

Dutch Banking Sector Agreement
on international responsible business conduct regarding human rights

Monitoring Committee

Monitoring and Progress Report Year 2

5 July 2019

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I. Introduction

1. First of all, the Monitoring Committee would like to express its appreciation for the work done by the Parties and the Adhering Banks in the second year of the Agreement. The Monitoring Committee would particularly like to thank the SER IMVO Secretariat for preparing the supporting document in which it compiled the data collected in the webtool. Considering the number of questions and the number of Parties and Adhering Banks, this was no small effort. The Monitoring Committee members are well aware of this, as they had to do the compiling themselves for the Year 1 results.
2. The Monitoring Committee would also like to commend the Parties and Adhering Banks on the progress made in Year 2 of the DBA. Although the reporting provides for some mixed pictures, we appreciate the hard work that is done to establish and improve human rights policies and develop human rights practices. The Monitoring Committee encourages the leaders to keep leading and the others to follow suit and keep up.
3. In this report, the Monitoring Committee reviews the outcome of the second-year survey, carried out in the framework of the Dutch Banking Sector Agreement on international responsible business conduct regarding human rights. This Agreement entered into force on 7 December 2016.
4. According to article 13.2 of the Agreement, the task of the independent Monitoring Committee is to monitor the quality and quantity of the input and the progress made by the parties and the adhering banks in carrying out the activities as agreed upon, based on the principles of reasonableness and fairness (*redelijkheid en billijkheid*) and to report on a confidential basis to the Steering Committee on its findings.
5. For this report, the Monitoring Committee was composed of Ms Christiane Colinet, Attorney at Law at the Bar of Brussels and at the Bar of Florence, Mr Hans Voortman, retired banker and supervisor, and Mr Cees van Dam, Professor of International Business and Human Rights at the Rotterdam School of Management, Erasmus University. The Minister for Foreign Trade and Development and the Minister of Finance appointed the members of the Monitoring Committee upon a binding nomination by the Steering Committee.
6. The Agreement holds provisions on measuring the progress the parties and the adhering banks make by carrying out three annual surveys and a final monitoring report on the overall progress. After signing the Agreement, the parties and the adhering banks agreed to carry out an additional baseline survey ('nul-meting'), in order to document the state of affairs at the parties and the banks as on 7 December 2016.

7. In November 2017, the Monitoring Committee submitted its report regarding this baseline survey.
8. In Q1 2018, the Steering Committee agreed the survey questions for Year 1 reporting, introducing a distinction between Deliverables and so-called Thermometer Questions, i.e. commitments for which the deadline was set for later than 2017. In order to facilitate the reporting of Parties and Adhering Banks, a webtool was conceived to collect the answers and documents given as support to answers. Parties and Adhering banks received the survey and submitted their answers on the webtool in March and April 2018 to be assessed.
9. The Year 1 Draft Monitoring and Progress Report, with its recommendations, was delivered by the Monitoring Committee on 28 May 2018. After answering questions asked by the Parties and Adhering Banks, the Monitoring Committee sent its final report, as well as a summary for publication to the Steering Committee on 5 July 2018.
10. On 9 August 2018, the Year 1 report was published on the DBA-site (part of the IMVO Covenants site), including a summary of the Monitoring Committee's report, answers by the Steering Committee to the Monitoring Committee's recommendations, as well as an analysis of the cocoa sector value chain and the first results of the palm oil value chain.
11. On 2 November 2018, a stakeholder meeting on the DBA and its progress report was called by the SER. Two workshops were organised on the basis of the work done in the working groups: one on the cocoa sector value chain and one on increasing leverage.
12. After its annual evaluation meeting in September 2018, the Parties and Adhering Banks decided to have an Assessment Framework developed by an independent consultant appointed by the SER on behalf of the Parties and Adhering Banks.
13. The scope of this Assessment Framework, developed in Q1 2019 and relating to the DBA requirements for Adhering Banks, was to identify sufficiently objective criteria based on the DBA and agreed by all relevant DBA Stakeholders, to streamline the evaluation process, allowing banks to self-assess their fulfilment with DBA requirements, and providing them practical guidance.
14. The agreed Assessment Framework reviewed the Survey questions, removed redundant questions and reformulated questions not sufficiently aligned to the text of the DBA (section 5). The Assessment Framework further distinguishes between key and non-key deliverables among the DBA requirements to be progressively fulfilled by Parties and Adhering Banks (section 3). It provides guidance by offering indications to interpret the criteria of reasonableness and fairness to be applied by the Monitoring Committee in

monitoring the progress made by the Parties and Adhering Banks. It especially introduces a distinction between two type of banks: Type 1 and Type 2 (section 3.3.1). Type 1 banks are banks active in project finance whereby the projects financed are located outside the EU and/or provide corporate loans to clients that operate in high risk sectors outside the EU and/or are having extensive value chains outside the EU. Type 2 banks do not meet these criteria. This distinction implies different actions through which banks achieve DBA requirements, as explained in the tables reported in section 6 of the Assessment Framework.

15. The final version of the Assessment Framework was communicated in late March 2019. In April 2019, the webtool was amended. In early May 2019, the Parties and Adhering Banks filed their answers, providing a self-assessment of the progress they made in implementing their DBA commitments, using the guidance given in the Assessment Framework.
16. According to the planning and the agreed division of tasks, the SER IMVO Secretariat reviewed the answers for completeness and where necessary asked for further information from the Parties and the Adhering Banks. On the basis of the answers given, the SER IMVO Secretariat prepared a summary of their initial findings on the progress made by Adhering Banks and Parties for the benefit of the Monitoring Committee.
17. Adhering Banks and Parties filled in the further requests for information on the webtool, making them accessible to the Monitoring Committee.
18. The Monitoring Committee accurately analysed the quality and the quantity of the answers given to the questionnaire and the supporting documents. The analysis of the progress made by each single party and adhering bank in the fulfilment of the DBA requirements agreed as this year Key deliverables has been made with the lens of reasonableness and fairness according to DBA art. 13.2.a and as further developed in the DBA Assessment Framework.
19. After this overview of the DBA working process as regards reporting and monitoring, the Monitoring Committee's evaluation report includes the following sections: (II) Key Deliverables for Adhering Banks, (III) Non-Key Deliverables for Adhering Banks, (IV) Key and Non-Key Deliverables for Parties, and (V) General observations and conclusions.

II. Key Deliverables Adhering Banks

A. Preliminary considerations

20. Of the 13 banks that signed the DBA in 2016, ASN Bank incorporated into the Volksbank, FGH into Rabobank (MC Report 2018, § 19) and ASR Bank (a 100% subsidiary of ASR insurance company) quit its participation in the DBA as a consequence of ASR's participation in the IMVO agreement for the insurance sector (MC Report 2018, § 20). This year, Intesa Sanpaolo Bank Luxembourg - Amsterdam Branch notified the Chair of the Steering Committee that, while reasserting its commitment to the requirements of the DBA, it was no longer in the position to participate actively and properly in the Agreement and its requirements (MC Report 2018, § 21). For this decision it gave several reasons, including its position as a branch of a Luxembourg Bank belonging to the Italian Intesa Sanpaolo Group of which group policies it entirely depends, as well as a shortage of human resources especially a skilled CSR officer. Hence, this Year 2 questionnaire has been completed by 10 banks. According to the DBA Assessment Framework, these banks are classified in T1 banks and T2 banks (see paragraph 14 above).
21. In 2018, there were 14 Key Deliverables. According to the Assessment Framework and the essentially progressive implementation of the DBA commitments, Key Deliverables are cumulative and last year's Key Deliverable (*Complaint procedure*, DBA 3.5) is also part of this year's Key Deliverables (*Human rights Policy commitment* DBA 3.1.a, 3.1.b, 3.1.c, 3.1.d, *Whistle Blowing mechanism* DBA 3.4, *Human rights due diligence & client engagement* DBA 4.1, 4.3.a, 4.3.b, 4.3.c, *Transparency & reporting* DBA 6.4.a, 6.4.b, 6.4.c, *Grievance mechanism at the client level* DBA 7.3.a., 7.3.b.) This years Key Deliverables (KD) represent fundamental operational principles that show how the adhering banks effectively implement their responsible business conduct regarding human rights, in line with the OECD Guidelines and UNGPs.
22. The DBA Assessment Framework for this year's monitoring on the quality and quantity of the input and the progress made by the Adhering Banks in carrying out the activities as agreed upon introduces the difference between T1 and T2 Banks as defined in the DBA AF (section 3.3.1). However, the Monitoring Committee would like to stress that this distinction (a) does not exclude other exercises of reasonableness and fairness in the monitoring process; (b) in any case does not mean for any of the Adhering Banks that they do not need to meet the DBA requirements. For the benefit of all Adhering Banks, the Monitoring Committee recalls the key rule in the compliance process that does not seem to be sufficiently used or maybe not understood: comply or explain why

compliance has not yet been possible. Reasoned instances and action plans are tools that help showing the progress made in meeting the agreed commitments.

