

# Rabobank Ethics Committee

## *About reflection platforms, moral cost and moral case law*

**F.M. Rost van Tonningen and S.J.P. Louwers<sup>1</sup>**

### **1 Introduction**

This article describes the design and operation of Rabobank's 'ethical infrastructure', Rabobank's approach to ethical dilemmas, the gains to be had from this approach and the opportunities and threats associated with it. Although the law does not prescribe a methodical debate on ethical dilemmas at different levels, at least not yet, this is definitely a must for the much-needed restoration of trust in the financial sector. As the significance of restoring trust stretches beyond Rabobank, we are happy to share our knowledge and experience with others who are interested in engaging in an ethics debate in their organisations.

Rabobank has had an Ethics Committee since 1998. The Committee meets several times a year to discuss bank-related cases and issues that touch upon ethics. In this article, we will talk about the background and history of the Ethics Committee, its procedures and Rabobank's broader ethical infrastructure.

Rabobank, a cooperative bank that grew on the back of the Rhineland model of moderate capitalism, expanded its horizons in the 1980s and 1990s. While spreading its wings outside the Netherlands, it increasingly started to run into moral dilemmas due to differences between the Rhineland model and the Anglo-Saxon model, which is characterised by individuals and firms pursuing their interests, ideally with minimal government interference. The resulting moral dilemmas were considered of such fundamental importance to the future of the bank that a reflection platform was created for their discussion, i.e. the Ethics Committee. Given this context, the platform focused on the international domain at the time.

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<sup>1</sup> Françoise Rost van Tonningen is the Head of the Rabobank Ethics Office and Stefan Louwers has the role of Ethics Officer.

An example of a case that was debated was the rise in meat consumption in China due to increased prosperity. This drove up demand for soy from Brazil as a supplier of animal feed, causing rampant deforestation. What were the right choices to make for Rabobank in its capacity as an internationally operating agricultural bank?

In short, in creating the Ethics Committee, Rabobank was driven by an intrinsic motivation to live by its core values.

## **2 From Code of Conduct to Rabobank Compass**

Similar to many organisations, Rabobank also drew up a Code of Conduct in the 1990s. This Code served as a kind of mission statement and expounded principles for ethically responsible business practices. Rabobank's Code of Conduct talked about core values such as respect, integrity, professionalism and sustainability. It grouped a number of general principles into three dimensions (i.e. client, society and organisation) that served as a guideline for ethically responsible business practices.

It soon became clear that Rabobank would only be paying lip service to ethical values if cases were not actually tested against the Code of Conduct on a regular basis. This worked both ways: the Code of Conduct provided a useful guideline for the Committee to test cases against, while it also stayed practically relevant in that it was tested against reality, which proved unpredictable.

The 1990s Code of Conduct was replaced by Rabobank Compass in October 2018, which was basically a 21<sup>st</sup> century rewrite with some new focus areas having been added. The change in terminology from 'code', which is somewhat static and generic, to 'compass' was a reflection of what the document is designed to do: serve as a moral compass specific to Rabobank.

## **3 Ethics in the financial sector: from nice-to-have to need-to-have**

The credit crisis and the scandals that followed in its wake (e.g. misselling of banking products, the LIBOR scandal, executive remuneration, etc.) showed more than ever before that trust in the financial sector is by no means a given. It is easier to lose trust than it is to build it back up. The sector gradually started to realise that it had to make an all-out effort to try to restore public trust. This led to the notion that the sector needed to do an about-face in terms of culture and conduct. This was formally enshrined in law in the banker's oath.

Regulators stress the importance of ethics, culture and conduct as well as 'social propriety', as was demonstrated by such documents as a report on blind spots that was published by the Dutch Authority for the Financial Markets in December 2017. At European level, this was formulated as follows: 'the management body's responsibilities should include setting, approving and overseeing the implementation of a corporate culture and values in line with Section 10, which fosters

responsible and ethical behaviour...'

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**Example: vulnerable clients**

Banks are increasingly being faced with the question of how to deal with clients who are losing their self-sufficiency, such as clients suffering from dementia. Since this disease happens progressively, it is difficult for the bank to diagnose. A bank officer may feel that a client is being taken advantage of by third parties. What is the bank expected to do based on its duty of care if it suspects financial abuse? Would it have to notify social services or make a report of domestic violence? And what about the client's right to privacy?

Rabobank supports many social initiatives in the areas of dementia, quality of life, services to help informal caregivers, and so on. In addition, a number of local branches participate in pilot projects organised by the Dutch Ministry of Health, Welfare and Sport to see how partnerships with others such as notaries, housing associations and social services can help to prevent financial abuse of the elderly. In view of these initiatives, the public has certain expectations of Rabobank. How proactive could and should the bank be?

