory for a small percentage of public procurement volume, possibly less than 3%. Two caveats when considering this estimate and figure 8 below:

- The fact that ISCs are only mandatory for 10 risk categories for ministries does not take away from the option of other governments to include ISCs as a priority in their RPP Action Plans (this is currently not done as a rule; climate and circularity are prioritized more often).
- Not all procurement by the Dutch government has high supply chain risks. The below does not include numbers on procurement of high-risk sector products, as such numbers are not easily available. The assumption is that specific procurement by central government and procurement by local government also include significant volumes of products from high-risk sectors such as Natural Stone, Timber, Textiles, Food, Electronics, Financial etc.

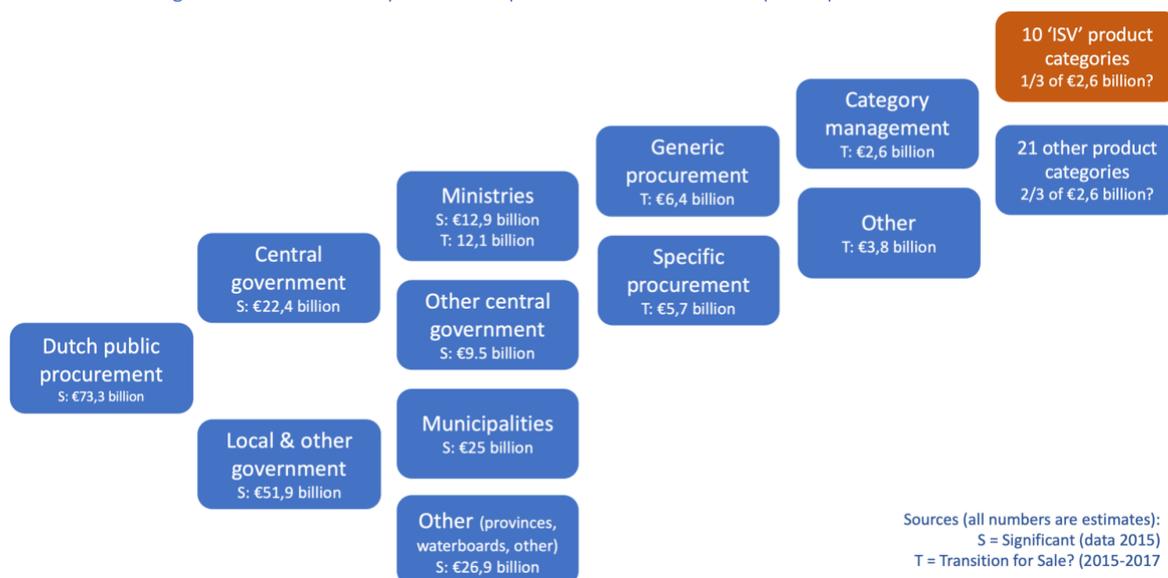
For an overview of the high-risk sectors and the 10 product categories, see [§4.2](#) or [Annex 3](#).

<sup>58</sup> [Evaluation Social Conditions](#), Berenschot, 2014

<sup>59</sup> *Final implementation revised application framework ISCs*, Memorandum from Ministry of BZK to ICIA, 27 September 2016



Figure 8: ISCs mandatory for a small portion of the total Dutch public procurement volume



Examples of public procurement in high-risk sectors where ISCs are currently not mandatory:

- procurement by the Real Estate Agency and the DG Public Works and Water Management. Responsible for design, construction, management and maintenance of main infrastructure facilities (using various materials from high risk sectors). These government agencies do have responsible public procurement policies, but without the mandatory requirement of ISCs;
- all procurement by municipalities, water boards and provinces (with many high-risk products such as natural stone, timber, food, electronics procured for city halls, plazas, offices, etc.);
- all procurement under the EU threshold (unfortunately given lack of monitoring it is unclear what the price distribution is of products from high-risk sector products above and below the threshold, but for infrastructural works the threshold is high: €5.548.000);
- all procurement of financial services, office furniture, construction (not included in the 10 risk categories, though these sectors are known to have high RBC risks).

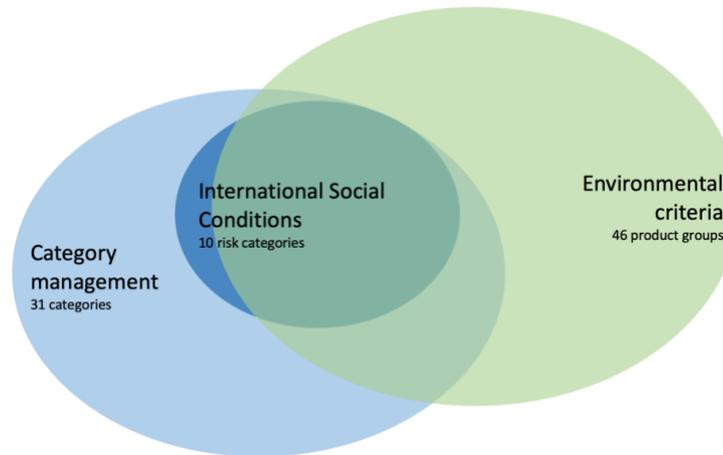
### ISCS MANDATORY (FOR MINISTRIES, ABOVE THE EU THRESHOLD) FOR A LIMITED NUMBER OF RISK CATEGORIES

Figure 9 adds another perspective. It both illustrates the origin of the 10 risk categories for which ISCs are mandatory, and that these 10 risk categories overlap to a large extent (but not fully) with the 46 product groups for which environmental and other criteria have been developed:

- The light blue circle encompasses 31 categories under category management. This policy only applies to ministries (see [§3.2](#)), aiming to harmonize procurement of generic categories such as Workwear and Electricity. It is from these 31 categories that the 10 risk categories were chosen where ISCs are now mandatory (for ministries and above the EU threshold).
- The green circle encompasses the 46 product groups on the [RPP criteria website](#), developed for all government procurement teams from central and local government, for which environmental (and for certain product groups also other) criteria have been developed<sup>60</sup>.
- The dark blue circle represents the 10 risk categories for which ISCs are mandatory since 2017 (for ministries, above the EU threshold). They are part of the 31 categories to which category management applies, and most of these 10 risk categories overlap with product groups for which environmental (and health and animal welfare) RPP criteria have been developed.

<sup>60</sup> 46 product groups as of November 2019 (regularly updated). For these product groups environmental criteria have been developed (updated frequently since 2009; annually in recent years); for some product groups also health or animal welfare related criteria. ISCs are also found on this website, at least for all 10 risk categories for which they are mandatory for ministries above the EU threshold.

Figure 9: Scopes of different parts of Dutch public procurement policy, related to the policy on International Social Conditions (see for details and sources used [Annex 3](#))



What the figure also visualizes is that ISCs are mandatory for a subset of the 46 product groups for which environmental (and some health and animal welfare) criteria have been developed. As we can see in [Annex 3](#), these 46 product groups include many other product groups where high supply chain risks are also expected, based on the Sector Risk Analysis.



Examples include the product groups of Office Furniture and Office Furnishings (overlapping with high-risk sectors Textiles and Timber), New Buildings and Renovations (high-risk sectors Chemicals, Natural Stone and Timber) and Toner cartridges (high-risk sector of Chemicals). Another observation is that Laboratories – one of the 10 ISC risk categories - does not appear to overlap with the 46 product groups on the RPP criteria website, raising questions about whether environmental criteria apply.

The 10 risk categories were identified in 2016 because of their overlap with category management. From the 31 categories, 10 were chosen, identified as related to high-risk sectors (see [Annex 3](#)). Policy makers understandably thought this was a good place to start, given the responsibility of category managers to engage with the market, draft multi-year category plans and otherwise harmonize procurement for their category for multiple ministries. The policy document of September 2016<sup>61</sup> by the ministry of BZK clarifies: *“The decision to apply ISCs primarily to category management was taken as the first step. If this method works well, the application to risk sectors will be expanded outside of category management only”*. Government representatives interviewed for this review indicated that the evaluation of this first step is in 2019 ongoing and expansion is under discussion.

When considering expanding ISCs to other high-risk products, it is good to think ‘outside the circles’. In 2009 initially environmental criteria were developed for 80 product groups (see [§4.1](#)), later brought down to 36 and now up again to 46 product groups. In other words: there are also product groups outside the circles of figure 9 and Annex 3. Financial services (indirectly related to high-risk sectors) and Oil & Gas are just two examples of public procurement that appear to fall outside these circles.

<sup>61</sup> Final implementation revised application framework ISCs, Memorandum from Ministry of BZK to ICIA, 27 September 2016



In conclusion, although the focus on high-risk sectors is valid, the scope of mandatory application of ISCs is currently limited, both in terms of the procurement volume (only mandatory for ministries, above the EU threshold) and in terms of type of products (only 10 risk categories).

Applying ISCs as due diligence requirements remains optional for all other public procurement. In select cases, as we will see in chapter 5 and especially [chapter 6](#), their application is even encouraged.

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## SUMMARY CONCLUSION ON DUE DILIGENCE REQUIREMENTS IN DUTCH RPP POLICY

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Do Dutch government policies and procedures require due diligence in supply chains?

The Dutch government has developed a range of criteria for Responsible Public Procurement (RPP). Moreover, with the RPP Manifesto of 2016 the government has encouraged all government bodies (central and local) to draft individual RPP Action Plans, and by late 2018 over 100 had been drafted. However, different themes have been added in different years, resulting in a well-intended patchwork that provides government bodies with a multitude of options, yet without strict guidance.

In Dutch procurement policy, applying RPP criteria is encouraged but optional. Climate change and circularity are rightfully prioritized, but (other) supply chain risks less so. The criteria specifically aimed at due diligence in supply chain risks (ISCs) are after ten years still limited in scope, both thematically and regarding the percentage of tenders for which they are mandatory.

### 5.4 TOOLS, GUIDELINES & TRAINING ON RPP

Does the government provide relevant procurement stakeholders with tools, guidelines, training & other capacity building & support, aimed at due diligence in public procurement supply chains?

The Dutch government has a range of tools and guidance documents, and organises trainings and workshops aimed at promotion of Responsible Public Procurement:

- The central agency that provides support on RPP to governments and tendering companies is PIANOo (see [§3.4](#)). Their website links to the RPP Manifesto 2016-2020, with an overview of the over 100 government bodies (central and local) that by now have an RPP Action Plan.
- Early 2017, a Guidance Document<sup>62</sup> was produced to support government entities in drafting their RPP Action Plan. This document includes ISCs as one of the RPP themes (in line with the themes as visualized in Figure 7 on page 29). The document does not mandate applying ISCs, it simply presents them as one of the RPP criteria government agencies can choose from.
- In November 2018, BZK and I&W launched [MVICriteria.nl/en](http://MVICriteria.nl/en), an online RPP criteria tool. It presents the RPP criteria developed for the 46 product groups described in [Annex 3](#).

PIANOo as an expertise centre, the Guidance Document for RPP Action Plans and the RPP criteria website are clearly supportive of government entities applying RPP. However, there are some concerns, most importantly that in line with current policy, the RPP criteria website and the Guidance Document for RPP Action Plans present the RPP themes and criteria as optional (with only some mandatory for part of central government). This limits the potential of the Dutch central and local government's potential to use their joint procurement volume as leverage to move markets.

Another concern is limited capacity. PIANOo has approximately 30 employees, of which an estimated six are advisors on RPP, servicing 3.500 public and private parties. The Ministry of Foreign Affairs (frequently partnering with PIANOo on tools and events) similarly has limited capacity, as there is only one person at the Ministry focusing on the ISCs (and her IRBC portfolio goes beyond ISCs only).

<sup>62</sup> [Guidance document](#) RPP Manifesto 2016-2020 (in Dutch)



The ministry of BZK has several colleagues working on RPP, but for expertise on ISCs they mostly defer to PIANOo and MFA<sup>63</sup>. Supply chain expertise per sector sits with other bodies, including the SER and organisations that coordinate or participate in sector covenants.

On a practical note, several interviewees found it difficult to see the forest for the trees on the PIANOo website. There is a lot of information, but sometimes hard to find what people are looking for. The new RPP criteria tool is seen as useful and appears very user-friendly, however by 2019 appears a work-in-progress (not all of the 10 risk categories to which ISCs apply are included).

At least two tools have been specifically developed aimed at due diligence in supply chains: the ISC Academy and the RBC Risk Check:

- The ISC Academy organised by PIANOo aims to increase awareness of ISCs and support implementation. Though many of the people interviewed for this review support this, one concern raised is that as ISCs are not fully developed yet, the Academy may risk ‘putting the cart before the horse’. Another question is whether it can be scaled enough to reach a substantial proportion of the target audiences: procurement teams but also their clients and policy makers. Despite these caveats on timing and scale, this is a positive development.
- The RBC Risk Check<sup>64</sup> is a web-based tool (funded by the ministry of Foreign Affairs since 2013) supporting companies in identifying supply chain risks. The website can be useful for potential suppliers in their compliance with ISCs, but also for risk analysis by procurement teams and policy makers themselves, as several of those interviewed concurred.

Several other tools related to environmental sustainability and construction were mentioned by local government representatives as useful during the procurement process:

- The Ambition web<sup>65</sup>, designed by the Dutch Green Deal Sustainable Ground and Water Works. It visualizes in a ‘spider web’ the ambitions on twelve subthemes related to Energy, Materials and Accessibility.
- DuboCalc is a method to calculate environmental impacts of a product throughout the lifecycle, and the CO<sub>2</sub> Performance Ladder has three levels covering CO<sub>2</sub> emissions of the organisation itself, and levels 4 and 5 relating to emissions throughout the supply chain.

These tools are applied regularly in construction projects, mostly by local government or by the ‘specific procurement’ portion of central government (see figure 8 on page 32). They have clear added value and the DuboCalc method is referenced in one of the environmental criteria for RPP. However, they are not all harmonized within an overall RPP strategy. There is no mention in the Ambition Web of (social) supply chain risks or ISCs, though such risks are known to exist in raw building materials such as natural stone, certain minerals, timber. This suggests a lack in coherence between tools of different ministries. The Ambition Web website itself acknowledges that their ‘spider web’ is not yet in line with the RPP criteria and that they will further develop the tool in future.

In summary, the Dutch government does have several support and capacity building tools, both regarding RPP in general and due diligence in supply chains in particular. However, following RPP policies, the tools encourage applying RPP criteria yet without strong guidance. The reach of the tools appears limited to a small portion of relevant stakeholders, not yet consistently reaching the many different government bodies with one coherent message.

<sup>63</sup> After the period covered by this review, though before this report was finalized, the ministry of Internal Affairs recruited a new legal procurement expert with specific knowledge of and experience on ISCs.

<sup>64</sup> The website ‘[CSR Risk Check](#)’ is hosted by MVO Nederland

<sup>65</sup> Page explaining the Ambitiweb on the website of the Green Deal Sustainable Ground and Water Works [here](#) (Dutch only)



## 5.5 IMPLEMENTATION

How are RPP criteria, particularly those aimed at due diligence in supply chains like ISCs, actually incorporated in public procurement? One of the reasons this question is not easy to answer, is that monitoring of RPP is currently limited (more on this in [§5.6](#) below). Conclusions drawn regarding implementation therefore need to be seen within the context of limited data availability.

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### RPP CRITERIA INCREASINGLY APPLIED, BUT CONCERNS RE AMBITION AND COHERENCE

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We start by looking at procurement by ministries. This is the part of central government where some RPP criteria are mandatory, with some statistics available.

According to the 2012 annual report on Operational Management by BZK<sup>66</sup>, the government achieved the objective of the motion Koopmans de Krom. As has been argued in [§4.2](#) on page 20, this conclusion can be challenged both regarding scope (the motion aimed for 100% of procurement by ministries) and ambition (the motion urged for ‘compelling’ criteria to be applied). Research by Ecorys<sup>67</sup> concluded implementation was ‘moderately positive’, with the introduction of environmental criteria leading to more awareness and some environmental impact. However, they urged for more ambitious criteria to achieve much more of the potential impact.

The same concern regarding lack of ambition was voiced in a 2015 report by De Groene Zaak<sup>68</sup> looking at how municipalities and provinces applied sustainability criteria in 2014. They called the criteria ‘frequently outdated’ and ‘not ambitious enough to move the market’. In addition, they noted multiple product groups, including financial services, not covered by sustainability criteria.

From 2015 onwards, BZK includes in its reports statistics for the application of mandatory environmental criteria. These are minimum requirements or demands which function as knock-out criteria. They can be very effective, though ambition levels vary (and as noted before are not always strong enough to move the market). The reports also show the percentage of tenders that applied award criteria. The numbers from 2015-2018 are captured in Box 8 below.

Box 8: percentages of tenders in product groups for which environmental criteria are available, based on data from annual reports by the ministry of BZK (covering procurement by ministries<sup>69</sup>)

Year	Mandatory environmental criteria applied	RPP criteria applied as award criteria
2015	95%	22%
2016	90%	24%
2017	84%	55%
2018	65%	40%



The report recognizes the added value of award criteria. “By including sustainability as award criterion, suppliers can be rewarded for additional efforts”. The 2015 report by BZK expressed hope that the RPP Plan of Action 2015-2020 would increase the use of award criteria in future years. By 2017 that percentage was higher than in 2015 and 2016 (right column).

<sup>66</sup> [Annual Report Business Operations](#), Ministry BZK, 2012

<sup>67</sup> [Ex post policy evaluation sustainable procurement](#), Ecorys, 2013

<sup>68</sup> [Sustainable procurement by provinces and municipalities](#), De Groene Zaak, 2015

<sup>69</sup> These annual reports cover Business Operations for all ministries, however in these data on procurement Infrastructural works by Directorate-General Public Works and Water Management are not included, nor are numbers by the ministry of Defence (as the 2015 report acknowledges in a footnote). This leaves out significant volumes of procurement, including of high-risk sectors.



If this trend continues that would be a good trend. Multiple reports and people interviewed for this review have confirmed the value of applying award criteria, in combination with other RPP criteria.

However, the lower number of 2018 suggests this may not be the case. Moreover, Box 8 also shows that application of the mandatory environmental criteria (left column) went down from 95% in 2015 to 68% in 2018, which is cause for concern.

A different way to measure progress was developed by RIVM in 2018. They developed a methodology to measure the effect of RPP by various levels of government for eight product groups<sup>70</sup>, analysing tenders of 2015 and 2016. The report quotes a reduction of 4.9 megaton of CO<sub>2</sub> for the selected product groups. However, they also conclude that application of mandatory criteria *“does not guarantee impact because minimum requirements are not always more stringent than what is available on average on the market.”* It should be noted that a government official interviewed for this review indicates the criteria are currently updated annually (and RIVM covered 2015/2016).

Another concern, this one frequently voiced by those interviewed for this review and seen in conclusions in almost every report perused for this review, is that enforcement is lacking. *“A lack of enforcement resulting in a gap between paper and practice”*, according to De Groene Zaak. *“The demands and criteria are not always included in the final contracts”*, says the RIVM report.

