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Decision

# Initial Assessment: Group of NGOs complaint to the UK NCP about Drax Group PLC

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# Summary of the UK NCP decision

The complaint has been brought to the UK NCP against Drax Group PLC (“Drax”), a UK-based energy company, by a group of non-governmental organisations (NGOs) based in the UK, Canada, Estonia, and the United States, with an interest in climate change and environmental protection .

The complaint alleges that Drax breached Chapter VI, paragraphs 2(a) and 6(c), and Chapter VIII, paragraphs 2, 4 and 5, of the [OECD Guidelines for Multinational Enterprises \(“OECD Guidelines”\)](https://mneguidelines.oecd.org/mneguidelines/) (<https://mneguidelines.oecd.org/mneguidelines/>), by making various misleading or inaccurate statements about their business’ carbon emissions, and the environmental impact of their business activities.

After conducting an Initial Assessment of the complaint, the UK NCP has decided that this complaint merits further consideration under the following paragraphs of the OECD Guidelines:

- Chapter VI, paragraph 2(a) – ‘Environment’
- Chapter VI, paragraph 6(c) – ‘Environment’
- Chapter VIII, paragraph 2 – ‘Consumer Interests’
- Chapter VIII, paragraph 4 – ‘Consumer Interests’
- Chapter VIII, paragraph 5 – ‘Consumer Interests’

Pursuant to Section 4 of the [UK NCP’s Procedures for Dealing with Complaints](https://www.gov.uk/government/publications/uk-national-contact-point-procedures-for-complaints-brought-under-the-oecd-guidelines-for-multinational-enterprises) (<https://www.gov.uk/government/publications/uk-national-contact-point-procedures-for-complaints-brought-under-the-oecd-guidelines-for-multinational-enterprises>), the UK NCP will now offer mediation to both parties. The scope of the mediation offer will cover only the five paragraphs of the OECD Guidelines accepted by the UK NCP at the Initial Assessment stage.

The decision to accept aspects of the complaint for further examination is not a finding against Drax, and does not mean that the UK NCP considers that Drax has acted inconsistently with the OECD Guidelines.

## Substance of the complaint

The complaint was submitted to the UK NCP in October 2021, jointly by The Lifescape Project, The Partnership for Policy Integrity, The Royal Society for the Protection of Birds, Biofuelwatch, Save Estonia’s Forests, and Conservation North (“the complainants”).

The complaint has been brought against Drax, a UK-based energy company. Drax is headquartered in Selby, North Yorkshire, and operates several biomass

and hydroelectric power stations in the UK. Drax has an international supply chain operation, including in Canada, Estonia, and the United States, for sourcing wood pellets for use at its Selby-based power station (Drax Power Station).

The complainants allege that Drax has not observed the OECD Guidelines by publishing a range of misleading or inaccurate statements about its carbon emissions and the environmental impacts of its business and supply chain activities. These allegations relate to chapters on Environment and Consumer Interests in the OECD Guidelines.

Drax accepted the invitation from the UK NCP to respond to the complainants, and denied all allegations made by the complainants. Drax also stated that its business activities follow industry's best practice and science, and meet or exceed applicable standards internationally.

## OECD Guideline provisions cited

The complainants refer to the following provisions of the Guidelines:

### **Chapter VI – ENVIRONMENT**

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

2) Taking into account concerns about cost, business confidentiality, and the protection of intellectual property right:

a) provide the public and workers with adequate, measurable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance...

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:

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)...

## **Chapter VIII – CONSUMER INTERESTS**

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide. In particular, they should:

2) Provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information on the prices and, where appropriate, content, safe use, environmental attributes, maintenance, storage and disposal of goods and services. Where feasible this information should be provided in a manner that facilitates consumers' ability to compare products.

4) Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair.

5) Support efforts to promote consumer education in areas that relate to their business activities, with the aim of, inter alia, improving the ability of consumers to: i) make informed decisions involving complex goods, services and markets, ii) better understand the economic, environmental and social impact of their decisions and iii) support sustainable consumption.

## **The Initial Assessment process**

The Initial Assessment process is a decision on whether the issues raised merit further examination. It does not determine whether the company has acted consistently with the Guidelines.

