

Shift

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Integrating Human Rights Due Diligence: A Review of Atradius DSB's Environmental & Social Policy and Procedure

About this Report

This is a public report authored by Shift. It draws on a review conducted by Shift for Atradius Dutch State Business, assessing ADSB's Environmental and Social Policy and Procedure against the expectations of the UN Guiding Principles on Business and Human Rights. This report was prepared by a team from Shift comprised of David Kovick, David Vermijs and Rachel Davis.

We welcome comments and feedback via info@shiftproject.org.

About Shift

Shift is the leading center of expertise on the UN Guiding Principles on Business and Human Rights. Shift's global team facilitates dialogue, builds capacity and develops new approaches with companies, government, civil society organizations and international institutions to bring about a world in which business gets done with respect for people's fundamental welfare and dignity. Shift is a non-profit, mission-driven organization.

Shift was established following the 2011 unanimous endorsement of the Guiding Principles by the UN Human Rights Council, which marked the successful conclusion of the mandate of the Special Representative of the UN Secretary-General for Business and Human Rights, Professor John Ruggie. Shift's founders were part of Professor Ruggie's core advisory team that helped develop the Guiding Principles. Professor Ruggie is the Chair of Shift's Board of Trustees.

Shift works with a range of public and private sector financial institutions on understanding the implications of the UN Guiding Principles for their operations. See: <https://www.shiftproject.org/resources/collaborations/supporting-financial-institutions-implement-guiding-principles/>.

I. Summary of Review

Atradius Dutch State Business (ADSB), part of the Atradius Group, executes the Netherlands' official export credit facility on behalf of the Dutch State. ADSB issues export credit insurance policies and guarantees to businesses on behalf of and for risk of the Dutch State. The Dutch State is the 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, including policies on environmental and social (E&S) risk management¹. ADSB conducts E&S reviews of the export credit guarantees and related products it provides, based on the Environmental and Social Review Policy ("E&S Policy") and accompanying Environmental and Social Assessment Process Description ("E&S Procedure"). These documents are in turn based on international standards, in particular the OECD Common Approaches.²

On behalf of the Ministries of Finance and Foreign Affairs of the Dutch Government, ADSB approached Shift to review its policy and procedures in order to assess their alignment with the UN Guiding Principles on Business and Human Rights (UNGPs). Shift was asked to provide recommendations to ADSB and the Dutch Government to further strengthen that alignment in updating ADSB's Environmental and Social Policy and accompanying Procedure that govern ADSB's environmental and social risk management (jointly referred to as the "E&S Policy Framework"). ADSB's E&S Policy already states that ADSB endorses and applies the UNGPs. The key question for this review is the extent to which ADSB's current E&S approach meets that commitment.

The report that follows reflects the key observations and recommendations from our review, and is structured as follows:

- Section II. Purpose and Scope of Review, including review methodology
- Section III. Applicability of the UNGPs to ADSB, as agent of the Dutch State
- Section IV. Summary of Expectations of the UNGPs, as a basis for assessing alignment
- Section V. Key Observations on Alignment of ADSB E&S Policy Framework with the UNGPs
- Section VI. Recommendations, offered to strengthen alignment between ADSB's policy and practice and the UNGPs.

II. Purpose and Scope of Review

A. Context for Review

A growing number of public and private sector financial institutions have recognized their responsibility to prevent and address human rights impacts connected to companies they finance, support or in which they invest as part of managing the environmental and social impacts of their operations. This includes national export credit agencies (ECAs),³ national development finance institutions⁴ and private banks.⁵ Institutional investors, such as pension funds and insurance

¹ This description of the relationship between ADSB and the Dutch State is based upon ADSB's brochure and the Final Statement Notification of the 2016 specific instance handled by the Dutch National Contact Point in *Both ENDS – Fórum Suape vs Atradius DSB*, available at <https://www.oecdguidelines.nl/latest/news/2016/11/30/final-statement-both-ends-associacao-forum-suape-vs-atradius-dutch-state-business>.

² OECD Council, Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, adopted 6 April 2016 and available at <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/ECG%282016%293&doclanguage=en>.

³ See, for example, GIEK's Environmental and Human Rights Policy, available at http://giek.cust.limecms.no/resources/pdf/diverse_engelsk-1/Environmental_and_Human_Rights_Policy.pdf, and Environmental and Human Rights Procedure <https://www.giek.no/getfile.php/133580/web/Dokumenter/Bærekraft/GIEK%20Environmental%20and%20Human%20Rights%20Due%20Diligence%20Procedure.pdf>.

⁴ See, for example, CDC, ESG Toolkit for Fund Managers, especially the Briefing Note on Human Rights, available at <http://toolkit.cdcgroup.com/e-and-s-briefing-notes/human-rights>; see also FMO, Sustainability Policy, especially the Position Statement on Human Rights, available at <https://www.fmo.nl/policies-and-position-statements>.

companies, are also increasingly paying attention to these issues.⁶ Many have sought to meet this responsibility through the adoption of risk management approaches grounded in the IFC’s Environmental and Social Performance Standards, which have for some time provided a recognized international reference point for environmental and social review, and, in the case of ECAs specifically, through the OECD Common Approaches.⁷

The UNGPs were unanimously endorsed by the UN Human Rights Council in 2011 and integrated into the revised OECD Guidelines for Multinational Enterprises (“OECD Guidelines”) that same year. They have since risen steadily on the agenda of many companies, governments, investors, international institutions and other stakeholders. Leading financial institutions are increasingly asking: (1) whether existing approaches to environmental and social risk management are sufficient to meet the UNGPs’ expectations that companies proactively manage their involvement with human rights impacts, including through conducting human rights due diligence (HRDD); and (2) whether and how those approaches might be adapted or complemented to meet the expectations of HRDD, particularly in circumstances that pose a high risk of severe human rights harms.

The E&S Policy Framework, updated in 2012, commits ADSB to reviewing transactions for potential E&S risks, including human rights risks. Section 2 of ADSB’s E&S Policy references the international frameworks upon which ADSB’s E&S Policy Framework is based, including the OECD Common Approaches and the IFC Performance Standards. ADSB’s E&S Policy further requires applicants for export credit insurance to sign an “effort statement” to respect the OECD Guidelines, which are substantially aligned with the UNGPs, and states that ADSB applies the UNGPs when human rights might be at risk in a particular project. ADSB’s E&S practice reflects a range of tools and approaches for implementing these commitments.

Human rights has been an important topic among public and private financial institutions in the Netherlands for some time, including for ADSB. The process of developing sector-level Agreements on International Responsible Business Conduct (IRBC Agreements) has further heightened attention to state support for private sector activity.⁸

B. Scope of Review and Methodology

The scope of Shift’s support included helping ADSB and the Ministries of Finance and Foreign Affairs to explore several questions, including:

- What is the nature and scope of ADSB’s responsibility under the UNGPs?
- To what extent is ADSB’s existing E&S Policy Framework aligned with the expectations of the UNGPs?
- What specific changes to policy, process and practices could be considered to create greater alignment with the expectations of human rights due diligence under the UNGPs?

In order to meet these objectives, Shift reviewed key ADSB documents that shape ADSB’s E&S risk screening process, including the E&S Policy and E&S Procedure, which frame the observations and recommendations shared by Shift in Sections V and VI of this report.

Shift complemented this desk-based review with a series of interviews, in order to understand how the E&S Policy Framework is implemented in practice. The majority of these interviews were conducted with key ADSB staff, including senior leadership, relationship and account managers, underwriters, and the E&S team. Interviews with the E&S team

⁵ See, for example, the Dutch Banking Agreement, available at https://www.internationalrbc.org/banking?sc_lang=en.

⁶ See OECD, Responsible Business Conduct for Institutional Investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises, 2017, available at <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>.

⁷ In 2016, OECD member states agreed to an update of the OECD Common Approaches for ECAs, in part to create greater alignment with the expectations of the UNGPs: note 2 above.

⁸ See <https://www.internationalrbc.org>.

included a review of several specific transactions and case examples to better understand how the E&S Framework is applied in practice, including areas where current practices deviate from (and often go beyond) the current requirements.

Shift's review was also informed by interviews with the Dutch State, represented by the Ministry of Finance, on whose behalf ADSB provides export credit insurance, and a limited number of external stakeholders with direct experience engaging with ADSB's E&S Policy Framework, including repeat corporate clients and civil society representatives. A list of those interviewed is attached as Appendix A.

It is important to note that, in line with the UNGPs, ADSB's responsibility to respect human rights applies throughout its operations, including in relation to its own human resource policies and practices and its own supply chain. However, this review focused specifically on ADSB's client relationships and the processes in place to prevent and address human rights risks arising through them.