Finally, there is a lack of coherence in strategy between different ministries. This is visible in the patchwork of RPP themes (see [§5.3](#)). It is visible in the application of ISCs to only 10 product groups. It comes to mind when one sees valuable tools like the Ambition web (see [§5.4](#)) that seem, at least until recently, to have evolved parallel to, instead of converging with, the RPP Plan of Action.

The lack of one coherent strategy is also noted by the recent report ‘Transition for Sale?’ of 2019<sup>71</sup>. Commissioned by the ministry of BZK, it poses a strategic question: how can procurement by ministries be better used *“to accelerate sustainable transitions, engage vulnerable groups and for innovative procurement?”*<sup>72</sup>. The report concludes that central government focuses on category management *“with only a limited presence on the other 80% of procurement by ministries”*. A strategic approach across government is found lacking. *“These considerations are now only made in sub-plans, for example for category management in the RPP Action Plan, for the Central Government Real Estate in route maps and at Rijkswaterstaat for the Ground, Road and Water Works. Bringing this together into one integrated Government Procurement Strategy would make it clearer what the vision, goals and priorities are that individual departments must act upon”*.

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## ISCS STILL EVOLVING, DECREASING TO SMALL NUMBER, AIMING FOR MORE ENGAGEMENT

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After pilots with Social Conditions were concluded not to present legal hurdles, the Social Conditions became mandatory for all procurement by ministries, above the EU threshold, as of 2013.

The 2012 and 2013 reports by BZK have no numerical data yet on these due diligence criteria. However, the Ecorys research of 2013<sup>65</sup> did ask questions related to due diligence. They concluded that 43% of suppliers said they pay attention to the sustainability of their own suppliers (though the question related to first tier suppliers only). Procurement officers were more sceptical: only 7% thought suppliers were effectively verifying the sustainability of the next step in the supply chain.

By 2014, the BZK reports include numbers on application of Social Conditions (until April 2017) and ISCs (since April 2017). These numbers are included in Box 9 below.

<sup>70</sup> [The effect of Responsible Public Procurement](#), RIVM, 2018

<sup>71</sup> [Transition for Sale?](#) ABDTOPConsult, 2019

<sup>72</sup> This sentence was explicitly included in the Government Agreement of the Rutte III Cabinet of 2017

<https://www.kabinetsformatie2017.nl/documenten/publicaties/2017/10/10/regeerakkoord-vertouwen-in-de-toekomst>, §2.4, p33



We can see that in 2014 and 2015, Social Conditions were applied in over 400 and 544 tenders respectively. In 2017 the number of tenders applying the Social Conditions is much lower. The number of 2018 is lowest of all, with application of ISCs limited to 9 tenders.

The lower numbers for 2017 and 2018 are explained, at least in part, by the new policy as of April 2017. Since April 2017 ISCs are mandatory for 10 product groups only (for ministries, above the threshold) as opposed to mandatory for all procurement by ministries until then.

Box 9: Data on application of Social Conditions / ISCs in the period under review, 2012-2018, from Annual Reports<sup>73</sup> on Operational Management of Dutch ministries

In how many tenders were Social Conditions and ISCs <sup>74</sup> applied?	
2013	no data yet
2014	applied in >400 tenders
2015	applied in 544 tenders
2016	applied in 67% of relevant tenders
In April 2017 the new ISC procedure entered into force	
2017	applied in 223 tenders (62% of relevant tenders)
2018	applied in 9 tenders within a high-risk product group; of 6 other high-risk tenders, application unknown.

Not only the quantity, but also the quality of application matters. Box 9 shows hundreds of tenders applied Social Conditions in 2015 and 2016. However, what this primarily means is that they were referenced in tender documents. The Berenschot report<sup>75</sup> had concluded that some suppliers were ticking the easy box ('we do not foresee any supply chain risks'). The RIVM research<sup>69</sup> (also looking at 2015 and 2016) equally found no evidence that the majority were more than paper exercises (with a few exceptions where ISCs were applied as award criteria, see chapter 6). RIVM was not able to quantify the effect of Social Conditions "*due to limited insight in whether delivered services and products actually complied with the conditions*". Procurement officers and contract managers acknowledged that follow-up during contract management was rare if not non-existent. All these comments relate to the procedure prior to 2017 and was the reason for policy makers to choose quality over quantity. Focus on fewer tenders with better due diligence (see next page).

The policy choice to focus, while aiming for more engagement, is understandable. However, Box 9 reinforces an earlier conclusion, which is that focusing on 10 risk categories only (for ministerial procurement above the EU threshold) limits mandatory application to a very small number. This leaves similar risks in other high-risk product groups unnoted and unmanaged. In addition, interviews for this review confirmed that enforcement of the contract clauses is still lacking to this day. Even in the best practices discussed in chapter 6, contract management remains an open question (see [§6.2](#)).

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## AWARD CRITERIA PROMISING, BUT LACK OF COHERENCE OF CENTRAL AND LOCAL POLICY

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As noted above, whether the intended outcome is realized (incentivizing companies to apply due diligence in supply chains) is based not only on quantity but also quality of implementation.

<sup>73</sup> All data from Annual Reports Business Operations by the ministry of BZK. Annual report 2014 page 32, Annual report 2015 p50, Annual report 2016 p61, Annual report 2017 p44, Annual report 2018 p53.

<sup>74</sup> In 2013, the criteria were named 'social conditions'. In 2017, the new International Social Conditions (ISCs) entered into force.

<sup>75</sup> [Evaluation Social Conditions](#), Berenschot, 2014



E.g., with what kind of ambition, what kind of wording in tender documents, what kind of engagement with the supply chain throughout the tendering process and during the contract phase?

In the first years, the introduction of the Social Conditions led to more awareness, first among procurement teams at ministries. They now had to refer to the Social Conditions in tender documents (for tenders above the EU threshold). The suppliers bidding had to consider which of the three options presented they would choose. Would they declare they did not foresee any supply chain risks in their sector? Could they refer to a certificate that could be (seen to) cover risks? Or would they carry out due diligence themselves?

The due diligence process appeared cumbersome to many companies, which led to most of them opting for one of the other two options. In summary, application of Social Conditions was in the first years not leading to significant engagement with the supply chains, with the exception of a limited number of cases that also applied award criteria. Policy makers noted this and made adjustments.

The Berenschot<sup>73</sup> report concluded that the new Social Conditions were not leading to the due diligence intended when the process was designed in 2009. One of their main conclusions was taken to heart by policy makers: the application was more administrative ('tick the box') than effective. The new ISCs were designed for more engagement with the supply chain.

However, Berenschot's recommendations (see §4.2) to apply ISCs across government and in all phases of the procurement process were not taken on board. The scope was narrowed further instead of widened (10 product groups only). Coordination with umbrella organisations of local government<sup>76</sup>, as recommended by Berenschot, has not been demonstrated as of yet. And ISCs remain contract clauses only, instead of systematically applied as demands or award criteria.

In the same year as the Berenschot report, NGO SOMO similarly concluded that national government should work with local government to stimulate application of Social Conditions<sup>77</sup>. They noted Social Conditions were rarely and inconsistently applied (both central and local government). On the positive side, they noted that some procurement teams applied these criteria not just as contract clauses, but also as award criteria. SOMO expected this would challenge businesses to demonstrate more efforts in the field, leading to more engagement with the supply chain.

A few years later, the 2015 report by BZK highlights one of the first tenders where ISCs are applied as award criteria in large volume, in Datacenters. In chapter 6, we will look closer at tenders that apply award criteria in four sectors (Natural Stone and Datacenters, plus Workwear and Timber).

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## 2012-2015: LACK OF COHERENCE BETWEEN LOCAL AND CENTRAL GOVERNMENT PROCUREMENT

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This review's primary focus is procurement by ministries within central government. However, as mentioned before and visualized in figure 8 on [page 32](#): the potential impact is much larger if central and local government align procurement. In this section, we look at how RPP is implemented by local government, and the (lack of) coherence with central government policy and implementation.

In the Netherlands, central government cannot easily mandate local government. In a conference on RPP in October 2018, someone from a city council referenced Thorbecke<sup>78</sup> (see [Box 11](#) in §5.8, p47). *"The Ministry of Foreign Affairs can't tell us what to do. In our country, municipalities decide on their own policies"*. At the same time, representatives of municipalities and provinces present were eager to apply RPP more effectively (both in general and ISCs specifically) and asked for useful tools.

<sup>76</sup> VNG as the Union of Dutch Municipalities, IPO as the Inter Provincial Counsel and UvW as the Union of Water Boards.

<sup>77</sup> [A review of Dutch policy for socially responsible public procurement](#), SOMO, 2014

<sup>78</sup> Thorbecke led the [constitutional revision of 1848](#), laying the foundation for the Dutch parliamentary democracy.

Following the motion Koopmans/de Krom of 2005 and the related target of 100% sustainable procurement by central government in 2010, municipalities had committed to applying compelling sustainability criteria to 100% of their procurement by 2015 (see §4.1).

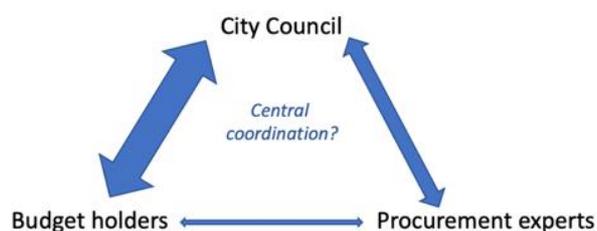
In 2011, De Groene Zaak had been part of a consortium providing recommendations to government, combining practical recommendations with a call for vision and ambition<sup>79</sup>. They referred to the Climate Accord of 2007<sup>80</sup>, in which local government would *'strive to apply the same environmental criteria that ministries apply as mandatory by 2015'*. In 2015, they express disappointment that their 2011 recommendations –referenced in policy documents- appeared not to have been implemented.

Their quick scan<sup>81</sup> concluded that in 2014 local governments would in 90% of the cases apply some criteria. However, criteria applied were often outdated, not ambitious enough to move the market. In addition, they found lack of enforcement was leading to *"a gap between paper and practice"*. De Groene Zaak observed limited direction from central to local government, with local government procurement teams not incentivized or sometimes even supported. They pointed at a lack of clarity of roles of different ministries, especially Infrastructure and Environment, BZK and Economic Affairs. *"Not buyers, but administrative and policy stakeholders have failed in recent years, due to a lack of vision or ambition, and by hardly making human or financial resources available."*

For local government procurement teams to apply RPP effectively, they need not only guidance and support from central government. They also need the backing of key decision makers at the local level. This is a key finding by Telos in a 2016 report<sup>82</sup>, commissioned by the ministry of I&M. Data and websites of 62 municipalities were analysed and staff from 14 municipalities were interviewed (including the biggest four). Like De Groene Zaak, Telos recalled that municipalities had expressed intentions to go for 100% sustainable procurement by 2015 and concluded this was not realized.

Analysing the reason why action was lagging behind ambition, Telos presented Figure 9 below to illustrate the defining role of budget holders. There are currently 355 municipalities in the Netherlands, that differ in size substantially. Bigger cities have larger procurement teams, but in most municipalities one can describe the procurement process as in Figure 10. The figure illustrates budget holders as a decisive factor in public procurement decisions, more so than procurement experts (the latter including both procurement officers and sustainability experts). According to Telos: *"Dutch municipalities have an estimated 10,000 budget holders, with procurement departments accommodating much less staff (about 1.000). Most municipalities apply the model of 'coordinated decentralized procurement', with the power of decision making in the hands of budget holders."*

Figure 10: the relationship between city council, budget holders and procurement departments (source: Telos, 2016<sup>34</sup>)



Telos concluded that in general, larger municipalities scored better on sustainable purchasing. Larger municipalities *"have higher ambitions, more purchasing power and a greater ability to manage budget holders to implement their sustainability agenda"*. Telos's recommendations include making budget holders accountable for their contribution to the sustainability agenda, supporting them with training and giving more responsibilities to procurement and sustainability departments.

<sup>79</sup> [Advice on Sustainable Procurement](#) by a coalition of de Groene Zaak, MKB Nederland, MVO Nederland, NEVI, VNO-NCW, 2011

<sup>80</sup> [Climate Accord municipalities and ministries 2007-2011](#)

<sup>81</sup> [Sustainable procurement by provinces and municipalities](#), De Groene Zaak, 2015

<sup>82</sup> [How ambitiously do municipalities apply sustainable procurement?](#), Telos et al, 2016



On content, Telos found that different municipalities have different interpretations of what sustainable procurement means. This confirms that lack of coherence in how RPP themes are presented can confuse procurement teams and result in a less coherent message to the market.

Specifically, regarding Social Conditions, Telos concluded that even larger municipalities like Amsterdam find their application difficult, *“because there is hardly any insight into what happens across the border”*. However, municipalities do ask suppliers for certification or association with supply chain initiatives such as sustainable natural stone, FairWear, certified timber etc. The city of Rotterdam is quoted as *“considering sustainability standards as a pleasant and objective yardstick, by which the city can avoid having to act as reviewer and/or auditor themselves”*.

It is interesting to note that municipalities indicate they would benefit from being able to link up to supply chain initiatives and/or approved sustainability certificates. This may be another way in which coherent RPP approaches can be scaled. See for more on the role of certification and sustainability standards the example of certified wood in [§6.4](#) and the section on certification in [§7.4](#).

To conclude this section: by 2015 there was significant concern that central government was not incentivizing nor supporting local government to apply RPP effectively, and organisational challenges of local government contributed to inconsistent implementation.

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## THE PLAN OF ACTION RPP 2015-2020 AND RELATED MANIFESTO RPP 2016-2020

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In September 2015, the Dutch central government launched their Plan of Action RPP 2015-2020. Given the political reality of ‘Thorbecke’, the Manifesto RPP subsequently signed in December 2016 was the policy approach chosen to incentivize all central and local governments. This has provided RPP with some momentum, leading to around 100 RPP Action Plans end 2018 (out of 160 signatories) by ministries, provinces, water boards and municipalities. With some delay, as the commitment had been to finalize plans by June 2017 (given implementation in July 2017-December 2020).

At the time of the signing of the Manifesto, a Guidance document<sup>83</sup> was produced to support governments in drafting RPP Action Plans. Recommendations included more explicit ambitions, dialogue with the market, application of award criteria, functional tendering, taking into account life cycle costs and better enforcement by capturing RPP related promises in contract management. These are all suggestions in line with recommendations from previous evaluations.

Limiting effective implementation, however, is how various RPP themes and criteria are presented: 1) as encouraged but optional, and 2) as a patchwork of related but incoherent themes. The themes presented in the Guidance document are, in that order<sup>84</sup>: Biobased procurement, Circular procurement, Climate conscious procurement, Innovation-oriented procurement, International Social Conditions and Social Return on Investment. The guidance document includes brief suggestions on how these can be included. Crucially however, the guidance document presents each theme as optional. The idea is that municipalities and provinces can decide on their own priorities.

This observation was confirmed by research<sup>85</sup> commissioned by the Ministry of I&W. CE Delft analysed the first 72 RPP Action Plans available in June 2018. Through a digital survey they reached 79 representatives from government (mostly municipalities) that finalized or nearly finalized their plans, plus 12 that had not yet done so. They spoke to 12 respondents for follow-up.

Positive observations: there is more awareness on RPP.

Multiple government bodies now have explicit RPP goals and concrete action lists.

<sup>83</sup> [Guidance document](#) RPP Manifesto 2016-2020 (in Dutch)

<sup>84</sup> SME friendly procurement was not incorporated into policy yet in 2016; otherwise these are the themes as in [Figure 7](#), p29.

<sup>85</sup> [Action Plans RPP and lessons learned](#), CE Delft, 2018



However, CE also notes *“there is no prescribed format for an RPP action plan.”* As a result, plans differ greatly. This leads to inconsistent messages to the market and severely limits the potential to promote due diligence regarding real supply chain risks, including on topics that should not be optional, such as combating child labour and deforestation.

The below box includes quotes by two local governments from the CE report that illustrate that local governments are looking for guidance, noting lack of clarity and the crucial role of budget holders.

Box 10: Quotes from one province and one municipality from the CE report analysing RPP Action Plans

<p><i>“We see that it is necessary to update the plan annually because not everything is immediately clear.</i></p> <p><i>For example, in the field of International Social Conditions: we did not yet know what was possible and a lot is changing.”</i></p> <p>Province of Noord-Holland</p>	<p><i>“The result agreements with directors is crucial. RPP was previously the responsibility of procurement only.</i></p> <p><i>The budget holder is now also responsible for RPP. As a result, much of the success is no longer dependent solely on enthusiastic colleagues.”</i></p> <p>Municipality of Utrecht</p>
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The same conclusion regarding lack of guidance was drawn in the 2019 report ‘Transition for Sale?’<sup>86</sup> (see also §5.5 page 37). Though the authors recognize much has been set in motion by the RPP Action Plan, where there is an investment in more RPP does not depend on the biggest risks and opportunities, but on a committed procurement team. RPP is currently *“too loose and too non-mandatory”*. To have more impact, the role of the client must be better utilized, with transition goals part of their responsibility. *“To unleash a flywheel effect, the first step is to invest in an organisational culture in which contributing to sustainability transitions with public procurement is of paramount importance. It is not lack of intention, but primarily a matter of actually implementing that intention.”*

That unclear responsibilities are a major hurdle was raised by all reports on the previous two pages: De Groene Zaak (2015), Telos (2016), CE report (2018) and Transition for Sale? (2019). The same point is made repeatedly: RPP should not just be the responsibility of procurement officers, but a joint responsibility shared by clients (at ministries) and budget holders (at local government).

Other hurdles for effective implementation include lack of capacity and knowledge management. As CE Delft notes, RPP is not something that can be done ‘on the side’. RPP themes require knowledge about sectors and supply chains. Telos notes that especially smaller municipalities lack capacity. Some larger cities have assigned product groups to individual staff. Much like category management in central government, this supports building up sector expertise (see for more on sector transformation chapter 7). As ‘Transition for Sale?’ notes, it is not as much a lack of knowledge, rather than a lack of structure where stakeholders can share and access relevant knowledge.

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## IMPLEMENTATION SUMMARIZED

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In conclusion, implementation of due diligence in supply chains of Dutch public procurement has seen several phases in the period under review. In 2012, environmental criteria were mandatory for part of central government, in 2013 followed by Social Conditions. Between 2013 and 2016, hundreds of tenders applied these Social Conditions. However, this resulted in a mostly administrative exercise with limited engagement. Environmental criteria were broadly applied but often seen as lacking in ambition, not moving the market. Additional policy RPP themes were introduced - all relevant, yet not harmonized. In 2017, the new ISC procedure was implemented aiming for more engagement, however further reducing the number of tenders where ISCs are mandatory to a small percentage.