Outside of statutory requirements, other financial institutions, as well as the regulators and the Dutch Banking Association (NVB), the sector association, also started to realise that a structural ethical approach to concrete issues would be helpful. The idea gained traction that a bank should carefully weigh the long-term perspective and social implications of a new banking product before introducing it, rather than being driven first and foremost by commercial and strictly legal reasons. It could be argued that, in some way, this was a victory of the Rhineland model over the Anglo-Saxon model. After all, the ethical approach helps organisations get it right the first time without having to repair the damage afterwards.

With this in mind, the other major Dutch banks have now also developed some form of ethical infrastructure, the banks have partnered up under the NVB umbrella (within the bounds of competition, of course) and ethics, culture and conduct have become priorities for regulators. That said, every institution still has its own approach and makes its own choices, which is fine because we need diversity in the banking landscape to allow clients to choose the bank that is right for them.

All these developments combined reflect an evolution in the ethics realm from nice-to-have to need-to-have.

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<sup>2</sup> *EBA Guidelines on Internal Governance*, 23.k (26 September 2017).

## 4 Mission, moral dilemmas and moral cost

Rabobank's mission is *Growing a Better World Together*. This motto informs the bank's strategy, but it is an ambition as well. A bank operates in society, which means that it is expected to revisit its role in the real world time and time again. This leads to a constant stream of dilemmas: the more ambitious the mission, the sooner there will be a disconnect with what can actually be accomplished. This is about issues for which rules or regulations do not yet provide guidance. In plain English: 'we should or could act on something, but do we actually want to?' Rabobank's mission and Rabobank Compass, which reflect what Rabobank stands for as a bank, provide the yardstick for what we will accept and what we will refuse.

A moral dilemma is usually a right-versus-right issue, meaning that the positively formulated interests of all stakeholders are considered as well as the organisation's norms and values. This leads to choice between a range of alternatives. There are sound arguments for each of these alternatives. The eventual choice almost invariably leads to moral cost, since some arguments will be given a lower priority than others. In other words, making choices is not without consequence.

## 5 Ethics is dynamic

Ethics is not static. What was acceptable yesterday might not be today. The law generally follows where ethical standpoints have led the way. One example in this context would be insider trading. The 1980s moral notions about grey areas in insider trading were enshrined in law in the 1990s.

Although there is a difference between bigger issues and smaller, more everyday moral dilemmas, seemingly small or trivial cases are often indicative of larger or even fundamental issues. A debate on an individual case might well lead to a position on a larger issue. Examples would be the arms industry and human rights; the bank initially had no policies on the issues, but they came into being after individual cases had been brought up. Difficult cases involving existing policies are occasionally resubmitted to the Ethics Committee for further consideration so as to keep a policy up-to-date.

### **Example: use of data**

Clients entrust their data to Rabobank. While this offers the bank many opportunities, it also brings with it a great responsibility. Rabobank is committed to educating its clients on how their data is used, putting clients' interests first, keeping client data safe and leaving clients in control of their data. Although few people will disagree with this, we may still be faced with dilemmas about the use of data because individual clients will think differently about the issue.

We have listed some examples of such dilemmas below:

- Is it appropriate to make a client who is experiencing an important life event, such as becoming a parent, a relevant offer?
- Is it appropriate to share data with third parties, for instance if a client buys a home?
- Is it appropriate to charge a business a higher risk margin if data leads the bank to believe that its performance is lagging by its own doing?

Proper reflection means thinking hard about the issue in question, weighing up all the arguments and not taking rash decisions. Carefully considered conclusions could eventually help the bank reach informed decisions about similar situations more quickly in the future. This is particularly important in these times of radical change, innovation and technological advances. By being proactive and duly reflecting on issues the bank is likely to come up against, a bank will not only be able to mitigate risks, but also make a positive contribution to its mission and enhance its reputation.

## 6 Rabobank Ethics Committee – structure and procedures

This brings us to the structure and procedures of the Rabobank Ethics Committee. The Ethics Committee is an independent body whose task is to test business opportunities and other bank-related issues against the mission and Rabobank Compass. The Committee has expressly been designed as a reflection platform; it does not concern itself with fleeting trends. This is particularly important in these times of radical change, innovation and technological advances.

The Committee meets six times a year and has 12 members. The CEO chairs the Committee. The other members have positions of authority in various disciplines of the organisation. They represent the business (both local and international), Legal, Compliance, Communications, Data & Innovation, Sustainability and Jong Rabo, Rabobank's young professionals platform. This wide and prominent representation guarantees a broad perspective and helps anchor support for the Committee's standpoints.

