

1. Home (<https://www.gov.uk/>)
  2. Business and industry (<https://www.gov.uk/business-and-industry>)
  3. Corporate governance (<https://www.gov.uk/business-and-industry/corporate-governance>)
  4. Global Witness complaint to the UK NCP about UK Export Finance (<https://www.gov.uk/government/publications/global-witness-complaint-to-the-uk-ncp-about-uk-export-finance>)
- UK National Contact Point (<https://www.gov.uk/government/organisations/uk-national-contact-point>)

Decision

# Initial assessment: Global Witness complaint to the UK NCP about UK Export Finance

Published 9 September 2020

## Contents

Summary of the UK NCP decision

Substance of the complaint

OECD Multinational Enterprises Guidelines provisions cited

The initial assessment process

UK NCP handling process

UK NCP decision

Identity of the complainant and its interest in the matter

Whether the issues are material and substantiated and whether there seems to be a link between the enterprise's activities and the issues raised

Relevance of applicable law and procedures, including court rulings and how similar issues have been, or are being, treated in other domestic or international proceedings

Whether the consideration of the specific issue would contribute to the purpose and effectiveness of the Guidelines

Next steps

[Print this page](#)



© Crown copyright 2020

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://www.nationalarchives.gov.uk/doc/open-government-licence/version/3) (<https://www.nationalarchives.gov.uk/doc/open-government-licence/version/3>) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gov.uk](mailto:psi@nationalarchives.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at <https://www.gov.uk/government/publications/global-witness-complaint-to-the-uk-ncp-about-uk-export-finance/initial-assessment-global-witness-complaint-to-the-uk-ncp-about-uk-export-finance>

This statement was published on 9 September 2020 by UK National Contact Point (UK NCP) for the OECD Guidelines for Multinational Enterprises.

## Summary of the UK NCP decision

The complainant Global Witness claims that UK Export Finance (UKEF) is failing to address climate concerns by providing export credits to the fossil fuel industry.

The UK National Contact Point (NCP) has decided not to accept the complaint for further examination. This is on the grounds that UKEF is not a multinational enterprise and the complaint would not contribute to the purpose and effectiveness of the Guidelines. This initial assessment concludes the complaint process under the Guidelines.

## Substance of the complaint

The complaint is from Global Witness, an international non-governmental organisation (NGO) established in 1993 that works to break the links between natural resource exploitation, conflict, poverty, corruption, and human rights abuses worldwide.

The complaint is about UKEF, the UK's Export Credit Agency (ECA) and a government department.

Global Witness claims that UKEF is in breach of the Guidelines by failing to support climate objectives as set out in the 2015 Paris Agreement. The Paris Agreement (<https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>) aims to strengthen the global response to the threat of climate change by keeping a global temperature rise this century to well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius.

The Paris Agreement commits governments to ensure greenhouse gas emissions are reduced as quickly as possible, in line with scientific advice. <sup>[footnote 1]</sup> Global Witness states that UKEF is undermining this commitment due to its global support for the fossil fuel industry. Global Witness states that UKEF, as a public finance institution, plays a key role in enabling fossil fuel projects and unlocking much larger amounts of capital for them.

Global Witness requests the UK NCP good offices to bring UKEF policies in line with the OECD Guidelines by:

- disclosing all relevant information on greenhouse gas emissions
- setting clear, rapid and science-based goals to reduce these emissions from its whole portfolio, in line with the Paris Agreement

UKEF accepted an invitation from the UK NCP to respond to the complaint. In response to the complaint UKEF states that it is not a multinational enterprise and its activities do not fall within the scope of the Guidelines as an ECA. As such, UKEF does not carry out 'commercial activity', is non-profit, and does not compete in the same way a company does.

## OECD Multinational Enterprises Guidelines provisions cited

The complainant has cited a number of general issues in their complaint. However, they specifically refer to the following articles of the guidelines:

## Chapter III – Disclosure

Enterprises are encouraged to communicate additional information that could include:

- A) value statements or statements of business conduct intended for public disclosure including, depending on its relevance for the enterprise's activities, information on the enterprise's policies relating to matters covered by the Guidelines;
- B) policies and other codes of conduct to which the enterprise subscribes, their date of adoption and the countries and entities to which such statements apply;
- C) its performance in relation to these statements and codes [...]