<sup>86</sup> [Transition for Sale?](#) ABDTOPConsult, 2019



The policy decision to focus on high-risk sectors is valid, but the 10 risk categories prioritized do not cover all high-risk sectors, and ISCs remain to this day only mandatory as contract clauses for these 10 risk categories, for ministries and above the EU threshold. For other tenders (central or local), ISCs are sometimes encouraged but they remain optional. Where ISCs are applied, and especially when used as award criteria in addition to contract clauses, this has led to engagement with suppliers and sector (see [chapter 6](#)), though follow-up and enforcement are still seen as lacking.

Since 2016, the Plan of Action RPP and related Manifesto have led to more commitments by both central and local government through public RPP Action Plans. In this period, the themes of climate and circular economy became rightfully more prominent in policy. However, this has apparently had the unintended side effect that awareness of and action on (social and other) supply chain risks and ISCs were snowed under. Given the lack of mandatory requirements, lack of strict guidance and a patchwork of themes, implementation of RPP varies significantly from one government body to the next. It often depends on individual category managers, contract managers and procurement officers. With that, a coherent and consistent message to the market is lacking and opportunities are missed.

Positive exceptions are found (though limited in number), including:

- o in two of the ten product groups where ISCs are mandatory for ministries that also are covered by category management (workwear and datacenters, see [§6.1](#) and [§6.2](#))
- o where there are sector initiatives that explicitly mention due diligence in public procurement supply chains as key to sector change (natural stone and timber, see [§6.3](#) and [§6.4](#))

These are currently exceptions rather than rule, and not all tenders in these sectors apply due diligence effectively yet. Lessons from these best practices will be discussed in chapter 6.

## 5.6 MONITORING & EVALUATION

Does the Dutch government have an effective monitoring system in place, and are evaluations carried out regularly and recommendations taken on board?

As can be seen in [§5.5](#), some numerical data are gathered annually (by the ministry of BZK for their annual reports on the governments Business Operations). However, this is mostly quantitative, limited in number and depth. More recently, there is an increase in data gathered related to carbon emissions and the circular economy, as seen in the 2018 RIVM report, described in [§4.2](#), page 25.

Multiple research reports covered in earlier sections of this review mention monitoring as key for more effective RPP, including due diligence in supply chains. Berenschot in 2014 included an improved monitoring system in their recommendations ([§4.2](#) page 22). One of the reasons quoted by De Groene Zaak to carry out their quick scan (as described on [page 40](#)) was because of a lack of monitoring: *“Because monitoring has not been taking place since 2010, we have started this research with 30 questions about sustainable procurement at ten provinces and ten large municipalities.”* They suggest presenting annual monitoring results through a benchmarking system, in order to incentivize government entities lagging behind. Ultimately, monitoring is a necessity if the government is serious about improving the effectiveness of RPP. As the report ‘Transition for Sale?’<sup>85</sup> notes, *“where monitoring is lacking, enforcement of compliance with agreements is impossible”*.

Telos<sup>87</sup> noted the lack of monitoring as a concern and suggested data gathering should be digitally linked to TenderNed in order to minimize the administrative burden. The recently launched ‘RPP self-evaluation tool’<sup>88</sup> (January 2019) does just that. It imports information from TenderNed and presents the user with the various RPP themes in order to tag themes that the team considers relevant.

<sup>87</sup> [How ambitiously do municipalities apply sustainable procurement?](#), Telos et al, 2016

<sup>88</sup> A 1,5min Dutch language video on the [homepage](#) of the website illustrates how the tool works.



As this tool was just launched, how consistently this will be applied is a matter for future evaluations. However, the question does surface whether monitoring should not be made mandatory to provide more consistent data, as using the self-evaluation tool is said to only cost a few minutes per tender.

Regarding evaluations, there have been a range of reports, several of which have been quoted in this review. Though from each report some recommendations have been taken on board, it appears that policy adjustments have taken relatively long and sometimes missed key recommendations. For instance, De Groene Zaak in their report of 2015 refers back to earlier recommendations made in 2011. And the recommendations from the report by Berenschot in 2014, commissioned by the government itself, have either been acted upon rather late (new ISC procedure framework active since 2017) or overlooked (ISCs still focusing on social issues only and no other supply chain risks).

In conclusion, there has been limited gathering of data on RPP, but no systematic monitoring. There are some efforts to develop a monitoring methodology (such as by RIVM) and there is a self-evaluation tool, but these currently do not yet provide systematic data on how RPP is applied. A point to consider in future monitoring is what data to gather. It is recommended to include both numerical (from a mandatory digital system) and qualitative data. And to include in a multi-year Monitoring & Evaluation plan not just data at output and outcome level, but also work on monitoring at impact level. Towards this end, it is advisable to carry out such M&E at sector level (see [§7.7](#)).

## 5.7 CLARITY, SUPPORT, INCENTIVES AND REWARDS FOR COMPANIES

Are suppliers aware of supply chain due diligence requirements in the Dutch RPP policy? Do they feel supported, incentivized and/or rewarded by government to invest in supply chain due diligence?

In § 5.2-§5.6 the outputs of the Dutch RPP policy related to due diligence, have been discussed: laws, policies, tools, implementation and monitoring & evaluation. The focus of this review is at the level of these outputs. The next step in the Theory of Change in [Figure 6](#) of §5.1 is that of the outcome level. Ultimately, the intention is that suppliers engage their entire supply chain at all levels or ‘tiers’.

Figure 11: EP&L of Stelle McCartney (2015) showing most environmental impact at the level of raw material production

	TIER 0 STORES WAREHOUSE OFFICES	TIER 1 ASSEMBLY	TIER 2 MANUFACTURING	TIER 3 RAW MATERIAL PROCESSING	TIER 4 RAW MATERIAL PRODUCTION	
AIR POLLUTION 	● €87	● €31	● €65	● €128	● €230	10% € 542
GREENHOUSE GAS EMISSIONS 	● €321	● €213	● €352	● €393	● €300	29% € 1,578
LAND USE 	● €21	● €27	● €49	● €43	● €979	20% € 1,118
WASTE 	● €48	● €55	● €126	● €51	● €22	5% € 302
WATER CONSUMPTION 	● €55 €54	● €27	● €69	● €22	● €293	8% € 465
WATER POLLUTION 	● €32	● €9	● €15	● €145	● €1,295	27% € 1,497
TOTAL	10% €562	7% €363	12% €676	14% €782	57% €3,119	100% €5,503



Preferably not just the first next step, but reaching farming, mining and processing facilities in countries where raw materials originate. For multiple sectors that is where environmental impact is largest (social supply chain risks may be large both where materials originate and on processing sites and in factories). An example is the image in Figure 11 above. It shows a key image from the Environmental Profit & Loss of 2015 by Stella McCartney company<sup>89</sup>, modelled on the EP&L methodology by multi-national enterprise Kering<sup>90</sup>, known from brands such as Puma and Gucci.

From reports and interviews, the below observations are noted on awareness of companies regarding required due diligence, and on the support and incentives they recognize. This is with the caveat that the conclusions in this section are based upon a limited number of suppliers interviewed.

## AWARENESS

The question whether companies are more aware itself can be subdivided:

- Awareness of supply chain risks in the sector varies greatly per sector and product group (see chapters 6 and 7). For instance, is a product composed of a multitude of materials from different sources (e.g. food, mobile phones, office supplies), or almost exclusively made from one specific raw material (e.g. natural stone). Particularly in sectors with existing sector initiatives (e.g. timber, natural stone), suppliers are aware of supply chain risks.
- For awareness of due diligence requirements and OECD guidelines the average size of suppliers and the diversity of products they supply plays a role. Larger companies (such as major ICT and food companies) are generally more aware of international agreements. Amongst SMEs, companies' awareness increases if there is a sector initiative (specifically SMEs that supply primarily one type of product, such as those supplying natural stone).
- Awareness of Social Conditions/ISCs. In the first year of the Social Conditions, this led to an increased awareness of the OECD guidelines and government interest in supply chain risks. In recent years, the number of tenders where ISCs are applied has gone down significantly (see Box 9 in [§5.5](#), p38). This sends a - perhaps unintended - message to the market. Still, it appears that where ISCs are applied, especially if as award criteria, this has led to increased awareness of the supply chain risks, the OECD guidelines and the government requirements.

## SUPPORT

Suppliers experience some support from government but limited in capacity and not consistently, nor coherently yet. The PIANOo website has a wealth of information but given the patchwork of RPP themes this can be confusing. Specifically regarding ISCs, the new ISC Academy is an interesting support tool, though some companies express that they expect the government to join them in their engagement with the supply chain. In the case of IRBC agreements and category plans where governments work with private sector participants on risk analyses, this joint effort seems to be both appreciated and effective. For now, companies appear to see the government more often as setting the rules (practical or not) and less as partners in supply chain risks. See also the [Epilogue](#) for a brief discussion on whether the government should or should not consider itself part of the supply chain.

## INCENTIVES AND REWARDS

Feedback from suppliers consulted for this review is mixed. Overall, they recognize some incentives, though limited and rarely leading to rewards. If RPP criteria are often not ambitious enough to move the market, front runners are not rewarded for their efforts to lead the sector. Based on best practices in some high-risk sectors (see chapter 6), particularly award criteria using the Best Price Quality Ratio are seen as useful incentives that can lead to rewards.

<sup>89</sup> [Page](#) on Stella McCartney's website on their first EP&L

<sup>90</sup> [Page](#) on Kering's EP&L methodology by the World Business Council on Sustainable Development



In almost all reports perused for this review, and in many interviews, concern was expressed about the lack of enforcement. Increasingly, RPP criteria including language on ISCs are included in tender documents. ISCs are applied as contract clauses can be effective, but only if enforced. If there is repeatedly no follow-up in the contract phase, this sends an unintended message to the market.

One specific example is that of a court case on Office Furniture (see [§6.4](#) on page 62), where the judge ruled that the supplier only had to comply with a demand (aka minimum requirements) at the time of delivery. The company that lost the case saw this as a missed opportunity for sector transformation, as this tender did not incentivize companies to become certified in advance.

In addition to the very end of the procurement process (the contract phase), another point in time where government could invest more in is at the very beginning of the procurement process. Market consultations can help procurement teams prepare a tender and clarify to the market what will be expected. In case of sector initiatives, this could even be done separate from an individual tender.

Where category managers actively engage companies in the development of their category plans (see the example of Workwear in [§6.1](#)), this is valued by suppliers and can add to sector knowledge of government. Companies feel incentivized if the category plan demonstrates a solid understanding of the sector, rather than with unrealistic demands that the sector struggles to comply with.

## 5.8 SUMMARY ANALYSIS

Do Dutch government laws, policies, support tools and procurement practices incentivize, support and reward companies to apply due diligence in their supply chains?

In the period 2012-2018 the government has demonstrably made efforts to do so, but effectively stimulating companies to apply due diligence in supply chains remains more exception than rule.

The main hurdles appear to lie in current policies and procedures, and in the lack of enforcement and monitoring. Laws and regulations could provide more space and incentives, but current policies do not yet use the space that the law does provide. The limited capacity for training and tools forms another hurdle, however these ultimately follow the policies and procedures chosen.

Within policies, the main hurdle is the lack of mandatory requirements, and where RPP criteria are mandatory, they are frequently not ambitious enough to move the market. In the middle of the period under review, the policy shifted from 'striving to apply RPP criteria in 100% of public procurement' to one where local governments are encouraged rather than mandated to apply RPP. With the Action Plan RPP and the related Manifesto, responsible ministries succeeded in incentivizing >100 central and local government bodies to draft RPP Action Plans. This is promising and if plans would be harmonized this could result in a consistent message to the market. However, the lack of mandatory requirements is not mitigated by measurable goals and harmonization of plans. The patchwork of RPP themes and lack of clear guidance sends mixed messages to the market.

Notwithstanding good intentions, in the period 2012-2018 the piloting, evaluating, adjusting and redefining of an RPP criterion focusing on supply chain risks (ISCs) has taken many years. The new ISC framework active since 2017 aims to move from administrative ('paper') to engagement ('practice'). However, the focus on high-risk sectors was translated to a small scope of 10 risk categories where ISCs are mandatory (for ministries, above the threshold). For other procurement ISCs remain optional. In RPP Plans, ISCs appear to be prioritized less frequently than other important RPP themes such as Climate and Circularity. Effectively using public procurement to incentivize more due diligence in supply chains is still limited, too often dependent on motivated individuals or teams. As a result, the Dutch government still procures products in high volumes with very real supply chain risks including child labour, unsafe working conditions, deforestation, water pollution etc.



There are examples of tenders that have applied ISCs in a way that incentivizes and even rewards suppliers. These are currently more exception than rule, and lack of enforcement during contract management risks limiting impact. However, future policy can be built upon their lessons. In the next chapter, we will look at best practices, where procurement teams have made efforts to apply due diligence in a way that can move markets, to see which lessons can be drawn.

Box 11: Food for Thought on 'Thorbecke'<sup>91</sup>



The name of the Dutch statesman Thorbecke surfaces several times in this review. His name was mentioned in interviews, referring to the current political reality in the Netherlands, whereby local government cannot be mandated by central government regarding their procurement.

If one considers the spirit of the law before the letter of the law, what was ultimately intended by Thorbecke and his contemporaries of the 19<sup>th</sup> Century? That the Netherlands would grow into a full democracy with a strong Parliament, and one where local government could make their own decisions on regional matters. Though this is not a historic review, one could argue this was and is more relevant for policies that relate to truly regional matters: where a new bridge is built, regional housing and zoning plans, whether two municipalities merge or not, etc.

If we look at the intention that both local and central government have to promote due diligence in supply chains, this is a national and international matter where local and central governments have a shared interest. Local and central government both want to use the leverage of public procurement to help eradicate child labour and reduce deforestation, droughts and pollution related to our consumption here.

If one further argues – a central conclusion of this review supported by multiple reports and interviewees – that consistent and coherent policy is needed to move markets and capture the potential leverage of public procurement. Can then local and central government not jointly commit to supply chain due diligence for high-risk sectors, instead of leaving it 'softly' encouraged but optional and - quite possibly - ultimately ineffectively?

<sup>91</sup> Johan Rudolf Thorbecke led the [constitutional revision of 1848](#), laying the foundation for the Dutch parliamentary democracy.



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## 6 LESSONS FROM TENDERS IN HIGH-RISK SECTORS

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In this chapter, we draw lessons from tenders in four of the sectors identified as high-risk in the 2014 Sector Risk Analysis (see [Annex 3](#) for all twelve sectors identified as high-risk). The tenders were chosen because they carry lessons, not because they are representative. On the contrary, based on conclusions from reports and interviews for this review, they are exceptions rather than the rule.

Three of the sectors have sector initiatives in the form of IRBC agreements<sup>92</sup> (Sustainable Garments & Textiles, Sustainable Forest Management and Natural Stone). One is related to an IRBC agreement 'under development' (Metallurgical Sector).

§6.1 and §6.2 discuss Workwear and Datacenters, part of the 10 risk categories for which ISCs are mandatory (for ministries, above the EU threshold) and that have category managers (see [§3.2](#)). Both categories surfaced in interviews as best practices for category plans and/or for tenders. Procurement teams applied ISCs not just as contract clause but also as award criteria. The tenders are described in some detail, thanks to teams that actively shared lessons.

The third and fourth paragraphs discuss products that do not fall under the 10 risk categories. In § 6.3, natural stone is discussed, with public and private partners working together in pilots focusing specifically on ISCs. §6.4 discusses a tender of Office Furniture that led to a court case on how RPP criteria were applied. The tender carries lessons on certification and balancing RPP themes.

In each paragraph we briefly discuss supply chain risks and sector characteristics, before we look at category plans, environmental and/or social criteria and tenders. The last paragraph of this chapter captures lessons, including the overlap in and differences between tenders, categories and sectors.

### 6.1 TEXTILE & CLOTHING AND THE CATEGORY OF WORKWEAR

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#### SECTOR SUPPLY CHAIN RISKS

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On Wednesday 24 April 2013 at 8:45am local time, the Rana Plaza building collapsed in Savar Upazila, Dhaka in Bangladesh. Within 90 seconds, a large part of the eight-storey building crumbled to the ground. After three weeks, the death toll stood at 1,134. Almost 2,500 people were wounded.

The tragedy sent shockwaves around the world, especially in the textile industry. It underlined the major human rights risks in the supply chain and led to increased debate on how to address this.

In addition to social issues, the sector carries environmental risks. Different fabrics face different challenges. Cotton is a thirsty crop, farmed using agrochemicals. Polyester needs no farmland, but the production from fossil fuels costs energy. Cotton is biodegradable, polyester is not. Recycling of the fibers as a result is different - and those are just some differences of two raw materials.

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#### SECTOR CHARACTERISTICS AND AGREEMENT SUSTAINABLE GARMENTS AND TEXTILE

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Clothing and textiles are among the world's largest industries. Clothing alone generates around €1,5 trillion in annual revenues and employs over 50 million people<sup>93</sup>.

<sup>92</sup> [Website](#) of the Social and Economic Council (SER) on IRBC Agreements

<sup>93</sup> Number from [website](#) of IDH, the Sustainable Trade Initiative on apparel

The Dutch government is with approximately €25 million annually a significant buyer of Workwear. though this remains small in the context of consumer spending on clothing and textiles in the Netherlands of >€11 billion<sup>94</sup>.

In 2012, Dutch companies were cautiously exploring sector-wide cooperation. The Rana Plaza tragedy in 2013 spurred on the sector's awareness and due diligence of supply chain risks. In July 2016, approximately 50 companies committed to the IRBC Agreement on Sustainable Garment and Textiles<sup>95</sup>. The OECD Guidelines are referenced as one of the fundamentals of the Agreement, and it explicitly mentions public procurement:



- as one of the motives for participants to join: *“Enterprises that sign the Declaration will benefit from doing so because they [...] will be able to make their presentation during sustainable procurement processes by public authorities more credible on the basis of their performance on international responsible business conduct.”* (p.6/7)
- referring to the government's role to incentivize: *“...the Dutch government will encourage governments to do their procurement in accordance with the OECD Guidelines, e.g. by changing over to a single system with a due diligence requirement. By setting a good example as a government and purchasing in a responsible way, the government will help to create a market for sustainable innovative products and production processes.”* (p.19)

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## CATEGORY MANAGEMENT WORKWEAR

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Workwear is one of the 31 generic procurement categories where central government applies 'category management' (see [§3.2](#)). Procurement of such products is carried out jointly, led by one ministerial department, also on behalf of other ministries. For the category Workwear, Lieutenant Colonel Rob van Arnhem of the Ministry of Defence is the category manager.

Since May 2018, the second version of the category plan for Workwear has been online<sup>96</sup>. Van Arnhem has made conscious efforts to include sustainability explicitly in his category plan. This includes a market consultation before the plan was finalized. One of the people interviewed for this review, Corien Beks of sector organisation Modint, calls this approach a 'Category Plan 2.0'.

