

Feedback on CSR policy document consultation

28 April 2023

Dear Mr Van Rij and Mrs Schreinemacher,

We welcome the opportunity to provide input to the consultation of the updated CSR policy of ADSB. The policy changes to screen all applications and visit and monitor all category A projects are important improvements.

Nevertheless, we - the undersigned organisations - are frustrated with the lack of overall improvements in the policy. Based on all the experiences over the past decade in relation to the adverse impacts on communities, the environment and climate in different cases around the world that the Dutch government is connected to via its ECA, we expected a thorough revision of the CSR policy of ADSB.

We find it rather embarrassing that this consultation is only in Dutch and not shared with foreign CSOs, especially from the Global South where these projects are implemented, with which the ministries and ADSB have been in contact with in numerous cases. We strongly feel that this is a missed opportunity of the Dutch government to show its willingness to learn from the experiences these organisations and the communities they represent have.

In multiple documents (related to the evaluation of ADSB's CSR policy in 2020 and consultation on monitoring in 2021, as well as the many policy interactions we had around the Glasgow statement) and in relation to numerous cases, the undersigned organisations have identified key aspects of ADSB's CSR policy that should be improved in light of the international standards and the adverse impacts communities and the environment faced in the insured projects. Despite the important changes mentioned above, we see no other improvements that ensure ADSB's operations will prevent or mitigate adverse impacts, where there are many. We actually see some backsliding now that important frameworks and guidelines, such as the SDGs and the VGGT, are no longer mentioned in the policy.

We are still awaiting the in-depth evaluation report on the security aspects concerning the Mozambique ECA support; and a second opinion on the monitoring concerning the Manila Airport case. These findings and recommendations should also be made an integral part of the CSR policy. It is our impression that lessons learned already identified in the letter to Parliament on the evaluation of the security in Mozambique have not been taken along in the CSR policy, which would be worrying.

A much more rigorous update of the CSR policy is required to make it effective in preventing and mitigating adverse impacts and promoting responsible conduct at ADSB. Therefore we would like to share following recommendations.

On behalf of,

Abibinsroma Foundation, Ghana

AFIEGO, Uganda

Alliance for Empowering Rural Communities, Ghana

Both ENDS, Netherlands

Environment Governance Institute, Uganda

FASE Espírito Santo, Brazil

Forum Suape, Brazil

FARN, Argentina

Kalikasan PNE, Philippines

Les Amis de la Terre, Togo

Milieudéfensie, Netherlands

SOMO, Netherlands

WALHI South-Sulawesi, Indonesia

Recommendations to improve ADSB's CSR policy

1. Consultations with local communities

In all category A and B cases it is important to be in direct contact (or via an independent consultant) with local communities in order to verify the information from the project owner and exporter and to hear communities' views and concerns in an independent manner. This should be an integral part of the due diligence phase in the CSR policy. ADSB should develop a clear protocol on how communities will be informed timely; ensure that a diversity of stakeholders at community level is heard during consultations prior to decision making (inclusivity and right to say no, veto right); ensure alignment with ILO's Convention 169 regarding indigenous and tribal peoples consultation and participation; ensure that the meetings provide a safe space – e.g. by creating specific mechanisms to ensure safe space for critical groups in settings of shrinking civic space -; as well as how to communicate timely, safely and transparently with communities during the different stages of the process. The protocol should outline the steps to be taken to ensure that local communities are adequately informed and consulted about the project's potential impact on their lives, rights and the environment. The protocol should also specify how the consultation process will be carried out, including how feedback will be collected and incorporated into the project planning process.

2. SDGs

SDGs were mentioned in the current CSR policy. In the new version they are not. The motion of Van Raan and Diks¹ requests the government to show how ADSB contributes to the implementation of the SDGs, and this has been taken up in ADSB's annual reporting. The SDGs are however not mentioned as a policy framework for ADSB. This results in trying to apply the SDGs in hindsight rather than to take a pro-active approach. It is important to take the SDGs along in the policy framework from the beginning, not only to steer ADSB towards contributing to them but also to identify potential negative effects and mitigate them via policies. It is also of key importance to ensure policy consistency between the government's trade, climate and development policies.