B. Policy commitment

General observations

23. DBA 3.1 refers to the policies and procedures publicly expressed that reflect the Adhering Banks' commitments to respect human rights in conformity with the OECD Guidelines and the UNGPs.
24. In relation to the DBA reference both to the OECD Guidelines and UNGPs, the Monitoring Committee emphasises that the OECD Guidelines and UNGPs are aligned standards. Due to Ruggies close collaboration with the OECD, the Human Rights chapter of the 2011 OECD Guidelines replicates the UNGPs formulation, the « General Principles » chapter of the OECD Guidelines reiterates the UNGPs formulation of the corporate responsibility to respect Human rights, and establishes a due diligence requirement for all subjects covered by the guidelines¹. Therefore, if Adhering Banks publicise or communicate internally or externally policy statements in different wording, especially if they did not refer to both the OECD Guidelines and the UNGPs, the Monitoring Committee has not considered such differences to be relevant as to the substance of the expressed commitments.
25. The OECD Guidelines and the UNGPs recommend that statements of policies be approved at the most senior level of the business enterprise, be informed by relevant internal and/or external expertise, stipulate the human rights expectations of personnel, business partners and other parties directly linked with its operations and services, be publicly available and communicated internally and externally to all personnel and relevant parties or business partners and be reflected in operational policies and procedures embedded throughout the business enterprise.

Policy statement to respect human rights (DBA 3.1.a)

26. In Year 1, all but two Adhering Banks had a public policy statement to respect human rights (MC Report 2018, § 55 and Appendix B-1). In Year 2, all T1 Adhering Banks, as well as all T2 Banks have a public policy statement to respect human rights in line with DBA 3.1.a.. The statements are often part of the banks' Sustainability Risk Policy. They are publicly available on line. Access to the statement is easy if the HR statement is a stand-alone statement but it can be more intricate to find if it is part of the Sustainability Risk Policy, such as in the case of one bank. As regards this bank, it should be stressed

¹ Ruggie J.G., Tamary N., « Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges », *Corporate Social Responsibility Initiative*, Working Paper n°66, Harvard University (2015) pp. 5-6

that the link given in the tool opens a document that is confusing (47 pages while the pages referred to in the explanation note go up to 80). This has considerably complicated the assessment of this bank. Policy Statements are public documents. The quality of the communication depends on its presentation. It is therefore important that banks' websites provide direct access to the policy statements. They must not be hidden behind or in other policies.

27. The application of the International Finance Corporation Performance Standards or Equator Principles are clearly expressed by the T1 adhering banks and by T2 banks operating in project finance.

Information on activities the individual bank will not finance or invest in (DBA 3.1.b)

28. All T1 adhering banks have developed exclusion lists and client policies that state activities and business conducts that are excluded from financing. Hence, all T1 and T2 banks comply with this deliverable. There are lists of sector/products exclusions, with further description of restricted activities. There are also specific statements on activities and business conduct that is excluded in any case. Some banks also communicate list of fully restricted companies

Statement on Human Rights Due Diligence procedure (DBA 3.1.c.)

29. As regards internal due diligence, the focus is on labour rights, especially gender equality policies. External due diligence usually focuses on clients' human rights due diligence and is embedded in the Adhering Banks' Environmental & Social Risks Assessments. Some banks specifically refer to suppliers and more generally all business partners. Some banks specifically commit to engage continuously with stakeholders. All banks (T1, T2) comply with this deliverable.

Statement on sector/theme policies outlining human rights standards and parameters under which the bank conducts business in sectors that are deemed high risk sectors (DBA 3.1.d.)

30. Some "sensitive" sectors are commonly made an object of special E & S risk policies, like energy (oil, gas, coal, dams and hydro-power), agri-commodities, chemicals, defence, metals and mining/minerals, manufacturing (textile, wood products, electronic devices), shipping and transportation. These sectors are associated with high risk human rights' themes, like indigenous people rights/land rights, forced labour, child labour, and living wages. The most updated documents are in line with DBA 3.1.d. in so far as themes are identified and specified by the sector that qualifies as high risk. Earlier statements do not necessarily follow the wording of DBA 3.1.d. but use terms like 'sensitive sectors' or 'high risk transactions', where the theme is more related to projects (as Hydro-power plants). One bank declared this DBA provision incorrectly not applicable but this bank does focus on sensitive human rights risks in its main sector policies, which cover some of the above-mentioned sectors. All T1 Banks comply with this deliverable, as well as 3 T2 Banks. The other 3 T2 Banks have declared this

provision not applicable.

C. Whistle blower mechanism and complaint procedure

Whistle blower mechanism (DBA 3.4.)

31. All banks comply with this DBA provision, some having recently updated their mechanism and have also introduced the mechanism for staff in their subsidiary's companies.

Complaint procedure which is publicly accessible for employees, clients and third parties (DBA 3.5)

32. This was the only DBA Year 1's deliverable for the Adhering Banks and all adhering banks in this year's review had already fulfilled this DBA requirement last year (Monitoring Report Year 1, III.A). It is worth noting that three banks specifically mention violation of human rights as a ground for complaints.

D. Human Rights Due Diligence & Client Engagement (DBA 4)

General observations

33. DBA 4.1. requires Adhering Banks to implement human rights due diligence in their operations in conformity with the OECD Guidelines and the UNGPs.
34. As regards Key Deliverables on Human Rights Due Diligence & client engagement (DBA 4), the Monitoring Committee would like to recall that human rights due diligence is an on-going, proactive and reactive process. It is anticipated by the policy commitments (and its above mentioned KDs) but goes beyond such public commitments in so far as it implies effective implementation in the bank's day to day operations. As mentioned in the DBA Assessment Framework (section 4), to fulfil the DBA requirements, positive answers have to be documented. It is important in order to show the working process. This did not always happen in the reporting.
35. The requirements of DBA 4 are manifold and it is illusory to pretend that the process can be immediately and completely implemented in all its aspects, especially considering last year's state of affairs of the preparatory stage of development (Monitoring Report 2018, § 60). Significantly, the Key Deliverables for Year 2, analysed below, are also Key Deliverables for Year 3. A positive answer to a KD in this section therefore does not mean that the Adhering Bank can just sit back and relax. A positive answer should be understood as an incentive to further develop the mechanisms that have to be put in place, internally and externally, also by learning from experiences of other Adhering Banks and Parties to the DBA, as well as the outputs of the working

groups.

