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Amsterdam District Court
Case number: C/13/766933 / HA ZA 25/ 896
Docket date: 18 February 2026

STATEMENT OF DEFENCE

in the matter of:

1. the public limited company
ING Groep N.V.,
having its registered office in Amsterdam,

2. the public limited company
ING Bank N.V.
having its registered office in Amsterdam (jointly with ING Groep N.V. "**ING**"),

defendants,
lawyer: D.C. Roessingh

versus:

the association (*vereniging*)
Vereniging Milieudefensie,
having its registered office in Amsterdam ("**Milieudefensie**"),

claimant,
lawyers: R.H.J. Cox and P. Heemskerk

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1 ESSENCE OF THE MATTER

1. With this statement of defence ("**SoD**"), ING[1] responds to the writ of summons issued by Milieudefensie on 28 March 2025 ("**Writ of Summons**").

1.1 The importance of combating climate change

2. Climate change poses a great danger to our society. Scientific insights show that global warming poses risks, such as a rising sea levels, increased risks of natural disasters and risks to global food supply. Climate change is caused by heightened concentrations of greenhouse gases in the atmosphere. In order to reduce climate change, global greenhouse gas emissions to the atmosphere will have to be reduced.

3. The urgency of combating climate change was underscored by the Paris Agreement. In 2015 the signatory states agreed to commit efforts to keep the global, average temperature rise to well below 2°C above pre-industrial levels, while continuing to strive for a maximum rise of 1.5°C. By limiting temperature rise, many of the risks caused by climate change can be mitigated. Under the Paris Agreement, it is up to the signatory states to determine what measures they will (and can) take to contribute to this. Only states themselves are entitled and able to weigh all relevant (e.g., social or economic) interests. Based on this weighing of interests, as well as their financial and technological capabilities, states are free to choose the most effective (and cost-effective) measures.

4. Achieving the goal of the Paris Agreement requires an "economic and social transformation".[2] Large-scale global transitions are needed to reduce greenhouse gas emissions and achieve a "low-carbon economy". This requires an energy transition by which the global use of fossil fuels is drastically reduced and eventually phased out completely. This means, for example, that houses will no longer be heated with gas but with heat pumps that use sustainably generated electricity, and that steel plants will switch from combusting coal (highest emissions) to gas (lower emissions) and eventually to a renewable energy source (lowest emissions) for their furnaces. A food transition will also be necessary, in order to – for example – reduce the greenhouse gas emissions associated with livestock farming for meat production.

5. These transitions need to be accelerated, but cannot be effected too rigorously and abruptly. A large portion of the world's population still relies on fossil fuels, existing means of food production and other industrial processes. This means that sustainability cannot be achieved overnight. Moreover, it cannot be brought about in an isolated manner without an overall systemic transition to

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1 This chapter uses defined terms that will be explained in more detail later in this SoD. Appendix 1 to this SoD includes a list of defined terms.

2 See no. 67 below.

sustainability. Sustainability needs to be effected incrementally to ensure that sustainable alternatives are available and affordable and that basic needs can be provided for around the world. This is why large-scale investments have been made in the various transitions over the past decades.

6. The pace and development of the climate transition is inherently uncertain. The way in which that transition will play out in the future is dependent, for example, on how much the world's population and global energy demand will grow, on economic developments and on technological advances. As stated before, under the Paris Agreement, it has been left to the signatory states to determine for themselves how they want to achieve their part of the target. When assessing the various trade-offs to be made, states not only take the interest of climate into account, but also look to interests such as energy security and affordability, sufficiency of the food supply, employment and the security of their citizens. It is not easy to make predictions as to how the transitions and underlying trade-offs will play out, as the turbulent developments since 2020 have shown. For example, since that time governments and legislators have used their policy discretion to stimulate energy independence and security of supply, the domestic production of essential goods, and increased defence and security. Developments like these, which cannot be predicted in advance, have a strong influence – nationally and globally – on the course of the transitions in all parts of the economy.

7. Moreover, a successful climate transition is only possible by means of major investments. These investments need to be made against the backdrop of inherent uncertainty of the transition. Households and businesses are becoming more sustainable, for instance, by purchasing a heat pumps insulation and to heat their real estate. That heat pump is only truly sustainable if they can use renewable electricity, which requires generation, transmission and security of supply. On top of that, not all households and businesses have the same starting point or resources at their disposal, which means they will become sustainable in different ways and at different speeds. Some homes or activities have lower greenhouse gas emissions than others and thus require barely any investment, while making other homes and businesses more sustainable may require substantial long-term investments. Sometimes the necessary technology or infrastructure is not yet available – for example, due to grid congestion – or investments, for example, will first result in an increase in emissions or only result in the intended reduced greenhouse gas emissions until many years later.

8. In doing so, the legislator, and by extension society, has chosen to make the existing economy more sustainable and not bring it to an end. Citizens want to be able to continue to heat their homes and buy a car. Cement and steel are needed to build homes, airplanes and nuclear power plants. Food and numerous other products need to be produced, transported and packaged. These are not prohibited activities. They will need to decarbonise in a transition, and legislators

are choosing an appropriate approach to achieve, encourage and support that passage to sustainability.

9. Accordingly, investment, and thus capital, is needed for the climate transition as such and for individual sustainability measures. The International Energy Agency's World Energy Outlook currently estimates that global annual investments of USD 4.8 trillion will be required for the energy transition over the next ten years. The EU expects that an additional EUR 700 billion in investments will be needed each year to achieve the objectives of its climate policy and related legislation. Thus, availability of sufficient capital is a core condition for the transition to more sustainable activity.

10. As the above shows, reductions in emissions take place in the real economy; that is, the parts of the economy outside the financial sector. At the same time, the real economy will need to remain operational in the coming years, not every sector and company will be making sustainability changes at the same speed, and risks in the market – including climate risk – will need to remain sufficiently managed. The climate transition must take place in an orderly manner, without losing sight of other interests. Those interests include security of supply, affordability of energy, and financial and economic stability. According to the legislator, these vital interests cannot be pushed aside by the climate transition. In addition, there are risks inherent in the climate transition itself. These, too, will have to remain manageable and contained.

1.2 ING's role in the climate transition

11. It was against this background that ING already made climate change and the climate transition a core part of its strategy many years ago. It did so for several reasons. ING is a global systemically important bank with clients in many countries and sectors. The climate transition affects ING and its clients in several ways. ING therefore sees an interest in supporting the climate transition both for its own position and for its clients.

12. First and foremost, as mentioned, the climate transition and climate change pose risks to banks. Climate change, for example, puts certain bank-financed assets at risk of declining in value. A house situated on low-lying ground near a river becomes exposed to greater flooding risk. A company that relies on certain raw materials from warmer regions for certain production processes runs the risk that drought will make those raw materials less (or not at all) available in the future. ING will need to adequately manage such physical risks to ensure the soundness and stability of its business model. In addition to these physical risks, there are also risks inherent in the transition. ING will also have to manage those risks. The 2008 financial crisis showed the importance of financial stability of banks to prevent disruptive systemic consequences throughout the economy. For this

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reason, the legislator has imposed detailed and far-reaching prudential requirements on banks, including climate risk requirements.

13. In addition, the climate transition is also of commercial interest to banks. As mentioned, making the economy sustainable requires a large amount of capital. Banks can support their clients in that transition and in financing their sustainability activities. For example, banks can finance energy projects and companies developing new technologies, creating new client relationships and knowledge. Accordingly, the climate transition also offers many opportunities.

14. This is why ING has developed a comprehensive climate approach over the past decade that it is enhancing and improving where necessary year after year. This approach is, among other things, aimed at reducing *actual* emissions, as opposed to *paper* emissions. That distinction matters. ING, as a bank, itself has relatively few actual emissions – and ING is doing what is necessary to reduce those actual emissions. Most of the emissions ING reports, some 99.99% of its reported emissions, are emissions on paper reflecting a part of the emissions of its clients. ING reports these emissions because they are allocated to ING on paper according to carbon accounting principles. Hence, when ING finances a client, that client's emissions do not become emissions "from" ING, but a portion of those emissions are allocated to ING. ING then reports those emissions as its so-called Scope 3, Cat. 15 emissions.

15. ING's approach focuses on helping clients reduce their actual emissions into the atmosphere. For example, ING ensures that it is available to finance sustainability measures for homes or factories. Reducing the emissions reported by ING is not a goal in itself. For example, ING could make virtually all of its paper issues disappear by divesting all of its mortgages and business loans. That might optically position ING as a "good" or "green" bank, but in the real world no sustainability action would take place and therefore there would be no reduction in emissions. After all, the buildings and business activities associated with those emissions would continue to exist. If banks were forced to reduce their paper emissions, this would lead to all sorts of adverse impacts including impacts on the climate transition itself. When a bank finances a heat pump factory, that bank's paper emissions go up. Nonetheless, the climate benefits, because the heat pumps the factory makes can be used to make homes more sustainable. There is no benefit to the climate transition if banks are no longer willing to provide in that kind of financing because they want to keep their balance sheets "clean" of emissions. Moreover, it creates the risk that other, less regulated, financiers will step in to finance those companies.

16. For this reason, in its climate approach ING is always asking itself how it can actually and properly support the climate transition, also given its role as a bank.

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17. On top of that, ING is a global systemically important bank, as the only Dutch bank and with 28 other banks around the world. As a result, ING also has other vital public interests to serve, including the interest of financial stability. ING itself needs to be solid, and remain so, and so doing it also contributes to the stability of the financial sector. This stability is in itself a prerequisite for various societal interests, including an orderly climate transition. After all, a sound financial sector is important for facilitating the financing of the economy and its transition.

1.3 Why ING disagrees with Milieudefensie's approach

1.3.1 Companies contribute to the climate transition in their own way while complying with legislation; there is not just one single legitimate approach

18. Against this backdrop, ING believes that Milieudefensie's claims should be dismissed. The various transitions, along with other societal developments, require regulation based on thorough consideration of interests by states, and then individual considerations and choices by companies.

19. It is up to states to determine how and with what rules, policies, pricing and incentives climate change is addressed, balancing a variety of different legitimate interests. Despite the support of ample manpower and resources, it typically takes legislators years to carry out such thorough analyses, given their far-reaching nature. Political choices based on multiple possible solutions must then be made. Such as: how far-reaching should climate policy be, given, for example, the competitiveness of the economy? May it be at the expense of being able to fund social security and defence? Should it be mandatory for citizens to insulate their homes, or will that be left to the market and rising energy prices? On such big policy issues, there is no single – let alone one correct – way to, for instance, mitigate climate change, design the pension system, or tax income and wealth. These kind of issues require a broad consideration of the interests and policy choices about the approach desired by the legislator (and by society).

20. It is subsequent to this that companies establish their climate approach within these statutory frameworks. Then, when determining their climate approach, they also weigh the importance of sustainability, being sufficiently competitive and contributing to economic growth and prosperity. This can be done in many ways, and depends on many factors.

21. Milieudefensie, however, has a different view. Milieudefensie argues that, regardless of what the legislator does and the policy discretion the legislator enjoys, detailed and legally enforceable unwritten rules and rules of conduct apply to companies that determine their future strategy and policies with zero flexibility, irrespective of any developments. Milieudefensie prescribes a single specific and detailed way in which companies must contribute to climate change mitigation. According to Milieudefensie, all other forms of corporate action are

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wrong – and even unlawful. Moreover, Milieudefensie believes that its vision should be imposed, not only now, but for the next 24 years, immutably and rigidly. Without exception and regardless of future circumstances.

22. Milieudefensie substantiates its claims by extensively pointing to the hazards of climate change. That hazard is so great that, according to Milieudefensie, any measure it can conceive of should supposedly be awarded by the court. At the same time, Milieudefensie fails to show in its Writ of Summons that its approach is emulated in statutory climate policy or is even compatible with it, that there is a consensus in society that its approach is legally mandatory and immutable for numerous companies. Nor does Milieudefensie demonstrate that its approach is actually being followed by any company in the real economy or in the banking sector. Milieudefensie also fails to demonstrate that this approach would be effective (and proportional) in reducing actual emissions. In other words, where it should be specific, comprehensive and meticulous, it is instead generic and selective. Lastly, Milieudefensie does not cite any objective sources describing its vision as a legal duty incumbent upon companies and banks.

23. In addition, there are innumerable possible combinations of Milieudefensie's various layered, primary, alternative, and further alternative claims. This is problematic, among other things because the Writ of Summons does not show which source, combination of sources, or other evidence Milieudefensie relies on in support of each specific measure or combination of measures as a legal duty.

24. The Writ of Summons also fails to discuss the scope of application of the purported rules. While Milieudefensie believes that in any case ING must comply, ING cannot be the only party to whom a purported legal rule applies. It would be arbitrary and discriminatory to argue for sweeping future purported duties for one company, while climate change is a matter not only for ING. It is also unclear why the rules should apply to ING in particular. For instance, it is unclear whether these purported legal rules affect other banks and financial service providers in the Netherlands and Europe – or in fact not. However, this is crucial to the question of whether those rules can actually exist, for example, because it depends on whether those rules can be effective and proportionate in any way.

1.3.2 Milieudefensie's unwritten general norms are (i) contrary to statutory climate policy; (ii) not based on consensus; and (iii) ineffective

25. This case is then not about the question as to whether ING's climate approach is better or worse than the rules advocated by Milieudefensie. The case is about the question as to whether Milieudefensie's vision and approach as set out in the claims indeed reflects unwritten legal duties applicable to businesses, including banks. If the rules of conduct argued for are not unwritten legal duties, then there is no legal basis for awarding the claims.

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26. Milieudefensie's claims consist of Purported Duties which it believes arise from unwritten law. Milieudefensie is trying to have general rules of law established via unwritten law. Rules that set down precisely, and independently of any particular circumstances, how companies and banks should shape their climate policies. Accordingly, Milieudefensie's claims in these proceedings could also be brought against any other company in the Netherlands.

27. Milieudefensie's rules can only exist if the requirements for rules of unwritten law, as established through years of case law, are satisfied.

- Purported Duties must be compatible with the statutory framework and the legislator's choices. Moreover, the adoption of unwritten law by the courts is not suited to rules containing legal policy choices or general regulations.
- Purported Duties must be knowable. This requires a consensus and it must be clear that the specific rules are legally enforceable obligations.
- Purported Duties must be effective and proportionate to achieving the purpose for which they are established.

28. Purported unwritten legal duties cannot truly be considered rules of unwritten law if they are incompatible with choices of the legislator, if the rules are not manifestly knowable and acknowledged as enforceable legal duties, or if the rules are ineffective or disproportionate. In this instance, one party would only like to see a new rule introduced, but not an existing rule whose existence, and legal enforceability, merely needs to be "confirmed" by the court. Milieudefensie's claims fail to meet all three of the above requirements.

(1) Milieudefensie's approach conflicts with the statutory framework

29. The purported duties that Milieudefensie claims exist are incompatible with current legislation and decisions made by the legislator. First and foremost, extensive and detailed policies exist in the EU and the Netherlands, laid down in legislation, to address climate change. Under the Paris Agreement, it is up to states, and thus the legislator, to set policies to mitigate climate change. This is confirmed in several related climate cases such as *Urgenda*, *KlimaSeniorinnen* and last year's advisory opinion of the International Court of Justice. In line with this, the EU legislator has laid out a package of policy initiatives to mitigate climate change in the Green Deal.

30. The Green Deal was brought about on the basis of an extensive balancing of interests, taking into account other crucial EU principles. These include freedom of movement within the EU, a level playing field, and the harmonisation that the EU is striving to achieve across the internal market. The EU legislator has

considered the interest of countering climate change, the interest of energy security, safeguarding the EU's competitiveness, and pursuing a just and orderly transition. The legislator also recognises the importance of market forces and the need for companies to be flexible enough to respond to marketplace developments.

31. Among other things, the Green Deal includes legislation aimed at reducing actual, physical, emissions. In the Green Deal, the EU legislator adopted an approach that does not focus on specific reduction obligations for individual companies of their Scope 1, 2 and 3 emissions. Instead, the EU legislator has taken a different approach, with legislation and market mechanisms that are sector-agnostic and sector-specific. By doing so, the legislator is aiming at achieving a true reduction of emissions in the real economy by means of market forces. Thus, other interests are also safeguarded and the legislator aims to stimulate and support market participants in becoming more sustainable by encouraging and rewarding sustainability through these mechanisms. For example, the Green Deal includes a specific emissions trading system for emissions-intensive sectors, with annual tradeable allowances decreasing year-on-year. In addition, legislation has been introduced on improving the energy efficiency of buildings with a specific goal for 2030, which also correctly places importance on continuing to finance homes with low energy labels. These homes also, perhaps especially, need to be able to be taken on board in the transition. These are just two examples of the clear approach taken by the EU legislator and the legislation that has been enacted in line with that approach. The Dutch legislator has aligned itself with EU climate policy and has expressly, and on good grounds, decided not to go beyond it.

32. Milieudefensie closes its eyes to this. Milieudefensie wants, in defiance of the legislator's choices, to impose a specific way on companies to reduce emissions, regardless of whether that leads to actual reductions in emissions. With regard to residential buildings, for example, it has devised its own reduction targets and obligations that differ from the specific EU policy on this subject. If it is up to Milieudefensie, all homeowners with a mortgage, will have to take all kinds of sustainability measures within four years. Those sustainability measures should also not in themselves involve emissions, as occurs in the production of heat pumps. After all, that would cause the reported emissions of the lender to increase. In doing so, Milieudefensie apparently believes that a bank, in defiance of the legislator's choices, should force citizens to carry out such sustainability measures. And if those citizens do not do so at the rate that Milieudefensie demands (which, by the way, deviates from the statutory target), the banks should apparently just cancel their mortgages or transfer them to lenders outside the Netherlands. This stands in no proportion to the choices of the EU legislator.

33. In addition, the EU legislator has recognised the importance of increased market transparency, and has introduced legislation to this end. The aim of the legislator

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is to enable investors, savers, banks, financiers, consumers and other market participants to gain sufficient insight into sustainability information. This will allow them to implement their sustainability preferences and strategies more effectively and improve their risk management. In this way the legislator is attempting to make capital available and set it in motion for the climate transition and related transitions. Banks are contributing to the approach intended by the legislator by contributing to transparency about sustainability aspects and risks.

34. For banks, the EU legislator has acknowledged the existing banking legislation framework, including prudential rules, the societal function of banks and their systemic role, as evidenced by the many policy documents on this subject. Among other bodies, the European Commission has been mindful that the transition requires a high amount of capital, and that banks are well positioned to facilitate its financing and support their clients. This is being done with a constant eye to the importance of solid banks and the stability of the financial system. This also means that banks must adequately manage risk and maintain flexibility to respond to market developments and risks. A forced reduction in reported emissions from banks is at loggerheads with this. However, Milieudefensie disregards this entirely. Instead, it attempts to ever further restrict ING by demanding that the court impose absolute reduction obligations on the bank for the coming 24 years. Indeed, Milieudefensie is demanding that a bank reduces the emissions allocated to it. However, this means that a bank can no longer finance, for example, a heat pump factory, as mentioned above, or the abatement drive of a high-emission industry. Accordingly, Milieudefensie's approach, which focuses on reducing a bank's paper emissions, not only fundamentally deviates from the legislator's choices – it is also quite counterproductive. Indeed, that approach would make it impossible for banks to provide capital for sustainability initiatives, and it raises the danger that risks are move to less regulated financiers who assess and manage those risks differently.

35. Milieudefensie does not explain how its claims relate to this legislation and all the choices made in that framework, while demanding very specific emission reduction percentages for the financing ING would be allowed to provide to its clients. The claims also extend to sectors already subject to sector-specific regulation, which Milieudefensie does not take into account. If a party subject to the EU Emissions Trading Scheme buys emission allowances and uses them, this is fully in line with the objective of the EU's transition policy. Accordingly, that party is acting legitimately. But according to Milieudefensie, if that company is an ING client, ING should impose separate reduction duties on that client that are not related to the EU Emissions Trading Scheme. This means, for example, that if a client has to reduce emissions by 10% by 2030 on the basis of statutory law, that same client may be made subject to more stringent reduction duties through the back door (i.e. via its financier), or in any case will not be able to attract financing despite the fact that the client complies with current legislation.

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This thus frustrates the functioning of the statutory framework. Moreover, Milieudefensie's view is incompatible with the policies and laws that apply to ING as a bank. The fact that the legislator has already addressed the same problem is apparently irrelevant, if one has to believe Milieudefensie.

36. Moreover, if the client reduces emissions in line with the reductions demanded by Milieudefensie, this does not mean that the emissions reported by ING reduce accordingly and that it is just a simple matter of having the client move in step with Milieudefensie's demands. As the heat pump example shows, there is no necessary, direct or equivalent relationship between, on the one hand, a client's reduction in actual emissions and, on the other hand, a reduction in the emissions reported by a bank.

37. Finally, Milieudefensie fails to mention that ING's diverse clients are not obliged to reduce emissions (or even report them) in line with the obligations that Milieudefensie seeks to impose on ING, the bank financing them. Also, being "involved" in "New Fossil Projects", is not illegal. This is true for clients in the Netherlands and in the EU, as well as for the innumerable clients located outside the EU. There is no reasonable basis for imposing specific reduction and exclusion duties on banks, which finance numerous different companies, and thus curtailing their ability to finance companies based on reported emissions, when those companies themselves (at least not all of them) are subject to such reduction and exclusion duties. Nor does it appear self-evident that the financing of lawfully operating companies should be categorically prohibited – or why such a prohibition would apply only to the provision of financing and not to the provision of all manner of other resources.

(2) There is no consensus on Milieudefensie's vision

38. Second, the norms that Milieudefensie contends exists are neither knowable nor obvious. Companies around the world, including in the EU and the Netherlands, formulate their own policies and climate approaches within the frameworks provided by the law. They do so in a way that they believe is appropriate for their sector and company-specific characteristics. However, there is no societal consensus that the approach advocated by Milieudefensie is the only correct one. Not to mention the fact that there is no consensus that this specific approach is legally enforceable. Nor is such consensus evident in the many voluntary initiatives, none of which identify Milieudefensie's approach as the only correct or compulsory one. Furthermore, that consensus is also not evident in the climate scenarios and transition paths cited by Milieudefensie since those scenarios and paths are not modelled for individual companies. These in themselves show no consensus, and there is no consensus on the transition path the world will follow in the coming years.

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39. The same applies to banks: every bank is different and each bank formulates its own policies, taking into account its business model, loan portfolio, other services and how best to manage the associated risks. There is not only a lack of broad consensus among banks on what elements their climate approach should contain; no specific approach in this area is widely regarded as a legally enforceable obligation.

40. In fact, market studies and private initiatives that specifically scrutinise the transition role that banks can perform frequently warn against "paper decarbonisation", which involves "sweeping clean" a bank's balance sheet by divesting high-emission clients or significantly reducing their financing. Although Milieudefensie does not address these concerns, the court will nevertheless need to take them into account. Private initiatives warn about "paper decarbonisation" for good reason: it does not effectively contribute to reducing emissions.

41. Moreover, the way in which the claims are formulated already demonstrates that the norms would not even be knowable for Milieudefensie itself. The web of claims, with alternative and further alternative options that the court may accept or reject individually or collectively, reflects the fact that there is no obvious combination that constitutes the purported legal duty.

(3) Milieudefensie's approach does not reduce actual emissions

42. The measures advocated by Milieudefensie are ineffective. The reason for warning against "paper decarbonisation" is that it is not an effective way for a bank to contribute positively to the climate transition. Clients from whom ING will have to categorically and rigorously disengage as a result of Milieudefensie's demands will (if they need to) seek an alternative lender. This could also be a financier who, unlike ING, is unwilling to support clients go through the climate transition or who is not committed to financial stability and may not be regulated at all. Accordingly, there is a reason why private initiatives warn of "paper decarbonisation".

43. As legislation, private initiatives and scientific research reveal, there is a widely held notion that categorically and rigorously cutting off bank financing does not help reduce emissions. In fact, this could bring about adverse impacts and risks for many different groups of clients and other members of society. For instance, if banks were compelled to reduce the reported emissions in their mortgage portfolios (as Milieudefensie demands), this would affect the housing market. Homes with higher emissions, such as those with lower energy labels, would no longer be eligible for financing on comparable and societally acceptable terms. Homes with little or no sustainability potential would also become undesirable, as banks would need to demonstrate absolute reductions. Accordingly, there are many consequences, and (societal) interests that will be affected if Milieudefensie's claims are awarded.

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44. Thus, Milieudefensie is making claims in these proceedings that cannot be granted. ING contests this on the basis of the three aforementioned elements, which, moreover, are closely intertwined. As the measures that Milieudefensie seeks, and the approach underlying them are ineffective (and certainly not sufficiently so), there is also no consensus among a broad group of actors that this is a correct approach and that there exists a knowable legal duty and thus is the same reason that they are not enshrined in legislation. Milieudefensie has also failed to explain or substantiate why its approach and the claims it bases upon it should constitute unwritten legal duties binding on ING. It does not cite any objective sources supporting the combination of legal duties it proposes. Numerous objective sources indicate that companies, including banks, can formulate a sound climate approach that considers all societal aspects and the rules within which they must operate. ING therefore concludes that all of Milieudefensie's claims must be dismissed.

45. Milieudefensie must also explain how a globally modelled average percentage reduction in emissions, derived from the IEA NZE scenario, can be converted into a one-to-one binding course of action for an individual company, let alone a bank with its own unique portfolio composition and client base. The reason for this is that the modelled average percentage does not impose any obligation on states, sectors or companies in general; nor do legislators prescribe a single climate scenario or transition path that must be followed or applied. Finally, these are scenarios based on many assumptions, not future predictions of how the transition will actually unfold globally. The scenarios are not intended as a basis for deriving duties from. Nor are they suitable for that purpose. Harder to abate sectors, such as the cement industry and the steel industry, often need technological innovation and the upscaling of new technologies. If these developments fall behind relative to the scenarios used by Milieudefensie, it would be counterproductive if banks were nonetheless compelled to adhere to the scenarios used by Milieudefensie for such sectors when it comes to financing. After all, that would mean that lending would have to be curtailed, thus precisely reducing the chances of that sector being able to move towards sustainability and make the investments needed to do so.

1.4 ING is committed to supporting the climate transition and reducing actual emissions

46. However, Milieudefensie's views on the climate obligations of companies, in this case an individual bank, differ from those of many other actors, including the legislator. A bank's role is to support the real economy and fulfil its systemic function, thus ensuring economic stability and supporting the climate transition. The emissions reported by a bank are not intended as a basis for statutory obligations. Reducing them is also not a meaningful goal in itself, as it says nothing about actual emissions. The distinction between reported emissions and

actual emissions also makes Milieudefensie's comparison between ING's reported emissions and the emissions in the Netherlands misleading. Milieudefensie is comparing apples to oranges and does not provide insight into whether ING is taking responsible climate action. Such a comparison cannot define the role that a bank plays or should play in the transition. This role is determined by regulations and the need to keep the economy running, while at the same maintaining the possibility to effectively finance the transitions.

47. ING must be able to fulfil its financing role while balancing diverse societal and economic interests. To do so, it needs sufficient flexibility and efficient risk management; otherwise, its financial soundness and the stability of the financial system could be jeopardised. At the same time, companies in the real economy should not be forced to seek financing outside the banking sector, as alternative sources of financing may be less available or affordable, and there is also the possibility that financiers outside the banking sector may be less inclined to invest in the transition to more sustainable activity. This could impede the transition and lead to undesirable consequences. It would also remove capital flows from supervisory control – a particular concern of the ECB.

48. Thus, Milieudefensie's claims must be dismissed. There is no legal basis for the notion that ING should strictly adhere into the distant future to what Milieudefensie is now labelling an obligation. The advances are illogical and irresponsible and do not help the climate transition.

1.5 Structure and length of this SoD

49. This SoD consists of four parts. **Part I** outlines the context in which these proceedings are taking place. This is largely absent in the Writ of Summons.

- **Chapter 2** discusses EU climate policy, including the Green Deal, the considerations and choices made by the EU legislator, and relevant policy instruments.
- **Chapter 3** covers Dutch climate policy, including the Dutch Climate Act (*Klimaatwet*) and the repeated confirmation that banks will not be subject to specific climate obligations.
- **Chapter 4** examines the societal role of banks and their risk management responsibilities in more detail.
- **Chapter 5** discusses soft law, private initiatives, and further societal insights, including aspects of transition planning and carbon accounting.

50. **Part II**, consisting of **Chapter 6**, discusses the importance that ING attaches to the climate transition and its approach to doing so.

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51. **Part III** sets out ING's defence against the Purported Duties.

- **Chapter 7** clarifies the Purported Duties and Claimed Measures in order to provide a clear understanding of what they entail.
- **Chapter 8** discusses the applicable legal framework given that Milieudefensie seeks to have general rules of law established by the court. It discusses that the legal rules proposed by Milieudefensie can only be established if they satisfy the applicable requirements, and why that is the case.
- **Chapter 9** discusses how the Purported Duties conflict with the existing legal duties of companies, including banks.
- **Chapter 10** demonstrates that the Purported Duties are not knowable, and that there is no consensus on about (the individual elements or combinations of) those so-called legal duties.
- **Chapter 11** discusses why the Purported Duties are not an effective way to reduce greenhouse gas emissions, but do however pose significant risks to society, the financial system and ING.

52. In **Part IV**, **chapter 12**, ING concludes the Purported Duties claimed by Milieudefensie do not exist. In **chapter 13**, ING concludes that Milieudefensie is not admissible as an interest organisation in these proceedings and that the requirements for a court order have not been met and that there is no basis to declare any favourable judgment provisionally enforceable. In **chapter 14**, ING concludes that Milieudefensie's claims should be dismissed in their entirety.

53. To improve readability, Appendix 1 provides a list of defined terms. Appendix 2 contains enlarged versions of the figures used in this SoD.

54. An overview of ING's exhibits submitted in support of its assertions is given in chapter 14. ING also submits with this SoD three expert reports and their appendices as exhibits.

- **Report of Professor Ringe, 6 February 2026**:[3] Professor Wolf-Georg Ringe, a lawyer and professor at the universities of Hamburg and Oxford, has provided an opinion addressing (i) whether civil law enforcement, based inter alia on liability law, is an appropriate method for regulating the climate stability obligations of companies, including banks; and (ii) whether the imposition of civil liability is an effective instrument for reducing greenhouse gas emissions. Professor Ringe explains that

[3] Submitted as Report of Professor Ringe of 6 February 2026 (Exhibit ING-001A). The accompanying appendixes are submitted as Exhibit ING-001B.

liability law has limitations that render it unsuitable for regulating a collective "good" such as the climate and climate mitigation obligations. He then discusses the notion that imposing individual civil law norms on banks will lead to a reduction in emissions is not supported by the available empirical evidence. He explains that there is even a risk of opposite effects, i.e. an increase in emissions.

- **Report of Professor Resti, 6 February 2026**:[4] Professor Andrea Resti, an economist and professor at Milan's Bocconi University, discusses the structure and policy objectives of the Green Deal, as well as the role of banks within it. He explains that banks should behave very differently in a societal context than companies do in the real economy. He reflects on the Green Deal itself and its effect on the prudential framework that applies to banks. He also discusses the revised Banking Package and the recently introduced obligation for banks to manage ESG risks. He concludes that banks should support the climate transition by increasing transparency to facilitate sustainability preferences and improve risk assessments, thereby improving the functioning of legislation arising from the Green Deal. Banks are also responsible for ensuring their own financial soundness and the stability of the financial system at all times.

- **Report of Oxera**, **5 February 2026**:[5] Oxera Consulting has drafted a report identifying the extent to which substitute financing takes place in the EU. It concludes that a high degree of substitution takes place within the EU, meaning no single bank or financier can force their clients to behave in a certain way. The report also discusses the financing structure of oil and gas companies, concluding that if they lose access to bank financing, they still have many other options for financing their business model.

55. This SoD exceeds 25 pages. This extension is necessary to (be able to) explain the relevant context of these proceedings to the court and to adequately respond and elaborate on ING's defences in response to Milieudefensie's 315-page Writ of Summons.

56. Milieudefensie raises many facts and circumstances in its Writ of Summons. Many of these are not linked to the specific elements of its claims. Nor does Milieudefensie explain the relevance of these assertions to the (legal) questions at issue, the alleged existence of the Purported Duties and the relevance of those assertions for the many specific elements of those Purported Duties. Where this is possible, ING provides specific responses to Milieudefensie's assertions in

[4] Submitted as Report of Professor Resti of 6 February 2026 (Exhibit ING-002A). The accompanying appendixes are submitted as Exhibit ING-002B.

[5] Submitted as Report of Oxera of 5 February 2026 (Exhibit ING-003A). The accompanying appendixes are submitted as Exhibit ING-003B.

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this SoD. However, given the large amount of irrelevant assertions and assertions that are not related to the specific claims, ING may not specifically address every assertion made by Milieudefensie, or may not address each assertion within the context in which Milieudefensie raises assertion. In other words: Milieudefensie may raise certain assertions in support of an (element of a) claim, without this being knowable to ING. However, that does not mean that where ING does not explicitly rebut the specific assertion in the specific context, it admits it. Accordingly, ING contests all of the assertions made by Milieudefensie, and is glad to provide further explanation, except where ING explicitly states that it concurs with Milieudefensie.

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PART I THE CONTEXT IN WHICH THESE PROCEEDINGS ARE TAKING PLACE

2 EUROPEAN CLIMATE POLICY

Key points of this chapter

- Combating climate change requires global transitions. That is one of the reasons why the EU and its Member States are parties to the Paris Agreement. The Paris Agreement recognizes the need for a just transition. The Green Deal contains the EU's climate policy and aims for an EU-wide transition. The EU drafted that policy taking into account many interests, including the importance of combating climate change, the importance of affordability, energy security and maintaining competitiveness. The Green Deal also leaves the fundamental freedoms of movement and effective market functioning intact.
- With the Green Deal, the EU legislator made choices on how to achieve its climate goals. In doing so, the EU legislator also considered how to deal with the climate mitigation obligations of companies. The EU legislator chose not to prescribe reduction obligations or a specific transition path. The legislator opted chose to retain flexibility for businesses and use market mechanisms and incentives to pursue the climate goals.
- EU climate policy is both sector-specific and sector-agnostic. It focuses on reducing emissions in the real economy while considering the specific characteristics of different sectors. Sector-agnostic policies include increasing transparency by imposing reporting requirements. The EU legislator aims to ensure that, in combination with transparency, the policy goals enable the market to respond adequately to these policies.
- The EU legislator recognizes that the climate transition requires a lot of capital. Policies that would require banks to withdraw from emission-intensive sectors were rejected. Instead, banking regulation focuses on ensuring financial stability, and contributing to a well-functioning market through transparency.
- Over the past year, as a result of various matters including geopolitical developments, and after a reconsideration of the interests, the EU legislator decided to simplify and abolish certain statutory regulations. For example, the EU legislator decided to eliminate a requirement for large EU companies to adopt a climate transition plan.

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57. The question in these proceedings is whether individual banks have specific obligations[6] to contribute to combating climate change. That question must be assessed against, among other things, the policy formulated by the European Union ("**EU**") on this subject.

58. Climate change needs to be countered by reducing the emissions of greenhouse gasses into the atmosphere. Those emissions take place in different parts of the global economy. This includes, among other things, emissions resulting from the production of fossil fuels by oil and gas companies and emissions from the use of those fuels, such as cars burning petrol. Our society has made unlimited use of fossil fuels for decades. For this and other reasons, many production processes and other users in the real economy are currently still dependent on fossil fuels. The global supply of food is also still accompanied by high emissions.

59. Therefore, to combat climate change it is necessary to reduce dependence on high-emissions activity on both the demand and supply side. As long as the demand for fossil fuels does not go down, because, for example, production processes or products are dependent on them, an abrupt reduction in supply of fossil fuels can lead to problems. Conversely, if the supply of fossil fuels is not reduced, there may be insufficient incentive to decarbonise high-emitting production processes and products. It is, from this background, widely recognized worldwide that a broad climate transition is required. Accordingly, reducing emissions cannot be achieved overnight. Instead, a graduated process is needed: a climate transition, which includes, among other things, an energy transition and a food transition as components.

60. These transitions were already initiated years ago. Moreover, following the signing of the Paris Agreement, many countries have increased their efforts to accelerate those transitions. The EU and its member states have also recognized the need for a transition. After signing the Paris Agreement, they have looked into the question how to design policies that will drive the climate transition while continuing to safeguard other essential interests in society and the economy, such as affordability of food and energy, security of supply, security and financial stability. This has resulted in a comprehensive and coherent set of policies and regulations. Clear decisions have been made about how to achieve the transitions to a sustainable economy, which instruments are suitable for this purpose, and how responsibilities should be divided.

61. This chapter discusses the climate policy introduced by the EU and the coordinated approach adopted by the European Commission ("**EC**"), the European Parliament, and the Council of the EU (collectively, the "**EU legislator**"). The Paris Agreement forms the basis for this approach

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6 In this SoD, climate mitigation refers to actions aimed at limiting climate change, and climate adaptation refers to actions aimed at managing the impacts of climate change.

(section 2.1). Building on this, the EU and its Member States have set themselves ambitious climate targets and have acknowledged the need for a fundamental economic transformation (section 2.2). To achieve these targets, the EU has introduced a comprehensive legislative package. The package sets out the EU's specific plans for the climate transition (section 2.3). After discussing these aspects, ING considers those elements of the package that are relevant to these proceedings: transparency and reporting, due diligence, and transition planning (section 2.4). According to the EU, the financial sector has a key role to play in the transition. The EU legislator has therefore developed additional specific regulations for financial institutions and banks (section 2.5). ING also discusses how the EU legislator has balanced interests in the context of the legislative package (section 2.6). To properly assess the choices made by the EU legislator, ING discusses another important EU objective: the creation of an internal market with a level playing field (section 2.7). EU climate policy is therefore being developed with due consideration for the interests of other parties involved. Banks are playing a supporting role, and attention is being paid to ensuring financial stability (section 2.8).

2.1 The Paris Agreement: discretion for states in national transition planning

62. States, including the EU and its Member States, have long recognised the need for a coordinated global approach to climate change. This requires a comprehensive climate transition, as described above. Reducing greenhouse gas emissions requires an energy transition, among other things: in the coming decades, we will need to transition from generating energy from fossil fuels to generating it from renewable sources. In addition, a transition to a more circular economy is needed on the demand side. Companies that still rely on high-mass production processes and products, and depend on fossil fuels, will need to reduce that dependence. This requires many transitions. States, and their governments, will have to take action to bring about those transitions.

63. The United Nations Framework Convention on Climate Change ("**UNFCCC**" or "**UN Climate Convention**") came into force in 1994.[7] The contracting states meet at a Conference of the Parties ("**COP**").[8] Various international arrangements have been made during COPs, including the Kyoto Protocol – which set emission reduction targets for "Annex I countries"[9] – and the Paris Agreement.[10]

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7 UN Climate Convention (consolidated English version) (Exhibit MD-069).

8 Article 7 UN Climate Convention (consolidated English version) (Exhibit MD-069). The most recent COP was COP30 and took place from 10 to 21 November 2025 in Belém, Brazil. See UN Climate Change Conference - Belém, "Overview Schedule" 19 November 2025 (excerpt) (Exhibit ING-004).

9 Of the currently 198 countries that have ratified the UN Climate Convention, 43 are "Annex I countries". These are industrialized countries that have committed to the most far-reaching goals under the UN Climate Convention. See *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, 11 December 1997 ("Kyoto Protocol") (Exhibit ING-005).

10 Paris Agreement (original English version) (Exhibit MD-070).

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64. In 2015, 194 states and the EU[11] signed the Paris Agreement, committing themselves to the objectives of the UN Climate Convention. Among other things, they agreed in Article 2(1) of the Paris Agreement:

> "*1. This Agreement, in enhancing the implementation of* [the UN Climate Convention]*, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:*
>
> *(a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;*
>
> *(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and*
>
> *(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.*"[12]

65. The target in Article 2(1)(a) of the Paris Agreement is referred to in this SoD as the "**Paris Goal**". In the Dutch translation of the Paris Agreement this reads as follows: "*de stijging van de wereldwijde gemiddelde temperatuur ruim onder 2 °C te houden ten opzichte van het pre-industriële niveau en ernaar te blijven streven de stijging te beperken tot 1,5 °C, erkennende dat dit de risico's en de gevolgen van klimaatverandering aanzienlijk zou beperken*".[13] This refers to an increase in average temperature, over an extended period of time.

66. The Paris Agreement also sets the non-binding goal of achieving net-zero global emissions by the end of the 21st century.[14] Under the Agreement, signatory states are committed to reducing emissions within their territory, regardless of the responsible company or individual. The contribution to global emission reductions will vary from state to state. This is reflected in the Paris Agreement's incorporation of the "*common but differentiated responsibilities*" principle ("**CBDR Principle**").[15]

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11 See United Nations Treaty Collection, "Paris Agreement" (accessible at https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=xxvii-7-d&chapter=27, last accessed 5 February 2026).

12 Article 2(1) Paris Agreement (original English version) (Exhibit MD-070).

13 See Article 2(1)(a) Paris Agreement) (Dutch translation).

14 Article 4(1) Paris Agreement (original English version) (Exhibit MD-070).

15 The CBDR Principle also featured in the Rio de Janeiro Declaration on Environment and Development at the first Earth Summit in Rio de Janeiro in 1992 (UN General Assembly, "Rio de Janeiro Declaration on Environment and Development" ("Rio Declaration") (Exhibit MD-175), the UN Climate Convention (consolidated English version) (Exhibit MD-069) and the Kyoto Protocol (Exhibit ING-005). See Article 2(2) Paris Agreement (original English version) (Exhibit MD-070).

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67. Achieving the goal of the Paris Agreement requires an "*economic and social transformation*".[16] However, the Paris Agreement does not prescribe how states should set or achieve their targets or which transition pathways should apply to them. States must choose their own emission reduction targets and measures. Therefore, it is up to states to weigh up all relevant interests (e.g. social or economic). Based on this weighing of interests, as well as their financial and technological capabilities, states are free to choose the most effective (and cost-effective) measures.

68. These targets and measures are included in what are known as "nationally determined contributions" ("**NDCs**"). NDCs extend to emissions within the territory of the various contracting state.[17] Those states must update their NDCs every five years.[18] Each successive NDC must be more ambitious than its predecessor and reflect the highest possible level of ambition.[19] The targets set out in an NDC are not legally binding.[20] Every five years, a "Global Stocktake" is carried out to evaluate the collective progress of all states combined.[21] During COPs, an assessment is made of whether the world is on track to achieve the targets and whether ambitions need to be adjusted. No binding international law is established during COPs; however, the states do agree on general principles of desirable conduct.[22]

69. In 1988, the United Nations established the Intergovernmental Panel on Climate Change ("**IPCC**"). The IPCC publishes reports analysing climate scenarios to reflect the state of climate science. The IPCC does not prescribe policy, set norms or establish targets itself. Since the Paris Agreement, the IPCC has also assessed the likelihood of the agreements being delivered, given actual global emissions.[23]

70. In 2023, for example, the IPCC concluded that to limit overall warming to a maximum of 1.5°C, global emissions would need to be reduced by 43% by 2030 and by 84% by 2050, compared to 2019 levels).[24]

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16 UNFCCC, "The Paris Agreement" (printout of 26 January 2026) (Exhibit ING-006).
17 Article 4(2) and (13) Paris Agreement (original English version) (Exhibit MD-070).
18 Article 4(2) and (9) Paris Agreement (original English version) (Exhibit MD-070).
19 Article 4(3) Paris Agreement (original English version) (Exhibit MD-070).
20 Article 4(2) Paris Agreement (original English version) (Exhibit MD-070). See also D. Bodansky, "Paris Agreement," *United Nations Audiovisual Library of International Law*, July 2021 (Exhibit ING-007), p. 1 and M. Brus,"Het klimaatakkoord van Parijs: bouwen aan wereldrecht of bewijs van falende internationale samenwerking?", *AA* 2016/0615, vol. 9 (Exhibit ING-008), p. 621.
21 Article. 14 Paris Agreement (original English version) (Exhibit MD-070). See also UNFCCC COP28 2023 (Dubai), "Outcome of the First Global Stocktake" (Exhibit MD-090).
22 For example, Article 6(2) Paris Agreement (original English version) (Exhibit MD-070) refers to guidelines adopted by COPs. See also S. Schiele, "International environmental regimes and their treaties", in: J.S. Bell et al. (eds.), *Evolution of International Environmental Regimes: The Case of Climate Change*, 2014 (excerpt) (Exhibit ING-009), p. 43.
23 IPCC 2013, "Principles Governing IPCC Work" (Exhibit MD-066), principles 2 and 3. See also IPCC, "About the IPCC" (printout of 21 January 2026) (Exhibit ING-010). ING discusses the IPCC in more detail in section 5.3.
24 IPCC 2023, AR6, SYR, (Exhibit MD-001), p. 92.

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2.2 EU climate policy: the Sustainable Finance Action Plan, the Green Deal, the European Climate Law and the Fit for 55 package

71. Following the signing the Paris Agreement, the EU has taken various steps to implement the Paris Goal in EU policies. In doing so, the various societal interests were taken into consideration.

72. To date, the EU has submitted four NDCs on its own behalf and on behalf of its Member States.[25] In these NDCs, the EU describes how it is taking responsibility for achieving the Paris Goal by setting out objectives and measures.[26]

73. The EU's most recent NDC includes a reduction target of 55% by 2030 compared to 1990 levels. The EU has also included an "*indicative*" reduction target of between 66.25% and 72.5% by 2035 (again compared to 1990 levels).[27] These targets concern emissions within EU territory.

74. The EU legislator has drawn up an extensive and coherent climate policy in recent years, in part to implement its NDCs.

- On 8 March 2018, the EC presented the "**Sustainable Finance Action Plan**", which has three themes: (i) redirecting capital flows towards sustainable investments; (ii) managing financial risks arising from climate change; and (iii) promoting transparency and long-term thinking in economic activities.[28]

- On 11 December 2019, the EC published the Green Deal.[29] The Green Deal comprises a large number of policy initiatives with the overarching goal of reducing emissions by 55% by 2030 compared to 1990, and the aim of achieving net-zero emissions by 2050.[30]

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25 On 6 March 2015, 17 December 2020, 19 October 2023 and 5 2025. See UNFCCC, "NDC Registry" (available at https://unfccc.int/NDCREG, last accessed on 10 February 2026).

26 In principle, each state should establish its own NDC, but the Paris Agreement provides that states can agree to act jointly in establishing, communicating and enforcing NDCs. If states take advantage of this option, there is no need for individual states to also adopt their own NDC. See Article 4(16) Paris Agreement (original English version) (Exhibit MD-070).

27 EU, "Submission of an updated Nationally Determined Contribution (NDC) to the United Nations Framework Convention on Climate Change (UNFCCC)," 5 November 2025 ("EU NDC 2025") (Exhibit ING-011), Annex, p. 53-54.

28 EC, "Sustainable Finance Action Plan", COM(2018) 97 final, 8 March 2018 ("Sustainable Finance Action Plan") (Exhibit ING-012), p. 2.

29 EC, "European Green Deal", COM(2019) 640 final, 11 December 2019 ("Green Deal") (Exhibit ING-013).

30 Green Deal (Exhibit ING-013), section 2.1.1.

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- The objectives of the Green Deal were enshrined in the European Climate Law in 2021.[31] It is up to the EU institutions and Member States to collectively achieve the goals set out in the European Climate Law by taking appropriate measures.[32]

- On 14 July 2021, the EC included the climate measures to be taken in the "Fit for 55" package.[33] This package contains coherent proposals for new and amended legislation and policy initiatives.[34]

75. These measures are the result of careful consideration of a large number of complex and interrelated interests.[35] The European Climate Law makes it clear that all of these interests were taken into account when drafting the statutory framework:

> "*In taking the relevant measures at Union and national level to achieve the climate-neutrality objective, Member States and the European Parliament, the Council and the Commission should, inter alia, take into account: the contribution of the transition to climate neutrality to public health, the quality of the environment, the well-being of citizens, the prosperity of society, employment and the competitiveness of the economy; the energy transition, strengthened energy security and the tackling of energy poverty; food security and affordability; the development of sustainable and smart mobility and transport systems; fairness and solidarity across and within Member States, in light of their economic capability, national circumstances, such as the specificities of islands, and the need for convergence over time; the need to make the transition just and socially fair through appropriate education and training programmes; best available and most recent scientific evidence, in particular the findings reported by the IPCC; the need to integrate climate change related risks into investment and planning decisions; cost-effectiveness and technological neutrality in achieving greenhouse gas emission reductions and removals and increasing resilience; and progression over time in environmental integrity and level of ambition.*"[36]

76. The interests listed in this quote, and the weighing-up of these interests, ultimately led the EU legislator to adopt its policy. The EU aims to play a leading

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31 Regulation (EU) 2021/1119 of 30 June 2021 ("European Climate Law"). Article 2(1) and Article 4 European Climate Law contain the EU target to achieve climate neutrality by 2050, and the intermediate target of reducing greenhouse gas emissions by at least 55% from 1990 levels by 2030. In December 2025, the European Parliament and the Council of the EU reached a provisional preliminary agreement on the intermediate target proposed by the EC in July 2025 in the European Climate Law to reduce greenhouse gas emissions by 90% by 2040 compared to 1990. See Council of the EU, "Outcome of procedures including letter to the European Parliament including provisional agreement on proposal for regulation to amend the European Climate Law", 17086/25, 19 December 2025 (Exhibit ING-014).

32 Article 2(2) European Climate Law.

33 EC, '"Fit for 55": delivering the EU's 2030 Climate Target on the way to climate neutrality", COM(2021) 550 final, 14 July 2021 ("Fit for 55 package") (Exhibit ING-015).

34 Fit for 55 package (Exhibit ING-015), p. 4 et seq.

35 Green Deal (Exhibit ING-013), p. 3.

36 Recital 34 European Climate Law.

role in the global climate transition.[37] This policy has been expanded and supplemented since 2021 and is still under development.

77. The policy is largely based on a sectoral approach.[38] Fair competition and the opportunity to benefit from the transition to a sustainable economy must be possible within and between EU Member States and sectors.[39] This applies not only to the internal competition, but also to the EU's competitiveness in relation to third (i.e. non-EU) countries.[40] Moreover, the EU "*recognises the need to maintain its security of supply and competitiveness*".[41] The EC aims to establish a modern, resource-efficient and competitive economy that fosters innovation and green technology and stimulates the circular economy.[42]

2.3 The EU climate policy is aimed at achieving a broad climate transition that must lead to reductions in emissions in the real economy

78. The core of EU climate policy is set down in the Green Deal. The Green Deal includes initiatives that aim to achieve a fair climate transition and related transitions in the real economy, for example in the areas of the environment, energy, transport, industry and agriculture; and (ii) the financing thereof:

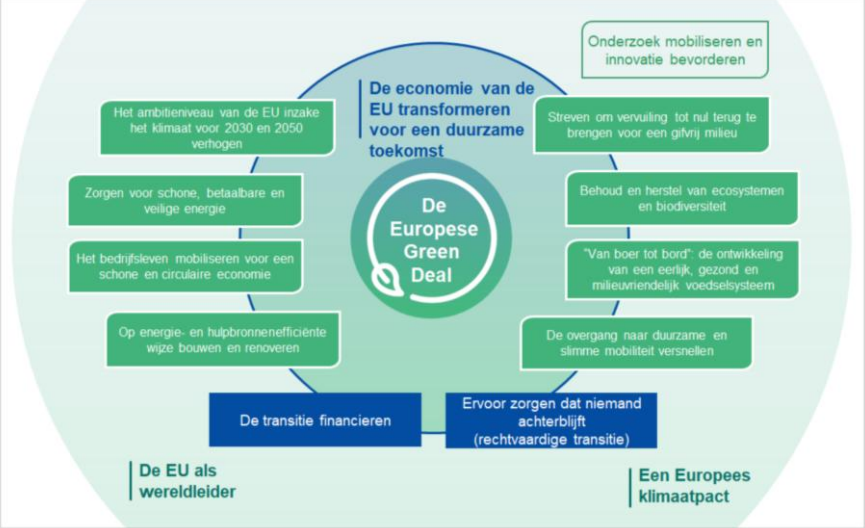

Figure 1 The various elements of the Green Deal[43]

37 Green Deal (Exhibit ING-013), section 3; recital 17 European Climate Law; Fit for 55 package (Exhibit ING-015), p. 2.
38 EU NDC 2025 (Exhibit ING-011), Annex, p. 44-45, 49-50, 57.
39 Recital 25 European Climate Law. See also Green Deal (Exhibit ING-013), p. 21.
40 European Council, "Fit for 55", 17 March 2025 (printout of 21 January 2026) (Exhibit ING-016): "*The package should provide a framework that:* […] *strengthens innovation and competitiveness of EU industry while ensuring a level playing field vis-à-vis third country economic operators*".
41 Green Deal (Exhibit ING-013), p. 3. See also Green Deal (Exhibit ING-013), p. 2, 6 and 17; Recital 34 and Article 4(5)(e) European Climate Law; Fit for 55 package (Exhibit ING-015), p. 3, 9 and 13-14.
42 Green Deal (Exhibit ING-013), p. 7-10, 14-15 and 21-22.
43 This graphic is included in the Green Deal (Exhibit ING-013) as Diagram 1 on p. 4.

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79. Making the economy and society more sustainable primarily takes place in the "real economy". This is the part of the economy where products are manufactured and used, and where services are provided and purchased. Those products and services are associated with emissions. This results from activities such as generating electricity, building and heating homes, burning petrol in cars, producing food and manufacturing products for end users.

80. The EU legislator has introduced a combination of sectoral and market measures in specific policy areas.[44] However, the EU does not apply a specific transition path in this regard. To ensure that the EU's climate ambitions are pursued as effectively as possible, the EU legislator has drafted sectoral legislation that takes into account the characteristics of each sector, combined with market mechanisms that encourage sustainability through market forces.

81. Sector-specific measures exist in the energy sector,[45] energy-intensive industry,[46] construction, road transport,[47] land use and forestry,[48] and agriculture[49] and fisheries.[50]

82. Sector-agnostic measures extend to matters such as transparency, reporting and climate transition planning.[51] The EU is also trying to reduce fossil fuel usage by introducing minimum taxes on energy products and electricity.[52]

83. By imposing measures on the market, the EU legislator seeks to reduce emissions through economic incentives and tradeable allowances. Instead of categorically banning emission-intensive activities or mandating green alternatives, the EU legislator has chosen to limit the level of permitted emissions and distribute that leeway by means of tradable allowances.

84. It is not yet clear how the ultimate transition will occur and nor can this be predicted in advance. After all, that final transition will depend, among other things, on how supply and demand develop in the coming years, the geopolitical situation, market conditions, and so on. The EU retains the flexibility to respond to future developments.

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44 Green Deal (Exhibit ING-013), p. 4-5; Fit for 55 package (Exhibit ING-015), section 2.2; recital 7 European Climate Law.
45 Green Deal (Exhibit ING-013), section 2.1.2; Fit for 55 package (Exhibit ING-015), p. 6-7 and section 2.2.3.
46 Green Deal (Exhibit ING-013), p. 8; Fit for 55 package (Exhibit ING-015), section 2.2.1.
47 Green Deal (Exhibit ING-013), section 2.1.4, where the EC points to a "*renovation wave*" of public and private buildings. See also Fit for 55 package (Exhibit ING-015), p. 8 and 11.
48 Green Deal (Exhibit ING-013), section 2.1.5; Fit for 55 package (Exhibit ING-015), sections 2.1 and 2.2.
49 Green Deal (Exhibit ING-013), p. 5; Fit for 55 package (Exhibit ING-015), section 2.3.
50 Green Deal (Exhibit ING-013), p. 13-15; Fit for 55 package (Exhibit ING-015), section 2.3.
51 See section 2.4 below.
52 Fit for 55 package (Exhibit ING-015), p. 12.

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85. The EU legislator has considered the way in which the climate transition can be funded, as it will require large-scale investment, not only to finance the climate transition, but also to ensure it is as non-disruptive as possible.[53] In 2023, the EC stated that an additional EUR 700 billion in investments would be needed each year to achieve the objectives of the Green Deal and related legislation.[54] The EC aims to make these investments not only with public money. Instead, several policies also discuss private financing as a possible additional source of funding.[55]

86. However, the financing of climate transition by private parties has not been made mandatory by the EU legislator. Instead, EU climate policy aims to facilitate that funding,[56] not only for companies that already fit into a sustainable economy, such as manufacturers of heat pumps and wind turbines, but also those that need to become more sustainable. Economic activity in general will also need to be financed. The economy must remain strong and resilient during the various transitions in the coming years. For this reason, the EU legislator has also not wanted to ban high-emission products and services.

87. Instead, in its 2023 recommendations on this topic, the EC considered that financial intermediaries could facilitate the transition:

> "*Bank lending and investments are both important for the financing of the real economy, and both are expected to provide a significant amount of transition finance to undertakings. Banks and other institutional investors are in a particularly good position to provide transition finance to their clients, since they can draw on their close client relationships.*"[57]

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53 See e.g. recital 17 of Regulation (EU) 2020/852 of 18 June 2020 ("Taxonomy Regulation"); recital 2 Directive (EU) 2022/2464 of 14 December 2022 ("CSRD").

54 EC, "A sustainable finance framework that works in practice", COM(2023) 317 final, 13 June 2023 ("EC, Sustainable Finance Framework") (Exhibit ING-017), p. 1.

55 EC, "Stepping up Europe's 2030 climate ambition investing in a climate-neutral future for the benefit of our people", COM(2020) 562 final, 17 September 2020 (excerpt) (Exhibit ING-018), p. 4. See also EC, "Strategy for Financing the Transition to a Sustainable Economy", COM(2021) 390 final, 6 July 2021 (excerpt) (Exhibit ING-019), p. 1-2. See also, for example, COP29 and COP30, *Report on the Baku to Belem Roadmap to 1.3T*, November 2025 (excerpt) (Exhibit ING-020), p. 37.

56 Sustainable Finance Action Plan (Exhibit ING-012), p. 1; Green Deal (Exhibit ING-013), section 2.1.2; Fit for 55 package (Exhibit ING-015), p. 2. The EU statutory framework does not define the concept of "*transition financing*". See also Recommendation (EU) 2023/1425 of 27 June 2023 (excerpt) (Exhibit ING-021), recital 5. In this SoD, the term "transition financing" refers to the financing of green projects and sustainability measures for companies that still need to become more sustainable.

57 Recommendation (EU) 2023/1425 of 27 June 2023 (excerpt) (Exhibit ING-021), recital 31. In doing so, banks have room to determine how they shape their cooperation with their clients. See Recommendation (EU) 2023/1425 of 27 June 2023 (excerpt) (Exhibit ING-021), chapter 10.

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2.4 Implementation of the Green Deal: sectoral regulation and sector-agnostic market forces through reporting and due diligence

88. The EU's climate policy focuses on three key areas: (1) emissions reduction, (2) transparency and (3) due diligence.

(1) Regulations aimed at regulating and reducing emissions in the real economy

89. One of the most important EU policy instruments for reducing emissions is the emissions trading system ("**EU ETS**").[58] The EU ETS is a market mechanism for trading emission allowances. "Installations"[59] that emit relatively large amounts of greenhouse gases are subject to an emissions permit requirement based on the "cap and trade" principle. Facilities are allocated a limited number of emission allowances (or "carbon credits") each year. These emission allowances are capped per country, with the total number decreasing annually.[60] This encourages companies in the real economy to gradually reduce emissions while continuing to provide essential products and services.

90. The EU legislator is gradually making the EU ETS more ambitious by expanding the number of sectors[61] and accelerating the reduction of emission allowances.[62] As part of the "Fit for 55" package, emissions within the system must be reduced by 62% by 2030 compared to 2005 levels.[63] Starting in 2027, a new, stand-alone ETS will be introduced for buildings, road transport, and fuel use in other sectors ("**EU ETS2**").[64]

91. Reducing emissions in the EU is only effective if those emissions are not simply diverted to another market. For example, if companies stop producing steel in

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58 Directive 2003/87/EC of 13 October 2003 ("EU ETS Directive"), as revised under the Fit for 55 package by Directive (EU) 2023/959 of 10 May 2023.

59 Article 3(e) EU ETS Directive defines "installation" as "*a stationary technical unit where one or more activities listed in Annex I are carried out and any other directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on emissions and pollution".* It follows from Appendix 1 to the EU ETS Directive that these include producers of electricity, heat, oil, steel, metals, aluminium, ceramics, asphalt, paper, cardboard and chemicals and the aviation and maritime sectors.

60 Article 9-10 EU ETS Directive. One allowance gives the right to emit one tonne of CO_2 equivalent. It follows from Article 16(3) EU ETS Directive that Member States must impose a penalty of EUR 100 per tonne of CO_2-equivalent on operators that do not surrender enough allowances.

61 Shipping and aviation have been added to the sectors. See Fit for 55 package (Exhibit ING-015), p. 8; Chapter II EU ETS Directive.

62 The annual reduction in the emissions cap is raised from 2.2% to 4.3% per year over the period 2024-2027 and 4.4% from 2028 . See Article 9 EU ETS Directive.

63 Fit for 55 package (Exhibit ING-015), p. 8 (here 61% was still being mentioned). Recital 39 Directive (EU) 2023/959 of 10 May 2023.

64 Fit for 55 package (Exhibit ING-015), p. 8 (where the EC still assumed that EU ETS2 would apply from 2026). Article 30c(1) EU ETS Directive. EU ETS2 aims to reduce greenhouse gas emissions in sectors not currently covered by the original EU ETS, such as road transport and buildings; see chapter IVa EU ETS Directive. Recently, the European Parliament supported a proposal by member states to delay the introduction of EU ETS2 by one year from 2027 to 2028. See EP, "EU 2040 climate target. MEPs want 90% emissions reduction in EU climate law", 13 November 2025 (press release) (printout of 21 January 2026) (Exhibit ING-022).

the EU but the EU then has to purchase steel from a new factory in Asia, this does not help the climate. The emissions themselves will not disappear; they will simply be relocated, potentially resulting in additional emissions from the transport from Asia to the EU. Therefore, the EU ETS is only effective if it cannot be circumvented. A correction mechanism at the border, the Carbon Border Adjustment Mechanism ("**CBAM**"), therefore provides support.[65] CBAM prevents production from being relocated to non-EU countries with less ambitious climate targets, thereby ensuring a level playing field within the EU.

92. In addition to the EU ETS and CBAM, there is also the Land Use, Land Use Change and Forestry Regulation ("**LULUCF Regulation**").[66] The LULUCF Regulation contains provisions on greenhouse gas emissions and removals resulting from land use, land use change and forestry, as well as the associated accounting, reporting and verification.

93. Sectors not covered by the EU ETS or the LULUCF Regulation fall under the Effort Sharing Regulation ("**ESR**"), which sets emission reduction targets for EU Member States.[67] The EU-wide ESR target is a 40% reduction compared to 2005 levels.[68] For individual Member States, these targets range from 10 to 50% compared to 2005.[69]

94. Together, the EU ETS, the LULUCF Regulation and the ESR extend to virtually all emissions within the EU.[70]

95. In its sectoral policy, the EU recognises that some sectors are more challenging to make sustainable than others. This takes into account the different speeds at which sectors can become sustainable.[71] This sectoral policy also encompasses

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65 Fit for 55 package (Exhibit ING-015), p. 8-9 and 15; Regulation (EU) 2023/956 of 10 May 2023. This regulation is applicable since 1 October 2023, followed by a transition period until 1 January 2026. During this transition period, different reporting requirements apply and importers are not yet required to have CBAM certificates.

66 Regulation (EU) 2018/841 of 30 May 2018.

67 Fit for 55 package (Exhibit ING-015), p. 7; Regulation (EU) 2018/842 of 30 2018 ("ESR"), as revised under the Fit for 55 package by Regulation (EU) 2023/857 of 19 April 2023. The ESR assigns binding national reduction targets for the period 2021-2030 to each Member State for the sectors not covered by EU ETS, based on their economic capacity and starting point. Unlike EU ETS, Member States are responsible for implementing measures to meet the targets; these do not directly affect entities that emit greenhouse gases.

68 Article 1 ESR.

69 See Appendix 3 to this SoD.

70 EC, "Commission Working Document. Impact Assessment Report. Part 1", SWD(2024) 63 final, 6 February 2024 (excerpt) ("EC, Impact Assessment Report") (Exhibit ING-023), p. 22-23.

71 See also EC, Impact Assessment Report (Exhibit ING-023), p. 18: "*Some sectors, such as agriculture and air travel, will not be able to cut their GHG emissions to zero in the coming decades, because they deliver goods and services that can only be partially substituted or there are inherent limits to the GHG mitigation options available to them.*" It also follows from recital 11 of Directive (EU) 2023/2413 of 18 October 2023 ("RED III") that aviation and shipping "*are difficult to decarbonize*". See also EC, "REPowerEU Plan", COM(2022) 230 final, 18 May 2022 ("REPowerEU Plan") (Exhibit ING-024), p. 10-11.

the Energy Efficiency Directive ("**EED**"),[72] the Renewable Energy Directive III ("**RED III**")[73] and the Net Zero Industry Act ("**NZIA**"),[74] the Industrial and Livestock Rearing Emissions Directive ("**IED**")[75] and the Energy Performance of Buildings Directive IV ("**EPBD IV**").[76]

96. There are also various regulations and initiatives aimed at road vehicles,[77] aviation,[78] and shipping,[79] as part of efforts to make the transport sector more sustainable and reduce its emissions.[80]

(2) Transparency requirements

97. The regulatory measures described above are intended to regulate the reduction of emissions in the real economy. The EU legislator has supplemented this with uniform and EU-wide reporting and transparency requirements concerning sustainability information.[81] Increased transparency is expected to ensure that capital is mobilised more effectively for more sustainable activities.[82] In other words: the EU legislator aims to enable the mobilisation of a part of the capital needed for the climate transition by means of transparency and market forces. This will enable the market, including financiers and investors, to make better use of the above policy framework, thereby making it more effective. Financiers and investors can pursue their sustainability preferences more effectively. Transparency also enables them to better assess risks, including climate risks.[83]

98. The EU has adopted various transparency directives and regulations, including the Taxonomy Regulation,[84] the Sustainable Finance Disclosure Regulation

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72 Directive (EU) 2023/1791 of 13 September 2023. This Directive requires EU Member States to integrate energy efficiency into their policy and investment decisions and sets targets to reduce energy consumption by 11.7% by 2030 compared to 2020 projections.

73 Directive (EU) 2023/2413 of 18 October 2023. With RED III, the EU is promoting the use of renewable energy with the goal of increasing the total amount of renewable energy in the EU to 42.5% by 2030.

74 Regulation (EU) 2024/1735 of 13 June 2024. Based on the NZIA, fossil fuel producers must contribute to the 2030 EU target for annual CO_2 storage capacity by setting up or investing in carbon capture projects.

75 Directive (EU) 2010/75 of 24 November 2010.

76 Directive (EU) 2024/1275 of 24 April 2024. The EPBD IV must be implemented in the national legislation of EU Member States by mid-2026. See Article 35 EPBD IV and also Netherlands Enterprise Agency (*Rijksdienst voor Ondernemend Nederland)*, "Europese Richtlijn energieprestatie van gebouwen EPBD IV" (printout of 21 January 2026) (Exhibit ING-025).

77 Regulation (EU) 2019/1242 of 20 June 2019.

78 Regulation (EU) 2023/2405 of 18 October 2023.

79 Regulation (EU) 2023/1805 of 13 September 2023.

80 Additionally, there are binding national targets for the rollout of alternative fuel infrastructure. See Regulation (EU) 2023/1804 of 13 September 2023.

81 Recital 8 of Directive (EU) 2022/2464 of 14 December 2022 ("CSRD") explains why the EU legislator no longer wishes to refer to "*non-financial*" information as of the CSRD, but to "*sustainability information*".

82 Green Deal (Exhibit ING-013), p. 20. See also Sustainable Finance Action Plan (Exhibit ING-012), p. 1; EC, "EU Taxonomy, Corporate Sustainability Reporting, Sustainability Preferences and Fiduciary Duties: Directing finance towards the European Green Deal" COM(2021) 188 final, 21 April 2021 (Exhibit ING-026), p. 1.

83 Recital 9 CSRD.

84 Regulation (EU) 2020/852 of 18 June 2020.

("**SFDR**"),[85] and the Non-Financial Reporting Directive ("**NFRD**").[86] The NFRD has been amended by the Corporate Sustainability Reporting Directive ("**CSRD**").[87]

99. Essentially, the transparency policy is built on the following pillars: (i) an EU classification system for sustainable activities (taxonomy); (ii) a framework for information disclosure; and (iii) a framework for SRI tools such as climate benchmarks, norms and labels.[88] By doing so, the EU legislator intends that increasingly better information becomes available in the coming years on the sustainability and transition risk profile of reporting companies.

100. For the purpose of useful and comparable sustainability reporting, the Taxonomy Regulation introduces a uniform EU classification system, which determines which activities are considered "sustainable.[89] The absence of such criteria would lead to higher costs and would "*significantly* disincentivise economic operators from accessing cross-border capital markets for the purposes of sustainable investment."[90] Moreover, "*it has* [...] *been shown that national rules and market-based initiatives taken to tackle that issue within national borders lead to the fragmentation of the internal market.*"[91] To resolve this, member states should "*a common concept of environmentally sustainable investment*".[92] Based on these harmonised concepts, financial instruments can be devised that are easily recognisable as sustainable by the investing public. Green bonds, which must meet specific sustainability requirements, are one example of this.[93]

101. The SFDR imposes reporting obligations on financial market operators.[94] The SFDR applies both at entity level[95] (e.g. through a sustainability policy on the website) and (investment) product level[96] (e.g. through pre-contractual

85 Regulation (EU) 2019/2088 of 27 November 2019.
86 Directive 2014/95/EU of 22 October 2014.
87 Directive (EU) 2022/2464 of 14 December 2022.
88 EC, Framework for Sustainable Finance, (Exhibit ING-017), p. 2-4. See also Recommendation (EU) 2023/1425 of 27 June 2023 (excerpt) (Exhibit ING-021), recital 6.
89 Article 3 Taxonomy Regulation.
90 Recital 11 Taxonomy Regulation.
91 Recital 13 Taxonomy Regulation.
92 Recital 14 Taxonomy Regulation.
93 Regulation (EU) 2023/2631 of 22 November 2023.
94 Article 1 in conjunction with Article 2(1) SFDR.
95 See, inter alia, Article 3-5 SFDR. On 20 November 2025, the EC submitted a proposal to amend the SFDR, proposing, among other things, the removal of entity-level reporting requirements from Article 4 and Article 5 SFDR. See Proposal for a Regulation amending Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR), Regulation (EU) No. 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) and repealing Commission Delegated Regulation (EU) 2022/1288, COM(2025) 841 final, 20 November 2025 (excerpt) (Exhibit ING-027), p. 35-36.
96 Financial products, in addition to units of alternative investment funds ("AIFs") and undertakings for collective investment in transferable securities ("UCITS"), include investment portfolios managed on a discretionary basis and pension products and schemes; Article 2(12) SFDR. See also Articles 6-9 and 11 SFDR.

information on ESG impact or the qualification of a particular financial product as "sustainable" in line with the Taxonomy Regulation).[97] It sets out requirements for the disclosure of information on the climate impact and risks associated with specific products and services, so that investors can ultimately take well-considered investment decisions. Banks are subject to SFDR requirements where they offer specific services such as portfolio or fund management and investment advice.

102. The CSRD is a sector-agnostic reporting directive.[98] One of its objectives is to redirect capital flows towards sustainable investment, thereby promoting sustainable and inclusive growth.[99] In this regard, the legislator considers transparency about "*relevant, comparable and reliable sustainability information*" to be of great importance.[100] The CSRD therefore obliges large[101] companies to include specific sustainability information in their management reports. The topics to be included depend on the "double materiality perspective", which considers the risks to the company arising from sustainability issues ("financial materiality", or "outside-in") and the effects of the company's activities on people and the environment ("impact materiality", "inside-out").[102] If a company deems a topic to be material based on one of these perspectives, it must report on it.[103]

103. The overview below shows the relationship between the reporting and transparency requirements included in the Taxonomy Regulation, the SFDR and

97 Article 1 SFDR.

98 The CSRD entered into force on 5 January 2023, and was to be implemented in national legislation by 5 July 2024. The Dutch legislator missed this deadline. See *Parliamentary Papers I* 2025/26, 26 485, no. E (Report of written consultation on draft decree implementing CSRD) (Exhibit ING-028), p. 8.

99 Recital 2 CSRD. Regulation (EU) 2024/3005 ("ESG Ratings Regulation") is consistent with this. See recital 3. See also, for example, recital 9 ff. of the EU Taxonomy Regulation.

100 Recital 2 CSRD.

101 To qualify as "large", companies must meet at least two of the three size criteria: (i) net turnover of EUR 50 million; (ii) a balance sheet total of EUR 25 million; (iii) an average number of employees of 250 during the financial year. Unlisted SMEs do not fall within the scope of the CSRD, but will have to provide data from within the supply chain of a CSRD-compliant company. These thresholds will be adjusted following the proposals to simplify the CSRD (see also section 2.6 below). The CSRD will still only apply to EU companies with an average of 1,000 employees and a net turnover of more than EUR 450 million.

102 Article 19a(2)(a) Directive 2013/34/EU of 26 June 2013 as amended by Article 1(4) CSRD; see (i) and (ii) for financial materiality and (iv) for impact materiality. See also chapter 3.5 ESRS 1 for financial materiality, and chapter 3.4 (nos. 43-46) and chapter 4 (nos. 58-61) ESRS 1 for impact materiality.

103 See chapters 3.2 and 3.3 ESRS 1.

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the CSRD, including two examples of the relevance of the Taxonomy Regulation to the CSRD and the SFDR:

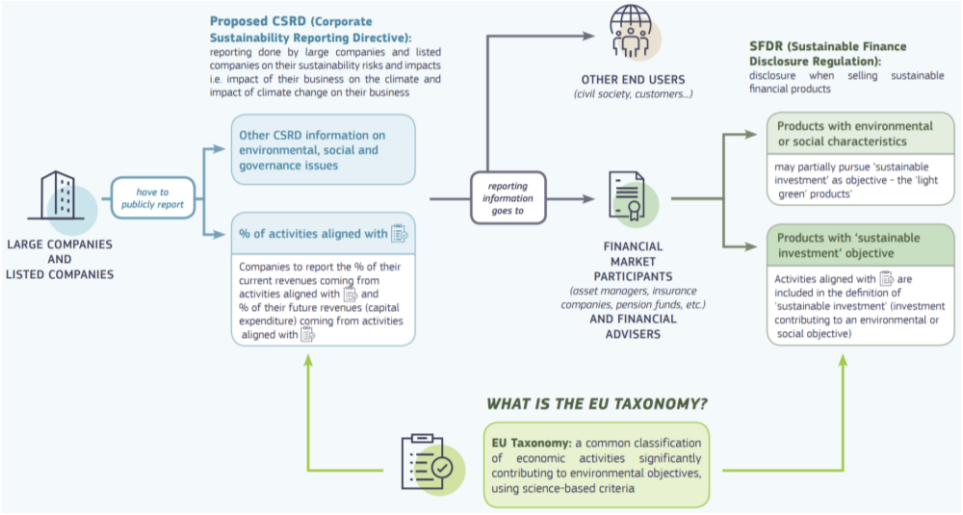

Figure 2 Examples of the relationship between the reporting and transparency requirements of the Taxonomy Regulation, SFDR and CSRD[104]

104. To facilitate the practical implementation of transparency requirements, the European Financial Reporting Advisory Group ("**EFRAG**") has developed EU standards for sustainability reporting (the European Sustainability Reporting Standards, "**ESRS**").[105] ESRS E1 relates to Climate Change. ESRS E1-1 relates to disclosures about transition plans aimed at climate mitigation, while ESRS E1-4 relates to disclosures about targets.

105. In response to calls within the EU to reduce the regulatory burden and administrative costs for EU businesses, among other things to improve the EU's competitiveness (see section 2.6 below), the EC presented a proposal on 26 February 2025 to simplify and harmonise current sustainability legislation (the "**Omnibus Package**").[106] The Omnibus Package aims to simplify several pieces of legislation, including the Taxonomy Regulation and the CSRD.[107] The

104 This graphic is included in EC, "Fact sheet: How does the EU Taxonomy fit within the Sustainable Finance Framework" (printout of 21 January 2026) (Exhibit ING-029).

105 On 25 December 2023, the delegated regulation containing the first set of ESRS entered into force. See Delegated Regulation (EU) 2023/2772 of 31 July 2023.

106 EC, "Commission simplifies rules on sustainability and EU investments, delivering over €6 billion in administrative relief" (printout of 11 December 2025) (Exhibit ING-030).

107 EC, "Commission Staff Working Document", SWD(2025) 80 final, 26 February 2025 (excerpt) ("EC, Commission Staff Working Document 2025") (Exhibit ING-031), p. 2-5.

Stop-the-Clock Directive was adopted as part of the Omnibus Package on 16 April 2025.[108]

(3) Due diligence

106. The next sector-agnostic component of EU climate policy is the Corporate Sustainability Due Diligence Directive ("**CSDDD**").[109] Through the CSDDD, the EU legislator intends to ensure that "*companies active in the internal market contribute to sustainable development and the sustainability transition of economies and societies*".[110] With this in mind, the CSDDD focuses on due diligence (Articles 5 to 16 CSDDD).

107. Due diligence is the process by which companies systematically identify, prevent, mitigate and end potential and actual negative impacts on human rights and the environment within their supply chains. While the CSDDD largely aligns with voluntary initiatives such as the United Nations Guiding Principles on Business and Human Rights ("**UNGPs**") and the Organization for Economic Cooperation and Development's Guidelines for Multinational Enterprises ("**OECD Guidelines**"),[111] it also contains provisions that deliberately deviate from these initiatives. The EU legislator did not consider all voluntary recommendations to be suitable legal norms.[112]

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108 Directive (EU) 2025/794 of 14 April 2025 ("Stop-the-Clock Directive"). Under the Stop-the-Clock Directive, companies are given an additional two years to comply with the CSRD's reporting requirements. EU Member States must transpose the directive into national law by 31 December 2025. See Article 3(1). The Dutch legislator did not meet this deadline and chose to combine the implementation of the Stop-the-Clock Directive and the expected implementation of the substantive directive. See Parliamentary Papers II 2025/26, 36 678, no. 10 (Letter to the Dutch House of Representatives on the CSRD implementation) (Exhibit ING-032), p. 3. See also *Parliamentary Papers II* 2025/26, 36 678, no. 11 (Letter to the Dutch House of Representatives on the CSRD implementation) (Exhibit ING-033), p. 2-3. In this letter, the Dutch Minister of Finance requested the Dutch House of Representatives to postpone a legislative debate on the implementation proposal scheduled for 2 March 2026, to allow the Dutch House of Representatives to align its consideration with the final amending directive following the Omnibus Package. See also section 2.6 above.

109 Directive (EU) 2024/1760 of 13 June 2024 ("CSDDD").

110 Recital 16 CSDDD.

111 See section 5.1 below.

112 EC, "Directive on Corporate Sustainability Due Diligence. Frequently asked questions", 19 July 2024 ("CSDDD FAQ") (Exhibit ING-034), p. 5.

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108. The EU legislator chose not to include climate change as a subject for due diligence under the CSDDD.[113] Consequently, under the CSDDD, companies are not required to conduct research into climate mitigation within their value chain. With respect to banks, the EU legislator goes one step further. In the CSDDD, the EU legislator has explicitly excluded financial institutions from performing due diligence on so-called downstream activities.[114] Thus, unlike other businesses, banks are not required to conduct due diligence on clients under the CSDDD.

109. As adopted in July 2024 and currently still in force, the CSDDD includes an obligation for companies to draw up a transition plan for climate change mitigation ("**CSDDD Climate Transition Plan Obligation**").[115] Article 22(1) CSDDD describes what these plans had to comply with, including time-bound targets, where appropriate emission reduction targets, and a description of the steps the company could take to achieve these targets.[116] Companies have a high degree of freedom and flexibility in determining their climate plans and the content thereof, and they can adjust them each year.[117]

110. However, with the Omnibus Package, the EU legislator has decided to ease the climate mitigation obligations for companies.[118] On 9 December 2025, following extensive negotiations, the EU legislator reached a provisional political agreement on part of the Omnibus package ("**Provisional Agreement**

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113 EC, "Minutes of the 2408th meeting of the Commission held in Brussels on Wednesday 23 and Thursday 24 February 2022", PV(2022) 2408 (final (English translation) (excerpt) ("EC, Minutes of the 2408th meeting") (Exhibit ING-035), p. 20-21: "*Lastly, Mr. REYNDERS explained that a different approach was proposed for climate change. Given that climate change mitigation commitments varied around the world and were linked to Member States' commitments, it was more difficult to translate them into clear obligations for companies and their value chains. For that reason, climate change was not covered by the due diligence proposal.*" See also EC, "Follow-up to the second opinion of the Regulatory Scrutiny Board", SWD(2022) 39 final, 23 February 2022 (excerpt) (Exhibit ING-036), p. 49: "*As explained in specific comment No. 7, due to a lack of clear obligations for companies climate change was excluded from due diligence obligations. Instead, the largest companies need to adopt a plan to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement.*"

114 Recital 26 CSDDD. Downstream activities include: "*activities of a company's downstream business partners related to the distribution, transport and storage of a product of that company, where the business partners carry out those activities for the company or on behalf of the company, and excluding the distribution, transport and storage of a product that is subject to export controls under Regulation (EU) 2021/821 or to the export controls relating to weapons, munitions or war materials, once the export of the product is authorised*". See Article 3(g)(ii) CSDDD.

115 The CSDDD has not been implemented yet in amongst other the Netherlands.

116 Article 22(1) CSDDD. Article 22(2) provides that companies that report a climate transition plan under the CSRD, or companies whose parent company does so, would by doing so satisfy the obligation in Article 22(1).

117 Article 22(3) CSDDD.

118 EC, Commission Staff Working Document 2025 (Exhibit ING-031), p. 2-5.

Omnibus").[119] In doing so, the EU legislator decided, among other things, to narrow the scope of the CSDD,[120] and remove the CSDDD Climate Transition Plan Obligation.[121] The EU legislator believed that the CSDDD Climate Transition Plan Obligation would impose an excessive administrative burden on companies.[122] According to the EU legislator, this obligation could lead to legal uncertainty, and its repeal would simplify the CSDDD obligations and facilitate more targeted and efficient implementation of the CSDDD.[123] The due diligence obligations have not been abolished. Companies are still not required to perform climate-related due diligence in their value chain. The exception for banks to conduct due diligence into clients has also been retained.

111. Thus, the EU has introduced a comprehensive package of measures to ensure it achieves its climate goals. The entire package is based on a careful and continuous assessment of the various interests affected by the measures, taking into account the existing EU legislative framework. The EU legislator has also explicitly considered the aim of creating a level playing field, maintaining competitiveness and providing companies with the flexibility and policy freedom needed to respond to developments. Because of this, in part, the EU legislator passed the Omnibus Package and relaxed certain obligations.

2.5 Financing the climate transition and the role of banks, including the need to manage climate risks

112. The Green Deal aims to reduce emissions in the real economy by means of large-scale transitions. To this end, the EU legislator has drafted a package of measures for a broad group of companies, as discussed in sections 2.3 and 2.4. In doing so, the EU legislator also expressly took into account the need for capital for these transitions and how to better match the supply and demand of such capital. The transparency measures described in section 2.4 thus in part serve

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119 Council of the EU, "Information notice on the outcome of the first reading of the European Parliament including Provisional Agreement Omnibus, 17078/25, 19 December 2025 ("Provisional Agreement Omnibus'). On 9 December 2025, the EC, the Council of the EU and the European Parliament reached a provisional agreement on the text of the directive amending the CSRD and CSDD, followed by the European Parliament's assent on 16 December 2025. Legal checks and translations are currently taking place, after which, the Council of the EU and the European Parliament will vote on the final texts and translations. This is expected to be in March 2026.

120 The Provisional Agreement Omnibus (Exhibit ING-037) limits the scope of the CSDDD to EU companies with (i) more than 5000 employees; and a (ii) net turnover of over EUR 1.5 billion; non-EU companies must generate a net turnover of more than EUR 1.5 billion within the EU; see recital 19(d) and Article 4(1a) which amends Article 2 CSDDD.

121 Recital 26 and Article 4(10) Provisional Accord Omnibus (Exhibit ING-037), which deletes Article 22 CSDDD.

122 Recital 26 Provisional Agreement Omnibus (Exhibit ING-037): "*The provisions of Directive (EU) 2024/1760 on the transition plan for climate change have been deemed to be disproportionate, particularly due to the administrative burden on companies and supervisory authorities, and could lead to legal uncertainty. It is necessary to repeal those provisions in order to streamline obligations and support a more targeted and efficient implementation of that Directive.*"

123 Recital 26 Provisional Agreement Omnibus (Exhibit ING-037).

to facilitate more appropriate investment decisions. Increased transparency and uniform reporting mean that in the coming years private investors including banks, will be able to make their investment decisions based on increasingly better information.

113. In addition, the EU legislator has examined the role banks can play in the climate transition (also see section 2.3 above). In that regard, the EU legislator has recognised that the role of banks in society and in relation to the real economy, within the EU and beyond, differs from that of undertakings operating in the real economy. After all, banks serve many societal and economic interests, the most important of which is financial stability.[124] The EU is also a highly "bank-based" economy, meaning that businesses and consumers receive most of their financing from banks. This makes it even more important that banks are stable. Chapter 4 provides a more detailed description of the context, societal role and systemic function of the banking sector in the transition. This section discusses the role of banks in EU climate policy.

114. In 2018, a High-Level Expert Group examined the role of banks in the climate transition, concluding that financial stability was a prerequisite for transitioning to a sustainable economy.[125] In March 2018, the EC endorsed these findings in the Sustainable Finance Action Plan.[126]

115. Banks are subject to prudential regulation and supervision (see chapter 4 below). The current regulatory framework has been significantly strengthened in response to the 2007–2008 financial crisis.[127] The Capital Requirements Regulation ("**CRR**")[128] and Capital Requirements Directive ("**CRD**")[129] introduced uniform rules for capital requirements, risk management, and disclosure for banks in the EU.[130] Following the Paris Agreement, prudential regulators (such as the European Banking Authority ("**EBA**") and supervisory authorities such as the European Central Bank ("**ECB**") and the Dutch Central Bank (*De Nederlandsche Bank*, "**DNB**") have increasingly focused on the climate-related financial risks to which banks are exposed.[131] Since then, the CRR and the CRD have been amended several times in line with EU climate policy. Since

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124 See, for example, J. de Larosière, *The High-Level Group on Financial Supervision in the EU*, 25 February 2009 (excerpt) (Exhibit ING-038), p. 13.

125 High-Level Expert Group on Sustainable Finance, *Final Report 2018*, 31 January 2018 (excerpt) (Exhibit ING-039), p. 68: "*Financial stability is a prerequisite for sustainability; to safeguard both, capital requirements must remain risk-based*."

126 Sustainable Finance Action Plan (Exhibit ING-012), p. 1-2. See section 2.2 above.

127 See, for example, recital 32 Regulation (EU) 575/2013 of 26 June 2013 ("CRR") and recital 51 Directive 2013/36/EU of 26 June 2013 ("CRD"). These changes were made in response to, among other things, the suggestions from norm-setting bodies at the international level such as the Basel Committee on Banking Supervision ("**BCBS**") and the Financial Stability Board ("**FSB**").

128 Regulation (EU) 575/2013 of 26 June 2013.

129 Directive (EU) 2013/36 of 26 June 2013.

130 See, for example, recitals 2 and 32 CRR and recitals 2, 43 and 80 CRD.

131 See, for example, ECB, *Guide on Climate and Environmental Risks*, November 2020 (Exhibit ING-040).

the entry into force of the Capital Requirements Regulation 2 ("**CRR2**")[132] in 2019, large listed banks were obliged to disclose information about their ESG risks (in the context of their "Pillar 3 disclosures).[133] The policy relating to Pillar 3 disclosures is intended to increase transparency and strengthen market discipline.[134]

116. In 2021, following the entry into force of CRR2 and Capital Requirements Directive 5,[135] the EBA reported, at the request of the EU legislator, on the integration of ESG risks into the supervisory framework.[136] In 2023, the EBA examined whether activities that raise ESG concerns should be subject to separate prudential scrutiny. The EBA concluded that this would not be justified, deeming it undesirable to penalise the holding of environmentally harmful assets.[137]

117. On 9 July 2024, the CRR and CRD were revised again by Capital Requirements Regulation 3 ("**CRR3**")[138] and Capital Requirements Directive 6 ("**CRD6**")[139] ("**Banking Package**").[140] The EU legislator indicated that banks "*have a relevant role to play in supporting that transition, which relates not only to capturing and supporting the opportunities that will arise but also to properly managing the risks that it may entail*." The EU legislator believes that "*an enhanced regulatory prudential framework"* is necessary as ESG risks *"can have implications for the stability of both individual institutions and the financial system as a whole".*[141] Among other things, the Banking Package introduces the following obligations for banks:

(a) an obligation to disclose ESG risks.[142] In addition, banks must report how they integrate risk into their business strategy and processes, governance and risk management;[143]

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132 Regulation (EU) 2019/876 of 20 May 2019 ('CRR2").
133 Article 449a CRR2. See also Implementing Regulation (EU) 2022/2453 of 30 November 2022.
134 EBA, "Transparency and Pillar 3" (printout of 21 January 2026) (Exhibit ING-041).
135 Directive (EU) 2019/878 of 20 May 2019 ("CRD5").
136 EBA, *Report on Management and Supervision of ESG Risks for Credit Institutions and Investment Firms*, 23 June 2021 (excerpt) (Exhibit ING-042), chapter 5.
137 EBA, *Report on the role of environmental and social risks in the prudential framework*, EBA/REP/2023/34, October 2023 (excerpt) (Exhibit ING-043), p. 22-23: "*The analysis presented in this report is not aimed at using prudential regulation to increase demand for environmentally and socially sustainable assets or penalize environmentally and socially harmful assets.* […] [A] *dedicated prudential treatment which would explicitly aim to redirect lending could have undesirable or unintended consequences, which could have an impact on financial stability.*"
138 Regulation (EU) 2024/1623 of 31 May 2024 ("CRR3").
139 Directive (EU) 2024/1619 of 31 May 2024 ("CRD6").
140 EC, *Banking Package*, October 26, 2021 (printout of 21 January 2026) (Exhibit ING-044).
141 Recital 37 CRD6. See also recital 39 CRD6.
142 Article 449a (1) and (2)(a) CRR.
143 Article 449a (2 (b) CRR.

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(b) an obligation to develop a prudential ESG plan and monitor its implementation.[144] Banks must ensure that financial risks arising from ESG factors are monitored and managed through strategies and procedures.[145] This includes risks arising from the implementation of EU climate legislation.[146] This is important given that "*those risks can have implications for the stability of both individual institutions and the financial system as a whole*".[147] On 8 January 2025, the EBA issued the Guidelines on the management of environmental, social and governance (ESG) risks ("**EBA ESG Guidelines**") in which the EBA emphasises the prudential nature of the ESG plan.[148] The EBA ESG Guidelines do not saddle banks with an "*exit or divest*[ment]" requirement from emission-intensive sectors.[149] Nor are banks required to enforce full alignment with EU targets or to follow a specific transition path.[150] Instead, the plans provide an explanation of the strategic actions and risk management tools used by banks to ensure their robustness and preparedness for the transition;[151] and

(c) an obligation to monitor and manage financial risks arising from ESG factors, including those arising from the transition to and a climate-neutral and more sustainable economy.[152]

118. The Banking Package expands the powers of supervisory authorities. Supervisory authorities ensure that banks implement sound strategies for monitoring ESG risks over different time periods.[153] They also oversee the

144 Article 76(2) CRD.
145 EBA, "*Guidelines on the management of environmental, social and governance (ESG) risks*", EBA/GL/2025/01, 8 January 2025 ("EBA ESG Guidelines") (Exhibit ING-045), nos. 14-15.
146 Article 76(2) CRD.
147 Recital 37 CRD6.
148 EBA ESG Guidelines (Exhibit ING-045), no. 12.
149 EBA ESG Guidelines (Exhibit ING-045), no. 18: "*It should also be pointed out that the goal of CRD-based plans is not to force institutions to exit or divest from greenhouse gas-intensive sectors but rather to encourage institutions to proactively reflect on technological, business and behavioral changes driven by the transition, to thoroughly assess the risks and opportunities they entail, and to prepare or adapt accordingly through structured transition planning, including by engaging with their clients and supporting them where appropriate, notwithstanding other mitigation actions consistent with sound risk management.*" See also p. 102.
150 EBA ESG Guidelines (Exhibit ING-045), no. 16: "*These guidelines do not require CRD-based plans to set out an objective of fully aligning with Member States or Union sustainability objectives or one specific transition trajectory.*" See also A.J.A.D. van den Hurk et al., "Het ene ESG-plan is het andere niet", *FR* 2025/3 (Exhibit ING-046), p. 46. See also Article 100(2) CRD on guidance on stress testing. See also EBA, "*Consultation Paper Draft Guidelines on the management of ESG Risks*", EBA/CP/2024/02, 18 January 2024 (excerpt) (Exhibit ING-047), p. 9, no. 15.
151 EBA ESG Guidelines (Exhibit ING-045), no. 20. See also no. 84.
152 EBA ESG Guidelines (Exhibit ING-045), nos. 14-15.
153 Article 87a(3) and (4) CRD.

implementation of stress tests to assess the long-term impact of ESG risks.[154] Moreover, supervisory authorities can issue risk mitigation instructions.[155]

119. The EBA also takes the specific consequences that supporting the climate transition may have for banks into account. For example, a bank's financed emissions could increase as a result of providing financing to companies that invest in making their activities more sustainable. While these investments are beneficial for the climate transition in the long term, they only result in higher "paper" emissions for the bank providing the financing (see sections 5.2 and 11.3 for more on this). The EBA therefore notes that banks are required to provide an explanation if they use financed emissions as a metric when monitoring the bank's transition risk profile:

> "*Institutions should complement these metrics with qualitative or quantitative information and criteria supporting the interpretation of their evolution over time, including e.g. a temporary increase due to the provision of transition finance to GHG-intense counterparties, and identifying the underlying drivers of the changes in emissions.*"[156]

120. With the transparency obligations discussed in section 2.4, the EU legislator aims to ensure that financiers and other market participants obtain a better understanding of the sustainability policies and sustainability risks, including climate risks, of other companies.[157]

121. Thus, the climate and energy transitions entail risks for companies in the real economy and, by extension, for banks. It is for this reason that the EU legislator tightened banking legislation in this area to support the Green Deal. In doing so, the EU legislator recognises that banks can contribute to the transition by providing capital or supporting clients. However, banks must also ensure that they remain stable and identify and manage all relevant risks.

2.6 The EU's continuous weighing up of interests, with a recent focus on competitiveness and energy security

122. The EU constantly evaluates the effectiveness and fairness of the regulatory framework discussed above, and whether it is on track to achieve its

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154 Article 87a(3) CRD.

155 Z.M. Knödler, "Greening prudential supervision: supervisory and regulatory responses to ESG risks" in: Van der Linden van Sprankhuizen et al. (eds.) *Ondernemingsgericht privaatrecht en ESG (O&R or. 145)*, 2024 (excerpt) (Exhibit ING-048), section 4.4.2. See also M. de Sá, "ESG and Banks: Towards Sustainable Banking in the European Union", in: P. Câmara et al. (eds.), *The Palgrave Handbook or ESG and Corporate Governance*, 2022 (excerpt) (Exhibit ING-049), p. 388.

156 EBA ESG Guidelines (Exhibit ING-045), no. 81(c).

157 See also Report of Professor Resti of 6 February 2026 (Exhibit ING-002A), section 2.1.

objectives.[158] The EU has stipulated in the Governance Regulation that it will monitor its policy in cycles and adjust it where necessary, in order to meet the objectives of the Energy Union,[159] achieve EU climate targets, and comply with reporting obligations under the UN Climate Convention and the Paris Agreement.[160] This requires a continuous weighing up of interests, taking into account not only climate issues, but other factors too.

123. Recently, renewed focus has been placed on (1) the competitiveness of the EU and (2) energy security.

(1) The importance of EU competitiveness

124. The increased focus on EU competitiveness is mainly due to the "Draghi Report: A Competitiveness Strategy for Europe", published on 9 September 2024 ("**Draghi Report**").[161] In this report, Draghi concludes – among other things – that the EU is lagging behind the United States and China in terms of innovation, competitiveness, and economic growth.[162] To restore competitiveness and stimulate economic growth, he recommends aligning and simplifying EU policy to reduce the regulatory burden and administrative costs for EU businesses.[163] In its "Competitiveness Compass", published on 29 January 2025, the EC agrees with this view.[164] According to the EC, the regulatory burden "*has become a brake on Europe's competitiveness*".[165] The European Climate Law,[166] the

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158 In its "State of the Energy Union Report 2024", the EC reported that existing EU regulations are effective in achieving EU climate targets, citing falling greenhouse gas emissions. EC, "State of the Energy Union Report 2024", COM(2024) 404 final, 11 September 2024 (Exhibit ING-050), p. 2 and 15. That the EU is "on track" to meet its target of 55% emissions reductions by 2030 is also evident from EC, "EU Climate Action Progress Report 2024", COM(2024) 498 final, 31 October 2024 (excerpt) (Exhibit ING-051), p. 6; EC, State of the Union 2025, From Promise to Progress: the first year of this term of office, Commission-Von der Leyen 2024-2029", 10 September 2025 (excerpt) (Exhibit ING-052) p. 14; EEA, *Europe's environment and climate: knowledge for resilience, prosperity and sustainability*, 29 September 2025 (excerpt) (Exhibit ING-053), p. 9-10; EU NDC 2025 (Exhibit ING-011), no. 83 and 90 from which it follows that the EU expects to meet its 2030 target. It follows from EC, "Climate Action Progress Report 2025", November 2025 (excerpt) (Exhibit ING-054), p. 17, that a 37% reduction from 1990 levels had been achieved by 2024.

159 The Energy Union rests on five closely linked pillars. These pillars include (i) security of energy supply (energy security); (ii) a well-functioning integrated internal energy market; (iii) promoting energy efficiency; (iv) decarbonisation; and (v) research, innovation and competitiveness. See Recital 2 and Article 1(2) Regulation (EU) 2018/1999 of 11 December 2018 ("Governance Regulation").

160 Governance Regulation. See also Article 13 European Climate Law.

161 EC, "The future of European competitiveness, Part A: A competitiveness strategy for Europe," 9 September 2024 ("Draghi Report") (Exhibit ING-055). Part B contains in-depth analysis and recommendations.