The title makes clear what the main policy goal is: *“On the road to circular textile”*. The plan analyses the market and discusses social and environmental risks (also starting with Rana Plaza). It sketches stakeholders, describes trends and presents a vision linked to the SDGs and goals for the short, medium and long term. Two other aspects stand out, from the perspective of this review:

- The category plan explicitly mentions using the Best Price Quality Ratio and ensuring the RPP criteria weigh in for at least 50% (and as a result price always less than 50%).
- The category plan mentions ISCs, but only briefly: the plan commits to *“stimulate and comply with ISCs through supply chain initiatives”*.

Regarding the second, ISCs are included, but not presented as a major ambition. This might be because the Category plan was finalized before a new Defence policy paper was published, in which the ministry prioritized 3 sustainability themes linked to their vision of 'Fighting for Peace and Safety': Energy, ISCs and Circularity. Trainees were tasked to research the application of ISCs.

<sup>94</sup> Data on consumer spending on textiles and clothing from [website](#) Market Data

<sup>95</sup> [Website](#) of the Sustainable Garments and Textile agreement

<sup>96</sup> [Category plan](#) for Workwear, May 2018

The category manager and his team (one of the trainees is not procurement officer) have expressed commitment to putting the research findings on ISCs into practice in future tenders and in the next version of the category plan. Van Arnhem intends to update the category plan every few years, as was the intention for all category managers, but has not been done consistently.

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## CRITERIA AS ON THE RPP CRITERIA WEBSITE

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If we select = 'Workwear' from the cluster 'Office facilities and services' on the new [RPP criteria website](#) we find 21 criteria that procurement professionals can 'choose' from. Some observations:

- There are multiple criteria related to the circular economy. Award criteria for a higher percentage of recycled fibers, for organic cotton, for better recycling, for recycled packaging. It includes suggestions regarding product design and other circular economy, including a hyperlink to the sector agreement Sustainable Textiles & Clothing.
- There is no mandatory criterion that applies environmental criteria related to water and pesticides in cotton production. There is one such award criterion for ambition level 2.
- There is only one contract clause: the ISCs. No other social criterion (not as a demand/minimum requirement, nor as an award criterion). The wording of the contract clause on the RPP website is in line with current policy and includes risk analyses, risk mitigation and reporting requirements and provides a hyperlink to the guidance document<sup>97</sup>.

In this product group, only eight out of the 21 RPP criteria are mandatory for ministries; the others are optional. For other government bodies, all criteria are optional (including ISCs). As a result, which RPP criteria are taken into account in each tender is determined by the preference of a category manager, department, city, procurement team or even an individual officer.

RIVM research from 2018<sup>98</sup> looked at tenders in eight product groups in 2015/2016. They concluded that application of environmental criteria for Workwear would in less than half the cases have the desired impact, because the lowest ambition level (mandatory for ministries) are less stringent than what is on average available in the market and because agreements are often not enforced.

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## THE CASE OF AMBULANCE WORKWEAR

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This tender, TN149531, has been covered in various news articles, amongst others because of their efforts to apply sustainability criteria. The tender, with a volume of over €5 million, was for ambulance workwear for 5.000 ambulance personnel.

The clients were Ambulance Care Netherlands (AZN) and Regional Ambulance Services (RAV). The contract period would be four years, with two options for a two-year extension. The procurement was carried out by the Institute for Physical Safety (IFV), an independent administrative body of central government, to which all mandatory requirements for ministries apply.

Ruud Scheerder, one of two people responsible for managing the tender process, took inspiration from at least two sources. One was the category plan developed by category manager Rob van Arnhem (especially relating to the recycling and efficient material requirements), the other the ISC ambition as expressed in the Sustainable Garment and Textiles Agreement.

The main tender document directly refers to the RPP Manifesto, which was signed by the procuring party IFV. This is important to note, as it underlines that IFV paid attention to social and environmental criteria at least in part because of the commitment made in signing the Manifesto. The tender document was consciously worded; no vagueness or 'copy paste' text used.

<sup>97</sup> 'Due diligence' [guideline](#) for companies as on the PIANOo website, May 2017

<sup>98</sup> [The effect of Responsible Public Procurement](#), RIVM, 2018

It states: *“With this tender for clothing for ambulance employees in the Netherlands, IFV and AZN want to encourage structural improvements in the social, ecological and economic areas in the textile and clothing sector, based on the latest developments in the area of RBC.”*

The document refers back to the Rana Plaza tragedy. *“Structural problems ask for structural solutions.”* It underlines engagement: *“AZN and the IFV are of the opinion that running away from problems by not having clothes produced in 2<sup>nd</sup> and 3<sup>rd</sup> World countries is no solution. Leaving the work there and being able to exert pressure to improve conditions structurally is the starting point.”*

In the first phase, there were eleven interested parties for one lot (tender split in two), twelve for the other. Prior to this phase, there was an information meeting with sector organisation Modint. The procurement team asked for input on how to set up the tender, explicitly including ISCs and other RPP criteria, aiming to align with the IRBC agreement and reward front runners. Six parties went through to the award phase based on criteria related to control over production, recycling, organic content and transparency of the supply chain.

In the award phase, the procurement team demanded more. The *Best Price Quality Ratio* was applied, with quality at 60% and price at 40%. Quality included ISCs explicitly, for 20% (of the total, so 1/3 of the quality). The procurement team asked the six tenderers the following ISC questions:

- A risk analysis of the supply chain, including discrimination and gender; child labour, forced labour, freedom of association, living wage, excessive overtime, safe working conditions.
- A plan on risk mitigation – including prioritization, stakeholder engagement, monitoring.
- An indication if they could follow the supply chain all the way to the beginning (e.g. the plantation), or one step or more removed. If so, this would mean extra points.

Three sent in proposals including responses to the ISC questions (two could not meet technical fabric demands, another could not meet logistical demands). These three were party to the IRBC Agreement. Interestingly, two others have since signed and the sixth is preparing to, underlining how sector initiatives like IRBC agreements and public procurement can reinforce one another.

The team of nine experts that judged the quality of the plans took into account realism, how SMART<sup>99</sup> risks and actions were formulated and the potential impact. The quality of the plans differed greatly, and the team’s decision was unanimous. One point that was reason for some disappointment, was that not one of the tenderers could substantiate what the social risks would be beyond the ‘dyed fabric’. This is a concern, as significant impacts often occur in countries of origin (see [§5.7](#) page 44).

Regarding environmental criteria, the companies were asked to fill a template aiming for a Life Cycle Analysis (LCA), with special attention to CO<sub>2</sub> emissions, fossil fuel use and water depletion. The procurement team later indicated such LCAs need to be carefully considered, given trade-offs. For instance, water purification regulations for cotton in Bangladesh increases energy usage.

This tender stimulated the thinking of companies in the industry and incentivized them to think carefully about how to engage their supply chain. Glass half full: this appears to be a ground-breaking tender in applying ISCs as award criteria. Glass half empty: though the candidate that won the contract will engage the supply chain, there are questions how far along the supply chain this will be, given during the tendering process they could not provide information beyond the dyed fabric.

As the contract was signed in February 2019, there are no lessons to share yet on monitoring (though the client has recruited a party to monitor). However, the party winning the contract is a signatory to the sector agreement, which means they already have to report on progress annually.

<sup>99</sup> Specific, measurable, ambitious, realistic and time-bound



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## MORE EXCEPTION THAN RULE

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Currently, the above is more exception than rule, even in this product group (a relative front-runner). Through TenderNed, some local textile tenders were scoped to see how other tenders included ISC conditions. The samples verified all did mention social conditions in some shape or form, but often minimally and not consistently. One party simply referred to ILO and would expect the contracted party to stipulate compliance ('checking the box'). Others required handing over a WRAP<sup>100</sup> and FairWear<sup>101</sup> certificate. None of the samples included ISCs in award criteria.

## 6.2 ELECTRONICS AND THE CATEGORY OF DATACENTERS

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### SECTOR SUPPLY CHAIN RISKS

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Datacenters are rooms filled with servers on which the data of our increasingly digitalized world are stored. The servers are an amalgam of components, with steel and aluminium cases, but also large volumes of smaller components made from silicon, copper and other minerals and metals. Among these are potential conflict minerals covered by the acronym '3TG': tantalum, tungsten, tin and gold. A region known for conflict minerals is Eastern DRC, where violence and trade are intertwined.

The various supply chain risks in Electronics, including in datacenters, are elaborated in research from SOMO<sup>102</sup>, and through the RBC risk check<sup>103</sup>. Most of the social risks relate to labour conditions (child labour in mining, excessive working hours, thwarted unions). Environmental risks include deforestation, toxic materials, water use and GHG emissions (datacenters use a lot of energy, during production but also while they are in use).

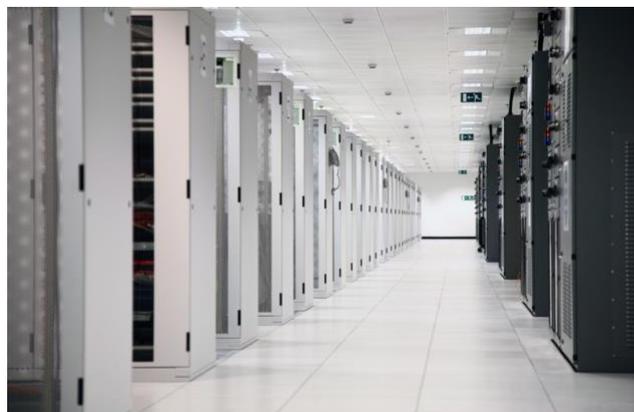
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### SECTOR CHARACTERISTICS

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Electronics and Datacenters are very different from Textile and Clothing and Workwear. Personal clothing and household textiles are literally close to our skin. Datacenters are rooms filled with servers, mostly out of sight of everyday life (including the related supply chain risks).

In Garments & Textile multinational companies are active, but also SMEs (including those supplying Workwear to government). Datacenters are dominated by multinationals, some of which are very large.



The total annual procurement by the Dutch government of Workwear is about €25 million, while one individual datacenter tender can be over €100 million. For large IT companies, Dutch public procurement can be important, yet small compared to large orders from countries like China or India. The supply chains are also very different, with datacenters composed of many different electronic components that originate from around the world, many of them from mines.

<sup>100</sup> <http://www.wrapcompliance.org>

<sup>101</sup> [www.fairwearfoundation.org](http://www.fairwearfoundation.org)

<sup>102</sup> [Website](#) by SOMO on sustainable supply chains in Electronics

<sup>103</sup> The website '[CSR Risk Check](#)' is hosted by MVO Nederland



There is no Electronics IRBC Agreement in the Netherlands, but a ‘Metals Sector Agreement’ was signed in May 2019<sup>104</sup> by public and private partners. Among the companies are primarily metal producing companies (producing aluminum, steel, tin etc.); no major electronics or datacenter companies are party to this Agreement (yet). The Agreement explicitly refers to OECD Guidelines, the UNGPs and the SDGs. It includes language on public procurement, with the ministries of Economic Affairs and Foreign Affairs (signatories) committing to a range of actions at the level of the EU and the Netherlands, including ‘*exploring possibilities for strengthening the use of supplementary corporate social responsibility criteria in public procurement procedures for metal-bearing materials by EU institutions*’, working with embassies and calling on relevant companies to sign the agreement.

Interestingly, the Agreement notes that through this IRBC Agreement private parties prepare for the EU Regulation on the Responsible Sourcing of minerals from conflict-affected and high-risk areas<sup>105</sup>. This is where regulation, IRBC sector agreements and procurement can reinforce one another.

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## CATEGORY MANAGEMENT DATACENTERS

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Like Workwear, the product group Datacenters is one where central government applies category management. Category manager is René Bergsma with Albert Geuchies as contract manager. The most recent category plan for Datacenters is over five years old. René Bergsma considers an update relevant but awaits ongoing discussions about possible restructuring of the 31 categories. The 2013 category plan refers to five goals that all IUC’s<sup>106</sup> of central government strive towards: 1) limit costs, 2) offer quality and service, 3) innovation, 4) sustainability and 5) access to SMEs.

As the category team was considering different sustainability themes, they concluded social supply chain conditions took priority over other RPP themes such as Circularity or Social Return. The category team, together with an intern and IUC North, started translating policy into practice. This led to the first of four large scale tenders in which ISCs were applied as award criteria, each taking into account lessons from previous tenders (more on these tenders below).

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## CRITERIA AS ON THE RPP CRITERIA WEBSITE

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If on the [RPP criteria website](#) we choose the product category ‘Networks, Datacenter hardware and Telephone services’ from the cluster ‘Automations and Telecommunications’, we find 19 criteria, of which 16 apply specifically to Datacenters. Some observations:

- Three are minimum requirements on energy efficiency of which two mandatory for ministries
- There is one award criterion related to energy efficiency, and a suggestion to apply the European Commission’s Code of Conduct for energy efficiency.
- There are four criteria (minimum requirements and award criteria with different mandatory and ambition levels) related to recycled and biobased packaging.
- There are two high ambition level (non-mandatory) award criteria on a circular approach.
- There is one suggestion to consider pros and cons of biobased versus plastic products.
- There are two options to include energy efficiency as contract clauses, of which the most ambitious one includes a bonus for the contracted party if they meet certain targets.
- There is one contract clause: ISCs. The wording of this contract clause is the same as for Workwear and in line with current policy. It includes wording on risk analyses, risk mitigation and reporting requirements, and provides a hyperlink to the guidance document.

<sup>104</sup> [Website](#) on the Agreement under development, on the website of the SER

<sup>105</sup> [Brochure](#) by SOMO on the new EU Regulation on Responsible Sourcing of minerals

<sup>106</sup> IUC = Inkoop en Uitvoerings Centrum Rijk, Dutch for Procurement and Implementation Centers of central government, see [§3.2](#)

## FOUR CONSECUTIVE DATACENTER TENDERS APPLY ISCS AS AWARD CRITERIA

In 2016, the Datacenters category management team was the first to explicitly include ISCs in their Program of Requirements as award criteria. Both the 2016 tender and the three tenders that followed in 2017/2018 share the acronym ROAD<sup>107</sup>. Box 12 summarizes key aspects of these tenders.

René Bergsma and Albert Geuchies worked together closely to apply increased ambition with each new tender. In the most recent tenders, they received support from partner SOMO. At first, there was resistance from companies: why would they tell government who they do business with? Bergsma<sup>108</sup>: *“We’ve seen commitment in the market grow. Do not underestimate that it’s a big step for companies to ask suppliers to look down the supply chain, asking about the origin of products and associated risks. Our call for ROAD 2016 was: help us gain more insight in the supply chain. For ROAD2017 we went one step further by asking how they will engage the supply chain.”*

This move from not only performing risk analysis but engaging the supply chain to mitigate some of the risks, follows the intentions of the OECD guidelines and its recommended due diligence process. In the first two tenders, the Best Price Quality Ratio was applied, with the ISC award criterion a subset of the Quality criteria. In the last two tenders, the Datacenter team developed their own ‘MEAT Super formula’ (a creative mathematical alternative balancing quality and price).

Box 12: Increased ambition in four consecutive ROAD Datacenter Tenders. Source: [IUCN Noord](#)

Name of Tender	ROAD 2016	ROAD 2017	ROAD 2017 Tax Dpt	ROAD 2018
Size of Tender (all ex VAT)	€144 million	€130 million	€50 million	€69 million
How were social conditions/ ISCs applied?	As award criterion in Best Price Quality Ratio, with social conditions 20% of Quality and Quality/Price 60/40	As award criterion in Best Price Quality Ratio, with social conditions 10% of Quality and Quality/Price 80/20	As award criterion, applying a MEAT Super formula (specifically designed)	As award criterion, applying the MEAT Super formula (specifically designed)
Award criteria	Social conditions divided into 3 parts, reviewed binary (before new ISCs of April 2017)	Social conditions as one main question, reviewed on content	Social conditions as one main question, reviewed on content	Social conditions as one main question, reviewed on content
Program of Requirements	Dialogue with parties in supply chain Theme meeting Transparency origin Hardware	How does tenderer contribute to awareness on social conditions and risks with participants in products procured in mini competitions?	How does tenderer identify risks of products procured, how will risks be mitigated, mitigating measures monitored and reported?	How does tenderer identify risks of products procured, how will risks be mitigated, mitigating measures monitored and reported?
	Best efforts obligation Carry out risk analysis Public annual report on ISCs results risk analysis	Best efforts obligation Carry out risk analysis Public annual report on ISCs results risk analysis	Carry out due diligence in supply chain Carry out risk analysis Public annual report on ISCs results risk analysis	Carry out due diligence in supply chain Carry out risk analysis Public annual report on ISCs results risk analysis

## NEXT STEPS: CONTRACT MANAGEMENT AND PUBLIC-PRIVATE COOPERATION

Though the increasing attention to ISCs in the ROAD tenders has made Albert Geuchies a name often mentioned when one looks for tenders that have applied ISCs as award criterion, he is hardly satisfied

<sup>107</sup> ROAD = RijksoverheidsAanbestedingDatacenters, Dutch for Ministerial Procurement of Datacenters.

<sup>108</sup> Quotes from an [article](#) on the website of PIANOo:



with the progress. For him, this is just the beginning and a lot more needs to happen to achieve more transparency of supply chains, let alone real and lasting impact in developing countries.

Similar to the case of Ambulance workwear, one of his questions is how to monitor progress during contract management. The contract manager himself does not have the time to do this properly and would ideally like to recruit expert capacity to review risk analyses and mitigation plans. Here, the *'who monitors, who audits'* question surfaces (this question will be discussed in chapter 7). Geuchies thinks that, though award criteria play a role, there should be minimum requirements to move the sector. Until now, attempts to formulate such criteria have ran into legal hurdles.

Finally, given the size of the multinationals involved in Datacenters, the Datacenter team considers engagement by high-level government representatives crucial. Albert Geuchies would like to see an IRBC Agreement with the ICT sector and work together with human rights experts from Foreign Affairs on the real risks in the supply chain. *"Get the minister around the table with the major players, work on sector transformation to start making real progress."*

## 6.3 CONSTRUCTION AND NATURAL STONE

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### SECTOR SUPPLY CHAIN RISKS

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Construction is one of the 12 high-risk sectors from the Sector Risk Analysis (see [Annex 3](#)). Natural stone was identified as a priority (alongside timber, cement, steel), with high risks in China and India.

Known supply chain risks include child labour, forced labour, wages, safety, health and freedom of association. SOMO and ICN (India Committee of the Netherlands) have reported on issues in this sector for years. Most recently, in 2017 ICN and Stop Child Labour produced a report *'the Dark Sites of Granite'*<sup>109</sup>. They scored twenty-two granite quarries and six processing locations in Southern India (where 75% of the Indian granite originates).



The report also includes a chapter on *'interventions'*: business and human rights initiatives; efforts of importing companies and efforts of exporting companies, governments, NGOs and labour unions.

Sustainable procurement is highly relevant to address these issues, as in the words of ICN *'this is the main tool to reward efforts of companies to improve working conditions in their supply chain'*<sup>110</sup>.

