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A bill introduced by the members Voordewind, Alkaya, Van den Hul and Van den Nieuwenhuijzen providing for rules regarding due diligence in value chains to combat violations of human rights, labour rights and the environment in the conduct of foreign trade (the Responsible and Sustainable International Business Conduct Act (*Wet verantwoord en duurzaam internationaal ondernemen*))

No. 2

BILL

We, Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Orange-Nassau, etc. etc. etc.

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered that, also considering international principles and directives, rules on due diligence in value chains should be identified to combat violation of human rights, labour rights and the environment when conducting foreign trade;

We, therefore, having heard the Advisory Division of the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

CHAPTER 1. GENERAL PROVISIONS

Section 1.1 Definitions

This Act and the provisions based upon it use the following definitions:

a. *stakeholder*: a person or group of persons whose rights or interests are directly affected by a lack of due diligence on the part of an enterprise or organisation whose objectives under their articles of association include protecting human rights, labour rights or the environment;

b. *subsidiary*:

1°. a subsidiary enterprise within the meaning of Article 22(1) to (5) of the Accounting Directive;

2°. an enterprise over which another enterprise effectively exercises a dominant influence; a subsidiary of a subsidiary is also considered a subsidiary of that enterprise;

c. *due diligence*: the continuous process whereby enterprises identify, prevent and mitigate the actual and potential negative impacts of their activities on human rights, labour rights and the environment in countries outside the Netherlands, which those enterprises can use to account for the way they tackle those impacts as an integral part of their decision-making process and risk management system, in accordance with the principles and standards of the OECD Guidelines for Multinational Enterprises;

d. *OECD Guidelines for Multinational Enterprises*: guidelines for responsible business conduct by multinational enterprises, drawn up by the Organisation for Economic Cooperation and Development, including any amendments taking effect on the day when such amendments have to have been implemented;

e. *enterprise*: an enterprise within the meaning of Section 5 of the Commercial Register Act 2007 (*Handelsregisterwet 2007*) or any entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed, including any subsidiaries;

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- f. *the Minister*: the Minister for Foreign Trade and Development Cooperation;
- g. *value chain*: the entirety of an enterprise's activities, products, production lines, supply chain and business relationships;
- h. *Accounting Directive*: Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of enterprises, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJEU 2013, L 176);
- i. *regulator*: the regulator referred to in Section 3.1;
- j. *business relationships*: an enterprise's business partners and other entities in its value chain, including State entities in any way linked to the enterprise's activities.

Section 1.2 Duty of care for every enterprise

1. Any enterprise that knows or can reasonably suspect that its activities may have negative impacts on human rights, labour rights or the environment in countries outside the Netherlands, must:

- a. take all measures that may be reasonably required of it to prevent such impacts;
- b. to the extent that such impacts cannot be prevented: mitigate or reverse them to the extent possible and, where necessary, to enable remediation;
- c. to the extent that such impacts cannot be limited sufficiently: refrain from the relevant activity in so far as that may reasonably be expected from the enterprise.

2. Human rights, labour rights or the environment are negatively affected if the value chain involves, for example:

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

Section 1.3 Scope of application for enterprises on BES islands and abroad

This Act also applies to:

- a. enterprises with their registered offices in the public bodies Bonaire, Sint Eustatius and Saba;
- b. foreign enterprises meeting the requirements of Section 2.1(1)(b) that are engaged in activities in the Netherlands or that market products in the Dutch market.

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CHAPTER 2. DUE DILIGENCE

Section 2.1 Scope of due diligence

1. This chapter and the regulations based on it apply to enterprises:
 - a. engaging in activities outside the Netherlands; and
 - b. exceeding at least two of the three following criteria on their balance sheet date:
 - 1°. balance sheet total: € 20 million;
 - 2°. net revenue: € 40 million;
 - 3°. average number of employees during the financial year: 250 employees.
2. Enterprises must exercise due diligence in their value chain.
3. The obligation of due diligence in the value chain is in any event fulfilled if the rules under or pursuant to this chapter are complied with.

Section 2.2 Due diligence in policies, management systems and business processes

1. Enterprises publish a policy document in which they commit to the obligation of due diligence in the value chain.
2. The policy document includes the enterprise's due diligence plan and in any event relates to the activities of the enterprise and its business relationships.
3. The enterprise ensures that the policy set out in the policy document is implemented in the management system and is part of the regular business process.
4. Pursuant to a regulation by the Minister, further rules may be set for the formation, publication and contents of such policy documents.