The Committee discusses each concrete dilemma or broader issue based on a memo. Anyone in the organisation has the right to submit a case or a dilemma. The memo gives a methodical description of the ethical dilemma, the stakeholders, the stakeholders' perspective and their interests. It then provides a systematic summary of the arguments in favour of and against a particular perspective for action (in concrete terms: 'do we want to do x, yes or no?'). These arguments focus in particular on the relationship between the defined perspective for action and the bank's mission and Rabobank Compass.

The debate on the issue is expected to result in a tentative conclusion, which – at that time – will have the status of an 'advisory opinion'. Depending on the nature of the case or the issue, this conclusion will offer a concrete perspective for action (which is usually followed up) or a direction

that will inform a policy, whether existing or newly to be defined. As the conclusion is a product of consensus, it will never be to everyone's liking. In other words, there will inevitably be a moral cost. This method does, however, guarantee that positions on issues are reached with due care and that they are justifiable.<sup>3</sup>

#### **Example: employees and cryptocurrencies**

When the price of bitcoin was on the rise, Rabobank employees too started to trade and invest in this currency for their own account and risk (i.e. in their private capacity). This led to debate in the organisation about whether we should allow this, also in view of the fact that the Dutch Authority for the Financial Markets (AFM) had warned against it. There might also be links to money-laundering and receiving stolen property. Early in 2018, Scandinavian-based Nordea Bank announced that it would ban its employees from trading in cryptocurrencies. We do not know the exact reasons for the ban from an employment law perspective. As Compliance's employee integrity rules did not offer any guidance, the issue was put to the Ethics Committee.

## **7 Moral case law**

In its 20 years of existence, the Ethics Committee has reached hundreds of conclusions, all of which have been systematically documented in minutes. This 'moral case law' is accessible via a database. Using this moral case law as a guideline in our decision-making, we ensure that Rabobank acts in accordance with its identity. Since so many cases and issues have been measured against the bank's moral compass over the years, the compass has been coloured in organically and reflects Rabobank's specific identity. In other words, Rabobank Compass gains practical relevance in combination with the moral case law. This is very similar to the relationship between code of law and case law in the legal domain.<sup>4</sup>

Values and norms do change over time of course, which is why the Ethics Committee should make allowance for consistency as well as flexibility. It has to be receptive to changing opinions on the one hand, while guarding against following every new trend on the other. Its conclusions must be carefully weighed, justifiable to internal and external parties, and, if possible, tenable for several years.

## **8 Rabobank Ethics Office – procedures**

The Ethics Committee can count on the support of the Ethics Office, which acts as a 'radar' in that

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<sup>3</sup> This method is based on that developed by Dr H. van Luijk (Nyenrode Business University).

<sup>4</sup> The article 'De steen van Rosetta' (Rosetta Stone) on page 73 of this Yearbook advocates focus on the moral framework.

it scans for ethical issues that may be relevant to the bank. The two-person Ethics Office also serves as a desk for cases and dilemmas in the organisation, submits them to the Committee for discussion, keeps the meeting minutes, encourages the incorporation of the Committee's conclusions into policy or guidance where needed, and serves as Rabobank's centre of expertise for 20 years' worth of moral case law. It has the option to perform searches of the moral case law to determine whether a certain dilemma has been tabled before.

In the first years of its existence, the Ethics Office was a fairly reactive body, i.e. it had a purely clerical role, preparing submitted dilemmas for discussion in the Ethics Committee and disseminating the meeting minutes after a meeting had taken place.

The Ethics Office was subsequently given more scope to proactively scan for ethical dilemmas. By engaging in debate about moral issues at an early stage, the bank ensures that the Ethics Committee has already reached a conclusion on a new phenomenon before decision-making on the issue becomes inevitable. Recent examples of such issues include Big Data, cryptocurrencies and the underlying cryptotechnology, animal welfare, biofuel, Islamic banking, legalisation of cannabis, tax ethics, etc. We have highlighted a number of themes and cases in the text boxes in this article. What is more, the Ethics Office is now working on raising its profile, both within and outside the organisation, for instance by giving presentations and teaching workshops.

By pioneering and teaming up with the right sparring partners at different universities, the Ethics Office has tried to develop a pragmatic model that could benefit other organisations as well.

**Example: biomass**

A business unit was interested in financing a transaction involving the supply of wood pellets (high-energy fuel from compacted wood waste) to a UK-based energy company that was responsible for 7% of the UK's energy supply, 65% of which generated from biomass. The case showed that:

- Producers of biomass tended to use not only natural wood waste and agricultural waste in the production process, but also living trees that ought not to have been logged in the first place.
- The timber used in the production process originated from the US, meaning that long-distance transport was required.
- The timber supplier claimed that all timber involved was certified, even though it was common knowledge that some of the timber from the logging area was not. So the question was whether the supplier's claim was trustworthy and could be sold to the public.