ICN notes that the government appears to believe in the carrot-and-stick approach in promoting IRBC. In their words: *"The Dutch government can only maintain its credibility by ensuring that companies that do take measures are appropriately rewarded in the context of government procurement."*

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### SECTOR CHARACTERISTICS, SECTOR FOCUS ON DUE DILIGENCE AND TRUSTONE INITIATIVE

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Though we are not always aware of it, we come across natural stone almost every day - literally. Natural stone is used for paving, curbs and facades; in buildings, plazas, water works and roads.

<sup>109</sup> [The Dark Sites of Granite](#), Stop Child Labour & India Committee of the Netherlands, 2017

<sup>110</sup> <http://www.indianet.nl/overheidsinkopen-en-mensenrechten-in-nederland-de-casus-natuursteen.html>



In the Netherlands, the annual turnover amounts to around €300 million, with some 800 companies importing and processing natural stone. About half is procured by government, with municipalities key buyers. The sector composition is very different from both Workwear and Datacenters. It is mostly composed of SMEs, including small businesses with a handful of employees.

Smaller companies mean less powerful players in the supply chain, and more fragmented procurement means more challenges to provide one coherent message to the market.

Natural stone is not covered by 'category management'. As a result, there is no 'category plan' similar to Workwear and Datacenters. However, over the last decade there have been increasing efforts to set up sector initiatives addressing supply chain risks in natural stone. In the Netherlands, this has led to the TruStone Initiative. Chapter 5 of the report the Dark Sites of Granite<sup>111</sup> discusses various initiatives, including certification schemes FairStone and Xertifix and the TFT Responsible Stone Program (an earlier Dutch Working Group on Sustainable Stone was brought under the TFT).

The TruStone Initiative is one of the IRBC Agreements (with the SER currently hosting the secretariat). This initiative is bi-national, with both Belgian and Dutch signatories (with representatives of governments, labour unions, branch organisations and individual companies).

Though the Agreement text<sup>112</sup> was formally agreed only in May 2019 (outside of the scope of this review, 2012-2018), in the lead-up there have been pilots explicitly focusing on due diligence in procurement of natural stone. The pilots received funding from the Fund against Child Labour (FBK)<sup>113</sup> (funded by the Dutch Ministry of Foreign Affairs) for 2017-2020. The pilots aim specifically to apply the ISCs in different phases of procurement for both public and private sector.

As one of the signatories to the Initiative, the ministry of Foreign Affairs and Trade itself has committed to various actions that could lead to more incentives to include supply chain risks for natural stone in Dutch public procurement by ministries, including:

- recruiting new participants to the initiative, e.g. other Dutch government bodies (municipalities, but also other major buyers among government including the RVB (Rijkswastgoedbedrijf, the central government real estate company) and the GWW (Grond-, Weg- en Waterbouw, the central government domain for roads and waterways).
- putting multistakeholder cooperation in the natural stone sector on the agenda in the EU;
- ensuring diplomatic staff, including those working in embassies, to support the Initiative including liaising with local stakeholders in country of origin;
- promoting the Initiative in bilateral and multilateral relations;
- ensuring trade missions to countries of origin are aligned with this Initiative.

In a meeting of the Initiative-under-development with 15 companies, requests for support tools were voiced. As in other sectors, companies want to know how to carry out due diligence, without a time-consuming administrative process. A template was developed which companies can use to map and capture supply chain risks. This will be improved based on the first experiences.

During a later session with government, participants concluded they want to apply ISCs not only to national government, but also to local government. Municipalities indicated however that they did not have the needed capacity and expertise. Two support tools were developed:

- A Road Map 'International Social Conditions Natural Stone' for procurement professionals.
- A 'Team ISC Natural stone' (TIN) of experienced civil servants (including from Foreign Affairs and PIANOo). External experts can be added on a case-by-case basis, with 50% of expert costs

<sup>111</sup> Chapter 5 of [the Dark Sites of Granite](#) includes an overview of business initiatives in the sector over the last decade.

<sup>112</sup> [Pages](#) on the covenant website of the SER dedicated to Initiative TruStone

<sup>113</sup> The [FBK](#) helps Dutch businesses that want to carry out research locally into the root causes of child labour within their production chain, would like to take measures to prevent it at local level, and/or are taking measures to prevent child labour within their own businesses.



covered by the program. The team aims to function as a ‘flying brigade’, supporting the procurement process from start to finish. A pre-condition to support from TIN is participating in a monitoring project by the VU University of Amsterdam.

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## CRITERIA AS ON THE RPP CRITERIA WEBSITE

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Natural stone as a material is used in several of the 46 product groups (see [Annex 3](#)) for which there are RPP criteria, including New Buildings, Renovation, Civil engineering structures. However, it is not covered in the 10 risk categories for which ISCs are mandatory (for ministries, above the threshold).

If we look at the criteria for the product group ‘New Buildings’ (a product groups that can include natural stone) on the [RPP website](#), we find 11 criteria. Most are related to climate change and circular economy and biobased policies. There is one criterion for sustainable timber (more on timber in §6.4), where certification is required. The contract clause on ISCs is in June 2019 not even presented as optional in the online tool for the product groups of New Building Construction, Building Renovation or Civil-engineering structures. Though these product groups do not fall within the 10 risk categories for which ISCs are mandatory for ministries, ISCs should at least be optional (if not strongly encouraged) for sectors that include high-risk material use. It is a remarkable omission.

On the positive side: though out of the formal scope of this review (2012-2018), a relevant development is that in May 2019, the Central Government Real Estate Agency and two municipalities (the cities of Leusden and Nijmegen) became signatories to the TruStone Initiative, with which this central government body commits itself to requiring due diligence from their suppliers. This is another example of the benefits of alignment of RBC sector agreements with public procurement.

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## LESSONS FROM TENDERS ADDRESSING SOCIAL SUPPLY CHAIN RISKS IN MUNICIPALITIES

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In one of the meetings of the TruStone Initiative-under-development in 2018, the participants concluded that currently, few suppliers fully apply due diligence. An important reason quoted: many governments still award at the lowest price, and do not let sustainability factors weigh in.

In this section, we look at exceptions to this rule: three examples of natural stone tenders by municipalities in the period under review in Utrecht, Leusden (described in most detail based on earlier publications on this tender) and the Hague. These examples share a common interest, have commonalities in lessons, and show an evolution from awareness to exclusion and engagement.



### STATION SQUARE OF UTRECHT

Utrecht is the fourth largest city in the Netherlands. With its central location, it has the biggest train station in the country. In 2011, Utrecht was preparing for a natural stone tender for its station square, as part of a big renovation called ‘CU2030’. The city started discussing various sustainability aspects with the partners of ‘Sustainable Squares’ in 2011<sup>114</sup>. SOMO was one of the partners, subsidized by the ministry of Housing, Spatial Planning and the Environment. SOMO highlighted the Utrecht square tender in their 2014 report<sup>115</sup>. They saw this tender as standing out in going far beyond the guidance

<sup>114</sup> More on the ‘Sustainable Plazas’ project can be found [here](#)

<sup>115</sup> [A review of Dutch policy for socially responsible public procurement](#), SOMO, 2014



document on 'Social Conditions', applying also award criteria. The city actively engaged potential suppliers in discussions on environmental and social supply chain risks.

The city ultimately decided to procure natural stone from Spain. They indicated that if they would have procured from India or China, the suppliers would have been asked to analyse, monitor and mitigate social risks and violations. Still, a footnote in a report on the 'Sustainable Squares' project suggests that no research was carried out to analyse risks in Spain, suggesting this was due to time constraints. Presumably they assumed procurement from Spain would be sustainable simply because they had avoided high-risk countries. That assumption was left untested and the possibility to engage suppliers from India or China (improving social conditions there) avoided. Still, the procurement team was ahead of its time in applying award criteria that actively engaged first level suppliers. The stones were finally laid on the Utrecht central station square in 2013 and 2014.

### CITY PLAZA IN LEUSDEN

The municipality of Leusden is a fast-growing commuter town close to Amersfoort in the province of Utrecht. Work has been going on for some years to redesign the centre. The outdoor space is also being renovated, requiring large amounts of natural stone to cover redesigned plazas.

In preparation for the procurement, they became aware of the human rights risks. The report "The Dark Sites of Granite"<sup>116</sup> made the risks all the more real to the team. City Councillor for Economic Affairs Patrick Kiel<sup>117</sup>: *"This is the first large natural stone project for Leusden in 30 years, so we did not have the knowledge in-house. That is why we made every effort to ensure transparency and communication with the Council and provide as much certainty as possible that we would not use natural stone with unacceptable risks such as child labour, slavery and poor working conditions."*

Similar to Utrecht, the team chose to avoid imports from China and India and contracted a supplier from Portugal. However, Leusden added two steps. The team visited the quarry and processing plant to assess working conditions. In addition, they set up a process to analyse the origin of the stone. Project leader Cor Rotgans: *"We ultimately opted for Portuguese granite. However, the stories that granite from other countries are also processed there and sold as 'Portuguese granite' also reached us. So, we wanted to know for sure if the material we received came from the quarry in Portugal."*

The project team took reference samples and had them analysed at a Belgian laboratory for composition, crystal structure, etc. Since then they regularly take samples from stone consignments to have them tested and compared with the mother samples. They add unannounced control samples of other material. So far, all samples are confirmed to originate from the Portuguese site.

Regarding costs, city councillor Kiel concluded a few thousand euros (for the collection of mother samples and analysis) was considered a relatively small amount within the overall size of the project. Because delivery would take place in multiple shipments over one to two years, they felt it was worthwhile to set up a careful control system. According to Kiel, some citizens did ask why it was necessary to buy more expensive natural stone. Most however appeared to support the approach to pay special attention to the social conditions for people at the mining location.

Risk management was carried out in a 'construction team' approach: jointly with the contractor. The procurement team did not want to do all the follow-up work themselves. However, they also did not want to lose all influence by placing the responsibility fully with the contractor (which would have been the case in a more standard client-contractor relationship).

The choices made by the cities of Utrecht and Leusden are understandable, aiming to avoid the risk of being associated with human rights violations. However, it is important to note the pros and cons of

<sup>116</sup> [The Dark Sites of Granite](#), Stop Child Labour & India Committee of the Netherlands, 2017

<sup>117</sup> [Interview](#) on the website of the IRBC Agreement on Natural Stone



exclusion versus engagement. That is, excluding suppliers from China and India also bears the consequence of not being able to engage and work with such suppliers towards better practices.

The procurement process by the city of Leusden was already well underway when funding for ISC pilots of natural stone was secured, and by then they had already made key procurement decisions. Members of the Leusden project team did join the meetings on the covenant-under-development and have actively shared their experience, amongst others through the TIN flying squad.

#### WORLD FORUM PLAZA IN THE HAGUE

The Hague is the third largest city of the Netherlands, housing government and Parliament, and is known for hosting the International Court of Justice. In 2018, the outdoor space around the World Forum exhibition centre was redesigned, aiming for a pleasant space allowing people to walk through the grounds, connecting with the surrounding neighbourhood. An architectural design was chosen with squares and a dune-shaped walking promenade in natural stone.

The city decided to apply ISCs to this tender. As in the other tenders highlighted, not just as contract clause but also as award criterion using the Best Price Quality Ratio. They asked bidders to provide insight into the entire supply chain, with traceability and the potential contractors' efforts determining the score. The procurement team ultimately decided on granite from China.

During the contract period the supplier has to report on compliance with ISCs. To support this process, the city has worked with them to draw up a map of the supply chain, broken down into different parts, with associated social risks identified. Mitigating measures were agreed with an emphasis on transparency, noting non-compliance but not avoiding openly discussing them. The dialogue and improvement plan are considered more important. Here, the emphasis is on transparency and engagement, rather than exclusion. After completion of the delivery, the contractor will have to present a report with:

- an analysis of social risks, related to the supply chain map;
- measures taken to reduce risks and correct any violations in the chain;
- the approach and results of monitoring compliance with ISCs.

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#### NEXT STEPS: VISITING COUNTRIES OF ORIGIN, ENGAGING OTHER GOVERNMENTS

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The Trustone Initiative intends to capture lessons from the pilots and share this both within the natural stone sector, and with other sectors aiming to learn how to apply due diligence in supply chains. Key lessons so far, recognized by Michiel Soeters who manages the Initiative, include:

- When a sector with little experience with due diligence is first asked to apply due diligence, supporting them with tools such as those developed in this sector initiative are valued and appear to lead to more engagement, both by the procurement teams and the suppliers.
- Ultimately, once companies are clear on what due diligence entails, front runners should be rewarded, both through award criteria in tender processes and by accepting higher prices.

In the first half of 2019 a trip to a Belgian quarry was organised and Indian human rights experts met with participants of the Initiative in the Netherlands. The participants are working on a pilot in India, aimed at how to take remedial action in when abuses are found, working with local stakeholders, NGOs and others in the supply chain. In addition, a trip to China has taken place in November 2019. As will be discussed in chapter 7, this review argues that to effectively address due diligence in supply chains, sector cooperation as intended here, jointly working on risk analyses, is indispensable.



## 6.4 TIMBER, CERTIFICATION AND THE CASE OF OFFICE FURNITURE

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### SECTOR SUPPLY CHAIN RISKS

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Timber features twice in the Sector Risk Analysis of 2014 (see [Annex 3](#)): as a high-risk subsector under 'Construction' (alongside natural stone, cement and steel), and as a high-risk sector 'Timber and Paper'. Unsustainable harvesting of wood has long been known to carry environmental and social risks, especially now that the role of deforestation in climate change is increasingly recognized. Major supply chain risks include GHG emissions and loss of biodiversity from unsustainable logging, unsafe working conditions cutting trees and processing wood, and land-rights related social issues.

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### SECTOR CHARACTERISTICS AND COVENANT

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A building material used since the early days of civilization, timber is found in houses, office buildings, office furniture and large infrastructure such as water works. According to Probos<sup>118</sup>, the Netherlands in 2017 used around 16 million m<sup>3</sup> of round wood equivalents, with 4 million produced in-country and 12 million imported (of which 0,5 million m<sup>3</sup> tropical timber).

Timber is, worldwide, likely one of the sectors most familiar with applying due diligence in supply chains. Following several awareness campaigns by NGOs in the 1990s and the 1992 summit in Rio, one of the first voluntary certification schemes was developed: FSC<sup>119</sup>, for sustainable forestry. FSC is a full member of ISEAL and follows the ISEAL Codes of Good Practice for its Standard Setting and assurance (see [§7.4](#)). In 1999 another label for forest certification entered the Dutch market, PEFC<sup>120</sup>.

By 2015, the share of sustainably sourced timber (FSC and/or PEFC certified) in Dutch consumption of sawn goods and wood panels rose to >83%, compared to 13% a decade earlier. For tropical timber, the percentage is lower at 63%. Probos, the organisation that produced and analyzed these numbers<sup>121</sup>, gives credit for this success to a variety of factors and actors. This includes (pre-competitive) cooperation of the various stakeholders active in this sector, from NGOs to branch organisations, from certification schemes to individual companies, from people developing and implementing sector agreements to those working on the government timber procurement policy.

Following the development of these certification schemes, a number of sector-wide initiatives were active before and during the period under review related to sustainable procurement of timber:

- In 2013, the EU Timber Regulation<sup>122</sup> entered into force. It requires companies placing timber on the market to apply due diligence in supply chains until the source of the timber, and take steps to assess and minimize risks as part of the EU FLEGT Action plan (aimed at tackling illegal logging). Traders have to keep track of their suppliers and buyers.
- In June 2013, a Green Deal "Promoting Sustainable Forest Management" was launched with the ambition to make certified sustainably produced wood on the Dutch market the norm. An impact report of December 2015<sup>123</sup> concluded this has led to more awareness. A specific recommendation on procurement was to consider involving the umbrella organisations of local governments<sup>124</sup> in the next sector initiative to mainstream sustainable procurement.

<sup>118</sup> Looking at all wood and wood-products; see these and more numbers on this [website](#) by Probos

<sup>119</sup> [www.fsc.org](http://www.fsc.org)

<sup>120</sup> [www.pefc.org](http://www.pefc.org)

<sup>121</sup> Dutch sustainably sourced timber consumption, [Probos bosbericht 3# 2017](#)

<sup>122</sup> Explanation on the [EU Timber Regulation](#) on the website of the EU FLEGT Facility

<sup>123</sup> [Impact study Green Deal Sustainable Forest Management](#), Schuttelaar & Partners, 2015

<sup>124</sup> VNG for municipalities, IPO for provinces and the Union of Water Boards and Rijkswaterstaat



- In November 2015, the ministry of Infrastructure and Environment asked Probos to look into public procurement of sustainably produced timber<sup>125</sup>. Main conclusion: certified sustainable timber is frequently included as demand, but enforcement is lacking. (This was in 2018 confirmed to still be the case during research and in interviews for this review.) Probos also advised to use award criteria so bidders can present a convincing case on how they will ensure compliance; to include rewards and costs for compliance and non-compliance, and to continue sector wide cooperation (follow-up to Green Deal) to improve procurement policy.
- In March 2017, the Green Deal was followed by the IRBC Agreement “[Promoting Sustainable Forest Management](#)”, signed by the minister of Foreign Affairs & Trade, the minister of Infrastructure & Environment, plus branch organisations, labour unions, knowledge organisations and NGOs. The government commitments explicitly include knowledge transfer between procurement teams of different government bodies, through PIANOo.

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## CRITERIA AS ON RPP WEBSITE

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One of the reasons this sector is highlighted, is that for timber there is a minimum requirement related to supply chain risks that can be met through certification. Bidders have to ensure that if their offer includes timber (round wood, or as part of an office desk that contains wood), this has to be certified for one of the approved certificates for sustainable forestry.



In 2008, the then Minister of Housing, Sanitation and the Environment established the Dutch Procurement Criteria for Sustainably Produced Timber (TPAS<sup>126</sup>). A committee called TPAC<sup>127</sup> was established to assess timber certification systems and advise the relevant ministry. In the years after, FSC and PEFC were tested against these criteria and admitted to the sustainable procurement policy. There is a [Wood Database](#) with information about which types of wood are available as certified by these labels, complying with TPAS, and who can supply them.

Representatives of local government have expressed an interest in working with recommended sustainability certificates, as this can be an efficient way for them to apply RPP. This is true in the more general sense (as was shown in the Telos report discussed in [§5.5](#), p41 and more specifically for certified timber, as expressed by several local government officials interviewed for this review.

If we look at the criteria proposed by the RPP criteria website for ‘Office Furniture’ (one of the product groups in which wood is often used), we find 21 criteria, including this minimum requirement: all timber and wood has to come from certified sources following TPAS criteria. The other criteria primarily relate to either reducing carbon emissions, or to circular economy aspects. ISCs are not mandatory for any of the product groups that involve timber. If we look at ‘Renovations of office buildings’ and ‘Office Furniture’, the RPP criteria website does not offer ISCs as optional. This is in contrast with the sector’s awareness of supply chain risks.

