

Summons

Class action based on Article 3:305a of the Dutch Civil Code

Today, the twenty-eighth of March two thousand and twenty-five (28/03/2025),

on the petition of:

- (1) the association Milieudefensie (also known as Friends of the Earth Netherlands), having its registered office in Amsterdam, the Netherlands and having its office at Willem Fenengastraat 23 in (1096 BL) Amsterdam, hereinafter called: **"Milieudefensie"**;

electing as the place for the effecting of formalities pertaining to this matter the office address of Paulussen Advocaten N.V. at Sint Pieterskade 26B in (6212 AD) Maastricht, the Netherlands, of which firm R.H.J. Cox, LL.M and P. Heemskerk, LL.M, are acting as legal counsel and R.H.J. Cox shall be noted in the letter of representation,

I,

SUMMONED

- (1) the public limited company ING Group N.V., having its registered office in Amsterdam (Netherlands) and having a place of business at Bijlmerdreef 106 in (1102 CT) Amsterdam; and
- (2) the public limited company ING Bank N.V., having its registered office in Amsterdam (Netherlands) and having a place of business at Bijlmerdreef 106 in (1102 CT) Amsterdam;

hereinafter collectively called: **"ING"**,

and served the writ and a copy of this summons at the office address of ING and left the exhibits referred to hereinafter on:

TO:

appear on Wednesday the sixteenth of April two thousand and twenty-five (16/04/2025) at 10:00, not in person but represented by an attorney, at the hearing of the district court in Amsterdam in the court building at Parnassusweg 280 in (1076 AV) Amsterdam,

GIVING NOTICE THAT:

- (a) if a defendant fails to appoint an attorney or does not pay the court registry fee referred to hereinafter in time, and the prescribed terms and formalities have been observed, the court shall award default judgment against said defendant and will award the above-described claim, unless the court deems such wrongful or unfounded;

- (b) if at least one of the defendants appears in the proceedings and has paid the court fee in time, one judgment will be passed between all parties, that will be deemed a judgment in a defended action;
- (c) upon appearance in the proceedings each of the defendants will be charged a court fee, to be paid within four weeks to be counted as of the time of appearance;
- (d) the amount of the court fees is stated in the most recent annex belonging with the Dutch Court Fees (Civil Matters) Act, which can be found, inter alia, on the website: www.kbvg.nl/griffierechtentabel;
- (e) a person who is indigent will be charged a court fee for indigents determined by or pursuant to the law, if at the time when the court fee is charged he has submitted:
 - a copy of the legal aid ruling referred to in Article 29 of the Dutch Legal Aid Act, or if this is not possible as a result of circumstances which cannot reasonably be attributed to him, a copy of the application referred to in Article 24(2) of the Dutch Legal Aid Act, or
 - a statement from the board of the Legal Aid Board, referred to in Article 7(3.e) of the Dutch Legal Aid Act, which demonstrates that his income does not exceed the incomes referred to in the order in council pursuant to Article 35(2) of that act;
- (f) defendants who appear and are represented by the same attorney and present the same statements or the same defence, on the basis of Article 15 of the Dutch Court Fees (Civil Matters) Act will only be charged one joint court fee;
- (g) the claimant and the defendant party are obliged to present the facts that are relevant for the court's decision in full and truthfully;
- (h) the court must deem the facts or rights asserted by one party that have not been disputed or have not been sufficiently disputed by the other party, as established, subject to its power to demand proof, if the acceptance of the assertions were to lead to a legal consequence that is not to be freely determined by the parties;
- (i) pursuant to Article 1018c(2) Dutch Code of Civil Procedure, claimant is obliged to present the writ of summons within two days after the day of the summons at the court registry, while simultaneously entering the summons into the central register for class actions as referred to in Article 305a(7) of Book 3 of the Dutch Civil Code; failure to do so will result in dismissal of the case. The entry will be accompanied by an extract of the summons;
- (j) the entry in the register entails that - unless the court immediately declares that the claimant does not have standing in accordance with Article 1018c(2) Dutch Code of Civil Procedure - the court will stay the proceedings until a period of three months after the entry in the central register has passed (Article 1018c(3) Dutch Code of Civil Procedure);
- (k) after the expiry of this period the handling of the matter will be continued at the status at that time, unless pursuant to Article 1018d(2) Dutch Code of Civil Procedure this period has been extended or another class action has been brought for the same event (Article 1018c(3)

Dutch Code of Civil Procedure);

- (l) the court will fix the cause-list date referred to in Article 128(2) Dutch Code of Civil Procedure to present the statement of defence at a time period of six weeks after the period referred to in Article 1018c(3) Dutch Code of Civil Procedure has expired;
- (m) In deviation for Article 128(3), in the statement of defence defendants may suffice with the defences that relate to the defences set out under Article 1018c(5) under a to c Dutch Code of Civil Procedure, until a decision has been made in this respect.

IN ORDER TO:

hear the demand set out hereinafter on the grounds described in this summons.

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DEFINITIONS

AFOLU	<i>Agriculture, Forestry and Other Land Use</i> . In the framework of national greenhouse gas inventories under the UNFCCC, AFOLU is the sum of the greenhouse gas inventory sectors <i>Agriculture</i> and <i>Land Use, Land-Use Change and Forestry (LULUCF)</i> .
AMOC	<i>Atlantic Meridional Overturning Circulation</i> . The AMOC is a large-scale ocean current in the Atlantic Ocean that transports warm water to the north and transports cold water to the south. It plays a crucial role in the climate by distributing heat and affects weather patterns worldwide.
AR4	The <i>Fourth Assessment Report (AR4)</i> of the IPCC, published in 2007. Like every <i>Assessment Report</i> , it comprises the (sub-)reports SYR, WGI, WGII and WGIII.
AR5	The <i>Fifth Assessment Report (AR5)</i> of the IPCC, published between 2013 and 2014. Like every <i>Assessment Report</i> , it comprises the (sub-)reports SYR, WGI, WGII and WGIII.
AR6	The <i>Sixth Assessment Report (AR6)</i> of the IPCC, published between 2021 and 2023. AR6 is the most recent assessment report of the IPCC. Like every <i>Assessment Report</i> , it comprises the (sub-)reports SYR, WGI, WGII and WGIII.
BCBS	<i>Basel Committee on Banking Supervision</i> . BCBS is an international consultation body that develops standards for the prudential supervision of banks, with the goal of safeguarding the stability of the global financial system. BCBS consists of representatives of central banks and bank supervisors from 28 jurisdictions, including G10 countries, the European Union and important emerging economies.
CAAGR	<i>Compound Average Annual Growth Rate</i> . As used in this summons, the CAAGR relates to the average annual absolute CO ₂ emissions change (increase or decrease) of absolute emissions that the IEA publishes annually in its WEO for, inter alia, the NZE scenario.
Carbon budget	A quantity (<i>budget</i>) carbon dioxide (CO ₂) that cumulatively can still be emitted before overshooting a temperature limit (or before reaching the chance of overshooting that temperature limit has reached a specific threshold value).
Carbon lock-in	The situation in which a future quantity of greenhouse gas emissions is determined and the reducing thereof is limited by the historical or current development of a system (including infrastructure, technologies, investments, institutions and behaviour norms), as a result of which a specific quantity of greenhouse gas emissions is 'locked in' to this system and is therefore difficult to reduce.
CBDR principle	The principle of <i>Common But Differentiated Responsibilities and Respective Capabilities</i> . The CBDR principle is a legal principle that has been laid down in international climate policy (including in the UNFCCC and the Paris Agreement) that all state actors are responsible for climate change, but not to an equal degree. Developed countries have a greater responsibility because of their historical contribution to emissions, their institutional capacity and their larger financial and technological resources to counter climate change. The CBDR principle is also relevant for non-state actors (NSAs), as is clear from, inter alia, the UN Race to Zero and the UN Expert Report.

CDP	<i>Carbon Disclosure Project.</i> The CDP is an international non-profit organisation that helps companies, cities, states and regions to report and administer their environmental data. CDP gathers and analyses data on climate change, water safety and deforestation, so that investors, companies and policymakers can make informed decisions.
CDR	<i>Carbon Dioxide Removal.</i> CDR concerns anthropogenic activities where CO ₂ is removed from the atmosphere and is stored in geological, terrestrial or ocean reservoirs or in products. It encompasses existing and potential anthropogenic reinforcement of biological or geochemical CO ₂ sinks, <i>Bioenergy with Carbon Dioxide Capture and Storage (BECCS)</i> and <i>Direct Air Carbon Dioxide Capture and Storage (DACCS)</i> , but does not encompass the natural absorption of CO ₂ that is not directly caused by human activities.
Climate Ambition Alliance	An international coalition of countries, cities, companies and other actors working on climate measures to limit global warming to 1.5°C. The Climate Ambition Alliance was launched during the COP25 in 2019, a corollary of the work of the UN Climate Change High-Level Champions set out in the Paris Decision. The state actors and non-state actors (NSAs) that participate in the Climate Ambition Alliance have committed to achieving nett zero CO ₂ emissions in 2050 in order to achieve the climate goal of the Paris Agreement.
CO₂	Carbon dioxide. CO ₂ is naturally occurring gas, that is also a by-product of the combustion of fossil fuels (like oil, gas and coal), of the combustion of biomass, of changes in land use, and of industrial activities (like cement production). It is the most important anthropogenic (caused by humans) greenhouse gas that affects the Earth's energy balance. CO ₂ is the reference gas to which other greenhouse gases are compared.
CO₂-eq	CO ₂ -equivalent. CO ₂ -eq is a unit that expresses what quantity of emitted carbon dioxide (CO ₂) would have an equivalent effect over a specific time horizon if an emitted quantity of another greenhouse gas or a mixture of other greenhouse gases.
COP	<i>Conference of the Parties.</i> The COP is the annual meeting of countries that are affiliated with the UNFCCC. The COP is the highest decision-making body under the UNFCCC and makes the decisions that are necessary to promote the application of the UNFCCC and the Paris Agreement.
Critical decade	The decade of 2020-2030, that the international community (including in the Glasgow Climate Pact of 2021) deems the critical decade, in line with SR15. The reason for this is that the scope of the emissions reductions in this decade will be decisive for determining the feasibility of the temperature goal of the Paris Agreement.
CSDDD	<i>Corporate Sustainability Due Diligence Directive</i> , i.e. 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.
CSRD	<i>Corporate Sustainability Reporting Directive</i> , i.e. Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.
Cumulative emissions	The total quantity of greenhouse gases that is and/or will be emitted into the atmosphere in a specific period. The cumulative emissions of a reduction pathway

	determine whether a reduction pathway is in proportion to a specific carbon budget.
Direct emissions	Emissions from sources that are the property of or are controlled by a company.
EBA	<i>European Banking Authority.</i> The EBA is the EU agency that is responsible for regulation and promoting of the stability of the banking sector within the European Union. The EBA's task is to develop common rules for banks, the coordination of the supervision between national supervisors and promoting the integrity and transparency in the sector. The EBA primarily focuses on the supervision of the regulations and the standards that banks (including ING) must follow, e.g. in the area of capital requirements and risk management. Contrary to the ECB, the EBA does not directly supervise individual banks.
ECB	<i>European Central Bank.</i> The ECB is the central bank of the eurozone. In addition to promoting price stability and managing inflation, as the regulator authority in the area of capital requirements and risks management, the ECB is responsible for the direct supervision of the largest and systemically important banks in the eurozone (including ING). The ECB follows the regulations and standards that are in part determined by the EBA.
Emissions	Greenhouse gas emissions.
Emissions gap	The difference between the total in emissions reductions according to NDCs (or the current policy of countries) and the emissions reductions that are necessary at global level prevent dangerous climate change.
EPA	<i>Environmental Protection Agency</i> (Federal Environmental Agency of the US).
ESRS	<i>European Sustainability Reporting Standards,</i> i.e. Implementing Regulation (EU) 2021/637 of the Commission 15 March 2021 laying down implementation technical standards with regard to public disclosures by institutions of the information referred to in Titles II and III of Part 8 of Regulation (EU) 575/2013 of the European Parliament and of the Council and repealing Commission Implementation Regulation (EU) 1423/2013, Commission Delegated Regulation (EU) 2015/1555, Commission Implementing Regulation (EU) 2016/200, Commission Delegated Regulation (EU) 2017/2295.
Facilitated emissions	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.
Financed emissions	<p>Insofar as the context in which the term is used distinguishes between financed emissions and facilitated emissions: all Scope 3 emissions of the bank that are associated with loans provided by the bank and assets managed by the bank, as determined on the basis of the PCAF's standards in this respect.</p> <p>Insofar as the context in which the term is used does not make the aforementioned distinction: all Scope 3 emissions of the bank within the "category 15: investments" of Scope 3 Standard with the GHG Protocol, including facilitated emission.</p>
Financing	All 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, unless the context in which the term is used explicitly entails otherwise, as described in further detail in Chapter X.2.2.

Flywheel effect	The effect emanating from the climate measures of state actors and non-state actors (NSAs) and extends beyond the direct effect intended with these climate measures. The flywheel 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.
FSB	<i>Financial Stability Board.</i> The FSB is an international organisation that is responsible for promoting worldwide financial stability, in which important states, central banks and international organisations in the global financial system (like the IMF, the World Bank, the OECD and BCBS) are represented. As such the FSB performs a coordinator function to promote the stability of the global financial system and the associated regulations and supervision.
GFANZ	<i>Glasgow Financial Alliance for Net Zero.</i> GFANZ is a global alliance of financial institutions that was established at the time of the Glasgow Climate Pact of COP26 in 2021. GFANZ was founded to create a forum to tackle and accelerate the transition to a zero-carbon economy and to utilise the associated opportunities.
GHG Protocol	The <i>Corporate Accounting and Reporting Standard</i> of the GHG Protocol and the associated Scope 3 Standard together. The GHG Protocol is a joint, internationally recognised standard to calculate and report greenhouse gas emissions.
Governance gap	The lack of (national) laws and regulations (or options for establishing such) and enforcement mechanisms to be able to effectively hold (multinational) enterprises responsible for their acts and omissions, in particular with regard to the performance of their environmental and human rights responsibilities. The governance gap is a result of increased globalisation and the associated increased power of (multinational) enterprises, in turn resulting in national governments not being properly able to regulate (multinational) enterprises. Professor John Ruggie (at the time special UN representative in the area of human rights and transnational companies and other commercial enterprises) already pointed out the existence of the government gap in 2008, which under John Ruggie's leadership led, inter alia, to the establishing of the UNGP and the responsibility for self-regulation by (multinational) enterprises that was laid down in the UNGP. See also the OECD Guidelines for Multinational Enterprises ("OECD Guidelines").
GROCC	<i>Global Roundtable on Climate Change.</i> The GROCC was an initiative of the Earth Institute of Columbia University in New York, that functioned as an international platform for important state and non-state actors to discuss and promote the global climate approach. The GROCC published a joint statement in 2007 entitled ' <i>The Path to Climate Sustainability</i> '.
Gt	Gigaton (equal to 1,000 Mt or 1,000,000,000 tons).
GTP Report	<i>Global Tipping Points Report.</i> The GTP Report is an authoritative scientific research report into tipping points in the climate system. The GTP Report was published in 2023 by the Global Systems Institute of the University of Exeter, with the support of more than 200 researchers of more than 90 organisations in 26 countries. The GTP Report was launched during COP28 on 6 December 2023.
IEA	<i>International Energy Agency.</i> The IEA is an intergovernmental organisation founded in 1974 within the OECD. Today, the IEA provides authoritative analyses, data, policy recommendations and solutions to guarantee energy security and help the world to

	switch to clean energy.
Implementation gap	The difference between the total in emissions reductions according to NDCs and the forecast emissions regulations that are effected by implemented policy.
Indirect emissions	Emissions that are the result of the activities of a company but that occur at sources that are owned or controlled by third parties.
IPCC	<i>Intergovernmental Panel on Climate Change</i> . The IPCC is a scientific body of the United Nations that assesses the most topical knowledge on climate change. It was founded in 1988 by the <i>World Meteorological Organisation (WMO)</i> and UNEP. The IPCC assesses scientific information on climate change, the consequences thereof and the possible solutions. It periodically publishes, inter alia, substantial <i>Assessment Reports (ARs)</i> , which inform policymakers, governments, companies and the public on climate change, climate risks and possible climate measures.
KNMI	Royal Netherlands Meteorological Institute (Koninklijk Nederlands Meteorologisch Instituut). The KNMI is the national meteorological and climatological institute of the Netherlands. The KNMI provides scientific insights and data to the government, companies and the public and plays an important role in international climate studies, inter alia through cooperation with the IPCC and other scientific organisations.
KR	<i>Key risk</i> . The IPCC uses this term to refer to certain risks of climate change, whereby 'risk' is to be understood to mean the possibility of adverse consequences for human or ecological systems, taking account of the diversity of values and goals that are associated with such systems. According to the IPCC, in the context of climate change, risks can arise from both the possible consequences of climate change and the human reactions to climate change. Relevant adverse consequences are, inter alia, those relating to lives, means of sustenance, health and well-being, economic, social and cultural assets and investments, infrastructure, services (including ecosystem services), ecosystems and species. According to the IPCC methodology, a risk is a 'key risk' if there is a potentially serious risk that is therefore particularly relevant for the interpretation of " <i>dangerous anthropogenic interference</i> " (DAI) of the climate system, the prevention of which is the central goal of the UNFCCC (Article 2). Some risks are 'potentially' serious because, although some can already cause dangerous interferences, they can become more serious over time. The seriousness of a risk concerns a context-specific opinion based on a number of criteria, i.e. (i) the scope of the adverse consequences, (ii) the probability of adverse consequences, (iii) temporal characteristics, whereby earlier, faster or more persistent risks can be deemed more serious and (iv) the capability to respond to the risk.
Mt	Megatons (equal to 1,000,000 tons).
NAZCA	<i>Non-State Actor Zone for Climate Action</i> . The NAZCA was founded in 2014 under the auspices of the UN to promote and highlight the climate action of cities, companies, investors and others.
NDC	<i>Nationally Determined Contribution</i> . An NDC is a climate plan in which a country records its national goals and measures to reduce the emissions of greenhouse gases. The Paris Agreement obliges the contracting states to submit a new or updated NDC every five years, which must set out ever-more ambitious climate goals.
Negative emissions	The removal of greenhouse gases from the atmosphere through intentional human activities (CDR), in addition to the removal of that takes place without human intervention via the natural carbon cycle or atmospheric chemical processes. The term

	is commonly used in the context of “net negative emissions”, which refers to the removal of greenhouse gases from the atmosphere after reaching global net zero emissions.
New Fossil Fuel Projects	Projects for the exploration of new oil and gas fields, projects for the extraction of oil and gas from new fields, projects for extracting coal from new coal mines and projects for expanding existing coal mines.
NSA	<i>Non-State Actor</i> . The term NSA is used by, inter alia, UNEP, UN Race to Zero and the UN expert group to refer to the responsibility of non-state actors such as financial institutions and other enterprises when countering climate change. Other NSAs are, inter alia, cities, regions and other sub-national governments.
NVB	Nederlandse Vereniging van Banken. The NVB is the trade organisation for the banks in the Netherlands. The NVB represents the interests of the Dutch banks and promotes (from the perspective of these interests) the cooperation between banks themselves and with other relevant parties, such as policymakers and supervisory authorities, both nationally and internationally.
NZBA	<i>Net Zero Banking Alliance</i> . The NZBA is a global coalition of banks that was established in 2021 as a part of both the PRB and the sectoral GFANZ alliance for the banking sector. The NZBA banks undertake to bring both the emissions from their own operations and their financial activities in line with pathways to net zero in 2050 or earlier.
NZE scenario	The Net Zero Emissions by 2050 scenario of the IEA. The NZE scenario is the normative scenario of the IEA that shows a route for the world to achieve net zero CO ₂ emissions by 2050. The NZE scenario is a scenario that is geared to retaining a 50% chance to limit the temperature increase this century to 1.5°C (with an interim overshoot to 1.6°C). The NZE scenario also satisfies the important energy-related SDGs, in particular universal access to affordable energy by 2030.
OECD	Organisation for Economic Co-operation and Development (<i>OECD</i>) is an international organisation comprising 38 member states and is geared to promoting economic growth, employment, living standards and global trade.
OECD Guidelines	<i>OECD Guidelines for Multinational Enterprises on Responsible Business Conduct</i> . The OECD Guidelines are recommendations of governments to multinational enterprises. They are intended to encourage positive contributions of companies to economic, ecological and social progress and to keep adverse effects on matters that fall under the guidelines and that can be connected with the activities, products and services of a company, to a minimum. The OECD Guidelines cover all important areas of corporate responsibility, including human rights, labour rights and the environment. The version of the OECD Guidelines that were updated in 2023 offers updated recommendations for responsible business conduct in important areas, such as climate change, biodiversity, technology, corporate integrity and diligence in the supply chain, and updated implementation procedures for the national contact points for responsible business conduct.
Overshoot	An overshoot of the 1.5°C target (due to an overshoot of the necessary carbon budget), followed by a decrease to the 1.5°C target (due to the large-scale use of CDR).
Paris Agreement	<i>Paris Agreement</i> of 2015.

PCAF	<i>Partnership for Carbon Accounting Financials</i> . PCAF is an international initiative that was founded in 2015 by a group of financial institutions, with the goal of development of harmonised methodologies to measure and publicise the greenhouse gas emissions of loans and investments, so that they can be brought in line with the goals of the Paris Agreement.
PPM	<i>Parts per million</i> . PPM is a unit that is used to express the concentration of CO ₂ (or another greenhouse gas) in the atmosphere. It states how many particles of CO ₂ (or another greenhouse gas) are present in every million particles in the atmosphere. Up to and including AR5, it was common practice to express the global reduction task in terms of the concentration of greenhouse gases in the atmosphere (such as the need to limit it to 430 ppm CO ₂ -eq for a 50% chance 1.5°C). Since the SR15, however, the IPCC has primarily tended to use carbon budgets to express how far the world is still removed from reaching temperature limits.
PRB	<i>Principles for Responsible Banking</i> . The PRB are six principles for socially responsible and sustainable banking, launched by UNEP FI in 2019. The six principles seek, among other things, to have banks bring their strategy in line with the Paris Agreement and the Sustainable Development Goals (SDGs).
Reasons for Concern	See “RFCs”.
Reduction pathway	The quantified process through which an emissions level in a base year reduces over time to a target level in a future target year. A same target level in a future target year can be achieved via various reduction pathways, whereby there can be difference with regard to the time when the reductions take place. Various reduction pathways can consequently lead to various accumulated emissions, so that one reduction pathway does and the other reduction pathway does not fit within a specific carbon budget.
RFCs	<i>Reasons For Concern</i> . The IPCC has been using this term since the third <i>Assessment Report</i> of 2001 to chart the significant risks associated with the anthropogenic climate change (“Key Risks”) and to divide them into five reasons for concern and on the basis thereof to enable the COP to interpret and implement Article 2 of the UN Climate Convention and consequently determining what dangerous climate change as referred to in Article 2 is to be understood to mean. Partly on the basis of the risks appearing from the RFCs, the COP has set the global danger limit for global warming at 1.5°C.
Scope 1 emissions	The direct greenhouse gas emissions that come from sources that are governed by or are the property of an organisation (e.g. emissions related to the burning of fuel in industrial installations, boilers or vehicles). Scope 1 emissions can be calculated by applying the GHG Protocol.
Scope 2 emissions	The indirect greenhouse gas emissions that are associated with the purchase of electricity, steam, warmth or cooling for the benefit of the business activities of an organisation. Although Scope 2 emissions take place physically in the facility in which they are generated, they will be included in the greenhouse gas inventory of the purchasing organisation because they are the result of the energy consumption of that organisation. Scope 2 emissions can be calculated by applying the GHG Protocol.
Scope 3 emissions	An organisation’s other indirect greenhouse gas emissions (not being Scope 2 emissions) that result from the organisation’s activities, but that arise from sources that are owned by or under the control of third parties in the organisation’s value chain, such as business clients of the organisation or consumers. The Scope 3 emissions are the emissions in the value chain that affects the reporting organisation,

	and these emissions often represent the biggest part of the total greenhouse gas emissions of an organisation. Scope 3 emissions are divided into 15 categories. The Scope 3 emissions of financial institutions include, inter alia, financed emissions and facilitated emissions. Scope 3 emissions can be calculated by applying the GHG Protocol (in particular the Scope 3 Standard) and – in case of financial institutions – the PCAF standards.
Scope 3 Standard	<i>The Corporate Value Chain (Scope 3) Accounting and Reporting Standard</i> belonging with the GHG Protocol. The Scope 3 Standard is a joint, internationally recognised standard to calculate and report Scope 3 emissions.
SDGs	<i>Sustainable Development Goals</i> . The United Nations accepted the SDGs in 2015 as a universal call to action to put an end to poverty, to protect the planet and to ensure that all people experience peace and well-being by 2030. The SDGs consist of 17 goals, which form an integral whole: they acknowledge that action in one area will affect the results in other areas and that development must find an equilibrium between social, economic and ecological sustainability.
SPM	<i>Summary for Policy Makers</i> . In IPCC reports, an SPM is the summary of the most important findings and recommendations, intended to provide policymakers, governments, companies and the public with a simplified insight into the most important findings of the relevant IPCC report.
SR15	<i>The Special Report on Global Warming of 1.5°C</i> of the IPCC, published in 2018.
Sustainable Development Goals	See “SDGs”.
SYR	<i>Synthesis Report</i> . Within every <i>Assessment Report</i> (AR), the SYR is the summarising report of the IPCC, that summarises the most important findings of the various (sub-)reports of the AR (WGI, WGII and WGIII). The SYR is intended to highlight the most important findings of the AR for policymakers, governments, companies and the public.
TCFD	<i>Task Force on Climate-related Financial Disclosures</i> . TCFD is an initiative that was initiated by the FSB in 2015 in the run-up to COP21, and offers financial institutions and other companies a framework for reporting climate-related financial risks and opportunities. The TCFD completed its task on 12 October 2023 and was dissolved. The FSB asked the IFRS Foundation to take over the supervision of the progress of the climate-related information provision by companies.
Tipping point	A critical limit which, once reached, reorganises a system, often abruptly and/or irreversible. In the climate system this concerns (often relatively small) changes that cause a sudden, often irreversible and large-scale shift. Examples of this are the melting of the Greenland ice cap, the disappearance of the Amazon rainforest or the collapse of ocean currents like the AMOC. As soon as a tipping point in the climate system has been passed, self-reinforcing processes can occur that accelerate further climate change.
TS	<i>Technical Summary</i> . In IPCC reports, the TS is a detailed summary of the most important findings of the AR. The TS offers a more detailed and more technical overview than the SPM, but is less detailed than the full chapters of the report.
UN Climate Change	Special representatives of the chairman of the COP with the core tasks of facilitating

High-Level Champions	an increase in scale and reinforcing voluntary climate efforts, initiatives and coalitions of NSAs (such as the UN Race to Zero initiative) by means of “ <i>high-level engagement</i> ” and calling an annual “ <i>high-level event</i> ” with the executive secretary and the sitting and future chairman of the COP.
UNEP	United Nations Environment Programme. UNEP was founded in 1972 during the UN conference in Stockholm (United Nations Conference on the Human Environment), in which climate change was on the UN’s agenda for the first time. UNEP promotes international environmental policy and sustainable development. UNEP plays a key role in the coordination of international environmental projects, supporting environmental legislation and promoting scientific research into environmental problems like climate change. UNEP is working together with governments, scientists, companies and societal organisations. UNEP is co-founder of the IPCC and publishes the annual Emissions Gap Report.
UNEP FI	United Nations Environment Programme Finance Initiative. UNEP FI is a partnership between UNEP and the financial sector. The initiative was founded in 1992, at the time of the United Nations Conference on Environment and Development in Rio de Janeiro, where the UNFCCC was also opened up for signing. The goal is to integrate sustainability into the decision making within banks, insurers and investors. The initiatives of UNEP FI encompass, among others, the PRB and the NZBA.
UNFCCC	See “UN Climate Convention”.
UN Guiding Principles	The United Nations Guiding Principles on Business and Human Rights, as unanimously adopted by the UN Human Rights Council in 2011. The UN Guiding Principles are an authoritative normative framework for responsible business conduct and preventing and tackling human rights violations due to business activities.
UNGP	See “UN Guiding Principles”.
UN Expert Group	United Nations’ High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities (HLEG). The UN expert group was appointed in 2022 by the UN Secretary General. It is an independent expert group for the development of stronger and clearer standards for the commitments of NSAs to reduce emissions to net zero in 2050 latest, and to accelerate the implementation thereof. The result of the UN expert group is the UN expert report.
UN expert report	The report <i>Integrity Matters: Net Zero commitments by Businesses, Financial Institutions, Cities and Regions</i> of the UN Expert Group. The report was launched in 2022 and welcomed by the COP during COP27, and formulates five principles and ten recommendations for ethical net zero targets of NSAs.
UN Climate Convention	United Nations Framework Convention on Climate Change.
UN Race to Zero	The UN’s Race to Zero initiative. The UN Race to Zero was launched in June 2020 and is coordinated by the UN Climate Change High-Level Champions. The goal of the UN Race to Zero is to mobilise non-state actors to take rigorous and immediate action to halve global emissions by 2030, on the road to net zero in 2050 latest.
WBCSD	World Business Council for Sustainable Development. The WBCSD was founded in 1995. It is a global network for companies, with the mission of ensuring that the world’s population can live in a sustainable manner in 2050. The WBCSD is a co-

	initiator of the GHG Protocol.
WEO	<p>The World Energy Outlook of the IEA. The WEO is an annual report of the IEA, in which it analyses the global energy needs and trends, including the expected developments in energy demand, energy production, emissions and the impact of policy measures. The report studies various scenarios for the energy transition, taking account of current developments in the area of, inter alia, climate change, energy markets, technological innovations and geopolitics. The WEO generally contains three types of scenarios, i.e. (i) the Stated Policies Scenario (STEPS) that is based on current and announcement government policy, whereby a “business as usual approach” assumes that not all commitments will be met (which overshoots the 1.5°C target), (ii) the <i>Announced Pledges Scenario</i> (APS) that is also based on current and announced government policy, but that does assume that all commitments will be met (which also involves an overshoot of the 1.5°C target, but to a lesser degree than in STEPS) and (iii) the NZE scenario is the normative scenario of the IEA that shows a route for the world to achieve net zero CO₂ emissions by 2050 to limit warming at the end of the century to 1.5°C. The NZE scenario also meets important energy-related SDGs, in particular universal access to affordable energy by 2030.</p>
WGI	<p>Working Group I of the IPCC. WGI focuses on the scientific state of affairs relating to the physics understanding of the climate system and climate change. As part of every Assessment Report, WGI publishes a (sub-)report entitled ‘<i>Climate Change: The Physical Science Basis</i>’. Unless otherwise indicated, references in this summons to ‘WGI’ are references to the relevant (sub-)report of WGI of the associated edition of the Assessment Report.</p>
WGII	<p>Working Group II of the IPCC. WGII focuses on the scientific state of affairs with regard to the consequences of, adaptation to and vulnerability for climate change of society, the economy and the environment. As part of every Assessment Report, WGII publishes a (sub-)report entitled ‘<i>Climate Change: Impacts, Adaptation, and Vulnerability</i>’. Unless otherwise indicated, references in this summons to ‘WGII’ are references to the relevant (sub-)report of WGII of the associated edition of the Assessment Report.</p>
WGIII	<p>Working Group III of the IPCC. WGIII focuses on the scientific state of affairs with regard to the possible strategies to reduce greenhouse gas emissions to the atmosphere and counter climate change. As part of every Assessment Report, WGIII publishes a (sub-)report entitled ‘<i>Climate Change: Mitigation of Climate Change</i>’. Unless otherwise indicated, references in this summons to ‘WGIII’ are references to the relevant (sub-)report of WGIII of the associated edition of the Assessment Report.</p>
WHO	<p>World Health Organization. The WHO is a UN agency, founded on 7 April 1948. The goal of the WHO is to global health, combat disease and strengthen health systems. The WHO coordinates international health initiatives, develops guidelines, gathers health data and supports countries in their efforts to improve health care.</p>

I. INTRODUCTION

1. Since the industrial revolution, humans have been producing and combusting fossil fuels such as oil, coal and natural gas on a grand scale because this releases energy humans can use to generate electricity, heat up our homes and drive machines and means of transport, for example. The production and burning of fossil fuel results in the release of greenhouse gases as a residual product. CO₂ (carbon dioxide) is the most important of the greenhouse gases.
2. These human-induced greenhouse gas emissions - also referred to as anthropogenic emissions - increase natural concentrations of greenhouse gases in the atmosphere, resulting in global warming. Greenhouse gases such as CO₂ are characterised by the fact that they retain heat in the atmosphere and that they gradually issue this absorbed heat in all directions.¹ If CO₂ concentrations in the atmosphere increase, the atmosphere, the land, the ice masses and the oceans will gradually warm up and the average temperature on Earth will rise.
3. Once CO₂ molecules have been emitted into the atmosphere, the bulk of these emissions do not naturally degrade. The result of this is that anthropogenic CO₂ emissions accumulate in the atmosphere. This cumulative effect causes atmospheric CO₂ concentrations to rise.
4. A result of the large-scale emissions since the industrial revolution, the physical-chemical composition of the atmosphere has drastically changed in a short period of time. Measures show that the current CO₂ concentration is higher than at any other time in at least the last 2 million years.² The current CO₂ concentration in the atmosphere as a result of the accumulated anthropogenic emissions is now approx. 50% higher than at the start of the industrial revolution.
5. Because the production and the consumption of fossil fuels are still increasing, the (accumulated) anthropogenic emissions are still increasing every year. According to the last IPCC report, global anthropogenic greenhouse gas emissions in 2019 were 59 gigatons (“Gt”) in CO₂ equivalents (“CO₂-eq”).³ This is an increase of 54% relative to 1990.⁴ Humankind has never before emitted so much greenhouse gas in one year. After 2019 the annual global anthropogenic greenhouse gas emissions continued to rise. This continuing increase can be traced back to a significant increase in emissions in all economic sectors, including in sectors like the fossil fuel industry, energy generation, transport and industry.⁵
6. This increase in production and use of fossil fuels, and consequently the current scale of the annual anthropogenic emissions, would have been impossible without the activities of banks and other financial institutions.⁶ Banks finance and facilitate economic activities that cause greenhouse gas emissions in various ways. This applies in the first place to the activities of the above-mentioned sectors, which by their nature are emissions-intensive and for which the emissions have increased so significantly since 1990. This increase was able to take place

¹ Exhibit MD-001, IPCC 2023, AR6, SYR, p. 124.

² Ibid, para. A.1.3 SPM, p. 4.

³ Along with the other greenhouse gases, CO₂ is also referred to as CO₂ equivalents, or “CO₂-eq”. In that case, the other greenhouse gases such as methane gas and nitrous oxide have been converted into CO₂ values.

⁴ Exhibit MD-001, IPCC 2023, AR6, SYR, para. A.1.4 SPM, p. 4.

⁵ Since 1990 greenhouse gas emissions in this sectors increased by 48% (fossil fuel industry), 96% (energy generation), 78% (transport) and 91% (industry); see Exhibit MD-002, European Commission JRC 2024, ‘GHG emissions of all world countries, p. 49.

⁶ See furthermore Chapter X.2.

due to large-scale investments in capital-intensive activities (like investments in power stations and infrastructure for the extraction and distribution of fossil fuels), which would by and large be impossible without the products and services of banks. The emissions of other sectors have also increased since 1990, and this too has been promoted and made possible by the products and services of banks.

7. This is why Milieudefensie has been studying the climate policy of banks since 2006, and is entering into dialogue with banks (including ING) to encourage them to take responsibility for their role in the cause and countering of climate change.⁷
8. ING stood out (in a negative sense) from the start, because in 2006 it was the only Dutch bank that had not explicitly acknowledged that there was a great interest in reducing the greenhouse gas emissions it had financed.⁸
9. In doing so, ING refused to shoulder its responsibility to take precautionary measures that counter the adverse consequences for the climate from its products and services. This is despite the fact that at the time when ING was founded in the 1990s, it had already been recognised that financial institutions have this responsibility.⁹
10. Now, some 34 years after its founding, ING is still not standing up and taking responsibility, while since then its contribution to and influence on global greenhouse gas emissions have increased to a very substantial level. Since its founding, ING has developed into the biggest and internationally most influential bank of the Netherlands. ING's balance sheet total has expanded by a factor of 6 since the 1990s to the current (rounded) 1020 billion euros;¹⁰ far and away the biggest balance sheet total of all Dutch banks.
11. ING uses this enormous balance sheet total of 1020 billion euros to finance and facilitate an economy-wide spectrum of activities of its clients.¹¹ In doing so, it also finances and facilitates the greenhouse gas emissions that are released with these economic activities. The emissions financed and facilitated by ING are therefore the emissions that are associated with the economic activities of ING's clients that are made possible by products and services of ING. In the jargon of climate standards for quantification and reporting of greenhouse gas emissions these financed and facilitated emissions of a bank are referred to as the bank's 'Scope 3 emissions'.¹²

⁷ Exhibit MD-003, Milieudefensie 2006, 'Investing in climate change: the role of Dutch banks.

⁸ Ibid, p. 38: "All banks, except for ING, explicitly underline the importance of indirect CO₂ emissions." This citation refers to 'indirect CO₂ emissions'. This summons will make it clear that financed CO₂ emissions fall under the category of indirect emissions.

⁹ See furthermore Chapter X.3.

¹⁰ Exhibit MD-004, ING Annual Report 2024, p. 225. In 1993, ING had a balance sheet total of 154 billion euros, see ING 2002 Annual Report, p. 3 (see <https://www.ing.com/MediaEditPage/2002-Annual-Report-ING-Groep-N.V..htm>).

¹¹ This spectrum covers a great variety of clients, ranging from large companies active in, e.g., manufacturing or transport, to SME companies that are active in, for example, construction or commerce. For example, the sectors 'Manufacturing' and 'Transportation and storage' in its 'Wholesale Banking Book' (large companies), for 2023 ING reported 34 billion euros in financing and 75.3 MtCO₂-eq in emissions and 20.8 billion euros in financing and 19.4 MtCO₂-eq in emissions respectively. For the sectors 'Construction' and 'Wholesale and retail trade; repair of motor vehicles and motorcycles' in its 'Retail Banking Book' (SME), for ING reported 5.1 billion euros in financing and 11.3 MtCO₂-eq in emissions and 15.3 billion euros in financing and 8.3 MtCO₂-eq in emissions. See Exhibit MD-005, ING Climate Report 2024.

¹² Standards for the quantification and reporting of greenhouse gas emissions distinguish between three categories of emissions, referred to as Scope 1, 2 and 3. Scope 1 and 2 concern emissions derived from sources owned or managed by the reporting company, and of the installations of third parties from which that company purchases electricity, steam or heat. Scope 3 emissions are the emissions of the company that are connected with its value chain. For banks and other financial institutions, these are, inter alia, the emissions that are associated with (the economic activities that are made

12. On the basis ING's own reporting alone (which is far from complete)¹³, ING's Scope 3 emissions in 2024 amounted to 262 Mt in greenhouse gases.¹⁴ 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. The Scope 1 and Scope emissions of clients financed and facilitated by ING appear not to be decreasing for the time being.¹⁵ Nor is ING seeking to achieve any reductions for the greater part of these emissions. At least 73% of its Scope 3 emissions are not covered by reduction targets.¹⁶ In addition, the reduction targets that ING does have are incomplete and inadequate (as will become clear in this summons).¹⁷
13. Through these emissions, which are relevant at global scale – for which largely no (and otherwise inadequate) reduction targets have been fixed – to this day ING is annually substantially contributing to increasing the concentration of greenhouse gases in the atmosphere.
14. As a result of increased CO₂ concentrations in the atmosphere since the industrial revolution, the average temperature of the Earth - which has been about 14°C since the end of the last ice age - has already risen by about 1.3°C.¹⁸ The consequences of that warming are felt around the world.¹⁹
15. Global warming leads to changes across the world in the climate and the living environment and consequently, according to science, forms a great danger to humans, their lives and health, their property and their family life. It is equally a great danger to the ecosystems on which humans' lives and well-being depend.²⁰ Sea levels are rising, ice sheets are melting and oceans are acidifying. The risk that a substantial share of animal and plant species will go extinct will also increase, as will the frequency and intensity of storms, deluges, flooding, periods of heat and forest fires, all of which are disruptive to society.²¹ These and other consequences of climate change, like water and food shortages, are already occurring and can be seen and felt all over the world, including in the Netherlands, but will become a great deal more severe as the Earth warms further.²²

possible by) loans, the underwriting of, e.g., bonds and investments. The total of Scope 1, 2 and 3 emissions provides an overview of all emissions over which a company has control or influence. See Chapter IX.2, Box: What are Scope 1, 2 and 3 emissions?. In addition, see Chapter X.2.3.

¹³ See Chapter XV.

¹⁴ Exhibit MD-005, ING Climate Report 2024, p. 124.

¹⁵ See Chapter XII.3.3.

¹⁶ The higher the actual percentage is over this 73% cannot be determined by ING's incomplete reporting. When calculating the percentage of emissions that are not covered, Milieudefensie applies the assumption, moreover, that ING has reduction targets for *all* financed emissions that are connected with its mortgages, which is probably not the case. Exhibit MD-005, ING Climate Report 2024, p. 73 shows that in 2023 ING did not have any targets for about a fifth of these emissions. Exhibit MD-004, ING Annual Report 2024 does not clarify whether and to what extent that cover has now become more complete. If ING indeed still does not have any targets for *all* financed emissions that are connected with its mortgages, the percentage of emissions that are not covered is even higher.

¹⁷ See Chapter XV.

¹⁸ Exhibit MD-006, Forster et al. 2024, 'Indicators of Global Climate Change 2023: annual update of key indicators of the state of the climate system and human influence, p. 2626.

¹⁹ For a summary of the consequences of the current warming, see: Exhibit MD-001, IPCC 2023, AR6, SYR, para. A.2 SPM, pp. 5-7.

²⁰ Exhibit MD-001, IPCC 2023, AR6, SYR, para. 2.1, p. 42: "*Human-caused climate change is already affecting many weather and climate extremes in every region across the globe. This has led to widespread adverse impacts on food and water security, human health and on economies and society and related losses and damages to nature and people (high confidence).*"

²¹ Exhibit MD-001, IPCC 2023, AR6, SYR, para. A.2 SPM (pp. 5-7), para. B.2 SPM (pp. 14-18) and para. 2.1.2 (pp. 46-51).

²² Exhibit MD-001, IPCC 2023, AR6, SYR, para. A.2 SPM (pp. 5-7), para. B.2 SPM (pp. 14-18) and para. 2.1.2 (pp. 46-51).

16. Every fraction of a degree of additional warming causes an increase in the tangible and intangible damage and an increase in climate-related risks, such as risks to health, food security and water supply.²³ In addition, this will make these risks more difficult to manage – and at some time will simply make them unmanageable – and it limits the options for sustainable development and adaptation of people and ecosystems to the consequences of climate change.²⁴
17. This is particularly problematic now that various recent studies have shown that in the last few years climate change has accelerated and that the sensitivity of the climate to CO₂ may be higher than previously thought.²⁵ This would mean that a specific quantity of CO₂ emissions leads to (far) more warming than had been thought until now.
18. In addition to the average temperature, the weather extremes are also rapidly increasing, worldwide and in the Netherlands. For example, in the summer of 2019 the Netherlands achieved a heat record of more than 40 degrees Celsius, even though the KNMI was not expecting to see such weather extremes for several more decades.²⁶
19. It is important to know in this respect that specific parts of the climate system have a delayed response to greenhouse gas emissions.²⁷ This means that the climate consequences that are caused in the Netherlands and the world by the current CO₂ concentration in the atmosphere are already greater than can be observed at this time. Some consequences of the current CO₂ concentration will persist and be reinforced for many tens or even many hundreds to thousands of years. Even in the theoretical situation that the global CO₂ emissions will be reduced to zero tomorrow, the climate consequences will be increasing in severity for a very long time to come.²⁸ This concerns, inter alia, during these time scales the continuing and persistent melting of ice masses (glaciers and ice caps), the thawing of permafrost, the acidification and warming of the oceans and the rising sea levels that is the result of the warming of the water and the melting of, inter alia, the Greenland and Antarctic ice caps.²⁹
20. Many climate consequences will continue to increase for a very long time, even after the emissions of greenhouse gases have stopped.³⁰ This means that the consequences that we see today only provide a quick look into the many more serious future consequences that have already been unavoidably caused by the current CO₂ concentration; consequences that

²³ Exhibit MD-001, IPCC 2023, AR6, SYR, p. 69, 70, 71, 72, 75, 88, 89, 95 and Figure 4.2 on p. 97.

²⁴ Exhibit MD-001, IPCC 2023, AR6, SYR, p. 72, 88, 89, 95 and Figure 4.2 on p. 97.

²⁵ Exhibit MD-007, Keulemans 2024, 'De klimaatverandering versnelt' and Exhibit MD-008, Hansen et al. 2023, 'Global warming in the pipeline'

²⁶ Exhibit MD-009, PBL 2024, 'Klimaatrisico's in Nederland', p. 11.

²⁷ Exhibit MD-010, IPCC 2021, AR6, WGI, TS, Box TS.9, p. 106: *"The present rates of response of many aspects of the climate system are proportionate to the rate of recent temperature change, but some aspects may respond disproportionately. Some climate system components are slow to respond, such as the deep ocean overturning circulation and the ice sheets (Box TS.4). It is virtually certain that irreversible, committed change is already underway for the slow-to-respond processes as they come into adjustment for past and present emissions."*

²⁸ See also chapter V.6.

²⁹ Exhibit MD-001, IPCC 2023, AR6, SYR, B.3.1 SPM, p. 18: *"Limiting global surface temperature does not prevent continued changes in climate system components that have multi-decadal or longer timescales of response (high confidence). Sea level rise is unavoidable for centuries to millennia due to continuing deep ocean warming and ice sheet melt, and sea levels will remain elevated for thousands of years (high confidence)."* See also Exhibit MD-010, IPCC 2021, AR6, WGI, TS, Box TS.9, p. 106: *"The increase in global ocean heat content (Section TS.2.4) will likely continue until at least 2300 even for low emissions scenarios, and global mean sea level will continue to rise for centuries to millennia following cessation of emissions (Box TS.4) due to continuing deep ocean heat uptake and mass loss of the Greenland and Antarctic ice sheets (high confidence)."*

³⁰ See also chapter IV.5.

await the world no matter what.

21. But this is not all. The extra dangers and risks associated with the fact that the current CO₂ concentration in the atmosphere will not remain the same but will continue to rise in the coming decades comes on top of this. After all, it is unavoidable that until the time that global CO₂ emissions have been reduced to net zero in a few decades (according to the status today, this will be no earlier than 2050), the CO₂ concentration in the atmosphere will continue to rise during that period. The longer it takes before the point of net zero emissions has been reached worldwide, the higher the CO₂ concentration will be and the more severe the climate consequences will be.
22. When working toward this net zero point, it is not only important *when* that zero point has been reached, but also *how* that zero point is reached. As mentioned, CO₂ will continue to be emitted on the road to net zero. The total CO₂ emissions between today and net zero – the *accumulated* emissions – can be bigger or smaller depending on the road that is followed to the zero point that is ultimately reached. In order to limit the consequences of climate change as much as follows, a pathway to net zero will have to be followed, whereby the accumulated emissions until the zero point are as low as possible. This asks for reduction pathways in which – now – emissions are reduced as quickly and as much as possible.³¹ The longer emissions reductions are postponed, the more likely it is that the accumulated emissions to net zero will lead to a considerable climate change. This will be explained in further detail in paras. 29 to 32, also through a figure.
23. All of this means that the actions of today dictate the future that the world and the Netherlands are facing. A part of that changing future is unfortunately already fixed in the increased CO₂ concentrations that are already in the atmosphere right now. The other part of that changing future is already fixed in the unavoidable increase of the CO₂ concentrations, as we are very far from the point of net zero emissions. But the very worst consequences can be avoided by reaching that zero point as quickly as possible, with the fewest possible accumulated emissions on the way to net zero.
24. Reducing emissions is therefore very urgent. The urgency is again underscored by the latest insights from science about tipping points in the climate system that can put abrupt and/or irreversible processes in motion that further uncontrollably worsen the climate problem. The latest scientific insights show that passing tipping points cannot be excluded with the current warming. For example, the massive die-off of tropical coral reefs is already likely with the current warming. Four other tipping points that are vulnerable now: the melting of the Greenland and West Antarctic ice caps, the collapse of the Subpolar Gyre (a circular ocean current at the ocean's surface) and the abrupt thawing of parts of permafrost.³² Above the limit of 1.5°C, three more tipping points will become vulnerable, and as of 2°C various tipping points will be added. In view of the fact that natural systems are closely connected with each other, passing a tipping point in one system can, moreover, have significant consequences for the stability of other systems: *“Global warming is rapidly approaching levels that could*

³¹ The term “reduction pathway” refers to the quantified process through which an emissions level in a base year reduces over time to a target level in a future target year. A same target level in a target year can be achieved via various reduction pathways, whereby there can be differences with regard to the time when the required reductions take place. For further explanation, see paras. 29 to 32 and the figure included and discussed therein.

³² Exhibit MD-039, UNDP 2024, ‘Peoples’ Climate Vote 2024’ (Executive Summary), pp. 10 and 20: *“Some Earth System tipping points are no longer high-impact, low-likelihood events, they are rapidly becoming high-impact, high-likelihood events”*. See also Exhibit MD-014, OECD 2022, ‘Climate Tipping Points: Insights for Effective Policy Action’, p. 3: *“There is indisputable evidence that the planet is approaching tipping points”*.

*trigger individual tipping points in systems that can interact with and destabilise other tipping systems.”*³³ The higher warming above the current level of 1.3°C, the bigger the risks that these tipping points we cannot control will be reached.³⁴ This too makes it clear that it is of the greatest importance to limit the total quantity of emissions – the *accumulated* CO2 emissions – on the road to the global zero point as much as possible.

25. It is good to know in this respect that there is a virtually linear relationship between the accumulated anthropogenic CO2 emissions and the global average temperature increase.³⁵ This means: every ton of CO2 emissions results in the same amount of warming. The CO2 emissions since the industrial revolution have brought about the 1.3°C warming that we are experiencing today and every future emission of CO2 will result in extra warming. This extra warming and the consequences thereof, moreover, come on top of the climate consequences that is already encompassed in the current concentration of CO2 in the atmosphere, due to the just discussed delayed response of certain parts of the climate system on the emissions that have already taken place.
26. This virtually linear relationship between the cumulative CO2 emissions and the temperature increase has two important consequences.
27. First of all, this means that as long as humans add (net) CO2 to the atmosphere, Earth will keep warming. The stabilisation of the human-induced global temperature increase therefore requires that the net anthropogenic CO2 emissions become zero.³⁶ It is therefore not possible to stop further warming and stabilise the temperature increase by reducing CO2 emissions, but not reducing emissions to net zero.
28. Secondly, this means that what is necessary to limit warming to a specific temperature level, can be expressed by means of a carbon budget.³⁷ This means a maximum quantity (budget) of CO2 that can still be emitted before there is overshoot of a temperature limit. According to the most recent report of the UN climate panel, in order to have a 50% chance of limiting the temperature increase to 1.5°C – the global temperature limit that the international community has committed to – the carbon budget was 500 GtCO2 at the beginning of 2020.³⁸ In June 2024 a group of scientists published an important update about the developments since the publication of the report of the UN climate panel. A crucial finding is that the best estimate of the remaining carbon budget for a 50% chance of 1.5°C from the beginning of 2020 has been adjusted to 400 Gt (instead of 500 GtCO2) and as of the beginning of 2024 is only 200 Gt GtCO2.³⁹
29. On the road to net zero emissions, the accumulated emissions of the world will therefore have to remain within this carbon budget in order to limit the temperature increase to 1.5°C. This shows that not only the end goal – reaching net zero emissions – is relevant, but that the reduction pathway to the end goal is also of great importance. This reduction pathway determines whether the zero point will be reached before the carbon budget has been used

³³ Exhibit MD-039, UNDP 2024, ‘Peoples’ Climate Vote 2024’ (Executive Summary), p. 20.

³⁴ See also chapter **Error! Reference source not found..**

³⁵ Exhibit MD-011, IPCC 2021, AR6, WGI, SPM, D.1.1 SPM, p. 28, and Exhibit MD-010, IPCC 2021, AR6, WGI, TS, TS.3.3, p. 97.

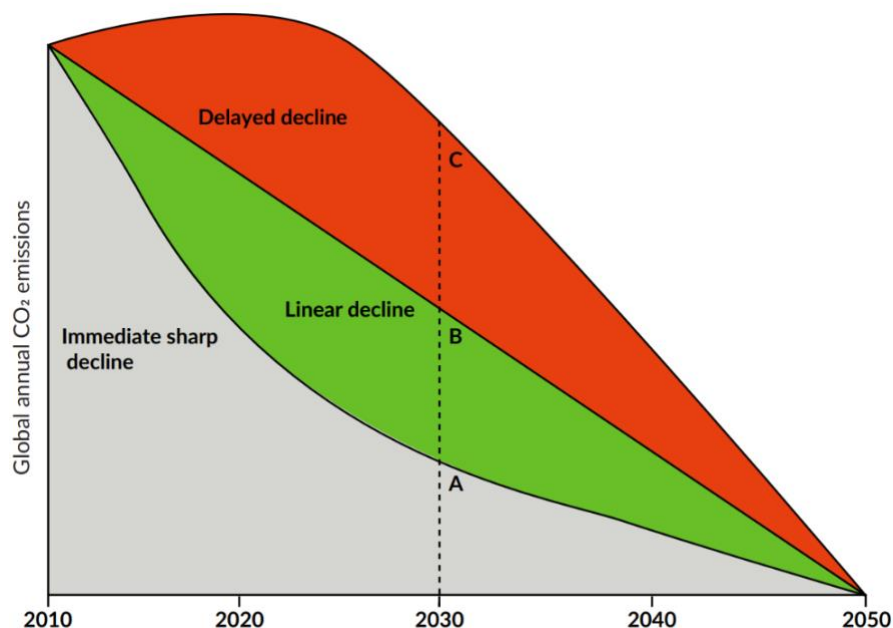
³⁶ Exhibit MD-011, IPCC 2021, AR6, WGI, SPM, p. 28, and Exhibit MD-010, IPCC 2021, AR6, WGI, TS, TS.3.3, pp. 97 and 98.

³⁷ Exhibit MD-011, IPCC 2021, AR6, WGI, SPM, p. 28, and Exhibit MD-010, IPCC 2021, AR6, WGI, TS, TS.3.3, pp. 97 and 98.

³⁸ Exhibit MD-010, IPCC 2021, AR6, WGI, TS, TS.3.3, p. 98, and Ch. 5, p. 678 (see https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_FullReport.pdf).

³⁹ Exhibit MD-006, Forster et al. 2024, ‘Indicators of Global Climate Change 2023: annual update of key indicators of the state of the climate system and human influence’, p. 2643-2645.

up or that the carbon budget is exceeded and the warming of the Earth is therefore higher than desired. The following figure of Milieudefensie makes this clear:



30. The above figure illustrates the point that the chosen path of emissions reductions to net zero in 2050 is crucial for the total quantity of accumulated emissions to 2050. The three illustrative scenarios all lead to zero emissions in 2050, but the reductions reached by 2030 (respectively points A, B and C) in essence determine what the total accumulated emissions will be in 2050. According to the grey scenario (immediate sharp drop) the accumulated emissions are equal to the grey surface area. According to the green scenario (linear drop) the accumulated emissions are the same as the grey and green surface areas together. According to the red scenario (delayed drop) the accumulated emissions are the same as the grey, green and red surface areas together.
31. This makes it clear that to prevent dangerous climate change, the issue is not only the end goal in 2050, but that it is crucial that the necessary interim reduction targets are achieved, such as those for 2030 and 2035. Only by reaching the interim targets (as well), will it be possible to remain within the remaining carbon budget. For example, the grey and green scenario still fit in the remaining carbon budget, but the red scenario does not. What is concerning in this respect is that on the basis of the current level of annual global CO₂ emissions, at the beginning of 2024 only five years remain before the carbon budget for a 50% change of 1.5°C has been depleted.⁴⁰
32. The above shows that very rapid and far-reaching emissions reductions are necessary.
33. As a result of the aforementioned *cumulative* effect of CO₂ emissions, the general damage associated with climate change is that of slumbering damage, which means damage does not fully manifest itself from one moment to the next but worsens gradually. You could compare

⁴⁰ In 2023, CO₂ emissions were estimated to be 40.9 GtCO₂. From 2024 only a budget of 200 GtCO₂ will remain. See Exhibit MD-006, Forster et al. 2024, 'Indicators of Global Climate Change 2023: annual update of key indicators of the state of the climate system and human influence', p. 2630 and p. 2645.

it to the situation in which employees are constantly exposed to a hazardous substance and gradually but to a worsening extent develop black lungs. The health of their lungs is stealthily damaged to an increasing extend.

34. Furthermore, due to the aforementioned *delayed* effect in the climate system, climate damage is also slumbering, i.e., the damage is already there because the damage to the chemical composition of the atmosphere in the form of excessive CO₂ concentrations has already been caused but it is not fully visible or perceivable yet because not all consequences of this increased atmospheric concentration have manifested themselves yet.
35. This type of stealthy and slumbering damage creates a particular risk. When damage is apparent and visible, it is possible to take immediate curtailing measures but stealthy and slumbering damage can continue to fester underground for a long time before its harmful effects are clearly perceivable. When the damage is 'discovered', it is often already irreversible.
36. A good example of slumbering damage is the asbestos disease mesothelioma, a lethal occupational disease that will not manifest itself until 30 years after being exposed to asbestos crystals. When the first mesothelioma victims emerged, measures were taken but at that time, it was clear there were going to be many more victims because a lot of people had been exposed to asbestos in the previous 30 years. For them, the measures came 30 years too late and their fate - death within two years after diagnosis - had been sealed.
37. For climate damage there is thus a comparable stealthy and slumbering damage because of, on the one part, the ever-increasing CO₂ concentration and on the other the delay in the climate system. Consequently, the already unavoidable climate damage is considerably greater now than people perceive and observe.
38. The awareness of climate change as a stealthy and slumbering global catastrophe in the making has existed in the international community since at least the 1980s. This awareness was confirmed 37 years ago by more than 300 scientists and politicians and policymakers from 48 countries. In a joint final statement at the Climate Conference in Toronto of 1988, they announced that the consequences of climate change can be so serious that only a global nuclear war could cause more damage. They jointly emphasised that it is of the greatest importance that immediate action should be taken and called for actions such as (i) switching investments to energy forms with little or no CO₂ emissions with immediate effect, (ii) investing in energy-efficiency and (iii) effecting a rapid reduction in global emissions. According to the collective statement from 1988, these measures are necessary in order to avert a major climate danger in the future and to secure a sustainable future.⁴¹
39. This final statement was made in 1988 against the background of the acknowledgement that the investment decisions of banks and investors substantially influence the emissions of greenhouse gases to the atmosphere (and consequently the arising and scope of climate change and the consequences thereof), and the acknowledgement that banks and investors must take account of the many long-term actions that are necessary for an appropriate response to the changing (as a result of greenhouse gas emissions) atmosphere.⁴²
40. This call to arms and statement from 1988, like other climate conferences such as the

⁴¹ See Chapter VI.5.

⁴² See Chapter X.3.2.

Noordwijk Conference (1989) and the scientific insights from the first report of the UN Climate Panel (1990) led to the 1992 UN Climate Convention (during the UN conference on the environment and development in Rio de Janeiro), which was ratified and signed by 197 countries in the years thereafter.⁴³ The central objective of the Climate Convention is to prevent anthropogenic climate change that is dangerous to humans and the environment (in short: dangerous climate change). This is to be realised by stabilising the concentration of greenhouse gases in the atmosphere at the necessary level (by means of bringing about timely emissions reductions).

41. In those same years – the early years of ING – the financial sector itself also showed a clear awareness that it had to take precautionary measures to counter a climate catastrophe. This awareness was institutionalised in 1992 in the United Nations Environment Programme Finance Initiative (UNEP FI), which ING joined subsequently. UNEP FI too shared the importance of a substantial reduction in greenhouse gas emissions and called on private institutions to use their capital resources to promote this position.⁴⁴
42. The Paris Climate Agreement was made in 2015. In that convention, the 194 contracting states (again) urged themselves and society to take urgent climate measures because otherwise, climate change that is dangerous to humans and the environment can hardly be prevented. Within that context and on the basis of the latest scientific insights of the UN Climate Panel, these 194 countries stipulated in the Paris Agreement that in order to prevent dangerous climate change, warming must, in any case, be reduced to far below 2°C and preferably limited to 1.5°C.
43. The Paris Agreement acknowledges that its temperature goal can only be achieved if financing flows also focus on this. Article 2(1)(c) of the Paris Agreement therefore explicitly formulated as a goal that financial flows must be made consistent with the (global) pathway to low emissions and a climate-proof development:

Article 2

1. *This Agreement [...] aims to strengthen the global response to the threat of climate change [...] including by: [...]*
- (c) *Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.* (underlining added by legal counsel)

It is evident that the requisite redirecting of financing flows can only occur if banks and other private actors contribute to the process. The decision with the making of the Paris Agreement therefore encompasses an appeal to the relevant parties to do their part.⁴⁵

44. After the Paris Agreement was made, the importance of limiting warming to 1.5°C was reconfirmed and made a spearhead by the Glasgow Climate Pact. The Glasgow Climate Pact is a decision of the 194 parties to the Paris Agreement that was made during the Conference of the Parties (COP) of November 2021 in Glasgow (COP26).⁴⁶ In this decision, based on the scientific insights gained from the IPCC in 2018 (from the SR15 report), the global community acknowledged that the consequences of climate change will be even more severe in case of warming of 2°C than in case of warming of 1.5°C. The global community repeated this acknowledgement and this decision during the COP in Sharm el-Sheikh in 2022 (COP27), the

⁴³ Exhibit MD-017, UNFCCC, 'Status of Ratification of the Convention' (print-out of website 27 February 2025).