Human Rights Due Diligence Procedure

36. It needs to be recalled that the distinction between T1 and T2 bank does not imply different DBA requirements. As to the Human Rights due diligence procedure, DBA 4.3 clearly states that at minimum the following three steps should be included: (a) identify and assess actual and potential human rights impacts; (b) integrate the findings from impact assessments across relevant internal functions and processes and take appropriate action; (c) tracking and assessing responses. The fact that T2 banks might achieve DBA requirements through different actions than T1 banks does not mean that these three steps should not be materially implemented.
37. In line with DBA 4.1.a, Human rights due diligence is being implemented by all 4 T1 adhering banks. Three banks provide more detailed information through a specific Human Rights progress report. One bank limits its evidence to general rules of conduct in its Sustainability Framework Policy. Two T2 banks declare to assess Human Rights impacts in their Customer Due Diligence but there was a technical problem getting their most recent documentation. These 2 banks are thus considered in the initial process of implementing a human rights due diligence procedure. The other T2 banks are further advanced in their implementing process and are thus considered mature but they should provide more specific information on their Due Diligence process.
38. All 4 T1 banks have a process to identify and assess human rights' risks and impacts for project finance and corporate lending clients (DBA 4.3.a). Of the T2 banks, four banks are further advanced in their implementing process, but this should be further documented, especially as regards one bank. Two banks have to produce their new documentation in order to allow assessment. Some banks are developing indicators to be used in these E&S risk assessments.
39. In accordance with DBA 4.3.b, all 4 T1 and all 6 T2 banks declare having a due diligence process that integrates the findings from the impact assessments across relevant internal functions and processes and take appropriate actions. One bank wrongly stated that the due diligence procedure is not applicable; its CDD policy document was not available in the tool for assessment. Another bank is still at an initial stage and another bank should further clarify its position. Again, there is a difference between the level of information given: one bank simply refers to its sustainability framework policy, another bank indicates in its Human rights progress report that it is currently developing the human rights due diligence capacities in the E&S staff, whereas two other banks describe roles and responsibilities in their clients checks.
40. All 4 T1 banks declare having processes in place to track and assess responses (DBA 4.3.c). Three banks are developing tracking databases and key indicators as well as

relationships with local experts. One bank refers to its sustainability framework policy and asks for clarification of the question, even though the DBA Assessment Framework offered guidance over this KDY2 (Section 6 - p. 26). Among the T2 Banks, two banks indicate “Not Applicable” with regard to this KD, explaining their specific context of work, while it is a necessary step to comply with the DBA requirements. One bank should clarify how the human rights due diligence process is embedded in the bank’s organisation.

Procedure identifying & addressing – Client processes

41. All 4 T1 banks declare to ascertain that the client processes involve meaningful and effective consultation by their clients with potentially affected groups and other relevant stakeholders and that they address the client in case of negligence (DBA 4.3.a). Pieces of evidence are given by the 3 T1 banks that publish a Human rights progress report. One bank clearly illustrates its procedures to assess client’s performance and progress on agreed action plans and addresses the client in case of default. Among the T2 banks, three banks refer to their specific context of work to exclude a specific process.
42. In the procedure to identify and assess human rights risks and impacts related to the client or the transaction at hand, all 4 T1 banks declare to require information from their clients or prospective clients (DBA 4.3.a). Of the T2 banks only two comply with the requirements. Four banks need to provide more information.

FPIC

43. For clients in project finance, all 4 T1 banks and 2 T2 banks ensure that FPIC or VGGT are carried out and require meaningful and effective consultations with potentially affected groups and other relevant stakeholders (DBA 4.3.a). In its VGGT Land Rights Working Paper, one bank well explains its due diligence process for clients. Some banks have working papers on land rights, others focus on land governance as a theme policy or a salient human rights issue. 3 out of 6 T2 banks are not active in project finance, one bank considers this provision not applicable due its context of work.
44. For clients in corporate loans all 4 T1 banks will actively promote their clients in case of land rights violations to undertake FPIC according to IFC PS or the VGGT and to conduct meaningful and effective consultations with potentially affected groups and other relevant stakeholders when it could be required by IFC PS or VGGT (DBA 4.3.a). For all other T2 banks the provision results in “Not Applicable”, even though in their auto-assessment the banks do not always answer this way.
45. Adhering banks indicate that according to EP they verify the requirement through independent advisors and due diligence processes. All banks also refer to the useful lessons learned from the DBA value-chain analysis.

46. As regards annual reporting to the Steering Committee on the efforts and results in promoting FPIC with clients in corporate loans, it was agreed that Adhering Banks should do this reporting in June 2019.

E. Grievance mechanism client level (DBA 7.3.a.)

47. In case of project finance, DBA 7.3.a provides that banks will require their clients to establish or participate in a grievance mechanism through which grievances concerning the client's human rights performance can be raised by affected communities in line with the UNGPs (Principle 31) and international standards such as the IFC PS or the Equator Principles (Principle 6).
48. More or less the same goes for corporate loans, where banks will "actively promote" grievance mechanisms to their corporate lending clients. (DBA 7.3.b.).
49. This requirement is part of the remediation process. Two banks follow the Equator Principles, one bank the IFC PS. One bank refers generically to its Sustainability Framework Policy. Information given appears too limited to consider the requirement satisfied for this bank. In any case it is also a KD3. The T2 banks show a mixed picture. Since this is also a KD3 requirement, the Monitoring Committee advises the T2 banks to strive to comply fully with KD3.
50. The focal question of such grievance mechanism for the adhering banks is the leverage operated by the bank on the effective working of the mechanism. This surely still has to be more systematically implemented. An important new approach has developed over remedies, the so-called eco-system approach which might also influence the question of grievance mechanisms. In May 2019, the DBA working group 'Enabling remediation' published an interesting discussion paper that will be helpful for Adhering Banks.

F. Transparency and reporting (DBA 6.4)

51. Adhering Banks are supposed to do some preparatory work for human rights reporting. Non-financial reporting is already done by all T1 banks. 3 of 4 T1 banks have already published specific human rights reporting. One bank has still to decide whether it will opt for a separate or integrated reporting format. T2 banks, except for one, are well underway.
52. The deliverable is to develop a reporting mechanism on human rights due diligence in line with DBA 6.4.a, especially including the eight overarching questions of the UN Guiding Principles Reporting Framework.

53. DBA 6.4.b requires publishing detailed information on exposure to economic sectors, in line with NVB Reference for Reporting on Loans, or a list of enterprises the bank has credit or investment relationship with. All T1 banks already comply with this requirement and have a disclosure policy that shows their exposure to economic sectors. 4 T2 banks also comply, one bank is at an initial stage and another bank indicates no progress yet.
54. DBA 6.4.c requires the publication of the bank's investment universe for asset management, with individual listed shares for Dutch clients or a published list of listed companies excluded from such an investment universe on the basis of CSR criteria. Two banks already publish such a list, one bank is preparing it for 2019, for another bank this provision is "Not Applicable". Among T2 banks, three banks publish a list, for the other 3 T2 banks it is "Not Applicable".

III. Non-Key Deliverables Adhering Banks

General observations

55. According to the DBA Assessment Framework (section 3.2), Non-Key Deliverables (NKD) are less prescriptive questions relating to activities agreed upon in the DBA. These questions allow more open answers that indicate the state of maturity in the implementation of DBA requirements. These Non-Key deliverables often relate to next year's Key Deliverables as was the case with Year 1 (« Thermometer questions », Monitoring Report 2018, § 52-53). For such questions the answer provided can indicate a « *mature* » or « *initial* » stage of progress towards DBA commitments. There are also NKD questions intended to serve as a basis for sharing information on good practices as well as implementation challenges. Answers to this last category of questions are « *not rated* » according to the DBA Assessment Framework.
56. Some NKD questions do not appear in the e-tool when they are linked to a KD question to which “Not Applicable” was given as an answer. This is the case for questions 4.1 and 4.2 of the chapter on « Human Rights Policy ».
57. The Monitoring Committee notes that the answers given to open questions are of very different quality. Some being minimal, nearly tautological: for example, to the question « *In case there has been improvements to your human rights related policies since the DBA, will you be willing to share your reflection on potential actions if and when improvements are identified?* » an answer was « *Yes, willing to share* ». It could be a good idea to reformulate questions which are leading to such kind of answers in order to obtain the expected feedback.
58. For the adhering banks, the analysis of the NKD will follow the sequence of the chapters of the DBA they relate to. As indicated above, only NKD which indicate a state of progress towards DBA commitments are reported hereunder.