## Chapter VI – Environment

Enterprises should...

1, Establish and maintain a system of environmental management appropriate to the enterprise, including:

- a) collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;
- b) establishment of measurable objectives and, where appropriate, targets for improved environmental performance and resource utilisation, including periodically reviewing the continuing relevance of these objectives; where appropriate, targets should be consistent with relevant national policies and international environmental commitments; and
- c) regular monitoring and verification of progress toward environmental, health, and safety objectives or targets. [...]

4, Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage; [...]

6, Continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as: [...]

- b) development and provision of products or services that have no undue environmental impacts; are safe in their intended use; reduce greenhouse gas emissions; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;
- c) promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including, by providing accurate information on their products (for example, on greenhouse gas emissions, biodiversity, resource efficiency, or other environmental issues); and
- d) exploring and assessing ways of improving the environmental performance of the enterprise

over the longer term, for instance by developing strategies for emission reduction, efficient resource utilisation and recycling, substitution or reduction of use of toxic substances, or strategies on biodiversity. [...]

## The initial assessment process

The initial assessment process is to determine whether the issues raised merit further examination. It does not determine whether the multinational enterprise has acted consistently with the Guidelines.

The [OECD](#) procedural guidance to NCPs state that generally issues are dealt with by the [NCP](#) of the country in which the issues have arisen. Global Witness submitted that the [UK NCP](#) is the appropriate forum for this complaint as they claim the impacts occur due to the decisions being made by an organisation in the UK.

## UK NCP handling process

16 March 2020	The <a href="#">UK NCP</a> receives complaint
27 March 2020	The <a href="#">UK NCP</a> sends the complaint to <a href="#">UKEF</a>
2 April 2020	Global Witness raise additional information to the <a href="#">UK NCP</a> for consideration
6 April 2020	<a href="#">UKEF</a> confirm receipt of the complaint
21 May 2020	The <a href="#">UK NCP</a> receives a response from <a href="#">UKEF</a>
29 May 2020	The <a href="#">UK NCP</a> shares <a href="#">UKEF</a> 's response with Global Witness
24 June 2020	The <a href="#">UK NCP</a> sends the draft Initial Assessment to both parties

All documents provided in the complaint and response were shared with both parties. The [UK NCP](#) offered parties the opportunity to explain the process.

## UK NCP decision

The [UK NCP](#) has decided not to accept the complaint for further examination on the basis that in the [UK NCP](#) view [UKEF](#) is not a multinational enterprise for the purposes of the [OECD](#) Guidelines and proceeding with the complaint would therefore not contribute to the purpose and effectiveness of the Guidelines.

The [UK NCP](#) takes account of the following 6 criteria, as set out in the Guidelines' implementation procedures in deciding whether issues raised merit further examination.

## Identity of the complainant and its interest in the matter

Global Witness is a campaigning not-for-profit organisation based in the UK.

According to the Charity Commission's website (<https://beta.charitycommission.gov.uk/charity-details/?subid=0&regid=1117844>), Global Witness' aims are to:

advance the education of the public in environmental matters, the preservation and conservation of the natural environment and its sustainable development

carry out or promote research into the maintenance and observance of human rights in places where there may have been an impact on the human rights of the inhabitants as a consequence of environmental damage

The NCP accepts that Global Witness has a legitimate concern in bringing this complaint in their capacity as a civil society organisation with a focus on the environment.

## **Whether the issues are material and substantiated and whether there seems to be a link between the enterprise's activities and the issues raised**

Global Witness provided evidence of UKEF's support for fossil fuel projects including:

- a study by the Catholic Agency for Overseas Development and the Overseas Development Institute, which states UKEF provided 97% of their energy support from 2010-2017 to fossil fuel projects<sup>[footnote 2]</sup>
- a study of UKEF's latest annual report which suggested that UKEF gave £2 billion to fossil fuel projects in the 2017/18 financial year, indicating that fossil fuel support is increasing. The study also found that support for renewable energy had dropped to £700,000<sup>[footnote 3]</sup>
- analysis by BBC Newsnight of UKEF's support to oil and gas projects and associated carbon emissions<sup>[footnote 4]</sup>

Global Witness provided evidence of their engagement on UKEF's work. This included direct meetings with UKEF, email correspondence and engagement with MPs and ministers on the issue, including a written submission they provided to a Parliamentary inquiry (<https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/1804/1804.pdf>) on this subject.