162 Draghi Report (Exhibit ING-055), p. 6-8, 12, 28-32 and 39.

163 Draghi Report (Exhibit ING-055), p. 67-69.

164 EC, "A Competitiveness Compass for the EU" COM(2025) 30 final, 29 January 2025 ("EC, EU Competitiveness Compass") (Exhibit ING-056), p. 4. See also EC, "An EU Compass to regain competitiveness and secure sustainable prosperity", 29 January 2025 (press release) (printout of 27 January 2026) (Exhibit ING-057).

165 EC, EU Competitiveness Compass (Exhibit ING-056), p. 20.

166 Recital 34 European Climate Law.

Governance Regulation,[167] and the "Action Plan for Affordable Energy" published on 26 February 2025,[168] also emphasise the importance of EU competitiveness.

125. As explained in section 2.4, the Omnibus Package aims to simplify current sustainability legislation, including the Taxonomy Regulation, the CSRD and the CSDDD, with the aim of strengthening the competitive position of European businesses visible in other areas of EU policy.[169] A comparable trend is visible in other elements of EU policy.[170] As part of the Omnibus Package, the EC has tasked EFRAG with simplifying the ESRS as well.[171] The EC's Strategy for a Stronger Single Market presented on 21 May 2025 also highlights the need to simplify complex and overlapping rules.[172]

(2) Ensuring energy security

126. Since the Russian invasion of Ukraine in 2022, the importance of energy security and independence from Russian fossil fuels has increased. As part of the REPowerEU plan ("**REPowerEU Plan**"), the EC emphasised the need for investment in gas and electricity infrastructure and hydrogen development, with a role for nuclear energy.[173] Existing coal capacity may also be used for longer than initially expected.[174]

127. In early 2025, the EC concluded that the REPowerEU Plan had made an effective contribution to reducing dependence on Russian gas.[175] Despite this progress, the EU still imported a large amount of energy from Russia in 2024.[176] In light of the associated economic and security risks to the EU and its Member States,[177]

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167 Article 1(2)(e) Governance Regulation.

168 EC, "Action Plan for Affordable Energy. Unlocking the true value of our Energy Union to secure affordable, efficient and clean energy for all Europeans", COM(2025) 79 final, 26 February 2025 (excerpt) ("EC, Action Plan for Affordable Energy") (Exhibit ING-058), p. 1-2.

169 EC, Commission Staff Working Document 2025 (Exhibit ING-031), p. 2-5.

170 In addition to the simplification of sustainability legislation, the EC has submitted nine other simplification proposals to the Council and Parliament since February 2025 in the areas of EU investment, common agricultural policy, small midcaps and digitalization, defence readiness, chemicals, digital, environment, automotive and food and animal feed safety. See European Council and Council of the EU, "Simplification of EU Rules" (printout of 5 February 2026) (Exhibit ING-059).

171 On 3 December 2025, EFRAG released and submitted an updated set of ESRS to the EC. See EFRAG, *EFRAG provides its technical advice on draft simplified ESRS to the European Commission*, 3 December 2025 (Exhibit ING-060). The EC will review the adapted set, adjust it where necessary and then make it mandatory as the reporting standard that companies must apply to comply with the CSRD.

172 EC, "The Single Market: our European home market in an uncertain world A Strategy for making the Single Market simple, seamless and strong", COM(2025) 500 final, 21 May 2025 (excerpt) (Exhibit ING-061), p. 2-4.

173 REPowerEU Plan (Exhibit ING-024), p. 1-3.

174 REPowerEU Plan (Exhibit ING-024), p. 3.

175 EC, "Roadmap towards ending Russian energy imports", COM(2025) 440 final, 6 May 2025 ("EC, Roadmap towards ending Russian energy imports") (Exhibit ING-062), p. 1; EC, Action Plan for Affordable Energy (Exhibit ING-058), p. 4 and 23.

176 EC, Roadmap towards ending Russian energy imports (Exhibit ING-062), p. 1.

177 EC, Roadmap towards ending Russian energy imports (Exhibit ING-062), p. 1.

the EU is moving towards a "*gradual removal of Russian oil, gas and nuclear energy from the EU markets*" while limiting the impact on prices and markets.[178]

128. In late 2025, the EC published an analysis of current EU legislation on security of electricity and gas supply. Proposals to amend the current legislation are expected to be published by the EC in the first half of 2026.[179]

2.7 EU climate policy respects freedom of movement and the level playing field

129. EU climate policy was devised, drafted and implemented within the existing EU statutory framework. An important part of this is the single market with its principle of economic freedom,[180] and based on "*an open market economy with free competition*"[181] ensuring that competition is not distorted.[182]

130. People and goods can move freely across borders within the internal market. Companies can provide their services and supply capital freely within the EU. Restrictions on these freedoms are only permitted if they are justified by overriding reasons of public interest, and are applied without discrimination. Restrictions must be proportionate and suitable for achieving the objective pursued. They must not go beyond what is necessary to achieve that objective.[183]

131. The internal market and the associated freedoms of movement, combined with competition law,[184] ensure a level playing field for individuals and businesses in the EU.[185] Companies from different Member States must be able to operate under equal competitive conditions within the EU without national rules or government intervention creating unjustified advantages or barriers. The level playing field is essential to achieving that goal.[186]

132. Member States must therefore implement and enforce EU legislation consistently. In areas of shared competence between the EU legislator and

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178 EC, "EU to fully end its dependency on Russian energy", 6 May 2025 (press release) (printout of 27 January 2026) (Exhibit ING-063). In line with this, on 3 December 2025, the European Parliament and the Council reached a preliminary political agreement on phasing out Russian gas imports, ending gas imports from Russia by November 2027. See EC, "EU agrees to permanently stop Russian gas imports and phase out Russian oil", 3 December 2025 (press release) (printout of 5 February 2026) (Exhibit ING-064).

179 EC, "Commission publishes 'fitness check' on EU laws covering the security of electricity and gas supply in view of future revision", 5 January 2026 (printout of 5 February 2026) (Exhibit ING-065).

180 C. Barnard, *The Substantive Law of the EU: The Four Freedoms*, 2022 (excerpt) ("Barnard 2022") (Exhibit ING-066), p. 4.

181 Article 119, 120, 127, 170 and 173 Treaty on the Functioning of the European Union ("TFEU").

182 Protocol (No. 27) on the Internal Market and Competition (to the Treaty on the European Union ("TEU")).

183 ECJ 30 November 1995, C-55/94, ECLI:EU:C:1995:411 (*Gebhard*), para. 37.

184 EC, EU Competitiveness Compass (Exhibit ING-056), p. 8-9.

185 Article 3(3) TEU. See also F. Zuleeg, "The end of the level playing field?", *European Policy Centre*, 1 October 2020 (Exhibit ING-067).

186 W.T. Eijsbouts et al. (red.), *Europees Recht Algemeen Deel*, 2020 (excerpt) (Exhibit ING-068), p. 201-203.

Member States, such as the internal market, the environment and energy,[187] Member States can only take measures themselves if the EU legislator has not already exercised its legislative competence.[188] Even then, these measures must be compatible with harmonised EU legislation. This follows, for example, from the principle of sincere cooperation.[189] Under this principle, Member States – including national judiciaries[190] – "*shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives*".[191] Under the principle of proportionality, a national measure must also be proportionate – i.e. suitable and necessary – to achieve the desired objective.[192] This prevents differences in national legislation that distort fair competition in the internal market.[193]

2.8 Conclusion: EU climate policy is the result of weighing up interests while paying due regard to the need for a sound financial sector

133. The EU recognises the dangers of climate change, and, like its Member States, it is a party to the Paris Agreement. When developing its climate policy, the EU legislator carefully considered many factors, including energy security and independence, a level playing field, a well-functioning internal market and sufficient competitiveness.

134. To this end, the EU legislator has established a comprehensive climate policy focusing on appropriate market mechanisms by sector. Reduction obligations for individual companies do not form part of this approach.

135. In the CSDDD, the EU legislator did create obligations for companies to conduct due diligence in their value chains. However, the EU legislator chose not to include climate in the scope of the due diligence to be performed. Moreover, for financial institutions, the EU legislator decided to include an exception, exempting them from conducting due diligence with regard to clients.

136. The EU legislator has specifically considered that the climate transition will benefit from increased transparency in the market. This can help market participants adequately factor their sustainability preferences into their commercial decisions (including investment decisions). On top of this, the EU legislator has found it paramount that banks contribute to financial stability

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187 Article 4(2) TFEU.
188 Article 2(2) TFEU.
189 Article 4(3) TEU. The principle of sincere cooperation is "*of fundamental importance* [...] *and* [holds] *a key position in EU law*". See F. Amtenbrink et al., *Recht van de Europese Unie,* 2022 (excerpt) (Exhibit ING-069), p. 77-78.
190 CJ EU 14 December 2000, C-300/98 and C-392/98, ECLI:EU:C:2000:688 (*Dior*), paras. 36-38.
191 Article 4(3) TEU.
192 CJ EU 13 July 2017, C-129/16, ECLI:EU:C:2017:547 (*Túrkevei Tejtermelő*), paras. 61 and 66.
193 Article 114 TFEU. See also EC, "Enforcing EU law for a Europe that delivers," COM(2022) 518 final, 13 October 2022 (Exhibit ING-070), p. 4-5. See also E. Versluis, "Even Rules, Uneven Practices: Opening the 'Black Box' of EU Law in Action", *West European Politics* (30) 2007/1 (Exhibit ING-071), p. 50.

for the benefit of the climate transition. It is up to banks to manage the risks associated with the various transitions within the EU.

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3 DUTCH CLIMATE POLICY

Key points of this chapter

- The Dutch legislator endorses the importance of a single EU climate policy for the sake of policy effectiveness and to protect the internal market, among other reasons. The Dutch legislator therefore explicitly aligns itself with the EU's objectives and policies, without imposing "national gold-plating'.
- The Dutch legislator has repeatedly rejected rules imposing directly binding reduction obligations on individual companies.
- Following extensive research, the Dutch legislator decided against implementing additional measures for the financial sector as they would, in the words of the legislator, be ineffective, inefficient and impractical. Dutch climate policy is determined in part by geopolitical developments and other significant interests, which the legislator must continually consider when making policy decisions.

137. EU climate policy was outlined in the previous chapter. In that context, it was discussed that the EU legislator and Member States share competence in climate matters. This means that Member States, including the Netherlands, can only adopt national policy and regulatory measures in areas where the EU legislator has not already exercised its competence. This chapter discusses Dutch climate policy against that backdrop.

138. First, ING discusses the policy itself (section 3.1), followed by the choices made by the Dutch legislator to align with EU policy without imposing "national gold-plating" (section 3.2), the decision not to impose individual reduction obligations on companies (section 3.3), and the decision not to lay down additional measures for the financial sector (section 3.4). Finally, it discusses a number of recent developments that have prompted the Dutch legislator to adjust the policy (section 3.5). Dutch climate policy therefore focuses on achieving a transition in the real economy, while also seeking to align itself with EU climate policy (section 3.6).

3.1 Dutch climate policy: sectoral measures based on market mechanisms and subsidies

139. In 2017, the Netherlands committed itself to the goals contained in the Paris Agreement by ratifying it.[194] The Dutch State had already begun implementing climate policy even before the publication of the Green Deal in December

[194] United Nations Treaty Collection, "Paris Agreement" (available at https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=xxvii-7-d&chapter=27, last accessed 5 February 2026). The Netherlands ratified the Paris Agreement on 28 July 2017.

2019.[195] Things began with the Climate Agreement (*klimaatakkoord*, "**Dutch Climate Agreement**").[196] The Dutch legislator opted for non-legally enforceable sectoral measures and agreements aimed at reducing greenhouse gas emissions.[197] Reductions had to be achieved while maintaining a level playing field for businesses and in a way that was feasible, affordable, cost-effective and future-proof for everyone.

140. As part of the Dutch Climate Agreement, around fifty banks, insurers, pension funds and asset managers made agreements in 2019 with the aim of contributing to that goal ("**Climate Commitment**").[198] The Climate Commitment consists of four core agreements, whereby the parties commit to the following actions, in accordance with their role in the financial chain, their responsibilities, and their capabilities:

(a) the parties will endeavour to contribute to financing the energy transition, in line with prudential regulations and risk-return objectives for financial institutions;

(b) the parties will measure and report on the emissions associated with their relevant financing and investment activities, based on an appropriate and self-selected methodology;

(c) by 2022 at the latest, the parties will publish action plans, including reduction targets for 2030, for relevant financing and investments. The chosen measures may consist of a combination of approaches, such as

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195 The development of this climate policy was partly prompted by the ongoing *Urgenda* case at the time. Ultimately, after the case was heard at three instances, it was decided that the Dutch State must take measures to prevent climate change and reduce its greenhouse gas emissions by at least 25% by the end of 2020 compared to 1990 levels. See The Hague District Court 24 June 2015, ECLI:NL:RBDHA:2015:7145, The Hague Court of Appeal 9 October 2018, ECLI:NL:GHDHA:2018:2591 and Dutch Supreme Court 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*). See also *Parliamentary Papers II* 2014/15, 32 813, no. 103 (Letter to the Dutch House of Representatives on Urgenda judgment) (Exhibit ING-072), p. 2; *Parliamentary Papers II* 2015/16, 32 813, no. 122 (Letter to the Dutch House of Representatives on interdepartmental policy study on cost-effectiveness of CO2 reduction measures) (Exhibit ING-073), p. 1; *Parliamentary Papers II* 2016/17, 30 196, no. 503 (Letter to the Dutch House of Representatives on Energy Agreement progress report 2016) (Exhibit ING-074), p. 4; *Parliamentary Papers II* 2015/16, 30 196, no. 380 (Letter to the Dutch House of Representatives on phasing out coal-fired power plants) (Exhibit ING-075), p. 2.

196 Dutch Climate Agreement of 28 June 2019 (excerpt) ("Dutch Climate Agreement") (Exhibit ING-076). The Dutch Climate Agreement lays down agreements following from the "sector tables" in the areas of electricity, industry, built environment, mobility and agriculture and land use. See Dutch Climate Agreement (Exhibit ING-076), p. 4.

197 *Parliamentary Papers II* 2018/19, 32 813, no. 342 (Letter to the Dutch House of Representatives on Climate Agreement proposal) (Exhibit ING-077), p. 2-3. See also Appendix to *Parliamentary Papers II* 2017/18, 32 813, no. 190 (Climate Council's responses to committee questions on the Dutch Climate Agreement) (Exhibit ING-078), p. 2.

198 Climate Commitment of 10 July 2019 ("Climate Commitment") (Exhibit MD-166). The Climate Commitment is an "*integral part*" of the Dutch Climate Agreement. See Dutch Climate Agreement (Exhibit ING-076), p. 230 and Climate Commitment (Exhibit MD-166), p. 1.

emission reduction targets where possible, engagement or financing for sustainable projects; and

(d) the parties will consult annually on the progress of implementing the agreements.[199]

141. Like the Dutch Climate Agreement, the Climate Commitment is not legally enforceable.[200]

142. On 1 September 2019, the Dutch Climate Act (*Nederlandse Klimaatwet*, "**Dutch Climate Act**") was introduced,[201] setting a target for the Netherlands to reduce greenhouse gas emissions by 55% by 2030 compared to 1990, with the aim of achieving net zero emissions by 2050.[202] Every five years, the responsible minister must draw up a climate plan for the following ten years.[203]

143. The Dutch Climate Act applies to government policy itself.[204] This policy focuses on specific sectors and measures, including energy,[205] industry, [206] and the built environment.[207] Examples of these measures include the "National Programme

199 Dutch Climate Agreement (Exhibit ING-076), p. 230 and Climate Commitment (Exhibit MD-166), p. 1.

200 See also Appendix to *Parliamentary Papers II* 2017/18, 32 813, no. 190 (Climate Council's responses to committee questions on the Dutch Climate Agreement) (Exhibit ING-078), p. 2.

201 Act of 2 July 2019 establishing a framework for developing policies aimed at a permanent and gradual reduction of greenhouse gas emissions in the Netherlands with the purpose of curbing global warming and climate change (Climate Act, *Klimaatwet*) (*Bulletin of Acts and Decrees* 2019, 253) amended by the Act of 10 July 2023 amending the Climate Act (implementing European Climate Law) (*Bulletin of Acts and Decrees* 2023, 271) and amended by the Act of 13 November 2025 correcting legislative defects and omissions and making other amendments to various legislative provisions in the area of the Dutch Ministry of Climate and Green Growth (*Bulletin of Acts and Decrees* 2025, 349).

202 Article 2(1)(a) and (2) Dutch Climate Act. The Dutch Climate Act explicitly refers to the European Climate Act, which includes the same reduction target.

203 Article 3(1) and Article 4(1) Dutch Climate Act.

204 *Parliamentary Papers II* 2015/16, 34 534, no. 3 (Explanatory memorandum Dutch Climate Act) (Exhibit ING-079), p. 20. Moreover, the targets applicable to the Dutch government are not intended to be legally enforceable. See *Parliamentary Papers II* 2018/19, 34 534, no. 13 (Memorandum in response to the Report on the Dutch Climate Act) (Exhibit ING-080), p. 2.

205 Appendix to *Parliamentary Papers II* 2023/ 24, 32 813, no. 1319 (National Energy System Plan) (excerpt) (Exhibit ING-081), section 1.1. See also Appendix to *Parliamentary Papers II* 2024/25, 33 561, no. 85 (Development Framework for Offshore Wind Energy) (excerpt) (Exhibit ING-082), p. 11-13; Appendix to *Parliamentary Papers II* 2025/26, 33 043, no. 119 (Climate and Energy Memorandum 2025) (excerpt) (Exhibit ING-083), p. 33-48.

206 *Appendix to Parliamentary Papers II* 2024/25, 32 813, no. 1501 ("Draft Climate Plan 2025-2035") (Exhibit ING-084), p. 40; *Parliamentary Papers II* 2022/23, 29 826, no. 176 (Letter to the Dutch House of Representatives on the Announcement of the National Programme for the Decarbonisation of Industry) (excerpt) (Exhibit ING-085), p. 9.

207 Title 4.5 of the Regulation on National Subsidies (*Regeling nationale EZK- en LNV-subsidies*) by the Dutch Ministry of Economic Affairs and Climate Policy and the Dutch Ministry of Agriculture, Nature and Food Quality, last amended by order of the Dutch Minister of Economic Affairs on 28 August 2024 (*Government Gazette* 2024, 28335); SVOH, last amended by order of the Dutch Minister of Housing and Spatial Planning on 27 December 2024 (*Government Gazette* 2024, 38621); Decree of 3 July 2018, laying down rules on buildings in the physical living environment (*Besluit bouwwerken leefomgeving,* "Buildings Decree for the Living Environment"), sections 3.4.1 en 4.4.1.

for Sustainable Industry" (*Nationaal Programma Verduurzaming Industrie*),[208] which aims to create favourable conditions and stimulate investment, and the "Subsidy Scheme for Sustainability and Maintenance of Rental Homes" (*Subsidieregeling Verduurzaming en Onderhoud Huurwoningen*, "**SVOH**"), which encourages landlords to make their rental homes more sustainable.[209] The government is also promoting Carbon Capture and Storage ("**CCS**") technology,[210] which captures and stores CO_2, through the subsidy scheme called "Sustainable Energy Production and Climate Transition Incentive Scheme" (*Stimulering Duurzame Energieproductie en Klimaattransitie*).[211]

144. To reserve and make financial resources available in the medium term for measures supporting the targets set out in the Dutch Climate Act, the Dutch legislator introduced the Climate Fund (temporary provisions) Act (*Tijdelijke Wet Klimaatfonds*).[212]

145. Accordingly, since 2019, the Dutch legislator has implemented a comprehensive climate policy comprising sectoral and sector-agnostic measures, market mechanisms and subsidies to promote sustainability in the real economy.

3.2 The Dutch legislator does not want "national gold-plating" that goes beyond EU policy

146. The Dutch legislator has chosen to align its climate policy with EU climate policy, rather than setting a stricter target than the EU's.[213] The Council of State advised that a stricter target in the Netherlands could lead to a "water bed effect",

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208 Parliamentary Papers II 2022/23, 29 826, no. 176 (Letter to the Dutch House of Representatives on the Announcement of the National Programme for the Decarbonisation of Industry) (excerpt) (Exhibit ING-085), p. 9.

209 SVOH, most recently amended by order of the Dutch Minister of Housing and Spatial Planning on 27 December 2024 (*Government Gazette* 2024, 38621).

210 CCS is the capture, transport and storage of CO_2, to prevent emissions from being released into the atmosphere. See *Parliamentary Papers II* 2024/25, 32 813, no. 1505 (Letter to the Dutch House of Representatives on developments in and the future of CCS) (Exhibit ING-086), p. 1.

211 Sustainable Energy Production and Climate Transition (Stimulation) Decree and General Implementing Regulations Promoting the Sustainable Production of Energy and Climate Transition (*Besluit stimulering duurzame energieproductie en klimaattransitie en Algemene uitvoeringsregeling stimulering duurzame energieproductie en klimaattransitie*), last amended by Decree of 6 June 2024 (*Bulletin of Acts and Decrees* 2024, 163). Resulting from Directive (EU) 2018/2001 of 11 December 2018 amended by Directive (EU) 2023/2413 of 18 October 2023. See also *Parliamentary Papers II* 2024/25, 32 813, no. 1505 (Letter to the Dutch House of Representatives on developments in and the future of CCS) (Exhibit ING-086), p. 2. The EU has similar legislation: the NZIA. See section 2.4 above.

212 Act of 20 December 2023, laying down temporary rules on the establishment of a Climate Fund (*Bulletin of Acts and Decrees* 2024, 16) (*Tijdelijke wet Klimaatfonds*, "Temporary Climate Fund Act").

213 *Parliamentary Papers II* 2018/19, 32 813, no. 342 (Letter to the Dutch House of Representatives on Climate Agreement proposal) (Exhibit ING-077), p. 1. See also Dutch Climate Agreement (Exhibit ING-076), p. 7-8 and "Aan de slag. Bouwen aan een beter Nederland", *Coalition Agreement 2026-2030* (excerpt) (*Coalitieakkoord 2026-2030,* "Coalition Agreement 2026-2030") (Exhibit ING-087), p. 25.

meaning more emissions could be released at a later time or in another place, and could give Dutch companies a competitive disadvantage.[214]

147. In view of the importance of international competitiveness and maintaining a level playing field,[215] the Dutch government emphasised that it would adhere to the existing climate and energy targets and only set additional targets if those set for 2030 and 2050 were not achieved:

> "*Climate policy must be bearable, achievable and performable; it is crucial that citizens and businesses have a clear perspective for action. We will adhere to existing agreements; only if we fail to achieve targets will we develop alternative policy. There will be no new national gold-plating that goes beyond European policy.*"[216]

148. The government subsequently confirmed this on repeated occasions.[217] The Dutch House of Representatives also expressly opposed "national gold-plating" that goes beyond EU policy.[218] In addition, the recent coalition agreement explicitly endorses the Omnibus Package. The new coalition has further agreed to "*make agreements with regulators to interpret rules no more strictly than necessary and reduce administrative burdens*."[219]

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214 *Parliamentary Papers II* 2015/16, 34 534, no. 5 (Opinion of the Advisory Division of the Council of State and response of the initiators of the Dutch Climate Act) (Exhibit ING-088), p. 12. See also *Parliamentary Papers II* 2017/18, 34 534, no. 10 (Memorandum of Amendment to the Dutch Climate Act) (Exhibit ING-089), p. 8.

215 *Parliamentary Papers II* 2024/25, 32 852, no. 323 (Letter to the Dutch House of Representatives on the interim report of the EU Rapporteur on the circular economy) (Exhibit ING-090), p. 2: "*For the sake of international business competitiveness and a level playing field, the preferred option is to develop European laws and regulations.*" See also Appendix to *Parliamentary Papers II* 2023/ 24, 36 471, no. 96 (Government programme Elaboration of the Outline Agreement by the Cabinet) (excerpt) (Regeerprogramma 2024, "Government Programme 2024") (Exhibit ING-091), p. 8 and 60; *Parliamentary Papers II* 2024/25, 32 852, no. 334 (Report of a Committee Debate on the circular economy) (excerpt) (Exhibit ING-092), p. 35 and Coalition Agreement 2026-2030 (Exhibit ING-087), p. 26.

216 Appendix to *Parliamentary Papers II* 2023/ 24, 36 471, no. 37 (Outline Agreement 2024-2028) (Exhibit ING-093), p. 13. See also Government Program 2024 (Exhibit ING-091), p. 8, 56-57, 60.

217 Draft Climate Plan 2025-2035 (Exhibit ING-084), p. 24. See also p. 34 and 62; *Parliamentary Papers II* 2024/25, 22 112, no. 4049 (Report of a written consultation on Omnibus I) (excerpt) (Exhibit ING-094), p. 5 and 20-21; *Parliamentary Papers II* 2024/25, 22 112, no. 4048 (List of questions and answers on Omnibus I) (excerpt) (Exhibit ING-095), p. 25; Coalition Agreement 2026-2030 (Exhibit ING-087), p. 29. EPBD IV will also be implemented without "national gold plating". *Parliamentary Papers II* 2024/25, 22 112, no. 4107 (Letter to the Dutch House of Representatives on the implementation of EPBD IV) (Exhibit ING-096), p. 4.

218 On 20 May 2025, the Dutch House of Representatives passed a motion to remove with respect to the national implementation of the CSDDD "*all existing gold plating from Dutch law*". See *Parliamentary Papers II* 2024/25, 21 501-02, no. 3151 (Motion on removing gold plating) (Exhibit ING-097) and *Proceedings II* 2024/25, no. 85, item 8 (Vote on motion) (Exhibit ING-098).

219 Coalition Agreement 2026-2030 (Exhibit ING-087), p. 29.

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3.3 The Dutch legislator has repeatedly rejected individual reduction obligations for companies

149. Like the Green Deal,[220] Dutch climate policy does not impose emission reduction obligations on companies. The Dutch legislator has explicitly rejected such legally enforceable obligations.

150. On 9 November 2021, the Dutch House of Representatives rejected a proposal to "*impose an absolute reduction obligation for scopes 1, 2 and 3 on all Dutch companies with global emissions exceeding 50 megatons per year, in line with the 1.5°C target set out in the Paris Agreement*" by a majority of almost three-quarters of the votes".[221] A proposal to "*introduce a binding climate obligation on companies*" was also rejected by a similar margin.[222]

151. On 23 November 2022, the Dutch Minister of Economic Affairs and Climate Policy informed the Dutch House of Representatives that individual companies – in view, in part, of the importance of a level playing field in Europe – are not and should not be directly bound by the Paris Agreement climate target:

> "*I do not think it is wise to directly bind individual companies to the Paris climate target. With the Green Deal, we in the EU have taken on an ambitious task, translating it into binding effort commitments for each Member State in collaboration with all EU countries. We have also set up a well-functioning emissions trading system (ETS) for large electricity producers and industrial companies, meaning that all large European companies face the costs of their emissions. However, the ETS also ensures a level playing field within Europe and provides a strong financial incentive to reduce emissions in the most economically efficient way.*"[223]

152. In the private member's legislative proposal proposing the "Responsible and Sustainable International Business Conduct Act" (*Wet verantwoord en duurzaam internationaal ondernemen,* "**WVDIO Proposal**"), a conscious decision was likewise made not to include individual reduction percentages for companies, even though such percentages had been included in an earlier version.[224]

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220 See section 2.3 above.

221 *Parliamentary Papers II* 2021/22, 35 925 XIII, no. 45 (Motion on the imposition of an absolute reduction obligation) (Exhibit ING-099) and *Proceedings II* 2021/22, no. 19, item 10 (Votes) (Exhibit ING-100), p .4.

222 *Parliamentary Papers II* 2021/22, 35 925 XIII, no. 43 (Motion on a binding climate obligation) (Exhibit ING-101) and *Proceedings II* 2021/22, no. 19, item 10 (Votes) (Exhibit ING-100), p. 4.

223 Written answers to parliamentary questions raised during the budget debate on Economic Affairs and Climate on 22 November 2022, 23 November 2022 (excerpt) (Exhibit ING-102), p. 36.

224 *Parliamentary Papers II* 2022/23, 35 761, no. 9 (Amended WVDIO proposal) (Exhibit ING-103), p. 6-7, the reduction percentage was regulated in Article 2.4.2 It follows from *Parliamentary Papers II* 2022/23, 35 761, no. 17 (Memorandum of Amendment WVDIO) (Exhibit ING-104), p. 4 that the relevant Article 2.4.2 has been repealed.

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According to the legislative proposal's authors, this brought the WVDIO Proposal more in line with EU policy.[225]

153. Consequently, the Dutch legislator has not imposed any directly binding reduction obligations on individual companies. This is a deliberate choice. In response to the Court of Appeal's judgment in the Shell case, the Dutch Minister of Climate Policy and Green Growth reconfirmed this, stating:

> "*I can well understand the Court's reasoning. Current European and Dutch climate legislation does not set absolute emission reduction percentages for individual companies. European and national climate policy encompasses a broad package of incentives, pricing measures and standards to achieve climate targets.*"[226]

3.4 No additional measures for financial sector

154. Following the introduction of the Dutch Climate Act, the Dutch legislator considered introducing additional climate measures for the financial sector. In March 2023, the Dutch Minister of Finance launched an exploratory study to this end. Three options were considered:

> "*1. a best-efforts obligation to align financing and investments with the objectives of the Paris Agreement;*
>
> *2. an obligation to develop a climate plan with clear guidelines on its content and implementation; and*
>
> *3. an extension of the legal requirements to pursue an engagement policy on climate issues*."[227]

155. The Dutch Minister of Finance concluded that it was not advisable to "*proceed with additional national legislation on top of all existing European regulations*".[228] According to the Minister, the measures under consideration were neither expedient, effective nor efficient:

> "*Firstly, in my view, the measures under consideration are not an appropriate instrument for achieving broader sustainability objectives. The measures proposed in the exploratory study will not effectively or*

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225 *Parliamentary Papers II* 2022/23, 35 761, no. 16 (Memorandum in response to the Report on the WVDIO) (excerpt) (Exhibit ING-105), p. 2.

226 Appendix to *Proceedings II* 2024/25, no. 865 (Parliamentary questions and answers on court of appeal ruling in Milieudefensie v. Shell) (Exhibit ING-106), p. 2.

227 *Parliamentary Papers II* 2022/23, 32 013, no. 281 (Letter to the Dutch House of Representatives on an exploration of climate measures in the financial sector) (Exhibit ING-107), p. 5 (underlining added).

228 *Parliamentary Papers II* 2024/25, 32 013, no. 304 (Letter to the Dutch House of Representatives on the outcome of the study on climate measures for the financial sector) (Exhibit 108-ING), p. 2. The Dutch Minister of Finance had already previously let it be known he would not impose any new climate measures on the financial sector. See *Parliamentary Papers II* 2024/25, 32 013, no. 302 (Letter to the Dutch House of Representatives on vision on the financial sector) (Exhibit ING-109), p. 11: "*Finally, in light of this, I will not impose any new reporting or other obligations on financial institutions through additional national regulations regarding sustainable financing. I will also not take any further steps on national legislative proposals in this area.*"

> *expediently increase the financial sector's contribution to the transition. The effectiveness of most of the measures in promoting sustainability in the real economy is unclear because financial institutions can simply 'go green' by divesting emission-intensive assets. Cutting off funding for emission-intensive industries that need to reform, such as the steel and cement industries, will not necessarily make the real economy more sustainable. These sectors actually need financing in order to go green. The measures under consideration are therefore insufficiently effective.*"[229]

156. The Dutch Minister of Finance also rejected a proposal to require financial institutions to invest more in the energy transition because "*the investment policy of institutions* [is] *primarily a matter for the companies themselves*".[230]

157. Additional measures for the financial sector could also "*adversely affect* the *competitive position of the Dutch financial sector, which operates primarily at an international level.*" Furthermore, according to the Minister, "there is unwanted overlap *between the options under consideration and obligations that already arise from recent European legislation, while it is precisely my aim to prevent this kind of overlap.*"[231]

158. Based on the results of the study, the Dutch legislator decided not to proceed with national climate legislation for the financial sector, stating that:

> "*Making the economy more sustainable should primarily focus on parties in the real economy through a balanced package of norms, pricing and subsidies.*"[232]

3.5 The Dutch legislator is compelled to take other interests into account when making policy choices

159. Like EU climate policy,[233] Dutch climate policy does not exist in isolation. The pace and direction of policy are determined in part by the broader political and societal context, including geopolitical changes and conflicts that affect energy security and affordability.[234]

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229 *Parliamentary Papers II* 2024/25, 32 013, no. 304 (Letter to the Dutch House of Representatives on the outcome of the study on climate measures for the financial sector) (Exhibit 108-ING), p. 2.

230 *Parliamentary Papers II* 2024/25, 32 013, no. 304 (Letter to the Dutch House of Representatives on the outcome of the study on climate measures for the financial sector) (Exhibit 108-ING), p. 3.

231 *Parliamentary Papers II* 2024/25, 32 013, no. 304 (Letter to the Dutch House of Representatives on the outcome of the study on climate measures for the financial sector) (Exhibit 108-ING), p. 3.

232 *Parliamentary Papers II* 2024/25, 32 013, no. 304 (Letter to the Dutch House of Representatives on the outcome of the study on climate measures for the financial sector) (Exhibit 108-ING), p. 3.

233 See chapter 2 above.

234 Security of supply and affordability of energy are important interests recognized by the legislator. See Draft Climate Plan 2025-2035 (Exhibit ING-084), p. 29, 42 and 61. See also Coalition Agreement 2026-2030 (Exhibit ING-087), p. 24-25.

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160. Fossil fuels, most of which are imported, will therefore remain necessary for Dutch society to function for a long time to come.[235] However, due to changing geopolitical circumstances, the supply of this energy is becoming increasingly uncertain and volatile.[236] Consequently, the government is placing emphasis on increasing gas extraction in the North Sea through the "Accelerated Plan for Gas Extraction in the North Sea" (*Versnellingsplan gaswinning Noordzee*, "**Acceleration Plan**").[237] On 23 April 2025, in response to the Acceleration Plan, the Dutch government, the industry association Element NL and its members, and Energie Beheer Nederland B.V. concluded the "Sector Agreement on Gas Extraction in the Energy Transition" (*Sectorakkoord Gaswinning in de Energietransitie*, "**Sector Agreement**"), with the aim of increasing the production of natural gas from small fields.[238]

161. At the same time, the competitive position of the Netherlands is seen as an increasingly important factor. While recognising the importance of a strong competitive position to broader prosperity, the Dutch government endorsed the recommendations of the Draghi Report.[239]

162. Apart from the above, the climate transition itself comes with challenges. For example, rapid electrification in recent years has caused grid congestion: society requires more and more electricity, but the development of network capacity and flexibility is too slow, sometimes resulting in grid overload.[240] This

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235 Appendix to *Parliamentary Papers II* 2024/25, 32 813, no. 1416 (Energy Memorandum 2024) (excerpt) (Exhibit ING-110), p. 6 and 7: Virtually all of the petroleum and 66% of the natural gas used are imported. See also *Appendix Proceedings II* 2025/26, no. 721 (Parliamentary questions and answers on licensing new oil and gas production) (Exhibit ING-111), p. 4, in which the government confirms that "*there will continue to be a certain need for gas*" in the energy supply for some time to come.

236 Russia's invasion of Ukraine in 2022, for example, has led to considerable uncertainty regarding energy supply and affordability. See Clingendael National Security Analyst Network Institute, *De gevolgen van de Russische oorlog in Oekraïne voor de nationale veiligheid van het Koninkrijk der Nederlanden, February* 2023 (excerpt) (Exhibit ING-112), p. 1, 28, 38-42, 45-46, 91, 94 and 96.

237 *Parliamentary Papers II* 2021/22, 33 529, no. 1058 (letter to the Dutch House of Representatives on the Acceleration Plan) (Exhibit ING-113).

238 Appendix to *Parliamentary Papers II* 2024/25, 33 529, no. 1293 (Sector Agreement) (Exhibit ING-114) and *Parliamentary Papers II* 2024/25, 33 529, no. 1293 (Letter to the Dutch House of Representatives presenting the Sector Agreement) (Exhibit ING-115), p. 1. Pursuant to Article 10 Sector Agreement, further agreements have been made on onshore gas production. On the concrete conditions for the responsible extraction of onshore gas, see Appendix to *Parliamentary Papers II* 2025/26, 33 529, no. 1368 (Supplementary Agreements Sector Agreement) (Exhibit ING-116), p. 5 and 28; *Parliamentary Papers* II 2025/26, 33 529, no. 1368 (Letter to the Dutch House of Representatives presenting the Sector Agreement) (Exhibit ING-117), p. 2-5. See also Coalition Agreement 2026-2030 (Exhibit ING-087), p. 25.

239 Appendix to *Parliamentary Papers II* 2024/25, 21 501-30, no. 614 (Cabinet response to the Draghi Report) (Exhibit ING-118), p. 1. See also Coalition Agreement 2026-2030 (Exhibit ING-087), p. 33.

240 Appendix to Parliamentary Papers II 2024/25, 29 023, no. 559 (second progress report on the national action programme on network congestion) (excerpt) (Exhibit ING-119), p. 3.

capacity issue complicates electrification and keeps society dependent on other energy sources, thereby slowing down the progress of the energy transition.[241]

3.6 Conclusion: Dutch climate policy focuses on transition in the real economy and is in line with EU climate policy

163. Following the Paris Agreement, the Dutch legislator established a balanced and comprehensive climate policy aimed at achieving transition in the real economy through sectoral policies combined with market mechanisms, such as subsidies.

164. Other interests were also taken into account alongside the importance of climate transition, such as the competitive position of the Netherlands and ensuring a level playing field within the internal market. Deliberately aligning with EU climate policy, Dutch climate policy does not impose individual or stricter measures on companies and particularly not on financial institutions.

241 ECORYS, *Maatschappelijke kostprijs van netcongestie* (commissioned by the Dutch Ministry of Economic Affairs and Climate), 29 April 2024 (excerpt) (Exhibit ING-120), p. 4.

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4 THE SOCIETAL FUNCTION OF BANKS AND THE PRUDENTIAL FRAMEWORK

Key points of this chapter

- Banks fulfil a broad societal function. They play a vital function in raising money from society and lending it to those who need capital.
- This requires bank to maintain their own financial soundness and the stability of the financial system. Consequently, banks are subject to prudential legislation. These impose detailed obligations on banks in areas such as capital requirements, risk management and governance. Specific supervisory authorities are charged with overseeing this. The EU legislator assumes that the banking sector will continue to finance the real economy.
- Financing is also provided by other parties besides banks. However, the non-banking sector has vulnerabilities that pose heightened risks to the financial system.

165. ING discussed EU and Dutch climate policy in chapters 2 and 3 above. In developing this policy, the legislator considered the societal role of banks. Section 2.5 outlined the EU legislator's main considerations and approach to the role of banks in the climate transition as part of the Green Deal. The role of banks in the climate transition cannot be viewed in isolation. It must be viewed in the context of the broader societal function of banks (section 4.1), the need for a sound financial system (section 4.2), prudential legislation (section 4.3), prudential supervision (section 4.4), and the role of banks in relation to other capital providers (section 4.5). Consequently, banks are subject to a wide range of complex rules (section 4.6).

4.1 Banks fulfil a broad societal function

166. Banks provide a wide range of products and services, including financing, savings, investments and payments. Consequently, they play an essential role in the proper functioning of society and the economy.[242]

167. Above all, they serve as a bridge between savers with short-term capital surpluses and those who require financing with longer-term capital requirements).[243] Banks raise funds from the public (deposits) on a large scale.

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242 H.P.A. Boogaard, *Toezicht op banken: kredietcrisis, eurocrisis, Europese bankenunie en bankencrisismanagement,* 2016 (excerpt) (Exhibit ING-121), p. 11; L.J. Silverentand et al. (eds.), *Hoofdlijnen Wft (Recht en Praktijk nr. FR6)*, 2018 (excerpt) ("Silverentand 2018") (Exhibit ING-122), p. 29; see also D. Busch et al., "Introduction", in: D. Busch et al. (eds.), *Leerboek Financieel Recht*, 2024 (excerpt) (Exhibit ING-123), p. 4-7.

243 See, for example, Article 4(1)(1) CRR; B. Bierens, "Banken," in: D. Busch et al. (eds.), *Leerboek Financieel Recht,* 2024 (excerpt) ("Bierens 2024") (Exhibit ING-124), p. 86-87.

They then lend these funds, for their own account, on a large scale. When a bank lends money for its own account, it assumes the risk that a saver would face when lending money to a single party. The risk to savers is further reduced because a portion of their deposits is covered by the deposit guarantee scheme.[244] By limiting the risks to savers on their investment, banks help to mobilise savings capital. This enables them to redistribute capital within society, allowing various parties, such as entrepreneurs and investors, to finance long-term investments.[245]

168. By mobilising capital, banks enable investment in the real economy. These investments come with uncertainty and financial risks. Banks are well placed to take on financial risks by spreading them across different asset classes. It is crucial that banks continue to fulfil this important function. This is also crucial for the climate transition, given that banks play a part in mobilising capital for this purpose (see section 2.5 above).

169. Banks also have other societal functions. For instance, they take care of and manage payment transactions. Access to payments enables individuals and businesses to participate fully in society and keep the economy running.[246]

4.2 The societal function of banks requires sound banks and a sound financial system

170. Due to the important societal functions of banks, it is crucial that they, and the financial system as a whole, remain financially sound. Banking involves risks inherent in converting savings into financing ("transformation").

(a) **Liquidity and maturity transformation:** depositors can claim their money immediately and at any time, whereas the bank will often have lent those funds to others for a longer period. Banks are therefore

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244 Article 3:259(2) Financial Supervision Act (*Wet op het financieel toezicht*, "Wft").

245 Silverentand 2018 (Exhibit ING-122), p. 29; Bierens 2024 (Exhibit ING-124), p. 77; K.A. Messelink et al., *Juridisch handboek intensief beheer. Beheer van bancaire kredieten van klanten met financiële problemen (Recht en Praktijk nr. InsR10)*, 2017 (excerpt) ("Messelink 2017") (Exhibit ING-125), p. 2.

246 Article 4:71f Wft. See also *Parliamentary Papers II* 2025/26, 36 711, no. 27 (Adopted amendment to proposal to amend, inter alia, the Wft) (Exhibit ING-126), p. 2: "*Access to payments is essential to participate in society. This applies not only to consumers but also to business clients of financial institutions. To this end, this amendment introduces a statutory right to a basic payment account for business clients.*" Illustrative of the importance of an adequately functioning payment system was the nationalization of SNS REAAL in 2013. The Dutch Minister of Finance's decision to nationalise SNS REAAL was heavily influenced by the need to ensure uninterrupted payments. If SNS Bank had gone bankrupt, not only would ATMs and automatic transfers have been shut down, but there would also have been acute disruption to daily payments, such as those for groceries, rent and mortgage loans. See Appendix to *Parliamentary Papers II* 2012/13, 33 532, no. 1 (Letter from DNB to the Dutch Ministry of Finance on SNS REAAL) (Exhibit ING-127), p. 6; Appendix to *Parliamentary Papers II* 2012/13, 33 532, no. 1 (Decision on the expropriation of SNS REAAL) (Exhibit ING-128), p. 9; *Parliamentary Papers II* 2012/13, 33 532, no. 1 (Letter on the expropriation of SNS REAAL) (Exhibit ING-129), p. 6.

dependent in part on public and marketplace confidence. If this confidence is undermined, for example as a result of rumours or sudden market panic, a self-reinforcing mechanism can arise whereby depositors decide to withdraw their funds *en masse* (a "bank run"), leaving the bank unable to honour these large-scale withdrawals due to insufficient liquidity.[247]

(b) **Credit transformation:** by converting savings into credit, banks convert low-risk deposits into higher-risk investments. This is riskier because not all of a bank's debtors can repay their loans, even when collateral has been provided. Consequently, banks are highly exposed to the creditworthiness of their debtors, resulting in a credit risk.

171. A bank has a sustainable business model if it can adequately manage the risks associated with transforming savings into loans and other forms of financing. If this is not the case, a bank may be less able to fulfil its societal function, potentially jeopardising the financial system and the economy. Consequently, banks must have sufficient public confidence.

172. Banks have various risk management options and obligations. For example, they must maintain own funds or liquidity in case of unexpected credit losses or clients withdrawing their deposits unexpectedly. Banks can also manage risk by taking security interests and pricing risk premiums into interest rates.

173. Where and to the extent necessary, banks must also spread their risks across regions and sectors. Such diversification ensures that the impact of a single event or market development on a large part of their portfolio is reduced. Investing in different sectors of the economy and/or geographical areas reduces exposure to specific sectors and/or local risks because losses in these sectors and/or areas would only affect a smaller part of the loan portfolio, thus enabling banks to absorb these losses. By pooling a large number of uncorrelated risks, banks can reduce their overall portfolio risk. This concept of "risk pooling" is a core component of the banking business.

174. There is a high degree of interdependence between banks (and other parts of the financial system).[248] That interconnectedness entails systemic risks. A bank collapse, for instance, could potentially trigger a domino effect.[249] This is all the

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247 Silverentand 2018 (Exhibit ING-122), p. 29. The deposit guarantee scheme can only provide limited protection, as this scheme only covers a portion of savings.

248 Banks are interdependent due to factors such as interbank financing. The banking and non-banking sectors (e.g. investment funds and insurers) are also linked through ownership, loans, investments, and derivative positions. See Report of Professor Ringe of 6 February 2026 (Exhibit ING-001A), p. 49.

249 If one bank fails, it could even cause a bank run at another bank, with no connection between the two. See C.E. du Perron, "Goede en slechte crisiswetgeving voor financiële instellingen", in: A.H.E.M. Wellink, *Crisiswetgeving voor financiële instellingen en ondernemingen*, 2011 (excerpt) (Exhibit ING-130), p. 48.

more true in the case of a systemically important bank. In the Netherlands, these are ING, ABN AMRO, Rabobank, BNG and ASN Bank.[250] From a global perspective, certain banks are also considered as Global Systemically Important Banks ("**GSIBs**"). There are currently 29 such banks worldwide.[251] ING is the only Dutch GSIB. GSIBs receive this designation because of their size, the nature and complexity of their activities, and their cross-border operations. They can affect the stability of the global financial system. Systemically important banks are therefore subject to more rules and supervision than other banks, such as more stringent capital requirements.[252]

4.3 The prudential framework ensures the soundness of banks and the financial system

175. To ensure the soundness of banks and the financial system, banks are subject to regulations designed to ensure that they pursue prudent policy and adequately manage all risks under the supervision of specific supervisory authorities.[253] Among other things, banks must consider factors such as concentration risk, credit and counterparty risk, liquidity risk, market risk, operational risk, interest rate risk arising from non-trading activities, residual risk, excessive leverage risk, securitisation risk,[254] and ESG risks, including climate risk.[255]

176. The prudential rules are based on the Basel standards of the BCBS. At European level, these are implemented on an ongoing basis by applying and amending the CRR and the CRD. These regulations are further elaborated upon in EC delegated regulatory acts and EBA guidelines. In the Netherlands, prudential

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250 DNB, "DNB handhaaft systeemrelevantiebuffers voor banken", 2 December 2024 (printout of 21 January 2026) (Exhibit ING-131). They fall into the category of "*other systemically important institutions*" as defined in Article 131 CRD.

251 FSB, *List of Global Systemically Important Banks (G-SIBs),* 27 November 2025 (Exhibit ING-132). The Financial Stability Board determines which banks qualify as GSIBs, in consultation with the BCBS and national supervisory authorities.

252 In addition to the higher capital requirements, these additional prudential safeguards relate to high-risk exposure to other GSIBs, stricter supervisory expectations (there is generally less scope for proportionality in supervising GSIBs), a statutory minimum total capital threshold for loss absorption and recapitalisation, and stricter recovery and resolution planning expectations. See, for example, Article 131(4) CRD.

253 Article 1:24(1) Wft and the explanatory note to the introduction of Part 3 of the Wft (*Parliamentary Papers II* 2004/05, 29 708, no. 10 (Memorandum of Amendment Wft) (excerpt) (Exhibit ING-133, p. 115). See also *Parliamentary Papers II* 2013/2014, 33 849, no. 3 (Explanatory Memorandum implementation CRD4) (excerpt) (Exhibit ING-134), p. 3. See, for example, recital 47 CRD, that the interests of depositors must take precedence over those of shareholders in a bank's corporate governance.

254 Article 79-87 CRD in conjunction with 23(2) and 23a under a Decree on Prudential Rules Wft (*Besluit prudentiële regels Wft,* "Bpr"). Other risks that require management include macroeconomic, geopolitical, compliance, legal, reputational and strategic risks. See Article 23(8) Bpr and EBA, "Guidelines on internal governance', EBA/GL/2021/05, 2 July 2021 (excerpt) ("EBA, Guidelines on internal governance") (Exhibit ING-135), no. 152.

255 Article 87a CRD. This article has not yet been implemented in the Netherlands. The legislative proposal for implementation was sent to the Dutch House of Representatives on 19 January 2026. On this delay, see DNB, "CRD6 Implementation", 23 December 2025 (printout of 11 February 2026) (Exhibit ING-136).

requirements have been implemented where necessary under or pursuant to the Dutch Financial Supervision Act (*Wet op het financieel toezicht,* "**Wft**").

(1) Minimum requirements for funds, solvency and liquidity

177. Bank balance sheets are a primary aspect of the prudential framework. Banks must meet financial requirements relating to own funds, solvency, liquidity, and total loss-absorbing capacity in the form of own funds and certain liabilities.

(a) Banks must have sufficient own funds compared to assets and associated risks. Only certain components of a bank's own funds of sufficient "quality" can be used to calculate whether a bank meets capital requirements. These components are known as Common Equity Tier 1, Additional Tier 1 and Tier 2 capital.

(b) Banks must also meet liquidity requirements: the liquidity coverage requirement and the net stable funding ratio.

(c) They must also maintain the minimum requirement for equity and eligible liabilities.

178. In their decision-making, banks must assess the impact of the decision on their capital, whether it is a decision to take a position or to downsize. The figure below shows the legal basis for this obligation:

IMPACT ON CAPITAL	IMPACT ON LIQUIDITY

• Art. 73 CRD: internal capital adequacy assessment process
• Capital requirements to ensure solvency of the bank, e.g. for credit risk:
  • Art. 111-114 CRR: standard approach
  • Art. 142-191 CRR: internal ratings based approach
• Part 4 CRR: limits for large exposures to prevent large losses in the event of bankruptcy of client / group of connected clients
	• Art. 86 CRD: detecting / measuring / managing / monitoring of liquidity risk
	• Part 6 CRR and Delegated Regulation (EU) 61/2015: liquidity requirements to ensure sufficient liquidity in stress scenarios and medium term funding stability

Figure 3 Rules related to capital and liquidity of banks[256]

(2) Heightened governance requirements

179. In addition to corporate governance requirements, banks are subject to additional governance obligations.[257] For instance, a bank must organise its business operations to ensure it conducts its business in a controlled and ethical

[256] Figure 3 is also submitted as part of Appendix 2.
[257] To be found in the CRD, Wft and the Bpr.

manner.[258] Moreover, banks must also have arrangements and procedures in place to ensure effective and prudent governance.[259] The EBA has issued guidelines setting out due diligence norms for decision-making by banks' boards of directors and supervisory boards. These bodies must ensure that the business model and governance arrangements take all risks into account.[260]

180. Consequently, these governance rules allow members of the board of directors and supervisory board members of a bank less freedom than companies in the real economy. The same applies to weighing up the interests of stakeholders, particularly depositors, and the overriding societal interest in the soundness of banks and the stability of the financial system. The following principle of the BCBS corporate governance principles illustrates this:

> "*The primary objective of corporate governance should be safeguarding stakeholders' interest in conformity with public interest on a sustainable basis. Among stakeholders, particularly with respect to retail banks, shareholders' interest would be secondary to depositors' interest.*"[261]

181. Governance rules affect the decision-making processes within banks:

RESPONSIBILITY OF THE MANAGEMENT BOARD	RISK COMMITTEE SUPERVISORY BOARD	RESPONSIBILITY OF THE SUPERVISORY BOARD

• Art. 88 CRD: effective and prudent management
• EBA guidelines on internal governance: provisions to ensure responsible risk management
  ◦ no. 23: understanding/mitigating relevant risks for decision-making
  ◦ no. 28: informed decision-making
  ◦ no. 30: constructive discussion / critical assessment in decision-making / informing supervisory board of important decisions on business activities and risks taken
• Art. 91 CRD and EBA/ESMA guidelines for assessing suitability: individual and collective understanding of business activities and risks
	• Art. 76(3) CRD: obligation to establish a risk committee
	• EBA guidelines on internal governance: risk committee advises and supports supervisory board on, among other things:
	  ◦ no. 61a: risk strategy and preparedness for all risks
	  ◦ no. 61b: implementation of risk strategy / limits
	  ◦ no. 61c: implementation of strategy for capital, liquidity and other risk management
	  ◦ no. 61d: adjustments to risk strategy, e.g. due to changes in the business model
	  ◦ no. 61f: testing (stress) scenarios to assess reaction risk profile
		• Art. 88 CRD: effective and prudent supervision
		• EBA guidelines on internal governance: provisions to ensure responsible risk management
		  ◦ no. 23: understanding relevant risks in order to exercise effective supervision
		  ◦ no. 32: constructive / critical approach to strategy
		  ◦ no. 34a: monitoring management decision-making
		  ◦ no. 34b: critically evaluating decisions
		  ◦ no. 34i: ensuring the independence of internal control functions / warning of risk developments
		• Art. 91 CRD and EBA/ESMA guidelines for assessing suitability: individual and collective understanding of business activities and risks

Figure 4 Governance standards applicable to the management board, the risk committee and the supervisory board[262]

258 Article 3:17 Wft.

259 Article 17c Bpr, referencing Article 88(1) CRD, and Article 76(2) CRD in conjunction with Article 23b(1) Bpr. These general prudential governance obligations are often detailed in more specific legislation, or EBA guidelines (e.g., Article 189 CRR).

260 EBA Guidelines on internal governance, (Exhibit ING-135), no. 23.

261 BCBS, "*Corporate governance principles for banks*", July 2015 (excerpt) (Exhibit ING-137), p. 3.

262 Figure 4 is also submitted as part of Appendix 2.

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(3) Frameworks for decision-making and business processes, particularly risk management

182. Banks are also subject to regulations designed to ensure that their decision-making and other business processes are subject to various safeguards and procedural requirements.[263]

183. For example, the prudential framework imposes requirements on a bank's risk management framework. Banks are expected to adequately manage all material risks to which they are exposed.[264]

184. The prudential framework imposes requirements on the most important activities and processes of banks that form part of the risk management framework. These include risk identification and assessment, risk monitoring, risk mitigation and control, and reporting.[265] Banks must also have internal processes in place to assess the adequacy of their capital, liquidity, and other prudential indicators. Other important processes include establishing a risk appetite framework, continuously assessing whether the bank's capital and liquidity are sufficient to cover current and future risks,[266] and preparing for various crisis scenarios with a recovery plan.[267] Banks are also expected to integrate climate-related and environmental risks into their business strategy.

185. Banks' decision-making processes must also incorporate safeguards. For example, a bank's policy should specify which departments and functions of the organisation should be involved in the decision-making process and its implementation. The policy must also ensure that banks take into account all relevant risks and possible consequences, and have sufficient resources to implement the decision. Consequently, requirements are imposed on the policy with regard to the approval of new products and services, special transactions (e.g. mergers and acquisitions), and other significant changes.[268]

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263 See, for example, Articles 3:10 and 3:17 Wft and chapters 4.1 and 4.2 Bpr.

264 Such as credit risk, market risk, interest rate risk, operational risk, liquidity risk, ESG risks, including climate risk, as well as macroeconomic risks, geopolitical risks, integrity risks, legal risks and reputational risks.

265 See EBA guidelines on internal governance (Exhibit ING-135), nos. 153-161.

266 The so-called Internal Capital Adequacy Assessment Process (Article 73 CRD, Article 3:17 Wft and Article 4.2 Bpr) and Internal Liquidity Adequacy Assessment Process (Article 86 CRD and Article 23a Bpr).

267 Article 5(1) Directive 2014/59/EU ("BRRD") in conjunction with Article 3:17(2)(4) Wft and Article 9(1)(c) Delegated Regulation (EU) 2016/1075.

268 EBA guidelines on internal governance (Exhibit ING-135), nos. 163-168.

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186. Figures 5 and 6 provide a schematic representation of the above:

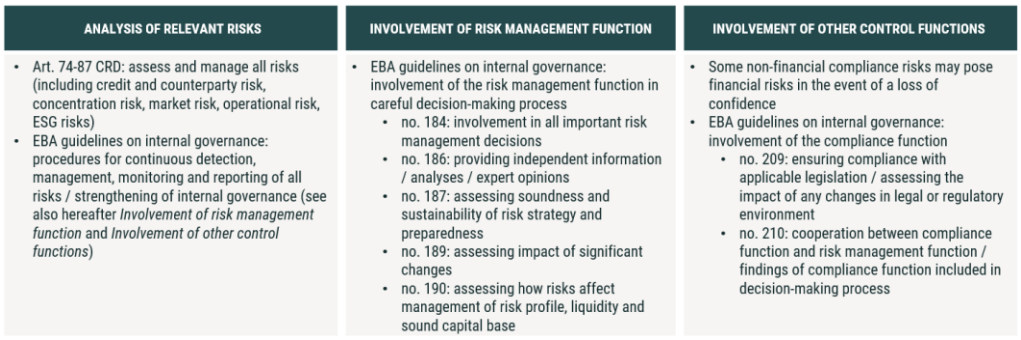

Figure 5 The steps, procedures and analyses to be followed by banks before decisions are submitted to the management board and the supervisory board[269]

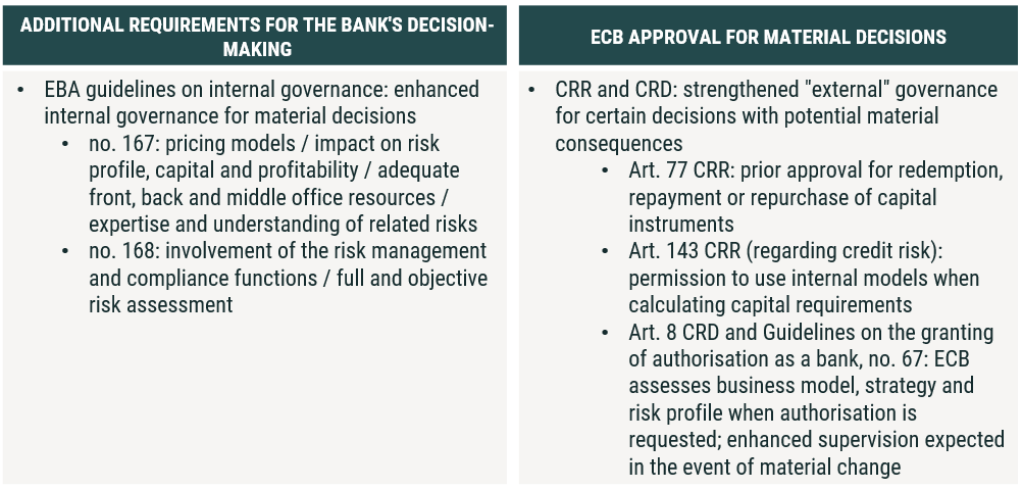

Figure 6 Specific requirements for significant/material decisions[270]

4.4 The ECB supervises banks

187. The prudential framework for banks comprises numerous rules and ongoing supervision of compliance with these rules. Under the Single Supervisory Mechanism ("**SSM**"), the ECB is responsible for the prudential supervision of larger banks, while competent national authorities supervise other banks.[271]

188. The supervision is thorough and comprehensive. The ECB closely monitors the risks that banks are exposed to, as well as their compliance with the prudential

269 Figure 5 is also submitted as part of Appendix 2.
270 Figure 6 is also submitted as part of Appendix 2.
271 Article 4(1) and Article 6 Regulation (EU) 1024/2013 of 15 October 2013 ("SSM Regulation"). See also recital 9 CRD regarding the background of the SSM. ING is a significant bank and is therefore supervised by the ECB.

framework. The Supervisory Review and Evaluation Process ("**SREP**") is an important tool in this regard").[272] As part of the SREP, the ECB assesses

(a) how resilient the bank's business model is in generating acceptable income over the next twelve months, and

(b) how sustainable its strategy is in generating an acceptable return over at least the next three years, based on its strategic plans and financial projections.[273]

189. The ECB pays particular attention to bottlenecks in the business model, such as excessive concentration risk.[274] Concentration risk is defined as the risk that a bank becomes vulnerable to adverse events affecting its concentrated exposures. Therefore, banks will need to achieve sufficient diversification of their exposures to clients, sectors, regions, services, types of income, etc.

190. The EU legislator has granted the ECB supervisory powers over banks, enabling it to issue instructions or impose measures where necessary.[275] This includes measures to divest activities that pose an irresponsible risk to a bank's soundness, or to limit or prohibit dividend payments to shareholders.[276] The ECB also has enforcement tools at its disposal, such as the ability to impose fines.[277] The ECB also has power of approval over certain business decisions that banks make, such as large mergers or acquisitions.[278]

4.5 In addition to banks, capital can be provided by other financiers who are subject to less stringent regulation

191. Companies in the real economy do not necessarily have to obtain financing from banks. They can also turn to sources such as investment funds or the capital markets. When raising investment capital, a company will consider how to meet its capital requirements. It will determine which financier offers the most favourable terms.

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272 Article 97 et seq. CRD and Article 3:18a Wft.

273 Article 98(1)(i) CRD and EBA, *Guidelines for the Supervisory Review and Evaluation Process,* EBA/GL/2022/03, 18 March 2022 (excerpt) ("EBA Guidelines SREP") (Exhibit ING-138), no. 71. See also Article 1 SSM Regulation.

274 EBA Guidelines SREP (Exhibit ING-138) no. 95(a) to (f).

275 Article 16(2) SSM Regulation. See also Article 104(1) CRD in conjunction with Article 3:111a(1)Wtf.

276 Article 104(1)(e) CRD.

277 Article 18 SSM Regulation and Regulation (EU) 2532/98 of 23 November 1998; Article 1:79-1:80 Wft.

278 Article 27a et seq. CRD. This article has not yet been implemented in the Netherlands. The legislative proposal for implementation was sent to the Dutch House of Representatives on 19 January 2026. On this delay, see DNB, "CRD6 Implementation", 23 December 2025 (printout of 11 February 2026) (Exhibit ING-136). Until these articles are implemented, the ECB can exercise similar powers based on current Dutch legislation (Article 3:96 Wft).

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192. The prudential framework prevents banks from financing just any project. If a bank finances a risky project or sector, prudential legislation may require it to maintain higher capital reserves. This may mean that financing certain projects or sectors is seen as unfavourable, or only on terms that the client finds unacceptable.

193. However, this does not eliminate the demand for financing. Over the years, other parties that are not subject to the same capital requirements have therefore increasingly stepped in to meet this demand. Financing provided outside the banking sector is also known as "shadow banking" or "non-bank financial intermediation".[279] Investment banks, private credit funds, private equity funds and money market funds are all examples of shadow banks. These shadow banks are not always subject to the same degree of risk management regulation and supervision. However, the systemic and other risks underlying the activities of shadow banks are no less significant, which creates vulnerabilities. These risks are widely recognized and are also described by professor Resti.[280] Shadow banks, for example, are heavily dependent on funding from professional investors, who are more likely to withdraw their money in times of economic instability. Shadow banks also lack access to liquidity support from central banks.

4.6 Conclusion: banks provide the financial stability that is key to the climate transition

194. To fulfil their societal function, banks must manage their risks adequately. This function has resulted in an extensive system of laws, rules and guidelines originating from the EU legislator, the EBA and others. The EU legislator has used this framework and the applicable banking legislation as a basis for further defining the role of banks in the Green Deal and the transition it aims to achieve (as discussed in chapter 2 above).

279 For the definition of "shadow banking" and its associated risks and concerns. See FSB, *Shadow Banking Scoping the Issues*, April 2011 (Exhibit ING-139), p. 2-5.

280 Report of Professor Resti of 6 February 2026 (Exhibit ING-002A), sections 1.3.3 and 4.3.

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5 VOLUNTARY INITIATIVES

Key points of this chapter

- Companies can use a variety of voluntary and non-binding guidelines and recommendations when developing climate policy. The OECD Guidelines and the UNGPs provide general recommendations on how companies can mitigate adverse impacts throughout their value chain. Other voluntary initiatives focus on specific topics, such as

  (a) carbon accounting: identifying the emissions that can be allocated to a company based on a variety of data and estimates; and

  (b) the development of climate policy, which involves various choices, such as: (i) which activities the policy will focus on; (ii) which climate scenarios and transition pathways will be used to inform the policy; and (iii) whether a reduction target is appropriate, and if so, what type.

- The Voluntary Initiatives that focus on climate are relatively new and still developing. There is no clear consensus on how companies should shape their climate policies. Moreover, Voluntary Initiatives, in their respective approaches, draw distinctions between sectors, including a distinction between the real economy and the financial sector.

- Voluntary Initiatives tend to take a similar approach to a limited number of issues. For example, many voluntary initiatives assume and impact-oriented approach and are prioritisation-based. This means that companies focus on the areas, sectors, relationships and types of emissions where they can have the most effective impact on sustainability.

195. Various voluntary and non-binding guidelines and recommendations (known as "**Voluntary Initiatives**") help companies to develop climate policy.

196. In section 5.1, ING discusses the OECD Guidelines and the UNGPs, which address how companies can mitigate adverse impacts throughout their value chain. There are also various Voluntary Initiatives that focus on climate. ING discusses the guidelines set out in these Voluntary Initiatives in the areas of carbon accounting (section 5.2) and establishing climate policy (section 5.3). Knowledge, insights and views on how banks – and companies more broadly – can best contribute to the climate transition are still evolving and display a considerable degree of divergence (section 5.4).

197. There are very many Voluntary Initiatives. A full discussion of these is beyond the scope of this SoD. For this reason, in this SoD ING discusses the Voluntary Initiatives mentioned by Milieudefensie, along with a few other

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Voluntary Initiatives that Milieudefensie has omitted to mention, but which are of relevance. The overview below lists those Voluntary Initiatives, indicating in each case whether the initiative is sector agnostic or focuses specifically on financial institutions or banks:

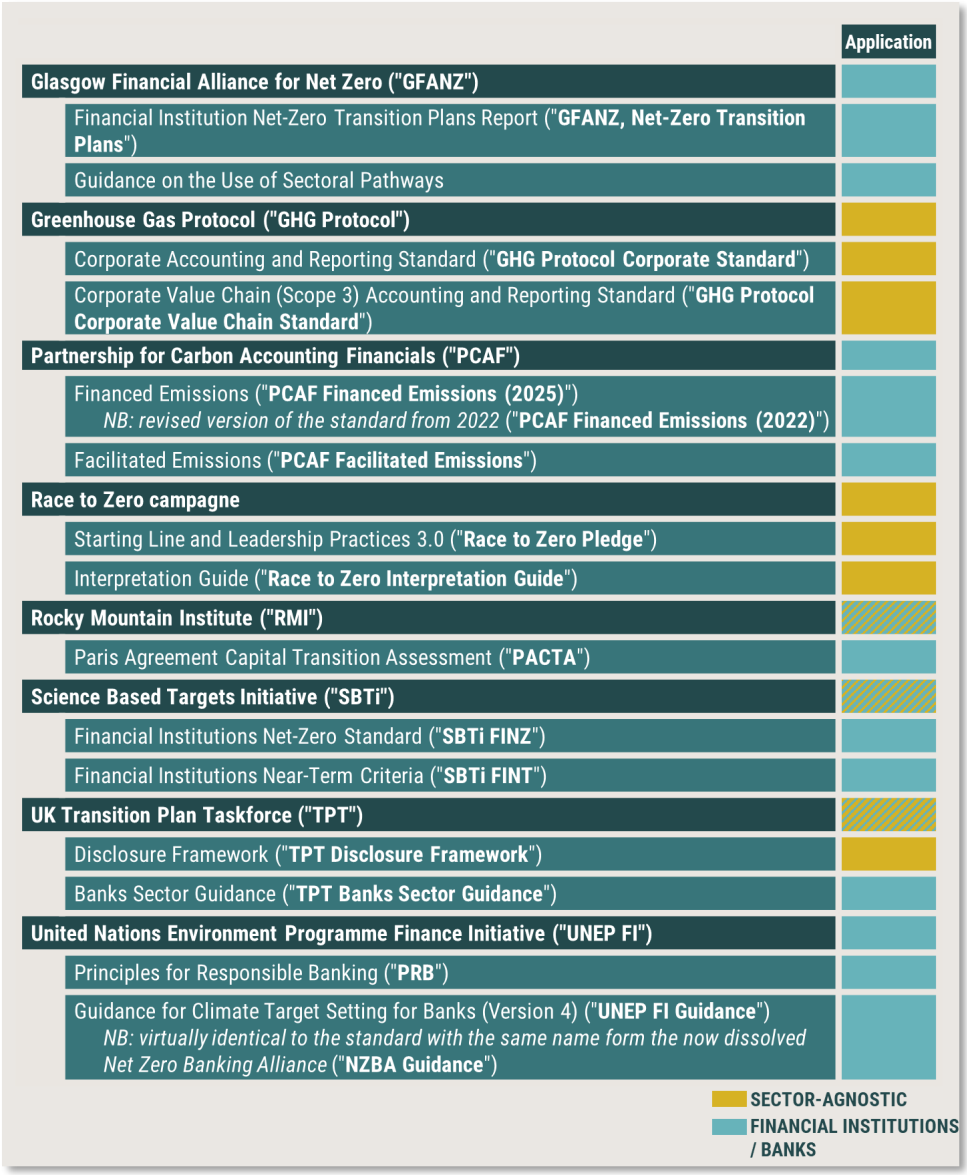

Figure 7 Overview of climate-focused Voluntary Initiatives discussed in this SoD[281]

5.1 The OECD Guidelines and the UNGPs: due diligence on the adverse impacts of business activities

198. The OECD Guidelines and the UNGPs are Voluntary Initiatives in the realm of corporate social responsibility. The OECD Guidelines were developed by the

[281] Figure 7 is also submitted as part of Appendix 2.

Organisation for Economic Co-operation and Development ("**OECD**"). The UNGPs were approved by the Office of the High Commissioner for Human Rights of the United Nations ("**OHCHR**").

199. Both Voluntary Initiatives make recommendations to address adverse impacts in the value chain, such as human rights violations and environmental impacts.[282] The OECD Guidelines and UNGPs explain how companies can exercise due diligence in this context. The recommendations on respect for human rights in the OECD Guidelines and the UNGPs are consistent with each other.[283] Both Voluntary Initiatives use a similar six step process for due diligence:

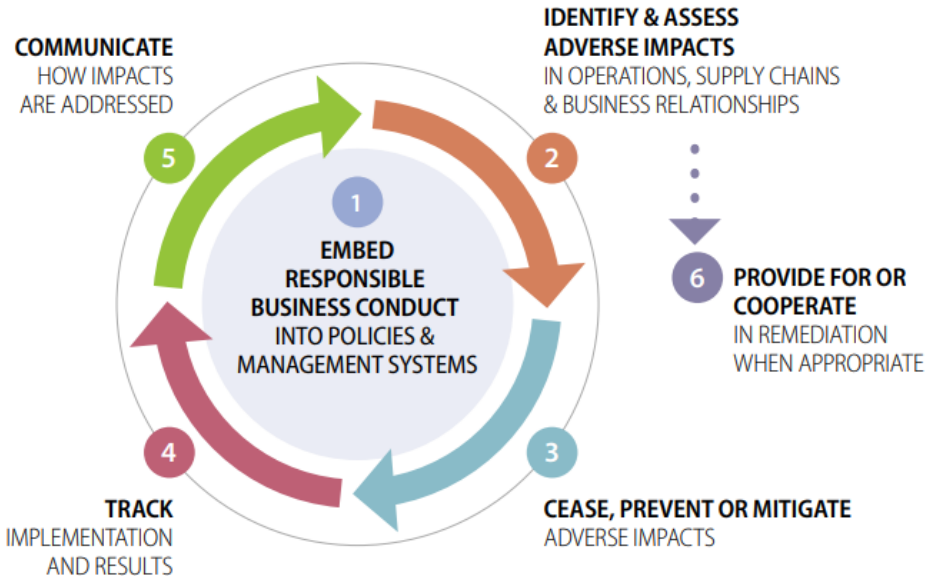

Figure 8 The six steps of the OECD Guidelines' due diligence process[284]

200. The OECD Guidelines and the UNGPs take an impact-oriented approach to this process, prioritising due diligence based on the severity and likelihood of the consequences.[285]

201. One part of the due diligence process involves identifying and assessing adverse impacts involving the company. The OECD Guidelines and the UNGPs

282 OECD Guidelines (Exhibit MD-137), p. 3; UNGPs (Exhibit MD-136), p. 1.
283 OECD Guidelines (Exhibit MD-137), p. 27.
284 Dutch Ministry of Foreign Affairs, *OESO Due Diligence Handreiking voor Maatschappelijk Verantwoord Ondernemen*, 6 June 2019 (excerpt) (Exhibit ING-140), p. 25.
285 OECD, *Declaration on International Investment and Multinational Enterprises,* 2022 (Exhibit ING-141), p. 9: "*Carry out risk-based due diligence* […]. *The nature and extent of due diligence depend on the circumstances of a particular situation.*"; OECD Guidelines (Exhibit MD-137), p. 18 and 35; UNGPs (Exhibit MD-136), p. 18 and 26.

distinguish between three forms of involvement: (i) causing;[286] (ii) contributing to;[287] and (iii) directly linked.[288]

202. Another part of the due diligence process focuses on preventing adverse impact in the value chain. In this context, the recommendations in the OECD Guidelines and UNGPs primarily focus on "engagement".[289] According to the OECD Guidelines and the UNGPs, companies should "leverage" their influence to prevent or mitigate adverse impacts.[290] "Disengagement" is only one of the possible "[a]*ppropriate responses*" according to the OECD Guidelines and should be a last resort.[291]

203. This analysis must take into account the extent to which actions have been taken in line with applicable standards and legal frameworks:

> "[T]*he assessment of an enterprise's contribution to adverse impacts should consider the extent to which its activities are consistent with widely recognised standards, environmental management processes and safeguards regarding good environmental practice; benchmarks and standards established in applicable environmental rules and regulatory frameworks; and relevant international agreements.*"[292]

204. The OECD Guidelines and the UNGPs focus on companies in general. Additionally, the OECD has also issued recommendations that focus specifically on application of the OECD Guidelines for financial relationships.[293] With regard to banks, these guidelines confirm that "linked to" requires more than just financing, let alone other qualifications.[294] The OECD also considers that the type

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286 An enterprise *causes* an adverse environmental impact if its activities on their own are sufficient to result in the adverse impact, see OECD Guidelines (Exhibit MD-137), p. 17-18 and 35-36; OHCHR, *The Corporate Responsibility to Respect Human Rights,* 2012 ("OHCHR Interpretive Guide") (Exhibit ING-142), p. 15-17.

287 An enterprise can *contribute* to an adverse impact either (i) through its own actions; or (ii) through another entity. (i) applies when the activities of the enterprise, combined with those of other entities, cause the impact. (ii) applies when the enterprise's activities induce, facilitate or encourage another entity to cause an adverse impact. This involves a "*substantial contribution*" rather than "*minor or trivial contributions*". See OECD Guidelines (Exhibit MD-137), p. 17-18 and 35-36; OHCHR Interpretive Guide (Exhibit ING-142), p. 15-17.

288 An enterprise is considered to be *directly linked* if it is connected to an adverse climate impact through its business relationships, but does not contribute to or cause it. See OECD Guidelines (Exhibit MD-137), p. 17-18 and 35-36; OHCHR Interpretive Guide (Exhibit ING-142), p. 15-17.

289 See for example OECD Guidelines (Exhibit MD-137), p. 20; UNGPs (Exhibit MD-136), p. 24.

290 OECD Guidelines (Exhibit MD-137), p. 21-22; OHCHR Interpretive Guide (Exhibit ING-142), p. 48-51; UN Working Group on the issue of human rights and transnational corporations and other business enterprises 2023, "Information Note on Climate Change" ("OHCHR Information Note") (Exhibit MD-138), p. 6.

291 In this regard, the OECD Guidelines note that *"*[w]*here it is possible for enterprises to continue the relationship and demonstrate a realistic prospect of, or actual improvement over time, such an approach will often be preferable to disengagement*". See OECD Guidelines (Exhibit MD-137), p. 19.

292 OECD Guidelines (Exhibit MD-137), p. 36.

293 OECD Banking Guide (2019) ("OECD Corporate Lending and Securities Underwriting") (Exhibit MD-235).

294 OECD Corporate Lending and Securities Underwriting (Exhibit MD-235), p. 42-43; OHCHR, *OHCHR Response to Request from BankTrack for Advice Regarding the Application of the UN Guiding Principles on Business and Human Rights in context of the banking sector*, 12 June 2017 ("OHCHR Application for Banking Sector") (Exhibit ING-143), p. 6.

of financing or service provided by a bank should be taken into account in assessing a bank's involvement.[295] Terminating the banking relationship may, under certain circumstances, be a last resort. In such cases, the actual and potential adverse impacts of terminating the business relationship must be considered.[296]

205. Climate change is seen as an adverse (environmental) impact under the OECD Guidelines and the UNGPs, which means that it is also addressed by the *due diligence* under these instruments.[297] It is also acknowledged that, in the context of banking, the nature of climate change necessitates a more nuanced examination of the nexus between financing and the relevant activities than other adverse impacts:

> "*For adverse impacts that are collective, diffuse and transboundary in nature such as climate change, a more nuanced analysis may be needed to understand the relationship between financing and the specific activities of the client causing harm.*"[298]

206. Thus, the OECD Guidelines and the UNGPs aim to encourage companies to exercise due diligence in identifying and addressing actual and potential adverse environmental impacts, including those related to climate change, throughout their value chain. The appropriate follow-up steps depend on the circumstances of the case and also the type of company involved. Accordingly, the OECD also sees the relationship that banks have with their clients as being essentially different from the relationship between chain partners in the real economy.

5.2 Carbon accounting: identifying and allocating emissions

207. While the OECD Guidelines and the UNGPs provide guidance on a wide range of potential adverse impacts, some Voluntary Initiatives focus specifically on climate issues. Several of these initiatives focus on identifying emissions, a process known as carbon accounting. Companies have various reasons as to why they might want to identify their emissions. For example, to comply with reporting obligations under the CSRD[299] and for Pillar 3 disclosures.[300]

208. They might also use this data to develop aspects of their climate approach. Among other things, the emissions allocated to the company could inform this

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295 For example, the OECD considers that factors in determining the influence of banks on their clients may include the type of transaction, the length of the relationship and the role of the bank in the transaction. See OECD Corporate Lending and Securities Underwriting (Exhibit MD-235), p. 50.

296 OECD Corporate Lending and Securities Underwriting (Exhibit MD-235), p. 52-53.

297 OECD Guidelines (Exhibit MD-137), p. 33. This is not included in the text of the UNGPs, but its relevance is confirmed by the OHCHR. See OHCHR Information Note (Exhibit MD-138), p. 3 and 6.

298 OECD Corporate Lending and Securities Underwriting (Exhibit MD-235), footnote 27.

299 See section 2.4 above.

300 See section 2.5 above.

climate approach or policy. Additionally, a climate approach may focus on other steps to contribute to reduce emissions in society, or relate to other parts of the transition, such as biodiversity, climate adaptation or circularity. Section 5.3 discusses Voluntary Initiatives that support the development of a climate approach by individual businesses in more detail. Section 5.2 first discusses various aspects of carbon accounting.

(1) Carbon accounting: Scope 1, 2 and 3 emissions

209. Emissions identified through carbon accounting, i.e. *reported emissions*, are not the same as *actual emissions*.

- *Actual emissions* are the greenhouse gas molecules that are emitted or released into the atmosphere and are then actually(physically) in the atmosphere. These emissions are often quantifiable, for example when fossil fuels are combusted.

- *Reported emissions* are those allocated to a company on paper based on accounting standards, as ING discusses below. Various methodologies and measurement methods have been developed for allocating emissions to companies (carbon accounting.[301] The GHG Protocol is the best-known Voluntary Initiative in this respect.[302]

210. The total reported emissions are referred to as the "inventory".[303] The GHG Protocol distinguishes between Scope 1, Scope 2 and Scope 3 emissions.

- **Scope 1** emissions are the direct result of a company's activities and originate from sources owned by the organisation (in the equity share approach), or over which it has controlling influence (in the control approach).[304]

- **Scope 2** emissions are indirect emissions released during the generation of purchased electricity, steam, heat and cooling consumed by the company.[305]

- **Scope 3** emissions are other indirect emissions related to a company's activities, but emitted by sources outside the company.[306] Scope 3 emissions consist of upstream and downstream emissions. Upstream emissions occur before production or service provision take place.

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301 GHG Protocol Corporate Standard (revised edition 2004) ("GHG Protocol Corporate Standard") (Exhibit MD-129), p. 4.
302 GHG Protocol, "About Us" (printout of 21 January 2026) (Exhibit ING-144).
303 GHG Protocol Corporate Standard (Exhibit MD-129), p. 60 and 99.
304 GHG Protocol Corporate Standard (Exhibit MD-129), p. 17-18 (about the equity share approach and the control approach) and p. 27 (on Scope 1).
305 GHG Protocol Corporate Standard (Exhibit MD-129), p. 27.
306 GHG Protocol Corporate Standard (Exhibit MD-129), p. 29-30.

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Downstream emissions occur after sales.[307] Scope 3 emissions are divided into fifteen categories in the GHG Protocol. For example: upstream emissions include categories 1 ("purchased goods and services") and 7 ("employee commuting"), while downstream emissions include categories 9 ("transportation and distribution") and 11 ("use of sold products").[308]

211. The figure below illustrates the categorisation of emissions in the GHG Protocol:

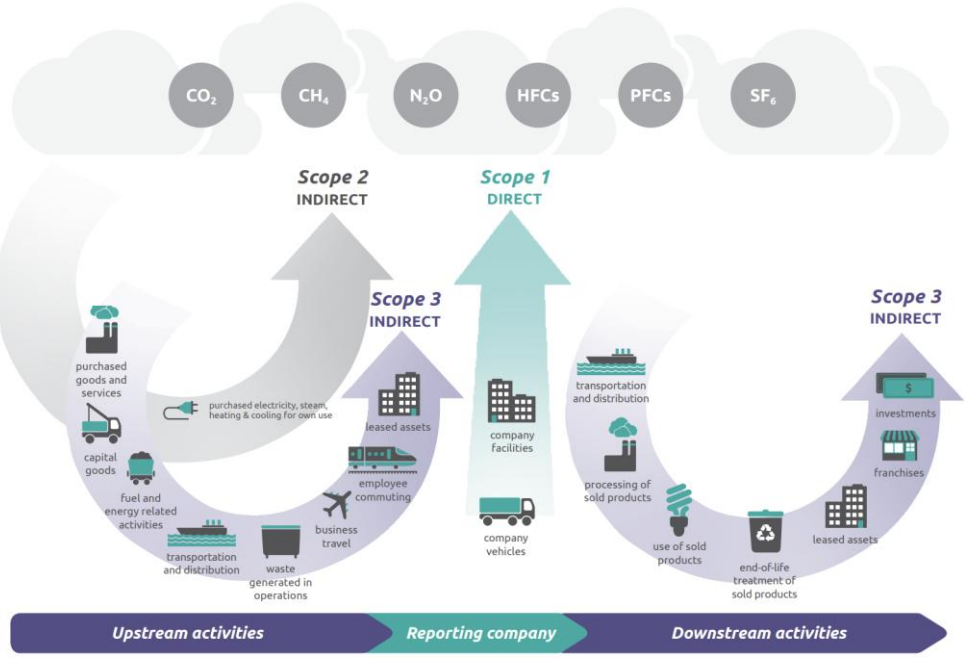

Figure 9 Overview of Scopes and categories based on the GHG Protocol[309]

212. The Scope 1 emissions of all states, organisations, companies and individuals together constitute actual global human-caused emissions. In addition to their Scope 1 emissions, companies also report Scope 2 and 3 emissions, i.e. those that occur in their value chain. When emissions are reported in the value chain, it is inevitable that multiple parties will report certain emissions as "their" emissions. This is known as "double counting".[310]

307 GHG Protocol Corporate Value Chain Standard (Scope 3) Standard ("GHG Protocol Corporate Value Chain Standard") (Exhibit MD-130), p. 29.

308 GHG Protocol Corporate Value Chain Standard (Exhibit MD-130), p. 32.

309 GHG Protocol Corporate Value Chain Standard (Exhibit MD-130), p. 5. In addition to the gases shown in this figure, NF_3 is now included among the greenhouse gases.

310 See, for example PCAF, *Global GHG Accounting and Reporting Standard Part A: Financed Emissions*, December 2025 ("PCAF Financed Emissions (2025)") (Exhibit ING-145), p. 29-30.

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Example: double counting

The emissions produced by the petrol used by taxis are counted as Scope 1 emissions for the taxi company,[311] and as Scope 3 emissions for both the petrol producer and the taxi passenger.

The same logic applies to banks. For example, a bank may provide financing to both the taxi company and the petrol producer, while its employees use the taxi company's services. In this case, the same emissions are allocated to the bank in multiple ways.

(2) Scope 3, Cat. 15: investments

213. Investments are qualified under the GHG Protocol as Scope 3, Cat. 15 emissions. These are "*emissions associated with the reporting company's investments in the reporting year, not already included in scope 1 or scope 2*".[312] The GHG Protocol distinguishes between four investment categories: (i) equity investments; (ii) loans; (iii) project financing; and (iv) asset management and other services.[313] For banks, Scope 3, Cat. 15 emissions are particularly relevant.[314]

214. While there is broad support for subdividing into Scopes 1, 2 and 3 as such,[315] there are different views on the parameters of Scope 3, Cat. 15 emissions. Some Voluntary Initiatives only allocate Scope 1 and 2 emissions from clients to a bank, while others include their clients' Scope 3 emissions (i.e. the emissions of the bank's clients' suppliers and clients).

Figure 10 A schematic representation of Scope 3, including clients' Scopes 1, 2 and 3[316]

311 This applies if the taxi company is the owner of the taxi. If the taxi company rents or leases its taxis, the emissions of the taxi company fall within the taxi company's Scope 3.

312 GHG Protocol Corporate Value Chain Standard (Exhibit MD-130), p. 51.

313 GHG Protocol Corporate Value Chain Standard (Exhibit MD-130), p. 51.

314 See, for example, PCAF Financed Emissions (2025) (Exhibit ING-145), p. 14: "*For most financial institutions the 'financed emissions' (Scope 3, category 15) associated with their loans and investments are the most relevant emissions source.*"

315 For example, the English language version of the CSRD aligns with the GHG Protocol with its references to "Scope 1", "Scope 2" and "Scope 3" emissions (Article 1(8) CSRD which inserts Article 29b) into Directive 2013/34/EU of 26 June 2013). See also, for example, ESRS E1-6, Appendix A, TV 39(a), 45(a) and (d), 46(a), (c) and (d) and ESRS E1-7, Appendix A, TV 58(a).

316 Figure 10 is also submitted as part of Appendix 2.

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(a) The GHG Protocol regards Scope 3 as an "optional" reporting category[317] and limits reporting on Scope 3, Cat. 15, to clients' Scope 1 and 2 emissions.[318]

(b) Other Voluntary Initiatives, such as PCAF,[319] SBTi,[320],and GFANZ,[321] take various middle ground approaches, for example by including the Scope 3 emissions of banks' clients operating in certain emission-intensive sectors. Due to the risk of double counting, PCAF recommends that clients' Scope 3 emissions should always be reported separately from other emissions.[322] This is because Scope 3 emissions have often been reported as Scope 1 or 2 emissions by others.

(c) Only the Race to Zero campaign,[323] and UNEP FI[324] prescribe a structural allocation of client' Scope 3 emissions to banks.

215. Voluntary Initiatives do, however, acknowledge that the reporting options are for the time being limited by the poor availability of data on Scope 3 emissions (see also nos. 222 and 223 below).

216. Scope 3, Cat. 15 emissions of banks can be divided into financed and facilitated emissions. PCAF uses these terms:

- **financed emissions** are defined as emissions allocated to the bank based on financing provided to clients by the bank;[325] and
- **facilitated emissions** are defined as emissions allocated based on services provided to clients without direct financing, such as bond issue

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317 GHG Protocol Corporate Standard (Exhibit MD-129), p. 25: "*Scope 3 is an optional reporting category that allows for the treatment of all other indirect emissions. Scope 3 emissions are a consequence of the activities of the company, but occur from sources not owned or controlled by the company*". See also GHG Protocol Corporate Standard (Exhibit MD-129), p. 29.

318 GHG Protocol Corporate Value Chain Standard (Exhibit MD-130), p. 51: "*A reporting company's Scope 3 emissions from investments are the Scope 1 and Scope 2 emissions of investees.*"

319 For example, PCAF allocates clients' Scope 1, 2 and 3 emissions at listed equity and corporate bonds and business loans and unlisted equity, but limits this in principle to clients' Scope 1 and 2 emissions at e.g., commercial real estate, mortgages and motor vehicle loans (respectively PCAF Financed Emissions (2025) (Exhibit ING-145), p. 40, 56, 77, 83, 91).

320 SBTi, *Financial Institutions Net Zero Standard,* July 2025 ("SBTi FINZ") (Exhibit ING-146), p. 28; SBTi, *Financial Institutions Near Term Criteria,* May 2024 ("SBTi FINT") (Exhibit ING-147), p. 14 and 22.

321 GFANZ 2022, *Net-Zero Transition Plans* ("GFANZ, *Net-Zero Transition Plans*") (Exhibit MD-219), footnote 243.

322 PCAF Financed Emissions (2025) (Exhibit ING-145), p. 29.

323 UNFCCC, *Interpretation Guide Race to Zero Expert Peer Review Group Version 2.0* ("RtZ Interpretation Guide") (Exhibit MD-132), p. 4. This document is a supplement to the UNFCCC, *Starting Line and Leadership Practices 3.0 - Minimum criteria required for participation in the Race to Zero campaign* ("RtZ Pledge") (Exhibit MD-128).

324 This applies to emissions that are "significant" and as far as "data allow". See UNEP FI, *Climate Target Setting for Banks,* October 2025 ("UNEP FI Guidance") (Exhibit ING-148), p. 4 and in the same vein p. 7; and the earlier version of this document UNEP FI NZBA 2024, "Guidelines for Climate Target Setting for Banks Version 2" ("NZBA Guidance") (Exhibit MD-220), p. 4 and in the same vein p. 7.

325 PCAF Financed Emissions (2025) (Exhibit ING-145), p. 4.

consultancy services. These activities are not reflected on the bank's balance sheet.[326]

217. The GHG Protocol does not require that all of a client's emissions be allocated to a bank pursuant to a client relationship. This is done on the basis of the ratio between the financing provided by the bank and the total value of the client.[327] PCAF uses this proportional allocation method[328] and provides guidelines on how to determine a company's value.[329]

Example: proportional allocation

A bank lends EUR 10 to two clients (A and B). Client A is worth EUR 100 and client B is worth EUR 200. Their combined emissions are 100 kg CO_2e. The bank is then allocated 10 kg CO_2e (10%) for client A and 5 kg CO_2e (5%) for client B.

218. Accordingly, changes in the clients' value can lead to changes in the emissions allocated to the bank on paper without any change in actual emissions (see chapter 11 below for a detailed explanation).[330]

219. The reporting of facilitated emissions is also still in its infancy, as the AFM also confirms.[331] PCAF and SBTi do already have an approach for this type of Scope 3, Cat. 15 emissions. PCAF allocates facilitated emissions to a bank if it acts as the lead bookrunner.[332] As with financed emissions, this is based on proportional emission allocation. So once again, the type of financing relationship and the role of the bank in the provision of services is relevant (see also no. 204 above where this relevance is discussed in the context of the OECD Guidelines). Due to the absence of direct financing, PCAF applies a discount to proportional emissions in the case of facilitated emissions. PCAF believes that at least 33% of these emissions can be allocated to the bank (although separate reporting of 100% is

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326 PCAF Global GHG Accounting and Reporting Standard Part B Facilitated Emissions ("PCAF Facilitated Emissions") (Exhibit MD-142), p. 8-9: "*Facilitated emissions differ from financed emissions in two respects: they are rarely held on a financial institution's balance sheet (representing services rather than financing); and a financial institution's association with the transaction is temporary*. […] *They are facilitated, using various services the facilitating institution provides, rather than financed, because the institution is not providing financing directly to the issuer.*"

327 GHG Protocol Corporate Value Chain Standard (Exhibit MD-130), p. 51.

328 PCAF Financed Emissions (2025) (Exhibit ING-145), p. 28.

329 PCAF applies specific rules for calculating the enterprise value depending on the situation. See PCAF Financed Emissions (2025) (Exhibit ING-145), p. 41-43.

330 See, for example, GFANZ, *Net-Zero Transition Plans* (Exhibit MD-219), p. 78-79.

331 AFM, *Naar een transparante rapportage over klimaattransitieplannen en gefinancierde emissies*, december 2025 (excerpt) ("AFM 2025") (Exhibit ING-149), p. 11.

332 PCAF Facilitated Emissions (Exhibit MD-142). On a bank's role as lead bookrunner, see footnote 899 to no. 555 and footnote 1029 to no. 611 below.

also permitted).[333] SBTi refers to PCAF's methodology, but aims for the reporting of 100% of proportional emissions.[334]

(3) Baselining: establishing the base year

220. The GHG Protocol was originally devised to enable companies to monitor their own emissions. Companies that want an overview of long-term emission trends usually choose a base year against which to measure their emissions. Voluntary Initiatives state that the base year should be re-established in the event of significant changes. These changes include (i) structural changes to the company, including divestments, mergers and acquisitions, or the outsourcing or insourcing of activities; (ii) changes in the calculation method or data quality; and (iii) the discovery of significant errors.[335] This process is referred to as rebaselining.

(4) Emissions data and its limitations

221. Carbon accounting requires emissions data. Scope 1 emissions are usually straightforward, as they are the emissions generated by the company itself. Scope 2 emissions are also relatively straightforward, as energy suppliers will usually have the necessary data.

222. Determining Scope 3 emissions is often more complicated and various Voluntary Initiatives and methodologies are available for different categories of Scope 3 emissions.[336]

223. To determine their Scope 3, Cat. 15 emissions, banks rely on data on their clients' emissions.[337] The availability and quality of this data present challenges and constraints.

(a) Many companies do not report their emissions. Banks therefore rely on external parties to generate proxy data (i.e. standardised emissions data for a specific economic activity). However, this does not take

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333 PCAF Facilitated Emissions (Exhibit MD-142), p. 32-33.

334 SBTi FINZ (Exhibit ING-146), p. 29. Different banks use different percentages: Barclays and HSBC use follow the 33% rate suggested by PCAF, while JPMorgan Chase & Co. and Wells Fargo assume 100%. See NZBA, *Target Setting for Capital Markets Activities,* October 2024 (Exhibit ING-150), p. 16-18.

335 GHG Protocol Corporate Standard (Exhibit MD-129), p. 35-39.

336 For example, different approaches exist for allocating Scope 3 emissions associated with the life cycle of a manufactured product. Companies may (i) calculate or model emissions directly; or (ii) estimate emissions from (a) their activities; or (b) multiply their turnover by an emission factor. For this allocation, companies can also use primary data or secondary – proxy – data. See Greenhouse Gas Protocol, *Product Life Cycle Accounting and Reporting Standard,* September 2011 (Exhibit ING-151), p. 51-54.

337 GHG Protocol Corporate Value Chain Standard (Exhibit MD-130), p. 74.

company-specific characteristics into account.[338] These external parties also use different (and therefore inconsistent) methods.[339]

(b) Even when companies report their emissions themselves, the reports are often inconsistent and incomplete.[340] Companies can – and often do – exclude certain emissions, for example by applying materiality thresholds.[341] Small and medium-sized enterprises generally have limited or no experience with emissions reporting, which increases the likelihood of error.[342]

224. Like the EU legislator,[343] various Voluntary Initiatives acknowledge the challenges and constraints associated with client emissions data.[344] Banks also need access to information about their clients' current market value to determine their Scope 3 emissions. However, they often have to rely on estimates, as much of the available information is outdated.[345]

225. Thus, carbon accounting helps companies identify their own emissions and those allocated to them for accounting purposes. For banks, carbon accounting helps them to assess which of their activities are associated with the highest emission intensity and where they are allocated the highest nominal emission figures.

226. Due to the varying basic principles, choices, assumptions, and shortcomings in data availability, quality, and integrity, reported emissions are not suitable for making qualitative or quantitative decisions about a bank's climate policy. The GHG Protocol therefore emphasises that its methodology "*is not designed to support comparisons between companies on their scope 3 emissions*".[346] PCAF recognises that Scope 3 emissions are not an effective measure "*to compare or benchmark financial institutions on their performance due to the potential*

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338 M. Condon, "Whats Scope 3 Good For?", *UC Davis Law Review* (56) 2023 (Exhibit ING-152), p. 1932-1933; Q. Nguyen et al., "Scope 3 Emissions: Data Quality and Machine Learning Prediction Accuracy", *USAEE Working Paper* 2022, vol. 22-562 ("Nguyen 2022") (Exhibit ING-153), p. 9.

339 T. Busch et al., "Corporate carbon performance: Quo vadis?", *Journal of Industrial Ecology* 2022, vol. 26 (Exhibit ING-154); Nguyen 2022 (Exhibit ING-153), p. 3-4.

340 Nguyen 2022 (Exhibit ING-153), p. 3.

341 Nguyen 2022 (Exhibit ING-153), p. 3.

342 OECD, *OECD Platform on Financing SMEs for Sustainability. Activity Report 2025*, November 2025 (excerpt) (Exhibit ING-155), p. 11. This limitation is widely recognized, and discussed in various contexts, for example in a publication by the Asian Development Bank, *Mitigating the Data Gap in Greenhouse Gas Emissions Calculation for Small and Medium-Sized Enterprises,* February 2025 (Exhibit ING-156), p. 3-5.