Limitations of Review

While the internal and external interviews conducted were intended to provide a more holistic perspective on ADSB's E&S Policy Framework in practice, this analysis was not intended to nor could it assess the effectiveness of ADSB's human rights due diligence on the ground in connection with specific projects or companies. As a result, this report offers a high-level analysis and initial recommendations for strengthening the E&S Policy Framework to create greater alignment with the UNGPs, which should be tested and further informed by the perspectives of internal and external stakeholders.

In addition, we note that ADSB's E&S Policy Framework documents are available only in Dutch. As a result, translation of specific points in the existing E&S Policy and E&S Procedure may be imprecise; however, the general direction of Shift's analysis and recommendations should not be affected.

Note on terminology: the UNGPs use the term "negative impacts" to include both actual and potential impacts on people. In this review, we use the term "risks and impacts" to be clear that the expectations of the UNGPs cover both concepts, and to more closely align with standard E&S due diligence practice.

III. Applicability of the UN Guiding Principles to ADSB, as Agent of the Dutch State

ADSB is a private company that advises the Dutch State as its agent in the provision of state insurance for Dutch private sector activity abroad. Under ADSB's mandate from the Dutch State, the State 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. As part of this review, ADSB therefore specifically asked which parts of the UNGPs apply to ADSB.

The first pillar of the UNGPs, the state duty to protect human rights, is focused on the policy implications of states' existing duties under international human rights law for corporate-related human rights harms, including in relation to what the UNGPs call the "state-business nexus," meaning all those ways in which the state contracts with, provides financial support to, controls, oversees or outsources key functions to private sector entities. The second pillar of the UNGPs, the corporate responsibility to respect human rights, identifies the key steps businesses should take to prevent and address human rights risks and impacts with which they are or may be involved. The third pillar addresses the need for greater access to effective remedy for victims of corporate-related human rights abuse, and sets out the respective roles of both states and companies in ensuring appropriate remedy for victims.

There are two aspects to consider when seeking to apply the UNGPs to ADSB's operations.

First, the Dutch State, which oversees the functioning of ADSB, has its own obligations as part of its state duty to protect. Guiding Principle 4 explains that states should take specific steps to protect against human rights abuses by companies that receive substantial support and services from state agencies such as ECAs. The commentary makes clear that states "should encourage and, where appropriate, require human rights due diligence by the agencies [i.e., ECAs] themselves and by those business enterprises or projects receiving their support. A requirement for human rights due diligence is most likely to be appropriate where the nature of business operations or operating contexts pose significant risk to human rights." Thus, there is a strong argument for the Dutch State to provide greater clarity in ADSB's mandate in terms of its expectations of ADSB and its clients to respect human rights. This would strengthen ADSB's own position in meeting its independent responsibility to respect human rights.

Second, the Atradius Group, which includes ADSB, is a private sector entity. The corporate responsibility to respect human rights (the second pillar of the UNGPs) would therefore apply to all parts of the Group, including ADSB, regardless of the fact that ADSB is performing a function at the direction of the Dutch State. The mandate set by the State does not appear to prevent ADSB from meeting its responsibility to respect human rights (i.e., there are no clauses or provisions within the mandate that are fundamentally misaligned with the expectations of the UNGPs). However, later sections of this report highlight areas within ADSB's overarching policies that nevertheless create the space for potential misinterpretation or misapplication that could result in misalignment with the UNGPs.

Even if ADSB's mandate did pose conflicts with the expectations of the UNGPs, it would not change the nature of ADSB's responsibility. ADSB would still be connected to any human rights impacts resulting from the implementation of that mandate, and ADSB would have a responsibility to take appropriate steps to seek to prevent and address those impacts. This would include using and building its leverage with the relevant Ministries of the Dutch Government to seek to have its mandate revised, in order to enable ADSB to respect human rights in practice.

Shift's observations on and recommendations about ADSB's E&S Policy Framework therefore focus on the extent to which the Framework aligns with the expectations of the UNGPs under the second pillar, the corporate responsibility to respect human rights. These expectations include: having a policy commitment to respect human rights that is embedded throughout the organization; conducting human rights due diligence; and playing an appropriate role in remediation where the business has caused or contributed to an impact. These elements are described further below, with reference to their relevance to ECAs.

IV. Assessing Alignment: The Expectations of the Corporate Responsibility to Respect Human Rights

ADSB's E&S Policy Framework is based on several international standards that are aligned to varying degrees with the UNGPs. Moreover, section 2.4 of ADSB's E&S Policy states that ADSB endorses and applies the UNGPs in conducting its business activities where human rights are identified as being at risk. This is an important commitment. However, it is essential to understand the implications of this commitment in practice, in order to be able to assess the extent to which the current E&S Policy Framework meets ADSB's own commitment, and any areas where this commitment is not yet fully aligned with operational policies, process and practice.

This part of Shift's report creates the foundation for assessing alignment with the UNGPs by exploring the specific expectations of the UNGPs and human rights due diligence. This review of core concepts in the UNGPs is not intended to be exhaustive, but rather to provide a baseline overview of what is expected of a private sector enterprise under the UNGPs. The examples that are provided below each core concept are not intended to provide any direct commentary on

the policies or practices of ADSB, but rather to show how they may be relevant within the context of an export credit agency such as ADSB.

A. Policy Commitment and Embedding

The broad expectation of the corporate responsibility to respect is that business enterprises should prevent and address negative human rights impacts with which they are or might be involved. To meet this responsibility, businesses should make a high-level commitment to respect human rights, and embed this commitment across the entirety of their operations, including their own activities as well as throughout their business relationships. This means ensuring the alignment of operational policies and practices across all areas of the business and across all functions within the business. This also means providing necessary training to key staff and aligning their incentives so that no part of the business is working at cross-purposes to this overarching commitment to respect human rights.

- *In the context of an ECA such as ADSB, this may have implications for internal governance and decision-making processes, including the allocation of roles, responsibilities and resources for considering human rights risks in decision-making.*

B. Scope of Responsibility Under the UNGPs

There are a number of points to highlight here.

- 1. Risk to People, Not Only Risk to Business:** The UNGPs expect businesses to apply a human rights lens, meaning a focus on the most severe negative risks to and impacts on people, not only the most material risks to the business. In practice, this may mean that some of the most severe risks and impacts may lie in business activities that are not particularly significant to the business's bottom line, including smaller or less critical transactions and relationships.
 - *In the context of an ECA such as ADSB, this may have implications for the scope of transactions which are screened for enhanced E&S due diligence, including transactions that fall under a certain financial threshold, a duration of cover, or the types of covered transaction (such as mobile assets or currency protection). When enhanced E&S due diligence is conducted, it may have implications for the specific risks that are prioritized for action.*
- 2. Business Relationships:** The UNGPs expect businesses to take steps to prevent and address risks to people arising not only through their own activities, but also throughout their value chain where those impacts are directly linked to their operations, products or services through their business relationships. This is so even if they have not contributed to those impacts. In practice, this includes business relationships in the supply chain, business customers, clients, and bilateral partnerships (such as joint ventures). It includes the extended value chain, even where the business has no direct contractual relationship with a party, if the impact is nevertheless linked to the business's operations, products or services.
 - *In the context of an ECA such as ADSB, this responsibility means considering the broader project context with which a client is involved, and the value chains that feed into or may otherwise be connected to the project, as part of the E&S due diligence that ADSB conducts on clients. At the client level, the scope of a client's responsibility, and the risks that their own due diligence processes should identify, are not limited to the risks that a client could "control." Under the UNGPs, an ECA's clients also have a responsibility to seek to address risks they do not control, but which their operations, products or services are directly linked to through their own business relationships, by using and building leverage.*
- 3. Differentiated Responsibility:** The nature of a business's responsibility to take action on the risks and impacts it is connected to differs, depending on how the business is connected to a particular risk or impact.

