



## National Contact Point

### OECD Guidelines for Multinational Enterprises

## Evaluation 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

3<sup>rd</sup> May 2018

ArgentinaAustraliaAustriaBelgiumBrazilCanadaChileColombiaCzechRepublicDenmarkEgyptEstoniaFinlandFranceGermanyGreeceHungaryIcelandIrelandIsraelItalyJapan

Evaluation by the Dutch National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises ('the Guidelines') further to the final statement<sup>1</sup> on the dialogue facilitated by the NCP.

### Agreements and recommendations in the final statement

On 30 November 2016 the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises ('the Guidelines') published a final statement 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 Zo8 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').

The NCP recommended that at the end of 2017 an evaluation should be conducted of the outcome of the dialogue, namely the agreements made by the parties and the NCP's recommendations.

The NCP held an evaluation meeting with Both ENDS, ADSB and the Ministry of Finance in January 2018. At the request of the NCP, both parties provided evaluation papers for the meeting.

<sup>1</sup> <https://www.oecdguidelines.nl/notifications/news/2016/11/30/final-statement-both-ends-associacao-forum-suape-vs-atradius-dutch-state-business>

### Evaluation of the agreements and recommendations

Both ENDS as well as ADSB and the Ministry of Finance welcome the opportunity to evaluate the agreements and recommendations made in the final statement.

Over the last year notifiers have continued their support work for the communities affected by the expansion of the port of Suape in general and the dredging works, carried out by Van Oord until 2014, in particular. They state that overall, the situation for the people living in and around the Suape port area is deteriorating. Efforts to come to reforestation at the site could not be materialized and fishermen continue to report a decrease in the amount of fishing. On the positive side, one community living in the territory of Suape Port was successful in obtaining legal recognition as a community of descendants from Afro-Brazilian slaves. This recognition allows this community stronger protection under Brazilian law.

Notifiers regret that no further progress could be made in the procedure of the Brazilian NCP addressing the complaint against Van Oord. Therefore notifiers and Van Oord initiated a mediation process with the participation of local community representatives living in the Suape Port area. Pending results under this mediation process notifiers and Van Oord have requested the Brazilian NCP to elongate its procedure.

In general the Dutch NCP stresses the need to continue to strengthen the effectiveness of the NCPs worldwide through peer learning activities and peer reviews which will, with support of the OECD and their governments, lead to stronger implementation of the OECD Guidelines.

The NCP appreciates the ongoing efforts of parties in this case and constructive conversation in this evaluation. The NCP welcomes ADSB's efforts to use its leverage over Van Oord to encourage stakeholder dialogue in Brazil and underlines the importance of monitoring the results of this dialogue. Both ENDS, the Ministry of Finance and ADSB will continue their efforts to improve and strengthen communications between themselves.

### Information Disclosure & Environmental & Social Policies

One of the outcomes of the dialogue between parties was the development of an Information Disclosure Policy. The Ministry of Finance and ADSB are in the process of finalising the Information Disclosure Policy. The development of this policy was done in close consultation with stakeholders, including Both ENDS.

Besides the formalization of disclosed information, the ESIA documents will be published by default for Category-A projects. Besides the development of the Information and Disclosure policy, ADSB and the Ministry of Finance have revised its Environmental & Social Policy for the Export Credit Insurance and published it in February 2018<sup>2</sup>. Prior to the publication, a public consultation process with stakeholders took place. Amongst other aspects, the revised E&S Policy is now clearly elaborated and explicit about input from local stakeholders to inform due diligence and measures and mechanisms to increase leverage.

Both ENDS welcomes the publication of these documents. The development of the Information Disclosure Policy is an important step. Nevertheless Both ENDS stresses the need for ADSB to actively seek to share information, especially regarding specific export credit insurance applications, with local civil society organizations in the host countries of the proposed transactions. With reference to the OECD Guidelines Both ENDS states that due diligence procedures of ADSB should be sufficiently transparent to alert and encourage local stakeholders in host countries to share their perspectives on a project.

### Complaints Mechanism

The NCP suggested ADSB to publish a complaints procedure, including a timeframe for the procedure. Parallel to the revision of the E&S Policy and the development of the Information Disclosure Policy, ADSB is in the process of upgrading their existing complaints mechanism. The aim is to make the complaints mechanism transparent, accessible and accountable. The complaints mechanism will be published before mid-2018.

<sup>2</sup> <https://www.rijksoverheid.nl/documenten/kamerstukken/2018/02/06/aanbiedingsbrief-mvo-beleidsdocument-voor-exportkredietverzekeringen> and <https://www.rijksoverheid.nl/documenten/kamerstukken/2018/02/06/mvo-beleidsdocument-exportkredietverzekeringen>

Besides ensuring that the complaints mechanism of ADSB is relevant and accessible, the due diligence process of ADSB is to ascertain that project owners have similar systems in place.

Both ENDS welcomes the publication of a complaints procedure but expresses concerns about the accessibility for local communities. With other stakeholders it participated in a consultation on a draft procedure hosted by ADSB in order to ensure that recommendations of CSOs that stand to benefit from such a mechanism can be sufficiently taken on board. ADSB has taken this forward.

### Communication

In the evaluation meeting communication matters between parties were discussed. All parties agree to the fact that cooperation and communication between parties has been intensified in this case. Parties are aware that it is important to continue paying attention to further improvements in this area with regard to mutual communication on this specific case as well as with regard to communication in the public domain.

The NCP in each specific instance calls on parties to be prudent with regard to publications or campaigning matters, also when is referred to information that is already in the public domain. This is specifically of importance during a specific instance procedure but also onwards because it can influence the relationship between parties. This without prejudging the fact that the heart of NGOs/CSOs lies in the defense of human and environmental rights by public campaigning and litigation.

Both ENDS asked ADSB and the Ministry of Finance to clarify the status of ADSB as an MNE and commitment of ADSB to implement the OECD Guidelines to the best of its ability. Both ENDS refers to the SHIFT review of the Human Rights due diligence of ADSB, in which it also considers ADSB to be a private company, as the NCP concluded in its initial assessment.

ADSB and the Ministry of Finance refer to their previous reasoning in the dialogue, which is included in the final statement, that the OECD Guidelines cannot be applied to public export credit insurances. Furthermore, export credit agencies are governed by special regulations, the 'OECD Common Approaches'. ADSB emphasises nevertheless that they endorse the OECD Guidelines for Multinational Enterprises and act in line with the spirit of these guidelines. ADSB has recently published a Corporate Responsibility statement on their website to underscore and clarify its role and approach in this regard<sup>3</sup>.

The NCP respects the diverging views and underlying motivations of ADSB and the Ministry of Finance on this topic. At the same time the NCP points out that this position continues to evoke questions from a.o. NGOs and other companies in the financial sector.

<sup>3</sup> <https://atradiusdutchstatebusiness.nl/documenten/44.418.01.n-dsb-leaflet-beleidsverklaring.pdf>

The NCP maintains its position that ADSB is a multinational enterprise within the meaning of the Guidelines and is therefore subject to the Guidelines. In this context it also remains important continuing the discussion on the differences and gaps between the Common Approaches and the Guidelines for MNE, internationally. The NCP will bring this point to attention when relevant to promote further discussion. Parties commit to jointly explore options for inclusive and interactive international meetings on this subject.

Parties agree to maintain a constructive dialogue, as the NCP recommended. ADSB and the Ministry of Finance will continue to also invite the NCP to the consultation meetings for stakeholders. The NCP appreciates the open and constructive attitude of all parties in this case.

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.nl](http://www.oecdguidelines.nl)

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