Section 2.3 Risk analysis and action plan for negative impacts

1. Enterprises identify and analyse the potential and actual risks of negative impacts in their own activities as well as those of their business relationships.
2. Enterprises draw up an action plan to prevent and mitigate any detected potential and actual negative impacts of their activities and those of their business relationships.
3. Enterprises carry out their action plan and ensure that they adequately tackle any detected potential and actual negative impacts.
4. If an enterprise is unable to tackle all potential and actual negative impacts immediately, it prioritises them based on their severity and likelihood. Once the most severe impacts have been identified and addressed, the enterprise will tackle the less severe negative impacts.
5. Pursuant to a regulation by the Minister, further rules may be set for such risk analyses, action plans and prioritisation.

Section 2.4 Termination of negative impacts

Enterprises cease their own activities if they cause or contribute to negative impacts on human rights, labour rights or the environment.

Section 2.5 Monitoring the application and results of due diligence

1. Enterprises monitor the application and effectiveness of their measures of due diligence.
2. Enterprises implement the conclusions drawn from such monitoring in their action plan, management system and business process.

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3. Pursuant to a regulation by the Minister, further rules may be set for the frequency and substance of such monitoring.

Section 2.6 Reporting on the tackling of negative impacts

1. Enterprises report annually on their due diligence policy and measures, including the findings from monitoring and the results of any measures they have taken.

2. In their reports, enterprises disclose data on the measures they have taken to prevent and mitigate negative impacts, excluding any data that is confidential for competitive or safety reasons.

3. Enterprises report in a manner that is accessible to and appropriate for everyone.

4. Pursuant to a regulation by the Minister, further rules may be set for the substance of such reporting.

Section 2.7 Remediation mechanism

1. Enterprises ensure that a well-functioning remediation mechanism is in place or that it cooperates with an existing remediation mechanism.

2. A stakeholder may use a remediation mechanism to file and submit complaints to an enterprise.

3. If parties differ as to whether an enterprise has caused or contributed to the negative impacts, or they differ about the nature and scope of the remediation, they may submit their dispute to a dispute resolution committee or court of law.

4. Pursuant to a regulation by the Minister, further rules may be set for the remediation mechanism, the dispute resolution committee and the complaints procedure.

Section 2.8 Remediation

1. If an enterprise has caused or contributed to negative impacts, it will offer to enable remediation or contribute to it.

2. Depending on the manner of an enterprise's involvement in a negative impact, the enterprise will take the following steps:

a. if the enterprise has caused a negative impact, it will terminate the activity causing that impact, as referred to in Section 2.4, and remediate the actual impacts;

b. if the enterprise has contributed to a negative impact:

1°. it will cease or prevent such contribution and contribute to remediating the actual impacts;

2°. it will use its leverage to prevent and mitigate the remaining impacts to the extent possible;

c. if there is a direct link between a negative impact and the activities of an enterprise's business relationship:

1°. the enterprise will use its leverage to prevent and mitigate the impacts to the extent possible; or

2°. the enterprise will terminate its business relationship, in accordance with the third paragraph.

3. If a negative impact actually occurs in a business relationship, the enterprise will terminate that relationship responsibly, after having made a sufficient effort to prevent or mitigate the negative impacts, in accordance with b and c of the second paragraph.

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4. An enterprise will in any event have breached its obligation of due diligence if its activity causing or contributing to a negative impact has not been terminated or the stakeholder has not received remediation.

CHAPTER 3. SUPERVISION AND ENFORCEMENT

Section 3.1 Regulator

1. The regulator to be designated by order in council is charged with supervising compliance with the rules laid down under or pursuant to this Act.
2. In addition to the powers of enforcement referred to in Sections 3.2 to 3.5, the regulator may also provide information on the obligations to exercise due diligence.
3. The regulator exercises its supervision on the basis of a supervisory strategy it sets out in an action plan.
4. The supervisory strategy is based on:
 - a. a risk assessment of the sectors and enterprises, with due regard to their size and position in the value chain and the severity of the potential negative impacts of their activities; and
 - b. relevant information on compliance with the rules under or pursuant to chapter 2, including specific filings or reports by stakeholders.
5. The regulator reports on the implementation of the action plan and the results of the supervisory strategy in its annual report.

Section 3.2 An order subject to a penalty

1. The regulator may impose an order subject to a penalty to enforce Sections 2.2(3), 2.3(1) and (3), 2.5, 2.7(1) and 2.8(1) and (2).
2. With due regard to Section 3.5, the regulator will publish the decision to impose an order subject to a penalty once the period within which the order must be carried out has expired or a penalty has been incurred.