- The authorities in question (the UK and Dutch governments and the European Commission) had different policies with varying criteria: the UK policies were fairly accommodating while the Dutch policies were stricter. It was not unlikely that subsidies might in fact be counterproductive, even to the point that they would contribute to global warming.

While environmental policies and, more specifically, policies on forestry and biofuel did not in themselves stand in the way of providing this loan, Rabobank did have to consider whether or not it wanted to assume responsibility.

## 9 Ethical infrastructure in a broad sense

Rabobank sets great store by internal dialogue at all levels. Ethical decision-making is based on dialogue, also in contexts other than the Ethics Committee. Employees with the confidence to take ownership and demonstrate moral courage can make the difference. Moral courage can also involve expressing doubts about issues or actions that were previously taken for granted. Employees can discuss moral dilemmas with their colleagues and, if they want, submit them to the Ethics Office, which, for its part, may decide to submit them to the Ethics Committee. The advantage of submitting them to the Ethics Committee is that this helps to give practical application to Rabobank Compass. The Ethics Office actively encourages this throughout the organisation.

After each Committee meeting, the Ethics Office posts a message about the issues that were discussed on the intranet to create awareness in the organisation of these issues and the conclusions that were reached, and to give everyone at the bank the opportunity to reflect on them and take part in the discussion. This is how the Ethics Office helps to encourage the ethical dialogue in the organisation and to ensure that the organisation as a whole (one bank) formulates positions on globally relevant issues that are in line with its missions and identity, and acts accordingly. This strategy of encouragement is complementary to the compliance strategy.

The Ethics Committee and the Ethics Office make up Rabobank's ethical infrastructure together with Compliance, Bureau Speak Up (which allows employees to confidentially report concerns and abuses) and the bank's confidential advisors (issues of a personal nature).

## 10 Learning by doing

The Ethics Committee was created 20 years ago driven by intrinsic motivation. It has gradually grown into the institution that it is today. At the time of its creation, the bank could not have predicted how the roles of the Ethics Committee and the Ethics Office would evolve. We have learned that debating concrete ethical dilemmas is an excellent starting point for defining policies.

At the same time, there have been blind spots in the organisation and the bank has not always harnessed the Ethics Committee's full potential for reflection. The financial crisis indisputably had an adverse effect on the reputation of the financial sector and of Rabobank as an individual bank.

As it turns out, having an Ethics Committee is no guarantee that things will always be fine. This has made us want to take ownership of wanting to know how to do better in the future. As we saw earlier, it was a leap for the bank to move from reactive to proactive dialogue, especially since the media are eager to report on ethical issues that call for an official position by the bank. New trends and phenomena are popping up all the time. As a bank, we need to have considered them before it is too late. And we should increasingly want to adopt an outside-in approach to demonstrate our added value as a financial services provider to society.

While we embrace our mission of *Growing a Better World Together*, reality is fickle. We continue our pioneering (learning by doing): the challenges we face in a constantly changing organisation and a volatile world are different every year. The glass is either half full or half empty.

**Example: dog trade**

A local branch had a client that engaged in dog breeding and trading. This client applied for an additional loan. This, in combination with negative media reports about abuses in the sector, led to the branch performing a client due diligence. The client ended up being categorised as 'dynamic' and the loan was provided. Then, new media reports of widespread abuses in the sector reignited doubts. Because of the many shady businesses in the sector and because the Dutch government was not very proactive on the matter, the local branch decided to ask the Ethics Committee whether Rabobank should continue to facilitate and finance the dog trading business in general.

What helps is that ethics is more of a priority in the financial sector as a whole now than it was before. This allows banks to forge partnerships in the ethics realm, at least in terms of methodology and priorities, leaving competitive issues aside. In these partnerships, ethics is increasingly viewed in the broader context of 'ethics, culture and conduct'.

In summary, we are constructively critical of the developments of recent years, but we still see new challenges ahead. In our experience, there is no doubt that concrete cases and stories will inspire others to join us in embarking on this challenging journey.

## 11 Benefits of ethical reflection

Choosing a short-term rather than a long-term perspective might be tempting, but it is rarely the best solution. Rabobank (and the financial sector in general) has much to gain from proper ethical reflection. The benefits have been summarised below:

- Ethical reflection provides direction and consistency in making moral choices in line with Rabobank's mission, moral compass and identity.
- Positions on specific minor dilemmas can lead to a vision on bigger issues and perhaps to policy.
- Early adoption of positions gives the bank ethical direction before the public asks for its opinion. Proactivity is key.
- We know why we make what choice and why we have to disappoint certain stakeholders sometimes.
- By sharing moral case law with the organisation, we contribute to achieving the ambition of creating one bank.
- Ethical dialogue is encouraged at all levels in the organisation through mutual learning.

This is how a mature and efficient ethical infrastructure helps to achieve a bank's mission and has a positive impact on its reputation.