It makes the question whether the government-accepted certificates FSC and PEFC adequately cover all relevant supply chain risks effectively all the more relevant. If the certificates cover these risks, ISC are still relevant to ensure enforcement, but can be more easily complied with. If the certificates do

<sup>125</sup> [From forest to production site](#), Probos, 2015

<sup>126</sup> [‘Dutch Procurement Criteria for Timber’](#), 2014

<sup>127</sup> [Website](#) of Timber Procurement Assessment Committee TPAC



not cover relevant risks, ISCs remain vital to ensure suppliers analyze, report on and mitigate risks. More about the roles of certification in sector transformation and in procurement in [§7.4](#).

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## CATEGORY PLAN OFFICE FURNITURE

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Office Furniture is one of the 31 categories to which category management applies. However, it is not one of the 10 risk categories for which ISCs are mandatory, even though the products can include raw materials from high-risk sectors such as timber.

The category plan for Office Furniture is strongly focused on the circular economy policy. After research indicated this category holds specific promise to achieve circularity goals, the category manager was asked to look into this<sup>128</sup>. The conclusion was that applying circular economy principles would not just be more sustainable, but also bring cost benefits<sup>129</sup>.

With funding from the ministries of BZK and I&W (through an EU-Life program called REBus<sup>130</sup>) and EZK the consultancy Turntoo was contracted, who in 2016 produced *'The route to a circular category Office Furniture'*<sup>131</sup>. This report provides an extensive roadmap for 2015-2020 on how the category can move to circularity, including extending life cycles (maintain, redistribute, refurbish, repurpose), recycling and more. The consultants were not asked, nor does their study focus on social risks in the supply chain. The focus is on environmental impact, following the logic that circularity means less demand for raw materials, meaning less pressure on the environment in countries of origin. It presents a clear vision for this product category from the perspective of circularity.

Lower GHG emissions, less land use, less water use and pollution are all vitally important and can significantly limit supply chain risks. One could argue however that, in addition to many benefits, there are some trade-offs to consider. Notwithstanding the fact that circularity is far more than recycling only, with increased volumes of recyclable materials there are growing concerns about working conditions for people in developing countries, for instance those recycling our plastic<sup>132</sup>.

This is an example where questions about the coherence of RPP policy themes surfaces, as there appears to be room for a more integral vision. The suggestion is not to take away from the circular economy ambition, but to harmonize this with due diligence in supply chains. As an example, sustainably produced timber can be a valuable renewable resource for furniture or for buildings, even capturing carbon if the material is included in a building that lasts for decades. However, unsustainably produced timber can do harm to both people and environment in countries of origin.

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## THE CASE OF OFFICE FURNITURE

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On 31 March 2017<sup>133</sup>, Rijkswaterstaat launched a large tender for Office Furniture (TenderNed ID TN132243). Office desks, chairs and office cupboards for 100.000 government employees, with an estimated annual value of €10 million per year, over a period of 10 years. The tender was sharply focused on the government's circular economy policy. The tender aimed for partners to work with for 10 years, including repairing and refurbishing.

The government hoped to save costs by bundling large amounts of product in one tender. The tender explicitly applied the Best Price Quality Ratio in award criteria, with Quality accounting for 80% of the

<sup>128</sup> An [interview](#) with the category manager on Circular Office Furniture on the website of Rijkswaterstaat, April 2017

<sup>129</sup> [Circular office furniture in central government](#), Facto Magazine, a monthly magazine for facility managers (November 2016)

<sup>130</sup> REBus is short for Resource Efficient Business Models, an EU LIFE+ program. [REBus Netherlands](#) focuses on circular procurement.

<sup>131</sup> [The route to a circular category Office Furniture](#), report by Turntoo (2016)

<sup>132</sup> [Recycling: poorer countries can now refuse plastic waste imports – this could make the system fairer](#), The Conversation, May 2019

<sup>133</sup> [Circular office furniture for all ministries](#), blog on the website of Rijkswaterstaat, July 2017



score and Price 20%. Quality was further subdivided in Plan of Action (45%), Circularity characteristics (20%) and Social return (employment opportunities for those disadvantaged in the market; 15%).

As the tender was published on 31 March 2017 (just prior to the new ISCs entering into force in April 2017), the tender applied the older Social Conditions then still valid. The minimum requirement (aka demand) for certified sustainable timber was included, though it should be noted this was one requirement out of a total of 327 bullet points in the 'Program of Requirements' for this tender.

One of the reasons why this case is highlighted here, is because of two perspectives that appear contradictory, but are both valid. This tender is a best practice in applying award criteria to stimulate RPP, more specifically stimulating a circular approach. At the same time, this is an example of a tender that led to a legal debate about how RPP criteria were applied.

After the contract was awarded to two contractors, a legal case was initiated by one of the other bidders. Their argument: the parties that won the contract were, at the time of their bid, not yet certified for the Chain of Custody that FSC and PEFC require, and substantial amounts of the office furniture would include wood. Those initiating the lawsuit argued that, as sustainable timber was a minimum requirement, this tender should have excluded the parties that won the contract.

In a news article briefly after the court case was initiated<sup>134</sup>, the suggestion is made that the procurement team might have made an error, and that the requirement of certified sustainable timber perhaps should have been a knock-out criterion. Ultimately though, in October 2017 the judge ruled in favour of the procurement team and the two parties that had been awarded the contract. Crucially, the judge concluded that following the Dutch Procurement Act, contractors do have to comply with minimum requirements, but only at the time of delivery.

Leaving aside the commitments of all parties involved in this tender, whether through the lens of circularity or sustainable forestry, there are two conclusions from this case:

- If the intention is to move the market, allowing minimum requirements to be met upon delivery does not reward front runners who already meet the requirements in advance;
- though the circular economy goals and the approach to stimulate the sector using award criteria should be applauded, the lack of coherence in RPP policy themes surfaces here.

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## NEXT STEPS: FOCUS ON ENFORCEMENT AND REWARDS

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The timber sector has, compared to other sectors, experience with supply chain risks and has made progress towards more sustainable forestry. However, enforcement is still lacking. Listening to sector stakeholders, there are several concerns going forward.

Some of these appear to be on the agenda of the current IRBC Agreement on Sustainable Forestry, others should ideally be on the radar of policy makers and procurement teams.

- As the 2015 study by Probos on procurement of sustainable timber noted: front runners should be rewarded. Minimum requirements are important to keep, and contract clauses to ensure enforcement. However also in this sector, award criteria are seen as key to reward those making a more convincing case of how well they know and manage supply chain risks.
- When a sector has several years of experience with supply chain risks such as this sector, including certification schemes as minimum requirement appears to be exactly what the sector needs. As will be argued in [§7.2](#) on page 66, this review concludes that the optimal mix of RPP criteria depends on the transition phase of each sector.

<sup>134</sup> [Sustainable office furniture government subject of litigation](#), blog on website of news organisation NOS, July 2017



- When sustainability certificates are accepted as minimum requirements (as in the case of certified timber), the process of approving sustainability standards remains vital, should remain impartial and stick to high process standards (such as the Codes of Good Practice of ISEAL, see [§7.4](#)). This is also what the current Guide on Proportionality advises<sup>135</sup>.

## 6.5 LESSONS ACROSS CATEGORIES AND SECTORS

As emphasized at the beginning of this chapter, yet worth reiterating: the examples in this chapter are more exception than rule. These are best practices where policy makers have made the decision to apply ISCs as award criteria because council or procurement teams cared, not what is the norm.

One thing that all tenders that apply RPP (and specifically ISCs) appear to have in common is the thoughtful application of award criteria using the Best Price Quality Ratio. Application of ISCs not just through the contractual clause, but also by letting companies describe how they are going to comply, and judging these not binary (correct/incorrect) but on content, with a team of ISC experts.

Another lesson is that effective application of RPP benefits from a sectoral approach. Of the three sectors above, the Datacenters have carried out their innovative tenders in 2016-2018 without the benefit of an IRBC Agreement on ICT/Electronics (though as of May 2019 there is an IRBC Agreement on Metals). The contract manager underlined such sector initiatives are needed to move the market.

Sector cooperation is especially relevant for due diligence. Analysing supply chains and understanding complex realities in countries of origin can be very time consuming for individual companies.

Moreover, the suppliers deeper in the supply chain receive one coherent message if the sector works together. Though none of the IRBC Agreements are perfect or would say their process was easy, sector cooperation appears to be a prerequisite to cooperate to truly make progress on RPP.

A condition for effective RPP would be that also governments themselves are active participants.

The sectoral approach does not relate just to the IRBC Sector Agreements, but also to how public procurement is organised. Currently, knowledge management is a real issue, as chapter 5 has already shown. Category management, as implemented in three of the four sectors discussed here, can help bring a central point of coordination to public procurement, one that can be linked to sector initiatives (whether IRBC Agreements or otherwise). This can become especially valuable if also local governments can tap into the knowledge and align with such a sector (or product group) strategy.

The examples here also suggest that one overall RPP vision for the Dutch government, and coherent strategies per product group are important to prevent one theme overshadowing others (even if with all the right intentions such as in the case of a focus on circular procurement). Supply chain risks are too serious to leave as optional when applying Responsible Public Procurement.

Finally, for RPP to have real impact, procurement teams need to think carefully about a coherent balance between minimum requirements, awards and contract clauses. The best 'smart mix' of criteria likely depends on the transition phase of the sector, as will be argued in the next chapter.

<sup>135</sup> See the top of page 56 of §3.5.6 of this [Guide on Proportionality](#) (in Dutch)



# 7 PUBLIC PROCUREMENT, SUPPLY CHAINS AND SECTOR TRANSFORMATION

The primary purpose of this review is to look at Dutch public procurement in 2012-2018, and evaluate whether the Dutch government has effectively incentivized, supported and rewarded suppliers applying due diligence in their supply chains, in line with the OECD Guidelines and UNGPs. Before we move to the final chapter with Conclusions & Recommendations, this chapter looks at supply chain due diligence from the perspective of sectors with known major supply chain issues.

Looking at the reconstructed Theory of Change, what other actors and factors influence outcome and impact? This chapter discusses the theory that transforming supply chains follows similar phases for each sector, and how public procurement might be adapted to the related transition phase.

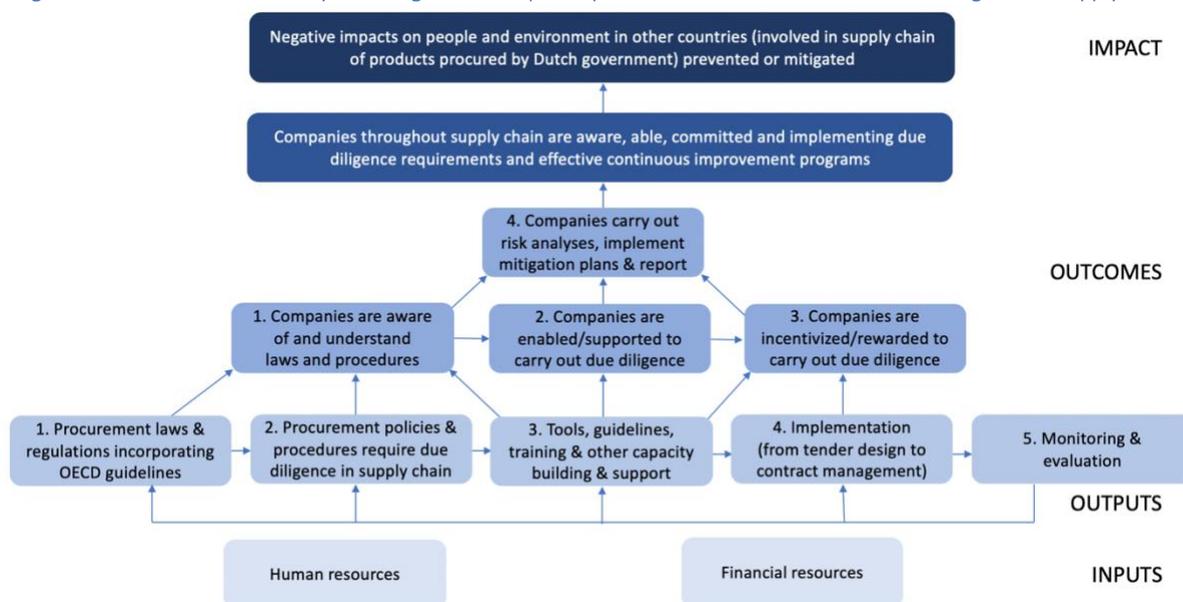
In some cases, there are sector initiatives that have been working to address supply chain risks for years. In others, initiatives to address supply chain risks are limited to individual companies with isolated pilots. How can Responsible Public Procurement contribute to sector transformation? How can sector initiatives contribute to more effective RPP, including due diligence in supply chains? What is the role of sustainability standards, of NGOs and auditors? How can the Dutch government work with other stakeholders (including from other countries) for more leverage and efficiency?

## 7.1 OTHER ACTORS AND FACTORS DETERMINING IMPACT

In [§5.1](#) the reconstructed Theory of Change for public procurement as in figure 12 below was used (derived from the ToC for IRBC as in [§1.1](#)). This review focuses on the outputs, and to some extent outcomes. The top two rows are included to clarify to what impact the outputs and outcomes ultimately contribute.

The Dutch government is fully responsible for the inputs and outputs. For how they apply human and financial resources, for laws and policies, for implementation and evaluation. Including the responsibility to think strategically how to most effectively do this, maximizing the chances that the outputs lead to the desired outcomes and ultimately the desired impact.

Figure 12: Reconstructed Theory of Change of Dutch public procurement used to stimulate due diligence in supply chains



Whether companies ultimately carry out due diligence effectively or not (outcomes) depends in part on whether the government has clarified due diligence requirements, is consistent in its policies, supports and rewards due diligence. However, there are also other factors influencing companies' due diligence: policies of other buyers (within and outside the Netherlands), what the competition does, how large the company is, their leadership and strategic priorities etc. The further up the Theory of Change, the more other actors and factors contribute and influence outcomes & impact.

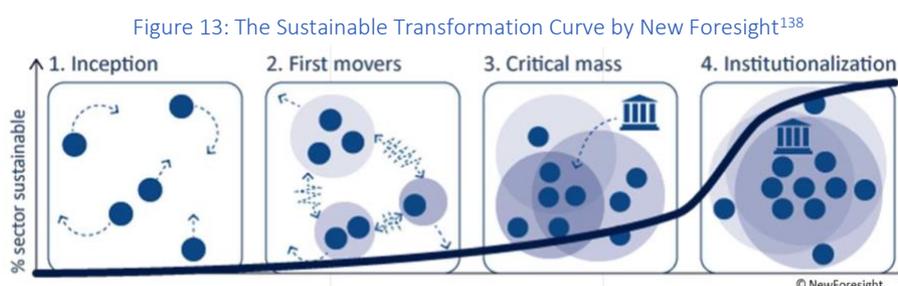
If, for the moment, one would assume that a given company carries out due diligence exactly as the OECD guidelines and UNGPs prescribe (number 4 of the outcomes in figure 12), then it is another assumption that this has the desired effect on the rest of the supply chain, all the way to processing factories and countries where raw materials originate. The ultimate impact depends on factors outside of companies' headquarters, including the characteristics of the supply chain (its complexity and opacity), how large and/or influential the company is within that sector, whether the sector has made any joint efforts to address supply chain risks, laws and regulations in the countries involved in that supply chain, progress of partners (NGOs, other experts) working to address the risks, etc.

Ultimately, transforming supply chains is not done by one company alone, or by public procurement alone. Transforming supply chains requires change at the sector level.

## 7.2 SECTOR TRANSFORMATION PHASES

Sectors differ greatly in size and composition, from those dominated by a few major multinationals to those mainly composed of SMEs. They also differ in the complexity and opacity of their supply chains: a tile of natural stone on a city plaza is less complex than the many components that combine into a datasever or an iPhone. The examples in chapter 6 of Textile & Clothing, Electronics, Natural Stone and Timber illustrate this and the KPMG Sector Risk Analysis of 2014<sup>136</sup> also emphasized this point.

A theory that is increasingly gaining traction is that the transformation from unsustainable to sustainable follows the same general path, regardless of the sector. The below image and the related theory were published in the book *Changing the Food Game*<sup>137</sup> by Lucas Simons of NewForesight, initially based on his research and experience in the food sector.



In summary, the theory states that every sector moves through four phases:

1. In the Inception phase, the sector becomes aware of sustainability issues (though some still try to deny or downplay them) as a result of a major crisis somewhere in the supply chain. Individual front runners start pilot projects, though these projects remain isolated.
2. In the First Movers phase, there are many sustainability initiatives in the sector and the first standards are developed. Front runners see sustainability as a competitive advantage.
3. In the Critical Mass Phase, multi-stakeholder initiatives are set up with industry, government, civil society and academia. They define a sector-wide vision and a roadmap of interventions.

<sup>136</sup> [Sector Risk Analysis](#), KPMG, 2014

<sup>137</sup> [Changing the Food Game](#), Market Transformation Strategies for Sustainable Agriculture, 2014

<sup>138</sup> [Driving the transition towards sustainability](#), brochure by NewForesight

4. In the final phase of Institutionalization, as a result of the multi-stakeholder initiatives, sustainable practices are perceived as the "new normal" by companies, consumers and policymakers. Frontrunners lobby for institutionalization of this "new normal", making sustainability part of the legal framework and enabling environment, further rewarding responsible behaviour and punishing laggards that still benefit from unsustainable practices.

If we apply this lens to the four sectors discussed in chapter 6, it appears the timber sector is furthest along. The timber sector has been aware of challenges in countries of origin for decades. When the 1992 Earth Summit failed to produce an agreement to stop deforestation, businesses, environmental and social NGOs worked together to establish FSC<sup>139</sup>. The standard was based on three pillars: economic viability and environmental and social sustainability. Since then, another certificate for sustainable forestry was established (PEFC) and an EU Action Plan called FLEGT initiated to combat illegal logging. Sector stakeholders increasingly work together (public, private and NGOs), including through the Green Deal, followed by the IRBC Agreement on Sustainable Forestry (see [§6.4](#)).

For Garments and Textile, the sector was likely lingering in the early stages of phase 1, with some efforts to move to phase 2, when the tragic events of Rana Plaza (see [§6.1](#)) shook the sector. The Dutch government worked with front runners and urged laggards to cooperate and move towards phase 2 and onwards to phase 3. IDH took an active role in bringing stakeholders together with their Apparel program<sup>140</sup>. Several standards were developed, such as FairWear (1999) and Fashion for Good (2017). In the Netherlands, the IRBC Agreement for Sustainable Garments and Textile is aiming for 80% of the sector to have signed on to the Agreement by 2020 (end 2018 this stands at 48%). Participants have worked together on a 'production location list' that end 2018 has 4,268 producers listed and aim to work more closely with the international Sustainable Apparel Coalition.

