

The Belgian Investment Company for Developing Countries

Lessons learned from the 2021 external study
“The Belgian Company for Investment
in Developing Countries (BIO) as a Sustainable
Development Actor”

Table of content

A Normative framework and standards: rules BIO needs to follow	3
National normative framework	3
International normative framework	4
Private standards and voluntary instruments	5
B BIO's financial Structure: where the money comes from.....	6
BIO's sources of funding	6
Financial additionality	7
C BIO as a Development Actor: where the money goes	7
BIO's business Model	7
<i>Geographic Scope</i>	7
<i>Priority sectors</i>	8
<i>Investment Channels</i>	8
<i>Private Equity Funds</i>	8
<i>Supporting (micro,) small and medium-sized enterprises</i>	9
How BIO chooses where to invest	10
<i>Environmental and Social Framework</i>	10
<i>Environmental and Social Assessment Process</i>	11
<i>Approach: negative impact can be compensated</i>	11
Community Engagement	12
BIO's idea of sustainable development	12
D Accountability: controlling how the money is used	13
Stakeholders to BIO's actions	13
BIO as part of the Belgian Development Cooperation	14
<i>Public accountability and transparency</i>	14
<i>Public transparency and access to information</i>	14
Accountability for Environmental and Social Impacts	15
<i>E&S Monitoring</i>	15
<i>Grievance Mechanism</i>	16
E Conclusion	17

This research aims to summarize a study named “The Belgian Company for Investment in Developing Countries (BIO) as a Sustainable Development Actor” (hereinafter “the Study”),¹ focusing on the legal framework and factual findings it provides. For an evaluation of the conformity of BIO’s actions with its legal framework, this work refers to three policy briefs² developed by CNCD-11.11.11, 11.11.11 and the Coalition Against Hunger.

In the first Chapter, the statutory framework of BIO is explained from a national and international perspective, analyzing both legal and voluntary frameworks. BIO needs to adhere to several rules, from national law to private standards, and even international obligations of the Belgian State. In Chapter B, this summary explains how BIO is funded and the important requirement of financial additionality it needs to fulfill when investing. Next, in Chapter C, BIO is described in its capacity as a development actor, displaying its business model and investment process. The notions of community engagement and BIO’s idea of sustainability are also discussed. In the final Chapter, it is revealed to what extent BIO’s stakeholders should be able to hold BIO accountable for negative impact created by its investments. Here, this summary also offers a brief description of BIO’s grievance mechanism.

A | Normative framework and standards: rules BIO needs to follow

National normative framework

BIO was established by the so-called BIO Law in 2001 as a public entity.³ It constitutes the binding framework in which BIO and its employees can operate, together with the Second Management Contract (drawn up as a Royal Decree valid from 2018 to 2023⁴) between BIO and the Belgian State and the 2013 Law on Development Cooperation⁵ (as explained below). The general goal of BIO is “to contribute to the realization of the sustainable development goals within the framework of the national and international obligations that BIO and the Belgian government have agreed and assumed.”⁶

The Belgian State is the only shareholder, having full power to select members of BIO’s Board of Directors. However, a high level of autonomy is respected through specific clauses in the Second Management Contract. For example, art. 29 states that “*The Belgian State undertakes to respect BIO’s management autonomy and not to interfere in the management of the company, which is the responsibility of the Board of Directors.*”⁷

Furthermore, as a public law entity,⁸ BIO falls under the scope of administrative law when it is conducting activities of a public nature. These activities include deploying Official Development Assistance funds in the framework of Belgian development cooperation or - in general - contributing to the realization of the SDGs. In this case, several administrative laws provide BIO’s stakeholders with rights related to access to information, transparency, and the filing of complaints with the Federal Mediators. This also establishes the competence of the Council of State. Moreover, when conducting these acts, BIO serves the public interest and in principle acts as the Belgian Government (holding 100% of the shares). In other words, BIO and the Belgian State act as one and the same entity. Consequently, BIO is directly bound by all international legal obligations assumed by the Belgian state, notably in the areas of environmental,

1 DE FEYTER, K., FERRANDO, T., JOKUBAUSKAITE, G., ROSSATI, D., “The Belgian Investment Company for Developing Countries (BIO) as a Sustainable Development Actor”, commissioned by 11.11.11, CNCD-11.11.11 and la Coalition Contre la Faim/ Coalitie Tegen de Honger, 2022.
2 Policy Briefings in French: <https://www.cncd.be/etude-impact-BIO>. Policy Briefings in nederlands: <https://11.be/verhalen/werk-aan-de-winkel-voor-de-belgische-ontwikkelingsbank-bio>.
3 Law of 3 NOVEMBER 2001 establishing the Belgian Investment Company for Developing Countries (hereinafter “BIO Law”), Belgian Official Journal (last accessed at 1 March 2022).
4 Royal decree of 12 DECEMBER 2018 approving the second management contract between the Belgian State and the public limited company “Belgische Investeringsmaatschappij voor Ontwikkelingslanden” (BIO NV) (hereinafter “Second Management Contract”), Belgian Official Journal, art. 64 (last accessed at 1 March 2022).
5 Law of 19 MARCH 2013 regarding the Belgian Development Cooperation (hereinafter “BDC Law”), Belgian Official Journal (last accessed on 2 March 2022).
6 Art. 7 Second Management Contract.
7 Art. 29 Second Management Contract.
8 Other companies like BIO include SNCB (the national railway) and Bpost.

labor, and human rights law. Consequently, a failure by BIO to observe these international obligations triggers international state responsibility of Belgium.⁹ BIO's corporate purpose is to directly or indirectly invest in the development of SMEs and companies in intervention countries that entail investments in "social economy enterprises" (1°); access to energy, the digital economy and combating climate change (2°); agriculture (3°) and basic services (4°).¹⁰

In the broader context, BIO's actions have to be consistent with the general objective of the official Belgian Development Cooperation (defined as sustainable human development).¹¹ BIO should be viewed as an instrument through which the Ministry of Development Cooperation promotes sustainable development in developing countries, disburses Official Development Aid (ODA) and contributes to development targets. To supervise this, government commissioners are appointed who attend Board meetings, join some of the sub-committees and exercise control over BIO's organs and activities. Each commissioner can file a suspensive appeal against every decision they consider to be contrary to "the laws, decrees, bylaws, management contract, business plan or with the public interest."¹² The main decision-making body in BIO is the Board of Directors, possessing the final say on all investment projects. It consists of twelve members and one observer, the Directorate-General for Development Cooperation and Humanitarian Aid (DGD). More specifically, the Management Contract between BIO and the Belgian state¹³ (adopted every 5 years in the form of a royal decree) regulates:

- The political framework;
- The missions and values of BIO;
- The strategic priorities of BIO's investment policy in terms of geographical, sectoral and thematic concentration.