⁴⁴ See Chapter X.3.3.

⁴⁵ See Chapter X.3.7.

⁴⁶ The importance of a decision of the COP will be explained in Chapter VI.5.2.

COP in Dubai of 2023 (COP28) and the COP in Baku of 2024 (COP29).

45. However, to date adequate climate action has been lacking. After the UN Climate Convention of 1992, and since the Paris Agreement of 2015 and the COPs after that, annual global emissions continued to rise. Consequently, the annual global greenhouse gas emissions have now increased to the current record level of 59 GtCO₂-eq.
46. To date, the financial sector (including ING) has also been remiss in establishing a suitable policy to reduce its financed and facilitated emissions, notwithstanding the UNEP FI goals and the appeal made to banks in the Paris Agreement. On the contrary: the products and services of the financial sector have helped to make it possible that the annual emissions of clients in sectors like the fossil fuel industry, energy generation, transport and industry is far-reaching and is still increasing.
47. The 197 countries of the UN Climate Convention have therefore repeatedly called upon themselves and society to take urgent actions since 1992, but this was not able to turn the persistent trend of annually increasing emissions. The Nationally Determined Contributions (NDCs) that were jointly established in Paris are therefore too limited for the time being to be able to achieve the climate goal of the Paris Agreement. The same applies for the NDCs that were subsequently tightened, that – even if countries translated these into policy in time and then implemented them – according to the analysis of the UN Environment Programme (UNEP) will probably lead to a warming of 2.8°C.⁴⁷
48. According to the UN Climate Panel, in order to still have a 50% chance to limit warming to 1.5°C and remain within the previously-mentioned carbon budget, it is necessary for global CO₂ emissions to be at least 48% lower in 2030 relative to 2019. In 2035, global CO₂ emissions must be at least 65% lower and in 2040 at least 80% lower. Then, according to the UN Climate Panel, CO₂ emissions will have to be reduced to net zero by 2050. In other words, after 2050, no more anthropogenic CO₂ emissions can be added to the atmosphere.⁴⁸
49. This necessary climate transition will succeed in time only when, among other things, substance is given to the conclusions of scientists and policymakers in Toronto in 1988, namely that investments must be switched with immediate effect to forms of energy that do not emit any CO₂ and that substantial emission reductions must be made. This will have to be done now against the background of the global consensus about dangerous climate change as laid down in the Paris Climate Agreement and the later COP decisions.
50. Milieudefensie is of the opinion that the universally acknowledged need (based on scientific findings) to limit the warming to 1.5°C, also has a legal significance for ING. Under Dutch law (to which ING is subject), ING has a duty of care to Milieudefensie under Article 6:162(2) Dutch Civil Code to contribute to preventing this all-pervasive danger.
51. This duty of care has been confirmed in Milieudefensie's climate case against Shell. The judgment of the Court of Appeal of The Hague in this case undeniably shows that protection against dangerous climate change is a human right, that has an effect on the societal standard of care pursuant to Article 6:162(2) DCC of companies that significantly contribute to the

⁴⁷ Exhibit MD-121, UNEP 2024, 'Emissions Gap Report 2024', Figure 4.2, p. 34. According to UNEP, there is a 66% chance that the unconditional NDCs of countries will lead to a temperature increase of 2.8°C. If we were to only look at the current (implemented) policy of countries, this will lead to a 66% chance of 3.1°C.

⁴⁸ See Chapter XIV.2.

climate problem and having it within their power to make a contribution to countering this danger.⁴⁹ According to the court of appeal, such companies are obliged to limit their greenhouse gas emissions in order to counter dangerous climate change, and this gives them their own responsibility to achieve the goals of the Paris Agreement.⁵⁰ This responsibility is separate from what the legislator is asking of companies.⁵¹ For these companies this leads to a societal duty of care to reduce their emissions, including their Scope 3 emissions.⁵² In addition, the court of appeal concluded that continuing investments in fossil fuel infrastructure lead to what is called a '*carbon lock-in*' effect, that maintains the demand for fossil fuels and delays the transition to sustainable alternatives.⁵³ This is in connection with, inter alia, the long payback time of such fossil fuel investments.⁵⁴ The court of appeal concluded that the carbon lock-in is creating roadblocks that can seriously delay the energy transition.⁵⁵ Because of the negative consequences for the energy transition, the court of appeal believes that investments in new oil and gas fields may be at odds with the drastic reductions that are necessary to keep the climate goals of the Paris Agreement within reach.⁵⁶ According to the court of appeal, the societal duty of care also creates responsibilities in that respect.⁵⁷

52. In Milieudefensie's opinion, the above-discussed interpretation of the duty of care of Article 6:162 DCC also has legal relevant for the interpretation of ING's legal obligation. Just as was established with regard to Shell, ING has long known of the danger of climate change, it has an influence on a quantity of emissions that also counts at global scale, has a role to play in the transition to a sustainable society, and possesses options for effectively interpreting that role through mitigation and precautionary measures. Milieudefensie will present additional support for this view in this summons.⁵⁸
53. It will become clear in this respect that the existence of this responsibility for ING has not appeared out of thin air. From the early 2000s on ING has shown that it is aware of this responsibility, and as of 2007 ING has, moreover, explicitly acknowledged its responsibility in causing and limiting the danger of climate change. To this day ING continues to reinforce this responsibility, for instance as a signatory of various sectoral climate initiatives like the '*Net-Zero Banking Alliance*' (NZBA) and by statements made in its own climate reports.
54. Nevertheless, ING is not doing justice to this responsibility. ING's climate policy has some crucial shortcomings, as will be explained in this summons.⁵⁹ The essence of those shortcomings is that ING's emissions reduction targets are not adequate, and that various necessary emissions reduction targets are completely lacking. The absence of overarching and sectoral targets that focus on an *absolute* reduction of ING's emissions is a significant shortcoming in this respect, because only an *absolute* reduction of greenhouse gas emissions can ensure that the previously mentioned carbon budget is not exceeded.

⁴⁹ Court of Appeal of The Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2100, paras. 7.6 to 7.27.

⁵⁰ Ibid, paras. 7.27, 7.55 and 7.57.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid, para. 7.59.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid, paras. 7.61 and 7.62.

⁵⁷ Ibid

⁵⁸ See Chapters XI, XIII and XIV.

⁵⁹ See Chapter XV.

55. On top of this, due to its flawed climate policy ING is continuing to finance and facilitate many billions in fossil fuel projects, as a result of which these projects will continue to cause excessively high emissions for decades to come.⁶⁰ With this ING is contributing to an economy that maintains the dependency on fossil fuel energy, making it increasingly difficult to achieve the 1.5°C goal. ING is therefore financing and facilitating on a large scale the lock-in effect for which the Court of Appeal of The Hague determined in the Shell case that because of the adverse consequences for the energy transition, this could be at odds with the climate goals. This is despite the fact that ING explicitly acknowledged the possibility and consequences of that lock-in effect back in 2007.⁶¹
56. For these and all other reasons mentioned in this summons, Milieudefensie has come to the conclusion that ING, through its current flawed climate policy, is guilty of a breach of its obligations under Article 6:162(2) DCC. ING must remedy this tortious situation by modifying its policy in such way that it is in line with the 1.5°C goal. Toward this end ING's climate policy must provide for various measures, including adequate emissions reduction targets and limitations for the financing and facilitating of investments in new fossil fuel projects.
57. Milieudefensie will explain in detail in this summons what these climate measures must encompass, and that various widely supported sources confirm that ING must and can also apply these.⁶² Milieudefensie will refer to, among other things, the UN Guiding Principles, the OECD Guidelines for Multinational Enterprises and the Corporate Sustainability Due Diligence Directive (CSDDD),⁶³ the importance of which was supported by the Court of Appeal of The Hague in the Shell case.⁶⁴
58. That the Court of Appeal of The Hague in the Shell case nevertheless rejected the emissions reduction target requested by Milieudefensie, does not detract from the legal obligations for which Milieudefensie is holding ING accountable in this case. On good and convincing grounds, the court of appeal included a wide range of objective reference points to hold that Shell has an obligation to reduce its emissions.⁶⁵ When answering the question by what specific reduction percentage Shell is bound, the court of appeal suddenly narrowed that framework for assessment by considering that establishing such a specific target is only possible if a reduction percentage is evidenced by existing climate legislation or consensus in climate science.⁶⁶ All other relevant objective reference points, including the reference points that the court of appeal did involve in determining that Shell has an obligation to reduce its emissions, were consequently not taken into consideration. This is unfathomable and incorrect, and Milieudefensie has challenged this opinion in appeal to the Supreme Court.
59. With its reasoning on the effectiveness of a reduction obligation the court of appeal is also applying an incorrect framework of assessment, not in the last place because the court of appeal is consequently failing to recognise the essence of a *shared* responsibility. This reasoning is therefore at odds with the jurisprudence of the Dutch Supreme Court, the ECtHR and foreign courts, from which it follows that the benchmark should have been whether the emissions reduction demanded by Milieudefensie is an effective measure against Shell's

⁶⁰ See Chapters V.6, VII.3.3 and XIV.3.5.

⁶¹ See Chapter XII.3.2.

⁶² See Chapter XIV.

⁶³ See Chapters IX and XIII.

⁶⁴ Court of Appeal of The Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2100, paras. 7.21, 7.22, 7.26, 7.42 to 7.46, 7.50, 7.55, 7.56 7.61, 7.99.

⁶⁵ Ibid, paras. 7.1 to 7.62.

⁶⁶ Ibid, para. 7.67.

individual tortious actions (and thus not necessary against the more comprehensive problem, that is also caused by others).⁶⁷

60. Milieudefensie is therefore of the opinion that the court of appeal, when applying the correct framework of assessment to specify Shell's legal obligation, should have decided to award the demanded emissions reduction. Milieudefensie therefore filed an appeal before the Dutch Supreme Court in the Shell case. However, this case against ING cannot await the outcome of that case. There can be no doubt about the urgent interest of Milieudefensie with respect to the measures demanded of ING. They focus on what the court of appeal describes in the Shell case as the "*the greatest issue of our time*".⁶⁸
61. Partly for this reason, Milieudefensie will also set out in this summons what it believes is the right legal framework to assess what has been demanded.⁶⁹ When applying this framework, it will turn out that ING is obliged to reduce its emissions, and that this obligation can be made specific for ING, in accordance with that framework, in the climate measures that Milieudefensie is demanding of it.
62. It is of the utmost importance that ING start reducing its emissions immediately because - as was determined in the Urgenda case - if reducing emissions is postponed, the risk of no longer being able to avoid dangerous climate change will increase and so will the (social) costs of the process of reducing emissions. The European Central Bank, among others, shows in its own analyses that a rapid and firm 1.5°C transition is the best way forward, not only from the perspective of an adequate climate approach, but also from the perspective of financial stability, the economy and keeping energy affordable.⁷⁰
63. Everything that will be discussed in this summons indicates that doing nothing or not doing enough is not a legitimate option for ING, and that awarding of the climate measures demanded by Milieudefensie will cause ING to take the legally necessary action.
64. The demands of Milieudefensie focus on the appropriate contribution that may be expected of ING to legitimately interpret its duty of care. Within the framework of what has been demanded, ING then remains free to determine at its own discretion what options it wishes to use and what options it does not. ING thus retains the freedom to determine its policy with regard to performing its legal obligation in a manner that is the most appropriate and least cumbersome for it, provided it makes an adequate climate contribution.
65. As Milieudefensie will explain, ING has a wide range of options to achieve the emissions reduction targets that it is required to satisfy pursuant to its duty of care.⁷¹ An important instrument in this respect is that it, based on the climate transition plans of clients, will increase its engagement with clients, thereby using its leverage to help the client become sustainable. This process of becoming more sustainable will then lead to a reduction in the emissions financed and facilitated by ING and to the ceasing or phasing out of the financing and facilitating of certain greenhouse gas-intensive economic activities (insofar as this is required to bring ING's Scope 3 emissions in line with the 1.5°C goal). ING can thus retain its relationship with clients and still bring its activities in line with the 1.5°C goal. The requisite

⁶⁷ See Chapter XVI.

⁶⁸ Court of Appeal of The Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2100, para. 7.25.

⁶⁹ See Chapter XI.

⁷⁰ See Chapter XII.5.

⁷¹ See Chapter XIV.4.

emissions reduction targets therefore do not imply any necessary shrinkage on the part of ING. These wide-ranging options of ING and the effectiveness thereof are widely supported and, moreover, desired by the UN Guiding Principles and the OECD Guidelines for Multinational Enterprises (discussed hereinafter) to which ING has committed itself. ING is already, to some degree, applying these options itself.

66. Insofar as the climate measures that Milieudefensie is demanding could cause ING to be confronted with difficult decisions or require it to make financial sacrifices, this still does not mean that Milieudefensie is demanding too much of ING.⁷² The urgency and need for the demanded climate measures and the all-encompassing danger that the measures seek to prevent are so great, that any adverse consequences for ING in relation to implementing the demanded measures are insignificant. These adverse consequences, should they arise, can therefore not be of decisive importance. The district court worded this position as follows in the Shell case:

“Due to the serious threats and risks to the human rights of Dutch residents and the inhabitants of the Wadden Sea region, private companies such as RDS may also be required to take drastic measures and make financial sacrifices to limit CO₂ emissions to prevent dangerous climate change. For these reasons, RDS’ argument, namely that accepting the reduction obligation, as advocated by Milieudefensie et al., is highly unusual and has no precedent, does not benefit RDS.”⁷³

67. The district court appears to align with the considerations of the court of appeal in the Urgenda case:

“The court of appeal, for that matter, acknowledges that measures to reduce CO₂ emissions, especially in our industrialised society, are drastic and that they require (financial) sacrifices but on the other hand, there is a lot at stake such as the risk of irreversible damage to global ecosystems and the habitability of our planet.”⁷⁴

68. In the Shell case, the court of appeal also highlighted the great severity of the danger when determining Shell’s legal obligations (although the court of appeal failed to do when it came to determining how to concretely perform that obligation; see para. 58). The court of appeal considered:

“The threat posed by climate change is so great that it could be life-threatening in several places on earth and will start to have a profound and negative impact on human and animal existence in many other places. Climate change damages the rights protected by Articles 2 and 8 ECHR, both in the Netherlands and abroad, and will damage them even further. Those rights are also decisive for the interpretation of the societal standard of care and for answering the question what can be required of Shell, as a large and international company, under that standard.”⁷⁵

69. Precisely because there is so much at stake, a change in policy can be demanded of ING through legal action. With its operating activities, ING makes an enormous individual contribution to the climate issue and that involves a special and large responsibility for ING, which should also have legal consequences.

70. Milieudefensie therefore informed ING by letter of 19 January 2024 of its legal obligation of

⁷² See Chapter XII.5.

⁷³ District Court of The Hague, 26 May 2021, ECLI:NL:RBDHA:2021:5337, para. 4.4.53.

⁷⁴ Court of Appeal of The Hague, 9 October 2018, ECLI:NL:GHDHA:2018:2591, para. 67.

⁷⁵ Court of Appeal of The Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2100, para. 7.25.

the demanded climate measures, and demanded that ING performed its legal obligation.⁷⁶ By letter of 16 January 2025⁷⁷ Milieudefensie informed ING one last time of the legal obligation (in part in light of the judgment of the court of appeal in the Shell case and the significance thereof for ING and the demands of Milieudefensie; see also para. 61 above).

71. ING's response to Milieudefensie's letters speaks volumes.⁷⁸ This shows that ING's flawed climate policy does not arise from incapacity, lack of knowledge or unfortunate coincidences on the part of ING. It is rather the result of a consciously chosen objection of ING to the climate measures for which a good climate policy should make provision. Contrary to the widely-borne acknowledgement of (the need for and achievability of) these climate measures, ING continues to ignore its responsibility to take these measures, based on defences that lack any substance.
72. In a last letter from ING to Milieudefensie of 4 February this year, ING made it definitely clear that it is not willing to take the demanded climate measures. In this very concise letter ING asserted that these measures are "*not realistic or reasonable*". As the only reason for this, ING mentions – without further substantive explanation – that the measures "*do not take account of the role of a bank in the transition and [not] supporting or contributing [...] to the system change that has to take place*".⁷⁹ Why ING takes this position is not made clear in its letter of 4 February 2025.
73. Because ING consciously persists in maintaining its current flawed climate policy, it willingly and knowingly accepts that its activities and emissions are and will remain contrary to the reductions that are necessary to prevent dangerous climate change.
74. As ING, even after the aforementioned letters of notice of Milieudefensie continues to persist with its tortious climate policy, Milieudefensie sees itself forced to issue summons against ING. In the following chapters Milieudefensie will discuss the jurisdiction of the district court, Milieudefensie's standing and the factual basis for its claims (Chapters II to X). After that there will be a discussion of the legal framework and the translation to the legal meaning of the facts and circumstances discussed for ING (Chapters XI to XIV). Milieudefensie will then explain that ING's climate policy does not satisfy ING's legal obligation (Chapter XV) and Milieudefensie will explain the effectiveness of the demanded climate measures (Chapter XVI). Lastly, the ING defences known to Milieudefensie will be discussed (Chapter XVII) and Milieudefensie is presenting a request for information to ING (Chapter XVIII).

II. JURISDICTION OF THE DISTRICT COURT

75. The District Court of Amsterdam has jurisdiction, as both ING Group N.V. and ING Bank N.V. have their registered office (as referred to in Article 1:10(2) of the Dutch Civil Code [DCC]) in Amsterdam (Article 2 in conjunction with Article 99 of the Dutch Code of Civil Procedure [DCCP], or Article 4(1) Brussels I bis in conjunction with Article 99 DCCP).

III. STANDING IN CLASS CLAIMS

III.1 INTRODUCTION

⁷⁶ Exhibit MD-019, Milieudefensie's letter to ING of 19 January 2024.

⁷⁷ Exhibit MD-020, Milieudefensie's letter to ING of 16 January 2025.

⁷⁸ See Chapter XVII.

⁷⁹ Exhibit MD-021, ING's letter to Milieudefensie of 4 February 2025.

76. The association Milieudefensie⁸⁰ (Friends of the Earth Netherlands) is an established interest group that has been striving to protect the living environment for more than 50 years. Milieudefensie stood at the basis of the environmental movement in the Netherlands, which started almost simultaneously with the 1972 publication of the Club of Rome report (entitled '*Limits to growth*'). One of the Dutch members of the Club of Rome, Wouter van Dieren, was one of the co-founders of Milieudefensie.
77. Since its founding in 1971, Milieudefensie's priority has been environmental protection and nature preservation and taking action against (industrial) pollution. Since at least 1990 Milieudefensie has also been focusing on the global climate problem. In the past decades, due to its many activities in this area Milieudefensie has grown into one of the most well-known environmental and climate organisations of the Netherlands. Milieudefensie now has 165 employees⁸¹, more than 107,000 members and donors⁸², 21 local chapters⁸³ and many volunteers. Donald Pols, previously Global Sustainability Senior Manager at the Energy Research Centre of the Netherlands and head of the World Wildlife Fund Climate Programme, has been the director of Milieudefensie since 2015.⁸⁴ Since 2022 the board/directorate of Milieudefensie consists of two members. Since January 1st 2025, an interim co-director is the second director.
78. Milieudefensie has also been a member of Friends of the Earth International since the 1970s. Friends of the Earth International is the biggest environmental network in the world, with organisations in 75 countries spread out across all continents. Friends of the Earth International has a total of 5000 local chapters. With 2 million members and donors globally, Friends of the Earth International strives to achieve a sustainable and fair world.⁸⁵
79. By means of this summons Milieudefensie is holding ING to account for the substantial climate impact that the bank finances and facilitates with its activities. With this lawsuit Milieudefensie is standing up for the general interest of present and future generations in limiting the significant dangers and risks of climate change, to which ING contributes in a legally relevant sense. The goal is to limit global warming to the universally and internationally acknowledged danger threshold of 1.5°C above the pre-industrial temperature.
80. In this chapter Milieudefensie will substantiate that all applicable requirements and rules regarding standing laid down in Article 3:305a DCC and Title 14a DCCP have been satisfied.
81. The following should first be noted in this respect. The statutory requirements for standing in lawsuits were made more stringent following the entry into force of the Settlement of Mass Damages in Class Actions Act (WAMCA) as of 1 January 2020. This includes the statutory arrangement laid down in Title 14a DCCP, which contains special procedural regulations for class actions. What the legislator had in mind when introducing Title 14a DCCP was class actions for damages, not class actions relating to the general interest. Part of the statutory rules of Title 14a are not geared to – nor suitable for – class actions relating to the general

⁸⁰ Exhibit MD-022, CoC extract.

⁸¹ Exhibit MD-023, Milieudefensie Annual Report 2023, p. 66.

⁸² Exhibit MD-023, Milieudefensie Annual Report 2023, p. 33.

⁸³ See <https://www.datocms-assets.com/115430/1709816593-overzichtactieslokaaleafdelingen2023.pdf>.

⁸⁴ See <https://milieudefensie.nl/over-ons/wie-is-donald-pols-de-directeur-van-milieudefensie>.

⁸⁵ See <https://milieudefensie.nl/over-ons/ons-internationale-netwerk>. See also <https://www.foei.org/what-we-do/>.

interest.

82. The legislative history shows that with the introduction of the WAMCA the legislature did not intend to make the work of organisations that already play an important role in protecting collective interests unnecessarily complicated, as evidenced by an explanation from the then Minister for Protection of the Law regarding Article 3:305a(6) DCC, the paragraph that introduced a less stringent regime regarding standing in idealistic actions:

“Paragraph 6 seeks to leave sufficient leeway for organisations that currently play an important role in protecting collective interests in class actions and that by definition are not geared to receiving damages. It is not the intention of the bill to make it unnecessarily difficult for these organisations to continue their work.”⁸⁶ [translation by legal counsel]

83. Whereas the less stringent regime on standing of Article 3:305a(6) DCC sets aside the more stringent requirements of Article 3:305a(2), parts a to e, and (5), no similar provision was made for Title 14a DCCP. However, the application of Title 14a DCCP has a number of objectionable consequences, that make the general interest action more time consuming and costly, including the waiting period and the layered regime on standing of Article 1018c(3) to (5) DCCP. This is inefficient, as will be explained below. Milieudefensie will seek consultation with ING to try to reach agreement on the manner in which the standing phase can proceed as efficiently as possible. If agreement is reached, the parties will jointly present a proposal for the proceedings to the court.
84. It has in the meantime been acknowledged in lower-court case law that various other rules of Title 14a DCCP are not suitable for use in general interest actions and need not be applied. Milieudefensie will explain this in further detail in Chapter III.5.
85. Following is an explanation that Milieudefensie meets the requirements of Article 3:305a DCC.

III.2 THE REQUIREMENTS OF ARTICLE 3:305(1) AND (2) DCC

86. Pursuant to Article 3:305a(1) DCC, a foundation or association with full legal competence can bring legal action intended to protect similar interests of other persons (similarity requirement), insofar as it represents these interests pursuant to its articles of association (articles of association requirement) and these interests have been sufficiently safeguarded. According to Article 3:305a(2) DCC, the interests are sufficiently safeguarded if the legal entity is sufficiently representative (safeguarding requirement, also called the representativity requirement). These three requirements will subsequently be discussed, starting with the articles of association requirement.

III.2.1 Article 3:305a(1) DCC – Milieudefensie’s objects and actual activities under its articles of association

87. Milieudefensie is an association with full legal competence. Milieudefensie’s objects under its articles of association are contained in article 3.1 of those articles of association and read as follows:

⁸⁶ Dutch House of Representatives, parliamentary year 2017-2018, 34608, no. 6, Report Memorandum (NnavV), p. 11.

“The objects of the Association are to make a contribution to solving and preventing environmental issues and to preserve cultural heritage, and to strive for a sustainable society on a global, national, regional and local level in the broadest sense of the word and in the interest of the members of the association, as well as in the interest of the quality of the environment, nature and landscape in the broadest sense of the word for present and future generations.”⁸⁷ (emphasis added by legal counsel)

88. As such, protecting the environment and nature at home and abroad for both present and future generations and striving for a sustainable society is, in effect, the objects for which Milieudefensie was set up as an association. Article 3.2 of the articles of association indicates how the Association aims to achieve these objects, inter alia by carrying out research, informing the public, influencing decision-making and engaging in litigation:

“The Association aims to achieve its objects by critically following all developments in society that have an effect in the area of the environment, nature, landscape and sustainability, by influencing the relevant decision-making process by using all appropriate and permitted means, conducting research, distributing and providing information in the broadest sense of the word, securing court decisions and undertaking anything considered necessary by the Association in order to achieve its objects.”⁸⁸

89. The articles of association requirement also comes with the requirement that the interest group must in fact serve the objects set out in the articles of association. This is crystal clear in the case of Milieudefensie. Following is a non-exhaustive overview of Milieudefensie’s many activities in the past decades which Milieudefensie engaged in to realise its objects.
90. In the 1970s, Milieudefensie successfully opposed the pollution of the Rhine, among other things, and the full closure of the Eastern Scheldt (to protect its (marine) water environment). The fight against environmental pollution caused by disposable packaging also started during those years. Milieudefensie planted a protest forest against the construction of a new runway at Schiphol. Its actions served to prevent environmental pollution caused by unbridled expansion of the airport and air traffic.⁸⁹
91. In the 1980s, Milieudefensie successfully fought against CFCs in aerosols that destroy the ozone layer. At that time, Milieudefensie also exposed the environmental pollution caused by fossil fuels, including acid rain and the greenhouse effect.⁹⁰ It campaigned against the use of toxic PVC in packaging and against cadmium, the toxic yellow colourant in Heineken’s yellow beer crates. Because of those protests, Heineken’s crates are now green and harmless. During those years, Milieudefensie also campaigned against the use of tropical hardwood (and the resulting deforestation), which led to the introduction of the FSC quality mark. Milieudefensie also set up the Milieutelefoon (now MilieuCentraal), an environmental hotline for those with questions about environmental issues. This initiative was taken up by other countries too.
92. In the 1980s, Milieudefensie also started campaigning for the roll-out of sustainable energy as an environmentally-friendly alternative to the polluting use of fossil fuel energy. “Aktie Schoonstroom”, a campaign for clean energy, was one example.⁹¹ It was a reaction to the government’s position that for our power supply, we could only choose between power generated by nuclear energy or by coal. With its campaign, Milieudefensie showed there

⁸⁷ Exhibit MD-024, Statuten Milieudefensie, p. 2.

⁸⁸ Ibid.

⁸⁹ See <https://milieudefensie.nl/over-ons/onze-geschiedenis>.

⁹⁰ Exhibit MD-025, Milieudefensie 1988, ‘Het gat in de Ozonlaag’ (selected pages).

⁹¹ See, e.g., Exhibit MD-026, Milieudefensie 1986, ‘Schoonstroomkrant’, p. 1.

were better alternatives and it pointed out that due to increasing environmental pollution, the future of power generation was the use of sustainable sources such as wind and solar energy.

93. In 1990, Milieudefensie and Stichting Natuur en Milieu published a report entitled “The Greenhouse Effect, it’s now or never: national exploration of an approach to the CO₂ problem”.⁹² After successfully drawing attention to the ozone problem (in 1989, the successful Montreal Protocol to control CFCs came into force), Milieudefensie brought the climate issue into the open on an even grander scale.
94. In 1991, Milieudefensie, author Martijn van Calmthout and Van Arkel publishers released a book entitled *Broeikaseffect*, the foreword of which was written by the then Minister for Housing, Spatial Planning and the Environment, Minister Alders. The book discusses the causes and consequences of climate change and also discusses the need to pursue climate politics and a climate policy.⁹³ The book formed a part of a large climate campaign run by Milieudefensie in 1991 and thereafter. The climate campaign in question was announced in Milieudefensie’s 1990 Annual Report, which reads as follows:

*“It is most appropriate that the programme for 1991 includes the largest campaign in Milieudefensie’s history, the greenhouse gases campaign, [...]”*⁹⁴

95. In its 1991 Annual Report, Milieudefensie reported about the way in which the campaign was run and it specified the results achieved to date:

“Ultimately, 43 local authorities joined the climate pact in 1991, representing 3.1 million residents, more than 20% of the Dutch population. The target of 50 (a quarter of the population) was reached in February 1992

[...]”

The campaign will be continued in 1992 and it will focus on the UNCED conference in Brazil⁹⁵, which may lead to an international Climate Convention

[...]”

*The campaign entitled “Working together toward a Clean World” (in collaboration with 11 other organisations, including Novib, the Ministry of Housing, Spatial Planning and the Environment and the Association of Netherlands Municipalities) focuses on the local authorities and will emphasise the Climate Pact and the local greenhouse policy.”*⁹⁶

96. In 1992, prior to the UN Conference in Brazil, Milieudefensie published the action plan *Netherlands Action Plan for Sustainability*. This plan is the result of over a year of investigation, calculations and discussion and shows what the Netherlands could concretely look like if account is taken of sustainable development throughout the world, with a fair distribution of resources. The action plan was presented in Rio, where it enjoyed a positive reception. Numerous environmental and development organisations then used the action plan in their own countries to initiate discussions on sustainability. National action plans or related publications and translations then appeared in many African, American and Asian countries.⁹⁷ The renowned British economist Kate Raworth, a senior associate with the

⁹² Exhibit MD-027, Albers et al. 1990, ‘Het Broeikaseffect, erop of eronder’ (print-out from website) (website print).

⁹³ Exhibit MD-028, Calmthout 1990, ‘Het Broeikas Effect’ (selected pages) (selected pages), pp. 1 to 6.

⁹⁴ Exhibit MD-029, Milieudefensie Annual Report 1990 (selected pages) (selected pages), p. 2 (foreword of the president). See also p. 4 (“Broeikascampagne houdt sectie in haar greep”).

⁹⁵ UNCED stands for United Nations Conference on Environment and Development.

⁹⁶ Exhibit MD-030, Milieudefensie Annual Report 1991 (selected pages) (selected pages), pp. 1 and 3, under the heading “Broeikascampagne: het tij keren”.

⁹⁷ See, inter alia, Exhibit MD-031, Milieudefensie Annual Report 1994, p. 17 (“Milieudefensie Internationaal”)

University of Oxford and Professor of Practice at Amsterdam University of Applied Sciences, referred in her bestseller “Doughnut Economics” to the Netherlands Action Plan for Sustainability as a leading contribution to views and observations regarding sustainable development.⁹⁸ On the initiative of Friends of the Earth Europe, over a period of four years Milieudefensie coordinated a campaign comprising organisations from 31 countries, resulting in, inter alia, a report drawn up by the Wuppertal Institute *Towards Sustainable Europe*. It formed the start of a European campaign, “*Campaign for Sustainable Development in Europe*.”⁹⁹

97. In 1994, the Association organised the “Greenhouse Tour” in 33 towns and cities, as well as a “National Greenhouse Debate”, later followed by “Climate Cafés”. The number of towns and cities that joined the Climate Pact rose to 131.¹⁰⁰
98. A large international UN climate top was held in The Hague in 2000. Together with Friends of the Earth International, Milieudefensie conceived and organised ‘the dyke against climate change’. Almost 6000 campaigners from forty countries built a 400-metre long dyke of sandbags alongside the conference centre. The dyke received a lot of international and national interest and resulted in pressure on the negotiating countries.¹⁰¹
99. As the foregoing demonstrates, since its official formation, Milieudefensie has been focusing on environmental protection and sustainable development in many areas and on many different scale levels, from the toxic production of beer crates and packaging to global environmental problems such as the deterioration of the ozone layer, acid rain and climate change. Milieudefensie has continued that line.
100. More well-known, subsequent campaigns and results achieved include the following:
 - (i) the popular ‘yes/no’ and ‘no/no’ stickers on letterboxes, aimed at reducing the use of paper and consequently the felling of trees;
 - (ii) under the influence of counting the number of EKO quality labels for organic food and public campaigns by Milieudefensie, supermarkets started to sell more organic products;
 - (iii) campaigns were dedicated to encouraging sustainable agriculture and livestock breeding and the use of renewable energy;
 - (iv) campaigns were held against filling green rural areas up with new industrial estates (this resulted in the inclusion of the Ladder for Sustainable Urbanisation in the law) and against air pollution caused by ever-increasing car use;
 - (v) as of 2008, Milieudefensie litigated against Shell together with four Nigerian farmers with regard to the oil pollution that Shell caused in the Niger Delta. In 2021, the Hague Court of Appeal held that Shell should have done more to prevent leaks. In addition,

⁹⁸ Raworth, K. (2018). *Doughnut Economics. Seven Ways to Think Like a 21st-Century Economist*. Random House Business Books. p. 54.

⁹⁹ See, inter alia, Exhibit MD-032, Buitenkamp 1992, ‘Duurzame Ontwikkeling in Nederland en Europa’ (selected pages) (selected pages), pp. 83-96.

¹⁰⁰ Exhibit MD-031, Milieudefensie Annual Report 1994, pp. 12-13 (“Energie”).

¹⁰¹ See <https://milieudefensie.nl/over-ons/onze-geschiedenis>.

Shell Nigeria was ordered to compensate three of the four Nigerian farmers for the oil contamination on their land. A settlement was reached on damages in 2022 and the long-running case came to an end;¹⁰²

- (vi) Milieudefensie's campaign against the extraction of shale gas due to the heavy environmental burden of this form of mining was very successful (and partly as a result of that campaign, no shale gas will be extracted in the Netherlands).¹⁰³

- 101. Milieudefensie has also remained specifically active in the field of climate change. Milieudefensie's long-term policy plans of the past 15-20 years are a testament to that.

2006-2010 Policy Plan "Looking Ahead to 2010!"

- 102. Between 2006 and 2010, Milieudefensie focused on encouraging climate-friendly banking, among other things. As of that time Milieudefensie also drew specific attention to the need to divert cashflows from fossil fuels to sustainable energy and pointed out the responsibility of private banks. The policy plan has this to say:

"The fast changes to the climate pose a great threat to humans and the environment [...] Climate change is connected to the large-scale use of fossil fuels in the energy supply [...] We need a shift of money flows from the fossil fuel economy to the sustainable energy sector [...] In the coming years Milieudefensie wants to tackle the problem at the source by encouraging the financing of climate-friendly investments. Private banks and public asset managers are the ideal partners in that respect. The involvement of large asset managers like banks in activities that harm the environment is not particularly visible to the public at large. That is why Milieudefensie is campaigning for 'climate-friendly banking', which means we show what happens to the banks' money."¹⁰⁴

- 103. In 2006, Milieudefensie started the campaign: *"Banks, save the climate"* because banks finance activities that are not environmentally-friendly across the globe on a large scale, such as oil and gas exploration, mining, intensive cattle farming and cutting down forests. Milieudefensie focused on the four large banks in the Netherlands: ING, Rabobank, ABN AMRO and Fortis and highlighted the options they had to contribute to solving the climate problem instead of making the problems worse through investments and loans, concrete products and their own operations. State Secretary Van Geel of the Environment and the Social and Economic Council (SER) took over Milieudefensie's appeal to banks to become more climate friendly.¹⁰⁵
- 104. In 2007, Milieudefensie addressed both banks and private clients of banks. In the framework of the HIER campaign of over forty charity organisations, in 2007 Milieudefensie started the *"Not with my money"* campaign, in which Milieudefensie compared banks in terms of climate performance in relation to policy and products and published information packages on how things could be done differently. In addition, it asked citizens to call on banks to make more climate-friendly investments by signing an action card.¹⁰⁶ A large-scale national campaign led

¹⁰² See <https://milieudefensie.nl/actueel/shell-betaalt-15-miljoen-euro-schadevergoeding-vanwege-olievervuiling-in-nigeria>.

¹⁰³ See <https://milieudefensie.nl/wonen-zonder-gas/hoe-schaliegas-opkwam-en-ten-onder-ging>.

¹⁰⁴ Exhibit MD-033, Milieudefensie 2006, 'Algemeen Beleidsplan 2006-2010: Uitzien naar 2010' (selected pages) (selected pages), pp. 18-19.

¹⁰⁵ Exhibit MD-034, Milieudefensie Annual Report 2006 (foreword and summary), pp. 2-3 (voorwoord) and p. 8 (samenvatting milieuresultaten).

¹⁰⁶ Exhibit MD-035, Milieudefensie Annual Report 2007 (foreword and chapter 'Klimaat en Energie') (voorwoord and chapter 'Klimaat en Energie'), pp. 25-26.

to a lot of attention for the societal impact of investments of pension funds and banks and to almost 100,000 visitors on the www.nietmetmijngeld.nl website.¹⁰⁷

105. Since 2007 Milieudefensie has also formed part of a broad coalition of societal organisations to persuade the government to follow a better climate policy. In May 2007, Milieudefensie, Natuur en Milieu, Greenpeace, the World Wildlife Fund, FNV and ABVAKABO FNV presented a joint plan – drawn up by CE Delft, which calculated the effects for the climate, the economy and employment – for a feasible, inexpensive and effective climate policy: Green4Sure.¹⁰⁸
106. Green4Sure formed the basis for a further campaign for a Dutch Climate Act, starting in February 2008, together with Natuur & Milieu and JMA, Milieudefensie's youth organisation. The campaign was supported by the entire Dutch environmental movement and development organisations. 75,000 people signed the petition that was to be presented to the Dutch House of Representatives.¹⁰⁹ The initiative for this campaign came from Donald Pols, who at that time was the campaign leader for Climate and who is now the co-director of Milieudefensie. A complete statute text was drafted on instruction of Milieudefensie and Natuur & Milieu, which served as the basis for a bill. Unfortunately, Dutch politics was not yet ready for this legislation. Minister Cramer for the Environment called the proposal "sympathetic", but she preferred to rely on voluntary agreements with the business community rather than legislation. Ten years later the Dutch House of Representatives adopted the initiative and a Climate Act was presented and accepted by the House of Representatives on 20 December 2018.
107. In 2009, together with Oxfam Novib, Amnesty International and FNV, Milieudefensie launched the development of a 'Fair Bank Guide' for consumers. The Fair Bank Guide compares the ten large Dutch banks with each other in relation to various sectors and topics, such as climate change, biodiversity, arms trade and transparency. This important tool for galvanising banks still exists and has been expanded with the 'Fair Insurance Guide' and the 'Fair Pension Guide'.¹¹⁰
108. In 2009, Milieudefensie also contributed to the Beat the Heat Now campaign, which drew attention to the Climate Summit in Copenhagen. A major Climate Event was held in the Jaarbeurs exhibition centre in December 2009, after which the Beat the Heat Now Express left for Copenhagen, carrying numerous ministers, young people, scientists and interest groups.¹¹¹ This presented the opportunity to forge relationships and coalitions.

2010-2015 General Policy Plan: "With support to movement"

109. Between 2010 and 2015, in part inspired by the credit crisis, Milieudefensie focused on stressing that the climate and the credit crises were connected to the same source, namely the unbridled capitalist (short-term) market orientation that ignores the negative consequences for humans and the environment in the long term. The following was announced in the policy plan for that period:

"We want to demonstrate the link between the crises that hold the world in their grip - the energy,

¹⁰⁷ Ibid, p. 26.

¹⁰⁸ Ibid, pp. 26-27.

¹⁰⁹ See <https://milieudefensie.nl/actueel/tijdlijn-hoe-nederland-zijn-klimaatwet-krijgt>.

¹¹⁰ See <https://www.eerlijkegeldwijzer.nl/over-ons/>.

¹¹¹ See <https://www.duurzaamgebouwd.nl/artikel/20091208-beat-the-heat-now/amp>.

*climate, credit and food crises - and we want to formulate answers to them.”*¹¹²

and

*“Sustainability and the environment are notions that are embedded in society. Pressure on the Earth's natural resilience is still growing. Raw materials are being depleted faster, species are disappearing, the climate is increasingly disrupted and the environment is polluted.”*¹¹³

110. Milieudefensie implemented its policy plan in this area, inter alia by instructing Ecofys to study the *“Accelerated development of sustainable energy in the Netherlands”*.¹¹⁴
111. Project A15 was launched in 2013, in collaboration with Natuur & Milieu and Nationale PostcodeLoterij. This project aimed to create the world's first sustainable highway, with clean and silent cars, charged with locally generated solar and wind energy.
112. From 2014, following growing unrest in Groningen because of earthquakes caused by gas extraction, Milieudefensie started to focus on ending gas extractions in Groningen, together with the Groninger Bodembeweging, among others. During the climate conferences in 2018, Milieudefensie also urged for a change of course in the national energy policy, in favour of investments in renewable sources. The motto of that successful campaign was *“Together we can reduce gas use”*. At the end of 2014, the Dutch House of Representatives decided that there was no room in the Netherlands for the extraction of shale gas because of the environmental risks involved. At the end of 2018, after many protests and commotion, it was announced that gas extraction in Groningen would be phased out and definitely ended.
113. During this time Milieudefensie continued following the financial sector to persuade actors in the sector to contribute to sustainability and the energy transition through their investments. The Fair Bank Guide was rolled out internationally and political decision makers also supported more transparency from banks regarding the impact of their investments. In 2015, on the eve of COP21 in Paris, research showed that ING was the bank with the greatest adverse impact on the climate in the Netherlands, with 25 billion dollars in loans to important companies and projects in the fossil fuel sector.¹¹⁵ The spokesperson of the Fair Bank Guide again pointed out that banks have a role to play when it comes to the climate change approach: *“The dramatic effects of climate change are already visible. ING too knows that something has to be done, but nevertheless continues making substantial investments in fossil fuel sources. This really needs to change. Banks must switch their investments from fossil fuel to sustainable energy sources as soon as possible.”*¹¹⁶

2016-2025 General Policy Plan: “Working together toward a fair transition”

114. For the period up to 2025, combating climate change was and is at the top of Milieudefensie's agenda. It was announced and explained in the policy plan that Milieudefensie would continue fighting for a fair transition:

“Climate change continues unabatedly, despite warnings from scientists. Furthermore, the transition

¹¹² Exhibit MD-036, Milieudefensie 2010, ‘Algemeen Beleidsplan 2010-2015: Met Draagvlak naar Beweging’ (selected pages), pp. 3-4.

¹¹³ Ibid, p. 4.

¹¹⁴ Exhibit MD-037, Geurts et al. 2009, ‘Versnelde Ontwikkeling van Duurzame energie in Nederland’ (selected pages) (selected pages), pp. 1-2.

¹¹⁵ See <https://milieudefensie.nl/actueel/ing-meest-klimaatsschadelijke-bank-van-nederland>.

¹¹⁶ Ibid.

to a climate-friendly society isn't going fast enough. We are the last generation that can stop climate change. Milieudefensie acknowledges this responsibility in this new General Policy Plan. We will all have to use the means available to us in order to set up and develop an effective social movement in the next ten years that will stop greenhouse gas emissions.”¹¹⁷

and

“This requires a fundamental change in the way in which we produce, do business and consume. The current method is untenable. Climate change is an urgent issue. Not only are we already confronted with the consequences every day at present but our children's future is at stake too. [...] Milieudefensie feels that responsibility and it, therefore, makes climate justice the central theme of this new General Policy Plan. During the next few years, we will be trying to curb the disproportionately large climate impact of the Netherlands on the world and we will ensure that the Netherlands will take the lead in climate solutions. This will be realised by holding our business community to account about its climate impact at home and abroad. And, together with our international network Friends of the Earth, by supporting people worldwide in building up fair and sustainable food and energy sources.”¹¹⁸

115. From 2016 on Milieudefensie made the subject of climate justice the spearhead of its policy. It commissioned various studies to be carried out regarding this topic and frequently published its findings in order to draw attention to the need for a just climate policy and a just energy transition.¹¹⁹
116. Milieudefensie explicitly focuses on the need for a just transition at home and abroad. This is based, inter alia, on the knowledge that people around the world will benefit from a progressive climate approach and associated sustainable energy transition, while this can only succeed if both the benefits and the burdens are fairly divided on a national and international level and the richest countries and private systemic players with the greatest (historical) responsibility make a proportional contribution to the global climate approach.
117. An important part of this is holding the business community to account for their climate impact at home and abroad. In line with this, Milieudefensie, together with Oxfam Novib, Greenpeace and BankTrack filed a complaint against ING via the National Contact Point OECD Guidelines for Multinational Enterprises (NCP). Following this complaint, the NCP held that the OECD Guidelines require that ING (as well as other commercial banks) establish concrete climate goals for its financial services, in line with the Paris Agreement.¹²⁰

¹¹⁷ Exhibit MD-038, Milieudefensie 2016, 'Algemeen Beleidsplan 2016-2025: Samenwerken aan een Eerlijke Transitie' (selected pages) (selected pages), p. 3.

¹¹⁸ Ibid, p. 4.

¹¹⁹ See also <https://milieudefensie.nl/alles-wat-je-wil-weten-over-klimaatrechtvaardigheid>. For a few examples in the Dutch context, see: 'De lancering van een nieuw rekenmodel voor eerlijker klimaatbeleid' [The launch of a new calculation model for a fairer climate policy] on 8 November 2023, available on <https://milieudefensie.nl/actueel/dit-nieuwe-rekenmodel-laat-zien-hoe-ons-klimaatbeleid-rechtvaardiger-kan>. See the letter to the Dutch House of Representatives of 27 October 2021 from Milieudefensie, Woonbond and FNV: 'Laat kwetsbare huishoudens niet in de kou zitten' [Don't leave vulnerable households out in the cold], available on <https://milieudefensie.nl/actueel/20211025-brf-498-alternatief-voorstel-compensatie-stijgende-energieprijzen-en-isolatie-maatregelen.pdf>. See also the launch of the Fair Climate Agenda on 9 June 2021, 'Brede coalitie lanceert klimaatplan voor lagere inkomens' [Broad coalition launches climate plan for lower incomes], available on <https://milieudefensie.nl/actueel/brede-coalitie-lanceert-klimaatplan-voor-lagere-inkomens>. See also Milieudefensie, 2 July 2020, 'Verruiming warmtefonds biedt miljoenen huishoudens kans op kosteloos isoleren' [Expansion of heating fund offers millions of households the chance of free insulation], available on <https://milieudefensie.nl/actueel/verruiming-warmtefonds-biedt-miljoenen-huishoudens-kans-op-kosteloos-isoleren> and Milieudefensie, 24 June 2018, 'Visie: Eerlijke verdeling van lusten en lasten' [Vision: Fair division of the benefits and the burdens], available on <https://milieudefensie.nl/actueel/eerlijke-verdeling-van-lusten-en-lasten.pdf>.

¹²⁰ See <https://www.oxfamnovib.nl/persberichten/oeso-richtlijn-banken-moeten-klimaataanpak-publiceren-in-lijn-met-parijs-akkoord>.

118. In 2016, Milieudefensie started preparing the climate case against Shell. We are all familiar with the results of that case. After giving notice of liability in April 2018, Milieudefensie, together with Greenpeace Netherlands, the Waddenvereniging, Fossielvrij Nederland, Both Ends, Jongeren Milieu Actief, Action Aid and 17,379 individual citizens initiated proceedings in 2019. In 2021, those proceedings led to a judgment of the District Court of The Hague in which it was confirmed that Shell had a legal obligation to reduce the global CO₂ emissions of the Shell Group in line with the 1.5°C limit.¹²¹ The Court of Appeal of The Hague confirmed the existence of a legal obligation on 12 November 2024.¹²²
119. In the past few years Milieudefensie has developed very many other concrete activities to realise its objects. A few recent examples are set out below:
- (i) In June 2021, shortly after the judgment at first instance in the Shell case, Milieudefensie, together with various other NGOs, wrote a letter to major banks, pension funds and insurers. In this letter they asked the financial institutions to reduce the CO₂ emissions of their loans and investments in line with the 1.5° target of the Paris Climate Agreement;¹²³
 - (ii) In January 2022 Milieudefensie launched the climate plans campaign, to call on 29 large multinationals and financial institutions to come up with a good climate plan. Milieudefensie writes letters, engages in discussions, conducts studies into the climate plans and calls on political decision makers not to distribute money from the climate fund to companies that do not have a good climate plan;¹²⁴
 - (iii) In 2022 Milieudefensie wrote letters to the major accountancy firms to draw their attention to the importance of an adequate inspection of reporting on climate risks in annual reports. With success: the four big accountancy firms and their professional association NBA responded positively;¹²⁵
 - (iv) In 2023 Milieudefensie was one of the organisers of the biggest climate march in Dutch history. On 12 November 2023 some 85,000 people joined the March for Climate and Justice;¹²⁶
 - (v) In 2023 and 2024, Milieudefensie (including Milieudefensie Jong) attended the shareholders' meeting of various large multinationals to draw attention to climate responsibility and the importance of a climate plan that is in compliance with the Paris Agreement;¹²⁷
 - (vi) The Climate Justice Manifesto was part of Milieudefensie's campaign to draw attention to the need for large polluting companies to comply with the Paris Climate Agreement

¹²¹ District Court of The Hague, 26 May 2021, ECLI:NL:RBDHA:2021:5337.

¹²² With regard to the significance of the judgments of the District Court and Court of Appeal of The Hague in the Shell case for ING's legal obligation, see Chapter XI.

¹²³ See <https://www.greenpeace.org/nl/klimaatverandering/47123/na-shell-vonnis-moeten-ook-banken-pensioenfondsen-en-verzekeraars-aan-de-bak/>.

¹²⁴ See <https://milieudefensie.nl/actueel/alles-wat-je-moet-weten-over-onze-klimaatplannen-campagne>.

¹²⁵ See <https://milieudefensie.nl/actueel/onze-brief-aan-accountants-ook-jullie-hebben-een-verantwoordelijkheid-in-het-voorkomen-van-gevaarlijke-klimaatverandering>.

¹²⁶ See <https://milieudefensie.nl/actueel/bijna-verkiezingen-zo-kan-jij-het-klimaat-laten-winnen>.

¹²⁷ See <https://milieudefensie.nl/actueel/een-terugblik-op-een-spetterend-ava-seizoen>.

and for the government to stop subsidising fossil fuels. The manifesto was signed by more than 96,000 citizens as of end-february 2025;¹²⁸

- (vii) In September 2023, Milieudefensie Jong published a study of climate stress among young people, launched the Radicale Hoop podcast and organised workshops under the supervision of a climate psychologist;¹²⁹
- (viii) In 2023, together with 123 national and international societal (environmental) organisations, Milieudefensie wrote an urgent letter calling on private and public financial institutions to withdraw from a risky LNG project in Mozambique that was accompanied by violence and human rights violations;¹³⁰
- (ix) Through the Fair, Green and Global Alliance and the Green Livelihoods Alliance, Milieudefensie is involved in supporting local communities in Honduras, Brazil, Colombia, Argentina, Bolivia and Togo in the campaign against new fossil fuel projects and for protection of nature and climate.¹³¹

120. The above shows that Milieudefensie dedicates itself to solving and preventing the climate problem, environmental problems in general, and to creating a sustainable society; at global, national, regional and local level, for both present and future generations across the world. These are interests that Milieudefensie states it will protect in its articles of association, in its words and in its actions, and which it deems Milieudefensie's interests. With its legal claims against ING, Milieudefensie is standing up for these general (legal) interests set out in its articles of association. Hereinafter it will be explained that these interests are sufficiently similar to be protected in this class action.

III.2.2 **Article 3:305a(1) DCC (and Article 1018c(5)(b)) – the similar interests that Milieudefensie is protecting**

121. In the light of the judgments in the Urgenda case and the judgments in the climate case against Shell there can be no doubt that the interests of the present and future generations of Dutch citizens in limiting climate change are sufficiently similar to be protected in a class action.¹³² The importance of being able to protect the interests of future generations was recently also explicitly acknowledged by the European Court of Human Rights in the KlimaSeniorinnen case.¹³³

¹²⁸ See <https://milieudefensie.nl/actie/manifest-klimaatrechtvaardigheid/teken>.

¹²⁹ See <https://milieudefensie.nl/actueel/20-procent-nederlandse-jongeren-ervaart-klimaatstress>.

¹³⁰ See <https://milieudefensie.nl/actueel/gasproject-mozambique-oproep-financiers>.

¹³¹ See, inter alia, Exhibit MD-023, Milieudefensie Annual Report 2023, pp. 15 to 18.

¹³² District Court of The Hague, 24 June 2015, ECLI:NL:RBDHA:2015:7145, para. 4.6 to 4.8, Court of Appeal of The Hague, 9 October 2018, ECLI:NL:GHDHA:2018:2591, para. 37, Dutch Supreme Court, 20 December 2019, ECLI:NL:HR:2019:1006, para. 5.9.2, District Court of The Hague, 26 May 2021, ECLI:NL:RBDHA:2021:5337, para. 4.2.4, Court of Appeal of The Hague, 12 November 2024, paras. 6.2 to 6.5.

¹³³ ECtHR, 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020, para. 420: “the Court notes that, in the specific context of climate change, intergenerational burden-sharing assumes particular importance both in regard to the different generations of those currently living and in regard to future generations. [...] it is clear that future generations are likely to bear an increasingly severe burden of the consequences of present failures and omissions to combat climate change [...] By their commitment to the UNFCCC, the States Parties have undertaken the obligation to protect the climate system for the benefit of present and future generations of humankind (see paragraph 133 above; Article 3 of the UNFCCC). This obligation must be viewed in the light of the already existing harmful impacts of climate change, as well as the urgency of the situation and the risk of irreversible harm posed by climate change. In the present context, having regard to the prospect of aggravating consequences arising for future generations, the intergenerational perspective underscores the risk inherent in the relevant

122. In this case Milieudefensie is standing up for the interests of present and future generations of Dutch citizens and the similarity requirement has therefore been met.
123. The similarity of the interests protected by Milieudefensie also appears from the following.
124. In this case, Milieudefensie is asking for legal protection on behalf of present and future generations of Dutch citizens against the all-encompassing danger of climate change, by seeking an order that ING bring its climate policy in line with the 1.5°C limit. This universal danger limit as laid down in the Paris Agreement expresses that dangerous climate change will have serious consequences for all people on Earth and it is therefore by definition in everyone's interest to defend that danger limit by means of the necessary emissions reductions.
125. This also appears as such from the UN Climate Convention, in which in the first recital point at the beginning it is acknowledged that climate change and the adverse consequences thereof form a common concern for humanity, after which it will be considered that the parties are determined to protect the climate system for present and future generations:
- "Acknowledging that change in the Earth's climate and its adverse effects are a common concern of humankind, [...] Determined to protect the climate system for present and future generations"*
126. The goal of the UN Climate Convention in preventing dangerous climate change is based, inter alia, on the principle that the climate system must be protected on behalf of present and future generations, "on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities" (Article 3(1) UN Climate Convention).
127. This was again confirmed in the Paris Agreement, whereby extra emphasis was placed on the importance of protecting the most vulnerable groups in society, and on the importance of intergenerational equity:
- "Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity"*
128. In the KlimaSeniorinnen case, the ECtHR also referred to the many international (legal) sources in which the importance of the protection of the global climate system for present and future generations of humankind is acknowledged, including the numerous resolutions of the UN General Assembly.¹³⁴
129. The general interest of preventing dangerous climate change is consequently by definition an indivisible and universal interest. As stated, there is also a specific threshold – limiting

political decision-making processes, namely that short-term interests and concerns may come to prevail over, and at the expense of, pressing needs for sustainable policy-making, rendering that risk particularly serious and adding justification for the possibility of judicial review."

¹³⁴ ECtHR, 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020, para. 148 (with reference to more than 30 UN resolutions). In paras. 50 to 106 the judgment provides a summary of important international sources that acknowledge the importance of environmental protection, a healthy living environment and protection of the climate system on behalf of present and future generations.

warming to 1.5°C – that must be observed to prevent this danger, which is acknowledged by the international community of states. Milieudefensie's demands are geared to achieving and protecting this global threshold and promoting a sustainable society, in line with the objects laid down in Milieudefensie's articles of association.¹³⁵ All present and future Dutch citizens have a sufficiently similar interest in achieving this goal and – consequently – the demands that have been brought.

130. It must be understood that the requirement of a sufficient similar interest does not go so far that all interested parties must be in an identical position and have exactly the same wishes. This is not a situation where the legal questions and factual questions of the dispute must be answered differently per individual. To answer the legal questions at issue, to protect the 1.5°C limit and when handling the demands presented by Milieudefensie, it is possible to extrapolate from the details of individual cases. This makes the interests sufficiently similar, so that they lend themselves to be joined together and can promote an efficient and effective legal protection for the stakeholders.

131. All in all, it can be determined that the interests of the present and future generations of Dutch citizens when preventing dangerous climate change are sufficiently similar to be protected in this class.

III.2.3 **Article 3:305a(2) DCC – interests sufficiently safeguarded: the representativity requirement**

132. Pursuant to Article 3:305a(1) DCC, the interests that Milieudefensie is protecting must be sufficiently safeguarded. Paragraph 2 stipulates that this is the case when the interest group is sufficiently representative, in view of the supporting base and the scope of the represented demands. This last addition originates from the WAMCA, in which the representativity requirements of interest groups have been made more stringent, in part to prevent some random organisation from acting in defence of the interests of injured parties.¹³⁶

133. According to the text of the statute and the legislative history, with regard to making the representativity requirements more stringent, the legislator primarily had class actions in mind, in which the interested parties can be individually identified.¹³⁷ This case against ING focuses on protecting general interests, which by their very nature cannot be reduced to individual interests. The essence of a class general interest action is precisely that the interest group is not acting on behalf of the joined interests of a determined or determinable number of individual persons, but on behalf of the general interest of protecting the rights of a much larger group of people, that is diverse and undetermined.

134. Consequently it is difficult to determine the representativity of the interest group on the basis of "the scope of the represented claims". What in a concrete case is to be deemed a sufficiently representative organisation must be determined on the basis of the nature of the lawsuit and the circumstances of the case.¹³⁸ In general interest actions, the criterion was applied in lower-court case law that the interest group must make it clear that it is an adequate

¹³⁵ Exhibit MD-024, Statuten Milieudefensie, article 2.

¹³⁶ Kamerstukken II 2016/17, 34608, no. 3, pp. 18 and 19.

¹³⁷ As already discussed in Chapter III.1, the legislator explicitly did not intend to make bringing purely idealistic actions more difficult than before the introduction of the WAMCA.

¹³⁸ Cf. Kamerstukken II 2003/04, 29414, 3, p. 15: "*The representativity of an organisation can be deduced from a variety of facts, and it is recommended not to deem one or more facts to be of decisive importance. It is therefore difficult to provide a specific definition of this requirement, because this would fail to take account of other facts that may also indicate that an organisation is representative. Different facts can be relevant, whether or not viewed in combination.*"

spokesperson for the group whose interests are being protected.¹³⁹

135. The detailed description set out in Chapter III.2.1 of the de facto national and international activities of Milieudefensie, its track record in other class actions, its support for and cooperation with other established interest groups, its worldwide network and the more than 100,000 members and donors and tens of thousands of other people who actively support it annually make it clear that Milieudefensie may be deemed an adequate spokesperson when it comes to protecting people against dangerous climate change.
136. In addition, up to now Milieudefensie has received almost 30,000 statements of support for this specific case against ING as of mid-March 2025.¹⁴⁰ In November 2024, more than 400 corporations and organisations supported Milieudefensie's call on large corporate polluters to accelerate the greening of their activities and to halve their CO2 emissions by 2030.¹⁴¹
137. Although as regards the representativity of an interest group no requirement has been set that the class action can count on support from a considerable part of the population¹⁴², as background information it might be interesting to refer to a recent peer-reviewed study among 300,000 people from 125 countries, published in the renowned magazine *Nature Climate Change*. The study shows that "*the overwhelming majority [of the global population, added by legal counsel] demands political action and supports pro-climate norms.*"¹⁴³ The study gives an indication that the majority of the population is aware of the great interest of preventing dangerous climate change and supports measures that can contribute to efforts in this respect.
138. This is also confirmed by the 'Peoples' Climate Vote 2024' as carried out by the United Nations Development Programme (UNDP) and the University of Oxford. This survey, held among 73,000 people from 77 countries, shows that 80% of the people asked for enhanced climate measures.¹⁴⁴

III.2.4 Article 3:305a(6) DCC – applicability of less stringent regime relating to standing

139. Milieudefensie's demands do not seek monetary damages. The demands have been filed with an idealistic goal, i.e. to contribute to protecting present and future generations against

¹³⁹ See District Court of The Hague, 15 November 2023, ECLI:NL:RBDHA:2023:17145, para 5.18 and District Court of Amsterdam, 7 June 2023, ECLI:NL:RBAMS:2023:3499, paras. 4.16-4.17, District Court of Midden-Nederland, 17 July 2024, ECLI:NL:RBMNE:2024:4106, para. 4.21 and District Court of Amsterdam, 17 July 2024, ECLI:NL:RBAMS:2024:4255, paras. 5.7.3 – 5.7.6. See also District Court of The Hague, 25 September 2024, ECLI:NL:RBDHA:2024:14834 (Bonaire Climate Case), para. 3.11.

¹⁴⁰ See <https://milieudefensie.nl/klimaatzaak-ing/mede-eiser>.

¹⁴¹ Zie <https://milieudefensie.nl/doe-mee/bondgenoten/deze-organisaties-ondertekenen-de-oproep-aan-grote-bedrijven>.

¹⁴² On the contrary, according to the legislative history, the fact that the interests that are to be protected by the lawsuit conflict with the ideas and views of other groups in society does not in itself stand in the way of a class action.