Human rights commitment (DBA 1.2)

59. Following the wording of article 1.2, Adhering Banks are asked if their organization implements and embeds its responsibility to respect human rights in its operations and confirm to act in conformity with the OECD Guidelines and UNGPs in the full scope of a bank's business activities, in particular: i) for new clients, ii) for existing clients, iii) for the bank's own operations and staff and the bank's subsidiary companies. All banks have answered positively. Some explained this better by references to policies and human rights due diligence procedures. Others have given a simple 'yes' answer. The guidance to the DBA Assessment Framework states that to be considered mature the DBA expects a bank to confirm its commitment to respect HR across its operations. By signing the agreement, the adhering banks have committed to this basic « *responsibility* ». The fact that Adhering Banks all answered positively is an expression

of the responsibility they all have taken. In so far, they all should be considered mature. The question is, however, whether the commitment of the adhering banks is further fulfilled in all its aspects according to the DBA provisions. This is the object and substance of each year's reporting and monitoring. The effective state of progress of this NKD does not result from a simple positive answer to the question asked. It has to result from the fulfilment of the other requirements of the DBA, especially the whole human rights due diligence process which is partly under scrutiny in this year's deliverables.

Policy Commitment

60. Two NKD questions linked to DBA 3.1.c and relative KD, ask the Adhering Banks to provide an overview of their high-risk sector policies and of their high risk theme policies. As such, the answers to these two NKDs appear to overlap and repeat the answers to KD question 4, relating to the inclusion of a *Statement on sector/theme policies outlining human rights standards and parameters under which the bank conducts business in sectors that are deemed high risk sectors* (see above § 30).
61. Adhering Banks were also asked if they are willing to share their reflection on potential actions if and when improvements are identified to their human rights related policies since the DBA. 3 T1 banks explain the progress they individually made since the DBA. T2 banks were not asked (see § 56). It seems that the working groups activities are creating some useful expectations.

Human Rights Due Diligence & Client Engagement (DBA 4)

62. Adhering banks were asked which kind of mapping they use for the identification of human rights risks. All Adhering Banks that answered this question combine geographical and sectorial mappings.
63. Adhering Banks were also asked which kind of tools they use for the identification of human rights risks and impacts. The answers show the use of several tools for identification and assessment of human rights risks as well as further monitoring and management of issues that need mitigation or remedy.

Transparency and reporting (DBA 6.5.a)

64. There are four NKD questions relating to transparency and reporting as regards the provisions of DBA 6.5, especially relating to the most severe human rights impacts.
65. The first question relates to the indication of identified salient human rights issues. All adhering banks appear at a mature stage. One bank expresses some difficulty in answering the question when no severe HR impacts were identified; in such a case the bank should simply state that it has found no violation. Quality and quantity of reporting is, obviously, dependent on the previous identification and material assessment of salient human rights issues for each bank (see above the KD on the due diligence procedure).

66. The second question relates to reporting of the efforts to prevent and mitigate these severe human rights impacts. Here again all banks (except for one) have already begun reporting on the subject.
67. The third question focuses on the number of companies with which there has been high level engagement on the most severe human rights issues. Five banks have already been reporting and are at a mature stage, the other 5 banks are at an initial stage.
68. The last question relates to the public disclosure over these salient human rights issues and over the engagements. All T1 and one T2 bank are at a mature stage, four T2 banks are at an initial stage. One bank considers it not applicable.

IV. Key and Non-Key Deliverables Parties, Working Groups and Joint Commitments

1. JOINT COMMITMENTS

Key Deliverable 2017 (not completed in 2017)

69. A remaining key deliverable for 2017 concerns par. 6.10a, in which the parties committed themselves to jointly explore options for greater transparency and to report on the results including the development of meaningful and effective performance indicators to report on business and human rights.
70. The Monitoring Committee concludes that this deliverable is still not completed in 2018. The parties report that the main challenge is to make KPIs practical in order to be applicable to every bank. The aim is to further develop the existing document (with the help of Shift) into a financial sector supplement to the UNGP Reporting Framework. When this can be achieved, it would go beyond the agreement and it would be a novelty in the market.

Key Deliverables 2018

71. The first key deliverable for 2018 regards the Additional agreements (Recital 13): “Upon successful functioning of this agreement, the Parties intend to add an agreement on one or more other topics covered by the OECD Guidelines after the first monitoring report. The Parties will explore on which topics an additional agreement would be most effective.
72. According to the Monitoring Committee, this deliverable has not yet been completed. A brainstorm meeting is foreseen for July 2019 on whether and if so how an additional agreement or an extended cooperation could add further value after the termination of the DBA in December 2019. The Monitoring Committee urges the parties to make progress.
73. The second key deliverable for 2018 regards Asset management (par. 2.2).
74. The NVB and the adhering banks are of the opinion that this has been delivered with the IRBC Agreements on pensions and insurance. The NGOs would prefer to see whether, and if so how, the asset management activities of the adhering banks are aligned with the IRBC Agreements.
75. The Monitoring Committee observes that this key deliverable has been completed with the signing of the IRBC Agreements on Pensions and Insurance. It is, however, pivotal for the financial sector to avoid gaps between the IRBC Agreements. Hence, it is for the parties to ensure that asset management by adhering banks (in-house investment funds and assets under management of clients as part of discretionary mandates) comply with

the IRBC Agreements. This underlines the importance of a cross Agreements dialogue for all issues overlapping more than one Agreement. The Monitoring Committee urges the SER and the Parties to operationalise such a dialogue.

76. The third key deliverable for 2018 regards FPIC (par. 4.6.b), namely to explore, in a joint initiative with the Land Governance Multi-Stakeholder Dialogue, if and how the broader application of FPIC can take place. This deliverable has been completed.
77. The fourth key deliverable for 2018 is for the Parties to provide recommendations based on this dialogue in international forums. There is no consensus between the parties as to whether this deliverable has been completed. On one hand, the NGOs argue that the adhering banks lack ambition when it comes to the Equator Principles. On the other, the adhering banks argue that their joint letter to EP on designated/non-designated countries shows this ambition. An international conference which is scheduled for November 2019, will include a session on the broader application of FPIC.
78. The Monitoring Committee concludes that this deliverable has not yet been completed. The letter to EP and the session at an international conference are relevant steps but the ambitions set out in the DBA clearly go beyond this. It does not only mention the EP but also the OECD and the IFC PS. The MC appreciates that it may not be possible to complete this deliverable overnight and that recommendations should not be one-offs but rather part of a process to create understanding and acceptance of a broader application of FPIC. It therefore encourages the parties to continue their efforts and their reporting on its progress in 2019.
79. The fifth key deliverable for 2018 regards the advice from parties to adhering banks to integrate the Enabling remediation results, considering the effectiveness criteria of Principle 31 of the UNGPs (par. 7.4.d).
80. The report on Enabling remediation has been published very recently and the parties have not yet been able to advise adhering banks on appropriate integration steps. This means the deliverable has not yet been completed but for an understandable reason. The Monitoring Committee encourages the parties to complete this deliverable in due course.
81. The sixth key deliverable for 2018 regards the dialogue/best practices on due diligence with regard to corporate lending and project finance (art. 4.5).
82. The Monitoring Committee concludes that this deliverable has been completed. It is now for the Parties and the adhering banks to report on the progress made, as detailed in par. 13.2 DBA.

Non-Key Deliverables 2018

83. The first thermometer question regards the geographical breakdown of sector data (par. 6.10 b) is work in progress because the transparency working group first needs to finalise the KPI's (initial stage).
84. The second thermometer question regards the discussion on how client confidentiality relates to transparency (par. 6.10.c). The Monitoring Committee considers this non-key deliverable as not yet completed.
85. The outcome of this process was the legal advice by law firm Nauta, concluding that sharing client information is only possible with the client's approval, provided that none of the disclosure prohibitions under the *Market Abuse Regulation* and the *Wet ter voorkoming van witwassen en financieren van terrorisme* are applicable. This aspect is a challenge, if not a barrier for the implementation of the DBA. Banks are hesitant to deviate from standard market loan documentation, including a confidentiality clause. They fear this might harm their commercial interests, as clients may change banks. NGOs feel that banks should try harder to ask for client approval.
86. The Monitoring Committee observes that achieving an international level playing field is important and should be a priority. Whilst it is self-evident that banks must protect their commercial interests, this cannot be an argument to keep things as they are. Greater transparency and better reporting are part and parcel of the UNGPs. The adhering banks and the NVB are therefore encouraged to play an active role in this respect and to create leverage, nationally and internationally, to push this topic and make real progress.