3. EU general provisions on external action

All EU member states must comply with the EU general provisions on external action, including (Article 21) "consolidating democracy, respect of human rights and policy coherence for development, and the fight against climate change, when establishing, developing and implementing their national export credit systems and when carrying out their supervision of officially supported export credit activities". The inclusion of this article in the CSR policy appears to be limited. Whereas respect for human rights is explicitly mentioned, this is not the case for policy coherence for development, combating climate change and promoting democracy. Including clear criteria in the assessment process and transparent reporting on these provisions is important for a transparent, effective and responsible CSR policy.

4. Just energy transition and 1.5C

The energy transition is more than a transition from fossil fuels to renewables. Following the SDGs and other international processes and discussions around a *just* energy transition, projects in the renewable energy system need to be people-centered and also support a transition and renewable energy access in the countries where renewable energy projects take place – and as such go beyond a merely extractivist approach. While renewable energy projects are crucial, also these projects can cause serious negative impacts on communities as large RE infrastructure projects that are centred around export undermine local people's rights to land and their livelihoods. While ECAs are set up to cater for national businesses, several renewable energy-related policies currently in the making underline the importance of also

¹ Kamerstukken II 2017-2018 26485 nr. 263

ensuring local content (e.g. the CRMA). Hence, in its due diligence process ADSB should develop and make use of Just Transition principles, and demonstrate how the renewable energy projects it plans to support (including supply chain related projects) will support a just transition in the countries where the project is implemented. For example, will the project increase local/ nation access to renewable energy and support public ownership of these sources? Will the project create sustainable and meaningful jobs for men and women? Will the project increase local renewable capacities along the value chain (technical expertise, industry capacity)?

Following the Glasgow Statement, the Dutch government took steps to align the portfolio of ADSB to 1.5C by excluding up and mid stream oil and gas projects. While loopholes still need to be fixed in the policy², the rest of the portfolio also needs to align with 1.5C. Sectors such as shipping, cement, paint, agribusiness etc also contribute to dangerous climate change. The Dutch government should start a process to work on full alignment with the international climate goals in all sectors it supports.

5. Policy coherence

With a co-responsible minister on both trade and development cooperation, connecting trade promotion through export credit insurance to the development agenda is important. The CSR policy does not talk about this. A concrete example of this is promoting women's rights. ADSB does not have an active gender policy and we see in practice that ADSB supports projects that impact women's rights negatively (e.g. Mozambique and Makassar). Women are often hit harder by harmful impacts. They are also affected differently by the project because of their different role in the community and family. An example of this is the Centre Point of Indonesia³ project and is described in our report on broader ECA support in 4 African countries.⁴ Women's knowledge, for example about land, sea, energy use and agriculture, is also of key importance for better project implementation.

6. Exclusion list

We can't find the exclusion list (uitsluitingslijst) on the website of ADSB which is mentioned on page 3. Where is this located?

7. OECD Guidelines

It is good to read clearly that the Dutch government requires ADSB to adhere to the OECD uidelines as a private company that is subject to the OECD Guidelines. Please delete the sentence "Ondanks dat ADSB zelf geen zakendoet in het buitenland" on page 5. ADSB is a multinational enterprise under the Guidelines and its services are international by definition.

8. UNGPs

Under the UNGPs, ADSB has the responsibility to seek to prevent or mitigate adverse human rights or environmental impacts. "*Even if it has not contributed to those impacts*" (being linked to operations, products or services via its business relationships). The latter is very important, however missing on page 6.