¹⁴³ Andre, P., Boneva, T., Chopra, F. et al., *Globally representative evidence on the actual and perceived support for climate action*. Nat. Clim. Chang. 14, 253–259 (2024), available on <https://doi.org/10.1038/s41558-024-01925-3>, p. 257 (under 'Discussion'). See also p. 254: "*we document widespread approval of pro-climate social norms in almost all countries. Overall, 86% of respondents state that people in their country should try to fight global warming (Fig. 1c). In 119 of 125 countries, the proportion of supporters exceeds two-thirds.*" And pp. 254-255: "*we identify an almost universal global demand for intensified political action. Across the globe, 89% of respondents state that their national government should do more to fight global warming (Fig. 1e).*"

¹⁴⁴ Exhibit MD-013, Lenton et al. 2023, 'The Global Tipping Points Report 2023' (selected pages)

, p. 4 and p. 13. See also p. 14, which shows that people are not convinced that companies make a sufficient contribution to climate action: "*People are unconvinced by big businesses' climate efforts. Just over one in three people (39 percent) globally said they think big businesses are doing well on addressing climate change.*"

the adverse consequences and great risks of climate change when global temperatures rise by more than 1.5°C. The people Milieudéfensie is standing up for obviously do not have a direct financial interest in the lawsuit.¹⁴⁵ This makes this lawsuit a prime candidate for application of the less stringent regime relating to standing.

140. The nature of Milieudéfensie's demands and the interests to be protected in this respect gives rise to application of the less stringent regime relating to standing of Article 3:305a(6) DCC.
141. Milieudéfensie refers in this respect to the many examples in which the less stringent regime relating to standing has been declared to apply.¹⁴⁶ Milieudéfensie has established in this respect that this is common practice in general interest actions. The conclusion is that Article 3:305a(2), points a to e and Article 3:305a(5) DCC need not be applied. It is nevertheless explained below that Milieudéfensie also meets these additional requirements in the area of transparency, governance and representativity.

III.2.5 **Article 3:305a(2), points a to e, and (5) – additional requirements in the area of transparency, governance and representativity**

Point a: a supervisory body

142. Milieudéfensie has a Supervisory Board, whose task is to supervise the policy of the management board and the general course of affairs in the Association and the organisation connected with the Association (Article 11.1 and 11.8 Articles of Association).¹⁴⁷

Point b: appropriate and effective mechanisms for participation in or representation in the decision making of the persons whose interests are to be protected by the lawsuit

143. Point b arranges the possibility for the supporting base to have its say. As Milieudéfensie is an association, its members have their say by means of the General Members Meeting ("GMM").¹⁴⁸ The GMM is held twice a year and can also be attended online.¹⁴⁹ It is also possible to vote online (beforehand). In addition, Milieudéfensie organises a pre-GMM, where questions can be asked and discussions can be held about items on the agenda.¹⁵⁰

¹⁴⁵ It is pointed out that the fact that the awarding of the demands in an idealistic action could have large financial consequences for the party against which the demands have been brought does not stand in the way of application of the less stringent regime relating to standing, see Court of Appeal of The Hague, 19 March 2024, ECLI:NL:GHDHA:2024:363 (right to potable water case), para. 6.4.

¹⁴⁶ See, inter alia: Court of Appeal of The Hague, 19 March 2024, ECLI:NL:GHDHA:2024:363 (right to potable water case), para. 6.4; District Court of The Hague, 6 March 2024, ECLI:NL:RBDHA:2024:3007 (nitrogen case), paras. 5.19 and 5.20; District Court of Oost-Brabant, 3 January 2024, ECLI:NL:RBOBR:2024:5, paras. 6.2 to 6.7 (saving hours arrangement case), Court of Appeal of The Hague, 12 February 2024, ECLI:NL:GHDHA:2024:191, para. 5.2 and District Court of The Hague, 15 December 2023, ECLI:NL:RBDHA:2023:19744, para. 4.2 (F-35 case); District Court of The Hague, 15 November 2023; ECLI:NL:RBDHA:2023:17145 (flight nuisance case), paras. 5.21 and 5.22; District Court of The Hague, 26 September 2023, ECLI:NL:RBDHA:2023:14320 (trailer dwellers case), paras. 4.17 to 4.20; District Court of Amsterdam, 7 June 2023, ECLI:NL:RBAMS:2023:3499 (KLM greenwashing case), para. 4.10.

¹⁴⁷ Exhibit MD-024, Statuten Milieudéfensie.

¹⁴⁸ T&C BW, comments on Art. 3:305a DCC, note 3 under b: "If the interest group is organised in the form of an association, the representation during decision making can be arranged by means of the members meeting."

¹⁴⁹ See <https://milieudéfensie.nl/actueel/vereniging/veelgestelde-vragen-algemene-ledenvergadering>.

¹⁵⁰ Ibid.

144. Members and donors of Milieudefensie are, in addition, informed of and involved in activities of Milieudefensie (including this lawsuit) in a number of ways, by means of newsletters¹⁵¹, information on its website, events (such as Milieudefensie on Tour¹⁵² or campaign days¹⁵³), by means of its international network¹⁵⁴ and by means of other online knowledge sharing.¹⁵⁵ The management board involves the Association and the members in activities to come up with ideas and evaluations in a variety of ways, e.g. through surveys, conferences, panels or advisory boards.¹⁵⁶

Point c: sufficient funds and sufficient control of those funds

145. Milieudefensie possesses sufficient funds to conduct this lawsuit.¹⁵⁷ The bulk of Milieudefensie's revenue – i.e. 86% of its total revenue – comes from gifts from individuals acting in a private capacity and other organisations without a profit motive. Milieudefensie can use this revenue to realise its objectives.

Point d: a publicly accessible internet page

146. Milieudefensie has a publicly accessible website, both in Dutch and in English (www.milieudefensie.nl and <https://en.milieudefensie.nl/>). The following information is available on that website:

- (i) 1° the articles of association of the legal entity;¹⁵⁸
- (ii) 2° the governing structure of the legal entity;¹⁵⁹
- (iii) 3° the last adopted annual accountability report regarding the main points of the supervisory body concerning its supervision;¹⁶⁰
- (iv) 4° the last adopted management board report;¹⁶¹
- (v) 5° the remuneration of directors and the members of the supervisory body;¹⁶²
- (vi) 6° the objects and working methods of the legal entity;¹⁶³

¹⁵¹ See <https://milieudefensie.nl/over-ons/nieuwsbrief>.

¹⁵² For example: <https://milieudefensie.nl/doe-mee/nazittingshell>.

¹⁵³ For example: <https://veranderaars.milieudefensie.nl/agenda/2024-02-24-campagnedag/> and <https://veranderaars.milieudefensie.nl/agenda/campagnedag-2024/>.

¹⁵⁴ For example: <https://www.foei.org/?s=shell>.

¹⁵⁵ For example: <https://en.milieudefensie.nl/news/unlock-our-shell-and-ing-climate-cases-with-our-new-climate-case-tool>.

¹⁵⁶ See <https://milieudefensie.nl/over-ons/onze-vereniging#directie-bestuur>.

¹⁵⁷ Exhibit MD-023, Annual Report 2023 (including financial statements), pp. 30 to 35 and pp. 74 to 94. See in particular pp. 75 and 76 (these are pp. 2 and 3 of the financial statements).

¹⁵⁸ See <https://milieudefensie.nl/actueel/statuten-juli-2022>.

¹⁵⁹ See <https://milieudefensie.nl/over-ons/onze-vereniging>.

¹⁶⁰ See <https://milieudefensie.nl/over-ons/jaarverslag>, where the accountability of the Supervisory Board can be found on pp. 41 to 45.

¹⁶¹ See <https://milieudefensie.nl/over-ons/bestuursverslag-milieudefensie-2023.pdf> [published on 31 May 2024].

¹⁶² Exhibit MD-023, Milieudefensie Annual Report 2023, p. 64 (regarding remuneration of the management board, see p. 16 of the financial statements for further specification). The Supervisory Board does not receive remuneration for its work (see p. 42 annual report and p. 17 of the financial statements, and article 11.6 of the Articles of Association).

¹⁶³ See <https://milieudefensie.nl/over-ons/onzeaanpak> and <https://milieudefensie.nl/actie/ons-verhaal/hoe-geef-jij-onze-aarde-door>.

- (vii) 7° an overview of the state of affairs in current litigation and the results;¹⁶⁴
- (viii) 8° if a contribution is requested from the persons whose interests the lawsuit seeks to protect: insight into the calculation of this contribution: this does not apply because no contribution has been requested;¹⁶⁵
- (ix) 9° an overview of the way in which people whose interests the lawsuit seeks to protect can become affiliated with the legal entity and the way in which they can end this affiliation.¹⁶⁶

Point e: sufficient experience and expertise with regard to bringing and conducting legal action

- 147. Milieudedefensie's extensive track record shows that it possesses sufficient experience and expertise to conduct this lawsuit. As an organisation, Milieudedefensie has experience in conducting lawsuits in the general interest and defending vulnerable environmental interests and human rights, including the (successful) class actions against Shell.¹⁶⁷
- 148. Milieudedefensie is being assisted in this case by the same attorneys who handled the climate case against Shell. Lastly, Milieudedefensie has an extensive network of external experts who are willing to support the case where necessary. Just like in the climate case against Shell, Milieudedefensie can rely on the assistance of renowned climate scientists, transition experts and economic experts.

Point f: not applicable

- 149. Point f does not apply because there is no legal claim to protect an interest as referred to in Article 2(1) of Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers.

Article 3:305a(5) DCC: financial statements and board report

- 150. The requirement of Article 3:305a(5) DCC entails that a board report and financial statements must be drawn up in accordance with the requirements of Book 2, Title 9 DCC, which reports must be published on the website within eight days. Milieudedefensie meets these requirements:
 - (i) Article 2:49(1) and (3) DCC: within six months after the end of the financial year (31

¹⁶⁴ See <https://milieudedefensie.nl/klimaatzaak-ing/info/veelgestelde-vragen-over-onze-nieuwe-klimaatzaak>, see <https://milieudedefensie.nl/actueel/hier-vind-je-alle-juridische-documenten-van-onze-klimaatzaak-tegen-shell> and as an example of a completed case: <https://milieudedefensie.nl/actueel/alles-wat-je-wil-weten-over-de-rechtszaak-tegen-shell-in-nigeria>.

¹⁶⁵ Milieudedefensie is only seeking a voluntary contribution from people who support the lawsuit through crowdfunding, see <https://milieudedefensie.nl/steun-klimaatzaak-ing/steun>. People can also join as a co-claimant by making a donation starting at 1 euro, see <https://milieudedefensie.nl/klimaatzaak-ing/mede-eiser>. As explained there, the contribution of at least 1 euro is intended to prevent double registrations or fake registrations.

¹⁶⁶ See <https://milieudedefensie.nl/actie/lidworden/word-lid>, which also lists the options for termination of membership.

¹⁶⁷ Court of Appeal of The Hague, 29 January 2021, ECLI:NL:GHDHA:2021:133 (Dooh and Milieudedefensie / Shell) and District Court of The Hague, 26 May 2021, ECLI:NL:RBDHA:2021:5337 (Milieudedefensie / Shell). See also <https://milieudedefensie.nl/actueel/shell-betaalt-15-miljoen-euro-schadevergoeding-vanwege-olievervuiling-in-nigeria>.

December 2023) the management board had drawn up the financial statements and the board report and made it available by inspection for the members. On 8 June 2024 the financial statements and the annual report were adopted by the General Members Meeting;¹⁶⁸

- (ii) Article 2:49(2) DCC: the financial statements were signed by the executive board and the supervisory directors;¹⁶⁹
- (iii) Milieudefensie published the financial statements and the board report on its website on 10 June 2024.¹⁷⁰

III.3 THE REQUIREMENTS OF ARTICLE 3:305A(3)(A) AND (B) DCC

151. Pursuant to Article 3:305a(3)(a) DCC, a legal entity as referred to in Article 3:305a(1) DCC only has standing if the directors involved in the founding of the legal entity, and their successors, do not have a direct or indirect profit motive, that is realised through the legal entity. This requirement has been met. Milieudefensie does not have a profit motive.¹⁷¹ Nor do its directors have a profit motive. On the basis of article 10.8 of the articles of association, directors of Milieudefensie receive remuneration that is determined by the Supervisory Board. On the basis of the articles of association, when determining the amount and the structure of the remuneration, account is taken of the idealistic character of the Association and the necessary professionalism; alignment is sought with the arrangement regarding the remuneration of directors of charitable organisations, or an arrangement that has taken the place thereof.¹⁷² The remuneration of the executive board was explained in detail in the 2023 annual report, with reference to the remuneration regulations of the Dutch charities umbrella organisation Goede Doelen Nederland and the Good Management Code for charitable causes. The remuneration of the two executive directors is considerably lower than the maximum that applies to a charitable organisation of the scope and complexity of Milieudefensie.¹⁷³
152. Article 3:305a(3)(b) DCC also includes a requirement that the legal action must have a sufficiently close link to the Dutch legal sphere. To meet this requirement, one of the requirements under 1, 2 or 3 must have been met. By setting these requirements the legislator wished to prevent that a Dutch class action for damages can be used for cases in which there is in fact no or an insufficiently close link between the class action and the Dutch legal sphere.
153. There is a sufficiently close link with the Dutch legal sphere, inter alia, when the party against which the legal claim is directed, is based in the Netherlands and additional circumstances indicate a sufficient link to the Dutch legal sphere (see Article 3:305a(3) under b.2). This is clearly the case in this matter, as ING's head office is in the Netherlands and ING is being held

¹⁶⁸ See <https://veranderaars.milieudefensie.nl/stukken-alv>.

¹⁶⁹ Exhibit MD-023, Milieudefensie Annual Report 2023 (including financial statements), p. 94. Milieudefensie's financial statements have been drawn up in accordance with the rules of Guideline 650 Fundraising Organisations (Guidelines for Annual Reporting published by the Dutch Accounting Standards Board) and has been audited as such by an independent auditor, see p. 95 for the auditor's report of Dubois + Co Registeraccountants.

¹⁷⁰ See <https://milieudefensie.nl/over-ons/jaarverslag-inclusief-jaarrekening-2023.pdf>.

¹⁷¹ Exhibit MD-024, Statuten Milieudefensie, article 3.3 ("*The Association does not have a profit motive*").

¹⁷² Exhibit MD-024, Statuten Milieudefensie, article 10.8.

¹⁷³ Exhibit MD-023, Milieudefensie Annual Report 2023, p. 64.

liable in this case for the climate policy that it determines and carries out from the Netherlands. The event giving rise to the damage is therefore occurring in the Netherlands.¹⁷⁴

154. The latter means that there is also a close link to the Dutch legal sphere as referred to in Article 3:305a(3) under b.3 DCC.¹⁷⁵

III.4 THE CONSULTATION REQUIREMENT OF ARTICLE 3:305A(3)(C) DCC

155. Pursuant to Article 3:305a(3)(c) DCC, a legal entity that wants to bring a legal claim against another party on the basis of Article 3:305a DCC only has standing if, given the circumstances, it has made sufficient effort to resolve the issue by consulting with the defendant.
156. In order to fulfil this obligation, Milieudefensie contacted the CEO of ING, Mr Steven van Rijswijk, by letter dated 19 January 2024.¹⁷⁶
157. This letter explains, inter alia, that ING, through its activities, is making a substantial contribution to the cause of climate change and is consequently causing (and will cause) great harm to humans and the environment, and that under Dutch law, ING is under a legal obligation to prevent this (future) damage as much as possible. As explained in the letter, according to Milieudefensie this means that ING will have to adjust its climate policy and bring it in line with the global goal of limiting global warming to 1.5°C. Milieudefensie also explained what concrete measures may be expected of ING in this respect. Milieudefensie asked ING to respond to the notice of liability within eight weeks and invited ING to meet and discuss ING's realisation of its responsibility.
158. As appears from what has been discussed above and as has also been explained in the letter, over the past 18 years Milieudefensie has worked hard to persuade ING to improve its climate policy. Although ING has taken some steps in this area in the past few years, ING's climate policy has been and to this day still is seriously lacking in terms of satisfying the individual shared responsibility that Milieudefensie believes that ING has in helping to limit climate change. With its letter of 19 January 2024, Milieudefensie made an attempt to persuade ING to take its responsibility without having to go to court. It is disappointing, but not entirely surprising, that ING's response has shown that ING will not adjust its climate policy following this letter.¹⁷⁷ ING has established that it agrees with Milieudefensie on most points: ING shares the concern for climate change and believes that action must be taken as quickly as possible to ensure that global warming is limited to 1.5°C.¹⁷⁸ ING also supports the view that global emissions must have been decreased by 48% in 2030 and that ING too must play a role in this respect.¹⁷⁹ ING furthermore acknowledges that it can make the most impact through the clients who are financed by ING.¹⁸⁰ Lastly, ING acknowledges on the basis of findings of the International Energy Agency ("IEA") that on the road to net zero emissions in

¹⁷⁴ That ING's climate policy is to be deemed an event giving rise to damage is explained in further detail in Chapter IV.

¹⁷⁵ GS Vermogensrecht, Art. 3:305a DCC, note 28.6: "*The requirement under (iii) that the event or events has or have occurred in the Netherlands refers exclusively to the place where the event or events did in fact occur.*" See also Tzankova and Van Leeuwen in Sdu Commentaar Letselschade, Article 3:305a, note 9: "*Paragraph 3, sub-paragraph b, under 3° limits the relevant starting point to the Handlungsort.*"

¹⁷⁶ Exhibit MD-019, Milieudefensie's letter to ING of 19 January 2024.

¹⁷⁷ Exhibit MD-019, Milieudefensie's letter to ING of 19 January 2024.

¹⁷⁸ Ibid, pp. 1-2, see also Exhibit MD-040, ING 2024, 'Mogelijke klimaatzaak' (print-out from website 27 February 2024), p. 1 (onder 'Wat willen ze en wat is onze reactie').

¹⁷⁹ Ibid.

¹⁸⁰ Exhibit MD-019, Milieudefensie's letter to ING of 19 January 2024, p. 2.

2050, no more new oil and gas fields are necessary, which is why it has stopped the project financing of new oil and gas fields. ING has not, however, ceased all forms of support for fossil fuel companies that develop new oil and gas fields, about which more in Chapter XV.2.3).¹⁸¹

159. Milieudefensie and ING emphatically differ in opinion, however, regarding the content of the proportional contribution that ING must make. In response to the notice of liability, ING barely went into Milieudefensie's detailed substantive explanation that ING's climate policy is inadequate. ING was in reality primarily defending its own policy and argued that this policy is already in line with the 1.5°C limit of the Paris Agreement. ING also failed to respond to the legal basis presented by Milieudefensie. ING did not specifically respond to the explicit invitation to meet and discuss the matter. Although ING concluded with the general remark that it wants to continue the dialogue with Milieudefensie, it apparently does not wish to have a dialogue with Milieudefensie regarding the notice of liability as such. In view of ING's dismissive response, and the lack of sufficient adjustments of policy in the interim, Milieudefensie decided to issue summons against ING.
160. Prior to issuing the summons, Milieudefensie addressed ING one last time by letter of 16 January 2025.¹⁸² This was in part due to the fact that when drafting the summons it made some changes to precisely what it is demanding of ING. In a letter dated 4 February 2025, ING made clear that it also will not comply with these adjusted demands. ING posits that these demands are "not realistic or reasonable".¹⁸³
161. In light of the above-mentioned facts and circumstances, Milieudefensie believes that it has made sufficient effort to achieve what it demanded by means of consultation.

III.5 THE APPLICATION OF TITLE 14A DCCP

162. In addition to the substantive requirements relating to standing laid down in Article 3:305a DCC, Title 14A DCCP contains further (procedural) provisions concerning class actions. As has already been discussed in the introduction to this section, not all provisions of Title 14A DCCP can be applied in a general interest lawsuit. This has now been recognised in a number of court decisions. Milieudefensie will explain below what requirements of Title 14A DCCP apply and that said requirements have been met.

Article 1018c(1) DCCP: content of the summons

163. Article 1018c(1) DCCP under a to d sets specific substantive requirements for the content of the summons. This summons plainly meets these requirements. Article 1018c(1)(e) in conjunction with Article 1018e DCCP does not apply, as explained below. According to statements under (i) to (m) in the beginning of this summons, Article 1018c(1)(f) has been satisfied.

Article 1018c(2) DCCP: central register formalities

164. Pursuant to Article 1018c(2) DCCP, Milieudefensie will file the writ of this summons with the court registry within two days, with simultaneous entry of the summons in the central

¹⁸¹ Exhibit MD-041, ING's letter to Milieudefensie of 13 February 2024, p. 3.

¹⁸² Exhibit MD-020, Milieudefensie's letter to ING of 16 January 2025.

¹⁸³ Exhibit MD-021, ING's letter to Milieudefensie of 4 February 2025.

register for class actions as referred to in Article 3:305a(7) DCC. The entry will be accompanied by an extract of the summons.

Article 1018e(1) DCCP: the exclusive advocate

165. Article 1018e(1) DCCP sets out the provisions for appointing an exclusive advocate. The provisions apply in particular if during the three-month period laid down in Article 1018c(3) DCCP it turns out that one or more interest groups wish to bring a class action for the same event or events with regard to similar facts and legal issues. The court will then appoint the most appropriate organisation amongst them as ‘Exclusive Advocate’ for all injured parties. This arrangement prevents competition between class (group) actions and provides an arrangement for a situation where various organisations are acting on behalf of different groups of injured parties. Although the designation of the exclusive advocate is based on the idea that several interest groups will each bring a separate class action, in practice an exclusive advocate is appointed if several interest groups together bring one class action, or if only one interest group does so.¹⁸⁴
166. Appointing an exclusive advocate is intended to make clear which of the interest groups that have filed a class action claim for a specific incident, will be in charge of and will be responsible for the proceedings. The exclusive advocate is also the person with whom a defendant can reach a settlement for the whole group. The interests of the entire group are, after all, represented as of that time by the exclusive advocate appointed for that purpose. Injured parties can also withdraw after the exclusive advocate has been appointed. It is against this background that Article 1018f DCCP prescribes detailed publication regulations (this will be discussed in greater detail later).
167. The above makes it clear that Article 1018e(1) DCCP was written for group actions, not for general interest class actions. This also appears from the circumstances to be taken into account referred to in Article 1018e(1) DCCP, such as the reference to “the scope of the group of persons who the claimant is representing” and “the size of the financial interest represented by this group”.
168. In a general interest action there is not a possible (competitive) situation in which several interest groups are representing a number of the injured parties. After all, the intent is to represent an indivisible general interest. Nor will the interest group negotiate a settlement on behalf of a specific group of persons (damages). Milieudefensie is asking the Court not to apply this rule in this case.¹⁸⁵
169. To the extent the Court were to decide to appoint an exclusive advocate, this summons contains all details that show that Milieudefensie must be appointed as such, including relevant details on its actual activities, expertise and experience, including experience with similar class actions.

Article 1018e(2) DCCP and Article 1018f DCCP: no need to establish a narrowly defined group

¹⁸⁴ Knigge, Dröge and Hoogervorst in Sdu Commentaar Burgerlijk procesrecht, comments on Article 1018e DCCP (October 2022).

¹⁸⁵ See in a similar sense, inter alia, District Court of Amsterdam, 7 June 2023, ECLI:NL:RBAMS:2023:3499 (KLM greenwashing), para. 4.29, and District Court of The Hague, 25 September 2024, ECLI:NL:RBDHA:2024:14834 (Bonaire Climate Case), para. 3.24.

and no reason to apply an opt-out/opt-in arrangement

170. The purpose of the rules of Article 1018e(2) DCCP and Article 1018f DCCP is to determine precisely whose interests are being represented and offer interested parties the possibility of making use of the opt-out option. There is an opt-in regime for interested parties based outside of the Netherlands, but who want their interests to be taken into account in the proceedings. Article 1018e(2) DCCP therefore requires that the group whose interests the interest group is representing is very narrowly defined. Article 1018f DCCP provides a detailed arrangement of, in short, opt-ins and opt-outs and the associated publicity.
171. The idealistic nature of Milieudefensie's case entails that in this case the provisions on determining a narrowly defined group and an opt-out/in procedure should be set aside. In such an action it is in fact not possible to designate a specific group, as general interests are intended to protect the rights of a very large group of persons, which group is diverse and indeterminable, rather than joined interests that can be pared down to individual interests.¹⁸⁶ In a general interest class action there therefore cannot be a situation in which some people are and others are not bound by the judgment: the essence is precisely that people cannot withdraw from a general interest class action.
172. This important difference between a group action and a general interest class action was also expressed in (former) Article 3:305a(5). That article read as follows:
- "A court judgment will not have consequences with regard to a person whose interests the legal action is intended to protect and who objects to falling within the scope of the judgment, unless the nature of the judgment entails that the scope cannot be excluded with regard to this person only."*
(emphasis added by legal counsel).
173. In the last passage of this paragraph *"unless the nature of the judgment entails that the scope cannot be excluded with regard to this person only"*, the legislator made it clear that in the case of an indivisible collective interest (i.e. in the case of a public interest class action) it is excluded that someone can opt out. If there were such an option, a single individual could frustrate a general interest class action. This is undesirable and has therefore been excluded by the legislator.
174. As was already discussed in Chapter III.1, when the WAMCA was introduced not enough attention was paid to general interest class actions. Case law has since frequently recognised that the special procedural rules are not suitable for idealistic cases and various courts therefore rightly chose not to apply these procedural steps.¹⁸⁷
175. The minister for Legal Protection has in the meantime acknowledged this and indicated that this must be taken into account when evaluating the WAMCA:

"In some idealistic actions it is not possible, due to the nature of the claim, to make the judgment

¹⁸⁶ See also the Opinion of Deputy P-G Langemeijer and A-G Wissink with the *Urgenda* case (ECLI:NL:PHR:2019:887) under 2.4.

¹⁸⁷ See District Court of Amsterdam, 7 June 2023, ECLI:NL:RBAMS:2023:3499 (KLM greenwashing), para. 4.32, District Court of The Hague, 6 March 2024, ECLI:NL:RBDHA:2024:3007, (Greenpeace/State), para. 5.24, District Court of The Hague, 8 March 2023, ECLI:NL:RBDHA:2023:2657 (Vereniging Republiek and Stichting de Republieken versus de Staat), para. 2.28, District Court of The Hague, 6 September 2023, ECLI:NL:RBDHA:2023:14320 (St. Sinti, Roma and Travellers), paras. 4.36 to 4.38, District Court of The Hague, 15 November 2023, ECLI:NL:RBDHA:2023:17145 (right to protection against aviation nuisance), paras. 5.25 to 5.28, District Court of The Hague, 17 January 2024, ECLI:NL:RBDHA:2024:355 (Privacy First), paras. 5.20 to 5.23, District Court of The Hague, 25 September 2024, ECLI:NL:RBDHA:2024:14834 (Bonaire Climate Case), paras. 3.23 – 3.24.

binding on only part of the supporting base. The prohibition on discharging waste water into a nature reserve, for example, is by its nature «indivisible»: it can only have effect with regard to everyone or with regard to no one. The Article 3:305a DCC that applied up to 2020 took account of this situation in paragraph 5. [...] The system of the WAMCA does include the possibility of withdrawing from the action by means of an opt-out (Article 1018f DCCP). No account was taken in this respect of the situation where an opt-out would be pointless if the nature of the action entails that the judgment, whether it awards or dismisses the claim, by its nature applies to everyone. In practice it therefore occurs that in such a case the court will not apply such an opt-out period. This is an element that must certainly be taken into account in the evaluation.”¹⁸⁸

176. The expectation is therefore that the legislator will make the necessary adjustments in this case. As this has not yet happened, Milieudefensie is asking this Court to not apply the rules of Article 1018e(2) DCCP and Article 1018f DCCP.

Article 1018g DCCP: no reason to test the waters for a settlement

177. In light of the above and partly bearing in mind the nature of the general interest class action that does not seek damages, according to Milieudefensie there is no reason to set a period of time to test the waters for a settlement as referred to in Article 1018g DCCP.

III.6 CONCLUSION

178. The conclusion of all of the above is that Milieudefensie has standing in respect of its claims and that the requirements of Article 1018c(5) DCCP have been met.

IV. APPLICATION OF DUTCH LAW

IV.1 INTRODUCTION

179. ING Group N.V. is a listed company and is the parent company of one important legal entity: ING Bank N.V. ING Bank N.V. is the parent company of various Dutch and foreign banks.¹⁸⁹ ING Group N.V., ING Bank N.V. and all subsidiaries will hereinafter also be called the ING Group or the ING concern. The globally operating ING Group has more than 60,000 employees and serves some 37 million clients, business clients and financial institutions in more than 40 countries.
180. From the head office in Amsterdam, ING Group N.V., together with ING Bank N.V., manages the global ING group and the group's subsidiaries. The division of responsibilities between ING Group N.V. and ING Bank N.V. will be explained in further detail below. This is in part to substantiate the need to call both entities to account with regard to their legal responsibility.
181. Milieudefensie is holding ING liable for the fact that due to its inadequate climate policy – climate policy that ING determines and implements from the Netherlands – ING is acting tortiously, or is on the verge of acting tortiously, with regard to the persons whose (similar) interests Milieudefensie is protecting. In short, this case seeks an order against a company based in the Netherlands, that establishes group policy in the Netherlands, which policy is being implemented in the Netherlands and abroad, under its management. The activities connected with that group policy then lead to environmental damage and other damage like health damage worldwide, including in the Netherlands.

¹⁸⁸ Kamerstukken II 2023- 2024, 36169, no. 40, pp. 8-9.

¹⁸⁹ See <https://www.ing.com/About-us/Corporate-governance/Legal-structure-and-regulators.htm>.

IV.2 APPLICATION OF ROME II

182. In this chapter Milieudefensie will explain that the application of Regulation 864/2007 (the Rome II Regulation, also called “**Rome II**”)¹⁹⁰ leads to application of Dutch law too.
183. Article 7 Rome II provides that the non-contractual obligation arising from environmental damage or from personal injury or financial loss as a result of environmental damage, is governed by the law of the place where the damage occurred (the *Erfolgsort*), unless the person claiming damages, or the person filing a (preventive) claim relating to (impending) environmental damage¹⁹¹, opts for the law of the country where the event giving rise to damage is occurring or has occurred (the *Handlungsort*).
184. The Rome II Regulation clarifies in recital 25 of the preamble the objective and the background of Article 7 on international environmental damage. It is indicated there that this arrangement gives substance to Article 174 of the (former) EC Treaty (now Article 191 of the TFEU) which prescribes (quote from Preamble):

“[...] there should be a high level of protection based on the precautionary principle and the principle that preventive action should be taken, the principle of priority for corrective action at source and the principle that the polluter pays[...]”.

185. Being able to hold the polluter liable in all cases – thus regardless of where and in what countries the environmental damage caused by him arises – with application of the law of the country where the polluting activities originate (*Handlungsort*), intends, inter alia, to make preventive action against cross-border environmental damage possible at source as much as possible. Combating damage at source seeks to prevent environmental damage as much as possible and to avoid unnecessary societal costs as much as possible.
186. In the case of ING, its financing activities and financial products finance and facilitate greenhouse gas emissions. These greenhouse gas emissions lead to global warming and cause serious environmental damage. The relationship between ING’s activities and environmental damage as a result of greenhouse gas emissions will be discussed in more detail in this summons. Milieudefensie will now first explain that ING’s climate policy is the source of the (impending) environmental damage and that the *Handlungsort* is based in the Netherlands.

IV.3 BOTH THE HANDLUNGSPORT AND THE ERFOLGSORT ARE IN THE NETHERLANDS

187. It is primarily relevant to establish that ING determines the climate policy of the global ING Group in the Netherlands. As already discussed above, ING’s registered office is in the Netherlands.¹⁹² ING’s head office is also in the Netherlands, in Amsterdam.¹⁹³
188. The executive board of ING Group N.V. (the “**Executive Board**” or “**EB**”) is responsible for the long-term strategy of ING Group N.V.¹⁹⁴ The Executive Board consists of the Chief Executive

¹⁹⁰ See Article 1(1) in conjunction with Article 2 Rome II.

¹⁹¹ That the Regulation also applies to impending environmental damage and preventive demands, appears from Article 2(2) and (3) Rome II.

¹⁹² See also Exhibit MD-042, Statuten ING Groep N.V., article 2 and Exhibit MD-043, Statuten ING Groep N.V., article 1.1

¹⁹³ Exhibit MD-044, KvK-uittreksel ING Groep N.V. and Exhibit MD-045, KvK-uittreksel ING Groep N.V. (selected pages)

¹⁹⁴ Exhibit MD-042, Statuten ING Groep N.V., article 17. See also <https://www.ing.com/About-us/Management->

Officer (CEO), the Chief Financial Officer (CFO) and the Chief Risk Officer (CRO). The management board of ING Bank N.V. (“**Management Board Banking**” or “**MBB**”) is responsible for the daily management of the banking business.¹⁹⁵

189. The Charter of the ING Group provides that the Management Board Banking of ING Bank N.V. will in any case consist of the three-headed Executive Board of ING Group N.V.¹⁹⁶ This means that the CEO, CFO and CRO of ING Group N.V. are also the CEO, CFO and CRO of ING Bank N.V.¹⁹⁷ At present the Management Board Banking of ING Bank N.V. has four other members. The Executive Board of ING Group N.V. and the Management Board Banking of ING Bank N.V. are under the supervision of the same Supervisory Board.¹⁹⁸
190. There is therefore a great degree of overlap between the management of ING Group N.V. and ING Bank N.V. Both have their own role to play in determining and implementing the ING Group’s climate policy from the Netherlands.
191. ING Group N.V.’s 2023 report to the CDP¹⁹⁹ sets out that the CEO (currently Steven van Rijswijk) has responsibility for drawing up, recording, implementing and where necessary adjusting the business strategy, including the sustainability strategy:

“The CEO is responsible for overall execution of our Strategic Plan which includes our Sustainability Direction (and climate-related risks and opportunities). His role includes formulating, recording, implementing and, where necessary, adjusting the Strategic Plan, as described in Article 5 of the Charter of the Management Board of ING Groep N.V.”²⁰⁰

192. According to the same CDP report, the climate-related responsibilities of the CEO include (numbering added by legal counsel):
- i. Integrating climate-related issues into the strategy
 - ii. Setting climate-related corporate targets
 - iii. Monitoring progress against climate-related corporate targets
 - iv. Managing climate-related risks and opportunities
 - v. Other, please specify (Overall execution of our Strategic Plan which includes our Sustainability Direction)²⁰¹

193. The CEO of ING Group N.V. (also the CEO of ING Bank N.V.) consequently has final

structure/Executive-Board-and-Management-Board-Banking.htm.

¹⁹⁵ Exhibit MD-043, Statuten ING Groep N.V., article 10.1 (in conjunction with article 2). See also Exhibit MD-004, ING Annual Report 2024, p. 88. Lastly, see <https://www.ing.com/About-us/Management-structure/Executive-Board-and-Management-Board-Banking.htm>.

¹⁹⁶ Exhibit MD-004, ING Annual Report 2024, p. 74. See also Exhibit MD-046, Charter of the Management Board of ING Groep N.V. and ING Bank N.V., article 1.3.

¹⁹⁷ Ibid.

¹⁹⁸ Exhibit MD-004, ING Annual Report 2024, pp. 72-73.

¹⁹⁹ CDP (formerly Carbon Disclosure Project) is a non-profit organisation founded in 2000 where companies (and later on cities, states and regions) can disclose their climate impact. CDP manages a global disclosure system for companies and investors (and other actors). In 2023, over 23,000 companies representing at least two-thirds of global market capitalisation submitted a CDP report (see <https://www.cdp.net/en/companies/companies-scores>). In addition to reporting on climate impact, companies (and other actors) also report via the CDP on their impact on deforestation and water security.

²⁰⁰ Exhibit MD-047, ING’s CDP report, p. 7, “(C1.1a) Identify the position(s) (do not include any names) of the individual(s) on the board with responsibility for climate-related issues.”

²⁰¹ Ibid, pp. 10 “(C1.2) Provide the highest management-level position(s) or committee(s) with responsibility for climate-related issues.”

responsibility for ING's climate policy. ING Group N.V. has a global head of Sustainability who reports directly to the CEO.²⁰² The Sustainability department then coordinates the transfer of responsibilities via various business units to sustainability experts who help in the development of ING's policy, programmes and goals relating to sustainability and climate-related risks and opportunities.²⁰³

194. The CDP report makes it clear that specific responsibility for sustainability and climate-related goals lies with (the individual members of) the MBB (Management Board Banking):

*"The responsibility for our various sustainability (climate) targets lies either with the MBB member responsible for that specific area, or with the MBB as a whole."*²⁰⁴

195. The most recent ING climate report makes it clear that the Management Board Banking is responsible for the global ambition level of ING's climate goals and oversees what is called the "Terra approach":

*"ING's Management Board Banking (MBB) has responsibility for the global ambition-setting and oversight of our Terra approach."*²⁰⁵

196. The Terra approach is the method developed by ING that contains transition pathways for twelve emission-intensive sectors in which ING invests. In its own words, ING uses Terra to guide its loan portfolio toward net zero emissions in 2050. The basis thereof is, of course, that ING determines and monitors at group level the way in which the (loan) portfolio²⁰⁶ of the ING Group should develop and what the ambition level for its climate plans is.

197. In view of these responsibilities at management board level, Environmental, Social & Governance topics are an important subject during the many meetings of the Management Board Banking of which, as stated, the members of the Executive Board of ING Group N.V. form part:

"ESG is a regular subject on the agenda of ING's management boards (the EB and the MBB), in their capacity of day-to-day management of the business and as part of their responsibility for ING's long-term (ESG) strategy. ESG-related matters, the related impacts, risks and opportunities and their effect on our strategy are intertwined in many other discussions and topics discussed by the EB and the MBB. These meetings generally take place on a weekly basis."

*As we take steps to further integrate and embed climate and other ESG actions into the business, many of the other topics on the management boards' regular meeting agendas have a sustainability angle. This means that the management boards are discussing and taking decisions on ESG-related topics on a frequent basis."*²⁰⁷ (emphasis added legal counsel)

198. Based on the above it is clear that the ING Management Board makes many strategic decisions during its meetings that have a direct influence on the business activities of the ING Group. Decisions are also made in this respect with regard to the climate policy to be implemented, for which the CEO has final responsibility. All of this takes place from ING's head office in the Netherlands.

²⁰² Ibid, p. 8, "(C1.1b) Provide further details on the board's oversight of climate-related issues."

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Exhibit MD-005, ING Climate Report 2024, p. 86.

²⁰⁶ What applies for loans, naturally also applies for investments and other activities of ING.

²⁰⁷ Productie MD-004, ING Annual Report 2024, p. 103.

199. Lastly, Milieudéfensie points out that the ING shareholders' meetings are held in the Netherlands, i.e. in Amsterdam, The Hague, Rotterdam or Utrecht (by choice of the Management Board).²⁰⁸
200. From the foregoing, we can conclude that the Netherlands should be considered the country where ING carries out its principal managerial and business activities, in any case, with regard to the climate policy to be pursued. With this policy ING determines at group level what climate goals it wishes to achieve and how it could achieve them. This makes the climate policy established by ING decisive for the global CO₂ emissions that the ING Group finances and facilities via its company activities. The Netherlands is therefore to be deemed the country where the event giving rise to damage occurs, and is therefore the relevant *Handlungsort*.
201. This aligns with the District Court's opinion in the Shell case that the determining of group policy can be deemed the event giving rise to damage.²⁰⁹ In the most recent edition of Asser part 10-III, Kramer & Verhagen state that this appears to be the correct conclusion, partly in view of the protective goal of Article 7 Rome II:
- "It was stated in [933] that the event giving rise to damage is defined as the (impending) event (act or omission) that the party suffering damage calls upon to support its claim based on tort. [...] The determining of the group policy of the Shell group is seen as an independent cause of damage that can contribute to the (impending) climate damage of Dutch citizens and is therefore to be deemed an event giving rise to the damage as referred to in Art. 7. The District Court added that Art. 4(1) would lead to the application of Dutch law insofar as the interests of Dutch citizens were concerned. This judgment appears to be correct, partly when seen in the light of the protective purpose of Art. 7 Rome II – which is also cited by the District Court. The character of this type of environmental damage and particularly insofar as it has not yet been (fully) realised, entails that policy that leads to this damage occurring can best be characterised as (a contribution to) the event giving rise to damage. This judgment also aligns with liabilities in relation to corporate responsibility, under which companies can also be held to account for their policy and preparatory actions that (might) lead to damage (elsewhere)."*²¹⁰ (emphasis added by legal counsel)
202. Bearing in mind the options that Milieudéfensie has under Article 7 Rome II, it is conditionally electing to apply Dutch law based on the *Handlungsort*.
203. Since Milieudéfensie in this case seeks to defend the interests of (present and future) Dutch citizens, the Netherlands should also be established as the *Erfolgort*. This also follows from the District Court in the Shell case.²¹¹ If the Court were to be of the opinion that determining climate policy cannot be deemed an event giving rise to damage, Milieudéfensie elects to apply Dutch law based on the *Erfolgort*.

V. IMPORTANT FACTS FROM CLIMATE SCIENCE

V.1 INTRODUCTION

²⁰⁸ Exhibit MD-042, Statuten ING Groep N.V., article 30 and Exhibit MD-043, Statuten ING Groep N.V., article 17.

²⁰⁹ District Court of The Hague, 26 May 2021, ECLI:NL:RBDHA:2021:5337, paras. 4.3.3 to 4.3.6. Shell appealed this opinion at first instance, but withdrew this ground of appeal during the appeal proceedings.

²¹⁰ Asser/Kramer & Verhagen 10-III 2022/1054a.

²¹¹ District Court of The Hague, 26 May 2021, ECLI:NL:RBDHA:2021:5337, para 4.3.7.

204. In this section Milieudefensie explains important facts from climate science.

V.2 **EARTH IS WARMING DUE TO HUMAN (ANTHROPOGENIC) EMISSIONS OF GREENHOUSE GASES**

205. It is a scientific certainty that the Earth is warming and that this is the result of human (i.e.: anthropogenic) actions. The Dutch national institute for strategic policy analysis in the area of the environment, nature and spatial planning, the PBL Netherlands Environmental Assessment Agency concludes in this respect in a report from 2013:

*“It has been proven beyond a doubt that the Earth has been warming, land and sea ice have been melting and sea levels have been rising since the industrial revolution. It is certain that concentrations of CO₂ have risen by almost 40% since the start of the industrial revolution. It has also been established that this rise in CO₂ is caused by human activity. Physicists have told us that greenhouse gases, including CO₂, cause global warming.”*²¹² (our translation)

206. The PBL Netherlands Environmental Assessment Agency based this conclusion on the findings from the Fifth Assessment Report (AR5) from 2013 of the UN Climate Panel, formally called the Intergovernmental Panel on Climate Change, hereinafter: “IPCC”).

207. In its most recent Assessment Report (AR6) from 2023, the IPCC (once again) confirmed the scientific certainty that the Earth is warming due to human influence and that the scale and speed of the recent changes in the climate system are unprecedented, compared to the state of the climate in the past hundreds to thousands of years:

*“It is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred. The scale of recent changes across the climate system as a whole and the present state of many aspects of the climate system are unprecedented over many centuries to many thousands of years.”*²¹³ (emphasis added by legal counsel)

208. According to the IPCC, the Earth is warming as a result of the concentration of greenhouse gases in the atmosphere that has increased due to human action, whereby the current CO₂ concentration in the atmosphere is higher than at any other time in at least the last 2 million years:

*“Observed increases in well-mixed GHG concentrations since around 1750 are unequivocally caused by GHG emissions from human activities over this period. Historical cumulative net CO₂ emissions from 1850 to 2019 were 2400 ± 240 GtCO₂ of which more than half (58%) occurred between 1850 and 1989, and about 42% occurred between 1990 and 2019 (high confidence). In 2019, atmospheric CO₂ concentrations (410 parts per million) were higher than at any time in at least 2 million years (high confidence), and concentrations of methane (1866 parts per billion) and nitrous oxide (332 parts per billion) were higher than at any time in at least 800,000 years (very high confidence).”*²¹⁴ (emphasis added by legal counsel)

209. This increase of atmospheric greenhouse gases is mainly a result of the fact that humans started burning fossil fuels (oil, coal and gas) and of deforestation due to human use of land

²¹² Exhibit MD-048, PBL 2013, ‘De achtergrond van het klimaatprobleem’, p. 1.

²¹³ Exhibit MD-001, IPCC 2023, AR6, SYR, para. 2.1.2, p. 46. See also IPCC 2013, AR5, WGI, SPM, p.4 (see https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5_all_final.pdf).

²¹⁴ Exhibit MD-001, IPCC 2023, AR6, SYR, A.1.3 SPM, p. 4. See also IPCC 2013, AR5, WGI, SPM, p.4 (see https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5_all_final.pdf). PM, p. 11 and p. 15.

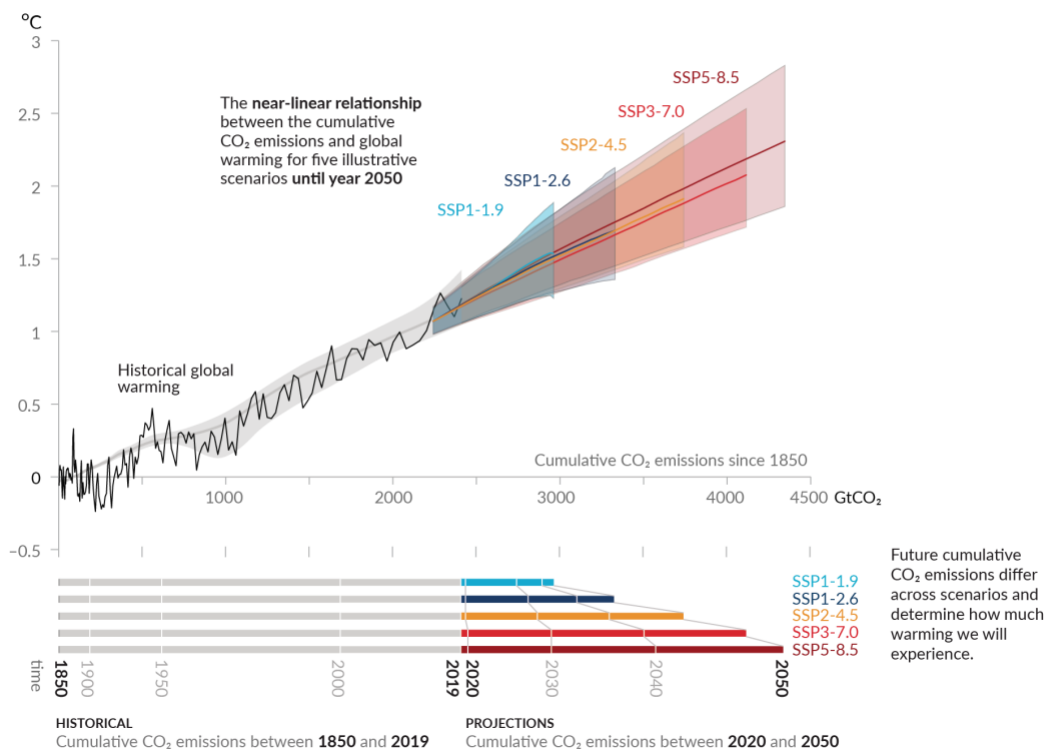
since the industrial revolution:

*"The main human influence on the climate is via combustion of fossil fuels and CO₂ emissions related to land-use change: the principal causes of increased CO₂ concentrations since the pre-industrial period."*²¹⁵ (emphasis added by legal counsel)

210. Greenhouse gases such as CO₂ are characterised by the fact that they retain heat in the atmosphere and that they gradually radiate this absorbed heat in all directions.²¹⁶ If CO₂ concentrations in the atmosphere increase, the atmosphere, the land (the biosphere), the ice masses (the cryosphere) and the oceans will gradually warm up and the average temperature on Earth will also rise.
211. According to the IPCC, the relationship between the cumulative CO₂ emissions and the global average temperature increase is virtually linear.²¹⁷ The IPCC shows this in their last Assessment Report (AR6) by means of the following figure.²¹⁸

Every tonne of CO₂ emissions adds to global warming

Global surface temperature increase since 1850–1900 (°C) as a function of cumulative CO₂ emissions (GtCO₂)



212. This figure presents the cumulative CO₂ emissions since 1850 on the horizontal axis and the

²¹⁵ IPCC 2021, AR6, WGI, p. 163 (see https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_FullReport.pdf). See also IPCC 2013, AR5, WGI, p.11 (zie https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5_all_final.pdf).

²¹⁶ Exhibit MD-001, IPCC 2023, AR6, SYR, p. 124.

²¹⁷ Exhibit MD-011, IPCC 2021, AR6, WGI, D.1.1, p. 28: "This Report reaffirms with high confidence the AR5 finding that there is a near-linear relationship between cumulative anthropogenic CO₂ emissions and the global warming they cause. Each 1000 GtCO₂ of cumulative CO₂ emissions is assessed to likely cause a 0.27°C to 0.63°C increase in global surface temperature with a best estimate of 0.45°C." See also TS.3.3, p. 97.

²¹⁸ Exhibit MD-011, IPCC 2021, AR6, WGI, SPM, Figure SPM.10, p. 28.

average temperature increase on Earth on the vertical axis. The figure shows by means of the black line and the table below that in 2019 some 2400 gigatonnes of CO₂ were emitted and warming was 1.1°C. The future emissions are represented in five different scenarios, varying from scenarios with low future emissions (SSP1-1.9) to high future emissions (SSP5-8.5). The figure shows a virtually straight line that goes from the bottom left to the top right, which means that both in the past and in the future, the temperature increase on Earth is in a virtually linear relationship with the cumulative CO₂ emissions, according to the IPCC.

213. This virtually linear relationship between the cumulative CO₂ emissions and the temperature increase has two important consequences.
214. First of all, this means that as long as humans add (net) CO₂ to the atmosphere, Earth will keep warming. The stabilisation of the human-induced global temperature increase therefore requires that the net anthropogenic CO₂ emissions become zero.²¹⁹ It is therefore not possible to stop further warming and stabilise the temperature increase by merely reducing CO₂ emissions. The CO₂ emissions must therefore be reduced to net zero worldwide.
215. Secondly, this means that what is necessary to limit warming to a specific temperature level, can be expressed by means of a carbon budget.²²⁰ This means a maximum quantity of CO₂ (the carbon budget) that can still be emitted before a temperature limit is exceeded. The precise scope of the remaining carbon budget to have a 50% chance to limit the temperature increase to the globally agreed target of 1.5°C will be discussed in further detail in Chapter XIV.2. For the moment we will suffice by reminding the Court of what was stated in the introduction to this summons (partly by the figure included there), i.e. that the cumulative global CO₂ emissions on the road to net zero emissions must therefore remain within the carbon budget in order to be able to limit the temperature increase to 1.5°C. This shows that not only the final goal – achieving net zero emissions – is relevant, but so too is the road to net zero. The road to net zero determines the quantity of cumulative CO₂ emissions that ultimately will be added to the atmosphere and this total of cumulative emissions is what determines continued global warming.
216. The more CO₂ (and other greenhouse gases) that is cumulatively emitted into the atmosphere, the higher its concentration in the atmosphere. This results in more heat being trapped in the atmosphere, causing the average temperature on Earth to rise. This global warming in turn results in climate change. This has far-reaching consequences on global, regional and local levels. These consequences will be discussed in this case (Chapter VIII) on account of the danger they pose to human society and the ecosystems on which we depend.
217. As will be explained in Chapter XII.3 of this summons, as of its founding in 1991 ING could have been and must have been familiar with the occurrence of anthropogenic climate change and that its activities as a financial institution are of influence on the scope of this phenomenon (something that ING has explicitly acknowledged since at least 2002).

V.3 THE ORIGIN OF ANTHROPOGENIC CLIMATE CHANGE

218. Humans have been using the fossil fuels oil, coal and gas since the industrial revolution. Due to the large-scale use of fossil fuels, a new (formerly not occurring) source of large-scale

²¹⁹ Exhibit MD-011, IPCC 2021, AR6, WGI, D.1.1 SPM, p. 28, and Exhibit MD-010, IPCC 2021, AR6, WGI, TS, TS.3.3, p. 97 en 98.

²²⁰ Exhibit MD-011, IPCC 2021, AR6, WGI, D.1.1 SPM, p. 28, and TS.3.3, pp. 97 and 98.

emissions of greenhouse gases has arisen, mainly CO₂. By burning huge quantities of fossil plant remnants - which is what coal, natural gas and crude oil are, in essence - humans have affected CO₂ concentrations in the atmosphere. These fossil plant remnants that are now being burned as fuel removed CO₂ from the atmosphere millions of years ago by means of the photosynthesis process and due to high pressure and temperature, they have turned into condensed carbon compounds in the Earth's crust. This storage of carbon in the Earth's surface forms a part of the natural carbon cycle on a very long geological time scale from tens to hundreds of millions of years.

219. Because humans started burning these carbon reserves stored in the earth about 200 years ago, concentrated carbon compounds from Earth's ancient history now end up in today's atmosphere in the form of CO₂. And because this millions-year-old carbon, which is stored in the Earth's crust, is being added to the atmosphere, atmospheric CO₂ concentrations are rising at an unnatural and unprecedented pace as a direct result of human action.
220. Fossil fuels are burned for the energy that is released during this burning process, which energy is used for, e.g., power generation (the energy sector), to drive machines (the industrial sector) or modes of transport (mobility), or to heat up rooms (the developed environment). This links the burning of fossil fuels and the associated CO₂ emissions to activities in almost all sectors of society and the economy.
221. The bulk of the CO₂ emitted by burning fossil fuels cannot be chemically broken down in the atmosphere. Scientists have concluded that it will take many hundreds of years for most CO₂ molecules and as much as thousands of years for others to disappear from the atmosphere but in the meantime, they retain their warming properties.²²¹ Of all anthropogenic CO₂ emissions, on balance up to approx. 50% is absorbed by the biosphere and the oceans within a number of decades. This absorption capacity of the biosphere and the oceans decreases, however, in case of persistent CO₂ emissions (and ditto warming) and continuing processes such as deforestation. Of the other CO₂ added to the atmosphere, 15% to 40% continues having a greenhouse gas effect for more than a thousand years and 10% to 25% for approximately ten thousand years. Indeed, a small part of the anthropogenic CO₂ emissions will only disappear from the atmosphere after several hundreds of thousands of years.²²²
222. Due to the long-term atmospheric life of CO₂, current CO₂ concentration is for a large part a sum of the anthropogenic CO₂ emissions since the start of the industrial revolution. In 2013 the concentration of CO₂ in the atmosphere was already 40% higher than the pre-industrial level,²²³ and this percentage had already risen to 50% in 2023 (and is still increasing every year).²²⁴
223. In addition to CO₂, other greenhouse gases also contribute to the process of anthropogenic climate change. The most important of these is methane (CH₄). Methane is a hydrocarbon that also forms the main component of natural gas. After CO₂ it is the most commonly

²²¹ IPCC 2021, AR6, WGI, ch.4, p.642 (see https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_FullReport.pdf). See also ibid, ch.6., p.544 and 545.

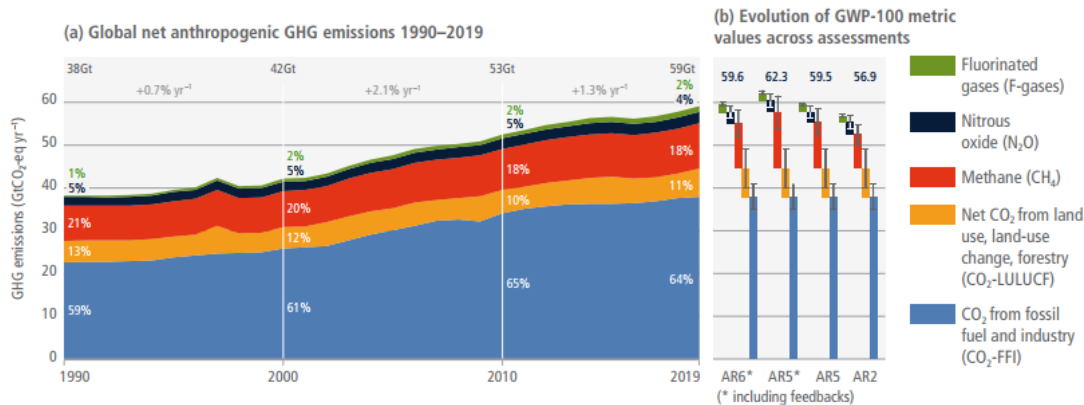
²²² Ibid, p. 2237 and ch6, Box 6.1, p. 472. See also exhibit MD-011, IPCC 2021, AR6, WGI, SPM, p. 20, on the decreasing share of CO₂ emissions that is being absorbed by the ocean and biosphere in scenarios with high CO₂ emissions.

²²³ Exhibit MD-048, PBL 2013, 'De achtergrond van het klimaatprobleem', p. 1.

²²⁴ Exhibit MD-006, Forster et al. 2024, 'Indicators of Global Climate Change 2023: annual update of key indicators of the state of the climate system and human influence', p. 2633. The CO₂ concentration of 419.3 ppm in 2023 is 50% (rounded) higher than the CO₂ concentration of 280 ppm, at the time of the beginning of the industrial revolution.

occurring greenhouse gas emitted by humans and in 2019 was responsible for about 18% of global greenhouse gas emissions (expressed in CO₂-equivalents)²²⁵, as appears from the graph below (in which methane is indicated by the colour red and CO₂ by the colours blue and orange).²²⁶

Emissions of greenhouse gases have continued to increase since 1990, at varying rates



224. Methane is emitted, inter alia, by the oil and natural gas industry, waste sites, agricultural activities, coal extraction, waste water purification and certain industrial processes. Methane is at least 84 times more potent than CO₂ in terms of trapping heat in the atmosphere (on a 20-year time scale).²²⁷ Although methane is therefore a very potent greenhouse gas, it is also a relatively short-lived gas in the atmosphere, because it breaks down in the atmosphere over an average of twelve years (into CO₂ and water). Partly due to this short life in the atmosphere, a significant reduction of methane emissions would have a rapid and considerable effect on the warming capacity of the atmosphere.²²⁸ However, in the past two centuries the methane concentration in the atmosphere has more than doubled, in large part due to human activity.²²⁹

225. In the next chapter we will discuss the increasing concentration of greenhouse gases in the atmosphere due to human activity, with a focus on CO₂ as the most important greenhouse gas.

V.4 THE INCREASING CONCENTRATION OF GREENHOUSE GASES IN THE ATMOSPHERE

²²⁵ See footnote 3.

²²⁶ IPCC 2022, AR6, WGIII, ch.2, p.229

(See https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf).

²²⁷ If the impact of methane is viewed over a period of twenty years, one tonne of methane can be deemed equivalent to 84 to 87 tonnes of CO₂. If the impact is reviewed over a period of 100 years, methane is 28 to 36 times as potent as CO₂. See Exhibit MD-051-IEA 2021, 'Methane Tracker 2021, Methane and climate change' (selected pages, print-out from website 13 March 2025).

²²⁸ The IPCC concludes: "As methane has a short lifetime but is a potent GHG, strong, rapid and sustained reductions in methane emissions can limit near-term warming" and "The level of peak warming depends on cumulative CO₂ emissions until the time of net zero CO₂ and the change in non-CO₂ climate forcers by the time of peaking. Deep GHG emissions reductions by 2030 and 2040, particularly reductions of methane emissions, lower peak warming, reduce the likelihood of overshooting warming limits and lead to less reliance on net negative CO₂ emissions that reverse warming in the latter half of the century". See Exhibit MD-001, IPCC 2023, AR6, SYR, para. 4.2, p. 95 and Exhibit MD-049, IPCC 2022, AR6, WGIII, SPM, SPM, Chp. 2, p. 23.

²²⁹ Exhibit MD-052, US EPA, 'The Importance of Methane' (print-out from website 26 February 2025), p. 1.

226. Based on measurements carried out in the ice caps of Greenland and Antarctica, which took millions of years to form, scientists know that CO₂ concentrations at the start of the industrial revolution were about 280 ppm, i.e. out of every 1,000,000 particles in the atmosphere, 280 consisted of CO₂. During the 8000 years prior to the industrial revolution, i.e. the period after the last ice age (the Mid-Holocene), CO₂ concentrations in the atmosphere have not been below 260 ppm and not higher than 280 ppm according to the IPCC; that is a bandwidth of only 20 ppm during an 8000-year period. The IPCC:

*“The concentration of atmospheric CO₂ has increased from a pre-industrial value of about 280 ppm to 379 ppm in 2005. Atmospheric CO₂ concentration increased by only 20 ppm over the 8000 years prior to industrialization.”*²³⁰

227. Because the concentration of CO₂ in the atmosphere during the 8000 years prior to the industrial revolution fluctuated between 260 and 280 ppm (the natural variation), the climate has been reasonably stable during the past 8000 years. This stable and temperate climate of the past 8000 years has created reasonably stable living conditions for today’s ecosystems and the planet’s biodiversity. These ecosystems and biodiversity have optimally adjusted themselves to today’s stable climatological circumstances but that also means they now strongly depend on them as well.
228. In that stable climate of CO₂ concentrations between 260 and 280 ppm during the past 8000 years, humans, who until then were nomadic hunters and gatherers of food, ‘discovered’ agriculture in the form of arable farming and livestock breeding. These food supplies, which are all tied to and benefit from the stability of the climate system, have facilitated a global population of billions of people.
229. All climatic changes that took place before the industrial revolution, similar to the (local) warmer periods around 900 AD (when wine was being produced in England, for instance) and the (local) colder periods in the 16th and 17th centuries (the time of the wintry scenes depicted in paintings by the Dutch masters) took place within that bandwidth of 20 ppm (i.e. between 260 and 280 ppm).
230. Not only was the bandwidth limited to this 20 ppm in the 8000 years prior to the industrial revolution, according to the IPCC, that bandwidth was also limited during the past 800,000 years. According to the IPCC, the levels of CO₂ in the atmosphere during those 800,000 years never exceeded 300 ppm (the warmest periods) and they never fell below 174 ppm (the ice ages). This emerged from scientific research on the basis of drillings in the aforementioned prehistoric ice layers on Greenland and Antarctica.

