



Permanent Representation of the  
Kingdom of the Netherlands to the  
United Nations Office and other  
International Organizations in Geneva

REF: GEV-MR 197/2023

The Permanent Mission of the Kingdom of the Netherlands to the United Nations (UN) and other international organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, with reference to the Joint Communication of 25 September 2023 (JAL NLD 2/2023) of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean healthy and sustainable environment; the Special Rapporteur on the right to food; and the Special Rapporteur on the human rights to safe drinking water and sanitation, has the honour to inform the Office as follows.

The Government of the Kingdom of the Netherlands first wishes to reiterate that it fully supports and values the mandates of the Special Rapporteurs and the Working Group. It gives serious consideration to their views. The Government of the Kingdom of the Netherlands will always seek to respond and actively engage with UN mandate holders, and it has extended a standing invitation to all UN mandate holders falling under special procedures. The Government of the Kingdom of the Netherlands is open to dialogue with its international partners on the protection of human rights in the Netherlands, in a spirit of self-reflection and with a view to further improving the implementation of human rights. In this context, the Government of the Kingdom of the Netherlands appreciates the opportunity provided by the Special Rapporteurs and the Working Group in question regarding the alleged human rights violations and abuses against residents along the lower Cape Fear River in North Carolina, the United States of America.

The Permanent Mission of the Kingdom of the Netherlands to the United Nations and other international organisations in Geneva avails itself of the opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 22 November 2023



To the Office of the High Commissioner for Human Rights  
Geneva

## **Response of the Kingdom of the Netherlands to the letter from OHCHR with reference JAL NLD 2/2023**

The Government of the Kingdom of the Netherlands (hereafter: the Government) responds as follows to the Joint Communication of 25 September 2023 by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean healthy and sustainable environment; the Special Rapporteur on the right to food; and the Special Rapporteur on the human rights to safe drinking water and sanitation.

### **1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.**

The Government takes due note of the serious concerns raised in the Joint Communication regarding the human rights and environmental impacts of DuPont and Chemours's activities at the Fayetteville Works. The Government is highly committed to regulating waste and taking measures with the aim of protecting human health and the environment.

For transboundary movements of waste, European Union (EU) Member States, including the Netherlands, must meet the conditions laid down in the EU Waste Shipment Regulation (WSR). The Netherlands has designated the Human Environment and Transport Inspectorate (ILT) as the competent authority responsible for the implementation of the WSR.

As soon as the ILT receives a notification, i.e. a request for consent for a transboundary movement based on the WSR, this notification is first checked for completeness. This means that all required documents and attachments must be presented with the notification. The notifier<sup>1</sup> must, among other things, provide information about the origin and composition of the waste. Furthermore, the notifier must provide information about the treatment of waste in the country of destination. Other mandatory components include evidence of a financial guarantee, evidence of a valid contract between the notifier and consignee for the recovery of the waste and information about the method of transport. If the notification is complete, a thorough assessment will then take place against the National Waste Management Plan, the WSR, case law, and other legislation and regulations.

If – and only if – the requirements of this assessment are met, the entire file is sent to the competent authority of destination and to the competent authorities of transit involved. Actual transport is only permitted after all competent authorities have consented to the notified shipment. The competent authority of destination has primacy as regards the assessment of whether the waste may be accepted and processed by the recipient.

The procedure of prior written notification and consent described above was followed for the shipments from Chemours Netherlands (Dordrecht) to Chemours US Fayetteville (United States) to which the Joint Communication refers. The US Environmental Protection Agency, as the competent authority of destination, provided its written consent and therefore – in accordance with the Decision of the Council of the OECD on the Control of Transboundary Movements of Wastes Destined for Recovery Operations – confirmed that the receiving facility will recover this waste in an environmentally sound manner in accordance with national legislation.

