



# National Contact Point

## OECD Guidelines for Multinational Enterprises

### Final Statement

Both ENDS, Associação Fórum Suape Espaço Socioambiental, Conectas Direitos Humanos and Colônia de Pescadores do Município do Cabo de Santo Agostinho vs. Atradius Dutch State Business

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Final statement by the Dutch National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises ('the Guidelines') further to a specific instance submitted by Both ENDS in conjunction with and on behalf of local NGOs/CSOs; Associação Fórum Suape Espaço Socioambiental, Conectas Direitos Humanos and Colônia de Pescadores do Município do Cabo de Santo Agostinho ('Both ENDS et al.') concerning an alleged breach of the Guidelines by Van Oord Marine Ingenuity ('Van Oord'), Atradius Dutch State Business ('ADSB') and Complexo Industrial Portuário Eraldo Gueiros – Empresa Suape, Pernambuco ('CIPS').

#### Contents

Introduction	1
Summary of the notification	1
The NCP procedure	2
The NCP's assessment of the specific instance	3
The NCP's good offices	4

#### Introduction

This final statement describes the process and outcomes of the dialogue facilitated by the NCP after receipt of notification regarding the specific instance from Both ENDS et al. on 8 June 2015.

The statement is based on information from the parties and the outcomes of the dialogue. Confidential information disclosed to the NCP in the course of the dialogue was not used in the preparation of this final statement.

This final statement marks the completion of the procedure by the NCP.

#### Summary of the notification

On 8 June 2015 Both ENDS – in conjunction with and on behalf of Associação Fórum Suape Espaço Socioambiental, Conectas Direitos Humanos and Colônia de Pescadores do Município do Cabo de Santo Agostinho – notified the Dutch National Contact Point of a specific instance concerning an alleged violation of the OECD Guidelines for Multinational Enterprises ('the Guidelines') by Van Oord Marine Ingenuity ('Van Oord'), Atradius Dutch State Business ('ADSB') and Complexo Industrial Portuário Eraldo Gueiros – Empresa Suape, Pernambuco ('CIPS'). On 1 June 2015 the same notification had also been submitted by the notifiers to the Brazilian NCP.

The notification against ADSB was relating to the provision of two export credit insurances, resp. in late 2011 and early 2012, on behalf of and for the account of the Dutch State with respect to

two dredging projects implemented by the Dutch company Van Oord for the Suape Industrial Port Complex in Suape, Brazil. The notifications against Van Oord Marine Ingenuity (Rotterdam), represented in Brazil by Van Oord Serviços de Operações Marítimas Ltda (Rio de Janeiro) and the Complexo Industrial Portuário Governador Eraldo Gueiros – Empresa Suape, Pernambuco, are considered by the Brazilian NCP in accordance with paragraph 23 of the Commentary on the Implementation Procedures of the Guidelines.

The notification of the specific instance with respect to ADSB states:

*‘... ADSB failed to use its influence over Van Oord to ensure compliance with the OECD Guidelines in the activities for which it was providing cover. Similarly, ADSB failed to ensure that the UN Guiding Principles on Business and Human Rights and the IFC’s Performance Standards were effectively applied in both of Van Oord’s projects in Suape. In violation of its own corporate social responsibility, ADSB failed to ensure effective monitoring of the projects’ impacts. This behavior, among other factors, resulted in a failure to consult with the affected people and communities, a loss of traditional ways of life, as well as severe damage to biodiversity and ecosystems. As an implementing agency that acts on behalf of the Dutch government, ADSB is committed to implementing the OECD Guidelines. In violation of those Guidelines, it failed by not encouraging Van Oord to apply them. By attempting to hold the contracting parties and Brazilian authorities liable for consulting with and guaranteeing the participation of the affected populations, ADSB shirked its responsibility to comply with OECD Guidelines, transferring it instead to the client (cf. communications and letters exchanged between Both ENDS, ADSB and Van Oord).’*