Observations on Joint Committees

87. *Key deliverables*
 - The 2017 deliverable is still not completed (performance indicators for reporting). This is a document eagerly awaited, as it will have great added value for the market.
 - Of the 2018 deliverables, three out of six are completed: broader application of FPIC part 1, dialogue re corporate lending/project finance, and asset management (see our remark regards the latter in § 75).
 - Three out of six of the 2018 deliverables have not been completed: broader application of FPIC part 2, enabling remediation results and recommendations, and additional agreements.
 - For two out of these three, there are credible reasons for the delay: additional agreement, enabling remediation results.
 - For the remaining one relevant progress has been made but more needs to be done to bring these deliverables to completion (FPIC part 2).

88. *Non-Key Deliverables*

Both thermometer questions are work in progress: the geographical breakdown of sector data awaits the results of the transparency working group, and the confidentiality discussion. The latter is one of the biggest challenges of the DBA. The Monitoring Committee provides its views in section V.

2. WORKING GROUPS

Working group ‘Enabling remediation’

89. This was a key deliverable for 2017, in which it was not completed. In par. 7.4.a, parties agree to set up a working group to explore when a bank is deemed to be ‘linked to’, ‘contributing’ or ‘causing’ to adverse impacts following their financing activities in specific cases and how the adverse impact in these instances could be addressed or remediated in conformity with the OECD Guidelines and the UNGPs.
90. This deliverable was completed late, in the spring of 2019. The reasons given for this delay were that discussions took much longer than expected, that participation in the working group by the adhering banks changed over the years, and that sometimes expectations of the parties and the adhering banks differed.
91. The paper can be seen as one of the key results of the multi stakeholder approach of the DBA. The working group has been able to influence the OECD process and the paper was welcomed by the OHCHR.

Working group ‘Increasing leverage’

92. The deliverable for the Working group ‘Increasing leverage’ follows from par. 9.1, in which the parties and the adhering banks committed themselves to publishing a study on good practices of how to increase leverage when supporting companies, to improve responsible business conduct regarding human rights for the different types of financial services, including corporate lending and project finance. This study will include different categories of ways to increase leverage.
93. This deliverable was set for 2017 and completed in 2018. A first draft was completed in the first half of 2018 and was based on the SILA study and working group discussions. The final version was published in August 2018. Before summer 2019, the working group will publish the progress made and the lessons learned.
94. The Monitoring Committee concludes that this deliverable has been successfully completed. This is particularly important because it is one of the DBA’s key elements. Obviously, it is pivotal that the findings of the report are put into practice and that experiences with increasing leverage are documented and reported. The Monitoring

Committee therefore appreciates the working group's aim to report on the progress made.

Working group 'Value Chain'

95. This deliverable follows from par. 5.2 and 5.2.a, in which parties and adhering banks agreed to jointly carry out value chain mapping exercises of high-risk sectors that are material to the banks and jointly commission a third party to facilitate this process.
96. The Monitoring Committee observes that one value chain report was published on cocoa and that an interim report was published on palm oil, but that the mapping exercises were not completed. This means that the deliverable has not been completed, as par. 5.2 DBA holds that two sector-specific value chain mapping exercises would be undertaken in parallel, which amounts for each year of this agreement to a minimum of 2 and a maximum of 4 sector-specific value chain mapping exercises.

Working Group 'Matrix/Database'

97. This working group was dissolved and merged into the value chain working group when it became apparent that much of the required information is partly publicly available and integrated by banks in their financing decision making, and partly cannot be collected in a matrix database.
98. The Monitoring Committee observes that this deliverable was **not completed** due to a 'supply and demand' gap. Although CSOs and Trade Unions may be able to supply information on a case by case basis through their experts and networks, one obstacle was that banks are unable to request information on specific cases due to their client confidentiality duty. It was not possible to draft a database that banks could use to browse without the need for sharing client information. A different database will be reconsidered following one of the recommendations of the palm oil value chain exercise: Trade Unions intend to map the existence of collective bargaining agreements on palm oil plantations, which can be used by banks.

Observations on Working groups

99. The findings on the working groups provide a somewhat mixed picture. On one hand, the Working Group 'Enabling remediation' and the Working Group 'Increasing leverage' completed their deliverables. The Monitoring Committee is pleased to see the completion of these two key deliverables of the DBA. On the other hand, two working groups did not complete their works: the Working Group 'Matrix/Database' because of mainly practical issues (such as no available 'ready to share information') leading to its dissolution, and the Working Group 'Value Chain' because of various issues. The latter working group still has time to make progress. This is important, as it provides another valuable outcome of the DBA process.

3. NEDERLANDSE VERENIGING VAN BANKEN

Key Deliverables 2018

100. The NVB completed the deliverables to encourage adhering banks on policy commitment and to supporting adhering banks on policy commitment (par. 3.3).

Independent voluntary advisory expert mechanism

101. The NVB set up and appointed members of an independent voluntary advisory expert mechanism (par. 7.6-7.8). This aspect of the deliverable has been completed.
102. The NVB stated that the recommendations of the Working Group Enabling Remediation (ER) could not be used as input for the mechanism, as the ER paper was not yet finished when the mechanism was established. Because one of the drafters of the ER paper is also a member of the panel, the NVB expects the panel to take the recommendations on board.
103. The Monitoring Committee considers it important for reasons of transparency that NVB reports on how the panel will use the Working Group ER's recommendations as input for its mechanism.
104. The NVB stated that it had carefully considered the experts for the voluntary advisory expert mechanism suggested by the Trade Unions and the CSOs but that it had chosen other candidates who it thought were more suitable for the composition of the Panel.
105. According to the Monitoring Committee, this statement does not explain the selection criteria for the panel members, nor how this panel reflects the interests that are potentially at stake in the cases that will be brought before it.
106. This deliverable is at an initial stage but the Monitoring Committee appreciates that already seven banks have agreed to participate in the Panel. The Monitoring Committee invites the NVB to provide an update on the progress made in the final reporting.

Non-Key Deliverables 2018

107. The NVB's participation in working groups shows a mixed picture. Generally, it was 90+% but lower in the Value Chain Groups (palm oil and gold). The Enabling Remediation group was facilitated by adhering banks. The same goes for the Value Chain groups but here the NVB was represented in the working groups palm oil and gold by one of the adhering banks. NVB actively participated in the IL and the TR (mature stage).
108. The NVB endorsed banks to sign the DBA and it promoted the OECD Guidelines and the UNGPs among its members (mature stage).

109. The NVB also stated that it supported adhering banks in implementing human rights due diligence (HRDD) (par. 4.4.a). This support consisted in advising smaller banks on how to formulate and implement their human rights policy and in discussing the context of human rights and the UNGPs and OECD Guidelines in the Netherlands. In 2019, NVB organised a workshop on HRDD, though it did not provide an overview of the number of participants and the content of the workshop. NVB also organized exchanges on due diligence, reporting and grievance mechanisms. Apparently, this happened with adhering banks but, again, it was not clear how many participated. The NVB also paid attention to the smaller banks in terms of individual support.
110. The Monitoring Committee observes that progress is made (mature stage) but would appreciate a more specific account and breakdown of the activities in order to properly assess the progress.
111. The NVB stated it generally promoted a broader application of FPIC (par. 4.6.a). However, it did not substantiate how it did so in practice. Apparently, it did not address the issue in the mentioned international forums. The NVB also explained that it did not engage with the EP as such, as this is not in NVB's remit but it plans a conference on Banking & Human Rights for international (EP) banks.
112. The Monitoring Committee observes that there is room for improvement (initial stage) when it comes to this 2019 deliverable. Addressing the FPIC at international forums has hardly happened yet (apart from a presentation at an OECD workshop). The NVB referred to its activities with respect to the EP, in which it was represented by banks, as well as a session it organised with the LANDDialogue.
113. The NVB promoted the principle of maximum transparency/disclosure by encouraging banks to use the NVB reference for Reporting on Loans (par. 6.1). It did not use the information itself (par. 6.2) as it is not relevant for a trade association like the NVB.