9 The Study, p 15 - 17.

10 Art. 3 (1) BIO Law.

11 Art. 7 (1) Second Management Contract. Also see art. 8 § 1 BIO Law j. BDC Law.

12 Art. 5 (3) BIO Law.

13 Art. 2-quinquies (2) BIO Law: "the management contract between the Belgian State and BIO determines the criteria for the management capacity that BIO must meet in order to fulfill these responsibilities, the applicable procedures for testing them and the consequences when BIO does not meet the aforementioned criteria." These responsibilities relate to "the quality execution of [BIO's] corporate purpose and the missions assigned to it, in accordance with the provisions of this Law and other applicable laws, the management contract and the bylaws". The Management Contract and its contents are directly influenced by the Minister of Development Cooperation.

14 VAN DE POEL, J., "Doing business to fight poverty? An evaluation of the Belgian Investment Company for Developing Countries (BIO).", 11.11.11., 2012 (last accessed on 10 March 2022).

15 These concepts are discussed below.

16 Art. 8 §1 Second Management Contract.

17 See art. 4bis §2, 8° BIO Law. However, no mention is made of financial sanctions in the Second Management Contract. See art. 65 §2 Second Management Contract stating that in case of non-compliance with the Management Contract, "the parties shall confer in good faith with the aim of settling the dispute amicably." Remember that, from a legal perspective, BIO mostly acts as the Belgian State when operating within the normative framework of the Management Contract.

18 See Note 5.

Since a previous study by 11.11.11. from 2012,¹⁴ BIO has seen a number of significant changes in terms of (1) the additionality principle, (2) the profitability requirement, (3) the development criterion and (4) the relationship with the environment, in particular:¹⁵

- (1) Financial additionality requirements have become more stringent.
- (2) The profitability requirement (i.e. investments must generate a sufficient financial return) has been watered down, and a distinction is now made in terms of expected return between the various funds managed by BIO.
- (3) The interpretation of the development criterion no longer requires explicit justification based on the Development Assistance Committee (DAC) criteria of the OECD.
- (4) Regarding the relationship to the environment, a new sentence was added in the latest management contract: "Potential environmental risks that may have an impact on the sustainability of the investment are also taken into account."¹⁶

The Management Contract also sets out the investment modalities, criteria for granting financing and the methods of funding BIO. A failure to meet the Management Contract's requirements results in a breach of contract, which *should*¹⁷ lead to financial sanctions.

International normative framework

As mentioned, BIO must ensure that its public activities comply with the international obligations of Belgium in the areas of environmental, labor and human rights law. The Belgian Law on Development Cooperation¹⁸ explicitly refers to a number of international norms and instruments that are deemed particularly relevant to development cooperation. These include:

- The United Nations Sustainable Development Goals (art.3);
- United Nations Human Rights instruments (art. 4 in conjunction with art. 2 §18, also see art 9);
- The Decent Work Agenda of the International Labor Organization (art.5);
- United Nations Principles, declarations and treaties on environment and development (art.9).

In addition, the gender dimension and the environment are transversal themes that are to be integrated in all development cooperation interventions (art. 11§2). The current Management Contract provides that BIO should support companies that are willing to respect high standards in fair trade, the environment, social and

human rights, and adopt inclusive policies vis-à-vis the local population. BIO's interventions should equally contribute to combating climate change.¹⁹

Private standards and voluntary instruments

BIO also claims to adhere to several private standards, like the mainstream of the DFI sector. BIO is part of the Association of European Development Finance Institutions ("EDFIs"), "a group of 15 publicly-backed institutions that provide financing and advice to private sector enterprises in emerging and frontier markets."²⁰ They make an effort to contribute towards the Sustainable Development Goals (SDGs) and the Paris Climate Agreement. They aim to achieve these shared goals guided by common principles, tools and practices. These include:

- Principles for Responsible Financing of Sustainable Development;
- Environmental and Social Category Definitions;
- Requirements for Environmental and Social Due Diligence, Environmental and Social Contractual Requirements and Monitoring and;
- an Exclusion List.²¹

EDFI members also commit to adhering to several commitments related to responsible financing, impact management, and transparency.²² However, no real sanctioning power exists in EDFI, besides the pressure from the organization and the risk of being excluded.

Finally, BIO's Environmental and Social (E&S) Policy²³ contains various standards that are currently also formally included by other DFIs, or widely accepted by the sector:

- the IFC Performance Standards;
- the World Bank Group Environmental Health and Safety Guidelines (WB EHS);
- United Nations Guiding Principles on Business and Human Rights (UNGP);
- the Universal Standards for Social Performance Management in microfinance / SMART Campaign Client Protection Principles;
- Responsible Finance Forum Guidelines for Investing in Responsible Digital Financial Services.²⁴

More information about BIO's approach with regard to its E&S policy follows in Chapter C.

¹⁹ Art. 7 §1, 2° & 4° Second Management Contract.

²⁰ EDFI, "EDFI Principles for Responsible Financing of Sustainable Development", p. 1 (last accessed on 8 March 2022).

²¹ Id. p 2 – 3.

²² Id.

²³ Such a policy is prescribed by Art. 8 Second Management Contract.

²⁴ BIO, Environmental & Social Policy, 2018 (hereinafter "E&S Policy") (last accessed on 1 March 2022).

B | BIO's financial Structure: where the money comes from

This summary mainly follows findings of The Study, based on the 2019 annual report as communicated by BIO to DGD in May 2020.²⁵ Some figures from the year 2020 are used too, based on information from BIO's website.²⁶ Overall, at the end of 2019, BIO:

- Managed an investment portfolio of 1 016 000 000 EUR;
- had committed 783 million for investment;
- had approved the total of 865 million for investment;
- ran the total of 141 investments (80 loans and 61 equity investments in companies and funds)

BIO's investments are financed in two ways:

- a) directly by the Belgian State (included in the national budget as funds);
- b) through the profits that are generated by existing investments.

Point b reveals that BIO's ability to expand its portfolio partly depends on the financial return the institution can generate through loans and equity. However, the original source of BIO's money will always be public.

In 2021 BIO had a total of 73 employees, of which:

- 3 people work on environmental and social issues, and
- 3 people work specifically on development impact.

BIO's sources of funding

BIO receives three main kinds of funding from the Belgian Federal state (see table below), while also having the possibility²⁷ to subscribe to private loans. Currently, BIO only manages public funds. The conditions attached to each source of funding are outlined in the table below. Since 2018, BIO has the possibility to use capital subsidies to finance investments ('Code 5'), in addition to the so-called 'Code 8' investments that are standard for BIO. The third category, non-capital subsidies, are less important.

Table B.1. BIO's sources of funding

Source	Expected return	Overall amount	Amount per investment
Capital and non-capital contributions ²⁸ ("code 8") Majority of BIO's portfolio (circa. 95%)	"Sufficient prospect of return" ²⁹	60 mln. EUR for period 2019-2023. 40mln in 2019 and then 10mln per year in 2021-2022. Extra 50mln for climate projects in 2019-2020. ³⁰	3-20mln. EUR
Capital subsidies ³¹ ("code 5")	"Break-even", excluding BIO's management costs ³²	50 mln. EUR (for period 2019-2023), max. 12 mln per year ³³	500 000 -3mln. EUR ³⁴
Non-capital subsidies ³⁵ ("technical assistance")	Fully concessional, not subject to target on returns ³⁶	10 mln. EUR (for period 2019-2023), max. 2 mln. per year ³⁷	Max. 350 000 EUR (technical assistance) or max. 100 000 EUR (feasibility studies) ³⁸

25 The Study, p 23, note 32: "Once a year, at the end of May, BIO is supposed to share with DGD a detailed overview of the state of its portfolio. Because most of our research was undertaken between November 2020 and June 2021, and because at the time of writing BIO had not yet communicated to DGD the state of the 2020 portfolio, we could only rely on the 2019 situation. An update of our financial findings would thus be welcome. However, a cross-check with the online data and the interviews demonstrate that the findings and reflections that we make in this report are still valid for 2020 and 2021. If anything, covid-19 has intensified some of the fragilities and vulnerabilities that we envisaged." Also see art. 31 - 32 Second Management Contract.