21 October 2021 – the UK NCP receives the complaint

29 October 2021 – the UK NCP confirms receipt of the complaint

30 November 2021 – the UK NCP sends the complaint to Drax

7 January 2022 – the UK NCP receives Drax's response to the complaint

18 January 2022 – the UK NCP speaks with The Lifescape Project, to explain the complaints process

21 January 2022 – the UK NCP shares notes from meeting with The Lifescape Project with the complainants

26 January 2022 – the UK NCP share note from the meeting with The Lifescape Project with Drax

19 April 2022 – UK NCP drafts the Initial Assessment and shares both the Initial Assessment draft and the factual commentary grid with parties for comment

3 May 2022 – both parties submit factual commentary grid to UK NCP with their response

8 June 2022 – UK NCP incorporates factual comments in the initial assessment

All documents provided in the complaint and the response were shared with both parties. The UK NCP offered each party a meeting to explain the process. The meeting minutes were shared with the parties.

## **Whether the UK NCP is the appropriate NCP to handle this complaint**

The UK NCP found that it is the appropriate NCP to undertake an Initial Assessment of the complaint. This is on the basis that Drax is a UK-based company, with headquarters in Selby, North Yorkshire, and qualifies as a multinational enterprise, given its supply chain operations across North America and Europe, including Canada, Estonia, and the US. Drax also has a North America office, focused primarily on wood pellet operations.

The UK NCP notes that the OECD Guidelines provide that “the Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities)” (Chapter I, paragraph 4). In this specific instance, the complaint has been directed to “Drax Group PLC”, which is registered in the UK, and the allegations made in the complaint pertain to information disseminated by Drax about their global business operations.

As Drax’s supply chains include operations in Canada, Estonia, and the US, the UK NCP contacted the NCPs in these countries to make them aware of the complaint and inform them that the UK NCP will lead the complaint. The UK NCP will continue to update these NCPs on the progress of this complaint, as per routine engagement with third-country NCPs.

# Admissibility criteria

As stipulated by the OECD Guidelines, the UK NCP took into account the following criteria:

## 1 - Identity of the complainants and its interest in the matter

The OECD Guide for National Contacts Points on The Initial Assessment Of Specific Instances (2019, p.6) states that the complainant(s) should have some interest in the matters they raise in their submissions: “Organisations with mandates or objectives related to certain RBC themes may also have an interest in issues touching on those themes (e.g. instances of environmental harm, forced labour etc.). An NCP may consider the mandate of an organisation as well as its stated objectives, while considering the legitimacy of its interests in the matter”.

The Lifescape Project is a registered charity in England and Wales, established in 2017. The Lifescape Project works on a range of projects with aim of promoting environmental protection and creating and preserving wild landscapes.

The Partnership for Policy Integrity is a charity based in the United States, established in 2010. The Partnership for Policy Integrity works on promotion of policies and public awareness of the role of forests in mitigating climate change, and bioenergy development impacts on air quality, water quality, ecosystems, and climate.

Biofuelwatch is an NGO based in the UK and in the United States. Biofuelwatch works on advocacy and campaigning in relation to the climate, environmental, human rights and public health impacts of large-scale industrial bioenergy.

The Royal Society for the Protection of Birds (RSPB) is a registered charity in England and Wales. The RSPB uses expertise in birds and nature to provide evidence-based solutions to the nature and climate emergency.”

Save Estonia’s Forests is an NGO based in Estonia, established in 2020. Save Estonia’s Forests works on advocacy for community forests, including protection of natural habitats and green corridors.

Conservation North is a volunteer-run community group, based in Prince George British Columbia, Canada. Conservation North work on advocacy for forest-based natural habitats and biodiversity.

The UK NCP is satisfied that the complainants are organisations with mandates or objectives relevant to the issues raised in the complaint.

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

The complainants have alleged that numerous public statements from Drax about the climate and environmental impacts of its business are misleading or inaccurate. The complainants have summarised these as 5 marketing-related "claims", which the complainants allege to have breached the OECD Guidelines. These are referred to here as "statements", for purposes of delineating claims made by the complainant and the company:

### **"Statement 1" – "Woody biomass is already effectively a carbon neutral energy generation technology".**

The complainants have referred this statement to the following paragraphs of the OECD Guidelines:

- Chapter VI, Paragraphs 2(a); 6(c)
- Chapter VIII, Paragraphs 2; 4; 5

### **"Statement 2" – "Woody biomass energy has resulted in Drax reducing its carbon emissions by 90% compared to when it burnt coal for energy".**

The complainants have referred this statement to the following paragraphs of the OECD Guidelines:

- Chapter VI, Paragraphs 2(a)
- Chapter VIII, Paragraphs 2; 4

### **"Statement 3" – "Using bioenergy with carbon capture and storage ("BECCS"), Drax can become "carbon negative" by 2030".**

The complainants have referred this statement to the following paragraphs of the OECD Guidelines:

- Chapter VI, Paragraphs 2(a)
- Chapter VIII, Paragraphs 2; 4

### **"Statement 4" – "Drax accounts for all supply chain emissions of woody biomass energy"**



The complainants have referred this statement to the following paragraphs of the OECD Guidelines:

- Chapter VI, Paragraphs 2(a)
- Chapter VIII, Paragraphs 2; 4

**“Statement 5” – “Whole trees are not felled to produce wood pellets burnt by Drax and Drax’s woody biomass energy does not damage forests”**

The complainants have referred this statement to the following paragraphs of the OECD Guidelines:

- Chapter VI, Paragraphs 2(a)
- Chapter VIII, Paragraphs 2; 4

The complainants provided the UK NCP with various public statements made by Drax, from around 2018 to 2021. These statements relate to Drax’s use of woody biomass fuel for energy generation by Drax Power Station. The complainants allege that Drax misrepresented wood biomass as a carbon neutral energy generation source and that Drax’ public statements on the environmental impact of its wood biomass energy activities are misleading.

The complainants have requested to the UK NCP that Drax:

- engage in mediation with complainants through the UK NCP mediation process
- withdraw and/or correct allegedly misleading statements presented in the complaint
- make a public statement drawing attention to and explaining any corrections to allegedly misleading statements
- make a public commitment to ensure Drax’s communications about carbon, biodiversity and wider environmental impacts of woody biomass energy adhere to the OECD Guidelines.

Drax has denied all allegations brought by the complainants. Drax claimed that its business activities follow industry best practice and science, and meet or exceed applicable standards internationally.

Drax also denied misleading its consumers, because it does not sell or market to retail consumers. Drax claimed that its primary consumer base is business customers, who are likely to have an existing knowledge of woody biomass fuels and carbon impact assessments.

Drax also stated that they account for all Scope 1 and 2 emissions (emissions directly or indirectly associated with a business’ operations), and voluntary exceed UK (Ofgem) and EU (REDII)’s regulation requirements. Drax claimed that they gather and share additional data and information from the areas from

which they source feedstock which is not required of them by legislation or regulation.

Following considering of the evidence provided by the complainants, and Drax's response, the UK has concluded that the following five paragraphs from the OECD Guidelines merit further consideration:

**Paragraphs accepted by the UK NCP as material and substantiated:**

The UK NCP has concluded that statements 1, 2, 4 and 5 presented by the complainants, as set out above, merit further consideration. These statements relate to: Chapter VI ("Environment"), paragraphs 2(a), and 6(c); and Chapter VIII ("Consumer Interests"), paragraphs 2, 4, and 5.

In its assessment, the UK NCP examined evidence provided by the complainants which include a range of public statements from Drax, including press statements, webpages and publicly available reports, which show that Drax has made statements referring to the carbon emissions from biomass energy, wood pellet sourcing and its business operations.

The complainants also provided photographs, taking between 2015 and 2021, showing forestry sites reportedly used in Drax's supply chain. These were produced by several organisations: Stand.Earth; Dogwood Alliance; and Estonian Fund for Nature; as well as several private photographers. None of the individuals or organisations credited for the photographic evidence are parties to this Specific Instance. Sites photographed included: Pinnacle Renewable Energy's pellet manufacturing site in Burns Lake British Columbia, Canada; Envivas' Sampson County pellet manufacturing site North Carolina, USA; a clearcutting site in Potocasi Creek, Woodland North Carolina, USA; and Osula Graanul pellet mill site in Sõmerpalu, Võru County, Estonia.

Further evidence provided by the complainants included: a range of academic and think-tank publications on the carbon properties of Woody biomass fuels; and references to relevant UK consumer and environmental regulations (for example, Green Claims Code, UK Code of Non-Broadcast Advertising and Direct and Promotional Marketing).

The UK NCP also assessed the submission made by Drax in its response to the complaint.