² <https://www.bothends.org/en/Whats-new/Press/The-Netherlands-breaks-major-climate-promise-to-end-public-financing-for-international-fossil-fuel-projects/>

³ <https://fairgreenglobal.org/nl/verhalen/vrouwen-zijn-de-drijvende-kracht-achter-het-protest/>

⁴ <https://www.bothends.org/nl/Actueel/Publicaties/A-Just-Energy-Transition-for-Africa---Mapping-the-impacts-of-ECAs-active-in-the-energy-sector-in-Ghana-Nigeria-Togo-and-Uganda/>

9. Project and project context definitions and security

In a few cases where communities shared concerns with ADSB on the risks of (potentially) supported projects, the definition of 'the project' was unclear (page 9). This was the case in Mozambique LNG, Makassar CPI project and the Manila Bay project. As a consequence, ADSB identified risks and adverse impacts on communities and the environment as being part of the project context rather than the project itself. This led to risks and adverse impacts being screened only marginally or not reflected as serious issues in the decision making of ADSB or the Dutch government on whether or not to provide an insurance.

The main issue is that ADSB sees the project too small. For example, in Makassar, ADSB identified the project only for the reclamation site of Boskalis, even though in that area there were 43 families who had been forcibly relocated as a form or part of the CPI project development. In Mozambique, the project was defined as the DUAT for Total leaving out the areas where the affected communities would relocate too as well as the communities that already live there.

The independent research on the Mozambique LNG case⁵, the Manilla Airport case, the Makassar case and the Angola case⁶ show that ADSB's procedures are insufficient to capture project context related aspects, which often times relate to the security situation and ecosystem-based livelihoods of communities. The independent research into the Mozambique LNG ECA support by Proximities, as requested by Parliament, draws some important conclusions in this regard. It concludes amongst others that ADSB lacks structure, objectivity and integrity, which limits the quality its security analysis. Also, ADSB lacks the procedural mandate and expertise to assess risks and mitigation measures on security. The updated CSR policy of ADSB fails to address these serious shortcomings that have been identified, as well as to adopt the recommendations highlighted in the independent evaluation report.

We also want to highlight that in a project context certain conflict dynamics might already be present. This was the case in Mozambique. These conflict dynamics and the interlinkage with the proposed project need to be investigated, especially when it concerns large scale infrastructure projects.

In order to incorporate these aspects, the government should change the way ADSB identifies the project and project context, and when identifying the risks as project context give more weight to these contextual factors. As seen in all these cases, the broader context has a huge impact on the livelihoods of communities depending on their environment for daily food and income, or it directly impacts their safety, as well as the project itself.

10. Transparency

We believe it is important that a summary of the due diligence will be published ex-post (page 10). However, there is a need to improve transparency ex-ante as well. In all category A cases ADSB should publish the ESIA, ESAP and other relevant social and environmental information about the project that also should be made available under the Wet Open Overheid (WOO). Under the OECD Guidelines, companies (including ADSB) are supposed to provide any information on material risks to rights holders directly to those rights holders. As part of the OECD Due Diligence Guidance for RBC, companies (including ADSB) are required to provide a level of transparency and information about their due diligence that is "sufficient to demonstrate [to stakeholders] the advocacy of their due diligence." This is a high bar for transparency. The OECD due diligence guidance for the financial sector instructs companies to seek to be creative and find ways to provide sufficient information to stakeholders in cases where certain information is sensitive or privileged. The OECD guidance provides several suggestions and examples of how to do this (e.g. by redacting names, aggregating figures, anonymizing, etc).

⁵ <https://www.tweedekamer.nl/downloads/document?id=2023D07284>

⁶ <https://www.trouw.nl/nieuws/duizenden-families-in-angola-verjaagd-voor-project-van-nederlandse-bedrijven~b59a6a27/>

This also links to the Aarhus Convention of 1998 in which the Netherlands committed to *“contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention”*. Following the WOO, (business) confidential information can be made anonymous.

As stated, category B projects have potentially high social, environmental and climate impacts. However, unlike category A projects, no transparency is required ex-ante. In order to improve the possibilities for ADSB to identify risks in these risky projects, we suggest that also for category B projects ADSB publishes information on its website.

