



Government Legal Department

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Your ref: n/a
Our ref: Z2008259/MGR/DS4

10 August 2020

Dear Tim

PLAN B v SECRETARY OF STATE FOR INTERNATIONAL TRADE

I write from the Government Legal Department. This is the response of my client in respect of your pre-action letter of 21 July 2020.

1 The claimant

The proposed claimant is Plan B. Earth of 62 Sutherland Square, London SE17 3EL.

2 From

This letter is sent on behalf of the Secretary of State for International Trade acting through the Export Credits Guarantee Department (operating as UK Export Finance) (“UKEF”).

3 Reference details

The reference is set out at the head of this letter. The identity of the lawyer handling this issue is set out at the end of this letter.

4 The details of the matter being challenged

It is difficult to tell from your letter of 21 July 2020 what is the matter proposed to be challenged as far as it relates to UKEF. Paragraph 6 of your letter suggests that the challenge is to “all aspects of the

Emma Robinson - Head of Division
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Government's package of financial measures designed to support the economy following the interruption caused by Covid-19", including "new projects supported by UK Export Finance". There is a reference in paragraph 46 of your letter to "a new natural gas project in Mozambique".

5 Response to the proposed claim

The proposed claimant's potential grounds of claim are not being conceded at all and will be contested in full.

The proposed claim is entirely misconceived. UKEF support is potentially available to all UK businesses, whether or not they are affected by covid-19. Support is available to UK exporters now as it was before the start of the covid-19 pandemic. UKEF has not supported any new project as part of any package of Government measures designed to support the economy in relation to the impact of covid-19.

In particular, the decision to provide support in relation to the Mozambique LNG project is entirely unrelated to any package of measures designed to support the economy in relation to the impact of covid-19. UKEF has been working on the possibility of providing support in relation to the Mozambique LNG project for a number of years. Formal notice that support for the project was under consideration was published on 20 August 2019, well before covid-19.

In any event, the underlying premise of your proposed challenge is that UKEF does not consider the climate change impacts of the projects in relation to which it decides to provide support. That is wrong. Before deciding to provide support in relation to the Mozambique LNG project, UKEF gave consideration to the project's climate change impacts, including the impacts of the project on global greenhouse gas emissions, taking into account the Paris Agreement, and the consistency of the project with a pathway towards low greenhouse gas emissions, in both Mozambique and globally.

For these reasons, your proposed judicial review claim against UKEF is wholly misconceived.

It is not accepted that the proposed claim against UKEF would be an Aarhus Convention claim as it would not fall within the scope of Article 9(1), 9(2) or 9(3) of the Convention, as required by r 45.41(2)(a) of the Civil Procedure Rules.

6 Details of any other Interested Parties

None.

7 ADR proposals

No specific proposals for ADR in relation to UKEF were made in the letter before claim. The proposed defendant does not make any.

8 Response to requests for information and documents

Paragraph 66(f) of your letter before claim refers to the reasoning for UKEF providing financial support in relation to the Mozambique LNG project.

The approach to and reasoning underlying the decision to provide support in relation to the Mozambique LNG project has been explained in a number of answers to Parliamentary Written Questions provided

by the Minister with responsibility for UKEF, Graham Stuart MP, the Minister for Exports in Department for International Trade.

In relation to the support generally, in a written answer on 20 July 2020, Mr Stuart said:

“UK Export Finance (UKEF) has agreed to provide up to US\$1.15bn of export finance support for UK exporters, as part of the design, construction and operation of a liquified natural gas (LNG) project in Mozambique. UKEF support is in the form of up to \$300m of direct loans, and up to \$850m in guarantees to the commercial banks providing lending.

The UKEF-supported element will support multiple UK businesses across the UK, including small and medium-sized enterprises, and in excess of 2,000 UK jobs.

The Project will generate significant revenue for Mozambique and be transformational for Mozambique’s economic and social development.”

In relation to poverty reduction, in an answer on 22 July 2020, Mr Stuart said:

“As Mozambique is progressively emerging from debt distress, UK Export Finance (UKEF) support is subject to meeting the Organisation for Economic Co-operation and Development (OECD) Sustainable Lending Principles, which include a consideration of the economic and social development benefits of the Project to Mozambique. The Department for International Development provided confirmation that these benefits would be met by the Project.

