Ministry of Foreign Affairs

National Contact Point

OECD Guidelines for Multinational Enterprises

Initial Assessment

Notification Oxfam Novib, Greenpeace, BankTrack ,
Friends of the Earth Netherlands (Milieudefensie) vs ING

14 November, 2017

gentina Australia Austria Belgium Brazil Canada Chile Colombia Czech Republic Denmark Egypt Estonia Finland France Germany Greece Hungary Iceland Ireland Israel

Notification to the Dutch National Contact Point of an alleged violation of the OECD Guidelines for Multinational Enterprises by ING. Submitted to the Dutch NCP on 8 May 2017 by Oxfam Novib, Greenpeace, BankTrack and Friends of the Earth Netherlands (Milieudefensie).

Executive summary

On 8 May 2017 Oxfam Novib, Greenpeace, BankTrack and Friends of the Earth Netherlands (Milieudefensie) notified the Dutch National Contact Point (NCP) of an alleged violation of the OECD Guidelines for Multinational Enterprises by ING.

As part of its initial assessment, the Dutch NCP held separate, confidential meetings with the parties raising the issue and with the business involved.

The Dutch NCP concludes that this notification merits further examination on the grounds listed below:

- The parties raising the issue have a legitimate interest in this case.
- ING is a multinational enterprise within the meaning of the Guidelines.
- The issues raised by Oxfam Novib, Greenpeace, BankTrack and Friends of the Earth Netherlands (Milieudefensie) are material and substantiated.
- In this specific instance there is a relationship between the activities of ING and the issue in question.
- Consideration of this specific issue may contribute to the objectives and effectiveness of the Guidelines.

The decision to further examine this specific instance does not entail substantive research or fact finding, nor does it entail a judgement on whether or not ING has violated the Guidelines.

In line with the Dutch NCP procedure[1], in this initial assessment the NCP explains its decision to offer parties its 'good offices' to help them reach a solution through dialogue. The parties were given a two-week period to respond to the NCP's initial assessment, which was subsequently published on the NCP website: **www.oecdguidelines.nl**.

Summary of the notification

On 8 May 2017 Oxfam Novib, Greenpeace, BankTrack and Friends of the Earth Netherlands (Milieudefensie) notified the Dutch National Contact Point of an alleged violation of the OECD Guidelines for Multinational Enterprises ('the Guidelines') by ING. The notifying parties state that ING has violated the Guidelines in respect of the environment and climate. In their notification they ask the NCP to scrutinise ING's climate policy and to urge ING to align its climate and other policies with the OECD Guidelines.

The notification specifically concerns the alleged non-observance of the chapters of the Guidelines on Disclosure (Chapter III), Environment (Chapter VI) and Consumer Interests (Chapter VIII).

[1] **https://www.oecdguidelines.nl/notifications/specific-instance-procedure**

In their notification Oxfam Novib, Greenpeace, BankTrack and Friends of the Earth Netherlands (Milieudefensie) state the following in relation to ING:

The parties to the Paris international climate agreement of 2015 agreed to limit the rise in global warming to 2oC and preferably to 1.5oC. This means that everyone – governments, citizens and businesses – must commit to reducing greenhouse gas emissions as quickly as possible. ING is failing seriously in this respect. ING Bank operates globally (in 40 countries according to ING) and invests its money in all parts of the world. The business finances many companies and projects in industries which emit substantial levels of greenhouse gases.

- A November 2015 study revealed that 89% of the lending and underwriting operations conducted by ING in the energy sector in the 2009-2014 period concerned the fossil fuel sector. During this period, ING provided finance totalling USD 24.484bn to the fossil fuel and fossil-based energy generation sector, compared to only USD 2.881bn to the sustainable energy sector.
- ING continues to finance ongoing projects and companies in the coal industry. The bank is also financing the renovation of old coal-fired power plants, resulting in plants that are essentially new and could remain in operation for decades to come.
- In 2016 ING issued a new loan of USD 121.5m to SUEK, Russia's largest coal producer and one of the largest coal companies worldwide.
- ING has no policy for scaling back, gradually or otherwise, its financial involvement in the oil and gas industry.
- ING has not set itself any objectives to increase investment in sustainable energy projects, companies or solutions.

The bank does not report the levels of greenhouse gas emissions caused by its lending activities and has not yet announced whether it intends to do so in the near future. Furthermore, the company has not set itself a target to reduce greenhouse gas emissions in its lending. This violates the OECD Guidelines, primarily:

- Chapter III, paragraph 3 (sub points a, b and c) and point 33 of the Commentary;
- Chapter VI, paragraph 1 (sub points b and c); paragraph 4, paragraph 6 (sub points b, c and d) and points 63 and 69 of the Commentary;
- Chapter VIII, paragraph 4.