Both ENDS et al. specifically request from ADSB (and Van Oord):

*With respect to substantial claims:*

*‘... compensation, mitigation and remediation for the damage caused to the traditional communities affected, and to the environment, with restoration to the previous state, and damages for losses suffered, in addition to satisfaction of the communities’ claims, so that respect for their human rights is assured....’*

*With respect to procedural claims ADSB (and Van Oord) are requested to:*

*‘... within the scope of their authority, and in the light of the Recommendations of the OECD Guidelines for Corporate Responsibility, seek to mitigate and remediate the impacts directly related to the operations of the two projects mentioned herein, with particular attention to the impacts of dredging, rock removal, disposal and filling; as well as the indirect impacts from the damage done to the social fabric of the local communities and the weakening of ecological interactions of existing ecosystems.’*

## The NCP procedure

### The Dutch NCP procedure in this specific instance

On 8 June 2015, Both ENDS – in conjunction with and on behalf of local NGOs/CSOs; Associação Fórum Suape Espaço Socioambiental,

Conectas Direitos Humanos and Colônia de Pescadores do Município do Cabo de Santo Agostinho – notified the Dutch NCP of a specific instance concerning an alleged violation of the OECD Guidelines for Multinational Enterprises (‘the Guidelines’) by Van Oord Marine Ingenuity, Atradius Dutch State Business and Complexo Industrial Portuário Eraldo Gueiros – Empresa Suape, Pernambuco. On 1 June 2015 Fórum Suape notified the Brazilian National Contact Point of the specific instance.

The Dutch NCP acknowledged receipt of this notification and forwarded it translated from Portuguese to English to Atradius Dutch State Business and Van Oord Dredging & Marine Contractors on 10 July 2015.

As part of its initial assessment, the NCP held separate, confidential meetings in July and August 2015 with the parties who raised the issue and two of the businesses involved (Van Oord and ADSB) about the specific instance procedure.

In accordance with paragraph 23 of the Commentary on the Implementation Procedures of the Guidelines, the Dutch and Brazilian NCPs are working together closely on this case. Both NCPs will act under their own responsibility in accordance with their own procedures. The Dutch and Brazilian NCPs agreed that the Dutch NCP is the right entity to assess the alleged violation by Atradius Dutch State Business NV. The Brazilian NCP will assess the alleged violations by Van Oord and CIPS.

On 1 October 2015, the NCP sent the parties a draft version of the initial assessment, requesting that they submit any comments within two weeks. In its initial assessment, the NCP concluded that this specific instance merits further consideration and offered its good offices to resolve the issue at hand by facilitating a dialogue between the parties.

In response to the draft initial assessment the NCP received a response not only from ADSB but also from the Dutch Ministry of Finance, stating that it sees the notification against ADSB as a complaint against the State of the Netherlands.

Both ENDS, ADSB and the Dutch State, represented by the Ministry of Finance accepted the NCP’s offer to engage in a dialogue and made agreements concerning confidentiality and transparency in line with the NCP procedure.

On 3 December 2015, the NCP published its initial assessment on its website in Dutch, and on 16 December the English text was published.<sup>1</sup>

### The course of the dialogue

The NCP held meetings to conduct a dialogue attended by Both ENDS, ADSB and the Ministry of Finance between January 2016

<sup>1</sup> <http://www.oecdguidelines.nl/notifications/news/2015/12/17/notification-both-ends-forum-suape-atradius-dsb>

and July 2016. Also a conference call was conducted with the Brazilian parties, mainly to describe the local situation. The parties jointly set the agenda and the terms of reference for the dialogue, and agreed on confidentiality and transparency matters in light of ADSB client confidentiality obligations, in line with the NCP procedure. In August the dialogue phase was rounded off with separate meetings between the NCP and each party.

