

OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES COMPLAINT AGAINST: UK Export Finance

SUBMITTED TO: United Kingdom OECD National Contact Point

COMPLAINANT: Global Witness

CONTACT DETAILS FOR COMPLAINANT:

Global Witness
The Green House, 244-254 Cambridge Heath Road
London E2 9DA
United Kingdom

Contact: Adam McGibbon (amcgibbon@globalwitness.org / 07730764438)

COMPLAINT (IN SUMMARY)

Under the terms of the 2015 Paris Agreement, it was agreed that the increase in the global average temperature must be kept well below 2°C, and efforts must be pursued to limit the increase to 1.5°C above pre-industrial levels. This means governments must ensure greenhouse gas emissions are reduced as quickly as possible, in line with the science. In addition, Article 2.1(c) of the Paris Agreement commits signatories to '(make) finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.'¹

UK Export Finance, the UK Government's export credit agency, is falling far short of this commitment. With its global reach (it operated in 72 countries and supported 181 companies in 2018/19)², its multinational support for the fossil fuel industry runs into the billions of pounds.

As a public finance institution, UKEF plays a key role in enabling fossil fuel projects and unlocking much larger amounts of capital for them.

Although the Government announced in January 2020 that UKEF and other government departments and agencies would no longer provide support for coal projects, UKEF has provided virtually zero support for coal in recent years. Therefore, this announcement cannot be taken as appropriate action to reduce greenhouse gas emissions.

UKEF has no goals to reduce greenhouse gas emissions resulting from its finance activities, nor does it fully disclose or report all such emissions that occur because of these activities.³

This is in conflict with the following components of the OECD Guidelines for Multinational Enterprises:

1. Chapter III, Article 3 (sub-sections A, B and C) and paragraph 33 of the Chapter III commentary.
2. Chapter VI, Article 1 (sub-sections A, B and C).

¹ United Nations Framework Convention On Climate Change, 2015, 'Paris Agreement,'

http://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_.pdf

² UK Export Finance, 'Annual Report 2018-19,' Pg16,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810203/UKEF_Annual_Report_2018-19.pdf

³ UK Parliament Environmental Audit Committee, March 2019, 'Oral Evidence: UK Export Finance,'

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environmental-audit-committee/uk-export-finance/oral/98536.html> Q262.

- Chapter VI, Article 4, Article 6 (sub-sections B, C and D) and paragraphs 63 and 69 of the Chapter VI commentary.

COMPLAINANT'S REQUEST TO UK EXPORT FINANCE

The complainant requests that:

- UK Export Finance reports fully and publicly on the total greenhouse gas emissions (direct and indirect, of all scopes under the Greenhouse Gas Protocol) of all the projects that it supports, has supported in the past, and will support in the future.
- UK Export Finance establishes clear and rapid goals to bring their portfolio in line with the 1.5°C goal of the Paris Agreement, including a commitment to end all support of any kind for fossil fuel projects as soon as possible. These goals should clearly align with scientific advice and include intermediate targets to reduce fossil fuel support. The process of ending all fossil fuel support should happen well within the life of the current UK Parliament.

We further note that the UK Parliament's Environmental Audit Committee recommended that UK Export Finance end all support for fossil fuel projects by 2021.⁴

UK EXPORT FINANCE IS A MULTINATIONAL ENTERPRISE UNDER THE OECD GUIDELINES

The following explains why UK Export Finance falls under the OECD Guidelines.

- 1) **Export finance is a commercial activity.** The Guidelines state that 'a precise definition of multinational enterprises is not required for the purposes of the Guidelines.... Ownership may be private, State or mixed.'

The OECD secretariat further clarified in a 2013 note that the key test for determining whether or not a company can be considered a "multinational enterprise" under the OECD Guidelines is not its ownership or whether it is a for-profit entity, but whether or not the entity engages in "commercial activities". The OECD secretariat's note even clarified that some of the activities of entities associated with the state, such as those of sovereign wealth funds and central banks, can be considered to fall under the expectations of the OECD Guidelines.⁵

UKEF's activities are commercial in nature. UKEF helps British businesses to, in its words, 'win export contracts by providing attractive financing terms to their buyers, fulfil contracts by supporting working capital loans, [and] get paid by insuring against buyer default.'⁶ This is clearly commercial activity. These activities – providing insurance, loans or bank guarantees – are clearly ones also undertaken by private enterprises.