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<sup>1</sup> Private entity

## **2. Please describe the step your Excellency's Government has taken to:**

### **a. Ensure that the generation of hazardous wastes and other wastes within its borders is reduced to a minimum, taking into account social, technological and economic aspects;**

Reducing the amount of waste starts with prevention, the highest step in the waste hierarchy. Instruments to prevent the generation of waste include restrictions or requirements that are imposed on products for admission to the EU single market and requirements that apply to obtaining a licence to operate an industrial activity. EU legally binding frameworks also apply here, which can also be elaborated in more detail at national level depending of the type of framework or measure imposed and the necessity thereof. The Netherlands is actively engaged in further strengthening prevention, including regarding PFAS. The Netherlands, together with Germany, Denmark, Norway and Sweden, has drafted a proposal for a restriction that should result in the furthest possible limitation of the production, the putting on the market, and the use of PFAS in Europe. Such a restriction will in turn also ensure the drastic reduction of waste containing PFAS.

As a Member State of the EU, the Netherlands also participates in a multitude of initiatives aimed at improving all aspects related to waste management. To give an impression of the scope and depth of these policy initiatives and the associated legal implementation, please see the overviews on the following European Commission web pages:

- Regarding environmental topics: [https://environment.ec.europa.eu/topics\\_en](https://environment.ec.europa.eu/topics_en)
- Regarding health and safety at work: <https://ec.europa.eu/social/main.jsp?langId=en&catId=148>

Where meaningful, the Netherlands elaborates these EU frameworks into national regulations and frameworks, such as the national waste management plan (<https://lap3.nl/service/english/>).

### **b. Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, within its borders;**

When processing waste, we strive to process it at the highest possible level according to the waste hierarchy as incorporated in the EU Waste Framework Directive. Specialised processing plants may be required to process specific waste streams in an environmentally sound and high-quality manner. Such a specialised processing plant requires a certain continuity and magnitude of the feed stock flow of waste to be processed for optimal operation. International cooperation is often necessary to achieve the required scale for this high-quality processing. That is why the Waste Shipment Regulation (WSR) provides scope to make use of each other's options for the environmentally sound recovery of waste within the European Union and within the member countries of the Organisation for Economic Co-operation and Development (OECD).

Disposal of waste within the European Union is in principle only permitted within the Member State itself. Only in exceptional cases is disposal permitted in another Member State of the Union or in a State that is a member of the European Free Trade Association and is also a Party to the Basel Convention. To other countries outside this category the WSR only allows exports intended for recovery and prohibits exports intended for disposal.

- c. Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to a minimum and is conducted in a manner which will protect human health and the environment against adverse effects which may result from such movement.**

As mentioned under 2b, for the Netherlands, the highest possible quality of processing according to the waste hierarchy is an important condition for allowing transboundary movements of hazardous and other wastes. For these shipments, the WSR requires prior written consent from the competent authorities of dispatch, destination and transit.

One of the goals of the update of the WSR mentioned under 1 is to significantly improve the monitoring and enforcement of these shipments, including the final processing of the transported waste.

- 3. Please indicate what assessments were conducted to determine whether the waste exported to the Fayetteville Works facility will be managed in an environmentally sound manner.**

We refer to the answer given under 1 concerning the applicable procedure and the assessment.

- 4. Please provide information on the measures that your Excellency's Government plans to take to prevent and mitigate the recurrence of impacts and damages of PFAS, including abroad by business enterprises domiciled within your territory.**

Many of the legally binding frameworks and the legislation applicable in the Netherlands for dealing with substances that may have a negative impact on health or the environment are established at EU level, including legislation regarding chemicals and/or substances of very high concern and legislation regarding waste and the shipment of waste. Negotiations are currently under way in the European Union (EU) to further tighten the conditions for allowing transboundary movements of waste. In these negotiations, the Netherlands aims to ensure that EU Member States do not export waste challenges.

It is expected that these negotiations will result in an updated EU Waste Shipment Regulation (WSR) around the turn of the year. This updated WSR will provide EU Member States with more and better options to monitor the processing of exported waste and to terminate those exports if the processing does not meet the requirements. This WSR is a central part of our legal implementation of the obligations arising from the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the Decision of the Council of the OECD on the Control of Transboundary Movements of Wastes Destined for Recovery Operations.

For PFAS specifically, the Netherlands has submitted a proposal to the European Chemicals Agency to restrict PFAS as a class, as opposed to the restriction of individual PFAS, to avoid the replacement of one hazardous PFAS with another hazardous PFAS.