### Details of the parties submitting the specific instance

Both ENDS is an independent NGO that aims to strengthen Southern CSOs by supporting strategic networks and by monitoring and lobbying for sustainable capital flows.<sup>2</sup> Fórum Suape is an NGO founded in October 2013 in the city of Cabo de Santo Agostinho, Pernambuco, to defend human rights and socio-environmental rights.<sup>3</sup> Colônia de Pescadores de Município do Cabo de Santo Agostinho is an association representing professional and small-scale fishermen. Conectas Direitos Humanos is an international NGO founded in São Paulo, Brazil, in September 2001.<sup>4</sup> Its mission is to promote the enforcement of human rights and the rule of law in the southern hemisphere. It has consultative status with the UN, and since May 2009 it has had observer status in the African Commission on Human and Peoples' Rights.

The Ministry of Foreign Affairs has a strategic partnership with Both ENDS under the 'Dialogue and Dissent programme', which aims to strengthen civil society in low- and middle-income countries.<sup>5</sup>

### Details of the enterprise

Atradius Dutch State Business issues export credit insurance policies and guarantees to businesses on behalf of and for risk of the State of the Netherlands providing coverage for risks related to the trade and services activities of those businesses with customers in countries outside of The Netherlands or providing coverage of non-commercial risks related to the investments of those businesses in a country outside The Netherlands. The State of the Netherlands in this regard acts as insurer and ADSB maintains these export credit insurance policies and guarantees as the State's agent. The execution of the export credit facility by ADSB is governed by the State's policies.

The relationship between Atradius Dutch State Business and the Dutch State is further explained on the website of Atradius DSB. Atradius Dutch State Business is part of the Atradius Group.<sup>6</sup>

<sup>2</sup> <http://www.bothends.org/en/Themes/Mission-Strategy>

<sup>3</sup> <http://forumsuape.ning.com/page/quem-somos>

<sup>4</sup> <http://www.conectas.org/en/about-us>

<sup>5</sup> <https://www.government.nl/latest/news/2015/01/30/ploumen-supports-innovative-partnerships-with-development-organisations>

<sup>6</sup> <http://www.atradiusdutchstatebusiness.nl/dsben/about/index.html>, <https://group.atradius.com/about-us/shareholder-information.html>

## The NCP's assessment of the specific instance

### Scope of the assessment

In its initial assessment of 3 December 2015, the NCP qualified ADSB as a multinational enterprise under the Guidelines and concluded that the specific instance merited further consideration. In accordance with the NCP specific instance procedure, the NCP therefore offered its good offices to facilitate a dialogue between Both ENDS and ADSB. The objective is to help the parties reach an agreement on the NCP's recommendations regarding addressing issues connected to the case itself and issues relating to due diligence, monitoring and leverage for the ECA sector on the basis of the Guidelines. The NCP is of the opinion that doing so may help clarify the OECD due diligence recommendations regarding export credit agencies.

Both sides, ADSB, the Dutch State (represented by the Ministry of Finance), and the NGO's involved, accepted the NCP's offer to engage in mediation.

### Applicability of the Guidelines to export credit agencies

The 2011 update of the Guidelines confirmed that they apply to all sectors, including the financial sector. The Guidelines do not provide more detailed guidance on their application to financial institutions or any other specific sector, but they do state that enterprises should:

*'Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.'*

The reference to services means that paragraph 12 (in Chapter II, General Policies) of the Guidelines is applicable to any financial service.

With reference to the Initial Assessment, the Dutch State and ADSB are of the opinion that the OECD Guidelines do not apply to ADSB as ADSB acts on behalf of and in the name of the Dutch State (the State bears responsibility). They state that even in case the OECD Guidelines are applicable to certain ECA's, because of their legal structure, they would not apply to all ECA's. Applicability of the Guidelines would undermine and harm the level playing field. The Dutch State argues, among other things, that the Guidelines do not apply to export credit insurers because they are covered by special regulations, the 'Common Approaches'. This OECD policy framework for ECA's has overlapping themes and principles with the OECD Guidelines.