- **Cause:** If a business has caused or may cause an impact, the business should prevent or mitigate the impact from occurring, continuing or recurring, and provide remedy for any human rights harms that have occurred.
- **Contribution:** If a business has contributed or may contribute to an impact, the business should prevent or mitigate its contribution to the impact, contribute to remedy for harm if it has occurred (to the extent of its contribution to the harm), and use or increase its leverage with others to prevent or mitigate the impact if it has not yet occurred. Contribution could occur in parallel (i.e., a cumulative impact caused by the actions of many) or through a third party (i.e., if a business facilitates or incentivizes the actions of a third party that causes or contributes to an impact).
- **Linkage:** If an impact is directly linked to a business's operations, products or services through a business relationship, then the business should use or increase its leverage with other parties to seek to prevent or mitigate the impact, which may include pushing for the provision of remedy by the responsible parties if the harm has occurred. However, in such linkage situations, under the UNGPs the business is not responsible itself for providing remedy to those who have been harmed, although it may choose to do so for other reasons.
 - *In the context of an ECA such as ADSB, most of the human rights risks and impacts that ADSB is likely to be connected to through its client relationships will be situations of linkage, with the expectation that ADSB would use its leverage with other responsible parties to seek to prevent or mitigate the impact. Moreover, given the nature of ADSB's portfolio, many of the most severe human rights risks and impacts will likewise be situations of linkage for ADSB's clients (i.e., impacts not caused by ADSB clients, but by other third parties connected to clients' value chains or project contexts). A similar responsibility for clients to use their leverage with others would apply.*

Importantly, however, there are circumstances in which a financial institution (including an ECA) could contribute to an impact through its business relationships, depending on the actions (or failure to take certain actions) of the financial institution.⁹

- 4. National Law versus International Standards:** The UNGPs expect businesses to respect internationally recognized human rights, even where national laws and regulations do not meet those standards. In practice, this means that businesses should not rely solely upon compliance with national law and regulations, in their own operations or in those of their business partners, unless they have assessed the extent to which national laws meet or exceed relevant international standards. In situations where national law or regulations fall short of international standards, there is no formal barrier to businesses going beyond compliance with local laws to ensure that they are respecting human rights in practice, and to setting similar expectations in the terms of their business relationships. Where local laws conflict with international human rights standards, the UNGPs expect companies to still seek ways to honor the principles underlying those standards, to the greatest extent possible.
- *In the context of an ECA such as ADSB, this means that solely assessing compliance with national law and regulation by clients and others involved in a specific project context may be insufficient to meet the expectations of the UNGPs, without comparing the standards set by local regulatory frameworks against international human rights standards.*

⁹ There is currently a substantial international discussion about the nature of the circumstances under which a financial institution could be seen to contribute to an impact through its client relationships, rather than that impact being directly linked to the financial institution's operations, products or services. These conversations are taking place in industry settings, such as the Thun Group, and in multistakeholder settings, including the OECD Working Party on Responsible Business Conduct and the Dutch Banking Sector Agreement on International Responsible Business Conduct Regarding Human Rights. The UN Office of the High Commissioner for Human Rights (OHCHR) offered further clarity on these questions in a June 2017 paper, available at <http://www.ohchr.org/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf>. The detail of this discussion goes beyond the scope of this review; it is sufficient for current purposes to note that an ECA such as ADSB could be deemed to have contributed to a negative human rights impact through its business relationships under certain circumstances.

5. **No Offsets:** The UNGPs do not allow businesses to “offset” actual or potential negative impacts on people with the positive development outcomes that may result from a given business activity. In practice, this means that regardless of the positive outcomes for many that may result from a particular business activity or investment (such as increased employment, enhanced livelihoods, or access to energy), a business must still take steps to manage the potential negative human rights impacts with which it may be involved.
- *In the context of an ECA such as ADSB, particularly where there is a socio-economic development or export promotion mandate, the ECA and its clients are not relieved of their responsibility to prevent and address negative human rights impacts because the positive outcomes of a project are said to “outweigh” the negative. Similarly, a decision to proceed with credit insurance based on a “net positive” impact overall, without additional requirements to prevent and address the most severe negative impacts that could be associated with that activity, would not be aligned with the UNGPs.*

C. Human Rights Due Diligence

In order to prevent and address human rights impacts in practice, businesses need to conduct human rights due diligence (HRDD). Under the UNGPs, businesses are expected to: (1) assess actual and potential human rights impacts that they may be connected to; (2) take action to prevent, mitigate or remedy those human rights impacts, depending on how they are involved with them; (3) track the effectiveness of those measures; and (4) communicate with external stakeholders about their efforts.

Across all stages of this cycle, HRDD should be an ongoing and dynamic process, rather than a static assessment of risks at a particular moment in time. HRDD should also be informed by the perspectives of affected stakeholders (i.e., those people whose human rights may be adversely impacted), through various forms of stakeholder engagement.

1. **Assessing Risks:** A business’s responsibility to respect human rights extends to all of the human rights impacts that it may cause, contribute, or be directly linked to. However, the UNGPs recognize that due to resource and time constraints, businesses may not be able to manage all risks and impacts at once. Therefore, the UNGPs provide a principled approach to prioritization, where necessary, based on the severity of harm to affected stakeholders and, as a secondary factor, the likelihood of the impact occurring. In practice, this prioritization often takes place at two levels: businesses may need to first prioritize certain activities and business relationships for enhanced due diligence (i.e., initial screening), and then identify the specific human rights risks or impacts connected to a particular project or transaction that they will prioritize for further attention and effort. The severity and likelihood of harm to affected stakeholders should drive both levels of prioritization.
 - *In the context of an ECA such as ADSB, this has two implications: (a) The screening criteria used to determine which projects or transactions will receive enhanced E&S due diligence should focus on those projects or transactions that could result in the most severe harm to affected stakeholders (i.e., by identifying high-risk circumstances for severe human rights impacts); and, (b) within the context of an individual transaction, actions taken by ADSB and requests or requirements directed to clients should focus on addressing the most severe impacts on people. The identification and prioritization of risks and impacts should be informed in various ways by the perspectives of directly affected stakeholders.*
2. **Addressing Risks:** Once human rights risks and impacts have been identified and prioritized, the business should take appropriate actions to prevent and mitigate them, or to enable remedy where impacts have occurred. As explained above, the actions the business takes will depend on how it is connected to the harm (cause, contribution or linkage). In the context of the E&S Policy Framework and the specific portfolio of

ADSB, it is likely that ADSB would most often be directly linked to impacts through its client relationships (i.e., through its policies of cover).¹⁰ In situations of linkage, where the business's operations, products or services are connected to risks and impacts caused by other entities, the business should use its leverage with other responsible parties to seek to prevent or mitigate the harm. Where the business does not have sufficient leverage to do so, it should seek to increase its leverage through a variety of means, including through the commercial terms of the relationship, such as contract provisions, as well as through other means such as capacity-building and collaborating with other entities in a wide variety of ways.

The basic expectation in terms of leverage is that the business should use all the tools at its disposal as it seeks to require, encourage, incentivize and/or support the responsible parties to prevent and otherwise address those risks and impacts prioritized in the assessment phase. This may mean engaging others to use or build their own leverage to address impacts. Where impacts have already occurred, this may include using leverage to push the responsible parties to provide appropriate remedy to those who have been harmed.

Where leverage is used effectively to prevent or mitigate prioritized risks, the severity and/or likelihood of those risks should be reduced. The business should then review its prioritization to see if other risks subsequently emerge as more severe or more likely, in light of mitigation efforts, and potentially shift the focus of its efforts to these other risks.

- *In the context of an ECA such as ADSB, this means using a broad range of approaches that could increase the ECA's influence with its clients (and other actors its clients may be connected to), and then using that leverage to seek to address the most severe risks to people, including:*
 - *Setting clear expectations for clients about their responsibility for E&S, including human rights risks;*
 - *Incorporating contract provisions on E&S, including human rights, performance, to create the formal basis for greater leverage;*
 - *Asking relevant questions to clients and their business partners about human rights risks and their capacity to manage them;*
 - *Assessing and supporting the effectiveness of stakeholder engagement and grievance mechanism processes conducted by clients and their project partners;*
 - *Supporting clients and other parties with capacity-building to more effectively manage human rights risks in practice;*
 - *Collaborating with other actors involved in individual projects or transactions to increase leverage over parties responsible for specific risks or impacts;*
 - *Collaborating with other actors not involved in individual projects, such as other parts of the ECA's home government, to engage with foreign governments around setting stronger regulatory or enforcement frameworks;*
 - *Collaborating with other ECAs to strengthen common standards (for instance, to increase the ECA's leverage in situations where multiple ECAs may be involved in either collaborative or competitive contexts).*

- 3. Tracking:** Businesses are expected to track the effectiveness of their human rights due diligence, including both the extent to which their assessment processes effectively identify and prioritize the most severe risks and impacts and the extent to which their leverage efforts effectively prevent or mitigate them. In practice, this can mean having systems in place that bring to the attention of the business impacts not identified through due diligence, and tracking the effectiveness of leverage efforts over time.

¹⁰ However, per footnote 9 above, there may be situations where ADSB could be seen to be contributing to impacts, rather than being directly linked to them. Specific examples of such situations are still being explored and debated in international settings, and Shift is actively involved in a number of these discussions.