*“Before industrialisation, atmospheric CO₂ concentrations varied between 174 ppm and 300 ppm, as measured directly in air trapped in ice at Dome Concordia, Antarctica (Bereiter et al., 2015; Nehrbaß-Ahles et al., 2020).”*²³¹

231. In 2015, the annual average of global CO₂ concentrations exceeded a level of 400 ppm for the first time. In 2023 it was 419 ppm on average.²³² This CO₂ concentration is higher than at

²³⁰ IPCC 2007, AR4, WGI, TS, p.25 (see https://www.ipcc.ch/site/assets/uploads/2018/05/ar4_wg1_full_report-1.pdf). See also IPCC 2021, AR6, WGI, Chp. 2, p. 299-301, including Table 2.1 and Figure 2.4 on these pages (see https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_FullReport.pdf).

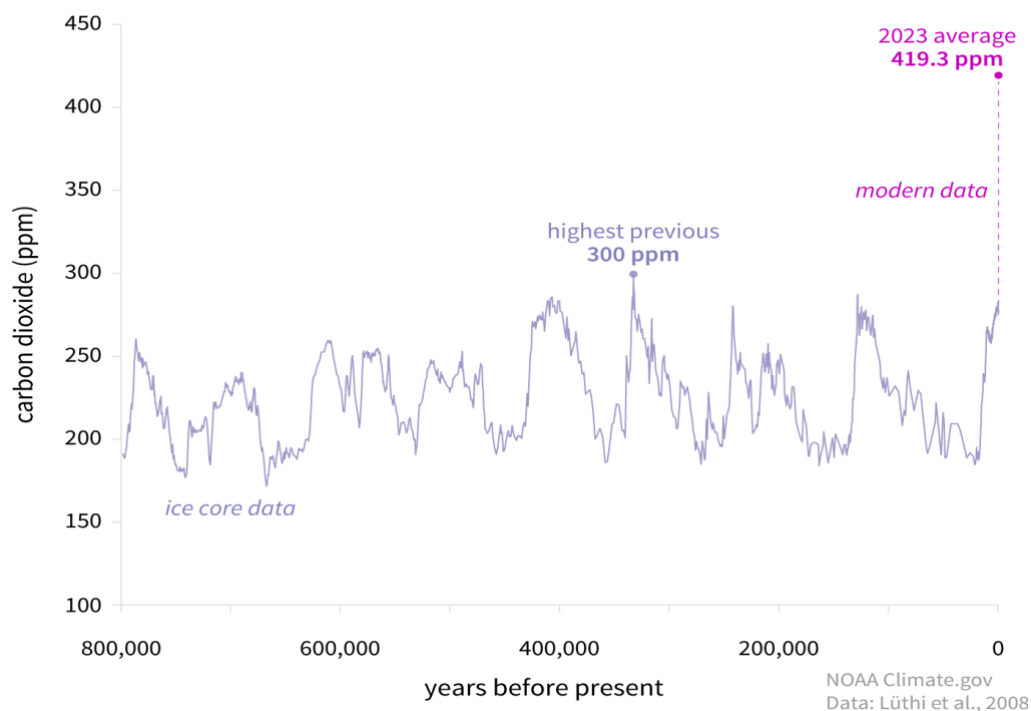
²³¹ Exhibit MD-010, IPCC 2021, AR6, WGI, Chp. 1, p. 160.

²³² Exhibit MD-006, Forster et al. 2024, ‘Indicators of Global Climate Change 2023: annual update of key indicators of the state

any other time in at least the last 2 million years²³³ and a good 119 ppm higher than the highest concentration values of the past 800,000 years. Indeed, levels are more than 139 ppm higher than the maximum CO₂ value of the past 8000 years, the period during which human civilisation was able to form.

232. In a graph, the situation of the past 800,000 years looks like this, clearly demonstrating how extraordinary the rise in CO₂ concentration in the recent period is compared to the previous 800,000 years:²³⁴

CARBON DIOXIDE OVER 800,000 YEARS



233. As the graph clearly shows, the speed at and the ultimate extent by which humans have changed the chemical composition of the atmosphere since the industrial revolution are enormous. Climate reconstructions show that the speed of the current increase in CO₂ may be many times higher than all known natural climate change of the past 56 million years.²³⁵
234. The most telling and worrying comparison may well be that since the 1980s, mankind has added an average of 20 ppm of CO₂ to the atmosphere every decade (see the NOAA figure below).²³⁶ In other words, every decade since 1980, due to human intervention, CO₂

of the climate system and human influence', p. 2633.

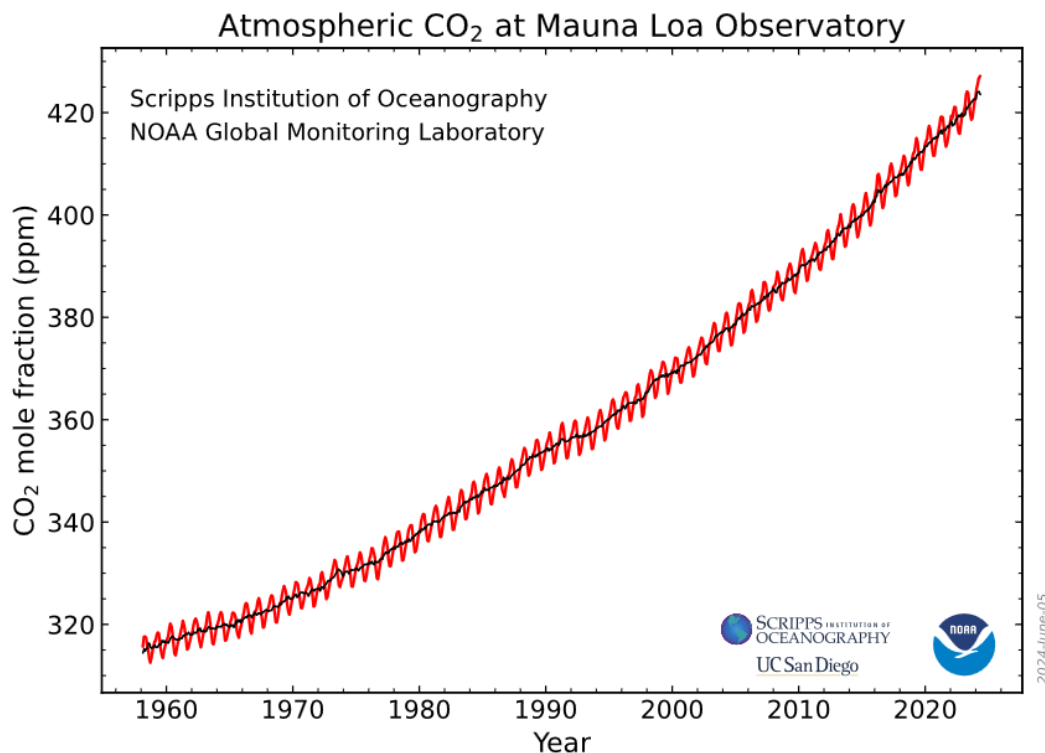
²³³ Exhibit MD-001, IPCC 2023, AR6, SYR, para. A.1.3 SPM, p. 4 and Exhibit MD-010, IPCC 2021, AR6, WGI, para. A.2.1 SPM, p. 8, and TS.2.2, pp. 67 and 68.

²³⁴ Exhibit MD-053, NOAA 2024, 'Climate Change: Atmospheric Carbon Dioxide' (print-out from website 26 February 2025). The National Oceanic & Atmospheric Administration (NOAA) is an agency of the US federal government which is similar to the Royal Netherlands Meteorological Institute (KNMI) in the Netherlands.

²³⁵ Exhibit MD-010, IPCC 2021, AR6, WGI, TS.2.2, p. 69: "The centennial rate of change of CO₂ since 1850 has no precedent in at least the past 800,000 years (Figure TS.9), and the fastest rates of change over the last 56 million years were at least a factor of four lower (low confidence) than over 1900–2019." See also Exhibit MD-010, IPCC 2021, AR6, WGI, Figure 5.3, p. 683, Exhibit MD-055, Ciu et al. 2011, 'Slow release of fossil carbon during the Palaeocene-Eocene Thermal Maximum' and Exhibit MD-054, Barras 2015, 'When global warming made our World super-hot' (print-out from website).

²³⁶ See also Exhibit MD-IPCC 2021, AR6, WGI, Chp. 2, Table 2.1, p. 299. This table shows the average change in CO₂

concentrations rise by as much as what used to form the maximum natural bandwidth during the 8000 years prior to the industrial revolution. So through the CO₂ emissions caused by humans, humans have an extraordinarily far-reaching impact on the chemical composition of the atmosphere. As a consequence, according to the IPCC, global warming increases with 0,2°C per decade (and according to more recent studies even with 0,26°C per decade), as will be elaborated below.



235. If the emissions of greenhouse gases continue to develop as expected based on the policy currently followed by countries, according to the latest Assessment Report (AR6) of the UN Climate Panel this will result in this century (alone) in a warming of 3.2°C above the pre-industrial level.²³⁷ The nationally determined contributions (called NDCs) announced by countries up until the 2021 climate top (COP26 in Glasgow) could, if implemented, lead to a somewhat lower warming, of 2.8°C, but have not yet been converted into actual policy. This is why the UN Climate Panel speaks of an *'implementation gap'*.²³⁸
236. Other organisations have come to comparable conclusions. For example, the United Nations Environment Programme (UNEP) concluded more recently that the Earth will warm this

concentrations per century for various periods.

²³⁷ Exhibit MD-001, IPCC 2023, AR6, SYR, A.4.4 SPM, p. 11: "Without a strengthening of policies, global warming of 3.2 [2.2 to 3.5]°C is projected by 2100 (medium confidence)."

²³⁸ Exhibit MD-001, IPCC 2023, AR6, SYR, A.4.3 and A.4.4 SPM, p. 11: "Modelled pathways that are consistent with NDCs announced prior to COP26 until 2030 and assume no increase in ambition thereafter have higher emissions, leading to a median global warming of 2.8 [2.1 to 3.4] °C by 2100 (medium confidence). Many countries have signalled an intention to achieve net zero GHG or net zero CO₂ by around mid-century but pledges differ across countries in terms of scope and specificity, and limited policies are to date in place to deliver on them. [...] Policy coverage is uneven across sectors (high confidence). Policies implemented by the end of 2020 are projected to result in higher global GHG emissions in 2030 than emissions implied by NDCs, indicating an *'implementation gap'* (high confidence)."

century by 2.8°C (66% chance), based on the unconditional NDCs issued by countries up to June 2024. If the conditional NDCs were also implemented, according to UNEP this will lead to a somewhat lower temperature increase of 2.6°C (66% chance). If we only look at the current policy of countries, this will lead, however, to a warming of 3.1°C (66% chance). According to UNEP there is thus a significant implementation gap.²³⁹

237. As things currently stand, the world is, therefore, heading for climate change that will be catastrophic for man and the environment.

V.5 THE RELATIONSHIP BETWEEN FOSSIL FUELS, CO₂ AND GLOBAL WARMING HAS BEEN KNOWN FOR MORE THAN 100 YEARS.

238. According to the IPCC, scientists have known for more than 100 years that CO₂ is a greenhouse gas and that additional CO₂ in the atmosphere causes additional global warming.²⁴⁰

239. As early as 1859, Irish physicist John Tyndall used lab experiments to describe that changes in CO₂ in the atmosphere may explain all of the historical climate change discovered by geologists.²⁴¹

240. Based on research and measurements, Svante Arrhenius, a Swedish scientist who was affiliated with Stockholm University, concluded in 1896 that the large-scale burning of fossil fuels (mainly coal in those days) would cause atmospheric CO₂ concentrations to rise and that this would result in global warming. Arrhenius already indicated in 1896 that an increase or decrease of 40% of the concentration of CO₂ in the atmosphere could result in ice ages or interglacials (the periods between ice ages).²⁴²

241. In the 1930s, British meteorologist Guy Stewart Callendar started collecting data from 150 weather stations across the world and he also started his own measurements. His findings were that between 1890 and 1910, concentrations of CO₂ had risen from 290 ppm to 303 ppm and in 1930 to 310 ppm. Based on his findings, Callendar concluded in 1938 that by using fossil fuels, we were considerably changing the atmosphere's composition at a pace that was highly exceptional in terms of geological time scales and that the potential effects of such change should, therefore, be studied more closely.²⁴³

²³⁹ Exhibit MD-121, UNEP 2024, 'Emissions Gap Report 2024', Figure 4.2, p. 34.

²⁴⁰ IPCC 2021, AR6, WGI, Chp. 1, pp. 174 and 175 (see https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_FullReport.pdf). See also IPCC 2007, AR4, WGI, H1, p. 103: "The realisation that Earth's climate might be sensitive to the atmospheric concentrations of gases that create a greenhouse effect is more than a century old." (see https://www.ipcc.ch/site/assets/uploads/2018/05/ar4_wg1_full_report-1.pdf).

²⁴¹ IPCC 2007, AR4, WGI, Chp. 1, pp. 103: "In 1859, John Tyndall (1861) identified through laboratory experiments [...] that changes in the amount of [...] CO₂ could have produced 'all the mutations of climate which the researches of geologists reveal'." Tyndall's work in question is entitled 'On the absorption and radiation of heat by gases and vapours, and on the physical connection' and it was published in Philosophical Magazine and Journal of Science, 1861, Vol 22, pp. 277 et seq.

²⁴² IPCC 2007, AR4, WGI, Chp. 1, pp. 105: "In 1895, Svante Arrhenius (1896) followed with a climate prediction based on greenhouse gases, suggesting that a 40% increase or decrease in the atmospheric abundance of the trace gas CO₂ might trigger the glacial advances and retreats." Arrhenius' work in question is entitled 'On the influence of carbonic acid in the air upon the temperature of the ground' and it was published in Philosophical Magazine and Journal of Science, 1896, Vol 41, pp. 237-276.

²⁴³ IPCC 2007, AR4, WGI, Chp. 1, p. 105: "G. S. Callendar (1938) [...] found that a doubling of atmospheric CO₂ concentration resulted in an increase in the mean global temperature of 2°C, with considerably more warming at the poles, and linked

242. In the 1950s, American chemist Charles David Keeling started registering CO₂ concentrations in the atmosphere with a higher degree of accuracy, using better technology. He incorporated his data into a graph called the Keeling curve which, as indicated by the IPCC, has obtained iconic status in the world of climate science (the NOAA figure included in para. 234 above shows the Keeling curve from the 1960s onward).²⁴⁴ When Keeling started his measurements in the 1950s, CO₂ concentrations were around 315 ppm, in 1980 they were 340 ppm, in 1990 they were 355 ppm and they have now reached around 419 ppm (2023).
243. For some time now, it has been possible to use satellites for measurements, which meant we had an additional method to prepare a picture that covered the entire world. These measurements, which are still updated every day, confirmed the reliability of Keeling's previous measurements.
244. In 1957, oceanographer Professor Roger Revelle and Austrian chemist Hans Suess concluded in their report that human CO₂ emissions are likely to cause global warming. With their report, they disproved another scientific theory, namely that the oceans would absorb most of the CO₂ emitted by humans. At the time, Revelle and Suess demonstrated that the oceans only absorb about 50% of the CO₂ emitted by humans and that the rest remains in the atmosphere in the form of greenhouse gas. They also concluded that the oceans emit some of the absorbed CO₂ into the atmosphere as a result of chemical processes, and that these emissions increase as the ocean's water warms up due to global warming. The more CO₂ that is emitted, the more the Earth warms and the oceans get warmer, the more the share of the emitted CO₂ absorbed by the oceans falls.²⁴⁵
245. The 1957 report by Revelle and Suess made it very clear that during the carbon cycle, the atmosphere, the oceans, the land and the ecosystems all interact, and that human emissions of CO₂ could have a bigger impact on the global climate than was initially thought.

V.6 WARMING TO DATE AND DELAYS IN THE CLIMATE SYSTEM

246. The fact that the Earth is warming due to more CO₂ in the atmosphere has been known for a very long time. It begs the question of how much the average temperature of the Earth has risen since the start of the industrial revolution as a result of increasing CO₂ concentrations.
247. According to the most recent IPCC Assessment Report (AR6), the average temperature of the Earth during the period 2011-2020 is already 1.1°C higher (bandwidth 0.95 to 1.20°C) than

increasing fossil fuel combustion with a rise in CO₂ and its greenhouse effects: 'As man is now changing the composition of the atmosphere at a rate which must be very exceptional on the geological time scale, it is natural to seek for the probable effects of such a change.' Callendar's work in question is entitled 'The artificial production of carbon dioxide and its influence on temperature' and it was published in the Quarterly Journal of the Royal Meteorological Society, Vol 64, pp. 223 et seq.

²⁴⁴ IPCC 2007, AR4, WGI, Chp. 1, pp. 100: "The high-accuracy measurements of atmospheric CO₂ concentration, initiated by Charles David Keeling in 1958, constitute the master time series documenting the changing composition of the atmosphere (Keeling, 1961, 1998). These data have iconic status in climate change science as evidence of the effect of human activities on the chemical composition of the global atmosphere."

²⁴⁵ IPCC 2007, AR4, WGI, Chp. 1, p. 105: "Revelle and Suess (1957) explained why part of the emitted CO₂ was observed to accumulate in the atmosphere rather than being completely absorbed by the oceans." See also the work of Revelle and Suess, entitled *Carbon Dioxide Exchange Between Atmosphere and Ocean and the Question of an Increase of Atmospheric CO₂ During the Past Decades*, published in 1957 In *Tellus*, Vol 9, p. 18 et seq. See also Exhibit MD-010, IPCC 2021, AR6, WGI, Chp. 1, Figure 1.6, p. 174. That the share of the emitted CO₂ that is absorbed by the oceans decreases in scenarios with higher CO₂ emissions has been confirmed several times since then. See Exhibit MD-010, IPCC 2021, AR6, WGI, Figure SPM.7, p. 20 and Box TS.5, p. 80.

the pre-industrial temperature level (from the period 1850-1900):

*"Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 in 2011-2020."*²⁴⁶

248. According to the IPCC, this warming is increasing on average by 0.2°C per decade:

*"Anthropogenic global warming was estimated to be increasing at $0.2 \pm 0.1^\circ\text{C}$ per decade (high confidence)"*²⁴⁷

249. However, the IPCC Sixth Assessment Report represents the *average* warming during the period 2011-2020 and is thus somewhat dated. A survey of more than 50 scientists that was published in June 2024 and that uses the same methodology as the IPCC, concluded that the average warming over 2014-2023 had already reached 1.19°C and that the warming for 2023 came to 1.31°C. This survey also concluded that the warming over the period 2014-2023 increased by an unprecedented 0.26°C per decade, i.e. even faster than previously:

*"The indicators show that, for the 2014–2023 decade average, observed warming was 1.19 [1.06 to 1.30] °C, of which 1.19 [1.0 to 1.4] °C was human-induced. For the single-year average, human-induced warming reached 1.31 [1.1 to 1.7] °C in 2023 relative to 1850–1900. [...] Human induced warming has been increasing at a rate that is unprecedented in the instrumental record, reaching 0.26 [0.2–0.4] °C per decade over 2014–2023."*²⁴⁸

250. In the meantime, 2024 has clearly surpassed the record heat of 2023, concludes the European Climate Change Service Copernicus. Copernicus establishes that in 2024 the global mean temperature was 1,6°C higher than in the period 1850-1900 when burning fossil fuels for industry started up.²⁴⁹ This is represented in the Copernicus figure below, which clarifies how the warming has occurred over the past decades relative to the reference period 1850-1900 (which is represented as zero point in the figure):²⁵⁰

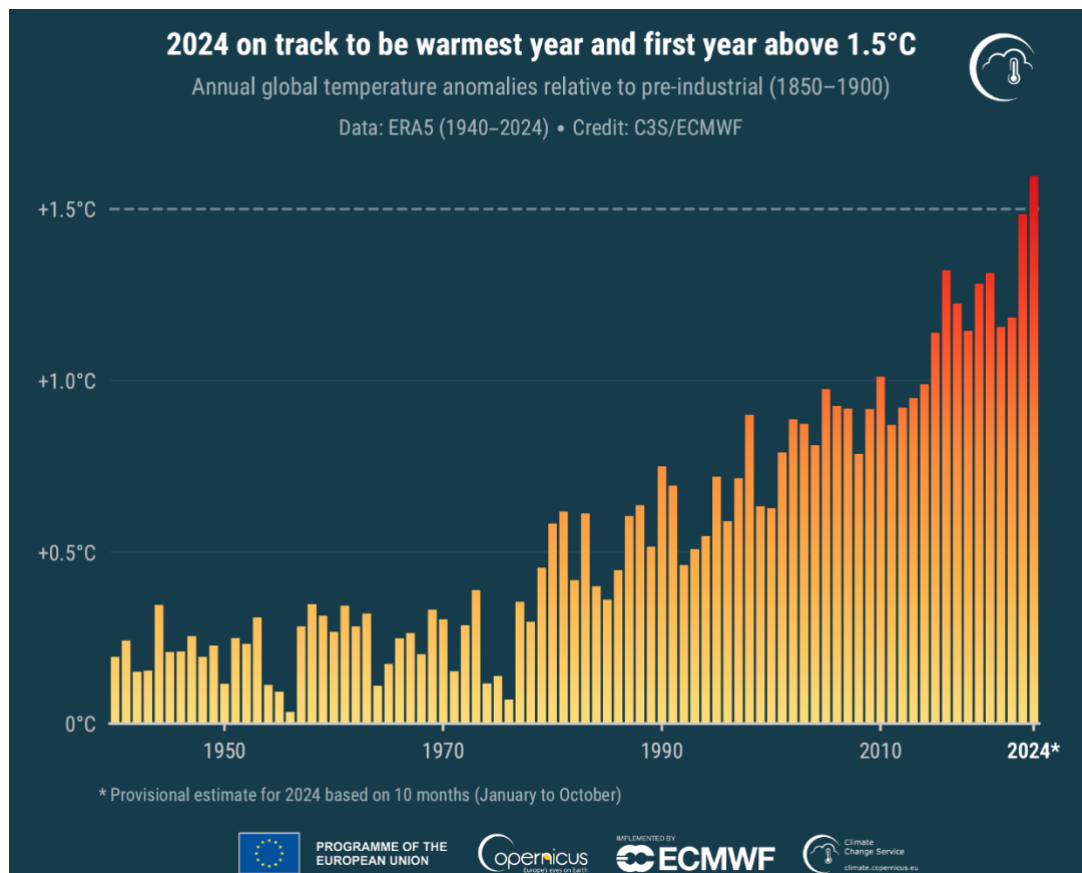
²⁴⁶ Exhibit MD-001, IPCC 2023, AR6, SYR, SPM, A.1, p. 4.

²⁴⁷ Exhibit MD-010, IPCC 2021, AR6, WGI, Chp. 1, p. 187.

²⁴⁸ Exhibit MD-006, Forster et al. 2024, 'Indicators of Global Climate Change 2023: annual update of key indicators of the state of the climate system and human influence', p. 2626. It is explained on pp. 2626-2627 that the IPCC reports form the scientific basis for the climate negotiations in the framework of the United Nations Framework Convention on Climate Change (UNFCCC), but that these reports are published at intervals of 5-10 years, so that an information gap can arise between reporting cycles. Empirically-based decision making must, however, be based on current and timely information on important indicators of the status of the climate system and of the human influence on the global climate system. As the Seventh Assessment Report of the IPCC is only expected at the end of this (critical) decade and in view of the speed of the recent changes and the need for updated knowledge on the climate, to support fact-based decision making, the 'Indicators of Global Climate Change (IGCC)' project was set up to provide policymakers with yearly updates of the most recent scientific insights regarding the status of selected crucial climate change indicators. The study follows the methodologies applied by the IPCC in the Sixth Assessment Report as much as possible.

²⁴⁹ See the website of Copernicus and the published article of 10 January 2025, 'Copernicus: 2024 is the first year to exceed 1.5°C above pre-industrial level', available at <https://climate.copernicus.eu/copernicus-2024-first-year-exceed-15degc-above-pre-industrial-level>. It is important to clarify that exceeding 1.5°C during one year does not mean that the average warming has now exceeded the 1.5°C target. Because annual figures show peaks and troughs (as appears from the graph), a long-term average is used to estimate average warming.

²⁵⁰ See <https://climate.copernicus.eu/copernicus-2024-virtually-certain-be-warmest-year-and-first-year-above-15degc>. In this figure Copernicus estimated on the basis of the first 10 months of 2024 the global average temperature rise with 1,55°C still slightly lower than the actual 1,6°C.



251. The current warming already has a large impact on important ecosystems, is felt in all regions of the world and has led to widespread negative consequences and related damage to nature and people:

“Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred. Human-caused climate change is already affecting many weather and climate extremes in every region across the globe. This has led to widespread adverse impacts and related losses and damages to nature and people (high confidence).”²⁵¹

252. According to the IPCC, climate- and weather-related extremes like heat waves, droughts, heavy rainfall, cyclones and forest fires have increased in frequency and intensity and have resulted in widespread, omnipresent consequences for ecosystems, people, the infrastructure and for human habitats. This shows that many human and natural systems are vulnerable to global warming and the consequences thereof. The IPCC attributes the fact that climate- and weather-related extremes are occurring more often and with increasing intensity to climate change caused by humans:

“Widespread, pervasive impacts to ecosystems, people, settlements, and infrastructure have resulted from observed increases in the frequency and intensity of climate and weather extremes, including hot extremes on land and in the ocean, heavy precipitation events, drought and fire weather (high confidence). Increasingly since AR5, these observed impacts have been attributed to human-induced climate change particularly through increased frequency and severity of extreme

²⁵¹ Exhibit MD-001, IPCC 2023, AR6, SYR, A.2, p. 5.

events.”²⁵²

253. The consequences of warming to date are, therefore, already significant and not to be underestimated (for more information, see Chapter VIII below). In addition, it is important to emphasise that specific parts of the climate system have a delayed response to the emission of greenhouse gases.²⁵³ This means that the climate consequences that are caused in the Netherlands and the world by the current CO₂ concentration in the atmosphere are already greater than can be observed at this time. Some consequences of the current concentration of greenhouse gases will persist and be reinforced for many tens or even many hundreds to thousands of years. Even in the theoretical situation that the current CO₂ concentration in the atmosphere will not increase further, the climate consequences will be increasing in severity for a very long time to come. This concerns, inter alia, during these time scales the continuing and persistent melting of ice masses (glaciers and ice caps), the thawing of permafrost, the acidification and warming of the oceans and the rising sea levels that is the result of the warming of the water and the melting of, inter alia, the Greenland and Antarctic ice caps.
254. It will be millennia before the warming has reached the deeper oceans and before the ice caps have fully adapted to the higher temperature. The sea level will consequently continue rising for millennia after the anthropogenic emissions of greenhouse gases has stopped worldwide.²⁵⁴ The worldwide glaciers, that form a critical water source for approx. 1.9 billion people, have a delayed response to the current warming. A sizeable study based on two decades of satellite data of all 215,000 glaciers worldwide shows that even in the most optimistic scenario in which warming is limited to 1.5°C, approximately half of all glaciers, and 26% of the total volume of glacier ice, will disappear this century.²⁵⁵
255. Many climate consequences will continue to worsen for a very long time, even after the anthropogenic emissions of greenhouse gases have stopped. This means that the consequences that we see today only provide a quick look into the many more serious future consequences that have already been unavoidably caused by the current CO₂ concentration; consequences that await the world no matter what. It is relevant in this respect that more than 40% of the total cumulative quantity of anthropogenic CO₂ emissions relatively recently, was emitted after 1990,²⁵⁶ as can also be seen in the IPCC figure below.²⁵⁷

²⁵² Exhibit MD-056, IPCC 2022, AR6, WGII, SPM, SPM, B.1.1, p. 9. For a summary of the consequences, see also para. B.1, pp. 9-11.

²⁵³ Exhibit MD-010, IPCC 2021, AR6, WGI, Box TS.9, p. 106: *“The present rates of response of many aspects of the climate system are proportionate to the rate of recent temperature change, but some aspects may respond disproportionately. Some climate system components are slow to respond, such as the deep ocean overturning circulation and the ice sheets (Box TS.4). It is virtually certain that irreversible, committed change is already underway for the slow-to-respond processes as they come into adjustment for past and present emissions.”*

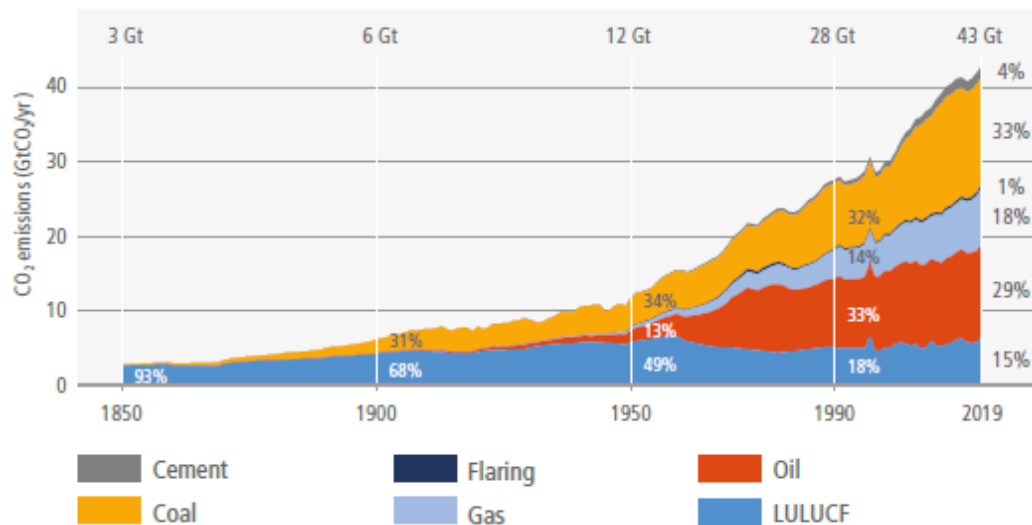
²⁵⁴ Exhibit MD-001, IPCC 2023, AR6, SYR, B.3.1 SPM, p. 18: *“Limiting global surface temperature does not prevent continued changes in climate system components that have multi-decadal or longer timescales of response (high confidence). Sea level rise is unavoidable for centuries to millennia due to continuing deep ocean warming and ice sheet melt, and sea levels will remain elevated for thousands of years (high confidence).”* See also Exhibit MD-010, IPCC 2021, AR6, WGI, Box TS.9, p. 106: *“The increase in global ocean heat content (Section TS.2.4) will likely continue until at least 2300 even for low emissions scenarios, and global mean sea level will continue to rise for centuries to millennia following cessation of emissions (Box TS.4) due to continuing deep ocean heat uptake and mass loss of the Greenland and Antarctic ice sheets (high confidence).”*

²⁵⁵ Exhibit MD-001, IPCC 2023, AR6, SYR, para. 3.1.2, p. 71 and Exhibit MD-012, Rounce et al. 2023, ‘Global glacier change in the 21st century: Every increase in temperature matters’, pp. 1 and 6.

²⁵⁶ Exhibit MD-001, IPCC 2023, AR6, SYR, para. 2.1, p. 44. This is based on data up to and including 2019.

²⁵⁷ Exhibit MD-049, IPCC 2022, AR6, WGIII, SPM, Figure TS.3, p. 62.

(a) Long term trend of anthropogenic CO₂ emissions sources



256. This figure shows at a glance how much CO₂ has been emitted annually since 1850.²⁵⁸ The figure makes it clear that the cumulative quantity of anthropogenic CO₂ emissions of 1850-1950 are only a fraction of the growth in emissions since 1950 and that the CO₂ emissions from 1990 in particular until this day have increased explosively. The fact that global warming has been so rapid – and is still increasing in speed – in the past decade is the result of the fact that a very large part of the emissions since the industrial revolution have taken place precisely in the last decade and the annual emissions have only increased to this day.
257. The serious consequences of warming up to now, in combination with the delayed response of certain parts of the climate system on the emission of greenhouse gases and the very high CO₂ emissions over the past few years, can be deemed very concerning. This is in part because it is unavoidable that until the time that global CO₂ emissions are reduced to net zero (which according to today's status will in any case be no earlier than 2050) extra CO₂ will be emitted, with all concomitant extra hazards and risks.
258. Even if the energy transition were to now significantly accelerate, the current CO₂ concentration level will increase further, as the phasing out of the fossil fuel infrastructure and the production and consumption of fossil fuels has not yet been started. After all, we cannot just stop using fossil fuels from one day to the next. This means the transformation from a global society which currently still predominantly runs on the burning of fossil energy to a society which will require alternative sustainable energy, for the most part, cannot take place in just a couple of years. During this transition phase to sustainable power supplies, we will, therefore, perforce still have to burn fossil fuels. The additional greenhouse gas emissions associated with that will contribute to further global warming. This unavoidable further warming of the Earth will in the coming decades lead to greater climate risks everywhere in the world:

²⁵⁸ The figure also shows that in 1850 virtually all human CO₂ emissions were the result of the LULUCF sector (Land Use, Land-Use Change and Forestry), i.e. emissions as a result of deforestation and agriculture in particular. Gradually first more coal was burned, after the Second World War there was an increase in the share of oil and in the last few decades we have seen that natural gas has been an increasingly larger cause of global CO₂ emissions.

*“Global warming will continue to increase in the near term (2021–2040) mainly due to increased cumulative CO₂ emissions in nearly all considered scenarios and pathways. In the near term, every region in the world is projected to face further increases in climate hazards (medium to high confidence, depending on region and hazard), increasing multiple risks to ecosystems and humans (very high confidence).”*²⁵⁹

259. In other words, in the event of system changes (such as a change to the energy system), society will experience a similar delay of new input as the delay that is inherent to certain parts of the climate system. The result of that is that if very strict net emission reductions are not forthcoming, future global warming is likely to (far) exceed the critical 1.5°C.
260. The IPCC acknowledges the risk of a transition that is moving too slowly, allowing the fossil fuel (supply and demand) infrastructure to continue growing in the meantime and the associated lock-in. The IPCC has indicated that maintaining the same course and following the current national climate plans to 2030,²⁶⁰ make it impossible to limit the temperature increase to 1.5°C. But not only that. The IPCC also warns that it will then be much more difficult to limit the warming to 2°C, precisely because of (the continuing investments in) the further construction of infrastructure for fossil fuels that will take place between now and 2030.²⁶¹ Consequently, lacking sufficient climate action in the period until 2030, even the 2°C target will be missed.
261. This makes it clear that the coming years are the critical years for bringing dangerous climate change to a halt. For that reason, for years already the IPCC and the global community in decisions of the annual UN climate summits, speak of the period until 2030 as the critical decade for global climate action (see chapter VII.3.3 t/m VII.7). The actions of today dictate the future that the world and the Netherlands are facing. A part of that changing future is unfortunately already fixed in the increased greenhouse gas concentrations that are already in the atmosphere. The other part of that changing future is already fixed in the unavoidable increase of the CO₂ concentrations, as we are very far from the point of net zero emissions. But the very worst consequences can still be avoided by reaching that zero point as quickly as possible. How much more extensive the warming will be depends on the speed of the transformation to an alternative sustainable power supply and, therefore, on how fast the CO₂ emissions (and other greenhouse gases) that are added to the atmosphere every day can be reduced. The limiting of further risks stands or falls with the limiting of the total quantity of emissions – the cumulative emissions – on the road to the global zero point, so that the cumulative emissions remain within the carbon budget for 1.5°C. As already mentioned at the end of Chapter V.4, if the current global emissions trend continues, catastrophic warming of around 3°C is expected within the current century.
262. The speed of the transformation to a sustainable power supply will ultimately determine the nature and severity of climate change and, as such, the nature of our future. There is a good reason why the IPCC concludes:

*“The choices and actions implemented in this decade will have impacts now and for thousands of years (high confidence).”*²⁶²

²⁵⁹ Exhibit MD-001, IPCC 2023, AR6, SYR, para. 4.3, p. 98.

²⁶⁰ The IPCC includes the national climate plans as announced for COP26 in Glasgow in 2021 in this analysis.

²⁶¹ Exhibit MD-049, IPCC 2022, AR6, WGIII, SPM, Chp. 3, p. 298.

²⁶² Exhibit MD-001, IPCC 2023, AR6, SYR, C.1, SPM, p. 24.

VI. THE ORIGINS OF THE INTERNATIONAL CLIMATE POLICY AND THE UN CLIMATE CONVENTION

VI.1 INTRODUCTION

263. As climate change caused by the changing composition of Earth's atmosphere due to CO₂ emissions and other greenhouse gases is a global and, therefore, an international problem, it is obvious that the subject of 'climate change' would be discussed within the context of the United Nations.

VI.2 1972: UN CONFERENCE ON THE HUMAN ENVIRONMENT IN STOCKHOLM

264. The first time climate change featured on the agenda of the United Nations was in 1972, during the UN conference in Stockholm on the human environment (United Nations Conference on the Human Environment). During that conference, it was decided to set up a special UN organisation for the issue of climate change and for other international environmental issues. To implement that decision, the United Nations Environment Programme, or UNEP, was set up.²⁶³

VI.3 1979: UN CLIMATE CONFERENCE IN GENEVA

265. The first world climate conference was held in Geneva, Switzerland, in 1979. It was organised by UNEP and another UN organisation, the World Meteorological Organization (WMO). The conference urged the countries of the world to take preventive measures against potential anthropogenic climate change that could harm the well-being of humanity (*"to foresee and to prevent potential man-made changes in climate that might be adverse to the well-being of humanity"*).²⁶⁴

VI.4 1985: UN CLIMATE CONFERENCE IN VILLACH

266. In 1985, the UNEP and WMO organised a conference in Villach, Austria, in which 29 countries took part. At the end of this conference, the scientists, in consensus, presented a message to politicians, saying that as a result of the rising levels of CO₂ and other greenhouse gases, we have to anticipate historically high global warming:

*"As a result of the increasing concentrations of greenhouse gases, it is now believed that in the first half of the next century a rise of global mean temperature could occur which is greater than any in man's history."*²⁶⁵

267. The statement also explains that continued global warming is unavoidable (due to the aforementioned delayed effect) on account of historical emissions but that humans can still limit the climate change they have started by taking emission-reducing measures.

"While some warming of climate now appears inevitable due to past actions, the rate and degree of future warming could be profoundly affected by governmental policies on energy conservation,

²⁶³ For the history of how UNEP arose and the link to the UN Conference in 1972, see Exhibit MD-059, Wikipedia, 'United Nations Environment Programme' (print-out from website 26 February 2025).

²⁶⁴ Exhibit MD-060, WMO 1979, 'Proceedings of the World Climate Conference: A Conference of Experts on Climate and Mankind', p. 713.

²⁶⁵ Exhibit MD-061, UNEP/WMO/ICSU 1985, 'Statement by the UNEP/WMO/ICSU International Conference on The Assessment of the Role of Carbon Dioxide and of Other Greenhouse Gases in Climate Variations and Associated Impacts' (Villach), p. 1.

use of fossil fuels, and the emission of some greenhouse gases.”²⁶⁶

VI.5 1988: UN CLIMATE CONFERENCE OF TORONTO AND THE IPCC

VI.5.1 UN Climate Conference in Toronto

268. In 1988, a new conference was held in Toronto, Canada, which attracted not only more than 300 scientists but also politicians and policymakers from 48 countries.²⁶⁷ The joint final statement was extremely insistent and called for urgent action in order to prevent the major threat of serious anthropogenic climate change:

“Humanity is conducting an unintended, uncontrolled, globally pervasive experiment whose ultimate consequences could be second only to a global nuclear war. The Earth's atmosphere is being changed at an unprecedented rate by pollutants resulting from human activities [...] These changes represent a major threat to international security and are already having harmful consequences over many parts of the globe.

Far-reaching impacts will be caused by global warming and sea level rise, which are becoming increasingly evident as a result of continued growth in atmospheric concentrations of carbon dioxide and other greenhouse gases [...] The best predictions available indicate potentially severe economic and social dislocation for present and future generations, which will worsen international tensions and increase risk of conflicts among and within nations. It is imperative to act now [...]”²⁶⁸
(emphasis added by legal counsel)

269. The conference of 1988, therefore, urged the governments but also industrial and non-governmental organisations to take immediate action in order to fight the (imminent) climate crisis.²⁶⁹ The Conference Statement then discussed the anticipated impact of increasing emissions of greenhouse gases and the all-encompassing threat it poses:

“Continuing alteration of the global atmosphere threatens global security, the world economy, and the natural environment [...] These changes will:

1 Imperil human health and wellbeing;

2 Diminish global food security, through increased soil erosion and greater shifts and uncertainties in agricultural production, particularly for many vulnerable regions;

3 Change the distribution and seasonal availability of fresh water resources;

4 Increase political instability and the potential for international conflict;

5 Jeopardize prospects for sustainable development and reduction of poverty;

6 Accelerate extinction of animal and plant species upon which human survival depends;

7 Alter yield, productivity and biological diversity of natural and managed ecosystems, particularly forests [...]”²⁷⁰ (emphasis added by legal counsel)

270. The statement also discussed the anticipated rise in temperature and it warns that it will be unprecedented and disruptive:

“The accelerating increase in concentrations of greenhouse gases in the atmosphere, if continued,

²⁶⁶ Exhibit MD-061, UNEP/WMO/ICSU 1985, ‘Statement by the UNEP/WMO/ICSU International Conference on The Assessment of the Role of Carbon Dioxide and of Other Greenhouse Gases in Climate Variations and Associated Impacts’ (Villach), p. 2.

²⁶⁷ Exhibit MD-062, WMO 1988, ‘Conference Proceedings of the World Conference on The Changing Atmosphere: Implications for Global Security’ (selected pages) (Toronto), p. 292.

²⁶⁸ Ibid. p. 292.

²⁶⁹ Ibid. p. 292. See also Exhibit MD-063, Zillman 2009, ‘A history of climate activities’ in the WMO bulletin, that contains a WMO report on the 1988 conference.

²⁷⁰ Exhibit MD-062, WMO 1988, ‘Conference Proceedings of the World Conference on The Changing Atmosphere: Implications for Global Security’ (selected pages) (Toronto), pp. 292 and 293.

will result in a probable rise in the mean surface temperature of the Earth of 1.5 to 4.5 degrees Celsius before the middle of the next century [...] If current trends continue, the rates and magnitude of climatic change in the next century may substantially exceed those experienced over the last 5000 years. Such high rates of change would be sufficiently disruptive that no country is likely to benefit in total from climatic change.”²⁷¹

271. It was also clarified that the climate has a delayed response and that continued global warming is already inevitable:

“There can be a time lag of the order of decades between the emission of gases into the atmosphere and their full manifestation in atmospheric and biological consequences. Past emissions have already committed planet earth to a significant warming.”²⁷²

272. The final statement from 1988 also argues that the transition to a sustainable future means we have to switch to non-fossil fuels and that we need to increase energy efficiency:

“The transition to a sustainable future will require investments in energy efficiency and non-fossil energy sources [...]”²⁷³

273. The statement, therefore, recommends that governments and the industry immediately proceed (i) to switch investment flows to research into and development of sustainable energy on a large scale, (ii) to make considerable energy reductions, (iii) to set targets for energy efficiency and (iv) to use product labels to inform consumers of CO₂ pollution caused by the production and use of fossil fuel products:

*“Actions by Governments and Industry
[...] Energy research and development budgets must be massively directed to energy options which would eliminate or greatly reduce CO₂ emissions [...] Reduce CO₂ emissions by approximately 20% of 1988 levels by the year 2005 as an initial global goal. [...] Set targets for energy efficiency improvements that are directly related to reductions in CO₂ and other greenhouse gases. [...] Label products to allow consumers to judge the extent and nature of the atmospheric contamination that arises from the manufacture and use of the product.”²⁷⁴*

274. This call from the 1988 climate conference to governments and the industry to proceed with an energy transition and to take specific measures can be called a historic event and rightly so, as this was the first time for a scientific conference to urge the main perpetrators of the climate issue to take immediate action. It demonstrates the concern already prevalent in the scientific community and the international community at that time. Within that context, the final statement urged the UN to draw up a convention to combat climate change and to protect the atmosphere (which would be done in 1992, in the shape of the United Nations Framework Convention on Climate Change (UNFCCC)) and to continue to support the work of the scientific UN Climate Panel (IPCC) that had been set up that year (1988).

VI.5.2 Founding and working of IPCC

275. Since 1988, scientific knowledge of the causes and consequences of climate change is regularly brought together and evaluated by the Intergovernmental Panel on Climate Change (IPCC), an intergovernmental and scientific organisation that was set up in that year by the United Nations Environment Programme (UNEP) and the World Meteorological Organization

²⁷¹ Ibid. p. 293.

²⁷² Ibid. p. 294.

²⁷³ Ibid. p. 295.

²⁷⁴ Ibid. pp. 296 and 297.

(WMO). The IPCC reports form the scientific basis for the international intergovernmental collaboration to stop climate change. In 1990, the IPCC published its first Assessment Report (AR). In this report, the IPCC concluded that emissions caused by human activity cause a substantial increase of the concentration of greenhouse gases in the atmosphere and that this reinforces the greenhouse effect, which in turn causes additional global warming. The IPCC, therefore, urged countries to collaborate so as to come to an international climate convention to prevent an anthropogenic climate change that harms man and the environment.

276. After the first Assessment Report of 1990, new editions followed in 1995, 2001, 2007 and 2013/2014. From 2021 to 2023, the IPCC's Sixth Assessment Report (abbreviated as AR6) was published: the part of Working Group I (WGI) was published in 2021, the parts of Working Groups II and III (WGII and WGIII) were published in 2022, and the "Synthesis Report" (SYR) was published in 2023.²⁷⁵ In addition to the Assessment Reports, the IPCC regularly publishes "Special Reports" that address one specific subject or methodology. In 2018, the IPCC published the Special Report called 'Global warming of 1.5°C' (abbreviated to SR15) that discussed the differences between global warming of 1.5°C and 2°C. More and more scientific knowledge of the subjects discussed by the IPCC is now available, which means the scope and depth of these reports have also increased.
277. The IPCC is subdivided into three working groups that analyse the scientific situation with regard to:
- (i) the existing scientific knowledge on the historical, current and future climate change (Working Group I);
 - (ii) the consequences of, adaptation to and vulnerability to climate change for the environment, the economy and society (Working Group II); and
 - (iii) possible strategies to reduce the emissions to the atmosphere and combat climate change (Working Group III).²⁷⁶
278. In this case, in addition to the most recent AR6 Report from 2021-2023, we will also use information from the IPCC SR15 Report of 2018 and the other earlier IPCC reports, e.g. IPCC AR5 from 2013/2014 and AR4 from 2007. This is in part because findings from the earlier reports still prove relevant, topical and correct on a regular basis and because ING, at latest as of 2007, partly in view of the content of the Fourth Report of the IPCC, should have been aware of the need for the sustainable climate transition, and the need ensuing therefrom to bring its activities in line with that transition.
279. The IPCC reports form the basis for the international intergovernmental collaboration to stop climate change, which gives these reports a special status. These reports are drawn up with the utmost care, which justifies their special status even more. A draft report from the IPCC (and the individual documents that form a part of that) is initially verified by the experts and by the countries that are party to the IPCC, before it can be adopted, as evidenced by the 'Principles Governing IPCC Work', principle 3 of which reads:

²⁷⁵ See Exhibit MD-064, IPCC, 'Reports' (print-out from website 27 February 2025).

²⁷⁶ See Exhibit MD-065, IPCC, 'Structure' (print-out from website 26 February 2025).

*"IPCC documents should involve both peer review by experts and reviews by governments."*²⁷⁷

280. All IPCC Reports undergo a rigorous process of demarcation, drafting and assessment.²⁷⁸ In essence, all available relevant scientific, technical and socio-economic information is involved in that process, with priority for peer-reviewed literature, but also attention for other relevant publications, including reports from government agencies and industry.²⁷⁹ Draft reports go through several assessment phases, in which hundreds of assessors and government-appointed experts pay very close attention to the accuracy and completeness of the scientific assessment in the draft documents.²⁸⁰ In practice, the draft report is presented to external experts (who are not involved in the IPCC). As soon as the draft has withstood the test of criticism from these external experts, the draft document is presented to both experts and the 197 countries that are party to the UN Climate Convention during a second verification round. These countries often forward the draft to a group of national scientists and (national) non-governmental organisations for a second opinion. This way, countries are given the opportunity to make recommendations or to comment on the draft report. The IPCC then has to study and assess the feedback from the second round again so that the report can be amended, if necessary, before it is adopted at a plenary meeting (third round) (principle 11):

*"Conclusions drawn by IPCC working groups and any working groups, are not official IPCC views until they have been accepted by the Panel in a plenary meeting."*²⁸¹

281. The way in which the IPCC reports are formed is very similar to the process of hearing both sides of the argument used in the legal world. Ultimately, scientific visions are presented at three levels of the process of hearing both sides of the argument, which is why the IPCC findings have a special status. The IPCC reports are also a representation of the best available science on climate change at that time. They serve as the basis for conventions, government policy, policy of other public and private institutions and also as crucial facts taken into account by the District Court, the Court of Appeal and the Supreme Court in the Urgenda case and by the District Court and the Court of Appeal in the Shell case, as well as in global lawsuits on climate change with regard to decisions on the responsibility of states and non-state actors in preventing dangerous climate change.²⁸²
282. The special status of IPCC reports naturally also appears from the fact that the IPCC reports have also acquired a special place in the UN Climate Convention, that will be discussed below.²⁸³

²⁷⁷ Exhibit MD-066, IPCC 2013, 'Principles Governing IPCC Work'.

²⁷⁸ Exhibit MD-067, IPCC 2015, 'IPCC Factsheet: How does the IPCC review process work?' on the extensive and careful establishing process of IPCC reports, pp. 1 and 5.

²⁷⁹ Ibid. pp. 5-6.

²⁸⁰ Exhibit MD-068, IPCC, 'Preparing Reports' (print-out from website 26 February 2025) contains a further explanation of the assessment process for draft reports of the IPCC.

²⁸¹ Exhibit MD-066, IPCC 2013, 'Principles Governing IPCC Work'.

²⁸² It is very telling in this respect that the International Bar Association in its 'Model Statute for Proceedings Challenging Government Failure to Act on Climate Change' provides that the findings of the IPCC must be deemed prima facie evidence, and that leave is necessary to challenge those findings (see Article 6).

²⁸³ Article 21(2) of the UN Climate Convention provides that the IPCC will provide the contracting states with objective scientific and technical advice and that the Secretariat set up under the Convention will support these activities. Article 21 explains that the Secretariat can also consult other qualifying scientific organisations. Practice has shown that the Secretariat uses, among other things, reports and advice from the two incorporating parties of the IPCC (the WMO and UNEP), which is why this summons will also rely on the reports from these organisations.

VI.6 1992: UN CLIMATE CONVENTION

VI.6.1 Main objective of the Convention

283. The UN Climate Convention, or the United Nations Framework Convention on Climate Change (UNFCCC), dates from 1992 (more than 30 years ago) and came into effect on 21 March 1994. A total of 197 countries and one regional organisation (the EU) are affiliated with the Convention.²⁸⁴

284. The main objective of the UN Climate Convention is to prevent dangerous man-made climate change. This can be achieved by stabilising the concentrations of greenhouse gases in the atmosphere on a level at which a dangerous anthropogenic disruption of the climate system is prevented. According to the Convention, this level must be reached within a time frame that is sufficient to allow ecosystems to naturally adapt to climate change, to ensure that food production is not jeopardised and economic developments can continue in a sustainable manner. The verbatim text of Article 2 of the Climate Convention reads as follows:

“The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.”²⁸⁵

VI.6.2 Protection of present and future generations (intergenerational justice)

285. The Convention clarifies that climate change and its adverse consequences are a “*common concern of humankind*” and it subsequently defines adverse consequences as consequences that have a considerable harmful impact on ecosystems, socio-economic systems or the health and well-being of humans.²⁸⁶

286. The UN Climate Convention clarifies that the prevention of dangerous climate change is important both for present and future generations (“*Determined to protect the climate system for present and future generations*”²⁸⁷). The principle of intergenerational justice is therefore one of the legal principles forming the basis of and that have been explicitly included in the Convention. Taking this principle as a starting point is formulated as an instruction and obligation for the contracting states in Article 3(1):

“The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity”²⁸⁸

VI.6.3 The CBDR principle and the precautionary principle

287. In the second part of Article 3(1) the Convention then goes into one of the other legal principles that the contracting states must observe in their actions, being the principle of

²⁸⁴ Exhibit MD-017, UNFCCC, ‘Status of Ratification of the Convention’ (print-out of website 27 February 2025).

²⁸⁵ Exhibit MD-069, UN Climate Convention (consolidated English version), article 2.

²⁸⁶ Ibid, respectively the first recital of the Convention and Article 1 (Definitions).

²⁸⁷ Ibid, last recital preceding the articles of the Convention.

²⁸⁸ Ibid, Article 3(1).

‘Common but Differentiated Responsibilities and Respective Capabilities’ (hereinafter: the “CBDR principle”).

288. This equity-based principle expresses that all contracting states have a shared and common responsibility for the approach to anthropogenic climate change, but that this responsibility is unevenly distributed between the contracting states, due to their diverse contributions to the causes of climate change and their diverse (economic and institutional) capacities to be able to do something about this. The CBDR principle takes account of the greater historical responsibility of the more industrialised developed countries²⁸⁹, compared to the developing countries,²⁹⁰ that have caused far fewer emissions. The CBDR principle is related to the well-known principle of environmental law that ‘the polluter pays’, whereby the historical contribution to climate change and the respective capacity to combat climate change are criteria for allocating the responsibility for the climate approach.
289. On this basis, the contracting states thus agreed in Article 3(1) of the Convention that the developed countries should take the lead in combating climate change and its adverse consequences.²⁹¹ The principle is further operationalised in, inter alia, Article 4 of the UN Climate Convention, in which the developed countries (again) have taken on the obligation to take the lead in addressing climate action and, among other things, to limit their own national greenhouse gas emissions.²⁹²
290. Another important principle imposed on all countries in Article 3(3) is the precautionary principle, which means that precautionary measures must be taken in order to curtail or prevent the causes of climate change and to limit its negative impact.²⁹³ The Convention clarifies that when serious or irreversible damage is likely to occur, a possible lack of full scientific certainty should not be a reason to postpone precautionary measures.²⁹⁴
291. The precautionary principle is not only laid down in the UN Climate Convention, but concerns a commonly occurring principle in international (environmental) conventions and is also included in the Treaty on the Functioning of the European Union (TFEU). We will return to this principle at a later point in the summons, as well as the CBDR principle and the principle of intergenerational justice, and an explanation will be presented regarding the relevance of these legal principles in terms of what demands may be made of ING.

VI.6.4 The Conference of the Parties (COP) as the supreme body

292. Article 7 of the UN Climate Convention establishes the Climate Conference, officially referred to as the Conference of the Parties (COP). Article 7 stipulates that the COP is the supreme body of the UN Climate Convention and that the COP makes the decisions required in order to promote the application of the Convention.²⁹⁵ The resolutions passed by the COP must be seen in this context. The resolutions usually include a series of determinations, acknowledgements and decisions, in order to promote the effective realisation of the goals

²⁸⁹ ‘Developed Country Parties’ in the words of the Convention.

²⁹⁰ ‘Developing Country Parties’ in the words of the Convention.

²⁹¹ Exhibit MD-069, UN Climate Convention (consolidated English version), Article 3(1).

²⁹² Ibid, Article 4(2).

²⁹³ Ibid, Article 3(3).

²⁹⁴ Ibid.

²⁹⁵ Ibid, Article 7(2). The COP is also the highest decision-making body of the Paris Agreement. In this capacity, the COP also passes the resolutions to promote the effective implementation of the Paris Agreement, see Exhibit MD-070, Paris Agreement (original English version), Article 16(4).

of the UN Climate Convention (and the Paris Agreement).

293. The first COP was held in 1995 and is referred to as COP1. The numbering continues like this, which means the COP of 2010 is referred to as COP16. The most recent COP was that of 2024, COP29, which was held in Baku, Azerbaijan in November 2024. The various climate conferences and the resolutions passed at said conferences will be discussed in greater detail below.

VII. THE INTERPRETATION OF THE TERM DANGEROUS CLIMATE CHANGE

VII.1 INTRODUCTION

294. As described above, the main objective of the UN Climate Convention is to prevent human-induced dangerous climate change. In this climate approach the contracting states base their position on the best available science and they make use of the scientific insights of the IPCC and other eligible scientific bodies. Below, we will explain how the contracting states have given substance to this main objective and on which scientific advice it is based. This gives us a very good picture of what was or should have been clear to ING during the past decades on the basis of scientific findings and the associated decisions of the Conference of the Parties, the EU or the Dutch government.

295. Chapter XI will then present proof of what ING did and specifically knew during the past decades about the climate problem and the consequences it could and would have on its business operations. We will put matters in a legal context in order to substantiate the claims brought by Milieudefensie.

VII.2 1990-2012: GLOBAL WARMING OF 2°C IS DANGEROUS

VII.2.1 1990 and 1992: scientific findings

296. As early as 1990 scientists indicated that global warming of 2°C is the maximum upper limit that must not be exceeded if we want to prevent very serious danger. Even then, it was obvious that warming beyond 1°C could have potentially fast, unpredictable and non-linear consequences and could cause serious damage to ecosystems. This emerges from an international study from 1990 which was conducted with the participation of the Ministry of Housing, Spatial Planning and the Environment and the National Institute for Public Health and Environmental Protection [Rijksinstituut voor Volksgezondheid en Milieu (RIVM)]:

“Temperature increases beyond 1.0°C may elicit rapid, unpredictable, and non-linear responses that could lead to extensive ecosystem damage [...] An absolute temperature limit of 2.0°C can be viewed as an upper limit beyond which the risks of grave damage to ecosystems, and of non-linear responses, are expected to increase rapidly.”²⁹⁶

Other scientists also came to similar findings.

297. In 1992, the RIVM subsequently announced that it was possible to calculate the maximum amount of carbon that could be emitted between 1992 and 2100 (i.e. during the next 108 years) in order to allow the concentrations of greenhouse gases in the atmosphere to

²⁹⁶ Exhibit MD-071, Stockholm Environment Institute 1990, ‘Targets and Indicators of Climate Change’ (selected pages), pp. viii and ix.

stabilise at 475 ppm CO₂-eq. The RIVM calculated a maximum emission of 338 GtC (gigatonnes of carbon) up to 2100, i.e. 1240 GtCO₂ (gigatonnes of CO₂).²⁹⁷

298. The RIVM also clarifies that this limited emission scope means that we have to start reducing the use of fossil fuels fast, otherwise, emissions will exceed this available carbon budget. The longer we wait and continue on the basis of business as usual, the faster the budget will decrease and the faster we will have to reduce fossil fuels in order to remain within this (smaller) budget. If we wait until 2000 to tackle the climate issue, the use of fossil fuels will have to be reduced by 70% within 50 years, the RIVM said in 1992. However, if we wait until 2010 before we take climate measures, the use of fossil fuels will have to be reduced by 90% within only 10 years, the RIVM explains:

*"[I]f the Business-as-Usual pathway is followed and in the year 2000 the world community decides to strive for a CO₂-equivalent concentration target of 475 ppmv in 2100 (the Low-Risk scenario), such a switch would require a 70% decrease of fossil CO₂-emissions within 50 years. If the decision to switch is taken in 2010, emissions from fossil fuel should drop by 90% in less than 10 years."*²⁹⁸

299. In other words, it was clear as early as 1992 that the longer we wait with phasing out fossil fuels, the (much) more extreme and faster this phasing-out process would have to be in order to remain within the maximum available carbon budget.

VII.2.2 1996: the EU findings

300. Based on the scientific information about the causes, consequences and dangers of climate change that has been available since the start of the 1990s, the European Council decided in 1996 - as the first political body in the world - to use the 2°C target as a starting point, bearing in mind the precautionary principle:

*"Given the serious risk of such an increase and particularly the very high rate of change, the Council believes that global average temperatures should not exceed 2 degrees above pre-industrial level [...] In this context the Council believes that the precautionary principle has to be applied [...] the Council notes that the IPCC considers that significant reductions in greenhouse gas emissions are technically possible, and can be economically feasible. It also notes that significant "no-regrets" opportunities are available; and that there is a rationale, on the basis of potential risk, for action beyond no-regrets [...]."*²⁹⁹ (emphasis added by legal counsel)

301. From that moment, the need to apply a 2°C target has also become the EU's formal position in the climate negotiations and the COP meetings, as evidenced by, for instance, a report from COP4 in Buenos Aires (1998), in which the EU states the following, among other things:

*"[F]ar greater global limitation and reduction effects [...] will be necessary over time [...] In this context, the EU have earlier stated that global average temperatures should not exceed 2°Celsius above the pre-industrial level [...]."*³⁰⁰ (emphasis added by legal counsel)

²⁹⁷ Exhibit MD-072, Janssen et al. 1992, 'Allocating CO₂-Emissions by Using Equity Rules and Optimization', pp. 12 and 13: Table 2.3 on page 12 shows that the low-risk scenario has to remain below 475 ppm of CO₂-eq and Table 2.4 on page 13 shows that this scenario has a maximum total budget of 338 GtC. To convert GtC to Gt CO₂, the amount in GtC must be multiplied by 3.667 so that 338 GtC is equal to 1240 Gt CO₂. For this mathematical formula see IPCC 2013, AR5, WGI, SPM, p. 27, with Table SPM.3, which states: "1 Gigatonne of carbon = 1 GtC = 1015 grams of carbon. This corresponds to 3.667 Gt CO₂." (see https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5_all_final.pdf)

²⁹⁸ Exhibit MD-072, Janssen et al. 1992, 'Allocating CO₂-Emissions by Using Equity Rules and Optimization', p. 13.