<sup>7</sup> <http://www.oecd.org/tad/xcred/oecd-recommendations.htm>

The NCP is aware of the international policy frameworks within which ADSB and other Export Credit Agencies operate. However, the Common Approaches do not preclude the Guidelines' applicability to the OECD member states or implementing organisations. Furthermore, ADSB states that it attaches great importance to its corporate social responsibility both as a private enterprise and as a manager of the Dutch State's export credit insurance facility.

The NCP is of the opinion that the export credit services by the Dutch State and ADSB are part of a business relationship within the meaning of the Guidelines.

### Relevant parts of the Guidelines

The chapters on General Policies (Chapter II) and Disclosure (Chapter III), Human Rights (Chapter IV) and Environment (Chapter VI) of the Guidelines are relevant to this dialogue.

### Export credit insurances

Capital goods export transactions and overseas construction projects may require relatively long delivery or construction periods and extended terms of payment. ADSB underwrites risks related to export transactions with buyers in, for example emerging markets. More information on credit insurance policies issued by ADSB can be found on their website.

In accordance with Dutch government policy to promote corporate social responsibility (CSR), ADSB takes specific CSR aspects into account when assessing an application for export credit insurance. Exporters must declare that they have taken note of the OECD Guidelines for multinational enterprises and will make their best efforts to adopt them. Besides, a risk based due diligence on environmental & social aspects is an integral part of ADSB's risk assessment. The environmental & social due diligence has to be positively concluded prior to providing an export credit insurance. More information on the CSR policies of ADSB can be found on their website.<sup>8</sup>

### Export Credit at the OECD

The Organisation of Economic Co-operation and Development (OECD) is making rules in the area of officially supported export credits. This work is facilitated, within the Trade and Agriculture Directorate of the OECD Secretariat, by the Export Credits Division. The resulting export credits disciplines apply to ADSB. On the OECD website the following information can be found:

*Governments provide officially supported export credits through Export Credit Agencies (ECAs) in support of national exporters competing for overseas sales. Such support can take the form either of "official financing support", such as direct credits to foreign buyers, refinancing or interest-rate support, or of "pure cover support", such as export credits insurance or guarantee cover for credits provided by private financial institutions.*

*ECAs can be government institutions or private companies operating on behalf of governments, as is the situation in the Netherlands.*

*The OECD provides a forum for exchanging information on Members' export credits systems and business activities and for discussing and coordinating national export credits policies relating to good governance issues, such as anti-bribery measures, environmental and social due diligence, and sustainable lending. These discussions take place under the auspices of the Working Party on Export Credits and Credit Guarantees (the "Export Credits Group" or ECG).*

*The OECD is also a forum for maintaining, developing and monitoring the financial disciplines for export credits, which are contained within the Arrangement on Officially Supported Export Credits (the "Arrangement"). These disciplines stipulate the most generous financial terms and conditions that Members may offer when providing officially supported export credits. Discussions relating to the Arrangement take place under the auspices of the Participants to the Arrangement on Officially Supported Export Credits.<sup>9</sup>*

The OECD working party on export credits and credit guarantees drew up the original Common Approaches for officially supported export credits and environmental and social due diligence in 2001, recommendations have been altered over the years. April 6, 2016 the OECD Council adopted the latest Recommendation on 'the Common Approaches'.<sup>10</sup>

## The NCP's good offices

### Purpose & scope of the dialogue

The purpose and scope of the dialogue facilitated by the NCP were:

- to focus on the content, implementation and monitoring of the applicable policies used by Atradius DSB and other relevant Environmental Social and Governance Factors with regard to these policies;
- more specifically, to focus on these applicable policies in relation to ADSB's advisory role to the Dutch State in providing export credit insurance for Van Oord's two dredging projects in Suape in late 2011 and early 2012;
- to bring the parties to an agreement on the NCP's recommendations concerning the content, implementation and monitoring of the applicable policies used by Atradius DSB in light of the OECD Guidelines as well as to discuss the scope of responsibilities of Atradius DSB under the Guidelines in this specific instance;
- To clarify due diligence recommendations for Export Credit Agencies in the framework of the OECD Guidelines

It was agreed between the parties that – irrespective of which regime each of the parties considers applicable, 'the Guidelines' or

<sup>9</sup> <http://www.oecd.org/tad/xcred/about.htm>

<sup>10</sup> <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/ECG%282016%293&doclanguage=en>

<sup>8</sup> <https://atradiusdutchstatebusiness.nl/en>

'Common Approaches – the dialogue would focus on substantive issues such as information disclosure and transparency, due diligence, monitoring and evaluation, and accountability (see below).