In natural stone, the sector is perhaps closest to phase 2, with the new TruStone Initiative and other sector initiatives (see [§6.3](#)) indicating a move towards phase 3. Of the four sectors discussed in chapter 6, Datacenters appears to lag behind. This could be related to the size of the companies, their relative independence from government tenders, and/or the fact that electronics are often composed of a multitude of different materials. The issues are well known to organisations like SOMO, who with their Electronics Watch are partnering with experts both in buying countries like the Netherlands and in producing countries. However, there is no sector initiative involving suppliers in Electronics or Datacenters generally (though there is now an IRBC Agreement on Metals, as of May 2019).

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## ADAPTING RPP CRITERIA TO A SECTOR'S TRANSITION PHASE

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Without attempting to perfectly identify the phase of each sector here, a key recommendation is that RPP policies should be adapted to the market transition phase a sector is in. Market consultation before tenders, RPP criteria during tenders, enforcement and monitoring after tenders are always relevant. However, depending on the phase a sector is in, a strategic mix of minimum requirements, award criteria, contract clauses and where possible selection criteria could be considered.

Looking at the forestry sector, two sustainable forestry standards are now recognized by government as minimum requirements for public procurement. Some fear the process is not stringent enough and there is concern about the level of enforcement. Still, this is an example of (an attempt to) institutionalization, of the sector making efforts to move from phase 3 to phase 4. The fact that there is a minimum requirement does not mean there is no need for award criteria. Probos in their report of 2015 (see [§6.4](#)) explicitly recommended the use of award criteria in procurement of sustainable timber.

<sup>139</sup> [Blog](#) by FSC about its history

<sup>140</sup> [Website](#) by IDH on apparel



The suggestion here is that for high-risk sectors, the optimal mix of minimum requirements, award criteria and contract clauses should be chosen, with the criteria mutually reinforcing one another. If RPP criteria are optimally defined, they should reward front runners that can showcase compliance, knowledge and experience. The same criteria should prevent laggards from winning contracts, and incentivize the majority to invest more in due diligence to be considered in future tenders.

In a sector that is less far along the transition such as Datacenters, award criteria are crucial additions to contract clauses. The category team Datacenters is hoping minimum requirements can be developed, but this may require the sector to move further along the transition phase. When both sector and government agree on what is considered sustainable, then this can be included as minimum requirement, such as in the case of certified timber. The addition of award criteria always has added value, as they allow front runners to continue on the path of continuous improvement (see §7.5). Especially in high-risk sectors, front runners should always be looking for the next step.

### 7.3 SECTOR AGREEMENTS

This review argues there should be a strong link between sector initiatives and RPP sector strategies.

What the Dutch government can be commended for is that it actively supports sector initiatives. This includes co-funding of IDH<sup>141</sup>, active in 12 high-risk sectors. It also includes the initiation and coordination of IRBC Agreements. In 2014, the SER<sup>142</sup> recommended multi-stakeholder International Responsible Business Conduct (IRBC) agreements for each of the sectors identified in 2014 as high-risk. By end 2018, nine such agreements had been reached. Currently, the Textile, Forestry, Gold and Food Agreements have some reference to public procurement. All four except Forestry urge applying ISCs. The new TruStone Initiative and IRBC Agreement on Metals are even more explicit about RPP.

This review does not suggest IRBC Agreements are perfect. Pre-competitive cooperation remains challenging. Moreover, this review does not evaluate sector initiatives. This chapter proposes that the link between sector initiatives and RPP is vitally important. Stakeholders in sector initiatives have a wealth of knowledge on supply chains and risks, plus connections throughout the supply chain. Bundled, they can be much more effective in engaging their suppliers. Also, if front runners are rewarded for investments, the middle group is incentivized to invest more and public procurement supports the sector transition. Reversely, if companies do their best to comply and they don't see the rewards, this is discouraging. RPP needs engagement with the sector, and sector initiatives need RPP.

In other words, if IRBC agreements would not exist, they would be recommended. The government should either actively support existing sector initiatives, or (if they do not yet exist for sectors with known supply chain risks) initiate them. In addition, it is strongly recommended to more actively link sector-specific RPP policies with sector initiatives (possibly by requesting participation in relevant and active IRBC agreements as selection criteria), and to ensure that governments themselves are not just initiators but active participants with their own procurement commitments. Public procurement and sector initiatives can, and from a policy coherence perspective should, be mutually reinforcing.

### 7.4 SUSTAINABILITY STANDARDS AND CERTIFICATION

The Dutch government would benefit from lessons on supply chain due diligence from standard setting and certification organisations. Depending on the sector transformation phase, sustainability standards can be included as minimum requirements and/or award criteria. In all cases, contract clauses are relevant to ensure compliance (assuming such contract clauses are enforced).

<sup>141</sup> [Website](#) of IDH, the Sustainable Trade Initiative showing the high-risk sectors they work on (alongside landscape programs)

<sup>142</sup> [Website](#) of the SER (Social Economic Council of the Netherlands) on IRBC Agreements



Both the EU Directives on Procurement and the Dutch Procurement Act have explicitly included wording to allow tenderers to request certificates of sustainability standards. Article 2.78a of the Dutch Procurement Act specifies the conditions for requiring such certificates:

- the requirements should only relate to the product procured
- the requirements are based on objectively verifiable and non-discriminatory criteria,
- the label is established in an open and transparent procedure in which all stakeholders, including public authorities, consumers, social partners, manufacturers, distributors and non-governmental organisations, can participate,
- the certificate is accessible to all parties involved, and
- requirements are set by a third party over whom the entrepreneur applying for the label does not exercise decisive influence.

Interestingly, these conditions align well with the Standard-Setting Code for Good Practice by ISEAL<sup>143</sup>, which emphasizes multistakeholder consultations, regular standard revisions and independent third-party verification. ISEAL appears to be not (yet) well-known in Dutch public procurement, as many interviewees were not familiar with the ISEAL Codes of Good Practice. The work of ISEAL, its members and partners appears relevant for policy makers aiming to make RPP more effective and efficient.

ISEAL have developed Codes for Standard setting, for Impact, for Claims (of labels) and for Assurance (regarding Chains of Custody, audits etc.). All codes are based on ten Credibility Principles (see figure 13), themselves developed with input from >400 stakeholders on five continents.

Figure 14: the ten Credibility Principles of ISEAL



Why argue for sustainability standards and certificates?

The primary reason: standards can help bring RPP to scale. Though occasional trips to countries of origin (such as this year by participants of the Trustone Initiative) are useful to truly grasp supply chain risks in countries of origin, the Dutch government can never carry out all audits for all tenders. Quality standards (defining what is sustainable and how this should be measured) and certification (providing labels after compliance is confirmed by a third-party auditor) have a role to play.

Several municipalities have indicated they like working with certificates. They recognize the scaling strategy and see it as an efficient way to check compliance, such as for certified timber. This was expressed by local government representatives and confirmed by research from Telos (see p41).

However, not all sustainability standards were created equal.

<sup>143</sup> ISEAL Codes of Good Practice can be found [here](#); more about the organization itself [here](#)



Sustainability standards were embraced almost as a silver bullet solution in 2000-2010, when the first certificates gained traction. Then there was a vast expansion of standards, after which organisations like ISEAL aimed to 'separate the wheat from the chaff'. The first Social Conditions included an option to refer to a certificate that would cover supply chain risks. Since 2017, this is no longer an option. Moreover, at a 2018 RPP conference concerns about the reliability of certain standards was voiced.

The recommendation here is to not throw the baby out with the bathwater. Distinguish between sustainability standards. They are no silver bullet and should undergo regular scrutiny regarding what is covered by the standard, the consultation process, the certificate claims and other key factors (for instance through ISEAL's Codes). However, standard organisations have a wealth of experience with supply chain risks, audits and verification, traceability, chain of custody etc.

The bottom line is that public procurement teams can not all go to countries of origin and audit themselves. The producers would not get any work done if they have to receive hundreds of auditors from Dutch government (let alone from other countries they export to). Quality standards can bring leverage and minimize the administrative burden, including for local government.

Depending on the transition phase of each sector, compliance with quality standards can be included as minimum requirement, as award criterion and/or contract clause. Quite possibly involving all three, to ensure a) bidders will have to comply (minimum requirement), b) bidders can distinguish themselves by showing they are already in compliance and/or showcase their experience with the standards (award criteria) and c) to ensure compliance is enforced (contract clause).

## 7.5 CONTINUOUS IMPROVEMENT

Everyone working in supply chains like cocoa and coffee knows that it is easier said than done to eradicate child labour from supply chains. It starts with the definition: not all child labour is harmful. Children of Dutch farmers who have worked the fields on Saturdays can attest to this. Child labour becomes harmful when children are forced to work longer than good for health or their education. It is related to Living Wage, as parents without can feel forced to allow children to work. Such deep-rooted issues cannot be solved by simply visiting and demanding change – it needs continuous improvement. It needs engagement and improvement plans until the issues are resolved (and/or can be managed by certification for standards, that through third-party audits verify compliance).

Continuous improvement is closely linked to the concept of 'engagement' versus 'exclusion'. As we have seen in §6.3, the response of some municipalities to learning about risks in India and China was to not buy natural stone from these countries, but from Portugal or Spain. This is a valid option, but exclusion avoids the option to engage Indian or Chinese companies in a process of continuous improvement, in which buyers agree with producers on regularly revised improvement plans.

The principle of continuous improvement is also valid for RPP strategies of the government itself. In one of the first Annual Reports by BZK, the conclusion was drawn that 'sustainable procurement was realized because each tender would apply at least one sustainability criterium'. That is a very low bar. For example, if chocolate is produced by a cocoa producer that pays a living wage to employees, but who still uses child labour and cuts primary forest, that would not constitute sustainability. All major risks need to be addressed, as soon as is realistically possible, through improvement plans.

The basic logic of continuous improvement can also be seen in the four consecutive ROAD tenders in Datacenters (Box 12 in [§6.2](#)), where each year there is more ambition in the request to suppliers. With the category team recognizing even the most recent tenders as steps along a continuum.

The suggestion is that both RPP Action Plans and sector-specific RPP strategies should embrace continuous improvement, with regular revisions and ideally a Theory of Change that clarifies not only what annual and three- or five-year goals are, but also what the longer-term desired impact is.



## 7.6 WORKING WITH COMPLEXITY: PRIORITIZE AND COORDINATE

A perspective worth noting is the complex variety of products and services procured by government. Most NGOs and consultancies working on market transformation have experience with only a handful to a dozen sectors or commodities (logically focusing on high-risk sectors). The government, in theory and ideally, would apply RPP strategically to each and every product group or category.

If one were to compare public procurement to that of an average multinational, the product range procured by the government is likely wider than most companies. And multinationals often have headquarters that decide on one coherent policy, whereas a country like the Netherlands has the 'Thorbecke' reality where decentralized governments are not mandated by central government (see Box 11 with 'Food for Thought' on Thorbecke in [§5.8](#)).

There are two recommendations that follow from the above:

- Prioritize high-risk sectors. This review supports the government's intention to apply RPP strategically and focus where there is the most 'bang for the buck'. This includes a focus on high-risk sectors, in line with the Proportionality principle (key in both the EU Directives on procurement and the Dutch Public Procurement Act). However, there are two caveats:
  - In recent years and especially for ISCs, the focus has been much too narrow. The suggestion has been made in various policy documents that ISCs are applied in all high-risk sectors, when in fact they are mandatory for 10 risk categories (not covering all high-risk sectors), for ministries, above the EU threshold. See [Annex 3](#).
  - The government should regularly update its own analysis of what constitutes a high-risk sector. This should be done at least every five years (in line with the principle of Continuous Improvement, about which more below). In the intermediary period, the government should be open to signals from civil society about unknown or insufficiently addressed supply chain issues in sectors not yet identified as high-risk.
- Coordinate procurement per product group and/or sector, for both central and local government entities. The complexity of the public procurement portfolio is another reason for better coordination. If all government bodies buying natural stone – whether the ministry of Infrastructure or a municipality, apply the same sector specific RPP approach this can lead to more efficiency and a more coherent message to the market, with ultimately more impact. This can build on the experience in recent years with category management.

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### CROSS-SECTORAL RISKS

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Another aspect of complexity is that one could look at supply chain risks as a matrix. On one axis you have sectors, on the other major social and environmental risks. Notwithstanding the focus on high-risk sectors and their specific supply chains notwithstanding, some risks are cross-sectoral.

The government in various cases already works on such risks with partners in and outside the Netherlands, aiming to contribute to the SDGs, and is encouraged to continue to do so. This should be aligned with the government's RPP policies. In other words: the category managers or sector leaders within the government's RPP strategy should know the high risks within their sector, and they should know whom within the government (Foreign Affairs, Economic Affairs or other) is working on such issues in international fora. There should be regular exchange to ensure experiences from procurement are fed into the diplomatic work and vice versa.



The report 'Transition for Sale?'<sup>144</sup> of early 2019 recommended to establish a Transition Platform aimed at knowledge development and sharing. This review supports this recommendation and suggests organising knowledge per sector, with close links with on the one hand category managers, and on the other relevant sector initiatives. Such a platform should also serve local governments to ensure one coherent message that moves markets.

Beyond better knowledge management within the Netherlands, there is the potential for more scale, efficiency and impact if public procurement from countries can be aligned. In a workshop on ISCs in February 2019, the organisers invited Karin Lonaeus, who spoke about collaboration between Swedish regions and county councils. By early 2019, they have a cooperation agreement with the central purchasing organisation for Swedish municipalities, and with the national purchasing organisation in Norway. They harmonize requirements, procedures and share audit results (they both travel to countries of origin and contract third party auditors).

Sharing lessons learned is clearly already happening, as Lonaeus was speaking in the Hague. The recommendation is simple: the Dutch government does not procure in a bubble. There is even more scaling if the sectoral approach can be carried out not only as one approach by Dutch central and local government, but jointly with other countries, starting within the EU.

## 7.7 SUMMARY: ADAPTIVE RPP FOR HIGH-RISK SECTORS

In summary, this chapter argues:

- RPP policies should be adapted to the market transition phase a sector is in, with a strategic mix of minimum requirements, award criteria, contract clauses and selection criteria.
- There should be a stronger link between sector specific RPP policies and sector initiatives (possibly by requesting participation in IRBC agreements as selection criteria), with governments not just initiating but also actively participating in such sector initiatives.
- Quality standards can help bring scale. Provided they can demonstrate their effectiveness, they can be included as minimum requirement, as award criterion and/or contract clause.
- Both RPP Action Plans and sector-specific RPP strategies should embrace continuous improvement, with multi-year strategies that clarify not only what annual and three- or five-year goals are, but also what the longer-term desired impact is.
- Focus on high-risk sectors is valid, as long as the Sector Risk Analysis is regularly updated and high-risk sectors each have a government-wide sector-specific procurement strategy.
- This review supports the establishment of a Transition Platform. The suggestion is to organise knowledge per sector, create links with sector initiatives and serve local and central government. If public procurement is truly going to contribute to Sustainable Development Goals, it should maximize its potential and leverage. Markets require one consistent message.

<sup>144</sup> [Transition for Sale?](#), ADBTopconsult, 2019



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## 8 CONCLUSIONS & RECOMMENDATIONS

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### 8.1 CONCLUSIONS

Markets respond best to a consistent and coherent message from policy makers. With its high volume, the potential leverage of Dutch public procurement can move markets. The current RPP policy recognizes this and aims to achieve sustainability goals through public procurement. However, with limited mandatory requirements, sustainable procurement often remains 'encouraged but optional'. Best practices on supply chain due diligence are promising, yet exceptions rather than rule.

1. Responsible Public Procurement (RPP) can be highly relevant to drive more responsible business practices of tendering companies, including more due diligence in supply chains. With Dutch public procurement exceeding € 70 billion per year, the government is an important economic player with substantial influence and potential leverage on high-risk supply chains. Through RPP, governments can reward frontrunners and support sector transformation, enhancing other policy developments and stimulating companies to better address supply chain risks.
2. The EU and national legal framework provide space to apply environmental and social criteria to public procurement. There are limitations within the law, yet current hurdles to more effective implementation appear to lie more with inconsistent policy and limited mandatory requirements. The space provided by the legal framework is currently underutilized.
3. In the 2012-2018 timeframe, the Dutch government has repeatedly expressed ambitions to better apply RPP, with a range of new policy initiatives. Earlier ambitions of 100% sustainable procurement by 2010 (ministries) and 2015 (municipalities) were not fully realized.
4. One of the hurdles is that Dutch ministries do not consider it feasible to set mandatory requirements for local government. Looking for ways to engage all governments, in 2015 a Plan of Action RPP was drawn up, followed in 2016 by a Manifesto signed by 160 government bodies. This has led to increased awareness and has incentivized more than 100 central and local government bodies to develop their own RPP Action Plans.
5. The increased ambition in the wording of the Plan of Action RPP is not yet translated in equally effective policy and implementation, due to inconsistent policy and a lack of scaling. There are few mandatory requirements and no strong guidance on what RPP Action Plans should include. Inspiring best practices of tenders are applying creative award criteria with the potential to move markets. However, these appear to be exceptional tenders by committed teams, rather than consistent messages to the market by one coherent government RPP policy.
6. Looking beyond due diligence in supply chains only, there are ambitious RPP criteria available, but the mandatory level for ministries is often not ambitious enough to move the market. In addition, RPP criteria are often used as a choice between minimum requirements, award criteria and contract clauses, rather than as a smart mix throughout the tendering process.
7. By 2018, the RPP policy has grown into a patchwork of policy themes that are all relevant, but not coherent. The themes do not stem from an overarching vision connecting the different sustainability themes or relating to the Sustainable Development Goals. Rather, they seem to have originated from policy decisions at different points in time. Current policy priorities like climate change and the circular economy appear to overshadow the International Social Conditions (ISCs). Both climate change and other supply chain risks should be addressed, neither should be optional. Notwithstanding tools and assistance offered by Expertise Centre PIANOO, much is left to the commitment and efforts of individual procurement officials.
8. Even in the best practice cases lack of enforcement (both during the procurement process and in the contract phase) remains a major point of concern. This is a disincentive for supply chain due diligence and also limits the potential impact of other RPP criteria (whether applied as minimum requirement, award criterion or contract clause).