Observations on the Nederlandse Vereniging van Banken

114. *Key deliverables*
- The Monitoring Committee observes that two of the three 2018 key deliverables were completed (encouraging and supporting adhering banks on their policy commitment).
 - The independent voluntary advisory expert mechanism was set up, which is an important step but there are still some question marks left that require follow-up or need more explanation:
 - The way the Enabling Remediation working group's recommendations are being followed up by the panel.
 - The reason why candidates for the panel suggested by the Trade Unions and the CSOs were less suitable than the ones appointed.

115. *Non-Key Deliverables*

The results of the Non-Key Deliverables were somewhat disappointing and give reason for concern:

- The NVB participated in the working groups, to some extent by representation through banks.
- The NVB supported adhering banks in implementing HRDD but the reporting could have benefited from more substance.
- The NVB's promotion of a broader application of FPIC is limited providing room for improvement.

116. The lack of substantiation was a recurring issue in the NVB's reporting. The secretariat had to ask further questions to correct this and even then the answers were not always impressive on substance. Last year, the Monitoring Committee observed a similar problem. This is not helpful for the work of the Monitoring Committee in particular and the progress of the DBA in general.

4. GOVERNMENT

Key Deliverables 2018

117. The key deliverable for the government for 2018 was to support adhering banks on their policy commitment (art. 3.3). The government states that it repeatedly offered support, but that the adhering banks did not accept it and/or did not ask for support.

118. Although the Monitoring Committee observes that this deliverable can be considered to be completed, the reporting shows that there is room for improvement when it comes to the way the parties and the adhering banks work together to achieve the aims of the DBA. The DBA is not only about the deliverables as such but also about cooperation where possible to achieve better and more sustainable results.

Non-Key Deliverables 2018

119. The government actively participated in the working groups with an attendance of 90% or more. This applies to all working groups: ER, VC, IL and TR. The government also stimulated banks to endorse the DBA (art. 1.5) (mature stage).

120. The results have not yet been taken to the EU and OECD level (art. 11 g), but the Dutch IMVO policy was explained at EU/OECD and UN level, as there were no results yet to share (initial stage).

121. The government encouraged other states to stimulate their banks to act in line with the OECD Guidelines/UNGPs (art. 11 i) (mature stage).

122. The government did not encourage other states to stimulate their banks to become EP members (art. 11 j), as the focus is on promoting DBA and level playing field on UNGPs/OECD GL (initial stage).
123. The Government supported adhering banks in implementing HRDD (art. 4.4) and promoted a broader application of FPIC (art. 4.6.a) at the OECD level (re food and agricultural sectors) (mature stage). Additionally, the Dutch Government Delegates have been active supporting stronger language on land governance and FPIC in the Environmental and Social Framework (ESF) of the World Bank, which applies to all new World Bank investment project financing.
124. The government promotes value chain transparency in the other IRBC agreements and seeks a customised approach for each sector and the different needs of each sector to improve their due diligence. The Government expects every agreement to contain commitments on transparency, due diligence (know your value chain) and leverage, which are all elements of the value chain analyses done by the DBA. The Government only made general requests to parties to those agreements to make mapping public.
125. The Monitoring Committee observes that it is not clear from the Government reporting whether and if so how, it promoted similar value chain mapping exercises in other IRBC agreements (art. 5.2.a). The cooperation between the gold agreement was initiated by the SER, not the Government (initial stage).
126. The Government did not use the information of Reference for Reporting on loans (art. 6.2) as this information is not relevant to the government.
127. The Government called upon pension funds, insurers and institutional investors to conclude IRBC Agreement (art. 2.2) (mature stage).
128. As regards sector specific commitments, (art. 11.a-11.n) the Government:
- received information requests for information on actual/potential human rights impacts of other parties
 - supported parties/banks to implement DBA through diplomacy
 - urged NVB members to adhere
 - made clear how competition affects mutual agreements
 - amended Policy Rule on Competition and Sustainability was put into effect
 - put issue of competition law/sustainability on EU agenda
 - incentivized RBC in general
 - fulfilled the tasks re Export Credit Agencies (Atradius)
129. However, the Government:

- did not receive requests to support parties/banks to increase leverage
- cooperated with the ECA and adhering banks in due diligence matters but it is not clear how the government provides support in these joint deals.
- did not consult on the report of the Council of Europe on business and human rights but plans to do so in 2019.

Observations on the Government

130. The Monitoring Committee concludes that the Government has conducted most of its thermometer activities for 2018 (mature stage). It also observes that there is room for improvement on a number of issues.
131. On the question re competition law, the Government only referred to the ACM guidelines. The MC considers this a hands-off approach. More tailored and active support is needed on what is and what is not possible for banks to cooperate, particularly given the difficulties adhering banks experience in the DBA due to competition law. They are still hesitant to exchange their approach to human rights due diligence, even though it is unclear how exactly these exchanges would eventually limit competition. This means that the ACM guidance on the boundaries of competition law does not provide sufficient guidance. As part of the DBA's success depends on cooperation and exchange of information, the Government is encouraged to take on a clarifying, sector specific, position here.
132. On the thermometer question regarding obstacles, the Government answered that it was not made aware of regulations that are obstacles for the implementation of the UNGPs and the OECD GL. However, the government should have been aware that competition law and standard loan documentation (including confidentiality clauses) pose obstacles for banks to communicate on human rights impacts. The latter (the confidentiality clauses) are not regulations, but standard market documentation made by industry bodies and these bodies might be susceptible for government influence. Although a first effort (a letter to the LMA) has not been successful, the Monitoring Committee invites the Government to keep developing effective steps and policies in this respect.

5. TRADE UNIONS

5.1 CNV

Key Deliverables 2018

133. CNV completed the deliverable for 2018 by supporting the adhering banks on their policy commitment (art. 3.3).

Non-Key Deliverables 2018

134. CNV reported that it actively participated in the working groups with an attendance of 90%.
135. The Monitoring Committee understands that this participation partly happened by proxy through other parties. It participated directly in the Value Chain Working Group and in the Steering Committee (mature stage).
136. CNV have not yet stimulated other banks to endorse the DBA (art. 1.5).
137. CNV supported adhering banks in implementing human rights due diligence (art. 4.4). It did not actively promote a broader application of FPIC (art. 4.6.a), as this was mainly a topic of the NGOs (mature stage).
138. CNV used the information of the Reference for Reporting on loans (art. 6.2), it shared expertise with parties/banks (art. 12.a-12.f) by providing information/perspectives it had easier/better access to, it contributed to the prioritization of risks based on its expertise, it interacted on themes for mutual learning and improving the situation for communities and it contributed to the improvement of civic space (mature stage).
139. CNV did not receive requests from other parties or adhering banks for support.

Observations on CNV

140. The Monitoring Committee concludes that CNV's deliverable for 2018 was completed and that moderate to good progress was made on the Thermometer questions.

5.2 FNV

Key Deliverables 2018

141. FNV reported that it did not have the staff capacity to complete this deliverable by supporting adhering banks on their policy commitment (art. 3.3).
142. The Monitoring Committee observes that FNV's key deliverable for 2018 has not been completed.

Non-Key Deliverables 2018

143. FNV reported that it did not actively participate in the working groups with an attendance of 90% or more.

144. The Monitoring Committee understands that this participation partly happened by proxy through other parties. It participated directly in the Value Chain Working Group and in the Steering Committee (initial stage).
145. FNV stated that it did not have the means to stimulate banks to endorse the DBA. It also stated that it supported adhering banks in implementing human rights due diligence but it is not clear to the Monitoring Committee how this happened (initial stage).
146. FNV neither promoted FPIC (art. 4.6.a), nor addressed a broader application at international forums. It did not use information of Reference for Reporting on loans (art. 6.2).
147. FNV did not share existing or tailor-made expertise (art. 12.a-12.f) (initial stage).
148. FNV provided information or perspectives that FNV have easier or better access to, inter alia by inviting a colleague from Indonesia on palm oil matters with one of the adhering banks.
149. The Monitoring Committee observes that this person from Indonesia works for FNV Mondiaal, which is a separate legal entity and not a party to the DBA. This person actively assisted CNV with the palm oil fieldtrip and gave banks access to information and stakeholders on the ground but this was not due to FNV's own activities (initial stage).
150. FNV did not contribute to prioritisation of risks based on its expertise or interaction on themes for mutual learning and improving the situation for communities. Its contribution to improvement of civic space remains unclear (initial stage).
151. FNV did not receive any requests by the Parties and/or adhering banks for solutions to problems.