⁴ UK Parliament, June 2019, 'MPs call for end of taxpayer support for fossil fuel projects from 2021,' <https://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news-parliament-2017/uk-export-finance-report-published-17-19/>

⁵ OECD Directorate for Financial and Enterprise Affairs (Investment Committee), November 2013, 'Application of the OECD Guidelines for Multinational Enterprises with respect to sovereign wealth funds and central banks,' (DAF/INV/RBC(2013)3/REV1): <https://drive.google.com/file/d/1IRi6pcYadHz7RyGtU1IGDlbcjJl-2MRR/view>

⁶ UK Export Finance website, accessed March 2020, <https://www.gov.uk/government/organisations/uk-export-finance/about>

UKEF operates all over the world, operating in 72 countries in 2018/19,⁷ and is headquartered in an OECD country (the UK). UKEF is thus a multinational financial institution that engages in commercial activities worldwide, and is therefore subject to the expectations under the OECD Guidelines.

- 2) **There is precedent of an accepted OECD Guidelines complaint against a government-run export credit agency.** – see *Forum Suape et al vs Atradius Dutch State Business (ADSB)*, filed June 2015.⁸ ADSB is the Dutch export credit agency, ultimately controlled by the Dutch Government. By accepting the case, the Dutch National Contact Point (NCP) confirmed that export credit agencies are regarded as falling under the OECD Guidelines. The precise legal structure and set-up of the export credit agency itself are irrelevant. What matters is that export credit activities themselves are covered by the guidelines. They also note that enterprises should, *seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.* The NCP said that ‘the reference to services means that paragraph 12 (in Chapter II, General Policies) of the Guidelines is applicable to any financial service.’

The NCP also noted that the Dutch State and ADSB claimed that ADSB was not covered by the guidelines, arguing amongst other things about the structure and legal set-up of ADSB, and that that export credit agencies are covered by special guidelines such as the Common Approaches. Some in the British Government will no doubt argue around similar lines. However, the Dutch NCP rejected this and said that export credit services fall within the guidelines.⁹ The UK NCP should follow this precedent.

Furthermore, the Dutch NCP clarified in its final statement that export credit services are part of a business relationship within the meaning of the Guidelines. As such, they are responsible for complying with not only national and regional laws, but also international norms and standards, including the Guidelines.¹⁰

As well as the *Forum Suape et al vs Atradius Dutch State Business* precedent, there is further precedent. A series of complaints to the Korean NCP were made regarding the Export-Import Bank of Korea (KEXIM), Korea’s export credit agency. In particular, *KTNC Watch vs KEXIM*, filed October 2018. According to OECD Watch’s summary of the case, although the Korean NCP rejected the complaint, both KEXIM itself and the Korean NCP claimed that the complaint was invalid because KEXIM was participating in the project at the centre of the case as an Official Development Assistance (ODA) agency, not as an export credit agency. This ruling implies that if KEXIM had been participating as an export credit agency, they would have been covered by the guidelines.¹¹

⁷ UK Export Finance, ‘Annual Report 2018-19,’ Pg16,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810203/UKEF_Annual_Report_2018-19.pdf

⁸ Dutch Ministry of Foreign Affairs, ‘Final statement notification Both ENDS – Forum Suape vs Atradius DSB,’

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

⁹ OECD National Contact Point Netherlands, November 2016, ‘Final Statement - Forum Suape et al vs ADSB,’

https://complaints.oecdwatch.org/cases/Case_365/1594/at_download/file, Pg3-4

¹⁰ OECD National Contact Point Netherlands, November 2016, ‘Final Statement - Forum Suape et al vs ADSB,’

https://complaints.oecdwatch.org/cases/Case_365/1594/at_download/file, Pg4

¹¹ OECD Watch, October 2018, *KTNC Watch et al vs KEXIM*, https://complaints.oecdwatch.org/cases/Case_547

- 3) **The OECD Guidelines cover non-traditional multinational enterprises.** OECD NCPs have accepted complaints against multi-stakeholder initiatives (*Tuk Indonesia vs Roundtable on Sustainable Palm Oil*, 2018¹²), industry certification bodies (*IDI, EC and LICADHO vs Bonsucro*, accepted by UK NCP 2019¹³), international sporting associations (*BWI vs FIFA*, 2015¹⁴) and even NGOs (*Survival International vs World Wide Fund for Nature*, 2016¹⁵). This shows that a range of non-traditional multinational enterprises are covered by the guidelines. To put it another way, if certification bodies, sporting associations, NGOs and multi-stakeholder initiatives are covered under the Guidelines as being multinational enterprises, there are no grounds for export credit agencies or export credit activities to be omitted from the Guidelines.