9. In 2012, the first pilots to incentivize suppliers to apply due diligence in supply chains were carried out. At the end of 2018, the ISCs are still in the pilot phase. They are only mandatory for 10 risk categories, for ministries, above the EU threshold, as contract clause. As a result, they are mandatory for a small percentage of the total budget of Dutch central and local government combined. Not all public procurement is high-risk, but the current 10 risk categories cover only a portion of high-risk products. A planned evaluation of possibly broadening mandatory application of ISCs is underway as of early 2019.
10. Changing behaviour of tendering companies towards more due diligence (preventing and mitigating supply chain risks) as a result of RPP appears to be more exception than rule. The current fragmentation in policy and implementation is unlikely to incentivize tendering companies towards RBC, yet the potential is much greater if best practices are scaled.
11. Best practices with ISCs as award criteria in addition to contract clauses are promising, challenging suppliers to compete on sustainability. This appears to be most effective when the approach is consistent throughout the tendering process: engaging suppliers in market consultations, using a smart mix of minimum requirements, award criteria and contract clauses.
12. In cases where category management is strategically applied, this approach appears to increase the effectiveness of RPP implementation. An underlying driver for success seems to be collaboration with multi-stakeholder sectoral initiatives like the IRBC agreements.
13. There is high awareness and reasonable buy-in for more RPP practices among public procurement professionals, but they often have an advisory role, rather than a decisive one (especially in local government). To make existing RPP processes more effective, more effort is needed to engage contracting authorities, budget holders and policy makers.
14. To date RPP is not consistently monitored, nor are key performance indicators collected from tenders (related to lack of enforcement). This leads to missed opportunities to steer policy implementation. Late 2018 a self-monitoring tool was developed. Though it is too early to assess its effect, leaving monitoring optional may well result in a less useful management tool.

## 8.2 RECOMMENDATIONS

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### OVERARCHING RPP PLAN WITH MEASURABLE GOALS & MORE MANDATORY REQUIREMENTS

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1. Present one coherent, overarching RPP Plan based on a sound strategy, with measurable goals (linked to the SDGs, the Paris agreement and other sustainability policy the Dutch government has committed itself to) that central and local government commit to work to achieve jointly.
2. Mandate all government entities to develop an RPP action plan, based on the overarching RPP Plan and Strategy. Ensure the goals of individual RPP action plans add up to the government-wide goals. Provide more stringent guidance on what action plans must contain, include mandatory requirements, offer assistance where needed, and require the plans to be made public.
3. Make RPP themes more coherent. Progress International Social Conditions to International Supply Chain Conditions and clarify the relationship with the SDGs. By including social and environmental topics, they become more closely connected to dominant policy themes like climate change and circular economy as well as with the OECD MNE Guidelines and the UNGPs.
4. Using the space within the existing legal framework, apply more mandatory requirements to RPP. For example, require ISCs to be applied as award criteria in high-risk product groups so tenderers can compete on sustainability rather than applying contract clauses only. Strive to apply Best Price/Quality Ratio and include a minimum weight for quality and a maximum for price.

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### INVEST IN SECTOR-BASED RPP STRATEGIES FOR HIGH-RISK SECTORS

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5. Regularly update the Sector Risk Analysis and include all high-risk sectors in the overarching, multi-year RPP Plan with Continuous Improvement as one of its core principles.



6. Consider supply chain due diligence not just a responsibility of suppliers, but also of the government itself (as a powerful economic actor at the beginning of the supply chain). Base investments and participation in high-risk sector agreements on this premise.
7. Produce RPP sector strategies for high-risk sectors based on market consultation, including expertise from in and outside the Netherlands, from sector agreements and standard organisations. Build on experiences with category management and consider applying category management to all product groups that include materials from high-risk sectors.
8. Each RPP sector strategy and category plan should include a smart mix of minimum requirements, award criteria and contract clauses. Set criteria that reward frontrunners and support sector transformation. Gradually raise criteria over time with the principle of Continuous Improvement.
9. Consider options to reward suppliers that participate in relevant sector agreements (possibly through selection criteria) strengthening coherence of IRBC policy overall.
10. Establish a new Platform (or assign responsibility to an existing one) to coordinate sector-based knowledge management, focusing on high-risk sectors known to carry major supply chain risks. Ensure all central and local governments feed in and have access to sector based RPP strategies. Ensure linkage with other countries wherever this increases effective scaling and efficiency.
11. Consider the space provided in Dutch law to apply mandatory requirements to high-risk sectors (e.g. Article 2.114, making Best Price/Quality Ratio mandatory for products from high-risk sectors)
12. Follow-up on EU 2014/24 §95 with sector-specific legislation to set mandatory objectives.

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#### INVEST IN ENFORCEMENT, MONITORING & TRAINING TO ACHIEVE THE MULTI-YEAR RPP GOALS

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13. Invest in an efficient but mandatory system of monitoring and enforcement for both central and local government, directly linked to the measurable targets of the overarching RPP Plan and the RPP Action Plans of individual government entities. Without measurable targets and systematic enforcement and monitoring, achieving ambitious goals is unlikely. Gather annual data on outputs (including enforcement and contract management) and multi-year data on outcome and impact. Consider benchmarking to reward front running governments and incentivize others.
14. Invest in a multi-year training program for key target audiences (including procurement professionals, but also policy makers, budget holders and other key decision makers and contract managers) that contributes to achieving the goals of the overarching RPP Plan.

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#### REVISE ROLES, RESPONSIBILITIES AND ACCOUNTABILITY

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15. Revise and clarify roles and responsibilities of different ministries and improve effectiveness of coordinating bodies. Include regular exchange between those developing and implementing RPP and those active in diplomacy, at embassies, in trade negotiations and EU policy development.
16. Revisit roles and responsibilities within departments and local government offices, ensuring accountability of not just procurement officers but also policy makers and budget holders.
17. Consider actively engaging the umbrella organisations of municipalities (VNG), provinces (IPO) and Water Authorities (UvW) to achieve more consistency in sustainable procurement policies.

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#### THINK AND ACT GLOBALLY AND LOCALLY

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18. Work with the European Commission and other like-minded EU Member States to align policy intentions and approaches towards high-risk sectors. Reopen the debate in the EU about the Procurement Directive, to create opportunities for mandatory RBC requirements and pre- or pro-competitive cooperation between tendering companies, in view of its potential leverage on and scaling up of due diligence practices and sector transformation at EU-level. Follow-up on existing space in the Directive to set sector-specific mandatory requirements.



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## EPILOGUE

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One last shift in perspective. Though it appears a semantic question, it is perhaps more fundamental. Could a government's procurement operations be considered a Multinational Enterprise (MNE) in and of itself? With over €73 billion a year, Dutch public procurement is a powerful economic actor, procuring products and services from all sectors of the global economy.

The 2011 OECD Guidelines for MNEs<sup>145</sup> do not give a precise definition: *“A precise definition of multinational enterprises is not required for the purposes of the Guidelines. These enterprises operate in all sectors of the economy. They usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, State or mixed.”*

Whether or not government bodies can be considered MNEs following this definition, the question is raised here from the perspective of due diligence. Where does the supply chain start, including the responsibility of due diligence? Does the supply chain start with the first-tier suppliers, or with the government as buyer? Is it the government that urges first tier suppliers to apply due diligence, including risk analysis, engagement with the supply chain, mitigation, reporting, compensation etc.? Or does the due diligence responsibility start with the government itself, and should the government carry out the same due diligence activities it expects from first tier suppliers?

To be fair, the Dutch government has taken on parts of these roles, with the Sector Risk Analysis (SRA<sup>146</sup>, due for an update) and with various IRBC sector agreements<sup>147</sup>. The RPP Action Plan and Manifesto demonstrate the intention to apply procurement more strategically towards sustainability goals. However, it would be interesting to base future public procurement laws, policies and strategies<sup>148</sup> upon the principle that the government shares the responsibility with the supplier and should not simply defer to suppliers for this responsibility. One consideration would be to ensure that current and future IRBC sector agreements include explicit measurable goals for public procurement, including active participation and commitment of procurement staff of relevant government bodies.



<sup>145</sup> OECD Guidelines for Multinational Enterprises, [2011 Edition](#), principle 4 on page 17

<sup>146</sup> [CSR Sector Risk Assessment Considerations for dialogue](#), KPMG, 2014

<sup>147</sup> [Website](#) of the SER on multiple IRBC sector agreements

<sup>148</sup> See chapter 7 for more recommendations on a sector-based approach to RPP.

## GLOSSARY

BPQR	Best Price Quality Ratio (applied in award criteria)
CSR	Corporate Social Responsibility (see RBC)
GDP	Gross Domestic Product
ICSR	International Corporate Social Responsibility (see RBC)
IOB	Policy and Operations Evaluation Department of the Dutch Ministry of Foreign Affairs
IRBC	International Responsible Business Conduct (see RBC)
ISCs	International Social Conditions
MEAT	Most Economically Advantageous Tender (applied in award criteria)
MNE	Multi-National Enterprises
MPs	Members of Parliament
OECD Guidelines	Organisation for Economic Development and Cooperation Guidelines for Multinational Enterprises
PIANOo	The Dutch Expertise Centre for Public Procurement (Ministry EZK)
RBC	Responsible Business Conduct (previously referred to as Corporate Social Responsibility, in Dutch <i>Maatschappelijk Verantwoord Ondernemen</i> )
Rijksoverheid	Part of central government, including ministries and executive branches
RIVM	National Institute for Public Health and the Environment
RPP	Responsible Public Procurement (the Dutch term <i>Maatschappelijk Verantwoord Inkopen</i> is sometimes also translated as Sustainable Public Procurement)
SDGs	Sustainable Development <a href="#">Goals</a> (also known as Global Goals)
SER	Social-Economic Council of the Netherlands ( <i>Sociaal Economische Raad</i> )
SRA	Sector Risk Analysis, referring to a <a href="#">report</a> on high-risk sectors by KPMG 2014
SMEs	Small and Medium-sized Enterprises (in Dutch <i>Midden- &amp; Klein Bedrijf</i> )
ToC	Theory of Change, a strategic planning methodology
UNGPs	United Nations <a href="#">Guiding Principles</a> on Business and Human Rights



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## ANNEX 1: PARAGRAPHS 95, 96 AND 97 FROM THE PREAMBLE OF DIRECTIVE 2014/24/EU

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### Paragraph 95

It is of utmost importance to **fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth**. In this context, it should be recalled that public procurement is crucial to driving innovation, which is of great importance for future growth in Europe. **In view of the important differences between individual sectors and markets, it would however not be appropriate to set general mandatory requirements for environmental, social and innovation procurement.**

The Union legislature has already set mandatory procurement requirements for obtaining specific goals in the sectors of road transport vehicles (Directive 2009/33/EC of the European Parliament and the Council (1)) and office equipment (Regulation (EC) No 106/2008 of the European Parliament and the Council (2)). In addition, the definition of common methodologies for life cycle costing has significantly advanced. It therefore appears appropriate to continue on that path, **leaving it to sector-specific legislation to set mandatory objectives and targets** in function of the particular policies and conditions prevailing in the relevant sector and to promote the development and use of European approaches to lifecycle costing as a further underpinning for the use of public procurement in support of sustainable growth.

### Paragraph 96

Those sector-specific measures should be complemented by an adaptation of Directives 2004/17/EC and 2004/18/EC empowering contracting authorities to pursue the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth in their purchasing strategies. It should hence be made clear that, except where it is assessed on the basis of price only, contracting authorities can determine the most economically advantageous tender and the lowest cost using a lifecycle costing approach. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services.

**This means internal costs**, such as research to be carried out, development, production, transport, use, maintenance and end-of-life disposal costs but **can also include costs imputed to environmental externalities, such as pollution caused by extraction of the raw materials used in the product or caused by the product itself or its manufacturing, provided they can be monetised and monitored**. The methods which contracting authorities use for assessing costs imputed to environmental externalities should be established in advance in an objective and non-discriminatory manner and be accessible to all interested parties. Such methods can be established at national, regional or local level, but they should, to avoid distortions of competition through tailor-made methodologies, remain general in the sense that they should not be set up specifically for a particular public procurement procedure.

Common methodologies should be developed at Union level for the calculation of lifecycle costs for specific categories of supplies or services. Where such common methodologies are developed, their use should be made compulsory.

Furthermore, the feasibility of establishing a common methodology on social life cycle costing should be examined, taking into account existing methodologies such as the Guidelines for Social Life Cycle Assessment of Products adopted within the framework of the United Nations Environment Programme.

### Paragraph 97

Furthermore, with a view to the **better integration of social and environmental considerations** in the procurement procedures, contracting authorities **should be allowed to use award criteria or contract performance conditions relating to the works, supplies or services to be provided under the public contract in any respect and at any stage of their life cycles from extraction of raw materials for the product to the stage of disposal of the product**, including factors involved in the specific process of production, provision or trading and its conditions of those works, supplies or services or a specific process during a later stage of their life cycle, even where such factors do not form part of their material substance. Criteria and conditions referring to such a production or provision process are for example that the manufacturing of the purchased products did not involve toxic chemicals, or that the purchased services are provided using energy-efficient machines. In accordance with the case-law of the Court of Justice of the European Union, **this also includes award criteria or contract performance conditions relating to the supply or utilisation of fair trade products in the course of the performance of the contract to be awarded**. Criteria and conditions relating to trading and its conditions can for instance refer to the fact that the product concerned is of fair trade origin, including the requirement to pay a minimum price and price premium to producers. Contract performance conditions pertaining to **environmental considerations** might include, for example, the delivery, package and disposal of products, and in respect of works and services contracts, waste minimisation or resource efficiency.

**However, the condition of a link with the subject-matter of the contract excludes criteria and conditions relating to general corporate policy, which cannot be considered as a factor characterising the specific process of production or provision of the purchased works, supplies or services. Contracting authorities should hence not be allowed to require tenderers to have a certain corporate social or environmental responsibility policy in place.**



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## ANNEX 2: INTERNATIONAL CONVENTIONS REFERENCED IN 2014/24/EU

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Article 18.2 refers to 'Annex X' (the 10<sup>th</sup> Annex to Directive 2014/24/EU)

The full text of Article 18.2 is copied here, with below that Annex X to which it refers.

2. Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X.

28.3.2014

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### ANNEX X

#### LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS REFERRED TO IN ARTICLE 18(2)

- ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;
- ILO Convention 98 on the Right to Organise and Collective Bargaining;
- ILO Convention 29 on Forced Labour;
- ILO Convention 105 on the Abolition of Forced Labour;
- ILO Convention 138 on Minimum Age;
- ILO Convention 111 on Discrimination (Employment and Occupation);
- ILO Convention 100 on Equal Remuneration;
- ILO Convention 182 on Worst Forms of Child Labour;
- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its 3 regional Protocols.



## ANNEX 3: RISK SECTORS, CATEGORIES AND PRODUCT GROUPS

The first table shows the high-risk sectors according to the 2014 SRA. The second table shows the 31 categories to which category management is applied (for ministries, in 2019). The third table shows the names of all 46 product groups on the [RPP criteria website](#) (target audience all Dutch public procurement teams, central and local). Product groups and categories sometimes cover the same (as in Workwear and Office Furniture), at other times one category can include more product groups or vice versa (Energy covers Electricity and Gas).

### High Risk sectors identified by the KPMG Sector Risk Analysis of 2014

- |                 |                        |                           |
|-----------------|------------------------|---------------------------|
| 1. Construction | 5. Financial sector    | 9. Metal / Electronics    |
| 2. Chemistry    | 6. Wholesale           | 10. Oil and Gas           |
| 3. Retail       | 7. Timber and paper    | 11. Textiles and clothing |
| 4. Energy       | 8. Agri & horticulture | 12. Foods                 |

31 categories as in 'Overview contracts category management' by Rijksoverheid (Dutch ministries), 4 March 2019  
The 10 risk categories where ISC are mandatory (above the EU threshold) have an asterisk\* and are in the left column

- |   |  |   |
|---|--|---|
| <ul style="list-style-type: none"> <li>• Catering*</li> <li>• Datacenters*</li> <li>• Data connections*</li> <li>• Energy*</li> <li>• Laboratories*</li> <li>• Office ICT*</li> <li>• Office &amp; computer supplies*</li> <li>• Paper &amp; printed matter*</li> <li>• Resource management and waste disposal*</li> <li>• Workwear*</li> </ul> | <ul style="list-style-type: none"> <li>• Bailiffs</li> <li>• Civil Service Vehicles</li> <li>• Cleaning Services</li> <li>• Communication services</li> <li>• Employability &amp; mobility</li> <li>• Financial &amp; audit services</li> <li>• Flexible workforce</li> <li>• Hotels &amp; meeting accommodation</li> <li>• Learning &amp; development</li> <li>• Legal advice &amp; capacity</li> </ul> | <ul style="list-style-type: none"> <li>• Interim Management &amp; consultancy</li> <li>• Office furniture</li> <li>• Postal services</li> <li>• Professional reading &amp; Subscription</li> <li>• Recruitment services</li> <li>• Relocation services</li> <li>• Security</li> <li>• Standard software</li> <li>• Temporary ICT Staff</li> <li>• Translation Services</li> <li>• Transportation</li> </ul> |
|---|--|---|

46 product groups as on the RPP criteria website (for which environmental and other criteria are available)  
The product groups that fall within the 10 ISC risk categories have an asterisk\*

- |   |  |  |
|---|--|--|
| <p>Automation &amp; telecommunication</p> <ul style="list-style-type: none"> <li>• Audio-Visual equipment</li> <li>• ICT Hardware and Mobile Devices*</li> <li>• Networks, Telephone Services and Telephone Equipment*</li> <li>• Reproduction Equipment*</li> <li>• Toner Cartridges</li> </ul> <p>Energy</p> <ul style="list-style-type: none"> <li>• Electricity*</li> <li>• Gas*</li> </ul> <p>Transport and Transportation</p> <ul style="list-style-type: none"> <li>• International business Travel</li> <li>• Contract Transport</li> <li>• Service Cars</li> <li>• Transport Services</li> </ul> | <p>Civil and hydraulic engineering</p> <ul style="list-style-type: none"> <li>• Civil-engineering Structures</li> <li>• Preservation Works</li> <li>• Pumping Stations</li> <li>• Winter Maintenance</li> <li>• Green Spaces</li> <li>• Earthworks, Preparation of Building Sites and Remediation/Soil Cleaning</li> <li>• Cables and Pipelines</li> <li>• Mobile machines</li> <li>• Mobile machines outsourcing (including personnel)</li> <li>• Public Lighting</li> <li>• Cleaning Public Spaces</li> <li>• Sewerage</li> <li>• Outdoor Furniture</li> <li>• Vessels</li> <li>• Traffic Control Systems</li> <li>• Water Purification and Sludge Treatment Plants</li> <li>• Roads</li> <li>• Heavy-duty vehicles</li> </ul> | <p>Office facilities and services</p> <ul style="list-style-type: none"> <li>• Vending Machines</li> <li>• Workwear*</li> <li>• Catering*</li> <li>• Printing Services*</li> <li>• External Meeting and Accommodation Facilities</li> <li>• Office Supplies*</li> <li>• Office Furniture</li> <li>• Paper*</li> <li>• Workwear Cleaning</li> <li>• Interior Cleaning</li> </ul> <p>Office buildings</p> <ul style="list-style-type: none"> <li>• Management and Maintenance</li> <li>• Catering Equipment</li> <li>• Rental and Purchase</li> <li>• Office Soft Furnishings</li> <li>• New Construction</li> <li>• Renovation</li> <li>• Demolition</li> </ul> |
|---|--|--|



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## ANNEX 4: CONTRIBUTORS

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