²⁹⁹ Exhibit MD-073, European Council 1996, 'Community Strategy on Climate Change', p. 7 under point 6, 1996 no. 188.

³⁰⁰ Exhibit MD-074, UNFCCC COP4 1998 (Buenos Aires), 'Second review of the adequacy of article 4.2(a) and (b)', p. 8.

VII.2.3 2007: the Bali Action Plan (COP13)

302. At the COP13 Climate Conference of December 2007, the Conference of the Parties adopted the Bali Action Plan (Decision 1/CP.13).³⁰¹

303. The preamble of this COP decision again explicitly recognised the fact that drastic emission reductions are needed in order to be able to achieve the main objective of the Convention and the parties emphasised the urgency with which this should be done (referring to the findings of the Fourth Assessment Report (AR4) of the IPCC that was published shortly before, in 2007):

“Recognizing that deep cuts in global emissions will be required to achieve the ultimate objective of the Convention and emphasizing the urgency to address climate change as is indicated in the Fourth Assessment Report of the Intergovernmental Panel on Climate Change.” (emphasis added by legal counsel)

304. In this quoted paragraph from the Bali Action Plan, the word ‘urgency’ comes with a footnote. The text of the footnote refers to specific parts of the Technical Summary (TS) and Chapter 13 of Working Group III of the Fourth IPCC report from 2007, which gives scientific substance to the word ‘urgency’.

305. Among other things, the footnote refers to page 39 of the Technical Summary of AR4 Working Group III, where we can find the table shown below.³⁰²

Table TS.2: Classification of recent (Post-Third Assessment Report) stabilization scenarios according to different stabilization targets and alternative stabilization metrics [Table 3.5].

Category	Additional radiative forcing (W/m ²)	CO ₂ concentration (ppm)	CO ₂ -eq concentration (ppm)	Global mean temperature increase above pre-industrial at equilibrium, using “best estimate” climate sensitivity ^a , ^b) (°C)	Peaking year for CO ₂ emissions ^c)	Change in global CO ₂ emissions in 2050 (% of 2000 emissions) ^c)	No. of assessed scenarios
I	2.5-3.0	350-400	445-490	2.0-2.4	2000 - 2015	-85 to -50	6
II	3.0-3.5	400-440	490-535	2.4-2.8	2000 - 2020	-60 to -30	18
III	3.5-4.0	440-485	535-590	2.8-3.2	2010 - 2030	-30 to +5	21
IV	4.0-5.0	485-570	590-710	3.2-4.0	2020 - 2060	+10 to +60	118
V	5.0-6.0	570-660	710-855	4.0-4.9	2050 - 2080	+25 to +85	9
VI	6.0-7.5	660-790	855-1130	4.9-6.1	2060 - 2090	+90 to +140	5
Total							177

306. In this Table TS.2, the IPCC provides an insight into how not to exceed the 2°C limit. Under Category I, the table shows that in order to limit the rise in temperature to between 2 and 2.4°C, the concentrations of greenhouse gases in the atmosphere have to be stabilised at a level of 445-490 ppm of CO₂-eq. The IPCC then concludes - as we can see from the table itself - that the rise in temperature can, in all reasonableness, only be limited to 2°C, if the concentrations of greenhouse gases in the atmosphere stabilise at no more than 450 ppm of CO₂-eq:

“[L]imiting temperature increases to 2°C above pre-industrial levels can only be reached at the lowest end of the concentration interval found in the scenario’s of category I (i.e. about 450 ppmv

³⁰¹ Exhibit MD-075, UNFCCC COP13 2007 (Bali), ‘Bali Action Plan’.

³⁰² IPCC 2007, AR4, WGIII, Tabel TS.2, p.39 See the explanatory note with the table – included as Table 3.10 in Chapter 3 on page 229 – which can be read on p. 227 (see https://www.ipcc.ch/site/assets/uploads/2018/03/ar4_wg3_full_report-1.pdf).

*CO₂-eq using “best estimate” assumptions).*³⁰³

307. Table TS.2 also shows that in order to stabilise around 450 ppm of CO₂-eq, we need to reduce global emissions by 2050 by about 85% relative to the emissions in 2000.

308. In the aforementioned footnote from the Bali Action Plan reference is furthermore made to page 776 of Chapter 13 from AR4 WGIII, where the following table can be found.³⁰⁴

Box 13.7 The range of the difference between emissions in 1990 and emission allowances in 2020/2050 for various GHG concentration levels for Annex I and non-Annex I countries as a group^a

Scenario category	Region	2020	2050
A-450 ppm CO ₂ -eq ^b	Annex I	-25% to -40%	-80% to -95%
	Non-Annex I	Substantial deviation from baseline in Latin America, Middle East, East Asia and Centrally-Planned Asia	Substantial deviation from baseline in all regions
B-550 ppm CO ₂ -eq	Annex I	-10% to -30%	-40% to -90%
	Non-Annex I	Deviation from baseline in Latin America and Middle East, East Asia	Deviation from baseline in most regions, especially in Latin America and Middle East
C-650 ppm CO ₂ -eq	Annex I	0% to -25%	-30% to -80%
	Non-Annex I	Baseline	Deviation from baseline in Latin America and Middle East, East Asia

309. This table from AR4 makes it clear that the developed “Annex I Countries”,³⁰⁵ to achieve the target of a concentration of a maximum of 450 ppm in the year 2100, must have reduced their collective greenhouse gas emissions in 2020 by 25-40% relative to 1990.

310. With this indirect reference to the ‘450’ scenario, the Conference of the Parties indicated in 2007 that in order to be able to achieve the main objective of the Convention, the global rise in temperature should not exceed 2°C and the concentrations of greenhouse gases should, therefore, be stabilised at 450 ppm CO₂-eq. Two years later, in 2009, this 2°C target was confirmed in the Copenhagen Agreement. After that, in virtually all following Conferences of the Parties (in Cancun, Durban, Doha and Warsaw) reference was made to the aforementioned -25-40% standard, and the developed (Annex I) countries were called upon to align their reduction targets accordingly.

VII.2.4 2009: the Copenhagen Accord (COP15)

311. The Copenhagen Accord, which was concluded during COP15 in Copenhagen in 2009, confirmed that in order to achieve the main objective of Article 2 of the UN Climate Convention (i.e. preventing dangerous anthropogenic climate change), scientific insights show that the global rise in temperature will have to remain below 2°C:

“To achieve the ultimate objective of the Convention to stabilize greenhouse gas concentration in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system, we shall, recognizing the scientific view that the increase in global temperature should be below 2 degrees Celsius, on the basis of equity and in the context of sustainable

³⁰³ Ibid.

³⁰⁴ Ibid, Chp. 13, Box 13.7, p. 776.

³⁰⁵ The term Annex I Countries is connected with the UN Climate Convention and refers de facto to the group of countries noted as developed countries in Annex I to the UN Climate Convention. The developing countries are therefore sometimes referred to as Non-Annex I countries.

*development, enhance our long-term cooperative action to combat climate change. [...]*³⁰⁶
(emphasis added by legal counsel)

312. With this the Copenhagen Accord is referring to a specific recommendation from the special update IPCC report from 2009, which adds more recent climate science findings to the previous synthesis of IPCC AR4. This update report tells us that recent observations have shown that ecosystems and societies are extremely vulnerable to even modest levels of climate change and that temperature rises above 2°C are likely to cause major societal and environmental disruptions this century and beyond:

*"Recent observations show that societies and ecosystems are highly vulnerable to even modest levels of climate change [...] Temperature rises above 2°C will be difficult for contemporary societies to cope with, and are likely to cause major societal and environmental disruptions through the rest of the century and beyond."*³⁰⁷

313. The update report also points out that the consequences are likely to be major with climate change between 1 and 1.5°C and that warming beyond 2°C will be an environmental catastrophe:

*"[T]he impacts on water resources in many parts of the world will be severe with climate change associated with only 1.0 to 1.5°C rises in temperature³⁰⁸ [...] There is a looming biodiversity catastrophe if global mean temperature rises above the 2°C-guardrail, ocean acidification spreads and sea-level rise accelerates"*³⁰⁹

314. The report then summarises by saying that a 2°C scenario will bring major risks for humans and the environment:

*"In summary, although a 2°C rise in temperature above pre-industrial remains the most commonly quoted guardrail for avoiding dangerous climate change, it nevertheless carries significant risks of deleterious impacts for society and the environment."*³¹⁰

315. As scientists clearly demonstrated prior to the UN Climate Conference in Copenhagen that the 2°C limit is not a safe limit, the Copenhagen Accord stipulates that a more comprehensive assessment of a 1.5°C limit as the ultimate objective of the Convention would be appropriate:

*"We call for an assessment of the implementation of this Accord to be completed by 2015 including in light of the Convention's ultimate objective. This would include a consideration of strengthening the long-term goal referencing various matters presented by the science, including in relation to temperature rises of 1,5 degrees Celsius."*³¹¹ (emphasis added by legal counsel)

316. In the context of the Copenhagen Accord as well as in the context of the Cancun Agreements (which will be discussed below), the countries affiliated with the UN Convention made nationally determined contributions and submitted them to the secretariat of the UN Convention, which will be discussed later.

³⁰⁶ Exhibit MD-076, UNFCCC COP15 2009 (Copenhagen), 'Copenhagen Accord', point 1.

³⁰⁷ Exhibit MD-077, Richardson et al. 2009, 'Climate Change - Global Risks, Challenges & Decisions: Synthesis Report' (update report AR4/2007), Executive Summary, Key Message 2, p. 6.

³⁰⁸ Exhibit MD-077, Richardson et al. 2009, 'Climate Change - Global Risks, Challenges & Decisions: Synthesis Report' (update report AR4/2007), p. 13.

³⁰⁹ Exhibit MD-077, Richardson et al. 2009, 'Climate Change - Global Risks, Challenges & Decisions: Synthesis Report' (update report AR4/2007), p. 14.

³¹⁰ Exhibit MD-077, Richardson et al. 2009, 'Climate Change - Global Risks, Challenges & Decisions: Synthesis Report' (update report AR4/2007), p. 16.

³¹¹ Exhibit MD-076, UNFCCC COP15 2009 (Copenhagen), 'Copenhagen Accord', point 12.

VII.2.5 2010: the Cancun Agreements (COP16)

317. The following year in Cancun (COP 16, 2010), the COP documented the 2°C target in the Cancun Agreements, again referring to the scientific findings, and the previous decisions in the Bali Action Plan (COP13, 2007) and the Copenhagen Accord (COP15, 2009):

*"Recalling its decision 1/CP.13 (the Bali Action Plan) and decision 1/CP.15 [...]"*³¹²

*"Recognizes that deep cuts in global greenhouse gas emissions are required according to science [...] so as to hold the increase in global average temperature below 2 °C above pre- industrial levels, and that Parties should take urgent action to meet this long-term goal [...]"*³¹³ (emphasis added by legal counsel)

318. Reference is then again made to the need to reconsider the 2°C target and to perhaps strengthen it and change it to 1.5°C:

*"Also recognizes the need to consider, in the context of the first review, as referred to in paragraph 138 below, strengthening the long-term global goal on the basis of the best available scientific knowledge, including in relation to a global average temperature rise of 1.5 °C"*³¹⁴ (emphasis added by legal counsel)

319. In the context of the Cancun Agreements, the developed (Annex I) countries made emission reduction commitments³¹⁵ and they were called upon to set more ambitious reduction targets, to reduce their collective emissions in line with (the -25-40% standard from) the IPCC Fourth Assessment Report.³¹⁶

320. Another important aspect is that the Cancun Agreements refer to resolution 10/4 from 2009 of the UN Human Rights Council, which states that climate change is a threat to human rights across the world, including the right to life and, in particular, to those in vulnerable positions.³¹⁷ Resolution 10/4 from 2009 of the UN Human Rights Council stipulates the following in this respect:

*"Noting that climate change related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights including, inter alia, the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to self-determination [and] recognizing that while these implications affect individuals and communities around the world, the effects of climate change will be felt most acutely by those segments of the population who are already in vulnerable situations [...]"*³¹⁸

VII.2.6 2011: Durban Climate Conference (COP17)

321. At the COP17 in 2011 in Durban, the contracting parties collectively agreed on the following,

³¹² Exhibit MD-078, UNFCCC COP16 2010 (Cancun), 'Cancun Agreements', preamble, p. 2.

³¹³ Ibid, p. 3 under 4.

³¹⁴ Ibid, p. 3 under 4.

³¹⁵ Ibid, p. 8 under 36.

³¹⁶ Ibid, p. 8 under 37.

³¹⁷ The preamble to the Cancun Agreements sets out the following: "Noting resolution 10/4 of the United Nations Human Rights Council on human rights and climate change, which recognizes that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights [...]", etc.

³¹⁸ Exhibit MD-079, UN Human Rights Council, Resolution 10/4.

inter alia, in Decision 1/CP.17³¹⁹:

- (i) to recognise that climate change constitutes an urgent and potentially irreversible threat to human societies and the planet and, therefore, something that must be addressed urgently by all parties:

*"Recognizing that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires to be urgently addressed by all Parties..."*³²⁰
(emphasis added by legal counsel)

- (ii) observing with grave concern the significant gap between the reductions for the year 2020 promised by the individual countries on the one hand and the actual emission reductions required on a global scale to keep global warming below 2°C or 1.5°C on the other:

*"noting with grave concern the significant gap between the aggregate effect of Parties' mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with having a likely chance of holding the increase in global average temperature below 2 °C or 1.5 °C above pre-industrial levels."*³²¹ (emphasis added by legal counsel)

322. The developed countries were once again called upon to set more ambitious reduction targets and reduce their collective emissions in line with (the -25-40% standard from) the IPCC Fourth Assessment Report.³²²

323. This gap between the emissions reductions committed by the individual countries on the one hand and the reductions required to prevent dangerous climate change on a global level on the other is often referred to as the 'emissions gap'. The UN Environment Programme (UNEP) reports annually on this emissions gap in the 'Emissions Gap Report' that contains analysis by the best climate scientists in the world on the trends in emissions of greenhouse gases, the implications of current and planned climate policies, and on the solutions to the climate problem. The report is published in advance of the COP each year.

324. With regard to this emissions gap, UNEP, in its first Emissions Gap Report of 2010³²³, had already come to the conclusion that even if all commitments made and reduction measures announced by the countries in Copenhagen and Cancun were, indeed, realised, the global reduction target for 2020 deemed necessary by scientists will never be achieved.

325. This message was repeated in the 2011 Emissions Gap Report (and many times since):

*"Although the country pledges help in reducing emissions to below a business-as-usual level in 2020, they are not adequate to reduce emissions to a level consistent with the 2°C target, and therefore lead to a gap."*³²⁴

326. This UNEP report from 2011 clarified that the gap between what emission reduction actions were necessary prior to 2020 and what was actually happening, was significant and cause for

³¹⁹ Exhibit MD-080, UNFCCC COP17 2011 (Durban), 'Decision 1/CP.17'.

³²⁰ Ibid, p. 2.

³²¹ Ibid.

³²² Ibid, p. 5.

³²³ Exhibit MD-081, UNEP 2010, 'Emissions Gap Report 2010' (Technical Summary).

³²⁴ Exhibit MD-082, UNEP 2011, 'Emissions Gap Report 2011' (Executive Summary), p. 8.

concern. This is why the quotation from the COP17 decision cited above speaks of “*Noting with grave concern the significant gap....*”, etc.

VII.3 2012-TO THIS DAY: GLOBAL WARMING OF 1.5°C IS DANGEROUS

VII.3.1 2012-2015: the Doha Climate Conference (COP18) and the Structured Expert Dialogue

327. Based on the Conference of the Parties in Doha in 2012 (COP18), a process of expert dialogues entitled Structured Expert Dialogue, or SED, was started between 2013 and 2015 under the auspices of the UNFCCC during the preparations for the Climate Summit in Paris (COP 21, 2015).

328. Among other things, the aim of SED was to find out if, given the ultimate objective of the UN Convention to prevent dangerous climate change, the objective chosen in Copenhagen and Cancun to limit global warming to below 2°C sufficed, partly in view of the possible need to reduce global warming to 1.5°C already mentioned in Copenhagen and Cancun.

329. The findings set out in the newer IPCC AR5 report published in 2013 and 2014 were, of course, also included in these dialogues. The final conclusions of the expert dialogues were documented in the SED final report which the UNFCCC published in 2015.³²⁵

330. Based on the latest state of the art, this final report draws the conclusion that the 2°C target can no longer be considered safe. A number of messages from the SED report:

*“Climate change impacts are hitting home. Significant climate impacts are already occurring at the current level of global warming and additional magnitudes of warming will only increase the risk of severe, pervasive and irreversible impacts. Therefore, the ‘guardrail’ concept, which implies a warming limit that guarantees full protection from dangerous anthropogenic interference, no longer works.”*³²⁶

*“The 2°C limit should be seen as a defence line [...] The ‘guardrail’ concept, in which up to 2 °C of warming is considered safe, is inadequate and would therefore be better seen as an upper limit, a defence line that needs to be stringently defended, while less warming would be preferable.”*³²⁷

*“[L]imiting global warming to below 1.5 °C would come with several advantages in terms of coming closer to a safer ‘guardrail’. It would avoid or reduce risks, for example, to food production or unique and threatened systems such as coral reefs or many parts of the cryosphere, including the risk of sea level rise [...] Parties may wish to take a precautionary route by aiming for limiting global warming as far below 2°C as possible, reaffirming the notion of a defence line or even a buffer zone keeping warming well below 2°C.”*³²⁸

331. As scientists now clearly consider the 2°C target inadequate and unsafe, as is clear from the quotes above, the SED report now considers this target a line of defence (according to the quote above) that must be strongly defended (“a defence line that needs to be stringently defended”), while the report also indicates that a target of 1.5°C would be a better line of defence and that global warming should be kept “well below 2°C”.

³²⁵ Exhibit MD-083, UNFCCC 2015, ‘Report on the structured expert dialogue on the 2013–2015 review’.

³²⁶ Ibid, Message 4, p. 15.

³²⁷ Ibid, Message 5, p. 18.

³²⁸ Ibid, Message 10, p. 33.

332. The SED report also clarifies, among other things, that in order to be able to keep global warming below 2°C, a radical energy transition is required immediately, just for starters (quote):

“Limiting global warming to below 2 °C necessitates a radical transition (deep decarbonization now and going forward), not merely a fine tuning of current trends.”³²⁹

VII.3.2 2015: the Paris Agreement and the decision on reducing emissions (COP21)

VII.3.2.1 The Paris Agreement

333. The scientific findings from the SED report quoted above were copied in the Paris Agreement that was concluded during COP21 in Paris in December 2015. The Paris Agreement is a further elaboration and update of the UN Climate Convention of 1992. The Agreements are complementary. The Paris Agreement came into force on 4 November 2016 after the necessary national ratification processes.³³⁰
334. The Paris Agreement³³¹ underlines the urgent threat of the climate issue and the need to tackle it on the basis of best available climatic and scientific findings, in part to protect human rights, to protect future generations and to limit the damage caused by climate change. The Paris Agreement, therefore, more clearly defined the main objective of the UN Convention (which was given substance in Bali, Copenhagen and Cancun). The goal of the Paris Agreement is to keep global warming “*well below 2°C*” and to preferably limit it to 1.5°C. With that goal in mind, all countries affiliated with the UN Climate Convention submitted the national emissions reductions targets (set by themselves) to the Secretariat. These targets are also referred to as Nationally Determined Contributions (NDCs), that are to have been achieved by 2030.
335. The above is worded as follows in the Paris Agreement:

“PARIS AGREEMENT

The Parties to this Agreement, [...]

In pursuit of the objective of the Convention, and being guided by its principles, including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances,

Recognizing the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge [...]

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights [...] and intergenerational equity, [...]

Have agreed as follows: [...]

Article 2

1. This Agreement [...] aims to strengthen the global response to the threat of climate change [...] 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; [...]

Article 3

As nationally determined contributions to the global response to climate change, all Parties are to

³²⁹ Ibid, Message 2, p. 11.

³³⁰ Exhibit MD-084, UNFCCC, ‘Status of Ratification of the Paris Agreement’ (print-out from website 27 February 2025).

³³¹ Exhibit MD-070, Paris Agreement (original English version).

*undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2.”*³³² (emphasis added by legal counsel)

336. An important point to mention – one that has relevance for ING – in this respect is that the Paris Agreement in Article 2(1)(c) also explicitly states and formulates as a goal that financing flows must be made consistently and in line with the (global) path to low emissions and a climate-proof development:

Article 2

1. *This Agreement [...] aims to strengthen the global response to the threat of climate change [...] including by: [...]*

(c) *Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.* (emphasis added by legal counsel)

337. Chapter X will discuss the role that banks will have to play in this respect in greater detail.
338. The Paris goal, as set out in Article 2, was further operationalised in Article 4. Article 4 makes it clear that the contracting parties will take it upon themselves to reach the peak of global greenhouse gas emissions as quickly as possible, to then reduce the emissions as quickly as possible in accordance with the best available scientific knowledge and in the second half of the century to come to net zero emissions (a balance between anthropogenic greenhouse gas emissions and removals).³³³
339. Just as with the UN Climate Convention, equity³³⁴, the CBDR principle³³⁵, and the principle of intergeneration equity³³⁶, once again play a big role regarding the manner in which contracting states are to achieve this goal. The fourth paragraph of Article 4 confirms once again that the developed countries will have to continue taking the lead in their approach to climate action. Developed countries must commit to achieving absolute emissions reduction targets for their entire national economy. Developing countries have less stringent obligations under the Paris Agreement. They must continue enhancing their mitigation efforts and are encouraged to gradually switch to emissions reduction targets for their entire economy.
340. Lastly, in the Paris Agreement (the same as in the UN Climate Convention) clear reference is made to the need to observe the best available climate science when implementing the agreements that have been made.³³⁷ The above-outlined development, whereby the climate target has been increased to limit the temperature increase to 1.5°C, must be viewed in this light and is situated in the (very significant) risks charted by climate science that will result from warming of 2°C rather than 1.5°C.

VII.3.2.2 The decision of COP21 about the emissions reductions required

³³² Ibid, preamble and Article 2.

³³³ Ibid, Article 4(1).

³³⁴ Ibid, Article 2(2), Article 4(1) and Article 14(1).

³³⁵ Ibid, Article 2(2), Article 4(3) and Article 4(19).

³³⁶ Ibid, recital, including the recital of COP-decision 1/CP.21 which adopted the Paris Agreement.

³³⁷ See, inter alia, Articles 4(1), 7(5) and 14(1) of the Paris Agreement. Also see the preamble: “Recognizing the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge.” See also Article 4(2)(c) and (d) and Article 7(2)(a) of the UN Climate Convention.

341. The COP decision³³⁸ pursuant to which the Paris Agreement was adopted and which is, as such, a further elaboration of the Convention, indicates that all the nationally determined contributions (NDCs) submitted by the countries will never be enough to achieve the main objective of the Agreement to prevent dangerous climate change. Mindful of the best available scientific findings, the COP decision indicated that the nationally determined contributions for 2030 together will still result in global emissions of 55 GtCO₂-eq in 2030, while global emissions should have been reduced to 40 GtCO₂-eq by 2030 in order to have a realistic chance of keeping global warming below 2°C in the first place.
342. As an even further-reaching reduction by 2030 than the aforementioned 40 Gt would have to be realised in order to achieve the 1.5°C target from the Paris Agreement, the COP decision stipulated that a special report would have to be available by 2018 in order to determine by how much more emissions must be reduced by 2030 than the aforementioned 40 Gt in order to be able to realise this objective of the Agreement. The elements from the COP that currently matter are quoted below:

“Adoption of the Paris Agreement

The Conference of the Parties,

[...]

12. *Welcomes the intended nationally determined contributions that have been communicated by Parties [...];*

16. *Takes note of the synthesis report on the aggregate effect of intended nationally determined contributions [...];*

17. *Notes with concern [...] that the aggregate green house gas emission levels in 2025 and 2030 resulting from the intended nationally determined contributions [...] lead to a projected level of 55 gigatons in 2030 and also notes that much greater emission reduction efforts will be required than those associated with the intended nationally determined contributions in order to hold the increase in the global average temperature to below 2 °C above pre-industrial levels by reducing emissions to 40 gigatonnes or to 1.5°C above pre-industrial levels by reducing to a level to be identified in the special report referred to in paragraph 21 below;*
[...]

21. *Invites the Intergovernmental Panel on Climate Change to provide a special report in 2018 on the impacts of global warming of 1.5 °C above pre-industrial levels and related global greenhouse gas emission pathways;”*
(emphasis added by legal counsel)

VII.3.3 2018: the IPCC report about the 1.5°C target requested by COP21

343. As indicated above in paragraph 21 of the quoted COP decision, in 2018, at the request of the 197 affiliated countries, a special report was published with regard to the preferred Paris target of limiting global warming to 1.5°C. The special report in question (known as IPCC SR15) concluded that global warming beyond 1.5°C would cause major damage and that the difference in the consequences of climate change at global warming of 1.5°C and 2°C respectively is large. In order to limit global warming to 1.5°C, global emissions will have to be reduced to (far) below 35 GtCO₂-eq by 2030, according to the report. The IPCC also pointed out that half of the models used even show that global emissions will have to be reduced to between 25 Gt and 30 GtCO₂-eq by 2030.³³⁹
344. The IPCC SR15 report from 2018 also indicated that as a result of these findings, limiting global warming to 1.5°C would require global CO₂ emissions to be reduced by net 45% by

³³⁸ Exhibit MD-086, UNFCCC COP21 2015 (Paris), ‘Decision 1/CP.21’.

³³⁹ Exhibit MD-087, IPCC 2018, SR15, SPM, SPM, p. 18.

2030 (bandwidth of 40-60%) and to net-zero by 2050 (bandwidth of 2045-2055). This means that from 2050 (bandwidth 2045-2055), there may be no more atmospheric CO₂ emissions.³⁴⁰ If this emissions reduction pathway is followed, the chance that the world remains below 1.5°C is 50% or more and the chance that the world remains below 2°C is 85%.³⁴¹ In other words, even when implementing this strong emissions reduction as of 2030 and achieving the zero point of CO₂ emissions in 2050, there is a 50% chance that the 1.5°C limit will be exceeded and a 15% chance that warming will exceed 2°C. Chapter XIV.2 will go into the global reduction task in greater detail, the related reduction percentages and the chance these entail of limiting the temperature rise to 1.5°C.

345. This IPCC SR15 report from 2018 again confirms, in accordance with the findings at the time (2017, 2018) of the UNEP Emissions Gap Report, that the nationally determined contributions for 2030 issued by the 194 countries in Paris added up, are far from enough to be able to achieve the Paris goals. The calculations from 2018 show that even if all these commitments are satisfied, the Earth will warm up by 3°C this century alone, according to the IPCC, and this warming will continue to rise:

“Pathways reflecting current nationally stated mitigation ambition until 2030 are broadly consistent with cost-effective pathways that result in a global warming of about 3°C by 2100, with warming continuing afterwards (medium confidence).”³⁴²

346. The SR15 report from 2018 again makes it clear that limiting global warming requires that total cumulative global anthropogenic emissions of CO₂ are limited, which means that the total cumulative emissions must remain within a specific carbon budget:

“Limiting global warming requires limiting the total cumulative global anthropogenic emissions of CO₂ since the preindustrial period, that is, staying within a total carbon budget (high confidence).”³⁴³

347. According to the IPCC, the remaining carbon budget allowing a 50% chance of limiting the temperature increase to 1.5°C is 580 GtCO₂ as of 2018. This budget decreases by 42 ± 3 GtCO₂ per year based on annual global emissions:

“The associated remaining budget is being depleted by current emissions of 42 ± 3 GtCO₂ per year (high confidence). [...] Using global mean surface air temperature, as in AR5, gives an estimate of the remaining carbon budget of 580 GtCO₂ for a 50% probability of limiting warming to 1.5°C, and 420 GtCO₂ for a 66% probability (medium confidence).”³⁴⁴

348. The IPCC emphasises in SR15 in this respect the importance of rapid emissions reductions in the short term, as otherwise – because of the continuing high cumulative emissions and the rapid exhaustion of the carbon budget – even faster and larger emissions reductions will be necessary later to keep the warming within certain temperature limits.

349. In addition, in SR15 the IPCC explicitly warns in this respect that postponing rapid emissions

³⁴⁰ Ibid, C1 SPM, p. 12: “In model pathways with no or limited overshoot of 1.5°C, global net anthropogenic CO₂ emissions decline by about 45% from 2010 levels by 2030 (40-60% interquartile range), reaching net zero around 2050 (2045–2055 interquartile range).”

³⁴¹ According to the IPCC Sixth Assessment Report (AR6), the scenarios with a 50% chance of 1.5°C give an approximate 90% chance to limit the temperature rise to 2°C. See in this respect Exhibit MD-049, IPCC 2022, AR6, WGIII, SPM, C1.1, note 41 SPM, p. 17.

³⁴² Exhibit MD-087, IPCC 2018, SR15, SPM, D.1.1 SPM, p. 18.

³⁴³ Ibid, C1.3 SPM, p. 12.

³⁴⁴ Ibid, C1.3 SPM, p. 12.

reductions will lead to economic and institutional lock-in of carbon-intensive infrastructure; by continuing investments in and use of carbon-intensive technologies, which are difficult to phase out or which can only be phased out at great expense once they have been introduced, those investments also generate CO₂ emissions for the longer term, causing them to be 'locked-in':

*"Less CO₂ emission reductions in the near term would require steeper and deeper reductions in the longer term in order to meet specific warming targets afterwards [...]. Besides this [...] delaying GHG emissions reductions over the coming years also leads to economic and institutional lock-in into carbon-intensive infrastructure, that is, the continued investment in and use of carbon-intensive technologies that are difficult or costly to phase-out once deployed".*³⁴⁵

350. An important conclusion of the IPCC in this respect is that mere compliance of the nationally determined contributions made by the contracting states in Paris not only makes it impossible to achieve the 1.5°C target, but due to the described lock-in, also forms an obstacle to rapid and far-reaching emissions reductions after 2030:

*"Based on the implied emissions until 2030, the high challenges of the assumed post-2030 transition, and the assessment of carbon budgets in Section 2.2.2, global warming is assessed to exceed 1.5°C if emissions stay at the levels implied by the NDCs until 2030³⁴⁶ [...] NDC pathways that apply a post-2030 price of emissions as found in least-cost pathways starting from 2020 show infrastructural carbon lock-in as a result of following NDCs instead of least-cost action until 2030. A key finding is that carbon lock-ins persist long after 2030, with the majority of additional CO₂ emissions occurring during the 2030–2050 period."*³⁴⁷ (emphasis added by legal counsel)

351. The IPCC therefore concludes that the period up to 2030 is the critical decade: the lower the emissions in 2030, the more achievable the task after 2030 will be to limit warming to 1.5°C. According to the IPCC, the risks of postponed emissions reductions include – in addition to the serious consequences of warming as such – the risk of cost escalation, the risk of lock-in of carbon-emitting infrastructure, the risk of stranded assets and the risk of reduced flexibility in future response options in the medium to long term:

*"The lower the emissions in 2030, the lower the challenge in limiting global warming to 1.5°C after 2030 with no or limited overshoot (high confidence). The challenges from delayed actions to reduce greenhouse gas emissions include the risk of cost escalation, lock-in in carbon-emitting infrastructure, stranded assets, and reduced flexibility in future response options in the medium to long term (high confidence)"*³⁴⁸

VII.4 2021: THE GLASGOW CLIMATE PACT (COP26)

352. The Glasgow Climate Pact was made during COP26 in Glasgow. Based on the IPCC findings in the SR15 report and the Sixth Assessment Report (AR6) of Working Group I that had just been published at that time, the Conference of the Parties expressed their utmost concern ("*Expresses alarm and utmost concern*") about the fact that human activities had already caused warming of 1.1 °C, that the consequences thereof could already be felt in every region of the world and that the remaining carbon budget was small and rapidly running out.³⁴⁹ In line with the findings of the IPCC, the international community indicated that the critical

³⁴⁵ Ibid, Chp. 2, p. 126.

³⁴⁶ Ibid, Chp. 2, p. 127.

³⁴⁷ Ibid, Chp. 2, p. 129.

³⁴⁸ Ibid, D1.3 SPM, p. 18.

³⁴⁹ Exhibit MD-088, UNFCCC COP26 2021 (Glasgow), 'Glasgow Climate Pact', para. 3.

decade for closing the gap between word and deed was now:

*“The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, Recalling Article 2 of the Paris Agreement [...] Stresses the urgency of enhancing ambition and action in relation to mitigation, adaptation and finance in this critical decade to address the gaps in the implementation of the goals of the Paris Agreement;”*³⁵⁰ (emphasis added by legal counsel)

353. What is important in this respect is that the Conference of the Parties – following the UN Climate Convention and the Paris Agreement – in the very first paragraph of the Glasgow Climate Pact once again emphasised that climate action should always take place in accordance with the best available science:

*“Recognizes the importance of the best available science for effective climate action and policymaking;”*³⁵¹

354. This establishes that for over thirty years there has been international consensus that the best available science forms the basis for determining the reduction task.

355. In the paragraph on mitigation (emissions reduction) of the Glasgow Climate Pact, the Conference of the Parties then reconfirmed the objective of limiting warming to 1.5°C and resolved to use endeavours to achieve this target. It was recognised that the consequences of climate change will be much less at a warming of 1.5°C than at 2°C.³⁵² In other words: the 194 countries that were party to the Paris Agreement acknowledged, taking account of the latest scientific understanding and the jointly expressed “*alarm and utmost concern*” regarding the global impact of the current warming of 1.1 °C, the need to limit warming to 1.5°C and resolved to strive to do so. The parties then acknowledged on the basis of the IPCC SR15 report that this would require “*rapid, deep and sustained*” emissions reductions, including a worldwide reduction of CO₂ emissions of 45% in 2030 relative to 2010 and achieving net zero CO₂ emissions in 2050:

*“Recognizes that limiting global warming to 1.5 °C requires rapid, deep and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around midcentury, as well as deep reductions in other greenhouse gases”*³⁵³ (emphasis added by legal counsel)

356. In view of this reduction target, the Conference of the Parties expressed its very serious concern regarding the fact that the nationally determined contributions of the parties, if these were to be implemented, would not together lead to the aforementioned reduction, but would indeed lead to an increase in greenhouse gas emissions of 13.7% in 2030 relative to 2010:

*“Notes with serious concern the findings of the synthesis report on nationally determined contributions under the Paris Agreement, according to which the aggregate greenhouse gas emission level, taking into account implementation of all submitted nationally determined contributions, is estimated to be 13.7 percent above the 2010 level in 2030.”*³⁵⁴ (emphasis added by legal counsel)

³⁵⁰ Ibid, beginning and para. 5. See also para. 23 on the need for accelerated mitigation in this critical decade, based on the best available science and taking account of equity and the CBDR principle.

³⁵¹ Exhibit MD-088, UNFCCC COP26 2021 (Glasgow), ‘Glasgow Climate Pact’, para. 1. See also paras. 23 and 24 of the Glasgow Climate Pact, the preamble, Articles 4(1), 7(5) and 14(1) Paris Agreement and Article 4(2)(c) and (d) and Article 7(2)(a) of the UN Climate Convention.

³⁵² Exhibit MD-088, UNFCCC COP26 2021 (Glasgow), ‘Glasgow Climate Pact’, paras. 20-21.

³⁵³ Ibid, para. 22.

³⁵⁴ Ibid, para. 25.

357. The Conference of the Parties emphasised that because of this very large and concerning emissions gap there was a need for all countries to scale up their ambition and called upon them to bring their nationally determined contributions in line with the Paris temperature goal.³⁵⁵
358. Despite the conclusion that all countries worldwide were still not doing nearly enough to prevent dangerous climate change, the Glasgow Climate Pact was a milestone relating to the agreements on reducing greenhouse gas emissions. Not only was the importance of the 1.5°C limit confirmed and did the parties resolve to focus their efforts on this goal, in a formal resolution to implement the UN Climate Convention and the Paris Agreement there was a more concrete discussion of the need to move away from fossil fuels in order to prevent dangerous climate change. For example, the Glasgow Climate Pact calls on all parties to accelerate the transition to low-emission energy systems, to scale up renewable energy and energy efficiency, to accelerate the phasing down of the use of coal-fired power stations and to phase out the inefficient subsidies for fossil fuels:

*“Calls upon Parties to accelerate the development, deployment and dissemination of technologies, and the adoption of policies, to transition towards low-emission energy systems, including by rapidly scaling up the deployment of clean power generation and energy efficiency measures, including accelerating efforts towards the phasedown of unabated coal power and phase-out of inefficient fossil fuel subsidies,”*³⁵⁶

VII.5 **2022: THE SHARM EL-SHEIKH IMPLEMENTATION PLAN (COP27)**

359. The Sharm el-Sheikh Implementation Plan (COP27) was agreed during COP27. Based in part on the contributions of Working Groups II and III to the IPCC Sixth Assessment Report (AR6) which had appeared in the meantime, the 2022 UNEP Emissions Gap Report and, inter alia, reports of the World Meteorological Organization, the Conference of the Parties once again confirmed the urgency of the climate approach.
360. The Conference of the Parties recognised the impact of climate change on the cryosphere³⁵⁷ and indicated that more knowledge was required about this impact and the role that tipping points in the climate system play in this respect.³⁵⁸ There will be further discussion of the importance and the risks of tipping points in Chapter VIII.2.1.2.
361. The Conference of the Parties then repeated the finding from the Glasgow Climate Pact that the consequences of climate change will be much less with warming at 1.5°C than warming at 2°C and the decision of the Glasgow Climate Pact to focus efforts on limiting the temperature increase to 1.5°C.³⁵⁹
362. Based on the update provided by IPCC Working Group III in the Sixth Assessment Report (AR6), the Conference of the Parties indicated that limiting the global temperature increase

³⁵⁵ Ibid, paras. 26-29.

³⁵⁶ Ibid, para. 36.

³⁵⁷ The cryosphere is a collective term for those parts of the Earth's surface where water is present in solid form. This encompasses sea ice, ice on lakes or rivers, snow, glaciers, ice caps and frozen ground (including permafrost). The cryosphere is an integral part of the global climate system and has a lot of influence on the global climate.

³⁵⁸ Exhibit MD-089, UNFCCC COP27 2022 (Sharm el-Sheikh), 'Sharm el-Sheikh Implementation Plan', para. 5.

³⁵⁹ Ibid, paras. 1-4. The Conference of the Parties repeated this decision during COP28 in Dubai, see Exhibit MD-090, UNFCCC COP28 2023 (Dubai), 'Outcome of the First Global Stocktake', para. 4.

to 1.5°C means that all greenhouse gases must have been reduced in 2030 by 43% relative to 2019:

“Recognizes that limiting global warming to 1.5 °C requires rapid, deep and sustained reductions in global greenhouse gas emissions of 43 per cent by 2030 relative to the 2019 level;”³⁶⁰

363. A reduction of all greenhouse gases (CO₂-eq)³⁶¹ by 43% in 2030 and by 84% in 2050, both relative to 2019, leads to a 50% chance to limit the temperature increase to 1.5°C.³⁶² This corresponds with a global reduction in specific CO₂ emissions by 48% in 2030 and achieving (virtually) net zero CO₂ emissions in 2050.³⁶³ In Chapter XIV.2 this reduction task and the relevance thereof for ING is explained in further detail.
364. Lastly, the Sharm el-Sheikh Implementation Plan paid attention to the important role that non-state actors (such as companies and financial institutions) play in the climate approach.³⁶⁴ The Conference of the Parties expressed its appreciation for the recommendations of the UN High Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities regarding the expectations relating to the climate commitments of companies, financial institutions, cities and regions.³⁶⁵ Chapter IX will discuss the important role of non-state actors (including corporations and financial institutions) in the climate approach in further detail. In that chapter Milieudefensie will also elaborate that the need for non-state climate action has been recognized within the UN Climate regime already since 2012. In addition, Milieudefensie will elaborate there on the findings of the UN High Level Expert Group with respect to the specific actions expected by UN from non-state actors like corporations and financial institutions.

VII.6 2023: THE OUTCOME OF THE FIRST GLOBAL STOCKTAKE (COP28)

365. COP28 in Dubai was a particularly important Conference of the Parties, because it marked the conclusion of the first ‘global stocktake’; a worldwide stocktake of the global efforts to prevent dangerous climate change. This ‘global stocktake’ takes place periodically based on the Paris Agreement to assess the progress that has been made in the realisation of the objectives of the Paris Agreement.³⁶⁶
366. The Conference of the Parties concluded that progress was too slow in all areas of climate action: from reducing greenhouse gas emissions to strengthening resilience against a changing climate and providing financial and technological support to vulnerable countries.³⁶⁷ At the same time, the contracting states expressed their serious concern that 2023 had been the hottest year since global temperatures were first recorded (since 1850)³⁶⁸

³⁶⁰ Exhibit MD-089, UNFCCC COP27 2022 (Sharm el-Sheikh), ‘Sharm el-Sheikh Implementation Plan’, para. 11.

³⁶¹ By way of explanation: along with the other greenhouse gases, CO₂ is also referred to as CO₂ equivalents, or “CO₂-eq”. In that case, the other greenhouse gases such as methane gas and nitrous oxide have been converted into CO₂ values.

³⁶² Exhibit MD-001, IPCC 2023, AR6, SYR, para. 4.1, p. 92.

³⁶³ Ibid, para. 4.1, p. 92, note 144.

³⁶⁴ Exhibit MD-089, UNFCCC COP27 2022 (Sharm el-Sheikh), ‘Sharm el-Sheikh Implementation Plan’, under the heading ‘XVI’. Enhancing implementation: action by non-Party stakeholders’.

³⁶⁵ Ibid, para. 60.

³⁶⁶ Exhibit MD-070, Paris Agreement (original English version), Article 14 and Exhibit MD-090, UNFCCC COP28 2023 (Dubai), ‘Outcome of the First Global Stocktake’, preamble.

³⁶⁷ Exhibit MD-090, UNFCCC COP28 2023 (Dubai), ‘Outcome of the First Global Stocktake’, inter alia, paras. 15, 17, 21, 24, 46, 49.

³⁶⁸ See also: Exhibit MD-093, Copernicus 2024, ‘Copernicus: 2023 is the hottest year on record, with global temperatures close to the 1.5°C limit’ (print-out from website 27 February 2025). According to Samantha Burgess, Deputy Director of

and that the consequences of climate change in the world were rapidly increasing.³⁶⁹ In view of this, the contracting states emphasised that urgent action was necessary to keep the 1.5°C goal within reach and tackle the climate crisis in this critical decade:

*“Expresses serious concern that 2023 is set to be the warmest year on record and that impacts from climate change are rapidly accelerating, and emphasizes the need for urgent action and support to keep the 1.5 °C goal within reach and to address the climate crisis in this critical decade;”*³⁷⁰

367. The Conference of the Parties promised the highly necessary acceleration of climate action during this critical decade, taking into account the best available science, equity and the CBDR principle:

*“Commits to accelerate action in this critical decade on the basis of the best available science, reflecting equity and the principle of common but differentiated responsibilities and respective capabilities in the light of different national circumstances and in the context of sustainable development and efforts to eradicate poverty;”*³⁷¹

368. The Conference of the Parties then expressed its concern that the current nationally determined contributions are highly insufficient to realise the necessary reductions by 2030, so that there is still a very large emissions gap³⁷² and concluded on the basis of the IPCC’s findings, that in addition there was an implementation gap, because the actually implemented policy was inadequate for meeting the nationally determined contributions.³⁷³

369. The Conference of the Parties then stated *“with significant concern”* that the options for achieving the Paris goal were rapidly decreasing. The contracting states expressed their concern that the remaining Paris-compliant carbon budget is small and will be depleted, with the conclusion that the historical cumulative CO₂ emissions have already used up four-fifths of the carbon budget for a 50% chance of limiting the temperature increase to 1.5°C.³⁷⁴

370. The contracting states (again) established in this respect, based on the findings of the IPCC’s Sixth Assessment Report (AR6), that in order to limit warming to 1.5°C, all greenhouse gas emissions must be reduced by 43% as of 2030 relative to 2019 and that CO₂ emissions must be net zero in 2050. The global community then added a reduction target for 2035 for the first time, being a reduction of 60% in all greenhouse gas emissions relative to 2019:

*“Also recognizes that limiting global warming to 1.5 °C with no or limited overshoot requires deep, rapid and sustained reductions in global greenhouse gas emissions of 43 per cent by 2030 and 60 per cent by 2035 relative to the 2019 level and reaching net zero carbon dioxide emissions by 2050;”*³⁷⁵

371. According to the global community, it is therefore crystal clear what needs to happen and that all current efforts fall short. But the Outcome of the first global stocktake also offers hope. The global community established that in all sectors there are sufficient effective and

Copernicus, temperatures in 2023 probably exceeded those of any period in at least the last 100,000 years.

³⁶⁹ Exhibit MD-090, UNFCCC COP28 2023 (Dubai), ‘Outcome of the First Global Stocktake’, inter alia, paras. 15(b).

³⁷⁰ Ibid, para. 5.

³⁷¹ Ibid, para. 6.

³⁷² Ibid, paras. 21-22. Even if all conditional nationally determined contributions were implemented, this would only lead to a 5.3% reduction in emissions by 2030 relative to 2019.

³⁷³ Ibid, para. 23.

³⁷⁴ Ibid, paras. 24-25.

³⁷⁵ Ibid, para. 27. The Conference of the Parties based these percentages on the findings in AR6, see Exhibit MD-001, IPCC 2023, AR6, SYR, p. 21.

inexpensive mitigation options to keep the 1.5°C goal within reach during this critical decade:

“That feasible, effective and low-cost mitigation options are already available in all sectors to keep 1.5 °C within reach in this critical decade with the necessary cooperation on technologies and support;”³⁷⁶

372. The Conference of the Parties established in this respect that in the past decade mitigation technologies have become increasingly available and that the costs of these technologies, including solar energy, wind energy and energy storage, have continually fallen.³⁷⁷

373. Where the global community was already calling for a scaling up of renewable energy and energy-efficiency and electricity generation by means of an accelerated phase-down of coal in the Glasgow Climate Pact, the Outcome of the first global stocktake now goes one step further and presents these concrete measures that the world must focus on in the period to 2030:

“Further recognizes the need for deep, rapid and sustained reductions in greenhouse gas emissions in line with 1.5 °C pathways and calls on Parties to contribute to the following global efforts, in a nationally determined manner, taking into account the Paris Agreement and their different national circumstances, pathways and approaches:

- (a) Tripling renewable energy capacity globally and doubling the global average annual rate of energy efficiency improvements by 2030;*
- (b) Accelerating efforts towards the phase-down of unabated coal power;*
- (c) Accelerating efforts globally towards net zero emission energy systems, utilizing zero- and low-carbon fuels well before or by around mid-century;*
- (d) Transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science;*
- (e) Accelerating zero- and low-emission technologies, including, inter alia, renewables, nuclear, abatement and removal technologies such as carbon capture and utilization and storage, particularly in hard-to-abate sectors, and low-carbon hydrogen production;*
- (f) Accelerating and substantially reducing non-carbon-dioxide emissions globally, including in particular methane emissions by 2030;*
- (g) Accelerating the reduction of emissions from road transport on a range of pathways, including through development of infrastructure and rapid deployment of zero and low-emission vehicles;*
- (h) Phasing out inefficient fossil fuel subsidies that do not address energy poverty or just transitions, as soon as possible;”³⁷⁸*

374. With this list of concrete measures, which were established based on recommendations of the IEA and its ‘Net Zero Emissions by 2050’ scenario (NZE scenario, see in this respect furthermore Chapter XIV.3.2), the global community made it clear that the prerequisite for preventing dangerous climate change is rooted in moving away not only from coal, but from

³⁷⁶ Exhibit MD-090, UNFCCC COP28 2023 (Dubai), ‘Outcome of the First Global Stocktake’, para. 16(c).

³⁷⁷ Ibid, para. 30.

³⁷⁸ Ibid, para. 28.

all fossil fuels, in addition to scaling up renewable energy and energy efficiency. With the political consensus that was created during COP28, the scaling up of renewable energy will accelerate and, more than previously, the thresholds will be removed for this scaling up. The most significant obstacles in this respect are, however, the continuing investments in and the use of fossil fuels and the resulting lock-in.³⁷⁹

375. Despite the fact that this outcome of COP28 can rightly be called a milestone, the world is not there yet (by far). COP28 in fact makes it clear just how far away we are from reaching the climate goals and how precarious the situation is. In order to achieve the necessary phasing-down of fossil energy and the scaling up of renewable energy and the requisite transition in all sectors, all sectors will have to use maximum effort.
376. The Conference of the Parties made this clear by, inter alia, (again) pointing out the importance of making financing flows consistent with the Paris goal,³⁸⁰ concluding that at present this has been happening to far too limited a degree,³⁸¹ by referring to the important role that governments and central banks, but also commercial banks, institutional investors and other financial actors must play³⁸² and by referring in a more general sense to the important role of ‘non-Party stakeholders’, including companies and financial institutions.³⁸³
377. The important role that non-state actors, and banks in particular, will have to play in preventing dangerous climate change will be explained in further detail in Chapters IX and X. The consequences of dangerous climate change for the world and for Europe and the Netherlands in particular will be discussed in the next chapter.

VII.7 2024: THE CLIMATE UNITY PACT OF BAKU (COP29)

378. The most recent COP took place in Baku Azerbaijan in November 2024. This COP was described as the first ‘finance COP’, given the central aim of the convention to strengthen the financing of climate action in developing countries.
379. COP29 reaffirms again the great importance of the 1.5°C-target. World leaders reaffirmed that this target is crucial to prevent the most catastrophic consequences of climate change. This (also) in light of the new agreement reached during this COP on climate financing, as part of the so-called ‘Baku Climate Unity Pact’.³⁸⁴ The COP explicitly refers back to the outcomes of the first global stocktake, as discussed above, and emphasizes that more ambition and action is needed in this critical decade to implement the goals of the Paris Agreement. The COP:

“[r]eaffirms the outcomes of the first global stocktake and stresses the urgency of enhancing ambition and action in this critical decade to address the gaps in the implementation of the goals of the Paris Agreement.”³⁸⁵

380. The meaning of these findings for the global climate financing goals will be discussed later in

³⁷⁹ See Chapter XIV.3.5. See in this respect also Chapter VII.3.3, which discusses findings of the IPCC in the SR15 Report with regard to the lock-in.

³⁸⁰ Exhibit MD-090, UNFCCC COP28 2023 (Dubai), ‘Outcome of the First Global Stocktake’, para. 90.

³⁸¹ Ibid, para. 91.

³⁸² Ibid, para. 96.

³⁸³ Ibid, para. 158.

³⁸⁴ Exhibit MD-091, UNFCCC COP29 2024 (Baku), ‘New collective quantified goal on climate finance’, par. 1.

³⁸⁵ Ibid, par. 2.

this summons. It will become clear that these goals ended up at a lower level than many had expected and hoped for, including UN Secretary-General Guterres (see chapter X.3.13).

381. Nevertheless, he too emphasized that the importance of (measures to achieve) the 1.5°C-target is bigger and more urgent than ever. He emphasizes that in anticipation of COP30 in 2025 the largest emitters (the G20 countries) should take the lead in developing plans that accelerate the reduction of greenhouse gas emissions throughout the economy and that the end of the fossil fuel era is inevitable:

“COP29 comes at the close of a brutal year – a year seared by record temperatures, and scarred by climate disaster, all as emissions continue to rise. [...]”

[C]ountries must deliver new economy-wide national climate action plans – or NDCs – aligned with 1.5 degrees, well ahead of COP30 – as promised. The G20 countries, the biggest emitters, must lead.

These new plans must cover all emissions and the whole economy, accelerate fossil fuel phase out, and contribute to the energy transition goals agreed at COP28 – seizing the benefits of cheap, clean renewables.

The end of the fossil fuel age is an economic inevitability. New national plans must accelerate the shift, and help to ensure it comes with justice.”³⁸⁶

VIII. THE CONSEQUENCES OF CLIMATE CHANGE

VIII.1 INTRODUCTION

382. As explained above, the 1.5°C goal of the Paris Agreement with regard to preventing dangerous climate change is based on the final report of the SED that in turn is based on the findings in the IPCC’s Fifth Assessment Report (IPCC AR5) from 2013/2014. The special 1.5°C report of the IPCC from 2018 (IPCC SR15) and the IPCC’s Sixth Assessment Report (IPCC AR6) provide valuable new insights and updates. In order to get a better picture of the dangers arising for humans and the environment if the Paris goal is not achieved, this aspect will be dealt with below.

VIII.2 THE SERIOUS CONSEQUENCES FOR THE WORLD AND THE CONSEQUENCES FOR THE NETHERLANDS

VIII.2.1 Significant global dangers and the five reasons for concern

VIII.2.1.1 Five reasons for concern

383. From the Third Assessment Report of 2001 (IPCC TAR) on, the IPCC has divided the significant risks that have been connected to anthropogenic climate change (“key risks”) into “Five Reasons for Concern”. The goal thereof was and is to enable the Conference of the Parties (COP), based on scientific data, to give substance to Article 2 of the UN Climate Convention and thus to determine what dangerous climate change as referred to in Article 2 is to be understood to mean.³⁸⁷

384. The IPCC deems significant risks to be “key risks” because of the great danger they pose or

³⁸⁶ Exhibit MD-092, UN Secretary-General Statement on COP29 (print-out from website 27 February 2025).

³⁸⁷ IPCC 2007, AR4, SYR, p.64 (https://www.ipcc.ch/site/assets/uploads/2018/02/ar4_syr_full_report.pdf).

the great degree of vulnerability of societies and/or ecosystems with regard to these risks. Matters that play a role in this respect are, inter alia, the large size of the risk, the high probability of the risk, the irreversibility of the consequences or the limited potential to reduce the risk via adaptation and mitigation.³⁸⁸

385. These criteria used by the IPCC to indicate risk also play a key role in Dutch law when it comes to societal care and the doctrine of hazardous negligence, as will be discussed in further detail in Chapter XI. Consequently, this stocktake of key risks is important for determining ING's legal obligation.
386. It is important to know what kind of risks the IPCC is specifically referring to when mention is made of the five "Reasons for Concern" (hereinafter abbreviated as: RFCs), to in that manner get a good understanding of the consequences and impacts of climate change. These five reasons for concern (RFC1 to RFC5) are briefly explained below.
- (i) *RFC1: 'unique and threatened systems'* – This RFC addresses the possible increase in damage to or irreversible loss of a wide range of physical, biological and human systems that are unique (i.e. are limited to a relatively narrow geographic area and possess high endemism or other distinguishing characteristics) and are at risk due to climate change. Global temperature increases will mean that certain human systems will have to undergo substantial adaptations or that ecosystems as we know them now will disappear. Examples of systems that run a very high risk of drastic adverse impact at warming already between 1.5°C to 2°, are the ecosystems in the Arctic region (the North Pole), the coral reefs in tropical waters, glaciers in mountainous areas and biodiversity hotspots. Even at the current temperature we are already seeing mass die-off of trees in various unique forest ecosystems all over the world, mass decline and extinction of various animal and insect species in various land and sea ecosystems and large-scale coral death (mounting to 70-90% of all coral worldwide at 1.5°C). In addition, rising sea levels, even in low emissions scenarios, ensure that certain areas are no longer habitable or disappear completely, such as small island states. At warming levels of more than 1.5°C, several unique systems reach adaptation limits, such as the areas that are dependent on glaciers and melted snow for their drinking water. Regions and ecosystems are threatened in these and other ways, as are the cultures that are dependent on these regions and systems.³⁸⁹
 - (ii) *RFC2: 'Extreme weather events'* – This RFC addresses the risks to human health, means of existence and ecosystems due to extreme weather circumstances such as heat waves, heavy rainfall, drought and associated forest fires, and coastal flooding. These extreme weather conditions are increasing both in frequency and intensity due to

³⁸⁸ IPCC 2014, AR5, WGII, SPM, p.11 and 12: "Key risks are potentially severe impacts relevant to Article 2 of the [UNFCCC], which refers to "dangerous anthropogenic interference with the climate system". Risks are considered key due to high hazard or high vulnerability of societies and systems exposed, or both. Identification of key risks was based on expert judgement using the following specific criteria: large magnitude, high probability, or irreversibility of impacts; timing of impacts; persistent vulnerability or exposure contributing to risks; or limited potential to reduce risks through adaptation or mitigation. Key risks are integrated into five complementary and overarching reasons for concern (RCF's) [...]" (see https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-PartA_FINAL.pdf). This is also the conclusion (summarised) of Exhibit MD-56, IPCC 2022, AR6, WGII, SPM, p. 5: "Key risks have potentially severe adverse consequences for humans and social-ecological systems resulting from the interaction of climate related hazards with vulnerabilities of societies and systems exposed".

³⁸⁹ Exhibit MD-057, IPCC 2022, AR6, WGII, SPM, SPM, Table TS.1, p. 69. See also Chp. 16, para. 16.6.3.1, pp. 2485-2488, for a detailed description of the risks arising with RFC1 and the consequences of various temperature levels.

climate change. With the current warming and up to 1.5°C there are already increased heat-related deaths, forest fires (due to drought/heat), floods (due to extreme precipitation and storms), agriculture and other ecological droughts and water scarcity. The extreme weather circumstances also lead to food shortages and consequences for food security, safety and peaks in food prices, jeopardising the nutrition and means of existence of millions of people. These risks increase rapidly and disproportionately between 1.5°C and 2°C and with (a median of) 2°C there is a risk of worldwide failure of crops in the 'breadbasket regions' (the areas suitable for agriculture that are responsible for worldwide grain production), of irreversible impacts relating to weather extremes (e.g. significant damage to ecosystems and severe coastal storms) and increasing risks of disease.³⁹⁰

- (iii) *RFC3: 'Distribution of impacts'* – RFC3 reflects how significant risks are unevenly distributed across regions and various population groups, as a result of the non-uniform spatial division of physical dangers of climate change, exposure and vulnerability across regions. It shows how risks have a disproportionately large influence on particularly vulnerable societies and socio-ecological systems. The IPCC indicated in this respect that within countries (regardless of the level of development of the country as such), the already weaker and marginalised groups in particular will be disproportionately affected by the impact of climate change. Climate risks are also highly related to inequality, often but not always in combination with poverty, geographical situation and political and socio-cultural aspects. Countries that have significant inequality are more vulnerable and exposed to climate risks. In general, areas in the Global South and less developed areas run a greater risk than areas in the Global North and more developed countries, including with regard to food- and health-related risks.³⁹¹ The IPCC has the following to say about this:

*"Adverse effects of climate change on food production are projected to become much more severe [...] when global temperatures rise more than 2°C globally, but there are predicted to be much more negative impacts experienced sooner on food security in low to mid-latitudes"*³⁹²

- (iv) *RFC4: 'Global aggregate impacts'* – This RFC views consequences for socio-ecological systems that can be combined worldwide into one single metric, such as monetary damage, lives affected, species lost or ecosystem degradation on a global scale. RFC4 shares underlying significant risk components with other RFCs (e.g. RFC1 and RFC2), but refers to consequences that reach concerning levels on a global scale. The combined effects of various risks, that are mutually reinforcing, varying from economic to biodiversity aspects, are weighed in conjunction with each other. This is best explained using an example. Via various complex mechanisms, climate change leads to a loss of biodiversity, in a relationship in which the loss in biodiversity increases with the scope of the warming. This loss of biodiversity not only has large (direct) consequences for the ecology, but also large (indirect) economic consequences because humans are dependent on this biodiversity. Think of such things as, e.g., the fishing industry (if species of fish become extinct or if populations decline, this will affect the fishing industry and consequently an important part of the human food

³⁹⁰ Ibid, SPM, Table TS.1, p. 70. See also Chp. 16, para. 16.6.3.2, pp. 2488-2490, for a detailed description of the risks arising with RFC2 and the consequences of various temperature levels.

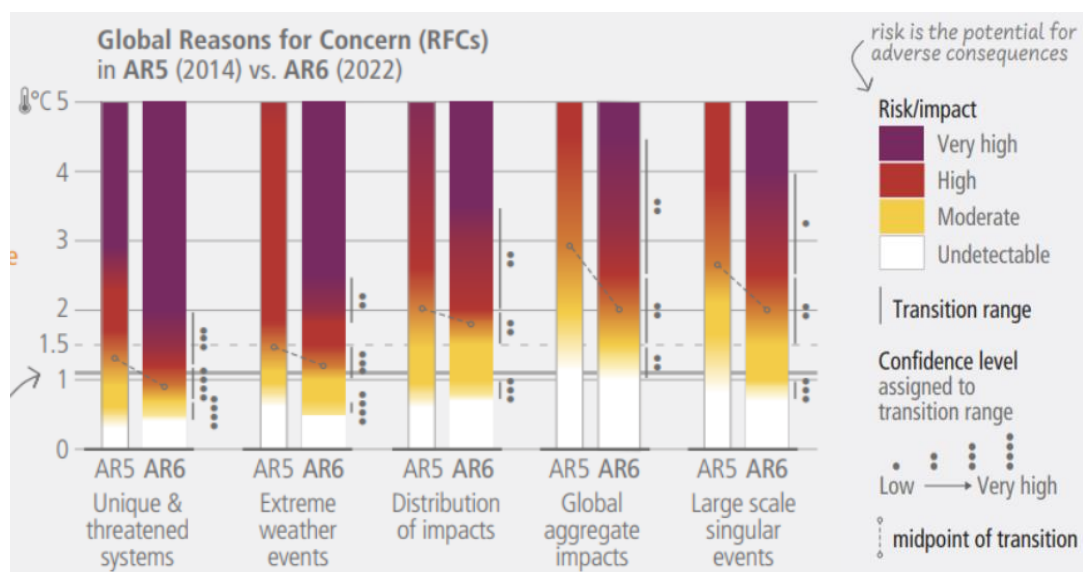
³⁹¹ Ibid, SPM, Table TS.1, p. 70. See also Chp. 16, para. 16.6.3.3, pp. 2490-2492, for a detailed description of the risk arising with RFC3 and the consequences of various temperature levels.