The facts that UK Export Finance is part of the UK government, or is housed within the same government department as the UK NCP, are not grounds for the UK NCP to reject this complaint. In a clarification to the Australian NCP case, *Human Rights Law Centre and Raid vs G4S (2014)*, the OECD Investment Committee ruled that the NCPs should not use an enterprise's links to government policies or agencies as grounds for rejecting a case.¹⁶

PROCESS LEADING UP TO THE COMPLAINT

Prior to this complaint, the complainant has engaged with UK Export Finance via:

- Direct meetings (for example, a meeting between UKEF and Global Witness and other organisations in November 2018, to discuss fossil fuel investments).
- Publishing reactions to particular UKEF projects in the media and highlighting UKEF policies and practice in reports and case studies.
- Email correspondence and Freedom of Information requests from 2018-20 on particular projects with UK Export Finance and on the overarching issue of climate change.
- Engaging MPs and Ministers on the issue, including encouraging MPs to examine UK Export Finance during a Parliamentary inquiry, which ran from December 2018 to June 2019. Global Witness engaged heavily in this process, including submitting written evidence to the inquiry. The inquiry produced recommendations asking UKEF to end its fossil fuel financing. UK Export Finance and the government rejected these recommendations in October 2019.

None of this engagement has changed UKEF's behaviour in a significant way. As we mentioned above, the announcement of an end to UK Government overseas coal support makes no practical difference to UKEF's footprint or operations. As we describe below, UK Export Finance and its controlling ministers are on record saying that no policy change has taken place because of the Paris Agreement. Therefore, the complainant has decided to lodge this complaint.

¹² OECD Watch, May 2018, 'TuK Indonesia vs RSPO,' https://complaints.oecdwatch.org/cases/Case_491

¹³ OECD Watch, September 2019, 'IDI, EC and LICADHO vs Bonsucro,' https://complaints.oecdwatch.org/cases/Case_534

¹⁴ National Contact Point of Switzerland, *Initial Assessment: Specific Instance regarding the Fédération Internationale de Football Association (FIFA) submitted by the Building and Wood Workers' International (BWI)*, Oct. 13, 2015, p. 1, <https://www.wiltonpark.org.uk/wp-content/uploads/WP1428-Swiss-National-Contact-Point-Initial-Assessment-FIFA.pdf>

¹⁵ OECD Watch, November 2017, 'Survival International vs WWF,' https://complaints.oecdwatch.org/cases/Case_457

¹⁶ OECD Investment Committee, November 2018, 'Response by the Investment Committee to the Substantiated Submission by OECD Watch regarding the Australian National Contact Point,' https://complaints.oecdwatch.org/cases/Case_342/1770/at_download/file, Paragraphs 41 - 42

COMPLAINT IN FULL

1) *UK Export Finance does not publish its full greenhouse gas emissions*

UK Export Finance supports many companies and projects in the fossil fuel industry, but does not disclose the volume of the greenhouse gases emitted because of its support, nor has it announced plans to do so in the near future.

UKEF publishes greenhouse gas emissions for projects it deems to be 'Category A' projects – projects that run the risk of significant social or environmental harm. It has stated that from the financial year 2020/21, it will also disclose this data for projects which have a 'medium potential of adverse environmental and/or social impacts (Category B).'¹⁷

However, even with this level of disclosure, this is not full disclosure of the greenhouse gas emissions of UKEF's portfolio. It is clearly in the public interest that this emissions data is disclosed in full.

2) *UK Export Finance is a significant financier of fossil fuel energy*

According to a study by the Catholic Agency for Overseas Development and the Overseas Development Institute, UKEF gave 97% of their energy support from 2010-17 to fossil fuel projects.¹⁸ A study of their latest annual report suggested they gave £2 billion to fossil fuels in 2017/18 alone, indicating that fossil fuel support is increasing. The study also found that support for renewable energy had dropped to £700,000.¹⁹

Particular projects of interest include support for exports to Saudi Aramco, support for fracking in Argentina, and support for a Bahraini oil refinery the week after the landmark IPCC Special Report into Global Warming of 1.5°C.²⁰²¹²² All this demonstrates UKEF's lack of commitment to reducing greenhouse gas emissions.

