

Queries on 7 November 2025 regarding questions from NGO's on Energy Policy Review and legal aspects

Thank you for sharing these views. We have considered these issues carefully, and take this opportunity to share our earlier analysis and response to you, with some additional clarifications.

As a multilateral development bank, ADB brings together members to foster economic growth and cooperation in Asia and the Pacific. ADB's mandate and operations are conducted in accordance with its Charter, which provides that only economic considerations will be relevant to ADB's decisions (Article 36.2). ADB remains committed to fostering cooperation through its mandate, and to supporting a prosperous, inclusive, resilient, and sustainable Asia and the Pacific.

The 2021 Energy Policy aims to help ADB's developing member countries accelerate the development of sustainable and resilient energy systems that provide reliable and affordable access to all, foster inclusive economic growth and social development, and support the low-carbon transition in Asia and the Pacific. In accordance with para. 118 of the policy, ADB is conducting a review of the policy in 2025 to assess the progress of implementing this objective. ADB continues to uphold its Charter and policies with the utmost diligence and integrity and the review of the policy is being undertaken consistent with ADB's policy framework.

With respect to the questions raised, we have noted at the outset that ADB possesses a separate and independent legal personality, distinct from that of its member states and, as such, does not assume or enforce obligations or responsibilities binding on its member states. In particular, the views raised contend that ADB, as an international organization, bears the treaty obligations of its member states. That position lacks support under international law. International organizations, like states, are bound only by those treaty obligations to which they have consented. This position is supported by relevant principles and sources of public international law (among others, for e.g., the Vienna Convention on the Law of Treaties Between States and International Organizations or between International Organizations (VCLTIO), which is itself thought largely to reflect customary international law). As an international organization with independent legal personality, ADB is bound only by those treaty obligations to which it itself is a party. In this regard, it is not germane to consider whether specific provisions of the treaties, conventions or protocols cited (including the Kyiv Protocol) are applicable to ADB in connection with the energy policy review.

In addition, we note that customary international law does not require ADB to conduct a strategic environmental assessment (SEA), as contended. As a general rule, relatively widespread and consistent state practice – *accepted as law by states* – is required to form a binding rule under customary international law. The procedures contended, including a SEA, are neither sufficiently widespread, nor accepted as law, to constitute customary international law. Moreover, the relevant protocols cited have not been widely adopted outside of Europe and cannot be said to reflect the custom of states accepted as law. With respect to the ICJ and ITLOS advisory opinions cited, these are not applicable to ADB's activities for reasons including that ADB is a multilateral development bank, with its mandate as explained above, and is not a State subject to these institutions.

Environmental impact assessments, where relevant, are a requirement under ADB's Safeguard Policy Statement (2009) and Environmental and Social Framework, for the projects that ADB finances, and those environmental assessments are carried out for such projects, where relevant.

With respect to consultations, it is important to recall that consultations on the Energy Policy Review have been undertaken (with the NGO Forum, its network members and Civil Society Organizations) on at least seven occasions, virtually and in-person: 15 August 2024 (online); 27 March 2025 (online); 5 and 7 May 2025 (in-person at the ADB Annual Meeting); 4 June 2025 (hybrid session at the ADB Asia Clean Energy Forum); and 22 July 2025 (online). In addition, on 15 August and 21 August 2025, the ADB team held four online consultations including on nuclear power. In parallel, consultations have been held with CSOs specifically on the Energy Transition Mechanism and Critical Minerals-to-Manufacturing Value Chains.

In addition, the contents of the proposed seven amendments were posted on [ADB's website](#) on 29 July 2025 noting that the final wording of the amendments is still under internal discussion and evolving, with comments received by 10 September 2025. Thus, sufficient and timely updates have been provided on the progress of the review.