26 (last accessed on 8 March 2022).

27 Art. 6 BIO Law.

28 Art. 9, §51 (1°-2°) & 2 BIO Law; Second Management Contract, Arts. 53-54.

29 Art. 11 §51 -2 Second Management Contract.

30 Art. 54 Second Management Contract.

31 Art. BIO law, Art. 9, §1, 3°. Art. 11 § 3, Art. 20-23 & Art. 55, Second Management Contract

32 Art. 11 § 3, Art. 20§2 Second Management Contract.

33 For the duration of the Management Contract.

34 Art. 23 §1, Second Management Contract.

35 Art. 9 §1, 4° BIO law.

36 Art. 9 §5 BIO law.

37 Art. 56 Second Management Contract

38 Art. 3quarter BIO Law

Capital and non-capital contributions are the standard for funding BIO, also called Code 8 investments.³⁹ They are larger in terms of size and often used for less risky or better regulated projects in terms of financial performance. In practice, this makes it difficult to use this type of funding for investing in small enterprises or enterprises in least developed or fragile states, due to the minimum amount of 'ticket size' (€3 - 20 mln) of the investment or to the risks being too extensive. As mentioned, Code 5 investments - namely capital subsidies - were introduced in 2018.⁴⁰ This opened the possibility to finance projects considered relevant in terms of development and sustainability, but considered insufficiently profitable or too risky to satisfy the return objective enshrined in Bio Law art. 9 §2.

Financial additionality

BIO's interventions need to be additional, meaning that local private investors are either:

- not available;
- insufficient to meet the needs of the enterprises;
- do not offer financing under terms and conditions that fulfill the needs of the target enterprise.

Additionality can also be fulfilled when BIO plays a specific role, such as acting as a catalyst for the mobilization of complementary financing.⁴¹

At least two of all four conditions need to be fulfilled for an intervention to be additional. If not, BIO breaches the Management Contract. This should be scrutinized by the two government commissioners.

C | BIO as a Development Actor: where the money goes

BIO's business Model

Next to the BIO law and Management Contract (MC), BIO's business model is enshrined in its Theory of Change⁴² and its Investment Strategy 2019-2023⁴³. The former provides a description of how BIO contributes to the 2030 Agenda, while the latter sets out goals and priorities for the coming 5 years.

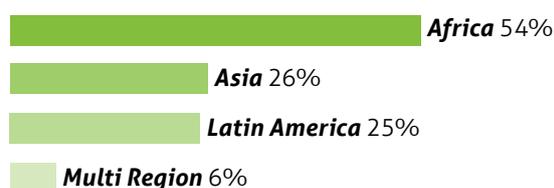
Geographic Scope

Box C.1. BIO's countries of intervention⁴⁴

Asia	Bangladesh, Cambodia, India, Indonesia, Myanmar, Nepal, Pakistan, Philippines, Sri Lanka, Vietnam
Latin America & Caribbean	Bolivia, Brazil, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, Perú
Middle East & North Asia	Algeria, Egypt, Iraq, Jordan, Lebanon, Morocco, Palestinian Territories, Syria, Tunisia
Sub Saharan Africa	Benin, Burkina Faso, Burundi, Cameroon, Côte d'Ivoire, Dem. Rep. Congo (DRC), Ethiopia, Ghana, Guinea, Kenya, Madagascar, Malawi, Mali, Mozambique, Niger, Nigeria, Rwanda, Senegal, South Africa, Tanzania, Uganda, Zambia

The Study points out that BIO's willingness to work in least stable and economically deprived countries brings about a responsibility to recognize the necessity of specific knowledge and expertise. This is essential to avoid doing more harm than good for local populations.⁴⁵

Chart 2.1. BIO's net approved commitments' per region (2019)



Source: The Study, p 32.

39 Art. 9 §1, 1°-2° BIO Law.

40 Art. 9 §1, 3° BIO Law.

41 Art. 12. Second Management Contract. Also see art 19 § 5 Second Management Contract.

42 BIO, Theory of Change: investing in sustainable future (hereinafter "ToC") (last accessed on 1 March 2022).

43 BIO, Investment Strategy 2019 - 2023 (hereinafter "Investment Strategy") (last accessed on 1 March 2022).

44 The Study, p 30 - 31.

45 The Study, p 31.

Since 2016, BIO is prohibited from investing in 'tax havens' or offshore financial centers (OFC). The list of prohibited countries adopted by BIO is the one set by Belgian Law, namely art. 307 (1)(5)(b) of the Income Tax Code⁴⁶.

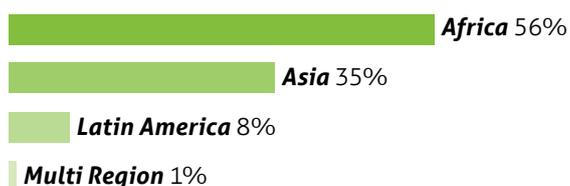
Priority sectors

BIO has four sectors of intervention:

- Financial sector for financial inclusion;
- Energy, with a focus on renewable energy, energy efficiency and the fight against climate change;
- The agricultural value chain;
- Health and Education.⁴⁷

The digital economy, another strategic area identified by BIO law⁴⁸, is an "overarching instrument that creates efficiency, expands access to products and services, reduces costs"⁴⁹ in the four strategic sectors outlined above.

Chart 2.2. BIO investments per sector (Code 8), 2018



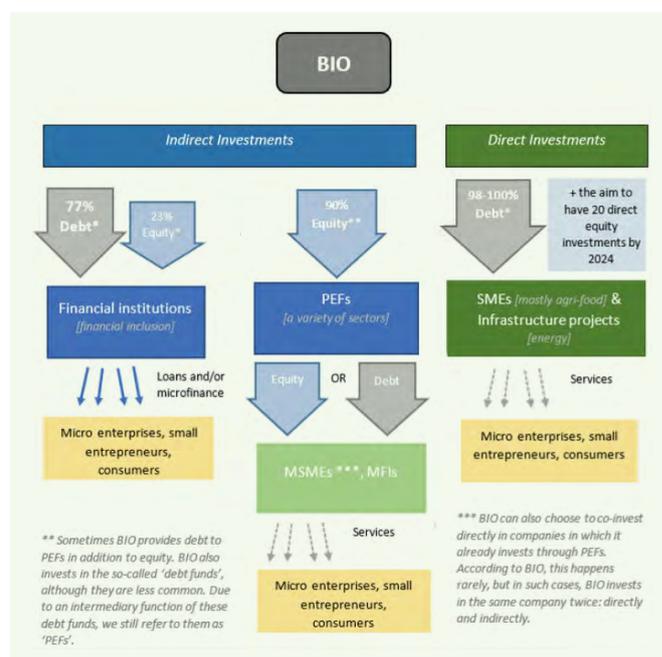
Source: The Study, p 34.