The Project is directly supported by the African Development Bank. The World Bank and IMF are supportive of the Project. All three of these organisations are leading international financing institutions with developmental mandates and goals.”

In relation to UKEF’s environmental, social and human rights due diligence review of the project, in an answer on 20 July 2020, Mr Stuart said:

“In line with its regular policy, UK Export Finance (UKEF) has undertaken an environmental, social and human rights (ESHR) review of the Mozambique LNG Project. This has been conducted alongside other export credit agencies and the African Development Bank, with the support of an independent ESHR consultant.

This review considered all the relevant ESHR documentation provided by the Project sponsors such as ESHR impact assessments, strategies, management and monitoring plans, amongst others. UKEF published a Category A notice of its consideration of the Project in August 2019, which includes a link to an Environmental, Social and Health Impact Assessment (ESHIA) of the Mozambique LNG project and related information. This notice can be found here: <https://www.gov.uk/government/publications/category-a-project-under-consideration-mozambique-lng-project>. In undertaking its review, UKEF considered the most up-to-date ESHIA.”

In relation to environmental, social and human rights impacts, in an answer on 22 July 2020, Mr Stuart said:

“In line with its regular policy, UK Export Finance (UKEF) has undertaken an environmental, social and human rights (ESHR) review of the Mozambique LNG Project. This was undertaken in strict alignment with international frameworks for managing such ESHR risks and impacts. UKEF’s review was conducted alongside other export credit agencies and the African Development Bank, with the support of an independent ESHR consultant. This review considered all the relevant ESHR documentation provided by the Project sponsors such as ESHR impact assessments, strategies,

management and monitoring plans amongst others and included studies undertaken since the publication of the Project's impact assessment.

UKEF published, in August 2019, a Category A notice of its consideration of the Project which includes a link to an Environmental, Social and Health Impact Assessment (ESHIA) of the Mozambique LNG project and related information. In undertaking its review, UKEF considered the most up-to-date ESHIA.”

In relation to climate change, in an answer on 23 July 2020, Mr Stuart said:

“The Project's Environmental and Social Impact Assessment presents the direct and indirect (Scope 1 and Scope 2) contribution of the Project to Mozambique's greenhouse gas emissions (GHG) baseline, which is estimated to account for approximately 6 - 10% of Mozambique's national GHG emissions. This was estimated in accordance with the GHG Protocol: Corporate Accounting & Reporting Standard developed by the World Business Council for Sustainable Development (WBCSD) and the World Resources Institute (WRI). The Project's Scope 3 emissions are produced by the use of the Project's LNG. Calculating LNG Scope 3 emissions is highly complex and requires details of when, where, how and how much of the Project's gas volumes will be used. UK Export Finance (UKEF) made some reasonable assumptions about Scope 3 emissions, that it then took into account in its review of the Project. There is scope, however, for the Project to replace / displace more polluting hydrocarbon sources, such as oil and coal, which would result in lower net emissions than using these energy sources.

UKEF considered climate change as part of its review of the Project including considering the potential lock-in risks from the Project. It is not known for certain whether the Project will displace renewable energy potential or lower carbon solutions. However, for Mozambique, the need for financial resources to support the country's climate resilience is noteworthy and, as per Mozambique's own Nationally Determined Contribution (NDC), UKEF considers that the financial outputs of this Project will act as a catalyst towards enabling the country's climate change plans to be fulfilled, and thus to allow investment in the renewables sector.

The International Energy Agency notes that demand for energy cannot be met for the foreseeable future (i.e. up to 2040) without oil and gas. Even under a sustainable development scenario, gas is expected to account for 24% of global primary energy demand in 2040. The Paris Agreement (Article 4.1) recognises that the peaking of greenhouse gases will take longer for developing countries, such as Mozambique, and the Project sits within Mozambique's longer-term plans to establish strong social and economic stability.”

9 Address for further correspondence and service of court documents

The address for further correspondence and service of court documents is that at the head of this letter.

Yours sincerely,