Key points

The OECD Guidelines emphasise the need for developing 'reporting standards for greenhouse gas emissions [...] that cover direct and indirect, current and future, corporate and product emissions'. ING discloses 'direct' corporate emissions, but not 'indirect' product emissions, even though the indirect emissions of financial products far exceed the direct emissions of large financial institutions like ING. Disclosure of data on these indirect emissions is therefore of much greater importance.

In terms of environmental impact, ING's core activity – providing finance to projects and companies – can have negative (or positive) effects on climate change. However the bank does not collect or evaluate data on the climate impact of its financial investments as set out in Chapter VI, paragraph 1 (a) of the Guidelines, nor does it disclose such information. The bank has not set measurable objectives or targets to reduce that climate impact in accordance with Chapter VI, paragraph 1 (b). In short, ING does not comply with paragraph 63 of the commentary to Chapter VI concerning sound environmental management 'in its broadest sense, embodying activities aimed at controlling both direct and indirect environmental impacts of enterprise activities'. ING neither supervises nor monitors this.

Request to ING

The parties submitting the notification request that ING identifies and makes public its indirect greenhouse gas emissions and establish objectives which the company will pursue to align the bank's indirect greenhouse gas emissions with the objectives of the Paris international climate agreement.

As a minimum action the parties request that ING make a public commitment before 1 September 2017 to take the following steps no later than in 2018:

1. Publication of ING's total carbon footprint: in other words ING's direct and indirect emissions. To facilitate this, ING could commit to using the outcome of the Platform Carbon Accounting Financials (PCAF).

   PCAF is an initiative by 11 Dutch financial institutions, including banks. ING is not a member of the platform but is a member of its focus group. In May 2017 PCAF published a progress report and is expected to publish its final report in December 2017. Its objective is to develop a common methodology for measuring the climate impact (or carbon footprint) of loans and investments made by financial institutions. See also **http://carbonaccountingfinancials.com/** and **https://www.asnbank.nl/nieuws-pers/financiele-instellingen-ontwikkelen-meetlat-voor-hun-klimaatimpact.html** (in Dutch). ING has not yet made public any commitment expressing any wish to take specific actions based on this process. The Fair Finance Guide International methodology describes instruments already developed to assess banks' policies and practices: **http://eerlijkegeldwijzer.nl/media/373664/ffg-methodology-2016-final-160421-edited-170413.pdf**.

2. Publication of ambitious, specific and measurable goals to reduce ING's indirect greenhouse gas emissions. The goals should align the emissions caused by industries financed by ING with the efforts to reduce global warming to 1.5oC as agreed in the Paris international climate agreement.

   Positive examples include ABP pension fund, which announced a new policy in 2016. The policy states that companies in which

ABP holds shares must reduce their CO_2 emissions by 25% by 2020. PFZW pension fund goes one step further with the measurable ambition that by 2020 it will have halved the total carbon footprint of PFZW investments.

In this initial assessment the NCP refrains from comment on the accuracy of the complainants' claims.

SUMMARY OF ING'S INITIAL RESPONSE

On 27 October 2017 the NCP received a written response from ING to the draft initial assessment concerning the notification. ING stated that:

ING agrees wholeheartedly that climate change is an immense challenge for our world, one in which banks, including ING, also have a role to play. ING and the complainants have spoken at length a number of times and will maintain this dialogue on the issues raised in the notification and the associated challenges. The complainants allege that ING's climate policy is 'inadequate' and 'falls seriously short' of what other financial institutions are doing. To illustrate this, the complainants hold up the environmental policy of, in particular, investment institutions (whose challenges differ from those facing banks), which in some respects goes beyond ING's policy. Investment institutions like pension funds invest in listed companies. Information relating to the carbon emissions of listed companies is available via CDP and analysts like Trucost. Banks whose portfolios largely comprise unlisted companies generally do not have access to such data.

ING subscribes to the importance of measuring CO_2 emissions related to financing activities and of developing a methodology to this end, as is apparent from the fact that ING committed to the decarbonisation methodology to be developed by Science Based Targets initiative (a collaboration between several parties including WWF, the World Resources Institute and Ecofys) as early as May 2015.

ING offsets 100% of its corporate carbon emissions so that, as an organisation, it has been climate-neutral since 2007.