- *For an ECA such as ADSB, this might mean establishing effective channels for impacts to be brought to the ECA's attention. It may also mean expanding the scope of projects that require ongoing tracking or monitoring. The OECD Common Approaches require periodic monitoring only for Category A project finance projects, while an ECA might identify significant human rights risks in projects in other categories. This broader notion of tracking might be implemented through the type of periodic monitoring used in Category A projects, or through other forms of tracking, including incident reporting, and through engagement with affected stakeholders, directly or via intermediaries.*
- 4. Communicating:** An essential step in the HRDD cycle is communicating publicly about the process of human rights due diligence, in terms of the risks identified and prioritized, the actions taken, and the effectiveness of those actions in preventing or mitigating harm. This should include formal reporting where the business is connected to significant risks to human rights. But the meaning of communicating in the UNGPs goes well beyond reporting to include a wide range of types of information-sharing with relevant stakeholders about individual projects, transactions or relationships which may be more or less formal in nature depending on the needs of the audience. The UNGPs recognize that there will need to be limits on communicating, for example where it could pose risks to affected stakeholders or personnel, or to the legitimate requirements of commercial confidentiality.
- *For an ECA such as ADSB, communicating includes all of the ways that the ECA shares information with potentially affected stakeholders and the public at large about how impacts are managed within specific projects and about the effectiveness of its broader E&S due diligence processes. For ECAs, this may be complicated by commercial confidentiality requirements in specific transactions at specific moments in time. As a result, ECAs may tend to default to limiting public communication to a narrow set of circumstances prescribed by the Common Approaches, rather than taking a more inclusive approach to sharing information based on what is possible, as the UNGPs expect.*

V. Key Observations: Alignment of ADSB's E&S Policy Framework with the UN Guiding Principles

Summary Observation: Based on Shift's document review as well as interviews with key ADSB staff and external stakeholders, we find that ADSB's E&S Policy Framework, which is based on the OECD Common Approaches and the IFC Performance Standards, exceeds the expectations of those international frameworks in several ways that are important to the expectations arising from the UNGPs, but that, nonetheless, some significant gaps remain.

On the one hand, there are several areas where ADSB has made revisions to its E&S due diligence in practice, but these are not yet reflected in the current versions of the E&S Policy and E&S Procedure. This includes: aspects of the 2016 revisions to the Common Approaches and the ways in which ADSB goes beyond these revised expectations in some respects (for example, the scope of transactions that are subject to E&S review); ADSB's approach to prioritizing human rights risks in practice in its E&S assessment; and the ways in which ADSB takes action to address identified human rights risks through various forms of leverage. ADSB's planned update of the E&S Policy Framework provides an important opportunity to consider how these could be addressed.

We also found areas where practice is improving, but which still leave substantial room for further evolution in practice and reflection in policy, such as the ways in which the perspectives of directly affected stakeholders are taken into account to inform ADSB's E&S due diligence.

Finally, there are several areas where current ADSB policy, process and practice fall short of the expectations of the UNGPs, including, for instance, the ways in which ADSB communicates about its environmental, social and human rights due diligence with external stakeholders.

In the section that follows, we share 10 more detailed observations about the alignment of ADSB's E&S Policy Framework and practice with the expectations of the UNGPs. For each observation, we point towards opportunities that may exist to strengthen alignment with the UNGPs. More specific recommendations are then presented in Section VI.

- 1. Further Explaining ADSB's Policy Commitment to Respecting Human Rights:** ADSB's E&S Policy explicitly refers to the role of the UNGPs in its work, recognizing that ADSB endorses and applies the UNGPs when a project is identified as at risk of having human rights impacts. However, the E&S Policy does not explain what this means in practice in terms of how the expectations of the UNGPs inform and shape ADSB's E&S approach. Rather, ADSB relies upon the proposed alignment of the OECD Common Approaches and the IFC Performance Standards with the UNGPs to explain how it meets this commitment. While these standards are in many ways aligned with the UNGPs, there are important ways in which they may in practice fall short of the expectations of HRDD in the UNGPs. Thus, the commitment to align E&S due diligence with the UNGPs is an important policy commitment, but additional exploration and explanation is required to implement this commitment fully and to communicate externally the extent to which this alignment exists in practice. Shift's independent, external review represents an important step in that process.

- *The most significant opportunity for strengthening ADSB's policy commitment would be to go further than stating the relevance of the UNGPs by explaining how ADSB's approach is aligned with them (i.e., the ways in which this commitment to apply the UNGPs is translated into practice), rather than simply stating that it is aligned.*

- 2. Coverage and Gaps in the Scope of ADSB's E&S Due Diligence:** The scope of ADSB's current E&S review process goes beyond the scope required by the Common Approaches, including with regard to (a) screening thresholds that would trigger or exempt certain transactions from E&S review and (b) clients' responsibility for third party risks arising in clients' supply chains. These are important divergences from the Common Approaches as they address areas where the Common Approaches fall short of the expectations of the UNGPs, and ADSB's approach comes closer to alignment with the UNGPs.

- **Screening Thresholds:** Section 1.2 of the E&S Procedure refers to the products that are subject to E&S review. This section may not yet reflect all of the 2016 updates to the Common Approaches, nor all of the divergences in ADSB's own screening criteria from the Common Approaches. ADSB's E&S Policy Framework requires review of: (a) short-term transactions (including those under two years) above a threshold of 10 million Euros; (b) smaller transactions regardless of financial amount (including those under the financial thresholds set by the Common Approaches) that are in "sensitive sectors" or "sensitive areas"; and (c) mobile assets (including maritime vessels).

These divergences from the Common Approaches recognize that the most severe risks to stakeholders may occur in any transaction, unrelated to the duration of cover, the amount of a transaction, or the fact that the policy covers a mobile asset (although the criteria for sensitive sectors or sensitive areas that would trigger E&S review of smaller transactions should be assessed to ensure that they correlate as closely as possible to high-risk circumstances for human rights impacts).

However, certain types of "pure financial products" that are not linked to an underlying insured export or investment transaction are still exempt under Section 2.2 of ADSB's E&S Procedure, such as currency protections. The nature of the financial product is itself not an indicator of reduced risk to stakeholders when

the broader project context is factored in. These transactions may reflect more limited leverage for ADSB or its clients to address risks connected to the underlying business activity, but ADSB and its clients would nevertheless still be linked to those impacts and have a responsibility to seek to address them. The UNGPs allow ADSB to prioritize certain areas of its business for enhanced due diligence (and therefore, certain areas of the business that would receive less due diligence), but this should be based on an assessment of the severity of risk to stakeholders (with likelihood as a secondary factor), not on the amount of leverage ADSB or its clients might have.

➤ *It may therefore be inappropriate for ADSB to presumptively exempt all financial products from E&S review, unless this is based on an assessment that these transactions are less likely to be connected to severe human rights impacts.*

- **Clients' Responsibility for Supply Chain Risks:** Section 2.5 of the E&S Procedure defines responsibility for supply chains in a narrow and limited way. The description is referenced as the OECD Guidelines' definition of "doing everything possible to enable and promote responsible business in the supply chain" (OECD Guidelines, Part II, A. 13). This definition in the Guidelines, however, begins with an important caveat: "*In addition to addressing adverse impacts in relation to matters covered by the Guidelines...*". Other sections of the Guidelines make clear that business enterprises have a responsibility to conduct risk-based due diligence, including with regard to impacts that may occur in their supply chains. That includes taking action and using their leverage to prevent and address such risks.

➤ *Shift's review found that, in practice, ADSB's E&S process take this more appropriate view of clients' responsibility for impacts in the supply chain. However, the language of the E&S Policy Framework is potentially misleading, as it does not adequately reflect this approach to client responsibility for supply chain impacts (and impacts caused by other third parties).*

3. Offset Language (Balancing Positive and Negative Impacts) is Problematic: There are several provisions in the E&S Policy Framework that make reference to weighting or balancing the positive and negative impacts of a particular transaction.

- These are most clear in Section 2.5 of the E&S Procedure: "*The assessment must lead to a conclusion that the environmental and social effects, all in all, are acceptable on balance.*" This policy language of balancing impacts is highly problematic, as it could easily be interpreted as endorsing the idea of "offsets": that certain negative impacts are deemed acceptable if they are offset by greater positive impacts. It may be appropriate for ADSB to consider positive and negative impacts in determining whether or not to offer a promise of cover provided that appropriate prevention and mitigation measures can be put in place to effectively address the identified negative impacts.

➤ *The E&S Policy Framework language needs to make explicit and clear, with no room for misinterpretation, that both ADSB and its clients maintain their respective responsibilities to take appropriate steps to prevent and address all human rights impacts they may be connected to, and to focus efforts on the most severe risks and impacts.*

- Separately, the assessment framework section of the E&S Procedure refers to "*deviations from international standards being substantiated to reach a final consideration that the human and environmental impacts are acceptable.*" Again, this language is highly problematic and risks an interpretation and implementation that would be wholly misaligned with the UNGPs.