**5. Please highlight the steps that Your Excellency's Government has taken, or is considering to take, including policies, legislation, and regulations, to fulfill its obligations to protect the population against human rights abuse by business enterprises domiciled in its territory and/or jurisdiction, and ensuring that business enterprises within its territory and/or jurisdiction conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operation, as set forth by the UN Guiding Principles on Business and Human Rights (UNGPs).**

The Government expects all business enterprises domiciled within its jurisdiction to align their business practices with the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and the United Nations Guiding Principles on Business and Human Rights. These non-binding guidelines and principles include a responsibility for businesses to identify and address risks in their international value chains. This responsibility includes engaging in meaningful stakeholder consultation and providing remedy where applicable. The obligation of the Netherlands to protect the population against human rights abuse by business enterprises, and the concomitant responsibility of business enterprises to respect human rights are laid down in the Dutch National Action Plan on Business and Human Rights. The Government of the Netherlands drew up its first National Action Plan on Business and Human Rights in 2014 and revised it in 2022 (for more information, please see the answer to question 6).

Dutch policy on responsible business conduct (RBC) is part of the Dutch National Action Plan on Business and Human Rights, and consists of a smart mix of measures to foster business respect for human rights. Measures include an RBC support centre serving as a 'one-stop shop' for businesses that wish – or are required – to adopt RBC principles, financial incentives for sectoral cooperation on RBC, and the setting of RBC conditions for businesses that request government support or take part in public procurement processes. Apart from setting conditions, incentivising, facilitating and informing, another element of RBC policy is establishing a broad due diligence obligation for businesses, preferably at EU level. The Government's intention is that these measures, along with legislation, will sufficiently motivate businesses to adopt effective RBC.

**6. Please indicate specific initiatives taken to ensure that those affected by business-related human rights abuse within your jurisdiction and/or territory have access to effective remedy.**

The Government promotes RBC in a variety of ways. In 2022, it published a revised National Action Plan on Business and Human Rights,<sup>2</sup> describing actions grouped according to three pillars of the UN's Guiding Principles for Business and Human Rights: the state duty to protect human rights (pillar 1), the corporate responsibility to respect human rights (pillar 2), and access to effective remedy (pillar 3).

Ideally, human rights abuses, including those related to labour rights, should be addressed where they take place and an effective remedy should be offered locally. A mechanism in the Netherlands may be preferred in some cases, for example when there is no effective local mechanism or when an enterprise domiciled in the Netherlands is involved in the violation. The revised National Action Plan on Business and Human Rights describes the actions the Dutch Government will take with regard to access to remedy, including publishing information about existing mechanisms and how they work and what support is available for individuals who want to access them.

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<sup>2</sup> <https://www.government.nl/documents/publications/2022/11/8/national-action-plan-business-and-human-rights>

More concretely, an important element of the third pillar (access to effective remedy) of the revised National Action Plan is the development and active dissemination of an accessible, multilingual digital guide for rights-holders, which is intended to clarify options for access to remedy in the Netherlands. To promote RBC in the second pillar, the Government applies the policy mix of mutually reinforcing measures as described above. Through the voluntary policy measures, the government promotes compliance with the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and the United Nations Guiding Principles on Business and Human Rights, for example through the sectoral RBC agreements. In terms of mandatory measures, the Government has taken the position that providing or contributing to remedy should be an integral part of the (EU) due diligence legislation. This should include provisions on mandatory grievance mechanisms as well as provisions on civil liability.

The Government recognises the need for action to address human rights abuses committed by, or with the involvement of, companies domiciled in the Netherlands, and to offer all victims of potential human rights abuses access to remedy in the Netherlands when such abuses occur. The Rome II Regulation states that the applicable law is determined on the basis of where the damage occurred. In cases of human rights abuses abroad, the applicable law is thus the law of the country concerned. Depending on the circumstances of the case, business enterprises incorporated in the Netherlands may be subject to the jurisdiction of the Dutch courts, and these may be competent to hear a claim pertaining to allegations of human rights abuses, even if they took place outside the Netherlands. Protecting the rights of these potential victims of human rights abuses and their representatives are elements of the due diligence methodology that the policy mix aims to promote, in accordance with the above-mentioned international standards.