³⁹² Ibid, Chp. 16, para. 16.6.3.3, p. 2492.

supply) or crop pollination in agriculture (if the population of bees and other pollinating insects declines, this will lead to less pollination and possibly lower crop yields). According to the IPCC, regions that are greatly dependent on climate-sensitive means of existence, like agriculture, fishing and forestry, can even encounter serious consequences in case of minor warming if the region has limited adaptive capacity. From 1.5°C and up, some 200 million people whose sustenance is dependent on small-scale fishing are at serious risk, in view of the sensitivity of marine life to the warming and acidification of the ocean and the loss of coral reefs. A warming between 1.5°C and 2°C can expose 330-396 million people to lower agricultural yields and the concomitant consequences this has for their sustenance, because the means of existence worldwide are greatly dependent on agriculture. At 2°C a relative reduction of effective labour is expected of 10%, which would have far-reaching economic consequences. Environmental damage therefore leads to economic damage. The IPCC therefore expects that the economic damage of adverse impacts on the environment will increase at an accelerated pace as the temperature increases.³⁹³

- (v) *RFC5: 'Large-scale singular events'* – This RFC views large-scale exceptional events (also called tipping points) as: abrupt, drastic and sometimes irreversible changes in physical, ecological or social systems that have significant and often permanent consequences. Because of the comprehensive nature of this risk, it will be discussed separately in the following paragraph.

387. As already explained, the IPCC uses the above-described reasons for concern to indicate the global risks connected with climate change, to enable the Conference of the Parties (COP), on the basis of scientific data, to give substance to the term 'dangerous climate change' of Article 2 of the UN Climate Convention. The IPCC has been using a hazard indicator since 2001 in this respect. The following hazard indicator is the one used in the recent IPCC AR6 report.³⁹⁴



³⁹³ Ibid, SPM, Table TS.1, p. 70. See also Chp. 16, para. 16.6.3.4, pp. 2492-2494, for a detailed description of the risks arising with RFC4 and the consequences of various temperature levels.

³⁹⁴ Exhibit MD-001, IPCC 2023, AR6, SYR, Chp. 3, p. 75.

388. The five RFCs are represented in the IPCC hazard indicator. From left to right these RFCs will further be referred to as RFC1 to RFC5. This hazard indicator clearly indicates where for each of the five Reasons for Concern the turning point lies from moderate to high risk level (the interface between yellow and red) and from a high risk level to a very high risk level (the interface between red and purple). The hazard indicator shows that the differences between the hazardous consequences in case of a warming of 1.5°C and 2°C are considerable.
389. The graph also shows what the hazard indicator was at the time of the Fifth Assessment Report (AR5) from 2013/2014 compared to the recent findings from AR6. This shows that the risk level for RFCs becomes high to very high at (substantially) lower levels of global warming compared to what was assessed in AR5. The increased risks since AR5 can consequently be deemed very concerning.
- “For a given level of warming, many climate-related risks are assessed to be higher than in AR5 (high confidence). Levels of risk for all Reasons for Concern (RFCs) are assessed to become high to very high at lower global warming levels compared to what was assessed in AR5 (high confidence). This is based upon recent evidence of observed impacts, improved process understanding, and new knowledge on exposure and vulnerability of human and natural systems, including limits to adaptation. Depending on the level of global warming, the assessed long-term impacts will be up to multiple times higher than currently observed (high confidence) for 127 identified key risks, e.g., in terms of the number of affected people and species. Risks, including cascading risks (see 3.1.3) and risks from overshoot (see 3.3.4), are projected to become increasingly severe with every increment of global warming (very high confidence).”³⁹⁵*
390. This increased risk estimate arises from recent observations, improved insight into processes and new knowledge about exposure and vulnerability of human systems and ecosystems, including the limits to adaptation, according to the IPCC. The risks, including ‘cascading risks’, also known as domino effects, and the risks of (temporarily) exceeding the danger threshold of 1.5°C (overshoot) will become more serious with each fraction of further warming.
391. The disastrous consequences and risks of climate change have, of course, long been known, and form the foundation of the international political consensus that the warming of the Earth must remain limited to 1.5°C. The most recent insights show, however, that the consequences of climate change will manifest themselves more quickly and that it has to be concluded increasingly often that certain risks are even greater than previously thought.³⁹⁶
392. The hazard indicator shows, inter alia, that climate-related risks for natural and human systems are greater at a warming of 1.5°C than at the current temperature, but (substantially) less than at 2°C. For example, the risk level for unique and threatened (eco)systems (RFC1) is already high to very high at warming of 1.5°C (and also at the current warming of 1.3°C). For the risk level for extreme weather incidents such as heat, drought, heavy rainfall and storms (RFC2), there is a high risk level at 1.5°C. For the other three reasons for concern – RFC3 (distribution of impact), RFC4 (global aggregate impacts) and RFC5 (large-scale singular events) – the hazard indicator makes it clear that there are moderate risks at warming of 1.5°C:

³⁹⁵ Ibid, Chp. 3, p. 71. See also p. 24 of the Summary for Policymakers and pp. 46 and 68.

³⁹⁶ Exhibit MD-057, IPCC 2022, AR6, WGII, SPM, p. 43: “Since AR5, climate risks are appearing faster and will get more severe sooner (high confidence). Impacts cascade through natural and human systems, often compounding with the impacts from other human activities.” See also Exhibit MD-001, IPCC 2023, AR6, SYR, Chp. 3, p. 89: “Observed adverse impacts and related losses and damages, projected risks, trends in vulnerability, and adaptation limits demonstrate that transformation for sustainability and climate resilient development action is more urgent than previously assessed (very high confidence).”

*Limiting global warming to 1.5°C would ensure risk levels remain moderate for RFC3, RFC4 and RFC5 (medium confidence), but risk for RFC2 would have transitioned to a high risk at 1.5°C and RFC1 would be well into the transition to very high risk (high confidence)."*³⁹⁷

393. At a warming of 2°C all risk levels are substantially higher and RFC3, RFC4 and RFC5 make the transition to a high risk. At 2°C, RFC1 and RFC2 even make the transition to a very high risk:

*"At 2°C of global warming, overall risk levels associated with the unequal distribution of impacts (RFC3), global aggregate impacts (RFC4) and large-scale singular events (RFC5) would be transitioning to high (medium confidence), those associated with extreme weather events (RFC2) would be transitioning to very high (medium confidence), and those associated with unique and threatened systems (RFC1) would be very high (high confidence)."*³⁹⁸

394. It is good to know in this respect that the IPCC uses the term 'high risk' if there are serious and wide-spread consequences that are assessed as high based on one or more criteria to assess "key risks" (see para. 383). The IPCC only speaks of 'very high risk' when there is both a very high risk of serious impacts and the presence of significant irreversible or persistent climate-related dangers, combined with a limited capacity of humans or nature to adapt due to the nature of the danger or the impact.³⁹⁹ In view of this, the above-described risks in case of warming of 2°C can, without exaggeration, be called very concerning.

395. The hazard indicator shows that the greater the warming, the greater the risks connected with the five Reasons for Concern. The climate risks therefore increase in all categories as the temperature increases. The IPCC therefore concluded:

*"Risks and projected adverse impacts and related losses and damages from climate change will escalate with every increment of global warming (very high confidence). They are higher for global warming of 1.5°C than at present, and even higher at 2°C (high confidence)."*⁴⁰⁰ (emphasis added by legal counsel)

396. Since the hazard indicator was first introduced by the IPCC in the Third Assessment Report (AR3) of 2001, the hazards noted by the IPCC have only increased. For example, the IPCC's Fourth Assessment Report (AR4) from 2007 shows that the five Reasons for Concern had become larger compared to the third report from 2001, that the risks had increased and that there was greater clarity about the vulnerability of systems, sectors, groups and regions in relation to the effects of climate change.⁴⁰¹ A similar conclusion is drawn in the IPCC's Fifth Assessment Report (AR5) from 2013/2014 compared to the fourth report from 2007.⁴⁰² The IPCC Special Report (SR15) from 2018 then concluded that the risks had increased relative to those described in the fifth report⁴⁰³ and as explained above, the IPCC's Sixth Assessment

³⁹⁷ Exhibit MD-001, IPCC 2023, AR6, SYR, Chp. 3, p. 71. See also Exhibit MD-057, IPCC 2022, AR6, WGII, SPM, TS, C.12.2, pp. 68-69.

³⁹⁸ Exhibit MD-057, IPCC 2022, AR6, WGII, SPM, Technical Summary, C.12.2, p. 69.

³⁹⁹ Exhibit MD-001, IPCC 2023, AR6, SYR, SPM, p. 15, note 37: "high risk indicates severe and widespread impacts that are judged to be high on one or more criteria for assessing key risks; and very high risk level indicates very high risk of severe impacts and the presence of significant irreversibility or the persistence of climate-related hazards, combined with limited ability to adapt due to the nature of the hazard or impacts/risks."

⁴⁰⁰ Ibid, B.2.2 SPM, p. 15.

⁴⁰¹ IPCC 2007, AR4, SYR, p.64 (zie https://www.ipcc.ch/site/assets/uploads/2018/02/ar4_syr_full_report.pdf).

⁴⁰² IPCC 2014, AR5, WGII, H.19, p. 1075-1079 (zie https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-PartA_FINAL.pdf).

⁴⁰³ Exhibit MD-087, IPCC 2018, SR15, SPM, SPM, p. 12.

Report (AR6) from 2021-2023 concluded that the risks were greater than in AR5 and SR15.⁴⁰⁴

VIII.2.1.2 The risk of tipping points

397. Of the five reasons for concern, the fifth reason (the risks of “large-scale singular events”) deserves special attention because it refers to the most comprehensive, drastic and abrupt dangers of climate change. This concerns the tipping points in the climate system:

“large-scale singular events (sometimes called tipping points or critical thresholds), considers abrupt, drastic and sometimes irreversible changes in physical, ecological or social systems in response to smooth variations in driving forces (accompanied by natural variability)”⁴⁰⁵

398. Tipping points in the climate system refers to the situation in which a critical threshold is exceeded, so that a change in parts of a climate system occurs that maintains itself, even if the underlying causes are removed. Tipping points lead to substantial, widespread, often abrupt and often (in any event on human time scales) irreversible consequences.⁴⁰⁶ Science pays a lot of attention to the sizeable risks and possible consequences of passing tipping points. Important (scientific) reports have been published about this in the past two years. These are, inter alia, the report entitled State of the Cryosphere 2023, the report entitled Climate Tipping Points: Insights for Effective Policy Action of the OECD and the Global Tipping Points Report, which was published during COP28 (hereinafter: “GTP Report”).

399. A few important findings from those reports will be explained below on the basis of the GTP Report. More than two hundred authors and 25 agencies collaborated on this international research report, which is seen as the most comprehensive study of tipping points in our climate system up to now. The list with references to associated publications alone is more than 100 pages. The GTP Report forms an addition to findings of the IPCC in the Sixth Assessment Report (AR6), both because it contains the most up-to-date findings and because it goes into climate tipping points and the negative societal, economic and political disruption that would ensue therefrom much more comprehensively.

400. The report identifies a total of 26 tipping points in (i) the cryosphere, (ii) the biosphere and (iii) the ocean currents and circulation in the atmosphere. The cryosphere encompasses the frozen parts of the Earth, like the ice caps, glaciers, sea ice and permafrost. The tipping points are, inter alia, the melting of the West Antarctic ice cap and the Greenland ice cap, the melting of other glaciers worldwide, and the thawing of permafrost. The biosphere encompasses natural ecosystems such as tropical rainforests, boreal forests, the tundra, lakes, coral reefs and fish stocks, whereby the degradation of those important ecosystems is deemed a tipping point. Oceanic and atmospheric circulation refers to, inter alia, the warm Gulf Stream in the North Atlantic Ocean and the Subpolar Gyre. These global circulating currents are essential for the transport of heat, oxygen, CO₂ and nutrients in the oceans (and consequently for life in the oceans), and are also decisive for regional weather circumstances and food production in large parts of the world.

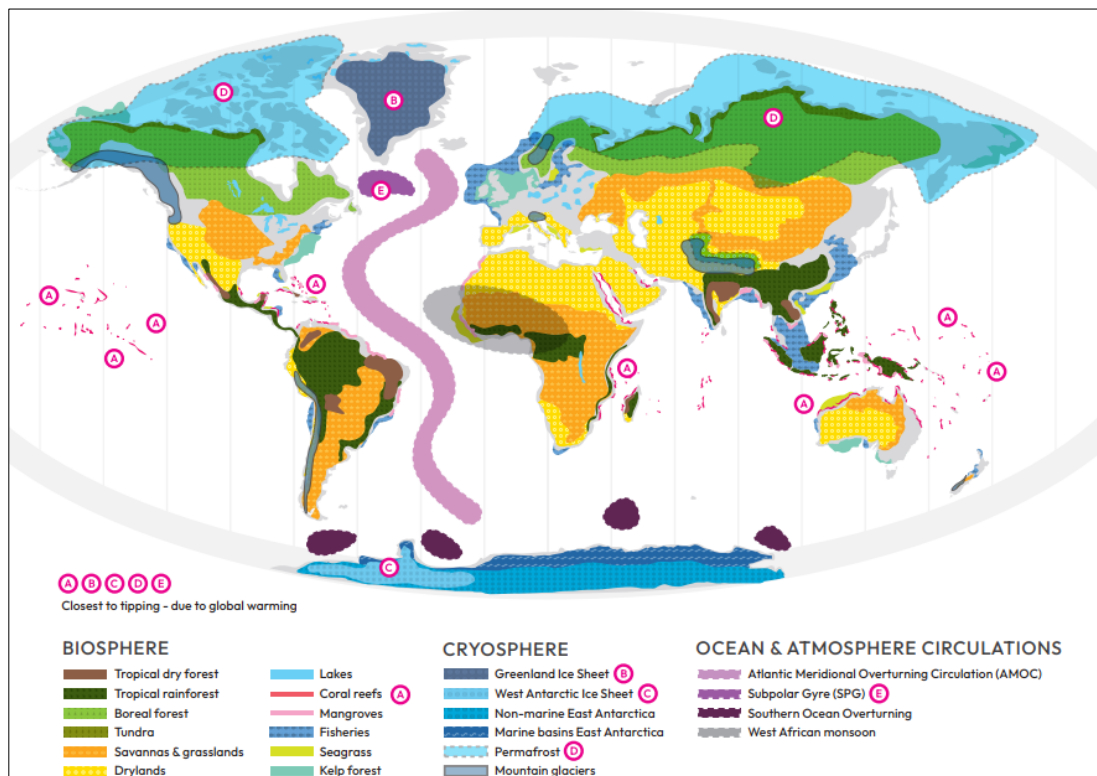
401. The GTP Report shows that with the current warming it is already likely that coral reefs in

⁴⁰⁴ Exhibit MD-057, IPCC 2022, AR6, WGII, SPM, TS, C.12.1, p. 68: “Compared to AR5 and SR15, risks increase to high and very high levels at lower global warming levels for all five RFCs (high confidence), and transition ranges are assigned with greater confidence.”

⁴⁰⁵ Ibid, Chp. 16, p. 2494.

⁴⁰⁶ Exhibit MD-039, UNDP 2024, ‘Peoples’ Climate Vote 2024’ (Executive Summary), p. 20. The definition also encompasses gradual (non-abrupt) and reversible tipping points.

warm waters will die out on a large scale and that it cannot be excluded that four other tipping points will be passed: the melting of the Greenland and West Antarctic ice caps (which can cause a sea level rise of 12 metres in total), the collapse of the Subpolar Gyre (a circular sea current at the ocean's surface south of Greenland) and the (continued) thawing of the permafrost.⁴⁰⁷ In the illustration below the parts of the climate system for which tipping points have been identified are indicated with colours. Letters A to E indicate which of these parts of the climate system are closest to tipping.⁴⁰⁸



402. At a warming of 1.5°C, according to best estimates the danger zone will be reached for three extra tipping points: the boreal forest (the forests in Alaska, Russia, Canada and Scandinavia), the mangroves and the seagrass meadows.⁴⁰⁹ As of 2°C, the danger zone for various other tipping points will be reached, including those for the Amazon rainforest and the marine

⁴⁰⁷ Exhibit MD-039, UNDP 2024, 'Peoples' Climate Vote 2024' (Executive Summary), p. 20. See also pp. 61 to 65 (about the Greenland and West Antarctic ice cap), pp. 131 to 134 (about the Subpolar Gyre), pp. 72 to 76 (about permafrost) and pp. 85, 105 to 108 (about coral reefs). The consequences of the first three tipping points are discussed below. The large-scale die-off of coral reefs will lead to loss of ecosystems and biodiversity (25% of all sea animals are to a certain degree dependent on coral reefs), loss of coastal protection and loss of fish stocks (half a billion people are partly dependent on healthy coral reefs for their sustenance).

⁴⁰⁸ Ibid, p. 21.

⁴⁰⁹ Ibid, p. 20. See also pp. 82, 89 to 91 and 255 (about the boreal forest) and pp. 108 to 114 and p. 255 (about mangroves and seagrass meadows). Tipping points in the boreal forest (dieback in the south and expansion to the north) can lead, inter alia, to an increased risk of forest fires and can change regional weather and precipitation patterns. Loss of mangroves and seagrass meadows leads, inter alia, to reduced coastal protection, increased vulnerability to weather extremes, loss of biodiversity and ecosystems, adverse impact on fishing stocks and food security, loss of an important source for carbon storage, as well as additional emissions of stored carbon stocks.

basin in East Antarctica.⁴¹⁰

403. For some tipping points it is not easy to define a critical limit, such as for the significant weakening or even collapse of the warm Gulf Stream in the North Atlantic Ocean (AMOC). This is in part because the AMOC has only been consistently monitored since 2004. The GTP Report therefore does not give a bandwidth. However, according to the GTP Report there are clear indications that the Gulf Stream is losing resilience, and may be at its weakest point in 1000 years. According to the GTP Report, several studies warn that the AMOC could reach a tipping point.⁴¹¹
404. On 9 February 2024 – i.e. after publication of the GTP Report – a new peer-reviewed study of Dutch scientists was published which again should be setting off alarm bells. The study shows that a slow weakening of the AMOC due to the inflow of fresh water as a result of the melting of the Greenland ice cap can lead to a very abrupt collapse in less than 100 years.⁴¹² In their own words, the scientists involved are “*shocked at the forecast speed of collapse once the point is reached*”.⁴¹³ With the help of “*exceptionally complex and expensive computing systems*” it has now been determined with greater reliability that (i) the AMOC is on the road to a tipping point and (ii) the AMOC can suddenly collapse.⁴¹⁴
405. A more recent study of (in part) the same scientists shows that the AMOC could even collapse between 2037-2064, with a 59% chance ($\pm 17\%$) that it will collapse before 2050.⁴¹⁵
406. The collapse of the AMOC would change regional climate circumstances worldwide considerably, especially in Europe, which will adversely impact vegetation and crop productivity in great parts of the world, with far-reaching consequences for food security.⁴¹⁶ According to the GTP Report, half of all grain and corn producing areas on Earth will be in danger and drastic consequences would arise for ecosystems worldwide, including further drying out of the Amazon area, and weather extremes would increase.⁴¹⁷ A further

⁴¹⁰ Ibid, p. 20. See also pp. 59 and 65 and Exhibit MD-016, ICCI 2023, ‘State of the Cryosphere 2023’, pp. 8 and 12 (with regard to East Antarctica, which would lead to rising sea levels (up to 19 metres) and disruption of global circulation currents). See also Exhibit MD-039, UNDP 2024, ‘Peoples’ Climate Vote 2024’ (Executive Summary), pp. 81, 86 to 89 and 182 to 185 (about the tropical rainforest). The drying out of the Amazon forest would have enormous local and regional consequences, including for the health and well-being of the millions of people who live there and for many hundreds of thousands of species of animals, plants and trees. Drought in the Amazon also disrupts food and transport systems. However, there can also be significant consequences for global rainfall patterns at the global level.

⁴¹¹ Exhibit MD-039, UNDP 2024, ‘Peoples’ Climate Vote 2024’ (Executive Summary), pp. 128 to 131 (“*Despite the caveats mentioned above, these results amount to a serious warning that the AMOC might be en route to tipping*”) and p. 155. See also Exhibit MD-014, OECD 2022, ‘Climate Tipping Points: Insights for Effective Policy Action’, p. 28: “*current early-warning signals are consistent with the AMOC losing stability and being close to a critical transition*”.

⁴¹² Exhibit MD-095, Westen et al. 2024, ‘Physics-based early warning signal shows that AMOC is on tipping course’.

⁴¹³ Exhibit MD-096, Watts 2024, ‘Atlantic Ocean circulation nearing ‘devastating’ tipping point, study finds’ (print-out from website 27 February 2025), p. 1.

⁴¹⁴ Ibid, p. 2.

⁴¹⁵ Exhibit MD-097, Smolders et al. 2024, ‘Probability Estimates of a 21st Century AMOC Collapse’. See also Exhibit MD-098, Dewan et al. 2024, ‘A critical system of Atlantic Ocean currents could collapse as early as the 2030s, new research suggests’ (print-out from website 27 February 2025).

⁴¹⁶ Exhibit MD-039, UNDP 2024, ‘Peoples’ Climate Vote 2024’ (Executive Summary), pp. 177, 186, 192 (Story of one collapse: AMOC) and p. 254 (Table 3.3.1: Impacts of ESTPs). See also Exhibit MD-014, OECD 2022, ‘Climate Tipping Points: Insights for Effective Policy Action’, p. 27, where the collapse of the AMOC is described as a “*critical threat to global food security*”, and pp. 28 to 30: “*Beyond impacts on agriculture, a serious weakening or collapse of the AMOC would have profound implications for ecosystems, human health, livelihoods, food security, water supply and economic growth, especially in the regions around the North Atlantic*.” (emphasis added by legal counsel)

⁴¹⁷ Exhibit MD-039, UNDP 2024, ‘Peoples’ Climate Vote 2024’ (Executive Summary), pp. 192, 254 (Table 3.3.1: Impacts of ESTPs). See also p. 131 about other consequences: “*A collapse of the AMOC would influence sea level rise along the boundaries*

deterioration of the AMOC – which has already been predicted – would, however, in itself have significant consequences, “essentially a scaled-down version of those resulting from a complete collapse” according to the OECD.⁴¹⁸

407. Because of the increasing proof that the AMOC could severely weaken or collapse within a few decades and because of the actual catastrophic consequences this would have, 44 of the most prominent climate scientists explicitly warned of this risk in an open letter in October 2024. Bearing in mind this risk, in the letter the scientists urged policymakers to take the risks of a collapse of the AMOC seriously and they emphasised that it is extremely important to achieve the goals of the Paris Agreement to limit the global temperature increase to 1.5°C.⁴¹⁹
408. The collapse of the Subpolar Gyre (the circulating gulf stream to the south of Greenland) can in part lead to similar consequences such as the collapse of the warm Gulf Stream, albeit on a smaller scale, but still with an unimaginable impact.⁴²⁰ The collapse of the Gulf Stream can, moreover, (also) occur very abruptly, starting at 1.1°C warming.⁴²¹ The world is thus already in this danger zone.
409. What the above-mentioned examples illustrate above all, and what science explains, is that parts of the climate system do not operate separately from each other, but are interconnected, or influence each other via the global temperature increase.⁴²² This means that the tipping of one subsystem can in turn lead to destabilisation or even the tipping of another subsystem.⁴²³ This is also referred to as ‘cascading risks’ or domino effects (see also para. 390 above and para. 415 below).
410. This interaction between different systems could effectively lower the thresholds for putting tipping point events in motion (so that the chance of passing tipping points increases).⁴²⁴ In addition, tipping points can in themselves activate natural processes that lead to extra emissions of CO₂ and other greenhouse gases. In science there are also referred to as positive feedback loops. The thawing of permafrost and large-scale die-off of trees (with a greater risk of forest fires) are examples of these positive feedback loops which can lead to the emission of greenhouse gases that were previously stored in nature.⁴²⁵ These positive feedback loops cannot yet be properly predicted and modelled. This means that the risks and

of the North Atlantic, modify Arctic sea ice and permafrost distribution (Schwinger et al., 2022; Bulgin et al., 2023), reduce oceanic carbon uptake (Rhein et al., 2017) and potentially lead to ocean deoxygenation (Kwiatkowski et al., 2020) and severe disruption of marine ecosystems (including changes in the North Atlantic Subpolar Gyre, see below), impacting North Atlantic fish stocks.”

⁴¹⁸ Exhibit MD-014, OECD 2022, ‘Climate Tipping Points: Insights for Effective Policy Action’, p. 28.

⁴¹⁹ Exhibit MD-099, Open Letter by Climate Scientists to the Nordic Council of Ministers 2024.

⁴²⁰ Exhibit MD-039, UNDP 2024, ‘Peoples’ Climate Vote 2024’ (Executive Summary), p. 255 (Table 3.3.1: Impacts of ESTPs), where, inter alia, the following consequences are described: “20-30cm sea level rise along North-East seaboard of North America, amplified cold winter blocking events in Europe & increase in summer heat wave frequency, large changes in ecosystems in affected regions, major disruptions of agriculture in Northern Europe and Sahel, impacting food security”.

⁴²¹ Ibid, pp. 125, 131-134, 255. P. 134: “the SPG collapse can occur much faster than AMOC collapse, on the timescale of just only a few decades (Armstrong McKay et al., 2022). Armstrong McKay et al. (2022) estimated global warming threshold of ~1.8°C (1.1 to 3.8°C) for the SPG collapse (high confidence) [...] Abrupt future SPG collapse is diverse in the CMIP6 models, occurring as early as the 2040s (~1 to 2°C) but in only a subset of models. However, as these models better represent some key processes, the chance of SPG collapse is estimated at 36-44 per cent”.

⁴²² Ibid, p. 145.

⁴²³ Ibid, pp. 144 to 154 (Chapter 1.5, Climate tipping point interactions and cascades) and Exhibit MD-014, OECD 2022, ‘Climate Tipping Points: Insights for Effective Policy Action’, pp. 22 to 26 (Chapter 2.2, Potential cascading impacts of climate system tipping points).

⁴²⁴ Exhibit MD-039, UNDP 2024, ‘Peoples’ Climate Vote 2024’ (Executive Summary), p. 144.

⁴²⁵ Ibid.

consequences of these processes might be (seriously) underestimated, particularly as they are not yet fully included in many climate models that are used to estimate the consequences of climate change. The IPCC's Sixth Assessment Report (AR6) has the following to say about this:

*"Additional ecosystem responses to warming not yet fully included in climate models, such as GHG fluxes from wetlands, permafrost thaw, and wildfires, would further increase concentrations of these gases in the atmosphere (high confidence)."*⁴²⁶

411. The State of the Cryosphere 2023 report and the GTP Report underscore these great dangers of not yet anticipating or only barely anticipating the aforementioned positive feedback loops in model calculations.⁴²⁷
412. With regard to the thawing of the permafrost, a warming of 1.2°C is expected to see already approximately a quarter of the permafrost at the land surface lost and 40% is expected to be lost at a warming of 1.5°C.⁴²⁸ The State of the Cryosphere 2023 report refers to estimates that up to 2100 this will be accompanied by annual additional emissions of 2.5 GtCO₂-eq per year (150 GtCO₂-eq in total).⁴²⁹ Emissions of 2.5 GtCO₂-eq per year is equal to the annual emissions of India, which we may already be stuck with, even if warming is limited to 1.5°C. This is a frightening conclusion. Anyone who realises, in view of the above, that these estimates may well be an underestimation of the risks of (abrupt and gradual) thawing processes, can imagine the threat this involves. There is a good reason that the GTP Report concludes that *"Communicating a 'threshold' for permafrost that indicates a 'safe zone' is misleading, as every tenth of a degree of global warming leads to significant impacts in permafrost-dominated landscapes (Schuur et al. 2022)"*.⁴³⁰
413. The IPCC makes it clear in AR6 SYR that the chance of feedback loops (and/or an underestimating of climate sensitivity) entails that temperature increases of over 4°C, even in case of low emission scenarios and if countries fulfil their climate promises, cannot be excluded.⁴³¹
414. The above leads to a disconcerting conclusion. As already mentioned, we are already in the danger zone within which individual tipping points may be passed. In view of the possibility that certain positive feedback loops cause additional emissions of greenhouse gases, this will increase the risk of overrunning tipping points in the climate system. Even more seriously,

⁴²⁶ Exhibit MD-001, IPCC 2023, AR6, SYR, p. 82. See also Exhibit MD-057, IPCC 2022, AR6, WGII, SPM, p. 69 (TS.C.13.2): *"Complex interactions of climate change, land use change, carbon dioxide fluxes and vegetation changes, combined with insect outbreaks and other disturbances, will regulate the future carbon balance of the biosphere, processes incompletely represented in current Earth system models."*

⁴²⁷ Exhibit MD-016, ICCI 2023, 'State of the Cryosphere 2023', pp. 31-32, Exhibit MD-039, UNDP 2024, 'Peoples' Climate Vote 2024' (Executive Summary), pp. 75 and 76, as well as p. 165: *"Despite our growing understanding of key Earth system feedbacks and interactions, some are currently not well represented in many computer models. As a result, tipping dynamics and interactions between tipping systems are less likely to emerge in model simulations, making comprehensive risk assessments difficult."*

⁴²⁸ Exhibit MD-016, ICCI 2023, 'State of the Cryosphere 2023', p. 31.

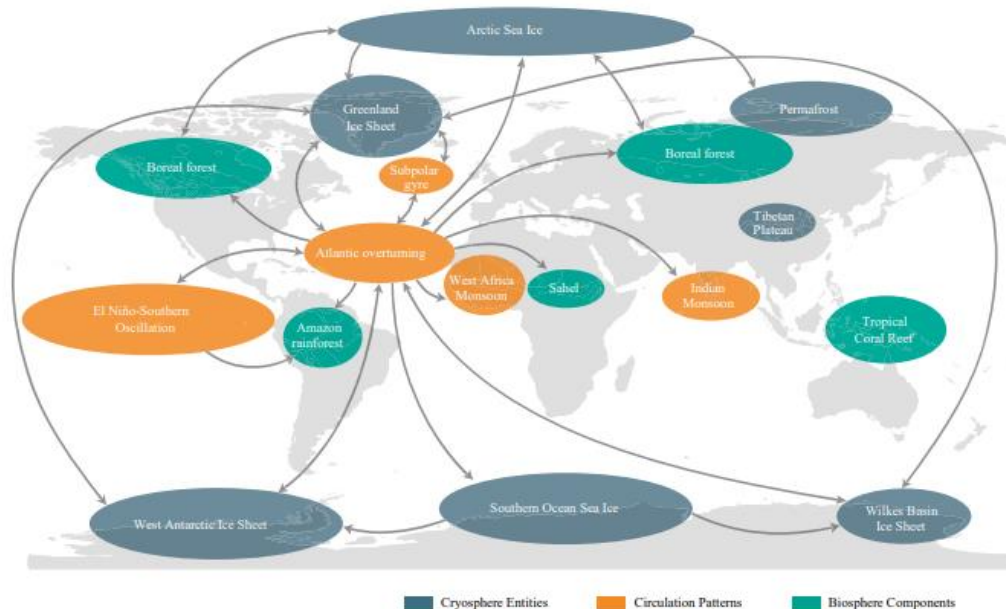
⁴²⁹ Ibid, p. 33: *"Permafrost emissions today and in the future are on the same scale as large industrial countries, but can be minimized if the planet remains at lower temperatures. If we limit warming to 1.5°C, emissions through 2100 will be about as large as those of India today, 2.5Gt/ year, totaling around 150Gt CO₂ by 2100. Should we instead reach 2°C, permafrost emissions will about equal those of almost the entire European Union** today on an annual basis, 3–4Gt/year, for about 200 Gt CO₂-eq by 2100."* See also Exhibit MD-039, UNDP 2024, 'Peoples' Climate Vote 2024' (Executive Summary), p. 77, where a similar estimate is made.

⁴³⁰ Exhibit MD-039, UNDP 2024, 'Peoples' Climate Vote 2024' (Executive Summary), p. 76.

⁴³¹ Exhibit MD-001, IPCC 2023, AR6, SYR, p. 63 (footnote 106).

bearing in mind the delayed response of the climate system to CO₂ emissions (a delay of decades or even centuries to millennia) discussed previously, it may occur that we reach a “point of no return” for certain tipping points, without the world realising that the time to be able to intervene has passed.

415. In view of the above-described insights that at this point in time we are already in the danger zone in which individual tipping points can be reached (or have already been reached), the understanding of the interaction between various tipping points and the generally destabilising effects thereof for other tipping points is becoming ever more important. This can result in domino effects or chain reactions (‘tipping cascades’), whereby one system collapsing in turn leads to the collapse of a following system.⁴³²
416. The possible interaction between various tipping point systems is represented in the following figure:



Note: Global map of candidate tipping elements of the climate systems and potential tipping cascades. Arrows show the potential interactions among the tipping elements that could generate tipping cascades, based on expert elicitation.

Source: (OECD, 2021^[5]); (Kriegler et al., 2009^[6]); Cai, Lenton and Lontzek, 2016^[7]; Wunderling et al., 2021^[4])

417. This figure⁴³³ shows how various tipping points can have an effect on each other and how this could lead to tipping cascades. An example will help to illustrate this. There are many potential interactions between the AMOC, the West Antarctic and Greenland ice caps. The melting of the Greenland ice cap will lead to an inflow of fresh water into the North Atlantic Ocean, which in turn can weaken and destabilise the AMOC. The collapse of the AMOC could (in addition to influencing various other tipping points) then lead to an increasing

⁴³² Exhibit MD-094, Schuttenhelm 2023, ‘Wetenschappers waarschuwen in Dubai voor ‘domino-effecten’ klimaatverandering’ (print-out from website 27 February 2025), pp. 1-4.

⁴³³ The figure comes from Exhibit MD-014, OECD 2022, ‘Climate Tipping Points: Insights for Effective Policy Action’, p. 19. See also pp. 19-26.

temperature of the sea surface in the southern hemisphere, resulting in a further destabilisation and melting of the West Antarctic ice cap.⁴³⁴ In this manner, the passing of one tipping point can lead to the passing of (several) other tipping points, with all the disastrous consequences this involves.

418. There is still uncertainty about the precise limits for passing tipping points and the worst-case scenario of tipping cascades, but the catastrophic consequences associated with tipping points call for appropriate (precautionary) measures, as also emphasised by the OECD in its last report with policy-relevant insights into the risks of tipping points.⁴³⁵

VIII.2.2 The consequences for Europe and the Netherlands

VIII.2.2.1 Introduction

419. The (direct) consequences of climate change in the Netherlands will be discussed below, as well as the (indirect) consequences that the Netherlands will experience due to the climate consequences elsewhere in the world. These latter (indirect) consequences will now be discussed first.

VIII.2.2.2 The indirect consequences of global warming for the Netherlands

420. Because of the international dimension of the consequences of global warming, the Netherlands is not only exposed to the dangers that occur within the borders of the Netherlands, but also to the dangers that occur outside of the Dutch borders. In a globalised world in which food supplies and commodities are purchased all over the world, there are consequences for Dutch society in relation to such things as declining food production or failed crops in other parts of the world. The IPCC also indicated this:

“Interconnectedness and globalisation establish pathways for the transmission of climate-related risks across sectors and borders, through trade, finance, food and ecosystems (high confidence). Flows of commodities and goods, as well as people, finance and innovation, can be driven or disrupted by distant climate change impacts on rural populations, transport networks and commodity speculation (high confidence). For example, Europe faces climate risks from outside the area due to global supply chain positioning and shared resources (high confidence). Climate risks in Europe also impact finance, food production and marine resources beyond Europe (medium confidence).”⁴³⁶

421. The Netherlands is therefore also exposed to the consequences of climate hazards in other countries and regions of the world.
422. That climate consequences in another part of the world create risks for the Netherlands has been long acknowledged and signalled, such as in the letter from the State Secretary of Infrastructure & the Environment dated 17 June 2014, in which the State Secretary responded on behalf of the cabinet to the IPCC’s Fifth Assessment Report (AR5):

“This report illustrates how the world is changing due to climate change. The effect on food production may be more significant than initially thought, particularly in Africa. Although there are many opportunities for improving this productivity, it is not easy to achieve. Water scarcity and food

⁴³⁴ Ibid, pp. 25-26. See also Exhibit MD-095, Westen et al. 2024, ‘Physics-based early warning signal shows that AMOC is on tipping course’, p. 2.

⁴³⁵ Exhibit MD-014, OECD 2022, ‘Climate Tipping Points: Insights for Effective Policy Action’, p. 58.

⁴³⁶ Exhibit MD-056, IPCC 2022, AR6, WGII, SPM, TS.C.11.6, p. 68.

*shortages are increasing in many parts of the world. Extreme weather is occurring more frequently and causing more damage, in part because people are increasingly living in vulnerable areas. This means risks for our trade, food security, conflicts and possible migration flows.*⁴³⁷ (emphasis added by legal counsel)

423. Further on in the letter the effects for the Netherlands of climate change abroad was again emphasised by the government:

*"[The] [c]limate problem is a global problem, the effects of which in other parts of the world may also be felt in the Netherlands. Climate change can, for example, impact our food and energy security and can lead to global instability and refugee flows."*⁴³⁸

424. The global climate effects will also affect the Netherlands economically, just as (in a similar manner) the 2008 credit crisis in the United States and the resulting banking crisis and Euro crisis affected the Netherlands. The IPCC indicated that climate change will tamper economic growth in the world (and is already doing so) and this too will impact the Netherlands:

*"A growing range of economic and non-economic losses has been detected and attributed to climate extremes and slow-onset events under observed increases in global temperatures in both low- and high-income countries (medium confidence). Extreme weather events, such as tropical cyclones, droughts and severe fluvial floods, have reduced economic growth in the short term (high confidence) and will continue to reduce it in the coming decades (medium confidence) in both developing and industrialised countries."*⁴³⁹

425. In this respect, the loss of ecosystems and ecosystem services due to climate change not only has consequences in the form of human suffering, impact on public health and food security, but also in terms of economic damage. According to the European Commission, for example, more than half of global GDP depends on nature and the services it provides.⁴⁴⁰ In addition, more than 75% of global food crop types depend on pollination by animals, the populations of which are under great pressure due to climate change and other human actions.^{441,442}

426. It is therefore not surprising that the IPCC emphasises in this respect that the protection of biodiversity and ecosystems is of fundamental importance for a sustainable and climate-proof development. It is precisely biodiversity and ecosystem services that have a limited capacity for adapting to an increase in global warming, in particular if the warming exceeds the 1.5°C limit.⁴⁴³ Aside from the inherent and incalculable value of ecosystems, exceeding

⁴³⁷ Exhibit MD-100, Kamerstukken II 2013/14, 31793, no. 91, 'Internationale klimaatafspraken' [Parliamentary Documents, 'International climate agreements', p. 2.

⁴³⁸ Ibid, p. 6.

⁴³⁹ Exhibit MD-057, IPCC 2022, AR6, WGII, SPM, TS.B.9.2, p. 54.

⁴⁴⁰ Communication from the European Commission 20 May 2020, COM(2020) 380, EU Biodiversity Strategy for 2030, pp. 1 to 3. Available at https://eur-lex.europa.eu/resource.html?uri=cellar:a3c806a6-9ab3-11ea-9d2d-01aa75ed71a1.0001.02/DOC_1&format=PDF.

⁴⁴¹ Communication from the European Commission 20 May 2020, COM(2020) 380, EU Biodiversity Strategy for 2030, pp. 2. See also Exhibit MD-057, IPCC 2022, AR6, WGII, SPM, p. 48 (TS.B.3.2), p. 61 (TS.C.3.5), p. 69 (Table TS.1), p. 109 (TS.E.4.1: "Species extinction levels that are more than 1000 times natural background rates as a result of anthropogenic pressures, and climate change will increasingly exacerbate this (high confidence).").

⁴⁴² Exhibit MD-001, IPCC 2023, AR6, SYR, A.2.3 SPM, p. 5: "Climate change has caused substantial damages, and increasingly irreversible losses, in terrestrial, freshwater, cryospheric, and coastal and open ocean ecosystems (high confidence). Hundreds of local losses of species have been driven by increases in the magnitude of heat extremes (high confidence) with mass mortality events recorded on land and in the ocean (very high confidence). Impacts on some ecosystems are approaching irreversibility such as the impacts of hydrological changes resulting from the retreat of glaciers, or the changes in some mountain (medium confidence) and Arctic ecosystems driven by permafrost thaw (high confidence)."

⁴⁴³ Exhibit MD-001, IPCC 2023, AR6, SYR, AR6, SYR, Chp. 3, p. 89: "Safeguarding biodiversity and ecosystems is fundamental

the 1.5°C limit will result in substantial economic and other damage in all regions of the world, including Europe and the Netherlands.

427. In addition, climate change can have significant consequences for the global financial system and with that naturally also for Europe and the Netherlands. Studies show that climate-related damage will have consequences for the stability of the global financial system, in particular when tipping points are passed. This could lead to gradual or abrupt capital destruction of companies, reduction in profitability, deterioration of liquidity and a higher percentage of defaults and bankruptcies, which in turn can lead to an increase in debts that banks cannot collect and banking crises.⁴⁴⁴ The insurance industry too can be taken by surprise by climate extremes and tipping points. Today, at a warming of 1.3°C, we can already see that insurers are excluding cover or are completely withdrawing from certain areas.⁴⁴⁵
428. As if all of this is not disconcerting enough, climate damage, and concomitantly the consequences of climate change for the financial sector, are probably still being significantly underestimated:

“However, by far the biggest issue with the existing empirical evidence, predictions and models that try to estimate climate damage for the financial sector is that they do not account for Earth system tipping points (Keen et al., 2022; Galaz et al., 2018)”⁴⁴⁶

429. In view of the above, it is evident that the Netherlands is not an island that can close itself off from the international consequences of climate change. The consequences of climate change abroad must therefore be involved in determining the severity and the scope of the consequences and dangers of climate change for the Netherlands and its citizens and future generations of the Netherlands.
430. This is precisely what the US Environmental Protection Agency (EPA) has done with regard to the risk analysis for citizens in the US, when it decided in 2009 to designate greenhouse gases like CO₂ as dangerous air polluting substances (as referred to in Section 202a of the federal “Clean Air Act”). In this decision (‘Endangerment finding’) the EPA indicated that it is necessary to include international climate effects in the risk analysis, such as the increase in failed crops in other parts of the world because, according to the EPA, this would also affect the health of American citizens. According to the EPA all these effects of climate change affect the safety, the well-being and the health of American society and as the Earth

to climate resilient development, but biodiversity and ecosystem services have limited capacity to adapt to increasing global warming levels, making climate resilient development progressively harder to achieve beyond 1.5°C warming (very high confidence).”

⁴⁴⁴ Exhibit MD-039, UNDP 2024, ‘Peoples’ Climate Vote 2024’ (Executive Summary), p. 201.

⁴⁴⁵ Ibid. See also Exhibit MD-101, United Nations University 2023, ‘Interconnected Disaster Risks: Risk Tipping Points’, p. 43: *“Climate change is dramatically shifting the landscape of risks, with the number of severe and frequent disasters forecast to double globally by 2040, causing insurance prices to rise. In places where extreme weather events increasingly wreak havoc, homeowners have seen prices climb by as much as 57 per cent since 2015, and people are struggling to afford coverage. Meanwhile, in the face of rising losses, some insurance companies in at-risk areas have decided to limit the amount or type of damages they can cover, cancel policies or leave the market altogether”*. See also Exhibit MD-102, Blood 2023, ‘California insurance market rattled by withdrawal of major companies’ (print-out of website 27 February 2025), pp. 1 to 4.

⁴⁴⁶ Exhibit MD-039, UNDP 2024, ‘Peoples’ Climate Vote 2024’ (Executive Summary), p. 201: *“Research on the significant, non-linear effects of climate damages on the global economy is well established (Burke et al., 2015; Carleton and Hsiang, 2016; Diffenbaugh and Burke, 2019; Hsiang et al., 2017; Martinich and Crimmins, 2019), albeit likely severely underestimating climate damage (Keen 2021; Winter and Kiehl 2023). The impacts of Earth system destabilisation on the financial sector are now receiving increasing attention too, with studies suggesting that climate-related damages will impact the stability of the global Cronafinancial system significantly (Curcio et al., 2023; ECB, 2021; FSB, 2020; IMF, 2020; ESRB, 2020; Crona et al., 2021; Kemp et al., 2022).”*

continues to warm, these negative effects will become increasingly more serious.⁴⁴⁷

431. This brief explanation of the international effects of climate change alone shows that these effects form a danger for the food supply, for sustainable economic growth and safety and for the ecosystems on which all of humanity is dependent. This is precisely the reason why the UN Climate Convention in Article 2, when formulating the key convention goal to prevent dangerous anthropogenic global warming makes reference, inter alia, to the need to stabilise the concentration of greenhouse gases in a timely manner at a level and within a time period that is sufficient to ensure that food production is not jeopardised, economic development can continue in a sustainable manner and ecosystems can adapt to climate change in a natural manner.⁴⁴⁸

VIII.2.2.3 The direct consequences for the Netherlands and Europe

432. The Netherlands is experiencing now and will experience in the coming decades, in addition to the many indirect consequences, naturally also direct consequences of ever-increasing warming. The increased periods of heat in the Netherlands, for example, also show this. The findings from the IPCC and the scientific literature show that there is a relationship between climate change, periods of heat and health complaints and deaths in society.⁴⁴⁹ A peer-reviewed study shows that 31% of the mortality due to heat in the period 1991-2018 in the Netherlands was caused by climate change. This comes down to approx. 250 extra deaths per year.⁴⁵⁰ Research of the PBL Netherlands Environmental Assessment Agency shows that one heatwave in July 2019 even led to four hundred extra deaths.⁴⁵¹ In Europe as a whole more than 61,000 people died during the extremely hot summer of 2022 as a direct consequence of the persistent exceptionally high temperatures.⁴⁵² In addition, there is a large group of people whose health and quality of life is impacted by heat stress. This relates to things such as disrupted sleep, behaviour changes (more aggression) and reduced work productivity, but also serious heat-related illnesses such as: strokes, kidney failure, respiratory problems, skin rash, cramps and fatigue.⁴⁵³
433. However, heat stress is only one of the consequences of climate change experienced by the Netherlands now and that it will experience to an ever-increasing degree as time goes by, according to, inter alia, the report of the PBL Netherlands Environmental Assessment Agency, "*Climate risks in the Netherlands, The current state of affairs*" that was published on 14 May 2024.⁴⁵⁴ Other health problems that according to the PBL Netherlands Environmental Assessment Agency will result from climate change for the Netherlands are, in addition to

⁴⁴⁷ Exhibit MD-103, EPA 2009, '40 CFR Chapter I, Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, Final Rule', p. 66514 under D, p. 66531 and p. 66534, 66535, 66536 under g and h.

⁴⁴⁸ Exhibit MD-069, UN Climate Convention (consolidated English version), Article 2 ('Objective').

⁴⁴⁹ Exhibit MD-056, IPCC 2022, AR6, WGII, SPM, B.1.4: "*In all regions extreme heat events have resulted in human mortality and morbidity (very high confidence)*." See also, for example, Exhibit MD-104, Garssen et al. 2005, 'The effect of the summer 2003 heat wave on mortality in the Netherlands', that speaks of a possible 1400 to 2200 deaths in the Netherlands in the summer of 2003 as a result of heat stress, the majority of which were among the elderly.

⁴⁵⁰ Exhibit MD-106, RIVM 2021, 'Klimaatverandering leidt nu al tot meer sterfte door hitte' (print-out from website 27 February 2025), with reference to Exhibit MD-107, Vicedo-Cabrera et al. 2021, 'The burden of heat-related mortality attributable to recent human-induced climate change'.

⁴⁵¹ Exhibit MD-009, PBL 2024, 'Klimaatrisico's in Nederland', p. 6.

⁴⁵² Exhibit MD-108, NOS 2023, '61.000 hittedoden in Europa door de hete zomer van 2022' (print-out from website 27 February 2025), with reference to Exhibit MD-109, Ballester et al. 2023, 'Heat-related mortality in Europe during the summer of 2022'.

⁴⁵³ Exhibit MD-110, TNO, 'Factsheet Hittestress'.

⁴⁵⁴ Exhibit MD-009, PBL 2024, 'Klimaatrisico's in Nederland'.

heat stress, among other things increasing allergies, increasing infectious diseases, health problems due to a deterioration in air quality, skin cancer due to an increase in UV exposure and mental health problems. This will lead to major health problems for people and considerable economic damage in the form of health care costs and loss of labour.⁴⁵⁵ The climate risks that the Netherlands runs at present are to a great degree related to water problems in the form of flooding from the sea, rivers or lakes or other water-related issues. The potential impact of floods and water-related damage is substantial. Near the sea or large rivers this concerns hundreds of thousands of impacted people, billions in economic damage and irreversible damage to nature and the environment.⁴⁵⁶ In case of flooding from regional waters or water-related damage due to extreme precipitation, the damage is also considerable. For instance, in 2021 there was more than 430 million euros in damage due to flooding in Limburg.⁴⁵⁷ Other climate risks that the Netherlands is suffering relate to, inter alia, water shortages and (extreme) drought, leading to damage to the foundations of buildings, damage to nature in the form of a loss of biodiversity and ecosystem services, wildfires, loss of yield in agriculture and restrictions for inland shipping due to low river levels.⁴⁵⁸

434. The PBL Netherlands Environmental Assessment Agency makes it clear that these current climate risks for the Netherlands have increased and that these occur earlier, more frequently and with larger consequences than estimated in an earlier risk analysis from 2015. Among other things, health risks now occur more frequently⁴⁵⁹ and dry periods occur earlier and more often, resulting in considerable damage.⁴⁶⁰ The PBL Netherlands Environmental Assessment Agency also explicitly warns – just like the IPCC – of the risk of cascades and the accumulation of risks, whereby the risks are mutually reinforcing and new risks arise. The total of several risks can have a greater impact than expected, with considerable consequences for society and the economy. The PBL Netherlands Environmental Assessment Agency states that individuals and companies have become increasingly dependent on electricity, ICT and logistics networks and on other vital infrastructure, that in turn have become increasingly entwined at national and international scale. These developments can increase the vulnerability of the Netherlands to climate change, according to the PBL Netherlands Environmental Assessment Agency. The PBL Netherlands Environmental Assessment Agency believes that a complete overview of complex risks is difficult to outline because of the large number of possible combinations, the accumulation, the cascade effects and the (unintended) negative side effects of adaptation ('maladaptation').⁴⁶¹

435. The consequences that the Netherlands will undergo, directly and indirectly, can also be deduced from studies into the climate consequences in Europe. The consequences of climate

⁴⁵⁵ Ibid, p. 15.

⁴⁵⁶ Ibid, p. 16.

⁴⁵⁷ Ibid, p. 6.

⁴⁵⁸ Ibid, pp. 16-17.

⁴⁵⁹ Ibid, p. 18: "According to the estimates in 2015, between 10,000 and 100,000 people will be affected this decade by allergies like hay fever. Currently this is estimated at more than 100,000 people annually. The economic impact of increased medical costs and labour loss due to such things as poor air quality, allergies and UV radiation is estimated to be higher: now more than 100 million euros, compared to 10 to 100 million euros in 2015. The impact on mental health was not considered in 2015, but concerns about climate change in society, particularly among the youth, is now seen as a serious problem."

⁴⁶⁰ Ibid, p. 18: "For example, in 2015 the consequences of crop damage of over 100 million euros due to successive periods of drought was still estimated as 'likely in this century'. These kinds of periods of drought have already occurred repeatedly in the recent dry years. The scope of the damage in agriculture is already estimated to be higher, i.e. more than 100 million euros, contrary to the figure of 10-100 million in 2015. The disruption of habitats, soils and archeology due to drought is happening now, rather than at the end of the century as was estimated in 2015."

⁴⁶¹ Ibid.

change are becoming increasingly clear in Europe.

436. In the State of the European Climate 2022 report, the Copernicus Climate Change Service provided insight into the climate conditions and weather extremes in 2022. During the summer months of 2022 heat waves were plaguing all of Europe and the temperatures rose to 10°C above the average summer temperature. In the United Kingdom, temperatures above 40°C were recorded for the first time. The surface temperature of the ocean reached a record temperature. Extreme marine heat waves occurred in the Mediterranean Sea.⁴⁶² Southern Europe experienced a record number of days with extreme heat stress, glaciers lost record amounts of ice and a large land surface was destroyed by wildfires.⁴⁶³ The year was drier than average, soil humidity fell to the second lowest level in 50 years, and the river discharge reached the second lowest level.⁴⁶⁴
437. 2023 saw even more records. As previously established by COP28, the year was by far the hottest year ever measured worldwide (although that record has been broken already in 2024).⁴⁶⁵ In 7 months of 2023 the average temperature was the highest ever measured in that month.⁴⁶⁶ The year has a record number of days with extreme heat stress (days with a perceived temperature of more than 46°C) and a record with regard to the area of Europa that was subject to severe heat stress at the same time (13% of the entire continent).⁴⁶⁷ The surface temperature of the sea water in the North Atlantic Ocean reached a record (again) in 2023.⁴⁶⁸ The water in the Mediterranean Sea reached a temperature of 30°C at several locations.⁴⁶⁹ The Wadden Sea region reached 21°C, which is the highest temperature ever measured.⁴⁷⁰ Greece was plagued by wildfires and then by storm, extreme rainfall and floods.⁴⁷¹ The wildfire was the largest ever measured in Europe.⁴⁷² In all of Europe, a total of 5000 km², an area the size of London, Paris and Berlin combined, burned in 2023.⁴⁷³ In 2023,

⁴⁶² Exhibit MD-111, Copernicus 2023, 'European State of the Climate 2022', p. 7.

⁴⁶³ Ibid, pp. 8, 10 and 12. See also Exhibit MD-112, WMO 2023, 'State of the Global Climate 2022', pp. 24-27.

⁴⁶⁴ Exhibit MD-111, Copernicus 2023, 'European State of the Climate 2022', pp. 9 and 10.

⁴⁶⁵ Exhibit MD-113, Copernicus 2024, 'European State of the Climate 2023', p. 8: for Europe as a whole it was the second hottest year ever measured, with the three hottest years ever occurring since 2020 and the ten hottest years since 2007. Several European countries experienced their hottest year ever.

⁴⁶⁶ Exhibit MD-114, Tensen 2024, 'Dit zijn de extremen van 2023, het warmste jaar sinds mensenheugenis', p. 5.

⁴⁶⁷ Exhibit MD-113, Copernicus 2024, 'European State of the Climate 2023', p. 8.

⁴⁶⁸ Ibid, p. 7., p. 9. See also Exhibit MD-114, Tensen 2024, 'Dit zijn de extremen van 2023, het warmste jaar sinds mensenheugenis'. See also NOS, 2 July 2023, Sterke opwarming Atlantische Oceaan werpt licht op tekortkomingen meetsysteem [Significant warming of Atlantic Ocean sheds light on shortcomings of the measurement system] (<https://nos.nl/collectie/13871/artikel/2481180-sterke-opwarming-atlantische-oceaan-werpt-licht-op-tekortkomingen-meetsysteem>).

⁴⁶⁹ The Guardian, 21 July 2023, 'Soaring temperatures may signal the decline of summer holidays to the Mediterranean' (<https://www.theguardian.com/travel/2023/jul/21/soaring-temperatures-may-signal-the-decline-of-summer-holidays-to-the-mediterranean>).

⁴⁷⁰ NOS 3 July 2023, 'Water Waddenzee nog nooit zo warm: "Gevolgen klimaatverandering spelen zich voor onze ogen af"' [Water in the Wadden Sea has never been so warm: "Consequences of climate change are occurring before our eyes"] (<https://nos.nl/regio/friesland/artikel/412922-water-waddenzee-nog-nooit-zo-warm-gevolgen-klimaatverandering-spelen-zich-voor-onze-ogen-af>).

⁴⁷¹ NOS 30 September 2023, "Grootste bos van Europa in brand: zonder hulp gaat niemand het redden" [Biggest forest in Europe on fire: 'no one will make it without help'] (<https://nos.nl/video/2492414-grootste-bos-van-europa-in-brand-zonder-hulp-gaat-niemand-het-redden>). See also NOS, 24 August 2023, 'Eurocommissaris: natuurbrand in noorden van Griekenland is "grootste ooit in EU"', ['Euro Commissioner: wildfire in northern Greece "biggest ever in EU"]' (<https://nos.nl/artikel/2487861-eurocommissaris-natuurbrand-in-noorden-van-griekenland-is-grootste-ooit-in-eu>) and NOS, 5 September 2023, 'Na bosbranden kampt deel van Griekenland nu met overstromingen', ['After forest fires, part of Greece is battling floods'] (<https://nos.nl/artikel/2489351-na-bosbranden-kampt-deel-van-griekenland-nu-met-overstromingen>).

⁴⁷² Exhibit MD-113, Copernicus 2024, 'European State of the Climate 2023', p. 9.

⁴⁷³ Ibid, 2023, p. 10.

the loss of glacier mass continued after the record loss in 2022, whereby in these two years the glaciers in the Alps lost approx. 10% of their total volume.⁴⁷⁴ Furthermore, in 2023 1.6 million people in Europe were affected by flooding and 550,000 people by extreme weather in the form of storms. The Copernicus Climate Change Service estimates the total economic loss at 13.4 billion euros, 81% of which can be attributed to the floods.⁴⁷⁵

438. The year 2023 was both the warmest and the wettest year ever measured in the Netherlands. The spring was exceptionally dry, with a large precipitation shortfall halfway through the growing season. In the second half of the year, in contrast, long-lasting and substantial rainfall caused flooding.⁴⁷⁶ As already indicated, in 2023 the highest water temperature ever was measured in the Wadden Sea region. In addition, significant consequences of climate change have become more visible. The warming of the Wadden Sea has an impact on the fish stocks and also has other adverse consequences for biodiversity.⁴⁷⁷ The tidal flats, that are essential breeding and wintering grounds for millions of migratory birds, are at risk of disappearing due to accelerated rising sea levels.⁴⁷⁸

439. In its Sixth Assessment Report (AR6) the IPCC specifically paid attention to the climate consequences for Europe of a warming of 1.1°C⁴⁷⁹.⁴⁸⁰ Bearing in mind the above-described climate consequences of the past years, it is hardly surprising that the IPCC should conclude that the current warming has already led to an impact on natural and human systems, inter alia due to extreme weather events:

“Our current 1.1°C warmer world is already affecting natural and human systems in Europe (very high confidence). Since AR5, there has been a substantial increase in detected or attributed impacts of climate change in Europe, including extreme events (high confidence).[...] Climate change has resulted in losses of and damages to people, ecosystems, food systems, infrastructure, energy and water availability, public health, and the economy (very high confidence).”⁴⁸¹

440. The IPCC expects that further warming will result in a loss of available habitat for the current land and maritime ecosystems in Europe and will irreversibly change the composition of these ecosystems, whereby the severity of the impact will increase when the temperature increase exceeds 2°C. In addition, the areas that are exposed to wildfires will expand all across Europe, which forms a threat to biodiversity and carbon sinks, i.e. the nature that currently absorbs CO₂ from the atmosphere:

“KR1: Warming will decrease suitable habitat space for current terrestrial and marine ecosystems and irreversibly change their composition, increasing in severity above 2°C GWL (very high confidence). Fire-prone areas are projected to expand across Europe, threatening biodiversity and carbon sinks (medium confidence)”⁴⁸²

441. It is furthermore expected that in most parts of Europe the food production will be reduced

⁴⁷⁴ Ibid, p. 14.

⁴⁷⁵ Ibid, pp. 4, 11 and 12.

⁴⁷⁶ Exhibit MD-115, KNMI 2024, ‘De staat van ons klimaat 2023’, pp. 3 to 11.

⁴⁷⁷ Exhibit MD-116, Schuttenhelm 2024, ‘Wadplaten verdrinken, schelpen leggen het loodje: opwarming bedreigt waddennatuur’ (print-out from website 27 February 2025), pp. 1 to 3.

⁴⁷⁸ Ibid

⁴⁷⁹ Being the average warming over the period 2011-2020. In the meantime, the average warming over the period 2014-2023 has now actually reached 1.19°C and the warming in 2023 reached 1.31°C. See in this respect Chapter V.6.

⁴⁸⁰ Exhibit MD-056, IPCC 2022, AR6, WGII, SPM, Chp. 13.

⁴⁸¹ Ibid, p. 1819.