Observations on FNV

152. The Monitoring Committee observes that the 2018 key deliverable for FNV was not completed.
153. On the Thermometer questions, the Monitoring Committee observes that FNV regularly reported that it did not make progress. In the instance it did report progress, this was not due to FNV but to FNV Mondiaal, which is not a party to the DBA.
154. The Monitoring Committee also observes that FNV regularly raises the point that it does not have the means to fulfil its obligations under the DBA. This statement is at odds with

the government funding FNV receives for this purpose and requires further explanation from FNV.

6. CSOs

6.1 *Amnesty International*

Key Deliverables 2018

155. Amnesty International completed the deliverable for 2018 by supporting the adhering banks on their policy commitment (art. 3.3).

Non-Key Deliverables 2018

156. Amnesty International actively participated in the working groups and attended three out of four groups with an attendance of 90% or more and one by proxy through an CSO representative. In the TR Working Group Amnesty International was represented by a joint NGO representative (mature stage).
157. Amnesty International stimulated banks to endorse the DBA (art. 1.5) and supported adhering banks in implementing human rights due diligence (art. 4.4). It did not promote a broader application of FPIC (art. 4.6a) as this is not one of its focus points but it did support Oxfam's efforts in this respect (mature stage).
158. Amnesty International used the information of Reference for Reporting on loans (art. 6.2) but did not consider them very useful.
159. Amnesty International shared information on 'empowering ways of interaction local stakeholders' and 'local evidence gathering' with Parties and banks (art. 12.a-12.f) and undertook a range of activities In this respect. Together with Oxfam and FMO, it initiated a meeting on human rights defenders and shrinking civic space. In the context of the palm oil working group, it shared information and expertise on the situation of HRDs/local communities that focus on labour rights violations. In the working group Enabling Remediations, it gave input on cases to be discussed, in which the group elaborated on possible local situations and needs of local communities/people. Finally, it took part in meetings to evaluate the Dakota Access Pipeline case and shared its perspective on engagement with local communities. The reports Amnesty International shared with the parties/banks, include an explanation of how it gathered the evidence at the local level (mature stage).
160. Amnesty International provided information/perspectives it has easier/better access to. It contributed to prioritisation of risks from expertise and there was interaction on themes for mutual learning and improving situations for communities (mature stage).

161. Amnesty International did not receive requests from parties or banks for support, other than supporting the adhering banks on their policy commitment.

Observations on Amnesty International

162. The Monitoring Committee concludes that Amnesty International's deliverable for 2018 was completed and that overall good progress was made on the Thermometer questions.

6.2 Oxfam Novib

Key Deliverables 2018

163. Oxfam/Novib **completed** the deliverable for 2018 by supporting the adhering banks on their policy commitment (art. 3.3).

Non-Key Deliverables 2018

164. Oxfam/Novib actively participated in three out of four working groups with an attendance of 90% or more (no participation in the ER working group) and no participation in the VC groups on gold and oil/gas (mature stage).
165. Oxfam/Novib stimulated banks to endorse the DBA (art. 1.5) and in implementing human rights due diligence (art. 4.4). It promoted a broader application of FPIC and addressed it at international forums (mature stage).
166. Oxfam/Novib did not use information of the Reference for Reporting on loans (art. 6.2) as it considered it not to be very useful.
167. Oxfam shared information on 'empowering ways of interaction local stakeholders' with Parties and banks. In the context of the FPIC workshop for representatives of adhering banks (2019), Oxfam shared several specific examples, demonstrating the importance of meaningful engagement with local stakeholders (mature stage).
168. Over 2018, Oxfam/Novib did not receive any requests from the adhering banks or other parties to facilitate specific with local stakeholders.
169. Oxfam/Novib provided information/perspectives it has easier/better access to. It contributed to prioritisation of risks from expertise. There was interaction on themes for mutual learning and improving situations for communities. Oxfam/Novib also contributed to the improvement of civic space (mature stage).
170. Oxfam/Novib did not receive requests from parties or banks for support, other than supporting the adhering banks on their policy commitment.

Observations on Oxfam/Novib

171. The Monitoring Committee concludes that Oxfam/Novib's deliverable for 2018 was completed and that overall good progress was made on the Thermometer questions.

6.3 Pax

Key Deliverables 2018

172. Pax completed its key deliverable for 2018 by supporting the adhering banks on their policy commitment (art. 3.3).

Non-key Deliverables 2018

173. Pax actively participated directly in two out of four working groups with an attendance of over 90% (ER and VC, except for cocoa and palm oil) and was represented in the TR group and the IL group through a mandated joint NGO representative (mature stage).
174. Pax stimulated banks to endorse the DBA (art. 1.5) and supported adhering banks in implementing human rights due diligence (art. 4.4). It promoted broader application of FPIC and addressed this at international forums (mature stage).
175. Pax did not use information of the Reference for Reporting on loans (art. 6.2) as it considered not to be very useful.
176. Pax shared information on 'empowering ways of interaction local stakeholders' with Parties and banks. This happened in specific cases, such as the Lundin case and the Dakota Access Pipeline case, explaining to banks how they could engage with local communities. Within the working group ER Pax shared its experiences from projects it works on. Within the Value Chain working group on Gold and in conversations outside the working group, Pax promoted the broader application of FPIC. As a member of the Fair Banking Guide, Pax and Amnesty International published a human rights report for the Dutch banking sector, with indicators on community engagement, engaging with other local stakeholders (mature stage).
177. Pax provided information/perspectives that Pax had easier/better access to. It contributed to prioritisation of risks from expertise. There was interaction on themes for mutual learning and improving situations for communities. It also contributed to the improvement of civic space (mature stage).
178. Pax did not receive requests from parties or banks for support, other than supporting the adhering banks on their policy commitment.

Observations on Pax

179. The Monitoring Committee concludes that Pax' deliverable for 2018 was completed and that overall good progress was made on the Thermometer questions.

6.4 Save the Children

Key Deliverables 2018

180. Save the Children completed its 2018 key deliverable by supporting the adhering banks on their policy commitment (art. 3.3).

Non-Key Deliverables 2018

181. Save the Children actively participated in one out of four working groups with an attendance of over 90% (VC, except for palm and oil/gas). It was represented in the TR group through a mandated joint NGO representative (mature stage).
182. Save the Children did not stimulate banks to endorse the DBA (art. 1.5), mainly because it joined later but it promoted DBA on several occasions. It supported adhering banks in implementing human rights due diligence (art. 4.4) (mature stage).
183. Save the Children did not promote broader application of FPIC and did not address it at international forums, as it is not within Save the Children's expertise.
184. Save the Children did not use information of the Reference for Reporting on loans (art. 6.2) as it considered it not to be very useful.
185. Save the Children stated that it shared expertise (art. 12.a-12.f). However, it is unclear what it did in terms of local evidence gathering and empowering ways of interaction with local stakeholders. A supplementary question remained unanswered (mature stage).
186. Save the Children provided information/perspectives it has easier/better access to. It contributed to prioritisation of risks from expertise. There was interaction on themes for mutual learning and improving situations for communities. It also contributed to the improvement of civic space (stage).
187. Save the Children did not receive requests from parties or banks for support, other than supporting the adhering banks on their policy commitment.

Observations on Save the Children

188. The Monitoring Committee concludes that Save the Children's deliverable for 2018 was completed and that overall good progress was made on the Thermometer questions.

V. Concluding observations and recommendations

Introduction

189. Following the specific observations made in sections II.-IV, the Monitoring Committee would like to make some general observations regarding a number of overarching and intertwining aspects. They do not focus on individual banks and parties but on the DBA, its functioning and its added value. These observations concern reporting issues, working groups, competition law, confidentiality clauses and an assessment of overall progress.