343 See, for example, recitals 13 and 36 to the CSRD. See also section 2.4 above.

344 PCAF Financed Emissions (2025) (Exhibit ING-145), p. 30; PCAF Facilitated Emissions (Exhibit MD-142), p. 4; GHG Protocol Corporate Value Chain Standard (Exhibit MD-130), p. 82, 84; RMI, *PACTA for Banks*, 25 July 2022 ("PACTA') (Exhibit ING-157), p. 32; SBTi FINZ (Exhibit ING-146), p. 15 and 27; RtZ Interpretation Guide (Exhibit MD-132), p. 4; GFANZ, *Net-Zero Transition Plans* (Exhibit MD-219), p. 77; GFANZ, *Financial Institution Net-Zero Transition Plans. Supplemental Information*, November 2022 (Exhibit ING-158), p. 145-147; UNEP FI Guidance (Exhibit ING-148), p. 8 and 10. See also AFM 2025 (Exhibit ING-149), p. 5, 14 and 35.

345 PCAF Financed Emissions (2025) (Exhibit ING-145), p. 30-31.

346 GHG Protocol Corporate Value Chain Standard (Exhibit MD-130), p. 6.

differences between financial institutions in terms of size, product portfolio, exposure to sectors and regions, etc."[347]

5.3 Transition planning: various ways of approaching transition planning by companies

227. When formulating an appropriate climate approach, a company will first consider how it can contribute to the transition process.[348] This may also mean that that approach does not directly target the reduction of the company's Scope 1, 2 and 3 emissions as such, but instead focuses on developing or advancing technologies that assist others in reducing their emissions or contributing to sustainable projects. For example, a producer of chemical components may focus on producing those components for the production of solar panels.[349] With that approach, the producer then contributes to sustainability in the real economy, despite the fact that successful implementation of that approach results in an increase in the producer's reported emissions.[350]

228. In formulating a climate approach, a company can track the progress under that approach by looking at, among other things, the progress of the company's reported Scope 1, 2 and 3 emissions. Alternatively, a company may choose an approach that does focus primarily or in part on the company's reported Scope 1, 2 and/or 3 emissions. In all cases, a company has several choices to make, including:

(a) which emissions in its inventory to focus on to best contribute to reducing emissions;

(b) which climate scenarios and transition pathways to use; and

(c) whether to formulate reduction targets (also known as target setting), and if so, which of them are appropriate.

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347 PCAF Financed Emissions (2025) (Exhibit ING-145), p. 166.

348 In this section, ING discusses only the climate policy related to the portfolio's impact on climate change and not the policy related to the risk of climate change on the portfolio. See also section 6.2 below.

349 Therefore, in addition to sector-agnostic and financial sector-specific Voluntary Initiatives, there are also a variety of guidelines focused on specific sectors. See, for example SBTi, *Forest, Country and Agriculture science-based target setting guidance*, December 2023 (Exhibit ING-159); SBTi, *Cement science-based target setting guidance*, December 2022 (Exhibit ING-160); RMI, *Sustainable STEEL Principles Framework*, February 2025 (Exhibit ING-161); RMI, *Pegasus Guidelines for the Aviation Sector*, March 2024 (Exhibit ING-162).

350 See, for example TPT, *Explore the Disclosure Recommendations*, April 2024 (Exhibit ING-163), p. 6: "*The Strategic Ambition provides the basis for all the other elements of the entity's transition plan and is likely also to be a core part of the entity's wider corporate strategy. Users of a transition plan will want to understand where the entity sees its main transition levers, and the relative emphasis that the entity places on the three inter-related channels of a strategic and rounded approach to transition planning: decarbonising the entity; responding to climate-related risks and opportunities; and contributing to an economy-wide transition.*"

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(1) Voluntary Initiatives take an impact-oriented approach

229. Banks engage in many different activities. Provided they comply with their statutory obligations, banks can choose which business activities and sectors to prioritise in their climate policy. Voluntary Initiatives offer banks the flexibility to set reduction targets for lending activities, asset management services and capital market activities, or a combination thereof.[351] Banks can also choose to focus their policy on specific products, such as commercial loans to businesses or mortgage loans to homebuyers. Voluntary Initiatives make certain choices, but also leave banks room for their own deliberations.[352]

230. Many Voluntary Initiatives, including the OECD Guidelines and the UNGPs,[353] take an impact-oriented and prioritisation-based approach. Based on these principles, a company will focus its policy on the activities and sustainability measures that will have the greatest tangible impact. The question is then where a policy will have the greatest effect. These activities have the highest priority.

231. Voluntary Initiatives that focus specifically on banks typically recommend that they formulate policy for a sufficiently large proportion of their emissions[354] or for certain emission-intensive clients.[355]

(2) The role of climate scenarios and transition pathways

232. Companies can also determine how quickly they will work towards reducing emissions and which benchmarks they will use. Like governments, companies use climate scenarios and transition pathways based on these scenarios.

- **Climate scenarios**: the IPCC defines a climate scenario as a "*plausible description of how the future may develop based on a coherent and internally consistent set of assumptions about key driving forces (e.g., rate of technological change, price) and relationships.*"[356]

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351 See, for example, UNEP FI Guidance (Exhibit ING-148), p. 9; TPT, Banks Sector Guidance, April 2024 ("TPT Banks Sector Guidance") (Exhibit ING-164), p. 12.

352 UNEP FI does not, for example, make any specific distinction between the types of lending activities it provides, merely stating that priority should be given to emission-intensive sectors when formulating targets. See UNEP FI Guidance (Exhibit ING-148), p. 9-10. Conversely, SBTi FINZ distinguishes between different loan categories and takes a different approach for each one. Some loans fall outside the scope of SBTi FINZ. See SBTi FINZ (Exhibit ING-146), p. 47, 57-58.

353 See no. 200 above.

354 UNEP FI Guidance (Exhibit ING-148), p. 9.

355 See, for example PACTA (Exhibit ING-157), p. 23: "[…] *the Scope is circumscribed such as to only include the segment of the value chain (i) that controls the bulk of the impact on the climate system, and (ii) on which decarbonization efforts must be concentrated in order to spur the entire sector to fall into alignment* […]".

356 IPCC 2022, AR6, WGIII (excerpt) ("IPCC Sixth Assessment Report") (Exhibit ING-165), p. 1812-1813.

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- **Transition pathways**: transition pathways outline possible routes by which the global economy can remain within a certain carbon budget, usually focusing on the most cost-effective options.[357] A carbon budget is the estimated maximum amount of CO_2 that can be emitted before global warming reaches a certain point.[358]

233. There are many climate scenarios and transition pathways in circulation. They are continuously being drafted, developed and adjusted. A wide range of organisations are involved in this process, including the International Energy Agency ("**IEA**"),[359] the Network for Greening the Financial System, GFANZ, as well as academics of all kinds. The website of the recently launched *Scenario Compass Initiative* (itself a Voluntary Initiative) states that "[e]*very year, hundreds of global and national scenarios are produced, offering detailed insight into future energy, land, economic, and climate systems. These scenarios and invaluable for helping business, governments, and communities craft policies and make informed investments.*"[360] The IPCC synthesizes findings from a variety of different climate scenarios.[361]

234. Accordingly, climate scenarios are not predictions.[362] They are based on various assumptions related to societal, socio-economic and technical developments and principles.[363] Transition pathways can differ in terms of their level of ambition, focus area, and geographical scope. Each transition pathway therefore has its own implications, for instance with regard to the likelihood of achieving a particular climate target, as well as the technologies used, a country's energy security, energy affordability, and economic and social development.[364]

235. Companies can use climate scenarios and transition pathways to formulate overall and climate policies. They can use multiple climate scenarios and transition pathways simultaneously for insight into the long-term trajectory of sectors and markets.

236. In section 10.2.2, ING explains that transition pathways are not designed to be applied to companies on a one-to-one basis. For example: the IEA develops its climate scenarios and transition pathways to help policymakers, entrepreneurs and investors more broadly, without suggesting that the reductions modelled can or should be applied to individual companies.[365]

Example: IEA climate scenarios

The IEA has developed various climate scenarios that demonstrate the impact of government measures: (i) the "Announced Pledges Scenario" (effects of national energy and climate targets, such as NDCs);[366] (ii) the "Current Policies Scenario" (effects of existing legislation based on a "narrow reading" and assuming no changes occur);[367] and the "Stated Policies Scenario"

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(effects of existing and announced legislation and official policy documents, assuming a broad reading).[368] The IEA has also created a climate scenario that takes the desired outcome as its starting point.[369] This is the Net Zero Emissions by 2050 Scenario ("**IEA NZE Scenario**").

In the World Energy Outlook 2025, the IEA states that its IEA NZE scenario is a modelled transition pathway. However, the IEA recognises that there are many other ways to achieve the same goal, and that each country will have its own route:

> "*The International Energy Agency (IEA) was asked by the COP26 Presidency in 2021 to give an indication of what achieving the 1.5°C goal would mean for the energy sector. Responding to this request, the Net Zero Emissions by 2050 Scenario (NZE Scenario) was developed. It represents a global pathway toward the goal of limiting global warming to 1.5°C. The IEA has always been clear that there are various paths to reach this objective and that each country will have its own route. Since 2021, the IEA has updated its NZE Scenario*

357 IPCC Sixth Assessment Report (Exhibit ING-165), p. 1810.
358 IPCC Sixth Assessment Report (Exhibit ING-165), p. 1796. See at (ii).
359 The "World Energy Outlook" published by the IEA offers analyses and insights into developments in the energy market and what these developments signify for energy security, environmental protection and economic developments. The IEA develops climate scenarios for the energy sector, for example. Other organisations develop sectoral climate scenarios, including the International Maritime Organisation in the case of shipping.
360 Scenario Compass Initiative, "A global initiative to inform choices about the future of our planet" (printout 21 January 2026) (Exhibit ING-166), p. 1.
361 IPCC Sixth Assessment Report (Exhibit ING-165), p. 305-309.
362 IPCC Sixth Assessment Report (Exhibit ING-165), p. 1813: "*scenarios are neither predictions nor forecasts*"; IEA, *World Energy Outlook 2024*, 16 October 2024 (excerpt) ("IEA WEO2024") (Exhibit ING-167), p. 78: "*None of these scenarios is a forecast*"; IEA, *World Energy Outlook 2025*, 12 November 2025 (excerpt) ("IEA WEO2025") (Exhibit ING-168), p. 87: "*The World Energy Outlook-2025 (WEO-2025) unfolds against an uncertain and unpredictable backdrop.* […] *There can be no single or simple view on how the global energy outlook might develop. This is why the WEO includes a suite of updated scenarios, each based on a different set of assumptions about the policies, technologies and other factors that shape the outlook. None of these scenarios should be viewed as a forecast.*"
363 See, for example, IEA 2021, "A closer look at the modeling behind our global Roadmap to Net Zero Emissions by 2050" (printout 27 February 2025) (Exhibit MD-222).
364 See, for example IEA WEO2024 (Exhibit ING-167), p. 78-79.
365 IEA, "Scenarios in the World Energy Outlook 2025", 5 November 2025 (printout of 21 January 2026) (Exhibit ING-169): "*Since it was published as an annual report in 1998, the approach of the World Energy Outlook has never been to provide a single vision of the future but rather to view the world through different lenses or scenarios. All scenarios have the same starting point based on the latest data for energy supply and demand, markets, technology costs and policies, as well as the same assumptions for future population and economic growth. However, depending on the scenario, different assumptions on policies, end goals or the ability to overcome technological barriers can mean very different energy futures. This approach allows for a comparison of the effects and implications of different energy choices against a common backdrop.*" (underlining added).
366 IEA WEO2024 (Exhibit ING-167), p. 78-79; IEA WEO2025 (Exhibit ING-168), p. 106.
367 IEA WEO2025 (Exhibit ING-168), p. 105.
368 IEA WEO2024 (Exhibit ING-167), p. 78; IEA WEO2025 (Exhibit ING-168), p. 105.
369 Transition paths that take desired outcomes as a starting point and work toward a particular outcome are sometimes described as *normative*. This term should be distinguished from normative in the legal sense.

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each year, in line with changes in real world investment, technology developments and greenhouse gas (GHG) emissions."[370]

However, the IEA (the International Energy Agency) has chosen to conduct its analysis only in the energy sectors.[371]

237. Supervisory authorities also use climate scenarios and transition pathways as part of their market supervision.

238. Voluntary Initiatives accept the nature of climate scenarios and transition pathways, as outlined above. Consequently, they do not prescribe the use of a specific climate scenario or transition pathway.

(a) The TPT Disclosure Framework does not adhere to a specific transition pathway; instead, it refers to "*ambitious objectives and priorities*".[372]

(b) Both UNEP FI,[373] and PACTA[374] adhere to the Paris Agreement ("*well below 2°C* [...] *and pursuing efforts to limit the temperature increase to 1.5°C*"[375]), but leave it to users to select an appropriate transition pathway. UNEP FI recommends "*IPCC-qualifying models*".[376]

(c) SBTi recommends reduction percentages in line with a sectoral transition pathway based on a 1.5°C climate scenario. It suggests different transition pathways for different sectors, among which those developed by SBTi itself.[377] GFANZ, too, proposes that transition plans should align with a 1.5°C pathway involving "*low or no overshoot*". However, it does not recommend a specific transition pathway.[378]

(d) In line with its nature as a public campaign intended to encourage action,[379] the Race to Zero campaign recommends targets consistent with limiting global warming to "*1.5C with no or limited overshoot*", and a "*maximum effort toward or beyond a fair share of the 50% global*

370 IEA WEO2025 (Exhibit ING-168), p. 315.
371 IEA 2023, "Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update" ("IEA NZE Roadmap 2023") (Exhibit MD-085), p. 3: "*With this in mind, the IEA is therefore providing a 2023 update to our Net Zero Roadmap, drawing on the latest data and analysis to map out what the global energy sector would need to do*".
372 TPT, *Disclosure Framework,* October 2023 ("TPT Disclosure Framework") (Exhibit ING-170), p. 19.
373 UNEP FI Guidance (Exhibit ING-148), p. 7 and 17.
374 PACTA (Exhibit ING-157), p. 33.
375 Article 2(1)(a) Paris Agreement (original English version) (Exhibit MD-070).
376 UNEP FI Guidance (Exhibit ING-148), p. 17.
377 SBTi FINZ (Exhibit ING-146), p. 64-67.
378 GFANZ, *Net-Zero Transition Plans* (Exhibit MD-219), p. 14.
379 See section 10.3.1 below.

reduction in CO2 by 2030", with an ultimate goal of net zero by 2050.[380] The Race to Zero campaign advocates no specific transition pathway.[381]

239. Thus, companies can choose from various climate scenarios and transition pathways to use as a benchmark for their climate policy.

(3) Target setting: various options for reduction targets

240. If companies wish to set reduction targets, they can choose from various options. Generally, two types of reduction target are distinguished: absolute reduction targets and intensity targets. An absolute reduction target involves the aim of reducing emissions by a fixed – absolute – amount compared to a base year. An intensity target focuses on reducing emissions per relevant unit of measurement compared to a base year. There are different types of emission intensity unit, including

- **economic emission intensity:** absolute emissions divided by an economic unit, e.g., a bank's outstanding loan or investment volume; and
- **physical emission intensity:** absolute emissions divided by a unit of physical activity or output, e.g., the number of products manufactured.[382]

241. Absolute emissions can fluctuate for a variety of reasons, including changes in actual emissions or any number of market factors.

Example: fluctuation in allocated emissions

In 2024, a company produces 100 products. The company's absolute emissions in 2024 are 100 tonnes of CO_2e. In 2025, the company's absolute emissions rise to 150 tonnes of CO_2e. This could be due to various factors:

- the company produces 100 products but has become less sustainable, causing absolute emissions to rise by 50%;
- the company produces products in exactly the same way but sells 50% more of them; or
- the company has started to produce more sustainably, resulting in 50% less CO_2e being is emitted per product (i.e. 0.5 tonnes of CO_2e per product), while annual sales have simultaneously increased to 300 products.

380 RtZ Pledge (Exhibit MD-128), p. 2.
381 RtZ Interpretation Guide (Exhibit MD-132), p. 7.
382 See, for example PCAF Financed Emissions (2025) (Exhibit ING-145), p. 16.

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242. Companies, including banks, often use intensity targets when setting their objectives. This is because emission intensity is less susceptible to market influences. For example, if a bank wants to set an intensity target for the automotive sector, it can consider the kg CO_2e emitted per kilometre driven by the cars produced by its clients. If the reported emission intensity decreases, this means that, on average, the vehicles produced cause less pollution. This insight would not be gained if only absolute targets were considered.

243. Voluntary Initiatives have differing views on the use of absolute and intensity targets.

- **No choice**: UNEP FI makes no choice, and believes absolute or relative targets can be used.[383] The OECD Guidelines recommend absolute and, where appropriate, intensity-based targets.[384]

- **Preference for intensity targets**: PCAF indicates that, while absolute emissions are suitable for establishing a base year, intensity data is better for setting targets.[385] PACTA uses intensity targets.[386] Intensity targets are also used by Voluntary Initiatives aimed at sectors where sustainability is difficult to achieve due to heavy reliance on fossil fuels ("hard-to-abate" sectors).[387]

- **Preference varies by type of emission/sector**: SBTi distinguishes between sectors on the basis of whether they are being phased out (e.g., coal, oil and gas) or will continue to exist but must become more efficient (all other sectors).[388] The Race to Zero campaign distinguishes between companies in the real economy and financial companies with indirect emissions, as well as between companies in certain sectors.[389]

244. All in all, Voluntary Initiatives offer different options and reasons for the type of target used.

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383 UNEP FI Guidance (Exhibit ING-148), p. 8.
384 OECD Guidelines (Exhibit MD-137), p. 37.
385 PCAF Financed Emissions (2025) (Exhibit ING-145), p. 15-16.
386 PACTA (Exhibit ING-157), p. 20.
387 RMI, *Sustainable STEEL Principles Framework*, February 2025 (Exhibit ING-161), p. 15-16; RMI, *Poseidon Principles*, June 2024 (Exhibit ING-171), p. 12 and 16; RMI, *Pegasus Guidelines for the Aviation Sector*, March 2024 (Exhibit ING-162), p. 8.
388 SBTi FINZ (Exhibit ING-146), p. 64-67; SBTi FINT (Exhibit ING-147), p. 29.
389 The Race to Zero campaign recommends absolute targets for normal businesses to achieve "*real-world reductions*". However, relative targets are considered appropriate in sectors where absolute growth is necessary. According to the Race to Zero campaign, relative targets can be used for banks with indirect emissions. See RtZ Interpretation Guide (Exhibit MD-132), p. 8-9.

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5.4 Conclusion: there is a high degree of divergence among the many Voluntary Initiatives

245. Companies have many visions and guidelines at their disposal to help them implement general sustainability and/or climate policy or approach. The OECD Guidelines and UNGPs provide guidance on how companies can contribute to mitigating adverse impacts within their value chains. All of these perspectives and guidelines are used by companies on a voluntary basis. These initiatives themselves also indicate that they reflect voluntary action.

246. In recent years, many Voluntary Initiatives focusing specifically on climate have emerged. These Voluntary Initiatives can serve as tools for policymakers and companies as they shape their climate approach. There are many options. However, given the complexity of the climate transition, perspectives are still evolving and the Voluntary Initiatives vary considerably. They also distinguish between sectors and types of companies on relevant points and themes. For banks, Voluntary Initiatives reflect different perspectives and insights than those applicable to companies in the real economy.

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PART II ING'S CLIMATE APPROACH

6 ING'S CLIMATE APPROACH DEMONSTRATES THE IMPORTANCE ING ATTACHES TO FULFILLING ITS ROLE IN THE CLIMATE TRANSITION

Key points of this chapter

- ING has prioritised sustainability, including climate transition, as part of its strategy for many years. ING's Operational Emissions are minimal. Instead, 99.99% of the emissions reported by ING are from its clients and their clients and suppliers. These emissions are allocated to ING based on reporting standards.
- ING's climate approach aims to support its clients in reducing their actual emissions in the real economy. This contributes to the climate transition. Rigorously divesting clients hinders this process and prevents ING from contributing to the necessary transitions.
- ING's overall climate approach involves managing parts of its portfolio through its Terra approach, which enables the company to mitigate climate-related risks. ING's climate approach primarily focuses on supporting and financing the energy transition of clients in the most carbon-intensive sectors. ING uses various global and sectoral transition pathways to achieve this. In addition to its portfolio-level approach, ING has also started collecting client data to enable it to offer data-based support for the transition at client level.
- ING also plays a part in developing and sharing knowledge about the role of banks in the climate transition. ING's approach is consistently praised by independent external parties. ING is also the first global systemic bank to have its reduction targets validated by the renowned SBTi.

247. As already briefly discussed in chapter 1, it is for Milieudefensie to assert and substantiate that the legal duties that are able to support its claims exist and that these satisfy the applicable requirements. ING sets out the relevant assessment framework for this task in chapter 8. This shows, among other things, that ING's climate approach plays no role in this assessment. Although Milieudefensie asserts that ING's climate approach does not satisfy its claims, this does not mean that its claims constitute obligations for ING.

248. Nevertheless, ING deems it important to inform the court about its climate approach so that it can put Milieudefensie's statements about ING and its actions into the right perspective. Climate change has been part of ING's strategy for many years. ING's approach differs fundamentally from that advocated by

Milieudefensie. ING's approach focuses on providing the best possible support for its the climate transition of its clients, consistent with its role as a bank. ING is a bank that wants to help its clients reduce their actual emissions. Milieudefensie, on the other hand, wants ING to "wipe" its balance sheet clean of emissions. This amounts to "paper decarbonisation". This does lead to reductions of emissions in the real economy, nor does it contribute to financing the transition in the coming decades. Accordingly, ING has deliberately chosen its approach. This is a different approach than what Milieudefensie is focusing on in these proceedings. ING's approach has been praised by authoritative parties. This demonstrates that ING's approach is appropriate for a bank and of a high standard. ING considers this to be an important perspective, not least to assure the court that these proceedings are not a dispute between one party that wants to bring about the climate transition and another that does not. There is no debate that climate change must be countered by means of broad and deep transitions; but there is debate on how banks can and should contribute to this.

249. In this chapter, ING first provides an overview of its business activities (section 6.1), offering insight into its size and the global context in which it operates. ING then discusses its general climate approach and its role in the climate transition (section 6.2). ING then zooms in on its approach at portfolio level (section [6.3]) and client level (section 6.4). Section 6.5 considers the dynamic nature of ING's approach, enabling it to develop its role in the climate transition while responding to market developments as a bank. Section 6.6 discusses the fact that the quality of ING's approach is widely acclaimed. ING concludes that its climate approach is a core element of its strategy, fitting in with its role as a bank in relation to the real economy (section 6.7).

6.1 ING is a bank and therefore generates minimal operational emissions

250. ING is the largest bank in the Netherlands when measured by total assets. ING operates internationally and is the only Dutch bank, along with 28 other institutions, that has been designated as a global systemically important institution.[390] With over 63,000 employees, ING serves some 40 million clients in about 100 countries.[391] These clients are private individuals, governments and small- and medium-sized enterprises in virtually all economic sectors.

251. ING distinguishes between retail banking, i.e., private individuals, small and medium-sized enterprises ("**Retail Banking**") and wholesale banking (i.e., large companies and financial institutions) ("**Wholesale Banking**").

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390 The concept of "systemic relevance" is explained in section 4.2. See further FSB, List of Global Systemically Important Banks (G-*SIBs*), 27 November 2025 (Exhibit ING-132).

391 ING Annual Report 2024 (Exhibit MD-004), p. 8 and 139.

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252. In the Retail Banking segment, ING offers its clients products and services such as loans, current and savings accounts, mortgage loans, insurance and investments.[392]

253. The Wholesale Banking segment serves clients with products and services including loans, payment services, cash management, capital market activities, trade & commodity finance ("**TCF**") and various consulting services.[393]

254. ING's revenue consists largely of (i) interest paid by clients on loans; and (ii) fees for services rendered.[394] ING's loans to clients are its largest balance sheet item (67%).[395]

255. The figure below shows the markets in which ING serves clients.[396] The activities of these clients cover practically the entire world. 58% of ING's Wholesale Banking income is international in nature.[397]

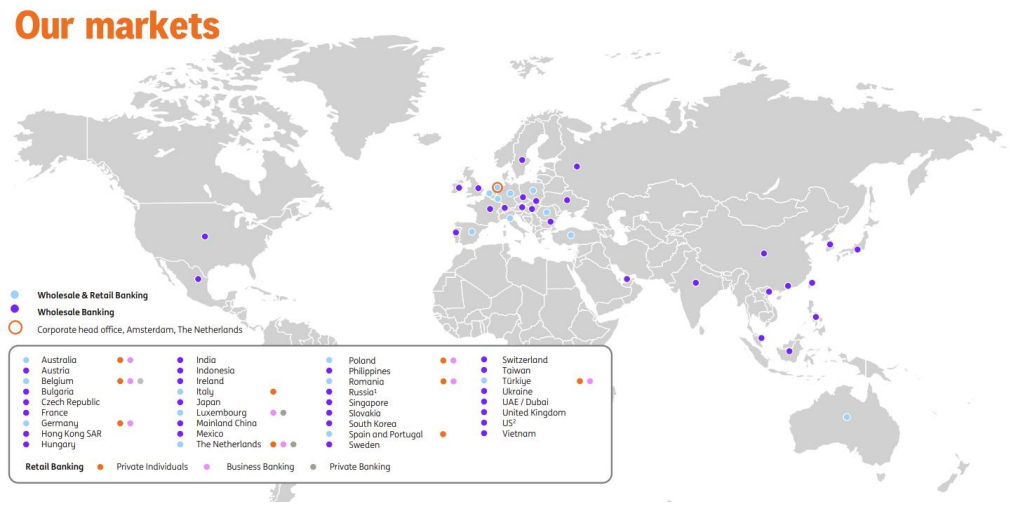

Figure 11 Geographic distribution of ING's business activities

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392 ING Annual Report 2024 (Exhibit MD-004), p. 9. Investment services consist of (i) investment advice, after which the client makes the investment decision; (ii) asset management, where ING invests a client's assets within certain limits; and (iii) execution-only services, where ING executes a client's investment order without being involved in the investment decision itself. See ING, *Algemene Voorwaarden Beleggen*, April 2024 (excerpt) (Exhibit ING-172), p. 4, 5 and 9.

393 ING Annual Report 2024 (Exhibit MD-004), p. 9. Cash management optimises client's cash flows, while ING's capital market activities help them raise funds on the capital markets. TCF finances short-term commodity trading, with ING providing a guarantee for transactions due to high market volatility. This distinguishes TCF from other types of loans. Capital market activities include helping companies issue bonds; ING itself does not provide financing in this case.

394 ING Annual Report 2024 (Exhibit MD-004), p. 226, 267 and 268.

395 ING Annual Report 2024 (Exhibit MD-004), p. 225.

396 ING, *Profielschets ten aanzien van 3Q2025*, October 2025 (excerpt) (Exhibit ING-173), p. 10. ING reached an agreement on the sale of its operations in Russia in January 2025. See ING *ING to sell its business in Russia to Global Development JSC*, 28 January 2025 (press release) (Exhibit ING-174).

397 ING Annual Report 2024 (Exhibit MD-004), p. 18.

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256. ING's own activities, as is usual for a bank, generate relatively few emissions. These are ING's Scope 1 and 2 emissions, as well as Scope 3 emissions in the business travel category[398] ("**Operational Emissions**"). The Operational Emissions are largely related to office buildings and business transport. They represent 0.01% of all emissions reported by ING.[399] The remaining 99.99% of the issues reported by ING stem from the activities of ING's clients (and the business relationships of these clients).[400] Of these 99.99% reported emissions, the majority are emissions from clients in Wholesale Banking.[401]

6.2 ING's overall climate approach and role in climate transition

257. As stated, sustainability, including climate transition, is a core part of ING's strategy.[402] To ensure the resilience and stability of ING's business model, ING, as a bank, will need to adequately manage these risks.[403] This is also important for mitigating systemic risks and ensuring financial system stability. Additionally, ING can also play a useful role in supporting its clients in managing risk at client level. ING's climate approach helps it do just that. ING also recognises commercial opportunities in financing the transition and wishes to contribute to it from a commercial perspective.[404] It is therefore essential for ING to have a robust climate approach. ING has continuously developed and improved its climate approach since the Paris Agreement was signed in 2015.

258. ING's climate approach is designed to contribute to the climate transition, rather than shut itself off from it. ING's climate approach therefore focuses on helping clients to reduce their actual emissions rather than simply and categorically reducing the emissions allocated to ING in order to wipe its balance sheet clean. ING could achieve this by excluding certain clients and reducing financing to specific clients and sectors. While this would make ING's balance sheet appear more "sustainable", it would not reduce the emissions of the affected sectors and clients. Nor would such an approach be consistent with adequate risk management, as it would also sideline ING in supporting clients in the transition. This support actually benefits the adequate managing of risks associated with climate change and the climate transition. By this sidelining, ING would also be

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398 GHG Protocol Corporate Value Chain Standard (Exhibit MD-130), p. 32, 46. Scope 3, Cat. 6 concerns business travel.

399 It follows from the table on p. 124 of the 2024 ING Annual Report (Exhibit MD-004) that the financed emissions in 2024 are 261,617 kilotons of CO_2e (the Scope 3, Cat. 15 emissions of ING, consisting of clients' Scope 1, 2 and 3 emissions). Operational Emissions are 27 kilotons of CO_2e, see ING, "Environmental Program" (printout of 4 February 2026) (Exhibit ING-175). This brings the total to 261,644 kilotons of CO_2e, of which 27 kilotons of CO_2e is 0.01.

400 These are so-called Scope 3, Cat. 15 emissions. See section 5.2 above.

401 Both in terms of financed emissions expressed as CO_2e emissions, and in terms of the number of CO_2e emissions per financed euro (economic intensity). See ING 2024 Annual Report (Exhibit MD-004), p. 124.

402 ING, *Climate Update 2025*, September 2025 ("Climate Update ING 2025") (Exhibit ING-176), p. 3

403 See section 2.5 above.

404 Climate Update ING 2025 (Exhibit ING-176), p. 3.

prevented from contributing to the climate transition of its clients and potential new clients in the coming decades. ING wants to retain its clients and provide financing for the transition.

259. ING's climate approach can be broken down into three parts:

- ING supports its clients in the transition by reducing their dependence on high-emission products and production processes;
- ING makes capital available for transition projects; and
- as a major mortgage lender, ING wishes to support its Retail Banking clients in their transition.[405]

260. The first part of the approach concerns supporting clients in their transition. The climate transition must take place in the real economy, and it will require trillions of euros' worth of investment, both to reduce emissions from current activities and to develop and expand new, more sustainable ones. Adequate financing is essential for making sustainable solutions feasible and scalable.[406] ING therefore supports its clients by for example providing financing for sustainability. This cannot be achieved overnight. The energy transition requires continuous adaptation and adjustment on both the production and consumption sides of fossil fuel use, and is therefore a gradual process.

261. Since 2015, ING has developed policies on issues including the financing of coal-fired power stations and thermal coal mines.[407] ING also has its own approach to financing (and supplying capital market services to) the exploration and production of new oil and gas fields, as well as the activities of pure play upstream oil and gas companies.[408]

262. Clients inevitably differ in terms of their capacity to become more sustainable (it is still difficult to become more sustainable in the cement sector, for example), the market in which they operate (clients outside the EU, such as those in the US, are subject to different legislation), their willingness to become more sustainable (ING also has clients who currently have no plans to do so) and various other contextual circumstances (such as other interests that need to be served and the client's financial position). Nor does ING provide all financing on the basis of direct one-to-one client relationships. Where ING provides financing in a syndicated loan structure, it liaises with other banks to agree on the financing

405 Climate Update ING 2025 (Exhibit ING-176), p. 5.
406 IEA NZE Roadmap 2023 (Exhibit MD-085), p. 173-174.
407 Climate Update ING 2025 (Exhibit ING-176), p. 16.
408 In the oil and gas sector, activities are categorised as upstream, midstream or downstream. Upstream refers to the exploration and production of oil and gas. Midstream refers to transport and storage. Downstream refers to refining and distribution. Pure-play means that a company is only active in a specific part of the sectoral value chain, such as upstream. See ING 2024 Climate Report (Exhibit MD-005), p. 40.

terms and maintain client contacts. ING must also exercise adequate risk management at all times. That means that ING considers many different factors in its risk assessment when entering into client and financing relationships. These not only include climate risks but also all kinds of other risks, such as those briefly set out in chapter 4 and elsewhere.

263. Secondly, ING provides financing for the development of renewable energy, new technologies, and sustainable activities. In 2022, ING committed to allocating EUR 2.5 billion annually to green projects. By 2023, ING had increased this target threefold to EUR 7.5 billion by 2025.[409] ING aims to mobilise EUR 150 billion for sustainable finance in its Wholesale Banking division by 2027.[410] In 2025, ING already mobilized EUR 166 billion for sustainable finance.[411]

264. Thirdly, ING wants to involve everyone who wants to contribute to the climate transition. For instance, ING supports private clients looking to make their homes more sustainable by offering discounts on mortgage and sustainability loans, as well as providing advice on sustainability measures.[412]

265. ING also aims to share its insights with other parties. ING therefore contributes to policy and legislative processes, methodologies and standards relating to climate and other sustainability issues.[413] A few examples:

(a) In collaboration with other parties, ING has contributed to the development of various transition planning methodologies for banks, including PACTA, the Sustainable STEEL Principles (steel sector), the Sustainable Aluminium Framework (aluminium sector) and the Poseidon Principles (shipping sector);[414]

(b) In 2018, ING played an active role in establishing the Katowice Commitment, which was signed by ING, BBVA, BNP Paribas, Société Générale and Standard Chartered.[415] The Katowice Commitment formed the basis for the Collective Commitment

409 Climate Update ING 2025 (Exhibit ING-176), p. 18.
410 Mobilising sustainable finance encompasses the provision of financial products and services to assist relevant clients in transitioning to more sustainable business models. See ING 2024 Annual Report (Exhibit MD-004), p. 378.
411 ING, *Press Release on Quarterly Results Q4 2025*, 29 January 2026 (Exhibit ING-177), p. 1.
412 See, among others Climate Update ING 2025 (Exhibit ING-176), p. 23-26; ING, "Verduurzamen financieren" (printout of 21 January 2026) (Exhibit ING-178); ING, *Actievoorwaarden ING Upgrader*, December 2024 (Exhibit ING-179).
413 Climate Update ING 2025 (Exhibit ING-176), p. 16.
414 Climate Update ING 2025 (Exhibit ING-176), p. 16; Climate Report ING 2024 (Exhibit MD-005), p. 28. These private initiatives mainly consist of a collaboration between various market players and stakeholders, and also hold consultation rounds on the guidelines and opinions they issue.
415 Katowice Commitment 2018 (Exhibit MD-164).

to Climate Action, supported by the United Nations and signed by ING;[416] and

(c) Alongside several other companies, ING has repeatedly called for more ambitious climate policy at an international level, at the Global Roundtable on Climate Change at Columbia University and the Climate Leadership Alliance of the World Economic Forum. This has included a request for CO_2 emission pricing (i.e. carbon pricing) at an international level.[417]

266. As a global systemically important bank, ING has been actively involved for over a decade in devising and developing ways in which banks can support the climate transition.

267. However, ING's climate approach does not necessarily lead to a reduction in its financed emissions, as the following example shows.

Example: Increase in allocated emissions due to transition financing

Wind energy is an important renewable energy source. Steel is needed to build a wind farm. However, steel production is associated with high emissions. If ING were to finance such production, its financed emissions in the sector "Steel" would increase significantly, even though this financing would also contribute to the climate transition.

268. ING's goal is not to reduce its financed and facilitated emissions on paper. ING's climate approach is designed to help its clients reduce their actual emissions while adequately managing the risks of climate change and the climate transition. Furthermore, the speed and manner in which ING's clients can become more sustainable depend heavily on the context. For example, steel producers can make their production more sustainable with significant investment, but not all are doing so at present. ING has chosen to continue financing the steel sector and help its clients in this sector achieve more sustainable production processes, both now and in the long term. ING believes that this approach will contribute more to the climate transition than excluding these clients would. This is partly because of the use of steel in transition activities, as the above example shows.

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416 UNEP FI 2019, 'Collective Commitment to Climate Action' (Exhibit MD-169), p. 1.

417 See, for example, The Earth Institute of Columbia University, "The Path to Climate Sustainability" (Exhibit MD-159), p. 3; World Economic Forum, "The climate economy is delivering: CEO climate leaders publish open letter ahead of COP30", 9 October 2025 (printout of 21 January 2026) (Exhibit ING-180).

269. In other words, ING recognises the dangers of climate change, the importance of mitigating those dangers, and the role banks can play.[418] ING is acting accordingly.

6.3 ING's approach to its own emissions and those of its portfolio

270. As part of its climate approach, ING promotes transparency in the marketplace. ING recognises the importance that the legislator attaches to transparency,[419] and sound risk management.[420] ING's climate approach has been covered in its annual report for some time now, and since 2019, it has also been providing transparency on this approach in separate climate updates.[421] It does this throughout while taking into account the relevant legislation.[422]

271. ING reports, among other things, on the emissions allocated to it. These financed emissions are calculated on a carbon accounting basis, as explained in chapter 5. Since 2014, ING has also set targets for its Operational Emissions (section 6.3.1) and has focused on reducing the most carbon-intensive areas of its loan portfolio (section 6.3.2).

6.3.1 ING is reducing its Operational Emissions

272. ING began by setting reduction targets for the emissions over which it can exert controlling influence: its Operational Emissions. From 2014 to January 2025, ING achieved its target of reducing Operational Emissions by 75%, from 106 to 27 kilotonnes of CO_2e.[423] ING then set a new target. It now aims to reduce Scope 1 and 2 emissions by an additional 44%, which target has been validated by SBTi, as well as to reduce total Operational Emissions by 23% in 2030 compared to 2023, from 29 to 22 kilotonnes of CO_2e.[424]

273. Furthermore, 100% of the electricity used in its office buildings worldwide is now renewable, and ING aims to have 90% of its global car fleet running on electricity by 2030.[425]

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418 For the role of banks, see section 2.5 above.
419 See section 2.4 above.
420 See section 2.5 above.
421 The 2024 annual report complies with the obligations under the CSRD and ESRS, which have not yet been implemented in the Netherlands, as well as with EBA Pillar 3, where applicable and compatible with the ESRS. See ING 2024 Annual Report (Exhibit MD-004), p. 94, 106. From 2025 onwards, ING will only report emissions in its annual report.
422 Contrary to Milieudefensie's allegation that ING's reporting is supposedly incomplete, ING has consistently met its reporting requirements. See Writ of Summons, nos. 12, 805-807.
423 ING, "Our own footprint" (printout of 21 January 2026) (Exhibit ING-181); Climate Report ING 2024 (Exhibit MD005), p. 90.
424 ING, "Our own footprint" (printout of 21 January 2026) (Exhibit ING-181); SBTi, "ING," 7 January 2025 (printout of 4 February2026) (Exhibit ING-182).
425 ING, "Our own footprint" (printout of 21 January 2026) (Exhibit ING-181).

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6.3.2 ING's Terra approach focuses on the most carbon-intensive segments of its loan portfolio

274. ING introduced its Terra approach in 2018, three years after the Paris Agreement was adopted. Through the Terra approach, ING aims to monitor the transition to net zero by 2050 for the most carbon-intensive segments of its loan portfolio.[426] Initially launched in 2018 with five sectors, Terra now covers ten sectors and sub-sectors.[427]

275. ING collects emissions data from clients in various sectors to implement Terra. ING then compares these emissions with sectoral transition pathways, primarily the IEA NZE model,[428] assessing its portfolio movement on that basis in relation to them.[429] With the exception of the automotive sector, this includes the Scope 1 emissions of ING's clients, as well as their Scope 2 and certain Scope 3 emissions where applicable.[430]

(1) Terra's underlying principles

276. Terra is based on three fundamental principles.[431]

(a) ***Impact-based***: Within the scope of a bank's capabilities in this regard, ING aims to have the greatest possible impact on sustainability in the real economy. ING's approach focuses on the specific (parts of) sectors where the climate transition plays the biggest role.[432]

(b) ***Science-based***: ING bases its climate goals and transition pathways on current climate science.[433] This is confirmed by ING's SBTi validation (the first global systemically important bank to achieve this).[434]

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426 Climate Update ING 2025 (Exhibit ING-176), p. 12. ING's Terra approach is in line with the EU legislator's choices in implementing the Paris Agreement.

427 Accordingly, Terra primarily focuses on ING's Wholesale Banking loan portfolio in various sectors. It also encompasses Retail Banking real estate loans. See ING 2024 Annual Report (Exhibit MD-004), p. 111.

428 Climate Update ING 2025 (Exhibit ING-176), p. 12; Climate Report ING 2024 (Exhibit MD-005), p. 36. ING uses IEA climate scenarios for the following sectors: power generation; upstream and midstream oil and gas; downstream oil and gas; cement; steel (in conjunction with another climate scenario); and cars. ING uses alternative transition pathways for the aviation, shipping and real estate sectors.

429 For explanation of these sectoral transition paths, see section 10.2.2 below.

430 ING determines Terra's focus by sector based on the parts of the sector value chain where reducing emissions has the most impact. For an overview of the Scope(s) per sector, see ING 2024 Annual Report (Exhibit MD-004), p. 111.

431 ING, *2023 Climate Report*, 5 October, 2023 (excerpt) ("ING 2023 Climate Report") (Exhibit ING-183), p. 48.

432 Climate Report ING 2023 (Exhibit ING-183), p. 48.

433 ING Annual Report 2024 (Exhibit MD-004), p. 370. Voluntary Initiatives endorse this approach.

434 Climate Update ING 2025 (Exhibit ING-176), p. 11; ING, "ING's climate targets validated by the Science Based Targets initiative (SBTi)", 26 March 2025 (printout of 21 January 2026 (Exhibit ING-184). The validated Terra sectors are fossil industries, power generation, cement, steel, automobiles, aviation and commercial real estate.

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(c) ***Engagement-driven***: As ING itself generates relatively minimal emissions, it believes it can have the greatest impact by helping its clients with their own transition.[435] However, this will require knowledge, coordination and substantial investment. As previously stated, ING does not consider rigorous, broad-based categorical exclusion and divestment to be effective in reducing actual emissions.[436]

277. Below, ING explains how these principles have been implemented in Terra's sectoral approach and transition pathways.

(2) Sectoral approach

278. As part of its sectoral approach, ING identifies the areas of its portfolio with the greatest climate impact. It is relevant to note in this context that approximately 90% of global CO_2 emissions result from the production and use of energy.[437] Coal, oil and gas are currently by far the world's most widely used primary energy sources, and they are responsible for the vast majority of global energy-related CO_2 emissions.[438] However, sun, wind, water power and nuclear reactions are increasingly being used as primary energy sources.

279. If global climate policy were to focus on transitioning from fossil fuels to sustainable energy sources, this would account for around 90% of global energy-related CO_2 emissions. ING's approach is based on this fundamental principle, including its approach to fossil fuel financing and its commitment to investing more in renewable energy.[439]

280. To further accelerate this transition, Terra focuses not only on the production and supply of energy, but also on the user side. On the user side, 75% of global energy-related CO_2 emissions can be attributed to eight economic sectors: electricity and heat generation; transport (passenger cars); steel; cement; residential and commercial property; and aviation and shipping.[440] Terra therefore focuses largely on these sectors.[441]

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435 Climate Report ING 2023 (Exhibit ING-183), p. 48.
436 Climate Report ING 2023 (Exhibit ING-183), p. 48. See also section 11.3.
437 The Global Carbon Budget projects total CO_2 emissions for 2024 at 41.6 $GtCO_2$, of which 37.4 $GtCO_2$ is related to fossil fuels and 4.2 $GtCO_2$ to other emissions such as agriculture. See P. Friedlingstein et al., "Global Carbon Budget 2024", *Earth System Science Data* (17) 2025, vol. 3 (Exhibit ING-185), p. 986-994.
438 See IEA, *Global Energy Review 2025*, 24 March 2025 (excerpt) (Exhibit ING-186), p. 39.
439 On those policy choices, see section 6.2 above.
440 Climate Update ING 2025 (Exhibit ING-176), p. 13; ING Annual Report 2024 (Exhibit MD-004), p. 109. Both documents refer to IEA WEO2024 (Exhibit ING-167). In IEA WEO2024, the total energy-related emissions are 37,723 Mt CO_2, of which the nine sectors mentioned cover 28,739 Mt CO_2.
441 The Terra sectors are: electricity, oil and gas (divided into upstream and mid- and downstream), transportation (passenger cars), aviation, shipping, cement, steel, commercial real estate, and residential real estate (mortgages).

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281. This sectoral approach to energy production, supply and use thus accounts for the majority of actual emissions in which ING's clients are involved. This approach also aligns with EBA guidelines and various Voluntary Initiatives, including UNEP FI and the Climate Commitment.[442]

282. Each sector has its own unique characteristics. Measuring emissions in a given sector requires sector-specific methodologies and metrics to measure and manage its portfolio.[443] These methodologies continue to evolve as insights change, which can have a significant impact on the reported values and metrics.

Example: ING's methodologies and metrics

Methodology: ING changed its transition pathway for the Shipping sector in 2024. ING previously applied the Poseidon Principles originally based on a well below 2°C scenario. Prior to the DNV initiative, there was no 1.5°C transition pathway for the shipping sector. ING therefore switched to the 1.5°C scenario of the new DNV initiative.[444] The methodology applied remains the Poseidon Principles.[445]

Metric: ING uses the metric of tonnes of CO_2 per tonne of cement produced (t CO_2 / t cement) for the cement sector (based on the chosen methodology).[446]

283. The methodologies used in the aforementioned Terra sectors focus on specific parts of the value chain that bring about systemic change in that sector.[447] ING does the same. In the electricity sector, for example, most emissions are generated during the production phase. There are also far fewer producers than consumers, and producers have more influence over product sustainability. Consequently, it is most effective and efficient for ING to focus on supporting electricity producers.

(3) Transition pathways are largely focused on emission intensity

284. ING uses a sector-specific transition pathway to measure the progress of its portfolio the relevant sector.[448] In eight Terra sectors, ING uses IEA transition

442 See EBA ESG Guidelines (Exhibit ING-045), p. 19. See also UNEP FI Guidance (Exhibit ING-148), p. 4, 9-10; GFANZ 2022, "Expectations for Real-Economy Transition Plans" (Exhibit MD-238), p. 8; Climate Commitment (Exhibit MD-166).
443 For an explanation of the methodologies for measuring emissions, see section 5.2 above. For an overview of the metrics used, see ING 2024 Annual Report (Exhibit MD-004), p. 111.
444 DNV is a classification society with a focus on the maritime sector. See DNV, "About DNV - Maritime" (printout of 21 January 2026) (Exhibit ING-187).
445 ING Annual Report 2024 (Exhibit MD-004), p. 373.
446 ING Annual Report 2024 (Exhibit MD-004), p. 111.
447 Climate Report ING 2024 (Exhibit MD-005), p. 33.
448 Climate Update ING 2025 (Exhibit ING-176), p. 12.

pathways (or transition pathways based on them).[449] For the aviation and shipping sectors, ING uses alternative transition pathways that it deems to be more suitable due to their greater level of detail compared to the IEA variant.

285. ING aims to achieve a net-zero in 2050 portfolio for each Terra sector in line with the current policy objectives of the legislator. ING does not achieve this through categorical and rigorous exclusion, but rather by setting targets based on physical emission intensity.[450] ING only uses absolute targets for the Upstream Oil & Gas sector because this is the primary fossil fuel source that will have to shrink significantly in absolute terms as the climate and energy transition moves towards net zero, even in the IEA NZE scenario. ING does not apply categorical and rigorous exclusion here either, but instead uses a transition pathway for the fossil fuel sector based on a significant reduction in demand by 2050 to achieve the net-zero target by that date.[451] Other sectors will not necessarily have to shrink, but will have to reduce their emissions by, for example, making greater use of renewable energy or improving their energy efficiency. This will reduce emissions while maintaining the accessibility and affordability of the goods and services required by the world's ever-expanding population.

(4) Current situation

286. ING monitors its sectoral portfolios based on relevant transition pathways. These portfolios are therefore partly dependent on the transitions that current and future clients are undergoing, as well as on the extent to which they are encouraged to do so by factors such as legislation and market mechanisms.

287. In 2024, eight Terra sectors are on track (or nearly on track) with their respective transition pathways. Two sectors (steel and residential real estate) are lagging behind.[452] There are various reasons why a sector in ING's portfolio might lag behind. In the steel sector, for example, the transition requires significant and costly technological changes, such as production facilities for "green steel". It takes years to develop and implement such changes before more sustainable production can be achieved. This leads to equal or higher emissions in the short term, but has the potential for significant reductions in actual emissions in the longer term. In terms of residential real estate (which underlies ING's mortgage

449 For an overview of the transition pathways used, see ING 2024 Climate Report (Exhibit MD-004), p. 111. ING uses IEA climate scenarios for the following sectors: power generation; upstream and midstream oil and gas; downstream oil and gas; cement; steel (in conjunction with another climate scenario); and cars. For the two real estate sectors, ING uses IEA-based transition paths.

450 See section 5.3 for an explanation of the difference between absolute and emission-intensity-based targets.

451 IEA NZE Roadmap 2023 (Exhibit MD-085), p. 105.

452 See for 2024: ING Annual Report 2024 (Exhibit MD-004), p. 117 (steel) and p. 122 (residential real estate).

loan portfolio), homeowners face the task, and thus the broader societal challenge, of making their homes more sustainable.[453]

6.4 ING's climate approach at client level: client engagement

288. ING recognises that its portfolio-level approach provides valuable insight into the current status of sectors, but less insight into sustainability and sustainability opportunities at a client level. Building on its Terra approach, ING has therefore started collecting data on the climate transition plans of approximately 2,000 of its largest clients (including all clients covered by Terra) in 2023 (the "**CTP Assessment**").[454] Combined with Terra, this will, over time, provide greater insight into how clients are progressing with their sustainability processes, particularly in relation to the sector or sectors in which they operate.[455] ING refers to this as client engagement. This enables ING to gain insight into the opportunities and risks of the climate transition at a client level, in addition to the sectoral perspective offered by Terra.

289. In 2023, ING created its own tool and methodology for the CTP Assessment because nothing of the kind existed at the time.[456] ING assesses the following, among other things, based on public data: (i) reported emissions; (ii) commitments to Voluntary Initiatives and client targets; (iii) action plans; and (iv) governance and strategy.[457] To conduct this assessment, it is vital that current and potential clients report their climate plans, or at least parts of these plans, such as emissions (whether or not via proxies).[458] Client reporting in this area often hinges on legislation and regulations, such as the CSRD.

290. This approach and the CTP Assessment, which was developed by ING, should enable ING to engage in even better dialogue with its clients about their needs over time, based in part on robust market data. It will also allow ING to make better commercial decisions and manage risk more effectively.[459] ING will be better informed when discussing sustainability and financing options with existing and potential clients based on the CTP Assessment. To ensure that its

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453 ING Annual Report 2024 (Exhibit MD-004), p. 122.

454 Climate Update ING 2025 (Exhibit ING-176), p. 13; ING, *Assessing climate transition plan disclosures – ING's Client Transition Plan assessment methodology*, January 2025 (excerpt) ("ING's CTP Assessment Methodology") (Exhibit ING-188), p. 6. CTP assessment at ING stands for "Client Transition Plan".

455 ING's CTP Assessment Methodology (Exhibit ING-188), p. 13.

456 The CTP Assessment is based on the most recent guidance set out in various external standards and guidelines, including those issued by the EBA. These are further the CDP (formerly known as the Carbon Disclosure Project), SBTi, ClimateAction 100+, the ESRS, International Capital Market Association, the CSDDD, NZBA, GFANZ, Transition Pathway Initiative ("**TPI**"), ACT and Task Force on Climate-Related Disclosures; ING's CTP Assessment Methodology (Exhibit ING-184), p. 10; Climate Report ING 2024 (Exhibit MD-005), p. 18.

457 Climate Report ING 2024 (Exhibit MD-005), p. 18; ING's CTP Assessment Methodology (Exhibit ING-188), p. 10-11.

458 This kind of information is becoming increasingly available, particularly in connection with the introduction of the CSRD in the EU and initiatives outside the EU.

459 ING's CTP Assessment Methodology (Exhibit ING-188), p. 13.

commercial staff are well-informed and equipped to engage in meaningful dialogue with clients, ING has provided them with training. This should increase knowledge within (and outside) ING of the commercial opportunities presented by the climate transition, as well as the risks of lagging behind.

291. ING can then take appropriate steps over time if it appears that an individual climate transition plan is lagging behind the sector, or if a client shows insufficient awareness of the intended transition.[460] The appropriate steps depend not only on how quickly clients transition. As mentioned in chapter 5, many different sources, as well as the EBA, consider excluding clients to be a measure of last resort, and not one to be taken lightly. Nor will ING, as a bank, be able to simply part ways with clients from a risk management perspective. Risk management may even require ING to continue the financing relationship.

6.5 ING's approach is dynamic

292. ING's approach is dynamic in several ways and for several reasons. ING discusses two of these reasons below.

293. Firstly, as explained in chapter 5 above, there is no single route to achieving net zero by 2050 for society as a whole, let alone for specific sectors or individual companies. Technological, political, geopolitical, scientific and regulatory developments have a significant influence on the actual pathway and the transition pathways modelled by ING. In response to these developments and to ensure ongoing compliance with evolving legislation, ING is committed to continuously improving its climate approach. For example, ING periodically updates the transition pathways used in Terra to keep abreast of climate science.[461] This (of course) also depends on how they stack up against reality. If circumstances change or risk management requires it, for example, ING will have to adjust its approach accordingly. ING's current approach is therefore the result of an ongoing development process.

294. Secondly, ING aims to continuously improve its climate approach. Should new insights emerge regarding the role of banks in the climate transition, this could prompt an adjustment to ING's approach.

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460 This is in line with the relevant guidance. See OECD Corporate Lending and Securities Underwriting (Exhibit MD-235), p. 51-52; UNEP FI Guidance (Exhibit ING-148), p. 11: "*Banks should support the necessary transition in the real economy through client engagement* […]"; GFANZ, *Net-Zero Transition Plans* (Exhibit MD-219), p. 62: "[…] *and, as a last resort, cessation of the relationship either as a service or product provider, or opting to divest*".

461 ING Annual Report 2024 (Exhibit MD-004), p. 370.

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6.6 ING's climate approach compared to those of other banks and actors in the climate transition

295. ING is confident in the quality of its climate approach. This is confirmed by the external validation provided by SBTi, as well as by comparison with the climate approaches of other banks.[462] ING provides a few examples.

296. A first example takes us far into the past. In May 2017, four organisations, including Milieudefensie, reported a possible environment and climate violation of the OECD Guidelines by ING to the NCP.[463] The "NCP" is the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises. The NCP handles reports of alleged violations of the OECD Guidelines.[464] Following the 2017 report, ING engaged in extensive dialogue with Milieudefensie and other parties regarding its climate approach. After a two-year process, the NCP concluded in 2019 that the parties agreed on various points, including that ING's climate approach (or Terra approach) was an innovative and positive development in the context of measuring and managing ING's climate impact.[465] The NCP also acknowledged the significant challenges faced by banks such as ING due to the absence of adequate methodologies. The NCP found that ING (i) is steering its portfolio towards the goals of the Paris Agreement; and (ii) is working to develop tools to adequately measure emissions.[466] It also noted that ING had begun these efforts in 2015, two years before the complaint was filed.[467] The NCP refrained from issuing a substantive decision on the complaint, due in part to ING's efforts.[468]

297. Since at least 2017, Milieudefensie has thus been aware of the considerations underlying ING's climate approach and the challenges facing banks. ING has also gone to great lengths since 2017 to address at least some of these challenges by contributing to the development of tools and other methodologies for accurately measuring emissions (see no. 265 above).

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462 Climate Update ING 2025 (Exhibit ING-176), p. 11; ING, "ING's climate targets validated by the Science-Based Targets initiative (SBTi)", 26 March 2025 (printout of 21 January 2026 (Exhibit ING-184).

463 NCP Final Statement. *Oxfam Novib, Greenpeace Netherlands, BankTrack and Friends of the Earth Netherlands (Milieudefensie) vs. ING*, 19 April 2019 ("NCP Final Statement") (Exhibit ING-189), p. 2.

464 Article 2(2) Decree establishing NCP 2014 (*Instellingsbesluit NCP 2014*) (*Bulletin of Acts and Decrees* 2014, 19014).

465 NCP Final Statement (Exhibit ING-189), p. 4. On ING's Terra approach, see section 6.3.2 above.

466 NCP Final Statement (Exhibit ING-189), p. 6.

467 NCP Final Statement (Exhibit ING-189), p. 6.

468 NCP Final Statement (Exhibit ING-189), p. 7.

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298. A more recent example is the benchmark of the World Benchmarking Alliance. In 2025, it used a range of criteria to compile a sustainability score for 400 financial institutions, including 150 banks.[469] ING received the highest score for climate.

299. ING also achieved the highest possible score in the "ESG Ratings", by MSCI which measure the extent to which a company can withstand financially relevant, sector-specific sustainability risks. This places ING in the top 13% of assessed banks. MSCI notes that ING's climate approach puts it ahead of its European peers.[470]

300. Also in studies conducted in March and October 2025 by, amongst others, the "TPI Global Climate Transition Centre", ING was considered leading under a number of globally operating banks and ING scored relatively high compared to peers.[471]

301. In December 2025, the German branch of the World Wildlife Fund published a study evaluating the sustainability performance of several German banks. The report identified ING's German branch as the only frontrunner in two of the three themes assessed.[472]

6.7 Conclusion: ING contributes to the climate transition

302. This chapter provides an insight into ING's climate approach. ING recognises the urgent and important nature of climate change and has therefore made sustainability a core part of its strategy.

303. ING developed its climate approach with due regard for its role and responsibilities as a GSIB, bearing in mind the role assigned to banks by the EU legislator in society in general and in the transition in particular. This approach and the recognition and appreciation that ING receives for it demonstrate that it is sincere in its commitment to this cause. ING therefore supports the climate transition in its capacity as a bank.

304. ING's approach is not the only one, of course. However, ING's choices are well thought out and in line with evolving science and legislation.

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469 See the World Benchmarking Alliance website, "Financial System Benchmark. Ranking. 2025. Banks" (printout of 4 February 2026) (Exhibit ING-190). The relevant benchmarks are (i) "Strategy, governance and stewardship"; (ii) "Respecting climate and nature"; (iii) "Environmental footprints"; (iv) "Inclusive finance"; and (v) "Responsible business conduct".

470 MSCI, *ING Groep NV ESG Ratings Report*, 13 October 2025 (Exhibit ING-191), p. 6. See also ING, 'Ratings' (printout of 16 February 2026) (Exhibit ING-192).

471 TPI Global Climate Transition Centre, *State of the Banking Transition 2025,* October 2025 (excerpt) (Exhibit ING-193), p. 8.

472 WWF Deutschland, *WWF-Bankenrating 2025 - Deutsche Banken und ihr Beitrag für zukunftsfähiges Wirtschaften*, December 2025 (Exhibit ING-194), p. 17-18.

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305. Although ING's approach is not relevant to answering the question whether ING has the duties that Milieudefensie asserts in these proceedings, ING considers it important to make clear that the contrast Milieudefensie seeks to create between the intentions of Milieudefensie's and ING's respectively, does not exist. On the contrary. ING is convinced that the approach advocated by Milieudefensie is not the right one – let alone the only right one – and that adopting it would be irresponsible. ING will therefore contest Milieudefensie's Claimed Measures in the following chapters and argue that the Purported Duties do not exist.

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PART III MILIEUDEFENSIE'S PURPORTED DUTIES DO NOT EXIST

7 MILIEUDEFENSIE'S CLAIMS

Key points of this chapter

- Milieudefensie demands that the court order ING to: (i) reduce all emissions that can be allocated to ING in a specific manner; (ii) exclude certain clients from all services; and (iii) request climate plans from certain clients. Milieudefensie is also seeking declaratory judgments that would establish ING's liability vis-à-vis Milieudefensie. Alternatively, Milieudefensie argues that other unwritten norms exist, giving rise to other reduction obligations.
- Through these claims, Milieudefensie asserts the existence of unwritten duties that precisely mirror the claims. It is alleged that unwritten law prescribes exactly how a bank (or any other person or entity to whom the norms apply) must implement its climate policy over the next 24 years.
- Various unwritten norms coexist and allegedly impose cumulative requirements. For each of the Claimed Measures, it must be established, both individually and collectively, that there is an equally detailed legal duty.

306. In Part I of this SoD, ING discussed the context relevant to assessing Milieudefensie's claims and the arguments put forward in support of them. In Part II, ING outlined its own approach. In Part III, ING explains what Milieudefensie is claiming and why the Purported Duties do not exist.

307. Part III begins with chapter 7, in which ING sets out Milieudefensie's claims and outlines the various elements thereof. ING does so for good reason. Although Milieudefensie discusses certain elements of its claims,[473] it does not do so exhaustively. ING will therefore explain the various elements of Milieudefensie's Purported Duties in chapter 7. As ING will explain in chapter 8 below, these duties can only be imposed on ING if identical unwritten legal duties exist.

308. Chapter 8 then outlines the legal framework against which the Purported Duties must be assessed. This paves the way for a discussion of ING's defences against the Purported Duties in chapters 9, 10 and 11. ING subsequently concludes in chapter 12 that all of Milieudefensie's claims must be dismissed.

309. In these chapters, ING will, in addition to general defences, also formulate specific defences to the various elements identified by Milieudefensie. All ING's

473 Writ of Summons, chapter XIV.

defences therefore defend against both Milieudefensie's claims in their entirety, as well as against the separate elements thereof.

7.1 The Purported Duties

310. In these proceedings, Milieudefensie is seeking various orders ("**Claimed Orders**")[474] and declaratory judgments ("**Declaratory Judgments**").[475] However, the underlying legal duties are not based on written law. According to Milieudefensie, unwritten norms form the basis of the Claimed Orders and Declaratory Judgments ("**Purported Duties**"). The Purported Duties would require: (a) specific emission reductions ("**Reduction Claims**"),[476] (b) refusal and termination of all services to various companies ("**Exclusion Claims**"),[477] and (c) requesting a Climate Transition Plan from various clients with specific substantive requirements ("**CTP Claim**")[478] (the measures requested by Milieudefensie are collectively referred to as "**Claimed Measures**"). Alternatively, Milieudefensie argues for the existence of other Purported Duties. All Purported Duties allegedly constitute obligations of result.[479]

7.1.1 According to Milieudefensie, the Claimed Measures constitute legal duties

311. Milieudefensie's claims entail highly specific, cumulative requirements. Milieudefensie believes that these requirements coincide with identical unwritten legal duties. According to Milieudefensie, this is the only approach that ING (or banks in general, although this is unclear – see section 7.1.2 below) should take with regard to climate change. Milieudefensie claims that there is no latitude to act differently, even if the objective is the same, a different method would be more effective, or circumstances change over time. Milieudefensie even alleges that doing so would be unlawful.

312. ING can only be bound by Milieudefensie's approach if it is established that the exact requirements in that exact combination constitute unwritten legal duties, both individually and in all possible combinations. This would require Milieudefensie to properly substantiate the grounds for each element of the Purported Duties.

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474 Writ of Summons, chapter XX, nos. 1, 2, 4, 5, 6, 7, 8, 11 and 12.

475 Writ of Summons, chapter XX, nos. 3, 9 and 10. Regarding claims 3 and 10, Milieudefensie seeks a finding that ING acted unlawfully "with regard to Milieudefensie". ING will not separately address the Declaratory Judgments.

476 Writ of Summons, chapter XX, nos. 1-5(i), 7-10 and 12.

477 Writ of Summons, chapter XX, no. 5(ii).

478 Writ of Summons, chapter XX, no. 6. The term "**CTP**" refers to the commonly used abbreviation of the English term "climate transition plan".

479 In its catch-all claim ("[b]*oth primarily and (more) alternatively*"), Milieudefensie argues that the unwritten norms can also be "*substantial best efforts obligation*[s]". See Summons, chapter XX, no. 12.

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7.1.2 It is unclear to whom the Purported Duties apply

313. Milieudefensie does not specify to which companies or individuals the Purported Duties apply. It fails to specify whether the Purported Duties would apply only to (i) ING or, for example, to (ii) all banks or a certain category of banks with their headquarters in the Netherlands; (iii) banks not established in the Netherlands, but with activities there; (iv) banks not established or with activities in the Netherlands, but with a main branch and with activities in the EU; (v) banks not established in the EU, but with activities there; or (vi) any other group of entities, such as Dutch pension funds and asset managers. Milieudefensie merely emphasises that, given its size and international influence[480] among other things, ING has a "*special and large responsibility*" to take climate measures.[481] However, there is no clarity about the exact relevance of these factors, nor of the extent to which these factors give rise to obligations for others.[482]

314. To establish the existence of unwritten legal duties and ensure a proper procedural debate, it is essential that Milieudefensie specifies the Purported Duties' addressees. It is inconceivable that an entire series of specific duties should apply only to ING. That would be arbitrary and discriminatory. Therefore, Milieudefensie cannot refrain from stating to whom the Purported Duties apply, and on the basis of which criteria it deems this to be the case.

7.2 Reduction Claims

315. Milieudefensie argues that there are Purported Duties requiring ING to reduce the emissions of (1) the ING Group as a whole and its group entities; (2) ING's entire portfolio, sectors and sub-sectors; (3) operational, financed and facilitated emissions;[483] (4) ING as a whole, and separately for individual business activities: (a) financing activities, (b) asset management activities and (c) bond issuance services; (5) in absolute terms; and (6) relative terms. The Purported Duties supposedly require the reductions to take place (7) on the basis of specific reduction pathways and prescribed reduction percentages and base years, (8) with pre-prescribed reduction targets for the next 24 years and (9) in a linear manner. ING explains these elements below.

316. **Element 1: The Reduction Claims extend to the ING Group as a whole.** Milieudefensie argues that the Purported Duties require ING to reduce its

480 Writ of Summons, no. 10.
481 Writ of Summons, nos. 69-71.
482 Writ of Summons, nos. 939-942. Milieudefensie argues that ING is "*such a company*" that has an "*above-average responsibility*". It is not clear how that leads to the overarching absolute reduction target discussed there.
483 The Purported Duties refer sometimes to CO_2 emissions (claims 1(i), 2, 5(i)(b) and 7) and sometimes to CO_2-eq emissions (claims 1(ii), 5(i)(a)).

emissions at an overarching level and therefore with regard to the ING Group as a whole ("**Overarching Reduction Claim**").[484]

317. **Element 2: The Reduction Claims require separate reductions for ING's (a) entire portfolio, (b) sectoral portfolios and (c) sub-sectoral portfolios.** Milieudefensie argues that the Purported Duties prescribe reduction obligations for a selection of sectors and sub-sectors ("**Sectoral Reduction Claims**").[485] These Purported Duties exist alongside the Overarching Reduction Claim and must be observed separately.[486]

318. ING understands that the Purported Duties would require the claimed emission reductions to be achieved separately for the main sectors and their sub-sectors.

319. To illustrate this, Milieudefensie argues that emissions from the main sector "Industry" must be reduced by a specific percentage. However, it also argues that separate reductions must be achieved in the "Chemicals", "Iron and steel", "Cement" and "Aluminium" sub-sectors, all of which fall under "Industry". This is distinct from the Overarching Reduction Claim, which stipulates an overall reduction (element 1 above) based on a different transition pathway and base year (element 7 below).

320. **Element 3: The Reduction Claims cover operational, financed and facilitated emissions.**[487] The Purported Duties relate to "*operational*",[488] "*financed*",[489] and "*facilitated*"[490] emissions. Through its claims, Milieudefensie appears to be aligning itself with the PCAF definitions of "financed" and "facilitated" emissions. However, it is unclear to ING how the reference to "*assets managed by the bank, as determined on the basis of the applicable PCAF standards*" should be interpreted, given that "*assets managed by the bank*" are not covered by the PCAF standard.

321. Milieudefensie also imposes choices about the scope of a bank's Scope 3 emissions. Milieudefensie includes Scope 3 emissions generated by ING's

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484 Writ of Summons, chapter XX, No. 1, 8-10(i) and 12. See also Writ of Summons, section XIV.3.1 and no. 906.

485 Writ of Summons, chapter XX, nos. 2-5(i), 7-9, 10(ii) and 12

486 Writ of Summons, section XIV.3.2.

487 Writ of Summons, section XIV.3.6.

488 The term "*operational*" is not defined.

489 If the term is used to distinguish between funded and facilitated emissions, it would mean "*all of the bank's Scope 3 emissions associated with loans made by the bank and assets managed by the bank, as determined under PCAF's applicable standards for that purpose.*" To the extent that the context would not make that distinction, Milieudefensie alleges the term would mean "*all of the bank's Scope 3 emissions within the "category 15: investments" of Scope 3 Standard to the GHG Protocol, which includes facilitated emissions.*" Accordingly, depending on the context outlined, either the PCAF boundary or the GHG Protocol boundary should be adhered to. See Writ of Summons, List of definitions, p. 12.

490 For the term "*facilitated*", Milieudefensie links up with the PCAF definition: "*The Scope 3 emissions of a bank associated with the activities of the bank as facilitator of capital market transactions, as determined on the basis of the applicable PCAF standards*" See Writ of Summons, List of definitions, p. 12.

clients in its calculation of ING's Scope 3 emissions, in other words: Scope 3 of Scope 3 emissions.[491]

322. **Element 4: The Reduction Claims extend to individual business units.** Milieudefensie argues that the Purported Duties require the Overarching and Sectoral Reduction Claims to be achieved "*individually*" for three categories of ING's activities, in absolute terms and in terms of intensity, with regard to "*financed and facilitated emissions*".[492] Milieudefensie distinguishes between activities that ING performs (a) "*at its own expense and risk*", (b) "*at the risk and expense of third parties*", and (c) for "*facilitating transactions for the issue of capital market instruments*".[493]

323. The Purported Duties supposedly apply not only to ING as a whole, but also to its business units separately. This is consistent with the system Milieudefensie chose for its Overarching and Sectoral Reduction Claims, whereby all reductions must be achieved separately and cumulatively at the overarching, sectoral and sub-sectoral levels. Significant progress (or changing circumstances or real-world insights) in one category cannot compensate for lagging progress in another. The unwritten legal duties allegedly impose strict limits in each category.

324. It is unclear how Milieudefensie's categorisation of business units relates to the reference to "*financed and facilitated*" emissions, given that "*facilitating transactions for the issue of capital market instruments*" can only refer to facilitated emissions.[494] ING will therefore address these claims collectively in this SoD.

325. **Element 5: The Reduction Claims require absolute reductions.** Milieudefensie argues that the Purported Duties require ING to reduce reported emissions in absolute terms.[495]

326. **Element 6: The Reduction Claims require reductions in physical intensity on top of absolute reductions.**[496] Milieudefensie argues that the Purported Duties oblige ING to reduce the "*weighted average physical emission intensities of the activities of the ING Group*".[497] Milieudefensie is referring to a specific type of intensity obligation, whereby reported emissions are measured against a specific physical metric. According to Milieudefensie, other options

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491 Writ of Summons, no. 569: "*The 'Scope 3 category 15' emissions of banks not only encompass the Scope 1 and 2 emissions of clients, but also the Scope 3 emissions of clients*". For Milieudefensie definition of Scope 1, 2 and 3 also see Writ of Summons, List of definitions, p. 16.
492 Writ of Summons, chapter XX, no. 8(i).
493 Writ of Summons, chapter XX, no. 8(i).
494 Writ of Summons, chapter XX, no. 8(i).
495 Writ of Summons, chapter XX, nos. 1, 2, 5(i) and 7. See also Writ of Summons, sections XIV.3.1 and XIV.3.3.
496 Writ of Summons, section XIV.3.2.3.
497 Writ of Summons, chapter XX, nos. 3 and 4.

proposed in various Voluntary Initiatives (such as economic intensity targets) are unlawful.[498]

327. **Element 7: The Reduction Claims prescribe specific reduction pathways, reduction percentages and base years.** Milieudefensie argues that the Purported Duties impose specific reduction pathways, reduction percentages and base years on a bank for both the Overarching and Sectoral Reduction Claims.

- **The Overarching Reduction Claim:** Milieudefensie argues that the Purported Duties require a bank to reduce its overall CO_2 emissions by 48% by 2030, 65% by 2035, 80% by 2040 and 99% by 2050, with 2019 as the base year.[499]

- **The Sectoral Reduction Claims:** At the sectoral level, the Purported Duties require emissions to be "*reduced in accordance with the goal of limiting global warming to 1.5°C*".[500] This would "*at least*" require the reduction percentages included in a table drawn up by Milieudefensie to be achieved, with 2022 as the base year. These percentages are based on various elements of the IEA NZE scenario, using either the global or the "*advanced economies*" model.[501] It is unclear whether Milieudefensie takes the view that its purported unwritten legal duty requires the achievement of the percentages it specifies, or whether that duty would instead require limiting the global temperature increase to 1.5°C.

- **The Fossil Fuel Sector:** According to Milieudefensie, "*activities in the fossil fuel sector*" are subject to other unwritten legal duties.[502] There is said to be a Purported Duty for the "*fossil fuel sector*" that prescribes various specific reduction percentages (in addition to the general 1.5°C obligation) for Scope 1 and 2 CO_2eq emissions, as well as for Scope 3 CO_2 emissions generated by a bank's clients. Milieudefensie claims that this aligns with the IEA NZE scenario. However, ING is unclear as to how Milieudefensie arrived at the various percentages. It is also unclear how Milieudefensie arrived at its definition of "*fossil fuel sector*". In any case, Milieudefensie's unwritten norm concerns the Scope 3 emissions of companies "*in the fossil fuel sector*", as well as a reduction percentage applicable to the "*fossil fuel sector*" itself, even though these emissions

498 See section 5.3 above.
499 Writ of Summons, chapter XX, no. 1. Milieudefensie uses other percentages for CO_2-eq emissions.
500 Writ of Summons, chapter XX, nos. 2, 3, 4, 5(i), 7 and 10.
501 See also Writ of Summons, sections XIV.3.3 and XIV.3.4.
502 See also Writ of Summons, sections XIV.3.2.4 and XIV.3.5.

are generated by companies in different sectors, each with different reduction percentages.

328. **Element 8: The Reduction Claims set out specific obligations for 2030, 2035, 2040 and 2050.** Milieudefensie argues that ING has binding reduction obligations for 2030, 2035, 2040 and 2050.[503]

329. **Element 9: The Reduction Claims require linear reduction.** Milieudefensie argues that the unwritten norms stipulate that reductions must proceed "*linear or faster*" every year.[504]

7.3 Exclusion Claims

330. According to Milieudefensie, there are also unwritten norms that require ING to (1) refuse or terminate all "*financing and facilitation*" (2) to companies involved in "*New Fossil Fuel Projects*", whether or not through a group company, (3) within three months for new services[505] and twelve months for existing services[506]. The Purported Duties take no account of the purpose of the relevant services.

331. **Element 1: The Exclusion Claims cover all "financing and facilitation".** Milieudefensie argues that the unwritten norm applies to "financing and facilitation". According to Milieudefensie, this includes "[a]*ll funds that ING provides for the benefit of clients or investee companies or (helps to) make possible in its capacity of loan provider, facilitator of capital market transactions or asset manager*".[507] The term "*facilitation*" is not defined. However, Milieudefensie does state that it considers "*financing*" to encompass activities that do not necessarily involve a bank providing financing, but that involve a "*multi-faceted financial intermediate function*".[508] In the context of its Exclusion Claims, Milieudefensie also argues that "*other kinds of support*" should be terminated too.[509] ING understands this to mean that Milieudefensie believes the unwritten norm dictates excluding the clients in question from all banking services, regardless of whether financing is involved.

332. **Element 2: The Exclusion Claims cover all possible involvement in "New Fossil Fuel Projects"** The Purported Duties rely on a broad interpretation of the term "involvement", and ING should "*not be involved in any way*" in "*New Fossil Fuel Projects*".[510] Milieudefensie defines New Fossil Fuel Projects as "*projects for the exploration for new oil and gas fields, projects for the*

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503 Writ of Summons, chapter XX, nos. 1, 2, 3, 4 and 5(i).
504 Writ of Summons, chapter XX, no. 8(ii). See also Writ of Summons, section XIV.3.7.
505 Writ of Summons, chapter XX, no. 5(ii)(a).
506 Writ of Summons, chapter XX, no. 5(ii)(b).
507 Writ of Summons, List of definitions, p. 12. Milieudefensie adds: "*unless the context in which the term is used explicitly entails otherwise, as described in further detail in chapter X.2.2.*"
508 Writ of Summons, no. 565.
509 Writ of Summons, no. 1043.
510 Writ of Summons, no. 1043.

extraction of oil and gas from new fields, projects for the extraction of coal from new coal mines and projects for the expansion of existing coal mines".[511]

333. It remains unclear what exactly "involvement" entails. ING interprets the claim as meaning that the extent of an entity's involvement in a New Fossil Fuel Project is irrelevant. According to Milieudefensie, any involvement justifies exclusion from all ING's services. This could include, for example, a company supplying computers for a new gas field or a state that has approved such a project. Even if only one group company of an ING client is involved in "*New Fossil Fuel Projects*", this is sufficient justification for exclusion.[512] Incidentally, the Exclusion Claims also apply to situations in which a company "*intends* […] *to approve*" a New Fossil Fuel Project "*in the future*".[513]

334. **Element 3: The exclusion must take effect within three or twelve months.** The Purported Duties require new services to be discontinued within three months of the judgment, and existing services within twelve months.

7.4 CTP Claim

335. According to Milieudefensie, there is an unwritten norm that requires ING to (1) request annual CTPs from (2) "*large corporate clients*", and (3) ensure these plans include: (a) a commentary on how the client is contributing to achieving net zero, (b) a quantified breakdown of Scope 1, 2 and 3 emissions, and how these will evolve by 2030, 2035, 2040 and 2050, (c) in terms of absolute emissions and emission intensity.[514] Milieudefensie does not define "*large corporate clients*". In January 2024, it adopted the CSRD's definition of this term, but this is not reflected in its Writ of Summons.[515]

7.5 Milieudefensie's unwritten norms in the alternative and further alternative

336. In the alternative, Milieudefensie argues that there is an unwritten norm that imposes an absolute reduction obligation on ING at the sectoral and sub-sectoral levels.[516] This norm would use 2023 as the base year instead of 2019 and 2022, and require compliance with an annually updated linear reduction percentage based on IEA figures. Milieudefensie is seeking an order to that effect.

337. Milieudefensie also argues that there is an unwritten norm requiring ING to achieve absolute emission reductions at an overarching level in accordance with

511 Writ of Summons, List of definitions, p. 14.
512 Writ of Summons, no. 1044.
513 Writ of Summons, no. 1044.
514 Writ of Summons, chapter XX, no. 6.
515 Letter from Milieudefensie to ING dated 19 January 2024 (Exhibit MD-019), p. 6.
516 Writ of Summons, chapter XX, no. 7. See also Writ of Summons, section XIV.3.8.

the 1.5°C target.[517] Milieudefensie is not seeking an order, but a declaratory judgment to that effect.

338. In the further alternative, Milieudefensie claims that the court should award a lower reduction percentage or a higher weighted average physical emission intensity than that included in the claim for relief, or any combination of the above claims.[518]

7.6 Conclusion: Milieudefensie has formulated a complex set of claims with many sub-elements (in various combinations)

339. As explained above, Milieudefensie's Purported Duties are both extensive and specific. The various detailed requirements are moreover cumulative. Milieudefensie emphasises that the various unwritten norms exist "*side by side*".[519]

340. Given the level of detail and strictness of the Purported Duties, it is clear that, according to Milieudefensie, there is only one way forward with regard to the climate mitigation obligations of ING (or any other addressee).

341. Therefore, the question in these proceedings is whether all of Milieudefensie's specific requirements, both individually and collectively, are in fact tenets of unwritten law and therefore binding on ING. This is not the case, as ING will discuss in chapters 8 to 12 below.

342. In chapters XIV.4 and XV of the Writ of Summons, Milieudefensie discusses whether ING could comply, or does not currently comply, with these claims. However, neither of these aspects is relevant to the question of whether the Purported Duties exist. As chapter 6 makes clear, ING and Milieudefensie have fundamentally different views on how a bank contributes to the climate transition and thus to reducing emissions into the atmosphere. Therefore, discussing the extent to which ING does not comply with Milieudefensie's claims is like comparing apples with oranges. Milieudefensie demands that ING reduce its reported emissions, whereas with its approach ING aims to support the climate transition with the goal of reducing actual emissions.

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517 Writ of Summons, chapter XX, no. 10.
518 Writ of Summons, chapter XX, no. 12.
519 Writ of Summons, no. 907.

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8 THE LEGAL ASSESSMENT FRAMEWORK FOR UNWRITTEN NORMS

Key points of this chapter

- In these proceedings, Milieudefensie is seeking the establishment of general unwritten rules of law by the court. Its Purported Duties are not tailored to ING, nor do they arise from any ING-specific or case-specific circumstances.
- The parties agree that Milieudefensie's general rules cannot be found in written law. Therefore, Milieudefensie's claims can only be upheld if they are based on generally applicable rules of unwritten law.
- The existence of such rules cannot simply be assumed. In any case, generally applicable unwritten legal norms cannot exist if they (i) conflict with the existing legal framework and involve legal policy choices; (ii) are not sufficiently knowable or do not enjoy a high degree of consensus; and (iii) are not sufficiently effective or do not offer a proportionate solution to the problem requiring regulation.
- The above framework for the acceptance of generally applicable unwritten legal norms cannot be circumvented by invoking the duty of care set out in Article 6:162 DCC. This provision is not intended to establish generally applicable rules that undermine the choices of the legislator, are not sufficiently knowable, do not enjoy a high degree of consensus, are ineffective, or are disproportionate. Even if Article 6:162 DCC were to be applied, the court must assess the existence of the Purported Duties using the above requirements.
- Milieudefensie invokes the endangerment doctrine. That doctrine is, however, only applied in very specific, individual situations involving endangerment and not in proceedings in which general, unwritten legal duties are asserted to address a collectively-caused global harm that requires collective action. In any case, even within the framework of the endangerment doctrine – if it were applicable – the aforementioned framework for accepting general unwritten legal duties cannot be circumvented.

343. In chapter 7 above, ING set out the measures claimed by Milieudefensie that, according to Milieudefensie, impose legally enforceable duties on ING. ING and Milieudefensie agree that the Purported Duties on which these claims are based are not enshrined in and cannot be derived from any written law. According to Milieudefensie, the Purported Duties derive from unwritten law. In this chapter, ING discusses the framework on the basis of which the existence of the Purported Duties must be assessed. ING first discusses Milieudefensie's attempt to establish general unwritten rules of law (section 8.1); then explains that unwritten law is subject to various requirements (section 8.2); and finally clarifies

that Milieudefensie cannot circumvent these requirements by arguing that the Purported Duties follow from Article 6:162 DCC (section 8.3).

8.1 Milieudefensie seeks the establishment of general unwritten rules of law

344. As ING explained in chapter 7 above, the Purported Duties can be broken down into detailed obligations that set out the policy for an undefined group of addressees over the next 24 years. Milieudefensie is therefore seeking the establishment of general unwritten rules that bear the characteristics of legislation. This is not simply a matter of remedying a legal deficiency in a specific situation dependent on the circumstances of the case.

345. The Purported Duties aim to regulate a collective good and a collective, global, systemic problem: limiting climate change.[520] There are multiple context-agnostic purported obligations involved, which determine how companies should act over the next 24 years in abstract terms. These are political choices and not case-specific. After all, Milieudefensie does not cite any circumstances specific to ING. For example, Milieudefensie argues that ING is a large Western company.[521] However, the same applies to many other companies – not just ING. None of the circumstances that Milieudefensie associates with ING are "ING-specific"; rather, they are general. The fact that these circumstances also apply to ING does not make the situation case-specific. This simply means that Milieudefensie is invoking general circumstances that apply to ING as well as to many other parties with legal rights.

346. Nor are the claims by any means case-specific. The claim for relief has no connection whatsoever with circumstances specific to ING. Milieudefensie derives the reduction percentages it claims from the IPCC and the IEA NZE scenario. These percentages were modelled by the IPCC and IEA for the whole world, and are therefore irrelevant to the composition of ING's loan portfolio and services. The base year is not specific to ING, nor are the linear reduction or the scope of the claim, which is allegedly applicable to *all* of ING's activities and *all* its reported emissions.

347. The court has been asked to rule that, in general, companies must be required to reduce their allocated and reported emissions in absolute terms – and based on intensity. The court should also stipulate that these obligations will remain in place for the next 24 years, regardless of global events and the composition of ING's portfolio in the base year and at the time of a ruling.

348. The court should also determine which companies ING may and may not do business with. If a company is in any way "involved" in New Fossil Fuel Projects,

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520 Writ of Summons, chapter I.
521 Writ of Summons, nos. 938-940 and 943.

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Milieudefensie believes that the court should prohibit all services to such projects in general.

349. In other words, the same claims could be brought against any bank, pension fund or asset manager in the Netherlands. Although Milieudefensie claims otherwise by citing the "*key role*" played by banks, its approach fails to recognise that ING is a bank and therefore fundamentally differs from a non-financial company operating in the real economy.[522] Already in the introduction, Milieudefensie equates financiers, including banks, with companies in the real economy, arguing that their emissions would have been impossible without financing.[523] According to Milieudefensie, a bank is therefore equally responsible for emissions as a client who actually emits greenhouse gases. Milieudefensie is therefore making the same claims against ING as it did against Shell.[524]

350. The fact that Milieudefensie is seeking the establishment of general legal rules is evident not only from the Writ of Summons, but also from its further statements. On its website, for example, it states that the Purported Duties apply to "*the entire sector*". Milieudefensie also appears to believe that the legal framework is inadequate and that these proceedings could prompt politicians to enact "*better legislation*":[525]

16. HEEFT DEZE RECHTSZAAK OOK INVLOED OP ANDERE BANKEN?

Uiteraard zullen banken, verzekeraars en pensioenfondsen meekijken. Want als wij deze Klimaatzaak tegen ING winnen, zetten we een voorbeeld voor andere banken (en pensioenfondsen en verzekeraars). Wat voor ING geldt, geldt namelijk voor de hele sector.

Dat geeft niet alleen een signaal naar banken maar ook naar politici die uiteindelijk betere wetten moeten maken. Zo zorgen we er met z'n allen voor dat uiteindelijk de hele sector in lijn is met het klimaatakkoord van Parijs.

* Translation of the screenshot:

> "***16. Will this lawsuit also affect other banks?***
>
> *Of course, banks, insurers and pension funds will be watching closely. Because if we win this Climate Case against ING, we will set an example for other banks (and pension funds and insurers). What applies to ING applies to the entire sector.*

522 Writ of Summons, section X.3.
523 Writ of Summons, no. 6 et seq.
524 See The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099 (*Milieudefensie v. Shell*).
525 Milieudefensie, "Frequently asked questions about our climate case against ING" (printout of 21 January 2026) (Exhibit ING-195), under question 16.

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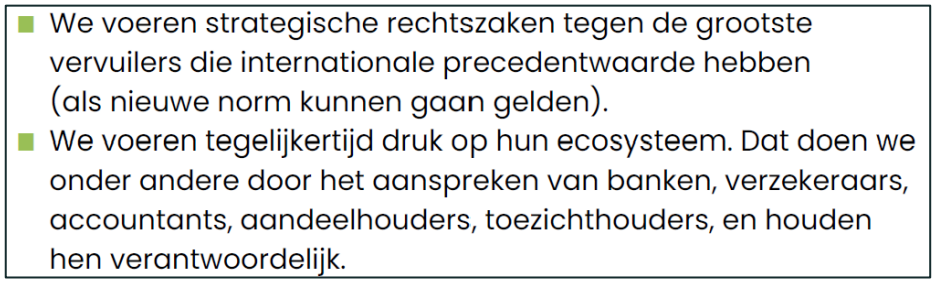
> *This sends a signal not only to banks but also to politicians, who ultimately have to establish better laws. This is how we can all ensure that the entire sector is ultimately in line with the Paris Agreement.*"

351. In its annual plan for 2026, Milieudefensie confirms that the aim of its climate lawsuits is for its rules to "*become the new norm*" and that it intends to put pressure on the entire ecosystem:[526]



* Translation of the screenshot:

> "*We conduct strategic lawsuits against the biggest polluters that have international precedent value (can become a new standard). At the same time, we exercise pressure on their ecosystem. We do this by, amongst other things, approaching banks, insurers, accountants, shareholders and supervisors, and hold them accountable.*"

352. Milieudefensie would therefore like to impose unwritten laws on the entire financial sector. Milieudefensie is asking the court to create this kind of new pseudo-legislation and respond to legal and other questions concerning general legislative, policy, and legal policy issues. Accordingly, these proceedings do not relate to case-specific norms that address a concrete deficiency in the law. In other words, this is not a situation that, because of its very case-specific nature, the legislator could not have regulated in advance. On the contrary, they concern general, broad and far-reaching norms that meticulously prescribe how a bank should act over the next 24 years with regard to a situation and topic that the legislator is indeed able to address.[527]

353. This is despite the fact that legislation has already been enacted on this topic on the basis of very detailed underlying policy choices, and that courts have ruled in multiple proceedings that the legislator has broad policy discretion and a wide

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526 Milieudefensie, *Annual Plan 2026*, 2026 (excerpt) (Exhibit ING-196), p. 10. See also Milieudefensie, *General policy plan Milieudefensie 2025-2030*, 17 June 2025 (excerpt) (Exhibit ING-197), p. 6: "*With all these actions we influence public opinion and thus step by step we shift the societal norm.*", similarly p. 13-14.

527 Writ of Summons, no. 1015. This is also evidenced by the fact that Milieudefensie generally believes that there are sources that imply what reductions are needed globally or per company. Milieudefensie does not focus this on ING. See Writ of Summons, nos. 493-494, 519, 551, 698, 915, 933, 956, 992, 1015, 1051-1052.

margin of appreciation.[528] This was already discussed in Part I of this SoD, and ING will elaborate on it further in chapter 9 below.

354. If Milieudefensie wishes to have the Purported Duties confirmed by the court, then, given their general nature, specific requirements will have to be met. ING discusses these requirements in section 8.2.

8.2 Unwritten law is subject to specific requirements

355. Unwritten law does not simply "appear" out of nowhere. As Milieudefensie points out, Advocate General Valk has stated that: "*this does not mean the court operates in isolation or elevates its subjective opinion of what is 'right' by endowing it with legal status*".[529] The notion that, in a democracy governed by the rule of law, the opinion of a section of society cannot be elevated to the status of law by the court is also reflected in Article 11 of the General Provisions (Kingdom Legislation) Act (*Wet Algemene Bepalingen (AB)*): "*The court must administer justice in accordance with the law: under no circumstances may it assess the intrinsic value or fairness of the law*." Article 12 of that Act adds that: "*No court may decide on matters submitted for its judgment by means of general regulation, disposition or rule*." This also implies that courts "*do not 'create' law themselves*".[530]

356. However, this does not mean that the court has no role in the formation of law. It has the power to interpret unclear or incomplete rules. In certain cases, it can fill "gaps" in the law by establishing unwritten law. The court can then continue to administer justice "according to the law".[531] After all, the court is merely formalising existing unwritten norms. However, such norms only exist if: (i) they do not conflict with the existing legal framework or involve legal policy choices;[532] (ii) there is sufficient consensus on the existence and legal enforceability of those norms; and (iii) the unwritten norms are effective and offer a proportionate

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528 Dutch Supreme Court 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*), paras. 8.2.1-8.2.7; ECtHR 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020 (*Klimaseniorinnen*), para. 543; The Hague District Court 28 January 2026, ECLI:NL:RBDHA:2026:1344 (*Greenpeace v. The State of the Netherlands*), para. 10.21.

529 Opinion of A-G Valk 24 April 2020, ECLI:NL:PHR:2020:412 (*IS-expatriates*), para. 6.1. See also H.J. Rossel, 'De verkeersopvatting', in T. Hartlief et al. (eds.), *CJHB (Brunner-Bundel)*, 1994 (excerpt) (Exhibit ING-198), p. 342; K.J.O. Jansen, 'Verkeersopvattingen en particuliere regelgeving', *NTBR* 2020/5 ("Jansen 2020") (Exhibit ING-199), section 2.1; J.L. Smeehuijzen, 'Hoe oordeelt de feitenrechter over strijd met de maatschappelijke betamelijkheid in de zin van art. 6:162 lid 2 BW', *VR* 2017/125 ("Smeehuijzen 2017") (Exhibit ING-200), p. 351.

530 M.E. Bruning, *De rechtsvormende taak van de civiele rechter. Over belangenbescherming in burgerlijke en handelszaken door rechtspraak 'volgens de wet' en naar billijkheid in een meerlagige rechtsorde*, 2025 (excerpt) ("Bruning 2025") (Exhibit ING-201), p. 227.

531 Bruning 2025 (Exhibit ING-201), p. 444.

532 However, as the Dutch Supreme Court held in the *Arbeidskostenforfait* that will be discussed below, in "*cases, however, where several solutions are conceivable and the choice among them depends in part on general considerations of public policy or important choices of a legal-political nature*", judges should in principle leave the choice to the legislator. See Dutch Supreme Court 12 May 1999, ECLI:NL:HR:1999:AA2756 (*Arbeidskostenforfait*), para. 3.15.

solution to the "problem" they purport to address. ING elaborates on this in the following sections.

8.2.1 No conflict with the statutory framework or legal policy choices

357. The relationship between unwritten law and written law has been brought before the Dutch Supreme Court on numerous occasions. In summary, it follows from those decisions that the Dutch Supreme Court has held that unwritten norms (1) must be compatible with the statutory framework; (2) must not contradict the legislator's choices; and (3) should not, in principle, involve legal policy choices.

(1) Unwritten norms must be compatible with the existing statutory framework

358. Unwritten law must be sufficiently clearly based on, and not derogate from, the statutory framework. If different solutions are conceivable, the legislator will have to choose. This applies regardless of any societally perceived need to correct the statutory framework or the possibility of providing effective legal protection.

359. In the *Quint v. Te Poel* judgment, the Dutch Supreme Court ruled that, "*in cases not specifically regulated by statute*", a solution must be chosen that fits within the statutory framework and is consistent with cases that are specifically regulated by statute:

> "[…] *it does not follow from these words* [Article 1269 (old) DCC] *that every obligation must be based directly on a specific statutory provision; only that, in cases not specifically regulated by statute, a solution that is consistent with the statutory framework and with cases that are specifically regulated by statute must be accepted.*"[533]

360. In the *Arbeidskostenforfait* judgment, the Dutch Supreme Court was confronted with a legal deficiency resulting from a discriminatory tax rule. The question was whether the court could remedy this themselves by granting an additional deduction, despite the absence of a statutory basis for doing so. The Dutch Supreme Court held that the court could remedy the legal deficiency themselves, provided it follows with "*sufficient clarity*" from the statutory framework how this should be done.

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533 Dutch Supreme Court 30 January 1959, ECLI:NL:HR:1959:AI1600 (*Quint v. Te Poel*). See also Dutch Supreme Court 28 June 2019, ECLI:NL:HR:2019:1046, para. 3.6.8: '*It is in line with the legal system and consistent with the cases regulated by law to limit the consequences of invoking error in the manner described above.*' This condition is established in case law, and, according to Procurator General Langemeijer and Advocate General Wissink, it reduces the likelihood of conflict within the *trias politica*. In their Opinion in the *Urgenda* judgment, they concluded that in cases where "*the Dutch courts* […] *seek a solution that fits within the legal system and is in line with the cases regulated by law* […] *the risk of conflict within the trias politica is low.*" See Opinion of P-G Langemeijer and A-G Wissink 13 September 2019, ECLI:NL:PHR:2019:887 (*Urgenda*), para. 5.22. See also Opinion AG Assink 8 May 2020, ECLI:NL:PHR:2020:450, para. 3.52.

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> "*This raises the question of whether the court can provide effective legal protection by remedying the legal deficiency caused by the rule in some other way, or whether they should leave this to the legislator for the time being. In such situations, taking into account the nature of the area of law in which the question arises, two interests must be weighed against each other. The argument in favour of the court remedying the legal deficiency themselves is that it would enable them to offer taxpayers immediate and effective protection. However, the argument against is that, given the constitutional separation of powers, the court should adopt a restrained approach when intervening in statutory regulation.*
>
> *This weighing of interests will generally lead to the court remedying the legal deficiency immediately if it can be inferred with sufficient clarity from the statutory framework, the cases regulated therein, the underlying principles or the legislative history how this should be done.*"[534]

361. In the same judgment, the Dutch Supreme Court held that if different solutions are conceivable and the choice between them depends on government policy and legal policy choices, the legislator should decide:

> "*However, in cases where different solutions are conceivable and the choice between them depends in part on general considerations of government policy or significant legal policy choices, it is appropriate for the court to defer to the legislator for the time being, in line with the constitutionally desirable judicial restraint referred to in 3.14, and due to the limited options available to them in this area.*"[535]

362. In a judgment on granting same-sex marriage rights in Curaçao, the Dutch Supreme Court reiterated that the court should exercise restraint when intervening in the statutory framework. The Dutch Supreme Court noted that the Court of Appeal had found that the judicial intervention was not technically complicated and did not depend on further political choices. This finding was not contested in the appeal in cassation.[536]

363. In the *Taxibus* judgment, the Dutch Supreme Court clarified that a societally perceived need to correct the statutory framework does not automatically justify judicial intervention.

> "*It cannot be ruled out that the statutory framework does not sufficiently address the societally perceived need to provide some form of compensation to individuals who experience grave personal consequences from the death of someone with whom they had an emotional relationship, as in this case. However, it goes beyond the law-*

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534 Dutch Supreme Court 12 May 1999, ECLI:NL:HR:1999:AA2756 (*Arbeidskostenforfait*), paras. 3.14-3.15.

535 Dutch Supreme Court 12 May 1999, ECLI:NL:HR:1999:AA2756 (*Arbeidskostenforfait*), para. 3.15.

536 Dutch Supreme Court 12 July 2024, ECLI:NL:HR:2024:978, para. 3.3.2.

> *making role of the court to award compensation in such a case in deviation from the statutory framework.*"[537]

364. The Dutch Supreme Court applied similar reasoning in the *Rooyse Wissel v. Hagens* judgment. According to the Dutch Supreme Court, accepting an insurance obligation on the part of the employer would be incompatible with the statutory framework. Intervention by the court in this matter would also create a great deal of legal uncertainty. Although such a general insurance obligation would offer the most effective protection for the injured party, the Dutch Supreme Court held that granting it would unduly undermine the statutory framework:

> "*However arbitrary any demarcation may be to a certain extent, it should be borne in mind that the accident at work that befell* [Hagens] *did not occur in a place where De Rooyse Wissel, the employer, had only limited control and influence, but rather at the workplace itself. In those circumstances, accepting that good employment practices entail an insurance obligation for employers would excessively undermine the statutory framework of employer liability, which is based on (the failure to comply with) a duty of care to prevent harm. This would also create a high degree of legal uncertainty, as it would be impossible to draw a clear line between this and other accidents at work for which the employer has no insurance obligation.*"[538]

(2) Unwritten law does not conflict with the choices of the legislator

365. When establishing unwritten norms, it is also relevant to consider whether the legislator has already weighed up the relevant interests. If the legislator has considered the relevant interests and chosen not to establish a particular right or legal duty, either because it sees no reason to do so or because it considers such a duty to be undesirable, there is no reason for the court to accept the existence of that legal duty on the basis of unwritten law.