Although investments in financial institutions and PEFs (under the general heading of "financial inclusion") constitute BIO's primary investment sector (56%), financial inclusion is not included in the corporate objectives.⁵⁰ The BIO law only mentions investing in financial institutions as one of the permitted measures that BIO can take in order to achieve its corporate objectives.⁵¹ However, the Second Management Contract does mention the financial sector and financial inclusion as priorities.⁵² This is also stated in the Investment Strategy.⁵³

From a legal perspective, this means that the emphasis on financial inclusion constitutes an operational addition and strictly does not belong to BIO's original mandate, as enshrined in the BIO law.

Investment Channels

BIO operates through different investment channels: debt financing (granting loans) and equity financing (purchasing shares in companies). Through these investment channels, it has a direct or indirect link with companies. Direct investments are made through debt financing in SMEs and infrastructure projects. Indirect investments in companies are made through financial institutions (77% through debt financing) and private equity funds or PEFs (mainly through equities (90%)) (see figure 2).



Source: The Study, p 40.

In short, both equity and debt allocate a level of influence to BIO in the decision making of its investees. The extent of influence related to PEFs is considerably smaller (\pm 4-10% capital injected) than cases of direct investment in SMEs through debt. In the latter, the contractual agreement of the loan provides more opportunities to guide the actions of the investees. Accordingly, there seems to be a trade-off between potential risk/return of the investment and "BIO's ability to ensure development relevance with sufficient level of influence and scrutiny on the other."⁵⁴

Private Equity Funds

PEFs are funds created by a fund manager for a specific purpose, typically following a 10-year investment strategy, with the possibility of extension. They differ widely in their geographic scope and focus, sectors and investment strategies. In general, they focus on development banks in terms of investment objective and strategy. Therefore, PEFs seek to 'blend' financing

46 See the list in Royal Decree of 1 March 2016 amending Article 179 of the Royal Decree on the list of countries with no or low taxation, Belgian Official Journal (last accessed on 1 March 2022).
47 Investment Strategy, p. 20.
48 Art. 3 § 2 (ii) BIO law,
49 Investment Strategy, p. 20.
50 Art. 3 BIO Law.
51 Art. 3bis §§ 3-5 BIO law.
52 Art. 14 §§1 - 2 Second Management Contract.
53 Investment Strategy, p 21.
54 The Study, p 41.

from institutions such as BIO with that of private investors in order to reduce the risk of investment in developing countries for the latter. By diversifying their portfolios, particularly with public funds, PEFs become a more attractive option for private investors, rather than investing directly in a single company from an emerging market.⁵⁵

At the end of 2019:

- BIO invested in 55 PEFs⁵⁶;
- Investments in PEFs accounted for 36% of BIO's approved commitments;
- Circa 740 companies received funds from PEFs in which BIO invested⁵⁷;
- On average BIO held 9.56% of shares in a PEF (equity investments only)⁵⁸;
- On average BIO received a 10% return per PEF (for Code 8 investments)⁵⁹;
- Usually, a fund manager charged 2% management fee⁶⁰;
- Of the 41 PEFs of which researchers found information about their domicile⁶¹. More than a half (56%) are based in the top 15 countries on the Corporate Tax Havens Index⁶² (23 PEFs);
 - > A third (32%) are based in the top 15 countries on the Financial Secrecy Index⁶³ (13 PEFs);
 - > A quarter (24%) are based in the top 15 countries on both lists (Corporate Tax Havens and Financial Secrecy) (10 PEFs).

Supporting (micro,) small and medium-sized enterprises

Essentially, BIO's mission is to support the private sector through direct and indirect investments in the development of target companies.⁶⁴ BIO's Theory of Change identifies five ways through which BIO supports micro, small and medium-sized enterprises (MSMEs): (1) financing, (2) developing environmental, social and governance (ES&G) Standards, (3) conducting development assessment, (4) monitoring and evaluating operations, (5) improving their governance through technical assistance grants. MSMEs are defined in the BIO Law as follows:

- Medium enterprises are ≤ 50 million EUR turnover, and 43 million EUR balance sheet total.
- Small enterprises are ≤ 10 million EUR (turnover and balance sheet total);
- Micro enterprises are ≤ 2 million EUR (turnover and balance sheet total).⁶⁵
- As to PEFs (indirect investment), BIO requires them to aid their investees with developing, implementing and improving their ESG-Standards. Besides technical assistance, BIO does not seem to support the PEFs portfolio companies directly and only works with the fund manager. For direct investments, BIO invests in companies showing a willingness to improve their management, policies and decision making. This willingness factor seems to be a cornerstone of BIO's investment selection process.⁶⁶ More on this in the following Section on BIO's E&S Standards.

BIO invests mostly in small and medium-sized enterprises, while micro enterprises are financed through microfinance institutions and banks. The latter are deemed in a better position to do so because BIO's minimum size for an investment account is too high for the microlevel (minimum 500K for Code 5 Investments).⁶⁷ Moreover, BIO's investment selection process (as explained below) requires a level of ESG commitments difficult for smaller businesses to guarantee. This means that BIO must often focus on larger players capable of internalizing the investment and generating the profitability requirement.⁶⁸ Finally, while BIO cannot invest in enterprises that are too large, according to the BIO law and MC⁶⁹, it has invested in local subsidiaries and spin-offs of multinational companies. The study identified several of the latter, such as KF Bioplants (shares by various multinational companies); Laitiere du Berger (20% owned by Danone), Tozzi Green (100% owned by Tozzi), Indorama Eleme Fertilizer & Chemicals, Rolfes Group (indirect investment through Phatisa II PEF).⁷⁰

55 The Study, p 43.

56 The Study, p 43, note 110: "combining a list of BIO's PEF percentages (information received from BIO); adding PEFs investments listed on BIO's website; adding PEFs investments that at the moment of writing were not yet added on the BIO's website (information received from BIO)."

57 The Study, p 44, note 111: "2019 data. Source: BIO's investment list submitted to the DGD."

58 The Study, p 43, note 112: "Source: info provided by BIO (PEF percentages)."

59 The Study, p 44, note 113: "Source: interview with BIO on PEFs."

60 Ibid.

61 The Study, p 44, note 115: "Information on the domicile of some PEFs is provided on BIO's website, some on the Fund manager's website. We did not manage to find the domicile-related information on 14 PEFs."

62 The Study, p 44, note 116: "2021 from data, published yearly by Tax Justice Network (last accessed on 1 March 2022)."

63 The Study, p 44, note 117: "2020 from data, published every two years by Tax Justice Network (last accessed on 1 March 2022)."

64 Art. 3 BIO Law.

65 Art.1bis, §1 BIO law. This definition is based on the European Commission's recommendation no. 2003/361/EC (last accessed on 1 March 2022).