Shift understands ADSB's approach in practice recognizes three types of relevant circumstances, based on the

concept of “margins of tolerance” described in the OECD Common Approaches (language that also risks misinterpretation and misalignment with the UNGPs):

- (a) Local laws and practices, and the practices of client companies and related third parties, already comply with international standards;
- (b) Local laws and practices do not yet comply with international standards, but ADSB expects the practices of client companies and those of related third parties to approach compliance over time. In such cases, ADSB provides a justification for this assessment of compliance over time; and
- (c) Local laws and practices do not meet international expectations and there is no reason to believe the practices of client companies and related third parties will approach international standards over time.

ADSB reports that it will provide a negative recommendation to the Dutch State in this final scenario.

This approach in practice is more aligned with the UNGPs than ADSB’s current related policy language. In many cases, with the exception of the most severe human rights risks, it would be perfectly appropriate for ADSB’s E&S Policy Framework to recognize the practical challenges for clients to be able to respect all human rights in a given context, where law, regulation or social custom prevent enjoyment of certain rights, provided that the policy nevertheless acknowledges a responsibility and commitment by both ADSB and its clients to work towards full enjoyment of those rights over time. However, as currently framed, the policy language suggests an approach of accepting a status quo that falls short of international human rights standards without further expectation. Where allowed by law, businesses should work to exceed local requirements in order to respect international human rights standards, and where they are prevented by law from doing so, businesses should pursue parallel means that seek to meet the principles underlying those standards, in line with the UNGPs.

- *The E&S Policy Framework language should make clear, aligned with the more nuanced practice reflected above, that deviations from international human rights standards and negative human rights impacts should never be deemed as simply “acceptable,” and that in all instances ADSB and its client companies are committed to take action to try to ensure full respect for human rights standards over time.*

4. **Strengthening Risk Assessment:** Within the phases of the HRDD cycle, ADSB’s E&S approach is strongest in the identification of human rights risks. As discussed above, an ECA may need to prioritize its human rights due diligence at two levels: first in the transactions that will be subject to enhanced human rights due diligence, and second in the specific risks or impacts within a given transaction that should receive immediate focus and attention. In both instances, this should be driven by an assessment of the severity of harm to stakeholders, with likelihood as a secondary factor. The role of stakeholder engagement in informing this prioritization process is discussed separately below.
 - **Screening Criteria:** ADSB’s E&S screening process prioritizes certain transactions for enhanced E&S due diligence, by providing an initial project categorization that determines the amount of enhanced due diligence that will be required. ADSB’s screening is based upon several factors that are relevant from a UNGPs perspective, including: (a) presumptively high risk sectors (including oil and gas, dredging, chemicals, paper and pulp, large scale agriculture and horticulture and textiles), (b) the project environment, including the track record of key project partners, and the legal and regulatory framework for preventing environmental and social harms, including respecting human rights, and aspects of how it operates in practice, and (c) specific “sensitive” circumstances in other sectors that might trigger enhanced due diligence (including projects that may involve land acquisition or resettlement or where indigenous peoples may be in project-affected areas). This approach to prioritization is broadly aligned with the UNGPs, which allow businesses to prioritize higher risk parts of their operations or value chains for enhanced due diligence when there are legitimate resource constraints.

- *Further alignment with the UNGPs would require that ADSB periodically reviews and updates these criteria to ensure that they are effectively capturing those transactions for enhanced due diligence that represent the highest risk circumstances for severe human rights impacts. This should be based on E&S experience in practice, as well as the recognition of other factors that could signal heightened risk of negative human rights impacts.*

For example, Shift observed that ADSB's E&S practice includes other sectors that are also treated as presumptively high risk, including infrastructure, construction and maritime, which are not currently reflected in the E&S Policy Framework. Equally, there may be additional factors not yet reflected in policy and practice – for example, the presence of potentially vulnerable groups beyond indigenous peoples within a particular project scope, such as women, children, ethnic or religious minorities or migrant workers. These groups may be at heightened risk of suffering severe negative impacts, yet current screening criteria may miss some of these particularly vulnerable groups.

- **Prioritization Within Transactions:** With regard to prioritization within individual transactions, ADSB's E&S practice is stronger than the current E&S Policy Framework. Through case examples, it was clear that ADSB's E&S team tends to prioritize the most severe harms to people within a given project, which is aligned with the UNGPs. However, these criteria and this approach to prioritization could be made more explicit, and the analysis more systematic and rigorous, in policy, process and practice. This would provide greater clarity to clients by helping them to focus their efforts on addressing the most severe risks first, especially in contexts in which they may have limited leverage to begin with. This is particularly significant given the continued growth in the number of transactions in ADSB's portfolio involving SMEs. In such cases, leverage and capacity are more likely to be limited, and a principled approach to prioritization will provide clarity internally and externally about the need for a deliberate focus on the most severe harms.
 - *The E&S Policy Framework should make more explicit an approach already reflected to some extent in ADSB's practice, that is, of prioritizing the most severe impacts on stakeholders for attention and action.*
- **Human Rights Expertise in Assessment:** As is the case for many financial institutions, including other ECAs, ADSB will at times rely upon external partners (such as consultants) to inform ADSB's own enhanced due diligence on specific projects. While interviews did not focus on this issue, Shift's experience with other ECAs and financial institutions has been that there is often greater expertise among third parties in assessing environmental rather than social (let alone human rights) risks and impacts. This can be a significant challenge, as different types of expertise and methodology may be required to effectively identify, understand and address social and human rights impacts as compared with environmental impacts, as well as the interplay between environmental and social risks.

Similarly, for those transactions that involve a development component, particularly with SME clients, the primary responsibility for conducting due diligence may rest with the Netherlands Enterprise Agency (RVO) within the Ministry of Economic Affairs, rather than ADSB. Although the Dutch State is setting a common E&S policy framework across relevant actors, implementation in practice by different actors may leave gaps. This could create situations where ADSB's due diligence is missing important human rights risks if it is relying upon others to conduct that due diligence. In line with its duty to protect human rights under the first pillar of the UNGPs, the Dutch State should ensure the quality of due diligence conducted by all partners on its behalf in the context of export credit, official investment insurance or guarantees and development finance. In addition, ADSB has its own responsibility under the second pillar of the UNGPs to ensure the quality of due diligence conducted on any business activity where ADSB is involved. Shift understands that ADSB

already regularly reviews the due diligence conducted on projects where RVO or others have the primary responsibility for that task.

- *We therefore call attention to the issue of human rights expertise and capacity in all situations where a third party is informing ADSB's due diligence or where ADSB is relying upon the due diligence of others, as the quality of human rights due diligence will be undermined in specific transactions if this expertise and capacity is lacking.*

- 5. Articulating ADSB's Approach to Addressing Risks and Using Leverage:** In the area of addressing risks, ADSB's E&S practice is again much stronger than ADSB's E&S Policy Framework, which is virtually silent on the expectations ADSB sets for itself or its clients to take action to prevent or mitigate prioritized risks. In practice, Shift observed several compelling examples of using and building leverage in specific ADSB cases, including capacity-building and proactive engagement approaches taken by ADSB with key clients (including supporting clients to increase their own in-house capacity to manage social risks), providing additional capacity to SMEs through the RVO program, engagement with the Dutch Government in high profile cases, and raising questions about human rights issues with clients and in turn expecting clients to raise these questions with project partners.

Importantly, Section 2.6 of the E&S Procedure appears to provide ADSB with significant leverage with clients by giving ADSB the right to nullify the policy if the client provides incorrect or incomplete information. However, there may be further opportunities for ADSB to increase its leverage by incorporating additional E&S clauses and commitments in policy contracts.

In addition, several circumstances were raised in relation to the timing of policy coverage that reduce ADSB's leverage in practice. Examples include coverage being sought by an ADSB client after a project is well underway, or coverage being sought as part of a bidding process, before an ADSB client has been selected as a product or service provider, thereby limiting the client's and ADSB's ability to receive answers to due diligence questions. These circumstances can pose challenges in both assessing risks (where exercising leverage is necessary to gather appropriate information) and addressing risks (where exercising leverage is necessary to take appropriate action to prevent or mitigate those risks).

- *Despite several examples of good practice, ADSB's E&S Policy Framework should more clearly articulate a broad approach or framework for how ADSB thinks about using and building leverage more holistically, as well as the expectations ADSB has of its clients, in light of the commercial realities that shape opportunities and challenges in this area.*

- 6. Broadening Tracking of Human Rights Performance:** ADSB's E&S Procedure limits tracking to the Common Approaches' requirement that Category A project finance projects should be monitored, at a minimum, through periodic client reporting on progress on E&S impacts. In contrast, the UNGPs expect ADSB to track its performance in managing human rights risks across all projects, in various ways, through formal monitoring as well as other systems and processes for tracking performance, including incident reporting, media monitoring and stakeholder feedback channels.