### **The NCP's observations**

The NCP appreciates the willingness of ADSB, the Dutch State and Both ENDS et al. to enter into a dialogue even once given that ADSB and the Dutch State are of the opinion that this case does not fall within the scope of the OECD Guidelines.

The NCP respects the parties' diverging views on the issues discussed and understands that this made it difficult to agree on some of the recommendations regarding the purpose and scope of the dialogue. Nevertheless, the parties reached agreement on some points. The NCP has made some additional recommendations to clarify the OECD recommendations regarding Export Credit Agencies.

The NCP observes that the duties of a multinational enterprise (MNE) with respect to adverse impacts under the Guidelines are unrelated to the duration of the MNE intervention, while the Common Approaches currently state that they are applicable to insurance transactions with a minimum repayment term of two years, without making any direct reference to adverse impacts. However, the national Dutch policy extends the scope of the Common Approaches to cash transactions and transactions with a repayment term of less than two years. The Suape case concerned two short term less than two years transactions, one of which was classified as Category A by ADSB and the other as Category B, in accordance with the aforementioned national policy, including conformity with Common Approaches and IFC Performance Standards.

The first project (Suape/Promar) was classified as Category A because it was the development of a new project (Greenfield development) involving the forced relocation of local people. The second (Suape/Outer Channel) was classified as Category B because the insured project was a part of an industrial development that was already in place. ADSB considered it not to be an area with high ecological value, with a high population or indigenous people, or an area of historic or archaeological interest.

The NCP also recalls that even if the dredging activities insured by ADSB were conducted in compliance with applicable national and/or regional laws and regulations in Brazil, MNEs are expected to comply with Article I.2 of the Guidelines under which they should 'seek to honour such principles and standards (as stated in the Guidelines) to the fullest extent which does not place them in violation with domestic law'.

The NCP is of the opinion that ADSB did not cause or contribute to adverse impacts on matters covered by the Guidelines, through

their own activities. However, in accordance with the Guidelines paragraph II.A.12, ADSB is "directly linked" to the possible adverse impacts "contributed to or caused by a business relationship" (Van Oord) under paragraph II.A.11, and therefore, has an independent duty to use its leverage on such business relationships to prevent or mitigate adverse impacts resulting from the dredging activities.

Possibly the principal issue discussed during the early proceedings was the responsibility of an insurance company, like ADSB, as opposed for instance to a financing or operating company that typically has greater direct involvement in a project/transaction. An insurance company assumes responsibility for its own ex ante due diligence, and will require its client (the Dutch company) to adhere to agreed principles and abide by contracts. It cannot however assume responsibility for acts performed by parties with which it has no relationship (in this case CIPS, the commissioning company in Suape). Since the leverage that can be exerted by insurance companies after issuing an insurance policy is limited, effective ex ante due diligence on all aspects of the proposed transaction, including the elements referred to in the Guidelines, deserves their full attention and is the core business of insurance companies.

The conversations between parties were conducted in a structured way, of which the most relevant discussion points are addressed in the following paragraphs.

### **The case specific positions of Both ENDS et al., and ADSB and the Ministry of Finance**

#### *Information disclosure & transparency*

The complaint stated that ADSB only disclosed the supplemental Environmental Impact Assessment (EIA) report on the dredging project for the Promar shipyard, thus failing to ensure access to sufficient information for local communities and people potentially affected by the two dredging projects. In the context of insufficient access to information for local stakeholders, the complaint also stated that ADSB failed to ensure meaningful stakeholder consultation in the Suape project area.