Reporting issues

190. The Monitoring Committee also observes a lack of commitment and a lack of urgency with at least some of the Parties and particularly some Adhering Banks. The lack of commitment is, for example, visible in the way the questions for this monitoring report were answered by a number of Parties and Adhering banks. Despite the warning in our Year 1 report, in too many instances, the SER had to ask additional questions to add, clarify or specify information. The information given was by times too general and inaccurate where sample checks by the Monitoring Committee did not confirm information given by the Adhering Banks.

191. For the proper functioning of the Monitoring Committee it is pivotal that it can rely with closed eyes on the information given by the Parties and the Adhering Banks. Though it has the power to ask questions but it should not have to use them where Parties and Adhering Banks fulfil their reporting obligations with diligence.

192. Considering our experiences over the past two years, the Monitoring Committee will for its final report, consider asking the banks' internal accountants to validate the data provided. If it does, it will make a reference to this step in its final report.

Working groups

193. The working groups probably reflect the best part of the DBA's implementation in terms of cooperation. Although not without problems, the parties have listed a lessons-learned overview for a number of these working groups, reports have been drafted and published, all with added value, not only for the Parties and the Adhering Banks but also beyond the DBA. The report regarding meaningful and effective performance indicators to report on business and human rights, is still in the pipeline and is eagerly awaited.

194. However, the target set in the DBA has not been met and is unlikely to be met by the end of the DBA's running time. It suggests that the parties are able to work together at a more abstract level but that cooperation is more challenging at the level of practical application and at the level of moving things on the ground.

195. One suggested reason for the lack of progress in working groups is that parties, due to their different perspectives, find it sometimes challenging to agree on prioritization and make choices. As prioritisation is allowed under the UNGPs, it is important for parties to consider how to constructively contribute to further progress in the relevant working groups.

Competition law

196. A continuous issue for cooperation between banks is the actual and perceived limitations imposed by competition law rules. Indeed, competition law is generally not very helpful in bringing the business and human rights agenda forward. A key problem is that it is often unclear what is and what is not allowed.
197. From the reporting it is not clear to the Monitoring Committee whether and if so which role the Government plays as an advisor to the other Parties and the Adhering Banks in this respect and how it engages with the ACM to ensure reliable advice is given. At the same time, it seems that Adhering Banks have not asked the Government for advice on competition law related matters either. Hence, from the reporting the Monitoring Committee cannot identify any substantive cooperation and communication within the DBA to deal with this issue.
198. The DBA's purpose is to implement the UNGPs in a multi-stakeholder framework. It is essential that issues such as competition law risks are identified and are taken head on if they provide obstacles to achieving the DBA goals. The Monitoring Committee encourages the Government to play an active role in this respect. If the parties do not find a passable way through the competition law jungle, binding legislation is the most obvious alternative.

Confidentiality clauses

199. A similarly thorny issue is client confidentiality. The Nauta report provides a helpful picture of the state of affairs. However, it seems to have been taken as a given by the Adhering Banks, rather than as a starting point for further development. Whilst it is self-evident that banks must protect their commercial interests and that achieving an international level playing field is important, these cannot be reasons for a standstill.
200. From the reporting, the Monitoring Committee concludes that there have been no requests from Adhering Banks to NGOs to advise them on specific case related issues. An exception was the engagement with NGOs in the Wilmar-case even though this did not lead to a successful conclusion. Although NVB and banks have been discussing possibilities to break through the boundaries, the Monitoring Committee has not seen an account of the reasons for this whereas it assumes NGOs could be helpful in providing information in a number of instances. It is conceivable that Adhering Banks have other reasons than confidentiality as to not to request information from NGOs but it is

important to map them in order to assess the practical limits of not engaging with NGOs for reasons of confidentiality. Inasmuch as confidentiality is an issue, the Monitoring Committee would be interested to know in which way this was the case, which conversations have been had with the client(s) to overcome this issue and what has been done to look for alternative ways to circumvent the problem.

201. The Monitoring Committee observes that the DBA requires an innovative approach to move away these obstacles, if only partially. The Adhering Banks and the NVB are therefore encouraged to play an active role in this respect and to create leverage, nationally and internationally, to push this topic and make real progress. In particular, the Monitoring Committee would encourage Parties and Adhering Banks to draft a plan to deal with this issue beyond the running time of the current DBA.
202. One of the options to be considered could be a clearing house between a bank and an NGO to protect confidentiality. It would be conceivable that company X receives advice from an NGO by making use of an independent intermediate between the company and the NGO(s). Another option could be that the bank advises the company to directly engage with an NGO to assist in a specific way in its human rights policies and practices without having to disclose its relationship with the bank.

Assessment of overall progress

203. The Monitoring Committee observes that a lot of work has been done and progress has been made on the deliverables since the start of the DBA. At an individual level, most of the Parties and Adhering Banks have made considerable progress in delivering their obligations under the DBA. Although there is still quite some work to do, the Monitoring Committee would like to commend the parties and the adhering banks on their efforts and time in this respect. However, this should not be a reason for complacency.
204. However, the Monitoring Committee is concerned that insufficient progress has been made on vital parts of the DBA deliverables, particularly creating a dynamic environment for cooperation and mutual support for the implementation of the United Nations Guiding Principles. This was a concern we already expressed in our Year 1 report and, unfortunately, our concerns have not been diminished by the outcomes for Year 2. These concerns have become more poignant as the DBA is nearing the end of its life cycle. After its Year 2 assessment, the Monitoring Committee considers it to be less likely that the key deliverables to which the parties committed themselves will be completed by the end of the DBA term.
205. As the Monitoring Committee pointed out in its Year 1 Report, the Government Coalition Agreement holds that if no sufficient results are made with the Agreements, legislative

intervention may be on the agenda.² Despite our remarks in our Year 1 Report, we have not seen evidence that the Government has adopted a more active role in Year 2 to make a success of the DBA by showing leadership and creating a sense of urgency that is needed to complete the work in a timely, satisfactory and sustainable manner.

206. In its Year 1 report, the Monitoring Committee invited the Steering Committee to take measures ensuring that the dynamics of the Agreement were kept alive or even get a new impetus, whilst respecting the responsibilities of the Parties and the adhering Banks under the Agreement. Considering its observations below, the Monitoring Committee invites the Steering Committee to report about the measures that were taken and how they were implemented.
207. For the Monitoring Committee, it is not self-evident that the evaluation method chosen to measure the progress - with an extensive number of questions asked on all sorts of details, generating hundreds of hours of work for the parties, the adhering banks, the SER and the Monitoring Committee – although useful, serves DBA’s purposes in the best way. It does provide a picture of the bones of the DBA but it does not show its flesh and spirit. Rather, it runs the risk of moving attention away from the flesh and spirit, which is, or at least should be, the DBA’s driving force. From the reporting on the DBA’s bones, the Monitoring Committee gets the impression that too much flesh and spirit is missing in the DBA’s process by cooperating actively and faithfully.
208. The Monitoring Committee understands that NGOs have asked to meet the Monitoring Committee to discuss its concerns regarding the lack of progress in the process. It was decided not to conduct such a meeting (which would have had to be complemented by meetings with all others involved in the DBA) at this stage.
209. Although obviously bridges have been built at some places, there is need for reflection as to how the overall trust in the process among the Parties and Adhering Banks can be improved. The DBA is not only an agreement to discharge listed commitments, but also a process to learn from each other (in every direction) in order to achieve better and more sustainable results in protecting human rights. For this process to be effective and fruitful, trust between the parties is indispensable.
210. One of the more general points to reflect on (and the Monitoring Committee aims to do this in more detail in its last report) is the format of the DBA. It is drafted as multi party contract with large input from lawyers, getting the DBA off to a start based on a lack of mutual trust. This format seems to have hindered rather than helped to improve

² 2017-2021 Coalition Agreement, *Confidence in the Future*, section 4.3: ‘Work on voluntary agreements on international corporate social responsibility will be continued. After two years, the government will consider whether to adopt binding obligations and, if so, what the nature of such obligations should be.’

cooperation, mutual understanding and mutual trust. When (rather than if) the Parties and Adhering Banks decide to continue their cooperation and formalise it beyond the DBA's running time, they need to seriously reflect on the most effective format that builds rather than erodes trust.