66 The Study, p 51- 54.

67 See Table B.1.

68 The Study, p 55.

69 Art. 3 BIO Law. Art. 6 Second Management Contract.

70 The Study, 56.

How BIO chooses where to invest

Environmental and Social Framework

In 2014, BIO introduced an Environmental and Social Assessment Policy Framework (E&S Policy)⁷¹ for selecting investments. It consists of two parts:

- a) list of external reference documents determining the operational principles;
- b) summary of an internal process that explains how these principles should be interpreted and applied.

In addition to this policy, other documents relevant for choosing to invest include the following:

- BIO's Theory of Change;
- E&S Investment Manual (publicly not available);
- Due diligence questionnaires and other assessment tools (publicly not available);
- Terms of reference for external assessment of investments (publicly not available);
- Contracts between BIO and its clients and E&S Action Plans (ESAPs) (publicly not available);
- Sustainable Development Goals (SDGs);
- Principles for Responsible Tax in Developing Countries;
- BIO's Grievance Mechanism Operating Rules.

In practice, core commitments related to E&S are agreed upon by BIO and its clients contractually. Sometimes, a confidential E&S Action Plan (ESAP) is included, containing core actions the client has to implement. This practice is not mandatory. In addition, the implementation mechanism of the E&S Policy is considered internal, even though it contains important commitments as to the environment and social well-being of (affected) communities. Consequently, the public and people affected cannot know what type of E&S assessment BIO is conducting. This can only be revealed through the grievance mechanism, a procedure mostly unknown by the community unless they are consulted by BIO or the client.⁷²

Further, many E&S rules are only relevant for direct investments. For indirect investments, BIO does not assess the planned business activities 'on the ground', but rather assesses the fund manager (for PEFs). This results in BIO claiming it does not hold a direct responsibility for the oversight of PEF Portfolio Companies or the impacts stemming from the financial institution's operations. Consequently, BIO expects in practice that funds or financial institutions establish E&S systems themselves. Moreover, there is no requirement for these to be made public. This means that the E&S impacts of BIO's Investments can only be known through the following four channels:

- Self-reporting (default method);
- A yearly evaluation of five sample institutions and funds;
- Non-obligatory site visit;
- In case of funds, BIO's participation in PEF's Advising Committee (not made public).

Finally, the project pipeline is highly competitive. BIO looks at about 400 projects each year, implying that the vast majority of these are rejected early. At the same time, projects coming from applicants with a large experience are *de facto* favored, as well as projects that are already financed by other DFIs or by BIO.

70 The Study, 56.

71 BIO, Environmental & Social Policy, 2018 (hereinafter "E&S Policy") (last accessed on 1 March 2022).

72 The Study, p 61 - 67.

Environmental and Social Assessment Process

"While development impact assessment attempts to quantify positive impacts by assigning indicators to them, the E&S is based on various sets of questions about potential issues and on a more qualitative analysis of relevant context."⁷³ This means only a highly selective part of E&S issues are generally deemed relevant for BIO.⁷⁴ During the initial approval process, potential investments are assigned a risk category according to the (negative) E&S impact they will likely produce, ranging from A (highest) to B+, B or C (lowest). This determines the following selection procedure and the scope of due diligence. Naturally, high risk projects require more extensive assessment. Here, the due diligence phase is key, as BIO researches whether an investment merits its funding. Strictly internal, it ensures that the client will disclose sensitive issues. This procedure should enable a thorough 'reality check', in order for BIO to be aware of what is actually going on 'on the ground'. Currently, BIO conducts this through site visits by staff or independent experts. This could produce significantly different and varying results, while also bringing about issues of governance.⁷⁵ While outsourcing responsibilities associated with E&S issues has some advantages, there are governance concerns associated with it. These include independence and the issue of 'friendly experts', well-being of respondents, intersectionality of E&S, unequal footing with internal decision making and responsibility for final decisions.⁷⁶ BIO chooses experts by defining the terms of reference based on items that need particular attention and the need for support from external due diligence.⁷⁷ Regarding the issue of 'friendly experts', BIO answered that it is not an easy task to diversify their expert portfolio and that sometimes "the same names are coming back."⁷⁸

To enable a good assessment, the expert needs to have expertise in the field; however, the expert can become biased with regard to externalities that might be viewed as negative by an outsider. BIO stated there is no perfect answer to this problem. Finally, BIO seems to be generally aware of the impartiality issues associated with expert-based governance. However, rather than assessing projects as a whole, BIO seems to utilize a case-by-case approach for working with experts, hiring them to appraise specific elements.⁷⁹

Approach: negative impact can be compensated

The E&S lists the reference documents that guide BIO's operations. It also highlights some of the core international documents that are not explicitly listed there.⁸⁰ It contains a **catch-all provision** stating that BIO "requires that all clients comply with applicable environmental, social labor and human rights laws and international conventions in the countries they operate."⁸¹ However, as mentioned, BIO uses a risk management approach, not a human rights-based one.⁸² According to the IFC Performance Standards – as declared applicable by the E&S Policy⁸³ – companies should, as a priority, try to avoid negative impacts. Nevertheless, harmful investments are allowed, if the company can compensate for the environmental and social damage.⁸⁴ Moreover, with the exception of the prohibition of forced and child labor, and the requirement of a living wage, the E&S framework does not mention how it assesses the impacts (direct and indirect) of its investments on specific human rights, such as the right to food, the right to health, the right to form trade unions, the freedoms of movement, expression and association, the right to privacy and family life, the right to development, the right to self-determination, etc. In other words, human rights risks are mentioned, without assessing how an investment can positively or negatively impact them.

73 The Study, p 71

74 Id.

75 The Study, p 77.

76 The Study, p 78 - 81.

77 The Study, p 81.

78 The Study, p 82.

79 The Study, p 81 - 82.

80 See the Study, table 2.3. p 85-86.

81 E&S Policy, p. 1.

82 The Study, Box 2.7., p 92-93.

83 E&S Policy, p. 1.

84 The Study, p 115. Also see IFC, World Bank Group, "IFC Performance Standards on Environmental and Social Sustainability", January 2012, PS1, § 14 (last accessed at 1 March 2022).

Community Engagement

Community engagement entails the participation in decision-making of local actors directly or indirectly affected by (potential) investments and is crucial for the relation of inclusive sustainable development. It is at the heart of a human rights-based approach to development.⁸⁵ In the E&S Policy, Investment Strategy and Investment Manual (not publicly available), there is no obligation for BIO to engage with local communities.⁸⁶ Instead, the client rather than BIO has the responsibility to engage in community participation under the IFC PS. Nevertheless, BIO has the responsibility to oversee the implementation of consultation, participation and access to information requirements imposed on the client that are set out in the IFC PS.⁸⁷ The fact that the community engagement process is not operationalized is problematic. Indeed, the only time/space explicitly dedicated to the participation of communities (potentially) affected by an investment is the complaint mechanism.