ING takes climate reporting seriously. ING, having obtained the highest possible score, has again been included on CDP's Climate A list, made up of 193 companies that are seen as taking the lead on climate action. ING also received the Euronext/CDP Leadership Award for its outstanding environmental reporting.

In other areas, too, ING's policy and actions go much further than those of its peers. According to BankTrack, which is in fact one of the complainants, ING is the only bank worldwide that discloses information on lending to fuel coal mining, thus providing transparency on the declining share of this activity in its portfolio (-26% in 2016). See BankTrack et al.: 'The effectiveness of existing coal mining policies at major banks remains clouded in uncertainty due to a dearth of reporting. To date, the only bank to have provided detailed reporting is ING.'

The International Energy Agency's (IEA) widely respected 2oC Scenario (450 Scenario) assumes that in 2040 around 60% of all energy will still be generated by fossil fuels (see Global Trends on p. 206 of the World Energy Outlook 2016, OECD/IEA 2016). It is therefore impossible to draw conclusions from the simple fact that ING provides financing for fossil fuels.

The complainants ask that ING identify and disclose its indirect greenhouse gas emissions. ING is keen to point out that it would like to do so. ING is conducting pilots to assess its indirect climate impact as explained in its annual report, and also supports the above-mentioned Science Based Targets initiative, which is developing a standard methodology to convert banks' climate footprint into targets. ING is not unwilling, however what the complainants are asking is technically impossible at this time. Currently, there is no international standard of reliable and equivalent data to measure carbon emissions. Due to the lack of information on the emissions of our clients around the world and the lack of an international methodology to determine the impact of such emissions in a climate scenario, it is impossible for ING to satisfy the complainants' request in this regard. And there is no internationally operating bank in the world that could do otherwise.

Finally, the complainants ask ING to establish and pursue a target to lower indirect emissions in line with efforts to limit global warming to 1.5°C. This request does not align with the 2oC scenario currently adhered to by the international community. At the request of the UNFCCC and the parties to the Paris Agreement, the UN climate panel IPCC is currently investigating the feasibility of a 1.5oC scenario. The results of this study are due to be available by the end of 2018. Governments may use the IPCC's findings to evaluate their plans for keeping global warming under 2 degrees. As the IPCC is not expected to publish its report on the feasibility of a 1.5oC scenario until late 2018, it is impracticable to demand that ING commit to a 1.5oC scenario on 1 September 2017. However, this in no way prejudices ING's pursuit of a greener portfolio, to which end it has already taken many steps. (See, for example, **https://www.ing.com/Newsroom/All-news/Reaction-to-National-Contact-Point-complaint-about-ING-by-Greenpeace-BankTrack-Milieudefensie-and-Oxfam.htm**.) But linking these steps to a 1.5oC or 2oC scenario is as yet impossible.
In light of the above, ING takes the view that the notification is i) impracticable, ii) unnecessary and iii) unfounded:

i) Impracticable, on the one hand because the request made by the complainants in the notification is quite simply technically impossible at this stage; and on the other because the implications and feasibility of a 1.5oC scenario are currently being investigated by the international community, and these results are not expected until late 2018.

ii) Unnecessary, given that the parties now engage in dialogue at regular intervals and at every level in the respective organisations. There are no grounds to request the good offices of the NCP.

iii) Unfounded, given the fact that in our opinion there has been no violation of the Guidelines, as ING explained in its comprehensive response, in writing, to the notification submitted on 11 September 2017.

In this initial assessment the NCP refrains from comment on the accuracy of ING's response.

Initial assessment

In accordance with the OECD Guidelines and the Dutch NCP's specific instance procedure, the Dutch NCP concludes that, in light of the following considerations, the notification merits further examination:

Is the Dutch NCP the right entity to assess the alleged violation?
The Dutch NCP is the right entity to assess the alleged violation of the OECD Guidelines by ING Bank N.V., located in Amsterdam.

What is the identity of the notifying party and its interest in the case?
Oxfam Novib is a worldwide development organisation that mobilises the power of people against poverty and injustice through projects, campaigns, research and political pressure in 93 countries. [2]

BankTrack is an international organisation that targets banks and the activities they finance, through tracking, campaigning and NGO support.[3]

Greenpeace is an international organisation that raises awareness of environmental issues by running campaigns to protect and preserve the environment.[4]

Friends of the Earth Netherlands (Milieudefensie) believes that a clean and just world is possible. The organisation in the Netherlands focuses on the themes of mobility, food, economy, energy and forests.[5]

All these organisations campaign on environmental issues including climate change in relation to the financial sector and, in that sense, have an interest in this case.