In response to the complaint, UKEF stated that is not a multinational enterprise and is not subject to the OECD Guidelines. UKEF also stated that, in any event, it was developing a framework for how it can best respond in the future to climate-related risks and opportunities, through its adoption of the recommendations of the Taskforce on Climate-related Financial Disclosures (<https://www.fsb-tcfd.org/>).<sup>[footnote 5]</sup> UKEF said further that it was working with other government departments to ensure that it appropriately takes account of the UK's international commitments, including under the Paris Agreement.

## **Relevance of applicable law and procedures, including court rulings and how similar issues have been, or are being, treated in other domestic or international proceedings**

In the complaint Global Witness cites a number of complaints where other NCPs have considered complaints under the Guidelines about non-traditional multinational enterprises. <sup>[footnote 6]</sup>

Global Witness cites complaints handled by the Netherlands NCP (NL NCP) and the Korean NCP about ECAs.<sup>[footnote 7]</sup> They argue that these complaints set precedent that export credit activities are covered by the Guidelines. They also cite a complaint where the NL NCP noted that the OECD Guidelines required financial institutions put in place targets to manage their environmental impact, in line with international commitments.<sup>[footnote 8]</sup>

In response UKEF notes the positions of the NL NCP and Korean NCP. UKEF states that it operates in a fundamentally different way to other ECAs. It is a ministerial government department with no funds of its own, issuing policies in the name of the Secretary of State for International Trade, and carrying out a statutory purpose. UKEF states further that its activities are not commercial in nature. It highlights it is a not for profit organisation which has an express policy to operate at no net cost the British taxpayer.<sup>[footnote 9]</sup>

The UK NCP notes that a precise definition of multinational enterprises is not required for the purpose of the Guidelines. The UK NCP notes the complaints handled by other NCPs which have dealt with the issue of whether organisations are to be deemed as multinational enterprises. The Guidelines allow a wide definition of multinational enterprise. Statements by other NCPs do not form binding precedent, and the UK NCP reaches its own independent conclusions on each specific complaint. The UK NCP notes distinct factual differences in the complaints cited. What constitutes a multinational enterprise must be considered on a case-by-case basis.

## **Whether the consideration of the specific issue would contribute to the purpose and effectiveness of the Guidelines**

Global Witness states that the OECD guidelines should apply to UKEF as export finance is a commercial activity. Global Witness asks that the UK NCP make specific recommendations to bring UKEF's behaviour in line with the Guidelines in respect to its impact on greenhouse gas emissions.

In response UKEF states that it is an ECA not a multinational enterprise and it does not compete with other finance and insurance providers from the private sector but complement them. UKEF highlight that as an ECA it is covered by and operates in line with other OECD agreed standards including:

- OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence ([http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=tad/ecg\(2016\)3](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=tad/ecg(2016)3))
- OECD Recommendation of the Council on Bribery and Official Supported Export Credits ([http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/ECG\(2019\)2&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/ECG(2019)2&docLanguage=En))
- OECD Recommendation on Sustainable Lending Practices and Officially Supported Export Credits ([http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=tad/ecg\(2018\)4&doclanguage=en](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=tad/ecg(2018)4&doclanguage=en))
- OECD Arrangement of Officially Supported Export Credits ([https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=tad/pg\(2020\)1](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=tad/pg(2020)1))

In addition to the above OECD measures, UKEF states that ECAs are covered by international rules as tools of the state and not private enterprises, including under the World Trade Organization Agreement on Subsidies and Countervailing measures ([https://www.wto.org/english/docs\\_e/legal\\_e/24-scm.pdf](https://www.wto.org/english/docs_e/legal_e/24-scm.pdf)),<sup>[footnote 10]</sup> by the European Union where export credits are broadly subject to state aid considerations. UKEF state that the OECD Arrangement on Officially Supported Export Credits and

WTO agreements recognise that profit is not central to the mandate of ECAs. Further, WTO and OECD rules on minimum pricing with respect to ECA products require that premiums charged by ECAs only need to cover long-term operating costs and losses.