ADSB did not accept these complaints on the absence of direct, active consultation with local communities as it considers this, as a matter of principal, to be the primary responsibility of the contracting party (CIPS) and not the insurer. ADSB and the Ministry of Finance note that however, that if a transaction so requires, ADSB demands that all exporters – such as Van Oord as a contractor – organise direct, active consultation with local stakeholders. This is one of the aspects that is examined in the environmental and social due diligence. During the execution of the due diligence ADSB disclosed Category A project information (Suape/Promar) on its website and provided the project EIA report to Both ENDS. ADSB states that during the ex-ante publication of the Category A project, no adverse impacts on environmental and social standards

(incl. consultation) nor any comments on the type of information disclosed were notified by Both ENDS or other parties. The lack of access to all relevant information was discussed and considered. Both ENDS states ADSB did not make other information than the supplementary EIA report on the Category A project available to stakeholders.

ADSB is of the opinion that was clarified which information was used for due diligence besides the EIA report and which information was disclosed to stakeholders in general. It is up to the Brazilian NCP to express an opinion on the quality of the stakeholder meetings.

#### *Due diligence*

The complaint noted a range of shortcomings of ADSB in its due diligence efforts before issuing the two export credit insurance policies (resp. late 2011 and early 2012) for Van Oord's two dredging projects in Suape. In particular it alleged that ADSB did not use its leverage to ensure that local communities were heard when the projects were designed and implemented.

Although in its view, given the short term nature of the two transactions, ADSB performed a proportionate adequate ex ante due diligence of the relevant information and studies pertinent to both projects in line with national policy based on the information provided by Van Oord and derived from its own independent sources, it seems that not all the relevant information may have been made available to relevant stakeholders.

#### *Monitoring & evaluation*

The complaint stated that ADSB failed to ensure that the insured projects would be monitored and evaluated on their impacts in relation to aspects identified in the OECD Guidelines.

Although insureds are required to confirm that they have taken note of the OECD Guidelines and will endeavour to apply these in their business to the best of their ability, ADSB and the Dutch State apply the – in their opinion – adequate national policy also with regard to monitoring. They also apply the IFC Performance Standards as well as the UN Guiding Principles on Business and Human Rights (UNGPs), which they consider more specific. As the projects are not Category A project finance, ADSB did not, subsequent to its initial due diligence, monitor environmental and social aspects. As the agency for the Dutch State's insurance activities, ADSB takes the view that it has only leverage on its client, not on the project company (CIPS) as it has no business relationship with the latter.

#### *Accountability*

The complaint stated that ADSB shirked its responsibility to comply with the Guidelines by transferring it to the client. As an insurance company acting as the agent of the Dutch State, ADSB takes the view that it only had leverage on its client (the insured, Van Oord), with which it has a business relationship, not on the project company (CIPS), with which it has no business relationship.

Overall the complaint highlights two major adverse impacts of the operations of Van Oord in Suape as insured by ADSB:

- the destruction of fishing grounds through the use of explosives and the dumping of dredge material on reproduction sites;
- the violent displacement of the inhabitants of Tatuoca Island.

In this regard the complaint notes that ADSB failed to articulate communication channels for the local communities that could have given them access to relevant information about the role and involvement of Van Oord and ADSB itself in the projects.

The absence of such communication channels meant that local stakeholders were unable to engage in policy dialogues and communicate complaints to ADSB and Van Oord at a much earlier stage.

#### **Forward-looking positions of Both ENDS et al., and ADSB and the Ministry of Finance**

In the context of the mediation process facilitated by the NCP, the notifiers provided a range of comments and suggestions on how, in their view, the due diligence policies of ADSB should be improved to comply with the Guidelines. These suggestions addressed a wide range of aspects relating to the substantive issues that were identified by all parties in this process.