- First, this tracking should help to assess the quality of ADSB's own screening processes, to ensure that initial screening effectively identifies those transactions at highest risk of being connected to severe human rights impacts, and that due diligence resources are therefore being deployed appropriately;
- Second, this tracking should help to ensure that ADSB's project due diligence effectively identifies the most severe and likely impacts connected to an individual project, which can help to ensure that due diligence is ongoing and dynamic, rather than static or reflective of a "moment in time";

- Third, this tracking should assess the extent to which steps taken by ADSB, or prescribed by ADSB to clients, are effective in practice in preventing, mitigating, or addressing prioritized risks. This should not be limited to Category A project finance transactions, but should apply to any transactions where significant human rights risks were identified (including Category M projects).

Again, in this area ADSB's E&S practice exceeds what is prescribed by ADSB's E&S Policy Framework. The case examples explored with the E&S team demonstrated a more consistent approach to engagement in several instances, and ADSB appears to follow up on impacts brought to its attention by external stakeholders as a matter of practice.

- *These practices should be made more systematic and a more holistic approach to tracking a broader spectrum of projects should be included in the E&S Policy Framework. Tracking should apply across project categories and may need to extend beyond the duration of the policy in some circumstances, in order to assess whether the most severe human rights risks and impacts were effectively assessed and addressed. This may in turn have resource implications for the E&S team.*

- 7. A Limited Approach to Communicating Human Rights Performance:** ADSB's E&S Policy Framework obligates ADSB to provide public disclosure about certain projects according to specific timelines, as prescribed by the Common Approaches. It goes further in explaining ADSB's disclosure policies towards specific stakeholders, including the Dutch State, exporters and NGOs. These practices were recently revised by ADSB to create greater transparency in some key respects for Category A projects than is required by the Common Approaches.

The UNGPs recognize that there may be legitimate concerns about commercial confidentiality that would prevent certain forms of public disclosure in specific circumstances. However, ADSB's current approach to communicating about its human rights performance in policy, process and practice seems based on the narrow expectations of disclosure required by the Common Approaches (even while acknowledging that ADSB goes beyond some of these requirements, such as in the publication of ESIAs), rather than the communication that may be possible, in line with the UNGPs. Specifically:

- ADSB's E&S Policy Framework does not articulate a broad approach that recognizes the potential value to the business that greater transparency and communication could play. As a result, public disclosure is positioned more as a burden than an opportunity, where ADSB must meet very narrow and specific requirements.
- Revisions to the E&S Policy Framework provide an opportunity for ADSB to reposition the role of communication in its E&S approach, for instance in enhancing the quality of due diligence, in increasing ADSB's leverage, or in improving stakeholder relationships (by allowing stakeholders to better understand ADSB's E&S approach in practice, and enabling ADSB to receive appropriate credit for the actions it takes as well as questions about those actions). For example:
 - With regard to the quality of due diligence, greater transparency – where possible – can empower stakeholders and other actors to provide relevant inputs into ADSB's assessment of risks in specific projects;
 - With regard to leverage, ADSB does not currently disclose transactions that are either rejected or withdrawn on E&S grounds. This severely limits the opportunity to increase ADSB's leverage in subsequent transactions by educating clients about ADSB's E&S expectations. This includes a case example shared with Shift, where, after cover was not provided to a prospective client, the company took significant steps to improve its E&S performance and management systems based on ADSB's E&S review. Where it is not feasible for ADSB to share the details of these transactions, at least sharing anonymized or aggregated information can be compelling evidence of the seriousness of

ADSB's commitment. Such information could include the number of transactions declined or withdrawn where significant E&S concerns were raised, or anonymous examples of the types of human rights issues that ADSB's E&S reviews have highlighted in such situations;

- The limitations of ADSB's current approach to communicating can damage relationships with stakeholders, particularly those in civil society who remain unaware or unconvinced of the credibility of the actions ADSB is taking to respect human rights in practice, the role that E&S assessment plays in decision-making, or ADSB's effective uses of leverage in specific projects or transactions.

- *The E&S Policy Framework review provides an opportunity for ADSB to reposition the role of communication about E&S issues with external stakeholders and substantially reshape its approach to enhancing transparency, even within the confines of commercially sensitive information.*

- 8. Limited Role for Stakeholder Engagement:** In the UNGPs, stakeholder engagement is focused on the ways in which the perspectives of affected stakeholders inform human rights due diligence and decision-making. This is therefore less about engagement with policy-level NGOs in the Netherlands, and more about engagement with directly affected stakeholders (i.e., those individuals or groups who are or might be harmed by a project, or their legitimate representatives, such as trade union leaders where workers are unionized), or with credible proxies who can provide insights into their perspectives, such as local NGOs. Despite some positive examples of stakeholder engagement revealed through case discussions, ADSB's E&S Procedure states that "proactive contact with NGOs" would only take place under "exceptional circumstances." This very limited approach to stakeholder engagement misses the underlying purpose of effective stakeholder engagement.

While ADSB itself may not need to conduct direct engagement with affected stakeholders in many instances, it should ensure that its E&S due diligence is informed by stakeholder perspectives. This would therefore place primacy on assessing the credibility and effectiveness of the stakeholder engagement processes of clients and their project partners in order to understand the extent to which those processes can be relied upon as part of due diligence. Where those processes are questionable or raise concerns, ADSB might then conduct its own stakeholder engagement. In practice, Shift observed several examples through case discussions with the E&S team where ADSB conducted this type of direct engagement with project-affected stakeholders.

- *The E&S Policy Framework could be strengthened by explaining the role that ADSB understands stakeholder engagement to play in its E&S due diligence, and the circumstances that might merit stakeholder engagement directly by ADSB. This also suggests that ADSB should have a clear approach to assessing the quality of stakeholder engagement processes conducted by clients and others.*

- 9. Further Embedding Respect for Human Rights Within ADSB:** The concept of embedding in the UNGPs is intended to ensure that the totality of a business's actions and decision-making are aligned with its commitment to respect human rights. This relates to governance and decision-making structures; the roles, resources and responsibilities for respecting human rights within an organization; and coherence between an overarching commitment to respect human rights and other organizational priorities.

- **Silo Approach:** Shift observed a strong silo approach within ADSB in terms of responsibility for respecting human rights, with that responsibility resting solely with the E&S team. At the same time, we also observed that the E&S team is highly respected by others within ADSB, and E&S assessments are accorded significant deference and weight in informing ultimate decision-making on whether a transaction would be approved and cover provided. It may therefore not be perceived as a problem or challenge that many relationship and account managers seemed unfamiliar with the realm of social or human rights risks, or the specific nature of ADSB's or clients' responsibilities to manage such risks. However, this approach may miss significant opportunities to increase ADSB's leverage with clients, as relationship and account managers will often be on

the frontlines of communication with clients, have earlier access to information about projects and potential projects, and may have greater leverage with clients. Shift observed a greater awareness of environmental risks among underwriters and relationship managers, who often substituted “environmental” risks and assessment for the more holistic environmental, social and human rights risks and assessment processes conducted by ADSB’s E&S team. This silo approach may therefore unintentionally undermine ADSB’s commitment to respecting human rights in practice.

- **Resources:** The E&S team is comprised of two full-time equivalent positions, shared across three individuals. Shift is not in a position to determine whether this is a sufficient level of resources for ADSB to conduct adequate HRDD across ADSB’s portfolio. However, our review and recommendations raise certain resource implications and potential concerns. We offer the following observations, which might serve to guide the Dutch State and ADSB in assessing this:
 - Our recommendations include expanding ADSB’s E&S efforts on individual tracking beyond current levels of effort, in terms of applying leverage, implementing more robust tracking, and enhancing communication;
 - The shift in ADSB’s portfolio towards a greater focus on transactions involving a larger number of SMEs is likely to stretch ADSB’s E&S resources, given a larger number of transactions, a larger number of clients, and clients with less familiarity and likely capacity when it comes to E&S management;
 - The process of embedding respect for human rights is equally about the perceptions created, implicitly or explicitly, about the importance a business attaches to respecting human rights. The allocation of organizational resources, including the allocation of human resources, is often one of the most tangible signals that an organization can send.