Based on interviews, BIO generally consults local communities and some local NGOs, usually during the due diligence process. Nevertheless, there seems to be no indication that BIO intends to ensure systematic stakeholder engagement by the client, as set out in the IFC PS. As with many other IFC PS, BIO's ability to check the actual scope of the client's community engagement depends on BIO's institutional reach. This is limited since BIO is a relatively small DFI with limited reach on the ground. Again, it is impossible to reveal to what extent BIO is actually overseeing the participation of local communities in its clients' decision-making.⁸⁸

BIO's idea of sustainable development

Belgian public funds allocated for ODA can be spent through BIO's contributions to sustainable development. Its approach to sustainability is governed by several national and international policy instruments.⁸⁹ Sustainable development is often viewed as a 'triple bottom line', including an economic, social and environmental dimension. However, BIO tends to focus more on the economic dimension, "with social and environmental aspects being interpreted more narrowly than optimal from a sustainability point of view".⁹⁰

BIO has adopted its own Development Goals (BDGs), before the launch of the SDGs in 2015. Recently, BIO revised its ToC to be more in line with the SDGs, and does not use the BDGs as core structure for BIO's objectives.⁹¹ However, BIO conducts its ex ante development impact assessment through the again internal 'Assessment, Monitoring and Evaluation' (AME) tool, which is separate from BIO's E&S assessment.⁹² As of now, the ToC seems to follow SDGs, while the internal AME tool appears to be still in line with the BDGs, which are narrower in terms of covered topics. BIO has informed that it plans to eventually shift all its development impact assessment towards the SDGs, but this has not yet occurred at the time of writing.⁹³

As mentioned, with regard to development impact assessment, BIO's objectives seem to be focused on economic development. Specifically, all 'mandatory development indicators'⁹⁴ concern either job creation, or governance and productivity of a company - including a gender dimension. Thus, other development criteria become secondary, including human rights contributions, environment, inclusion or equality. On this point, the Study concludes that BIO has an extremely limited understanding of these concepts, limiting its positive impact on development. In this sense, it is also worth highlighting once more that there are currently only 3 people working specifically on development impact at BIO.

85 The Study, p 99. Also see the Belgian Ministry of Development Cooperation, "Support to Human Rights Based Approach to Development: Introduction to a Human Rights-Based Approach to Development within the Belgian Cooperation and Humanitarian Affairs, Policy Note, 21 October 2020 (last accessed on 1 March 2022).

86 The Study, p 99.

87 E&S Policy, p 4.

88 The Study, p 102.

89 The Study, Table 2.4., p 107 - 108.

90 The Study, p 109.

91 ToC, p 3 (last accessed on 10 March 2022)

92 Supra.

93 The Study, p 110.

94 The Study, p 112, note 353: "These are the indicators that have to be used for every project funded by BIO. There are also project-specific and sector-specific development indicators that BIO tailors according to each investment."

D | Accountability: controlling how the money is used

This section aims to understand to what extent stakeholders can hold BIO accountable, with a focus on BIO's development impact and E&S commitments. Accountability here is understood as having both preventive and compensatory dimensions.

BIO is autonomous in its decision-making, and the Board operates as:

- a decision-making body
 - > setting internal policies
 - > holding BIO's management to account
- a primary mechanism for the Belgian government to oversee operations

As such, BIO's Board is essential in ensuring BIO's accountability. However, as an internal body, there may not be enough opportunities for other stakeholders to give input on the activities and policymaking. This means that BIO is not only autonomous but also "a relatively insular institution within the landscape of Belgian Development Cooperation".⁹⁵

Stakeholders to BIO's actions

BIO is accountable to:

- The Belgian public and the target group of Belgian Development Cooperation (as a public entity under Belgian law funded by ODA);
 - The Belgian State, represented by the Minister of Development Cooperation (as a public limited liability company);
 - The Board of Directors.
- An exchange of information concerning BIO's activities (which is "subject to the confidentiality of the certain data of a commercial nature").¹⁰⁶ Finally, the Management Contract between BIO and the Belgian state is negotiated and signed every five years.¹⁰⁷

BIO's public accountability is broader in comparison to the corporate accountability towards its shareholders. It is in the public interest that BIO effectively contributes to Belgium's commitments towards the SDGs, climate action and human rights, and that ODA is used appropriately.⁹⁶

According to the BIO law and the current Management contract, the main mechanisms through which the Belgian State can hold BIO to account are:

- A membership of the Director General of the DGD⁹⁷ in BIO's Board, including all its Committees (without a voting right).⁹⁸ A supervisory function, performed by two Commissioners of the two responsible ministers appointed by the government to the Board (one by the Minister for Development Cooperation and one by the Minister for Budget)⁹⁹ who can also impose a veto on BIO's proposed decisions (see box 5.1).¹⁰⁰ An annual report submitted by BIO to the DGD¹⁰¹ and the Minister for Development Cooperation.¹⁰² A participation in the consultations on BIO's development indicators, and an oversight of how BIO's progress under these indicators advances Belgium's contribution to the Agenda 2030.¹⁰³ A participation in the annual evaluation of a sample of BIO's investments.¹⁰⁴ A multiannual budget submitted to the Minister by BIO each year, the capital structure of which has to be validated by the minister ("subject to parliamentary approval and the Government's budgetary decisions").¹⁰⁵

On top of the above, the Federal government also appoints BIO's Board of Directors, by Royal Decree "after deliberation by the Council of Ministers."¹⁰⁸

The renegotiation of the management enables the government to extensively revisit the 'ground rules' of BIO's operations, and to exercise a significant level of control over BIO's business model.¹⁰⁹ However, the periods between renegotiations leave a lot of discretion for BIO. The State mainly follows and influences BIO's daily operations through the participation of the government's commissioners and the DGD representative in the Board. The commissioners can overturn decisions if they consider that a decision might be against the law or not in line with the public interest. However, their involvement in decision-making seems limited.¹¹⁰ In addition, there appears to be an informal dialogue taking place between BIO and the Ministry outside the Board, mainly concerning certain aspects

95 The Study, p 239.

96 The Study, p 239.

97 Directorate General for Development Cooperation and Humanitarian Aid of the Federal Public Service for Foreign Affairs, Foreign Trade and Development Cooperation (last accessed on 0 March 2022).

98 Art. 2bis 59 BIO law.

99 Art.5 52 BIO law.

100 Art.5 53 BIO law.

101 Art. 60-61 Second Management Contract.

102 Art. 7 BIO law, Art. 62 Second Management Contract.

103 Art. 31 51-2 Second Management Contract.

104 Art. 32, Second Management Contract.

105 Art. 58, Second Management Contract.

106 Art. 51, Second Management Contract.

107 Art. 4bis-sexies BIO law.

108 Art. 2bis 54 BIO law.

109 Art. 4bis BIO law.

110 The Study, p 242.

of BIO's operations, and in particular in relation to the more contentious investments (for instance, in the case of Feronia (PHC)).¹¹¹

Overall, despite high control by the Minister of Development Cooperation, the State tends to exercise its supervisory powers with restraint. BIO has a lot of leeway to structure its operations and its approach to development. This also means that BIO is somewhat removed from the landscape of Belgian Development Cooperation, which is discussed next.¹¹²

BIO as part of the Belgian Development Cooperation

According to the Law on Belgian Development Cooperation, there is an obligation for all actors of Belgian Development Cooperation to cooperate and seek synergies between each other.¹¹³ BIO also needs to align its strategy and priorities with the general framework of Belgian Development Cooperation¹¹⁴ and has to "identify opportunities for interventions that are complementary to Enabel's activities."¹¹⁵ As mentioned above, this does not seem to be the case and BIO is even perceived by at least some stakeholders as unwilling and/or unable to cooperate.¹¹⁶

Public accountability and transparency

Public transparency and access to information

Subject to public interest, BIO's operations and approach to sustainable development need to be open to public debate, requiring access to information about BIO's procedures, decisions, and impacts. BIO's Transparency and Disclosure Policy (T&D Policy)¹¹⁷ decides what information BIO intends to make public or confidential. It also solves the structural issue between commercial sensitivity and right to information in favor of the former. The following remain confidential:

- documents that result from the E&S assessment due to commercial reasons (including the conditions that BIO attaches to their funding and the commitments undertaken by the clients),
- the procedural steps taken and overall progress of choosing investments, including the initial assessment of their E&S impact.