366. This was confirmed by the Dutch Supreme Court in a patent law case. The Dutch Supreme Court held that additional protection on the basis of unwritten law is not warranted if the legislator acknowledged the relevant interests when drafting the law.

> "*Since the legislator has acknowledged the question of when the holder of a process patent should be able to oppose the importation of products manufactured abroad using that process, and after weighing up all the*

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537 Dutch Supreme Court 22 February 2002, ECLI:NL:HR:2002:AD5356, (*Taxibus*), para. 4.2. See also Dutch Supreme Court 9 October 2009, ECLI:NL:HR:2009:BI8583, para. 3.4: "*The crux of the plea is that the obligation to pay compensation to the surviving relatives of road accident victims, as defined by the Dutch Supreme Court, particularly in the Taxibus judgment, should be expanded to include cases where the accident was intentionally caused. This expansion cannot be countenanced. The general viewpoints expressed in the Taxibus judgment still apply in full, including that it would exceed the legislative remit of the courts to deviate from the restrictive legal system in this case, let alone in cases where the traffic accident was caused intentionally.*"

538 Dutch Supreme Court 11 November 2011, ECLI:NL:HR:2011:BR5223 (*Rooyse Wissel v. Hagens*), para. 5.4.

> *interests involved has responded by stating that the patent holder will only be entitled to do so if and insofar as such products 'have been obtained directly by applying those processes', there is no room for additional protection under common law on the basis of the circumstances referred to in the ground for cassation.*"[539]

367. According to the Dutch Supreme Court, the above may also apply when certain matters are already being considered by the legislator, but the legislator has not yet made any clear choices.[540] In a case concerning the right to information, for example, the Dutch Supreme Court rejected a claimed derivative right to information. The Dutch Supreme Court also noted that "*the legislator has taken up this matter, although the final outcome remains uncertain, as the relevant legislative proposal is by no means uncontroversial*" and "*it is not desirable to pre-empt discussion of this matter at this stage with a decision that seeks to align itself with that legislative proposal*".[541]

368. The Dutch Supreme Court made a similar finding in an employment law case concerning the possibility of partial termination of an employment contract on the basis of Article 7:761b DCC. In that case, the Dutch Supreme Court noted that (a) the legislator had recently revised the rule without providing for the possibility

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539 Dutch Supreme Court 10 June 1983, ECLI:NL:HR:1983:AG4612, para. 3.1. Similarly, the Dutch Supreme Court has found that a statutory prohibition exempts a party from being required to perform the prohibited act on grounds of social propriety. See Dutch Supreme Court, 17 December 1954, ECLI:NL:HR:1954:180. See also K.J.O. Jansen, *GS Onrechtmatige daad*, art. 6:162 BW (excerpt) (Exhibit ING-202), item 5.1.5, which argues that compliance with, or the absence of, a statutory obligation could be used to justify considering the conduct in question as lawful (and also in other respects): "*Statutory obligations can also have an indirect influence on the assessment of unlawfulness when interpreting societal duties of care. More specifically, this 'secondary effect' of statutory obligations means that a breach of a statutory obligation* […] *is more likely to be considered contrary to a societal duty of care than arbitrary conduct that is not regulated by statute. Conversely, the absence of, or compliance with, a statutorily imposed obligation could be an argument for considering the conduct in question to be lawful (also in other respects).* […] *The justification for this lies in the fact that, by enacting these obligations, the legislator qualifies certain conduct as permissible or impermissible, and this carries particular weight in the judicial weighing of interests in the context of the duty of care assessment* […] *(cf. Article 11 of the General Provisions (Kingdom Legislation) Act). This rationale applies, in particular, if the statutory obligation in question is based on a concrete weighing of interests by the legislator.*" For an overview of case law, see K.J.O. Jansen, *GS Onrechtmatige daad*, art. 6:162 BW (excerpt) (Exhibit ING-202), item 5.5.3.

540 Opinion of A-G Strikwerda 22 February 2002, ECLI:NL:PHR:2002:AD5356 (*Taxibus*), para. 46: "*Leaving aside the fact that amending the legal system in this way would exceed the legislative remit of the courts, this issue is currently under consideration by the legislator, and it is not the place of the courts to anticipate possible legislation, the nature of which is still uncertain.*" In their Opinion in the *Urgenda* case, Procurator General Langemeijer and Advocate General Wissink aptly refer to the expression "*a brooding hen should not be disturbed*". See Opinion of P-G Langemeijer and A-G Wissink 13 September 2019, ECLI:NL:PHR:2019:887 (*Urgenda*), para. 5.28 and footnote 555.

541 Dutch Supreme Court 17 December 1993, ECLI:NL:HR:1993:ZC1187, para. 3.4.

of partial termination, and (b) the government had already sought advice on the matter.[542]

(3) Unwritten law does not lend itself to legal policy choices and general rules

369. Even when the legislator has not addressed a problem, the question of whether legal policy choices or general rules are required to remedy the purported legal deficiency remains relevant. According to the Dutch Supreme Court, such choices and rules are the responsibility of the legislator.

370. In the aforementioned *Arbeidskostenforfait* judgment, the Dutch Supreme Court held that it is the responsibility of the legislator to make legal policy choices. The court can only remedy legal deficiencies where it is sufficiently clear that the solution can be inferred from the statutory framework.

371. The Dutch Supreme Court adopted a similar approach in its judgment on capital gains tax ("box 3"). In that judgment, the Dutch Supreme Court held that there was a legal deficiency at the systemic level. To remedy it, choices had to be made at the systemic level. As it was not sufficiently clear that these choices could be inferred from the statutory framework, the Dutch Supreme Court held that judicial intervention would be inappropriate:

> "*A violation of this type at the systemic level is accompanied by a legal deficiency that cannot be remedied without making choices at the systemic level. It is not sufficiently clear that these choices can be inferred from the statutory framework (cf. NL Supreme Court 8 June 2018, ECLI:NL:HR:2018:846, para. 2.5.1). In that case, the court should defer to the legislator and exercise restraint when remedying such a legal deficiency at the systemic level. There is in principle no place for court intervention unless an individual taxpayer faces an individual and*

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542 Dutch Supreme Court 21 February 2020, ECLI:NL:HR:2020:283, paras. 3.2.1-3.2.3: "*The law provides a closed system of rules for the termination of employment contracts, in which the relevant interests are weighed up. The statutory regulation of employment contracts does not allow for the partial termination of an employment contract.* […] *Nor is there any evidence that the legislator intended to allow for this.* […] *In view of the above,* [...] *it is currently beyond the legislative remit of the Dutch Supreme Court to allow for the possibility of partial termination of employment contracts. This is particularly relevant given that the government has set up an Independent Commission on the Regulation of Work to advise on changes to the labour market and the potential regulatory impact thereof. The Commission's final report, presented to Parliament on 23 January 2020, contains proposals to enable the partial termination of employment contracts.*"

> *excessive burden in violation of Protocol No. 1 to the ECHR (see above in 2.4.4).*"[543]

372. Similarly, in the *TNT v. Weijenberg* judgment, the Dutch Supreme Court held that no obligation on the part of the employer to take out insurance could be inferred from the general obligation to observe good employment practices. While the Dutch Supreme Court acknowledged that there were compelling arguments for broader, more comprehensive protection against workplace accidents than that provided by Article 7:658 DCC, it was the responsibility of the legislator to establish such provisions. According to the Dutch Supreme Court, it was not within the remit of the court to create such a general rule, due in part to the required legal certainty and manageability of the law:

> "*While there are good arguments to be made for offering employees more extensive general protection against work-related accidents than Article 7:658 currently provides, it is the role of the legislator to create such rules; such general rules go beyond the law-making remit of the court* [...] *However, given the current state of legislation and in view of the required legal certainty and manageability of the law, the employers' insurance obligation, as established in case law and based on good employment practices, must remain limited to the specific, defined category of cases described above.*"[544]

373. In the *Kernwapens* judgment, the Dutch Supreme Court expressed itself in similar terms. In that case, the claimants sought to challenge the alleged unlawfulness of the State's participation in the deployment of nuclear weapons in a NATO context. According to the Dutch Supreme Court, the case involved State policy that was "*highly dependent on political considerations in relation to the*

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543 Dutch Supreme Court 14 June 2019, ECLI:NL:HR:2019:816, para. 2.10.3. See also Dutch Supreme Court 14 June 2019, ECLI:NL:HR:2019:911, para. 2.4; Dutch Supreme Court 14 June 2019, ECLI:NL:HR:2019:912, para. 2.4; Dutch Supreme Court 14 June 2019, ECLI:NL:HR:2019:817, paras. 4.2.3-4.2.4; Dutch Supreme Court 14 June 2019, ECLI:NL:HR:2019:948, para. 3.2 and Dutch Supreme Court June 14, 2019, ECLI:NL:HR:2019:949, para. 3.2. In their Opinion in the *Urgenda* case, Procurator General Langemeijer and Advocate General Wissink explain this restraint with reference to the principle of democracy: "*The principle of democracy requires judicial restraint regarding the actions of the other two branches of government. In previous disputes concerning the possibility of legislative review, the Dutch Supreme Court has cited 'the position of the courts in our constitutional system, as set out in Article 11 of the General Provisions Act*" in reference to Dutch Supreme Court, 16 May 1986, ECLI:NL:HR:1986:AC9354, para. 6.1 and Dutch Supreme Court April 14, 1989, ECLI:NL:HR:1989:AD5725, para. 3.5, see Opinion of P-G Langemeijer and A-G Wissink 13 September 2019, ECLI:NL:PHR:2019:887 (*Urgenda*), para. 5.26.

544 Dutch Supreme Court 11 November 2011, ECLI:NL:2011:BR5215 (*TNT v. Weijenberg*), para. 3.5.

circumstances of the case".[545] The Dutch Supreme Court held that "*it is not the role of the civil court to weigh these political considerations*".[546]

8.2.2 There is a high degree of consensus on unwritten law

374. The second requirement for unwritten norms is that they must enjoy widespread support. Unwritten legal norms do not simply exist because they are regarded as moral norms. Rather, they are norms that are "*accepted by society as legal norms, meaning they must be observed not only out of conscience, but also by law.*"[547] These are "*rules that, although not published, are nevertheless part of the public domain, meaning that they are accessible to anyone of reasonable insight.*"[548] These obligations can be "*imposed without prior publication, because everyone can easily understand that they exist*".[549]

375. This self-evident nature is important so that those with legal rights know in advance where they stand: "[t]*he norms of unwritten law should in fact be knowable for these actors beforehand, rather than after the fact when a court ruling is required to demonstrate that the damage has been done*".[550]

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545 Dutch Supreme Court 21 December 2001, ECLI:NL:HR:2001:ZC3693 (*Kernwapens*), para. 3.3.

546 Dutch Supreme Court 21 December 2001, ECLI:NL:HR:2001:ZC3693 (*Kernwapens*), para. 3.3. In a speech about climate change cases, Professor G. de Groot, president of the Dutch Supreme Court, noted that courts cannot regulate the harmful effects of climate change, because they lack the necessary information and are not equipped to make the relevant choices in a democratic process: "*Even though this illustrates the importance of a sustained and resilient judiciary, it does not alter the fact that courts are not in a position to make rules to protect people from harmful effects of climate change. Apart from their constitutional position, courts generally lack the information which is needed to make rules of such a nature and are not equipped for making the relevant choices in a democratic process.*". See G. de Groot, "The potential of climate change cases for a sustained and resilient judiciary", *Conference for the Presidents of the Constitutional Courts of Europe on "Climate change as a Challenge for Constitutional Law and Constitutional Courts"*, 4-5 May 2023 ("De Groot 2023") (Exhibit ING-203), p. 9. In a comparable manner, Snijders argues that in these types of cases the courts must constantly search for the right balance between providing sufficient legal protection and not excessively stepping into the regulatory role of the government and parliament. See E.M. Snijders, "Ideële acties in de financiële sector", in: N. Boomsma et al. (eds.), *Collectieve acties in de financiële sector*, 2024 (excerpt) ("Snijders 2024") (Exhibit ING-204), p. 172.

547 C.J. van Zeben et al. (eds.), *Parl. Gesch. Nieuw BW. Boek 6*, 1981 (excerpt) (Exhibit ING-205), p. 616.

548 J.H. Nieuwenhuis, *Confrontatie & compromis. Recht, retoriek en burgerlijke moraal*, 2007 (excerpt) ("Nieuwenhuis 2007") (Exhibit ING-206), p. 9. This is an unwritten law that is "*recognised not only by the courts, but also by other members of society*". See Nieuwenhuis 2007 (Exhibit ING-206), p. 9.

549 T. Hartlief, "Kennen wij het ongeschreven recht?", *NJB* 2021/1711 ("Hartlief 2021") (Exhibit ING-207), p. 1941. In this context, Nieuwenhuis argues that "*do not leave trapdoors open in dimly lit pub corridors*" is one such obvious norm (Nieuwenhuis 2007 (Exhibit ING-206), p. 9). Hartlief argues that these "*wise words from Nieuwenhuis are not only a reassurance for us as participants in transactions – we are familiar with unwritten law – but also an instruction to the court that writes down the unwritten law*." See Hartlief 2021 (Exhibit ING-207), p. 1941.

550 Hartlief 2021 (Exhibit ING-207), p. 1941.

376. The degree of consensus is a key factor in determining the extent to which an unwritten norm is knowable. This is because consensus can influence the extent to which specific actions can be expected to be taken by a legal actor.[551]

377. In various judgments, the Supreme Court has recognised the degree of consensus on a norm to be a relevant factor. For example, in the *Trombose* judgment, which concerned a doctor's professional liability for violating clinical guidelines set out in a medical protocol, the Dutch Supreme Court concurred with the Court of Appeal in finding that failure to comply with the protocol constituted an attributable breach. That finding was based in part on the determination that it was undisputed in cassation that the protocol in question was based on a "consensus" within the profession.[552] Unanimity is not required within the entire profession; it is not the intention that a single individual can oppose the existence of an unwritten norm by speaking out against it. However, a high degree of consensus is required, meaning that a significant proportion must agree on what constitutes lawful practice.

378. In the *Urgenda* judgment, the Dutch Supreme Court held that there was a high degree of international consensus on the urgent need for emission reductions. According to the Dutch Supreme Court, this consensus was relevant to the State's obligations under Articles 2 and 8 ECHR.[553] In the climate case against Shell, the Hague Court of Appeal was asked to consider whether a sectoral norm for oil and gas could be established on the basis of scientific consensus. It answered this question in the negative.[554]

379. When assessing whether the Purported Duties actually exist, it is important to consider whether they are based on factors such as a high degree of societal and scientific consensus on climate change.

8.2.3 Unwritten law effectively addresses the problem that needs to be regulated

380. Thirdly, unwritten norms must also be effective and proportionate. The Legislative Drafting Designation Order (*Aanwijzingen voor de regelgeving*) stipulates that legislation may only be enacted "*if the need for it has been*

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551 In doing so, it is important to seek alignment with the state of affairs at the time of the conduct in question. For example, Procurator General (by designation) Mok finds that, in the event of an alleged violation of an "*unwritten duty of care, decisions must be based on the state of scientific and technological knowledge or technical and social insights that were or should have been available at the time regarding the danger*". See Opinion of P-G (by designation) Mok, 1 December 2000, ECLI:NL:PHR:2000:AA8729, para. 3.2.

552 Dutch Supreme Court 2 March 2001, ECLI:NL:HR:2001:AB0377 (*Trombose*) para. 3.3.

553 Dutch Supreme Court 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*), para. 7.2.11.

554 The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099 (*Milieudefensie v. Shell*), para. 7.67.

established".[555] This is the case when "*it is plausible that the specific proposal constitutes an effective, efficient, and proportionate response to the societal problem that gives rise to that legislation*", and when "[t]*his requires sufficient certainty that the proposed legislation will actually lead to the resolution or reduction of that problem; that there are no less burdensome alternatives; and that the costs and burdens thereof are justified by the seriousness of the problem*".[556]

381. Similarly, unwritten norms that aim to address a problem can only exist if they effectively address that problem.[557] The legal norm must actually protect the interest it covers. This also follows from the reason underlying the unlawfulness of the conduct in question. In the case of norms aimed at preventing adverse effects, the contested conduct is not unlawful in itself, but only because it may have an undesirable effect.[558] Therefore, the conduct required by the norm must effectively address that undesirable effect.

382. This is illustrated by a 1 April 2024 judgment of the Hague Court of Appeal. The Court of Appeal was asked to consider whether Allianz, Sanders' insurer, was liable for an accident involving a Sanders employee who had tripped over some pallets. The Court of Appeal answered this question in the negative, holding that Sanders could not be considered to have taken insufficient precautions due to any potential measure's lack of effectiveness, onerousness and potentially counterproductive effects.

> "*This raises the question of whether additional safety measures were called for in this case. In addition to the circumstance that the risk of tripping over an empty pallet is not particularly high, this also depends in part on the degree of onerousness and the expected effectiveness of any (additional) safety measures that could be implemented.*
>
> *Allianz et al. argue that taking additional safety measures would have been too onerous and ineffective. According to Allianz et al., marking the location of the pallet would not have prevented the accident.* […] *Allianz et al. also raise practical objections to installing a fence or barrier.* […] *The Court of Appeal agrees with them that it is reasonable to assume*

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555 Instruction 2.2 Legislative Drafting Designation Order. The Legislative Drafting Designation Order (*Aanwijzing voor de regelgeving*) was created for the benefit of the drafters of written laws and regulations in the Netherlands. The Legislative Drafting Designation Order contains instructions to be observed in the preparation and adoption of regulations.

556 Instruction 2.2 (Explanatory Note) Legislative Drafting Designation Order.

557 J.L. Smeehuijzen, "Milieudefensie tegen Shell in hoger beroep", *NJB* 2025/2389 ("Smeehuijzen 2025") (Exhibit ING-208), p. 2672. In her speech on climate change cases Professor G. de Groot noted that "[t]*he aim of a legal provision, the functioning of the law within the legal order and society and the effectiveness of a judgment are important points for a courts' considerations*" and that "[i]*f it is self-evident that a decision on a claim cannot have any effect at all, a lack of so-called legal interest may obstruct the admissibility of the claim.*" See De Groot 2023 (Exhibit ING-203), p. 9-10. ING discusses the role of effectiveness in the context of a sufficient interest in section 13.2.3.

558 A.G. Castermans et al., "Drie arresten over gebod, causaliteit en klimaatschade", *AV&S* 2025/7 (Exhibit ING-209), p. 35: "*The obligation to close basement hatches in crowded bars arises only because it may cause harm.*"

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that installing markings, fencing or barriers around the pallet would not have prevented the accident, and that installing fencing or barriers would also entail practical objections for business operations and increase the risk of falls.

Based on the above, the Court of Appeal finds that Sanders was not obliged to take additional safety measures and that Allianz et al. have sufficiently demonstrated that Sanders fulfilled its duty of care."[559]

383. Accordingly, the Purported Duties can only exist if they are effective. In addition, as both the Legislative Drafting Designation Order and the *Allianz* judgment make clear, there must be proportionality between the onerousness and difficulty of the required conduct.

384. The following schematic representation illustrates this:

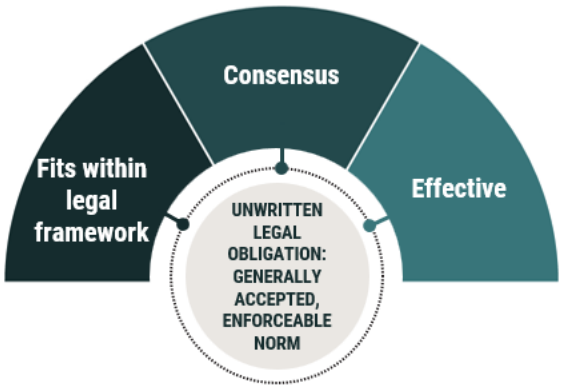

Figure 12 Overview of requirements for an unwritten legal duty[560]

8.3 Milieudefensie cannot circumvent the requirements for unwritten law by invoking the duty of care

8.3.1 The requirements for unwritten law apply fully to the interpretation of duties of care

385. As previously mentioned, it has been established that Milieudefensie does not invoke written laws. Instead, Milieudefensie argues that the Purported Duties follow from "*what, according to unwritten law, is deemed acceptable in society*".[561] According to Milieudefensie, this is characterised by "*intertwining with the circumstances of the case, or in other words, their contextual nature*".[562] According to Milieudefensie, these are "*unwritten norms, the content of which is not defined in advance by a recognised subjective right or a legally defined duty,*

559 The Hague Court of Appeal 1 April 2025, ECLI:NL:GHDHA:2025:577, para. 5.12-5.14.
560 Figure 12 is also submitted as part of Appendix 2.
561 Article 6:162(2) DCC. See also Writ of Summons, no. 659: "*The existence and the content of the legal obligation to which ING is subject can be found based on the societal duty of care as laid down in Article 6:162(2) DCC.* "
562 Writ of Summons, no. 660.

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which is why they must be determined on a case-by-case basis depending on the specific circumstances of the case".[563] This is known as the duty of care.

386. The duty of care is a particular norm determined by the court for a specific case, based on the given circumstances. This is also evident from the rationale behind the norm. According to Advocate General Hartlief, the duty of care is a catch-all category of unlawful conduct for cases that the legislator was unable to foresee or specifically address:

> "*Apart from its turbulent history, the rationale behind this norm is clear at first glance. The legislator cannot spell out all forms of conduct that should be avoided in certain circumstances given the wide variety of circumstances and the case-specific considerations needed to decide whether certain conduct is appropriate. It is up to the court to make that assessment.*"[564]

387. First and foremost, as ING explained in section 8.1 above, there is no question of a case-specific assessment in this matter. The claims and the underlying Purported Duties do not specifically relate to the conduct of a single party, nor are they case-specific. The legal duties in question are generally applicable and will apply to the future conduct of all relevant parties, regardless of the specific circumstances of the case. Milieudefensie's claims do not retrospectively examine an incident or event to determine its lawfulness, nor do they allege that a specific act or omission threatens to be unlawful in their view. The unwritten norms that Milieudefensie advocates are no different compared to generally applicable rules that govern future conduct in general.

388. In any case, Milieudefensie cannot circumvent the requirements for unwritten law, as set out in section 8.2, by invoking a duty of care. After all, the court's law-making role remains unchanged, and invoking Article 6:162 DCC does not mean that the court can continue to make laws without restriction.

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563 Writ of Summons, no. 660.

564 Opinion of A-G Hartlief 31 March 2023, ECLI:NL:PHR:2023:378 (*Afzinkkelder*), para. 3.6. See also K.J.O. Jansen, *GS Onrechtmatige daad*, art. 6:162 BW (excerpt) (Exhibit ING-202), item 6.1.3, where Jansen refers to an "*additional significance in relation to the other two categories of unlawfulness*" and a "*safety net*". Asser/Sieburgh *6-IV* 2023/82 (Exhibit ING-210), which refers to "*an additional criterion where the others fail*". See also T.F.E. Tjong Tjin Tai, "Van zorgvuldigheid naar zorgplicht. Een eeuw maatschappelijke zorgvuldigheid', *RMThemis* 2019/1 (Exhibit ING-211), p. 26, and on p. 32: "*The duty of care should remain a safety net, intended for use only when necessary.*"

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389. When establishing duties of care, it is therefore necessary to align as closely as possible with objective reference points:[565]

> "*By its very nature, the interpretation of what is generally referred to as 'the duty of care' takes place on a case-by-case basis. Fortunately, this does not mean that the court operates in isolation or elevates its subjective opinion of what is 'right' by endowing it with legal status. On the contrary, it should align itself as closely as possible with objective references with which the case at hand can be compared.*"[566]

390. The question is always whether a generally accepted, evident and knowable legal norm can be inferred from these reference points. Various objective reference points are mentioned in case law and legal literature. For example:

(a) **statutory provisions and treaty provisions.** These are provisions that do not directly apply to the case at hand, or choices made by the legislator that suggest one direction or another.[567] If a provision does apply to the case at hand, it can, of course, be used as a basis for deciding it, meaning that the duty of care no longer applies;[568]

(b) **court rulings are another important point of reference**.[569] They offer perspectives on specific cases and legal rules that can be compared to the case at hand;[570] and

(c) **private regulations and other forms of soft law.**[571] These include industry practices and other forms of self-regulation. While soft law

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565 Opinion of A-G Valk 24 April 2020, ECLI:NL:PHR:2020:412 (*IS-expatriates*), para. 6.1. See also Opinion of P-G Langemeijer and A-G Wissink 13 September 2019, ECLI:NL:PHR:2019:887 (*Urgenda*), para. 2.19. The Court of Appeal: considered in similar vein in the *Shell* judgment: "*This societal duty of care is interpreted as much as possible on the basis of objective starting points, such as legislation, general legal principles, fundamental rights, case law and/or expert reports.*" See The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099 (*Milieudefensie v. Shell*), para. 7.2. See further Asser/Sieburgh*6IV*2023/76 et seq. (excerpt) (Exhibit ING-210); K.J.O. Jansen, *GS Onrechtmatige daad*, art. 6:162 BW (excerpt) (Exhibit ING-202), item 6.1.9. See also Milieudefensie in Writ of Summons, no. 663.

566 Opinion of A-G Valk 24 April 2020, ECLI:NL:PHR:2020:412 (*IS-expatriates*), para. 6.1. See also Opinion of P-G Langemeijer and A-G Wissink 13 September 2019, ECLI:NL:PHR:2019:887 (*Urgenda*), para. 2.19. See also Asser/Sieburgh*6-IV*2023/76 et seq. (Exhibit ING-210); K.J.O. Jansen, *GS Onrechtmatige daad*, art. 6:162 BW (excerpt) (Exhibit ING-202), item 6.1.9; G.J. Wiarda, *Drie typen van rechtsvinding*, 1999 (excerpt) (Exhibit ING-212), p. 83-85; K.J.O. Jansen, "Verkeersopvattingen en particuliere regelgeving", *NTBR* 2020/5 ("Jansen 2020") (Exhibit ING-199).

567 Opinion of A-G Valk 24 April 2020, ECLI:NL:PHR:2020:412 (*IS-expatriates*), para. 6.1.

568 Opinion of A-G Valk 24 April 2020, ECLI:NL:PHR:2020:412 (*IS-expatriates*), para. 6.2: "*Such references could be to legal provisions that do not directly apply to the case at hand. (If a provision does directly apply, it can, of course, be used as a basis for deciding it, meaning that the duty of care no longer applies.)*".

569 Opinion of A-G Valk 24 April 2020, ECLI:NL:PHR:2020:412 (*IS-expatriates*), para. 6.6.

570 Smeehuijzen 2017 (Exhibit ING-200), p. 351-352.

571 Opinion of A-G Valk 24 April 2020, ECLI:NL:PHR:2020:412 (*IS-expatriates*), para. 6.7.

provisions are not legal norms per se, they can "permeate" the duty of care, influencing the legitimate expectations of those involved.[572]

391. All of the requirements referred to in section 8.2 above must be regarded as objective reference points.[573]

8.3.2 All objective reference points must be taken into account and considered in relation to each other

392. When interpreting the duty of care, all relevant reference points must be considered, within the scope of the court's law-making remit. It is not enough to choose only the reference points (or parts thereof) that back a particular norm. This does not mean that every objective point of reference is equally relevant when interpreting an unwritten norm. To assess the relative weight of various reference points, other factors can be considered, including: (a) the authority and credibility of the drafter;[574] (b) the intended scope of application;[575] and (c) the degree of consensus on the course of action advocated by the source (see section 8.2.2 above).[576]

393. Only when the norm in question is strongly context-dependent and highly case-specific can weighing up the different interests be used as a last resort when there are no objective reference points for further interpretation of the duty of care.[577] As discussed above, this is not the case in these proceedings. The Purported Duties are general in nature, not context-specific (see section 8.1 above). In addition, numerous objective reference points confirm that the

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572 Smeehuijzen 2017 (Exhibit ING-200), p. 354-355; Opinion of P-G Langemeijer and A-G Wissink 13 September 2019, ECLI:NL:PHR:2019:887 (*Urgenda*), paras. 2.19 and 2.31.

573 Milieudefensie further points to human rights and general principles as objective reference points. In certain cases, human rights and general principles may serve as objective reference points. However, as ING explains in section 10.2, they do not provide support for the Purported Duties. Thus, it is incorrect that "[t]*hese principles not only entail that emissions reductions are necessary, also* [...] *how they are to be realised*". See Writ of Summons, no. 741.

574 Sources drawn up by authoritative or powerful parties are given greater weight when determining the duty of care. See C.O. Hoekstra, "Maatschappelijke normvorming en de ongeschreven onzorgvuldigheidsnorm. Een gezichtspuntencatalogus", *WPNR* 2023/7419 ("Hoekstra 2023") (Exhibit ING-213), p. 542-543.

575 Jansen believes that applying private regulations is not the obvious choice when setting norms with a broad scope that could also impact the assessment of other situations. See Jansen 2020 (Exhibit ING-199), p. 27-28. See also Hoekstra 2023 (Exhibit ING-213), p. 546.

576 For example, in the *Graafrichtlijn* judgment, the Dutch Supreme Court held that, in the absence of a statutory norm, weight should be given to a directive setting out concrete norms adopted by a group comprising a wide range of individuals with technical training, which (in part) impacted the prevailing views within the professional group on how to act with due care. See Dutch Supreme Court, 25 May 2018, ECLI:NL:HR:2018:772, para. 3.7.2. In determining whether a consensus exists, the extent to which such a norm is already being adhered to by the relevant legal actors to whom the legal norm is intended to apply can be indicative. See also Hoekstra 2023 (Exhibit ING-213), p. 544.

577 Opinion of A-G Valk 24 April 2020, ECLI:NL:PHR:2020:412 (*IS-expatriates*), para. 6.8: "*If and to the extent that objective points of reference for the (further) interpretation of unwritten duties of care are lacking, the court – also in view of the prohibition of denial of justice (Article 13 General Provisions Act) – will have to fall back on a weighing of the interests, as have been made apparent in the proceedings. The duty of care is then strongly coloured on a case-by-case basis.*"

Purported Duties do not exist. Therefore, the determination of unwritten norms in these proceedings cannot be limited to a simple weighing "*on the one hand, of ING's interest in freely pursuing its own interests with regard to its climate policy, and on the other the interest represented by Milieudefensie in remaining indemnified against the (wrongful) consequences of that climate policy*."[578]

8.3.3 The endangerment doctrine is not an appropriate method for assessing the existence of the Purported Duties

394. In these proceedings, Milieudefensie relies on the endangerment doctrine as an "additional point of reference".[579] The endangerment doctrine is a method, developed through case law, of interpreting duties of care. It is not a framework for establishing such norms per se.[580] The creation of an endangering situation comes into play in "*situations where an individual has created and/or allowed a hazard to continue to endanger persons or property. In such cases, societal care requires that one should not expose another to greater danger than is reasonably justifiable given the circumstances. More specifically, depending on the circumstances, this means that the hazard must be eliminated or reduced to an acceptable level by taking adequate precautions.*"[581]

395. In the landmark *Kelderluik* judgment[582] and subsequent cases[583], the Dutch Supreme Court set out factors for assessing unlawfulness in situations where hazards are present. These include (i) the likelihood that the aggrieved party will not exercise the required vigilance and care; (ii) the likelihood of this resulting in harm; (iii) the potential severity of the consequences; (iv) the degree of onerousness involved in taking the precautionary measures; (v) whether the precautionary measures are standard practice; and (vi) the nature of the conduct ("**Kelderluik factors**").

396. The Kelderluik factors are interrelated and cumulative (but not exhaustive). Essentially, they require a basic legal and economic risk assessment of the extent of the potential damage and its probable occurrence, compared to the onerousness of taking precautionary measures in terms of cost, time and effort.[584] This assessment means that unlimited preventive measures are not

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578 Writ of Summons, no. 662.
579 Writ of Summons, nos. 670-671 and 684.
580 Opinion of P-G Langemeijer and A-G Wissink 13 September 2019, ECLI:NL:PHR:2019:887 (*Urgenda*), para. 2.23; Smeehuijzen 2017 (Exhibit ING-200), p. 351.
581 Opinion of P-G Langemeijer and A-G Wissink 13 September 2019, ECLI:NL:PHR:2019:887 (*Urgenda*), para. 2.20. See also Asser/Sieburgh *6-IV* 2023/58 (Exhibit ING-210); K.J.O. Jansen, *GS* Onrechtmatige daad, art. 6:162 BW (excerpt) (Exhibit ING-202), item. 6.3.1.
582 Dutch Supreme Court 5 November 1965, ECLI:NL:HR:1965:AB7079 (*Kelderluik*): "*that attention should be paid not only to the probability of non-compliance with the required vigilance and caution, but also to the magnitude of the risk of accidents arising from this, the severity of their potential consequences, and the degree of onerousness of the necessary safety measures.*"
583 Dutch Supreme Court 14 July 2017, ECLI:NL:HR:2017:1345, para. 3.3.2 and Dutch Supreme Court 7 April 2006, ECLI:NL:HR:2006:AU6934, para. 3.3.
584 C.C. van Dam, *Aansprakelijkheidsrecht*, 2024 (excerpt) (Exhibit ING-214), p. 74-80.

required;[585] they should be proportionate to the level of risk reduction. An inherent aspect of this is that measures must also be effective.

397. The endangerment doctrine and the Kelderluik factors focus on individual situations where the safety of others is endangered. However, they are not suitable for establishing a company's obligations to limit climate change.[586]

- Firstly, the Kelderluik factors are generally applied in situational, incidental and relatively straightforward cases. These are always specific situations in which a tortfeasor poses (or a defined group of tortfeasors pose) a specific threat to a defined group of potentially aggrieved parties.[587] This is not the case in the context of climate change. Neither the causes nor the consequences of climate change can be attributed to a defined group of individuals.

- Secondly, the relatively straightforward weighing up of the harm and the onerousness of taking measures is ill-suited to climate cases. In situations where the safety of others is endangered, the relevant hazard can usually be avoided by taking relatively straightforward precautionary measures.[588] Precautionary measures have a direct and substantial effect on the likelihood of harm. Conversely, the measures that an individual company can take do not remedy climate change per se, making them only indirectly related to the alleged hazard. Therefore, it is not appropriate to weigh up the severity of all the consequences of climate change against the onerousness of measures taken by an individual company.[589]

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585 K.J.O. Jansen, *GS* Onrechtmatige daad, art. 6:162 BW (excerpt) (Exhibit ING-202), item 6.4.4.9.

586 Likewise The Hague Court of Appeal in 12 November 2024, ECLI:NL:GHDHA:2024:2099 (*Milieudefensie* v. Shell), paras. 7.2-7.3: "*This societal duty of care is interpreted as much as possible on the basis of objective points of references, such as legislation, general legal principles, fundamental rights, case law and/or expert reports.* […] *The court will therefore not assess (specifically) using the so-called Kelderluik factors whether a societal duty of care exists under which Shell is obliged to reduce its CO2 emissions by a certain percentage. The Kelderluik factors are used in case law to assess whether, assuming a dangerous situation, the societal duty of care requires certain safety measures to be taken. The Kelderluik factors are focused on the creation of dangerous situations. The dangerous climate change occurring worldwide is not entirely equivalent to endangerment situations to which the Kelderluik factors tend to be applied. Whatever the case, ultimately these Kelderluik factors also constitute an interpretation of the general societal duty of care.* […]." See also Smeehuijzen 2025 (Exhibit ING-208), p. 2667.

587 See also E.R. de Jong, "Urgenda: rechterlijke risicoregulering als alternatief voor risicoregulering door de overheid?", *NTBR* 2015/46, vol. 10 (Exhibit ING-215), vol. 10, section 3.1.

588 E.H.P. Brands et al., "Shell/Milieudefensie. Geen reductiebevel voor Shell. Wel een aantal voor klimaat- en milieuzaken belangrijke mijlpalen", *M&R* 2025/42 (Exhibit ING-216), p. 397.

589 Similarly, when assessing the foreseeability, the foreseeability of damage as a result of the action in question should be assessed, rather than the foreseeability of climate change as such or the foreseeability of damage as a consequence of climate change.

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- Thirdly, the endangerment doctrine and the Kelderluik factors cannot answer the question of *what* measures a party must take to prevent a hazard; they can only serve as reference points when assessing whether a party should (or should have) taken such measures. However, these proceedings concern the question of whether ING has a legal duty and whether this duty implies that specific measures should be taken.

398. Therefore, the Purported Duties cannot be established by systematically checking off the Kelderluik factors. Nevertheless, the criteria for accepting generally applicable legal duties cannot be circumvented, even in endangerment situations. This too must be assessed to establish whether the purported unwritten rules actually exist. Application of the Kelderluik factors also shows that the Purported Duties do not exist (see section 12.1 below).

8.4 Conclusion: the Purported Duties can only exist if they are compatible with the statutory framework, knowable and effective

399. In these proceedings, Milieudefensie is seeking the establishment of new, generally applicable laws. These unwritten laws would then apply to the entire financial sector. This is not possible.

400. The freedom of the courts to make law in place of the legislator is limited by the clear requirements set out in the General Provisions Act, which have been further confirmed by the Dutch Supreme Court through decades of case law. This limitation applies fully in cases such as this one, where there is no question of a specific situation highly dependent on the circumstances of the case. After all, this case involves generally applicable rules that reflect legal policy choices. If the Purported Duties are to be established as norms derived from unwritten law or duties of care, the above-outlined framework will have to be applied.

401. In chapters 9 to 11 below, ING will demonstrate that the Purported Duties do not fulfil these requirements and consequently do not exist. ING does this with reference to three themes: the Purported Duties are incompatible with the statutory framework (chapter 9); there is no consensus on the Purported Duties in Voluntary Initiatives or in practice, or even elements thereof (chapter 10); and the Purported Duties are ineffective (chapter 11).

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9 THE PURPORTED DUTIES CONFLICT WITH WRITTEN LAW AND CHOICES MADE BY THE LEGISLATOR

Key points of this chapter

- Both the interest pursued in these proceedings (climate change mitigation) and its subject matter (obligations of individual companies to combat climate change) are regulated in the EU and the Netherlands. However, with its Purported Duties, Milieudefensie seeks the establishment of general rules that would require the court to make legal policy choices that deviate from those made by EU and Dutch legislators.
- The Purported Duties are also in conflict with the statutory framework at various levels.
- Firstly, they deviate fundamentally from the EU legislator's approach laid down in its climate policy. This policy was developed based on a thorough weighing of interests, resulting in an approach that envisages a climate transition in which market dynamics and competitiveness, among other things, are maintained. The legislator explicitly rejected a duty to reduce reported emissions at the level of individual companies. The Purported Duties therefore constitute a policy instrument that the legislator did not wish to employ and whose content it explicitly rejects. They would also prevent banks from financing the policy's intended transition.
- The Purported Duties also contradict specific statutory obligations. Implementing the Purported Duties would result in conflicts with climate legislation and freedom of movement, among other things.
- The above applies irrespective of the type of company or the sector in which it operates. Specifically for banks, the Purported Duties give rise to conflicts with prudential legislation. They hinder banks' ability to adequately manage risk and thus the extent to which banks can ensure financial stability.

402. ING set out the requirements for rules of unwritten law in chapter 8. The Purported Duties do not achieve this. First and foremost, there is no legislative gap. In the present chapter 9, ING first discusses how the Purported Duties conflict with legislation. Milieudefensie is attempting to override interests that have already been weighed and legal policy choices that have already been made by the legislator with Purported Duties that conflict with the approach chosen by the EU legislator (section 9.1). The Purported Duties also conflict with climate legislation (section 9.2), banking legislation (section 9.3), and the freedom of movement within the internal market (section 9.4). All in all, it is clear that the Purported Duties cannot exist (section 9.5).

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9.1 There is no legislative gap, and the Purported Duties fundamentally conflict with the legislator's approach

9.1.1 There is no legislative gap

403. Chapters 2 and 3 explained that limiting climate change and the role of individual companies and banks in this regard are high on the agenda for EU and Dutch legislators.[590] To implement the Paris Agreement, legislators have formulated policies and enacted various laws to ensure that companies take responsibility for reducing emissions.[591]

404. In these proceedings, Milieudefensie is formulating norms on an issue that is already "*specifically regulated by law*",[592] despite the fact that the legislator deliberately chose not to include certain elements in legislation. There is no legislative gap concerning the role of companies and banks in limiting climate change. Consequently, there is no room to nonetheless establish unwritten norms.[593]

405. Incidentally, the EU is on track to meet its 55% emissions reduction target by 2030.[594] In 2025, the EC confirmed that, in 2024, "*EU greenhouse gas emissions fell again, by 2.5% compared with 2023. They now stand at over 37% below 1990 levels, or 39% when only domestic emissions are considered, while our economy is 71% larger*"[595] and that EU ETS even "*continues to deliver deep emission cuts in power and industry, now 50% below 2005 levels*" and "[w]*ith this progress, the system is on track to achieve the 2030 target of 62% reduction.*"[596]

9.1.2 There is no room for legal policy choices and general rules

406. With its Purported Duties, Milieudefensie is attempting to elevate its own vision to the status of generally applicable rules. Milieudefensie acknowledges that these are "*new*" norms. In its 2026 annual plan, as referenced in chapter 8, Milieudefensie writes that it is taking strategic legal action so that its rules "*can*

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590 According to the Governance Regulation and Article 13 of the European Climate Law, the EU is required to continuously evaluate the regulatory framework and assess its progress towards achieving its objectives. See also section 2.6 above.

591 See chapters 2 and 3 above. The EU legislator and the Dutch legislator have incorporated the outcomes of the various COPs, where relevant. As discussed in section 2.1, the outcomes of COPs, by themselves, do not constitute binding law. Milieudefensie discusses these COPs in chapter VII of the Writ of Summons.

592 Dutch Supreme Court 30 January 1959, ECLI:NL:HR:1959:AI1600 (*Quint v. Te Poel*).

593 See, for example, Opinion of P-G Langemeijer and A-G Wissink 13 September 2019, ECLI:NL:PHR:2019:887 (*Urgenda*), para. 5.28 and footnote 555; Opinion of A-G Assink 8 May 2020, ECLI:NL:PHR:2020:450, para. 3.52. See also section 8.2.1 above.

594 See recently, for example, EC, "Climate Action Progress Report 2025", November 2025 (excerpt) (Exhibit ING-054), p. 7 and section 2.6 above.

595 EC, "Climate Action Progress Report 2025", November 2025 (excerpt) (Exhibit ING-054), p. 7.

596 EC, "Climate Action Progress Report 2025", November 2025 (excerpt) (Exhibit ING-054), p. 7 and 29.

become a new norm ":[597] In other words: its rules do not exist yet but should become applicable in the future.

407. Milieudefensie thereby concedes that the Purported Duties do not reflect the current state of the law. The rules that Milieudefensie wants to elevate to legally enforceable norms do not include a mandatory injunction to implement sufficient warning measures for open basement hatches.[598] Instead, they entail detailed, newly concocted rules that extensively regulate how banks (in any case) and, through them, all sorts of other companies should conduct themselves. The Purported Duties also entail specific choices about how the climate transition should take place, as well as the transition and emission reduction pathways that should apply. These are choices that, under international law (and in a democracy) lie with the legislator – choices that the legislator has already made. Under the Paris Agreement, for instance, states can opt to prioritise the full sustainability of one sector while allowing another to be less sustainable. The differences can be significant in this regard. The EU legislator has also introduced sector-specific legislation that considers the unique features of each sector, while opting to impose no particular transition and emission reduction pathways on companies. Milieudefensie wishes this were otherwise. It would like to be able to determine how the Dutch climate transition should take place and which reductions are appropriate in which sectors.

408. Milieudefensie also believes that "New Fossil Fuel Projects" are unlawful.[599] The legislator disagrees. On the contrary, it considers such projects to be necessary due to various interests.[600] Consequently, Milieudefensie is asking the court to make choices that take precedence over the legislator's weighing of interests and written legislation. According to the Dutch Supreme Court, unwritten norms are ill-suited to this purpose.[601]

409. The granting of Milieudefensie's "new norms" would require legal policy choices to be made. There is no room for this in individual proceedings between two parties. This is particularly pertinent given that Milieudefensie is presenting its claims to the court while invoking only one interest: combating climate change. The legislator, however, must weigh multiple interests.[602] Based on this weighing

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597 Milieudefensie, *Annual Plan 2026*, 2026 (excerpt) (Exhibit ING-196), p. 10.

598 Milieudefensie fails to appreciate this, and, as discussed above in chapter 8, mistakenly believes that the existence of the Purported Duties must be "explicitly" tested against the Kelderluik factors. See Writ of Summons, no. 748.

599 Writ of Summons, nos. 1019 and 1043.

600 See sections 3.5 and 2.6 above.

601 See chapter 8 and specifically Dutch Supreme Court 12 May 1999, ECLI:NL:HR:1999:AA2756 *(Arbeidskostenforfait*), para. 3.15.

602 See sections 3.5 and 2.6 above. Milieudefensie describes the consequences of climate change in the Writ of Summons (chapter VIII). These consequences were considered by the EU and Dutch legislators in their balancing of the interests. Contrary to what Milieudefensie apparently believes, however, EU and Dutch legislators cannot avoid also taking other interests into account when enacting legislation.

of interests, it has made choices between the various possibilities for regulating the climate transition, the energy transition and the role of companies, including banks, in these transitions.[603] For instance, the legislator weighs the climate interest against the interest in affordable, independently sourced and widely available energy, competitiveness, and financial stability. According to the Dutch Supreme Court,[604] it is the responsibility of the legislator to weigh up such interests. This is yet another reason the Purported Duties do not exist.

410. As will be explained below, cases such as *Urgenda*, *KlimaSeniorinnen* and, more recently, *Greenpeace v. the Dutch State* repeatedly demonstrate that states are responsible for setting climate policy. The Dutch courts and the CJEU have ruled that states have broad policy discretion.[605] The existence of this policy discretion, which has been confirmed by the courts, means that it is not up to Milieudefensie or others to use civil proceedings against individual defendants to nullify it by demanding that civil courts make legal and policy choices that restrict policy discretion and run counter to previous policy choices, as explained below.

9.1.3 The Purported Duties contradict the approach chosen by the legislator

411. The EU legislator envisaged an orderly climate and energy transition. Ensuring a level playing field is an essential part of this process. According to the legislator, the objectives of the EU's legal and policy framework are best achieved through coordinated action. However, unilateral action by Member States without careful consideration of interests and consequences can undermine coordinated policy and risk disrupting the internal market.[606] The Purported Duties conflict with the choices made by the EU legislator in this regard (and with the subsequent approach of the Dutch legislator rejecting "national gold-plating"[607]).[608]

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603 This weighing includes climate scenarios and transition paths, including the IEA and IPCC climate scenarios. Accordingly, these climate scenarios and transition paths have also been "incorporated" into EU policies. See section 9.2.1 below.

604 Dutch Supreme Court 12 May 1999, ECLI:NL:HR:1999:AA2756 (*Arbeidskostenforfait*), para. 3.15. See also Dutch Supreme Court 11 November 2011, ECLI:NL:HR:2011:BR5223 (*Rooyse Wissel v. Hagens*), para. 5.4; Dutch Supreme Court 21 December 2001, ECLI:NL:HR:2001:ZC3693 (*Kernwapens*), para. 3.3 and Dutch Supreme Court 10 June 1983, ECLI:NL:HR:1983:AG4612, para. 3.1. In this latter judgment, the Dutch Supreme Court held that additional protection is not warranted if the legislator acknowledged the relevant interests when drafting the law.

605 See, for example Dutch Supreme Court 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*), paras. 8.2.1-8.2.7; ECtHR 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020 (*Klimaseniorinnen*), para. 543; The Hague District Court 28 January 2026, ECLI:NL:RBDHA:2026:1344 (*Greenpeace v. The State of the Netherlands*), para. 10.21.

606 EC, "Inception Impact Assessment on Amendment of the EU Emissions Trading System" (Directive 2003/87/EC)' (Q2 2021) (Exhibit ING-217), p. 2: "*Action at EU level is therefore indispensable and has a much bigger chance of leading to the necessary transformation, acting as a strong driver for cost-efficient change and upward convergence. Implementing a similar measure nationally would result in smaller, fragmented carbon markets, risking distortions of competition and likely lead to higher overall abatement costs.*"

607 See section 3.2 above.

608 See also Report of Professor Resti of 6 February 2026 (Exhibit ING-002A), section 5.1.

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412. Firstly, the EU legislator has recognised that high-emission activities must become more sustainable. This sustainability is being realised in the real economy. The EU legislator has chosen to promote this through transparency and to make use of market forces. It has developed market mechanisms intended to encourage more sustainable practices. The EU ETS discussed in section 2.4 is an example of this. While companies are not prohibited from emitting greenhouse gases, they will have to bear increasingly high costs for doing so. Consequently, the legislator has in fact chosen *not* to impose reduction obligations at the level of individual companies – including banks, in particular. The Purported Duties contradict this choice. They also contradict the implicit decision to provide market incentives for individual companies to become more sustainable without enforcing specific emissions reductions along a particular transition pathway at company level, let alone through bank financing.

413. Secondly, the EU legislator has chosen *not* to stipulate a specific transition pathway for the European economy. Instead, the EU legislator acknowledges that sustainability opportunities and the pace of change vary from sector to sector, and that future developments may necessitate adjustments to the transition process. This is first of all why the EU's climate policy is sector-specific in part. The sustainability of a sector – as well as the degree of sustainability within a sector – as part of the climate transition, is therefore the result of sectoral legislation to which market participants are bound, in combination with, often sector-agnostic, market forces and mechanisms. The EU legislator deliberately does not prescribe what individual companies in a sector must do, nor which transition pathway they must follow. This too demonstrates that the Purported Duties are based on a philosophy that differs significantly from that advocated by the EU. The EU legislator envisages a gradual transition. The exact transition pathway has yet to be determined. Conversely, Milieudefensie believes that it should, in fact, be able to prescribe precisely which transition pathway should apply to the entire economy – and even to individual companies. Based on this transition pathway, it also believes that it can determine which obligations apply to individual companies, or at least determine when companies may or may not obtain financing from a single bank. This would ultimately require categorical and rigorous reduction and exclusion.

414. Thirdly, the Purported Duties conflict with the role of financiers in the Green Deal and the choices made by the Dutch legislator.[609] Financiers can contribute to the

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609 See also Report of Professor Resti of 6 February 2026 (Exhibit ING-002A), p. 14-15: "*Private sector involvement is based on a logic framework whereby, by increasing transparency and providing adequate information "top down" from non-financial companies to savers, the latter will be in a position to direct their money, "bottom up", towards sustainable investments. The two limbs of this logic, as devised by the EC in the Green Deal, are:*

mobilisation of capital for economic sustainability and removing obstacles to the necessary financing, for example by promoting transparency.[610] Furthermore, the Banking Package stipulates that banks must manage transition-related risks that could affect the stability of individual financial institutions and the financial system as a whole.[611] Against this backdrop, it is clear that the legislator does not intend to oblige banks to categorically reduce their financing to clients and sectors on the basis of a fixed, rigid pathway. This would actually be counterproductive, given that bank financing can help companies and sectors successfully transition.[612] Nevertheless, the Purported Duties do compel banks to do so (see chapter 11 below). This could have consequences for the financial soundness of banks and the wider financial system. Sound banks and a robust financial system are essential for mobilising the necessary transition funding from the financial sector.[613]

415. Not only the obligation of banks to manage their risks adequately, but also the actual necessity of doing so, is the reason why the Dutch Minister of Finance explicitly rejected the idea of obliging banks to invest more in the energy transition, as this would prevent financial institutions from "*independently making an adequate risk-return assessment*" [sic: i.e. spelling error in the Dutch text]. *This could undermine the soundness of financial institutions. Furthermore, an institution's investment policy is primarily the company's own responsibility. This measure is therefore not effective*."[614] The Minister agrees that Milieudefensie's claims in these proceedings would undermine the stability of financial institutions and would not be effective.

1.strengthening the foundations for sustainable investment by classifying sustainable activities, embedding sustainability into the corporate governance framework, increasing private companies' and financial institutions' disclosures on climate and environmental data so that investors are fully informed;
2. provide greater opportunities for investors and companies by making it easier for them to identify sustainable investments in a credible way, e.g. by developing "clear labels" for retail investment products.
A third limb of the Green Deal aims at ensuring that climate risks do not jeopardise financial stability. Accordingly, the document vows to
3. integrate the management of climate and environmental risks into the EU prudential framework and examine how the financial system can help to increase resilience to such risks (in particular, to physical damage arising from natural catastrophes)."

610 See sectiond 2.4 and 2.5 above. The basis for this lies in the Sustainable Finance Action Plan (Exhibit ING-012) (see p. 10) and the Green Deal (Exhibit ING-013) (see p. 20). Although in its Writ of Summons Milieudefensie points to an alleged "*widely acknowledged key role of banks in limiting climate change*" it makes no reference at all in the Writ of Summons to the Green Deal or the Sustainable Finance Action Plan, or the role that financial institutions, including banks, could play according to the EU legislator.

611 See section 2.5 above and section 9.3.1 below.

612 Milieudefensie does in fact mention that banks can play an important role ("*key role*") in the "*success of the climate transition*". See Writ of Summons, section X.2.5-X.3 (and more specifically no. 584(ii)).

613 See section 11.4 below.

614 *Parliamentary Papers II* 2024/25, 32 013, no. 304 (Letter to the Dutch House of Representatives on the outcome of the study on climate measures for the financial sector) (Exhibit 108-ING), p. 2-3.

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416. The Purported Duties are predicated on other choices and weighing of interests. Rather than promote market forces through transparency and adequate risk-return assessments by banks, they focus on curtailing the availability of financing for market participants and sectors that are not becoming sustainable in line with the IEA NZE scenario, either directly through mandatory exclusion or indirectly through mandatory reductions in financed and facilitated emissions. Milieudefensie thus disregards how legislators have weighed up various interests, including financial stability. As ING discusses in section 11.4 below, Milieudefensie also disregards the fact that this approach hinders banks' ability to provide capital for the transition. Professor Resti therefore concludes that: "[t]*he measures Milieudefensie is requesting in its writ of summons can hardly be considered consistent with the EU's Green Deal. Indeed, the latter is based on empowering private savers and other surplus units by providing them with adequate information on how to invest in climate-friendly assets, not on imposing decarbonisation obligations onto the banking system.*"[615]

417. In addition, the Purported Duties contradict the EU's core principle of a level playing field. After all, the Purported Duties would only apply to ING or to individuals under the jurisdiction of the Dutch courts and subject to Dutch law.[616] However, the EU legislator intended otherwise.

418. For instance, both the CSDDD[617] and the CSRD[618] are based on Article 114 of the Treaty on the Functioning of the European Union ("**TFEU**"). EU regulations based on Article 114 TFEU leave less room for stricter national measures than those based on other legal bases. The fact that this Treaty article has been used to provide a legal basis indicates that the EU legislator is pursuing the predetermined objective of establishing and maintaining the internal market.[619] To the extent that more far-reaching national measures are permitted in theory, they must still be assessed against the intended level playing field.[620] Under Article 114(3) TFEU, EU measures are deemed to offer "*a high level of protection*" with regard to environmental interests.[621]

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615 Report of Professor Resti of 6 February 2026 (Exhibit ING-002A), p. 10-11. See also section 5.4.

616 See section 7.1.2 above.

617 Recitals CSDDD: "*Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50(1), Article 50(2), point (g), and Article 114 thereof* [...]".

618 Recitals CSRD: *"Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 50 and 114 thereof* [...]".

619 In the Writ of Summons (chapter IV), Milieudefensie contends that Dutch law applies on the basis of Article 7 of Regulation (EU) 864/2007 of July 11, 2007 ("Rome II"). It asserts that the damage (*erfolgsort*) and the damaging event (*handlungsort*) are located in the Netherlands. This way of determining applicable law shows all the more that addressing climate change through civil law leads to fragmentation, which is precisely what the EU legislator aims to avoid. As professor Ringe also explains, such fragmentation is undesirable. See Report of Professor Ringe of 6 February 2026 (Exhibit ING-001A), specifically sections 2.4 and 4.2.

620 See section 2.7 above.

621 M. Kellerbauer et al. (eds.), *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, 2024 (excerpt) (Exhibit ING-218), p. 1751.

419. Thus, the Purported Duties contradict a wide range of explicit and implicit choices made by the EU legislator. These choices are the result of a thorough weighing of interests, and aim to facilitate effective and orderly transitions.

9.1.4 Milieudefensie's argument suffers from omissions that cannot be remedied by invoking the horizontal effect of human rights

420. Milieudefensie seems to believe that it can circumvent the approach chosen by the legislator by invoking the horizontal effect of human rights.[622] As explained above in chapter 8, duties of care cannot override the work of the legislator. This also applies when the duty of care is "fleshed out" by invoking human rights and referring to rulings such as *KlimaSeniorinnen*.[623]

421. Protection against climate change is a human right. States should offer their citizens this protection. This has been confirmed in rulings such as *Urgenda* and *KlimaSeniorinnen*.[624] Contrary to Milieudefensie's apparent assumption, neither these rulings, nor the other sources Milieudefensie references[625] support their position, either generally or with regard to the specific elements of the Purported Duties. In *KlimaSeniorinnen*, the ECtHR explicitly confirmed that states have primacy in protecting against climate change.[626] According to the ECtHR, climate change mitigation requires weighing up interests as part of democratic decision-making processes, even though climate change poses major long-term risks.[627] States have a "*reduced margin of appreciation*" for the targets they set, but a "*wide margin of appreciation*" for "*their choice of means, including operational choices and policies adopted in order to meet internationally anchored targets and commitments in the light of priorities and resources*".[628] Thus, states must provide adequate protection. How they subsequently do this is up to them.[629] In the present case, the relevant legislators have already done so, albeit in a manner displeasing to Milieudefensie.

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622 As Milieudefensie sets out in Writ of Summons, section XI.2.4.

623 Milieudefensie refers to *Urgenda* in Summons, nos. 62, 67, 121, 281, 674-675, 677, 692, 711, 719, 731, 748, 751, 760, 828, 843, 845, 859, 864-865, 877, 1156, 1164, 1184; and to *KlimaSeniorinnen* in Summons, nos. 121, 128, 718, 736, 845, 848, 854, 862-865, 877-878, 1175. In chapter XIII of the Writ of Summons Milieudefensie addresses what it believes to be the applicable relevance of human rights to ING's alleged legal duty.

624 Dutch Supreme Court 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*), para. 5.7.9; ECtHR 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020 (*Klimaseniorinnen*), para. 542.

625 Writ of Summons, section XIII.5. Also the OCHCR's "Information Note" (No. 874), UN Special Rapporteur's report (No. 875), Reykjavík Declaration (No. 876) and Advisory Opinion of the Inter-American Court of Human Rights (No. 881) cited by Milieudefensie do not support Milieudefensie's position.

626 ECtHR 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020 (*Klimaseniorinnen*), para. 541. See also ICJ 23 July 2025, *Obligations of States in respect of Climate Change* (*Advisory Opinion*) ("IGH Advisory Opinion"), para. 403.

627 ECtHR 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020 (*Klimaseniorinnen*), para. 421.

628 ECtHR 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020 (*Klimaseniorinnen*), para. 543.

629 The ECtHR has explicitly confirmed that Article 8 ECHR does not include the right to a concrete mitigation measure. See ECtHR 11 December 2025, ECLI:CE:ECHR:2025:1118DEC004005423 (*Fliegenschnee and others v. Austria*), para. 33.

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422. EU climate policy basically provides the same protection as the ECHR. This is the ECtHR's *Bosphorus* presumption.[630] The same presumption applies to the human rights invoked by Milieudefensie.[631] The EC confirms this in the climate case *Duarte Agostinho et al. v. Portugal et al.*[632] at the ECtHR: "*EU law provides for the substantive guarantees of respect for fundamental rights in the field of environment, which ensure a level of protection equivalent to that of the Convention.*"[633] The EC stresses that "*EU law can be considered to provide for an equivalent level of protection of human rights to that of the Convention in the field of environmental protection. Therefore, Member States of the EU can be presumed not to have departed from the requirements of the Convention when they implement the legal obligations flowing from their membership to the EU.*"[634] The Dutch state also believes that its climate mitigation policy meets the requirements of the ECHR (and Article 27 ICCPR).[635] Regardless, the Dutch state intends to comply with the ECHR. Should the court subsequently decide that it does not, it will be up to the Dutch state to toughen its policy. The ECHR does not provide any scope or grounds to demand from courts that they establish individual obligations in individual proceedings at the level of individual companies.[636] After all, this would undermine the states' margin of appreciation.

423. The Writ of Summons does not discuss the *Bosphorus* presumption, but if Milieudefensie believes that current EU policy does not provide sufficient protection based on that presumption, it should address this at EU level in infringement proceedings against the EU legislator.[637] It cannot instead initiate proceedings against individual companies, independent of that policy.

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630 ECtHR 30 June 2005, ECLI:CE:ECHR:2005:0630JUD004503698 (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*), paras. 155-156. This presumption has been confirmed by the ECtHR on several occasions, for example in ECtHR 23 May 2016, ECLI:CE:ECHR:2016:0523JUD001750207 (*Avotiņš v. Latvia*), paras. 101-112 and ECtHR 11 December 2025, ECLI:CE:ECHR:2025:1118DEC004005423 (*Fliegenschnee and others v. Austria*), para. 28.

631 Milieudefensie relies on Articles 2 and 8 ECHR, believing these to be objective reference points in the interpretation of the duty of care; see among others Writ of Summons, nos. 686, 689 and 692. It argues that the ECHR, specifically Articles 2 and 8, offers protection against the consequences of dangerous climate change, from which clear principles and reference points for determining the necessary preventive measures can be inferred; Writ of Summons, no. 869. According to Milieudefensie, this implies that ING has a legal obligation to contribute adequately and proportionately to the prevention of dangerous climate change; Writ of Summons, section XIII.5.

632 ECtHR 9 April 2024, ECLI:CE:ECHR:2024:0409DEC003937120 (*Duarte Agostinho and Others v. Portugal and Others*.).

633 Written Observations of the European Commission of 19 May 2021, Application n° 39371/20 (*Duarte Agostinho et al. v. Portugal et al.*) ("EC, Written Observations Duarte v. Portugal"), (Exhibit ING-219), no. 67.

634 EC, Written Observations Duarte v. Portugal (Exhibit ING-219), no. 72.

635 The Dutch State's Statement of Defence in the proceedings between Greenpeace et al. and the Dutch State (excerpt) (Exhibit ING-220), no. 15.4.

636 The Hague District Court 28 January 2026, ECLI:NL:RBDHA:2026:1344 (*Greenpeace v. The State of the Netherlands*). Moreover, the court also decided in this case that it is up to the state to set reduction targets in general terms. Accordingly, these those targets are not fixed in advance based on IEA or IPCC climate scenarios, and they are aspirational targets.

637 The EC has repeatedly confirmed that EU climate policy has so far been sufficiently effective in achieving EU climate goals. See section 2.6 above.

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9.1.5 Conclusion: the Purported Duties cannot exist

424. In view of the above, the Purported Duties cannot exist.

425. Incidentally, the same would apply if Milieudefensie believes that there is indeed a legislative gap and that the norms it proposes are in fact consistent the EU legislator's chosen approach and that establishing these norms would not require any legal policy choices. As discussed in chapter 8, unwritten legal duties can only exist, after all, if they do not conflict with that legislation.

426. The Purported Duties do not meet that criterion. They conflict, both individually and collectively, with climate legislation (section 9.2), banking-specific legislation (section 9.3), and the fundamental freedom of movement (section 9.4).

9.2 The Purported Duties conflict with climate legislation

427. Below, ING explains, without claiming to be exhaustive, that the Purported Duties on which Milieudefensie bases its claims conflict with climate legislation. In section 9.2.1, ING discusses the Reduction Claims; in section 9.2.2, the Exclusion Claims; and in section 9.2.3, the CTP Claim.

9.2.1 The Reduction Claims conflict with climate legislation

428. Milieudefensie's Purported Duties focus on emissions that are allocated and reported at entity or group level. It elevates the reduction of those allocated and reported emissions to a norm. However, this approach conflicts with the coordinated approach chosen by the EU and the Netherlands to reduce emissions. That approach allows the emission of greenhouse gases within the limits set by the legislator.[638] Reported emissions are not regulated at entity level in either the EU or the Netherlands. Legislators have rejected the idea of imposing specific reduction obligations on individual companies. Instead, they opted for a broader approach involving general emission reduction targets or sector-wide measures.[639]

429. The EU ETS is a key element of this approach. With the support of CBAM, it regulates emissions by limiting the number of tradeable emission allowances.[640] In short, the underlying technology ensures that production levels can be maintained and kept within the EU while reducing emissions at a sector level. Within sectors, companies can achieve different emission reductions. As discussed in section 2.4, the combination of the EU ETS, the LULUCF Regulation and the ESR covers virtually all emissions within the EU.[641] The Reduction Claims

638 See section 9.1.3 above.
639 See chapters 2 and 3 above.
640 See section 2.4 above.
641 Confirmed in EC, Impact Assessment Report (Exhibit ING-023), p. 22-23.

attempt to introduce an alternative system. According to Milieudefensie, companies that trade emission allowances within a regulated market to stay within a legally established emissions budget should nevertheless face backdoor obstacles. While these companies would be permitted to purchase allowances, they would be unable to use them, as the bank providing the financing would itself have to reduce its reported emissions.

430. Under the EU ETS, companies can follow their own reduction pathways, provided they have sufficient emission allowances to do so. Consequently, it is permissible for some companies to drastically reduce their emissions while others reduce them only marginally. In that case, the latter category operates within the limits set by law and the system functions as conceived and envisaged by the legislator. Sector-wide emissions will ultimately decrease. However, banks would still be prohibited from financing companies in the latter category. After all, Milieudefensie argues that there are unwritten norms requiring a bank to reduce its reported emissions within a certain sector by a certain percentage. Suppose that that bank has two clients operating in an EU ETS sector in which dozens of companies are active. Those two clients would then have to reduce their emissions by the percentage devised by Milieudefensie. This would negate the EU ETS approach. The reductions to be achieved in the real economy would then no longer depend on the emission rights obtained and the reduction pathways chosen by individual companies, but on the bank providing the financing.

431. This is just one example. The legislator has devised ways of achieving emission reductions in a variety of sectors in the real economy. For example, EPBD IV stipulates that the average primary energy consumption of the housing stock must be reduced by 16% by 2030 and by 20-22% by 2035.[642] Milieudefensie's assertion that banks should be obliged to reduce their housing portfolio emissions by 40.5% in 2030 and 66.2% in 2035 conflicts with this. The only way for banks to comply would be to grant fewer mortgage loans (see section 11.5 below), whereas EPBD IV expects banks to finance measures to make homes more sustainable.[643] Therefore, it is completely out of the question to impose the Purported Duties in relation to emissions generated by clients falling within the scope of this legislation.

432. The Reduction Claims also conflict with legislation on corporate mitigation obligations. Although Milieudefensie argues that the CSRD and CSDDD would endorse the Purported Duties, it does not explain why.[644] This is, in fact, incorrect.

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642 Article 9(2) EPBD IV. The average primary consumption in kWh/(m^2.year) relates to the entire housing stock. EPBD IV percentages take 2020 as the base year.

643 Article 17(11) EPBD IV.

644 Writ of Summons, nos. 666-667, 744 and 1159.

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433. The obligation that comes closest to the Reduction Claims is the CSDDD Climate Transition Plan Obligation of Article 22 CSDDD,[645] but even that conflicts with the Reduction Claims. Although the EU legislator intends, as part of the Omnibus Package, to remove Article 22 CSDDD from the CSDDD, it requires companies on the basis of the (not implemented) current text to prepare a climate plan from 2028 or 2029 in which they must, among other things, set climate-related targets. Companies do not need to set absolute emission reduction targets, as Milieudefensie is demanding.[646] Instead, companies are permitted to set their own targets. Companies may also themselves determine which transition pathway or pathways to follow,[647] and these reduction targets relate to significant emissions categories rather than all reported emissions.[648] The CSDDD Climate Transition Plan is a best-efforts obligation, and the CSDDD explicitly stated that companies can adjust their targets if they fail to achieve them.[649] Furthermore, the EU legislator chose not to provide for civil enforcement of this obligation.[650] Member States would appoint a supervisory authority to oversee the market.[651] Lastly, financial undertakings are exempted from the obligation to carry out downstream due diligence or client due diligence.[652] This is no different under the Provisional Agreement Omnibus.

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645 See section 2.4 above.

646 The inclusion obligation only applied to absolute targets "*where appropriate*" and to "*each significant category*" of Scope 1, 2 and 3 emissions. See Article 22(1)(a) and Recital 73 CSDDD. Milieudefensie wrongly claims that ING's climate policy has crucial shortcomings and is flawed. The absence of absolute emission reduction targets (as even permitted under the currently still applicable and most far-reaching CSDDD Climate Transition Plan Obligation) in climate policy does not mean that there are shortcomings or flaws. See Writ of Summons, nos. 54 and 73.

647 Article 22(1)(a) CSDDD prescribes a company-discretionary approach based on conclusive scientific evidence. Therefore, the CSDDD Climate Transition Plan had to contain time-bound reduction targets for 2030 and for every five years thereafter up to 2050. See also recital 73 CSDDD. Scientific insights, climate scenarios and transition pathways evolve over time. See sections 5.3 above and 10.2.2 below. The legislator has addressed this through the annual adjustment option.

648 Article 22(1)(a) CSDDD.

649 In Article 22(1) CSDDD, the term "*through best efforts*" is used in relation to companies. The same term is used in Recital 73 and Article 1(1)(c), although the Dutch version translates it there as "*to the best of its ability*" ("*naar beste vermogen*"). The extent of these efforts depended on a company's progress and the complexity and evolving nature of the climate transition: "[w]*hile companies should strive to achieve the greenhouse gas emission reduction targets contained in their plans, specific circumstances may lead to companies not being able to reach these targets, where this is no longer reasonable.*" See Recital 73 CSDDD. Article 22(3) CSDDD allows companies to update their CSDDD Climate Transition Plan every 12 months. The Hague Court of Appeal also points this out in The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099, para. 7.46.

650 Article 29 CSDDD. This choice aligns with professor Ringe's conclusion that "[t]*he complexity of climate change, the multitude of affected persons, the global character of the phenomenon, and the required policy choices and weighing of interests call for a solution based on public regulation rather than private law mechanisms*". Professor Ringe in this context also considers that piecemeal regulation through civil enforcement is not appropriate for regulating public goods such as climate stability. See Report of Professor Ringe of 6 February 2026 (Exhibit ING-001A), sections 2.3-2.4. Article 4(12)(a) Provisional Agreement Omnibus (Exhibit ING-037) removes the provision relating to civil liability altogether.

651 Article 24 and 25 CSDDD.

652 See extensively section 9.2.2.2 below.

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434. As stated, the EU legislator has now opted to delete the entire CSDDD Climate Transition Plan Obligation.[653] The EU legislator has decided, based on a recent weighing of interests, to reduce the regulatory burden and administrative costs for companies.[654] Accordingly, the EU legislator is deliberately deleting an obligation that comes closest to what Milieudefensie is claiming, and even if that obligation would have remained, there are clear conflicts between it and the Purported Duties.

435. As it happens, even after the CSDDD Climate Transition Plan Obligation was scrapped, the Purported Duties are still irreconcilable with how the EU legislator has regulated the transition-related obligations of individual companies:

(a) **The risk-based approach**. Both the old and new versions of the CSDDD adopt a risk-based approach to due diligence.[655] Companies must focus on those areas of the value chain where the likelihood of actual and potential adverse impacts is greatest. Where risks are equal, they may prioritise the assessment of adverse impacts involving direct business partners.[656] Incidentally, climate impact is not a topic for which companies are required to perform due diligence (see section 9.2.2.2 below).

The CSDDD Climate Transition Plan Obligation, which, as noted above, the legislator intends to delete from the directive that is already in force, also concerns a risk-based approach. This also continues to apply to the reporting obligations (under e.g. the CSRD) that remain in place. If companies have a climate transition plan, they only need to report on each "*significant scope 3 category*", i.e. "*each Scope 3 category that is a priority for the undertaking*".[657] This is set out in the CSRD and ESRS E1-6, on the basis of which companies report which emissions are prioritised.[658] However, Milieudefensie's approach, which sets targets for all emissions reported by a company, conflicts with this.

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653 Article 4(10) Provisional Omnibus Agreement (Exhibit ING-037).

654 See section 2.6 above. The Dutch legislator has indicated its support for the agreement since reducing regulatory burden is a policy priority. See *Parliamentary Papers II* 2025/26, 36 712, no. 9 (Letter to the Dutch House of Representatives on Provisional political Agreement Omnibus I-CSDDD) (Exhibit ING-221), p. 1.

655 Recitals 40 and 44 and Article 9(1) CSDDD. This risk-based approach also follows explicitly from the Omnibus package. See EC, Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements, COM/2025/81 final, 26 February 2025 (Exhibit ING-222), p. 7. Article 22(1)(a) CSDDD also stipulates that corporate climate policy should prioritise emissions where real reductions can be most effectively achieved.

656 Article 4(4) Provisional Agreement Omnibus (Exhibit ING-037) amending Article 8(2)CSDDD.

657 ESRS E1-6, no. 51.

658 ESRS E1-6, Appendix A, AR 46(d), suggests that undertakings must assess which categories have the highest priority. To do so, they must consider factors such as the scale of emissions, related financial spend, their influence on those emissions, and transition risks and opportunities.

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(b) **There is no obligation to formulate reduction targets**. There is no requirement for companies to set emission reduction targets. In addition, the CSRD and the ESRS, which only relate to reporting requirements, also assume that companies can also formulate intensity targets and not just absolute targets.[659] The ESRS E1-4 reporting requirement explicitly allows for intensity targets. In fact, the EFRAG proposal for a new, simplified set of ESRS includes an exemption for financial institutions from reporting absolute values for their Scope 3, Cat. 15 intensity targets, provided they meet certain conditions, including providing contextual information about the targets set.[660] In the Shell case, the Court of Appeal also confirmed that the CSRD and the CSDDD "*do not impose absolute reduction obligations on individual companies or specific sectors.*"[661] As discussed above, the EU legislator decided to remove the only rule that came close to an obligation to formulate emission reduction targets, namely the CSDDD Climate Transition Plan Obligation.

(c) **The legislator will provide specific guidance**. Iin the coming years the EU legislator will provide specific guidance on the precise content and scope of corporate due diligence obligations.[662] Milieudefensie's attempt to pre-empt this and possibly frustrate guidance that differs from that of the legislator is inconsistent with this approach.

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659 Article 19a(2)(b) Directive 2013/34/EU of 26 June 2013 as amended by Article 1(4) CSRD.

660 EFRAG, *Draft ESRS E1. Climate Change*, November 2025 (Exhibit ING-223), ESR E1-6, p. 8-9, *AR* 13 which seeks to amend *AR*23. In the accompanying Basis for Conclusions, EFRAG explains that the disclosure requirement serves to support transparency and to meet the needs of investors and data users, see EFRAG, "*Basis for Conclusions. Draft amended ESRS*, December 2025 (excerpt) (Exhibit ING-224), no. 333; and that the conditional exemption "*addresses the lack of methodological robustness in converting Scope 3 category 15 intensity targets into absolute values, while preserving transparency by requiring undertakings to disclose absolute financed emissions covering the same emissions as the intensity targets. This allows users, based on historical data, to assess whether the intensity targets are associated with stable, increasing, or decreasing absolute emission trajectories*" (no. 333). The exemption was included in light of concerns received from stakeholders, including that "*absolute targets are only useful for sectors where decommissioning is envisaged. At the same time, the greatest need for transition financing is in the most emissions-intensive sectors, which means absolute targets may be deceptive. In addition to that, transposing intensity targets into absolute terms requires multiple assumptions (for example, static portfolio composition, clients' future production or sales mix, future enterprise value or capital ratios, etc.)*" (no. 327) and "*the exemption should be granted as intensity targets are the primary tool for managing the sector's decarbonisation. They further argued that absolute targets may be business sensitive and, in the context of financed emissions, unreliable and impractical. Examples provided by banks showed that translating physical intensity metrics for Scope 3 into absolute values presented key challenges, including the risk of double counting when aggregating different portfolios, which prevents faithful representation, and significant uncertainties in assumptions used (e.g. composition of the portfolio over time, rhythm of decarbonisation of the client and its growth). Some stakeholders underlined that for similar reasons, exemption should be granted to all sectors and not only FI*" (no. 330).

661 The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099 (*Milieudefensie v. Shell*), para. 7.56.

662 Article 19(2) and (3) CSDDD, as proposed to be amended in Article 4(9) Provisional Agreement Omnibus (Exhibit ING-037). See also Article 6 CSRD.

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436. More generally, EU climate policy implies and explicitly states in many ways that companies can have different plans, objectives, transition pathways and ambitions. After all, if this were not the case, there would be no instruments such as the Benchmark Regulation, the Taxonomy Regulation, or the many other instruments aimed at providing insight into the diversity of the marketplace. If the Purported Duties did exist, no comparisons would need to be reported – everyone would simply follow the transition and reduction pathways that Milieudefensie would like to impose.

437. It is unclear why Milieudefensie's Writ of Summons fails to take into account the existing legal framework, even though, according to the legislator, that framework complies with all international law and human rights obligations.[663] In any case, the Purported Duties conflict with the considerations and chosen approach that underlie the legal framework, thereby frustrating its proper functioning.

438. Thus, Milieudefensie's assertion that the CSRD and the CSDDD support, the Purported Duties is incorrect.[664] The Reduction Claims – and their individual elements – conflict with the choices made by the legislator in relation to the most comparable obligation. Just over a year and a half after the CSDDD came into force, the EU legislator has in fact decided to abolish various mitigation obligations for companies.

9.2.2 The Exclusion Claims conflict with climate legislation and energy policy

439. Through the Exclusion Claims, Milieudefensie is demanding that ING immediately cease financing and facilitating all companies worldwide that are involved in any way with "New Fossil Fuel Projects".[665] It is alleged that providing services to such entities is unlawful.[666] This too conflicts with Dutch and EU climate and energy policy.

9.2.2.1 "New Fossil Fuel Projects" are lawful and compatible with government energy policy

440. "New Fossil Fuel Projects" are not prohibited in the Netherlands or the EU.[667] Nor is it prohibited to be part of a group (under company law) in which an entity

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663 However, Milieudefensie only refers to LULUCF (sectors) in general terms in a few footnotes in its Writ of Summons and does not discuss the LULUCF regulation in any further detail. See Writ of Summons, footnotes 259, 971 and 1151 No other regulations are mentioned. Milieudefensie only mentions the European Climate Law in general terms at no. 988 and the Dutch Climate Act at no. 106.

664 Writ of Summons, nos. 57, 667, 744 and 1159.

665 Writ of Summons, chapter XX, no. 5(ii)(a) and (b). See also section 7.3 above.

666 Writ of Summons, nos. 1019 and 1043.

667 The lack of agreement on the phasing out of fossil fuels was again evident recently at the COP30 in Belém. See Health Policy Watch, "COP30 Ends With No Text on Fossil Fuels Phase-Out – but Plans for a Conference in 2026", 24 November 2025 (printout of 21 January 2026) (Exhibit ING-225).

somewhere in the group is involved in any way in "New Fossil Fuel Projects".[668] "New Fossil Projects" are subject to government permits and concessions. These projects are subject to a comprehensive system of public-law legislation, ensuring that only projects complying with these rules and holding a licence can proceed. When assessing whether to grant a licence for a particular project, its potential environmental or ecological impact is considered.[669] Recently, as part of the development of the oil and gas field "F06-IJssel", scope 3 emissions were also calculated and involved in the decision-making process. The Dutch Minister of Climate and Green Growth agreed to the extraction plan and the emissions associated with this fossil project were "*considered compatible with the climate goals of the Dutch Climate Act*".[670] This also means that as soon as a project complies with the applicable regulations, a fossil fuel project has a legitimate basis and can be implemented – and therefore financed. Incidentally, this is not only the case in the EU, but worldwide – and it is up to individual governments to decide how to organise their licensing procedures and concessions.

441. With a view to societal interests such as energy independence, the EU and the Dutch government also actively encourage projects that Milieudefensie classifies as "New Fossil Fuel Projects".[671] The EC recognises that "*gas will remain part of the EU's energy mix for the coming decades*".[672] The Netherlands is pursuing a similar approach, for example by devoting extra resources to gas extraction to ensure energy security.[673] The importance for the Netherlands and Europe of

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668 "New Fossil Fuel Projects" are also still being developed. See section 3.5 above. The German government, for example, has also indicated that it wants to focus more on gas extraction and reopen a coal-fired power station. See Enerdata,"Germany plans to develop 20 GW of gas power plant capacity by 2030", 11 April 2025 (printout of 21 January 2026) (Exhibit ING-226); DW, "Germany reactivates coal-fired power plant to save gas", 22 August 2022 ((printout of 21 January 2026) (Exhibit ING-227). New gas fields are also being developed in Poland and Cyprus. See Offshore Energy, "New oil & gas discovery seen as European country's 'largest conventional hydrocarbon field", 22 July 2025 (printout of 21 January 2026) (Exhibit ING-228); D. Katanich, "New gas discovery off Cyprus coast may reduce EU energy dependence", *EuroNews* 8 July 2025 (printout of 21 January 2026) (Exhibit ING-229).

669 See, for example, Article 6(1) of Council Directive 92/43/EEC of 21 May 1992, as last amended by Directive (EU) 2025/1237 of 17 June 2025 ("Habitats Directive").

670 Decision of the Dutch Minister of Climate and Green Growth on extraction plan F06-IJssel of 22 December 2025 (Exhibit ING-230), p. 8.

671 See sections 2.6 and 3.5 above.

672 EC, Roadmap towards ending Russian energy imports (Exhibit ING-062), p. 4.

673 See section 3.5 above. The Sector Agreement states that Dutch natural gas is essential for the energy transition, as "*at present, there is not yet sufficient sustainable energy available* to *stop using natural gas*", and that "[g]*as extraction from small Dutch fields on land and at sea is important for security of supply during the energy transition."* See Appendix to *Parliamentary Papers II* 2024/25, 33 529, no. 1293 (Sector Agreement) (Exhibit ING-114), p. 8. See also *Parliamentary Papers II* 2024/25, 33 529, no. 1293 (Letter to the Dutch House of Representatives presenting the Sector Agreement) (Exhibit ING-115), p. 1 from which it follows that the Dutch Minister of Climate and Green Growth also believes that natural gas "*will still play an important role in the coming decades, in the transition to a CO_2-neutral Netherlands*". See also Appendix to *Parliamentary Papers II* 2025/ 26, 33 529, no. 1368 (Supplementary agreements Sector Agreement) (Exhibit ING-116), p. 5 and 28; *Parliamentary Papers II* 2025/26, 33 529, no. 1368 (Letter to the Dutch House of Representatives presenting the Sector Agreement) (Exhibit ING-117), p. 2; Coalition Agreement 2026-2030 (Exhibit ING-087), p. 25.

extracting gas from the small Dutch fields is also emphasised.[674] In the Netherlands, the government is pursuing its climate goals by "*focusing on reducing the use of fossil fuels, not on reducing their production*".[675] It emphasises that a "*decrease in domestic production will not automatically* lead *to a decrease in use, and thus to a decrease in emissions*".[676] The Dutch Minister of Climate and Green Growth emphasises the importance of sustainability on the user side of the fossil fuel equation, rather than on the production side. Accordingly, the aim is to achieve an orderly and fair transition, rather than abruptly putting the brakes on production, which could result in energy and products becoming unavailable or unaffordable for large groups of consumers.

442. Milieudefensie probably disagrees with the legislator's choices.[677] However, this does not justify interfering rigorously with government policy by prohibiting banks from financing legal activities that the EU still considers essential to society.

9.2.2.2 Climate legislation is undermined by the exclusion of companies involved in "New Fossil Fuel Projects"

443. Milieudefensie has formulated the Exclusion Claims in such broad terms that they are far-reaching. ING would not only be prohibited from financing "New Fossil Fuel Projects", but also from doing business with the entire company carrying out that project, as well as all (non-involved) entities in the corporate group. This would apply even if that entity were simultaneously committed to the energy transition by, for example, building a wind farm. ING would no longer be able to finance such energy transition projects. This conflicts with EU and Dutch climate targets.[678] After all, the energy transition depends on investments in renewable energy and infrastructure.[679] The Exclusion Claims also conflict with the objectives of the NZIA, specifically for clients in the EU.[680] Capital is needed to increase production capacity. The Exclusion Claims would make this impossible

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674 See also Appendix to *Parliamentary Papers II* 2025/ 26, 33 529, no. 1368 (Supplementary agreements Sector Agreement) (Exhibit ING-116), p. 28 and *Parliamentary Papers II* 2025/26, 33 529, no. 1368 (Letter to the Dutch House of Representatives presenting the Sector Agreement) (Exhibit ING-117), p. 2.

675 *Appendix Proceedings II* 2025/26, no. 29 (Parliamentary questions and answers on the Sector Agreement) (Exhibit ING-231), p. 2. See also *Appendix Proceedings II* 2025/2026, no. 984 (Parliamentary questions and answers on Additional agreements Sector Agreement) (excerpt) (Exhibit ING-232), p. 2.

676 *Appendix Proceedings II* 2025/26, no. 29 (Parliamentary questions and answers on the Sector Agreement) (Exhibit ING-231), p. 2.

677 For example, in the Writ of Summons (chapter V), Milieudefensie points to the role of fossil fuels in climate change. The EU legislator and the Dutch legislator are aware of this role and with the IPCC report studies cited by Milieudefensie in that context. However, this did not result in the adoption of the Exclusion Claims proposed by Milieudefensie, or the other Purported Duties.

678 The EU climate targets follow from EU NDC 2025 (Exhibit ING-011) and Article 2(1) and Article 4 European Climate Law. The Dutch targets follow from Article 2(1)(a) and (2) of the Dutch Climate Act. See sections 2.2 and 3.1 above.

679 See, for example, Green Deal (Exhibit ING-013), p. 6-7; Fit for 55 package (Exhibit ING-015), p. 13-14; REPowerEU Plan (Exhibit ING-024), p. 3 and 7-9 and section 4. See also the RED III and Regulation (EU) 2023/1804 of 13 September 2023 ("AFIR').

680 NZIA aims to increase the EU's production capacity of net-zero technologies and reduce its dependence on imports of such technologies. See art. 1 and recital 8.

if the company in question were involved in any way, anywhere in its global group, in a "New Fossil Fuel Project".

444. The scope of the qualification "*involved in*" is also unclear. It could mean anything. For example, it could apply to the financing of network operators that must facilitate the connection and transport of electricity to and from "New Fossil Fuel Projects". If the Exclusion Claims are granted, ING will no longer be permitted to finance those network operators, even though these network operators are legally required to provide electricity connections (and they supply many in our society with heat and electricity).[681] These companies also require financing to address grid congestion, which is a legitimate societal objective that also supports the energy transition.[682] There are many more examples that could be given, such as providing IT or support services for – and financing – a "New Fossil Fuel Project". With this approach, Milieudefensie also seems to fail to recognise that transitions are gradual by definition and that companies and their activities cannot always be categorically divided into "good" and "bad".

445. The Exclusion Claims also hinder the effective operation of market mechanisms and sectoral (climate) plans for implementing the Green Deal. For example: a gas utility company covered by EU ETS can use its emission allowances for "New Fossil Fuel Projects" to meet society's energy needs.[683] Milieudefensie is nonetheless attempting to prevent this by denying them financing. Such new projects could even eliminate emissions. New projects set up in a sustainable manner reduce the need to procure primary energy sources from other parts of the world, thereby reducing greenhouse gas emissions from their production and long-distance transport.

446. Finally, the Exclusion Claims ignore the fact that gas is explicitly designated as a transition fuel in the Taxonomy Regulation.[684] Through the Taxonomy Regulation, the legislator aims to provide investors with clarity about the sustainability of various investments. Based on scientific evidence and the precautionary principle set out in Article 191 TFEU, the EC has concluded that gas-powered energy generation can "*contribute to the decarbonisation of the*

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681 According to Article 3.38 of the Energy Act, a network operator must in principle provide a connection to an electricity network managed by that operator to anyone who requests it.

682 See section 3.5 above. See also REPowerEU Plan (Exhibit ING-024), p. 16; Appendix to Parliamentary Papers II 2024/25, 29 023, no. 559 (second progress report on the national action programme on network congestion) (excerpt) (Exhibit ING-119), p. 14. For example, TenneT is allocating EUR 160 billion for this purpose in the coming years; see TenneT, "Grid Congestion" (printout of 21 January 2026) (Exhibit ING-233). It also follows from the recent Coalition Agreement that addressing net congestion issues is the government's "*highest priority*". See Coalition Agreement 2026-2030 (Exhibit ING-087), p. 24.

683 See sections 2.6 and 3.5 above.

684 Recital 3 of Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 as regards economic activities in certain energy sectors and Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 as regards specific public disclosures for those economic activities ("Delegated Regulation (EU) 2022/1214"). See also Taxonomy Regulation, Article 10(3), 11(3), 19(1)(f).

Union's economy".[685] The EU's General Court has confirmed the EC's position and emphasised that gas may be used to support the transition.[686] Despite this, new gas projects fall under Milieudefensie's "New Fossil Fuel Projects". This, too, explicitly contradicts the legislator's chosen approach and the statutory framework itself.

447. The approach chosen by the EU and Dutch legislators is frustrated by the Purported Duties, even if the underlying activities covered by the Exclusion Claims are lawful. Through ING, Milieudefensie is attempting to ensure that legitimate, government-approved activities cannot be financed by ING, which would render them infeasible due to a total lack of capital. Apart from the fact that the Purported Duties are ineffective in achieving Milieudefensie's goal (see chapter 11 below), unwritten law is not intended to circumvent the various choices and weighing of interests made by the legislator.

448. The Exclusion Claims would also oblige a bank to independently assess whether its clients are involved in "New Fossil Fuel Projects" in any way. This, amongst others, conflicts with the CSDDD:

(a) **No downstream due diligence**: Banks are exempt from downstream due diligence.[687]

(b) **Climate is not a topic of due diligence**: The legislator has chosen not to include climate in the due diligence obligations under the CSDDD, despite various proposals to that effect from the European Parliament and the Council.[688][689] Through the Exclusion Claims, Milieudefensie is attempting to force banks to carry out climate-related due diligence on clients (i.e. downstream), thus sidestepping the choices made by the legislator.

(c) **No automatic exclusions under the CSDDD**: Where due diligence obligations exist, companies subject to the CSDDD must work with their clients to contribute to "*sustainable development and the sustainability*

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685 Recital 3 Delegated Regulation (EU) 2022/1214. See also Taxonomy Regulation, Article 10(3), 11(3), 19(1)(f).

686 General Court EU 10 September 2025, T-625/22, ECLI:EU:T:2025:869 (*Austria v. EC*), paras. 503-605.

687 Recital 26 CSDDD and section 2.4 above.

688 For example, the European Parliament proposed in its first reading to amend the definitions in the CSDDD so that climate change would be covered by the due diligence obligations. See EP, "European Parliament Amendments Adopted 1 June 2023", C/2023/1232, 21 December 2023 (excerpt) (Exhibit ING-234), p. 149-150, Amendments 365-367.

689 The EU legislator found that no unequivocal obligation for companies and banks could be established. See EC, Minutes of the 2408th meeting (Exhibit ING-035), p. 20-21. The CSDDD FAQ (Exhibit ING-034) clarify on p. 9 that "[o]*nly environmental conventions whose requirements are sufficiently precise and clear, and which create prohibitions and obligations that can be implemented directly by companies without the need for additional measures by State parties, were selected*." See also section 2.4 above.

transition of economies and societies".[690] The CSDDD requires engagement and cooperation with business partners. Disengagement, i.e. the termination of business relationships, is a "*last resort*".[691] The EU legislator intends to change this. Under the Omnibus Package there will no longer be any obligation to terminate business relationships, even as last resort. However, the relationship may still be suspended.[692] In any, case, as mentioned above, a risk-based approach must be applied.

(d) **No automatic exclusions, according to the EBA**: From a banking perspective, banks should only consider exclusion as a last resort. The EBA likewise considers client disengagement to be a last resort.[693]

9.2.3 The CTP Claim conflicts with climate legislation

449. Through the CTP Claim, Milieudefensie argues that ING should request updated climate transition plans annually from its "*large corporate clients*" and assess them substantively.[694] Like the Reduction Claims and the Exclusion Claims, this claim is incompatible with the statutory framework.

450. ING has already discussed the fact that (a) the legislator has lifted the obligation for companies to draw up climate transition plans (although this obligation never aligned with Milieudefensie's claims anyway) and (b) banks are explicitly exempt from client due diligence (not to mention the fact that climate issues fall outside the scope of due diligence).[695] Furthermore, the Provisional Agreement Omnibus clarifies that, when carrying out due diligence, companies must rely on "*information that is reasonably available to them, which will as a general rule preclude requesting information from business partners*."[696] The CTP Claim contradicts this and therefore cannot be upheld. Incidentally, it is unclear what constitutes "large" and "corporate" clients.[697] Although Milieudefensie did not include it in its claim for relief, it argues that ING should also assess its clients' CTPs.[698] It is unclear what this would entail, what legal and other requirements ING would have to meet, and why banks should be required to fulfil this supervisory role.

451. Nevertheless, banks request all sorts of information from clients in order to assess their own risks. After all, banks must, in the interest of sound risk

690 Recital 16 CSDDD.
691 Recitals 50 and 57 CSDDD. See also Articles 10(6) and 11(7) CSDDD. It is further necessary to assess whether the negative consequences of the exclusion outweigh the negative consequences that the exclusion is intended to prevent.
692 Recital 23 and Article 4(5) and (6) of the Provisional Agreement Omnibus (Exhibit ING-037) that seek to amend these articles such that exclusion is limited "*until the impact is addressed*".
693 EBA ESG Guidelines (Exhibit ING-045), no. 46(a)(iv).
694 Writ of Summons, nos. 1092 and 1094.
695 See sections 2.4 and 9.2.1 above.
696 Recital 21 Provisional Agreement Omnibus (Exhibit ING-037).
697 Writ of Summons, no. 1092.
698 Writ of Summons, no. 1092.

management, assess their risks, including those at client level. For example, based on prudential regulations including CRD6, they are required to identify, measure, manage and monitor climate-related and other ESG-related risks to the financial system.[699] To identify these risks, banks must obtain information about their clients. ING does this too.[700] However, the information requested differs from the information Milieudefensie believes ING should request if the CTP Claim is upheld, and differs from the objective with which the information is requested.

452. Thus, the Purported Duties contradict EU and Dutch climate and energy legislation for many reasons and in many ways. ING discussed the most salient examples of this in section 9.2, but notes that this discussion is not exhaustive.

9.3 Conflicts with banking and prudential legislation

453. The Purported Duties hinder the effective implementation of prudential obligations (section 9.3.1) and impede sound and careful decision-making processes (i.e. "enhanced governance") (section 9.3.2). The Purported Duties also conflict with ING's obligations to its clients (section 9.3.3).

9.3.1 The Purported Duties preclude effective compliance with the prudential framework

454. Milieudefensie argues that the Purported Duties are not onerous, because regulators already require banks to take adequate measures to manage climate-related risks.[701] According to Milieudefensie, its claims only concern the preconditions ING must meet to cease or phase out greenhouse gas-intensive activities.[702] Milieudefensie made no mention at all of the role of banks and banking legislation discussed in chapters 2 and 4.[703] Nor does it discuss why it believes its Purported Duties are compatible with that framework.[704]

455. This is problematic. The Purported Duties do not simply set out a few "preconditions": they would subject ING to a web of detailed measures over the next 24 years. They would directly impact the extent to which ING is able to finance clients and sectors. Milieudefensie's approach would lock ING into a rigid framework for the distribution of sectors and services in its portfolio, with

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699 See section 2.5 and chapter 4 above.
700 See section 6.4 above.
701 Writ of Summons, nos. 838 and 839.
702 Writ of Summons, no. 840.
703 In the Writ of Summons (sections X.2.5-X.3), Milieudefensie points only to what it says is the "*widely acknowledged key role*" that banks purportedly have in mitigating climate change. In section X.4 of the Writ of Summons, Milieudefensie goes on to assert that it believes that banks are improperly performing that role. Milieudefensie does not address the societal role of banks and the prudential frameworks in which they operate.
704 Instead, Milieudefensie simply states that "*there does not* [...] *appear to be a great degree of onerousness with regard to changing.*" This is alleged to be apparent form, among other things, from a 2017 letter signed by ING (and others). See Writ of Summons, no. 836. Milieudefensie fails to acknowledge ING's prudential obligations.

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Milieudefensie selecting the base years. This renders myriad actions infeasible, despite the potential prudence of such policies for a bank. ING discusses three clear examples below, but notes that this is by no means an exhaustive selection.

- **No change in distribution between sectors:** the Reduction Claims require ING to achieve reductions for each sector and sub-sector separately (see chapter 7). Consequently, large reductions in one sector cannot be used to offset setbacks in another. Furthermore, ING would no longer be able to transfer significant amounts of capital between sectors. Even if ING were to end up with the same net outstanding capital, the emissions allocated to it could still increase (unlawfully, according to Milieudefensie). There are two reasons for this. Firstly, Milieudefensie believes that sector-specific obligations do exist, meaning that increasing the exposure in a particular sector (accompanied by an increase in "paper emissions" or reported emissions "in" that sector) would be inherently unlawful. According to Milieudefensie, it is also irrelevant whether ING's overarching emissions decrease or remain the same as a result of the shift. If ING's overarching emissions were to increase as a result of the shift, this would also constitute a violation of the Overarching Reduction Requirement. A shift in ING's loan portfolio is therefore effectively prohibited.

- **No substantial change in the distribution of services:** ING would also be constrained by a fixed framework for distribution between financed and facilitated emissions. ING generates interest-based income and fee-based income (income based on fixed rates). Suppose ING wanted to alter the ratio between the two compared to the distribution in 2019 and 2022 in order to manage risk in the coming years. This too is effectively prohibited by Milieudefensie's claims, as Milieudefensie is calling for reductions to be made by each business unit individually, and is linking the obligation to reduce emissions to a specific base year, by which the coincidental ratio in the base year hence dictates the obligations and the ratio between the obligations for the next 24 years.