#### *Information disclosure & transparency*

The notifiers called on ADSB to develop an information disclosure policy document that starts from the assumption that all information should be public, unless specific, clearly defined considerations bar disclosure.

ADSB and the Ministry of Finance have agreed to develop a more specific Information Disclosure Policy that starts from the assumption that relevant information should be public, unless specific clearly defined considerations bar such disclosure (as in the case of confidential business information). A draft Information Disclosure Policy will be presented and discussed in a stakeholder meeting.

ADSB undertook to continue publishing Category A projects (ex-ante) on its website as soon as the ESIA has been received, subject to the exporter's/insured's consent (which should not be unreasonably withheld), and to make sure the information on its website remains available to interested third parties throughout the due diligence period and the period that any insurance policy is effectively in place.

ADSB agreed to improve the ex-post publication of information on all categories (A, B, C, M, E), for example by disclosing the nature of the product for each relevant transaction. For Category A projects, including transactions with a repayment period of less than two years, an adequate summary of the transaction and the framework of the assessment will be published.

ADSB is not in a position to publish 'promises of cover' because of the confidentiality of this information for business and/or competition reasons, as the transaction is considered part of the

bidding process for the exporter/insured. The repayment term of a transaction is considered to be confidential information that ADSB is not prepared to disclose. Publication of the ADSB CSR Review is not an option either for the same reason.

#### *Due diligence*

The notifiers recommended improvements to ADSB's verification procedures for information it obtains on transactions, and the articulation of communication channels open to local stakeholders with an interest in these transactions. The notifiers underscore ADSB's own responsibility in this regard complementing that of its clients.

ADSB places the primary responsibility for due diligence on the insured, but recognises its own responsibility to verify the information provided by the insured and seek additional information from the insured and/or other sources for its own due diligence, for which it sets high standards.

ADSB and the Dutch State are of the opinion that, in the event that non-payment is due to unacceptable environmental and/or social impacts, the exporter may be held accountable for such impacts, and may consequently lose its rights under the export credit insurance cover.

If information provided by the insured to ADSB proves to be materially incorrect and/or incomplete and/or the insured has been negligent during the execution of the transaction, this may have consequences for ADSB's and the Dutch State's willingness to provide insurance cover for future transactions or, even to the suspension or lapsing of the insurance cover already provided.

#### *Monitoring & evaluation*

The notifiers expressed concern that ADSB's current policies effectively mean there is no collecting or keeping of information on any adverse impacts of insured transactions, rendering ADSB unable to assess and evaluate the effectiveness of its CSR policies.

ADSB does monitor Category A project finance transactions, in which it has a higher leverage than for example in short-term transactions similar to the dredging projects in Suape. This monitoring includes checks on stakeholder engagement.

Under the current policies, exporters are required to comply with local and international laws and rules; in cases where non-repayment is due to non-compliance by the exporter, non-coverage is a legal possibility.

#### *Accountability*

The notifiers mentioned weaknesses in ADSB's accountability and therefore recommended improvements by introducing an independent grievance mechanism and operational safeguard policies.

Stakeholder meetings have traditionally been held by the Ministry of Finance, with input of ADSB, within the Netherlands, but the interactive nature and the content will be further improved.

The Dutch State will hold a stakeholder meeting at least once a year to discuss lessons learned and intended and/or possible policy changes; business- and civil society representatives and/or experts will be invited to these meetings; reports of these meetings will be published on the ADSB website. A draft of the Information Disclosure Policy will be presented at the next stakeholder meeting in February 2017. The Dutch State will also try to organise a more substantive and interactive debate between other OECD members and the NGOs at the OECD CSO meetings.

ADSB handles complaints, a complaint form is available on the website of ADSB.

#### **Conclusion & recommendations of the NCP**

The NCP concludes that Van Oord and ADSB, have a duty to comply not only with national and regional laws and regulations, but also with relevant international norms and standards, including - but not limited to - the Guidelines (see paragraph II.A.10).