Consequently, transparency is fairly limited, which impedes affected peoples' and civil society's access to valuable information to be able to influence decisions and exercise the necessary public control.¹¹⁸

The T&D Policy is "guided by the principles of openness and transparency, such that any information concerning BIO is publicly accessible, or available upon request, unless the information is deemed restricted or confidential."¹¹⁹ However, of the three categories of information that BIO introduces in this policy (public, internal and confidential), internal or confidential appear to be the default.¹²⁰ Specifically, there is a catch-all provision that 'internal' information will be "all other internal policies, operating procedures, templates or working tools not falling under the 'publicly disclosed' section."¹²¹

Confidential information is determined broadly, as "information that is

- not known to the general public, that is
- potentially sensitive and that is labeled as such,
- or that should, given the nature of information, reasonably be considered as such."¹²² The list of confidential information is also considered non-exhaustive, and includes "other kinds of information, which because of their content or circumstances of their creation or communication, must be deemed confidential."¹²³ Read together, this means that persons interested in gaining access to information have to prove¹²⁴ that information should be released – unless that specific type of information is already marked as 'public' by BIO in the T&D Policy.¹²⁵ Hence, BIO possesses a lot of discretion to decide what information can be released and to what extent. This brings about the risk of BIO withholding the more challenging aspects of its investments from public oversight. According to the Office of the High Commissioner on Human Rights, the right to information, the right to participation and the right to development are not fully guaranteed if they are subordinated to commercial confidentiality.¹²⁶

111 The Study, 239 - 243.

112 The Study, p 245.

113 Art. 8, & Art. 13 BDC Law. See Note 5.

114 Art. 47 § 1 Second Management Contract.

115 Art. 48 § 2 Second Management Contract.

116 The Study, p 246.

117 BIO, "Transparency & Disclosure Policy", May 2021 (hereinafter "T&D Policy") (last accessed on 1 March 2022).

118 The Study, p 64. Also see The Study, p 249 - 251.

119 T&D Policy, p 3.

120 See The Study, Table 5.1., p254 - 256.

121 T&D Policy, p 5 - 6.

122 T&D Policy, p 6 - 7.

123 Ibid.

124 This is not in line with the constitutional right to information. See The Belgian Constitution, art. 32 (last accessed on 10 March 2022). Also see Law of 11 APRIL 1994 on the Public Access of Government, Belgian Official Journal (last accessed on 10 March 2022).

125 The Study, p 252.

126 OHCHR, "Benchmarking Study of Development Finance Institutions' Safeguards and Due Diligence Frameworks against the UN Guiding Principles on Business and Human Rights" (last accessed 1 March 2022).

Box D.1. OHCHR on the dilemma between the right to information and commercial sensitivity

According to the Office of the High Commissioner on Human Rights (OHCHR), the dilemma between the right to information and commercial sensitivity should be resolved by DFIs in a proactive way that guarantees very limited exceptions to the former. In its 2019 benchmark study of DFIs safeguards and due diligence framework, the OHCHR stated that the right to access to information is recognized in international, regional and domestic law, which is a critical consideration when framing a balance between commercial interests and the rights of communities potentially affected by DFI-supported projects. Contrary to broad business exemptions, companies are now also increasingly encouraged to place information in the public domain in relation to ESG issues, in response to demands by regulators and other stakeholders. The OHCHR stated DFIs should provide better and more meaningful access to information, assuming a position in favor of proactive disclosure. While it recognised legitimate needs to safeguard truly confidential business information, exemptions to the right should be defined narrowly and justified on a case-by-case basis.¹²⁷

Further, the new T&D Policy did introduce a timeline outlining when BIO should update its portfolio information online and how long this information should remain available on the site, after exiting the company or fund in question.¹²⁸ However, the due diligence process remains internal, withholding all information about the investment selection process. Hence, de facto, any public control can only be carried out ex post and therefore cannot avoid negative impacts. Also, the time period during which this information must remain accessible on the website (3 years) is not sufficient to exercise control over potentially negative impacts that may occur much later.¹²⁹

Accountability for Environmental and Social Impacts

Investments can directly or indirectly and positively or negatively affect people, to whom BIO is then accountable. BIO generally oversees the E&S impacts of its clients remotely, with monitoring, evaluation, and subsequent pressure to comply. The extensiveness of this pressure and control depends on the risk allocated, and how problematic it actually becomes. As mentioned, BIO mostly relies on the responsibility of the client to ensure E&S compliance, rather than holding them to account for its implementation in the broader sense.¹³⁰

E&S Monitoring

E&S compliance of clients is based on their self-reporting, combined with ad hoc site visits by BIO. These are decided on a case-by-case basis, and depend on:

- the risk category of the project;
- the reported level of compliance with E&S commitments;
- the potential for reputational damage that might be caused by a project.¹³¹

Box D.2. Sources from which BIO ascertains the need for an ad-hoc site visit (monitoring stage)¹³²

- Annual monitoring report and ESAP status update - produced by a client;
- Serious incidents reports and reporting on changes - produced by a client;
- Independent consultant monitoring reports - produced by external experts;
- Any other information received from the investee company - produced by a client;
- Publicly available information (e.g. media or NGO coverage) or;
- Significant changes to the environmental, social or political context affecting the E&S risks - if it becomes available from external sources.

This box reveals that BIO's choice of monitoring intensity depends on either self-reporting by the client, or on client's reputation in the media and/or NGO coverage. External evaluation is currently required only for high-risk direct investments.¹³³ For indirect investments PEFs are monitored through fund manager reports, and BIO's participation in the fund's advisory committee.¹³⁴ Here,

127 Ibid.
128 T&D Policy, p 7 - 8.
129 The Study, p 256. Also See T&D Policy, p 7.
130 The Study, p 258.
131 The Study, p 259.
132 The Study, p259, also see note 790: "BIO E&S Investment Manual, p. 24" (not publicly available).
133 The Study, p260, note 791: "E&S Investment Manual, p. 23; for medium-high risk investments, "monitoring and reporting or verification of the project company by independent consultant or DFI expert is recommended." (emphasis added). For PEFs, a requirement is to "assist with site visits upon request" (there is no mention of external evaluations)."
134 The Study, 260, note 792: "Interview with BIO (PEFs)."