[2] **https://www.oxfamnovib.nl/donors-partners/about-oxfam/our-story**
[3] **https://www.banktrack.org/page/about_banktrack**
[4] **https://www.greenpeace.org.uk/what-we-do/**
[5] **https://milieudefensie.nl/english/about-us**

Is ING Bank N.V. a multinational enterprise according to the Guidelines?
ING Bank N.V. is a multinational enterprise within the meaning of the Guidelines. ING N.V. is a financial institution which operates worldwide. It is headquartered in Amsterdam.[6]

Are the issues raised material and substantiated?
The issues raised by the complainants are *prima facie* material and substantiated with documentation. The complainants refer to relevant clauses in the Guidelines. The notification concerns alleged violation of the OECD Guidelines relating to Disclosure (Chapter III), Environment (Chapter VI) and Consumer Interests (Chapter VIII).

Is there a link, or can a link be established, between the activities of the company and the issues raised in the specific instance?
ING Bank finances companies, projects and investments around the world whose activities impact or could potentially impact the environment and climate. The notification concerns ING's responsibility to endeavour to avoid or minimise adverse impacts under the terms of the chapters referred to in the Guidelines.
In view of the above, the NCP takes the view that there is a link between ING's activities and the issues raised in the notification.

What is the relevance of applicable legislation and procedures, including court rulings?
As far as is known, there are no legal proceedings addressing similar issues in parallel which would prejudice this notification.

Would the consideration of the specific instance contribute to the objectives and effectiveness of the Guidelines?
The OECD Guidelines clarify what the government of the Netherlands expects from enterprises in respect of responsible business conduct. They offer practical advice for companies on how to deal with questions such as responsible supply chain management, human rights, child labour, the environment and corruption. The OECD Guidelines are therefore the starting point for the Dutch code of conduct for responsible global business.

The Guidelines state that enterprises should avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur. They should also 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 through a business relationship.

Under the terms of the OECD Guidelines companies are expected to conduct a due diligence process in respect of their environmental impact, including climate impact. This relates not only to their own negative environmental impact, but also to the impact in

[6] **https://www.ing.com/About-us.htm**

their value chain. Given the above, the NCP takes the view that there is a link between ING's activities and the issue raised in the notification with reference to the Guidelines' chapters on Environment, Disclosure and Consumer Interests.

The NCP is conscious of the complexity of this subject, not least in respect to the methodology currently in development to calculate CO2 emissions. However, this should not prejudice a dialogue in respect of this notification, all the more so since ING indicates that climate change is an immense challenge for our world and one in which banks also have a role to play. The NCP therefore takes the view that consideration of this notification could contribute to the purpose and enhance the effectiveness of the Guidelines, in the sense that it can clarify issues relating to climate change in the financial sector in respect of due diligence, and more particularly in respect of this specific instance.

Conclusion

The NCP takes the view that this notification merits further consideration and offers its good offices to facilitate a dialogue between Oxfam Novib, Greenpeace, BankTrack and Friends of the Earth Netherlands (Milieudefensie) and ING.

The goal of the dialogue is to help the parties reach agreement based on the NCP's recommendations in the light of the Guidelines, in this specific instance with respect to ING's climate policy and with respect to due diligence issues on climate change in the financial sector.

All the parties involved, Oxfam Novib, Greenpeace, BankTrack and Friends of the Earth Netherlands (Milieudefensie) and ING, accept the NCP's invitation to participate in a dialogue. In line with the NCP procedure, all parties will observe confidentiality and transparency in respect of the dialogue and further examination. The NCP will complete the procedure by issuing a final statement on the outcomes which will be published on the NCP's website.

The role of National Contact Points (NCPs) is to further the effectiveness of the OECD Guidelines. The Dutch government has chosen to establish an independent NCP, which is responsible for its own procedures and decisions, in accordance with the Procedural Guidance section of the Guidelines. In line with this, the Dutch NCP consists of four independent members, supported by four advisory government officials from the most relevant ministries. The NCP Secretariat is hosted by the Ministry of Foreign Affairs. The Minister for Foreign Trade and Development Cooperation is politically responsible for the functioning of the Dutch NCP. More information on the OECD Guidelines and the NCP can be found on **www.oecdguidelines.nl**.

Further information

To submit a notification or a question on the application of the OECD Guidelines:
see **www.oecdguidelines.nl**
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Published by:
National Contact Point OECD Guidelines for Multinational Enterprises
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