⁴⁸² Ibid. The abbreviation “KR” stands for Key Risk.

significantly due to a combination of heat and drought:

“KR2: Due to a combination of heat and drought, substantive agricultural production losses are projected for most European areas over the 21st century, which will not be offset by gains in Northern Europe (high confidence).”⁴⁸³

442. Water scarcity will also impact Europe and already forms a high risk at warming of 1.5°C:

“KR3: Risk of water scarcity will become high at 1.5°C and very high at 3°C GWL in Southern Europe (high confidence), and increase from moderate to high in Western Central Europe (medium confidence).”⁴⁸⁴

443. In general, Europe’s urban areas are also exposed to risks of extreme heat, drought and floods:

“European cities are hotspots for multiple risks of increasing temperatures and extreme heat, floods and droughts (high confidence). Warming beyond 2°C GWL is projected to result in widespread impacts on infrastructure and businesses (high confidence). These impacts include increased risks for energy supply (high confidence) and transport infrastructure (medium confidence), increases in air conditioning needs (very high confidence) and high water demand (high confidence).”⁴⁸⁵

444. In addition, the IPCC (again) explicitly points out that Europe is also encountering risks due to climate consequences outside of Europe and that the climate consequences inside Europe also cause risks outside of Europe:

“Climate risks from outside Europe are emerging due to a combination of the position of European countries in the global supply chain and shared resources (high confidence). There is emerging evidence that climate risks in Europe may also impact financial markets, food production and marine resources beyond Europe.”⁴⁸⁶

445. Another large risk for Europe is the rising of the sea level and the changing precipitation patterns, causing an increasing risk in flooding at the coast and the river areas, with partly existential consequences:

“KR4: Due to warming, changes in precipitation and sea level rise (SLR), risks to people and infrastructures from coastal, riverine and pluvial flooding will increase in Europe (high confidence). Risks of inundation and extreme flooding will increase with the accelerating pace of SLR along Europe’s coasts (high confidence). [...] Coastal flood damage is projected to increase at least tenfold by the end of the 21st century, and even more or earlier with current adaptation and mitigation (high confidence). Sea level rise represents an existential threat for coastal communities and their cultural heritage, particularly beyond 2100.”⁴⁸⁷

446. It is good to know in this respect that almost 50 million Europeans live less than 10 metres above sea level. The risk of flooding along Europe’s lower-lying coasts will increase due to rising sea levels, in combination with storm surges, rainfall and rivers with a high water level. According to the IPCC, from 2040 the part of the European population that will be impacted by serious coastal flooding (“100-year flood events”) will increase rapidly and even in low emission scenarios this is more than 5 million people. When it comes to high emission

⁴⁸³ Ibid.

⁴⁸⁴ Ibid, p. 1820.

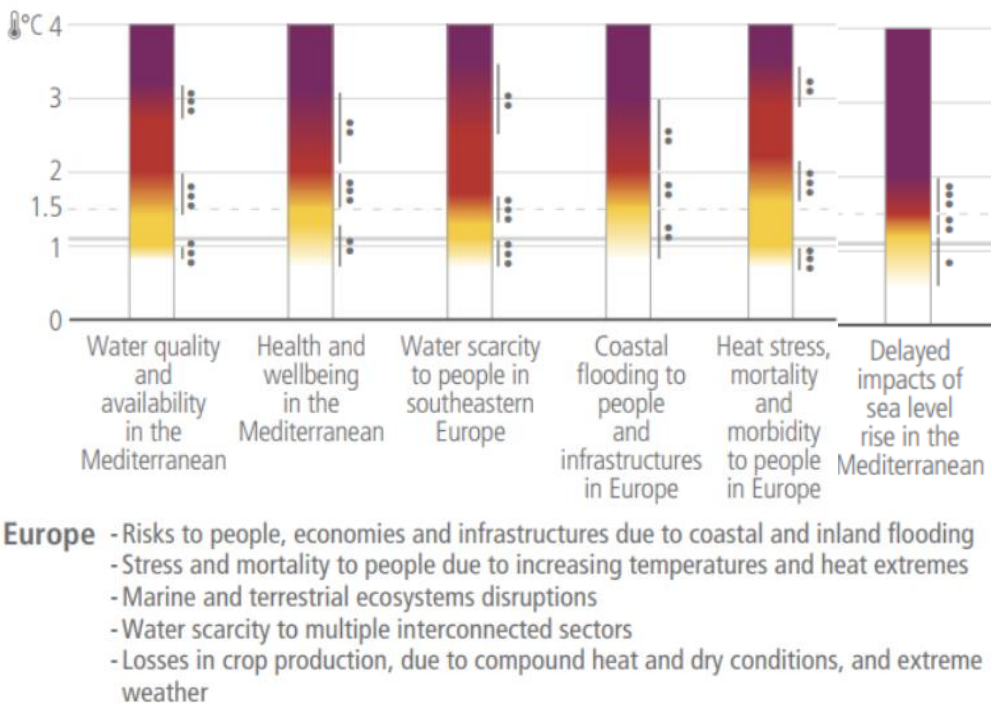
⁴⁸⁵ Ibid.

⁴⁸⁶ Ibid.

⁴⁸⁷ Ibid.

scenarios the number rises to 10 million people.⁴⁸⁸ The IPCC has also indicated in this respect that UNESCO world heritage sites in the European coastal area are threatened by sea level rises, coastal erosion and flooding, as well as other important infrastructures in Europe.⁴⁸⁹

447. The IPCC expects that the (direct) annual damage due to coastal flooding will increase from 1.3 billion euros today to 13-39 billion euros in 2050 in case of warming between 2°C and 2.5°C. At a greater warming of between 2.5°C and 4.4°C, the IPCC expects annual damage from between 93-960 billion euros by 2100.⁴⁹⁰ Remember that according to UNEP the current policies of countries worldwide will lead to a temperature increase of 3.1°C and that even if all conditional nationally determined contributions were to be successfully implemented, this would still result in a temperature increase of 2.6°C.⁴⁹¹
448. The above-mentioned amounts do not take account of the damage due to river flooding and other water-related damage, even though these too entail substantial damage and due to climate change will occur increasingly more often and with greater severity. The IPCC has indicated that this water-related damage, that also occurred in Belgium and Germany at the same time, resulted in more than 200 deaths, damage to thousands of homes and a disrupted water and electricity supply.⁴⁹²
449. The IPCC has also represented part of the above-described risks for Europe in a hazard indicator, similar to that of the global Reasons for Concern (RFCs).⁴⁹³ These look as follows.



⁴⁸⁸ Ibid, p. 1827. See also Figure 13.5 on p. 1831.

⁴⁸⁹ Ibid.

⁴⁹⁰ Ibid.

⁴⁹¹ Exhibit MD-121, UNEP 2024, 'Emissions Gap Report 2024', Figure 4.2, p. 34.

⁴⁹² IPCC 2022, AR6, WGII, p. 1827 (see https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf).

⁴⁹³ Exhibit MD-001, IPCC 2023, AR6, SYR, Chp. 3, p. 76.

450. This hazard indicator makes it clear at one glance that the risks for Europe are significantly higher at 2°C than at 1.5°C. Where at 1.5°C there is still a moderate risk for most risk categories or a transition to a high risk, for (almost) all risk categories there is a high risk (and in one case even a very high risk) at 2°C. In view of the currently expected temperature increase, this can be considered very concerning and this emphasises the extreme importance of limiting the temperature increase to 1.5°C, including for Europe (and the Netherlands).
451. Back to the Netherlands. In October 2023, the Royal Netherlands Meteorological Institute (KNMI) published new climate scenarios for the first time since 2014. These scenarios (again) show that climate change will bring about that we will increasingly have to deal with heat waves, extreme precipitation and lengthy droughts in the Netherlands, and that these changes have consequences for our safety, our health and nature.⁴⁹⁴ In addition, the sea level will rise, both for European Netherlands and for Caribbean Netherlands. The chance of severe hurricanes with abundant rainfall on Sint Eustatius and Saba will increase in the future.
452. The KNMI works with the following scenarios: a scenario with low emissions in which global warming is limited to 1.7°C and a scenario with high emissions in which the Earth warms by up to 4.9°C this century. Further warming in any event means that the Dutch summers will become drier and the winters wetter. The degree in which this might occur can differ. That is why the KNMI uses a wet variant within the low and high emissions scenarios, with a significant increase in precipitation in the winter and slightly drier summers, and a dry variant, with a lot of drought in the summer and slightly wetter winters.⁴⁹⁵ The KNMI uses the same method for the BES islands (Bonaire, Sint Eustatius and Saba), but looks at the wet and dry season, instead of the summer and winter. With regard to the BES islands, in all scenarios the temperature and wind speed will increase and precipitation will decrease.⁴⁹⁶
453. The high emissions scenario assumes an increase in emissions at the current pace to 2080 and only sees a levelling off after that. The KNMI acknowledges that this is probably an overestimation of the CO₂ emissions (in view of the current climate plans of countries). However, the KNMI points out (just like the IPCC) that there is still the possibility that this high temperature increase will occur with lower emissions, e.g. because climate-sensitivity turns out to be high or because feedback loops in the climate system lead to extra natural emissions, e.g. due to deforestation, because oceans absorb fewer greenhouse gases, or because greenhouse gases are released through the thawing of permafrost. The KNMI points out – the same as the findings previously described above – that climate models do not yet take sufficient account of these feedback loops (positive feedback loops).⁴⁹⁷
454. The possible consequences of various processes that can lead to tipping points have not been included in the climate models that the KNMI has used for its climate scenarios, because these processes are not easy to simulate and are therefore difficult to express in numbers. This concerns the accelerated erosion of the West Antarctic ice cap, changes of large-scale ocean currents like the North Atlantic Gulf Stream and the thawing of permafrost.⁴⁹⁸ It is

⁴⁹⁴ Exhibit MD-117, KNMI 2023, 'KNMI'23 klimaatscenario's voor Nederland in het kort', p. 1.

⁴⁹⁵ Exhibit MD-118, KNMI 2023, 'KNMI'23 klimaatscenario's voor Nederland', KNMI 2023, Klimaatscenario's voor Nederland [Climate scenarios for the Netherlands], p. 9.

⁴⁹⁶ Ibid, p. 36.

⁴⁹⁷ Ibid, p. 59.

⁴⁹⁸ Ibid. See also Exhibit MD-013, UNDP 2024, 'Peoples' Climate Vote 2024' (Executive Summary), p. 179: "*typical modelling*

precisely those tipping points that can have great consequences for the sea level rise and the future climate in the Netherlands (including Caribbean Netherlands). The KNMI has included important findings about this. The following can be said in this respect.

455. The KNMI'23 scenarios look further ahead than the scenarios published in 2014 (up to 2150 instead of 2085 and for sea level rises to 2300). Because of the improved insights into the contribution of Antarctica to the rising Dutch sea level, in its scenarios the KNMI now – contrary to 2014 – also presents an estimate of the highest possible rise in sea level in the future.⁴⁹⁹ The KNMI points out with regard to the West Antarctic ice cap that *“the sea level in our region in the distant future will be virtually fully determined by the speed with which the Antarctic Ice Cap loses mass. According to the high emissions scenario, the rise in sea level around 2300 will be 2 to 6 metres. If uncertain ice cap processes on the Antarctic are included, this can increase to more than 17 metres.”*⁵⁰⁰ In this scenario the upper limit of the rise in sea level can increase to 2.5 metre in this century.⁵⁰¹ In Caribbean Netherlands (Bonaire in particular) this can even increase to 3.4 metres.⁵⁰²
456. In the low emissions scenario (excluding tipping points), the estimation of the rise in sea level in this century is significantly lower, but is nevertheless impactful (*“In the low emissions scenario the rise in sea level to 2100 will be reasonably strong (26-73 cm).”*⁵⁰³ It is good to know in this respect that according to the European Environment Agency a rise in the sea level of only 10 cm will generally cause the frequency of flooding to increase by a factor of approximately 10. According to the European Environment Agency, flooding that historically occurred at a chance of 1% per year (the above-mentioned “1-in-100 year coastal floods”) will, even in a low emissions scenario, increase at many locations along the Atlantic coast, including a few locations in the Netherlands, before the year 2050 by a factor 10 (and for 2100 this factor 10 increase applies to almost all remaining European coasts as well). In a high emissions scenario, such coastal flooding will, indeed, occur at least once a year along most European coasts before 2050.⁵⁰⁴
457. Because the ice caps respond slowly, the sea level will continue rising this century and even for hundreds of years after this century, even if greenhouse gas emissions were to be reduced to zero tomorrow.⁵⁰⁵ The speed and degree in which the rise in sea level will increase depends on the degree in which the balance between climate and land ice is destabilised in the coming century. *“The total quantity of emitted greenhouse gases plays an all-determining role in this respect.”*, according to the KNMI.⁵⁰⁶
458. Shortly after publication of the KNMI climate scenarios, a startling new study was published

approaches struggle to accurately represent ice sheet dynamics, leading many studies to underestimate projections of sea level rise”.

⁴⁹⁹ Exhibit MD-118, KNMI 2023, ‘KNMI’23 klimaatscenario’s voor Nederland’, p. 55.

⁵⁰⁰ Ibid, p. 33.

⁵⁰¹ Ibid, p. 32.

⁵⁰² Ibid, p. 39.

⁵⁰³ Ibid, p. 32. In Bonaire, the rise at the end of the century will be 31-78 cm in the low emissions scenario (p. 39). Because of the significant risks of climate change for the inhabitants of Bonaire, including the large risks for the habitability of the island and the continued existence of cultural heritage, Greenpeace Nederland has in the meantime started a lawsuit against the Dutch government, see <https://www.greenpeace.org/nl/klimaatverandering/klimaatrechtvaardigheid/61952/eisers-klimaatzaak-bonaire/>.

⁵⁰⁴ Exhibit MD-119, EEA 2024, ‘Extreme sea levels and coastal flooding in Europe’ (print-out from website 27 February 2025), pp. 1-2.

⁵⁰⁵ Exhibit MD-118, KNMI 2023, ‘KNMI’23 klimaatscenario’s voor Nederland’, p. 32.

⁵⁰⁶ Ibid.

in the renowned scientific journal *Nature Climate Change*, entitled '*Unavoidable future increase in West Antarctic ice-shelf melting over the twenty-first century*'. That study reviews how quickly the floating ice shelves that can keep the glaciers of the West Antarctic ice cap under control can melt in different emissions scenarios. The conclusion is that the "*point of no return*" has possibly already been passed: even if the warming is limited to 1.5°C, it is predicted that the ocean will warm significantly, causing the floating ice shelves to melt at a faster pace and the glaciers behind them to flow into the sea more quickly.⁵⁰⁷

459. A worrisome conclusion, according to the KNMI. In a press release that was issued especially for this study, the KNMI let it be known that the low sea level scenarios would consequently become more unlikely and that further study will show whether the KNMI scenarios need to be updated as a result.⁵⁰⁸ It shows that climate science is developing at a rapid pace, so that scenarios that were previously estimated as improbable (although they were not excluded as a possibility) can all of a sudden turn out to be dangerously near (or, indeed, to have already occurred). It shows once again the importance of applying the precautionary principle and the extreme urgency that is needed to bring about the maximum emission reductions to mitigate the greatest risks as much as is still possible.
460. (Future) Dutch citizens and other (Western) Europeans are exposed to the many direct and indirect dangers of climate change as explained above. In addition to the tangible damage that this will cause, these dangers also threaten the right to life, health and a peaceful family life as referred to in the ECHR (see Chapter XIII).
461. Lastly, it follows from the above that in case tipping points in the climate system are passed, this will also have consequences for the Netherlands and its citizens. The chance of consequences for the Netherlands as a result of tipping points already exists with the current temperature increase and with a warming of 1.5°C (as already explained in Chapter VII.1.2), but will increase even more if this temperature limit is exceeded, with the risks only increasing with each fraction of a degree of further warming. This underscores once again the absolute importance of limiting global warming to the danger threshold of 1.5°C designated by the global community.

IX. THE IMPORTANT ROLE OF NON-STATE ACTORS

IX.1 INTRODUCTION

462. The consequences and risks of climate change were discussed above based on climate science. The international climate policy was also discussed, including the UN Climate Convention, the Paris Agreement and other relevant international agreements and acknowledges, such as those following from the annual COPs. This shows, *inter alia*, that the international community of states acknowledges the causes, consequences and risks of climate change and for that reason has bound itself through treaties and conventions to prevent dangerous climate change. It was also explained that this means that global warming must be limited to 1.5°C. States acknowledge in this respect that urgent emissions reductions are necessary not to exceed this universally acknowledged danger limit and that the coming years are critical for that task, because the carbon budget is being rapidly consumed and will have been fully depleted by 2030 failing additional climate action.

⁵⁰⁷ Exhibit MD-015, Naughten et al. 2023, '*Unavoidable future increase in West Antarctic ice-shelf melting over the twenty-first century*', pp. 5-6 (under '*Implications*').

⁵⁰⁸ Exhibit MD-120 KNMI 2023, '*Valt de West-Antarctische Ijskap nog te redden?*' (print-out from website 27 February 2025).

463. Milieudefensie explained in Chapter VII.2.6 what the emissions gap is and that the UN environmental programme, UNEP, annually reports on this in its Emissions Gap reports, with analyses of the best climate scientists in the world. In 2024, UNEP again established that states as a whole are not on course to achieve the 1.5°C limit and again clarified that far-reaching emissions reductions must be achieved globally to close the emissions gap by 2030 in order to retain a chance of limiting global warming to 1.5°C.⁵⁰⁹ UNEP also makes it clear that without more substantial emissions reductions until 2030 it will also be much more difficult to limit warming to 2°C.⁵¹⁰
464. This chapter will explain that within the UN climate regime states have acknowledged since 2012 that non-state actors play a crucial role in closing the emissions gap, that the contribution of these actors will have an important flywheel effect, and that climate protocols have been developed against that background that are important starting points for establishing reduction targets for non-state actors in line with the 1.5°C limit. This relates to, among other things, contributing a “*fair share*” to the globally required emissions reductions, the use of interim reduction targets for 2030 and later, and phasing out fossil fuels. As will become clear, those starting points have been confirmed in various authoritative sources at UN level.
465. It will then be reviewed how authoritative and internationally widely supported soft law instruments such as the United Nations Guiding Principles on Business and Human Rights (“**UN Guiding Principles**” or “**UNGPs**”) and the OECD Guidelines for Multinational Enterprises (“**OECD Guidelines**”) show that it is internationally accepted that companies must respect human rights and that this responsibility also entails that companies must take adequate measures to reduce their emissions in line with the 1.5°C limit and to prevent or limit their involvement in actual or potentially adverse consequences for human rights through business relationships.

IX.2 THE IMPORTANT ROLE OF NON-STATE ACTORS UNDER THE UN CLIMATE REGIME

IX.2.1 2012-2017: the acknowledgement of the need for non-state climate action

466. That non-state actors have a role to play in countering climate change was acknowledged in the UN framework at the climate conference of Toronto in 1988 (see Chapter VI.5.1). The need for this non-state climate action has become increasingly recognised, and the interpretation of what it entails has also expanded. The progress of this development in relation to specific banks will be discussed later (see Chapter X.3).
467. In a more general sense, the acknowledgement of the need for non-state climate action accelerated in the period 2012-2017. The run-up to this was at the Climate Conference in Durban in 2011 (COP17), when the 194 countries that at that time were parties to the UN Climate Convention, had determined with great concern that there was a considerable emissions gap, based on the findings of the UNEP Emissions Gap Report. These countries decided to set up two parallel work pathways, both of which were deemed necessary to be able to reach a negotiated agreement in 2015 in Paris.⁵¹¹

⁵⁰⁹ Exhibit MD-121, UNEP 2024, ‘Emissions Gap Report 2024’, p. XV (under 5).

⁵¹⁰ Ibid.

⁵¹¹ Exhibit MD-122, Klein et al. 2017, ‘The Paris Agreement on Climate Change. Analysis and Commentary’ (selected pages), Chapter 2.B Pre-2020 Climate Action and the Emergent Role of Non-party Stakeholders, pp. 43-44.

- (i) Workstream 1 concerned the determination of the parameters for the further negotiations of the Paris Agreement.
 - (ii) Workstream 2 concerned the route that was to ensure that prior to 2020 there would be a much greater emissions reduction. This means to say that a much stronger emissions reduction would have to take place than that which could be expected on the basis of the reduction promises made in 2010 by the contracting states. Workstream 2 was to ensure that this emissions gap would be closed as quickly as possible to prevent dangerous climate change.
468. In 2012, in the further elaboration of Workstream 2, the contracting parties came to the conclusion that in order to close the emissions gap, active climate action of non-state parties would also be necessary. As of that time greater weight was attributed to climate action of non-state parties like cities, companies and investors.⁵¹²
469. All of this ultimately led to a large conference being organised by the UN Secretary General in New York in 2014 - prior to COP20 Lima - in which, in addition to the countries affiliated with the UN, the directors of large companies and banks and leaders from other public and private sectors were gathered.⁵¹³ The central goal of this Climate Summit 2014 was to create a flywheel effect of state and non-state climate action so that the emissions gap could be closed in time.⁵¹⁴
470. Non-state climate action has been communicated as of that moment in 2014 as one of the four pillars for closing the emissions gap. The other three pillars were:
- (i) making an ambitious climate agreement in Paris;
 - (ii) ambitious climate action of the contracting states; and
 - (iii) mobilising public and private financing for climate action.⁵¹⁵
471. Against the background of the successful Climate Summit 2014, the President of COP20 in Lima organised a high-level event to be able to acknowledge the outcomes of the Climate Summit. This acknowledgement then also found its way to the COP decision, entitled "*the Lima Call for Climate Action*". At the same time – i.e. in 2014 – the Non-State Actor Zone for Climate Action (NAZCA) was founded under the auspices of the UN, to promote and draw attention to the climate action of cities, companies, investors and others.⁵¹⁶ In addition, the Lima-Paris Action Agenda was launched in order to further promote important initiatives for acceleration climate action in the run-up to COP21 in Paris.⁵¹⁷
472. Because of the private and other non-state initiatives which arose in connection with the Climate Summit 2014, and the subsequent Lima conference and the Lima-Paris Action Agenda with regard to, inter alia, sustainable energy, energy efficiency and the access to

⁵¹² Ibid, p. 45: "*the focus gradually shifted from formal commitments from parties to informal ambition driven by international cooperation and through climate action by non-party stakeholders*".

⁵¹³ Ibid, p. 45. See also <https://unfccc.int/news/un-climate-summit-ban-ki-moon-final-summary>.

⁵¹⁴ Ibid, pp. 46-47.

⁵¹⁵ Ibid, p. 47.

⁵¹⁶ Ibid, p. 47. This is often referred to as the Global Climate Action Portal (GCAP).

⁵¹⁷ Ibid, p. 47.

more private capital for the transition, an important momentum arose which has contributed to the state parties having been able to reach an agreement in Paris.⁵¹⁸

473. The importance of these developments and the role of non-state actors (also called Non-Party stakeholders) is also explicitly acknowledged in the Paris Decision, in which the Paris Agreement was adopted:

"The Conference of the Parties" [...]

116. Acknowledges with appreciation the results of the Lima-Paris Action Agenda, which build on the climate summit convened on 23 September 2014 by the Secretary-General of the United Nations;

117. Welcomes the efforts of non-Party stakeholders to scale up their climate actions, and encourages the registration of those actions in the Non-State Actor Zone for Climate Action platform;

134. Welcomes the efforts of all non-Party stakeholders to address and respond to climate change, including those of civil society, the private sector, financial institutions, cities and other subnational authorities;

*135. Invites the Non-Party stakeholders referred to in paragraph 134 above to scale up their efforts and support actions to reduce emissions [...] and demonstrate these efforts via the Non-State Actor Zone for Climate Action platform referred to in paragraph 117 above;"*⁵¹⁹

474. States thus not only welcomed the climate approach of companies in the Paris Decision, they also invited the companies to further scale up their climate approach and to demonstrate this scaling up via the previously cited Non-State Actor Zone. The idea behind the demonstration and consequently making visible of non-state climate action is that consequently other state and non-state parties are again encouraged to take farther-reaching climate action, which can result in a flywheel effect.
475. In Paris a decision was also made for an annual high-level event for non-state actors to announce and report the progress of their climate initiatives and agreements.⁵²⁰
476. In addition, a decision was made in Paris to appoint two *high-level champions*, which would advance climate action of non-state actors in the years thereafter.⁵²¹
477. In Paris the importance of non-state action was therefore formally acknowledged within the UN climate regime and institutionalised. A year later, during COP22 in 2016, the appointed *UN Climate Change High-Level Champions* launched the Marrakesh Partnership and the associated vision for scaling up non-state climate action.⁵²² Since that time, under the banner of the Marrakesh Partnership, with the approval of the COP and with support of the UNFCCC Secretariat and the COP chairman further stimulated and facilitated the worldwide climate action of non-state actors.⁵²³

⁵¹⁸ Ibid, pp. 46 to 49 (under 4: "An irresistible force: building momentum for adoption of the Paris Agreement").

⁵¹⁹ Exhibit MD-086, UNFCCC COP21 2015 (Paris), 'Decision 1/CP.21'.

⁵²⁰ Ibid, para. 120.

⁵²¹ Ibid, para. 121.

⁵²² See <https://unfccc.int/climate-action/marrakech-partnership/background>.

⁵²³ See <https://unfccc.int/climate-action/introduction-climate-action/history-non-party-stakeholder-engagement>: "Since adoption of the Paris Agreement, global climate action has been encouraged and facilitated under the banner of the Marrakech Partnership for Global Climate Action, which was agreed in Morocco at COP 22 and acknowledged at subsequent Conferences of the Parties. The Partnership brings together in stakeholders working in key sectors and themes to spur enhanced climate ambition and action, and then recognizes that action, to inspire [sill] greater effort."

478. The Oxford University handbook on the Paris Agreement established in 2017 that the importance of non-state action to achieve the climate goals had become undeniably significant and crucial (*“a most critical driving force”*):

*“They [non-party stakeholders, added by legal counsel] represent an essential and unique feature of the climate regime and its ability for long-term momentum and ambition: a most critical driving force that can ensure that global efforts to address climate change are capable of achieving the purpose set out in Article 2.”*⁵²⁴

IX.2.2 2018: UNEP findings on the importance and effect of non-state climate action

479. The importance of action by non-state parties, more commonly called non-state actors (abbreviated to: **“NSAs”**), is also recognised by UNEP in its Emissions Gap Report of 2018:

*“Global climate change governance is diversifying rapidly: in recent years, political attention has been acknowledging the increasingly important role of non-state and subnational actors. [NSAs].”*⁵²⁵

480. UNEP too refers in this respect to the run-up to the Paris Agreement and the Paris Decision as the times when it became clear that the countries need the scaling up of climate action of non-state actors to achieve the climate goals:

*“In sum, the process leading up to the Paris Agreement and the outcomes of Decision 1/CP.21 have paved the way for an increasingly prominent role for NSAs under the climate regime to support Parties in reaching the mitigation and adaptation goals.”*⁵²⁶

481. According to UNEP there is also a very great potential for emission reductions to be realised by companies and other non-state parties and to close the emissions gap:

*“The emission reduction potential from NSAs is large and could, if fully implemented, contribute significantly to bridging the 2030 emissions gap. However, realizing this potential requires commitments and action that go far beyond current pledges made by individual actors or single initiatives, and implies the scaling up of multiple initiatives across sectors and regions.”*⁵²⁷

482. The potential for closing the emissions gap before 2030 if the non-state actors take much farther-reaching climate action and bring about a flywheel effect within their industries or regions is thus substantial. According to UNEP, the value of non-state climate action goes much further than merely the emissions reductions which the non-state actors manage to achieve themselves in this respect:

*“Non-state and subnational actors provide important contributions to climate action beyond their quantified emission reductions. They build confidence in governments concerning climate policy and push for more ambitious national goals.”*⁵²⁸

483. The knife cuts both ways according to UNEP. In addition to the fact that non-state parties

⁵²⁴ Exhibit MD-122, Klein et al. 2017, ‘The Paris Agreement on Climate Change. Analysis and Commentary’ (selected pages), p. 43. See also p. 49 in which it is concluded that non-party stakeholders *“were placed at the heart of the new climate change regime”*.

⁵²⁵ Exhibit MD- 123, UNEP 2018, ‘Bridging the emissions gap - The role of nonstate and subnational actors’ (Pre-release Emissions Gap Report 2018), p. 6.

⁵²⁶ Ibid, p. 7.

⁵²⁷ Ibid, p. 6.

⁵²⁸ Ibid, p. 5.

reduce their own emissions, they make it possible for states to tackle more ambitious goals themselves. When states know that others are sharing the load, it becomes easier to achieve their national goals and therefore also easier to show more ambition.

484. This important finding is also supported in a research report of the British think-tank Chatham House, the Royal Institute of International Affairs:

“politically, measures implemented by sub-state/non-state actors can help national governments to implement existing targets faster and more effectively, while helping to build political support for more ambitious climate action.”⁵²⁹

485. Every action in conformity with the Paris Agreement on the part of important non-state actors may thus be expected to produce a flywheel effect so that countries and other parties will be able to and will dare to show more climate ambition.

IX.2.3 2019-2020: the Climate Ambition Alliance and the UN Race to Zero

486. In 2019, during the 25th Conference of the Parties under the UN Climate Convention (COP25) – as corollary of the work of the UN Climate Change High-Level Champions who were appointed pursuant to the Paris Decision appointed – the Climate Ambition Alliance was established. In this Climate Ambition Alliance, both state and non-state parties committed themselves to the target of achieving net-zero CO₂ emissions in 2050, in order to achieve the Climate Goal of the Paris Agreement.⁵³⁰ It is also emphasised there that states cannot handle the task on their own and that non-state action is necessary to achieve the goal of the Paris Agreement and that this should take place taking account of the latest scientific findings:

“The overall goal of this group is to push for net-zero CO₂ emissions in line with latest scientific information.

The deep transformation towards net zero CO₂ emissions requires the mobilization of actors across all segments of society, which is why this group includes regions, cities, businesses, and investors alongside countries. All are united behind the same target because they recognize the benefits of the low-carbon transition.”⁵³¹

487. In order to achieve the necessary expansion of the group of non-state parties within the Climate Ambition Alliance as quickly as possible, the “Race to Zero” initiative was developed under the auspices of the UN. This in order to establish additional interpretation of the importance of climate action in the private sector that was acknowledged in the Paris Agreement.
488. In this Race to Zero initiative the existing global networks were brought together which have developed climate protocols for non-state parties. On the basis of scientific findings these climate protocols show, inter alia, what companies (including financial institutions) have to do to take responsibility for reducing the emissions which are attached to their activities and products.
489. The mission of the UN Race to Zero is to mobilise non-state actors to take rigorous and

⁵²⁹ Exhibit MD-124, Hale 2018, ‘The Role of Sub-state and Non-state Actors in International Climate Processes’, p. 1.

⁵³⁰ Exhibit MD-125, UNFCCC 2019, ‘Climate Ambition Alliance: Nations Renew their Push to Upscale Action by 2020 and Achieve Net Zero CO₂ Emissions by 2050’ (print-out from website 27 February 2025).

⁵³¹ Exhibit MD-126, UNFCCC, ‘Climate Ambition Alliance’ (print-out from website 27 February 2025).

immediate action to halve global emissions by 2030, on the road to net zero in 2050 latest:

“Race to Zero is a global campaign rallying non-state actors – including companies, cities, regions, financial, educational, and healthcare institutions – to take rigorous and immediate action to halve global emissions by 2030 and deliver a healthier, fairer, net zero world. [...] All members must meet robust science-aligned criteria.”⁵³²

490. This important focus of the UN Race to Zero on 2030 of course arises from the fact that this is the critical decade and the acknowledgement that a halving of emissions by 2030 is necessary to keep a 1.5°C- education pathway within reach.

491. The UN Race to Zero now has over 14,000 members, who participate through one or more of the 29 partner networks, which networks must all satisfy the strict criteria of the Race to Zero:

“Over 14,000 members have joined Race to Zero through 29 initiatives and networks – all of which are official Partners of the campaign. [...] All members must meet stringent criteria and are part of the largest ever alliance committed to halving emissions by 2030.”⁵³³

492. The criteria of the UN Race to Zero define by means of ‘Starting line’ criteria the lower limit for climate plans of non-state actors.⁵³⁴ These criteria are accompanied by an Interpretation Guide. This guide was drawn up by the Expert Peer Review Group (EPRG), consisting of more than 20 experts. The Interpretation Guide seeks to inform participants beforehand on how the Race to Zero criteria are to be interpreted and applied.

493. According to the minimum criteria of the UN Race to Zero, participating companies must in any event set the following goals for 2030 and 2050:

“Pledge at the head-of-organisation level to reach (net) zero GHGs as soon as possible, and by 2050 at the latest, in line with the scientific consensus on the global effort needed to limit warming to 1.5C with no or limited overshoot, recognising that this requires phasing down and out all unabated fossil fuels as part of a global, just transition.

Set an interim target to achieve in the next decade, which reflects maximum effort toward or beyond a fair share of the 50% global reduction in CO₂ by 2030. Targets must cover all greenhouse gas emissions:

- 1. Including scopes 1, 2 and 3 for businesses and other organisations;*
- 2. Including all territorial emissions for cities and regions;*
- 3. For financial entities, including all portfolio/financed/facilitated/insured emissions;*
- 4. Including land-based emissions.”⁵³⁵ (underlining added by legal counsel)*

494. The criteria therefore make clear that companies (including financial institutions) must achieve (net) zero emissions as fast as possible – but at latest by 2050. They must also take action in the short term, which entails that they must use “*maximum effort*” to contribute their “*fair share*” to the globally necessary CO₂ reduction of (almost) 50% in 2030. For each

⁵³² Exhibit MD-127, UNFCCC, ‘Race to Zero’ (print-out from website 29 July 2024), p. 1.

⁵³³ Ibid, p. 3.

⁵³⁴ Exhibit MD-128, UNFCCC, ‘Starting Line and Leadership Practices 3.0 - Minimum criteria required for participation in the Race to Zero campaign’, p. 1 (underlining added by legal counsel): “*Starting line’ criteria lay out minimum requirements for all members to meet, below which members cannot fall if they wish to join and remain in the campaign. ‘Leadership practices’ signal how leading entities can light the way to a net zero world.*” In addition to the ‘Starting line’ criteria there is thus also a second set of criteria - the Leadership practices - for non-state actors that wish to act as examples and thereby accelerate the road to net zero.

⁵³⁵ Ibid, p. 2.

actor this must concern a reduction of Scope 1, 2 and 3 emissions. With regard to financial institutions it has also been explicitly stated that this must concern all emissions, including both financed emissions and facilitated emissions.

Box: What are Scope 1, 2 and 3 emissions?

For a good understanding of the emissions that an organisation has to take responsibility for, it is necessary to know what Scope 1, 2 and 3 emissions are. This categorisation finds its origin in the Greenhouse Gas Protocol, a joint initiative of the World Resources Institute (WRI) and the World Business Council for Sustainable Development (WBCSD). This collaboration arose at the end of the 1990s based on the need for a common, internally recognised standard for calculating and reporting greenhouse gas emissions. In 2001, the first version of the *GHG Protocol Corporate Accounting and Reporting Standard* was published, followed in 2011 by the separate *Corporate Value Chain (Scope 3) Accounting and Reporting Standard* (the “**Scope 3 Standard**”, together the “**GHG Protocol**”). Since then, the GHG Protocol has grown into the *de facto* worldwide standard for making an inventory (quantification) and reporting of greenhouse gas emissions at individual company level.⁵³⁶ The GHG Protocol defines Scope 1, 2 and 3 emissions as follows:

- Scope 1: the direct greenhouse gas emissions that come from sources that are governed by or are the property of an organisation (e.g. emissions related to the burning of fuel in industrial installations, boilers or vehicles);
- Scope 2: the indirect greenhouse gas emissions that are associated with the purchase of electricity, steam, warmth or cooling for the benefit of the business activities of an organisation. Although Scope 2 emissions take place physically in the facility in which they are generated, they will be included in the greenhouse gas inventory of the purchasing organisation because they are the result of the energy consumption of that organisation;
- Scope 3: an organisation’s other indirect greenhouse gas emissions (not being Scope 2 emissions) that result from the organisation’s activities, but that arise from sources that are owned by or under the control of third parties in the organisation’s value chain, such as business clients of the organisation or consumers.⁵³⁷ The Scope 3 emissions are the emissions in the value chain that affects the reporting organisation and these emissions often represent the biggest part of the total greenhouse gas emissions of an organisation. Scope 3 emissions are divided into 15 categories.⁵³⁸ For banks and other financial institutions, these are, inter alia, the emissions that are associated with (the economic activities that are made possible by) loans, the underwriting of, e.g., bonds (underwriting) and investments.

In this manner an overview is obtained of all emissions over which a company has control or influence.⁵³⁹ The category Scope 3 emissions is in many cases the most important category of emissions.⁵⁴⁰ With regard to financial institutions, the emissions that are associated with (the

⁵³⁶ See also: <https://ghgprotocol.org/about-us>: “GHG Protocol supplies the world’s most widely used greenhouse gas accounting standards. The Corporate Accounting and Reporting Standard provides the accounting platform for virtually every corporate GHG reporting program in the world.” And: <https://ghgprotocol.org/corporate-value-chain-scope-3-standard>: “the Scope 3 Standard is the only internationally accepted method for companies to account for these types of value chain emissions.”

⁵³⁷ Exhibit MD-129, GHG Protocol Corporate Standard (revised edition 2004), p. 25 and Exhibit MD-130, GHG Protocol Corporate Value Chain (Scope 3) Standard, p. 5 and p. 28.

⁵³⁸ See also: Exhibit MD-130, GHG Protocol Corporate Value Chain (Scope 3) Standard, pp. 31-32.

⁵³⁹ Ibid, p. 27: “Direct emissions are included in scope 1. Indirect emissions are included in scope 2 and scope 3. While a company has control over its direct emissions, it has influence over its indirect emissions. A complete GHG inventory therefore includes scope 1, scope 2, and scope 3.”

⁵⁴⁰ Ibid, p. 5: “Scope 3 emissions can represent the largest source of emissions for companies and present the most significant opportunities to influence GHG reductions and achieve a variety of GHG-related business objectives”. See also: <https://ghgprotocol.org/corporate-value-chain-scope-3-standard>: “the majority of total corporate emissions come from Scope 3 sources”. According to the data of the Carbon Disclosure Project (see Chapter X.3.4), on average ‘high-impact sectors’ account for 75% of the total in Scope 1, 2 and 3 emissions : “across all sectors Scope 3 emissions account on

economic activities that are made possible by) loans, underwriting and investment activities is, on average, more than 700 times higher than the direct (Scope 1) emissions of a financial institution.⁵⁴¹

495. The Interpretation Guide of the UN Race to Zero makes it clear that the requirement to contribute a “*fair share*”, means that by 2030 many actors can and must achieve farther-going reductions than the global average of 50% and must come to net zero long before 2050:

“One key dimension, amongst others, informing “fair share” is the time by which actors reach a state of (net) zero emissions.

- (i) *Many actors in Race to Zero can and must go beyond 50% of emissions reductions by 2030, and must achieve an end state net zero well before 2050, as part of the requirement for entities in the campaign to contribute their fair share of achieving net zero as soon as possible.*
- (ii) *In parallel, developing country actors may require more flexibility on their pathway to net zero and may find it challenging to halve their emissions by 2030. Race to Zero recognises regional and sectoral disparities and, whilst requiring all actors to go as fast and as far as possible, expects targets to account for such factors.”⁵⁴² (underlining added by legal counsel)*

496. The UN Race to Zero makes it clear that many companies must achieve percentages of emissions reductions that exceed the global average. This applies in particular with regard to influential Western companies with substantial emissions, a large transition capacity and/or a large historical responsibility. In connection with the topic ‘fair share, equity & justice’ the UN Race to Zero explicitly refers to the Preamble and Articles 2 and 4 of the Paris Agreement, in which the principle of Common But Differentiated Responsibilities and Respective Capabilities (the CBDR principle) was laid down.⁵⁴³ The Interpretation Guide also contains a clear appeal that “*Entities shall be bold and shoulder the greatest responsibility, and to consider the established principles around equity in international law.*”⁵⁴⁴ This is logical, because only in that manner will any scope for emissions be left for, among others, actors in developing countries which should have more time to achieve climate goals. According to the UN Race to Zero, the starting point for all actors at all times is that they must reduce emissions “*as fast and as far as possible*”.

497. The UN Race to Zero furthermore makes it clear that in far and away most cases, actors must set *absolute* percentage emissions reduction targets.⁵⁴⁵ This too is no more than logical, because the total quantity of emitted absolute emissions must be limited as quickly and as much as possible in order to remain within the carbon budget. It is pointed out with regard to financial institutions that in addition (but not instead of) intensity targets can help to measure the progress of becoming sustainable. Intensity targets measure the emissions per unit in physical terms (such as the CO₂ emissions per ton of produced product) or in economic terms (CO₂ emissions per financed euro). In this manner, absolute reduction targets perform different functions, with regard to which: “*including both absolute and intensity targets and metrics provides the most clarity.*”⁵⁴⁶ In Chapter XIV.3.2 Milieudefensie will discuss what this means specifically for ING.

average for 75% of total Scope 1+2+3 emissions”; see Exhibit MD-131, CDP 2024, ‘Relevance of Scope 3 Categories by Sector’ (selected pages), p. 6.

⁵⁴¹ Exhibit MD-132, UNFCCC, ‘Interpretation Guide Race to Zero Expert Peer Review Group Version 2.0’, p. 5 (under “*Financed and facilitated emissions*”).

⁵⁴² Exhibit MD-132, UNFCCC, ‘Interpretation Guide Race to Zero Expert Peer Review Group Version 2.0’, p. 6.

⁵⁴³ Ibid, p. 2.

⁵⁴⁴ Ibid, p. 6 (para. 3a).

⁵⁴⁵ Ibid, p. 8: “*In most cases, absolute emissions targets are necessary for ensuring real-world reductions.*”

⁵⁴⁶ Ibid, p. 9 (para. 7c).

498. Lastly, the UN Race to Zero makes it clear that “*phasing down and out all unabated fossil fuels as part of a global, just transition*” means that members must limit the development, financing and facilitating of new fossil fuel projects, in line with the science.⁵⁴⁷ Policy has to be established to achieve this. The UN Race to Zero makes it clear in this respect that for financial institutions, divestments from fossil fuel companies in some cases – namely when fossil fuel companies do not have a (good) transition plan – is the only option to achieve net zero:

*“Race to Zero does not wish to disincentivize the financing of companies or assets with fossil fuel-related activity where the purpose of that finance is to accelerate phaseout or decarbonization of related infrastructure. However, where there is no transition plan, divestment may be the only way to drive net zero alignment. [...] For finance entities, engagement with clients 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”*⁵⁴⁸

499. With all these points, the UN Race to Zero provides important basic principles that must be observed when establishing climate policy and associated emissions reduction targets by non-state actors. It does so, inter alia, by placing the lower limit that existing and newly developed climate protocols for companies must meet in order to make a credible contribution to limiting warming to 1.5°C.

500. Milieudefensie reminds us in this respect that the UN Race to Zero arose based on the international consensus that had already arisen in 2012 regarding the need for non-state climate action for achieving the climate task.⁵⁴⁹ A need that had, by the way, already been recognised in 2011 by the drafters of the Scope 3 Standard with the GHG Protocol:

*“Temperature rise above this level will produce increasingly unpredictable and dangerous impacts for people and ecosystems. As a result, the need to accelerate efforts to reduce anthropogenic GHG emissions is increasingly urgent. Existing government policies will not sufficiently solve the problem. Leadership and innovation from business is vital to making progress.”*⁵⁵⁰

IX.2.4 2021: UNEP’s acknowledgement of the increasing interest of non-state climate action’

501. In light of the above-mentioned developments, in more recent reports UNEP continued to point to the ever-increasing importance of non-state action for closing the emissions gap while headed toward 2030, and for the climate goals in the longer term:

*“Businesses, cities, regions, investors, civil society groups, and other non-state and subnational actors (NSAs) play an increasingly important role in raising ambition and accelerating implementation. The Paris Agreement institutionalized the engagement of NSAs in achieving long-term climate goals and created an ongoing process to catalyse climate commitments made by NSAs, including net-zero targets (Chan, Ellinger and Widerberg 2018; Hale 2016; Hsu et al. 2018).”*⁵⁵¹

502. UNEP points (again) explicitly to the interaction between state and non-state climate action that can help realise the positive transformation on the way to the 1.5°C target, and to the

⁵⁴⁷ Ibid, pp. 7-8 (para. 5: “Phase down & out of fossil fuels”).

⁵⁴⁸ Ibid.

⁵⁴⁹ See in this respect also District Court of The Hague, 26 May 2021, para. 4.4.26: “Since 2012 there has been broad international consensus regarding the need for non-state action, because states cannot take climate action on their own.”

⁵⁵⁰ Exhibit MD-130, GHG Protocol Corporate Value Chain (Scope 3) Standard, p. 3.

⁵⁵¹ Exhibit MD-133, UNEP 2021, ‘Emissions Gap Report 2021’, p. 28.

enormous mitigation potential of non-state actors (NSAs):

“Efforts by NSAs towards global net-zero emissions are strengthening and broadening, which helps mobilize stakeholders to achieve net zero [...] Actions taken by NSAs can also contribute to achieving net-zero targets set by governments, while at the same time creating more favourable conditions for governments to increase their ambition going forward. A recent study of major non-state actor initiatives found they had the potential to reduce 2030 emissions by 5–15 GtCO₂-eq (Black et al. 2021; Hale et al. 2021; Hsu et al. 2019; NewClimate Institute and Data-Driven EnviroLab 2020; NewClimate Institute et al. 2021).”⁵⁵²

503. Unfortunately, the reverse also applies. The lack of adequate climate action by the private sector means that the so important and necessary flywheel effect to be able to achieve the 1.5°C goal will fail to be realised too.

IX.2.5 **2022: the recommendations of the UN expert group on credible climate policy of non-state actors**

504. The importance of adequate climate action of companies is not only found in the above-described flywheel effect. If non-state climate action is not sufficiently ambitious or insufficiently credible, this will undermine and weaken the implementation of government policy.

505. Against this background it is important to refer to the work of the United Nations' High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities. This committee of UN experts will hereinafter be referred to as the **“UN Expert Group”**. On the request of the UN Secretary General, the UN Expert Group formulated five principles and made ten important recommendations regarding what credible net zero goals of companies should look like.

506. These recommendations were necessary, as although more and more companies committed themselves in words to a net zero goal, the integrity of those promises was often of little value: *“many of these pledges are not aligned with the science, do not contain enough detail to be credible, and use the terms “net zero” or “net zero aligned” (as well as many other similar terms) inconsistently. Deceptive or misleading net zero claims by non-state actors not only erode confidence in net zero pledges overall, they undermine sovereign state commitments and understate the work required to achieve global net zero”*, according to the UN expert panel.⁵⁵³

507. The goal was thus to develop stronger and clearer standards for net zero goals to prevent greenwashing by companies and a further delay of meaningful climate action.

508. The recommendations of the UN expert panel are laid down in the report *‘Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions’*, hereinafter called the **“UN expert report”**.

509. The UN Expert Report expands on existing initiatives like the UN Race to Zero initiative to establish a universal definition of net zero in 2050 that is to inform the action of companies:

⁵⁵² Ibid. By way of illustration: 15 GtCO₂-eq is more than China's total emissions, see <https://ourworldindata.org/co2/country/china>.

⁵⁵³ Exhibit MD-134, 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’*, p. 15.

“We have built on the existing science and best-in-class voluntary efforts to create a universal definition of net zero, based on five principles and ten recommendations to guide the future of net zero, and focused on the actions that need to be taken by cities, states, corporations and those who regulate them.”⁵⁵⁴

510. The five important principles that must be observed relate to, inter alia, setting an ambition to achieve considerable emissions reductions in the short- and mid-term on the road to net zero in 2050:

1. *Ambition which delivers significant near- and medium-term emissions reductions on a path to global net zero by 2050;*
2. *Demonstrated integrity by aligning commitments with actions and investments*
3. *Radical transparency in sharing relevant, non-competitive, comparable data on plans and progress*
4. *Established credibility through plans based in science and third-party accountability*
5. *Demonstrable commitment to both equity and justice in all actions⁵⁵⁵ (underlining added by legal counsel)*

511. The recommendations then worked out what this means in practice. The UN Expert Report confirms – in line with the minimum criteria of the UN Race to Zero – that a target must be set to achieve net zero emissions in 2050 or earlier, which should reflect the maximum ambition (“[a]ll non-state actors must reduce emissions as fast as possible”) and where an absolute percentage emissions reduction of 50% by 2030 is the starting point.⁵⁵⁶ There may be an exception for companies in developing countries:

“Those that have the capacity to move faster than a 50% reduction by 2030 and net zero by 2050 should do so, while some developing country non-state actors may require more support on their path to net zero.”⁵⁵⁷

512. The importance of the fastest possible climate action by companies is once again emphasised, partly in view of the large risk of passing tipping points in the climate system: *“It is crucial that non-state actors have short-term targets that prioritise immediate reductions aligned with pathways that keep 1.5 °C in sight across their value chain to avoid crossing dangerous climate tipping points.”⁵⁵⁸*

513. The UN Expert Report emphasises that it is of crucial importance that companies immediately set short-term targets, and as of 2025 have reduction targets for at least every five years. It is again emphasised here that this helps governments with the implementation of their own goals and because it can create a flywheel effect for tightening existing (government) targets.⁵⁵⁹

514. The UN Expert Report explicitly emphasises that companies have to reduce their emissions in an absolute sense, with additional - where appropriate - intensity targets. The reduction target must relate to all emissions of the company: the Scope 1 and 2 emissions, and the Scope 3 emissions. For financial institutions, it is clarified that this concerns all emissions

⁵⁵⁴ Ibid, p. 12.

⁵⁵⁵ Ibid, p. 13.

⁵⁵⁶ Ibid, pp. 15 and 16.

⁵⁵⁷ Ibid, p. 16.

⁵⁵⁸ Ibid, p. 17.

⁵⁵⁹ Ibid.

made possible by them.⁵⁶⁰ These are therefore all emissions that are related to the products and services of the bank. Insofar as certain emissions data are lacking, companies will have to explain what efforts they will take to obtain those data or what estimates they use.⁵⁶¹

515. The UN Expert Report also contains a specific recommendation relating to the phasing out of fossil fuels. According to the UN Expert Report it is, after all, clear that existing fossil fuel infrastructure well exceeds the remaining carbon budget for 1.5°C.⁵⁶² The UN Expert Report therefore determines that: *“there is no room for new investment in fossil fuel supply and [there is] a need to decommission existing assets.”*⁵⁶³ In the words of the chairman of the UN expert panel: *“Non-state actors cannot claim to be net zero while continuing to build or invest in new fossil fuel supply.”*⁵⁶⁴
516. Specific guidelines are provided for financial institutions regarding the phasing-out plans that must be used with regard to coal, oil and gas production⁵⁶⁵ and regarding the other requirements that can be set for a transition plan.⁵⁶⁶
517. The UN expert report was presented during COP27 and approvingly welcomed and embraced by states, while acknowledging the importance of non-state climate action and the importance of transparency, progress and accountability for achieving climate commitments of non-state actors:

“The Conference of the Parties, [...]

90. Encourages Parties and non-Party stakeholders to engage actively in the Marrakech Partnership for Global Climate Action;

92. Welcomes the recommendations of the High-Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities, launched by the United Nations Secretary General in March 2022, which are designed to enhance transparency and accountability related to, and progress in achieving, the climate pledges of businesses, investors, cities and regions;

*93. Invites the secretariat to ensure greater accountability of voluntary initiatives through the Non-State Actor Zone for Climate Action platform;”*⁵⁶⁷

IX.2.6 Interim conclusion

518. In conclusion, it can be stated that for quite some time there has been consensus among all parties to the UN Climate Convention and (after that) the Paris Agreement that states cannot tackle the climate task on their own and that non-state actors play a crucial and indispensable role in preventing dangerous climate change. For that reason, the important role of non-state actors was already institutionalised in the UN climate regime in 2015. At UN level important initiatives have been developed that make it clear what basic principles non-state actors must use when formulating and implementing climate policy to make a credible contribution to

⁵⁶⁰ Ibid. The UN Expert Report uses the term *“facilitated”*, which term, in view of the context in the UN Expert Report must be interpreted broadly and thus encompasses both financed emissions and facilitated emissions.

⁵⁶¹ Ibid.

⁵⁶² Ibid, p. 23.

⁵⁶³ Ibid, p. 23.

⁵⁶⁴ Ibid, p. 7.

⁵⁶⁵ Ibid, p. 24.

⁵⁶⁶ Ibid, p. 22.

⁵⁶⁷ Exhibit MD-089, UNFCCC COP27 2022 (Sharm el-Sheikh), ‘Sharm el-Sheikh Implementation Plan’, beginning and paras. 90 to 93.

the climate task and – by extension – to de facto create the necessary flywheel effect in climate action.

519. The starting point in this respect is that non-state actors must show maximum ambition to reduce their Scope 1, 2 and 3 emissions to net zero as quickly as possible, but at latest in 2050. Toward that end ambitious and credible interim percentage reduction targets must be set. For 2030 this will have to be a fair share of the global minimum necessary halving of CO₂ emissions. For many actors, a fair share means that they will have to do more than the global average, and therefore must have reduced their Scope 1, 2 and 3 emissions in 2030 by more than 50%. These findings are of importance for interpreting the duty of care to which ING is subject, as will be discussed in further detail in Chapter XIV.3.1.

IX.3 THE RESPONSIBILITY OF COMPANIES TO RESPECT HUMAN RIGHTS

IX.3.1 The responsibilities to respect human rights of companies under the UNGP and the OECD Guidelines

520. The recognition since 2012 that states cannot handle the climate task alone and the explicit appeal of states to non-state actors to take proactive ambitious climate action aligns with the background of other important sources regarding the societal expectations relating to the responsibility of companies. Around that same period - in 2011 - the UN Guiding Principles on Business and Human Rights (UNGPs) were adopted with the unanimous support of the UN Human Rights Council.
521. The UNGP are the elaboration of the UN “Protect, Respect and Remedy Framework”, which was adopted by the UN Human Rights Council in 2008 in response to the adverse effects of globalisation and the resulting increase in violations of human rights by multinationals.
522. The framework was designed by the late Professor John Ruggie, special UN representative in the area of human rights and transnational companies and other commercial enterprises.⁵⁶⁸ He was appointed in 2005 by the Secretary General of the UN to identify and clarify the standards for responsibility and liability of companies.
523. In the “Protect, Respect and Remedy Framework” it was concluded (see below) that the increase in human rights violations by companies was predominantly caused by the fact that (national) governments and public organisations did not have enough control over multinationals due to fast-paced international developments. A lack of international supervision and international regulation created a situation - a power vacuum due to governance gaps - in which and as a result of which internationally operating businesses found it increasingly easy to operate outside the rules of individual countries, without any fear for sanctions.
524. That is why self-regulation by means of a new international guideline as a code of conduct for businesses was considered necessary. This code of conduct was intended to encourage businesses to respect human rights independently.
525. The explanatory introduction to the “Protect, Respect and Remedy Framework” contains the aforementioned background to this framework (and the UNGP based on that).

⁵⁶⁸ For an overview of his impressive CV, see <https://scholar.harvard.edu/john-ruggie/home>.

*"[M]arkets work optimally only if they are embedded within rules, customs and institutions [...] Indeed, history teaches us that markets pose the greatest risks - to society and business itself - when their scope and power far exceed the reach of the institutional underpinnings that allow them to function smoothly and ensure their political sustainability. This is such a time and escalating charges of corporate-related human rights abuses are the canary in the coal mine, signalling that all is not well. The root cause of the business and human rights predicament today lies in the governance gaps created by globalization - between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge."*⁵⁶⁹ (underlining added by legal counsel)

526. The aforementioned framework was set up as a result of this conclusion, generally implying that apart from States, businesses also have an independent responsibility to prevent the violation of human rights during the performance of their activities.

*"The framework rests on differentiated but complementary responsibilities [...]: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights [...] Each principle is an essential component of the framework: the State duty to protect because it lies at the very core of the international human rights regime; the corporate responsibility to respect because it is the basic expectation society has of business."*⁵⁷⁰

527. On the one hand, the state has to protect citizens against the violation of human rights by companies but on the other, companies have to refrain from that as well and respect human rights because that is what society can expect from them.

528. That forms the basis of the framework that was further structured by Ruggie in consultation with authorities, companies and NGO stakeholders and which resulted in the UN Guiding Principles on Business and Human Rights, to which ING also committed itself.⁵⁷¹

529. Page 1 of the UNGP sets as the central starting point that companies have a special role in society, that the UNGP applies to all states and companies and that the UNGP must be interpreted in light of their purpose, including making a contribution to socially sustainable globalisation:

"These Guiding Principles are grounded in recognition of:
(a) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
(b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
(c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.
These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.
These Guiding Principles should be understood as a coherent whole and should be read, individually and collectively, in terms of their objective of enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities,

⁵⁶⁹ Exhibit MD-135, Ruggie 2008, 'Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises', p. 3 under 2 and 3.

⁵⁷⁰ Ibid, pp. 4 and 5 under 9.

⁵⁷¹ See <https://www.ing.com/Sustainability/Sustainable-business/Human-rights.htm>: "Human rights are a key aspect of ING's overall ESR framework. [...] The standards established in the Universal Declaration of Human Rights; the eight Fundamental International Labour Organisation Conventions ('ILO Conventions'); the Corporate Responsibility to Respect Human Rights under the UN Guiding Principles on Business and Human Rights; the OECD Guidelines for Multinational Enterprises and the UN Global Compact guide us."

and thereby also contributing to a socially sustainable globalization.”⁵⁷²

530. The UN Guiding Principles embraced by ING showed the following, in essence: the responsibility to respect human rights is a global standard of conduct which all companies are expected to observe;⁵⁷³ tackling the adverse consequences in the field of human rights means that measures must be taken by companies in order to prevent, minimise and, where necessary, remedy those consequences;⁵⁷⁴ companies are not permitted to undermine the ability of states to fulfil their own human rights obligations;⁵⁷⁵ companies must therefore prevent that their own activities, products and services cause adverse consequences for human rights;⁵⁷⁶ the larger the company and the severity of the impact (scale, scope and degree of irreversibility), the larger the responsibility to prevent these adverse consequences; preventive or mitigating (precautionary) measures must also be taken in the case of potential consequences.⁵⁷⁷
531. This responsibility of companies is an individual independent responsibility. According to the UNGP, this responsibility demands of companies that they take appropriate care to respect human rights in all their business activities and business relationships. This means that companies must engage in due diligence geared to identifying adverse consequences in the area of human rights that the company causes or incentivises through its own activities, or that are directly linked to its activities, products or services through its business relationships:
- “In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. [...] Human rights due diligence: (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships.”⁵⁷⁸*
532. Companies must then, based on their findings and estimates, take appropriate measures to prevent and limit adverse consequences for human rights in their value changes (and must offer a remedy for consequences that have already occurred).⁵⁷⁹ If there is an adverse consequence for human rights that is directly linked to the activities, products or services of a company via a business relationship with another entity, a company shall use its position (“use its leverage”) to prevent or limit adverse consequences for human rights and thus encourage the other entity to demonstrate better behaviour. If there is no improvement in protecting human rights, this can mean that the business relationship must be terminated.⁵⁸⁰ Milieudefensie will come back to the further meaning of these principles in Chapter XIII when determining the duty of care that applies to ING.
533. Other guidelines which ING has committed itself to are the OECD Guidelines for Multinational Enterprises, among others. The OECD is known as a joint venture of 38 prosperous countries (including the Netherlands) to discuss, study and coordinate social and economic policy. The

⁵⁷² Exhibit MD-136, UN Guiding Principles (2011), p. 1.

⁵⁷³ Ibid, p. 13, Commentary Principle 11: “The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations.”

⁵⁷⁴ Ibid.

⁵⁷⁵ Ibid.

⁵⁷⁶ Ibid, p. 14, Principle 13.

⁵⁷⁷ Ibid, pp. 14 and 15, Principle 14 and Commentary.

⁵⁷⁸ Ibid, p. 16, Principle 17.

⁵⁷⁹ Ibid, p. 17, Principle 17 and p. 20, Principle 19.

⁵⁸⁰ Ibid, p. 21, Commentary Principle 19.

affiliated countries try to resolve problems together and they try to coordinate international policies. They also established guidelines in 1976 that make clear what they expect of multinational enterprises when doing business in a global context, which were aligned in 2011 with the principles and responsibilities laid down in the UN Guiding Principles and which were most recently updated in 2023.⁵⁸¹ These OECD Guidelines form the common opinion of the 38 OECD countries and 13 additional countries⁵⁸² about the role of multinationals in society (these countries are also home to most of the large multinationals and their head offices) and their responsibilities in relation to protecting human rights and the environment. The content of the OECD Guidelines and the UN Guiding Principles correspond with each other on the most important parts.

534. All in all, it can be concluded that the OECD Guidelines and the UNGP reflect a universal behaviour standard for companies to respect human rights, which were established in part based on the acknowledgement that internationally operating companies operated partly in a power vacuum due to the increased globalisation. Proactive action by these companies is necessary for the full protection of human rights. In other words, due to increased globalisation, countries cannot (or can no longer) achieve this full protection of human rights by themselves and companies also need to take their own responsibility in that respect.

IX.3.2 The human rights responsibilities of companies in relation to climate change

535. The above-mentioned human rights responsibility also extends to measures against climate change. This is evident, in view of the very serious consequences and risks of climate change for human rights as established by, among others, the Dutch Supreme Court and the ECtHR.⁵⁸³ In Chapter XIII Milieudefensie provides an overview of the most important developments relating to the protection that human rights provide against climate change.
536. Both the OECD Guidelines and authoritative sources on the UN Guiding Principles clarify what climate measures can be expected of, among others, corporations. Because of the overlap between the OECD Guidelines and the UNGP, they will be discussed together.
537. In the update of the OECD Guidelines in 2023, climate change has been added to the environmental paragraph, where – in addition to the generally applicable due diligence framework for human rights – specific tools are provided regarding the measures that companies must take to mitigate their climate impact.⁵⁸⁴ With regard to the UNGP, in 2023 a special UN Working Group on the issue of human rights and transnational corporations and other business enterprises, under mandate of the UN Human Rights Council, published an Information Note on the UNGP and the climate problem.⁵⁸⁵
538. This UN working group has the UN mandate to bring about an effective implementation of the UNGP.⁵⁸⁶ According to the UN working group, the Information Note is in addition to the

⁵⁸¹ Exhibit MD-137, OECD Guidelines (original English version) (2023).