BIO mostly relies on the information provided by the manager. This approach to monitoring and evaluation reveals a significant degree of trust in the client.¹³⁵

When things go wrong, BIO can adopt extra measures to facilitate E&S compliance and support by its clients. These measures consist of¹³⁶

- Soft means (e.g. technical advice, renegotiation of contract);
- Incentives (e.g. technical assistance, additional financial support);
- Leverages (e.g. non-disbursement of tranches of a loan, if contractually such disbursement is attached to achieving certain E&S conditions).

In the instances of serious E&S non-compliance, this last option might mean BIO exiting the investment (in the words of an interviewee: the 'atomic bomb' option).¹³⁷ In practice, when E&S commitments are not (well) implemented, BIO tends to first of all adhere to its standard position of trusting the client. Hence, it seems to favor the so-called 'soft means' to induce compliance. With a hope that it would increase the client's capacity to implement its E&S commitments, it might also provide that client with additional financial support. In short, the main mechanism that is meant to ensure compliance with E&S commitments seems to be the need for a client to maintain its good business reputation.¹³⁸

Based on the concrete cases analyzed and other elements, the Study concludes that BIO's system of monitoring and ensuring E&S compliance is not reliable enough from a perspective of the people affected by BIO's interventions. More specifically, if the following three conditions are present in BIO's investment simultaneously:

- a local community or a group of workers in a company that do not have links with international NGOs and/or cannot attract media attention to their grievances,
- a client not reporting its failure to implement its E&S obligations to BIO, and
- BIO not commissioning a study by an external consultant to assess a company's compliance

then there is a high likelihood that the E&S non-compliance and the resulting grievances created by that particular investment would remain undetected. Moreover, for affected communities to be able to monitor and follow up on compliance and implementation of E&S plans implies that the information is available in detail and accessible for the specific community. It seems that these two requirements are rarely met.¹³⁹

Grievance Mechanism

BIO's Grievance Mechanism (GM) is a relatively recent addition to BIO's governance,¹⁴⁰ following the example of its peers. It is a "citizen-driven accountability mechanism that responds to grievances and demands for redress by people affected or potentially affected by projects financed by BIO."¹⁴¹ The GM has received four complaints, one of which led to an actual change in the E&S commitments of portfolio companies.¹⁴²

The GM is meant to be fast and adaptable. A specifically designated person within BIO (Internal Auditor) conducts investigations, possessing "a good knowledge of internal procedures, a full access to information held by BIO, and who is generally able to react to complaints both with speed and in a targeted manner."¹⁴³ The four complaints that BIO's GM had received remain undisclosed. From a public information perspective, it is impossible to know whether the mechanism is used, what the complaints concern and the outcome's reasoning. Moreover, the new Transparency Policy only requires "that the 'aggregated yearly information' on the work of GM is included in BIO's annual report."¹⁴⁴ At the time of writing, the Grievance Mechanism has not received a complaint since January 2019.¹⁴⁵

Hence, The Study identifies several shortcomings and dysfunctions¹⁴⁶ related to the mechanism:

- a lack of independence
- a lack of transparency hindering the filing of E&S-related complaints because they are not accessible
- The non-publication of complaints and decisions hindering the use of the mechanism and the consideration of decisions
- lack of visibility and accessibility

135 The Study, p 260, note 794: "[E&S Investment Manual], p. 25".

136 The Study, p 262, note 800: "E&S Investment Manual, p. 27".

137 The Study, p 262, note 801: "According to an interviewee from BIO, 'The 'atomic bomb' option (i.e. enforcing repayment) needs to be used very seldomly as it put the company into jeopardy (which involves job loses, etc).'"

138 The Study, p 262, note 804: "Interview with BIO on PEFs."

139 The Study, p 267 - 268.

140 The Study, p 269, note 829: "Based on the information on BIO's website and on the Operating Rules of the Grievance Mechanisms (GM), we could not ascertain when exactly the mechanism was created. During our meeting with BIO where we discussed the functioning of the mechanism, we were told about a complaint that was submitted in 2019, which suggests that the mechanism was created no later than in 2019."

141 BIO, BIO's Grievance Mechanism – Operating Rules (GM Operating Rules) (last accessed on 1 March 2022).

142 The Study, p 269.

143 The Study, p 270 - 271.

144 See BIO, "Annual report 2018: the quest for a better life", 2019, p 46 (last accessed on 1 March 2022): "During the year, 2018 three grievances were submitted through the Mechanism. Two of them were found ineligible because it concerned financing requests. The remaining one concerned a former African SME investment." There is no information on the complaints submitted to Grievance Mechanism in the 2019 Annual Report.

145 The Study, p 274.

146 The Study, p 271 - 273.

E | Conclusion

The first chapter explained the legal framework of BIO. It is important to know that BIO is a public institution. As a result, administrative law is applicable and the competence of the Council of State arises. In the aforementioned execution, BIO also has to comply with the international obligations of the State regarding human rights, labour rights and environmental rights. In addition, as a member of EDFI, BIO subscribes to numerous private sector standards that should also have far-reaching implications for the latter in terms of responsible investment.

Chapter B focused on BIO's financial structure. BIO receives money from the State in three different ways and also derives profit from its investments. Furthermore, all its investments must be additional.

Section C then described BIO as a development actor, specifically BIO's business model and how it chooses where to invest. It made clear that communities that are (potentially) affected by investments are not systematically consulted. However, this is necessary for a Human Rights Based Approach (HRBA) on sustainable development. In terms of this concept, it is clear that BIO focuses almost exclusively on the economic aspect, making the social and environmental aspects secondary.

Chapter D dealt with how BIO's stakeholders can hold the bank to account when an investment has a negative impact. It highlighted the fact that much information is classified by BIO as confidential or internal, whereas Human Rights institutions (the OHCHR) believes that DFIs should adopt a proactive approach in favour of the right to information. Some shortcomings of the grievance mechanism were also highlighted.

In conclusion, both BIO and the State do not seem to realise that BIO is on an equal footing with the State in the execution of its public purpose. Furthermore, the Belgian State appears to exercise little control over the institution and an informal dialogue even seems to be taking place between the two. In light of controversial investments such as Feronia's, a focus on the economic dimension of sustainable development, a high degree of trust in the client and the absence of an HRBA regarding E&S issues, the lack of transparency and the lack of a mandatory systematic involvement of (potentially) affected communities, this could at least be considered questionable. Although positive changes have certainly been added to the operational framework, there is still room for improvement in order to create real sustainable development in the targeted intervention countries.

Finally, this study further refers to three policy briefings by the CNCD-11.11.11, 11.11.11 and the Coalition Against Hunger. These briefings provide an assessment of BIO's actions in relation to the normative framework it is required to follow. You can find them here:

- [Policy Briefings in French](#)
- [Policy Briefings in Nederlands](#)

Document produced by FIAN Belgium on behalf of the Coalition Contre la Faim
with the contribution of CNCD-11.11.11



With the support of



Belgique
partenaire du développement