



The Hague, 31 January 2019

To: Ms Sigrid A.M. Kaag MA MPhil
Minister for Foreign Trade and Development Cooperation

Re: Report on the oil and gas sector and the OECD Guidelines

Dear Ms Kaag,

On behalf of the National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP), we are hereby sending you the report on the application of the OECD Guidelines in the oil and gas sector in the Netherlands. In this letter we will briefly explain the research assignment, its findings and the NCP's conclusions and recommendations.

I Background

On 17 June 2016, Minister for Foreign Trade and Development Cooperation Lilianne Ploumen and Minister of Economic Affairs Henk Kamp sent the House of Representatives a letter on the progress made in implementing government policy on International Responsible Business Conduct (IRBC) through the IRBC Sector Agreements.

The annexe to the ministers' letter showed that the Dutch oil and gas sector believes that IRBC risks have been adequately addressed at company level and that, internationally, the sector is actively developing RBC risk management systems. The sector therefore sees no added value in a Dutch IRBC Sector Agreement.

The Parliamentary Committee on Foreign Trade and Development Cooperation and the Permanent Economic Affairs Committee held consultations with minister Ploumen on 22 June 2016. At this meeting, several MPs expressed concern at how the establishment of IRBC Sector Agreements was proceeding. Minister Ploumen confirmed that no progress had yet been made towards establishing a voluntary IRBC Agreement in the oil and gas sector. She therefore promised to ask the NCP to investigate this matter, in order to examine whether this sector's business practices comply with the OECD Guidelines.

On 25 October 2016, the Minister for Foreign Trade and Development Cooperation, acting on the government's behalf, requested the NCP to conduct a research and make recommendations.

The NCP drew up a detailed programme of requirements and the Ministry of Foreign Affairs, in close cooperation with the NCP, invited organisations to submit a tender. Following a bidding procedure in accordance with Dutch public procurement rules, the contract was awarded to a consortium consisting of CE Delft and Arcadis.

The NCP established a supervisory committee and a reference group for the research. The supervisory committee consisted of the independent members of the NCP and the NCP-

advisory members from the Ministries of Foreign Affairs, Economic Affairs & Climate Policy, Social Affairs & Employment and Infrastructure & Water Management.

The reference group consisted of supervisory committee members as well as experts with knowledge of the oil and gas sector, drawn from industry (including the sector itself), research institutions, civil society and government.

II Research method

The Netherlands is one of the biggest importers and exporters of oil and oil products in the world, and plays a significant role in supplying oil to Europe due to its considerable refinery capacity and extensive network of ports, storage facilities and pipelines. The oil and gas sector is large and diverse. It comprises the following subsectors: oil processing, extraction of petroleum and natural gas, services for oil and gas extraction (e.g. storage), and oil trading. The research looked at companies that are present in the Netherlands and conduct operations here. Some companies were based in the Netherlands, and some in other countries.

The first phase involved desk research. Companies in the sector were asked to complete detailed questionnaires and provide information on the RBC policy they have adopted and how it has been translated into mechanisms and procedures in specific parts of the value chain. This was done so considering the various themes/issues that companies are deemed to be responsible for under the OECD Guidelines. This includes reporting obligations and complaints and grievance mechanisms allowing internal stakeholders (e.g. employees) and external stakeholders (e.g. local residents) to lodge complaints and seek redress.

The second phase involved a more in-depth analysis of how certain OECD themes/issues are handled in practice (at implementation level). For this purpose, three cases were selected for study, in consultation with the reference group (the case concerning motor fuels was selected at the minister's request):

1. Matters relating to the production and trading of motor fuels for the West African market (known as 'dirty diesel').
2. The sector's responsibility for methane emissions.
3. An analysis of how the sector has responded to earlier notifications handled by the NCP concerning companies in the oil and gas sector.

As the government requested, the research took the form of a **sector scan**. It focused on companies' knowledge of the OECD Guidelines and how individual companies and their value chain partners and associates implement them, and it was supplemented by an in-depth investigation of specific company actions in relation to the three cases mentioned above. The NCP would like to point out that a sector scan differs fundamentally from an investigation carried out by a competent inspectorate with investigative powers. The scan provides a general overview of the measures taken by individual companies to manage risks relating to their OECD-defined responsibilities, but is certainly not intended to catalogue sectoral malpractices.

III Research results

For the purposes of the research, the Dutch oil and gas sector is defined as: all companies that are represented in the Netherlands (e.g. in the form of offices or a plant) and carry out activities here relating to the exploration, extraction, refining and processing, sale, trading or transportation of (fossil fuel) oil and gas products.

Given the broad nature of the assignment, the researchers set out to answer the following two questions:

1. Does the Dutch oil and gas sector operate in accordance with the OECD Guidelines?
2. If this is not the case (at least in certain respects), are companies trying to make improvements in order to comply with the OECD Guidelines, and if so, what measures are they taking?

The research shows that the sector is taking a range of measures that could be viewed as efforts to meet the Guidelines' main requirements. However, the key question is: To what extent are these efforts sufficient, in terms of both quantity and quality, to fulfil the sector's obligations under the OECD Guidelines? We wish to make the following observations.

We will start by addressing the quantity of the efforts.

The research shows that 54% of the respondents say they have an IRBC policy on human rights and 75% on corruption, with higher percentages for the environment (78%) and employment (91%). However, only in two-thirds of the cases has this policy been translated into specific measures and procedures. External audits and disclosure of IRBC policy are even less common. We found that about 30 to 40% of the respondents active in the oil and gas sector publish information on their own IRBC policy, for example by issuing a sustainability report. A similar percentage of companies has a validly certified environmental management system.