A February 2020, a BBC Newsnight analysis of UKEF's Category A projects found that UKEF has helped to finance oil and gas projects that, when complete, will emit 69 million tonnes of carbon a year, according to government estimates. This is nearly a sixth of the total annual carbon emissions of the UK.²³ Given that the BBC Newsnight research is not an analysis of UKEF's entire portfolio, the total UKEF portfolio emissions are likely to be even higher. This underlines how significant UKEF is as a financier of greenhouse gas-intensive projects.

UKEF plays a key role in enabling fossil fuel projects, by removing risks from them and sending signals to private investors about what investments the Government deems acceptable. By UKEF's own admission, many of the projects they support may not go ahead without their involvement. Export credit agencies are a small percentage of total investment – but their de-risking of fossil fuel

¹⁷ House of Commons Environmental Audit Committee, August 2019, 'UK Export Finance – Government Response to the Committee's Nineteenth Report of Session 2017-19,' <https://publications.parliament.uk/pa/cm201919/cmselect/cmenvaud/243/24302.htm> - See section 'Energy Transition.'

¹⁸ 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>

¹⁹ 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>

²⁰ The Guardian, October 2019, 'UK to use finance meant for green energy to support fracking in Argentina,'

<https://www.theguardian.com/environment/2019/oct/22/uk-to-use-1bn-meant-for-green-energy-to-support-fracking-in-argentina>

²¹ The Independent, October 2018, 'UK Government considers supporting £4bn oil refinery expansion days after bombshell climate change warning,'

<https://www.independent.co.uk/environment/uk-support-oil-refinery-bahrain-ipcc-climate-change-report-global-warming-bapco-a8579456.html>

²² Financial Times, November 2017, 'UK set to agree \$2bn loan guarantee to Saudi Aramco,' <https://www.ft.com/content/117c63ee-c4a4-11e7-a1d2-6786f39ef675>

²³ BBC News, February 2020, 'Carbon emissions: Scale of UK fossil fuel support "staggering":' <https://www.bbc.co.uk/news/science-environment-51216084>

projects makes many investments viable and unlocks further huge private sector investment. As the International Energy Agency stated in their World Energy Outlook 2018, energy investment ‘is increasingly underpinned by governments,’ with state-backed investments accounting for a rising share of global energy investment. This shows how important state actors like UKEF are in driving investment in the fossil fuel industry, and therefore driving climate change.²⁴

This funding of fossil fuels is inconsistent with the Paris Agreement goals. According to a study using data from the Intergovernmental Panel on Climate Change, the World Energy Council and oil & gas industry analysts Rystad, the potential carbon emissions from the oil, gas, and coal in the world’s currently operating fields and mines would take us beyond 2°C of warming. The reserves in currently operating oil and gas fields alone, even with no coal, would take the world beyond 1.5°C.²⁵ Therefore, no infrastructure that enables the further extraction of fossil fuel beyond this can be built if we want to keep to the Paris Agreement goals.

To add to this, Fatih Birol, the Head of the International Energy Agency, was quoted in 2018 stating that the world has so many existing fossil fuel projects that it cannot afford to build any more without breaching international climate goals.²⁶ This underlines how inconsistent UKEF’s plans to continue support fossil fuel projects is with international climate goals, as well as the UK’s own climate objectives under the Paris Agreement.

The Minister responsible for UK Export Finance in 2019, Baroness Fairhead, admitted to a parliamentary committee that UKEF has not changed its business model or policies because of the Paris Agreement.²⁷ Again, this demonstrates the lack of action and consideration taken to reduce greenhouse gas emissions from UKEF, despite their very large footprint.

3) UK Export Finance’s environmental policies do not do enough to protect the climate

UKEF’s environmental policy is not fit for purpose. It has no policies to reduce greenhouse gas emissions. Its environmental policy fails to tackle climate change, and there is little evidence that decisions to support large fossil fuel projects are taken with real regard to climate goals or emissions reductions. In terms of its legal setup, there is no consideration taken of environmental policy. UKEF Chief Executive Louis Taylor told a Parliamentary committee in 2019 that ‘within the statutory purpose of UKEF, there is not a developmental or environmental statement in there at all.’²⁸

UKEF’s peers in other export credit agencies have more effective environmental policies. The Swedish Export Credit Corporation (SEK) caps its fossil fuel operations at 5% of total lending, and in 2018 fossil fuels made up less than 1% of its total lending.²⁹ In 2019, the French export credit agency ended support for coal, shale oil and gas and projects with routine gas flaring.³⁰