- **No portfolio growth:** In line with the above examples, the absolute Overarching and Sectoral Reduction Requirements would drastically limit ING's ability to grow its portfolio at all compared to the base years chosen by Milieudefensie. ING would, therefore, not automatically be able to provide additional financing. After all, this would mean an increase in the emissions allocated to ING. ING explains the practical implications of this in chapter 11. Consequently, ING is severely restricted in its ability to provide financing for various client activities, which, incidentally, include transition measures for emission-intensive operations and other climate-friendly initiatives. However, if ING deems

it necessary to increase its exposure in general or in specific sectors from a risk management perspective, it will not be able to do so.

456. Professor Resti also concludes that Milieudefensie's demands are out of step with the applicable prudential framework:

> "*Prudential rules requesting banks to measure climate-related risks and draft transition plans are aimed at ensuring that lenders remain strong and stable as the EU progresses towards its decarbonisation objectives, not at using banks as a transmission channel to cut funding to climate-unfriendly industries.*
>
> *The requested measures may have several unwelcome consequences on a bank's business model, profitability and financial strength, including e.g. a drop in the volume of outstanding loans with implications for net interest income, temporary shortages in credit supply, especially for small and medium enterprises, a less diversified loan portfolio that is more vulnerable to sector-specific threats, a sale of long-term loans to third-party investors that could trigger one-off losses (materially hurting the bank's CET1 capital), a limitation on the services to be provided by the bank with possible consequences for non-interest income, and potential customer dissatisfaction on managed portfolios, as well as litigation risk.*
>
> *Should the affected bank's business model, capitalisation and profitability come under pressure due to the above-mentioned effects, supervisory actions could ensue to guarantee that its financial stability is not at risk.*"[705]

457. In view of the societal interests that the prudential framework is intended to protect, Milieudefensie's approach, which undermines that prudential framework and renders compliance with it impossible, is irresponsible. In section 11.6 below, ING explains that this poses risks to the stability of the financial system and to banks' ability to facilitate financing for the climate transition, among other things. For this reason alone, the Purported Duties conflict with the prudential framework. The rigidity of the Purported Duties also conflicts with banks' obligations to continuously identify, assess, monitor and manage risks.[706] Banks must adjust how they implement their business plans if risks become unmanageable or pre-set limits are exceeded.[707] ING discusses several of the risks associated with the Claimed Measures below. Milieudefensie has also failed to take this into account.

458. Firstly, the Purported Duties could lead to an unauthorised increase in portfolio concentrations.

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705 Report of Professor Resti of 6 February 2026 (Exhibit ING-002A), p. 11.
706 Article 74(1) and 76 CRD.
707 Article 74(1) and 76 CRD.

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- **Green asset concentrations**: as long as there are insufficient financing and investment opportunities that are compatible with Milieudefensie's reduction pathway (about which multiple warnings have been given[708]), the range of asset classes in which ING can invest and trade remains very limited. This creates concentration risks, for example in certain sectors or technologies.

Example: green asset class concentrations

Suppose a European bank with total assets of EUR 300 billion has to reduce its financed emissions by 50% in absolute terms by 2030 compared to 2019. To achieve this, the bank would need to invest as much as possible in carbon-neutral assets and divest as much as possible from the most carbon-intensive assets. Suppose the bank has also set a concentration limit of 15% per sector. Suppose this bank succeeded in reducing its exposure to fossil fuels by EUR 23 billion, i.e. from EUR 45 billion (15% of its loan portfolio) in 2020 to EUR 22 billion (7.3% of its loan portfolio) in 2027, while simultaneously reinvesting that EUR 23 billion in its renewable energy portfolio, thereby increasing that portfolio from EUR 25 billion (8.3% of the loan portfolio) to EUR 48 billion (16% of the loan portfolio). The rapid expansion of the renewable energy portfolio means that the 15% total capital concentration limit has been exceeded. This creates a conflict between the reduction target and the bank's concentration risk management policy. After all, the reduction targets force the bank to expand its renewable energy portfolio further, even though it should be reducing that portfolio in order to bring its concentration risk back below the sector limit.

It is, of course, impossible to predict the exact impact of the Purported Duties at this stage, but the foregoing illustrates the risks that have already been highlighted in literature.

- **Restrictions on possible diversification measures:** the Purported Duties limit diversification options. ING has already explained

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708 The lack of available green projects for banks has been pointed out in the report of M. Cardona et al., *What role for financial regulation to help the low-carbon transition?*, June 2020 (excerpt) ("Cardona 2020") (Exhibit ING-235), p. 8: "*Lack of green projects. Last, a lot of financial actors complain about the lack of "green projects" (and more specifically large enough projects as very often green projects are too small and so not attractive to investors or banks). In an economic world where money is abundant, financial actors argue that the problem is less that of a lack of money than a lack of good and profitable 'green projects'.* […]" The European Banking Federation ("**EBF**") has also pointed to the lack of sufficient demand for sustainable finance as a major barrier to scaling up transition finance. See EBF, *Increasing Bankability of Transition & the Clean Industrial Deal*, July 2025 (excerpt) ("EBF Report 2025") (Exhibit ING-236), p. 21-27. In a similar vein, KPMG notes in its periodic progress report on the 2024 Climate Commitment that there is too little "[a]*vailability of projects and companies in line with the Paris Agreement* [...] *which complicates and makes challenging the construction of well-diversified portfolios with low climate impact*". See KPMG, *Het Klimaatcommitment van de Nederlandse financiële sector,* December 2025 ("KPMG Progress Report 2024") (Exhibit ING-237), p. 12.

that the Reduction Claims mean that it can no longer freely shift capital between sectors. Nor can it make any significant changes to its income source ratio. The Exclusion Claims also result in ING being completely prohibited from financing a significant group of clients. As long as there are insufficient financing and investment opportunities compatible with the reduction pathway that Milieudefensie would like to see imposed on ING, the Reduction Claims will limit the scope for adequate risk diversification.[709]

Example: Restrictions on possible diversification measures

The bank in the previous example has a long-standing practice of spreading credit risk across different sectors and regions, ensuring that no single region accounts for more than 25% of the loan portfolio. In 2020, the distribution was evenly spread across Europe, North America, Asia and other regions.

Due to the Exclusion and Reduction Claims, the bank must stop financing fossil fuels and reduce its existing exposure. By 2027, the distribution will have changed accordingly: Europe now accounts for 35% of the loan portfolio, thus exceeding the internal limit. North America and Asia have decreased to 22.5% and 17.5% respectively, while other regions still account for 25%.

The bank must focus on low-emission regions, primarily Europe. This creates a conflict between the diversification policy and the emission reduction target. Consequently, the bank cannot easily switch to other regions or sectors, thus increasing concentration risk.

The same applies within the EU, where different Member States have different reduction targets. The bank would also be forced to concentrate its EU activities in certain regions. In section 9.4, ING discusses that this also forms an infringement on the EU free movement rights.

459. Secondly, even when financing and investments are compatible with Milieudefensie's reduction pathway,[710] banks must adequately manage the associated risks.

709 See section 11.6.1 below.

710 M. Regelink et al., *Waterproof? An exploration of climate-related risks for the Dutch financial sector*, 5 October 2017 (excerpt) ("Regelink (DNB) 2017") (Exhibit ING-238), p. 54: "*Like all other types of finance, green finance involves risks. Therefore, we believe that supervisory rules should not be relaxed to promote sustainable finance.*"

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460. One challenge here is the risk and return profile of sustainable asset classes and transition financing.[711] For example, uncertainty surrounding the cash flow projections of transition-related projects is making banks reluctant to provide transition financing. The risk profile of such financing is often relatively high[712] due to uncertainties concerning a project's feasibility, high inherent business risks associated with new and unproven business models, and the substantial initial investment required.[713] Banks must manage these risks within the prudent policy frameworks they have established. Significant changes in the risk and return profile of portfolios can create vulnerabilities in banks' business models.[714] Banks must therefore take measures to address such vulnerabilities, such as adjusting course in the event of potential unexpected losses. However, this requires flexibility that the Purported Duties do not provide.

461. Thirdly, the climate transition can expose banks to new risks associated with unproven client business models or the development of new technologies.[715] Banks must deal with this prudently. For example, banks are expected to engage in new activities or expand existing ones only if they have the resources to understand and manage the risks involved, including sufficient data and methodologies to properly assess new risks.[716]

462. Without the ability to deviate from the Purported Duties, banks would not be able to comply effectively with these obligations. If the risks of new green technologies turn out to be higher than previously estimated, for example, banks would need the flexibility to limit their exposure or offset it with sufficient other investments. Such flexibility must be allowed, even if it results in a change to the emissions allocated to a bank.

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711 See, for example, Cardona 2020 (Exhibit ING-235), p. 8; EBF Report 2025 (Exhibit ING-236), p. 27; R. Hubert et al., *Connecting the dots between climate risk management and transition finance,* February 2024 (I4CE publication on transition finance) (Exhibit ING-239), p. 10. See also M. Andersson et al., "Green investment needs in the EU and their funding", *ECB Economic Bulletin* 2025/1 (excerpt) (Exhibit ING-240), p. 121: "*The financing of investment in innovative green technologies typically entails higher credit risk, making their funding more costly.*"

712 Regelink (DNB) 2017 (Exhibit ING-238), p. 5.

713 C. Nerlich et al., "Investing in Europe's green future. Green investment needs, outlook and obstacles to funding the gap", *Occasional Paper Series* 367/2025 (excerpt) (Exhibit ING-241), p. 37: "*In addition, financing innovative green technologies often entails higher uncertainty regarding the return on investment of green projects and may require high upfront investment volumes to be financed. This increases the credit risk premium for transition financing, as indicated by the net tightening impact of climate risks on bank credit standards related to the firm-specific situation and outlook.*" See also EBF Report 2025 Exhibit ING-236), p. 28.

714 EBA Guidelines SREP (Exhibit ING-138), no. 95 lists several examples of vulnerabilities taken into account as part of prudential supervision. These include poor expected financial performance, reliance on unrealistic strategies, excessive concentrations and funding structure concerns.

715 EBF Report 2025 (Exhibit ING-236), p. 33.

716 See, for example, EBA guidelines on internal governance (Exhibit ING-135), nos. 167-168.

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463. This situation is not unimaginable, as the following example shows:[717]

> **Example: new risks**
>
> Leasing companies purchase vehicles, including an increasing number of electric vehicles (EVs). The vehicles are leased for a certain period and then resold on the second-hand market. Leasing companies therefore run a market risk on the residual value of their vehicles. If this is lower than estimated, they have to record a loss. To manage this risk, leasing companies must accurately estimate the residual value of their vehicles. They do this based on historical data on residual values. However, it turns out that the residual value of electric vehicles was considerably lower than estimated based on the available data. Consequently, leasing companies have been forced to take measures to mitigate this market risk, such as incorporating market risk premiums into their pricing, maintaining a relatively low number of electric vehicles in their fleets, or extending lease agreements. This new risk is significant enough to threaten the sustainability of leasing companies' business models.
>
> Banks could face a similar scenario. This shows that if banks do not have sufficient flexibility to manage new risks, this could conflict with the prudent policies required under the prudential framework.

464. Thus, if banks are unable to deviate from the Purported Duties, they could struggle to meet their obligation to manage new risk effectively.

9.3.2 The Claimed Measures hinder sound and careful decision-making processes

465. The prudential framework imposes requirements on banks' decision-making processes.[718] These processes require detailed preparation and entail multiple procedural steps, as well as a substantive and well-informed decision-making process throughout the organisation, including by the management and supervisory boards. Banks must be able to thoroughly assess all risks and considerations arising from a decision. If the outcome of the decision-making process is a foregone conclusion – as it would be if a bank had to comply with the Purported Duties – the process itself becomes meaningless. Milieudefensie took no account of these obligations whatsoever in the Writ of Summons.

466. The Purported Duties, particularly the Reduction and Exclusion Claims, do not allow banks the necessary policy discretion and flexibility to implement these requirements meaningfully. Banks cannot, and certainly not over the next

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717 This example is based on N. Carey, 'Leasing model behind Europe's EV drive at risk of breakdown', *Reuters* 13 August 2024 (printout of 21 January 2026) (Exhibit ING-242).

718 See section 4.3 above and the schematic representation of the various requirements in Figures 3 through 6 in Appendix 2.

24 years, proceed to adopt and implement the Claimed Measures without going through the aforementioned decision-making processes.

467. The Purported Duties prevent balanced decision-making, including in the following areas.

- **Capital allocation:** the Reduction Claims limit a bank's ability to make long-term capital allocation decisions based on a meaningful assessment of impact, risks, checks and balances, and alternatives.

- **Implementation options:** the Reduction Claims mean that banks cannot choose which risks taking to reduce their reported emissions or ensure the resilience of their business model. As these targets would be mandatory, a bank would have no choice but to accept the risks of implementation measures, such as divesting portfolios and allocating capital to green financing and investments.

  The same applies to the Exclusion Claims. Banks can, of course, only comply by divesting clients. They would have to accept the associated risks without the benefit of a solid, careful decision-making process beforehand. While excluding certain clients may sometimes be an appropriate way to reduce risk exposure, banks should do so on a case-by-case basis, based on their own risk assessment.

- **No possibility to review business strategy and respond to developments:** as the Reduction Claims extend to 2050 with a fixed timeline and reduction schedule, they also prevent bank management boards from meaningfully reviewing their business strategy and adjusting it where necessary. However, banks need exactly that flexibility to do so. The Purported Duties deprive banks of this flexibility. They amount to policy orders and leave no room for flexibility, policy discretion or management autonomy.[719]

468. Thus, the Purported Duties do not provide banks with sufficient flexibility to enable them to structure their decision-making processes in a sound and careful

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719 The legislator does not see it as a task of courts to prescribe the future policies of a company; see *Parliamentary Papers II* 1967/68, 9596, no. 3 (Explanatory Memorandum) (Exhibit ING-243), p. 6-7 and *Parliamentary Papers II* 1968/69, 9595, 9596, no. 6 (Memorandum of Reply) (Exhibit ING-244), p. 14-15. This is inherent to the autonomy and policy discretion of the board. In addition, (systemic) banks have a special societal duty of care, given their role in the financial system; see Amsterdam Court of Appeal 29 July 2014, ECLI:NL:GHAMS:2014:3005 (*Fortis*), para. 5.2.6 and Amsterdam Court of Appeal (Enterprise Chamber) 30 November 2022, ECLI:NL:GHAMS:2022:3392 (*SNS*), para. 16.11. The Purported Duties limit the way in which banks can fulfil this duty of care in the future and respond to changing market conditions. See also Dutch Supreme Court 13 July 2007, ECLI:NL:HR:2007:BA7970 (*ABN AMRO*), para 4.4.

manner. This is at odds with the importance of enabling banks to comply with these obligations.

9.3.3 The Purported Duties conflict with ING's duties to its clients

469. The Purported Duties also cause friction with ING's duties towards its clients. For example, the Purported Duties stipulate that ING must terminate existing financing relationships and services with clients if it cannot sell them to other parties.[720] However, a bank's ability to terminate client relationships, particularly with private clients, is limited in view of its duty of care and contractual agreements. A bank can only do so, even for commercial clients in the Netherlands, after weighing up the interests involved.[721] The bank must take the client's interests into account, including the interest in continuing the relationship.[722] Milieudefensie should have explained how ING could comply with this, given that:

(a) categorical termination of client relationships is contrary to the duty of care; and

(b) the client's interests take precedence over those of the bank when the client's "undesirable" activities are legal.[723]

470. The Purported Duties also conflict with ING's duty towards clients purchasing investment services.[724] The statutory duty of loyalty means that ING must protect the interests of its clients.[725] However, the Purported Duties prioritise climate concerns over the interests of the client. For example, the Exclusion Claims requires ING to exclude certain investments, regardless of whether this aligns with a client's interests. ING would, for example, have to prevent retail clients from using its investment app to buy shares in an oil company. ING would also then be required to sell the shares of retail clients if the companies in their equity portfolio have not reduced their emissions by 2030 in the way that Milieudefensie demands. Therefore a client who has bought some shares in his or her own investment app could lose them just like that if Milieudefensie's demands are not satisfied. ING would also be prohibited from purchasing such shares on behalf of clients whose assets it manages, even if they were profitable and matched a

720 See also section 11.2 above.
721 See, for example, Messelink 2017 (Exhibit ING-125), p. 90-99; R.M. Wibier, "Opzegging van duurovereenkomsten, in het bijzonder kredietovereenkomsten", *AA* 2015/480 (Exhibit ING-245), p. 480-481 and the case law discussed in these sources.
722 Messelink 2017 (Exhibit ING-125), p. 97. Thus, contrary to what Milieudefensie contends, it is incorrect that ING "*has full control*" over whether or not to fund (existing) relationships. See Writ of Summons, no. 829.
723 See, for example, Amsterdam District Court 28 February 2024, ECLI:NL:RBAMS:2024:1081 in which the relationship with a crypto asset service provider had to be restored because the service was legal.
724 Article 4:90 Wft in conjunction with Article 24 Directive 2014/65/EU of 15 May 2014 ("MiFID II").
725 K.W.H. Broekhuizen, "Loyaliteit en zorgvuldigheid in het financiële recht", *MvV* 2018/6 (Exhibit ING-246), p. 215-216.

client's risk appetite. Hence, it was incumbent on Milieudefensie to explain how its claims could be reconciled with ING's duty of loyalty.

471. Thus, as this section 9.3 demonstrates, the Purported Duties give rise to numerous conflicts with banking and prudential legislation.

9.4 The Purported Duties constitute an unjustified restriction on the free movement of services and capital

472. A further reason why the Purported Duties cannot exist is that they conflict with the freedom of movement. EU law takes precedence over national legislation, including "*any legislative, administrative or judicial practice which might impair the effectiveness of Community law*".[726] If national rules conflict with EU law, they must be excluded from application.[727] In civil disputes, it is for the national court "*when interpreting and applying domestic law, to give to it, where possible, an interpretation which accords with the requirements of the applicable Community law and, to the extent that this is not possible, to hold such domestic law inapplicable*."[728]

473. ING provides Retail Banking services to almost forty million private clients across Europe.[729] ING provides these clients with various services, including current and savings accounts, loans (including mortgage loans), mobile banking services, and sustainability financing. ING also provides, for example, lending services to businesses in several EU Member States.[730] ING also provides Wholesale Banking services to clients throughout the EU. 58% of ING's Wholesale Banking income is generated from cross-border activities.[731] These include cash management services,[732] capital markets & advisory services,[733]

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726 ECJ 9 March 1978, C106/77, ECLI:EU:C:1978:49 (*Simmenthal*), para. 22.

727 This is a far-reaching duty to do "*everything necessary* [...] *to set aside national legislative provisions which might prevent Community rules from having full force and effect*". See ECJ 9 March 1978, C-106/77, ECLI:EU:C:1978:49 (*Simmenthal*), para. 22; J.W. van de Gronden et al., *Kern van het Europees recht* (2025) (excerpt) (Exhibit ING-247), p. 78.

728 CJEU 4 February 1988, C-157/86, ECLI:EU:C:1988:62 (*Murphy*), para. 11; ECJ 13 November 1990, C-106/89, ECLI:EU:C:1990:395 (*Marleasing SA v. La Comercial Internacional de Alimentacion SA*), para. 8.

729 ING Annual Report 2024 (Exhibit MD-004), p. 17: "*ING offers retail banking products and services to cover the needs of individual retail banking clients. We serve nearly 40 million clients in 10 countries: the Netherlands, Belgium, Luxembourg, Germany, Spain, Italy, Türkiye, Poland, Romania and Australia.*"

730 ING Annual Report 2024 (Exhibit MD-004), p. 17.

731 ING Annual Report 2024 (Exhibit MD-004), p. 18.

732 ING Annual Report 2024 (Exhibit MD-004), p. 18 and 33.

733 ING Annual Report 2024 (Exhibit MD-004), p. 18 and 33-34.

and lending.[734] The free movement of services[735] and capital[736] are both essential for these activities.[737]

474. As per the established case law and legal literature, when reviewing potential violations of the freedom of movement, the situation must fall within the scope of the EU. More specifically, the situation must fall within the (a) personal, (b) territorial, and (c) material scope of the EU.[738] This is the case.

(a) As ING's registered office is in Amsterdam, it falls within the personal scope.[739]

(b) The Purported Duties focus on ING's cross-border provision of services and capital, as a result of which they fall within the territorial scope. The required cross-border situation applies when services are provided to clients in another Member State and capital is provided to nationals of, or investments are made in, another Member State.[740] As mentioned above, ING's business activities extend across various EU Member States. Milieudefensie recognises this, and the Purported Duties are not limited to ING's activities in the Netherlands.[741]

(c) According to the CJEU, there is a restriction on the free movement of services in the event of "*measures which prohibit, impede or render less*

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734 ING Annual Report 2024 (Exhibit MD-004), p. 18 and 33.

735 The free movement of services prohibits all restrictions on freedom to provide services within the EU in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended (Article 56 TFEU). It follows from Article 57 TFEU that a "service" [encompasses] "*services where they are normally provided for remuneration*". The CJEU confirmed that "*the business of a credit institution consisting of granting credit* constitutes *a service within the meaning of Article 49 EC* [currently Article 56 TFEU]", CJEU 3 October 2006, C-425/04, ECLI:EU:C:2006:631 (*Fidium Finanz*), para. 39.

736 Based on the free movement of capital, all restrictions on the movement of capital and payments between Member States and between Member States and third countries are prohibited (Article 63 TFEU). The movement of capital includes cross-border investment and lending. Payment includes consideration for transactions in the free movement of goods, services, persons and capital, such as the tranfer of purchase prices, wages and interest payments. As per CJEU 16 March 1999, C222/97, ECLI:EU:C:1999:143 (*Trummer and Mayer*), para. 7, "movement of capital" must be interpreted in accordance with Annex 1 to Directive 88/361/EEC.

737 According to the CJEU, '*the activity of granting credit on a commercial basis concerns, in principle, both the freedom to provide services* [...] *and the free movement of capital*'. See CJEU 3 October 2006, C-425/04, ECLI:EU:C:2006:631 (*Fidium* Finanz), para. 43.

738 Barnard 2022 (Exhibit ING-066), p. 206.

739 ING Group N.V. Articles of Association (Exhibit MD-042), article 2; ING Bank N.V. Articles of Association (Exhibit MD-043), article 1.1. See also Writ of Summons, no. 200. For the personal scope, the freedoms of movement apply to nationals of EU Member States. For legal entities, nationality is determined by the registered office, place of main administration or principal place of business. See, for example ECJ 13 July 1993, C-330/91, ECLI:EU:C:1993:303 (*Commerzbank AG*), paras. 12-13.

740 ECJ 28 March 1979, C-175/78, ECLI:EU:C:1979:88 (*Saunders*). For application of the freedoms of movement, a "*possible*" cross-border element is sufficient, CJEU 10 May 1995, C-384/93, ECLI:EU:C:1995:126 (*Alpine Investments*), para. 19. For the free movement of capital, see: CJEU 17 October 2013, C-181/12, ECLI:EU:C:2013:662 (*Welte*), paras. 20-21.

741 Letter from Milieudefensie to ING dated 19 January 2024 (Exhibit MD-019), footnote 79.

attractive the exercise of the freedom".[742] The bar is not set high in this regard.[743] Anything that "*hinder*[s] *or render*[s] *less attractive*" the free movement of capital is considered a restriction.[744] This involves "*measures, inter alia, which are such as to discourage non-residents from making investments in a Member State or to discourage that Member State's residents from doing so in other States*".[745] As the Purported Duties impede ING's provision of services and capital, they fall within the material scope.

475. The Purported Duties, both individually and collectively, constitute a restriction on the free movement of services and capital.[746] They render it "less attractive" for ING to provide services and capital and, in some cases, they even prevent ING from doing so altogether. ING provides several examples of the restrictions that follow from the Reduction Claims, Exclusion Claims and CTP Claim below. Again, these examples are not an exhaustive selection.

476. The Reduction Claims focus almost exclusively on emissions generated by ING's clients.[747] These clients are companies in the real economy in various Member States (and elsewhere).[748] At the time this SoD was submitted, none of those Member States had imposed individual reduction obligations on companies. Consequently, clients are not required to reduce their emissions as quickly as Milieudefensie would like.

477. Furthermore, the EU has set different reduction percentages for each Member State.[749] ING's clients operate in all of these Member States, including Member States with significantly lower percentages than the overarching percentage claimed by Milieudefensie and the sectoral percentages claimed by Milieudefensie.[750] To begin with, ING must reduce its reported emissions independently of and even faster than Dutch and EU society are required to reduce theirs. Furthermore, if the Purported Duties are imposed on ING, it will

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742 CJEU 3 March 2020, C482/18, ECLI:EU:C:2020:141 (*Google Ireland*), para. 26.

743 The CJEU held that restricting advertising for a particular activity in a general and absolute manner constitutes a 'restriction' under Article 56 TFEU because it makes it more difficult for those carrying out the activity to make themselves known and promote their services to their potential clientèle. See CJEU, 4 May 2017, C-339/15, ECLI:EU:C:2017:335 (*Vanderborght*), paras. 63-64.

744 CJEU 13 May 2003, C98/01, ECLI:EU:C:2003:273 (*Commission v. UK* – Golden Shares), para. 20.

745 CJEU 22 June 2023, C-258/22, ECLI:EU:C:2023:506 (*H Lebensversicherung*), para. 30. According to the case law of the CJEU, national measures that can block or restrict the acquisition of shares in companies, or deter investors from other EU Member States from investing in them, qualify as 'restrictions' under Article 63 TFEU.

746 For the relevant legal classification of "restriction", see CJEU 3 March 2020, C-482/18, ECLI:EU:C:2020:141 (*Google Ireland Limited v. Commission*), para. 26 (in relation to services) and CJEU 13 May 2003, C98/01, ECLI:EU:C:2003:273 (*Commission v. UK – Golden Shares*), para. 20 (in relation to capital).

747 See section 6.1 and chapter 7 above.

748 See chapter 6 above.

749 See section 2.4 above and Appendix 3 to this SoD.

750 As shown in the table listing percentage per Member State in Appendix 3.

have to reduce its allocated emissions, regardless of the Member State in which the client whose emissions are reported operates and, hence, regardless of the reductions which clients operating on the territory of that Members State have to consider. This does not only apply to absolute emissions, but also to the emission-intensity.

478. This would make it structurally impossible for ING to comply with the Purported Duties and unlawfully restrict its freedom of movement. After all, even if ING's clients were to voluntarily comply with the applicable reduction targets in their country of establishment or the relevant Member State market, ING would still fall short of Milieudefensie's desired reductions.[751] ING would then effectively no longer be able to provide services and capital to those clients and in those markets.

479. ING's services and capital provision would also be limited if all of its clients, without any obligation to do so, were to comply with the reduction percentages desired by Milieudefensie. Accepting a new client, even if that client strictly followed the reduction pathway desired by Milieudefensie, would mean that ING would exceed the absolute emissions limit desired by Milieudefensie. This is because ING's total emissions would still increase. It is irrelevant whether the client is an oil or gas company that Milieudefensie believes should be banned or a company to which it is sympathetic. Even financing a wind farm in Germany or a green factory in Belgium would result in new emissions.

480. The Exclusion Claims directly prohibit ING from providing services and capital to all companies that are in any way involved in "New Fossil Fuel Projects". For example: all services to companies such as Gasunie, Energie Beheer Nederland, Shell, ENGIE and ENI would be prohibited.[752] Financing a group entity that manages a wind farm in Germany would also be prohibited if another group entity were involved in a "New Fossil Fuel Project".

481. With regard to the CTP Claim, ING's EU clients are under no obligation to draw up plans that meet Milieudefensie's demands.[753] Consequently, ING would have to impose additional requirements on its clients, even though the EU legislator wants to abolish the CSDDD Climate Transition Plan Obligation (see section 9.2.1 above). This would render ING's cross-border services and capital provision less attractive and restrict the free movement of services and capital.

482. The above restrictions on ING's freedom of movement might be permissible in theory, provided that each restriction is (i) proportionate; and (ii) justified by a

751 See also section 11.2 above.
752 For the sake of completeness, ING notes that this is an arbitrary list of companies. These are not necessarily ING clients.
753 See section 9.2.3 above.

treaty exception[754] or compelling reasons of public interest.[755] It is up to Milieudefensie to substantiate the proportionality of and justify all the Purported Duties. Milieudefensie has failed to do so, and it is in any case inconceivable that there could be any question of proportionality or justification.

9.5 Conclusion: the Purported Duties do not exist for any company, let alone for banks

483. Milieudefensie's claims aim to establish general legal rules on climate mitigation obligations that would then have to be imposed on individual companies – in this case, a bank.

484. ING is not alone in acknowledging the importance of limiting climate change. EU and Dutch legislators acknowledge this too, and have therefore introduced comprehensive climate policy in line with obligations under international law. Both limiting climate change and the obligations of companies are regulated by a broad-based package of legislation. This ensures that the human rights invoked by Milieudefensie are adequately protected. Therefore, there is no legislative gap that the court needs to remedy, let alone in a way that interferes with legislation and underlying policy choices.

485. If the Purported Duties existed, conflicts would also arise at the level of individual laws.

- The **Reduction Claims** undermine the EU legislator's approach of combining sector-specific regulations aimed at reducing emissions with sector-agnostic market mechanisms that stimulate sustainability while maintaining competitiveness within the EU, and of the EU. The EU and Dutch legislators have therefore each explicitly rejected an obligation such as the Reduction Claims at the level of individual companies.

- The **Exclusion Claims** and **CTP Claim** frustrate climate legislation on two levels. At the banking level, Milieudefensie is still attempting to impose climate mitigation-related downstream due diligence on banks, despite banks being exempt from downstream due diligence under the CSDDD. The CSDDD legislator requires no climate due diligence whatsoever. At the level of companies in the real economy, Milieudefensie is also attempting to impose additional obligations via bank financing, and is even seeking to make it impossible to perform

754 Article 65 TFEU provides for a treaty-based exception to restrictions on the free movement of capital. Article 51 and Article 52, read in conjunction with Article 62, also contain treaty-based exceptions to the free movement of services. However, none of these exceptions applies.

755 ECJ 30 November 1995, C-55/94, ECLI:EU:C:1995:411 (*Gebhard*), para. 37.

certain banking activities. These activities are already regulated and are often essential for the climate transition.

486. The Purported Duties also conflict with banking legislation. The EU legislator aims to achieve a climate transition that makes the entire economy more sustainable, in part by harnessing market forces. Banks contribute to this by ensuring financial stability, for example by managing the risks associated with climate change and the climate transition, and promoting market transparency. The Purported Duties make it impossible to do so.

487. Finally, the Purported Duties violate ING's freedom of movement. This once again demonstrates that they cannot exist. Even if these duties had been enshrined in statutory law, they would still have to be disregarded due to their incompatibility with freedom of movement.

488. Therefore, the Purported Duties on which Milieudefensie bases its Reduction Claims, Exclusion Claims and CTP Claim do not exist. Consequently, the court cannot "construct" them as norms of unwritten law because they do not meet the requirements set out in sections 8.1, 8.2.1 and 8.3, for the reasons set out in chapter 9.

UNOFFICIAL TRANSLATION

10 NO CONSENSUS ON THE PURPORTED DUTIES

Key points of this chapter

- An unwritten norm must be self-evident, knowable and generally accepted as legally enforceable. The Purported Duties are none of these. In practice, neither companies in the real economy nor banks apply the policy prescribed by the Purported Duties, or anything like it.
- Milieudefensie refers to the Paris Goal, transition pathways, and general principles as objective reference points that supposedly substantiate the existence of the Purported Duties. However, these sources provide no evidence of a consensus on their existence, let alone give rise to legally enforceable, knowable norms. Voluntary Initiatives actually contradict the existence of the Purported Duties.
  - (a) Voluntary Initiatives emphasise that the Purported Duties are not legally enforceable.
  - (b) Voluntary Initiatives reveal a range of views. Voluntary Initiatives demonstrate that there is no consensus on various elements of the Purported Duties and that they are not knowable. For example, Voluntary Initiatives hold divergent views on the use of absolute and intensity targets. They also warn of the adverse impacts of discontinuing funding to emission-intensive sectors and for "paper decarbonisation" by banks.
  - (c) There is also no consensus on the measures that companies in the real economy – including ING's clients – should take.

489. For an unwritten norm to be established, it must be knowable by the relevant legal subjects, and its existence must be readily apparent.[756] This is not the case for the Purported Duties. Milieudefensie attempts to overcome this by invoking the endangerment doctrine. It argues that, in the event of a significant danger, various specific legal duties automatically "arise". According to Milieudefensie, the content of this purported duty can be pieced together or constructed from a selection of reference points that a claimant could select at will; a claimant could also choose to omit various other relevant circumstances. Milieudefensie's invocation of these reference points in its Writ of Summons relies on a selection of sources that only reflects information useful to it. This selection of sources alone shows that there is no consensus on the existence of the Purported Duties. If Milieudefensie were to paint a more complete picture, it would become clear

[756] See section 8.2.2 above, citing Nieuwenhuis 2007 (Exhibit ING-206), p. 19.

that there is in fact consensus that the Purported Duties are undesirable for many reasons.

490. The Purported Duties cannot, for that reason alone, be self-evident or knowable, because they conflict with written law and with choices made by the legislator, as ING has set out in chapter 9. In addition, globally operating systemic banks do not, in practice, pursue policies that align with what Milieudefensie considers to be self-evident and knowable legal norms (section 10.1). This makes sense: there are, after all, no concrete sources from which the Purported Duties can be inferred. Milieudefensie does not cite any objective sources identifying the Purported Duties per se.

491. Contrary to Milieudefensie's position, no specific legal norms can then be inferred from general guidelines and legal principles (section 10.2). Nor do Voluntary Initiatives support Milieudefensie's argument. They emphasise that their recommendations are non-binding, meaning there is no consensus on the obligations of individual companies (section 10.3). Given the lack of consensus on and knowability of the Purported Duties, they cannot be qualified as unwritten norms (section 10.4).

10.1 The Purported Duties are not "generally accepted"

492. Milieudefensie argues that "*there can be no ambiguity*" about the "*legal responsibilities of ING to take the demanded climate measures*".[757] However, Milieudefensie has not provided any examples of a company or bank, let alone a global systemically important bank, that adheres to the Purported Duties. Nor has Milieudefensie demonstrated that banks uniformly apply and accept the climate policy Milieudefensie demands as legally binding norms. This is not surprising, as no such practice exists – and for good reasons, as explained in chapters 9, 10 and 11.[758]

493. The periodic progress report on the Climate Commitment for 2024 illustrates that the Purported Duties are by no means consistent with current practice in the Netherlands:

(a) lenders and investors prioritise certain sectors in their emissions measurements, meaning that not all possible emissions are accounted for;[759] and

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757 Writ of Summons, no. 1153.

758 Milieudefensie itself also contends that in practice banks are not doing what Milieudefensie alleges they are obligated to do based on unwritten law. See Writ of Summons, section X.4.

759 It is against that background that KPMG Progress Report 2024 (Exhibit ING-237), p. 17-18, addresses, for example, the emissions reporting from "material" sectors and "priority categories". See also KPMG, *Het Klimaatcommitment van de Nederlandse financiële sector*, February 2025 (excerpt) ("KPMG Progress Report 2023") (Exhibit ING-248), p. 7 and 17. See also AFM 2025 (Exhibit ING-149), p. 11.

(b) There is no universally employed method of measuring and reporting financed emissions,[760] and reporting on Scope 3 emissions in particular is still in the development stage.[761]

494. Furthermore, the 2023 progress report on the Climate Commitment reveals that the majority of institutions only have targets for 2030 and 2050, with no targets set for intermediate years.[762]

495. External parties also have a positive view of ING's climate policy, even compared to other banks.[763] Although Milieudefensie believes that a much more far-reaching climate approach would be widely accepted, and that there can be "*no ambiguity*" in this regard, many others consider ING's efforts to be more than adequate.

496. Moreover, there simply is no single, specific, climate approach that is universally accepted. As the discussion of Voluntary Initiatives in chapter 5 shows, there are many visions and guidelines available that companies, and banks, can use to formulate the climate approach they feel is appropriate.[764] They may choose between them, and they may also change that approach. That there is no single approach is also underscored by the results of the survey of possible climate measures for the financial sector.[765] These contradict the supposed existence of a knowable norm. The results show that it has not yet been established whether financial institutions have a best-efforts obligation to achieve specific climate targets, such as aligning their activities with the Paris Goal and EU and Dutch climate ambitions.[766] Furthermore, a majority of respondents oppose the introduction of an obligation of result, as this "*has an even greater adverse effect on actual emission reductions in the real economy than the best-efforts obligation.*"[767] In other words: the government and various respondents to the government's survey agree that not even much less far-reaching norms exist, not least due, in part, to a lack of effectiveness. In chapter 11, ING examines the lack of effectiveness in more detail, including that of the more far-reaching norms devised by Milieudefensie for reported emissions, which, as mentioned above, deviate from the approach taken by the legislator. The risk of

760 KPMG Progress Report 2024 (Exhibit ING-237), p. 6, 9 and 12.
761 KPMG Progress Report 2024 (Exhibit ING-237), p. 20.
762 KPMG Progress Report 2023 (Exhibit ING-248), p. 24.
763 See section 6.6 above.
764 This is widely recognized. For example, the Institute of International Finance holds that there is a "*fragmented landscape*" and that there is no single "*common yardstick*". See Institute of International Finance, *The Role of The Financial Sector in the Net Zero Transition: Assessing Implications for Policy, Supervision and Market Frameworks*, 10 October 2023 (excerpt) ("IIF 2023") (Exhibit ING-249), p. 6 and 33.
765 See section 3.4 above.
766 Appendix to *Parliamentary Papers II* 2024/25, 32 013, no. 304 (Report of responses to survey of climate measures for the financial sector) (Exhibit ING-250), p. 2.
767 Appendix to *Parliamentary Papers II* 2024/25, 32 013, no. 304 (Report of responses to survey of climate measures for the financial sector) (Exhibit ING-250), p. 3.

"paper decarbonisation" and this lack of effectiveness are, in fact, more widely acknowledged.[768]

497. The Purported Duties – a combination of far-reaching and specific obligations of result at the level of a bank's reported emissions – are neither knowable by the relevant potential addressees (i.e. banks), nor self-evident or widely accepted by others who have considered the matter (i.e. policymakers).

10.2 The Purported Duties cannot be inferred from general guidelines and legal principles

498. Milieudefensie constructs a "consensus" based on a selection of general concepts without citing any sources that endorse the Purported Duties or any combination thereof. Among other things, Milieudefensie relies on the Paris Goal, various transition pathways and general principles. First and foremost: ING attaches value to the Paris Goal, to the binding nature of that target for the EU and the Netherlands, and to transition pathways that model how the Paris Goal could be achieved. ING has taken this context into account in its climate approach for good reason.[769]

499. However, contrary to Milieudefensie's assertions, this does not mean that the parties agree that the Paris Goal and transition pathways should be used to give content to ING's purported legal duty.[770] ING's climate approach is not an exact copy of the transition pathways cited by Milieudefensie.[771] Even if ING voluntarily adopts certain transition pathways for its climate approach, this does not mean that these pathways can be converted into legal duties for everyone, let alone in a manner that differs completely from how ING uses them.

500. Milieudefensie also overlooks the fact that these sources are primarily intended for states and policymakers, and leave room for policy discretion. They are neither intended, nor suitable for, inferring static obligations for individual companies. This applies to the Paris Goal (section 10.2.1), the transition pathways (section 10.2.2) and the general principles (section 10.2.3).

10.2.1 The Paris Goal is not a benchmark from which the Purported Duties can be inferred

501. According to Milieudefensie, the Paris Agreement is just one of the reference points demonstrating that " *ING is subject to a societal duty of care to reduce its emissions*".[772] However, Milieudefensie does not explain how the

768 See, for example, section 11.3 below.
769 See chapters 1 and 6 above.
770 Writ of Summons, nos. 49-50, 911, 932-933, 950 and 977-989.
771 See section 6.3 above.
772 Writ of Summons, nos. 666-667.

Purported Duties, and all their specific elements, can be inferred from the Paris Goal. Milieudefensie sticks to generalities: the Paris Agreement supposedly forms a "*universal danger limit*"[773] that should be taken as a "*reference point*"[774] and supposedly bears "*legal relevance*" for ING.[775] However, the Paris Agreement is not a benchmark from which individual obligations for private actors can be distilled. It certainly does not give rise to the very specific obligations formulated by Milieudefensie in its claim for relief.

502. The Paris Agreement incorporates the Paris Goal, stipulating that states (i) can weigh up the interests involved in the non-binding emission reduction target included in their NDC; and (ii) have policy discretion to achieve this target.[776] Under the Paris Agreement, it is states, rather than individual companies, that are responsible for implementing policies that support the pursuit of the Paris Goal.

503. The Paris Agreement does not prescribe concrete, uniform, or binding emission reduction targets for its signatories. Nor does it prescribe how states should achieve those targets. States must formulate their own policies and, for example, determine which aspects, policy instruments and sectors they will prioritise. After all, there are many different ways to achieve this goal. This approach is also recognised by the ECtHR[777] and the International Court of Justice.[778] Against this backdrop, the EU legislator has made policy and legislative choices, as discussed in chapters 2, 3 and 9.

504. According to Milieudefensie, this can be disregarded entirely: despite the above, only one correct, legally enforceable climate approach exists for a company, which, in fact, follows directly from the Paris Agreement. It is allegedly up to the court to establish that this approach is a legal duty. This is incorrect. Had the Paris Agreement intended to impose universal obligations on companies, it would have stated so. The policy discretion granted to states by the Paris Agreement, as also confirmed by courts, would also be undermined if that were the case. Apparently, individual companies' obligations do not stem from the policies of the states in which they operate, but from the Paris Agreement itself. This is not true. For ING, the relevant policies are those of the EU, the Netherlands, and other

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773 Writ of Summons, nos. 124, 825 and 846.
774 Writ of Summons, no. 825.
775 Writ of Summons, nos. 50-52.
776 See section 2.1 above.
777 ECtHR 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020 (*Klimaseniorinnen*), para. 543.
778 ICJ Advisory Opinion, para. 239. Here the ICJ affirmed that the Paris Agreement "*is silent on the question of the content of NDCs and the discretion afforded to each party to determine their NDCs*." The ICJ continued that countries "*in the exercise of their discretion*" are bound "*to exercise due diligence*", but that "*the standard of due diligence varies depending on a range of factors*." See ICJ Advisory Opinion, paras. 245 and 246.

states in which it operates.[779] The Paris Agreement does not impose any additional obligations beyond this, let alone obligations that would dictate ING's corporate policy and require it to act in contravention of policies drawn up specifically to implement the Paris Agreement.[780] This would be neither logical nor consistent with the Paris Agreement itself. Consequently, Milieudefensie cannot invoke the Paris Agreement or the Paris Goal as independent sources or reference points to substantiate the existence of a norm based on unwritten law.

10.2.2 Transition pathways do not constitute a distinct point of reference

505. Milieudefensie also infers the Purported Duties from climate scenarios and transition pathways. For example, it argues that the total number of emissions allocated to ING should be reduced by a percentage equal to the median of the various climate scenarios analysed by the IPCC ("**IPCC climate scenarios**").[781] Milieudefensie has devised its own reduction percentages for the sectors in ING's portfolio based on the IEA NZE scenario. Milieudefensie believes that these percentages represent absolute lower limits.[782] Milieudefensie also refers to the findings of the IEA and the IPCC to substantiate the Exclusion Claims.[783] For various reasons, however, the Purported Duties cannot be inferred from transition pathways.

(1) The nature of transition pathways means that they are not suitable for use as the basis of static legal duties.

506. Milieudefensie is essentially attempting to convert the IPCC and IEA climate scenarios into a legal duty for individual companies. These climate scenarios are models. In section 5.3, ING explained that many climate scenarios and transition paths are in circulation, with new ones constantly being developed to support policymakers in formulating climate and energy policy, among other things. The IPCC and the IEA are two of the many developers of these models.

507. Like other climate scenarios and transition pathways, the models by IEA and the models that IPCC analyses are based on assumptions regarding societal, economic, and technical developments and principles. These scenarios and

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779 See chapters 2 and 3 above. Recently, the government confirmed that it conducts "*climate policy focused on European and national climate targets, so that the Netherlands will make its contribution to realizing the temperature target of the Paris Agreement*", See *Appendix Proceedings II* 2025/26, no. 104 (Dutch State Secretary of Foreign Affairs' response to climate commitments of states) (Exhibit ING-251), p. 1. See also p. 3-5.

780 See chapter 9 above. See also The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099 (*Milieudefensie v. Shell*), para. 7.54: "*For instance, it must be assumed that the fulfilment of the said duty of care takes into account obligations that companies have under that existing legislation.*"

781 Writ of Summons, nos. 911, 933 and the IPCC table presented in no. 911.

782 See, for example, Writ of Summons, nos. 914, 929, 932, 943, 950 and 981.

783 Writ of Summons, nos. 1034-1043.

pathways are regularly updated because the climate transition in the real economy does not correspond seamlessly with previous modelling.[784]

508. In practice, many developments deviate from the assumptions and principles on which the climate scenarios and transition pathways are based.[785]

Example: deviations from the IEA NZE scenario

The 2023 update of the IEA NZE scenario reveals that several social and economic developments diverge from the projections in the 2021 climate scenario, including (i) a greater increase in solar panel installations and production capacity;[786] (ii) more limited global plans to expand wind energy production capacity;[787] and (iii) slower-than-anticipated technological development of hydrogen-based fuels.[788]

The IEA's World Energy Outlook 2025 also shows various deviations from the NZE scenario, including (i) slower energy efficiency development; (ii) faster growth in wind and solar energy installations; (iii) lower electric vehicle sales; and (iv) much slower carbon capture development.[789] The image below illustrates this:

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784 See section 5.3 above.

785 For example, it is noted in the literature points that the IEA and IPCC models "*struggle to capture the dynamics of non-linear change that characterize the low-carbon transition*". See Oxford Sustainable Finance Group, *Implications of the International Energy Agency Net Zero emissions by 2050 Scenario for Net Zero Committed Financial Institutions*, 24 March 2022 (Exhibit ING-252), p. 8. In addition, the literature emphasizes that climate models (Integrated Assessment Models ("**IAMs**")) generally assume that states make cost-effective choices, while reality shows that choices are also made that are not cost-effective. It is also argued that IAMs do not make good predictions about the effects of crises. See, for example, K. Koasidis et al., "Why integrated assessment models alone are insufficient to navigate us through the polycrisis", *One Earth* (6) 2023/3 (Exhibit ING-253), p. 206: "*IAMs typically assume perfect markets and knowledge over a certain future; "windows of opportunity," however, may arise due to disruptive events and be associated with socioeconomic/market imperfections. This means that IAMs cannot project crises and, in turn, the emergence of "windows of opportunity" in their outputs. Furthermore, IAMs typically operate on the assumption of cost-optimizing behaviors of representative agents; in contrast, the real-life exploitation of "windows of opportunity" may point toward sustainable choices with broader-than-economic future benefits, rather than cost-optimal choices based on today's knowledge. Therefore, even if crises were invented as starting points by prescribing a series of socioeconomic and technological assumptions as IAM inputs, "windows of opportunity" pointing to non-optimal choices would remain unexplored in output trajectories.*" The IPCC seems to recognize this: it stresses that the models that it analyses "*do not, however, fully account for all constraints that could affect realization of pathways*". See IPCC, *Special Report. Global Warming of 1.5°C*, 8 October 2018 (excerpt) (Exhibit ING-254), p. 100.

786 IEA NZE Roadmap 2023 (Exhibit MD-085), p. 58.

787 IEA NZE Roadmap 2023 (Exhibit MD-085), p. 83-84.

788 IEA NZE Roadmap 2023 (Exhibit MD-085), p. 55.

789 IEA WEO2025 (Exhibit ING-168), p. 317.

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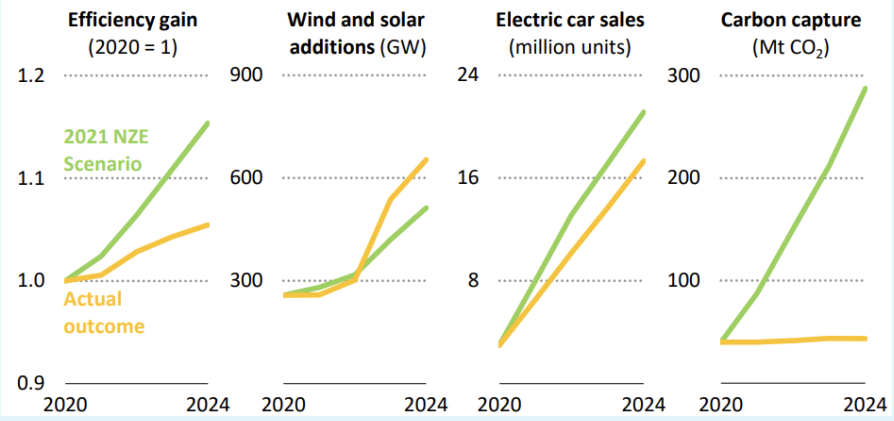

Figure 13 Key indicators for the energy transition in the IEA NZE scenario versus actual developments[790]

509. Consequently, the reduction percentages in the climate scenarios and transition pathways invoked by Milieudefensie cannot form a basis or principle from which static legal norms for the next 24 years can be distilled, i.e. the Purported Duties.[791]

(2) Transition pathways are meant as a tool for policymakers

510. Transition pathways and climate scenarios are designed to help policymakers formulate policy. Each transition pathway entails different implications for economic and societal developments, energy security and energy affordability. The IPCC defines its role as follows:

> "*IPCC reports are policy-relevant without being policy-prescriptive. The IPCC may set out options for policymakers to choose from in pursuit of goals decided by policymakers, but it does not tell governments what to do.*"[792]

511. To begin with, insights from climate scenarios are not intended to tell states what policies to pursue, nor do they constitute a legal duty for states, as acknowledged by the Court of Appeal in the Shell case.[793] Transition pathways require a political transition to government policy. Rather than following transition pathways step by step, policymakers use them as part of a broader assessment. For example, the European Climate Law stipulates that the EU legislator and Member States

790 IEA WEO2025 (Exhibit ING-168), p. 317.

791 As the Court of Appeal also noted in the Shell case. See The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099 (*Milieudefensie v. Shell*), para. 7.92.

792 IPCC, "FAQ" (printout of 21 January 2026]) (Exhibit ING-255), p. 3. Milieudefensie does recognize that institutions like the IPCC are there to support policymakers. See Milieudefensie Defence on Appeal in the proceedings between Milieudefensie et al. and Shell plc ("Milieudefensie Defence on Appeal in Shell") (excerpt) (Exhibit ING-256), no. 21. That the IPCC's findings are based on a careful decision-making process does not, of course, change this, as Milieudefensie explains in its Writ of Summons (section VI.5.2).

793 The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099 (*Milieudefensie v. Shell*), para. 7.92.

must consider a broad range of interests when formulating climate policy. These interests include the "*best available and most recent scientific evidence, in particular the findings reported by the IPCC*", as well as factors including energy security and employment.[794]

512. Milieudefensie substantiates this by arguing that the IEA and IPCC transition pathways can serve as reference points for establishing its Purported Duties, and that regional data and circumstances were taken into account as input when the IEA NZE scenario was developed.[795] However, contrary to what Milieudefensie suggests,[796] this does not mean that the outcomes of the transition pathway are suitable for application at a granular level – and in addition to the fact that the inputs accounted for does not necessarily encompass all relevant datapoints and circumstances, nor all future circumstances. The IEA in fact states that "*each country will follow its own route based on its resources and circumstances*".[797] In other words, the IEA itself does not believe that its transition pathways can be understood to create obligations for states. Therefore, Milieudefensie cannot invoke them to impose obligations on an individual company, let alone a bank.

513. In addition, transition pathways are not tailored to individual companies. Nor do company portfolios generally reflect a transition pathway designed for global sectors. Even if a transition pathway, a combination of pathways, or a reduction percentage were to form a legal duty at state level, individual company obligations would still depend on policymakers' choices. Logically, such duties should primarily be formulated for companies in the real economy, rather than their financiers.

(3) No consensus on any specific transition pathway

514. Moreover, there is no societal consensus that there should be just one transition pathway, let alone one specific transition pathway. The IPCC and IEA climate scenarios are just two of many models that map out how the Paris Goal could be achieved.[798] Even if transition pathways could have normative legal effect, the IPCC and IEA climate scenarios are not generally accepted as the only applicable norm. This is evident from Milieudefensie's own statements. Milieudefensie believes that the IPCC climate scenarios are inadequate because they are not compatible with the CBDR Principle.[799] According to Milieudefensie, the IEA's transition pathway is '*too conservative*' as it '*protects the interests of the fossil fuel industry too much*' and has '*certain deficiencies*'.[800] Milieudefensie has expressed similar criticisms in other proceedings. In the climate case against

794 Recital 34 European Climate Law. See sections 2.2 and 2.6 above.
795 Writ of Summons, nos. 979-980.
796 Writ of Summons, nos. 979-980 and 996.
797 IEA NZE Roadmap 2023 (Exhibit MD-085), p. 17.
798 See section 5.3 above.
799 Writ of Summons, no. 721-722.
800 Writ of Summons, no. 978.

Shell, Milieudefensie in fact argued that Shell could not "*hide behind the model calculations of the IEA or the IPCC (or other bodies such as the EU)*".[801] In the Shell judgment, the Court of Appeal held that setting a reduction percentage based on these calculations would amount to disregarding "*the doubts that Milieudefensie et al. themselves have raised about the creation of the IEA's prognosis*".[802] Although Milieudefensie has recently levelled heavy criticism at these models, it simultaneously insists that a consensus exists and that the models are widely accepted.

515. To support its argument that the IEA NZE scenario can serve as a starting point, Milieudefensie points to its application within the prudential framework.[803] Milieudefensie refers to the reporting standards established by the EC in the context of Pillar 3 disclosures.[804] These requirements focus on banks providing information to the market.[805] In order to guarantee the provision of reliable information, it is vital that all banks report and apply the same scenarios. However, this practice does not imply that banks are obliged to use the IEA NZE scenario in a completely different context beyond their reporting obligations, let alone as a normative framework for structuring their business strategies.

516. The EBA ESG Guidelines demonstrate that these reporting standards do not require banks to adhere to the IEA NZE scenario in other contexts. These Guidelines set out the Pillar 2 requirements, which focus on adequate risk management. Consequently, Pillar 2 and Pillar 3 disclosures serve different purposes. According to the EBA Guidelines, banks are free, and should be free, to choose from multiple transition pathways.[806] Milieudefensie does not explain why alignment with Pillar 3 disclosures should be required in the context of formulating climate targets, when according to policymakers, risk management and financial stability must be guaranteed above all else.[807] Milieudefensie hence seeks to misuse the considerations of the EBA which have a very different context. That cannot happen.

517. It also claims that the ECB "*opts*" for the IEA NZE scenario and that the ECB states that this aligns with the GFANZ approach.[808] However, the exhibit to which Milieudefensie refers is a research report in which the ECB explains its

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801 Milieudefensie Defence on Appeal in Shell (Exhibit ING-256), no. 545. See also nos. 467, 524, 541 and 574.
802 The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099 (*Milieudefensie v. Shell*), para. 7.92.
803 Writ of Summons, nos. 987-989.
804 Writ of Summons, no. 987.
805 See section 2.5 above.
806 EBA ESG Guidelines (Exhibit ING-045), p. 35, 48 and 103.
807 Moreover, financial stability is also a prerequisite for an effective climate transition, as discussed in section 2.5.
808 Writ of Summons, no. 988.

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methodology.[809] While the ECB bases its approach on the IEA NZE scenario, it explicitly states that "[t]*here are many possible pathways that can be chosen for assessing alignment*".[810] The ECB then provides several criteria for selecting a transition pathway, explaining that "*these criteria*" "*are broadly consistent with guidance set forth by, for example, GFANZ*".[811]

518. Furthermore, Milieudefensie's arguments ultimately lead to the conclusion that the IPCC's findings and the IEA's findings in its NZE scenario are cumulatively normative. Milieudefensie argues that ING must reduce its emissions in line with the IPCC's findings in the context of the Overarching Reduction Claim and in line with the IEA NZE scenario in the context of the Sectoral Reduction Claims.[812]

519. However, because the IPCC's findings and the findings under the IEA NZE scenario differ, they cannot simultaneously constitute the prevailing norm. The IPCC based its findings on an analysis of a large number of different transition pathways that align with a 1.5°C climate scenario.[813] The percentages referred to by Milieudefensie are the median outcome of these different transition pathways.[814] The IEA NZE scenario, on the other hand, assumes that the energy sector will have achieved net-zero emissions by 2050. However, only one in five of the IPCC's analysed transition pathways reach that same end result.[815] The IPCC climate scenarios also require steeper reductions until around 2030 than the IEA NZE scenario; after this point, the opposite is true. As the reduction targets are cumulative, ING would have to reduce emissions by more than if it were to follow the findings of either the IPCC or the IEA NZE scenario alone. The image below illustrates the incompatibility between the IPCC climate scenarios and the IEA NZE scenario:

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809 ECB 2024, "Risks from misalignment of banks' financing with the EU climate objectives" ("ECB, Assessment climate misalignment") (Exhibit MD-223), p. 3 and chapter 3.
810 ECB, Assessment climate misalignment (Exhibit MD-223), p. 11.
811 ECB, Assessment climate misalignment (Exhibit MD-223), p. 11-12.
812 See section 7.2 above.
813 See no. 232 et seq. above.
814 IPCC 2023, AR6, SYR, (Exhibit MD-001), p. 21.
815 IEA 2021, "A closer look at the modelling behind our global Roadmap to Net Zero Emissions by 2050" (printout 27 February 2025) (Exhibit MD-222): "*The IPCC special report includes 90 individual scenarios that have at least a 50% chance of limiting warming in 2100 to 1.5 °C. Only 18 of these scenarios have net zero CO2 energy sector and industrial process emissions in 2050 – the objective of the NZE Scenario. In other words, only one-fifth of the 1.5 °C scenarios assessed by the IPCC have the same level of ambition for reductions in energy and industrial process emissions as our NZE Scenario*".

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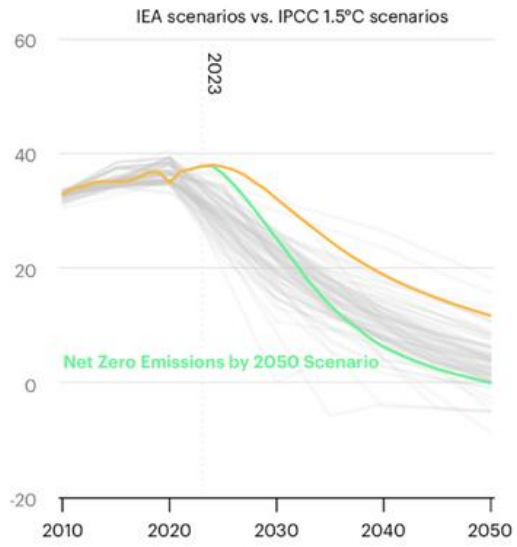

Figure 14 IEA NZE Scenario and Announced Pledges Scenario (2023 Update) compared to IPCC 1.5°C Climate Scenarios[816]

(4) Milieudefensie misinterprets IEA and IPCC findings

520. In the context of the Exclusion Claims, Milieudefensie refers to the IEA, among other sources. The IEA states that operating existing energy sector assets until the end of their useful life would generate more emissions than the remaining carbon budget required to stay below the Paris Goal.[817] Milieudefensie interprets this as meaning that '*no oil and gas producer may develop new fields, and no coal producer may develop or expand new mines*'.[818]

521. However, Milieudefensie ignores the context in which the IEA's comment was made. It was based on a climate scenario involving a specific set of assumptions and principles, such as the idea that current assets "*were to be operated until the end of their normal technical and economic lifetimes, and in the same manner in which they have been operated*".[819] Investment is required for the continued extraction of oil and gas from fields that have been in use for some time but where the reservoir pressure is slowly declining.[820] Last year, the IEA director also unequivocally confirmed that "[t]*here is a need for oil and gas upstream investments, full stop*".[821] Milieudefensie fails to mention that. The IEA has

816 IEA, "Understanding GEC Model Scenarios," (printout of 21 October 2025) (Exhibit ING-257), p. 7.
817 Writ of Summons, nos. 1034-1038. Milieudefensie refers to IEA NZE Roadmap 2023 (Exhibit MD-085), p. 150-151.
818 Writ of Summons, no. 1041.
819 IEA NZE Roadmap 2023 (Exhibit MD-085), p. 150.
820 T. Gardner, "CERAWEEK IEA chief sees need for investment in existing oil, gas fields", *Reuters* 10 March 2025 (printout of 16 January 2026) ("Gardner 2025") (Exhibit ING-258).
821 Gardner 2025 (Exhibit ING-258).

recently reiterated that "*investment in existing and approved conventional projects*" is needed to meet fossil fuel demand and maintain security of supply.[822]

522. This is inconsistent with Milieudefensie's Exclusion Claims. The Exclusion Claims cover all companies involved in "New Fossil Fuel Projects", whether directly or through a group company.[823] Although there is no norm whatsoever that elevates the IEA's findings to a legal norm, the broad scope of the Exclusion Claims means that even investments endorsed by the IEA itself would no longer be permitted.

523. In the context of the Exclusion Claims, Milieudefensie quotes from the IPCC, UNEP FI, and the journal *Science*.[824] While the IPCC does state in one of the quotes cited by Milieudefensie that the level of financing in oil and gas remains a concern, it does not state that no oil or gas producer should be allowed to develop new fields.[825] Nor can any such conclusion be drawn from the UNEP FI quotes cited by Milieudefensie.[826] The *Science* article merely argues that proponents of "*ambitious climate action should direct policy and advocacy efforts toward building a global 'No New Fossil' norm*".[827] In fact, this shows that no such norm exists or is widely accepted: the article recommends ambitious, voluntary, action.

524. Contrary to Milieudefensie's assumptions,[828] the fact that ING has developed a project financing approach for new oil and gas fields does not imply that banks are bound by a legal norm requiring them to adopt policies in line with the Exclusion Claims. As explained above, Milieudefensie cannot base its Purported Duties on ING's voluntary actions or risk management decisions in order to substantiate a purported norm that envisages a completely different approach.

525. Thus, the Purported Duties cannot be inferred from either climate scenarios or transition pathways. Milieudefensie's attempt to create general legal rules and policies that entail obligations for individual companies must therefore fail. Consequently, it is not the nature of climate scenarios and transition pathways that would render it "*de facto impossible to hold ING to account for its societal duty of care*".[829] Instead, it is the absence of an overall general acceptance that these scenarios and pathways can determine legal obligations at the level of individual companies.

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822 IEA, *The Implications of Oil and Gas Field Decline Rates*, 16 September 2025 (Exhibit ING-259), p. 59. See also IEA WEO2025 (Exhibit ING-168), p. 351: "*Continued investment is required to counteract the effect of natural decline rates in oil and gas fields (IEA, 2025c), and some infrastructure, such as natural gas networks, import terminals or natural gas peaking plants, are needed for some time to provide buffers for the energy system.*"

823 See section 7.3 above.

824 Writ of Summons, nos. 641-653, 1019 and 1033.

825 Writ of Summons, no. 644.

826 Writ of Summons, nos. 642 and 648.

827 Green et al. 2024, "No new fossil fuel projects: The norm we need" (Exhibit MD-226), p. 954.

828 Writ of Summons, no. 1045.

829 Writ of Summons, no. 1071.

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10.2.3 The general principles cited by Milieudefensie do not support the highly detailed Purported Duties

526. Although Milieudefensie effectively disregards the statutory framework (with which the Purported Duties conflict[830]), it does rely on a number of general principles to substantiate its claim that there is a consensus on the Purported Duties.[831]

527. According to Milieudefensie, the precautionary principle, the CBDR Principle, and the principle of intergenerational justice confirm that ING is bound by the Purported Duties, which constitute "*benchmark criteria for the minimum content and scope that can be required of ING in that regard*".[832] Milieudefensie believes that these general principles confirm "*ING is bound to take the concrete climate measures that Milieudefensie is demanding of ING*".[833] This argument fails for multiple reasons.

528. Firstly, ING emphasises that general principles do not give rise to independent legal duties.[834] They provide guidelines for interpreting obligations based on other sources. The EU legislator did in fact consider these principles when drafting its policies.[835] In addition, they cannot, for the following reasons, serve as valid reference points for the Purported Duties.

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830 See chapter 9.

831 Writ of Summons, section XI.2.5.

832 Writ of Summons, no. 698.

833 Writ of Summons, no. 684. See also Writ of Summons, no. 937.

834 See, for example, E.R. de Jong, *Voorzorgverplichtingen. Over aansprakelijkheidsrechtelijke normstelling voor onzekere risico's*, 2016 (excerpt) ("De Jong 2016") (Exhibit ING-260), p. 72: "*The second defining characteristic of a principle is that it is not a concrete legal rule.*", with reference to Asser/Scholten, *Algemeen deel** 1974 (excerpt) (Exhibit ING-261), section 15. Similarly, the ICJ held that general principles of law, such as the CBDR Principle, the precautionary principle, and the principle of intergenerational justice, "*do not constitute standalone obligations*" for states. Rather, these principles can, at most, "*guide*" the interpretation of their "treaty obligations". See ICJ Advisory Opinion, para. 178. Since it is up to states to fulfil these "treaty obligations", in such case by drafting individual climate policies, the climate policies in question therefore also satisfy the general principles of law.

835 For example, Article 191 TFEU contains the EU's environmental objectives, which include preserving, protecting and improving the quality of the environment and human health. It follows explicitly from Article 191(2) TFEU that EU policy aims "*at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.*" Recital 9 of the European Climate Law confirms that "*the Union's and Member States' actions should be guided by the precautionary and 'polluter pays' principles established in the Treaty on the Functioning of the European Union.*" It also follows from recital 34 that "[i]*n taking the relevant measures at Union and national level to achieve the climate-neutrality objective*", the "*fairness and solidarity across and within Member States, in light of their economic capability, national circumstances, such as the specificities of islands, and the need for convergence over time*" have been taken into account. See also section 2.2 above. Additionally, for example, the national targets as included in the ESA take into account, among other things, the varying capacity of member states to take action. See, for example, Fit for 55 package (Exhibit ING-015), p. 7. Accordingly, the application of these legal principles has not resulted in the EU legislator imposing different obligations on large companies than on small companies, other than through the scope of application of, for example, the CSRD and CSDDD, see section 2.4.

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(1) No specific norms can be inferred from the precautionary principle

529. The precautionary principle requires states to take appropriate measures in the event of reliable indications of significant climate damage, even in the presence of scientific uncertainty.[836] According to Milieudefensie, the precautionary principle can also be applied in cases of 'scientific' uncertainty regarding the specific reduction percentage contribution that a company must make.[837] Milieudefensie claims that, in such cases, a company must take measures that limit the likelihood and severity of the threat as much as possible.[838] This is incorrect.

530. The precautionary principle focuses on situations where there is scientific uncertainty. In this case, however, there is no scientific uncertainty about the existence of climate change. The issue here is that Milieudefensie would like to impose norms on individual companies that are neither knowable nor self-evident, and on which there is a lack of consensus. The lack of consensus on the existence of a reduction norm, let alone consensus on which reduction percentages should be applied, cannot be remedied by invoking the precautionary principle. According to Milieudefensie itself, a general appeal to science cannot solve this problem, since "*science, by its very nature, cannot provide a definitive answer because non-scientific criteria will inevitably have to be taken into account when doing so.*"[839] Therefore, the precautionary principle is not relevant in cases of uncertainty regarding applicable norms or the reduction percentages applied to them.[840]

531. Even if the precautionary principle were relevant, it does not imply that companies "*will, as a precaution, in principle have to take measures that limit the chance of and the gravity of the threat as much as possible*", as Milieudefensie claims.[841] Although the precautionary principle calls for "*proactivity*",[842] it does not create so-called "hell or high water" obligations, being obligations that must be met regardless of all other circumstances. After all, if that were the case, everyone would be obliged to do so, which would have far-reaching consequences. Taking appropriate measures requires striking a balance between interests, taking into account such factors as proportionality,

836 See, for example, Article 3(3) UN Climate Convention (consolidated English version) (Exhibit MD-069); recital 15 Rio Declaration (Exhibit MD-175); ICJ Advisory Opinion, para. 293.
837 Writ of Summons, no. 712.
838 Writ of Summons, no. 712.
839 Writ of Summons, footnote 753 to no. 712.
840 Likewise: The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099 (*Milieudefensie v. Shell*), para. 7.95: "*However, this case does not concern uncertainty about the consequences of a particular action (CO2 emissions), but about uncertainty about a norm to be applied. The precautionary principle does not justify ignoring that uncertainty at the expense of a private party and setting a legal norm for that private party.*"
841 Writ of Summons, no. 712.
842 De Jong 2016 (Exhibit ING-260), p. 69.

socio-economic consequences, and cost-effectiveness.[843] As ING explained in chapter 9, the EU legislator made the same assessment. As ING explains in chapter 11, the Claimed Measures are neither effective nor cost-effective, and they entail unjustified risks.

532. Consequently, the precautionary principle cannot be invoked as a point of reference that establishes the existence of the Purported Duties. Even if the precautionary principle is invoked to elaborate an existing norm, this still does not establish the existence of the Purported Duties or their individual elements.

(2) No specific norms can be inferred from the CBDR Principle

533. The CBDR Principle implies that states will assume different obligations in pursuit of a common goal, depending on factors such as their historical contributions, levels of economic development, and other national circumstances.[844]

534. Milieudefensie argues that the CBDR Principle applies to individual companies.[845] Milieudefensie concludes from this that companies based in industrialised countries, which mainly supply services and products to those countries, are obliged to contribute their fair share to the global reduction target and have a relatively large responsibility in this regard.[846] According to this argument, ING would be required to achieve greater reductions than the global average. This argument also fails.

535. The CBDR Principle is primarily addressed to states. This can also be inferred from the sources cited by Milieudefensie.[847] If states apply the CBDR Principle, it stands to reason that the total number of companies in developed countries will, on average, make a greater contribution. However, states are free to take measures to ensure that companies in certain sectors contribute more than average, while those in other sectors contribute less. Therefore, if states apply this principle, it does not mean that all companies in those states should contribute more than the global average, let alone implement the highly specific

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843 Recital 15 Rio Declaration (Exhibit MD-175): "*In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation*." M. Schröder, "Precautionary Approach/Principle", *Max Planck Encyclopedia of Public International Law* (printout of 21 January 2026) (Exhibit ING-262), section 11: "*The distinctive feature of the precautionary principle is that it does not dictate specific regulatory measures or a particular outcome. Like all principles, it is flexible and interrelates with other principles and concerns, such as the principle of proportionality, cost-benefit issues or socio-economic considerations*".

844 E. Hey et al., "Common but Differentiated Responsibilities", *Max Planck Encyclopedia of International Law* (printout of 21 January 2026) (Exhibit ING-263), section 1; ICJ Advisory Opinion, para. 1.

845 Writ of Summons, nos. 684, 715-725 and 937.

846 Writ of Summons, nos. 495, 519, 551, 938-939 and 942-943.

847 As Milieudefensie is relying on the UN Climate Convention (Writ of Summons, no. 288) and the Paris Agreement (Writ of Summons, no. 339).

Claimed Measures. In the Shell case, the Court of Appeal therefore rightly held that the CBDR Principle does not result in "*a standard for Shell's reduction obligation that can be applied in this case*".[848] The fact that it is uncertain whether application of the CBDR Principle will result in companies in all sectors contributing equally to the climate transition and the economy is particularly relevant to sectors such as finance, which play a unique role in both.[849]

536. Policymakers' vision for the role of banks in the climate transition and their statutory duties[850] cannot be dismissed by invoking the CBDR Principle.

(3) No specific norms can be inferred from the principle of intergenerational justice

537. Milieudefensie argues that intergenerational justice "*creates a responsibility to prevent that the interest of future generations* [...] *is unfairly damaged by today's emissions*".[851] However, Milieudefensie does not explain how the Purported Duties can be inferred from this responsibility, nor how future generations would benefit from them. As ING explains in chapter 11, they are not effective, and certainly not sufficiently effective.

538. Thus, no specific legal norms applicable to individual companies can be inferred from the precautionary principle, the CBDR Principle, or the principle of intergenerational justice.

10.3 Voluntary Initiatives do not support the Claimed Measures

539. Milieudefensie is also attempting to construct the Purported Duties on the basis of a selective – and, in some respects, inaccurate and incomplete – representation of Voluntary Initiatives. This cannot succeed. To begin with, it would have been appropriate for Milieudefensie to explain why it accords weight to certain Voluntary Initiatives and not to others.[852]

540. The Purported Duties are not in any case supported by Voluntary Initiatives aimed at businesses in general or banks in particular, nor by Milieudefensie's selection thereof. Firstly, Voluntary Initiatives emphasise the non-binding nature of their recommendations. For this reason alone, Voluntary Initiatives cannot support the conclusion that they are enforceable legal norms (section 10.3.1). Furthermore, Voluntary Initiatives demonstrate that there is no consensus on the Reduction Claims (section 10.3.2), the Exclusion Claims (section 10.3.3) and the CTP Claim (section 10.3.4), let alone in combination (section 10.3.5).

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848 The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099 (*Milieudefensie v. Shell*), para. 7.93.
849 See section 2.5 and chapter 4 above.
850 See section 2.5 and chapters 4 and 9 above.
851 Writ of Summons, no. 737.
852 This is all the more true now that all the Voluntary Initiatives recognize and acknowledge the dangers of climate change discussed by Milieudefensie. See Writ of Summons, chapters V-VIII and XIII.

Furthermore, the Purported Duties contradict the existence of an obligation of result (section 10.3.6), as it would be impossible to perform them. Consequently, no evident and knowable norms exist.

541. An overview of the Voluntary Initiatives discussed in this section is provided in Figure 7 at no. 197 above.

10.3.1 Voluntary Initiatives that focus on "non-state actors" emphasise the non-binding nature of these actions

542. Various factors must be taken into account when assessing the relevance of reference points for interpreting an unwritten norm, including the intended purpose and scope of application.[853] In the Dutch Supreme Court judgments referred to by Milieudefensie in this context, the intended purpose and scope of application of the source in question is always explicitly considered.[854]

543. Milieudefensie substantiates most elements of the Purported Duties with a reference to Voluntary Initiatives. Milieudefensie barely comments on the relevance of these initiatives. It points out that in the Shell case, the Hague Court of Appeal endorsed the importance of the UNGPs and OECD Guidelines,[855] and further only asserts in general terms that soft law *may* be important for the interpretation of unwritten legal norms.[856] However, Milieudefensie does not demonstrate that this also applies specifically to the other sources it cites in support of the Purported Duties.

544. Voluntary Initiatives are expressly *not* intended to create legally enforceable obligations.[857] The OECD Guidelines, for example, state that "[o]*bservance of the Guidelines by enterprises is voluntary and not legally enforceable*".[858] They also state that "*the Guidelines extend beyond the law in many cases*"[859] and should be distinguished "*from matters of legal liability and enforcement*".[860]

545. The UNGPs also specify that nothing in them "*should be read as creating new international law obligations*".[861] As with the OECD Guidelines, the UNGPs state

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853 Hoekstra 2023 (Exhibit ING-213), p. 548. See also section 8.3.2 above.

854 See, for example, Dutch Supreme Court 18 May 2014, ECLI:NL:HR:2014:942, para. 5.2.1: "*The Dutch Association of Insurers created the Code of Conduct partly for the benefit of policyholders. It aims to give substance to the aforementioned weighing of interests by including the obligation for insurers to observe the principles of proportionality and subsidiarity. As mentioned in the introduction, the Code of Conduct aims to align with existing privacy legislation, including the Personal Data Protection Act and legislation on the use of cameras, both overt and covert.* […]" (underlining added).

855 Writ of Summons, no. 57.

856 Writ of Summons, nos. 896-903.

857 It also cannot be inferred from the sources cited by Milieudefensie in section IX.2 of the Writ of Summons that there exists a specific, let alone legally enforceable norm exists for non-state actors, let alone that this should take the specific shape of the Purported Duties.

858 OECD Guidelines (Exhibit MD-137), p. 12.

859 OECD Guidelines (Exhibit MD-137), p. 12.

860 OECD Guidelines (Exhibit MD-137), p. 10.

861 UNGPs (Exhibit MD-136), p. 1.

that the "*responsibility of business enterprises to respect human rights is distinct from issues of legal liability and enforcement, which remain defined largely by national law provisions in relevant jurisdictions*".[862]

546. Similar considerations about the voluntary nature, are included in the NZBA Guidance[863] (and in its successor: the UNEP FI Guidance[864]), and GFANZ.[865] In addition, PCAF[866] and the PRB[867] only apply to those financial institutions that have committed to them.

547. The UN Expert Report to which Milieudefensie frequently refers[868] also recognises that all contributions from private parties are "*voluntary*".[869] The UN Expert Report makes recommendations to discourage greenwashing, specifically targeting "*net zero pledges and commitments from non-state actors*".[870] Contrary to what Milieudefensie implies,[871] however, this report cannot be used to create general obligations for financial institutions. Instead, these sources provide guidance to businesses and policymakers in a rapidly evolving field. Their inherently supportive nature shows that these sources are not intended to, nor can they, serve as a direct elaboration of, let alone a basis for, very specific legal duties.

548. Milieudefensie's line of argumentation also relies heavily on the Race to Zero campaign. Milieudefensie claims that this initiative has amassed a significant membership base through its partner networks, all of which adhere to the rigorous Race to Zero criteria.[872] However, the Race to Zero campaign was started to set in motion the transition to a net-zero economy, not to create

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862 UNGPs (Exhibit MD-136), p. 14.

863 NZBA Guidance (Exhibit MD-220), p. 2: "*This document does not create binding obligations on any person, including NZBA and its members, as it reflects mere guidance*." See also NZBA, *Transition Finance Guide,* October 2022 ("NZBA Transition Finance Guide") (Exhibit ING-264), p. vii: "*NZBA members are not automatically expected to adopt the principles and frameworks communicated within this guide*" and p. 11: "*This guide is not binding by nature; it aims to support banks' engagement on transition finance by providing conceptual ideas for transition planning.*" Milieudefensie's assertion that, according to NZBA, banks are "committed" to something is therefore incorrect. See Writ of Summons, List of definitions, under "NZBA".

864 UNEP FI Guidance (Exhibit ING-148), p. 2: "*This guidance does not create binding obligations on any person, including banks that choose to use it.*"

865 GFANZ, *Net-Zero Transition Plans* (Exhibit MD-219), p. iii: "*This report does not create legal relations or legally enforceable obligations of any kind.*"

866 See, for example, PCAF Financed Emissions (2022) (Exhibit MD-141), p. 123. See also PCAF Financed Emissions (2025) (Exhibit ING-145), p. 160.

867 UNEP FI, "About the Principles" (printout of 21 January 2026) (Exhibit ING-265).

868 UN High-Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities 2022, 'Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions" ("UN Expert Report") (Exhibit MD-134). See Writ of Summons, nos. 508-517, 551, 934, 936, 942, 944, 973 and 1041.

869 UN expert report (Exhibit MD-134), p. 12-13, 15 and 33.

870 UN expert report (Exhibit MD-134), p. 2.

871 Writ of Summons, no. 516.

872 Writ of Summons, no. 491.

obligations.[873] The Race to Zero campaign aspires to play a coordinating role[874] by attempting to link "*emerging international standards*", such as SBTi, to policy.[875] Clearly, this campaign is not intended to serve as a standard for banks, nor should it be elevated to that status.[876] Nor does it give substance to the Paris Agreement, as Milieudefensie suggests.[877] Furthermore, it is unclear why Milieudefensie believes that the Race to Zero campaign, which brings together various partner networks, can be cited as evidence of any consensus to substantiate the Purported Duties when (i) those partner networks all use different criteria and do not require their members to have policies equivalent to the Purported Duties; and (ii)(a) one of those networks is nota bene SBTi, despite the fact that ING's targets have been validated by SBTi, and (ii)(b) Milieudefensie itself strongly criticises the SBTi.[878] In fact, by arguing that there is a consensus, Milieudefensie cites an initiative that only reflects a diversity of views and thus a lack of consensus.

549. It is only logical that the Voluntary Initiatives do not attempt to create enforceable obligations. If adhering to or using a non-binding instrument puts a company at risk of this circumstance being used (or misused) to impose a legal duty on it, this would have a so-called "chilling effect".[879] This chilling effect would be even greater if these initiatives were used to impose much more far-reaching and divergent legal duties on them (based on elements selectively chosen from the initiatives). ING recognises the value of voluntary knowledge sharing in the market and the testing and trialling of new perspectives and guidelines to help advance the climate transition. This also means that voluntarily adopted approaches can be tried and tested and should be able to be abandoned again, instead of leading to obligations that then apply until the end of time. Milieudefensie's approach would discourage such initiatives, and have a counterproductive effect.

550. Thus, the Voluntary Initiatives emphasise voluntary action and contradict the existence of an enforceable legal norm.

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873 Race to Zero, *2024 Progress Report*, 23 June, 2025 ("RtZ Progress Report 2024") (Exhibit ING-266), p. 14.

874 RtZ Progress Report 2024 (Exhibit ING-266), p. 78: "*Orchestration initiatives e.g. Race to Zero campaign*".

875 RtZ Progress Report 2024 (Exhibit ING-266), p. 9.

876 In this regard, the Race to Zero also acknowledges that it itself that its campaign is not a benchmark: "*The flagship Corporate Net-Zero Standard of the Science Based Target Initiative (SBTi) has become the global benchmark for businesses committed to ambitious climate action*". See RtZ Progress Report 2024 (Exhibit ING-266), p. 77.

877 Writ of Summons, no. 487.

878 See, for example Milieudefensie et al., "Call for SBTI to align methodology with UN's High Level Expert Group report on Net-zero Commitments", 12 July 2023 (Exhibit ING-267), in which Milieudefensie accuses SBTi of greenwashing.

879 On a deterrent effect, see, for example, S.J.M. Biesmans, annotation to The Hague District Court 26 May 2021, ECLI:NLRBDHA:2021:5337 (*Milieudefensie v. Shell*), *JOR* 2021/208, (excerpt) (Exhibit ING-268), p. 2461.

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10.3.2 Voluntary Initiatives contradict the Reduction Claims

551. Milieudefensie claims that "*various initiatives that were established within the financial sector*" supposedly "*recognise*" the Reduction Claims.[880] The Reduction Claims consist of at least nine elements, as set out by ING in section 7.2.[881] However, Voluntary Initiatives demonstrate that there is no consensus on these elements; in fact, they contradict them in several respects. ING discusses this below with regard to the various elements of Milieudefensie's claims.

552. Added to this, Voluntary Initiatives do not support the idea underlying the entirety of Milieudefensie's Reduction Claims. The general idea of strict rules and reduction obligations based on carbon accounting, particularly for banks, is not supported by the OECD Guidelines or the UNGPs, for example. Nor do the sources cited by Milieudefensie reflect any societal consensus *that* reduction targets should be set as enforceable legal duties. If companies, including banks, choose to do so on a voluntary basis, only *then* do these sources offer guidance on how to do so.[882] Climate change is a subject that, according to these sources, requires due care to be exercised. However, this applies at the level of individual business relationships. Application of these sources does not lead to the exclusion of large groups of clients, let alone entire sectors, based on general principles, as the Dutch NCP has already stated.[883]

553. At the client level, as ING will discuss in section 10.3.3 in the context of the Exclusion Claims, this individual assessment does not automatically lead to the conclusion that banks must divest their clients. Furthermore, Milieudefensie is essentially requiring the court to issue policy orders against ING that would oblige it to categorically and rigorously reduce its financing of entire sectors and thus withdraw from those sectors. For sectors where, for example, the emission intensity demanded by Milieudefensie cannot be achieved, this would mean ING having to withdraw from those sectors entirely sooner rather than later. To begin with, Voluntary Initiatives do not require reduction obligations to be imposed at the level of overall policy and large groups of clients and sectors to be categorically excluded. They also cannot serve as a source or point of reference for obligations that have that effect in practice.

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880 Writ of Summons, no. 944.
881 See section 7.2 above.
882 Accordingly, these sources do not clarify what climate action can be expected from companies, as Milieudefensie contends. See Writ of Summons, section IX.3.2.
883 See for example, NCP, *Final Statement. Friends of the Earth Europe and Friends of the Earth Netherlands/Milieudefensie versus Rabobank*, 15 January 2016 (Exhibit ING-269), p. 4.

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(1) Elements 1 to 4: The Reduction Claims require emission reductions from the ING Group and ING's individual business units; include operational, financed and facilitated emissions; and require separate reductions for ING's entire portfolio, sectors and sub-sectors

554. The Reduction Claims cover "*operational*", "*financed*" and "*facilitated*" emissions, including the Scope 1, 2 and 3 emissions of ING's clients. The Reduction Claims also require reduction targets that apply to ING as a whole, as well as to its financing, asset management and capital market activities. In other words, the Reduction Claims cover all possible ING emissions.[884]

555. Milieudefensie refers to a variety of Voluntary Initiatives to substantiate these elements: the UNGPs, the OECD Guidelines, the PRB, GFANZ, and the NZBA Guidance.[885] However, they do not imply that emission reduction targets should cover all possible emissions. This follows from, among other things, (i) the principle of an impact-oriented approach; (ii) the broad recognition that the necessary methodologies and data are lacking; and (iii) the lack of consensus on the exact boundaries of Scope 3, Cat. 15 emissions. ING discusses these three circumstances below, but emphasises that this list is not exhaustive.

- All Voluntary Initiatives put forward by Milieudefensie adopt an impact-oriented approach.[886] These include the UNGP,[887] the OECD Guidelines,[888] the PRB,[889] GFANZ,[890] NZBA Guidance[891] (which has since been replaced by the UNEP FI Guidance[892]), and the Race to Zero campaign, which brings together various initiatives.[893] Other Voluntary Initiatives – such as PACTA[894] and TPT[895] – and the

884 See chapter 7 above.
885 Writ of Summons, nos. 944-949.
886 See sections 5.1 and 5.3 above.
887 See section 5.1 above.
888 See section 5.1 above.
889 UNEP FI, *Principles for Responsible Banking Guidance Document*, November 2021 ("PBR Guidance Document") (Exhibit ING-270), p. 13: "*Once your bank has identified its areas of most significant impact, assess which of those areas should be prioritized, and set targets in those areas*".
890 GFANZ, *Net-Zero Transition Plans* (Exhibit MD-219), p. 52: "*Establish and apply policies and conditions on priority sectors and activities*".
891 Milieudefensie notes this itself. See Writ of Summons, no. 946: "*The NZBA requires of banks that their emissions reduction targets relate to a significant majority of their financed emissions, including the emissions of all or a substantial majority of CO2 intensive sectors."* See also Writ of Summons, no. 962
892 UNEP FI Guidance (Exhibit ING-148), p. 10: "*Banks should prioritize sectors based on GHG emissions, GHG intensities and/or financial exposure in their portfolio in their first round of target setting.*"
893 RtZ Interpretation Guide (Exhibit MD-132), p. 4: "*In the transition to (net) zero, prioritise reducing real world emissions, limiting any residual emissions to those that are not feasible to eliminate.*"
894 PACTA prioritizes "*the most climate-critical*" sectors because these are responsible are "*for over 75% of all CO_2 emissions*". See PACTA (Exhibit ING-157), p. 23.
895 See, for example TPT Banks Sector Guidance (Exhibit ING-164), p. 21; TPT Disclosure Framework (Exhibit ING-170), p. 19.

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CSDDD[896] also take this approach. However, Milieudefensie fails to mention them. As part of the new SBTi standard – the SBTi FINZ – SBTi sets an explicit materiality threshold of 5% of total global turnover for target formulation.[897] Based on this SBTi materiality threshold, SBTi would not require ING to formulate targets for capital market transactions, for example.

- Target setting requires access to the necessary data and methodologies. However, emissions data, or at least reliable emissions data, is not always available.[898] Furthermore, there are no methodologies for identifying the emissions of all banking products and services.[899] None of the sources discussed recommend setting targets for asset management services provided by banks, for example. Voluntary Initiatives – including the PRB,[900] UN Expert Report,[901] GFANZ,[902] NZBA Guidance[903] (and its successor: the UNEP FI Guidance[904]), and the Race to Zero campaign[905] – recognise that the lack of necessary data and methodologies can hinder target

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896 See section 9.2.1 above.

897 SBTi FINZ (Exhibit ING-146), p. 7 and 24. SBTi additionally calls for "*prioritized action on emissions-intensive sectors*". See SBTi FINZ (Exhibit ING-146), p. 14.

898 See section 5.2 above.

899 For example, PCAF's methodologies for financed emissions are limited to ten types of financing (PCAF Financed Emissions (2025) (Exhibit ING-145), p. 9 and 33), while the methodology for facilitated emissions is limited to the role of lead bookrunner for a bond issue (PCAF Facilitated Emissions (Exhibit MD-142), p. 27). There is no widely accepted methodology for carbon accounting for other financing and services. EFRAG confirmed that "*for asset management there is no specific methodological guidance in IFRS S2 nor in ESRS, and there is a clear request from the industry to exempt preparers from reporting facilitated emissions (those managed on behalf of clients)*". See EFRAG, *Basis for Conclusions. Draft amended ESRS,* December 2025 (excerpt) (Exhibit ING-224), no. 116.

900 According to UNEP FI, banks should set targets "*where data and methodologies allow*". And it is specifically noted that "[g]*uidance on measuring facilitated emissions is in development*". See UNEP FI PRB 2022, "Foundations of Climate Mitigation Target Setting" ("UNEP FI Mitigation Target Setting") (Exhibit MD-218), p. 7-8.

901 The UN Expert Report acknowledges that products and services exist "*for which emissions cannot (at least to date) be calculated*". See UN Expert Report (Exhibit MD-134), p. 22.

902 GFANZ acknowledges "*that supporting pathways, tools, and methodologies may not be available for all situations*". See GFANZ, *Net-Zero Transition Plans* (Exhibit MD-219), p. 28.

903 NZBA Guidance (Exhibit MD-220), p. 4: "*Targets shall be set and/or disclosures should be made: Where data allow; Where methodologies (whether open-source or privately developed) exist; Where the sector/activity's emissions and/or financial exposures are significant; Where not restricted by regulatory requirements and/or commercially sensitive or proprietary information.*"

904 UNEP FI Guidance (Exhibit ING-148), p. 4: "*Targets should be set and/or disclosures should be made: Where data allow; Where methodologies (whether open-source or privately developed) exist; Where the sector/activity's emissions and/or financial exposures are significant; Where not restricted by regulatory requirements and/or commercially sensitive or proprietary information.*"

905 The Race to Zero "*recognizes that data availability is a limitation*" and states that targets should only be formulated "*where data availability allows* [emissions] *to be measures sufficiently*". See RtZ Interpretation Guide (Exhibit MD-132), p. 4.

formulation.[906] In general, the AFM acknowledges that the collection and use of data for climate purposes is still in its early stages (see section 5.2).

- There is also no consensus on the exact boundaries of banks' Scope 3, Cat. 15 emissions.[907] Some Voluntary Initiatives limit this to clients' Scope 1 and 2 emissions, while others also consider clients' Scope 3 emissions under certain circumstances.[908]

556. Thus, a more complete representation of Voluntary Initiatives reveals that there is no consensus on whether banks should set targets for all possible emissions. Firstly, companies can choose whether or not to implement the Voluntary Initiatives. Secondly, these initiatives allow companies, including banks, to focus their reduction targets on specific parts of their reported emissions. Consequently, the Voluntary Initiatives contradict elements 1 to 4 of the Reduction Claims. In addition, the following applies.

- Milieudefensie substantiates its position that separate reduction claims must be formulated for financed and facilitated emissions by referencing PCAF.[909] The citations that Milieudefensie references do not support its argument. PCAF recommends that financial institutions report financed and facilitated emissions separately. This is logical given that PCAF is a Voluntary Initiative that explicitly restricts its remit to carbon accounting and does not focus on target formulation.[910] Given the contribution that the financial sector can make to increasing transparency in the market, it would have been for Milieudefensie to explain the relevance of PCAF in this context and to recognise, accept and explain the distinction between reporting on the one hand, and target setting on the other hand. The PCAF recommendation is also logical on its own terms (see section 2.4).

- Milieudefensie cites no sources to substantiate its claim that there is a consensus on applying the reduction percentages from the IEA NZE

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906 As indicated in section 10.3.1 above, ING is of the view that Milieudefensie should not have disregarded the purpose and context of Voluntary Initiatives and drawn it out of context. Accordingly, ING has not included a reference to TPT here either, because strictly speaking TPT's recommendations in this regard do not refer to target setting, though TPT does acknowledge that "*there may be data and methodology limitations for some banking activities (e.g. methodologies for financed emissions may not cover all relevant asset classes, and methodologies for facilitated emissions may not cover all relevant banking activities)*". See TPT Banks Sector Guidance (Exhibit ING-164), p. 12.

907 See section 5.2 above.

908 See section 5.2 above.

909 Writ of Summons, nos. 1060-1061.

910 PCAF Facilitated Emissions (2022) (Exhibit MD-142), p. 19 ("*While other climate initiatives focus on scenario analysis and target setting, PCAF has been established to focus solely on the GHG accounting of financial activities.*") and p. 33 ("*However, target setting methodologies are a distinct topic, and not the remit of PCAF.*"). See also PCAF Financed Emissions (2025) (Exhibit ING-145), p. 166.

scenario at both the sectoral and sub-sectoral levels. Milieudefensie substantiates this element solely by referencing the CBDR Principle.[911] As explained in section 10.2.3, no specific legal norms can be inferred from the CBDR Principle. This shows that the specific norm set by Milieudefensie (the application of IEA NZE percentages at the sectoral and sub-sectoral levels) is not knowable, and that there is no consensus on it.

- Furthermore, Voluntary Initiatives in general do not imply that reduction targets should be formulated at the sub-sectoral level. For example, the UN Expert Report does not require banks to set sectoral targets, while Race to Zero,[912] PRB[913] and GFANZ[914] do not require them to set sub-sectoral targets.[915] The NZBA Guidance (and it successor the UNEP FI Guidance[916]) limits this to "*significant sub-sectors or parts of the value chain*" and emphasises that it varies from bank to bank as to "*which parts of the value chain or sub-sector must be included*".[917] SBTi FINZ distinguishes between different sub-sectors,[918] although its classification system differs from that of Milieudefensie.[919]

557. With regard to elements 1 to 4, which themselves contain specific purported legal norms, Milieudefensie has constructed its desired approach as outcome based on a selection of sources, parts of sources, a misuse of sources with a purpose different from the purpose for which these sources have been drafted, and combinations thereof. It should also be noted that the sources themselves indicate that they only present ways to act voluntarily. As explained in sections 8.2.2 and 8.3, further criteria must be met for there to be consensus on a legal duty and its enforceability. Milieudefensie's Writ of Summons only demonstrates the absence thereof.

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911 Writ of Summons, no. 996.

912 Race to Zero recommends "*specific sectoral targets relevant to the sectors they mostly work in*", and does not mention sub-sectors. See RtZ Interpretation Guide (Exhibit MD-132), p. 11.

913 The PRB recommends setting targets on certain "*activities or sectors*". See PBR Guidance Document (Exhibit ING-270), p. 14.

914 GFANZ only recommends that banks set targets at "*sector level*". See GFANZ 2022, "Guidance on the Use of Sectoral Pathways for Financial Institutions" ("GFANZ, *Sectoral Pathways*") (Exhibit MD-221), p. III.

915 For completeness, ING points out that TPT only states that targets at "*sector level*" need to be disclosed, which is in line with the conclusion that sub-sector level targets are not required. See TPT Banks Sector Guidance (Exhibit ING-164), p. 35.

916 UNEP FI Guidance (Exhibit ING-148), p. 10 and footnote 28.

917 NZBA Guidance (Exhibit MD-220), p. 9 and footnote 28.

918 SBTi FINZ (Exhibit ING-146), p. 64-67.

919 Thus, unlike Milieudefensie, SBTi does not ask for overall targets for the overarching "*Sector Group"* it has identified. Thus, unlike Milieudefensie, SBTi FINZ does not require a (separate) target for, say, the "Industrial" sector. See SBTi FINZ (Exhibit ING-146), p. 55-56 in conjunction with p. 60-67. In addition, the sub-sectors in Milieudefensie's claims do not match the sectors highlighted in SBTi FINZ. For example, unlike Milieudefensie, SBTi FINZ does not require sectoral targets for the sub-sectors "Chemicals", "Iron" and "Aluminum". See Writ of Summons, no. 2.

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(2) Elements 5 and 6: The Reduction Claims require both absolute and intensity reduction

558. The Reduction Claims cover both absolute and intensity targets. Milieudefensie argues that these elements of the Reduction Claims are supported by various Voluntary Initiatives, including the Race to Zero campaign, UN Expert Report, the OECD Guidelines, the UNGPs, the PRB, NZBA Guidance, GFANZ, the GHG Protocol and PCAF.[920] Firstly, none of these Voluntary Initiatives endorses Milieudefensie's claim that both types of reduction target must be set, let alone that these reductions are obligations of result. The cumulative effect of this is that the reduction duties are much more far-reaching than if the two types of reduction were considered separately. The Voluntary Initiatives do not in any way endorse the idea that companies should subject themselves to both regimes and self-impose such far-reaching reductions, let alone as an obligation.

559. However, these Voluntary Initiatives do not provide a clear picture or general notion of which type of target should be used. Many Voluntary Initiatives are in fact critical of the use of absolute targets by financial institutions, as these targets do not necessarily lead to actual emission reductions in the real economy.[921]

560. Milieudefensie also misrepresents the content of the Voluntary Initiatives. For example, Milieudefensie refers to the PRB to support its argument that both absolute and intensity targets should be set.[922] The PRB in fact leaves it up to banks to determine what kind of targets they set: "*emissions-based targets (either absolute or intensity)*".[923] This is also evident from the quote referenced by Milieudefensie, which states that while it is important "*to disclose*" data on both absolute emissions and emission intensity, "*an intermediate sector target may be set on an absolute or intensity basis*".[924]

561. Similarly, Milieudefensie suggests that the NZBA Guidance requires banks to set absolute targets.[925] This too is incorrect. Like its successor, the UNEP FI Guidance, the NZBA Guidance explicitly leaves it up to banks to decide whether to set absolute targets, sector-specific targets, or both.[926]

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920 Writ of Summons, nos. 497, 514, 541, 890, 935, 944-950 and 972-976.