Section 3.3 Administrative penalty

1. The regulator may impose an administrative penalty if Sections 2.2(1) and (2), 2.3(2), 2.4, 2.6 and 2.8(4) are breached.
2. If Sections 2.2(1) and (2), 2.3(2), 2.4, 2.6 and 2.8(4) are breached, the regulator may first issue a binding instruction to comply with them. The regulator may set a time limit within which compliance with the instruction must occur.
3. The administrative penalty to be imposed amounts to:
 - a. a maximum fine of the fourth category of Article 23(4) of the Dutch Criminal Code for a breach of Sections 2.2(1) and (2), 2.3(2) and 2.6;
 - b. a maximum fine of the fifth category of Article 23(4) of the Dutch Criminal Code for a breach of Sections 2.4 and 2.8(4).
4. The effect of the decision to impose an administrative penalty will be suspended until the period for objecting or appealing has expired or, if an objection has been filed or an appeal has been lodged, a decision has been taken on the objection or the appeal, respectively.
5. With due regard to Section 3.5, the regulator publishes the decision to impose an administrative penalty.

Section 3.4 Hardship clause

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1. The regulator may refrain from imposing an order subject to a penalty as referred to in Section 3.2(1) or remit the penalty, either wholly or in part, if it would result in extreme unfairness for a certain enterprise.

2. The regulator may refrain from imposing an administrative penalty as referred to in Section 3.3(1) or remit the administrative penalty imposed by in the decision, either wholly or in part, if it would result in extreme unfairness for a certain enterprise.

Section 3.5 Publication of an order subject to a penalty and an administrative penalty

1. Before publishing the decision to impose an administrative penalty or an order subject to a penalty, the regulator will first take a decision on the publication of that penalty or order.

This decision consists of:

- a. the data to be published;
- b. the publication method; and
- c. the time limit within which the decision will be published.

2. The competent authority will only publish the decision ten business days after the day on which the enterprise is notified of the decision.

3. If interim relief within the meaning of Section 8:81 of the General Administrative Law Act (*Algemene wet bestuursrecht*) is sought, the decision will not be published until the interim relief court has handed down its judgment.

4. A decision is published in such a way that it cannot be traced back to individual natural or legal persons if the regulator can establish before publication that if the decision were to be published in full:

- a. the disclosure of personal data would be disproportionate in view of the gravity of the violation;
- b. these persons would be harmed disproportionately; or
- c. it would undermine an ongoing criminal investigation or an ongoing investigation by the regulator.

5. The regulator publishes the submission of an objection or the filing of an appeal against a decision as referred to in the first subsection, as well as the outcome of the objection or the appeal as soon as it is reasonably practicable. The restrictions referred to in the fourth subsection apply *mutatis mutandis*.

Section 3.6 Offence

The following is inserted in alphabetical classification in Section 1 at 1° of the Economic Offences Act (*Wet op de economische delicten*):

The **Responsible and Sustainable International Business Conduct Act** (*Wet verantwoord en duurzaam internationaal ondernemen*), Sections 2.4 and 2.8(4) if an administrative penalty or an order subject to a penalty has been imposed at least twice in the last five years for violation of those sections by an enterprise on the basis of that Act;

CHAPTER 4. FINAL PROVISIONS

Section 4.1 Repeal of the Child Labour Due Diligence Act (*Wet zorgplicht kinderarbeid*)

The Child Labour Due Diligence Act is repealed.

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Section 4.2 The delayed effect of sections in Chapter 2

1. The obligations to adopt a policy document and to incorporate the policy into the management system and the regular business process, as referred to in Section 2.2(1) to (3), are to be met within six months of the entry into force of this Act.

2. The obligations to perform a risk assessment and to prepare an action plan, as referred to in Section 2.3(1) and (2), are to be met within nine months of the entry into force of this Act.

3. The obligations to monitor, as referred to in Section 2.5(1) and (2), to prepare a report, as referred to in Section 2.6(1), (2) and (3) and to have a redress mechanism, as referred to in Section 2.7(1), (2) and (3), are to be met within one year of the entry into force of this Act.

Section 4.3 Transitional provisions for complaints based on former scheme

If a complaint was filed before this Act entered into force on the basis of a former complaint or dispute settlement scheme, the old scheme will continue to apply until the decision of the dispute resolution committee or the judgment of the court has become irrevocable.

Section 4.4 Entry into force

This Act enters into force with effect from 1 January 2023, except for Sections 3.2 to 3.6. Sections 3.2 to 3.5 enter into force with effect from 1 June 2023 and Section 3.6 from 1 January 2024.

Section 4.5 Citation title

This Act will be cited as: The **Responsible and Sustainable International Business Conduct Act**.

Mandate and order that this will be printed in the Bulletin of Acts and Decrees and that all ministerial departments, authorities, councils and civil servants concerned will ensure its precise implementation.

Done

The Minister for Foreign Trade and Development Cooperation.