²⁴ International Energy Agency, ‘World Energy Outlook 2018 – Analysis,’ <https://www.iea.org/reports/world-energy-investment-2018>

²⁵ Oil Change International, September 2016, ‘The Sky’s Limit – Why The Paris Goals Require a Managed Decline of Fossil Fuel Production,’ <http://priceofoil.org/2016/09/22/the-skys-limit-report/>

²⁶ The Guardian, November 2018, ‘World has no capacity to absorb new fossil fuel plants, warns IEA,’ <https://www.theguardian.com/business/2018/nov/13/world-has-no-capacity-to-absorb-new-fossil-fuel-plants-warns-iea>

²⁷ House of Commons Environmental Audit Committee, March 2019, ‘Oral evidence: UK Export Finance,’ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environmental-audit-committee/uk-export-finance/oral/98536.html>, Q248

²⁸ House of Commons Environmental Audit Committee, March 2019, ‘Oral evidence: UK Export Finance,’ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environmental-audit-committee/uk-export-finance/oral/98536.html>, Q254

²⁹ House of Commons Environmental Audit Committee, June 2019, ‘UK Export Finance,’ <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/1804/1804.pdf>, Pg3

³⁰ Legifrance.fr, Finance Bill 2019, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000039683923&dateTexte=&categorieLien=id#JORFARTI000039684001> – See Article 201

No policy is in place in UK Export Finance to reduce support for oil and gas – in fact, UKEF’s huge support for oil and gas runs directly counter to any sensible and scientifically coherent environmental policy.

In addition to this, the UK Government’s own independent advisers, the Committee on Climate Change, stated in their landmark May 2019 report on Net Zero that the UK’s ‘export finance is not aligned with climate goals, and often supports high-carbon investments.’³¹ In the UK, the Committee on Climate Change is regarded as an extremely authoritative body, drawing on the advice of top scientists, engineers and economists. Therefore, this is a major assessment that needs to be taken seriously.

In addition to the above, a March 2020 report by Perspectives, an independent climate change research house, noted that the activities of UK Export Finance are not aligned with the Paris Agreement, and indeed their policies lag behind similar export credit agencies. Perspectives have performed significant work in establishing the UNFCCC Clean Development Mechanism and other UN projects, so their viewpoint on UKEF not being Paris-aligned is worthy of consideration.³²

Although the Government announced in January 2020 that UKEF would no longer provide support for coal projects, UKEF provides virtually zero support for coal, so this announcement cannot be taken as appropriate action to reduce emissions. It was essentially already a *de facto* policy of UK Export Finance to refuse coal support before this policy was announced – Liam Fox, International Trade Minister in 2018, told a Parliamentary committee that he was not in favour of supporting new coal installations.³³

Other institutions are going further. The European Investment Bank, the world’s largest public bank, has announced it will end all its fossil fuel support by 2021.³⁴ Compared to this, UKEF’s environmental policies are not fit for purpose.

VIOLATIONS OF THE OECD GUIDELINES BY UK EXPORT FINANCE

For the above reasons, the complainant considers that UK Export Finance is in breach of the following provisions of the OECD Guidelines. The full text of this complaint should be taken into account by the NCP in assessing whether the guidelines have been breached:

1. Chapter III (“Disclosure”), article 3 and paragraph 33 of the commentary:

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[...]

³¹ Committee on Climate Change, May 2019, ‘Net Zero – The UK’s contribution to stopping global warming,’ <https://www.theccc.org.uk/publication/net-zero-the-uks-contribution-to-stopping-global-warming/>, Pg118

³² Perspectives Climate Group, March 2020, ‘Study on external and internal climate change policies for export credit and insurance agencies,’ https://www.perspectives.cc/fileadmin/Publications/ECA_Study.pdf, ‘UK Export Finance,’ Pg43-46 and ‘Conclusions,’ Pg47-49, ‘None of the ECAs reviewed in this study...are in line with the long-term objectives of the Paris Agreement.’

³³ House of Commons, July 2018, ‘The Work of the Department for International Trade,’ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/international-trade-committee/the-work-of-the-department-for-international-trade/oral/86825.html> – Q338.