921 See section 5.3 above. See also chapter 11 below. The AFM also recognises that the ultimate goal of the transition is that reductions in emissions must take place in the real economy in AFM 2025 (Exhibit ING-149) p, 16, where the AFM notes that "[a]*n adjustment of portfolio composition by financial institutions* [...] *may indeed lead to lower reported financed emissions, but* [...] *does not yet necessarily* [lead] *to lower emissions in the real economy*" and according to the AFM, it is therefore "*also important to look deeper than financed emissions at the portfolio level for an assessment of institutions' contribution to sustainability.*"

922 Writ of Summons, no. 945.

923 UNEP FI Mitigation Target Setting (Exhibit MD-218), p. 8.

924 UNEP FI Mitigation Target Setting (Exhibit MD-218), p. 9 (underlining added).

925 Writ of Summons, no. 946.

926 NZBA Guidance (Exhibit MD-220), p. 8: "*Targets shall be set based on: Absolute emissions; and/or Sector-specific emissions intensity*"; UNEP FI Guidance (Exhibit ING-148), p. 8.

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562. Milieudefensie also believes that the Race to Zero campaign indicates that "*a combination of absolute reduction targets and intensity targets is important for financial institutions per sector*".[927] In addition to the Race to Zero campaign failing to demonstrate this in general terms, Milieudefensie also omits from its Writ of Summons the fact that the Race to Zero campaign emphasises the usefulness of intensity targets for financial institutions, given that transition financing can lead to a temporary increase in absolute emissions.

> "*In addition, for finance institutions and others with "indirect" emissions, intensity targets may be helpful for tracking the process of decarbonization. For example, putting additional investment into the steel sector to finance the development of zero-carbon production technology may lead to a temporary increase in absolute financed emissions, but represents an activity that is needed to drive transformative decarbonization, which could be traced by measuring the carbon intensity of the steel sector over time.*"[928]

563. Milieudefensie also refers to GFANZ, arguing that this Voluntary Initiative insists on "*the application of an absolute reduction target in addition to any intensity targets*".[929] This is incorrect. GFANZ does not insist on absolute reduction targets, but merely advises banks that both absolute and intensity targets "*should be considered*".[930] In this context, GFANZ rightly reflects that the ultimate goal is to reduce actual emissions, as banks' reported emissions can paint a very different picture.[931]

564. Milieudefensie again refers to PCAF to support its argument.[932] As ING has explained above, Milieudefensie fails to substantiate the relevance of PCAF in setting targets.[933] In any case, PCAF notes that absolute emissions are useful for establishing a base year, but intensity data is typically employed for setting targets.[934]

565. Finally, Milieudefensie believes that intensity targets cannot be formulated for all sectors and sub-sectors, as it is not always possible to identify a uniform unit of measurement.[935] Moreover, this is not a reason to adopt absolute targets, let alone turn them into legally enforceable duties.

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927 Writ of Summons, nos. 497, 974.
928 RtZ Interpretation Guide (Exhibit MD-132), p. 8-9. See also section 5.3 above.
929 Writ of Summons, nos. 947-948 and 975.
930 GFANZ, *Net-Zero Transition Plans* (Exhibit MD-219), p. 79.
931 GFANZ, *Net-Zero Transition Plans* (Exhibit MD-219), p. 8: "*Actions taken by financial institutions to decarbonize their portfolios and business may not drive real-world decarbonization*".
932 Writ of Summons, no. 935.
933 See no. 556 above.
934 PCAF Financed Emissions (2022) (Exhibit MD-141), p. 21-22. See also PCAF Financed Emissions (2025) (Exhibit ING-145), p. 15-16 and section 5.3 above.
935 Writ of Summons, no. 968.

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566. Thus, there is no consensus among Voluntary Initiatives on what type of targets banks should use. That is even separate and in addition to the basic reality that none of these initiatives as such considers that what is being reflected therein, qualifies as a legal obligation or should qualify as such.

(3) Element 7: Reduction Claims prescribe specific reduction pathways with specific reduction percentages and base years

567. Milieudefensie argues that ING has an obligation to reduce emissions by a specific percentage. Milieudefensie bases this percentage on the findings of the IPCC and the IEA NZE scenario.[936] As ING explained in section 10.2.2 above, these and other transition pathways are not suitable as a direct source of obligations for individual companies, and there is no consensus on which specific transition pathway the climate transition should follow. Voluntary initiatives also fail to provide an unambiguous vision of which transition pathways should be used.[937]

568. In this context, Milieudefensie argues that it would be problematic to use transition pathways other than the IEA NZE scenario, as there is a risk of cherry picking reduction percentages. Milieudefensie refers here to the risk of choosing the transition pathway with the lowest possible reduction percentage for each sector, which would result in the overall reduction exceeding the global carbon budget.[938] Milieudefensie quotes GFANZ in this context.[939] However, GFANZ does not advise against using different transition pathways. It merely recommends that financial institutions consider the effects across their entire loan portfolio when using different transition pathways.[940] As Milieudefensie recognises, this can be done, and ING does so in practice.[941] The use of different transition pathways is therefore in line with this, and the qualification of that use as cherry picking is also not an accurate way to describe that practice.

(4) Element 8: Reduction Claims require firm commitments for 2030, 2035, 2040 and 2050

569. The Purported Duties essentially entail fixed targets being imposed on ING for the next 24 years. ING would not allowed to update its targets.[942]

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936 See chapter 7 above.
937 See section 5.3 above.
938 See Writ of Summons, nos. 1004-1006.
939 See Writ of Summons, no. 1005.
940 See Writ of Summons, no. 1005; GFANZ, *Sectoral Pathways* (Exhibit MD-221), p. 13.
941 See Writ of Summons, no. 1006.
942 See, for example, Writ of Summons, no. 1014.

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570. In contrast, Voluntary Initiatives such as the UN Expert Report,[943] GFANZ,[944] SBTi,[945] Race to Zero,[946] and TPT emphasise the importance of updating targets based on the latest developments.[947] The same applies to the Voluntary Initiatives on which Milieudefensie itself relies. For example, the NZBA Guidance (and its successor the UNEP FI Guidance[948]) emphasises that targets must be reviewed at least every five years "*to ensure consistency with the latest science" and "as needed to reflect significant changes that might compromise the relevance and consistency of the existing targets*".[949] The same is true of the CSRD.[950] Before it is scrapped by the Omnibus Package, the obligation under the currently applicable CSDDD Climate Transition Plan entails the right, but also the duty, to evaluate the plan annually and revise it if necessary.[951]

571. Thus, the Voluntary Initiatives demonstrate a consensus on the importance of updating reduction targets. However, no rigid, fixed and entirely inflexible obligation can be distilled from them for banks over the next 24 years.

(5) Element 9: The Reduction Claims require linear reduction

572. According to Milieudefensie, ING must ensure that reductions proceed "*linear or faster every year*".[952] However, Milieudefensie does not provide any sources to support this claim. Instead, it attempts to substantiate this element of the Reduction Claims by referencing case law concerning the risk of exceeding the emissions budget.[953] However, this case law concerns the climate obligations of states, not companies. Thus, Milieudefensie's reasoning does not support its position.

573. Furthermore, Voluntary Initiatives do not imply an obligation for banks to achieve a linear reduction target. For example, the Race to Zero campaign, frequently cited by Milieudefensie in other contexts, notes that "*change may not be linear, in particular for hard-to-abate sectors*", meaning that the average reduction percentage of "*7%/year may be more/less ambitious depending on baseline, sector and geography.*"[954] Similarly, GFANZ emphasises that "*in reality,*

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943 UN expert report (Exhibit MD-134), p. 21-22.
944 GFANZ, *Net-Zero Transition Plans* (Exhibit MD-219), p. 15: "*Transition planning is not a one-time exercise. As the global net-zero transition progresses and financial institutions assess their strategies with improved and new climate-related scenarios and sectoral pathways, it is important that transition plans are regularly reviewed and updated, especially in light of the rapid pace of change.*"
945 SBTi FINZ (Exhibit ING-146), p. 40.
946 RtZ Interpretation Guide (Exhibit MD-132), p. 12.
947 TPT Disclosure Framework (Exhibit ING-170), p. 19.
948 UNEP FI Guidance (Exhibit ING-148), p. 18.
949 NZBA Guidance (Exhibit MD-220), p. 18.
950 See section 9.2.1 above.
951 Article 22(3) CSDDD.
952 See section 7.2 above.
953 Writ of Summons, nos. 1063-1069. See also Writ of Summons, no. 29-31, where Milieudefensie discusses the emissions budget and the importance of interim targets.
954 RtZ Interpretation Guide (Exhibit MD-132), p. 7.

transformations often follow non-linear trajectories, where exponential growth in technology may suddenly occur",[955] and the PRB refers to "*the non-linear process that financial institutions can embark on to achieve Paris alignment*".[956] The OECD Guidelines, UNEP FI Guidance, OECD Guidance, TPT Disclosure Framework and TPT Banks Sector Guidance likewise do not include any recommendations for linear reductions. However, SBTi FINZ does address this issue and, where sectors are within scope, allows the choice of either a linear pathway or sectoral targets.[957]

574. Thus, the Reduction Claims are not supported by the Voluntary Initiatives, and are in fact contradicted by them.

10.3.3 No consensus on the Exclusion Claims

575. The Exclusion Claims, like the Reduction Claims, consist of multiple elements, as discussed in section 7.3 above. Voluntary Initiatives do not reflect consensus on these elements.

(1) Element 1: Exclusion Claims concerning "financing and facilitation"

576. To substantiate its claim that ING has an exclusion obligation in certain cases, Milieudefensie refers to the UNGPs and the OECD Guidelines. According to Milieudefensie, these guidelines constitute "*important objective reference points*"[958] and reflect "*a universal behaviour norm*".[959] This is incorrect.

577. Firstly, the UNGPs and the OECD Guidelines do not support Milieudefensie's argument. Before addressing this, ING would like to note that the EU legislator has partially codified the UNGPs and the OECD Guidelines, making conscious choices about which elements it wished to elevate to legal duties and which ones it did not. The EU legislator has done so with explicit consideration of what it deems to be an appropriate legal obligation.[960] For example, climate change is not covered by the concept of "adverse environmental impact" in the CSDDD, whereas it is in the UNGPs and OECD Guidelines.[961] In addition, the scope of the due diligence obligations for financial undertakings is limited to their upstream activities. Clients are not included in this scope.[962] The Exclusion Claims conflicts

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955 GFANZ, *Sectoral Pathways* (Exhibit MD-221), p. 32.
956 PBR Guidance Document (Exhibit ING-270), p. 17.
957 This suggested linear reduction does not apply to loans to SME clients, certain real estate financing, or financing to governments and public authorities. See SBTi FINZ (Exhibit ING-146), p. 57-58.
958 Writ of Summons, no. 895.
959 Writ of Summons, no. 534.
960 See section 2.4 above.
961 See no. 108 above.
962 See no. 108 above.

with the CSDDD[963]; for this reason alone, it cannot reflect the required consensus on a knowable, generally accepted norm.

578. The EU legislator has, after all, expressly referred to these non-binding instruments, but also deliberately deviated from them when establishing binding legal obligations. Despite this, Milieudefensie has not explained why the court should attach great importance to the UNGPs and OECD Guidelines when interpreting ING's legal duties on the basis of the duty of care, contrary to the law and the choices made by the legislator. Furthermore, the results of the exploratory study into possible climate measures for the financial sector show that "*many parties have spoken out against the tightening of existing European climate engagement policy obligations at a national level*".[964] Milieudefensie is mistaken in thinking that the fact that ING does in fact apply these instruments changes the above.[965] In fact, the question is whether this amounts to societally accepted legal norm. The decision by one individual company, in this case ING, to voluntarily incorporate an instrument into its actions and approach is not as such relevant to answering this question. If, moreover, individual legal obligations come into existence on the basis of voluntary choices by individual companies, this will lead to fragmentation of rules which is not desirable in itself as professor Ringe explains in his report – in addition to the *chilling effect* discussed before. If, on the other hand, individual choices by individual companies lead to the existence of general legal obligations applicable to various categories of companies, then this shows that Milieudefensie is essentially seeking to establish news legislation in these proceedings.

579. Even if the UNGPs and OECD Guidelines did reflect consensus in this area, these Voluntary Initiatives would still not provide grounds for the Exclusion Claims. One important part of the due diligence process involves identifying and assessing adverse impacts involving the company. Such involvement can take three forms: (i) causation of; (ii) contribution to; and (iii) a direct link.[966] In the context of providing financing, the evaluation of involvement is predicated on the actions of a bank – rather than the outcome.[967]

580. A direct link requires a connection between the financing provided by a bank and an adverse impact caused by a client:

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963 See section 9.2.2.2 above.

964 Appendix to *Parliamentary Papers II* 2024/25, 32 013, no. 304 (Report of responses to survey of climate measures for the financial sector) (Exhibit ING-250), p. 6.

965 Writ of Summons, no. 1087.

966 See section 5.1 above.

967 OHCHR Application for Banking Sector (Exhibit ING-143), p. 9: "*Whether a situation is one of incentivizing or of facilitating, contribution to human rights harm is tied to a bank's actions or omissions, not the outcome, i.e. the existence of harm. If it was defined by the outcome (i.e. whether harm occurred) then a bank would be considered to have contributed to any harm associated with its financial products or services, regardless of its efforts to identify and mitigate risk. This would not be a reasonable standard and it is not what is expected under the UNGPs.*"

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> "*Providing a financial product or service creates a business relationship between the bank and the client for the purposes of the UNGPs. However, the mere existence of such a business relationship does not automatically mean that there is a direct link between an adverse impact and the bank's financial product or service. For UNGP 13(b) to apply, the link needs to be between the financial product or service provided by the bank and the adverse impact itself.*"[968]

581. An even higher threshold applies in the case of "*contribution to*". This requires the financing to induce the client to cause or contribute to the adverse impact. This contribution must be substantial.[969] Contrary to what Milieudefensie suggests,[970] merely providing financing is insufficient for it to qualify as a "*contribution to*".[971]

582. There is no *contribution to* or *direct link* between ING and climate change or adverse climate impact. The necessary link between financing and that adverse climate impact[972] is absent. This is particularly true with regard to the financing of group companies that are not involved in "New Fossil Fuel Projects". Furthermore, Milieudefensie fails to clarify *whether* and *why* this threshold was crossed due to ING's actions with regard to its clients in the fossil fuel sector.

583. The OECD Guidelines go on to consider that a *contribution to* does not mean a company is obliged to terminate its client relationship, let alone immediately. According to the OECD Guidelines and UNGPs, companies should use their leverage to prevent or mitigate adverse impacts, and ensure that they cease to contribute to them.[973] The OECD Guidelines favour engagement and cooperation with clients to end adverse impacts rather than their exclusion.[974] For banks, this means that the adverse impacts of terminating a financing relationship must also be considered.[975] Consequently, the OECD Guidelines and UNGPs provide no basis for the Exclusion Claims, which leave no room for such considerations. Nor

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968 OHCHR Application for Banking Sector (Exhibit ING-143), p. 6.

969 The following factors are taken into account when assessing whether a substantial contribution has been made: (i) the degree to which the bank's activities increased the risk of the impact occurring, (ii) the degree of foreseeability of the impact, and (iii) degree to which actions taken by the bank actually mitigated or decreased the risk of that impact. See OECD Corporate Lending and Securities Underwriting (Exhibit MD-235), p. 43-44.

970 Writ of Summons, nos. 547-549 and 893. In this context, Milieudefensie refers to a letter sent by several United Nations Special Rapporteurs to Saudi Aramco and some of its financiers. However, this letter precisely confirms that merely providing financing is insufficient for it to qualify as a "contribution to". The letter outlines the specific circumstances that led the Special Rapporteurs to conclude that providing financing is possibly not in line with chain responsibility. See the letter from UN experts to JP Morgan Chase & Co (Exhibit MD-139), p. 2-5 and 7.

971 The OHCHR emphasizes that "[t]*he primary activity, i.e. providing a financial product or service, is not inherently problematic – it is in fact an important service to commerce – and as such not the facilitating factor in and of itself because the potential for abuse relates to external factors, i.e. the decisions of the client*." See OHCHR Application for Banking Sector (Exhibit ING-143), p. 8.

972 See section 5.1 above.

973 See section 5.1 above.

974 See no. 202 above.

975 OHCHR Application for Banking Sector (Exhibit ING-143), p. 13.

is the categorical and rigorous exclusion of an entire sector on this basis appropriate.

584. There are also other Voluntary Initiatives that do not endorse the Exclusion Claims. For example, the NZBA Guidance[976] (and the successive UNEP FI Guidance[977]), and GFANZ,[978] also favour engagement over divestment. Like the OECD Guidelines, GFANZ implies that terminating a client relationship should be a last resort.[979] Furthermore, various Voluntary Initiatives, including GFANZ,[980] TPT,[981] and the NZBA,[982] highlight the potential consequences of withdrawing financing from emission-intensive sectors.[983] SBTi also favours engagement over divestment.[984] The latest SBTi standard recommends that, in a limited number of cases, banks should stop providing new financing to oil and gas companies from 2030 onwards, but not even this recommendation goes as far as Milieudefensie's Exclusion Claims.[985]

585. Contrary to the above, Milieudefensie cites Voluntary Initiatives that allegedly support its Exclusion Claims. Yet that is not the case. The Race to Zero campaign states that, if the relevant targets are not achieved after 12 months of engagement, "appropriate escalation" should take place.[986] Milieudefensie quotes this, but then provides an incomplete and distorted account of what the

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976 NZBA Guidance (Exhibit MD-220), p. 12: "*Banks should support the necessary transition in the real economy through client engagement and offering products and services to support clients' transition, as appropriate.*"

977 UNEP FI Guidance (Exhibit ING-148), p. 11: "*Banks should support the necessary transition in the real economy through client engagement and offering products and services to support clients' transition, as appropriate.*"

978 GFANZ, *Net-Zero Transition Plans* (Exhibit MD-219), p. 62.

979 GFANZ, *Net-Zero Transition Plans* (Exhibit MD-219), p. 62.

980 GFANZ, *The Managed Phaseout of High-Emitting Assets*, June 2022 (Exhibit ING-271), p. 5: "*While withdrawal of finance can encourage decarbonization, it can also potentially have the unintended consequence of prolonging the life of high-emitting assets and even worsen their GHG emissions profile if they are transferred to those with less climate ambition, disclosure, or scrutiny*".

981 TPT Banks Sector Guidance (Exhibit ING-164), p. 22: "*When disclosing any potential trade-offs, synergies, or co-benefits identified between its objectives and priorities, an entity may include:* […] *reducing portfolio emissions and climate vulnerability through divestment and capital reallocation, versus reducing real-world emissions and building climate resilience through engagement with new and/or existing clients and customers.*"

982 NZBA Transition Finance Guide (Exhibit ING-264), p. 10: "*Divesting from carbon-intensive sectors may sound like a simple, quick way for a bank to lower its financed emissions and meet their short- or medium-term targets. While this may be true for certain banks, divestment may not be an appropriate path because: Divestment alone will not reduce emissions in the real economy. As discussed throughout this guide, if the emissions of the real economy reach net zero, banks' financed emissions will reach net zero. The reverse, however, is not true. Creation of "climate shadow banking." While some banks may wish to achieve their net-zero target through divestment, the real economy firms (i.e., borrowers) may seek funding from other banks or non-bank financial institutions ("NBFIs") that may be less climate conscious or agnostic to the climate impact of their business activities. These circumstances are known as "climate shadow banking." A massive divestment may cause economic and social dislocations, as well as financial instability.*"

983 See section 11.3 below.

984 SBTi FINZ (Exhibit ING-146), p. 8 and 33.

985 SBTi FINZ (Exhibit ING-146), p. 35. SBTi FINZ's advice is limited to (i) new financial products; (ii) with an unknown use of proceeds; and (iii) applies from 2030 onwards.

986 RtZ Interpretation Guide (Exhibit MD-132), p. 8, as quoted in the Writ of Summons, no. 498.

source actually implies. In the sentences immediately following the quotation in Milieudefensie's Writ of Summons, several examples of "appropriate escalation" are given in the case of shareholders, who – unlike banks – have voting rights and can simply sell their shares. Exclusion is again described as a "last resort":

> "*For finance entities, engagement with client and investees shall be in line with the 1.5C pathway, with appropriate escalation in place if the targeted outcome is not achieved within 12 months of engagement. For example, for companies that fail to present a credible 1.5C aligned transition plan, shareholders can escalate the engagement by (co)filing shareholder resolutions, voting against management proposed climate transition plan if it fails to meet the 1.5C criteria, voting against the Board, and using divestment as the last resort.*"[987]

586. Milieudefensie also notes that the Race to Zero campaign suggests that, in the absence of a transition plan, divestment is the only option.[988] However, this too offers no support for the Exclusion Claims. After all, the Exclusion Claims are not linked to the existence of a transition plan, but simply to the existence of any link with New Fossil Fuel Projects.

587. Milieudefensie also refers to the PRB.[989] It argues that this document cites the termination of a client relationship or the controlled phasing out of assets as one of the escalation options. According to Milieudefensie, this implies that "*ceasing the financing of clients that have not drawn up a good climate transition plan or have failed to properly implement such a plan are also considered to be a necessary and feasible measure*".[990] However, although the PRB does mention this as an option, it goes on to state that, in this case, "*emissions in the real economy would continue, which is why engaging with clients is an important aspect and cannot be neglected on the pathway to impact*".[991] Nor does this suggest, as Milieudefensie claims, that exclusion is regarded as a feasible measure. Notions arising from the PRB are, in fact, consistent with the considerations of policymakers (see section 2.5) regarding the usefulness of banks' client relationships, as well as the actual and logical consequences of terminating them (see sections 11.4 to 11.6).

588. Thus, the Voluntary Initiatives indicate that termination of a client relationship is, and should be considered, a last resort. This requires an individual assessment of interests in each situation and does not necessarily lead to a reduction in emissions. This is not in line with the categorical and rigorous exclusion demanded by Milieudefensie.

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987 RtZ Interpretation Guide (Exhibit MD-132), p. 8.
988 Writ of Summons, no. 1089.
989 Writ of Summons, no. 1093.
990 Writ of Summons, no. 1093.
991 UNEP FI, *Theory or Change for Climate Mitigation*, February 2023 (Exhibit ING-272), p. 3-4.

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(2) Element 2: The Exclusion Claims cover all possible involvement in "New Fossil Fuel Projects"

589. The Exclusion Claims cover all companies involved in "New Fossil Fuel Projects", whether directly or through a group company.[992]

590. However, the Voluntary Initiatives do not imply that a categorical exclusion obligation applies. As discussed at nos. 584 and 585, the Voluntary Initiatives imply that exclusion is a "last resort" and that a weighing of interests must always be carried out on a case-by-case basis.

591. With regard to banks, the OECD emphasises that exclusion is not intended to be applied categorically to a large group of clients:

> *"the* [OECD Guidelines] *do not recommend categorical 'de-risking'. Generally, rather than completely avoiding contexts that raise potential risks, banks are encouraged to engage with clients to ensure that these risks can be/are responded to effectively.*"[993]

592. The OECD also explicitly warns that categorical exclusion could lead to "*alternative, less regulated, forms of financing*" and the loss of "*opportunities for potentially raising standards in high-risk sectors*".[994]

593. The Race to Zero campaign also demonstrates that the objective is not just to categorically exclude groups of clients or the fossil fuel sector. On the contrary, it emphasises that policies for phasing out fossil fuels must not have adverse impacts. These consequences include "*inhibiting activities that would involve engaging with fossil fuel assets in order to accelerate their phaseout, or simply passing fossil fuel assets from one owner to another*".[995]

594. Finally, Milieudefensie refers to the UN Expert Report, from which it concludes that "*all companies and financial institutions must cease investing in new fossil fuel projects*".[996] However, Milieudefensie fails to appreciate that the purpose of the UN Expert Report is simply to make recommendations on how to discourage greenwashing with regard to net zero pledges. It is not intended to provide general regulations.[997] The UN Expert Report states that, if such a commitment is made, "*financial institutions must include a commitment to end financing and investing in support of (i) exploration for new oil and gas fields, (ii) expansion of*

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992 See section 7.3 above.
993 OECD Corporate Lending and Securities Underwriting (Exhibit MD-235), p. 52. For the sake of completeness: when a company contributes to a negative impact through its business relationships, it should end this contribution. See OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, 1 February 2018 (Exhibit ING-273), p. 75.
994 OECD Corporate Lending and Securities Underwriting (Exhibit MD-235), p. 52.
995 RtZ Interpretation Guide (Exhibit MD-132), section 5.
996 Writ of Summons, no. 1041.
997 See section 10.3.1 above.

oil and gas reserves, and (iii) oil and gas production".[998] The report refers to the IEA and the IPCC for guidance on the timeframe for achieving this.[999] The UN Expert Report calls on the IEA and the IPCC "*to clearly define phase out dates for all fossil fuels in line with a just global transition*".[1000] It therefore does not follow from the UN Expert Report that all financial institutions are required, in the short term, to cease all financing of a broad group of companies that have any involvement whatsoever with "New Fossil Fuel Projects".

595. The above is even more applicable to companies that are not directly involved in "New Fossil Fuel Projects", but through a group company. None of the Voluntary Initiatives cited by Milieudefensie in the context of the Exclusion Claims argue that the obligation to exclude companies should go this far. This also makes sense. After all, in such cases, the link between financing and adverse climate effects is even weaker.

596. Thus, the Voluntary Initiatives oppose the obligation to categorically exclude all companies involved in "New Fossil Fuel Projects", whether directly or through a group company.

(3) Element 3: Exclusion must take effect within three or twelve months

597. The Exclusion Claims mean that client relationships must be terminated within three months for new services and within twelve months for existing services.[1001]

598. Milieudefensie does not provide any justification for the three-month timeframe. Milieudefensie refers to the Race to Zero campaign to justify the twelve-month timeframe.[1002] As discussed at no. 585, this merely suggests that "*appropriate escalation*" should occur, with, in the case of a shareholder, termination of the client relationship being a "*last resort*". This does not align with the fixed timeline advocated by Milieudefensie. Other Voluntary Initiatives referred to by Milieudefensie[1003] make no mention of the timeframe for escalation within the engagement process.

599. Thus, there are well-considered and substantiated views on the undesirability of the Exclusion Claims, meaning there is no consensus on it.

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998 UN expert report (Exhibit MD-134), p. 24.

999 UN expert report (Exhibit MD-134), p. 23: "*All net zero pledges should include specific targets aimed at ending the use of and/or support for fossil fuels in line with IPCC and IEA net zero greenhouse gas emissions modeled pathways that limit warming to 1.5°C with no or limited overshoot, with global emissions declining by at least 50% by 2030, reaching net zero CO2 emissions by 2050, followed by net zero greenhouse gas emissions soon after.*"

1000 UN expert report (Exhibit MD-134), p. 23: "*There is an urgent need for the IPCC and the IEA to clearly define phase out dates for all fossil fuels in line with a just global transition.*"

1001 See section 7.3 above.

1002 Writ of Summons, nos. 498, 1044, 1088.

1003 This concerns the OECD guidelines and the UNGPs. See Writ of Summons, nos. 1087, 1089 and 1211.

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10.3.4 Voluntary Initiatives refute the CTP Claim

600. The CTP Claim also consists of multiple elements.[1004] Before addressing these elements, ING would like to point out that Milieudefensie does not actually substantiate that any legal duty exists. Milieudefensie simply contends that this is "[a]*n obvious instrument*" given that " *many large corporate clients of ING* [are] already obliged *to draw up a climate plan*".[1005] Milieudefensie refers to the CSDDD in this context. As set out in section 9.2.1 above, the EU legislator has decided to scrap the CSDDD Climate Transition Plan Obligation. Consequently, this argument is no longer relevant. Furthermore, Voluntary Initiatives contradict each and every element of the CTP Claim.

(1) Element 1: The CTP Claim involves requesting climate transition plans on an annual basis

601. The CTP Claim stipulates that ING must request climate transition plans from its clients on an annual basis. Voluntary Initiatives contradict the existence of such an obligation. For example, there is no mention of requesting climate transition plans in the UN Expert Report, the Race to Zero Interpretation Guide or the SBTi FINZ. It is only presented as an option in the TPT Banks Sector Guidance.[1006] Nor does such obligation follow from the Voluntary Initiatives that Milieudefensie uses to substantiate the CTP Claim, i.e. the PRB, GFANZ and NZBA Guidance.[1007]

602. According to Milieudefensie, the PRB explicitly mentions "*policy in the area of engagement, including requirements for climate transition plans, explicitly as part of a bank's climate policy*".[1008] Milieudefensie also argues that this implies that "*requiring climate transition plans of (large corporate clients)* [...] [are] *necessary and feasible measures*".[1009] However, Milieudefensie is misrepresenting the facts in doing so. As discussed in no. 560 above, the PRB page to which Milieudefensie refers only provides a few examples of how a bank could convert targets into an action plan.[1010] Requesting climate transition plans is mentioned as one of eighteen examples. Therefore, it remains unclear on what basis Milieudefensie concludes that the PRB considers the annual request for a climate plan to be a legally enforceable norm. Furthermore, Milieudefensie fails to explain why this is a necessary measure, either in general or in the case of ING.

1004 See section 7.4 above.
1005 Writ of Summons, no. 1092.
1006 TPT Banks Sector Guidance (Exhibit ING-164), p. 23-24.
1007 Writ of Summons, no. 1093.
1008 Writ of Summons, no. 1093.
1009 Writ of Summons, no. 1093.
1010 UNEP FI PRB 2023, "Target Setting FAQ" (Exhibit MD-217), p. 12: "*Examples of action plan components* [...] *Client engagement policies and processes incl. demands for transition plans.*"

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603. Milieudefensie states that GFANZ aims "*to support and accelerate the development of climate transition plans of companies in the real economy*".[1011] Milieudefensie also believes that GFANZ "*expects of banks that they exert leverage on their clients and portfolio companies in order to ensure that clients determine and implement climate transition strategies and plans*".[1012] However, this does not follow from the quotes cited by Milieudefensie. The quotes merely indicate that GFANZ encourages banks to use their influence to reduce emissions in the real economy.[1013] This does not imply that GFANZ believes banks should request climate transition plans annually.

604. Milieudefensie also claims that the NZBA Guidance "*refers*" to "*the evaluation of clients' transition plans*" in the context of engagement.[1014] In any case, this does not mean that the NZBA Guidance – or its successor, the UNEP FI – can be interpreted as requiring banks to request a climate transition plan annually. While banks are encouraged to be transparent about how they evaluate transition plans, the NZBA Guidance and UNEP FI do not require them to request them annually.[1015]

605. Thus, the Voluntary Initiatives do not support the idea that banks should request climate transition plans from their clients annually. For the sake of completeness, ING recognises the added value of – in its own way – collecting these climate transition plans in order to manage climate risk, among other things. ING already collects transition plans from a large number of clients on a voluntary basis for this reason.[1016] However, this does not constitute a legal duty.

(2) Elements 2 and 3: The CTP Claim focuses on large corporate clients and sets specific requirements for climate transition plans

606. Milieudefensie fails to substantiate these elements of the CTP Claim. As ING has explained in the preceding paragraphs, the Voluntary Initiatives do not impose an obligation to request climate transition plans, let alone impose these specific requirements.

10.3.5 No consensus on the elements of the Claimed Measures, let alone in combination

607. There is no consensus on Milieudefensie's Purported Duties or specific elements thereof. Nevertheless, Milieudefensie believes that ING is bound by "*a combination*" of the Purported Duties.[1017] However, not a single source advocates

1011 Writ of Summons, no. 1093.
1012 Writ of Summons, no. 1093.
1013 Writ of Summons, no. 1093.
1014 Writ of Summons, no. 1093.
1015 NZBA Guidance (Exhibit MD-220), p. 10-11; UNEP FI Guidance (Exhibit ING-148), p. 10-11.
1016 See section 6.4 above.
1017 Writ of Summons, no. 907.

"*a combination of*" all elements of the Purported Duties. Not for companies in the real economy, and certainly not for a bank.

10.3.6 Impossibility of performance precludes the existence of an obligation of result

608. Milieudefensie claims that the court should rule that the Purported Duties are obligations of result.[1018] Milieudefensie does not substantiate this claim, nor is there any apparent source or basis for it. In any case, Voluntary Initiatives imply that banks are not subject to obligations of result. For example, the UNEP FI Guidance notes that "*banks alone cannot solve the climate crisis*".[1019] GFANZ acknowledges that "*there are additional dependencies and variables outside of* [the banks'] *control that will determine the pace of the transition*".[1020] The UNEP FI Guidance states that, given all the uncertainties, "*including the non-static nature of portfolios over multiple decades, expected growth in portfolio coverage, technological developments, evolving policies, and evolution of consumer behaviour and demand, long-term objectives do not need to be very detailed.*"[1021] Similarly, NZBA,[1022] SBTi,[1023] and TPT[1024] emphasise that banks' goals depend on other stakeholders to achieve their objectives. This widely acknowledged dependency means not only that there is no obligation of result, but also that the approach introduced by Milieudefensie in these proceedings fundamentally deviates from the role that society, policymakers, the drafters of Voluntary Initiatives and many banks themselves see for themselves in relation to the real economy, and how they can support reducing emissions in the real economy.

609. The lack of consensus on the existence of an obligation of result is only logical. The Reduction Claims cover emissions allocated to and reported by ING. Reported emissions do not constitute a suitable basis for a legal obligation.[1025] The Reduction Claims are therefore impossible to perform in practice, which is

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1018 Writ of Summons, no. 1072. See in more detail section 7.1 above.
1019 UNEP FI Guidance (Exhibit ING-148), p. 3.
1020 GFANZ, *Sectoral Pathways* (Exhibit MD-221), p. 8. See also GFANZ, Net-Zero Transition Plans (Exhibit MD 219), p. 15: "*An economy-wide net-zero transition requires effort from multiple stakeholders.*"
1021 UNEP FI Guidance (Exhibit ING-148), p. 8.
1022 NZBA Transition Finance Guide (Exhibit ING-264), p. 34: "*The linkage between and interdependency of banks' and the real economy's transition plans should be clearly understood by all stakeholders*". See also p. iii.
1023 For example, SBTi FINZ stresses that engagement with customers in the real economy is a "key element" of its standard (p. 8), and explicitly affirms dependence on other parties in the context of fossil fuel investments. See SBTi FINZ (Exhibit ING-146), p. 33: "*The SBTi recognizes that the emissions impacts of divestment from fossil fuel assets are not always clear or consistent. Real economy companies, policymakers, and other stakeholders will play a central role* […]".
1024 TPT Banks Sector Guidance (Exhibit ING-164), p 17.
1025 See chapter 5 above.

another reason why Milieudefensie's approach cannot be established as a legally enforceable norm.

610. The data crucial for emissions reporting is generally poor quality to begin with.[1026] Many clients either do not report their emissions or do not report them fully. Banks therefore depend on generic "proxy data" developed by third parties to fill in the gaps.[1027] According to PCAF, proxy data has a margin of error of between 40% and 50%.[1028] Inconsistent datasets and data quality can lead to fluctuating reported emissions, despite there being no underlying change. While data on reported emissions is useful for identifying where hotspots might be located, it is not possible to link an obligation of result to such data. This is because it is not possible to reliably determine whether a specific result has been achieved.

611. In addition, the following applies to the reporting of financed emissions and physical emission intensity:

(a) for certain financial products and services, there is no adequate methodology for attributing emissions;[1029]

(b) there is no adequate methodology for calculating emission intensity in the "Chemicals", "Other energy" and "Industry" sectors. These sectors lack a uniform unit of measurement for productivity, which is required to calculate emission intensity. Milieudefensie acknowledges this, arguing that "*emission intensity targets can never be formulated for all sectors and sub-sectors*";[1030]

1026 This is recognized by the EU legislator and in Voluntary Initiatives. See recitals 13 and 36 CSRD and section 5.2 above. In the CSRD, the EU legislator has opted to limit assurance statements regarding emissions reporting to "*limited assurance*", rather than "reasonable assurance". See recital 60 CSRD.

1027 See section 5.2 above. For example, ING relies on proxy data for about 80% of its reported emissions.

1028 During the public consultation, PCAF stated that the error margin is 40–50% for a data quality score of 5 (the lowest possible score) and 5–10% for a score of 1 (the highest possible score). See PCAF, *The Global Carbon Accounting Standard for the Financial Industry. Draft version for Public Consultation*, August 2020 (excerpt) (Exhibit ING-274), p. 33. Other banks are also experiencing problems with low data quality. For example, Nordea's data quality score for calculating financed emissions (scopes 1 and 2) related to business loans is 4.1. See Nordea, *Annual Report 2024*, 24 February 2024 (excerpt) (Exhibit ING-275), p. 163. Triodos scores 3.2 for financed emissions (Scopes 1 and 2) relating to mortgage loans for residential properties, and 5.0 for Scope 3 relating to residential properties. See Triodos, *Annual Report 2024*, 13 March 2024 (excerpt) (Exhibit ING-276), p. 201-203. The AFM also sees the quality of data on emissions in the chain as a challenge. See AFM 2025 (Exhibit ING-149), p. 5, 14 and 35.

1029 For example, PCAF's methodology for financed emissions is limited to ten financial products, while its methodology for facilitated emissions is limited to the role of the bank as "lead bookrunner". See sections 5.2 and 10.3.2 above. However, the Overarching Reduction Claim covers all possible emissions.

1030 Writ of Summons, no. 968.

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(c) the classification of business activities into sectors can be misleading because companies are sometimes active in multiple sectors. There are also no generally accepted classification methods; and

(d) fluctuations in external circumstances lead to fluctuations in reported emissions based on carbon accounting.[1031]

612. Furthermore, the choice of 2019 (Overarching Reduction Claim) and 2022 (Sectoral Reduction Claims) as base years is arbitrary. For example, companies' obligations are arbitrarily linked to how their business model, balance sheet composition and other aspects happen to have looked in those base years. This does not account for cases where a company has, for example, achieved a significant reduction in emissions prior to the base year. Another example is that of a bank that, just before the end of the base year, had less credit outstanding to a number of large clients with greater capital requirements in subsequent years.[1032] Milieudefensie's approach means a company that installed solar panels and carried out insulation work the previous year might suddenly have to reduce its emissions by the same amount as its competitor that has not yet implemented any sustainability measures. The fact that the relatively low-hanging fruit has already been picked means it would also be more difficult for the company with solar panels to achieve significant reductions. It may even be practically impossible for that company to realise any additional significant emission reductions. There is also the possibility that in the base year, a particular sector had higher or lower emissions than usual. 2022, for example, was a year in which the ongoing effects of the COVID-19 pandemic caused reduced emissions in certain sectors, such as aviation. This means that companies are imposed an obligation from a starting point that does not represent the actual possibilities for fulfilling that obligation.

613. Thus, there is no consensus on, among other things, the existence of an obligation of result, which is logical. The Reduction Claims impose obligations on everyone bound by them that are practically impossible to perform, and certainly not unambiguously so. This is based on a starting point sensitive to highly specific circumstances that significantly influence the extent to which a company, and thus indirectly the bank, can comply with an order. As with the other elements of Milieudefensie's claims, this once again demonstrates that Milieudefensie is seeking the establishment of general legal rules that amount to legislation, in a

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1031 See section 5.2 and the example in section 11.1.

1032 See, for example, N.O. Peer, 'Corporate Climate Targets Science, Discretion, and Climate-Washing', *Colorado Law Scholarly Commons* (33) 2025 (excerpt) (Exhibit ING-277), p. 303-304: "*When examining CVS's Scope 3 emissions, CCRM discovered that 2019 had Scope 3 emissions that were 70–80% higher than those in either 2018 or 2020. By selecting 2019 as the baseline year for its target, CVS can meet its 47% reduction without actually cutting its emissions relative to 2018 or 2020.*"

manner that does not fit within the societal and economic reality in which companies operate.

10.4 Conclusion: the Purported Duties are neither self-evident nor knowable

614. Governments create policies to limit the dangers of climate change by weighing a wide range of societal interests. They assess how companies can contribute to this climate transition. It is on this basis that they formulate policy and legislation.

615. In addition to governments, various private initiatives have spent years considering what role companies can play in the climate transition, and how each type of company and sector can best fulfil that role. These initiatives aim to promote sustainability by sharing knowledge and insights on the climate transition. As discussed in chapter 5, Voluntary Initiatives are still in the early stages of development, in addition to being highly diverse. They contribute to sustainability in the marketplace precisely *because* they are voluntary, enabling companies to trial certain approaches to their climate strategy and evaluate initiatives to determine an effective approach that suits them.

616. Milieudefensie has constructed very specific norms to which ING is apparently expected to adhere, with often an incorrect representation of the contents of those Voluntary Initiatives, based on a selective sample of various Voluntary Initiatives and with reference to a few general principles that support its argument. However, these Purported Duties are neither self-evident and knowable, nor generally accepted. Indeed, Milieudefensie's claims are, in themselves, unclear and internally contradictory in certain respects.[1033]

617. There is no consensus on the individual elements of the Purported Duties, either separately or in combination. The mere existence of so many Voluntary Initiatives, each with its own evolving vision, means that the consensus required to establish the existence of the Purported Duties based on unwritten laws or duties of care is lacking. Their existence is contradicted by written law, the choices of the legislator, and the Voluntary Initiatives themselves. For example, companies – and even governments – do not use the IEA NZE scenario or the sectoral percentages it contains in the way that Milieudefensie advocates. Nor is there a prevailing norm requiring banks to divest from entire sectors and reduce all their emissions across the board in absolute terms.

618. It is therefore also not the case that, upon reading the Writ of Summons, ING suddenly realised that Milieudefensie had found "the" way for banks to support the climate transition and reduce its clients' emissions, or that Milieudefensie's approach is in fact what many banks have been doing for years and that ING had simply failed to recognise this earlier. Milieudefensie is not presenting the court

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1033 See chapter 7 and section 10.3.6 above.

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with a method that sounds logical, let alone self-evident, knowable or widely accepted. On the contrary: in practice, no global operating systemically bank has a climate approach equal to, or that even comes close to, the Purported Duties.

619. Nor can the "*societal duty of care*"[1034] transform the individual preferences of an NGO serving a single interest into a legal obligation for a bank serving a wide range of societal and economic interests simply because the NGO has cherry picked favourable reference points and perspectives. No generally accepted "*societal duty of care*" exists obliging companies to reduce all emissions allocated to them by fixed percentages.

[1034] See, for example, Writ of Summons, no. 656.

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11 THE PURPORTED DUTIES DO NOT LEAD TO ACTUAL EMISSION REDUCTIONS BUT DO HAVE SOCIETAL CONSEQUENCES

Key points of this chapter

- In these proceedings, Milieudefensie is bringing claims that aim to reduce actual greenhouse gas emissions. The Purported Duties do not achieve this.
  - (a) A reduction in emissions allocated to and reported by ING will not inherently, and certainly not necessarily, lead to a reduction in actual emissions, let alone an equal reduction.
  - (b) To comply with Milieudefensie's claims, ING would have to exclude clients categorically and rigorously. However, it is unlikely that such a method of exclusion would lead to a reduction of emissions. Nor is there any evidence to suggest that it would. However, there is evidence that excluding clients and sectors (or parts thereof) in this way only results in paper decarbonisation, which is exactly what we are being warned against.
  - (c) Studies also show that the opposite can happen: as a result of being excluded by banks, emissions from the excluded companies and sectors could actually increase.
- The Purported Duties could also have significant consequences for society, individual banks, and national and international financial systems, while doing nothing to help the climate transition or reduce emissions.
- Consequently, the Purported Duties also pose a risk to the "Just Transition" intended by the legislator.
- Furthermore, due to various external factors, it is practically impossible to perform the Purported Duties.

620. Milieudefensie justifies this procedure, as well as the existence of the Purported Duties, by arguing that "*profound and rapid global emission reductions are required*".[1035] Milieudefensie aims to limit the concentration of greenhouse gases in the atmosphere by reducing physical emissions. However, Milieudefensie's claims do not focus on physical emissions. Instead, the Reduction Claims focus on emissions allocated to and reported by ING (i.e. paper emissions); the Exclusion Claims focus on terminating financing to certain clients; and the CTP Claim focuses on getting ING to request information from its clients.

[1035] Writ of Summons, no. 932. See also Writ of Summons, no. 32.

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621. Milieudefensie neither substantiates *that* these claims result in a reduction in emissions, either directly or indirectly, nor explains *how* they result in a reduction in emissions. Nor does Milieudefensie substantiate how the claims contribute to that goal. However, Milieudefensie does bear the obligation to furnish facts and the burden of proof in this regard[1036] ING is unfamiliar with Milieudefensie's arguments or vision on this matter, and is therefore unable to confirm or refute them. At the same time, however, ING wishes to inform the court about the risks associated with Milieudefensie's approach. As discussed in sections 8.2.3 and 8.3, there can, after all, be no question of general legal rules or other legal duties if they are ineffective. This is the case here: the Purported Duties are ineffective.

622. In this chapter, ING will explain that reducing reported emissions does not necessarily lead to a reduction in actual emissions (section 11.1). ING cannot force its current or future clients to increase their sustainability or reduce their emissions in line with the Reduction Claims in order to enable ING, as required by Milieudefensie, to achieve a reduction in emissions allocated to it. ING can therefore only comply with the Reduction Claims and the Exclusion Claims by categorically and rigorously terminating financing to certain clients (section 11.2). Although this would mean that ING was acting in accordance with Milieudefensie's claim for relief, it would not lead to a relevant reduction in actual physical emissions (section 11.3). The Purported Duties also hinder the role of banks in the transition, and have no positive effect on the availability of transition financing (section 11.4). Furthermore, they would have significant consequences for society and the banking sector (sections 11.5 and 11.6). It can therefore be concluded that the Purported Duties do not effectively or responsibly contribute to the fight against climate change (section 11.7).

623. When considering all these elements, it is important to bear in mind that the climate transition and related transitions, and the measures taken in this context, are significant. The Paris Agreement recognises this.[1037] The EU therefore considers the consequences of the climate transition for everyone in society in formulating its climate policy. It weighs all these different interests in formulating its policy. The EU has introduced the Just Transition Mechanism as part of the Green Deal for this reason, among others.[1038] The EU describes this mechanism as "*a key tool to ensure that the transition toward a climate-neutral economy*

1036 It would also have been incumbent upon for Milieudefensie to provide substantiation for this. After all, Milieudefensie's claims need to fit into the statutory framework, which means they must be reconcilable with the principle of proportionality.

1037 See, for example, Paris Agreement (original English version) (Exhibit MD-070), preambule: "*Recognizing that Parties may be affected not only by climate change, but also by the impacts of the measures taken in response to it*", "*Emphasizing the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty*" and "*Taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities*" (underlining added).

1038 See also EC, "The Just Transition Mechanism: making sure no one is left behind" (printout of 21 January 2026), Exhibit ING-278).

happens in a fair way, leaving no one behind".[1039] The consequences discussed by ING in chapter 11 do not align with the EU's and the Paris Agreement's policy vision. In this sense, they also conflict with the EU policy discussed in chapters 2, 4 and 9. ING's discussion in chapter 11 simultaneously explains why legislators opted for a different approach to that advocated by Milieudefensie in these proceedings (chapter 9) and why Voluntary Initiatives warn against "paper decarbonisation" and client exclusion (chapter 10): it does not promote a just and orderly transition.

624. In the following sections, ING will clarify the ineffectiveness and adverse impacts of Milieudefensie's claims using the flowchart below.

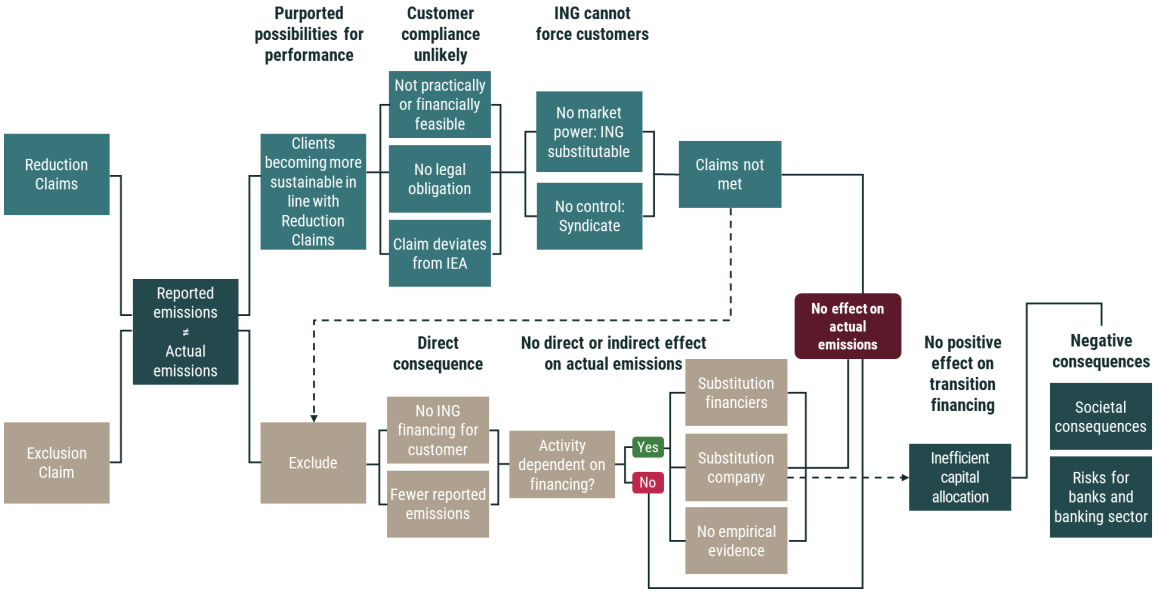

Figure 15 Flowchart showing the effectiveness and consequences of the claims[1040]

1039 EC, "The Just Transition Mechanism: making sure no one is left behind" (printout of 21 January 2026), Exhibit ING-278), p. 1.

1040 Figure 15 is also submitted as part of Appendix 2.

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11.1 A reduction in reported Scope 3, Cat. 15 emissions does not necessarily lead to a reduction in actual emissions

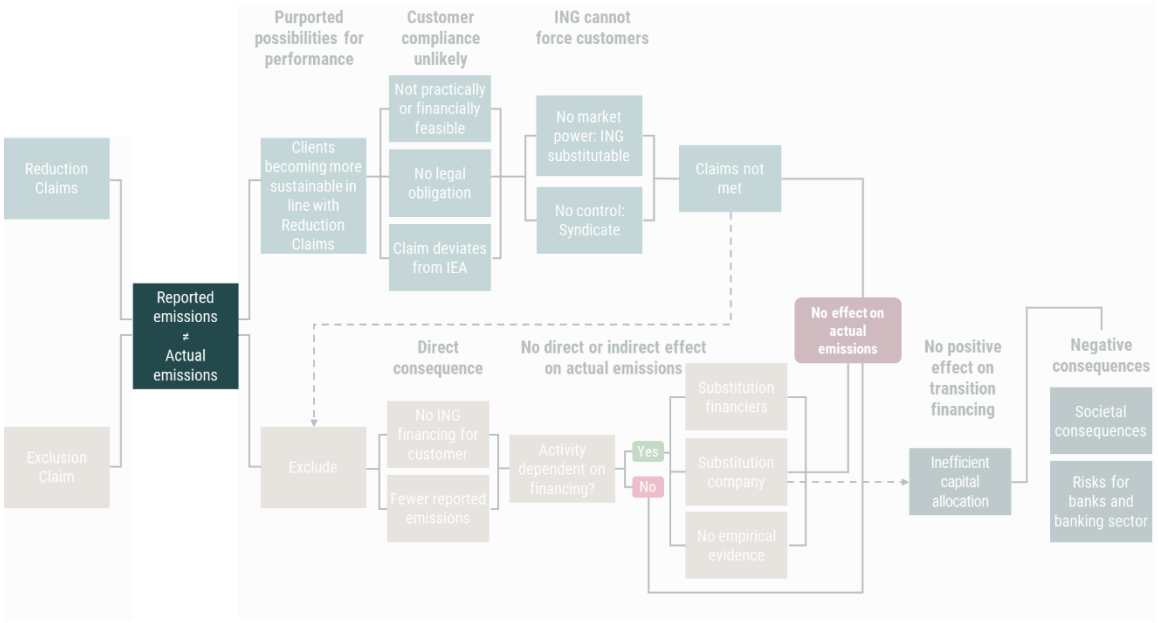

Figure 16 Flowchart showing the effectiveness and consequences of the claims (part 1/6)[1041]

625. Milieudefensie bases the Purported Duties on the premise that ING, with its Scope 3 emissions, "*is increasing the concentration of greenhouse gases in the atmosphere* [...] *and is thereby contributing to the danger of climate change.*"[1042] The Purported Duties are alleged to be effective given that the "*(individual) emissions reductions to be realised by these climate measures will contribute to the necessary (global) limiting of greenhouse gas emissions*".[1043]

626. This is based on two assumptions: (i) the emissions allocated to and reported by a bank are equivalent to actual, physical emissions; and (ii) a reduction in emissions reported by a bank leads to an equivalent reduction in actual emissions. Both assumptions are incorrect. In section 11.1, ING refutes assumption (i). In sections 11.2 and 11.3, ING refutes assumption (ii).

627. Actual emissions and reported emissions are not the same. ING discussed this in section 5.2 above.[1044] Therefore, a reduction in the emissions allocated to and

1041 Figure 16 is also submitted as part of Appendix 2.
1042 Writ of Summons, no. 1161.
1043 Writ of Summons, no. 1161. That Milieudefensie believes that the actual effectiveness of its claims is supposedly apparent from this, follows from Writ of Summons, no. 1176: "[i]*nsofar as a farther-reaching effectiveness were required, Milieudefensie refers to the explanation set out in para. 1161.*"
1044 Therefore, it is incorrect that "*greenhouse gas emissions into the atmosphere will ultimately, at least to an extent relevant for the occurring of dangerous climate change, be determined by the Scope 1, 2 and 3 emissions of all individual companies together, so that the reduction by one of them will or can have a positive effect on countering climate change.*" See Writ of Summons, no. 1161.

reported by ING does not equate to a reduction in actual emissions. A reduction in a bank's reported Scope 3 emissions means that certain emissions are no longer allocated to the relevant bank. It says nothing, however, about whether the client is still emitting the greenhouse gases in question.[1045] This applies regardless of whether the bank reports Scope 3 emissions as absolute emissions, weighted physical emission intensity, or a combination of the two. This means that Milieudefensie's claims do not lead to a reduction in actual emissions, either individually or collectively. ING provides three examples to explain this in more detail below.

(1) Absolute emissions

628. Absolute Scope 3, Cat. 15 emissions are CO_2(e) emissions attributed to a bank based on the services it provides to its clients. Under the aforementioned Voluntary Initiative "PCAF", these emissions are calculated in proportion to (a) the financing provided to a client and (b) that client's total enterprise value. Put simply, if a bank finances 80% of a client's enterprise value, 80% of that client's emissions are attributed to the bank.

629. A bank's Scope 3, Cat. 15 emissions may change due to: (i) a change in the client's actual emissions; and (ii) changes in the ratio between the financing provided and the client's enterprise value. A decrease in a bank's reported emissions does not automatically lead to a decrease of the client's emissions, let alone by the same amount. This could be due to an increase in the client's market value, additional financing from third parties, mergers, client repayments, or a combination of these factors.

Example: bank's emissions decrease; actual emissions increase

On 1 January 2026, Company A has an enterprise value[1046] of EUR 100 million, consisting of EUR 50 million in own funds and EUR 50 million in financing from Bank Y. Company A reports 100 kt CO_2e emissions.[1047] Bank Y's Scope 3, Cat. 15 emissions with respect to Company A are 50 kt CO_2e (= 50% (= 50/100) of 100 kt CO_2e).

On 1 January 2027, Company A's enterprise value has increased to EUR 130 million increased its, consisting of EUR 80 million in own funds and EUR 50 million in financing from Bank Y. Production also increases. Company

1045 The converse is also true: reporting more Scope 3, Cat. 15 emissions does not mean that actual emissions have increased. Accordingly, Milieudefensie's assertion that ING's Scope 3, Cat. 15 emissions "*substantially* [contribute] *to increasing the concentration of greenhouse gases in the atmosphere*" is incorrect. See Writ of Summons, no. 13.

1046 PCAF applies specific rules for calculating the enterprise value depending on the situation. See section 5.2 above.

1047 For the examples in section 11.1, it is assumed that the reported emissions from companies in the real economy are *actual* emissions.

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A reports 110 kt CO_2e emissions. Bank Y's Scope 3, Cat. 15 emissions with respect to Company A are 42 kt CO_2e (≈38% (= 50/130) of 110 kt CO_2e).

Conclusion: Bank Y's Scope 3, Cat. 15 emissions have *decreased*, while actual emissions have increased, despite no change in bank financing.

630. This notion is also supported by the scientific literature. Economists at the University of Sydney conclude that "[w]*hile declines in physical emissions can cause reductions in financed emissions, the converse is not true: reductions in a portfolio's financed emissions does not mean physical emissions are declining*."[1048] They conclude that there is a "*disconnect between financed and physical emissions*" and that investors can reduce their financed emissions (i.e. Scope 3, Cat. 15 emissions) by more than 95%, even though actual emissions are increasing: "*investors can achieve large – over 95% – reductions in their financed emissions even while the physical emissions of the companies they invest in are increasing*."[1049]

631. This is confirmed not only by science. The AFM has also found that banks' reported emission reductions do not necessarily lead to lower actual emissions.[1050]

(2) Weighted emission intensity

632. The same applies to Scope 3, Cat. 15 emissions reported in terms of weighted physical emission intensity. Weighted physical emission intensity reflects the number of emissions relative to a sector-specific unit of measurement; for example, megawatt hours (MWh) for energy.[1051] However, this does not provide conclusive information about the absolute amount of actual emissions from the underlying companies. Therefore, a decrease in the weighted emission intensity of a bank's portfolio (or sector portfolio) does not necessarily mean that its clients' actual emissions have decreased too.[1052]

1048 A. Fraser et al., "Net-zero targets for investment portfolios: An analysis of financed emissions metrics", *Energy Economics* 2023/126 ("Fraser 2023") (Exhibit ING-279), p. 10.

1049 Fraser et al. further write: "*The disconnect between financed and physical emissions occurs because changes in an investment portfolio's financed emissions combine changes in physical emissions within companies, (and for some carbon metrics, changes in company value and sales) with changes in the attribution of emissions across investors as portfolio holdings change*." Fraser 2023 (Exhibit ING-279), p. 10. On this volatility, see also I. Granoff et al., "Shocking Financed Emissions: The Effect or Economic Volatility on the Portfolio Footprinting. or Financial Institutions," *Sabin Center for Climate Change Law* 5/2024 (Exhibit ING-280), p. 12 et seq.

1050 AFM 2025 (Exhibit ING-149), p. 16.

1051 The weighted physical emission intensity of a portfolio is the sum of the weighted average emission intensity of its individual customers, calculated based on their respective shares of the portfolio.

1052 Milieudefensie acknowledges this where it states that "*simply applying intensity targets does not* [...] *guarantee that the absolute emissions reductions that are necessary in every sector will be achieved*", See Writ of Summons, no. 970.

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Example: weighted intensity decreases; actual emissions increase

On 1 January 2026, Bank Y's automotive sector portfolio consists of two clients: Company A (60%) and Company B (40%).

- Company A reports an emission intensity of 0.150 kg CO_2/vkm (i.e.: per kilometre driven). Company B reports 0.140 kg CO_2/vkm.
- Company A reports 30 Mt CO_2e emissions. Company B reports 42 Mt CO_2 e emissions.

Bank Y's weighted emission intensity is 0.146 kg CO_2/vkm (= (0.150 x 0.6) + (0.140 x 0.4)).

On 1 January 2027, Bank Y's automotive sector portfolio consists of three clients: Company A (30%), Company B (15%), and Company C (55%).

- The emission intensity of Companies A and B remains unchanged. Company C's emission intensity is 0.110 kg CO_2/vkm.
- The emission intensity of Companies A and B has increased. Company A reports 33 Mt CO_2e emissions; Company B 46.2 Mt CO_2e emissions; and Company C 44 Mt CO_2e emissions.

Bank Y's weighted emission intensity is 0.127 kg Co_2/vkm (≈ (0,150 x 0.3) + (0.140 x 0.15) + (0.110 x 0.55)).

Conclusion: Bank Y's emission intensity in the automotive sector has decreased. Conversely, the emissions of Companies A and B have increased.

(3) Combination of absolute emissions and emission intensity

633. The situation remains the same if a bank reduces both its reported absolute emissions and its weighted physical emission intensity,[1053] as demanded by Milieudefensie.

Example: weighted intensity and reported absolute emissions decrease; actual emissions increase

On 1 January 2026, Bank Y's energy sector portfolio consists of the following two companies: Company A (60%) and Company B (40%).

[1053] Writ of Summons, no. 969.

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- Company A reports 200,000 MWh of electricity produced and 20 kt CO_2e emissions, 6% of which are allocated to Bank Y. Company A's emission intensity is 100 kg CO_2e/MWh (= 20 kt/200,000).

- Company B reports 500,000 MWh of electricity produced and 25 kt of CO_2 emissions, 4% of which are allocated to Bank Y. Company B's emission intensity is 50 kg CO_2e/MWh (= 25 kt/500,000).

Bank Y's absolute emissions amount to 2.2 kt CO_2e (= (20 × 0.06) + (25 × 0.04)). Bank Y's weighted emission intensity is 80 kg CO_2/MWh (= (100 × 0.60) + (50 × 0.4)).

Company A has partially repaid a its financing. Company B, on the other hand, has received additional financing. In addition, the value of both companies has increased.

On 1 January 2031, Bank Y's portfolio consists of the following two companies: Company A (40%) and Company B (60%). Both companies have increased their production.

- Company A reports 210,000 MWh of electricity produced and 21 kt of CO_2e emissions, 3% of which are allocated to Bank Y. Company A's emission intensity is 100 kg CO_2e/MWh (= 21 kt/210,000).

- Company B reports 600,000 MWh of electricity produced and 30 kt of CO_2e emissions, 5% of which are allocated to Bank Y. Company B's emission intensity is 50 kg CO_2e/MWh (= 30 kt/600,000).

Bank Y's absolute emissions amount to 2.1 kt CO_2e (= (21 x 0.03) + (30 x 0.05)). Bank Y's weighted emission intensity is 70 kg CO_2e /MWh (= (100 x 0.40) + (50 x 0.6)).

Conclusion: Bank Y's absolute Scope 3, Cat. 15 emissions have *decreased*. Bank Y's weighted emission intensity has also *decreased*. This while actual emissions from Company A and Company B have *increased*.

634. Thus, a reduction in reported emissions does not necessarily or inherently imply that actual emissions have also decreased, regardless of the unit or units of measurement used by the company to report emissions. Assumption (i), which forms the basis of Milieudefensie's claims, is therefore incorrect.

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11.2 ING cannot force clients to become more sustainable to meet the Reduction Claims, which means they could lead to exclusion

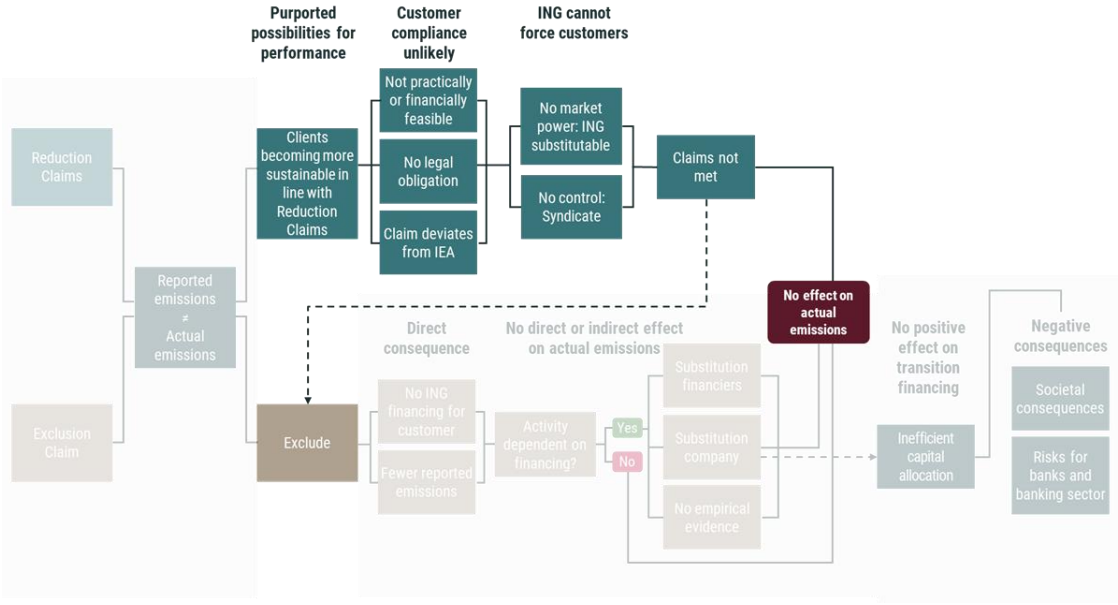

Figure 17 Flowchart showing the effectiveness and consequences of the claims (part 2/6)[1054]

635. Assumption (ii) is that a reduction of a bank's reported emissions would lead to an equal reduction of actual emissions. Based on the Reduction Claims, ING would be bound by obligations of result to reduce its reported Scope 3, Cat. 15 emissions within a specific time frame.[1055] In other words, the emissions of ING's clients. To comply with this obligation without losing clients, ING's current and new clients would need to become sustainable in accordance with the Reduction Claims and all their specific elements.[1056] Milieudefensie believes that ING can achieve this by simply using its "influence and control" to make clients sustainable in accordance with the Reduction Claims.[1057] This is incorrect.

636. As discussed in chapters 9 and 10, banks can play a positive role in supporting clients to contribute to the climate transition. This is widely recognised. For example, a bank could (a) discuss with clients how they can become more sustainable and communicate expectations in this regard; (b) offer incentives, such as more favourable interest rates for clients with good sustainability plans; and (c) share knowledge about other sustainability initiatives within a sector or

1054 Figure 17 is also submitted as part of Appendix 2.
1055 Incidentally, a significant best-efforts obligation (whatever that may be) would not change this. This too means that ING would have to reduce its reported Scope 3, Cat. 15 emissions, regardless of what actually happens. Nevertheless, ING would still have to exclude clients wherever feasible.
1056 If, for example, ING's clients reduce their emissions on balance by less than Milieudefensie demands, ING will not meet the Reduction Claim. The same applies to emission intensity targets. ING can only achieve these targets if its clients reduce their emission intensity in line with Milieudefensie's demands, or if ING alters the composition of its portfolio.
1057 Writ of Summons, section XIV.4.2, in particular nos. 1083-1084.

connect clients with appropriate support services, such as sustainability consultancies.

637. As ING explains below, this does have its limits. Meanwhile, Milieudefensie is claiming something entirely different. Essentially, Milieudefensie is demanding that ING's clients become sustainable in exactly the way that Milieudefensie envisages. It claims that this is the only correct way; anything else would be unlawful. However, ING's clients have legitimate reasons for their inability or unwillingness to become sustainable in exactly the way that Milieudefensie is demanding. ING certainly does not have the power to achieve that level of sustainability and reduction in emissions by exercising "influence and control", also in view of the following.

(a) **The necessary investments and measures are not always practical or financially feasible**. Companies would need to make significant investments and take significant measures to achieve the necessary emission reductions. In hard-to-abate sectors in particular, this may not always be practical (due to technological limitations or grid congestion, for example) or financially feasible (due to insufficient demand, excessive costs, or a low chance of success).[1058] If ING wants to help clients overcome financial constraints by providing more financing, this could lead to an increase in emissions allocated to ING. This, in turn, limits the extent to which ING can serve other clients.

(b) **Companies are not statutorily required to become more sustainable in a specific way**. Companies have no legal duty to reduce emissions in accordance with the Reduction Claims. Nor is there any scientific consensus on the matter.[1059] In fact, companies have considerable freedom to tailor their climate transition plans to what is feasible and appropriate for them.[1060] For example, there is no statutory obligation to reduce Scope 1, 2 and 3 emissions using a prescribed reduction pathway, percentage or methodology.[1061]

(c) **The emission reduction method demanded by Milieudefensie is not in line with the IEA NZE scenario**. Milieudefensie claims that it bases its sectoral reduction percentages on the IEA NZE scenario. However, the sectoral percentages in the IEA NZE scenario apply only to Scope 1

1058 O.Y. Edelenbosch et al., "Mitigating greenhouse gas emissions in hard-to-abate sectors", *PBL Netherlands Environmental Assessment Agency*, July 2022 (Exhibit ING-281), p. 19-32. Incidentally, this illustrates why the IEA NZE scenario and the percentages based on it apply to sectors rather than individual companies.

1059 On the multiplicity of different transition paths to a net-zero economy, see sections 5.3 and 10.2.2 above.

1060 Conform, for example, Article 22(1) CSDDD. See section 9.2.1 above.

1061 In fact, the legislator deliberately took a different approach to achieving its climate goals. See chapter 9 above.

emissions within entire sectors.[1062] However, Milieudefensie also applies these percentages to clients' Scope 2 and 3 emissions per sector. This deviates from the IEA NZE scenario and clearly contradicts the IEA's underlying methodology. Scope 2 and 3 emissions include emissions from sectors other than the sector in which the underlying company operates (e.g. business travel undertaken by the employees of a cement factory).[1063] Furthermore, ING's clients are highly diverse and could be the most sustainable or the most polluting actors in a sector, or anything in between. ING's clients' ability to achieve a percentage reduction therefore depends on a variety of factors. Even if the entire sector follows the IEA NZE scenario, this does not guarantee that the emissions allocated to and reported by ING within that sector will align with the IEA NZE scenario percentages.

638. ING cannot, in part due to the reasons outlined above, force its clients to become more sustainable in line with the Reduction Claims. Although Milieudefensie seems to assume so, ING has no decisive influence or power in this regard, let alone control. ING, like other banks, can play a role in supporting its clients' sustainability efforts. However, if a bank imposes unrealistic demands on its clients, the client relationship will deteriorate and the bank will lose its positive influence. There are many financiers active in the financing markets. While there are differences in quality of service and terms and conditions, the product itself is the same. Financiers are therefore highly substitutable. The Report of Oxera confirms that there is fierce competition in each of the relevant financing markets among the large numbers of regulated and unregulated financiers.

> "*The results of our assessment indicate that the relevant markets within the financial sector tend to be highly competitive, at both the global and the EEA level. We also observe that ING is not a major player in the relevant markets, both at the global and EEA level. Our results indicate that individual players in the market are subject to competitive pressure, even the largest individual market participants are unlikely to be able to exercise significant market power and that the provision of services is likely to be highly substitutable.*"[1064]

639. These other financiers do not require their clients to become more sustainable in accordance with the Purported Duties.[1065] Were ING to attempt to do so, its clients would simply switch to another financial institution or raise funds on the

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1062 It also makes sense: IEA percentages reflect the reductions to be achieved within a sector.

1063 ING's clients may therefore have to require their own clients to reduce their emissions by a higher percentage (i.e. the sector percentage of ING's client) than the IEA NZE prescribes for their sector. According to the Purported Duties, an ING client in the oil sector must have reduced its Scope 3 emissions by 44.4% by 2030. To achieve this, ING's client will have to ensure that their clients reduce their emissions by 44.4%. This could be in the shipping industry, for example, which, according to Milieudefensie, must have reduced its emissions by 18.7% by 2030.

1064 Report of Oxera of 5 February 2026 (Exhibit ING-003A), no. 1.7.

1065 See section 10.1 above explaining that, in practice, the Purported Duties are not observed by banks or recognized as legal obligations.

capital markets. They could also avoid ING altogether, just as they would if it charged excessive interest rates or imposed other onerous conditions.[1066]

640. In addition, bank financing, especially of larger amounts, is often provided by a syndicate of banks rather than by a single bank. In that case, the applicable financing conditions are not agreed upon by each bank individually, but by the entire syndicate, led by a syndicate leader. ING cannot force the syndicate's client to meet sustainability requirements unilaterally in such cases. This requires the cooperation of the syndicate.[1067]

641. Thus, ING cannot force clients to become more sustainable in accordance with the Reduction Claims. Clients are not under any independent obligation to reduce their emissions in accordance with the Reduction Claims (see chapter 9 for clients within the EU; outside the EU, ING's clients are subject to other legal duties and local climate policies). If ING's clients fail to become more sustainable in line with the Reduction Claims, ING can only comply with them by excluding clients, as this would be the only way for ING to eliminate its paper emissions.[1068] According to Milieudefensie, ING should under no circumstances do business with companies that are directly or indirectly involved in "New Fossil Fuel Projects". Milieudefensie's assertion that "[t]*he requisite emissions reduction targets therefore do not imply any necessary shrinkage on the part of ING*" is also incorrect.[1069]

1066 Incidentally, this would be no different if the Purported Duties applied to all Dutch banks. Even then, there would still be enough financiers to whom the company could turn.

1067 The OECD also recognizes this point where it notes that a bank's leverage may depend on "[t]*he role the bank has in the transaction, whether it is a leading bank or a member of a larger syndicate*" and that "[a] *non-leading bank in a syndicate may have limited leverage over a client independently*". See OECD Corporate Lending and Securities Underwriting (Exhibit MD-235), p. 50-51.

1068 Milieudefensie also states that "[i]*f engagement of ING with a client does not lead to the necessary climate performance, ING can decide to terminate its relationship with the client (also known as 'disengagement*')". See Writ of Summons, no. 1085. Incidentally, meeting the emission intensity targets would also necessitate exclusion. If ING's clients do not reduce their emission intensity quickly enough, ING can only achieve this by restructuring its portfolio. However, it is not always possible to do so by providing more financing to companies with low emission intensity due to factors such as: (i) not every sector has companies with lower emission intensity that require sufficient financing from ING; and (ii) additional financing may result in ING failing to meet the required absolute emission reduction.

1069 Writ of Summons, no. 65.

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11.3 Categorical and rigorous exclusion does not lead to actual emission reductions, only to paper decarbonisation

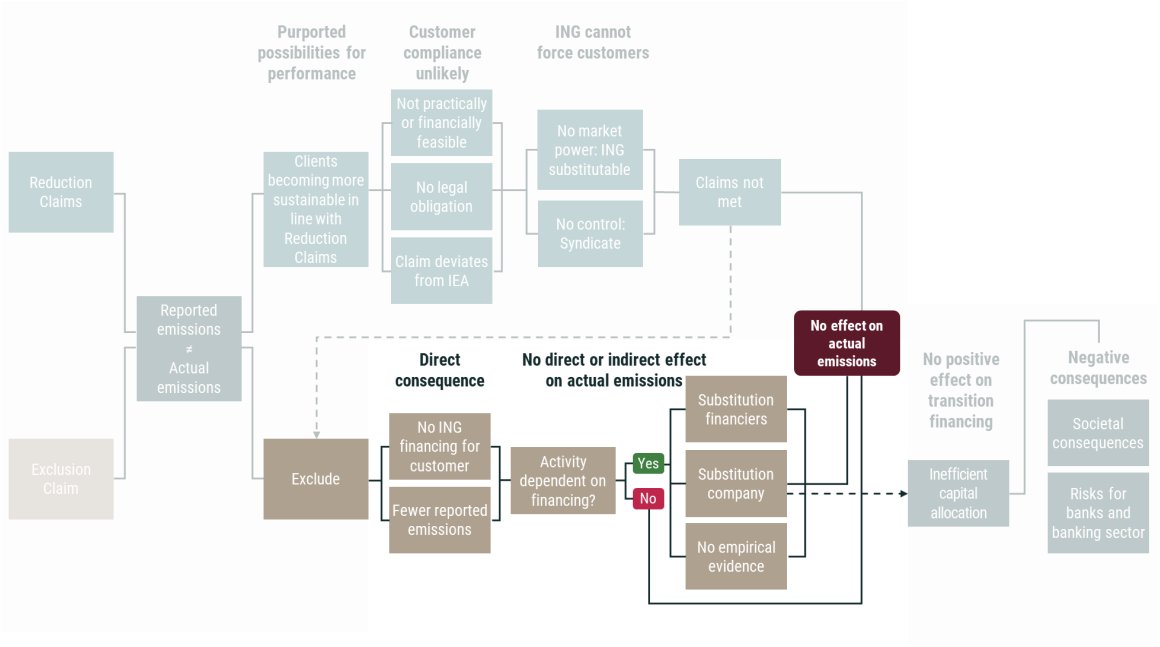

Figure 18 Flowchart showing the effectiveness and consequences of the claims (part 3/6)[1070]

642. Banks can exclude new clients by declining to enter into a relationship. For existing clients, however, banks have roughly three options: (i) allowing the relationship to lapse and declining to renew it; (ii) terminating the relationship; and (iii) transferring the rights to another party (to the extent that this is legally and commercially feasible and compatible with the prudential framework).

643. In none of these cases does exclusion, as claimed by Milieudefensie, lead to a meaningful reduction in actual emissions. The only direct consequence of a company being excluded from financing by a bank is that it will not receive financing from that particular bank (ING, in this case) and its emissions will not be allocated to that bank as Scope 3, Cat. 15 emissions. This has no effect on the client's actual emissions, as explained in section 11.1.

644. Milieudefensie has not in fact argued that exclusion would lead to actual emission reductions, albeit indirectly. Such an effect is both implausible (section 11.3.1) and unsupported by scientific evidence (section 11.3.2). Various organisations warn that exclusion only leads to paper decarbonisation (section 11.3.3).

645. It is worth noting that Milieudefensie completely disregards this aspect in its Writ of Summons. After all, in Milieudefensie's proceedings against Shell, the Hague Court of Appeal held that a reduction order concerning Scope 3

1070 Figure 18 is also submitted as part of Appendix 2.

emissions would not necessarily result in a reduction in actual emissions.[1071] Given that a reduction order against an oil and gas company would be ineffective, it is even less likely that a similar order against a bank, which does not sell any products that cause emissions, would be effective.

11.3.1 The indirect effects on actual emissions are implausible

646. Milieudefensie has made several justifications for its claims, including the assertion that "[a]*ctivities that lead to large-scale greenhouse gas emissions* […] *would, in many cases, not be feasible from a financial-economic perspective without the financing of banks.*"[1072] According to Milieudefensie, bank financing is an "essential link" in activities that lead to greenhouse gas emissions.[1073] Milieudefensie thus suggests that terminating existing business relationships and avoiding new ones will prevent banks from emitting greenhouse gases. This is incorrect for the following four reasons.

647. Firstly, a company is not necessarily dependent on external financing, let alone from a specific bank. Larger companies in the fossil fuel sector often have sufficient capital and cash flow to finance their own emission-intensive activities.[1074] In these cases, it is unclear whether ending the financing will affect the continuation of emission-intensive activities.

648. For example, Oxera confirms that oil and gas companies have sufficient financing options, including retained earnings:

> "*The results of our assessment indicate that oil and gas companies have (i) access to credible and attractive internal financing options through retained earnings, (ii) access to multiple external financing channels (including bonds, syndicated loans and equity) between which they can substitute, (iii) access to highly significant pools of liquidity with numerous market participants, even within a specific financing channel, (iv) access to a number of financial intermediaries for underwriting and facilitation services, between which they are able to rotate.*"[1075]

649. Secondly, limiting the supply of financing from one bank in particular will not reduce overall demand for financing. Companies that need financing will simply try to obtain it elsewhere. There are countless other Dutch and foreign banks, as well as private financiers (*shadow banks*), that can meet their needs.[1076] It is, of

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1071 The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099 (*Milieudefensie v. Shell*), para. 7.110.

1072 Writ of Summons, no. 556.

1073 Writ of Summons, no. 560.

1074 IEA, 'Who is investing in energy around the world, and who is financing it?', 25 June 2024 (printout of 21 January 2026) (Exhibit ING-282), p. 3: "*In 2022 alone, net income for fossil fuel producers is estimated to have neared USD 4 trillion. Consequently, they have been able to finance investments primarily through retained earnings, while returning cash to shareholders via generous buybacks and record dividends.*"

1075 Report of Oxera of 5 February 2026 (Exhibit ING-003A), no. 1.11.

1076 See sections 4.5 and 11.2 above and Report of Oxera of 5 February 2026 (Exhibit ING-003A), no. 1.9-1.11.

course, perfectly legal to provide financing. As a result, banks can also comply with the Purported Duties by transferring financing relationships to other financiers, for example, insofar as contractually, commercially and prudentially feasible. In that case, the financing would not stop either.

650. Empirical research confirms the existence of a substitution effect when banks exclude companies. American economists recently investigated the impact of banks' targeted credit restrictions on businesses.[1077] They examined the 2013 US Department of Justice initiative known as "Operation Choke Point", which forced a group of banks to limit their relationships with companies in controversial, but otherwise legal, sectors, including firearms and ammunition, tobacco, and online gambling, due to these companies' heightened risk of fraud. The researchers concluded that most of these companies had fully replaced their bank financing with credit from nontargeted banks on similar terms. There was no measurable shift in the activities of the affected companies:

> "*We exploit a regulatory initiative that provides exogenous variation in credit rationing to firms in specific industries. Using supervisory loan-level data, we document that credit rationing does affect banking relationships, with targeted banks reducing lending and terminating relationships with firms in affected industries. However, these firms initiate new relationships with nontargeted banks and manage to obtain loans with similar terms to the ones they had. Indeed, we show that these firms do not experience measurable changes in performance, highlighting that target credit rationing by a subset of banks can be ineffective. Our findings have significant implications for current debates on whether credit rationing to specific industries is effective in promoting change.*"[1078]

651. Thirdly, in the unlikely event that a company is unable to obtain financing, substitution occurs at both the company and product offering levels. Suppose a company operates an emission-generating factory and is seeking financing. If the company is unable to obtain financing due to the Purported Duties, it is unreasonable to assume that it will simply shut down the factory and wind up operations. Instead, the company would sell the factory (or any other emissions-generating activity or asset) to another company that can obtain external financing or does not require it. This process is also known as asset partitioning. The emission-generating activity would still be carried out, just by a

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1077 K. Sachdeva et al., "Defunding controversial industries: Can targeted credit rationing choke firms?", Journal of Financial Economics (172) 2025/104133 ("Sachdeva 2025") (Exhibit ING-283). The authors note that their research "*contributes to the broader literature examining the role of financial markets and intermediaries in driving environmental and social change.*" See p. 3.

1078 Sachdeva 2025 (Exhibit ING-283), p. 14. One of the economists involved – Xu – aptly described the ineffectiveness: "*If you are trying to stop the water but you turn the taps off in one place only-it's probably not enough. You'll have to turn them off everywhere else, too, which can be costly or infeasible.*" See University of Rochester, "When Washington tried to starve industries of loans — and failed", 26 September 2025 (printout of 21 January 2026) (Exhibit ING-284), p. 4.

different company. This is because the emission-generating activity itself is not prohibited.

652. However, asset partitioning can also have adverse climate effects. Economic studies suggest that buyers are less likely to reduce emissions if they are less concerned about climate change, experience less external pressure, or perceive the risks of "stranded assets" differently.[1079] Therefore, asset partitioning can lead to an increase in actual emissions. The IEA and GFANZ warn of this risk.[1080] The risk associated with asset partitioning also applies at the level of the bank, for example if it is no longer permitted to provide certain types of financing and consequently sells loans to financiers who are not bound by the Purported Duties or who have not incorporated climate change into their strategy.[1081]

653. Fourthly, Milieudefensie incorrectly assumes that financing that is to be terminated is always related to the emission-generating activity in question. This is not necessarily true. Clients can use general business financing for a variety of activities, including short-term financing of business inventory, wages, and related activities. In that case, the financing would not be related to the emission-generating activity. Clients may have already used the relevant financing for the emission-generating activity and be repaying it, or they may be using it, or part of it, to invest in future sustainability. Terminating the relationship and calling in the financing – if this is even possible – will not, for that reason as well, prevent or halt emissions.[1082]

654. Thus, it is unlikely that companies being excluded by banks will reduce emission-generating activities in the real economy. Unless there is a general ban on emission-generating activities and the financing thereof, substitution will take place at the level of the financier and the company itself. Effective measures that can actually reduce emissions in the real economy require clear regulations with a broad scope of application. The legislator has in fact introduced them.[1083]

11.3.2 No empirical evidence of the effect on actual emission reductions

655. The effectiveness of excluding large groups of objectively determined clients is ultimately an empirical question. Current research into the effectiveness of exclusion concludes that there is no evidence to suggest that such exclusion by banks leads to a limitation or reduction in physical emissions.

1079 Report of Professor Ringe of 6 February 2026 (Exhibit ING-001A), sections 5.2 and 5.3.

1080 IEA, *Scaling Up Transition Finance*, 16 October 2025 (excerpt) (Exhibit ING-285), p. 65; GFANZ, *Measuring Portfolio Alignment*, November 2022 (Exhibit ING-286), p. vi.

1081 Report of Professor Ringe of 6 February 2026 (Exhibit ING-001A), section 5.2.

1082 For example: if the client has used the financing received to build a plant, terminating the financing relationship and calling in the loan will not result in that client no longer operating the plant. The client is more likely to increase production capacity to repay the loan earlier than expected.

1083 See chapter 9 above.

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656. Researchers from Imperial College London, for example, investigated whether banks' climate commitments to decarbonise their portfolios influence lending and whether this impacts the emissions of companies in the real economy. They concluded (a) that climate commitments have resulted in companies in emission-intensive sectors receiving less bank financing, but (b) that these companies did not achieve any reduction in actual emissions:

> "*Despite firm-level real and financial effects associated with bank commitments for browner firms, we do not find any reduction in carbon emissions over one year, which represent hard data (and choice). Since adjustment of environmental performance may be a slow process, we also analyze whether affected firms change their emissions significantly over the longer horizon of up to 3 years, or whether they at least express their willingness to commit to future emission reduction, using again SBTi commitments as a relevant proxy. Again, we do not find any significant incidence that emissions change in the longer horizon or that firms change the intensity of their commitment efforts.*"[1084]

657. On the basis of literature research into topics including the effectiveness of exclusion, the New Climate Institute concluded that the effect of exclusion on actual emissions is uncertain due to a lack of empirical evidence:

> "*While divestment, corporate engagement and positive impact investment may help minimise investment risks and reduce the carbon intensity of the portfolio, the impact and magnitude of these actions on global GHG emissions remains uncertain. Our literature review shows that no systematic appraisal of financial sector's investment commitments' impact on GHG emissions currently exists due to lack of empirical evidence (Heinkel, Kraus and Zechner, 2001; Fama and French, 2007; Gollier and Pouget, 2014; Luo and Balvers, 2017; Kolbel et al., 2019).*"[1085]

658. Likewise, professor Ringe notes that the effectiveness of exclusion in reducing financing costs and, consequently, actual emissions has not been proven empirically. According to professor Ringe, the available empirical evidence actually suggests that exclusion is a weak and potentially counterproductive instrument:

> "*My analysis shows that imposing divestment obligations on banks would likely not be effective in achieving real-world emission reductions. A positive impact on the reduction of real-world emissions is not supported by empirical evidence.*

1084 M. Kacperczyk et al., "Carbon Emissions and the Bank-Lending Channel", *ECGI Finance Working Paper* (991) 2024 (Exhibit ING-287), p. 7-8.

1085 New Climate Institute & Universiteit Utrecht, *Unpacking the financial sector's climate-related investment commitments*, September 2020 (excerpt) (Exhibit ING-288), p. 9. Similarly, A. Plantinga et al., "The finance perspective on fossil fuel divestment", *Current Opinion in Environmental Sustainability* (66) 2024/101394 (Exhibit ING-289), p. 3: "*Other studies concentrate on the impact on the energy transition or global GHG emissions* […]*: these do not show divestment has had any significant effect so far. While disappointing, it is in line with the findings of* [previous research]."

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> *In theory, restricting bank finance would raise the cost of capital for 'brown' firms and thereby deter harmful activities. However, economic and empirical evidence shows that this mechanism is weak and, under circumstances, counterproductive, as each link in the assumed causal chain from divestment to net greenhouse gas emission reduction presents significant obstacles and limitations.*"[1086]

659. As professor Ringe explains, there is a risk that emission-intensive activities will receive even more funding. Even if we assume that no substitution would occur and that financing costs for emission-intensive companies would increase, which is not guaranteed[1087], we cannot conclude that their actual emissions would decrease. In fact, higher capital costs for a company mean higher income for the financier. This is also known as a "brown premium" – a reward for financiers who invest in emission-intensive activities. Investments that carry a certain risk due to high emissions, such as investments in new oil and gas fields, then become more attractive:

> "*At first sight, this would seem to discourage polluting investments: higher costs of capital should make carbon-intensive projects less attractive, pushing firms toward cleaner alternatives. However, both economic theory and empirical studies show that the outcome is more complicated — and may even produce the opposite result.*
>
> *Most importantly, it has been firmly established that, when lending to 'brown' firms becomes more risky (due to the liability/transition risk or because of a divestment order), in other words the cost of capital for brown firms goes up, those projects that still go ahead can become more profitable for investors, not less. Economists describe this as the emergence of a 'brown premium': Investors who are willing to hold carbon-intensive assets require, and are rewarded with, higher expected returns. This premium can persist for a long time, and the financing of brown activities continues through a smaller but more specialised investor base.*"[1088]

660. Thus, empirical research does not support the claim that the Purported Duties would have a positive impact on actual emissions. In fact, the research suggests that there could be adverse impacts for both actual emissions and the broader climate transition.

11.3.3 Categorical and rigorous exclusion only leads to paper decarbonisation, which is precisely what is being warned against

661. A reduction in reported emissions without a corresponding reduction in actual emissions is known as paper decarbonisation. In view of what has been outlined

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1086 Report of Professor Ringe of 6 February 2026 (Exhibit ING-001A), p. 5.
1087 Report of Professor Ringe of 6 February 2026 (Exhibit ING-001A), p. 38-39.
1088 Report of Professor Ringe of 6 February 2026 (Exhibit ING-001A), p. 39. Professor Ringe cites, among other things: P. Bolton et al., "Do Investors Care About Carbon Risk?", *NBER Working Paper* 2020/26968 (Exhibit ING-290); and P. Bolton et al., "Global Pricing of Carbon-Transition Risk", *Journal of Finance* 2023/78 (Exhibit ING-291).

above, it is understandable why it is referred to as "paper" decarbonisation, why warnings are being issued about it, that it is considered highly undesirable, and why.

662. For example, the OECD refers to the UNEP Target Setting Protocol to warn against paper decarbonisation, claiming that that it could delay the transition in emission-intensive sectors:

> "*In addition, divesting from assets associated with adverse climate impacts may limit the adverse climate impacts of investors' portfolios without reducing the overall impact on society and the environment, due to purchase of the asset by another investor, or may in fact slow needed transition in high-emitting assets and sectors. There is an important difference between reducing emissions in an investment portfolio and reducing emissions in the real economy* […]."[1089]

663. The IEA also warns that short-term targets may discourage financiers from providing financing, meaning that while the financier will achieve its own target, this will not result in actual emission reductions. The IEA emphasises that financing companies in developing countries and hard-to-abate sectors is essential for achieving long-term emission reductions, and that short-term targets can hinder the necessary capital flows:

> "*While financial institutions' climate goals are important motivations toward decarbonisation, these targets may also have an unintended impact on real-economy emissions reductions. Many large global financial institutions have adopted financed emissions targets, typically calculated by multiplying their share of a borrower's or investee's total outstanding debt and equity by that borrower's or investee's emissions (Figure 3.12). These targets are ideally meant to be met through reductions in a borrower's or investee's real emissions. However, when applied over short timeframes, especially to counterparties in EMDE or hard-to-abate sectors, these targets can incentivise financial institutions to reduce financing volumes rather than engage with corporates or project owners to support emissions reductions over time.*
>
> *While such behaviour may improve an individual institution's metrics, it does not lead to actual reductions in global emissions. In fact, early-stage investments in EMDE or hard-to-abate sectors such as energy efficiency upgrades or clean infrastructure development are often necessary to achieve long-term emissions reductions. A focus on near-term financed emissions reductions can therefore obstruct the flow of capital needed to support credible transition pathways in these sectors.*"[1090]

1089 OECD, *Managing Climate Risks and Impacts Through Due Diligence for Responsible Business Conduct: A Tool for Institutional Investors*, 3 October 2023 (excerpt) (Exhibit ING-292), p. 33. The OECD refers to UNEP FI, *Target Setting Protocol*, January 2022 (Exhibit ING-293).

1090 IEA, *Scaling Up Transition Finance*, 16 October 2025 (excerpt) (Exhibit ING-285), p. 76.

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664. Finally, the Sustainable Finance Observatory (formerly 2DII[1091]), an internationally recognised organisation that focuses on mobilising finance for the transition, argues that exclusion does not necessarily result in a decrease in actual emissions, despite leading to lower *reported* emissions:

> "*Current disclosures and alignment approaches do not provide financial institutions with adequate tools to measure real world greenhouse gas (GHG) emissions reductions versus emissions changes simply driven by portfolio reallocation. While divesting from a high emitting company into a low emitting company might lower your portfolio GHG emissions, it doesn't necessarily translate into real world GHG emissions.*"[1092]

665. Incidentally, this context, coupled with ineffectiveness in reducing emissions, also explains why there is no consensus on Milieudefensie's approach, as outlined by ING in chapter 10. It also explains why policymakers have developed a different set of measures (chapter 9) instead of individual reduction obligations based on reported emissions.

666. The Purported Duties are therefore ineffective in reducing actual emissions (sections 11.1 to 11.3). However, the Purported Duties risk having far-reaching consequences for the climate transition, society, and the financial system (sections 11.4 to 11.6).

1091 2DII previously managed the PACTA initiative. The management of PACTA has now been transferred to the RMI.

1092 Sustainable Finance Observatory, *Tracking Real World Emissions Reductions: The Missing Element in Portfolio Alignment and Net-Zero Target-Setting Approaches*, September 2022 (Exhibit ING-294), p. 4.

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11.4 The Purported Duties limit the role of banks in supporting the climate transition

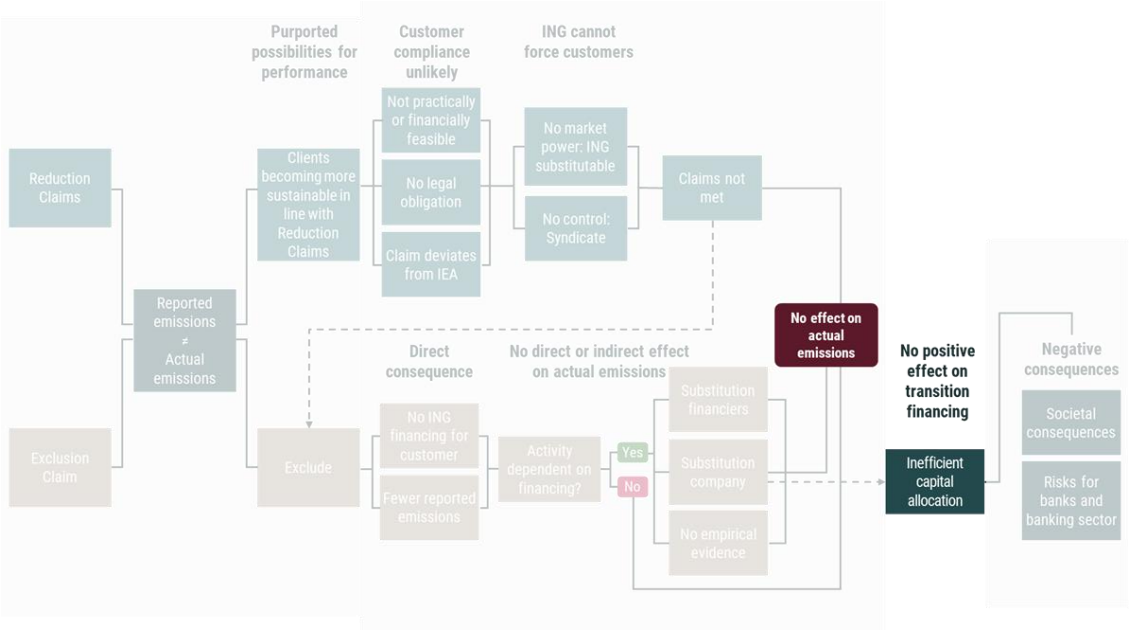

Figure 19 Flowchart showing the effectiveness and consequences of the claims (part 4/6)[1093]

667. Milieudefensie suggests that a secondary effect of its claims is that more funding will become available for the "*sustainable climate transition*".[1094] Milieudefensie is presumably referring here to "more sustainable" companies and green projects. Milieudefensie apparently assumes that ING will allocate the same amount of funding to other clients if it no longer invests in its current clients and their "emissions". That assumption is flawed for multiple reasons.

668. Firstly, the Purported Duties limit banks' ability to finance the climate transition. This transition requires capital. This capital will be raised in part from banks. When a bank finances clients – even for sustainability purposes – the client's emissions are allocated to the bank. Therefore, it is to be expected that a bank's reported emissions will remain the same or even increase if the bank finances clients taking part in the energy transition. This is precisely what is happening, as emission-intensive activities require transition financing. However, the Reduction Claims impose an absolute cap on reported emissions and emission intensity, compelling banks to exclude emission-intensive clients and sectors that require sustainability financing.

669. Secondly, banks can use their client relationships to influence clients positively, however limited that influence may be.[1095] If banks are forced to terminate

1093 Figure 19 is also submitted as part of Appendix 2.
1094 Writ of Summons, no. 588.
1095 See section 11.2 above.

business relationships (whether on the basis of the Exclusion Claims or because of the Reduction Claims' overly strict requirements) or if clients start avoiding banks altogether, the limited influence banks can exert and the opportunity for engagement will be lost (see also section 10.3.3).

670. Thirdly, the transition requires a sound financial system that enables banks to raise money from the marketplace. Given the risks discussed by ING in section 11.6 below, it is highly questionable whether ING will be able, if the Purported Duties are imposed, to raise capital effectively and on favourable terms and subsequently fulfil its broader societal role, including financing sustainability.