Analysis of the completed questionnaires, the case studies and independent information sources further show that compliance with the OECD Guidelines declines significantly in the operational phase (monitoring of performance, transparent communication and providing access to remedy). The research also shows that IRBC policy is implemented less often in the 'trade' and 'distribution to consumers' subsectors. In addition, smaller companies in the sector are less likely to have an IRBC policy than larger companies.

We will now address the effectiveness (quality) of companies' IRBC policy.

The case studies show that the application and implementation of IRBC policy principles in specific, practical situations present major challenges. The three cases selected – measures to reduce methane emissions, production and trading of motor fuels for the West African market, and the handling of issues raised in earlier notifications dealt with by the Dutch NCP – were studied by means of a literature review and interviews with companies and other parties. It was found that companies have difficulty applying their own IRBC policy in practice. This is true with regard to issues both in the companies themselves and – even more so – further down the value chain.

Companies have to operate in competitive markets, and this means that short-term financial advantage may be given precedence over long-term benefits for people, society and the environment. The research shows that companies find it difficult to shoulder their individual responsibility by endorsing and acting in accordance with the OECD Guidelines as long as other parties fail to do so, and they also have difficulty taking effective joint action to improve the situation. This is also apparent from the interviews with companies. Initiatives are launched by some companies, especially large ones, but are slow to come into being.

The case study on the production and trading of motor fuels for the West African market also shows that companies in the sector – both individually and collectively – find it hard to tackle the root causes of environmental and health problems. This picture is supported by the Human Environment and Transport Inspectorate's report on fuel oil for seagoing vessels and motor fuels for West Africa, published on 4 July 2018.

IV The NCP's recommendations to the minister

The government asked the NCP to make recommendations on how the Dutch oil and gas sector can enhance its compliance with the OECD Guidelines in the future. On the basis of the findings set out above, the NCP is making several such recommendations to the minister and the government.

There are major differences between companies, but it is clear that many have not drawn up a detailed RBC policy for dealing with specific problems in parts of the value chain. These companies do not have a clear picture of the risks. In addition, companies commonly report that they have not created a complaints mechanism and have not adopted a policy on how to handle complaints when internal or external stakeholders have suffered adverse impacts.

The NCP advises the government to encourage companies to develop a joint **action plan** for the sector. The plan should address the need for transparency concerning responsible business conduct. It should provide individual companies with guidance on how to translate their policy into specific procedures for monitoring compliance with their responsibilities under the various chapters of the OECD Guidelines.

It is in particular vital for companies to establish a grievance mechanism, as set out in the OECD Guidelines. The system should ensure that complaints by internal or external stakeholders in the value chain are treated seriously and lead to a just outcome. The research shows that most companies in the sector lack such a grievance mechanism. An action plan could set out proposals for this mechanism, and a mechanism could also be considered for the sector as a whole. The plan should cover both companies headquartered in the Netherlands and companies that have their headquarters elsewhere but operate in the Netherlands.

In addition to the general picture outlined above, the research shows that in some subsectors there are particular vulnerabilities, as in the case of the production and trading of motor fuels for the West African market. The Human Environment and Transport Inspectorate's above-mentioned report on fuel oil for seagoing vessels and motor fuels for West Africa confirms the Netherlands' pivotal position in the oil and gas industry. The NCP believes that companies need to take extra measures to ensure that their operations comply with the OECD Guidelines.

A sectoral action plan could include not only additional measures in certain subsectors, as mentioned above, but also extra action on specific issues. The research shows that human rights are an issue; in particular, companies have failed to take measures to ensure that victims of abuses can obtain remedy. Companies could tackle this issue by jointly developing targeted activities and other arrangements.

The research shows that the sector has a problem with transparency and reporting. This includes transparency vis-à-vis third parties, both on company policy and on how it is implemented in the value chain. The case studies, too, found that companies are not very transparent about how they deal with any violations of the OECD Guidelines.

The sectoral action plan could include the provision of information aimed at making companies in the sector more familiar with the OECD Guidelines. Government has a responsibility in this regard, but so does the sector itself.

The sector can make agreements with the government on monitoring compliance with the action plan. IRBC Agreements have proven effective in other sectors and could also be a good way to tackle various issues in the oil and gas sector. It would seem to be important for the Dutch Petroleum Industry Association (VNPI), the Association of Dutch Tank Storage Companies (VOTOB), the Dutch Organisation for the Energy Industry (NOVE) and the

Association of Dutch Suppliers in the Oil and Gas Industry and Offshore Renewable Industry (IRO) to work together.

The Dutch government should reward companies that submit reports in compliance with the OECD Guidelines, and attach consequences to non-compliance with the reporting obligations. Reporting on RBC is a central element of Dutch policy. Transparency is a prime requirement in the dialogue between companies and their internal and external stakeholders on the implementation of the OECD Guidelines. Without the necessary information, no dialogue is possible. Policy coherence means, among other things, that only companies that report on their IRBC policy and activities are allowed to participate in the Dutch government's trade missions or use the various financial facilities available.

To sum up, the research shows that the implementation of CSR in the oil and gas sector is deficient. The level of transparency is insufficient. There are shortcomings in specific companies and specific parts of the sector. Although there have been positive initiatives, they do not adequately fulfil companies' responsibilities under the OECD Guidelines. The organisations concerned need to formulate a targeted action plan. This could take the form of an IRBC Agreement, but other options are conceivable. It is in any event important that the sector makes agreements with the government as well, on how the steps towards improvement set out in the above-mentioned action plan will be enforced, implemented and monitored.

Yours sincerely,

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a long horizontal stroke that curves upwards at the end.

Ms M.J.A. van Putten Dr
Chair of the Dutch NCP

Co-signatories, members of the Dutch NCP:

Ms M.M.C.G. Peters Dr MSc

Mr F.C.A. van Haasteren Dr LL.M

Ms C.E. Passchier LL.M