The UK NCP accepts that the issues raised by the complainants – except in relation to Statement 3 - are material in relationship to the alleged breaches of the specific provisions of Chapter VI (Environment) Paragraphs 2(a) and 6(c), and Chapter VIII (Consumer Interests), Paragraphs 2, 4, and 5 of the OECD Guidelines. The submitting parties have substantiated the submission by providing the necessary information for the UK NCP to consider that five Paragraphs under two Chapters of the OECD Guidelines merit further assessment.

As the complaint directly concerns Drax's business activities, and does not allege that Drax has breached the OECD Guidelines indirectly through its wider business relationships, the UK NCP is satisfied that there is a sufficient link between the enterprise and the issues raised.

### **Statements not accepted by the UK NCP as material and substantiated**

The UK NCP has rejected statement 3 made by the complainants, pertaining to Drax's statements on its target to become carbon negative by 2030. This decision was reached on the basis that the evidence provided by the complainants did not substantiate the allegation that Drax cannot become a carbon-negative business by 2030, and that Drax's statements on this target are consequentially misleading.

## **3 - Relevance of applicable law and procedures, including court rulings**

In addition to the Guidelines, the complaint includes references to several other regulations and frameworks:

- The Competition and Market Authority (CMA) Guidance on Environmental Claims on Goods and Services
- The CMA Green Claims Code
- The United Nations Framework Convention on Climate Change (UNFCCC)
- The UK Consumer Protection from Unfair Trade Regulations (2008)
- The UK Code of Non-Broadcast Advertising and Direct and Promotional Marketing (CAP Code)
- The International Chamber of Commerce's Advertising and Marketing Communications Code
- The International Chamber of Commerce (ICC) Framework for Responsible Environmental Marketing Communications

## **4- How similar issues have been, or are being, treated in other domestic or international proceedings**

[Advertising Standards Agency Ruling on Haven Power Ltd, 24 February 2021 \(https://www.asa.org.uk/rulings/haven-power-ltd-a19-569987-haven-power-ltd.html\)](https://www.asa.org.uk/rulings/haven-power-ltd-a19-569987-haven-power-ltd.html)

A similar complaint against Haven Power Limited., a UK-based subsidiary of Drax, was handled by the Advertising Standards Agency (ASA), which rejected the complaint in February 2021 on the grounds that Haven Power had met the

relevant sustainability criteria, and its calculation of carbon emissions was consistent with the UK's existing methodology.

The complainants in this specific instance have referenced the complaint against Haven Power and have distinguished it from the present complaint. The UK NCP also notes that the material facts of the previous complaint brought against Haven Power Ltd were different and the complaint was not brought under the remit of the OECD Guidelines. Therefore, any direct comparison is inappropriate.

The UK NCP considers each complaint on its individual merits. As such, the previous complaint against Haven Power is not relevant to this complaint against Drax.

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

The UK NCP considers that accepting this complaint would contribute to the effectiveness of the Guidelines, as offering good offices could facilitate an exchange of dialogue between the parties.

Further, as the complainants have shown willingness to engage in mediation to constructively resolve the alleged issues with Drax's public communications, a potential mediation could remedy the issues raised in the complaint.

The UK NCP therefore considers that it would contribute to the purpose and effectiveness of the Guidelines for the UK NCP to consider the complaint further.

## **UK NCP decision**

The UK NCP considers that all paragraphs below merit further consideration:

- Chapter VI, paragraph 2(a) – 'Environment'
- Chapter VI, paragraph 6(c) – 'Environment'
- Chapter VIII, paragraph 2 – 'Consumer Interests'
- Chapter VIII, paragraph 4 – 'Consumer Interests'
- Chapter VIII, paragraph 5 – 'Consumer Interests'

# Conclusions and next steps

The conclusions reached by the UK NCP in this Initial Assessment are based on the information provided by the parties.

The UK NCP has decided that five paragraphs under two chapters cited in the complaint merit further consideration. The UK NCP's decision to accept these five paragraphs does not mean that it considers Drax to have act inconsistently with the OECD Guidelines.

Pursuant to section 4 of the UK NCP Procedures for Dealing with Complaints, the UK NCP will offer mediation to both parties after the conclusion of the Initial Assessment.

The mediation offer is voluntary and if any party to the complaint declines mediation, the UK NCP will conduct a Further Examination of this complaint. A Further Examination would include the UK NCP providing: a determination on whether the company has acted consistently with the OECD Guidelines. Should the UK NCP determine that the company has not adhered to the OECD Guidelines, the UK NCP may provide non-binding recommendations for improving the company's adherence to the OECD Guidelines.

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