671. Fourthly, it cannot be assumed that banks will provide more financing to green energy and low-emission companies if they are forced to exclude other clients. There are simply not enough sustainable investment opportunities at the moment. This applies equally to shareholders of companies in the real economy and to banks. With regard to companies in the real economy, a working group led by DNB and consisting of, among others, the Dutch Authority for the Financial Markets (*Autoriteit Financiële Markten*, AFM), the Dutch Ministry of Finance and the Dutch Ministry of Climate and Green Growth has concluded that there are insufficient sustainable investment options due to an insufficiently attractive risk-return profile:

> "*The main reason for the insufficient number of sustainable investments is too often their insufficiently attractive risk-return profile. The investments are too risky, offer too low a return, or both. There are also too few financially attractive sustainable investment opportunities.*"[1096]

672. Similarly, the European Banking Federation concludes that sustainable projects are often too risky and non-bankable due to the limited size of the projects and insufficient offtake agreements:

> "*If there is too high risk relative to the return, insufficient financial capacity of the borrower to undertake the necessary investments or insufficient cash flows, the projects become non-bankable. Lack of visibility regarding the viability of the project (new technology, no established market, question marks around demand and price) also*

1096 Platform voor Duurzame Financiering, *Duurzame financiering: Zijn er belemmeringen vanuit toezicht, financiële regelgeving en overheidsbeleid?*, 25 September 2018 (excerpt) (Exhibit ING-295), p. 18. Likewise DNB, *De financiering van transitie*: *kansen grijpen voor groen herstel*, 1 February 2021 (excerpt) (Exhibit ING-296), p. 16: "*The business case for climate-related investments is often unattractive because the potential return is too low relative to the risk. The main reason is that CO2 emissions are not sufficiently taxed (section 3.1.1), making renewable investment plans less competitive than fossil alternatives. At the same time, financing new sustainable technologies carries a high level of risk due to their long duration and uncertain payback period (see section 3.1.2). Because the business case is unattractive, the market is unable to achieve the level of climate investment that would be desirable from a social perspective. Consequently, the market outcome for climate investment diverges from the social optimum (Dasgupta, 2021).*"; KPMG Progress Report 2024 (Exhibit ING-237), p. 12 "*Financial institutions indicate that demand for sustainable investment opportunities exceeds available supply* [...] *which makes constructing well-diversified portfolios with low climate impact difficult and challenging*."

> *decreases the bankability. If business risk is perceived to be too high (e.g., lack of established business model, consumer payment capacity or technology), then these businesses cannot be financed without public guarantees, which protect against a proportion of downside risk at an appropriate premium, which does not push the cost of capital too high.* […]
>
> *The reason while many projects often fall outside the standard parameters of bankability, can be related to factors such as absence of offtake agreements, limited track records, unproven emerging technologies or intense global competition. Projects are also often not large enough for structured financing.*"[1097]

673. Milieudefensie's assumption reflects a fundamental misunderstanding of what the climate transition involves. Emissions-intensive companies must become more sustainable, too – perhaps even *more so*. As long as society continues to strive for this, and as long as it remains the choice of the legislator,[1098] legal, emission-intensive activities that meet societal needs should have access to capital. Banks can support the sustainability of these activities by providing funding for sustainability initiatives and investments. For example, projections suggest that the cement sector will require EUR 51 billion, and the steel sector EUR 3.6 trillion.[1099] Given the vast sums of money required to make, for example, steel factories more sustainable, a rigorous linear reduction in reported emissions is neither desirable nor realistic. Milieudefensie implies that financing emission-intensive companies cannot be part of a sustainable climate transition. This is incorrect, and also contradicts the Green Deal.[1100]

674. Furthermore, shifting capital from emission-intensive clients and activities to "sustainable" projects and clients is not necessarily a good idea. Empirical research shows that such a shift in financing is counterproductive in terms of reducing actual emissions. Researchers from Boston College and Yale University investigated how increasing or decreasing the cost of capital[1101] for "brown" or "green" companies affects their emissions.[1102] They come to two conclusions:

1097 EBF Report 2025 (Exhibit ING-236), p. 28. See also Cardona 2020 (Exhibit ING-235), p. 8.

1098 As discussed in chapters 2 and 9.

1099 World Economic Forum, *Net-Zero Industry Tracker - 2024 edition*, December 2024 (excerpt) (Exhibit ING-297), p. 82 (steel) and p. 88 (cement).

1100 See chapter 9 above.

1101 Capital costs are the expenses incurred by a company in order to obtain financing, and are therefore an important factor for companies when making investment decisions. Incidentally, higher capital costs may in turn encourage financing and investment in emission-intensive activities. See section 11.3.2 above.

1102 Hartzmark et al. define "brown" and "green" undertakings as those with negative and positive environmental impacts, respectively. See S.M. Hartzmark et al., "Counterproductive Sustainable Investing: The Impact Elasticity of Brown and Green Firms", *SSRN Electronic Journal* 2024 ("Hartzmark 2024") (Exhibit ING-298), p. 1.

(a) an increase in capital costs for "brown" companies leads to an increase in their emissions rather than a reduction, while a reduction in capital costs for "green" companies has a minimal positive impact;[1103] and

(b) sustainability measures taken by a "green" company have a much smaller impact on absolute emissions than those taken by a "brown" company because the absolute emissions of a "green" company are much smaller to begin with.[1104]

675. Based on these findings, they conclude that withdrawing financing from "brown" companies and providing it to "green" companies is counterproductive in terms of reducing actual emissions:

> "*We develop a new measure of impact elasticity: the change in a firm's environmental impact due to a change in its cost of capital. We find that reducing green firms' financing costs leads to minimal impact changes, while increasing brown firms' financing costs causes significant negative impact changes. Thus, sustainable investing strategies that shift capital from brown to green firms contain a counterproductive channel that makes brown firms more brown without making green firms more green. A mistaken focus on percentage reductions in emissions rewards already-green firms for trivial reductions in emissions and gives brown firms weak incentives to improve.*"[1105]

676. Thus, granting the claims is unlikely to have a positive effect on financing the climate transition. Instead, financing will be required for a transition to take place on both the production and user sides of the fossil energy equation.

11.5 Impact on society

677. ING has already demonstrated that the Purported Duties are ineffective and potentially counterproductive in terms of reducing actual emissions, and that they hinder banks in supporting the climate transition. This is exacerbated by the fact that the Purported Duties pose significant risks to society. These risks are

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1103 Hartzmark 2024 (Exhibit ING-298), p. 22-23.
1104 Hartzmark 2024 (Exhibit ING-298), p. 3 and 31.
1105 Hartzmark 2024 (Exhibit ING-298), abstract. See also Report of Professor Ringe of 6 February 2026 (Exhibit ING-001A), p. 52-53.

multifaceted and intertwined, making them difficult to predict accurately and therefore impossible to mitigate effectively. ING will explain.

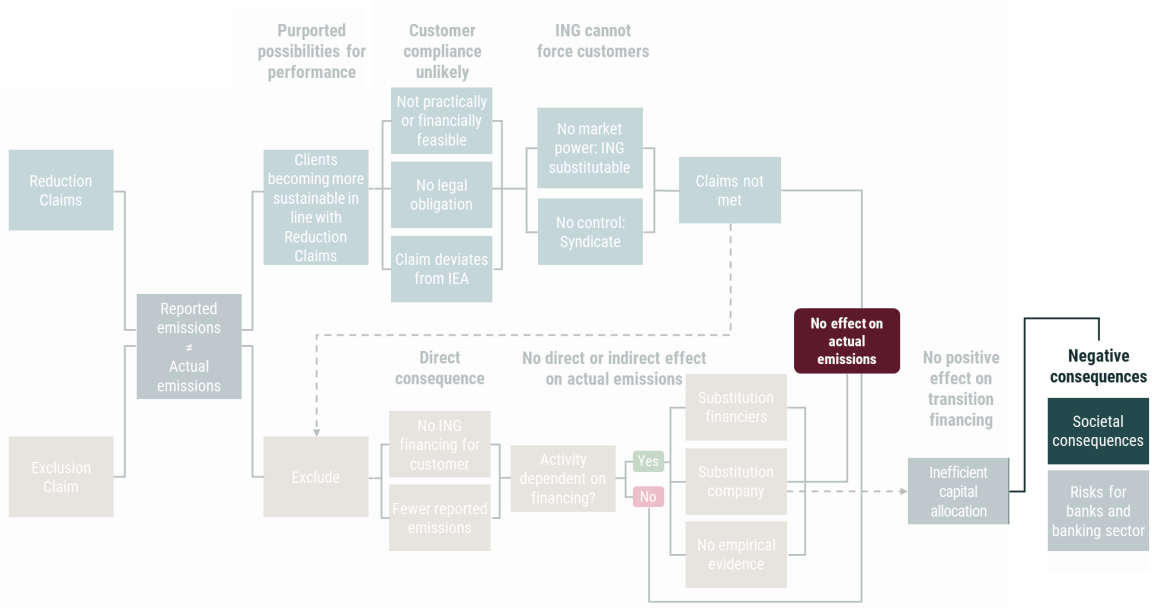

Figure 20 Flowchart showing the effectiveness and consequences of the claims (part 5/6)[1106]

678. As previously mentioned in this SoD, Milieudefensie has not clarified to whom its norms would apply.[1107] It would be arbitrary for the Purported Duties to apply exclusively to ING since Milieudefensie does not cite any highly specific circumstances applicable only to ING. ING therefore considers the possibility that Milieudefensie believes the Purported Duties would apply to all financiers, including financial companies operating in the Netherlands.[1108]

679. Broader application of the Purported Duties would have significant societal consequences. Different societal interests are simultaneously served by sectors that are financed by the complex and intertwined banking system.[1109] Milieudefensie must provide a thorough account of the possible consequences of its claims and their proportionality. It must also provide an account of ING's systemically important position and provide a reasoned explanation as to why those consequences should be accepted in light of the interest it has asserted. It has not done so. It is beyond the scope of this SoD to discuss every possible

1106 Figure 20 is also submitted as part of Appendix 2.
1107 See section 7.1.2 above.
1108 In the Writ of Summons, Milieudefensie – in the context of effectiveness – deduces from the Court of Appeal's judgment in *Shell v. Milieudefensie* that "*all (major) companies have a duty of care to reduce emissions".* According to Milieudefensie that obligation means that not only is ING required to take adequate climate action, but *"that action may also be expected of other banks and their clients*". See Writ of Summons, no. 1161. See also chapter 8 where ING discusses that Milieudefensie's norms are pseudo-legislation and, in its own words "*new norms*" and section 13.2.3, where it is discussed that Milieudefensie is seeking a broad precedent.
1109 On that role, see section 4.1 above.

consequence. Moreover, many consequences are currently impossible to predict. Below, ING discusses two examples of highly obvious societal consequences that Milieudefensie could have addressed in its Writ of Summons.

(1) The Purported Duties in the "Electricity and heat" sector

680. The electricity and heat sector comprises companies that produce electricity and heat for various applications.[1110] The sector contributes to the achievement of three important societal interests: (i) security of supply; (ii) affordability; and (iii) sustainability of the energy supply. During the energy crisis of 2021-2023, Europeans experienced the importance of these interests when security of supply was jeopardised and energy bills and inflation rose sharply. This prompted the EU legislator to accelerate the energy transition by investing in more independent renewable energy production, while continuing to guarantee security of supply and affordability through the supply of LNG (liquefied natural gas) and other measures.[1111]

681. In 2023, the EU legislator therefore set the following 2030 targets: (i) emissions covered by the EU ETS, including those from the electricity and heat sector, must be reduced by 62% compared to 2005;[1112] and (ii) 42.5–45% of the EU's energy must come from renewable sources.[1113] For the Dutch electricity sector, this equates to an emissions reduction target of 57.65% by 2030 compared to 2022 levels.[1114] These are ambitious targets that put the EU ahead of the game. An IEA analysis of current and developing government policy in OECD countries indicates that CO_2 emissions from the electricity and heat sector in these countries are projected to decrease by 47.53% by 2030 compared to 2022.[1115]

682. Contrary to EU policy and at odds with the percentages sought by OECD countries, the Purported Duties stipulate that this sector must achieve an absolute reduction of 71.5% by 2030. Given the aforementioned IEA analysis and

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1110 The IEA's definition of the "Power generation" sector is as follows: "*electricity generation and heat production from all sources of electricity, including electricity-only power plants, heat plants, and co-generation (i.e. combined heat and power) plants.*" See IEA WEO2024 (Exhibit ING-167), p. 367.

1111 REPowerEU Plan (Exhibit ING-024), p. 1. See also the Proposal for a Regulation on phasing out Russian natural gas imports, improving monitoring of potential energy dependencies and amending Regulation (EU) 2017/1938, COM/2025/828 final (excerpt) (Exhibit ING-299), recital 11.

1112 See section 2.4. See recital 39 Directive (EU) 2023/959 of 10 May 2023. This is a tightening of the stated target of 43%.

1113 Article 3(1) RED III.

1114 This follows from Appendix to *Parliamentary Papers II* 2023/24, 32 813, no. 1307 (2023 Climate Memorandum) (Exhibit ING-300), p. 16. CO_2(e) emissions from the Dutch electricity sectors in 2022 were 30.7 Mt CO_2(e). The indicative residual emissions in 2030 are 13 Mt CO_2(e). That is a reduction of 57.65%.

1115 The Extended Data set to the IEA, World Energy Outlook 2023 (2023) shows that CO_2 emissions from "Electricity and heat" are 3,842 Mt CO_2 in 2022. In the "Stated Policies" scenario, OECD countries' CO_2 emissions in 2030 are 2,016 Mt CO_2. That is a reduction of 47.53%.

government targets, in part, it is unlikely, or even highly unlikely, that companies in this sector will achieve an average emission reduction of 71.5% by 2030.

683. To comply with the Purported Duties, banks would therefore have to exclude these clients (see section 11.2). In practice, this means that the Purported Duties prohibit financing for such companies, even if they are in line to meet EU and Dutch reduction targets. This does not benefit the sector's transition, as it actually needs financing to produce more renewable energy, e.g. through new wind farms, as explained in section 11.4.

684. The Purported Duties also pose a risk to energy security and affordability. If the EC determines that, under certain conditions, electricity produced from gas is necessary to maintain sufficient reserve and transition capacity, banks will no longer be able to finance this under the Purported Duties.[1116]

(2) The Purported Duties in the Dutch residential real estate sector

685. The Dutch government aims to ensure that the housing sector ("Residential Real Estate") has enough (i) readily available; (ii) affordable; and (iii) high-quality housing, with sustainability falling under the umbrella of quality.[1117] In 2024, the national housing shortage amounted to 401,000 homes.[1118] Much of the available housing is unaffordable for private individuals. In addition, 21.3% of Dutch homes have an energy label of D or lower ("inefficient").[1119]

686. Banks play a vital role in this sector by providing mortgage loans. At the end of 2024, Dutch banks had EUR 591 billion in Dutch mortgage loans on their balance sheets. Banks hold approximately 69% of Dutch mortgage debt.[1120] Consequently, they finance millions of homes.[1121]

687. In 2024, the EU legislator stipulated in EPBD IV that the average primary energy consumption of homes must be reduced by at least 16% by 2030 compared to

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1116 Delegated Regulation (EU) 2022/1214. The EC has established technical screening criteria to determine, among other things, whether electricity generated from gas qualifies as an economic activity that substantially contributes to mitigating climate change, and whether this economic activity would not seriously undermine certain environmental objectives. See no. 4.29 in Appendix I of Delegated Regulation (EU) 2021/2139 (as amended by Delegated Regulation (EU) 2022/1214). The EU's General Court has rejected an objection by Austria to Delegated Regulation (EU) 2022/1214, thus emphasising the importance of energy security. See General Court EU 10 September 2025, T-625/22, ECLI:EU:T:2025:869 (*Austria v. EC*), paras. 513-514.

1117 Appendix to *Parliamentary Papers II* 2021/22, 32 847, no. 878 (National Housing and Construction Agenda) (excerpt) (Exhibit ING-301), p. 21-22.

1118 Dutch Ministry of Housing and Spatial Planning, "How is the housing shortage calculated?", 12 August 2024 (Exhibit ING-302).

1119 Netherlands Enterprise Agency, "Dashboard - Energielabels" (printout of 21 January 2026) (Exhibit ING-303).

1120 DNB, "Size and breakdown of the mortgage market" (printout of 21 January 2026) (Exhibit ING-304), p. 2.

1121 There are 4.5 million owner-occupied homes in the Netherlands. About 61% of households have a mortgage. This equates to 2,745 million mortgage loans. See the Dutch Banking Association's 'Bank in Beeld' (printout of 21 January 2026) (Exhibit ING-305), p. 2.

2020 levels.[1122] At least 55% of this reduction must be achieved by renovating the 43% of homes that are the least energy efficient.[1123] To promote the energy efficiency of the building stock, mortgage lenders must provide certain loans on a non-discriminatory basis and on a large scale.[1124]

688. In 2022, emissions from the "built environment" sector in the Netherlands totalled 19.8 Mt CO_2eq.[1125] Based on current and proposed policies, the Dutch Ministry of Climate and Green Growth estimates that emissions will be approximately 15.5 Mt CO_2eq in 2030, while the target is 13.2 Mt CO_2eq.[1126] The expected 15.5 Mton CO_2eq in 2030 would represent a reduction of 27.7% compared to 2022, and the target of 13.2 Mton CO_2eq would represent a reduction of 33.3%. The government's position is that this target is "*only achievable if all planned and scheduled policies are implemented and external factors such as the weather are favourable*".[1127] The PBL Netherlands Environmental Assessment Agency (*Planbureau voor de Leefomgeving*) considers the probability of achieving the sector-specific 2030 target to be "*approximately 10 per cent*".[1128] However, contrary to EU and Dutch policy, the Purported Duties stipulate that the residential real estate sector must achieve an even higher absolute reduction in 2030: 40.5% compared to 2022.

689. Assuming that Dutch homes will not become sustainable much faster than the statutory targets allow for, ING and other banks will only be able to fulfil the Purported Duties by divesting mortgage loans. To divest as few mortgage loans as possible while still achieving the required 40.5% reduction by 2030, banks would have to divest the parts of their portfolios with the highest absolute emissions and the highest emission intensity – presumably those with the lowest energy labels (D/E/F/G). This is despite the fact that EU climate policy is based on the idea of helping rather than divesting energy-inefficient homes.[1129] In addition to the forced divestment of mortgage loans, banks would also theoretically be unable to grant new mortgage loans, let alone for energy-inefficient homes. This would otherwise result in more reported emissions.

1122 Article 9(2)(a) EPBD IV.
1123 Article 9(2) EPBD IV.
1124 Article 17(1) and (11) EPBD IV.
1125 See Emissions Registry, "Greenhouse Gases" (printout of 21 January 2026) (Exhibit ING-306), p. 2. This represents the direct emissions from homes and most other non-residential buildings. Emissions from electricity generation, for example, are not included here (they are counted in the electricity sector).
1126 Appendix to *Parliamentary Papers II* 2025/26, 33 043, no. 119 (Climate and Energy Memorandum 2025) (excerpt) (Exhibit ING-083), p. 17. The estimate has a range of 12.5 – 18.2 Mton CO_2-eq.
1127 Draft Climate Plan 2025-2035 (Exhibit ING-084), p. 39.
1128 Appendix to *Parliamentary Papers II* 2025/26, 33 043, no. 119 (Climate and Energy survey 2025) (excerpt) (Exhibit ING-307), p. 60.
1129 See also section 9.2.1 and the elaboration on the EPBD IV there.

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690. Therefore, excluding large groups of clients with mortgage loans is the way for a bank to meet Milieudefensie's demands. However, this approach makes no positive contribution to actual home sustainability, nor does it provide a solution to the current problems in the housing sector. After all, divesting mortgage loans would either lead to (i) their resale to a party not subject to the Purported Duties; or (ii) the termination of mortgage loan agreements with Dutch homeowners.

691. It has been explained in section 11.3 that option (i) does not lead to real emission reductions and may even have counterproductive effects, for example if clients then have to turn to banks that are less willing than ING to support sustainability. In addition, homeowners often have a current account with the same Dutch bank that holds their mortgage loan, plus any other services they purchase from that bank.

692. Option (ii) is obviously undesirable and unrealistic as it has major implications for the valuation of houses and would leave hundreds of thousands of homeowners in (possibly even acute) financial difficulty, without their homes becoming sustainable. Milieudefensie does not explain why it believes that such consequences of its claims with respect to residential real estate either do not exist (if it believes that there is ample opportunity here for homeowners to make an easy switch and this will have no price effects), or that these consequences should be tolerated in the housing market and society should bear these consequences, or why that would fit within a just and orderly transition. This is distinct from the question of whether the bank in question has the right, under the terms of the contract, to terminate mortgage agreements.

693. In both cases, considerably less capital would be available for emission-intensive homes. Owners of such homes, which are often lower-value properties owned by people on lower incomes, have insufficient opportunities to make their homes more sustainable and continue to be burdened with high energy bills.[1130]

694. This lack of capital is also likely to negatively impact the demand for such homes. In fact, it increases demand for lower-emission or less emission-intensive homes. This will also affect the valuation of homes, as well as the difference in value between high and low emission homes. This will have an effect on homeowners' assets (perhaps even a shock effect). It remains to be seen how this will affect factors such as bank risk management, purchasing power, and social mobility.

[1130] Research by DNB shows that 20% of households have an average to very high energy consumption home (label D-G). On average, these households have a lower income than those with more sustainable homes. However, the research found no such relationship when looking only at the least energy-efficient homes (labels F and G). See DNB, *Van crisis naar kans: verduurzaming van woningen na de energiecrisis*, 22 April 2024 (excerpt) (Exhibit ING-308), p. 12.

695. The Purported Duties therefore entail economic risks that cannot yet be fully and accurately predicted, and consequently cannot be properly managed or corrected, certainly not prospectively. In any case, it is wrong to rule out such risks. Milieudefensie might therefore have been expected to identify these risks and consequences, and inform the court and the group whose interests it claims to represent accordingly (see also section 13.1).

696. Thus, it is clear from just two examples that the Purported Duties will have a, significant, adverse effect on the real economy and broader society. Even if the Purported Duties were to have any impact on actual emissions, then it cannot be established now whether any positive effects would outweigh the adverse impacts of implementing them. On the contrary, the two examples show that the, potentially possible, effect on actual emissions are not at all proportional, nor outweigh the societal impacts.

11.6 Risks to banks and the banking sector

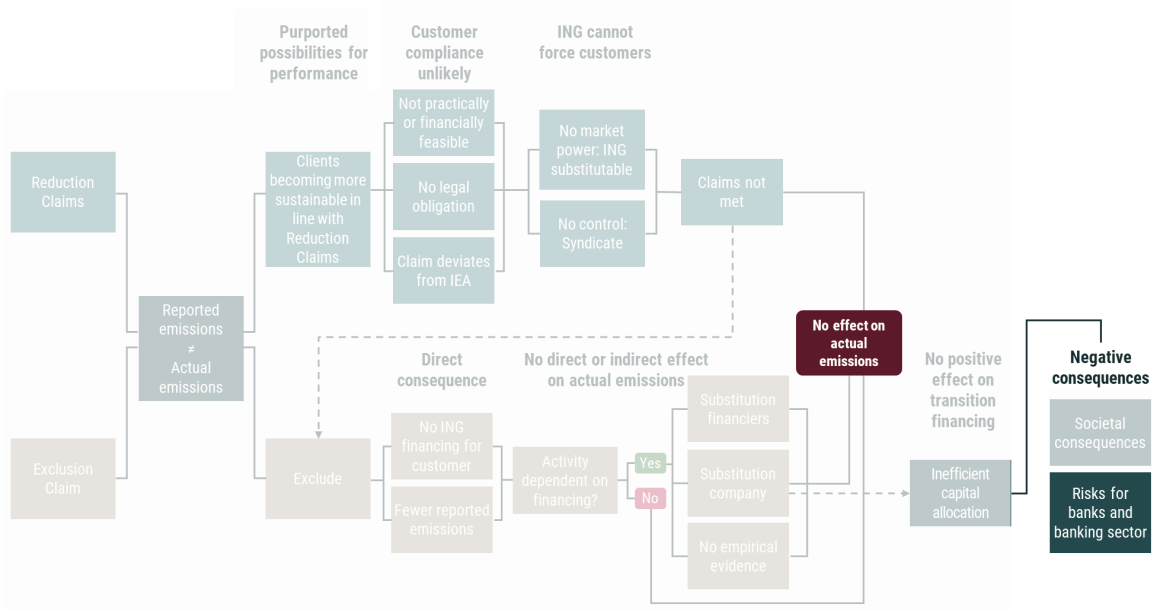

Figure 21 Flowchart showing the effectiveness and consequences of the claims (part 6/6)[1131]

697. Another category of undesirable consequences of the Purported Duties is the risk they pose to banks, the broader financial system and, through these channels, the economy. Here as well, ING assumes that Milieudefensie believes the Purported Duties apply to all types of financial institution.[1132] Even if these norms only applied to ING, they would still pose risks to other banks and the financial system given ING's position as a GSIB.[1133] Milieudefensie simply claims

1131 Figure 21 is also submitted as part of Appendix 2.
1132 See also section 11.5 above.
1133 See also Report of Professor Resti of 6 February 2026 (Exhibit ING-002A), sections 5.2 and 5.3.

that even after its demands were met, ING would still have policy discretion.[1134] This assertion is not only incorrect; it also fails to adequately address the consequences of the claims.

698. The Purported Duties have adverse impacts for the financial position of individual banks (section 11.6.1) and for the financial system (section 11.6.2).

699. In this context, too, it goes without saying that the precise financial impact on a bank and on the stability of the financial system cannot be predicted in advance, especially given the limited scope for argument in legal proceedings. However, the mere *chance* of significant consequences shows that banks must not be heedlessly saddled with obligations of such magnitude.

700. Therefore, the extent to which the risks described below will or could occur remains uncertain. Firstly, it is unclear which transition pathways the various markets and sectors in which a bank operates will follow. If ING is forced to reduce its paper emissions in line with, for example, the IEA NZE scenario but the real economy does not follow the same climate trajectory, additional risks will arise. ING does not rule out the possibility that the expected consequences and their likelihood will increase as the disparity between emissions reductions in the real economy and reductions on paper grows.

11.6.1 The Purported Duties pose negative risks to banks' financial position

701. A sound financial position is essential for a bank's stability. This encompasses aspects including the business model, risk profile, and capital and liquidity position.[1135] The Purported Duties adversely affect these elements.

(a) **Business model resilience**. The Purported Duties may affect business model resilience. The restrictions they impose may prevent banks from conducting adequate risk and return assessments when allocating capital, for example. It cannot be ruled out that this could have adverse consequences for the sustainability of individual banks' business models. As discussed in section 9.1.3 above, the Dutch Minister of Finance pointed this out in 2025.

(b) **Capital**. Implementation of the Purported Duties could also affect banks' capital positions. This could be the case if, for example, (i) a loss is recognised on the value of assets;[1136] (ii) profitability structurally

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1134 See, for example, Writ of Summons, no. 1080 et seq.

1135 See also Report of Professor Resti of 6 February 2026 (Exhibit ING-002A), section 3.2, for a discussion of the background of these prudential rules.

1136 In principle, losses on the asset side of the balance sheet are debited to the own funds on the liability side.

declines;[1137] or (iii) it becomes more difficult to raise equity capital on the capital markets:[1138]

(i) If a bank is forced to categorically sell off the emission-intensive parts of its portfolio, it should be noted that the assets in question will be sold for less than their book value. This effect is exacerbated if the forced sale must be completed within a very short timeframe (e.g. three or twelve months). In other words, a "fire sale". This would affect the bank's capital position, as a loss would have to be recognised;

(ii) the risk and return profile of "green" portfolios could deteriorate if the bank's ability to make purely risk and return based capital allocation decisions is restricted. For example, if the bank is no longer free to pursue a different spread across sectors in its portfolio because it has to comply with the Purported Duties, this could affect its risk profile. See section 9.3.1 above. Deterioration in the risk and return profile could affect banks' ability to generate capital (i.e. make a profit); and

(iii) if there are doubts about the sustainability of a bank's business model, it becomes more difficult for the bank to raise capital. It is essential that there are no doubts about the sustainability of the bank's business model ahead of the issue of capital instruments. The market's assessment of ING's risks and its willingness to provide capital to ING may be impacted if ING is held to the Purported Duties. As explained in section 11.4, this also means that ING is unable to play a meaningful role in supporting its clients in the climate transition.

(c) **Liquidity**. As explained above under (b)(ii), the Purported Duties entail a range of restrictions. This includes restrictions on the types of assets a bank can invest in. It is not inconceivable that ING may have to withdraw from certain sectors entirely if those sectors do not become more sustainable in line with Milieudefensie's claims. After all, these claims would require ING to reduce emissions in absolute terms as well as on the basis of emission intensity. If a particular sector *cannot* become sustainable in line with Milieudefensie's claims, ING will no longer be able to finance any clients in that sector because none will be able to meet Milieudefensie's emission intensity requirements. This, in turn,

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1137 Recorded profits increase a bank's own funds, thus helping to maintain its own funds requirement.

1138 After all, this may mean that a bank cannot – by issuing capital instruments – strengthen its capital position (pre-emptively).

affects both the extent to which the bank can hold liquid assets and its financing mix.

(d) **Risk profile**. Various studies show that there is a shortage of financeable "green" projects with an adequate risk and return profile.[1139] It cannot be ruled out that an obligation to nevertheless invest in this relatively limited group of assets may lead, on the one hand, to increased concentrations within the portfolio – for example in companies that depend on the same new technology – and, on the other, to fewer opportunities for diversification. It could also result in a higher risk profile for Dutch banks, as they would have to invest in assets whose risk and return profile is unclear.

702. Thus, imposing the Purported Duties could have adverse impacts for the individual banks to which they apply. The severity of these consequences depends on various factors, including how out of step a bank is with the real economy. As has frequently been discussed in this SoD, a bank must adequately manage its risks, including applying and ensuring sufficient risk diversification. If a bank's transition pathway differs significantly from that of the real economy (for example, if it progresses at a different speed, uses a different method, or distributes sustainability differently within sectors), the aforementioned consequences cannot be ruled out. In any case, a bank cannot be subject to isolated obligations that conflict with regulations applicable to the real economy.

11.6.2 The Purported Duties risk having adverse impacts for the financial system

703. Milieudefensie has rightly pointed out the potential adverse impacts of climate change for the financial system.[1140] Addressing climate change does indeed help to mitigate risks for banks and the financial system. However, there are also other sources of risk to the financial system. Milieudefensie overlooks the various systemic risks that the Purported Duties actually create.

704. As explained in section 11.2, the Purported Duties lead to the categorical and rigorous exclusion of clients. This is achieved, for example, by divesting clients or parts of portfolios. Milieudefensie's Purported Duties pose a risk of large-scale divestment of assets in carbon-intensive sectors ("brown runs") by various parties in the financial sector. This increases the risk of fire sales. The Purported Duties could also lead to an overvaluation of green investments ("green bubbles"). If many banks are required to comply with the Purported Duties, demand for green investments will increase significantly within the banking sector. Banks have to invest their depositors' money somehow. This increased demand will make green assets more attractive. This could artificially

1139 See also nos. 671-672 and section 9.3 above for further references.
1140 Writ of Summons, nos. 62, 427, 838 and 839.

inflate the valuation of those "green" assets. After all, the value of the underlying assets will not have increased. Overvaluation on a large scale would lead to a green bubble. When the bubble bursts, market actors will incur significant losses. Scientists are also warning about this:

> "*Seen in this light, the risks to financial stability linked to the transition are two-sided. One side is what has attracted attention so far – exposures to overvalued 'brown' assets, which should lose their value (become 'stranded') as the transition proceeds. The concern here is that investors either sleepwalk into 'brown vortices' or act rashly, generating disorderly 'brown runs' (eg Delis et al, 2018). But there is also another side, which has received far less attention and is more similar to the familiar boom-bust pattern. This relates to exposures to either overvalued 'green' assets or to assets that purport to be green; a 'green bubble', for short (Carstens, 2021, Aramonte and Zabai, 2021, Cochrane, 2021 and Tett and Mundy, 2022), The first side reflects an underestimation of the scope and speed of the transition; the second an overestimation.*
>
> *The risk of a green bubble is material. In principle, private investors and lenders more generally have a clear incentive to ride bubbles, lured in by self-reinforcing returns. In some respects, policy and social pressures heighten the danger. With government measures in the real economy having so far fallen short of CO2 commitments, the official sector has strongly encouraged green investments. Partly as a result, it is likely that private agents will expect some form of public support in case things go wrong – a kind of 'government put'. Social pressures, in turn, can reinforce emulation, or herding, further boosting the demand for green assets, even when the bubble is recognised as such. The bursting of a green bubble would not only carry direct social costs but could also undermine the credibility of the transition process itself.*"[1141]

705. Imposing the Purported Duties on multiple banks could cause shockwaves. The financial sector could be exposed to systemic risks if there are unexpected changes to the legal framework for climate transition, for example through court rulings[1142].[1143] Various studies indicate that the likelihood of systemic risk

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1141 C. Borio et al., 'Finance and climate change risk managing expectations', *BIS Speech*, 8 June 2022 (Exhibit ING-309), p. 3. See also P. Bolton et al., "Resilience of the Financial System to Natural Disasters", *Centre for Economic Policy Research*, 25 May 2021 (excerpt) (Exhibit ING-310), p. 39-40; P. Bolton et al., "The green swan - Central banking and financial stability in the age of climate change", *Bank for International Settlements*, January 2020 (excerpt) (Exhibit ING-311), p. 18; Regelink (DNB) 2017 (Exhibit ING-238), p. 39-40.

1142 The DNB brochure *'Op weg naar een duurzame balans'* also states that "*Climate and environmental policy, technological developments, and court rulings aimed at limiting climate and environmental damage can also lead to transition risks due to the risk of stranded assets.*" DNB, *Op weg naar een duurzame balans,* 22 November 2021 (excerpt) (Exhibit ING-312), p. 14.

1143 ECB, *Gids inzake klimaat en milieurisico's*, November 2020 (Exhibit ING-040), p. 11: "*Transition risk* [...] *can be driven, for example, by a relatively abrupt implementation of climate and environmental policies, technological advances or changes in market sentiment and preferences.*"

increases when coordinated policy approaches are thwarted.[1144] Consequently, what Milieudefensie aims to achieve with its lawsuits (the abrupt and, rather than coordinated, fragmented establishment of a "*new norm*" with "*international precedential value*")[1145] is considered undesirable.

706. Substituting banks for shadow banks can also lead to systemic risk.[1146] For a number of reasons, including the fact that they are subject to less regulation and are less transparent, shadow banks are less able than mainstream banks to absorb unexpected losses and prevent them from spreading throughout the financial system.

707. Substituting mainstream banks with shadow banks leads to transition-related risks being transferred to a sector that is not supervised in the management of these risks and is therefore less able to absorb their consequences. However, the shadow banking sector is intertwined with the mainstream banking sector, meaning the consequences of shadow banks failing to manage risks adequately affect the mainstream banking sector, which can manifest in ways that mainstream banks are less able to control. This could have consequences for the stability of the financial system.[1147]

708. The EC also warns that an accumulation of transition-related risks in the shadow banking sector could negatively impact the stability of the financial system:

> "*The non-bank financial intermediation (NBFI) sector plays a critical role in the structural build-up and potential materialisation of climate-related financial stability risks. Climate shocks, especially in a delayed transition scenario, are likely to first result in revised market expectations (in equity and corporate bond markets), before hitting the balance sheet of banks. Investment funds and insurers are inherently more exposed to market*

1144 For example, the ECB and the ESRB have also warned that an accumulation of transition-related risks in the shadow banking sector could negatively impact the stability of the financial system. See ECB and ESRB, *Towards macroprudential frameworks for managing climate risk*, December 2023 (excerpt) (Exhibit ING-313), section 4.1. In its "Review of the EU Macroprudential Framework for the Banking Sector", the ESRB reiterates that coordination is crucial in addressing systemic climate-related financial risks. See ESRB, *Review of the EU Macroprudential Framework for the Banking Sector*, March 2022 (excerpt) (Exhibit ING-314), p. 48-51. See also FSB, *Supervisory and Regulatory Approaches to Climate-related Risks*, 13 October 2022 (excerpt) (Exhibit ING-315), p. 5-7, section 1, where the FSB concludes that a more consistent global approach to climate-related risks would improve the assessment and mitigation of financial vulnerabilities and reduce the risk of harmful market fragmentation.

1145 Milieudefensie, *Annual Plan 2026*, 2026 (excerpt) (Exhibit ING-196), p. 10. See also Writ of Summons, no. 1179.

1146 See also Report of Professor Resti of 6 February 2026 (Exhibit ING-002A), section 4.3.

1147 See, for example, A.A. Gözlügöl, "Credit Substitution in Sustainable Finance: An Achilles Heel?", *Journal of Financial Regulation* (00) 2025 (Exhibit ING-316), p. 2-3: "*Credit substitution also means that financial risks are transferred rather than mitigated. An important agenda in sustainable finance is to monitor and manage the environmental and climate-related risks that financial institutions might be subject to in relation to their lending and investment activities. While 'exit' eliminates these risks in exiting financial institutions, the risk itself is not eliminated but rather exists and builds up in other parts of the financial system that are potentially less regulated and transparent, which might have financial stability implications. In other words, while there might be an improvement from a microprudential sense (ie stability of an institution), there will be no improvement from a macroprudential sense (ie stability of a system).*"

> *risk due to larger corporate securities holdings but remain nonetheless interconnected with the banking sector through cross-equity holdings, common exposures and direct cash deposits. Climate-induced market corrections may initiate fund redemptions and possibly trigger fire sales across fund and insurance holdings. Leverage may further amplify such market pressures.*"[1148]

709. Substitution can also result in a worsening of the quantity and quality of information available on the market regarding sustainability issues that inform investor decisions. Banks are subject to transparency rules, whereas shadow banks are not.[1149] A lack of quality information could hinder the reorientation of financial flows towards sustainable investments. It could also limit the ability of banks and other financial firms to manage climate-related risks.

710. The EU legislator has anticipated the systemic and transition risks resulting from climate change. Consequently, it has conducted detailed analyses, for instance within the framework of the Fit for 55 package. These analyses show that, in all the examined scenarios, the financial sector suffers losses (of varying magnitude) due to transition risks.[1150] The EU legislator concluded that the financial sector would incur the fewest losses in a scenario in which the economy and financial system evolve under circumstances that allow for an orderly transition.[1151] The Purported Duties could disrupt this orderly transition, in part due to the potential for policy fragmentation.[1152]

1148 EC, "Report on the monitoring of climate-related risk to financial stability", C(2024) 4372 final, 28 June 2024 (excerpt) (Exhibit ING-317), p. 39. See also p. 37-40. These findings find support in several studies, e.g. ECB and ESRB, *Climate-related risk and financial stability,* July 2021 (excerpt) (Exhibit ING-318), sections 8.2-8.3; EIOPA, *2022 IORP Climate Stress Test*, 13 December 2022 (excerpt) (Exhibit ING-319), section 2.2.2; Emambakhsh et al. 2023, "The Road to Paris: stress testing the transition towards a net-zero economy" (Exhibit MD-194), section 6.2. The results of the ESA and ECB's Fit for 55 climate scenario analysis suggest that insurers, pension funds, and investment funds (i.e. shadow banks) would incur significantly higher losses than banks in a scenario involving a 'run on brown shock' alongside adverse macroeconomic conditions. See European Supervisory Authorities and ECB, *Fit-for-55 climate scenario analysis by the European Supervisory Authorities and the European Central Bank,* 19 November 2024 (excerpt) ("ESA, Fit-for-55 climate scenario analysis") (Exhibit ING-320), sections 15-16.

1149 Shadow banks, for example, are not necessarily subject to Pillar 3 and/or CSRD disclosure requirements, nor to the requirements of lower-level legislation.

1150 ESA, Fit for 55 climate scenario analysis (Exhibit ING-320), p. 15-16.

1151 ESA, Fit for 55 climate scenario analysis (Exhibit ING-320), sections 12-18. Incidentally, this is also confirmed by other publications by regulators and policymakers as well as academics. See ECB and ESRB, *Positively green: Measuring climate change risks to financial stability*, June 2020 (excerpt) (Exhibit ING-321), p. 9; FSB, *The Implications or Climate Change for Financial Stability*, Nov. 23 2020 (excerpt) (Exhibit ING-322), section 2.2; S. Alogoskoufis et al., "ECB economy-wide climate stress test", *ECB Occasional Paper Series* 281/2021 (excerpt) (Exhibit ING-323), section 6.1; Bank of England, *Results of the 2021 Climate Biennial Exploratory Scenario (CBES)*, 24 May 2022 (excerpt) (Exhibit ING-324), p. 26, Figure 2.2; ECB, *2022 climate risk stress test*, July 2022 (excerpt) (Exhibit ING-325), section 4.3; J. Ojea-Ferreiro et al., 'Systemic risk effects of climate transition on financial stability', *International Review of Financial Analysis* (96) 2024 (e ING-326), section 4.2.1; T. Jourde et al., *Systemic Climate Risk*, April 2023 (Exhibit ING-327), section 3.2.

1152 Report of Professor Ringe of 6 February 2026 (Exhibit ING-001A), p. 19-21 and 58.

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711. Thus, the Purported Duties create risks for individual banks and the financial system. Moreover, risks to the financial system amount to societal risks.

11.7 Conclusion: no effective or responsible contribution to climate change mitigation

712. Unwritten norms only exist if they are effective (see sections 8.2.3 and 8.3). This requirement applies in full regardless of the grounds on which Milieudefensie bases its claims. Even if Milieudefensie's claims are granted, the danger that it (and, incidentally also ING) wishes to mitigate will continue to exist as before. The Claimed Measures will not lead to a reduction in emissions. On the contrary.

713. As this chapter shows, the assumptions and suppositions on which Milieudefensie bases its claims are incorrect. No complicated analysis is required to reach this conclusion. There are obvious reasons why Milieudefensie's approach is ineffective. Milieudefensie for example ignores the difference between reported and physical emissions, the lack of influence and control that banks have over their clients, and the fact that substitution occurs at the level of financiers and companies. Furthermore, there is no scientific evidence to support Milieudefensie's claims. These circumstances all lead to the conclusion that Milieudefensie's claims are ineffective, or at best extremely limited, in reducing emissions.

714. Moreover, the claims risk having counterproductive effects that hinder the climate transition. For example, they impede the capital flows necessary for the transition to succeed. The Purported Duties also have significant consequences for society, banks themselves, and the financial system. The Purported Duties could thus hinder the financing of clients' and homes' sustainability, worsen banks' financial stability, and create systemic risks, which could in turn lead to undesirable societal consequences.

715. The Purported Duties' ineffectiveness and counterproductive consequences for global emissions confirm that they cannot exist as unwritten legal norms. It is precisely for these reasons that Dutch and EU legislators opted for a different approach, why the Purported Duties therefore conflict with legal obligations and legislators' policy choices (chapter 9), and why many Voluntary Initiatives do not reflect or support this approach (chapter 10).

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PART IV MILIEUDEFENSIE'S CLAIMS CANNOT BE GRANTED

12 THE PURPORTTED DUTIES DO NOT EXIST

Key points of this chapter

- The Purported Duties do not exist because the requirements for rules of unwritten law have not been met.
- Reliance on Article 6:162(2) DCC does nothing to alter this conclusion. The role of the court remains unchanged on that basis. Furthermore, chapters 9,10 and 11 show that the "reference points" cited by Milieudefensie either do not exist or cannot serve as reference points or circumstances in support of the Purported Duties, while numerous other "reference points" demonstrate that the Purported Duties do not exist. Nor do the endangerment doctrine and Kelderluik factors, as invoked by Milieudefensie, lead to a different conclusion.
- The various elements of Milieudefensie's claims lack a basis or "reference points", whether considered individually or in any combination thereof.

716. In chapter 7 ING discussed the elements of Milieudefensie's claims and the Purported Duties. In chapter 8, ING discussed the requirements that the Purported Duties must meet: (i) they must be compatible with the statutory framework; (ii) they must be knowable, and there must be societal consensus that the norms exist as legally enforceable duties; (iii) they must be effective:

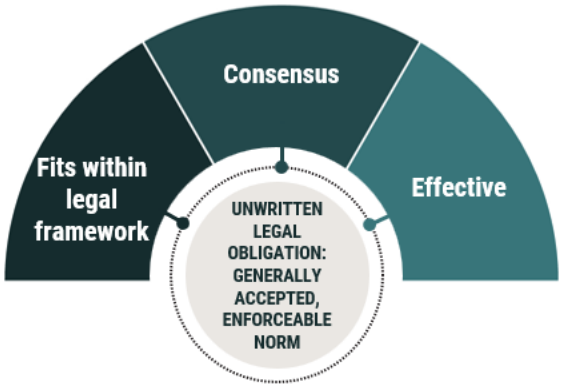

Figure 12 Overview of requirements for an unwritten legal duty[1153]

[1153] Figure 12 is also submitted as part of Appendix 2.

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717. In chapters 9, 10 and 11, ING explained that none of the requirements had been met, outlining the main reasons why. In this chapter, ING summarises its defences against the Purported Duties.

- In section 12.1, ING begins by outlining its overarching defence against all claims. It argues that, given what has been discussed in chapters 8 to 11, the legal norms advocated by Milieudefensie do not exist. This argument stands regardless of the grounds put forward by Milieudefensie. Specifically, Milieudefensie cannot circumvent the requirements of general legal rules based on unwritten law by invoking a duty of care, let alone the highly case-specific endangerment doctrine.

- In section 12.2, ING provides a non-exhaustive summary of its defences against the various elements of Milieudefensie's claims, as set out in chapter 7. These are the Reduction Claims (section 12.2.1), the Exclusion Claims (section 12.2.2) and the CTP Claim (section 12.2.3). This will show that the Purported Duties do not exist.

12.1 Overarching defence: Regardless of which grounds Milieudefensie puts forward, the Purported Duties do not exist

718. In chapters 8 to 11, ING argued that the Purported Duties cannot exist. The reference points outlined by Milieudefensie either do not exist or are part of a much larger group of reference points that actually contradict the nature and specific interpretations of the Purported Duties.

719. Milieudefensie has also failed to fulfil its obligation to provide evidence of the legal duties it alleges; nor has it provided the court with sufficient, accurate and complete information. First, Milieudefensie will have to indicate to whom its norms apply. It will also have to present the court with a comprehensive analysis of the "reference points" relevant to the court's evaluation.

720. This is true regardless of whether the Purported Duties are unwritten legal norms or arise from the duty of care or the endangerment doctrine.

721. Furthermore, by their nature, the Purported Duties are policy directives that Milieudefensie is trying to have established as general legal and policy rules. The endangerment doctrine and the general duty of care are not suitable for this purpose.

722. As explained in section 8.3, ING notes that the endangerment doctrine and the related Kelderluik factors are unsuitable for assessing the existence of the Purported Duties. ING's actions do not, in and of themselves, create a hazardous

situation, contrary to what Milieudefensie assumes.[1154] This is because the provision of financing and other services to third parties has no direct impact on the climate; financing generates no emissions. The allegedly endangering conduct (emissions) takes place in the real economy.[1155] If ING were to discontinue its financing or services to certain clients, this would not result in an actual reduction in those clients' emissions. Because of this, in part, emissions resulting from these activities cannot be regarded as emissions of ING.[1156] The fact that these emissions are allocated to ING for accounting purposes does not change this.

723. Even if the court were to apply the endangerment doctrine, this would still not imply the existence of the Purported Duties. Conduct that endangers the safety of others is only considered unlawful if the relevant party was required to refrain from such conduct in accordance with an applicable duty of care. The Kelderluik factors are relevant to this assessment.[1157] In this context, however, it is not the seriousness of climate change that must be considered, but rather ING's contribution to it. Applying the Kelderluik factors does not justify the conclusion that ING is acting unlawfully.

- **ING is not required to refrain from providing financing.** Conduct can only be unlawful if a party is required to refrain from such conduct in accordance with duties of care. According to these duties of care, a bank is not required to refrain from providing financing or other services. Banks serve societal interests, and neither the banking sector nor ING's business model can be labelled as conduct that should be avoided.[1158]

1154 Writ of Summons, section XII.4 and no. 824. ING's policy does not result in "*an adverse impact, or excessive adverse impact, of the interest represented by Milieudefensie in having a sustainable society* ", Writ of Summons, no. 665.

1155 See section 6.1 above. It is also partly for this reason that termination of the business relationship is ineffective in reducing physical emissions.

1156 See, for example, J. Spier, "Milieudefensie v. Shell: een sirenenzang? Suggesties voor een beter alternatief", in: W.M.J. van Veen et al., *De klimaatzaak tegen Shell (ZIFO-reeks nr. 35),* 2022 (excerpt) (Exhibit ING-328), p. 58: "*However, the question was whether Shell is responsible for* [all of its Scope 3 emissions] [...] *Moreover, it is highly questionable whether Shell can satisfy the claim in a manner that will provide climate relief."* See also the New South Wales Land and Environment Court of Australia, 18 October 2021: *Mullaley Gas and Pipeline Accord Inc. Santos NSW (Eastern) Pty Ltd*, [2021] NSWLEC 110 (Exhibit ING-329), paras. 106-107. In this case, it was held that there is "*a sufficient degree of direction or control*" over Scope 2 and 3 emissions when the end user is part of "*the same corporate group*". However, "*other circumstances where the degree of control that the proponent of the development has over the indirect emissions, whether Scope 2 or 3 emissions,* [are] *insufficient to justify the consent authority imposing a condition of consent requiring the proponent to minimise the indirect emissions*."

1157 These include (i) the likelihood that the aggrieved party will not exercise the required vigilance and care; (ii) the likelihood of this resulting in harm; (iii) the potential severity of the consequences; (iv) the degree of onerousness involved in taking the safety measures; (v) whether the precautionary measures are standard practice; and (vi) the nature of the conduct. See section 8.3.3 above.

1158 See section 9.3 above. Milieudefensie wrongly alleges in the Writ of Summons that much of the current (global) emissions would have been impossible without the financing by banks and other financial institutions of activities in the real economy, see nos. 6, 759, 783 and extensively in sections X.2.1-X.2.4 and X.4-X.5.

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Moreover, Milieudefensie does not clarify why providing funding would be unlawful, while providing labour, raw materials and other means (of production) is not. according to Milieudefensie's theory, those means would also enable global emissions. Thus, Milieudefensie does not make clear why providing funding is supposedly endangering, and all other conduct supposedly is not.

- **ING's own actions are what matters**. When applying the Kelderluik factors, the focus should be on assessing the consequences of ING's actions rather than the consequences of climate change itself.[1159] As noted above, the emissions allocated to ING are the focus of these proceedings. ING can support its clients in the transition, but it cannot force them to become more sustainable as required by the Reduction Claims.[1160] So the impact of ING's actions on climate change as such is limited. ING's control in respect of countering climate change it is even more limited. This is also apparent from the Purported Duties' lack of actual effectiveness. The impact of the Purported Duties on reducing or limiting emissions into the atmosphere is negligible.[1161] Therefore, there is no situation in which ING "*should* [...] have known as of the time of its founding that as a financial institution it makes a considerable contribution to causing climate change."[1162] In this context, Milieudefensie further believes it is relevant that ING has long been committed to helping support its clients in the transition. Voluntary action is obviously not a ground on which general legal duties can be established.

- **The claimed "precautionary measures" are extremely onerous**. Granting the Claimed Orders would have far-reaching and adverse impacts for society, ING, its clients and any other potential addressees, as well as for the financial system.[1163] Contrary to what Milieudefensie suggests, the Purported Duties [1164] require a reduction in ING's activities (including its financing activities).[1165] After all, ING will have to exclude clients and will not be able to reinvest financing on a one-to-one basis in

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1159 See section 8.3.3 above. Milieudefensie wrongly suggests that it is necessary to assess "*the nature and the scope of the damage caused by climate change*". See Writ of Summons, no. 749 under (i).

1160 See section 11.2 above.

1161 See sections 11.1-11.3 above.

1162 Writ of Summons, no. 786. Milieudefensie wrongly raises this commitment and contribution of ING as substantiation of ING supposedly being "*aware*" of "*its substantial contribution to climate change*." (Writ of Summons, section XII.3.3). Leaving aside the fact that Milieudefensie incorrectly presents ING's Scope 3 emissions as ING's own contribution, Milieudefensie incorrectly argues here that ING's emissions are supposedly "*material*" (Writ of Summons, no. 802). However, the quote from Milieudefensie in support of this position only says that the Scope 3, Cat. 15 emissions from ING are a relatively large portion ("*material*") of its total Scope 3 emissions.

1163 See chapter 11 above.

1164 Writ of Summons, no. 1084.

1165 See section 11.2 above.

clients with a low emission profile.[1166] This is despite the fact that these measures will not reduce physical emissions and may even be counterproductive. Furthermore, the Purported Duties impose a significant burden on ING by limiting its competitive opportunities. After all, its competitors are not subject to the same or similar obligations.[1167] Thus, ING is not just invoking the onerousness of measures for ING itself here, but the onerousness of the measures for others (see also no. 724 below).

- **The claimed "safety measures" are not standard practice**. The Purported Duties are not standard market practice. As explained in section 10.1, banks do not act in accordance with the Purported Duties. Furthermore, Milieudefensie's highly specific view of companies' obligations in climate mitigation, based on modelled emission reductions in a single transition pathway (the IEA NZE scenario), is not widely accepted in society. In fact, both the EU and the Dutch legislators have specifically rejected this approach and its various elements.

- **As a bank, ING is intrinsically linked to the real economy and beholden to fulfil that role.** The nature of ING's conduct does not make it unlawful. That conduct – financing the real economy – is at the core of a bank's normal business operations and does not itself create any threat. Milieudefensie fails to appreciate this.[1168] Furthermore, the greater the benefit to society of this conduct, the less likely it is to be unlawful.[1169] Financing the real economy – ING's allegedly unlawful conduct – is of great benefit to society. Policymakers recognise the benefit that banks provide, too, in part as a result of the transition.

724. An assessment of these factors shows that the Purported Duties require onerous and unusual precautionary measures that are disproportionate to ING's alleged contribution to climate change and have a negligible effect. That Milieudefensie claims it is "[not] *clear why the entire world should have to suffer catastrophic climate change and suffer the consequences thereof because it would be too*

1166 See section 11.4 above.

1167 That Milieudefensie also places importance on the onerousness of measures follows from its complaint that in the Shell case the Court of Appeal "*failed in this respect, inter alia, to attribute significance to the factor of 'onerousness' as an important part of the 'Kelderluik' factors*." Writ of Summons, no. 681.

1168 When discussing "the nature of ING's conduct" (Writ of Summons, section XII.4), Milieudefensie does not address ING's actual conduct. Instead, Milieudefensie believes that ING has "*influence and control*" over its Scope 3 emissions (Writ of Summons, no. 829), meaning that ING's conduct endangers the safety of others.

1169 C.J.H. Brunner, annotation to Dutch Supreme Court 6 November 1981, ECLI:NL:HR:1981:AG4257, *NJ* 1982/567 (Exhibit ING-330), sections 6-7; K.J.O. Jansen, *GS Onrechtmatige daad*, art. 6:162 BW (excerpt) (Exhibit ING-202), item 6.4.8.1. See also L.'t Mannetje, "Wie goed doet, goed ontmoet?", *AV&S* 2015/34 (Exhibit ING-331), p. 216, which argues that "*social and societal utility*" means that a less stringent duty of care applies to friendly favours and in the context of sports and games.

onerous for ING (and other big greenhouse gas emitters) to change"[1170] is a misstatement of fact. This argument is based on an inaccurate assessment of "*catastrophic climate change*" as such in relation to ING's actions. This fails on two counts. Firstly, ING is not a "*big emitter*" and the Claimed Measures would not prevent any danger.[1171] Secondly, the issue is not whether "*change*" is onerous for ING, but whether it would be onerous for the market, society, the financial sector and ING's clients to bear the consequences of the changes ING would have to implement if it were required to take the Claimed Measures.[1172]

725. Thus, contrary to what Milieudefensie implies, neither the existence of the Purported Duties nor " *how they are to be specifically interpreted for ING*"[1173] can be inferred by applying the endangerment doctrine. The defences put forward by ING in the preceding chapters, and the summary of these defences in relation to the individual elements thereof, are put forward by ING against all claims brought by Milieudefensie relating to all types of services provided by ING and all types of clients and on every basis. These defences apply in full to the primary, alternative and further alternative claims.

12.2 Specific defences: none of the elements of the Purported Duties can be elevated to the status of legal duty

726. As discussed in chapter 7, there are countless possible combinations of Milieudefensie's various primary, alternative, and further alternative claims, all of which are multi-layered. ING cannot possibly defend itself against all the countless combinations of Milieudefensie's primary, subsidiary and alternative claims, all of which are multi-layered. Nor is this necessary. As ING summarises below, it contests each and every element of the Purported Duties. These defences apply regardless of whether unwritten law, a duty of care, or the endangerment doctrine is invoked. ING notes that any of the many combinations of claims can only be granted if *that* specific combination does not conflict with policy choices or the law, consensus has been reached on *that* combination of legal norms and *that* specific combination is effective in achieving actual emission reductions.

12.2.1 Reduction Claims: none of the elements meet the requirements that apply to unwritten norms

727. As the previous chapters demonstrate, the individual elements of the Reduction Claims cannot be granted,[1174] let alone combined to form a legal duty.

1170 Writ of Summons, no. 834.
1171 See section 8.3.3 and chapter 11 above.
1172 These implications are discussed in outline in chapter 11.
1173 Writ of Summons, no. 669.
1174 For an overview of these elements, see section 7.2 above.

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(1) *Element 1: there is no norm requiring the ING Group as a whole to reduce its allocated emissions*

(a) The statutory framework sets out a systematic approach to emissions reduction based on market mechanisms.[1175] The EU and Dutch legislators have deliberately chosen not to impose emissions reduction obligations on individual companies.[1176] The Purported Duties would impose separate reduction obligations on individual banks in a roundabout way, which they would then have to impose on their clients.[1177]

(b) Milieudefensie's approach conflicts with the role of banks as envisaged by EU climate policy and the Green Deal: investing in the transition while managing risk.[1178]

(c) The Reduction Claims against a single bank, in this case the ING Group, conflict with the fundamental freedom of movement, as they would restrict ING's services and provision of capital.[1179]

(2) *Elements 2, 3 and 4: no separate reduction requirements for ING's (i) entire portfolio; (ii) sectors; and (iii) sub-sectors, which cover all emissions that can possibly be allocated to ING and its individual business units*

(a) EU legislation, including the CSDDD, takes a risk-based approach, as do Voluntary Initiatives. Companies, including banks, can prioritise their efforts based on the emissions, parts of their portfolio, business units and/or sectors and sub-sectors in which they can most effectively reduce emissions.[1180]

(b) There is also no consensus on the exact boundaries of banks' Scope 3, Cat. 15 emissions: some Voluntary Initiatives limit this to clients' Scope 1 and 2 emissions, while other Voluntary Initiatives include clients' Scope 3 emissions. This contradicts the idea that banks should set reduction targets for all possible reported emissions.[1181]

(c) Milieudefensie does not substantiate its claim that banks have an obligation to set reduction targets at the sub-sectoral level. There is no consensus among Voluntary Initiatives on such an obligation.[1182]

1175 See section 9.2.1 above.
1176 See section 9.2.1 above.
1177 See sections 9.1 and 9.2.1 above.
1178 See section 9.1.3 above.
1179 See section 9.4 above.
1180 See sections 9.2.1 and 10.3.2 above.
1181 See section 10.3.2 above.
1182 See section 10.3.2 above.

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(d) Banks cannot identify all possible indirect emissions, at least not reliably. In order to do so, they are dependent on data from their clients. These data are often missing, incomplete, or inaccurate. Furthermore, there are no adequate methodologies available for allocating emissions for all types of services.[1183]

(3) Elements 5 and 6: no obligation to achieve absolute and intensity-based reductions

(a) The statutory framework does not require banks to achieve absolute reductions. The CSRD (and ESRS) only require companies to report on absolute reduction targets if they have set such targets.[1184] The CSRD (and the ESRS) explicitly permit the setting of intensity targets.[1185]

(b) Voluntary Initiatives do not provide a clear picture of the types of targets that banks should use, let alone reach a consensus on a legally enforceable type of target.[1186]

(c) However, many Voluntary Initiatives criticise banks for using absolute targets. This is because a reduction in reported emissions does not necessarily lead to a reduction in actual emissions; it only leads to paper decarbonisation.[1187]

(d) Combining the two types of targets would increase the risk that a bank will be unable to meet its obligations under the prudential framework, not to mention all the risks this would entail.[1188]

(e) No source supports combining the two types of targets.

(4) Element 7: no obligation to use specific reduction pathways with specific reduction percentages and base years

(a) Prescribing a specific transition pathway would be incompatible with the statutory framework and the legislator's weighing of interests. Under the EU ETS, companies can follow their own reduction pathway, provided they have sufficient emission allowances to do so.[1189] Even under the CSDDD Climate Transition Plan Obligation, which will be deleted under the Omnibus Package, the EU legislator explicitly leaves the choice to

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1183 See sections 10.3.6 and 11.1 above.
1184 See section 9.2.1 above.
1185 See section 9.2.1 above.
1186 See sections 5.3 and 10.3.2 above.
1187 See sections 10.1 and 11.3 above.
1188 See sections 9.3 and 11.6 above.
1189 See section 9.2.1 above.

companies with regard to the applicable reduction percentages and pace.[1190]

(b) The legislator's choices underscore the lack of consensus on the necessity of a single, specific transition pathway. This also follows from Milieudefensie's own statements, as well as from Voluntary Initiatives.[1191]

(c) Transition pathways are neither intended nor suitable for inferring obligations for an individual company or bank.[1192]

(5) Element 8: no firm commitments for 2030, 2035, 2040 and 2050

(a) It would be inconsistent with the legislator's previous approach when establishing the CSDDD to establish firm long-term reduction commitments. For example, the CSDDD's soon to be deleted Climate Transition Plan obligation explicitly states that companies would be able to adjust their targets.[1193] Voluntary Initiatives also emphasise the importance of a flexible approach.[1194]

(b) A flexible approach is in fact necessary. Transition pathways are based on various assumptions regarding societal, economic, and technical developments and principles that, in practice, often do not reflect reality. Consequently, transition pathways and targets based on them must be continuously updated.[1195]

(c) Furthermore, imposing a rigid transition obligation for years to come would conflict with a bank's risk management obligations and the requirements of sound and careful decision-making, not to mention all the risks this would entail.[1196]

(6) Element 9: no linear reduction obligation

(a) Milieudefensie cites not a single source to support the existence of a linear reduction obligation.

(b) Such an obligation would be inconsistent with the CSDDD and the flexible approach it sets out. Under the to be deleted CSDDD Climate Transition Plan Obligation, companies (and banks) can determine their

1190 See section 9.2.1 above.
1191 See section 10.2.2 above.
1192 See section 10.2.2 above.
1193 See section 9.2.1 above.
1194 See section 10.3.2 above.
1195 See sections 5.3 and 10.2.2 above.
1196 See sections 9.3 and 11.6 above.

own reduction percentages and pace of reduction.[1197] The CSDDD does not impose a linear reduction obligation.[1198]

(c) Various Voluntary Initiatives contradict the existence of a linear reduction obligation for banks. Either way, there is no consensus.[1199]

(d) A fixed reduction obligation would interfere with a bank's ability to manage risk and retain flexibility, not to mention all the risks this would entail.[1200]

728. ING's defences against the Reduction Claims relate not only to its Scope 3 emissions, but also to its Scope 1 and 2 emissions.

729. Furthermore, to the extent that the court is of the opinion that the Reduction Claims (or some of them) can be granted, which is not the case, this could not in any event apply to activities covered by the EU ETS, EU ETS2, the LULUCF Regulation or the ESR. After all, this would interfere with the functioning of the EU ETS, EU ETS2, the LULUCF Regulation and the ESR.[1201]

730. In addition, none of these elements, either individually or collectively, are effective in reducing actual emissions and limiting climate change.

12.2.2 Exclusion Claims: none of the individual elements constitutes a legal duty

731. As the previous chapters demonstrate, the individual elements of the Exclusion Claims cannot be granted,[1202] let alone combined to form a legal duty:

(1) Elements 1 and 2: no legal duty to discontinue all "financing and facilitation" or any possible involvement in New Fossil Fuel Projects

(a) The Exclusion Claims focus on underlying activities that are permitted in both the Netherlands and the EU. "New Fossil Fuel Projects" are still being developed, and even encouraged, in the Netherlands and the EU. Consequently, the Exclusion Claims go through banking channels to make it impossible to perform otherwise legal activities.[1203]

(b) Excluding "*financing and facilitation*" and any possible involvement in "New Fossil Fuel Projects" is inconsistent with the explicit choices of the EU legislator in the CSDDD and other legislation, including climate legislation: (i) climate impact is not among the due diligence obligations

1197 See section 9.2.1 above.
1198 See section 9.2.1 above.
1199 See section 10.3.2 above.
1200 See sections 9.3 and 11.6 above.
1201 See section 9.2.1 above.
1202 For an overview of these elements, see section 7.3 above.
1203 See section 9.2.2.1 above.

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set out in the CSDDD;[1204] (ii) banks are not obliged to carry out downstream due diligence, meaning they do not have to independently assess whether clients are involved in "New Fossil Fuel Projects";[1205] and (iii) engagement is paramount in both the CSDDD and from a banking perspective, and exclusion is a last resort.[1206]

(c) Milieudefensie bases its Exclusion Claim on the UNGPs and OECD Guidelines. However, the EU legislator explicitly deviates from this in the CSDDD.[1207] Consequently, the UNGPs and OECD Guidelines are not in consensus on this matter.[1208]

(d) In any case, the UNGPs and OECD Guidelines do not provide grounds for an exclusion obligation based solely on the provision of financing. ING does not contribute to adverse climate impacts.[1209] Furthermore, under the UNGPs and the OECD Guidelines, as with other Voluntary Initiatives, exclusion is a last resort. This always requires a case-by-case weighing of interests.[1210]

(e) Various Voluntary Initiatives specify that banks should not categorically exclude groups of clients.[1211] This is because exclusion does not automatically lead to a reduction in actual emissions.[1212]

(f) The Exclusion Claims frustrate the EU legislator's objective to mobilise financing for companies that are at the beginning of the transition or active in an emission-intensive sector. They also exclude financing for these companies' sustainable projects.[1213]

(g) The Exclusion Claims hinder the effective operation of market mechanisms and sectoral climate regulations established to implement the Green Deal.[1214]

(h) The Exclusion Claims directly restrict ING's provision of services and capital to a specific group of companies. This infringes ING's right to the free movement of services and capital.[1215]

1204 See section 9.2.2.2 above.
1205 See section 9.2.2.2 above.
1206 See section 9.2.2.2 above.
1207 See sections 2.4 and 10.3.3 above.
1208 See section 10.3.3 above.
1209 See section 10.3.3 above.
1210 See section 10.3.3 above.
1211 See section 10.3.3 above.
1212 See section 11.3 above.
1213 See sections 9.1.3 and 9.2.2.2 above.
1214 See sections 9.1.3 and 9.2.2.2 above.
1215 See section 9.4 above.

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(i) Milieudefensie does not cite any sources indicating that the obligation to exclude a company extends to those involved in "New Fossil Fuel Projects" through a group company.

(2) Element 3: no grounds for a three-month or twelve-month exclusion timeframe

(a) Milieudefensie does not provide any justification whatsoever for the three-month timeframe. For the twelve-month timeframe, Milieudefensie refers to the Race to Zero campaign, which does not, however, specify a timeframe for exclusion, only "appropriate escalation".[1216]

(b) Other Voluntary Initiatives likewise offer no grounds for this element of the Exclusion Claims.[1217] Not do the timeframes have any basis in the statutory framework.

12.2.3 CTP Claim: no indication whatsoever that it exists

732. As the previous chapters demonstrate, the individual elements of the CTP Claim cannot be granted,[1218] let alone combined to form a legal duty:

(1) Element 1: no obligation to request climate transition plans on an annual basis

(a) An obligation to request climate transition plans would be inconsistent with the CSDDD. Climate impact is not among the due diligence obligations set out in the CSDDD, nor are banks required to carry out downstream due diligence.[1219]

(b) Voluntary Initiatives, including those invoked by Milieudefensie, contradict the idea that banks have an obligation to request climate transition plans; they either do not mention it at all, or only as an option.[1220]

(2) Element 2: no reason to impose an obligation to request climate transition plans from large corporate clients

(a) Milieudefensie does not substantiate this element of the CTP Claim.

(b) In addition, the EU legislator has chosen to remove the obligation to prepare a climate transition plan from the CSDDD. This will make it

1216 See section 10.3.3 above.
1217 See section 10.3.3 above.
1218 For an overview of these elements, see section 7.4 above.
1219 See section 9.2.2.2 above.
1220 See section 10.3.4 above.

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difficult to perform the CTP Claim. After all, ING's clients are not (or no longer) required to prepare such a plan.[1221]

(3) Element 3: no grounds for specific climate transition plan requirements

(a) Milieudefensie does not substantiate this element of the CTP Claim.

(b) The obligation for companies to draw up climate transition plans under the CSDDD will be deleted.[1222] These requirements also differ from those that apply to the information that banks request for risk management purposes.[1223] Consequently, in order to comply with the CTP Claim, ING would have to impose additional requirements that other market participants do not impose. This would constitute an unlawful restriction on ING's right to the free movement of services and capital.[1224]

(c) Likewise, the Voluntary Initiatives impose no obligation to request climate transition plans, nor do they give rise to any specific requirements.[1225]

1221 See sections 9.2.1 and 9.2.3 above.
1222 See sections 9.2.1 and 9.2.3 above.
1223 See section 9.2.3 above.
1224 See section 9.4 above.
1225 See section 10.3.4 above.

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13 MILIEUDEFENSIE IS INADMISSIBLE, THE CLAIMED ORDERS CANNOT BE GRANTED AND ARE NOT PROVISIONALLY ENFORCEABLE

Key points of this chapter

- Milieudefensie's claims are inadmissible. Milieudefensie misinforms the group whose interests it claims to represent regarding the nature of ING's conduct, the nature of the claims, and the potential consequences thereof for them and society at large. Consequently, it cannot be concluded that Milieudefensie has the necessary level of support from the group whose interests it claims to represent.
- Nor have the requirements governing court orders and declaratory judgments been met: (i) ING is not subject to any legal duty corresponding to the Claimed Orders; (ii) the Claimed Orders are insufficiently specific, making it impossible to determine in advance whether deviating from the Purported Duties would be unlawful in all circumstances; (iii) Milieudefensie has insufficient interest in the Claimed Orders because granting them would not have a sufficiently substantial positive effect on actual emissions; and (iv) due to various legal and practical obstacles, the Claimed Orders are impossible to perform.
- Given the substantial change that granting any of Milieudefensie's claims would cause at ING and its consequences for various parties involved with ING, including its clients, there can be no question of provisional enforceability in the event of a favourable judgment.

733. On behalf of the group whose interests it claims to represent, Milieudefensie is seeking various declaratory judgments in these proceedings to the effect that ING is acting unlawfully, and court orders requiring ING to terminate its allegedly unlawful conduct. Those claims cannot be granted. Milieudefensie is not admissible as an interest organisation in these proceedings as it does not meet class action admissibility requirements (section 13.1). Furthermore, as Milieudefensie's claims do not meet the applicable formal requirements, they must be rejected (section 13.2). Nor can any order be declared provisionally enforceable (section 13.3).

13.1 Milieudefensie is inadmissible in these proceedings

734. Milieudefensie is an organisation that has been working for over 50 years to "*protect the living environment*", collaborating with many other interest

organisations[1226] in the process.[1227] To this end, it initiates various legal proceedings.[1228]

735. Milieudefensie is not representing its own interests in these proceedings. Accordingly, it cannot seek a declaratory judgment that ING "*is acting wrongfully towards Milieudefensie*".[1229] as an interest organisation, it represents the interests of "*current and future generations of Dutch residents*".[1230]

736. The law imposes admissibility requirements for bringing collective actions.[1231] This form of proceedings constitutes an exception to the general principle that parties may, in principle, only pursue their own interests.[1232] These requirements serve in part to protect the group whose interests the interest organisation claims to represent, as they are not parties to the proceedings even though it is their interests that are at stake.

737. An interest organisation may bring a collective claim only if the interests of the group whose interests it claims to represent are sufficiently safeguarded.[1233] To determine whether this is the case requires, inter alia, an assessment of the extent to which that group would benefit from the granting of the claims.[1234] An interest organisation is inadmissible if the group whose interests it claims to represent does not benefit from the collective action.[1235]

1226 Including through its membership of Friends of the Earth International. See Writ of Summons, no. 78.

1227 Writ of Summons, nos. 76, 90-119.

1228 For example, such as the proceedings mentioned in the Writ of Summons in nos. 100 and 118.

1229 Milieudefensie's claims 3 and 10.

1230 Writ of Summons, no. 122. Although Milieudefensie is of the view it is advocating on behalf of Dutch residents, it primarily addresses the worldwide effects of climate change. According to Milieudefensie, climate change "*has a disproportionately large impact on particularly vulnerable societies*" (Writ of Summons, no. 386).

1231 Article 1018c(5) DCCP provides that the collective claim will only be dealt with on the merits if and after the court has decided that the admissibility requirements have been met, including those of Article 3:305a(1) to (3) DCC. The court must test the admissibility requirements *ex officio* (*Parliamentary Documents II* 2016/17, 34 608, no. 3 (Explanatory Memorandum to the Resolution of Mass Damage in Collective Action Act, *Wet afwikkeling massaschade in collectieve actie*) (excerpt) (Exhibit ING-332), p. 39).

1232 This principle follows, among other things, from Articles 3:296, 3:302 and 3:303 DCC. See also Asser Procesrecht/Van Schaick *2* 2022/29 (Exhibit ING-333).

1233 Article 3:305a(1) DCC.

1234 *Parliamentary Papers II* 2011/12, 33 126, no. 3 (Explanatory Memorandum to the Act amending the Collective Settlement of Mass Damage, *Wet collectieve afwikkeling massaschade*) (excerpt) (Exhibit ING-334), p. 12: "*The question of whether a class action adequately protects the interests of those involved can only be answered on a case-by-case basis. Two key questions* […] *to consider are the extent to which those affected will ultimately benefit from the class action if the claim is upheld* […].' See also Amsterdam District Court 1 February 2023, ECLI:NL:RBAMS:2023:468, para. 4.13; Amsterdam District Court 7 June 2023, ECLI:NL:RBAMS:2023:8485, para. 2.5.

1235 See, for example, Opinion of A-G Ibili 23 January 2025, ECLI:NL:PHR:2026:106, para. 3.31 affirming that the Claims Foundation is inadmissible because the claim "*is not sufficiently specific to the interests of the interested parties, so that they do not benefit from this collective action.*"

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738. Article 3:305a(2) DCC further specifies the safeguarding requirement and includes, inter alia, a representativeness requirement.[1236] This requires that an interest organisation enjoys sufficient backing from the group whose interests it claims to represent.[1237] This requires that the interest organisation is able to credibly and adequately represent the interests that it claims to represent in court.[1238] It is also important that "*an affected person is able to make an informed choice*" as to whether to align themselves with the claims brought by the interest organisation.[1239] Case law shows that the group whose interests the interest organisation claims to represent must be made aware of "*whether and to what extent the* […] *claims concern them, and of the positive and adverse impacts that granting those claims may have for them.*"[1240]

739. Milieudefensie does not meet these requirements in these proceedings: (i) the group whose interests Milieudefensie claims to represent does not, in fact, benefit from all of the claims brought by Milieudefensie; and (ii) the information that Milieudefensie shares with the group it claims to represent about the potential consequences of granting the claims is both inaccurate and incomplete.

1236 Article 3:305a(2) DCC. *Parliamentary Papers II* 2016/17, 34 608, no. 3 (Explanatory Memorandum to the Resolution of Mass Damage in Collective Action Act, *Wet afwikkeling massaschade in collectieve actie*) (excerpt) (Exhibit ING-332), p. 18.

1237 *Parliamentary Papers II* 2023/24, 36 169, no. 40 (Report of a written consultation on the amendment of the Climate Act) (excerpt) (Exhibit ING-335), p. 21; *Parliamentary Papers II* 2016/17, 34 608, no. 3 (Explanatory Memorandum to the Resolution of Mass Damage in Collective Action Act, *Wet afwikkeling massaschade in collectieve actie*) (excerpt) (Exhibit ING-332), p. 19; Dutch Supreme Court 21 February 2025, ECLI:NL:HR:2025:319, para. 3.7.3. This is where the Dutch Resolution of Mass Damage in Collective Action Act (*Wet afwikkeling massaschade in collectieve actie,* "WAMCA") differs from the Dutch Collective Settlement of Mass Damage Act (*Wet collectieve afwikkeling massaschade*, "WCAM"). When the WAMCA was introduced, the legislator deliberately imposed requirements concerning the interest group's representativeness.

1238 Snijders 2024 (Exhibit ING-204), p. 162.

1239 *Parliamentary Papers II* 2016/17, 34 608, no. 3 (Explanatory Memorandum to the Resolution of Mass Damage in Collective Action Act, *Wet afwikkeling massaschade in collectieve actie*) (excerpt) (Exhibit ING-332), p. 20: "*The requirements oblige interest organisations to set up a publicly accessible website containing essential information about their activities. This allows an injured party to make an informed decision about whether to join a particular interest group*".

1240 East Brabant District Court 3 January 2024, ECLI:NL:RBOBR:2024:5, para. 6.19.

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(1) The group whose interests Milieudefensie claims to represent does not benefit from the claims

740. However, the persons who Milieudefensie claims to represent are also told that ING is "*responsible*" for emissions amounting to more than "*one and a half times what the Netherlands emits*":[1241]

> ING, ondertussen, heeft op dit moment nog steeds bijna 30 miljard aan leningen voor olie- en gasbedrijven uitstaan en leende afgelopen jaar zelfs méér geld aan olie- en gasbedrijven dan in 2016, een jaar na het Klimaatakkoord van Parijs, waaronder in talloze olie- en gasbedrijven bedrijven die nieuwe velden starten. Bovendien is ING verantwoordelijk voor 264 megaton aan broeikasgassen, dat is ruim anderhalf keer wat Nederland uitstoot. De uitspraak in de Shell-zaak biedt kortom voor ING veel houvast.

* Translation of the screenshot:

> "*Meanwhile ING currently still has nearly 30 billion in outstanding loans to oil and gas companies and last year even lent more money to oil and gas companies than in 2016, a year after the Paris Agreement, including to numerous oil and gas companies starting new fields. Moreover, ING is responsible for 264 megatonnes of greenhouse gases, which is well over one and a half times what the Netherlands emits. Basically, the judgment in the Shell case provides ING with a great deal of guidance.*"

741. Milieudefensie also suggests that ING has an "*enormous impact*" on the climate and must cut "*all emissions for which the company is responsible*" by half:[1242]

> **ONZE CONCLUSIE**
>
> ING heeft een enorme impact op het klimaat en moet daar verantwoordelijkheid voor nemen. Daarom spant Milieudefensie een klimaatzaak aan tegen ING. ING moet niet alleen alle uitstoot waar het bedrijf verantwoordelijk voor is duidelijk rapporteren, maar moet die uitstoot ook halveren.

* Translation of the screenshot:

> "***Our conclusion***
>
> *ING has an enormous impact on the climate and must take responsibility for this. That is why Milieudefensie starts a climate case against ING. ING must not only clearly report all emissions for which the company is responsible but must also halve those emissions.*"

1241 Milieudefensie, "Frequently asked questions about our climate case against ING" (printout of 21 January 2026) (Exhibit ING-195), under question 11; see Writ of Summons, no. 12: "*On the basis of ING's own reporting alone (which is far from complete), ING's Scope 3 emissions in 2024 amounted to 262 Mt in greenhouse gases. This is comparable to 1.74 times the emissions of all citizens and companies in the Netherlands and represents 0.49% of the global emissions.*"

1242 Milieudefensie, "Why we are suing ING in particular: the emissions", 12 October 2025 (printout of 21 January 2026) (Exhibit ING-336).

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742. This does not adequately represent what is at stake in these proceedings. ING is not "responsible" for the vast majority (over 99.9%) of the emissions it reports. These are, in fact, Scope 3, Cat. 15 emissions: emissions generated by ING's clients.[1243] By describing these emissions as "*ING's emissions*",[1244] Milieudefensie wrongly gives the group whose interests it claims to represent the impression that ING emits all these greenhouse gases itself and therefore emits much more than it actually does. Milieudefensie compounds this erroneous suggestion by comparing ING's reported emissions with direct emissions on Dutch territory. As with the comparison between Milieudefensie's claims and ING's actions (chapter XV of the Writ of Summons), comparing the emissions reported by ING with those on Dutch territory is like comparing apples with oranges. Milieudefensie is comparing emissions allocated to a global systemically important bank from its clients worldwide with direct emissions in a single country, without making that distinction.

743. Milieudefensie also suggests that granting its claims would have an "*enormous impact*", i.e., a reduction in the actual emissions it attributes to ING by half.[1245] This is also incorrect: In chapter 11 above, ING explained that Milieudefensie's claims do not, and certainly do not automatically, lead to a reduction in greenhouse gas emissions into the atmosphere – let alone an emissions reduction equal to the reduction in ING's reported emissions. In fact, if ING divests itself of clients, there is a risk that emissions will increase.[1246]

744. The group whose interests Milieudefensie claims to represent does not, in fact, benefit from the claims being granted.[1247] Milieudefensie's claims should therefore be declared inadmissible.

(2) Milieudefensie does not adequately inform the group whose interests it claims to represent of the consequences of its claims being granted

745. In addition, it cannot be concluded that Milieudefensie has a sufficient level of support from the group whose interests it claims to represent. As explained above, Milieudefensie does not provide the group it claims to represent with adequate information about the issues at stake in these proceedings. Therefore, it is impossible to determine whether the group whose interests Milieudefensie claims to represent is aware of the nature of the emissions reported by ING, the

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1243 The GHG Protocol precisely reflects the notion that Scope 3 emissions are not within a company's control. See GHG Corporate Value Chain Standard (Exhibit MD-130), p. 27.

1244 Milieudefensie, "Frequently asked questions about our climate case against ING" (printout of 21 January 2026) (Exhibit ING-195), under question 14.

1245 According to Milieudefensie, awarding the claims would cut ING's "enormous impact on the climate" in half. See Milieudefensie, "Why we are suing ING in particular: the emissions", 12 October 2025 (printout of 21 January 2026) (Exhibit ING-336).

1246 See section 11.3 above.

1247 It is hard to see why the group whose interests Milieudefensie claims to represent would stand any benefit from a declaratory judgment that ING is acting unlawfully *with regard to Milieudefensie*, as sought in Milieudefensie's claims 3 and 10.

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nature of Milieudefensie's claims, or the potential and actual consequences of those claims being granted.[1248] For example, the Milieudefensie website suggests that its claims will have no impact on ING clients' savings and mortgages:[1249]

* Translation of the screenshot

> "***14. I am a customer of ING. Are my monies (and savings) still safe?***
>
> *Our Climate Case against ING is about ING's climate approach and emissions. We are not focussing on the savings or mortgages of citizens like you.*"

746. This too is incorrect, as discussed in detail in this SoD.[1250] Milieudefensie does in fact "focus" on "*the savings and mortgages of citizens* […]"

- Milieudefensie demands absolute and emission intensity targets for *all* of ING's activities. This also affects ING's mortgage lending activities and how it manages, invests in and generates returns on savings for its clients.

- Milieudefensie has also formulated specific absolute and emission intensity targets for the residential buildings sector.[1251] These demands will indeed affect ING's mortgage lending activities and home financing options, as ING will be able to provide significantly fewer mortgages if it is forced to shrink its mortgage loan portfolio.

747. Milieudefensie should be aware of these potential consequences:[1252] it is an experienced interest organisation that can draw on a broad international network for knowledge and support. It also has significant resources at its disposal to obtain that knowledge. Therefore, it is either aware of these consequences but informing neither the group whose interests it claims to represent nor the court thereof, or it is not aware of them but should have investigated them before

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1248 Accordingly, Milieudefensie cannot "*be deemed an adequate spokesperson*". See Writ of Summons, no. 135.

1249 Milieudefensie, "Frequently asked questions about our climate case against ING" (printout of 21 January 2026) (Exhibit ING-195), under question 14.

1250 See chapter 11 above.

1251 Milieudefensie is here calling for absolute reductions of 40.5% by 2030, 66.2% by 2035, 83.7% by 2040 and as much as 97.6% by 2050. See Writ of Summons, chapter XX, no. 2

1252 For an interest organisation to be able to act on behalf of a group of victims, it must have sufficient specific knowledge and expertise (*Parliamentary Papers II* 2016/17, 34 608, no. 3 (Explanatory Memorandum to the Resolution of Mass Damage in Collective Action Act, *Wet afwikkeling massaschade in collectieve actie*) (excerpt) (Exhibit ING-332), p. 21). Milieudefensie also claims to have that knowledge. See Writ of Summons, nos. 147-148.

initiating these proceedings. Either way, Milieudefensie must provide the group whose interests it claims to represent with accurate and complete information.[1253]

748. It has failed to so. It is therefore unlikely, and in any case cannot be established, that the group whose interests Milieudefensie claims to represent actually support the claims. This too can only lead to the conclusion that Milieudefensie fails to adequately safeguard the interests of the group it claims to represent, meaning that its claims in these proceedings should be declared inadmissible.

749. By extension, ING also expects Milieudefensie to accurately and sufficiently inform the group whose interests it claims to represent, as well as the wider public, about the content of this SoD, the positions ING takes in it and the societal consequences outlined in it. Given the importance of combating dangerous climate change and the need for a profound climate transition, and given that ING has been taking significant steps in this area for years and has received third-party recognition for this (see section 6.6), the safeguarding requirement means that the group whose interests Milieudefensie claims to represent, and the wider public, must be accurately informed.

13.2 The requirements applicable to court orders have not been met

750. Milieudefensie's claims must be dismissed because they do not meet the requirements applicable to court orders and declaratory judgments: (i) ING is not subject to any legal duty underpinning the Claimed Orders (section 13.2.1); (ii) Milieudefensie's claims are not sufficiently specific (section 13.2.2); (iii) Milieudefensie has insufficient interest in the Claimed Orders, as granting them would have insufficient actual effect (section 13.2.3); (iv) the Claimed Orders are impossible to perform (section 13.2.4);[1254] and (v) the Claimed Orders cannot be granted due to ING's strict prudential obligations (section 13.2.5).

13.2.1 ING is not subject to any legal duty

751. Article 3:296(1) DCC stipulates that a person "*obliged to give, to do or not to do something as regards another*" may be ordered "*to do so*".[1255] This means that (i) ING must be subject to a legal duty; and (ii) the Claimed Orders' scope of application must be limited to and correspond to that legal duty. Therefore, an

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1253 This is of course all the more true if Milieudefensie believes that the Purported Duties also apply to other banks, as it seems to suggest by its references to the "flywheel effect" and the "*broader effects*" of the influence of litigation. See Writ of Summons, nos. 1177-1179.

1254 That the Claimed Orders do not make any real difference and are unenforceable are also reasons why the Purported Duties do not exist, as explained in Part III above.

1255 Article 3:296(1) DCC. This is different only if it follows otherwise from the law, from the nature of the obligation or from a juridical act.

order cannot impose anything that goes beyond the legal duty.[1256] Instead, it must be limited to addressing the purported unlawfulness only, and must be rejected if it impedes lawful conduct.[1257] The claims must reflect the underlying legal norm.

752. As explained in chapter 12, however, ING is not subject to any legal duty corresponding to the Claimed Orders.

13.2.2 The Claimed Orders are not sufficiently specific

753. In order for judicial orders and declaratory judgments to be granted, the claims must be formulated in sufficiently concrete terms. According to the Dutch Supreme Court, claims concerning the prospect of future unlawful acts are only admissible if the claims are formulated in such a way that the acts are unlawful "*in all cases covered* [by the claim]".[1258] The same applies to an action for an injunction or order to cease purportedly unlawful conduct:

> "*Particularly insofar as it concerns the declaratory judgments claimed in this lawsuit to the effect that acts that have not yet been performed – but that the State, according to the assertions of VJV et al. could perform in the future – must be regarded as unlawful, it will have to be tested whether they have been formulated in such a way that in all cases covered by them there is unlawfulness. A declaratory judgment is insufficiently specific if it is already apparent from the outset that the acts, a declaration of whose prohibition is sought in these proceedings, are defined in such a way that they are not all, or not in all circumstances, unlawful, and the question of whether or not they are unlawful cannot, unlike in the case of past acts, be examined on the basis of the circumstances of the case. It should also be noted that it is not the court's duty to reformulate a claim in such a way that it refers only to acts that should be considered unlawful under all circumstances.* […]
>
> *The same applies mutatis mutandis to insufficiently specific claims seeking prohibition of, or an order to cease, those acts.*"[1259]

754. Milieudefensie's claims seek to impose absolute obligations and prohibitions on ING. In addition, the Reduction Claims set ING's climate policy in stone for the

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1256 See Dutch Supreme Court 27 April 1962, ECLI:NL:HR:1962:121 (*Holst v. Philips*), and then in the same vein Dutch Supreme Court 14 June 1963, ECLI:NL:HR:1963:AC3603 (*EZH v. Bailey I*); Dutch Supreme Court 1 December 1972, ECLI:NL:HR:1972:AB6720 (*Royal Sluis v. Hakkenberg & Hoopman*); Dutch Supreme Court 24 May 1985, ECLI:NL:HR:1985:AC8901 (*Gebiedsverbod*); J.J. van der Helm, *Het rechterlijk bevel en verbod als remedie (Serie Burgerlijk Proces & Praktijk XXIII)*, 2023 (excerpt) ("Van der Helm 2023") (Exhibit ING-337), no. 42; W.Th. Nuninga, *Recht, plicht, remedie of de belofte van een norm*, 2022 (excerpt) (Exhibit ING-338), p. 48-50; T.E. Deurvorst, *GS Onrechtmatige daad*, II.2.1.3.2 (excerpt) (Exhibit ING-339).

1257 Van der Helm 2023 (Exhibit ING-337), no. 308: "*However, it is particularly important to bear in mind, in the case of court orders and prohibitions arising from an unlawful act, that the order or prohibition issued must be in line with the underlying legal obligation and may therefore only prohibit the unlawful conduct.*"

1258 Dutch Supreme Court 21 December 2001, ECLI:NL:HR:2001:ZC3693 (*Kernwapens*), para. 3.3. A-G Hartkamp already noted in his opinion that "[a] *claim* [...] *is only awardable if it is sufficiently concrete, in the sense that its scope is sufficiently limited*", Opinion of A-G Hartkamp, 18 May 2001, ECLI:NL:PHR:2001:ZC3693, para. 11.

1259 Dutch Supreme Court 21 December 2001, ECLI:NL:HR:2001:ZC3693 (*Kernwapens*), para. 3.3.

next 24 years. The Exclusion Claims and CTP Claim are not temporally limited and would therefore apply indefinitely.

755. However, Dutch and EU legislators have opted for sectoral measures rather than mandatory emission reductions for individual companies. Consequently, there is no legal duty underpinning the Claimed Orders. Nor have any rigid and static future emission reduction targets been set for companies. Flexibility has been recognised as essential for companies in general, and for banks in particular. Furthermore, Dutch and EU legislators have explicitly opted for an approach involving interim evaluation and adjustment.[1260] It also makes sense: assessing and determining climate obligations requires weighing up a wide range of relevant interests and circumstances. These include geopolitical developments, societal needs, the stability of the financial system, policy (including climate policy), and developments relevant to or within the field of climate science. Examples include international conflicts, energy security, housing supply, new insights into effective mitigation strategies, and the development of carbon capture technologies.

756. These interests and circumstances are not static.[1261] ING, for instance, highlights the increased demand for and investment in fossil fuels in the aftermath of Russia's invasion of Ukraine, alongside the associated concerns about energy security.[1262] Other relevant developments are conceivable.

- **Developments in the conceptualisation of the sustainable energy transition.** ING and Milieudefensie agree that a sustainable climate transition depends in part on the generation of sustainable energy.[1263] However, it ultimately falls to policymakers to determine which sustainable methods best align with a country's opportunities and interests, including its geographical capabilities.[1264] Policymakers' preferences may change over time, for example because certain methods become more efficient or profitable, or because certain sources become more or less societally acceptable (such as Russian gas or nuclear energy). Consequently, policy may change and require ING to

1260 Recital 69 and art 1(1) Governance Regulation.
1261 See also chapters 2 and 3 above.
1262 See no. 126 and section 3.5 above. The defence sector is a striking example of how social attitudes and needs in other sectors are evolving. For decades, attempts were made to limit its funding. However, geopolitical tensions have reversed this sentiment: private investment in the defence sector has increased significantly, with the government now actively encouraging it. This again demonstrates that national and international policy is not static.
1263 Writ of Summons, no. 584, under (ii): "*financing certain economic activities in line with the 1.5°C target* [...] *is necessary for the success of the climate transition.*" See Writ of Summons, no. 258 on the necessary transformation "*to a society which will require alternative sustainable energy, for the most part*".
1264 On this subject, see nos. 67 and 509-510 above.

finance this activity and all the underlying commodities required for it. This will, of course, also affect ING's reported emissions.

- **Developments with regard to climate targets and reduction pathways.** The parties to the Paris Agreement have committed to making national contributions to achieving the Paris Goal. These parties will continue to adjust and adapt their individual climate targets.[1265] These adjustments will, of course, also impact the climate transition and investments in it. This could mean that the banking sector will be expected to finance the economy in a way that does not align with the claimed reductions.

- **Sectors whose sustainability increases faster or slower than the reduction pathway.** Sectoral reduction pathways model ways in which certain sectors *can* reduce their emissions to meet specific targets by 2050.[1266] However, certain sectors could become more sustainable faster than modelled in such a transition pathway due to policy choices made by the legislator (EU or Dutch), and/or certain sectors could reduce emissions more slowly than modelled.

757. Milieudefensie's claims do not allow for such developments and interests over the next 24 years, or indeed until the end of time. For example, it cannot be determined from the outset that it is always and under all circumstances unlawful to finance companies that are directly or indirectly involved in any way in "*New Fossil Fuel Projects*".[1267] An outbreak of a hot or cold international conflict, or any other disruption to the supply of fossil fuels, could necessitate local investment in existing or new fossil fuel projects to guarantee local and national energy security. Similarly, even if it were unlawful, which ING disputes, it cannot be determined from the outset that it is unlawful in all circumstances to report more Scope 3, Cat. 15 emissions than is purportedly permitted under the Reduction Claims. The situation might be different, for example, if the financing resulted in an increase in ING's reported emissions, while also leading to a substantial decrease in actual emissions. Incidentally, this is precisely why the legislator is best equipped to formulate climate policy.[1268]

1265 For example, the EU has updated its climate goals for COP30. See K. Abnett et al., "EU agrees weakened climate target in final-hour deal for COP30", *Reuters* 5 November 2025 (printout of 21 January 2026) (Exhibit ING-340). Another possibility is to adjust the 1.5°C reduction target to a target of well below 2°C.

1266 For example, the IEA NZE scenario allocates the necessary emission reductions across different sectors. See IEA NZE Roadmap 2023 (Exhibit MD-085), p. 198, for the distribution of the 2023 IEA NZE scenario per covered sector and section 10.2.2 above.

1267 For example, the Dutch Minister of Climate and Green Growth agrees that new fossil drilling would not "*violate the commitments of the Paris Climate Agreement.*" See *Appendix Proceedings II* 2025/26, no. 29 (Parliamentary Questions and Answers on the Sector Agreement) (Exhibit ING-231), p. 1.

1268 See chapter 9 above.

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758. Thus, it is impossible to weigh up all the relevant developments and interests adequately. Therefore, it is also impossible to conclude that ING's purported actions are unlawful in all circumstances covered by Milieudefensie's claims. Consequently, Milieudefensie's claims are insufficiently specific.

13.2.3 The Claimed Orders have insufficient actual effect

759. In addition, a claimant is required to have a sufficient interest in what is claimed; in this case, that is a claimed order. This requires that the order must effectively contribute to and benefit the claimant's interest.[1269] The difference between the situation in which the order is granted, and the situation in which it is not, is assessed. "Some" difference is insufficient: the granting of an order must make a substantial difference.[1270] A claimant lacks sufficient interest if the order brings little or no actual benefit.[1271] The order cannot, of course, be granted at all if it achieves the opposite effect.[1272]

760. Milieudefensie has brought these proceedings with the stated aim of reducing actual emissions.[1273] Therefore, Milieudefensie must demonstrate that granting these claims will lead to a significant reduction in actual emissions compared to the situation if the Claimed Orders were not granted.[1274] Milieudefensie has not done so, and this is not the case.[1275] Consequently, Milieudefensie has insufficient interest in what is claimed.[1276]

1269 Opinion of P-G Langemeijer and A-G Wissink 13 September 2019, ECLI:NL:PHR:2019:887 (*Urgenda*), para. 2.13; P. Gillaerts et al., "De verklaring voor recht, voldoende belang(rijk)?", *MvV* 2020/12 (Exhibit ING-341), p. 410.

1270 It also follows from C.J. van Zeben et al. (eds.), *Parl. Gesch. Nieuw BW. Boek 3*, 1981 (excerpt) (Exhibit ING-342), p. 915: "*To determine whether a claimant's claim should be dismissed on these grounds, the courts must consider not only whether the claimant has an interest in the claim, but also whether this interest is sufficient to justify legal proceedings.*" V.C.A. Lindijer, *De goede procesorde*, 2006 (excerpt) ("Lindijer 2006") (Exhibit ING-343), p. 100.

1271 The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099 (*Milieudefensie v. Shell*), para. 7.102: "*It follows from Article 3:303 DCC that there must be a sufficient interest in a legal action. Whether there is a sufficient interest can be assessed by comparing the situation with and without granting the claim. If there is no relevant difference between the two situations, in the sense that allowing the claim does not actually bring the claimant any benefit, the required interest in the claim is lacking.*" See also Van der Helm 2023 (Exhibit ING-337), nos. 374 and 378; A.W. Jongbloed, *GS Vermogensrecht*, art. 3:303 BW, item 3 (Exhibit ING-344); Lindijer 2006 (Exhibit ING-343), p. 100.

1272 After all, a court order must be an "appropriate means" for enforcing any rights, see Van der Helm 2023 (Exhibit ING-337), p. 111.

1273 See also chapters 1 and 11 above.

1274 Dutch Supreme Court 12 April 2019, ECLI:NL:HR:2019:590, para. 4.1.2: "*If the existence of* [sufficient] *interest is disputed, or if the court wishes to clarify it ex officio, the obligation to furnish facts and the burden of proof in this regard will, in principle, fall to the party bringing the claim. (On this, see T.M. and Memorandum of Reply II, Parliamentary History* of *Book 3 DCC, p. 915 and 916.)*".

1275 See chapter 11 above.

1276 The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099 (*Milieudefensie v. Shell*), paras. 7.97-7.111. This also applies to declaratory judgments. See, for example, Limburg District Court 19 July 2023, ECLI:NL:RBLIM:2023:4361, paras. 8.25-8.32.