The UK NCP considers that the Guidelines do not apply to UKEF as it is not themselves a multinational enterprise for the purposes of the Guidelines. While many ECAs share common overarching purposes, each one is structured differently and acts within different operating parameters. As regards UKEF, it does not strictly engage in commercial activity and its primary purpose is to provide financial products that are not otherwise available on the private market. Consistent with this purpose, UKEF does not have a separate corporate legal personality, but rather exists as a government department having its legal personality as the Secretary of State for International Trade. In such circumstances, UKEF cannot be considered as a multinational enterprise to which the OECD Guidelines should apply.

The NCP considers that further examination of the complaint would not contribute to the purpose and effectiveness of the Guidelines as it would not be within the NCPs remit to conduct such an examination.

## Next steps

The conclusions reached by the UK NCP in this initial assessment are based on the information it has been provided by the parties.

As the complaint has not been accepted, this initial assessment concludes the process under the Guidelines in regards to this complaint.

- 
1. Article 2.1(c) of the Paris
  2. Catholic Agency for Overseas Development, July 2019, 'Analysis: UK support for energy,' (<https://cafod.org.uk/About-us/Policy-and-research/Climate-change-and-energy/Sustainable-energy/Analysis-UK-support-for-energy>)
  3. The Guardian, June 2019, 'UK committed nearly £2bn to fossil fuel projects abroad last year,' (<https://www.theguardian.com/environment/2019/jun/27/uk-spent-nearly-2bn-on-fossil-fuel-projects-overseas-last-year>)
  4. BBC News, February 2020, 'Carbon emissions: Scale of UK fossil fuel support "staggering"' (<https://www.bbc.co.uk/news/science-environment-51216084>)
  5. Taskforce on Climate-related Financial Disclosures (<https://www.fsb-tcfd.org/>) is an independent body which has developed recommendations on how organisations can identify and disclose information about climate-related financial risks and opportunities.
  6. Tuk Indonesia against Roundtable on Sustainable Palm Oil (<http://mneguidelines.oecd.org/database/instances/ch0017.htm>), IDI, EC and LICADHO against Bonsucro (<https://mneguidelines.oecd.org/database/instances/uk0053.htm>), BWI against FIFA (<https://mneguidelines.oecd.org/database/instances/ch0013.htm>), Survival International against World Wide Fund for Nature (<https://mneguidelines.oecd.org/database/instances/ch0014.htm>), Danish Ministry of Defence concerning the Lauge Koch vessel (<http://mneguidelines.oecd.org/database/instances/dk0017.htm>)
  7. Forum Suape et al about the Dutch ECA, Atradius Dutch State Business (ADSB) (<https://mneguidelines.oecd.org/database/instances/provisionofexportcreditinsurancefordredgingoperationsinbrazil.htm>), KTNC Watch about the Korean ECA (KEXIM) handled by the Korean NCP ([https://complaints.oecdwatch.org/cases/Case\\_547](https://complaints.oecdwatch.org/cases/Case_547))
  8. Oxfam Novib et al against ING Bank (<http://mneguidelines.oecd.org/database/instances/nl0029.htm>)

9. [UKEF Annual Report for 2018 - 2019](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810203/UKEF_Annual_Report_2018-19.pdf) ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/810203/UKEF\\_Annual\\_Report\\_2018-19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810203/UKEF_Annual_Report_2018-19.pdf))
10. [WTO Agreement on Subsidies and Countervailing Measures](https://www.wto.org/english/docs_e/legal_e/24-scm.pdf) ([https://www.wto.org/english/docs\\_e/legal\\_e/24-scm.pdf](https://www.wto.org/english/docs_e/legal_e/24-scm.pdf))

[Print this page](#)