³⁴ BBC News, November 2019, ‘European Investment Bank drops fossil fuel funding,’ <https://www.bbc.co.uk/news/business-50427873>

33. *The Guidelines also encourage a second set of disclosure or communication practices in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting. This is particularly the case with greenhouse gas emissions, as the scope of their monitoring is expanding to cover direct and indirect, current and future, corporate and product emissions; biodiversity is another example. Many enterprises provide information on a broader set of topics than financial performance and consider disclosure of such information a method by which they can demonstrate a commitment to socially acceptable practices. In some cases, this second type of disclosure – or communication with the public and with other parties directly affected by the enterprise’s activities – may pertain to entities that extend beyond those covered in the enterprise’s financial accounts. For example, it may also cover information on the activities of subcontractors and suppliers or of joint venture partners. This is particularly appropriate to monitor the transfer of environmentally harmful activities to partners.*

Here, the Guidelines mention the importance of developing reporting standards for greenhouse gas emissions that “cover direct and indirect, current and future, corporate and product emissions”. UK Export Finance claims to track *some* of these emissions but does not track all of them. It does not disclose the “indirect” or “product” emissions of its full portfolio.

The indirect emissions caused by UKEF’s financial products are many times greater than their direct emissions. Therefore, the disclosure of these figures is much more important.

2. Chapter VI (“Environment”), article 1 and paragraph 63 of the commentary:

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. [...] 63. In the context of these Guidelines, “sound environmental management” should be interpreted in its broadest sense, embodying activities aimed at controlling both direct and indirect environmental impacts of enterprise activities over the long-term, and involving both pollution control and resource management elements.

UK Export Finance does not collect or evaluate any information on the full climate impact of its financial investments as requested under article VI.1.a).

UK Export Finance does not appear to have any targets for improved environmental performance that would reduce greenhouse gases. Its operations are not in line with relevant national policies (Such as the UK’s commitment to net zero emissions under the Climate Change Act, as noted by the Committee on Climate Change) or international environmental commitments (such as the UK’s commitment to the targets in the Paris Agreement). The House of Commons Environmental Audit Committee, in their summary of their investigation into UKEF, stated that “[UKEF’s] level of support for fossil fuel energy projects does not respect the Paris Agreement, which commits signatories to

[Make] financial flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.’³⁵

UK Export Finance has not formulated any measurable objectives or targets to control the direct or indirect environmental impacts of their activities in the long run. There are no targets to control or reduce the indirect greenhouse gas emissions that occur because of UKEF’s activities. Therefore, UKEF does not “manage in the broadest sense” the indirect environmental impacts of its activities as required under paragraph 63 of the commentary to chapter VI.

3. Chapter VI (“Environment”), articles 4 and 6 and paragraph 69 of the commentary:

“Enterprises should [...] 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. [...] 69. The basic premise of the Guidelines is that enterprises should act as soon as possible, and in a proactive way, to avoid, for instance, serious or irreversible environmental damages resulting from their activities.”

Articles 4 and 6 and paragraph 69 of the commentary state that companies must do what they can to avoid environmental damage. UK Export Finance does not comply with these provisions since, as explained in the text of this complaint, it is a significant enabler of climate change through its financial support for fossil fuels. Therefore, it is taking no effective action to reduce its indirect greenhouse gas emissions.

In addition, the NCP must take into account the precedent set in the decision in *Oxfam Novib et al vs ING Bank* (filed May 2017). The decision requires financial institutions to put into place ‘concrete targets to manage [their] impact towards alignment with relevant national policies and international environmental commitments. Regarding climate change, the Paris Agreement is currently the most relevant international agreement between states...’³⁶. The Paris Agreement is clearly an element of UK policy, as confirmed recently in the judicial review *Friends of the Earth vs Secretary of State for Transport and others*. This must be taken into account when deliberating on this complaint.

³⁵ House of Commons Environmental Audit Committee, June 2019, <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/1804/1804.pdf>, Pg3

³⁶ OECD Watch, 2019, ‘Dutch NGOs vs ING Bank – Final Statement by NCP,’ https://complaints.oecdwatch.org/cases/Case_476/1793/at_download/file, Pg5

CONCLUSION

The complainant therefore requests that the National Contact Point offers its services, and that it asks UK Export Finance to bring its policies in line with the OECD Guidelines. To do this, UKEF must disclose all relevant information on greenhouse gas emissions and set clear, rapid and science-based goals to reduce these emissions from its whole portfolio, in line with the 1.5°C goal of the Paris Agreement.