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761. Milieudefensie has not substantiated the actual effectiveness of its claims.[1277] Instead, Milieudefensie has limited itself to an argument about the legal framework for assessing effectiveness. According to Milieudefensie, "*under Dutch law the awarding of a claim is sufficiently effective if that award makes an effective contribution to the removal of the unlawfulness of the acts or omissions of the party that is being held liable.*"[1278] It is supposedly not required that the claims constitute effective measures "*against the (more comprehensive) problem that is also caused by others*".[1279]

762. Milieudefensie thus ignores the following:

- it is essential to establish whether a particular action has an actual effect when assessing whether a legal duty exists and whether an act is unlawful.[1280] The court can already reject the claims on the grounds of a lack of unlawfulness.[1281] Milieudefensie's approach fails to appreciate this. It acts as if the Purported Duties exist to prevent a violation of the Purported Duties (the existence of which has not been proven). This is manifestly illogical and circular reasoning; and

- sufficient interest is an independent prerequisite for a claim's admissibility, or, at any rate, its grantability. As explained above, it is required – for proving the existence of both the legal duty and sufficient interest – that the claims make a sufficiently substantial, actual difference to the interest being defended.

763. Furthermore, it seems that Milieudefensie's arguments anticipate ING's defence that granting the claims would have a negligible effect, as the claims would not solve the climate change problem completely. However, this is not what ING argues here, and this not at issue: the Claimed Orders do not contribute significantly to reducing or limiting actual emissions. In other words, they do not make an "*effective contribution*".[1282]

764. Instead, the case law cited by Milieudefensie confirms that a judicial order (in this case, a reduction order) must lead to a positive effect on the concentration of greenhouse gas emissions in the atmosphere.[1283] In the *Urgenda* judgment, the Dutch Supreme Court rejected the Dutch State's defence that its own share of

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1277 Milieudefensie only states in general terms that "*ING is increasing the concentration of greenhouse gases in the atmosphere through its Scope 1, 2 and 3 emissions and is thereby contributing to the danger of climate change and by taking the (individual) climate measures demanded by Milieudefensie can make an effective contribution to the (global) climate goals.*" See Writ of Summons, no. 1161. This does not hold up, as explained in chapter 11 above.

1278 Writ of Summons, no. 1163.

1279 Writ of Summons, no. 1163.

1280 See section 8.2.3 above.

1281 See section 13.2.1 above.

1282 Writ of Summons, no. 1163.

1283 Writ of Summons, sections XVI.2 and XVI.3.

global greenhouse gas emissions was negligible, and that reducing emissions within its own territory would have little global impact. The Dutch Supreme Court held that any reduction on the part of the State "*would have a positive effect on the mitigation of dangerous climate change*" since "[e]*very reduction* [...] [means] *more room in the carbon budget*".[1284] This reference is irrelevant as that situation does not apply in these proceedings: the Claimed Orders will not, or only to a very limited extent, lead to more room in the carbon budget; they will only reduce ING's reported emissions.[1285] The physical, actual, emissions of those third parties will continue to exist.

765. Similar reasoning is used in the other Dutch[1286] and foreign case law[1287] cited by Milieudefensie, which does not benefit it for the same reason.[1288] Incidentally, all the climate cases cited by Milieudefensie – with the exception of the Shell case, where no bank is involved – are directed against a government (or government agency). This does not imply that a reduction order imposed on an individual company would be effective, let alone on a bank whose emissions are almost entirely those of others that have been allocated to that bank.[1289]

766. Finally, Milieudefensie's reliance on the possible indirect effects of granting its claims is of no benefit to it.[1290] According to Milieudefensie, granting the claims would have "*wider effects that contribute in a more indirect manner to the success*

1284 Dutch Supreme Court 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*), para. 5.7.8.

1285 See chapter 11 above.

1286 Dutch Supreme Court 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*); Dutch Supreme Court 13 November 2015, ECLI:NL:HR:015:3307 (*Pirate Bay*). Milieudefensie also cites The Hague District Court 26 May 2021, ECLI:NL:RBDHA:2021:5337 (*Milieudefensie v. Shell*), although this judgment was overturned in The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099 (*Milieudefensie v. Shell*). Milieudefensie also refers to The Hague Court of Appeal 12 February 2024, ECLI:NL:GHDHA:2024:191 (*F-35*), which judgment was annulled by the Dutch Supreme Court (Dutch Supreme Court 3 October 2025, ECLI:NL:HR:2025:1435 (*F-35*)).

1287 Supreme Court of the United States (United States) 2 April 2007, *Massachusetts v. Environmental Protection Agency* (Exhibit ING-345); Montana Supreme Court (United States, Montana) 18 December 2024, *Held v. Montana*, 2024 MT 312 (Exhibit ING-346); BVerfG 24 March 2021, Neubauer, Official English Translation (Exhibit MD-181); Cour d'Appel Bruxelles (Belgium) Nov. 30, 2023, 2021/AR/15gs 2022/AR/737 and 2022/AR891 (Exhibit MD-182); ECtHR 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020 (*KlimaSeniorinnen*).

1288 In the Pirate Bay judgment, the Dutch Supreme Court firstly determined that the proposed measure would effectively achieve the desired outcome (Dutch Supreme Court, 13 November 2015, ECLI:NL:HR:2015:3307 (*Pirate Bay*), para. 4.4.2). See also Supreme Court (United States), 2 April 2007, *Massachusetts v. Environmental Protection Agency* (Exhibit ING-345). The quote cited by Milieudefensie in no. 1165 of the Writ of Summons shows that the US Supreme Court believes that regulation by the Environmental Protection Agency will, in any case, lead to "*a small incremental step*". See also p. 30 of this judgment: "'*That risk* [of catastrophic harm] *would be reduced to some extent if petitioners received the relief they seek*." The same is true of Montana Supreme Court (United States, Montana) 18 December 2024, *Held v. Montana*, 2024 MT 312 (Exhibit ING-346), p. 34: "*Thus, the question is whether legal relief can effectively alleviate, remedy, or prevent Plaintiff's constitutional injury*" (underlining added).

1289 In fact, in the Shell case, the court of appeal precisely held that there was no sufficient interest because of a lack of factual effectiveness. See The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099 (*Milieudefensie v. Shell*), para. 7.110.

1290 Writ of Summons, section XVI.4.

of global climate action",[1291] as other actors might adjust their behaviour in response to "*lawsuits – just like this* one".[1292] Milieudefensie also suggests that granting the claims would have an "*impact on further litigation*".[1293]

767. However, Milieudefensie fails to appreciate that a possible precedent is insufficient grounds for granting the claims. After all, the established case law of the Dutch Supreme Court indicates that the possibility that a judgment will create a precedent is not in itself sufficient to establish sufficient interest.[1294] Furthermore, Milieudefensie does not clarify what indirect effects granting the Claimed Orders would have. In this context, Milieudefensie only refers to a "*flywheel effect*" that "*should be considered in the assessment of the effectiveness defence*".[1295] It does not substantiate what this entails specifically,[1296] nor does it explain why granting the Claimed Orders against ING would contribute to this. Such hypotheses cannot serve as sufficient grounds for granting the claims, as the Court of Appeal held in the Shell case that:

> "*A possible signalling function of a reduction order for other fossil fuel investors is too speculative and too remote from Shell's alleged unlawful conduct to serve as grounds for seeking the reduction order.*"[1297]

768. Consequently, Milieudefensie has insufficient interest in what it claims, as granting the claims would not make a sufficiently substantial difference to its stated purpose: actual emission reductions.

13.2.4 The Claimed Orders are impossible to perform

769. Furthermore, the Claimed Orders are impossible to perform. In the *Buddev. Tao Moa Cruising Limited* judgment, the Dutch Supreme Court held that the "*impossibility of performance* [...] *precludes the granting of* [the] *claim for*

1291 Writ of Summons, no. 1177.
1292 Writ of Summons, no. 1179.
1293 Writ of Summons, no. 1179.
1294 Dutch Supreme Court 21 May 2021, ECLI:NL:HR:2021:750, para. 2.4; Dutch Supreme Court 12 June 2015, ECLI:NL:HR:2015:1602, para. 3.2. See also Opinion of A-G Silvis 3 July 2012, ECLI:NL:PHR:2012:BX5516, para. 27. In a similar vein, the Dutch Supreme Court believes that the prevention of precedent cannot count as a sufficient interest. See, for example, Dutch Supreme Court 16 April 1993, ECLI:NL:HR:1993:0927, para. 3.
1295 Writ of Summons, nos. 1179-1181.
1296 According to the definition of the flywheel effect used by Milieudefensie (Writ of Summons, List of definitions, "Flywheel Effect"), this effect "*encompasses, inter alia, the reinforcing of confidence between the aforementioned actors, that each actor adequately implements his individual shared responsibility in solving the collective problem of climate change. It will bring about that all actors in society will be able to and will dare to shore more climate ambition.*"
1297 The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099 (*Milieudefensie v. Shell*), para. 7.109.

performance."[1298] Therefore, the granting of an order requires a legal duty that can be performed. This is unsurprising: It would be illogical to impose an order on a party that is unable to perform it.[1299]

770. A legal duty is impracticable if the defendant, for example, cannot perform the order due to legal or practical obstacles, such as contractual restrictions under agreements between the defendant and third parties.[1300] According to the Dutch Supreme Court, it makes no difference if defendants "*put themselves in a position where performance has become impossible*".[1301] The Dutch Supreme Court has also held that this situation must be equated with cases where defendants can eliminate the obstacle, but only "*by making sacrifices that, taking all circumstances into account, cannot reasonably be expected of them*".[1302]

771. The Claimed Orders are impossible to perform.

- As explained in section 10.3.6 above, it is impossible to perform the Reduction Claims with respect to the emission intensity targets.
- ING and its clients have agreed to terms and conditions that limit the possibility of performing the Purported Duties. Furthermore, the Purported Duties conflict with ING's duties to its clients.[1303]
- The Purported Duties extend to ING's activities in all the markets in which it operates. These include EU Member States, the United States, the United Kingdom, Singapore and Australia. ING's clients, in turn, are active in many other countries, regardless of the market in which they obtain credit from ING. If ING were to perform the Claimed Orders by, for example, terminating certain banking relationships, it would likely be acting in violation of applicable law in various jurisdictions. This means that such legislation hinders the performance of the Claimed Orders.

1298 Dutch Supreme Court 27 June 1997, ECLI:NL:HR:1997:ZC2401 (*Budde v. Tao Moa Cruising Limited*), para. 3.3. The Dutch Supreme Court referred to its previous judgment of 21 May 1976, ECLI:NL:HR:1976:AC5738 (*Oosterhuis v. Unigro*), in which it held that: "*in general, an order requiring the debtor to perform an obligation must be rejected on the grounds that it is impossible for the debtor to perform that obligation at the time the order is issued".* See also Arnhem Court of Appeal 19 October 2004, ECLI:NL:GHARN:2004:AR8245, para. 3.4: "*An obligation cannot be enforced if the party claiming its performance has no interest in it, or if its performance has become permanently impossible.*"

1299 Van der Helm, for instance, argued that '*an order requiring the performance of an impossible task cannot be given because such an order serves no purpose.*" See J.J. van der Helm, "Niets is onmogelijk, of toch?", *NJB* 2024/1124 (Exhibit ING-347), p. 1401.

1300 Dutch Supreme Court 21 May 1976, ECLI:NL:HR:1976:AC5738 (*Oosterhuis v. Unigro*); Van der Helm 2023 (Exhibit ING-337), p. 265 and 275; H.B. Krans et al., *Verbintenissenrecht algemeen (Studiereeks Burgerlijk Recht, deel 4)*, 2022 (excerpt) (Exhibit ING-348), p. 113: "*Relative impossibility is deemed to exist when the performance in question encounters insurmountable obstacles due to practical, moral or legal impediments, even though it is not impossible in absolute terms.*"

1301 Dutch Supreme Court 21 May 1976, ECLI:NL:HR:1976:AC5738 (*Oosterhuis v. Unigro*).

1302 Dutch Supreme Court 21 May 1976, ECLI:NL:HR:1976:AC5738 (*Oosterhuis v. Unigro*).

1303 See section 9.3.3 above.

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13.2.5 Due to ING's strict prudential obligations, the Claimed Orders cannot be granted

772. The Purported Duties are also incompatible with the statutory framework of prudential rules and supervision applicable to ING. As explained in chapter 4 and section 9.3, the purpose of the prudential system is to ensure the stability of the financial system and the soundness and liquidity of banks. Due to the significant national and global public interests involved, compliance with this regulatory framework is subject to strict and rigorous supervision.

773. The prudential system means that the Purported Duties cannot exist (as explained in section 9.3) and that the Claimed Orders cannot be granted. The civil court can only grant an order that ING is able to perform (see section 13.2.4 above).

774. Clearly, the Claimed Orders will, or could, impede the lawful performance of ING's prudential obligations in the future. Conversely, it is by no means certain that the Claimed Orders will give ING the necessary leeway to perform its prudential obligations in all possible future circumstances. The Claimed Orders are completely inflexible, yet they will remain in place for a long time and have a wide reach. In contrast, the prudential system requires ING to be highly flexible in order to adapt continuously to new circumstances and manage the resulting risks as adequately as possible. Changing circumstances have consequences for ING's risk exposure and therefore require constant vigilance in the form of risk management.

775. However, the Purported Duties would require ING to follow modelled transition pathways. ING would not be permitted to deviate from these pathways in response to normal or unexpected developments affecting its risk exposure. This conflicts with ING's significant obligations under the prudential system: ING is simply not legally permitted to continue performing the rigid Claimed Orders – regardless of future circumstances. Consequently, the Claimed Orders hinder obligatory and lawful conduct.

776. It was and is incumbent upon Milieudefensie to assert and substantiate that the Purported Duties align with the statutory prudential system. Similarly, it is Milieudefensie's responsibility to demonstrate that the Claimed Orders are compatible with the prudential system and do not hinder lawful conduct. Milieudefensie has failed to do so: the Claimed Orders do not provide ING with the flexibility required to perform its statutory prudential obligations. The requirements for granting an order have therefore not been met.

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13.3 No declaration of provisional enforceability

777. As discussed in this SoD, Milieudefensie has a very specific view of companies' obligations in the area of climate mitigation. This view differs significantly from the approach of the legislator and society at large. Given this circumstance, i.e. that Milieudefensie's demands deviate from what is required of ING by society and by law, if any of the Claimed Measures are granted, they cannot under any circumstances be provisionally enforceable.

778. A declaration of provisional enforceability requires that the interests of the parties must be considered in light of the circumstances of the case.[1304] The interests of Milieudefensie must therefore be weighed against those of ING in maintaining the status quo until the proceedings are finally resolved. When weighing up these interests, the far-reaching consequences for the defendant must be considered, particularly if they are difficult to reverse at a later date.[1305] In this case, the societal interest, the systemic interest, and the interests of ING's clients must also be considered.

779. The outcome of this weighing of interests is that Milieudefensie's request for provisional enforceability must be rejected.

- **The nature of the Claimed Orders means they require significant measures with significant consequences**. The Claimed Orders effectively amount to policy orders: ING must act in accordance with these – rather detailed – claims. However, there is a fundamental difference between Milieudefensie's approach and the current organisation of the climate and energy transition. ING – and any other company to which the Purported Duties would apply – would therefore have to take significant and onerous steps to adapt its policy and strategy.[1306] This would require significant changes to the company itself, its long-term strategy, contracts and client relationships, among other

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1304 Dutch Supreme Court 20 December 2019, ECLI:NL:HR:2019:2026, para. 5.3.6: "[...] *(ii) The assessment must weigh up the interests of the parties in light of the circumstances of the case.*" Dutch Supreme Court, 20 May 2008, ECLI:NL:HR:2008:BC5012, para. 3.2.3: "[...] *that when weighing up the interests of the parties in light of the circumstances of the case, it must be determined whether* [...] *the interests of the party who obtained the order outweigh those of the party against whom the order was made, while maintaining the status quo until a decision is reached on the remedy*".

1305 Dutch Supreme Court 28 May 1993, ECLI:NL:HR:1993:ZC0976, para. 3.3: "*that awarding the ancillary claims may have far-reaching consequences that will be difficult to undo later* [will] *have to be taken into account when deciding whether to proceed to give* [a declaration of provisional enforceability]."

1306 To the extent that Milieudefensie would believe that the court's judgment in the proceedings between Stichting Greenpeace Nederland and the Dutch State (The Hague District Court 28 January 2026, ECLI:NL:RBDHA:2026:1344) shows that defendants can be required to take action pending an appeal, that comparison fails. In that case, the court considered that its judgment could be declared provisionally enforceable because the Dutch state was ordered to comply with obligations it had already assumed and could comply with them by implementing existing policies (see para. 11.62). That is not the case in the present matter. ING has an approach that fundamentally differs from that advocated by Milieudefensie.

things. The Claimed Orders offer no flexibility or opportunity in this regard to respond to relevant developments and risks.[1307] Consequently, it will (or be forced to) change course in a way that significantly deviates from the context in which it operates, including with regard to its suppliers, clients, regulators, financiers, shareholders and society at large. This lack of flexibility creates significant additional problems as it limits the extent to which banks can adequately manage their risks. This conflicts with the importance of stable policy,[1308] ING's prudential obligations[1309] and the public interest in a sound and stable financial system.[1310]

- **The consequences cannot be reversed**. For companies to comply with the Claimed Orders, fundamental policy changes and a change of strategic course are required, including changes to financial planning and staffing. These changes will have irreversible effects on the company. For example, a bank such as ING would have to restructure its portfolio and categorically exclude certain clients.[1311] This will cause irreparable harm to ING's market position, competitiveness and relationships with those clients. It could also cause its clients to suffer losses. These abrupt consequences are precisely what policy documents and studies label as highly undesirable.[1312] In other words: complying with the Claimed Orders will have irreversible consequences.

- **There is a real risk of conflicting rulings from other authorities**. Climate change legislation and private initiatives are developing at light speed. Given the fast-changing nature of this context and these proceedings, it is possible that the principles underlying a decision at first instance will differ from those on appeal. This is illustrated by the different outcomes in the initial proceedings and the subsequent appeal in the proceedings initiated by Milieudefensie against Shell. If a judgment in favour of (or partially favourable in favour of) the claimant is declared provisionally enforceable, ING's policy will have to be adjusted while the proceedings are still pending.

780. The consequences of the Claimed Orders are thus enormous and irreversible. It seems that Milieudefensie is pursuing precisely these far-reaching consequences. It argues that granting its claims could, after all, have "*wider effects*".[1313] According to Milieudefensie, legal proceedings can have a "*signalling*

1307 See sections 7.1 and 12.2 above.
1308 See section 2.5 and chapter 4 above.
1309 See section 4.3 above.
1310 See section 4.2 above.
1311 See section 11.3 above for the Reduction Claims and Exclusion Claims, and section 7.3 above for the Exclusion Claims.
1312 See section 11.6 above.
1313 Writ of Summons, section XVI.4.

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function".[1314] Setting aside the fact that this activism does not demonstrate sufficient interest in these proceedings, any signalling function should only arise once the final judgment in these proceedings has been issued and become final and conclusive.

781. Milieudefensie's interest in provisional enforceability does not outweigh the interests of ING, its clients, and wider society in ensuring the stable operation of ING and all the interests its associated activities serve. In any case, a judgment granting any of Milieudefensie's claims cannot be provisionally enforceable.

1314 Writ of Summons, no. 1182.

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14 CLOSING REMARKS AND CONCLUSION

782. In this SoD, ING has put forward its defence against Milieudefensie's claims. ING has the evidence included in the list below to support its defence. The text of this SoD continues after the list of exhibits on page 301.

Exhibits

Exhibit ING-001A	Report of Professor Ringe of 6 February 2026
Exhibit ING-001B	Appendixes to Report of Professor Ringe of 6 February 2026
Exhibit ING-002A	Report of Professor Resti of 6 February 2026
Exhibit ING-002B	Appendixes to Report of Professor Resti of 6 February 2026
Exhibit ING-003A	Report of Oxera of 5 February 2026
Exhibit ING-003B	Annexes to Report of Oxera of 5 February 2026
Exhibit ING-004	Climate Change Conference - Belém, "Overview Schedule", 19 November 2025) (excerpt)
Exhibit ING-005	*Kyoto Protocol to the United Nations Framework Convention on Climate Change*, 11 December 1997 ("Kyoto Protocol")
Exhibit ING-006	UNFCCC, 'The Paris Agreement" (printout of 26 January 2026)
Exhibit ING-007	D. Bodansky, "Paris Agreement," *United Nations Audiovisual Library of International Law*, July 2021
Exhibit ING-008	M. Brus, "Het klimaatakkoord van Parijs: bouwen aan wereldrecht of bewijs van falende internationale samenwerking?", *AA* 2016/0615, vol. 9
Exhibit ING-009	S. Schiele, "International environmental regimes and their treaties", in: J.S. Bell et al. (eds.), *Evolution of International Environmental Regimes: The Case of Climate Change*, 2014 (excerpt)
Exhibit ING-010	IPCC, "About the IPCC" (printout of 21 January 2026)
Exhibit ING-011	EU, "Submission of an updated Nationally Determined Contribution (NDC) to the United Nations Framework Convention on Climate Change (UNFCCC)," 5 November 2025 ("EU NDC 2025")
Exhibit ING-012	EC, "Sustainable Finance Action Plan", COM(2018) 97 final, 8 March 2018 ("Sustainable Finance Action Plan")
Exhibit ING-013	EC, "European Green Deal", COM(2019) 640 final, 11 December 2019 ("Green Deal")

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Exhibit ING-014	Council of the EU, "Outcome of procedures including letter to the European Parliament including provisional agreement on proposal for regulation to amend the European Climate Law", 17086/25, 19 December 2025
Exhibit ING-015	EC, '"Fit for 55": delivering the EU's 2030 Climate Target on the way to climate neutrality," COM(2021) 550 final, 14 July 2021 ("Fit for 55 package")
Exhibit ING-016	European Council, "Fit for 55", 17 March 2025 (printout of 21 January 2026)
Exhibit ING-017	EC, "A sustainable finance framework that works on the ground", COM(2023) 317 final, 13 June 2023 ("EC, Sustainable Finance Framework")
Exhibit ING-018	EC, "Stepping up Europe's 2030 climate ambition Investing in a climate-neutral future for the benefit of our people", COM(2020) 562 final, 17 September 2020 (excerpt)
Exhibit ING-019	EC, "Strategy for Financing the Transition to a Sustainable Economy", COM(2021) 390 final, 6 July 2021 (excerpt)
Exhibit ING-020	COP29 and COP30, Report on the Baku to Belem Roadmap to 1.3T, November 2025 (excerpt)
Exhibit ING-021	Recommendation (EU) 2023/1425 of 27 June 2023 (excerpt)
Exhibit ING-022	EP, "EU 2040 climate target: MEPs want 90% emissions reduction in EU climate law", 13 November 2025 (press release) (printout of 21 January 2026)
Exhibit ING-023	EC, "Commission Working Document. Impact Assessment Report. Part 1", SWD(2024) 63 final, 6 February 2024 (excerpt) ("EC, Impact Assessment Report")
Exhibit ING-024	EC, "REPowerEU Plan," COM(2022) 230 final, 18 May 2022 ("REPowerEU Plan")
Exhibit ING-025	Netherlands Enterprise Agency (*Rijksdienst voor Ondernemend Nederland*), "Europese Richtlijn energieprestatie van gebouwen EPBD IV" (printout of 21 January 2026)
Exhibit ING-026	EC, "EU Taxonomy, Corporate Sustainability Reporting, Sustainability Preferences and Fiduciary Duties: Directing finance towards the European Green Deal" COM(2021) 188 final, 21 April 2021

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Exhibit ING-027	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR), Regulation (EU) No. 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) and repealing Commission Delegated Regulation (EU) 2022/1288 COM(2025) 841 final, 20 November 2025 (excerpt)
Exhibit ING-028	*Parliamentary Papers I* 2025/26, 26 485, no. E (Report of written consultation on draft decree implementing CSRD)
Exhibit ING-029	EC, "Fact sheet: How does the EU Taxonomy fit within the Sustainable Finance Framework" (printout of 21 January 2026)
Exhibit ING-030	EC, "Commission simplifies rules on sustainability and EU investments, delivering over €6 billion in administrative relief" (printout of 11 December 2025)
Exhibit ING-031	EC, "Commission Staff Working Document", SWD(2025) 80 final, 26 February 2025 (excerpt) ("EC, Commission Staff Working Document 2025")
Exhibit ING-032	*Parliamentary Papers II* 2025/26, 36 678, no. 10 (Letter to the Dutch House of Representatives on the CSRD implementation)
Exhibit ING-033	*Parliamentary Papers II* 2025/26, 36 678, no. 11 (Letter to the Dutch House of Representatives on the CSRD implementation)
Exhibit ING-034	EC, "Directive on Corporate Sustainability Due Diligence. Frequently asked questions", 19 July 2024 ("CSDDD FAQ")
Exhibit ING-035	EC, "Minutes of the 2408th meeting of the Commission held in Brussels on Wednesday 23 and Thursday 24 February 2022", PV(2022) 2408 (final (English translation) (excerpt) ("EC, Minutes of the 2408th meeting")
Exhibit ING-036	EC,"Follow-up to the second opinion or the Regulatory Scrutiny Board', SWD(2022) 39 final, 23 February 2022 (excerpt)
Exhibit ING-037	Council of the EU, "Information notice on the outcome of the first reading of the European Parliament including Provisional Agreement Omnibus, 17078/25, 19 December 2025 ("Provisional Agreement Omnibus')
Exhibit ING-038	J. de Larosière, *The High-Level Group on Financial Supervision in the EU*, 25 February 2009 (excerpt)

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Exhibit ING-039	High-Level Expert Group on Sustainable Finance, *Final Report 2018*, 31 January 2018 (excerpt)
Exhibit ING-040	ECB, *Guide on climate-related and environmental risks*, November 2020
Exhibit ING-041	EBA, "Transparency and Pillar 3" (printout of 21 January 2026)
Exhibit ING-042	EBA, *Report on Management and Supervision of ESG Risks for Credit Institutions and Investment Firms* 23 June 2021 (excerpt)
Exhibit ING-043	EBA, *Report on the role of environmental and social risks in the prudential framework*, EBA/REP/2023/34, October 2023 (excerpt)
Exhibit ING-044	EC, *Banking Package*, 26 October 2021 (printout of 21 January 2026)
Exhibit ING-045	EBA, "*Guidelines on the management of environmental, social and governance (ESG) risks*", EBA/GL/2025/01, 8 January 2025 ("EBA ESG Guidelines")
Exhibit ING-046	A.J.A.D. van den Hurk et al., "Het ene ESG-plan is het andere niet", *FR* 2025/3
Exhibit ING-047	See also EBA, "Consultation Paper Draft Guidelines on the management of ESG Risks", EBA/CP/2024/02, 18 January 2024 (excerpt)
Exhibit ING-048	Z.M. Knödler, "Greening prudential supervision: supervisory and regulatory responses to ESG risks" in: Van der Linden van Sprankhuizen et al. (eds.) *Ondernemingsgerichtprivaatrecht en ESG (O&R nr. 145),* 2024 (excerpt)
Exhibit ING-049	M. de Sá, "ESG and Banks: Towards Sustainable Banking in the European Union", in: P. Câmara et al. (eds.), *The Palgrave Handbook or ESG and Corporate Governance,* 2022 (excerpt)
Exhibit ING-050	EC, "Report on the state of the energy union 2024", COM(2024) 404 final, 11 September 2024
Exhibit ING-051	EC, "2024 Climate Action Progress Report", COM(2024) 498 final, 31 October 2024 (excerpt)
Exhibit ING-052	EC, State of the Union 2025, From Promise to Progress: the first year of this term of office, Commission-Von der Leyen 2024-2029", 10 September 2025 (excerpt)
Exhibit ING-053	EEA, *Europe's environment and climate: knowledge for resilience, prosperity and sustainability*, 29 September 2025 (excerpt)

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Exhibit ING-054	EC, "2025 Climate Action Progress Report", November 2025 (excerpt)
Exhibit ING-055	EC, "The future of European competitiveness, Part A: A competitiveness strategy for Europe", 9 September 2024 ("Draghi Report")
Exhibit ING-056	EC, "A Competitiveness Compass for the EU" COM(2025) 30 final, 29 January 2025 ("EC, EU Competitiveness Compass")
Exhibit ING-057	See also EC, "An EU Compass to regain competitiveness and secure sustainable prosperity", 29 January 2025 (press release) (printout of 27 January 2026)
Exhibit ING-058	EC, "Action Plan for Affordable Energy. Unlocking the true value of our Energy Union to secure affordable, efficient and clean energy for all Europeans", COM(2025) 79 final, 26 February 2025 (excerpt) ("EC, Action Plan for Affordable Energy")
Exhibit ING-059	European Council and Council of the EU, "Simplification of EU Rules" (printout of 5 February 2026)
Exhibit ING-060	EFRAG, *EFRAG provides its technical advice on draft simplified ESR to the European Commission*, 3 December 2025
Exhibit ING-061	EC, "The Single Market: our European home market in an uncertain world A Strategy for making the Single Market simple, seamless and strong", COM(2025) 500 final, 21 May 2025 (excerpt)
Exhibit ING-062	EC, "Roadmap towards ending Russian energy imports", COM(2025) 440 final, 6 May 2025 ("EC, Roadmap towards ending Russian energy imports")
Exhibit ING-063	EC, "EU to fully end its dependency on Russian energy", 6 May 2025 (press release) (printout of 27 January 2026)
Exhibit ING-064	EC, "EU agrees to permanently stop Russian gas imports and phase out Russian oil", 3 December 2025 (press release) (printout of 5 February 2026)
Exhibit ING-065	EC, "Commission publishes 'fitness check' on EU laws covering the security of electricity and gas supply in view of future revision", 5 January 2026 (printout of 5 February 2026)
Exhibit ING-066	C. Barnard, *The Substantive Law of the EU: The Four Freedoms*, 2022 (excerpt) ("Barnard 2022")
Exhibit ING-067	F. Zuleeg, "The end of the level playing field?", *European Policy Centre*, 1 October 2020

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Exhibit ING-068	W.T. Eijsbouts et al. (eds.), *Europees Recht Algemeen Deel*, 2020 (excerpt)
Exhibit ING-069	F. Amtenbrink et al., *Recht van de Europese Unie,* 2022 *(*excerpt)
Exhibit ING-070	EC, "Enforcing EU law for a Europe that delivers," COM(2022) 518 final, 13 October 2022
Exhibit ING-071	E. Versluis, "Even Rules, Uneven Practices: Opening the 'Black Box' of EU Law in Action", *West European Politics* (30) 2007/1
Exhibit ING-072	*Parliamentary Papers II* 2014/15, 32 813, no. 103 (Letter to the Dutch House of Representatives on Urgenda judgment)
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Exhibit ING-087	"Aan de slag. Bouwen aan een beter Nederland", *Coalition Agreement 2026-2030* (excerpt) (*Coalitieakkoord 2026-2030,* "Coalition Agreement 2026-2030")
Exhibit ING-088	*Parliamentary Papers II* 2015/16, 34 534, no. 5 (Opinion of the Advisory Division of the Council of State and response of the initiators of the Dutch Climate Act)
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Exhibit ING-106	*Appendix to Proceedings II* 2024/25, no. 865 (Parliamentary questions and answers on court of appeal ruling in Milieudefensie v. Shell)
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Exhibit ING-112	Clingendael National Security Analyst Network Institute, *De gevolgen van de Russische oorlog in Oekraïne voor de nationale veiligheid van het Koninkrijk der Nederlanden*, February 2023 (excerpt)
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Exhibit ING-123	D. Busch et al., "Introduction", in: D. Busch et al. (eds.), *Leerboek Financieel Recht*, 2024 (excerpt)
Exhibit ING-124	B. Bierens, "Banks," in: D. Busch et al. (eds.), *Leerboek Financieel Recht*, 2024 (excerpt) ("Bierens 2024")
Exhibit ING-125	K.A. Messelink et al., *Juridisch handboek intensief beheer. Beheer van bancaire kredieten van klanten met financiële problemen (Recht and Praktijk no. InsR10)*, 2017 (excerpt) ("Messelink 2017")
Exhibit ING-126	*Parliamentary Papers II* 2025/26, 36 711, no. 27 (Adopted amendment to proposal to amend, inter alia, the Wft)
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Exhibit ING-130	C.E. du Perron, "Goede and slechte crisiswetgeving voor financiële instellingen", in: A.H.E.M. Wellink, *Crisiswetgeving voor financiële instellingen and ondernemingen*, 2011 (excerpt)
Exhibit ING-131	"DNB handhaaft systeemrelevantiebuffers voor banken", 2 December 2024 (printout of 21 January 2026)
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Exhibit ING-136	DNB, "CRD6 Implementation", 23 December 2025 (printout of 11 February 2026)
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Exhibit ING-139	FSB, *Shadow Banking Scoping the Issues*, April 2011
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Exhibit ING-143	OHCHR, *OHCHR Response to Request from BankTrack for Advice Regarding the Application or the UN Guiding Principles on Business and Human Rights in context or the banking sector*, 12 June 2017 ("OHCHR Application for Banking Sector")
Exhibit ING-144	GHG Protocol, "About Us" (printout of 21 January 2026)
Exhibit ING-145	PCAF, *Global GHG Accounting and Reporting Standard Part A*: Financed Emissions, December 2025 ("PCAF Financed Emissions (2025)")

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Exhibit ING-147	SBTi, *Financial Institutions Near Term Criteria*, May 2024 ("SBTi FINT")
Exhibit ING-148	UNEP FI, *Climate Target Setting for Banks*, October 2025 ("UNEP FI Guidance")
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Exhibit ING-150	NZBA, *Target Setting for Capital Markets Activities*, October 2024
Exhibit ING-151	Greenhouse Gas Protocol, *Product Life Cycle Accounting and Reporting Standard*, September 2011
Exhibit ING-152	M. Condon, "Whats Scope 3 Good For?", *UC Davis Law Review* (56) 2023
Exhibit ING-153	Q. Nguyen et al., "Scope 3 Emissions: Data Quality and Machine Learning Prediction Accuracy", *USAEE Working Paper* 2022, vol. 22-562 ("Nguyen 2022")
Exhibit ING-154	T. Busch et al., "Corporate carbon performance: Quo vadis?", *Journal of Industrial Ecology* 2022, vol. 26
Exhibit ING-155	OECD, *OECD Platform on Financing SMEs for Sustainability. Activity Report 2025*, November 2025 (excerpt)
Exhibit ING-156	Asian Development Bank, M*itigating the Data Gap in Greenhouse Gas Emissions Calculation for Small and Medium-Sized Enterprises*, February 2025
Exhibit ING-157	RMI, *PACTA for Banks*, 25 July 2022 ("PACTA")
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Exhibit ING-167	IEA, *World Energy Outlook 2024*, 16 October 2024 (excerpt) ("IEA WEO2024")
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Exhibit ING-169	IEA, "Scenarios in the World Energy Outlook 2025", 5 November 2025 (printout of 21 January 2026)
Exhibit ING-170	TPT, *Disclosure Framework*, October 2023 ("TPT Disclosure Framework")
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Exhibit ING-174	ING, *ING to sell its business in Russia to Global Development JSC*, 28 January 2025 (press release)
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Exhibit ING-184	ING, "ING's climate targets validated by the Science-Based Targets initiative (SBTi)", 26 March 2025 (printout of 21 January 2026)
Exhibit ING-185	P. Friedlingstein et al., "Global Carbon Budget 2024", *Earth System Science Data* (17) 2025, vol. 3
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Exhibit ING-188	ING, *Assessing climate transition plan disclosures – ING's Client Transition Plan assessment methodology*, January 2025 (excerpt) ("ING's CTP Assessment Methodology")
Exhibit ING-189	*NCP Final Statement. Oxfam Novib, Greenpeace Netherlands, BankTrack and Friends of the Earth Netherlands (Milieudefensie) vs. ING*, 19 April 2019 ("NCP Final Statement")
Exhibit ING-190	World Benchmarking Alliance, "Financial System Benchmark. Ranking. 2025. Banks" (printout of 4 February 2026)
Exhibit ING-191	MSCI, *ING Groep NV ESG Ratings Report*, 13 October 2025
Exhibit ING-192	ING, 'Ratings' (printout of 16 February 2026)
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Exhibit ING-201	M.E. Bruning, *De rechtsvormende taak van de civiele rechter. Over belangenbescherming in burgerlijke and handelszaken door rechtspraak 'volgens de wet' and naar billijkheid in een meerlagige rechtsorde*, 2025 (excerpt) ("Bruning 2025")
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Exhibit ING-203	G. de Groot, "The potential or climate change cases for a sustained and resilient judiciary", *Conference for the Presidents or the Constitutional Courts of Europe on 'Climate change as a Challenge for Constitutional Law and Constitutional Courts'*, 4-5 May 2023 ("De Groot 2023")
Exhibit ING-204	E.M. Snijders, "Ideële acties in de financiële sector", in: N. Boomsma et al. (eds.), *Collectieve acties in de financiële sector*, 2024 (excerpt) ("Snijders 2024")
Exhibit ING-205	C.J. van Zeben et al. (eds.), *Parl. Gesch. Nieuw BW. Boek 6*, 1981 (excerpt)
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Exhibit ING-209	A.G. Castermans et al., "Drie arresten over gebod, causaliteit en klimaatschade", *AV&S* 2025/7
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Exhibit ING-216	E.H.P. Brands et al., "Shell/Milieudefensie. Geen reductiebevel voor Shell. Wel een aantal voor klimaat- and milieuzaken belangrijke mijlpalen", *M&R* 2025/42
Exhibit ING-217	EC, "Inception Impact Assessment on Amendment or the EU Emissions Trading System (Directive 2003/87/EC)" (Q2 2021)
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Exhibit ING-221	*Parliamentary Papers II* 2025/26, 36 712, no. 9 (Letter to the Dutch House of Representatives on Provisional political Agreement Omnibus I-CSDDD)
Exhibit ING-222	EC, "Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements", COM/2025/81 final, 26 February 2025
Exhibit ING-223	EFRAG, *Draft ESR E1. Climate Change*, November 2025
Exhibit ING-224	EFRAG, *Basis for Conclusions. Draft amended ESRS,* December 2025 (excerpt)
Exhibit ING-225	Health Policy Watch, "COP30 Ends With No Text on Fossil Fuels Phase-Out – but Plans for a Conference in 2026", 24 November 2025 (printout of 21 January 2026)
Exhibit ING-226	Enerdata, "Germany plans to develop 20 GW or gas power plant capacity by 2030", 11 April 2025 (printout of 21 January 2026)
Exhibit ING-227	DW, "Germany reactivates coal-fired power plant to save gas", 22 August 2022 (printout of 21 January 2026)
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Exhibit ING-229	D. Katanich, "New gas discovery off Cyprus coast may reduce EU energy dependence", *EuroNews* 8 July 2025 (printout of 21 January 2026)
Exhibit ING-230	Decision of the Dutch Minister of Climate and Green Growth on extraction plan F06-IJssel of 22 December 2025
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Exhibit ING-235	M. Cardona et al., *What role for financial regulation to help the low-carbon transition?*, June 2020 (excerpt) ("Cardona 2020")
Exhibit ING-236	EBF, *Increasing Bankability or Transition & the Clean Industrial Deal*, July 2025 (excerpt) ("EBF-rapport 2025")
Exhibit ING-237	KPMG, *Het Klimaatcommitment van de Nederlandse financiële sector*, December 2025 ("KPMG Progress Report 2024")
Exhibit ING-238	M. Regelink et al., *Waterproof? An exploration or climate-related risks for the Dutch financial sector*, 5 October 2017 (excerpt) ("Regelink (DNB) 2017")
Exhibit ING-239	R. Hubert et al., *Connecting the dots between climate risk management and transition finance,* February 2024 (I4CE publication on transition finance)
Exhibit ING-240	M. Andersson et al., "Green investment needs in the EU and their funding", *ECB Economic Bulletin* 2025/1 (excerpt)
Exhibit ING-241	C. Nerlich et al., "Investing in Europe's green future. Green investment needs, outlook and obstacles to funding the gap", *Occasional Paper Series* 367/2025 (excerpt)
Exhibit ING-242	N. Carey, "Leasing model behind Europe's EV drive at risk or breakdown", *Reuters* 13 August 2024 (printout of 21 January 2026)
Exhibit ING-243	*Parliamentary Papers II* 1967/68, 9596, no. 3 (Explanatory Memorandum)
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Exhibit ING-245	R.M. Wibier, "Opzegging van duurovereenkomsten, in het bijzonder kredietovereenkomsten", *AA* 2015/480
Exhibit ING-246	K.W.H. Broekhuizen, "Loyaliteit en zorgvuldigheid in het financiële recht", *MvV* 2018/6
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Exhibit ING-248	KPMG, *Het Klimaatcommitment van de Nederlandse financiële sector*, February 2025 (excerpt) ("KPMG Progress Report 2023")
Exhibit ING-249	Institute of International Finance, *The Role of The Financial Sector in the Net Zero Transition: Assessing Implications for Policy, Supervision and Market Frameworks*, 10 October 2023 (excerpt) ("IIF 2023")
Exhibit ING-250	Appendix to *Parliamentary Papers II* 2024/25, 32 013, no. 304 (Report of responses to survey of climate measures for the financial sector)
Exhibit ING-251	Appendix Proceedings II 2025/26, no. 104 (Dutch State Secretary of Foreign Affairs' response to climate commitments of states)
Exhibit ING-252	Oxford Sustainable Finance Group, *Implications or the International Energy Agency Net Zero Emissions by 2050 scenario. for Net Zero Committed Financial Institutions*, 24 March 2022
Exhibit ING-253	K. Koasidis et al., "Why integrated assessment models alone are insufficient to navigate us through the polycrisis", *One Earth* (6) 2023/3
Exhibit ING-254	IPCC, *Special Report. Global Warming of 1.5°C*, 8 October 2018 (excerpt)
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Exhibit ING-259	IEA, *The Implications or Oil and Gas Field Decline Rates*, 16 September 2025
Exhibit ING-260	E.R. de Jong, *Voorzorgverplichtingen. Over aansprakelijkheidsrechtelijke normstelling voor onzekere risico's*, 2016 (excerpt) ("De Jong 2016")
Exhibit ING-261	Asser/Scholten, *Algemeen deel** 1974 (excerpt)
Exhibit ING-262	M. Schröder, "Precautionary Approach/Principle", *Max Planck Encyclopedia of Public International Law* (printout of 21 January 2026)
Exhibit ING-263	E. Hey et al., "Common but Differentiated Responsibilities", *Max Planck Encyclopedia of International Law* (printout of 21 January 2026)

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Exhibit ING-264	NZBA, *Transition Finance Guide*, October 2022 ("NZBA Transition Finance Guide")
Exhibit ING-265	UNEP FI, "About the Principles" (printout of 21 January 2026)
Exhibit ING-266	Race to Zero, *2024 Progress Report*, 23 June 2025 ("RtZ Progress Report 2024")
Exhibit ING-267	Milieudefensie et al., "Call for SBTI to align methodology with UN's High Level Expert Group report on Net-zero Commitments", 12 July 2023
Exhibit ING-268	S.J.M. Biesmans, annotation to The Hague District Court 26 May 2021, ECLI:NL:RBDHA:2021:5337 (*Milieudefensie v. Shell*), JOR 2021/208, (excerpt)
Exhibit ING-269	NCP, *NCP Final Statement. Friends of the Earth Europe and Friends of the Earth Netherlands/Milieudefensie versus Rabobank*, 15 January 2016
Exhibit ING-270	UNEP FI, *Principles for Responsible Banking Guidance Document*, November 2021 ("PBR Guidance Document")
Exhibit ING-271	GFANZ, *The Managed Phaseout or High-Emitting Assets*, June 2022
Exhibit ING-272	UNEP FI, *Theory of Change for Climate Mitigation*, February 2023
Exhibit ING-273	OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, 1 February 2018
Exhibit ING-274	PCAF, *The Global Carbon Accounting Standard for the Financial Industry. Draft version for Public Consultation*, August 2020 (excerpt)
Exhibit ING-275	Nordea, *Annual Report 2024*, 24 February 2024 (excerpt)
Exhibit ING-276	Triodos, *Annual Report 2024*, 13 March 2024 (excerpt)
Exhibit ING-277	N.O. Peer, "Corporate Climate Targets Science, Discretion, and Climate-Washing", *Colorado Law Scholarly Commons* (33) 2025 (excerpt)
Exhibit ING-278	EC, "The Just Transition Mechanism: making sure no one is left behind" (printout of 21 January 2026)
Exhibit ING-279	A. Fraser et al., "Net-zero targets for investment portfolios: An analysis of financed emissions metrics", *Energy Economics* 2023/126 ("Fraser 2023")
Exhibit ING-280	I. Granoff et al., "Shocking Financed Emissions: The Effect or Economic Volatility on the Portfolio Footprinting. or Financial Institutions," *Sabin Center for Climate Change Law* 5/2024

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Exhibit ING-281	O.Y. Edelenbosch et al., "Mitigating greenhouse gas emissions in hard-to-abate sectors", *PBL Netherlands Environmental Assessment Agency*, July 2022
Exhibit ING-282	IEA, "Who is investing in energy around the world, and who is financing it?", 25 June 2024 (printout of 21 January 2026)
Exhibit ING-283	K. Sachdeva et al., "Defunding controversial industries: Can targeted credit rationing choke firms?", *Journal of Financial Economics* (172) 2025/104133 ("Sachdeva 2025")
Exhibit ING-284	University of Rochester, "When Washington tried to starve industries of loans—and failed", 26 September 2025 (printout of 21 January 2026)
Exhibit ING-285	IEA, *Scaling Up Transition Finance*, 16 October 2025 (excerpt)
Exhibit ING-286	GFANZ, *Measuring Portfolio Alignment*, November 2022
Exhibit ING-287	M. Kacperczyk et al., "Carbon Emissions and the Bank-Lending Channel", *ECGI Finance Working Paper* (991) 2024
Exhibit ING-288	New Climate Institute & Universiteit Utrecht, *Unpacking the financial sector's climate-related investment commitments*, September 2020 (excerpt)
Exhibit ING-289	A. Plantinga et al., "The finance perspective on fossil fuel divestment", *Current Opinion in Environmental Sustainability* (66) 2024/101394
Exhibit ING-290	P. Bolton et al., "Do Investors Care About Carbon Risk?", *NBER Working Paper* 2020/26968
Exhibit ING-291	P. Bolton et al., "Global Pricing of Carbon-Transition Risk", *Journal of Finance 2023/78.*
Exhibit ING-292	OECD, *Managing Climate Risks and Impacts Through Due Diligence for Responsible Business Conduct: A Tool for Institutional Investors*, 3 October 2023 (excerpt)
Exhibit ING-293	UNEP FI, *Target Setting Protocol*, January 2022
Exhibit ING-294	Sustainable Finance Observatory, *Tracking Real World Emissions Reductions: The Missing Element in Portfolio Alignment and Net-Zero Target-Setting Approaches*, September 2022
Exhibit ING-295	Platform voor Duurzame Financiering, *Duurzame financiering: Zijn er belemmeringen vanuit toezicht, financiële regelgeving en overheidsbeleid?*, 25 September 2018 (excerpt)

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Exhibit ING-296	DNB, *De financiering van transitie: kansen grijpen voor groen herstel*, 1 February 2021 (excerpt)
Exhibit ING-297	World Economic Forum, *Net-Zero Industry Tracker - 2024 edition*, December 2024 (excerpt)
Exhibit ING-298	S.M. Hartzmark et al., "Counterproductive Sustainable Investing: The Impact Elasticity of Brown and Green Firms", *SSRN Electronic Journal* 2024 ("Hartzmark 2024")
Exhibit ING-299	Proposal for a Regulation on phasing out Russian natural gas imports, improving monitoring of potential energy dependencies and amending Regulation (EU) 2017/1938, COM/2025/828 final (excerpt)
Exhibit ING-300	Appendix to *Parliamentary Papers II* 2023/ 24, 32 813, no. 1307 (2023 Climate Memorandum) (excerpt)
Exhibit ING-301	Appendix to *Parliamentary Papers II* 2021/22, 32 847, no. 878 (National Housing and Construction Agenda) (excerpt)
Exhibit ING-302	Dutch Ministry of Housing and Spatial Planning, "How is the housing shortage calculated?", 12 August 2024
Exhibit ING-303	Netherlands Enterprise Agency, "Dashboard - Energielabels" (printout of 21 January 2026)
Exhibit ING-304	DNB, "Size and breakdown of the mortgage market" (printout of 21 January 2026)
Exhibit ING-305	Dutch Banking Association "Bank in Beeld" (printout of 21 January 2026)
Exhibit ING-306	Emissions Registry, "Greenhouse Gases" (printout of 21 January 2026)
Exhibit ING-307	Appendix to *Parliamentary Papers II* 2025/26, 33 043, no. 119 (Climate and Energy survey 2025) (excerpt)
Exhibit ING-308	DNB, *Van crisis naar kans: verduurzaming van woningen na de energiecrisis*, 22 April 2024 (excerpt)
Exhibit ING-309	C. Borio et al., "Finance and climate change risk managing expectations", *BIS Speech*, 8 June 2022
Exhibit ING-310	P. Bolton et al., "Resilience or the Financial System to Natural Disasters", *Centre for Economic Policy Research*, 25 May 2021 (excerpt)
Exhibit ING-311	P. Bolton et al., "The green swan - Central banking and financial stability in the age of climate change", *Bank for International Settlements*, January 2020 (excerpt)
Exhibit ING-312	DNB, *Op weg naar een duurzame balans*, 22 November 2021 (excerpt)
Exhibit ING-313	ECB and ESRB, *Towards macroprudential frameworks for managing climate risk*, December 2023 (excerpt)

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Exhibit ING-314	ESRB, *Review of the EU Macroprudential Framework for the Banking Sector*, March 2022 (excerpt)
Exhibit ING-315	FSB, *Supervisory and Regulatory Approaches to Climate-related Risks*, 13 October 2022 (excerpt)
Exhibit ING-316	A.A. Gözlügöl, "Credit Substitution in Sustainable Finance: An Achilles Heel?', *Journal of Financial Regulation* (00) 2025
Exhibit ING-317	EC, "Report on the monitoring of climate-related risk to financial stability", C(2024) 4372 final, 28 June 2024 (excerpt)
Exhibit ING-318	ECB and ESRB, *Climate-related risk and financial stability*, July 2021 (excerpt)
Exhibit ING-319	EIOPA, *2022 IORP Climate Stress Test*, 13 December 2022 (excerpt)
Exhibit ING-320	European Supervisory Authorities and ECB, *Fit-for-55 climate scenario analysis by the European Supervisory Authorities and the European Central Bank*, 19 November, (excerpt) 2024) ("ESA, Fit-for-55 climate scenario analysis")
Exhibit ING-321	ECB and ESRB, *Positively green: Measuring climate change risks to financial stability*, June 2020 (excerpt)
Exhibit ING-322	FSB, *The Implications or Climate Change for Financial Stability*, 23 November 2020 (excerpt)
Exhibit ING-323	S. Alogoskoufis et al., "ECB economy-wide climate stress test", *ECB Occasional Paper Series* 281/2021 (excerpt)
Exhibit ING-324	Bank of England, *Results of the 2021 Climate Biennial Exploratory Scenario (CBES)*, 24 May 2022 (excerpt)
Exhibit ING-325	ECB, *2022 climate risk stress test*, July 2022 (excerpt)
Exhibit ING-326	J. Ojea-Ferreiro et al., "Systemic risk effects of climate transition on financial stability", *International Review of Financial Analysis* (96) 2024
Exhibit ING-327	T. Jourde et al., *Systemic Climate Risk*, April 2023
Exhibit ING-328	J. Spier, "Milieudefensie v. Shell: een sirenenzang? Suggesties voor een beter alternatief", in: W.M.J. van Veen et al., *De klimaatzaak tegen Shell (ZIFO-reeks nr. 35)*, 2022 (excerpt)
Exhibit ING-329	New South Wales Country and Environment Court (Australia) 18 October 2021, *Mullaley Gas and Pipeline Accord Inc/Santos NSW (Eastern) Pty Ltd*, [2021] NSWLEC 110
Exhibit ING-330	C.J.H. Brunner, annotation to NL Supreme Court 6 November 1981, ECLI:NL:HR:1981:AG4257, *NJ* 1982/567

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Exhibit ING-331	L. 't Mannetje, "Wie goed doet, goed ontmoet?", *AV&S* 2015/34
Exhibit ING-332	*Parliamentary Papers II* 2016/17, 34 608, no. 3 (Resolution of Mass Damage in Collective Action Act, *Wet afwikkeling massaschade in collectieve actie*) (excerpt)
Exhibit ING-333	Asser Procesrecht/Van Schaick *2* 2022 (excerpt)
Exhibit ING-334	*Parliamentary Papers II* 2011/12, 33 126, no. 3 (Explanatory Memorandum to the Act amending the Collective Settlement of Mass Damage, *Wet collectieve afwikkeling massaschade*) (excerpt)
Exhibit ING-335	*Parliamentary Papers II* 2023/24, 36 169, no. 40 (Report of a written consultation on the amendment of the Climate Act) (excerpt)
Exhibit ING-336	Milieudefensie, "Why we are suing ING in particular: the emissions", 12 October 2025 (printout of 21 January 2026)
Exhibit ING-337	J.J. van der Helm, *Het rechterlijk bevel en verbod als remedie (Serie Burgerlijk Proces & Praktijk XXIII)*, 2023 (excerpt) ("Van der Helm 2023")
Exhibit ING-338	W.Th. Nuninga, *Recht, plicht, remedie or de belofte van een norm*, 2022 (excerpt)
Exhibit ING-339	T.E. Deurvorst, *GS Onrechtmatige daad*, II.2.1.3.2 (excerpt)
Exhibit ING-340	K. Abnett et al., "EU agrees weakened climate target in final-hour deal for COP30", *Reuters* 5 November 2025 (printout of 21 January 2026)
Exhibit ING-341	P. Gillaerts et al., "De verklaring voor recht, voldoende belang(rijk)?", *MvV* 2020/12
Exhibit ING-342	C.J. van Zeben et al. (eds.), *Parl. Gesch. Nieuw BW. Boek 3*, 1981 (excerpt)
Exhibit ING-343	V.C.A. Lindijer, *De goede procesorde*, 2006 (excerpt) ("Lindijer 2006")
Exhibit ING-344	A.W. Jongbloed, *GS Vermogensrecht*, art. 3:303 BW, item 3
Exhibit ING-345	Supreme Court of the United States (United States) 2 April 2007, *Massachusetts v. Environmental Protection Agency*
Exhibit ING-346	Montana Supreme Court (United States, Montana) 18 December 2024, *Held v. Montana*, 2024 MT 312
Exhibit ING-347	J.J. van der Helm, "Niets is onmogelijk, of toch?", *NJB* 2024/1124
Exhibit ING-348	H.B. Krans et al., *Verbintenissenrecht algemeen (Studiereeks Burgerlijk Recht, deel 4)*, 2022 (excerpt)

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783. The above should not be construed as ING voluntarily assuming any burden of proof that does not legally rest with ING.

784. However, if Milieudefensie disputes other assertions put forward by ING and the court deems that ING should bear the burden of proof in this regard, ING is willing to provide the necessary proof, for example by calling witnesses and experts.

785. ING has taken note of Milieudefensie's assertion that, "*with a view to the violation of the law that is at issue, it is now up to ING to prove why, in light of the arguments in this summons, it cannot be obliged to do what Milieudefensie demands it should do*".[1315] ING believes that this requires no further discussion, except to note that Milieudefensie does not explain on what basis and in what manner the normal apportionment of the burden of proof and obligation to furnish facts should be deviated from in these proceedings. There are also no grounds for this. There can be no question of a highly specific climate policy devised by Milieudefensie for an individual company, which Milieudefensie compiles on the basis of reference points favourable to it, which would then apply as long as a defendant does not prove that the opposite – a negative fact – is true.

786. The same response can be given to Milieudefensie's request in chapter XVIII of the Writ of Summons for information about emissions from 2019 onwards. Milieudefensie refers to information from ING about "*its emissions*".[1316] This specifically concerns information about ING's financed and facilitated emissions in 2019 and beyond and a sector-by-sector breakdown, as specified in the claim for relief in the Writ of Summons.[1317] Furthermore, Milieudefensie does not link any specific claim to its request. Milieudefensie itself acknowledges that ING only began reporting on its Scope 3 emissions in 2020.[1318] This is correct. ING reports them in accordance with the legislation it is subject to, including its Pillar 3 obligations. ING is under no obligation to do anything more than is necessary, and complying with such a request would require significant efforts to obtain information based on low-quality data.

1315 Writ of Summons, no. 1221 (underlining added).
1316 Writ of Summons, nos. 1214 and 1217.
1317 Writ of Summons, no. 1216.
1318 Writ of Summons, no. 1214.

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ON THESE GROUNDS, ING CONCLUDES THAT:

the District Court, by provisionally enforceable judgment in so far as legally possible:

(a) declares Milieudefensie's claims inadmissible or denies these claims;

(b) if any claim is awarded separately or together with other claims, denies the requested provisional enforceability; and

(c) orders Milieudefensie to pay the costs of the proceedings, as well as the usual subsequent costs (both with and without service), plus statutory interest as referred to in Article 6:119 DCC, from fourteen days after the judgment date.

lawyer

This case is handled by D.C. Roessingh, T +31 20 577 1892, E Davine.Roessingh@debrauw.com, De Brauw Blackstone Westbroek N.V., PO Box 75084, 1070 AB Amsterdam

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APPENDIX 1 DEFINITIONS

Definition	Notes
Banking Package	The CRR3 and CRD6
BCBS	Basel Committee on Banking Supervision
Purported Duties	The unwritten norms that, according to Milieudefensie, ING is supposedly obliged to perform and that form the basis for the Declaratory Judgments
Bpr	Prudential Rules (Financial Supervision Act) Decree (*Besluit prudentiële regels Wft*)
CBAM	Carbon Border Adjustment Mechanism. The carbon border adjustment mechanism from Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism
CBDR Principle	Common But Differentiated Responsibilities Principle. The principle of common but differentiated responsibilities
CCS	Carbon capture and storage. The capture, transport and storage of CO_2
COP	Conference of the Parties
CRD	Capital Requirements Directive. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC
CRD5	Capital Requirements Directive 5. Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempt entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital preservation measures

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Definition	Notes
CRD6	Capital Requirements Directive 6. Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, branches from third countries and environmental, social and governance risks
CRR	Capital Requirements Regulation. Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012
CRR2	Capital Requirements Regulation 2. Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) 575/2013 as regards leverage ratio, net stable funding ratio, own funds and eligible liabilities requirements, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) 648/2012
CRR3	Capital Requirements Regulation 3. Regulation (EU) 2024/1623 of the European Parliament and of the Council of 31 May 2024 amending Regulation (EU) 575/2013 as regards requirements on credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor
CSDDD	Corporate Sustainability Due Diligence Directive. Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859
CSDDD Climate Transition Plan Obligation	The requirement of the current Article 22 CSDDD for companies to prepare a transition plan for climate change mitigation

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Definition	Notes
CSRD	Corporate Sustainability Reporting Directive. Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting
CTP	Climate transition plan
CTP Assessment	ING's assessment of information about the climate transition plans of its 2,000 largest clients
CTP Claim	The claim requiring the request of climate transition plans from various clients, with specific substantive requirements attached, as submitted by Milieudefensie in chapter XX, no. 6 of the Writ of Summons
SoD	This statement of defence
Writ of Summons	Milieudefensie's Writ of Summons of 28 March 2025
DNB	The Dutch Central Bank (*De Nederlandsche Bank)*
Draghi Report	Mario Draghi's report on the future of European competitiveness: EC, "The future of European competitiveness, Part A: A competitiveness strategy for Europe," 9 September 2024
EBA	European Banking Authority
EBA ESG Guidelines	Guidelines on the management of environmental, social and governance (ESG) risks, issued by the EBA, EBA/GL/2025/01, 8 January 2025
EBF	European Banking Federation
EC	European Commission
ECB	European Central Bank
EED	Energy Efficiency Directive. Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast)
EFRAG	European Financial Reporting Advisory Group
EPBD IV	Energy Performance of Buildings Directive IV. Directive (EU) 2024/1275 of the European Parliament and of the Council of 24 April 2024 on energy efficiency and amending Regulation (EU) (recast)

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Definition	Notes
ESR	Effort Sharing Regulation. Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013
ESR	European Sustainability Reporting Standards. Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards
EU	European Union
EU legislator	The European Commission, the European Parliament and the Council of the EU jointly
EU ETS	Emissions trading system: the EU emissions trading system. Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, as amended by Directive (EU) 2023/959 of 10 May 2023
EU ETS2	Additional ETS, for buildings, road transport and fuel use in sectors not covered by the existing EU ETS; it will become fully operational in 2027, as introduced by Directive (EU) 2023/959 of 10 May 2023
FSB	Financial Stability Board
Claimed Orders	All orders sought by Milieudefensie in chapter XX, nos. 1, 2, 4, 5, 6, 7, 8, 11 and 12 of the Writ of Summons
Claimed Measures	All measures sought by Milieudefensie in chapter XX, nos. 1 to 12 of the Writ of Summons
GFANZ	Glasgow Financial Alliance for Net Zero
GFANZ, Net-Zero Transition Plans	GFANZ, Financial Institution Net-Zero Plans Report, November 2022
GHG Protocol	Greenhouse Gas Protocol
GHG Protocol Corporate Standard	A Corporate Accounting and Reporting Standard, March 2004

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Definition	Notes
GHG Protocol Corporate Value Chain Standard	Corporate Value Chain (Scope 3) Accounting and Reporting Standard, September 2011
GSIBs	Global Systemically Important Banks
IAMs	Integrated Assessment Models
IEA	International Energy Agency
IEA NZE scenario	Net Zero Emissions by 2050 scenario. An IEA scenario that takes achieving net-zero CO_2 emissions by 2050 as the end goal to limit global warming to 1.5°C, and then outlines a possible pathway for the global energy sector to achieve that goal
IED	Industrial and Livestock Rearing Emissions Directive. Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (recast)
ING	ING Group N.V. and ING Bank N.V.
IPCC	Intergovernmental Panel on Climate Change
IPCC climate scenarios	The various climate scenarios analysed by the IPCC
Kelderluik factors	The criteria formulated by the Dutch Supreme Court in the *Kelderluik* judgment and successive judgments for assessing unlawfulness in situations where the safety of others is endangered.
Climate Commitment	The 10 July 2019 climate commitment for the financial sector entered into by fifty banks, insurers, pension funds and asset managers as part of the Dutch Climate Agreement with the aim of reducing greenhouse gas emissions
LULUCF Regulation	Land Use, Land Use Change and Forestry Regulation. Regulation (EU) 2023/839 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2018/841 as regards the scope, simplifying the reporting and compliance rules, and setting out the targets of the Member States for 2030, and Regulation (EU) 2018/1999 as regards improvement in monitoring, reporting, tracking of progress and review
Milieudefensie	Vereniging Milieudefensie
NCP	National Contact Point for the OECD Guidelines for Multinational Enterprises

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Definition	Notes
NDCs	Nationally Determined Contributions
Dutch Climate Agreement	The 28 June 2019 climate agreement entered into by more than 100 parties in the Netherlands setting out sectoral measures and agreements aimed at reducing greenhouse gas emissions (*Nederlandse Klimaatakkoord*)
Dutch Climate Act	The Climate Act (Bulletin of Acts and Decrees 2019, 253) enacted in the Netherlands on 1 September 2019, amended to implement the European Climate Law on 10 July 2023 (Bulletin of Acts and Decrees 2023, 271) (*Nederlandse Klimaatwet*)
NFRD	Non-Financial Reporting Directive. Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups
New Fields	The exploration and taking into production of new oil and gas fields where the financial investment decision is made after 31 December 2021
NZBA	Net Zero Banking Alliance
NZBA Guidance	NZBA Guidance for Climate Target Setting for Banks, April 2024
NZIA	Net Zero Industry Act. Regulation (EU) 2024/1735 of the European Parliament and of the Council of 13 June 2024 on establishing a framework of measures for strengthening Europe's net-zero technology manufacturing ecosystem and amending Regulation (EU) 2018/1724
OECD	Organisation for Economic Co-operation and Development
OECD Guidelines	OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (2023 version, English)
OHCHR	Office of the High Commissioner for Human Rights of the United Nations

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Definition	Notes
Omnibus Package	The EC proposal of 26 February 2025 for simplifying and harmonising current sustainability legislation, including the Taxonomy Regulation, CSRD and CSDDD
Operational Emissions	ING's Scope 1 and Scope 2 emissions, as well as Scope 3 emissions relating to business travel
Overarching Reduction Claim	Milieudefensie's reduction claims in chapter XX, nos. 1, 8, 10(i) and 12 of the Writ of Summons requiring a reduction of emissions at an overarching level by the ING Group as a whole
PACTA	Paris Agreement Capital Transition Assessment
Paris Goal	The objective set out in the Paris Agreement to limit the global temperature rise to "well below" 2°C and to endeavour to limit it to 1.5°C
PCAF	Partnership for Carbon Accounting Financials
PCAF Facilitated Emissions	PCAF, The Global GHG Accounting and Reporting Standard Part B: Facilitated Emissions, December 2023
PCAF Financed Emissions (2022)	PCAF, The Global GHG Accounting and Reporting Standard Part A: Financed Emissions, December 2022
PCAF Financed Emissions (2025)	PCAF, Global GHG Accounting and Reporting Standard Part A: Financed Emissions, December 2025
PRB	Principles for Responsible Banking
Race to Zero Interpretation Guide	Race to Zero, Interpretation Guide, June 2022
Race to Zero Pledge	Race to Zero, Starting Line and Leadership Practices 3.0, June 2022
RED III	Renewable Energy Directive III. Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652
Reduction Claims	The emission reduction claims submitted by Milieudefensie in chapter XX, nos. 1-5(i), 7-10 and 12 of the Writ of Summons

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Definition	Notes
REPowerEU Plan	The EC's REPowerEU Plan. COM(2022) 230 final, 18 May 2022
Retail Banking	The part of ING's business focused on retail clients and small and medium-sized businesses
SBTi	Science Based Targets Initiative
SBTi FINT	SBTi, SBTi Financial Institutions' Near-Term Criteria, May 2024
SBTi FINZ	SBTi, Financial Institutions Net-Zero Standard, July 2025
Sector Agreement	Sector Agreement on Gas Extraction in the Energy Transition. Appendix to Parliamentary Papers II 2024/25, 33 529, no. 1293 (Sector Agreement)
Sectoral Reduction Claims	The sectoral reduction claims submitted by Milieudefensie in chapter XX, nos. 2-5(i), 7-9, 10(ii) and 12 of the Writ of Summons
SFDR	Sustainable Finance Disclosure Regulation. Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector
SREP	Supervisory Review and Evaluation Process
SSM	Single Supervisory Mechanism
Sustainable Finance Action Plan	EC, "*Sustainable Finance Action Plan*", COM(2018) 97 final, 8 March 2018
SVOH	Subsidy Scheme for Sustainability and Maintenance of Rental Homes
TCF	Trade Commodity Finance, the financing of trade in commodities such as agricultural products, metals and fuels
TPI	Transition Pathway Initiative
TPT	UK Transition Plan Taskforce
TPT Banks Sector Guidance	TPT, Banks Sector Guidance, April 2024
TPT Disclosure Framework	TPT, Disclosure Framework, October 2023

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Definition	Notes
Exclusion Claims	The claim requiring the denial and termination of all services to various companies, as submitted by Milieudefensie in chapter XX, no. 5 (ii) of the Writ of Summons
UNEP FI	United Nations Environment Programme Finance Initiative
UNEP FI Guidance	UNEP FI, *Guidance for Climate Target Setting for Banks*, October 2025
UNFCCC	United Nations Framework Convention on Climate Change (the UN Climate Convention)
UNGPs	United Nations Guiding Principles on Business and Human Rights
Declaratory Judgments	The declaratory judgments sought by Milieudefensie in Writ of Summons, chapter XX, nos. 3, 9 and 10
Acceleration Plan	North Sea gas extraction acceleration plan. *Parliamentary Papers II* 2021/ 22, 33 529, no. 1058 (letter to the Dutch House of Representatives on the Acceleration Plan)
TEU	Treaty on the European Union
UN Climate Convention	United Nations Framework Convention on Climate Change (UNFCCC)
Provisional Agreement Omnibus	Provisional political agreement between the Council, European Parliament and the EC on part of the Omnibus package of 9 December 2025, which, among other things, amends the CSDD
Voluntary Initiatives	All guidance on the role of companies within the climate transition that do not originate from a legislative power.
TFEU	Treaty on the Functioning of the European Union
WVDIO Proposal	Private members' legislative proposal for the "Responsible and Sustainable International Business Conduct Act" (*Wet verantwoord en duurzaam internationaal ondernemen*)
Wft	The Dutch Financial Supervision Act (*Wet op het financieel toezicht*)
Wholesale Banking	The part of ING's business focused on large corporations and financial institutions

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APPENDIX 2 ENLARGED FIGURES USED IN THE SOD

Figure 3: Rules related to capital and liquidity of banks

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Figure 4: Governance standards applicable to the management board, the risk committee and the supervisory board

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Figure 5: The steps, procedures and analyses to be followed by banks before decisions are submitted to the management board and the supervisory board

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Figure 6: Specific requirements for significant / material decisions

ADDITIONAL REQUIREMENTS FOR THE BANK'S DECISION-MAKING	ECB APPROVAL FOR MATERIAL DECISIONS
• EBA guidelines on internal governance: enhanced internal governance for material decisions • no. 167: pricing models / impact on risk profile, capital and profitability / adequate front, back and middle office resources / expertise and understanding of related risks • no. 168: involvement of the risk management and compliance functions / full and objective risk assessment	• CRR and CRD: strengthened "external" governance for certain decisions with potential material consequences • Art. 77 CRR: prior approval for redemption, repayment or repurchase of capital instruments • Art. 143 CRR (regarding credit risk): permission to use internal models when calculating capital requirements • Art. 8 CRD and Guidelines on the granting of authorisation as a bank, no. 67: ECB assesses business model, strategy and risk profile when authorisation is requested; enhanced supervision expected in the event of material change

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Figure 7: Overview of climate-oriented-focused Voluntary Initiatives discussed in this SoD

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Figure 10: A schematic representation of Scope 3, including clients' Scopes 1, 2 and 3

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Figure 12: Overview of requirements for an unwritten legal duty

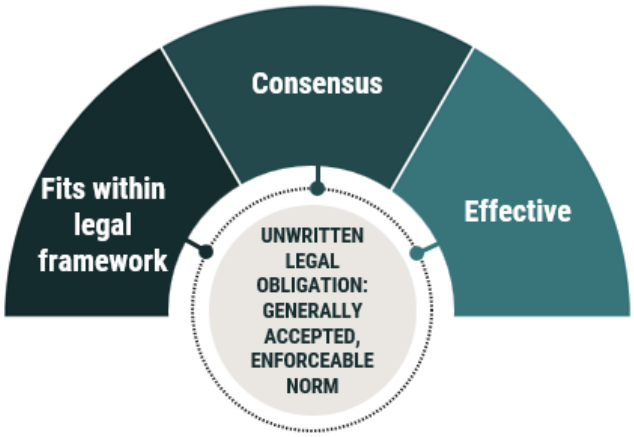

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Figure 15: Flowchart showing the effectiveness and consequences of the claims

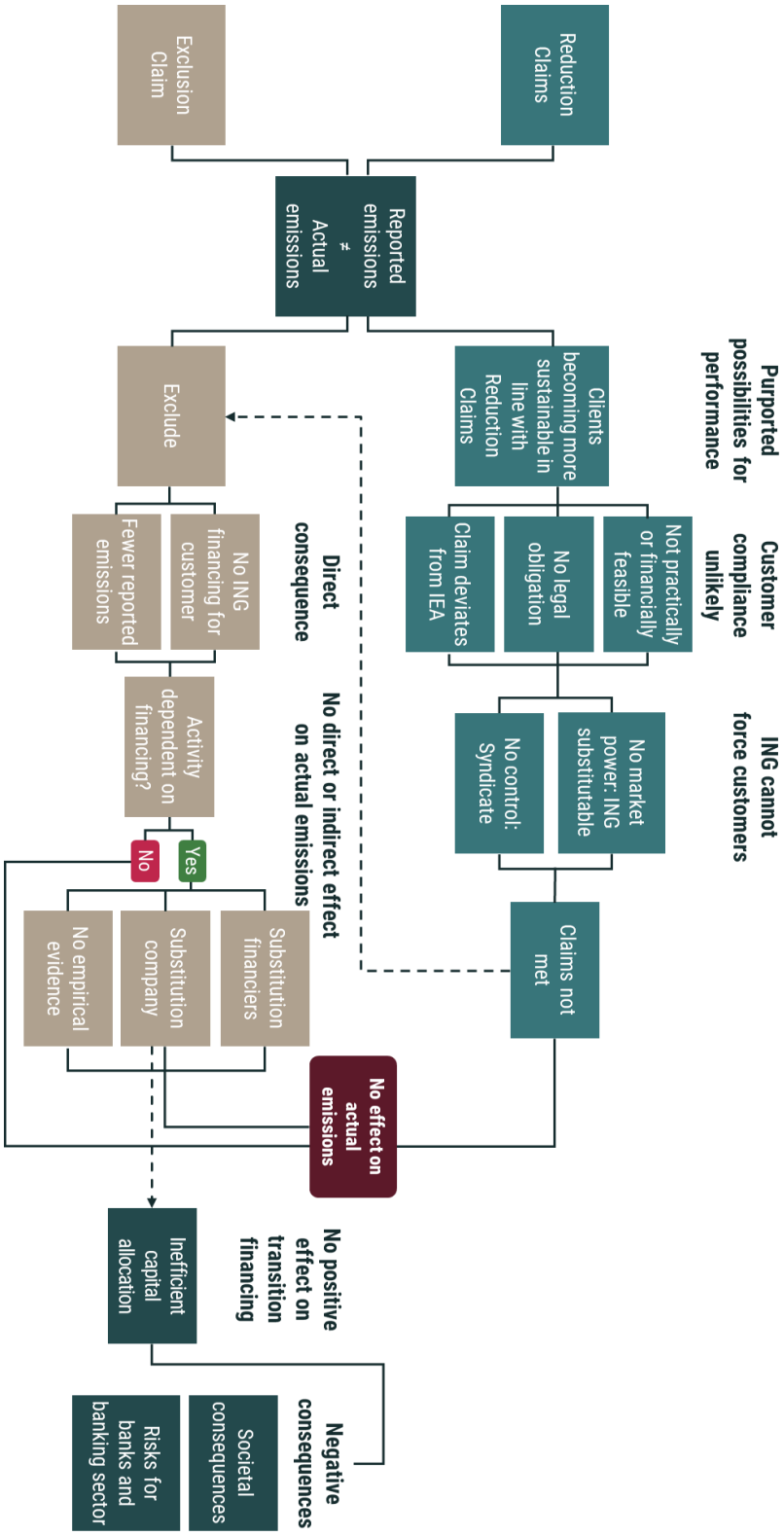

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Figure 16: Flowchart showing the effectiveness and consequences of the claims (part 1/6)

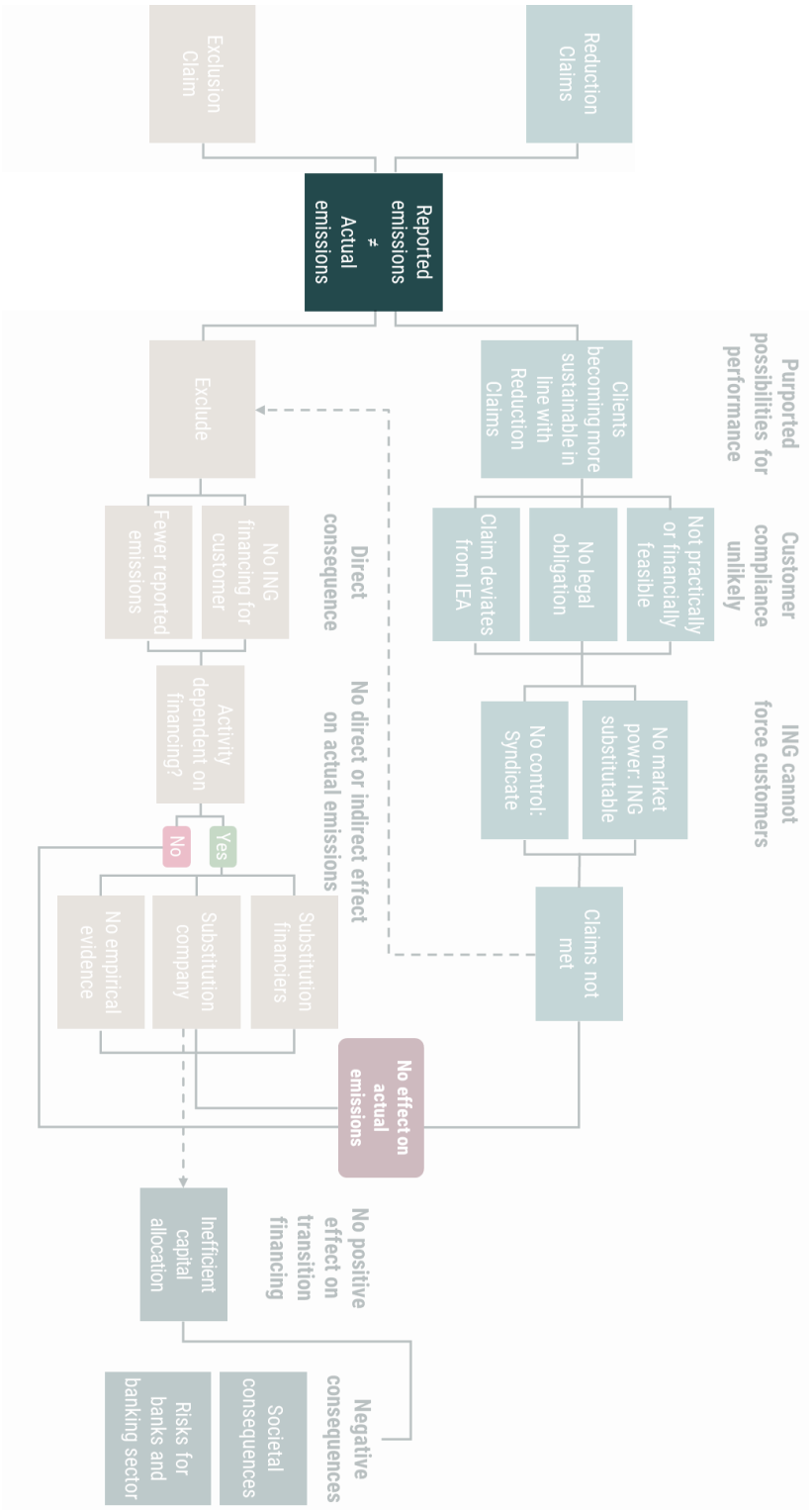

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Figure 17: Flowchart showing the effectiveness and consequences of the claims (part 2/6)

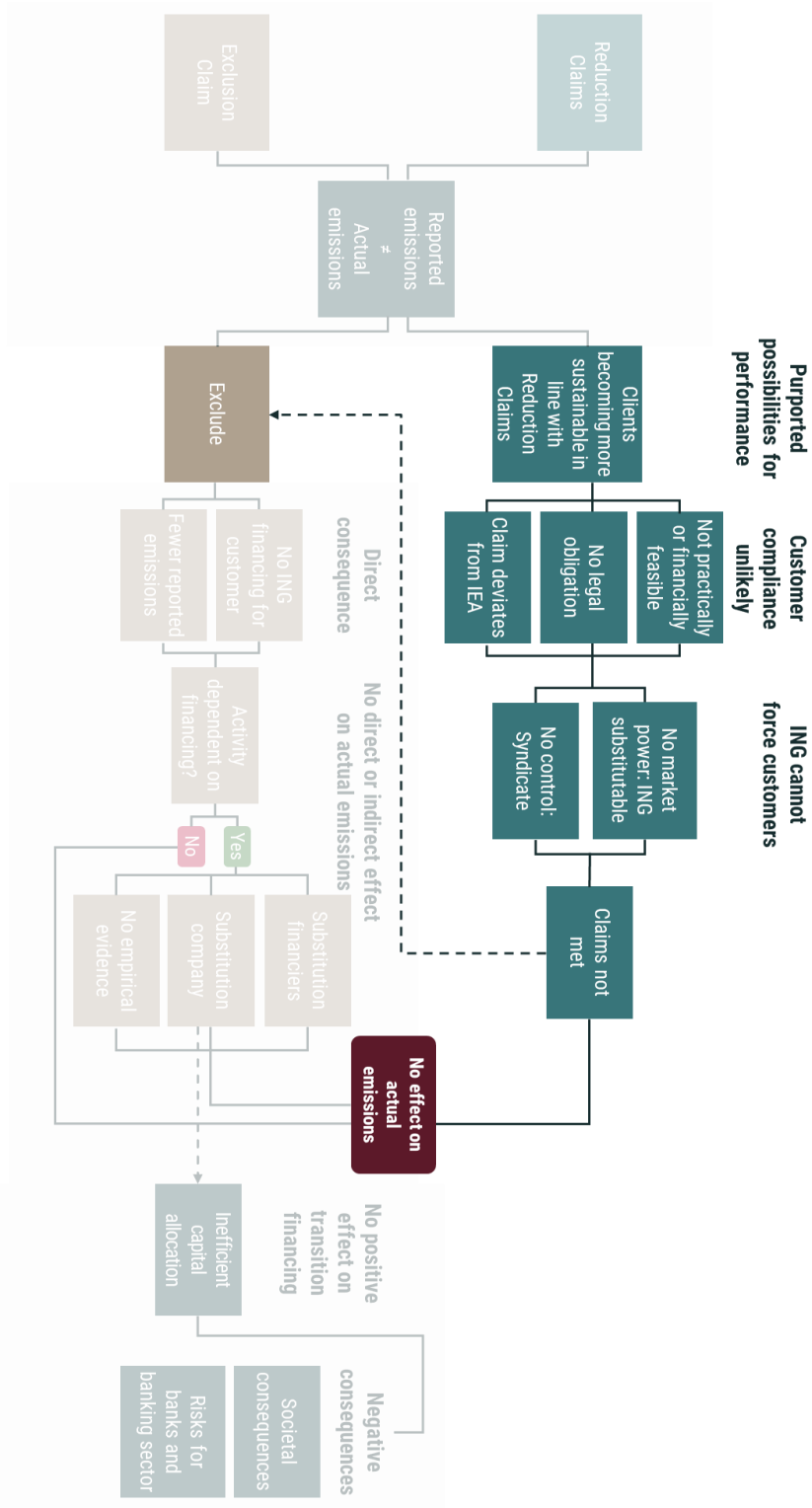

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Figure 18: Flowchart showing the effectiveness and consequences of the claims (part 3/6)

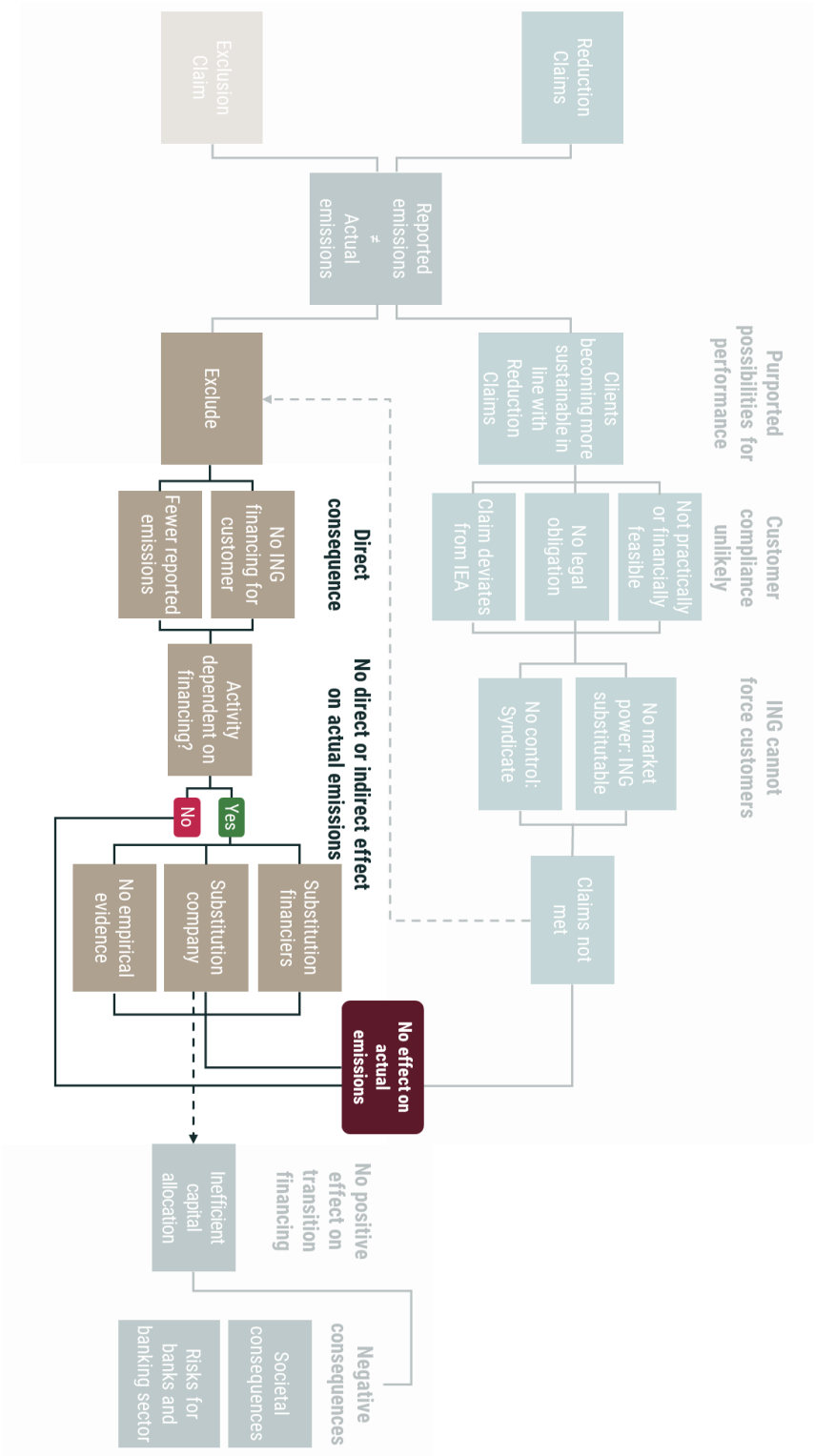

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Figure 19: Flowchart showing the effectiveness and consequences of the claims (part 4/6)

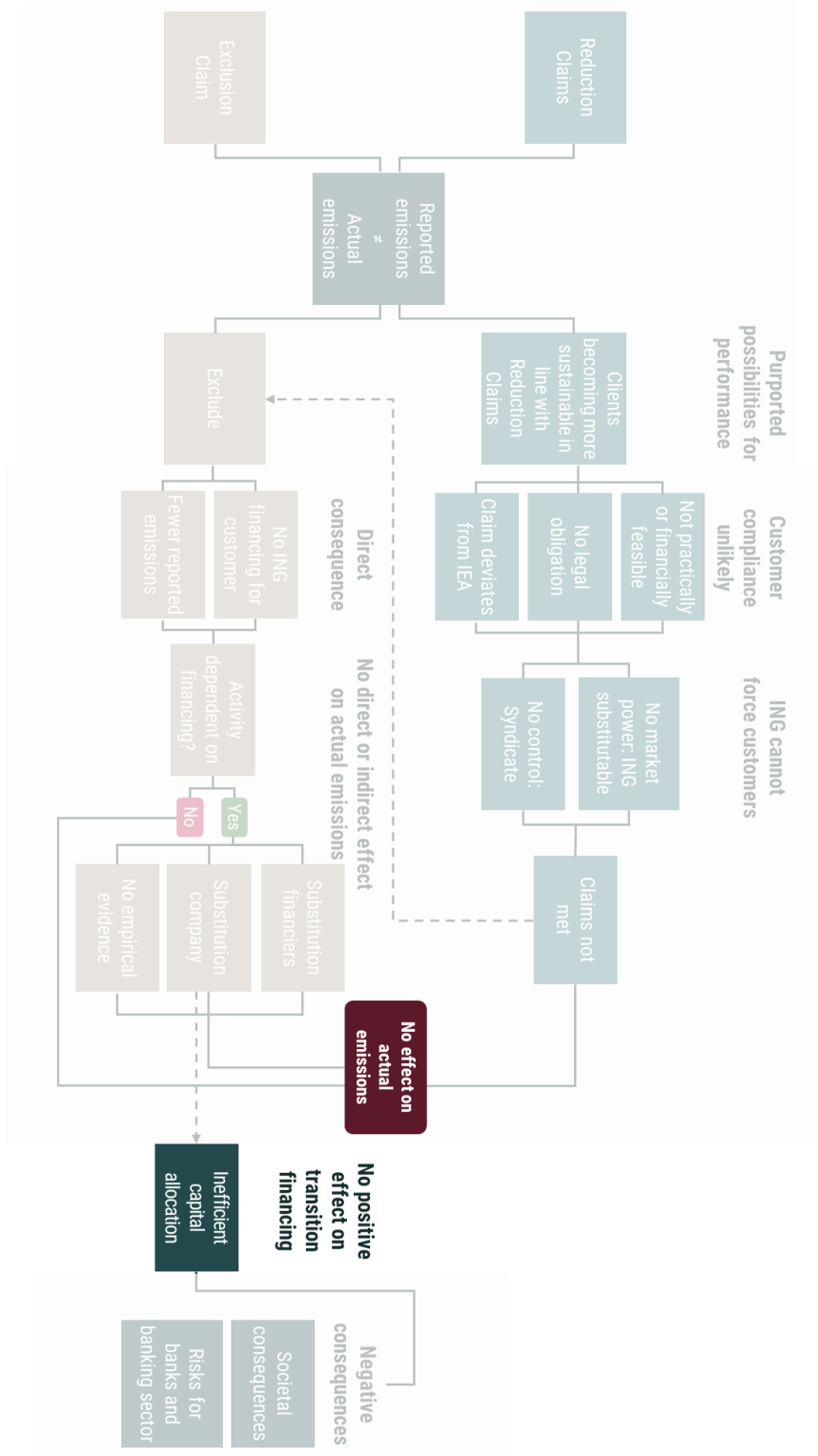

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Figure 20: Flowchart showing the effectiveness and consequences of the claims (part 5/6)

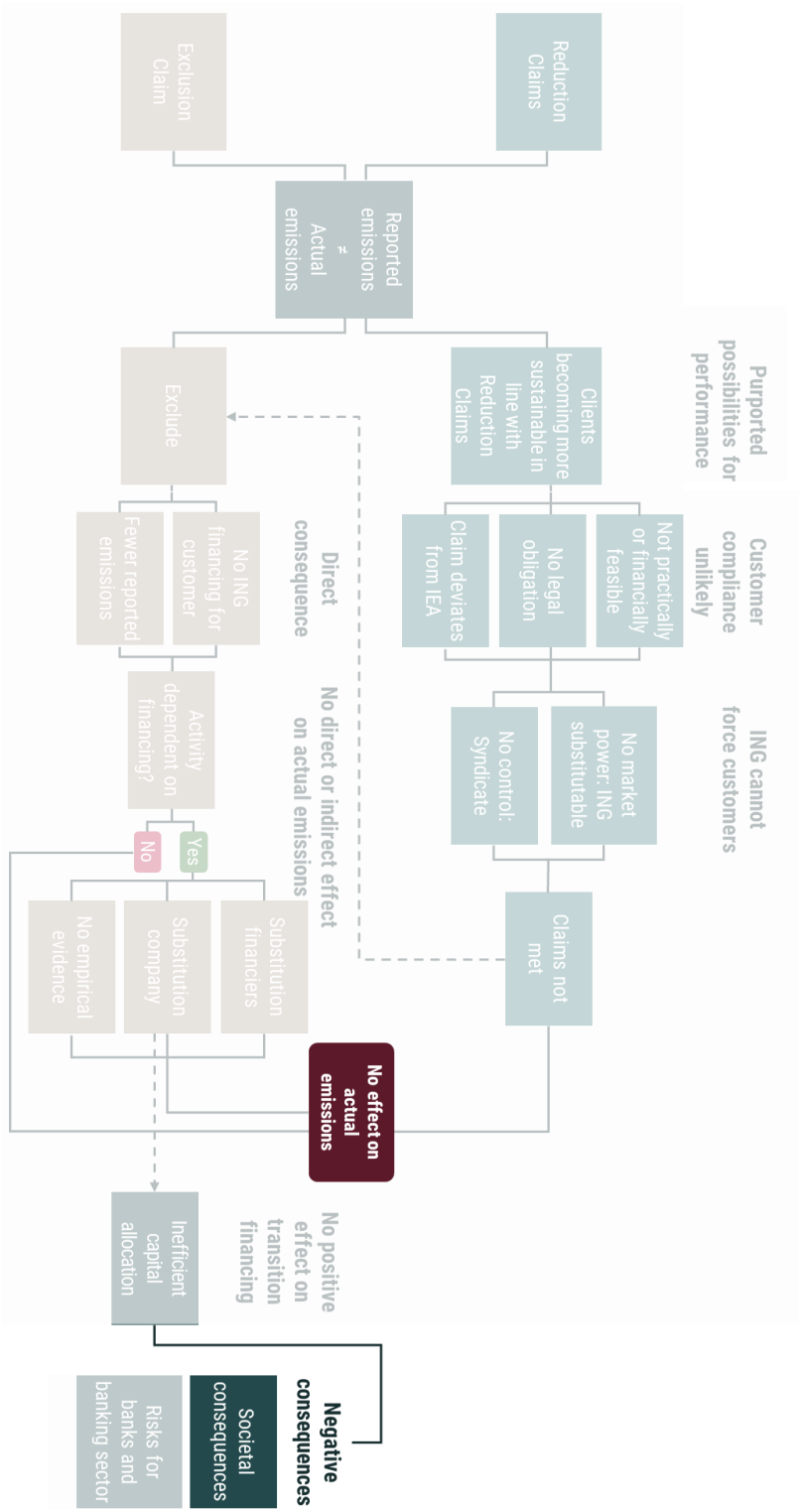

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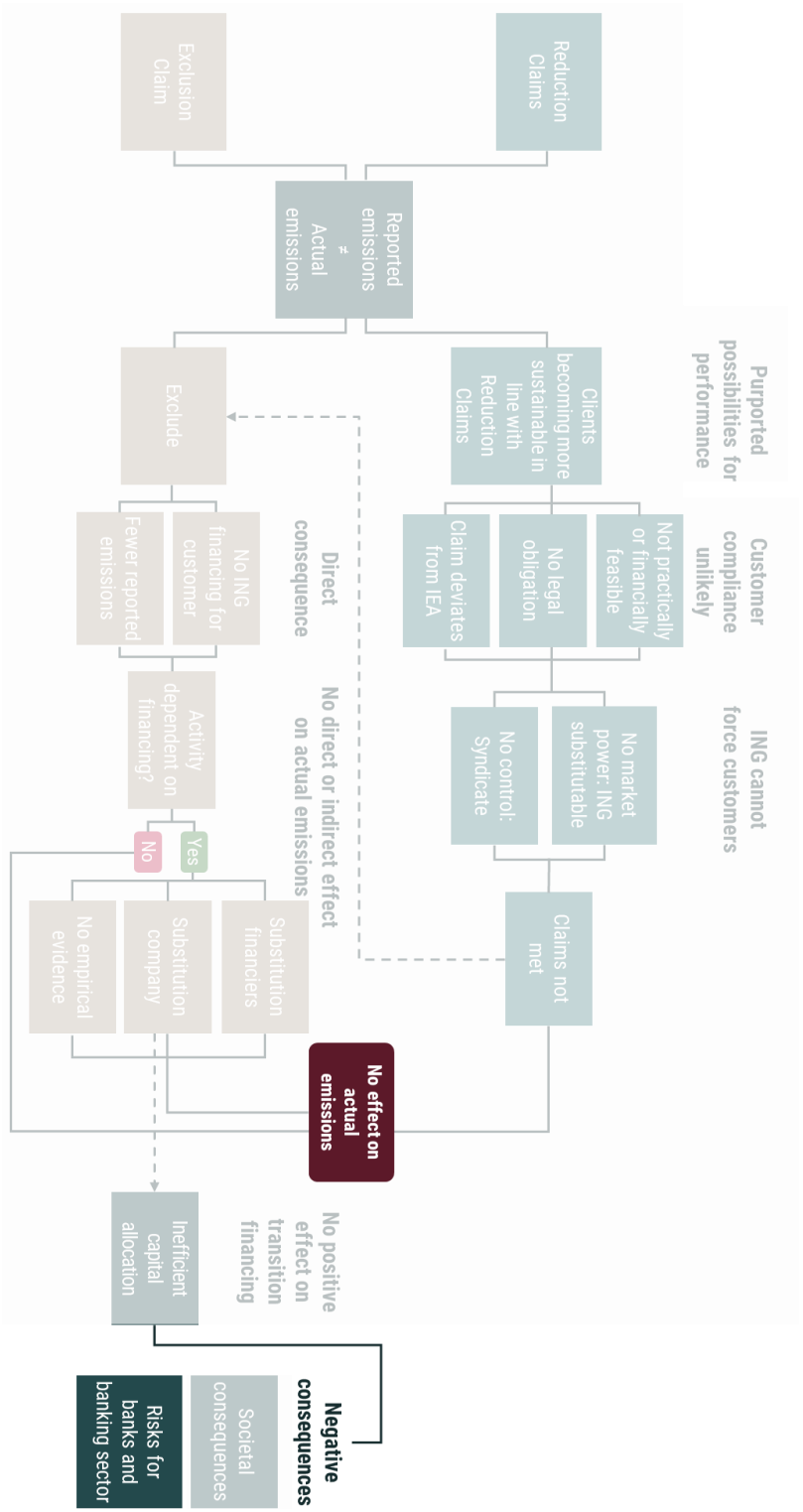
Figure 21: Flowchart showing the effectiveness and consequences of the claims (part 6/6)



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APPENDIX 3 OVERVIEW OF EMISSION REDUCTION TARGETS EU MEMBER STATES IN 2030 COMPARED TO 2005

Country	Reduction percentage[1319]	Country	Reduction percentage
Bulgaria	10%	**Cyprus**	32%
Romania	12.7%	**Spain**	37.7%
Croatia	16.7%	**Italy**	43.7%
Poland	17.7%	**Ireland**	42%
Latvia	17%	**France**	47.5%
Hungary	18.7%	**Belgium**	47%
Malta	19%	**Netherlands**	48%
Lithuania	21%	**Austria**	48%
Greece	22.7%	**Germany**	50%
Slovakia	22.7%	**Denmark**	50%
Estonia	24%	**Luxembourg**	50%
Slovenia	27%	**Finland**	50%
Czechia	26%	**Sweden**	50%
Portugal	28.7%		

1319 The reduction percentages included follow from Annex I ESR.