➤ *We therefore suggest considered reflection by the Dutch State, ADSB management and the E&S team on the adequacy of current human resources for meeting ADSB’s commitment to respecting human rights and fulfilling its mandate to conduct effective E&S and human rights due diligence.*
- **Policy Coherence:** ADSB’s commitment to respect human rights is not only about the E&S due diligence it conducts, but also about the way it communicates about the role that environmental, social and human rights risks play in its business decision-making. External stakeholders raised concerns about Section 3.7 of the Procedure, which speaks to the “tuning” of ADSB’s E&S Policy Framework: *“The purpose of the tuning is to monitor the Level Playing Field. All export credit insurers have committed themselves to the same normative framework for the environmental and social assessment of export credit insurance and investment guarantees in the international context. Dutch exporters should not face substantial competitive disadvantages of a stricter assessment process compared with other Common Approach Suppliers, unless national policy explicitly makes a different choice. The aim is to provide as good and sound possible environmental and social assessment while minimizing the burden for the exporter.”*

External stakeholders raised concerns that this framing of ADSB’s approach places greater emphasis on the commercial drivers for ADSB’s business when these might conflict with robust human rights due diligence (HRDD). While Shift observed significant concerns within ADSB about the level playing field, this did not seem to result in a dilution of HRDD in practice. In fact, we observed many examples where E&S due diligence trumped commercial or political drivers to approve a policy. However, as an expression of ADSB’s commitment to respect human rights, the language could be made clearer to convey an unqualified commitment to applying robust HRDD, while recognizing the importance of efforts to raise industry standards to meet those expectations. Indeed, given the public/private nexus, the Dutch State should be

sending (and ADSB should be seeking from the government) a clearer message about its expectations of ADSB and its clients with regard to implementing their responsibility to respect human rights.

- *The E&S Policy review process provides an opportunity to ensure that ADSB's commitment to respecting human rights is embedded throughout the business, by using any updates as an opportunity to promote greater internal awareness and understanding across functions and by reviewing the resources required for implementation of an updated policy. The Policy should be reviewed to identify sections that may send unintended messages about the importance or role of human rights in ADSB's decision-making.*

10. Enabling Remedy and the Role of Grievance Mechanisms: The UNGPs expect businesses to have processes in place to provide for or contribute to remedy where the business has caused or contributed to an impact. For ADSB, as discussed above, the majority of the human rights risks ADSB will be connected to through its clients are likely to be situations of linkage. In such situations, ADSB would not have a responsibility to provide remedy directly. However, one means of using its leverage could be to engage with those actors that are responsible for causing the harm, to push them to provide effective remedy and to strengthen their own grievance mechanisms.

The current E&S Policy Framework is silent on the question of remedy and the ways in which ADSB might meet its differentiated responsibilities for enabling, or seeking to enable, remedy in the context of its client relationships. The policy does reference the potential role of the NCP as a platform for complaints; however, it does so in a way that does not identify whether ADSB sees any constructive role for such a process as part of its own approach to handling grievances.

ADSB does have an internal procedure in place for how the organization will handle complaints that are raised through ADSB's Dutch language website. However, there are often legitimate questions about the effectiveness of these types of mechanisms in practice, particularly for affected stakeholders who may lack access to such formal channels because of a lack of access to technology, language barriers or other reasons.

Several national development finance institutions have recently established a shared formal grievance mechanism for client-related risks and this is one option for ADSB. A more effective ADSB grievance mechanism could potentially play an important role in informing its own due diligence in connection with clients by creating formal pathways for external stakeholders to raise complaints and alert ADSB to issues. However, in many cases a grievance mechanism at the ADSB level would be unable to provide remedy in practice if the parties responsible for causing or contributing to the impact (who are unlikely to be ADSB's direct clients given ADSB's portfolio) do not participate in the process. At the same time, ADSB might better meet the expectations of the UNGPs through greater attention in the E&S due diligence process to the quality and effectiveness of project-level grievance mechanisms, including tools to assess and/or support their greater effectiveness.

- *Shift encourages ADSB to take a thoughtful approach to the roles that ADSB could play in enabling remedy, including greater attention to the effectiveness of project-level grievance mechanisms and the roles that a formal complaints process or grievance mechanism could play (whether that is in-house or through a credible external channel like the Dutch National Contact Point).*

VI. Detailed Recommendations: Strengthening Alignment of ADSB's Policy, Process and Practice with the UN Guiding Principles

This section provides further elaboration and more detailed recommendations on some of the areas identified above in the Findings section. Shift understands that ADSB will use this review first and foremost to inform its own assessment of potential revisions to its E&S Policy Framework, and then as input into further discussions with external stakeholders about those revisions.

Shift's recommendations, based on the above analysis, are focused on specific opportunities to revise the E&S Policy Framework in order to strengthen alignment with the UNGPs. Additional recommendations on strengthening E&S practices, including steps to further embed respect for human rights through the broader E&S Policy Framework, are provided in order to illustrate the potential implications of our suggested revisions to that framework.

A. Nuance the Relevance of International Standards and Frameworks:

- In discussing the role of international frameworks, ADSB should consider language that recognizes the role that the Common Approaches and IFC Performance Standards play in shaping ADSB's E&S Policy Framework without suggesting that this alone creates alignment with the UNGPs. That language could go further to acknowledge that while these frameworks go a long way towards meeting the expectations of the UNGPs and human rights due diligence, ADSB recognizes that certain gaps remain, and ADSB's E&S Policy Framework goes beyond the expectations of those frameworks where necessary to ensure a robust approach to respecting human rights in practice. The E&S Policy Framework could further highlight specific areas of divergence and recognize ADSB's efforts to continue to strengthen those industry standards in order to create a level playing field that is fully aligned with the UNGPs.
- In discussing the UNGPs, ADSB should consider expanding on the statement that ADSB endorses and applies the UNGPs where human rights risks have been identified, by explaining its understanding of how the expectations of the UNGPs are met through ADSB's E&S Policy Framework, as described further below. (Two smaller notes: the UNGPs should not be referenced as "the Ruggie Framework" as they are a formal UN document, and they apply to all business activity not only international business activity).

B. Close Gaps in Scope:

- ADSB should provide further explanation in its E&S Policy Framework regarding its rationale for the scope of its E&S due diligence, regardless of financial threshold in sensitive sectors or areas, duration of cover, or mobility of assets. In other words, ADSB should recognize the fact that severity of harm to stakeholders is the primary criterion, and that severe human rights impacts can occur in the smallest financial transactions, the shortest coverage policies or in connection to mobile assets. Moreover, ADSB should review and refine its criteria for sensitive sectors or areas in order to ensure that these criteria effectively capture all high-risk circumstances.
- ADSB should remove the exemption of E&S due diligence for pure financial transactions that are not linked to an underlying insured export or investment transaction. In practice, these transactions may prove to be at lower risk of human rights impacts, but that conclusion should be reached based on a review of human rights risks typically connected to this class of transactions. If ADSB chooses to not prioritize this class of transactions due to limited leverage in practice, rather than due to the potential for severe human rights impacts, this would be a deviation from the criteria of the UNGPs and should therefore be based on consultation with relevant policy-level stakeholders.

C. Reframe Assessment Framework Language, Removing Reference to Offsets and Deviations:

- ADSB should reframe the language that describes its assessment framework, particularly by removing the discussion of balancing positive and negative impacts, “acceptable risks,” and acceptable deviations from international standards. The current language of the E&S Procedure is at best misleading, and indeed has led in some instances to misinterpretation by internal ADSB staff, clients, and external stakeholders. New language should be unmistakably clear and more explicit that ADSB recognizes its own responsibility and that of its clients to address all negative human rights impacts to which they may be connected, and that ADSB and its clients are committed to taking appropriate and credible steps to prevent or mitigate the most severe impacts. The E&S Policy Framework should also recognize that (as reflected in practice) there may be certain situations where, regardless of the perceived positive outcomes, the human rights impacts are or would be so severe that no effective prevention or mitigation measures are possible.

D. Frame a More Holistic Approach to Due Diligence:

- ADSB’s E&S Procedure is heavily focused on the assessment phase of due diligence, in terms of the initial screening of transactions and the identification of potential negative impacts. ADSB should consider reframing its E&S Procedure around a more holistic approach to due diligence, including the role of prioritization, leverage, tracking, communicating and stakeholder engagement. (By way of example, see the structure of GIEK’s Environmental and Human Rights Due Diligence Procedure¹¹, which is framed around: (1) identifying impacts; (2) assessing impacts; (3) acting to address those impacts through leverage; (4) accounting for how those impacts are addressed; and (5) communication and disclosure).

E. Define Prioritization Explicitly Based on Severity of Harm to People:

- ADSB should consider framing its approach to screening projects for enhanced due diligence around factors that heighten the risk of severe human rights impacts. Along these lines, ADSB already considers several factors: the sector that is involved; the project context; the track record and capacity of clients and project partners; specific sensitivity factors (including activities such as land resettlement); and the presence of vulnerable groups in project-affected areas (including an expanded definition of vulnerable groups, beyond indigenous peoples).