Both the contracting party (CIPS) and the contractor for the works addressed (Van Oord) could perhaps have done a better job in their due diligence activities (including consultation with affected stakeholders); it is also possible that Van Oord could have done a better job, in accordance with paragraph II.A.11 of the Guidelines, in using its leverage over CIPS to effect such due diligence, including, notably, active consultation with local communities, as well as in fulfilling its own responsibility in this respect.

In accordance with paragraph 23 of the Commentary on the Implementation Procedures of the Guidelines, the Dutch and Brazilian NCPs agreed that the Brazilian NCP will assess the alleged violations by Van Oord and CIPS. It is up to NCP Brazil to conclude whether adverse impacts have occurred in relation to the activities by Van Oord for which it received export credit insurance.

As the NCP takes the view that ADSB as an MNE under the Guidelines, is 'directly linked' to possible adverse impacts to which its business relationships (Van Oord) have 'contributed'; it may not quite have fulfilled its duty to use its leverage over these business relationships, as described in paragraph II.A.12 of the Guidelines, to prevent or mitigate these possible adverse impacts. ADSB did not cause or contribute to any possible adverse impacts on matters covered by the Guidelines, through their own activities.

With the benefit of hindsight it is questionable, in the NCP's view, whether sufficient checks were made of the availability of information on environmental and social plans, consultations held and issued licenses.

The Brazilian NCP has the primary responsibility to ascertain the causality of the adverse impacts referred to in the complaint, and has not yet come to a conclusion on this matter. The Dutch NCP cannot offer any definitive opinions on such impacts and the roles of CIPS, Van Oord and ADSB in this regard. Notwithstanding this, adverse impacts have occurred. The Dutch NCP has no opinion on the parties' respective degree of responsibility for this.

The NCP suggests that Both ENDS shares its submission in this dialogue on the "Gaps between the Common Approaches and the OECD Guidelines" with the OECD and other interested stakeholders. The NCP considers that this document contains reflections that deserve a broader audience potentially interested in promoting an improved alignment of the two benchmark international policy standards.

The NCP suggests ADSB to use its leverage over Van Oord to encourage the proposed stakeholder dialogue in Brazil between the local complainants, Van Oord and CIPS, through Van Oord, to actually take place, and to monitor the results of such a dialogue.

ADSB handles complaints concerning negative impacts caused in projects. The NCP suggests ADSB publishes a complaints procedure, including a time frame for the procedure.

The NCP appreciates the professional and constructive conversations between Both ENDS and the other complainants on the one hand and, on the other, ADSB and the Ministry of Finance, on the evaluation of the specific issues relating to the Suape case and the general lessons to be drawn from it for the future, resulting in a narrowing of the 'perception gap' on both sides, on the work done, on the impacts generated and the drivers behind them, and on agreements for further intensified, inclusive consultation on policies and practices, against the background of a shared desire for continuous improvements for exporters, for affected communities and for nature.

### Monitoring

The NCP recommends that in October 2017 an evaluation be conducted of the outcomes of the dialogue, namely the agreements made by the parties and the NCP's recommendations, but also the concrete cases that were discussed in the meantime. It is important in this regard that Both ENDS, and ADSB and the Dutch State continue to carry on a constructive dialogue in the intervening period on the basis of practical experience and any concrete complaints of non-compliance by ADSB's clients.

The role of National Contact Points (NCPs) is to further the effectiveness of the OECD Guidelines. The Dutch government has chosen to establish an independent NCP which is responsible for its own procedures and decision making, in accordance with the Procedural Guidelines section of the Guidelines. In line with this, the Netherlands NCP consists of four independent members, supported by four advisory government officials from the most relevant ministries. The NCP Secretariat is hosted by the Ministry of Foreign Affairs. The Minister for Foreign Trade and Development Cooperation is politically responsible for the functioning of the Dutch NCP.

More information on the OECD Guidelines and the NCP can be found on [www.oecdguidelines](http://www.oecdguidelines)

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