In multiple projects ADSB is limited to share crucial social and environmental information based on NDAs (non-disclosure agreements), for example the ESAP. This is in violation of the rights of communities to know how their lives might be impacted and what the involved actors are doing to prevent and mitigate risks. The Dutch government should enable ADSB to share the ESIA, ESAP and other relevant social and environmental documentation with (potentially) affected communities. This also helps to better monitor the projects ADSB has insured.

In all projects we have engaged with communities and ADSB, communities were not aware of the involvement of ADSB. Oftentimes they were not even aware of the involvement of a Dutch company. This limits the effectiveness of ADSBs due diligence, the leverage ADSB can assert on an exporter and project owner and complaint mechanism. This should be part of the protocol towards communities.

11. Categorisation is unclear

Per transaction, it remains completely unclear for parties other than ADSB, the government and the exporter why an application is labelled in a specific categorisation. However, this categorisation is the first important step in the due diligence process and the rest of the process. For example in Port of Suape (Brazil), one project was labelled as A and the other as B, whereas both projects had huge consequences for people and the environment even beyond the project location.

For vessels, it is not clear when a vessel is category M, C, B or A. Many of the vessels ADSB supports (dredgers etc) can have big social and environmental impacts. Previously we have seen FPSOs being categorised as M and other FPSOs as A. This should be clarified more clearly.

12. Tax evasion

It is unclear how ADSB carries out due diligence on tax avoidance. In any case, ADSB has been supporting projects that go through notorious tax havens.⁷ This is in stark contrast to OECD Guidelines Chapter XI, which ADSB says its clients must comply with.

13. The VGGT should be consulted in all projects involving land, fisheries and forests

The FAO Voluntary Guidelines on the responsible Governance of Tenure of land, fisheries and forests in the context of national food security (VGGT) were mentioned in the current CSR policy. In the new version they are not. The VGGT state that active, free, effective, meaningful and informed participation of individuals and groups must be ensured, prior to decisions being taken. The VVGT also provides helpful language in the sense that it talks about legitimate tenure rights, which goes beyond only formally recognized rights.

⁷Two reports were already published in 2013 and in 2015:

<https://www.bothends.org/nl/Actueel/Publicaties/Shady-dealings-How-Atradius-Dutch-State-Business-fails-to-adequately-screen-the-businesses-it-supports-/> and

<https://www.bothends.org/nl/Actueel/Publicaties/Cover-for-what-/>

14. Monitoring and withdrawing

Following the UNGPs and OECD Guidelines, if during the monitoring it appears that the exporter, project owner or other actor in relation to the service of ADSB is causing, contributing to or directly linked to adverse impacts, ADSB should take action. If the adverse impacts are not addressed accordingly, the CSR policy doesn't allow for ADSB to withdraw the insurance.

The case of Mozambique – where the Dutch government provided support in the days the conflict situation escalated completely, leading to many people killed on the ground and a Force Majeure that lasts until this day – showcases that the current policy doesn't help the Dutch government nor ADSB to withdraw on a legal basis, even when the project is clearly linked to both direct and indirect adverse impacts.

Ways for ADSB to withdraw an insurance should be addressed in the CSR policy and should be clear in the contract with the exporter and involved financial partners. Here, making the ESAP – specifically the social and environmental issues that need to be addressed – public helps in order to be transparent on the monitoring as communities, CSOs and others can verify if the agreements made by the companies (for example to compensate communities) actually take place.

15. Learn from complaints

The complaint procedure of ADSB should be an integral part of the CSR policy. It should be referenced in the policy that ADSB has a complaint procedure. Also the CSR policy should reflect on how the lessons learned from complaints on CSR issues are taken onboard. This should be reported on in ADSB's annual reporting.

16. Improve complaint guidelines for CSR related complaints

The first CSR-related complaint in relation to the CPI project in Makassar shows the need for a more in-depth discussion on the complaint guidelines. We ask you to set up a separate process for this, also involving stakeholders that have been part in the consultations on setting up the complaint Guidelines such as SOMO, OECD-Watch and Transparency International.