⇒ *In practice, this may require adapting ADSB’s screening criteria, or the way these factors are used to classify projects, in order to ensure that screening is as successful as possible in identifying the highest risk projects. It may also mean that – over time – a transaction conducted in a presumptively high risk sector may be designated for a lesser amount of due diligence if ADSB has gained sufficient confidence in the credibility and effectiveness of the client’s own human rights due diligence and management capacity. Conversely, a project that may otherwise have been deemed lower risk might be classified as higher risk, based on client experience and capacity (and that of project partners). However, ADSB would need to develop clearer tools for assessing client capacity as part of an overall risk rating (for example, by assessing client experience and track record in implementing projects of similar complexity, magnitude, and in similar contexts; assessing the human rights expertise of client companies; and assessing the quality of the company’s own due diligence through comparison to issues and actions identified through ADSB’s due diligence).*

- ADSB should consider including in its E&S Policy Framework a more explicit approach to prioritizing the most severe negative impacts on stakeholders, within the context of specific transactions and projects. This would create greater clarity for ADSB, clients and stakeholders, and allow for a focused use of potentially limited leverage in the most important ways in terms of outcomes for people.

¹¹ See note 3 above.

F. Articulate a Robust Approach to Leverage:

- ADSB should include in its E&S Policy Framework an articulation of its approach to taking action to prevent and mitigate risks that are identified and prioritized, including explicitly discussing how ADSB views its role in building and using leverage. (Again, Shift would recommend reviewing GIEK’s discussion of leverage in its Environmental and Human Rights Due Diligence Procedure.) This should also include articulating clear expectations of ADSB’s clients to build and use their own leverage with project partners to address prioritized risks.

⇒ *In practice, this may require reviewing and expanding the tools that ADSB has at its disposal to increase its leverage with clients, including for example through:*

- *case-specific E&S covenants or contract provisions;*
- *proactive engagement with repeat and prospective clients;*
- *capacity-building approaches with clients to strengthen their own human rights management capacity (which can in turn reduce the resource burden on ADSB for transactions with repeat clients); and*
- *reviewing internal procedures and practices (see the discussion on embedding below) to mainstream awareness of human rights risks and responsibilities among underwriters and account managers and help to ensure an earlier application of the E&S lens.*

⇒ *In practice, this may also require reviewing and expanding the tools that ADSB has at its disposal to increase leverage with the project partners of clients, where clients themselves may have insufficient leverage to prevent or mitigate risks, including, for example, through:*

- *helping clients to articulate the business case to project partners for better E&S performance;*
- *direct engagement with project partners, where appropriate;*
- *developing capacity-building tools around common challenges in key sectors, including practical approaches to effective stakeholder engagement and effective grievance mechanisms;*
- *collaborating with other ECAs in addressing systemic risks in sectors of shared interest;*
- *bringing issues to the attention of the Dutch Government, where ADSB’s own leverage efforts are unlikely to be successful in addressing risks and impacts.*

G. Take a More Structured Approach to Stakeholder Engagement:

- The review of ADSB’s E&S Policy Framework provides an opportunity for ADSB to articulate a more constructive and structured approach to the role of stakeholder engagement in the organization’s E&S due diligence. This should include identifying the value to the business that ADSB perceives in understanding and incorporating the perspectives of affected stakeholders into due diligence processes, and the various tools that ADSB might use to enable this in practice.

⇒ *In practice these could include, for example:*

- *credible stakeholder engagement processes by clients and project partners (and tools to assess the effectiveness of those approaches in practice);*
- *open channels of communication with networks of civil society organizations and trade unions which may be more closely connected to affected stakeholders;*
- *proactive consultation with policy level stakeholders to inform ADSB’s understanding of general sector-related or context-specific risks.*

H. Take a More Inclusive Approach to Transparency and Communication:

- Similar to other recommendations, the E&S Policy Framework should be updated to reflect a completely different relationship to transparency and communication, including a general description of the reason ADSB communicates about E&S risks and performance, some of the challenging commercial and legal realities that

may require reasonable limitations on disclosure in practice, and how ADSB seeks to meet the spirit of the UNGPs' expectation of robust communication in light of these constraints.

⇒ *In practice, this will require a cultural shift within ADSB with regard to communication, focusing on what information ADSB could share, rather than the information it is required to share. Recognizing legitimate commercial constraints, ADSB may not always be able to share information about specific project transactions. However, there are certainly ways in which ADSB could share more information about risk screening criteria, the use and effectiveness of leverage in practice, and transactions that are rejected or withdrawn at least in part on E&S grounds, including through anonymized or illustrative examples.*

I. Take Further Action on Embedding:

- **Silos:** The E&S Policy Framework could specify that ensuring respect for human rights in ADSB transactions is a shared responsibility of all, rather than solely the E&S team. While this might appear to be largely symbolic, it could be a helpful first step in breaking down a silo approach.

⇒ *Capacity-building: In practice, ADSB may wish to consider general awareness-raising training to ensure that account and relationship managers and underwriters have a firm understanding of ADSB's commitments in practice, so that they are better positioned to represent and advocate with clients for necessary information up front and necessary action once risks are identified. This may be particularly important with regard to the evolving ADSB client base, with a greater focus on new SME applicants where the capacity of the E&S team will be even further stretched.*

- **Resource Implications:** While questions of capacity are beyond the scope of Shift's review, we recognize that many of the recommendations for revisions to E&S policy, process and practice may have resource implications, as will the move towards new SME applicants.

⇒ *Assess Capacity of External Due Diligence Providers: Where ADSB contracts with third parties to conduct enhanced due diligence, ADSB should assess the human rights expertise of those third parties. The current policy references framework agreements with engineering firms; however, it is unclear what forms of expertise these providers are expected to demonstrate.*

⇒ *Prepare for SMEs: The implications of the shift in ADSB's portfolio towards a greater number of first-time SME applicants are likely to include: (a) a greater number of transactions to be screened; (b) more limited capacity of applicants to conduct effective due diligence themselves; and (c) limited leverage by clients in addressing overall project-related risks. The separate recommendations above regarding a more comprehensive screening framework, prioritization, a clearer approach to leverage, and breaking down silos should all play a role in meeting this new reality.*

- **Policy Coherence:** ADSB should use the policy revision process to develop a more constructive framing of the "level playing field" challenge. Specifically, policy language should make clear that ADSB seeks to raise practices across the industry to create a level playing field without diluting its own approach to E&S due diligence, in order to remain competitive.

J. Explore ADSB's Role in Remedy:

- The E&S Policy Framework should clearly articulate how ADSB understands its responsibility in relation to enabling remedy including the potential roles it can play when remedy is the primary responsibility of clients and/or their project partners.

- ⇒ *In practice, this will require further exploration, including the role of project-level grievance mechanisms, external grievance mechanisms that ADSB could rely upon as well as the possibility of developing an internal mechanism.*
 - *Any such internal grievance mechanisms should play a constructive role in ADSB's broader due diligence and tracking efforts. ADSB will need to explore internally and externally what role such a mechanism might play in enabling remedy in linkage situations, and how it might best design the mechanism, in line with the UNGPs, to play that role effectively;*
 - *Additional efforts could, for instance, include a clearer focus and stronger tools for assessing the quality of project-level grievance mechanisms, and/or various forms of capacity-building resources that could be offered in high-risk circumstances.*

- ⇒ *For now, it is sufficient to recognize that the E&S Policy Framework is currently silent on the question of remedy, and it should not remain so. ADSB should as a first step in this process engage in a meaningful internal and external dialogue about its role in remedy, and the ways in which ADSB might most effectively meet its responsibilities in this regard.*

Concluding Observation: ADSB's E&S approach (inclusive of policy, procedure and practice) reflects important areas of alignment with the UNGPs, as well as some highlighted gaps. In some instances, ADSB's E&S Policy Framework is not fully reflective of ADSB's implementation of E&S due diligence in practice, where there are several leading practices. However, these areas of leading practice risk being undermined by other areas of weakness, such as ADSB's lack of communication about its human rights risks and efforts. Shift hopes this analysis and the recommendations for revisions to ADSB's E&S Policy Framework are a constructive input into ADSB's broader revision process, and can help ADSB to position itself as a leader on human rights within the ECA community.

Appendix: List of those consulted as part of this review

- Managing Director, ADSB
- E&S team, ADSB
- Senior Underwriter (Asia), ADSB
- Senior Underwriter (Account Manager), ADSB
- Underwriter (New Business), ADSB
- Manager (Account Team), ADSB
- Head of Project Finance, ADSB
- Van Oord
- ING
- Both ENDS
- SOMO
- Dutch Ministry of Finance