⁵⁸² Ibid, p. 6, footnote 1.

⁵⁸³ Dutch Supreme Court, 20 December 2019, ECLI:NL:HR:2019:1006 and ECtHR, 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020.

⁵⁸⁴ Exhibit MD-137, OECD Guidelines (original English version) (2023), p. 33. See also pp. 37 (paras. 76-77).

⁵⁸⁵ Exhibit MD-138, UN Working Group on the issue of human rights and transnational corporations and other business enterprises 2023, 'Information Note on Climate Change', p. 3, which sets out: *"it is clear that States and business enterprises have obligations with respect to climate change, and with respect to the impacts of climate change on human rights"*.

⁵⁸⁶ Regarding this mandate: <https://www.ohchr.org/en/special-procedures/wg-business/about-mandate>.

growing number of guidelines and regulations relating to states and companies tackling climate change.⁵⁸⁷

539. The environmental paragraph of the OECD Guidelines makes it clear – in line with the UN Race to Zero and the UN Expert Report – that corporations play a key role in the climate approach.⁵⁸⁸ The environmental paragraph is based on the position that corporations must act proactively and as quickly as possible in order to prevent an adverse environmental impact.⁵⁸⁹ The explanation of the OECD Guidelines states that corporations must ensure that their emissions of greenhouse gases are in line with the global temperature goal and the best available science. Toward this end they must apply “science-based” reduction targets, for Scope 1, 2 and 3 for the short, mid- and long term.⁵⁹⁰ The required action must relate to absolute targets, and in addition, where relevant, targets to reduce CO2 intensity.⁵⁹¹
540. The previously mentioned UN working group also emphasises with regard to the UNGP that companies must develop policy and action plans relating to the climate impact of their activities.⁵⁹² To do so they must identify all their Scope 1, 2 and 3 emissions and include these in their climate policy.⁵⁹³ The UN working group also explicitly states that companies must phase out the use of fossil fuels and the production of emissions and that financial institutions must also move away from financing fossil fuel projects:

“International, national and regional financial institutions and other investors should move away from financing fossil fuel projects. Both personal and institutional investors should integrate consideration of climate change-related impacts on human rights and the environment into their investment decision making.”⁵⁹⁴

541. Based on the foregoing, it follows from the OECD Guidelines and the UNGP that companies have their own responsibility to realise percentage-based reduction targets, in order to reduce their Scope 1, 2 and 3 emissions in an absolute sense. This is to protect human rights and the climate. According to these guidelines, this means reduction targets that are in line with climate science. This aligns with the climate protocols for companies that we just discussed, which make it clear in this respect that the basic principle is that companies must cut their emissions by half by 2030. In the European context too the Corporate Sustainability Due Diligence Directive has now entered into force, that imposes an independent obligation on companies to reduce Scope 1, 2 and 3 emissions in line with limiting global warming to 1.5°C and in line with climate science.⁵⁹⁵
542. In addition, as previously stated, the value chain responsibility of the OECD Guidelines and the UNGP make it clear that companies have due diligence obligations with regard to their

⁵⁸⁷ Exhibit MD-138, UN Working Group on the issue of human rights and transnational corporations and other business enterprises 2023, ‘Information Note on Climate Change’, p. 2 (para. 3) and p. 3 (para. 6).

⁵⁸⁸ Exhibit MD-137, OECD Guidelines (original English version) (2023), p. 33: “Enterprises play a key role in advancing sustainable economies and can contribute to delivering an effective and progressive response to global, regional and local environmental challenges, including the urgent threat of climate change.”

⁵⁸⁹ Ibid, p. 37, para. 74.

⁵⁹⁰ Ibid, p. 37, paras. 76-77.

⁵⁹¹ Ibid

⁵⁹² Exhibit MD-138, UN Working Group on the issue of human rights and transnational corporations and other business enterprises 2023, ‘Information Note on Climate Change’, p. 5 (para. 17, under b)

⁵⁹³ Ibid, p. 6 (para. 17, under d, f and g and para. 19 under d).

⁵⁹⁴ Ibid, p. 6 (para. 20). See also para. 19, under b.

⁵⁹⁵ 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, Article 22.

business relations.⁵⁹⁶ Based on these due diligence obligations, companies must chart in what manner they could be involved through business relationships in negative consequences for human rights and the climate. They must then endeavour to prevent or limit those negative consequences.⁵⁹⁷

543. The OECD Guidelines and the UNGP demand that companies take action if they have a share in adverse consequences for human rights and the climate through their business relationships. If they determine that such adverse consequences with business relationships exist, companies will have to take steps and use their influence (leverage) to counter those consequences.
544. In the context of climate change this means that a company will have to prepare an inventory of the degree in which its business relations implement an adequate climate policy. If these business relations do not have a good climate policy, it is possible that the conclusion will have to be drawn that these business relations contribute to adverse consequences for human rights and the climate. Based on the OECD Guidelines and the UNGP, appropriate action will have to be taken in this respect.
545. Whether these business relations are countries or companies, does not matter.⁵⁹⁸ Both countries and companies have human rights responsibilities.⁵⁹⁹ The OECD Guidelines and the UNGP not only relate to the human rights responsibilities of companies, but also confirm the human rights responsibilities of countries.⁶⁰⁰
546. In addition, the human rights responsibilities of countries and companies exist separately from each other according to both sets of guidelines. This means that every country and every company has its own responsibility. The failure of one does not detract from the obligation of the other. Nor may countries and companies undermine each other's obligations based on these guidelines.⁶⁰¹ Due to this value chain responsibility – in which all relevant parties have their own, independent responsibility, in essence a human rights flywheel effect is caused that promotes the effective protection of human rights (and the climate).
547. A current example of value chain responsibility is the procedure of the UN Working Group together with various UN Special Rapporteurs, in which the Saudi national oil company Saudi Aramco and a large number of its financiers have each individually been held to account for their own role and responsibility relating to climate change.⁶⁰² This concerns a letter in connection with a complaint of the environmental organisation ClientEarth regarding Aramco's business plans that are not in line with the Paris Agreement, and the financing of private banks and investors that makes those plans possible. ClientEarth has argued that the financial institutions contribute to human rights violations of Aramco by, among other things,

⁵⁹⁶ Exhibit MD-137, OECD Guidelines (original English version) (2023), pp. 14 and 15 (paras. 11 to 13) and p. 33. Exhibit MD-136, UN Guiding Principles (2011), Principles 17 to 21 (pp. 17 to 24).

⁵⁹⁷ Ibid

⁵⁹⁸ Exhibit MD-137, OECD Guidelines (original English version) (2023), p. 18 (para. 17). Exhibit MD-136, UN Guiding Principles (2011), Explanation of Principle 13 (pp. 14-15).

⁵⁹⁹ Exhibit MD-137, OECD Guidelines (original English version) (2023), p. 25 (paras. 42 and 43). Exhibit MD-136, UN Guiding Principles (2011), Explanation with Principle 1 and Principle 11 (pp. 8 and 13).

⁶⁰⁰ Ibid

⁶⁰¹ Exhibit MD-137, OECD Guidelines (original English version) (2023), p. 12 (para. 2) and p. 25 (para. 42). Exhibit MD-136, UN Guiding Principles (2011), Explanation with Principle 1 and Principle 11 (pp. 8 and 13).

⁶⁰² Exhibit MD-139, Letter from UN experts to JP Morgan Chase & Co, pp. 6-7 and pp. 10-11.

providing loans, purchasing stocks or bonds, supporting, facilitating and/or advising on the most important financial transactions of Aramco and investing in Aramco's oil and gas infrastructure. Due to these actions, they are not fulfilling their own human rights responsibility.⁶⁰³

548. The UN experts confirm that financial institutions have an independent responsibility under the UN Guiding Principles and that, for example, by providing financing they can be directly affiliated with or can contribute to the adverse consequences for human rights ensuing from their business relations and that this can be contrary to international human rights law and international human rights standards:

*"Therefore, the alleged involvement of financial institutions in the financing of Saudi Aramco's activities could be in violation of international human rights law and standards."*⁶⁰⁴

549. In light of all of this, the UN experts are requesting a great deal of information from both Aramco and its financiers, to determine in what manner they are implementing or will implement their responsibility under the UNGP.

IX.4 CONCLUSION

550. The above shows that the international community has made it clear in various ways that there is an important role for non-state actors (including financial institutions) in relation to helping to limit global warming to 1.5°C. This responsibility is a responsibility for the value chain, that extends across a company's entire scope of emissions (Scope 1, 2 and 3 emissions), and also entails additional obligations to ensure that it is not in some other way through business relations affiliated with or contributes to adverse consequences for human rights.

551. Under the UN climate regime, as well as under the UN Guiding Principles and the OECD Guidelines, clear and consistent starting points have been provided that all non-state actors (including financial institutions) must observe when it comes to establishing climate policy. Non-state actors will have to reduce their emissions (in Scope 1, 2 and 3) in line with science and the 1.5°C target. This requires adequate interim reduction targets, on the road to net zero no later than 2050. The UN Race to Zero and the UN Expert Report make it clear that these reduction targets must reflect a "fair share" of the globally required emissions reductions. With regard to 2030, for many companies this means an absolute reduction of more than 50%. In addition, fossil fuels, and the financing thereof, will have to be phased out.

552. In Chapters XI and XIII Milieudefensie will explain that the aforementioned findings in the above-discussed authoritative soft law instruments relating to human rights and the environment, carry significant weight when it comes to determining the societal duty of care to which ING is subject. As the Court of Appeal of The Hague put it on 12 November 2024 in the Shell case:

"In private law relationships, human rights including protection from dangerous climate change can have an effect through open standards, such as the social standard of care. The social standard of care in relation to climate can be further defined through soft law such as the UNGP and the OECD guidelines. The content and scope may vary from one company to another, depending on a company's

⁶⁰³ Ibid, p. 6 (under 'Financing').

⁶⁰⁴ Ibid, p. 7.

contribution to climate change and its capacity to counter climate change. It follows from the instruments discussed that the social duty of care implies that companies also have an obligation to contribute to the mitigation dangerous climate change."⁶⁰⁵

553. Further attention will first be paid to the specific role that banks play in the climate problem.

X. THE IMPORTANT ROLE OF BANKS

X.1 INTRODUCTION

554. In the preceding chapters Milieudéfense has described what dangers to human rights society is exposed to as a result of anthropogenic climate change. Milieudéfense has also explained that the global reduction in greenhouse gas emissions that is required to counter this danger, is only possible if (in addition to states), non-state actors also make an important contribution. It was already discussed in this respect that private financial institutions also have an important role to play, including private banks like ING. In this chapter Milieudéfense will further specify the role of banks.

555. Toward this end Milieudéfense will first further specify the important role that banks play in contributing to dangerous climate change, as well as the role they must play in countering dangerous climate change (Chapter X.2). Milieudéfense will then explain that this role has been increasingly recognised since 1988, both by the global community and by the financial sector itself (Chapter X.3). Lastly, Milieudéfense will present support for its position that banks do not interpret their role as required, including according to authoritative bodies like the IPCC, UNEP and the IEA (Chapter X.4).

X.2 BANKS PLAY A KEY ROLE IN CAUSING AND COUNTERING CLIMATE CHANGE

X.2.1 The human activities that cause climate change are dependent on financing

556. It was discussed in Chapter V that anthropogenic climate change is the result of human activities that lead to emitting greenhouse gases into the atmosphere. Activities that lead to large-scale emissions of greenhouse gases take place to a great degree in a commercial context and are often capital-intensive. The reason for this is that they are dependent on large initial investments (e.g. in such things as research costs and means of production) and financing for high operational costs (e.g. for labour and energy). The result of this is that these activities would, in many cases, not be feasible from a financial-economic perspective without the financing of banks.

557. This can be illustrated by a number of examples:

- (i) The most obvious example is, perhaps, the fossil fuel sector. The exploration, extraction, processing and distribution of fossil fuels make use of very costly infrastructure. The development of a single offshore drilling platform, for example, requires an investment of billions of euros, which generally can only be acquired with the support of the banks. The same applies to the financing of the operating costs that are necessary for the exploitation and the maintenance of such an infrastructure.
- (ii) High initial investments are also required in the electricity sector, e.g. for the

⁶⁰⁵ Court of Appeal of The Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2100, para. 7.55.

infrastructure that is necessary to generate electricity (power stations) and delivering the power to the customers (transmission lines and distribution networks). These investments are also usually financed (in part) by banks. In case of energy generation based on fossil fuels or biomass, banks are, moreover, involved in the purchase of these raw materials.

- (iii) Industries producing, e.g., steel, cement and chemicals belong to the biggest greenhouse gas emitters, due to their use of fossil fuels and due to the emissions that are the result of chemical processes. The founding of factories and the (often energy-intensive) exploitation thereof are capital intensive and generally depend on banking support.
- (iv) The transport sector (the production and the use of means of transportation like cars, trains, airplanes and ships) also has high greenhouse gas emissions (particularly CO₂). These emissions cannot occur without investments in capital-intensive production factors (like the production facilities and assembly lines that are necessary to produce means of transport on a large scale), the financing of which usually involves banks.

558. The above examples concern (commercial) activities that are characterised by their relatively large contribution to global greenhouse gas emissions. However, they are not a stand-alone phenomenon and take place in the wider economy. For example, the fossil fuel sector and the electricity sector provide the energy to, e.g., the operators and end users of transport, heating and industrial processes. The production of steel, cement, chemicals and other resources provides materials for the construction of real estate, the development of infrastructure, the production of machines and equipment, agriculture and consumer goods. Transport facilitates the traffic of goods, people and services.

559. Actors in other parts of the economy – companies in other sectors, households, governments, etc. – carry out activities that lead to greenhouse gas emissions. Many of the activities of these actors in other parts of the economy cannot take place without financing.

560. The phenomenon that the examples described in para. 557 illustrate – financing as an essential link in activities that lead to greenhouse gas emissions – consequently extends across the economy in the broadest sense of the word. In other words: financing of the economy contributes to the greenhouse gas emissions as a result of the activities that take place in the economy. This means that the financing decisions of financial institutions, such as banks, contribute to determining how much greenhouse gas the economy will emit.

X.2.2 Banks perform a central and multi-faceted role in the financing of (greenhouse gas emissions due to activities in) the economy

561. Banks thus play a key role in financing the economy and consequently, as described in the preceding paragraph, in the greenhouse gas emissions that occur as a result of activities in the economy.

562. This key role of banks can be characterised as a multi-faceted financial intermediate function, whereby commercial banks can perform at least three sub-functions (all three of which ING performs):

- (i) One of the most important functions of banks is that of loan provider. Commercial

banks, like ING, provide economic actors like those mentioned above with different kinds of loans, including commercial loans for companies (project financing or general company financing), mortgage loans for house buyers and consumer loans for individuals. As loan provider, banks hold a special, key position in capital transactions. They possess the ability to use liabilities (such as savings) for the creation of assets (like loans). In addition, by providing loans there is an increase in the amount of money, i.e. money creation, because by means of providing loans banks are putting a larger amount of money into circulation than if they simply attract liabilities (like savings).⁶⁰⁶

- (ii) In addition to providing loans, commercial banks, like ING, also act as facilitator for capital market transactions. This role consists of banks – in addition to providing loans - providing essential services that make it possible for capital to flow from economic actors with a supply of capital to economic actors with a demand for capital, because the first-mentioned actors (investors) invest in financial instruments (stocks or bonds) that are issued by the last-mentioned actors (often clients of the bank). In this process banks assess the market circumstances, evaluate the financial position of the issuing party and they assist in determining the optimal price and structuring the transaction. In addition, they provide consultancy services to the issuing party in relation to, inter alia, charting market trends, investor preferences and regulations. In many cases banks guarantee that they will underwrite the stocks or bonds (in part) to be issued by a client. This provides issuing parties with a guarantee of the necessary capital and makes sure that investors have confidence in the success of the transaction.
- (iii) Thirdly, banks, like ING, provide asset management services. In this role too banks perform an essential function in the availability of capital for economic actors with a demand for capital. This comes down to banks enabling investors (clients of the bank) to invest in financial instruments of issuing parties (often called 'investee entity'). This is possible, for example, by means of individual asset management provided by the bank, but also by investing in (collective) investment funds managed by the bank. Investors entrust their capital to the expertise of banks, so that they have access to a wide range of investment opportunities and, in addition, can delegate asset management activities (like decisions regarding risk/return considerations and the exercising of voting rights) to the bank.

563. Put simply, banks thus bridge the gap between economic actors with a supply of capital and economic actors with a demand for capital, and, moreover, it increases the quantity of available capital through money creation. In this manner, banks make it possible that the activities mentioned in Chapter X.2.1 are carried out (and that they are carried out at their current scale).

564. Banks are in a unique position to bridge the aforementioned gap because, on the one part, they create scale due to the aggregation of many provisions of capital, and on the other side often enter into a long-term relationship with parties that require capital that provides them with insight into non-public information. Consequently, banks can gain thorough knowledge regarding the financial position of parties with a demand for capital. By using a bank as intermediary, capital providers save themselves the trouble of screening and monitoring investment opportunities (and capital seekers save themselves the trouble of looking for suitable capital providers). In economic terms: banks play a unique role in reducing transaction costs by solving the information asymmetry between capital providers and

⁶⁰⁶ A DNB information video explains the process of money creation, see <https://youtu.be/h1aY0fCSb00>.

capital seekers.

565. The three sub-functions mentioned in para. 562 above concern activities of an individual nature, whereby the role of the bank differs and, with regard to sub-functions (ii) and (iii), does not necessarily mean that the bank uses its own capital to provide the financing. After all, as facilitator of capital market transactions – sub-function (ii) – and as asset manager – sub-function (iii) – in principle the bank will not make its own capital available. However, because all sub-functions can be deemed a part of the aforementioned multi-faceted financial intermediation function, Milieudéfense refers to the activities of the bank under the heading of each of these functions (individually or together) as “**Financing**” by the bank (or it uses similar terminology), unless explicitly otherwise indicated. This aligns with the principle that the allocation of emissions to the products and services of banks, cover all three of the aforementioned sub-functions (cf. para. 571).
566. When exercising the aforementioned multi-faceted financial intermediation function, the banks play an exclusive and systemic role, in such sense that only banks can exercise this function. Banks consequently play a key, multi-faceted role in making the financing available that is necessary to be able to carry out activities that lead to greenhouse gas emissions. Virtually all ways in which companies with a demand for capital can provide for this take place through the intermediation of banks (partly due to the aforementioned unique information position of banks). The activities of these companies could therefore not take place without the products and services of banks, or in any event the current scale of these activities would not have been even remotely possible without the products and services of banks.

X.2.3 The contribution of banks to climate change can be quantified

567. The above-discussed key role of banks in the financing of activities that lead to greenhouse gas emissions is very large. The individual contribution of banks to global greenhouse gas emissions can also be quantified. In this paragraph, Milieudéfense will first of all clarify this quantifiability. In X.2.4 Milieudéfense will then explain the size of the contribution of banks like ING to global greenhouse gas emissions.
568. The attributing of emissions to individual actors form the basis of the quantification of the contribution of banks to global greenhouse gas emissions. The leading framework in this respect is the GHG Protocol, that was already discussed above in Chapter IX.2 (and which forms the basis of the PCAF that is also used by ING; see: para. 569). As previously explained, the use of the GHG Protocol will result in a quantification of the emissions over which a company has control and influence (explicitly including Scope 3 emissions).
569. The GHG Protocol applies to entities regardless of the nature of their activities. Also (the greenhouse gas emissions resulting from) the activities of banks can be quantified on the basis of this framework. This applies to the Scope 1 and 2 emissions of banks, such as those resulting from the heating and cooling of their offices. It also applies to the emissions that are related to the financing provided by the bank for economic activities of clients of the bank. The financed emissions of clients are thereby part of the Scope 3 emissions of the bank and in the framework of the GHG Protocol fall under a specific sub-category of downstream Scope 3 emissions, i.e. “Scope 3 category 15: investments”. This category is primarily intended for financial institutions and encompasses Scope 3 emissions that are connected with investments in stocks and bonds, with bank loans, with the underwriting of issues of stocks and bonds, with asset management and other forms of financial services. “Scope 3

category 15” represents the contribution of financing to greenhouse gas emissions of (financed) activities in the economy, and the role that banks play in providing that financing, as Milieudefensie has described above.⁶⁰⁷ 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.

570. The way in which this contribution translates itself within the framework of the GHG Protocol into a quantification of the emissions as a result of the products and services of banks, received a more elaborate interpretation through the specific framework geared thereto of the ‘*Partnership for Carbon Accounting Financials*’ (hereinafter: “**PCAF**”). ING also reports its emissions applying PCAF (see para. 805). It arose from a recognition of both the need to counter climate change, and the important role that banks (and other financial institutions) have in this respect because of the emissions as a result of their products and services. An underlying thought in this respect was that a more consistent determination and reporting on these emissions of banks offers a starting point to determine emissions reduction targets and the alignment of their financing portfolio with the Paris Agreement. In addition, it provides transparency on and accountability for the emissions connected with the products and services of banks. As PCAF itself says:

*“The harmonized accounting approach provides financial institutions with the starting point required to set science-based targets and align their portfolio with the Paris Climate Agreement. PCAF enables transparency and accountability [...]”*⁶⁰⁸

571. PCAF bases its position on the principles and methodologies of the framework of the GHG Protocol, and gears it to the specific context of the Scope 3 emissions of banks (and other financial institutions). The PCAF standard has been assessed by the GHG Protocol as being in conformity with the requirements of the GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard for Scope 3 category 15 (para. 568). PCAF classifies the Scope 3 emissions of banks (and other financial institutions) into three major categories, whereby it prescribes principles and methodologies specifically geared to each category. These have been placed under various parts, which cover all sub-functions of the multi-faceted financial intermediation function referred to in para. 562:

- (i) ‘*Part A – Financed Emissions*’ provides methodological guidelines for measuring and reporting the emissions that are connected with the loans provided by the bank (para. 562 point (i)) and assets managed by the bank (para. 562 point (iii)). PCAF makes a distinction between seven asset classes (listed stocks and bonds, business financing and unlisted shares, project financing, commercial real estate, mortgages, loans for motor vehicles and government debt).⁶⁰⁹
- (ii) ‘*Part A – Facilitated Emissions*’ provides methodological guidelines for measuring and reporting the emissions that are connected with the activities of the bank as facilitator of capital market transactions (para. 562 point (ii)).⁶¹⁰
- (iii) ‘*Part C – Insurance-Associated Emissions*’ provides methodological guidelines for measuring and reporting the emissions that are connected with taking out insurance

⁶⁰⁷ Exhibit MD-130, GHG Protocol Corporate Value Chain (Scope 3) Standard, pp. 51-54. See also Box: What are Scope 1, 2 and 3 emissions?

⁶⁰⁸ Exhibit MD-140, PCAF, ‘About PCAF’ (print-off from website 27 February 2025).

⁶⁰⁹ Exhibit MD-141, PCAF Global GHG Accounting and Reporting Standard Part A: Financed Emissions (Second Edition).

⁶¹⁰ Exhibit MD-142, PCAF Global GHG Accounting and Reporting Standard Part B: Facilitated Emissions.

and reinsurance. Because of the very limited insurance activities of ING, Part C will not be discussed.⁶¹¹

572. The methodologies of the GHG Protocol and PCAF are based on the principle that the emissions of a client or a company in which investments are made must be attributed to the reporting bank in proportion to the share of the investment or the financing in the client or the company receiving the investment. The attribution is therefore based on various factors. These factors are rooted in, inter alia, the emissions of the client or the company in which the investment is made and financial-economic factors, such as the relationship of the financing provided to the business value of the financed entity. This makes it possible that the emissions as a result of the activities of an entity (or as a result of the financing thereof by the bank) are determined and reported as a quantity of the greenhouse gases attributable to that entity (or to the bank). The emissions attributed to the bank via this method is expressed in tons of CO₂ or CO₂-eq. In addition to the Scope 1 and 2 emissions of the client, the above also encompasses the Scope 3 emissions of the client. As of the financial year 2024, under PCAF banks must report these Scope 3 emissions of clients for every sector (this reporting requirement was previously limited to the most emissions-intensive sectors).⁶¹²
573. The GHG Protocol and PCAF are internationally seen as the most appropriate standard for determining and reporting the emission of banks. Illustrative in this respect is that both frameworks also serve as a standard for the sustainability reporting under the European directive for sustainability reporting, that also applies to banks like ING (usually referred to as the 'Corporate Sustainability Reporting Directive' or the acronym derived thereof, which will be used hereinafter, "**CSRD**").⁶¹³ Under the CSRD, the European Commission – on the indication of the 'European Financial Reporting Advisory Group' (EFRAG) – included both the GHG Protocol and the PCAF standard in the 'European Sustainability Reporting Standards' (usually referred to by the acronym used hereinafter, "**ESRS**").⁶¹⁴
574. The technical implementation standards for reporting under the Capital Requirements Regulation adopted by the European Commission – on the indication of the European Banking Authority (EBA) – also refer to the PCAF standard as the method for banks to calculate their Scope 3 emissions.⁶¹⁵

X.2.4 Banks have a large role

575. As follows from the aforementioned paragraph, the contribution of the financing of banks to the greenhouse emissions due to activities in the economy is quantifiable on the basis of widely-accepted frameworks for determining those emissions and the attribution thereof to the bank. This makes it possible that the scope of that contribution can be determined and reported as a specific quantity of greenhouse gases attributable to the bank (expressed as a number of tons of CO₂ or CO₂-eq).

⁶¹¹ ING states with regard to its insurance activities in 2023: "ING Group does not have an insurance business, but on a limited basis sells insurance products as a broker where it does not run the insurance risk". ING Annual Report 2023, p. 216 (see <https://www.ing.com/MediaEditPage/2023-ING-Groep-N.V.-annual-report.htm>).

⁶¹² Exhibit MD-141, PCAF Global GHG Accounting and Reporting Standard Part A: Financed Emissions (Second Edition), p. 51 and Exhibit MD-142, PCAF Global GHG Accounting and Reporting Standard Part B: Facilitated Emissions, p. 33.

⁶¹³ Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 as regards corporate sustainability reporting.

⁶¹⁴ Delegated Regulation (EU) 2023/2772 of the Commission of 31 July 2023, see, e.g., Application Requirement 46 (AR46).

⁶¹⁵ Implementing Regulation (EU) 2021/637 of the Commission of 15 March 2021, Annex XL.

576. Various sources show that this contribution is considerable. On Milieudefensie's instruction, research agency Profundo charted the size of the contribution of the three biggest Dutch banks in 2021: ABN AMRO Bank N.V., Coöperatieve Rabobank U.A. and ING Groep N.V.⁶¹⁶ In this study, Profundo estimates the collective emissions of these three banks (i.e. the Scope 1, 2 and 3 emissions of the activities financed by these banks)⁶¹⁷ at 500 MtCO₂-eq. In that year, this was comparable to more than three times the emissions of the Netherlands.⁶¹⁸ A large part of these emissions arise from activities and sectors that are connected with the extraction or the use of fossil fuels. For example, Profundo estimates in the aforementioned 500 MtCO₂-eq emissions of the three Dutch major banks, the share of the emissions as a result of financing of the fossil fuel sector and energy generation (based on, inter alia, fossil fuel energy, referred to as 'utilities') at more than 50% (254 MtCO₂-eq for financed Scope 1, 2 and 3 emissions). As Milieudefensie will explain in Chapter XII.3.3, ING holds a special position, with, inter alia, (individual) financed emissions of at least 262 MtCO₂-eq (approx. 1.74 times the emissions of the Netherlands, and approx. 0.49% of global emissions).
577. The emissions of the aforementioned three Dutch banks naturally do not stand alone, and fit within the global view that banks like ING can make a large contribution to the causes and consequences of climate change. This is because of the size of their Scope 3 emissions – being the Scope 1, 2 and 3 emissions of their clients, insofar as connected with their financing – and specifically because of their Scope 3 emissions due to the financing of the extraction of fossil fuel energy and energy generation based on fossil fuel energy. The annual report '*Banking on Climate Chaos*'⁶¹⁹ is illustrative in this respect, focusing on the financing by banks of a selection of fossil fuel activities that are characterised as especially emissions-intensive or harmful to humans and the environment (and that consequently can also be deemed controversial), such as drilling for new fossil fuel sources, the expansion of LNG production and the extraction of and energy generation with coal.
578. The report provides, inter alia, an overview of the 60 biggest banks globally, and scales it on the basis of the total amount in financing of very harmful fossil fuel activities in the period 2016-2023. According to the report, the total in financing is 6.9 trillion dollars (whereby ING, with 106.4 billion dollars, is at number 26 of the biggest financiers worldwide, an increase in two places relative to the preceding year).⁶²⁰ The preceding observations fit within the findings of the IPCC, which concluded that:

*"Persistently high levels of both public and private fossil fuel-related financing continue to be of major concern despite promising recent commitments."*⁶²¹

579. With their substantial financing of emissions-intensive economic activities, banks make a problematic contribution to dangerous climate change. By providing financing they are a

⁶¹⁶ Exhibit MD-143, Warmerdam et al. 2002, 'Dutch financial sector financed emissions'.

⁶¹⁷ The Scope 1, 2 and 3 emissions of the activities of its clients financed by a bank together form the Scope 3 emissions of the relevant bank.

⁶¹⁸ In 2022, the emissions of the Netherlands were 158.4 Mt, see Exhibit MD-144, RIVM 2024, 'Greenhouse gas emissions in the Netherlands 1990–2022' (Executive Summary), p. 17. If this estimate in Exhibit MD-143, Warmerdam et al. 2002, 'Dutch financial sector financed emissions' limits itself to exclusively financed Scope 1 and 2 emissions (i.e., the Scope 1 and 2 emissions of financed activities), this still comes to 117 MtCO₂-eq, which in 2021 was comparable to a country like Belgium (according to the Joint Research Centre (JRC) of the European Commission, in 2021 the emissions of Belgium were 116.79 MtCO₂-eq; see Exhibit MD-002, European Commission JRC 2024, 'GHG emissions of all world countries' (selected pages), p. 61 and more specifically in the emissions table on https://edgar.jrc.ec.europa.eu/report_2023#emissions_table).

⁶¹⁹ Exhibit MD-145, Rainforest Action Network et al. 2024, 'Banking on Climate Chaos 2024'.

⁶²⁰ Ibid, p. 13 and Exhibit MD-146, Rainforest Action Network et al. 2023, 'Banking on Climate Chaos 2023', p. 12.

⁶²¹ Exhibit MD-050, IPCC 2022, AR6, WGIII, TS, TS.6.4.

hindrance to closing the ‘emissions gap’ referred to in Chapter VII.2.6, which according to Chapter IX must in fact be closed by non-state actors (including banks). By reducing their substantial emissions-intensive financings, banks can and must contribute to reducing global emissions. This means that banks have a big role to play in closing the emissions gap. The analysis of the 2022 Emissions Gap Report of UNEP is characteristic for the importance of that sizeable role of the financial sector is:

*“Investments in fossil fuel assets need to decline rapidly, because they work against the clean energy transition now and lock in GHG emissions for decades to come, leading to stranded assets in the future (Campiglio et al. 2018; Mercure et al. 2018; Kreibiehl et al. 2022). The financial sector has historically funded and is highly exposed to GHG-intensive assets (see section 7.2), including fossil fuel extraction and GHG-intensive industrial sectors (e.g. steel and cement). For example, of the equity holdings portfolios of the European Union's 50 biggest banks, 4–13 per cent is directly in the fossil fuel sector and 36–48 per cent is in climate-relevant sectors such as fossil fuels, utilities and energy-intensive industries (Battiston et al. 2017).”*⁶²²

580. The contribution of the financing of banks to the causes and consequences of dangerous climate change does not consist of only the already considerable contribution due to the financing of (the emissions resulting from) fossil fuel activities, but is greater than that. This contribution covers all their financing of (the greenhouse gas emissions resulting from) all possible activities in the wider economy. A report of the NGO ReCommon of May 2024 entitled *“Unsupervised, the carbon pollution of the world’s largest banks”* is illustrative of the scope of that contribution. The report estimates the emissions of 29 system-relevant banks (including ING) based on information reported for 2022. One of the key findings of this report is that this group of banks is responsible for emissions that, being at least 2700 MtCO₂-eq., are higher than the collective emissions of Germany, Italy, the United Kingdom and France (the four biggest European industries):

“The 29 assessed banks financed an estimated 2.7 billion tCO₂e absolute emissions in 2022. Although not like-for-like, for a sense of scale it is worth noting that this is higher than the emissions of Germany, Italy, UK and France combined. [...]

*The absolute emissions figure is an underestimation of the annual financed emissions for all banks.”*⁶²³

581. As also appears from this quote, this quantification is still an underestimate. An important reason for this is the incomplete reporting by the banks studied of the Scope 3 emissions of clients financed and facilitated by the banks, notwithstanding the standards applicable to such reporting (like PCAF). The report is consequently forced to ignore these client Scope 3 emissions virtually in their entirety, even though these emissions in fact cover the greatest part of the total client emissions (for ‘high-impact sectors’ average 75%; see para. 494, note 539). In other respects too the limited transparency of banks stood in the way of a more accurate (and less conservative) quantification. It should therefore be clear that the banks that were studied in reality have financed and facilitated considerably more emissions than currently appears from the report. In the words of the report:

*“Accordingly, it’s likely that the actual level of emissions is several orders of magnitude higher.”*⁶²⁴

582. The above makes it clear that the contribution of banks to (the financing of) the greenhouse

⁶²² Exhibit MD-147, UNEP 2022, ‘Emissions Gap Report 2022’, p. 67.

⁶²³ Exhibit MD-148, ReCommon 2024, ‘Unsupervised, the carbon pollution of the world’s largest banks’, p. 12.

⁶²⁴ Ibid.

gas emissions resulting from activities in the economy is not significant, but also that the contribution of banks is even greater than the current quantifications already tell us and, moreover, can be deemed a contribution that covers the whole economy.

X.2.5 Banks play a twofold key role in the climate transition

583. The significant, economy-wide contribution of banks to the causes and consequences of dangerous climate change compels banks to make their contribution to preventing dangerous climate change and bringing their activities in line with the 1.5°C target.

584. The role of banks in this climate transition is twofold:

- (i) First of all, their role extends to ceasing or phasing out the financing of certain greenhouse gas-intensive economic activities, to reduce their emissions to such degree that they are brought in line with the 1.5°C goal. This is because such financing leads to emissions and lock-in of emissions that form a threat to the success of the climate transition, and consequently contributes to the causes and consequences of dangerous climate change.
- (ii) Secondly, it extends to financing certain economic activities in line with the 1.5°C target, because such financing is necessary for the success of the climate transition. The provision of such financing is consequently precisely necessary to prevent dangerous climate change.

585. It is this twofold role that forms the basis of the task formulated in the Paris Agreement to make financing flows consistent with the (global) path to low emissions and a climate-proof development. By way of example, the financing of the production and the use of fuel cars will have to be scaled down, while the financing of electric cars will have to be scaled up.

586. The 2022 Emissions Gap Report of UNEP makes it clear that both parts of the twofold requirement determine the success of this task. According to that report, they are both of crucial importance when closing the ‘emissions gap’ described in Chapter IX:

*“A realignment of the financial system is a critical enabler of the sectoral transitions required to address the current climate crises. [...] The success of the transformation can ultimately be measured based on two indicators: a rapid increase in investments in low-carbon assets worldwide and a rapid decrease in investments in greenhouse gas (GHG)-intensive assets.”*⁶²⁵

587. The IEA shares this position and asserts:

“The financial community has a critical role to play in the massive ramp-up of clean energy spending needed to meet climate goals and the orderly reallocation of capital away from fossil fuels. [...]”

*Achieving the NZE Scenario requires clean energy spending to rise nearly threefold by 2030, with an estimated 65% of this needing to come from the private sector.”*⁶²⁶

588. It is part (i) of the twofold key role that Milieudefensie’s demands focus on: the cessation or phasing out of financing of certain greenhouse gas-intensive economic activities, so that ING’s emissions are reduced to such degree that they are brought in line with the 1.5°C

⁶²⁵ Exhibit MD-147, UNEP 2022, ‘Emissions Gap Report 2022’, p. 65.

⁶²⁶ Exhibit MD-149, IEA 2023, ‘World Energy Investment 2023’ (selected pages), p. 157-158.

target. In Chapter XIV Milieudefensie will explain in what manner part (i) is expressed in ING's societal duty of care under Article 6:162(2) DCC, which Milieudefensie calls upon to support its demands. Whether and how ING focuses its financing on activities that are necessary for the success of the sustainable climate transition (part (ii)), is left up to ING. This does not detract from the fact that Milieudefensie's demands might promote ING also contributing to part (ii). ING can satisfy these demands by supporting its clients with, and persuading them to, reduce their emissions by means of becoming more sustainable (see Chapter XIV.4). After all, these sustainability actions of the client not only lead to ING's Scope 3 emissions being brought more in line with the 1.5°C target (part (i)), but also that more of ING's financing supports the sustainable climate transition of its clients (part (ii)).

589. Although Milieudefensie's demands are therefore directed at part (i), it is nevertheless relevant to pause at the scope of the significance of part (ii). The reason for this is that the non-cessation of the financing of climate-threatening activities in accordance with part (i) not only leads to maintaining the related emissions, but also forms an impediment to the financing of the sustainable climate transition in accordance with part (ii). After all, the financing of climate-threatening activities leads to there being less financing available for the sustainable climate transition. This is even though the required financing is substantial, and far from sufficient financing has been made available. According to the IPCC, this makes this financing a critical facilitating factor for the sustainable climate transition:

*"Finance to reduce net greenhouse gas (GHG) emissions and enhance resilience to climate impacts represents a critical enabling factor for the low carbon transition."*⁶²⁷ (underlining added by legal counsel)

X.3 THE KEY ROLE OF BANKS HAS ALREADY BEEN KNOWN SINCE 1988

X.3.1 Introduction

590. The above-explained key role of banks has been known since at least 1988, has been recognised within the financial sector since at least 1992, and since at least 2007 has been an explicit part of international climate policy. Milieudefensie will set out the historical development of this awareness and acknowledgement below.

X.3.2 1988: the VN climate conference of Toronto

591. The aforementioned awareness and acknowledgement go back at least to naming the importance of private financing flows in solving the climate problem during the UN climate conference in Toronto of 1988. It was already discussed in Chapter VI.5.1 that in the final declaration thereof, not only governments but also private parties (such as commercial banks) were called upon to bring about the large-scale redirecting of investment flows in the direction of sustainable energy.

592. This appeal was made against the background of the following conclusions:

"(t)he rate of future emissions growth is likely to determine how rapidly climate changes take place and how severe the consequences will be. Energy policy decisions will substantially affect future emissions, as will private investment choices made during the next 10 years and implemented over the next few decades. If historically inefficient patterns of energy use continue, or if the amount of coal and biomass burned for energy increases, the concentration of these gases in the atmosphere

⁶²⁷ Exhibit MD-050, IPCC 2022, AR6, WGIII, TS, TS.6.4.

*will rise. As a consequence, the risks of global warming and ozone depletion would rise substantially.*⁶²⁸ (underlining added by legal counsel)

*"There are obviously many long-term actions that will be required in order to ensure appropriate responses to the changing atmosphere. These actions will be taken at a number of different levels. (...) At the national level, action will also be necessary. On the one hand, governments should examine existing policies, e.g., energy policy and forest policy, and adjust them to reduce the rates at which the atmosphere is being changed. In addition, governmental support for research and development of alternative technologies must be greatly intensified. Corporations, banks, the investment community and non-government organizations must also include consideration of the atmosphere in their planning and operational agendas."*⁶²⁹ (underlining added by legal counsel)

593. It can be deduced from this that since at least 1988, the international community acknowledged that:

- (i) the investments decisions of private actors, including banks and investors, "substantially affect" the emissions of greenhouse gases into the atmosphere (and consequently the arising and scope of climate change and the consequences thereof); and
- (ii) banks and investors, in their planning and operational agendas "must also include consideration of" the atmosphere, in view of the many long term actions that are necessary for an appropriate response to the changing (as a result of greenhouse gas emissions) atmosphere.

594. This notion has been given a different interpretation since then and has, moreover, been further reinforced, both in relation to international climate policy and within the financial sector itself. Milieudefensie explains this below.

X.3.3 1992-1998: the United Nations Environment Programme Finance Initiative (UNEP FI)

595. At the time of the making of the UN Climate Convention in 1992, the financial sector itself demonstrated a growing acknowledgement that it plays a crucial role in the transition to a sustainable economy, whereby the risks of climate change were acknowledged. The United Nations Environment Programme Finance Initiative (UNEP FI) was established during the "United Nations Conference on Environment and Development" in Rio de Janeiro, where the UN Climate Convention was opened for signing.

596. One of the first results of UNEP FI was the "UNEP Statement by Banks on the Environment and Sustainable Development" in 1992.⁶³⁰ In this document, the 91⁶³¹ participating banks indicated their awareness that the banking sector has a responsibility to protect the environment and promote sustainable development and that this leads to precautions:

"We further recognise that ecological protection and sustainable development are collective responsibilities and must rank among the highest priorities of all business activities, including banking. We will endeavour to ensure that our policies and business actions promote sustainable

⁶²⁸ Exhibit MD-062, WMO 1988, 'Conference Proceedings of the World Conference on The Changing Atmosphere: Implications for Global Security' (selected pages) (Toronto), p. 120.

⁶²⁹ Ibid, p. 401.

⁶³⁰ Exhibit MD-150, Delphi International et al. 1997, 'The role of financial institutions in achieving sustainable development, report to the European Commission', para. 17.1, VI.1, p. 133 (including cover sheet).

⁶³¹ Ibid, p. 136 (including cover sheet).

development: meeting the needs of the present without compromising the needs of the future.

[...]

1.5 We recognise that sustainable development is a corporate commitment and an integral part of our pursuit of good corporate citizenship. We are moving towards the integration of environmental considerations into banking operations and business decisions in a manner which enhances sustainable development.

[...]

2.1 We subscribe to the precautionary approach to environmental management, which strives to anticipate and prevent potential environmental degradation.

2.2 We expect, as part of our normal business practices, that our customers comply with all applicable local national and international environmental regulations. Beyond compliance, we regard sound environmental practices as one of the key factors demonstrating effective corporate management.”⁶³²

597. As of 1994, the efforts of UNEP FI (also) explicitly focused on climate change.⁶³³ In 1995, this was expressed in a statement that was comparable to the above-mentioned “*UNEP Statement by Banks*” (see para. 596). This “*Statement of Environmental Commitment by the Insurance Industry*” of 1995 concerned the insurance sector (in which ING was also active at the time) and sets out:

“We are committed to work together to address key issues such as pollution reduction, the efficient use of resources, and climate change.”⁶³⁴

598. The following efforts of UNEP FI, geared to climate change, also resulted in various “position papers” with insights regarding the nature and scope of the danger of climate change, the risks thereof for (and the responsibility therein of) actors from the financial sector, and the importance of the precautionary principle when taking necessary measures for a substantial reduction of emissions. A position paper from 1996 that focuses on the insurance sector (ING was active in the insurance sector at that time) sets out:

“2.2.1 In dealing with climate change risks it is important to recognise the precautionary principle, in that it is not possible to quantify anticipated economic and social impacts of climate change fully before taking action. Research is needed to reduce uncertainty but cannot eliminate it entirely.

2.2.2 In the case of climate change risks, the most efficient precautionary measure is a substantial reduction of greenhouse gas emissions with respect to a “business as usual” scenario of greenhouse gas emissions.”⁶³⁵

599. In 1997, in the context of COP3 in Kyoto, UNEP FI published a position paper relating to the financial sector in a broader sense.⁶³⁶ This position paper again refers to the (preventive) need for emissions reductions, with developed countries having to take the lead and for which it must be possible to use private capital sources:

⁶³² Ibid, para. 17.1, VI.1, p. 133 (including cover sheet).

⁶³³ Exhibit MD-151, UNEP FI 2003, brochure Climate Change Working Group, p. 2.

⁶³⁴ Exhibit MD-150, Delphi International et al. 1997, ‘The role of financial institutions in achieving sustainable development, report to the European Commission’, para. 17.2, VI.2, p. 134 (including cover sheet).

⁶³⁵ Ibid, para. 17.5, VI.5, p. 140.

⁶³⁶ Exhibit MD-152, UNEP FI 1997, ‘Working Group: Climate Change and the Financial Sector, Position Paper.

“2.2 Developed countries need to take the lead in redirecting their economies to a path of reduced per capita greenhouse gas emissions.

[...]

The capital resources of both the public and private sectors should work in synchrony to promote alternative energy generation and use.”⁶³⁷

600. In 1998, in the run-up to COP4 in Buenos Aires, UNEP FI published a position paper in relation to the “Financial Institutions Initiative”, that also explicitly covered the banking sector.⁶³⁸ This position paper made it clear that the key principles of, inter alia “*UNEP Statement by Banks*” of 1992 (see para. 596) also cover countering climate change, that the wider economy and thus the financial sector, including banks, are affected by dangerous climate change, and that the financial sector has a role to play in the implementation of the Kyoto Protocol.⁶³⁹

X.3.4 1998-2004: the GHG Protocol, the Carbon Disclosure Project (CDP) and the UNEP FI Climate Change Working Group

601. Against the background of awareness, discussed above, that private actors (including private financial institutions) have a necessary role to play in preventing dangerous climate change, the second half of the 1990s and the first half of the 2000s were characterised by a growing recognition of the importance of (and the possibilities for) determining and reporting on the greenhouse gas emissions of private actors.

602. An important step in this developed was the launch in 1998 of the GHG Protocol, as a joint initiative of the World Resources Institute (WRI) and the World Business Council for Sustainable Development (WBCSD). This collaboration arose from the need for a common, internationally recognised standard for calculating and reporting greenhouse gas emissions, and in 2001 led to the publication of the first version of the GHG Protocol (that was already discussed above in Chapters IX.2 and X.2.3). This protocol offered companies a methodology for quantifying their greenhouse gas emissions and is also nowadays the foundation of the quantification and reporting of the greenhouse gas emissions by financial institutions.

603. In that same period, the Carbon Disclosure Project (later abbreviated to CDP) was established, that described itself as a “*coordinating secretariat for institutional investor collaboration regarding climate change*”.⁶⁴⁰ As such, in 2002 the CDP sent a letter and questionnaire on behalf of institutional investors (including an ING entity) to the 500 largest companies in the world (measured according to market capitalisation, “FT500 companies”).⁶⁴¹ This questionnaire related to, inter alia:⁶⁴²

- (i) reporting emissions data based on the aforementioned GHG Protocol;
- (ii) measuring the quantity of emissions in the value chain (Scope 3 emissions);
- (iii) applying emissions reduction programmes and targets; and

⁶³⁷ Ibid, p. 2 (para. 2.2) and p. 4 (para. 3.7).

⁶³⁸ Exhibit MD-153, UNEP FI 1998, ‘Working Group: Climate Change and the Financial Sector, Position Paper.

⁶³⁹ Ibid, pp. 1-2.

⁶⁴⁰ Exhibit MD-154, CDP, ‘Carbon Disclosure Project - Home Page’ (print-out from website 27 February 2025).

⁶⁴¹ Exhibit MD-155, CDP, letter of 21 May 2002 ‘Greenhouse Gas Emissions’, p. 2.

⁶⁴² Exhibit MD-156, CDP 2003, ‘Carbon Finance and the Global Equity Markets’ (selected pages), p. 69 (incl. notes 1 to 3).

- (iv) the possibilities for emissions reductions to 20% within five years.

Where the FT500 company concerned a financial institution, these questions explicitly also covered the assets held by the institution, such as loans and investments.⁶⁴³ As a FT500 company, ING was also asked to answer the questionnaire, so that it, in addition to being a signatory, was also a respondent of the questionnaire (in response to which it also completed the questionnaire; see: Chapter XII.3.2).

604. The CDP presented the results of the aforementioned survey of FT500 companies in a report in February 2003.⁶⁴⁴ This report demonstrates, inter alia, the recognition that climate change entails financial risks and consequences (including the threat of legal action), which, moreover, extend beyond the traditional emissions-intensive sectors and will continue to get worse. It also asserts that managing these risks and consequences is not necessarily a cost item, and in fact also offers commercial opportunities. The report presented, among other things, the following “key findings”:

“There is a remarkably broad consensus among major global companies on the need for action. Fully 80% of the Survey respondents explicitly acknowledge the importance of climate change as a business risk, and roughly 35-40% of them are already taking concrete action.

The financial impacts of climate change extend well beyond the obvious, emissions-intensive sectors. Companies in the financial services, transportation, semi-conductor, telecoms, electronic equipment, food, agriculture, and tourism sectors among others are also affected.

[...]

Managing the financial risks of climate change does not necessarily impose a net cost on companies. Success stories can be identified in virtually every industry sector we examined; substantial commercial opportunities are also being created and captured on the upside.

The financial risks and consequences of climate change are almost certain to intensify. Corporate Governance reform, notably SarbanesOxley in the U.S., pension fund reform, shareholder activism, and the threat of litigation are some of the important “mega-trends” militating in this direction.”⁶⁴⁵

605. Parallel to these developments, within the framework of UNEP FI (see Chapter X.3.4) in 2000, the UNEP FI Climate Change Working Group was established.⁶⁴⁶ In November 2001, this working group published a position paper in the context of COP7 in Marrakesh. This position paper acknowledges the influence of the financial sector in the wider economy and the role that it can consequently play when performing the task to prevent dangerous climate change:

“1.1. We believe that the precautionary approach is the appropriate way to deal with climate change, in that it is not possible to quantify all the environmental, economic, and social effects before taking action to reduce greenhouse gas emissions. Research can reduce the uncertainty, but never completely eliminate it.

1.2. The financial services sector is involved in all aspects of economic activity and is affected by environmental and social issues. Owing to its business skills - particularly in innovation - and its size (insurance premiums of USD 2.3 trillion and operating income for banking of USD 1.7 trillion annually worldwide) the sector can play an important part in meeting the challenges posed by climate

⁶⁴³ Ibid, p. 69 (incl. note 1)

⁶⁴⁴ Ibid.

⁶⁴⁵ Ibid, p. 1 (cover sheet under ‘key findings’).

⁶⁴⁶ Exhibit MD-157, UNEP FI 2000, ‘Climate Change Working Group Scoping Paper.

change.”⁶⁴⁷

X.3.5 2007: the Global Roundtable on Climate Change, the UNFCCC Investment and Financial Flows report and the Bali UN Action Plan

606. In February 2007, financial institutions (including ING) again took account of their key role, in particular in relation to dangerous climate change. This occurred within the context of the Global Roundtable on Climate Change (“GROCC”), which was established on the initiative of the Earth Institute of Columbia University from New York. It brought together: “*high-level, critical stakeholders from all regions of the world — including senior executives from the private sector and leaders of international governmental and non-governmental organizations*”. This Global Roundtable was initiated due to an “*urgent need to better understand the threats posed by human-induced climate change and to build a consensus on proactive initiatives that can help society mitigate and adapt to its impacts*”.⁶⁴⁸ Private banks (including ING)⁶⁴⁹ were involved with the GROCC from the start in 2004.

607. In a joint statement of the GROCC of 2007, 100 participants, including private banks (among others, ING), acknowledged that in that context they also have their own responsibility in tackling climate change. They state:

*“Each company and institution, as well as each government, has the opportunity and responsibility to address climate change. This responsibility can be fulfilled in a variety of ways, which will differ depending on the nature of the business or organization. In this spirit, and in recognition of the importance and immediacy of this issue, we commit ourselves to pursuing the following measures and invite others to do likewise: [...] Incorporating climate change and GHG emissions into relevant business management decision making, and communicating such actions to key stakeholders, such as investors, employees, suppliers, and customers.”*⁶⁵⁰ (underlining added by legal counsel)

608. This joint statement of the GROCC of February 2007 was followed in October 2007 by a UNFCCC report entitled “Investment and Financial Flows to Address Climate Change”,⁶⁵¹ that analysed the role of financing flows in reducing greenhouse gas emissions on the basis of (at the time) existing, foreseen and necessary investment and financing flows in various sectors like energy, transport and agriculture. This is based on the acknowledgement that banking and other financing in many economic sectors are used for the production of capital goods that often have a lifespan of 30 years or more (think of oil platforms, refineries, electricity power stations, oil tankers, gas pipes, factories, etc.), with which this financing will have a great influence until far into the future on the emissions level that global society will still have. Science also refers to this as the ‘lock-in effect’ because greenhouse gas emissions are ‘locked in’ through such financing and investments for many decades. As this UNFCCC report puts it:

“In many sectors the lifetime of capital stock can be thirty years or more. The fact that total investment in new physical assets is projected to triple between 2000 and 2030 provides a window of opportunity to direct the financial and investment flows into new facilities that are more climate

⁶⁴⁷ Exhibit MD- 158, UNEP FI 2001, ‘Climate Change Working Group Position Paper, p. 1.

⁶⁴⁸ Exhibit MD-159, The Earth Institute at Columbia University 2007, ‘Global Roundtable on Climate Change, The Path to Climate Sustainability’, p. 22.

⁶⁴⁹ ING Annual Report 2007, p. 55 (see <https://www.ing.com/web/file?uuid=cd4762d2-f2dd-4265-9bb9-d4d81f705c39&owner=b03bc017-e0db-4b5d-abbf-003b12934429&contentid=6438>).

⁶⁵⁰ Exhibit MD-159, The Earth Institute at Columbia University 2007, ‘Global Roundtable on Climate Change, The Path to Climate Sustainability’, p. 10.

⁶⁵¹ Exhibit MD-160, UNFCCC 2007, ‘Investment and Financial Flows to Address Climate Change’ (selected pages).

*friendly and resilient. The investment decisions that are taken today will affect the world's emission profile in the future.*⁶⁵² (underlining added by legal counsel)

609. The report explicitly recognises the importance of the private sector:

*"When considering means to enhance investment and financial flows to address climate change in the future, it is important to focus on the role of private-sector investments as they constitute the largest share of investment and financial flows (86 per cent)."*⁶⁵³

610. The UNFCCC report of 2007 identifies three categories of "significant changes investment and financing flows that are necessary to tackle climate change".⁶⁵⁴ In addition to the scaling up of investment and financing flows for mitigation and adaptation and the optimisation of the allocation of available resources, the report refers in the first place to the following category of changes:

*"Shift investments and financial flows made by private and public investors to more sustainable climate-friendly alternatives, for example, by redirecting investments from traditional energy supply sources and technologies to low GHG emitting ones [...]"*⁶⁵⁵

611. Publication of the report in October 2007 was followed by the acknowledgement of the importance of private financing flows during COP13 in December of that year. The COP decided (as the highest body of the UN Climate Convention; see Chapter VI.6.4) that the private sector has a necessary role to play in providing climate financing within the framework of the UN Climate Convention. In the 2007 Bali Action Plan, the COP acknowledges that the mobilisation of private financing is necessary to enable a "full, effective and sustained implementation" of the UN Climate Convention.⁶⁵⁶ The COP decided in the Bali Action Plan to:

*"Enhanced action on the provision of financial resources and investment to support action on mitigation and adaptation and technology cooperation, including, inter alia, consideration of: [...] (v) Mobilization of public- and private-sector funding and investment, including facilitation of climate-friendly investment choices."*⁶⁵⁷ (underlining added by legal counsel)

X.3.6 **2009-2011: the GHG Corporate Value Chain (Scope 3) Accounting and Reporting Standard**

612. Between 2009 and 2011, the framework for the quantification (and reporting) of financed emissions by private financial institutions continued to develop, and due to the development of the Scope 3 Standard with the GHG Protocol, which establishes "category 15: investments" as an individual category. The Scope 3 Standard says:

*"Category 15 is designed primarily for private financial institutions (e.g., commercial banks) [...]"*⁶⁵⁸

613. This standard for the quantification and reporting of the Scope 3 emissions of (inter alia) commercial banks like ING was introduced based on the acknowledgement that these actors play a "vital" role in booking the necessary progress and that the standard is an instrument that provides for the required detailed understanding of the greenhouse gas impact of these

⁶⁵² Ibid, p. 5 (p. 1 of the Executive Summary, Key Findings, under 6).

⁶⁵³ Ibid, p. 5 (p. 1 of the Executive Summary, Key Findings, under 7).

⁶⁵⁴ Ibid, p. 178 (under 9.3, para. 961).

⁶⁵⁵ Ibid.

⁶⁵⁶ Exhibit MD-075, UNFCCC COP13 2007 (Bali), 'Bali Action Plan', para. 1, beginning.

⁶⁵⁷ Ibid, para. 1(e).

⁶⁵⁸ Exhibit MD-130, GHG Protocol Corporate Value Chain (Scope 3) Standard, p. 51.

actors (which in the case of financial institutions thus also comprises emissions within “category 15: investments”):

“Existing government policies will not sufficiently solve the problem. Leadership and innovation from business is vital to making progress. [...]”

*An effective corporate climate change strategy requires a detailed understanding of a company’s GHG impact. A corporate GHG inventory is the tool to provide such an understanding. It allows companies to take into account their emissions-related risks and opportunities and focus company efforts on their greatest GHG impacts.”*⁶⁵⁹

X.3.7 2015: the Paris Agreement, the Dutch Banks Climate Statement, the Task Force on Climate-related Financial Disclosures (TCFD) and the Partnership Carbon Accounting Financials (PCAF)

614. The acknowledgement that private financing is also necessary for countering dangerous climate change, during COP21 ultimately found its way to the central goal of the Paris Agreement (see Chapter VII.3.2.1). Article 2(2) of the Paris Agreement extends not only to limiting global warming “well below 2°C” and preferably to 1.5°C. But, as follows from Article 2(1)(c) of the Paris Agreement, also to making financing flows consistent with a pathway to low greenhouse gas emissions and climate-proof development. Or in the words of the Paris Agreement:

*“1. This Agreement, in enhancing the implementation of the 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: [...] (c) [m]aking finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.”*⁶⁶⁰ (underlining added by legal counsel)

615. The wording of Article 2(1)(c) express that the overarching goal of the Paris Agreement “to *strengthen the global response to climate change*” requires a structural transformation of the economy, and in the form of a reorientation of financing flows from non-sustainable to sustainable infrastructure and commercial practices.⁶⁶¹ Partly bearing in mind the appeal in the Decision belonging with the Paris Agreement that companies and other non-party stakeholders implement a better climate policy – and bearing in mind the background of that appeal (see Chapter IX.2) – Article 2(1)(c) of the Paris Agreement (in part) forms an appeal to banks and other private actors to redirect their financing flows.⁶⁶² It will become clear further on (inter alia in para. 624) that Article 2(1)(c) of the Paris Agreement has been understood to be such an appeal by ING and other banks.
616. In the run-up to COP21 in 2015 and the Paris Agreement that was agreed at that time, there was a broader attention for the role of banks and other financial institutions in relation to (preventing) dangerous climate change. In the first place, this was the time when greater attention arose and a clearer idea occurred in relation to climate change as a source of financial risks for banks, following the “Tragedy of the Horizon speech” of Mark Carney, then governor of the Bank of England and chairman of the Financial Stability Board (FSB).

⁶⁵⁹ Ibid, p. 3.

⁶⁶⁰ Exhibit MD-070, Paris Agreement (original English version).

⁶⁶¹ Exhibit MD-122, Klein et al. 2017, ‘The Paris Agreement on Climate Change. Analysis and Commentary’ (selected pages), p. 128.

⁶⁶² Ibid, pp. 128 and 255.

617. In response to the growing concern for the impact of climate change on the stability of the worldwide financial system, on the request of the G20, the FSB founded the Task Force on Climate-related Financial Disclosures (TCFD). The goal of the TCFD was to develop a framework for companies to publish information on climate-related financial risks.
618. The founding of the TCFD coincided with the establishing of the Partnership Carbon Accounting Financials (PCAF), that must help financial institutions to better manage and limit their contribution to climate change. Toward this end PCAF set as its goal the development of harmonised methodologies for measuring and publishing the CO₂ emissions of loans and investments, so that they can be brought in line with the goals of the Paris Agreement (see Chapter X.2.3).
619. In the Netherlands, the run-up to COP21 in Paris was also characterised by the “climate statement” of 12 Dutch banks (including ING), all members of the Dutch Banking Association (Nederlandse Vereniging van Banken; “NVB”). This climate statement indicated the awareness of the banks in question that they have their own role to play in countering dangerous climate change, with the commitment that they:
- (i) will take sustainability, climate impact and environmental damage into consideration in their financing and investment decisions;
 - (ii) will work toward transparency on the (positive and negative) impact of their loans and investments on climate change;
 - (iii) will encourage clients to reduce their CO₂ emissions and help them in this respect with products and services; and
 - (iv) will strive to accelerate the activities to make Dutch housing stock, offices and other real estate sustainable.⁶⁶³

X.3.8 2018: the Spitsbergen Ambition and the Katowice Commitment

620. On 26 June 2018, the “Spitsbergen Ambition” was established as a result of a journey of representatives of 33 Dutch financial institutions to the Norwegian archipelago. The Spitsbergen Ambition was an “*undertaking between Dutch financial institutions that together want to counter climate change through their financing and investments*”, in which ING also participated. These financial institutions concluded that they have an important role to play in countering climate change and accelerating the sustainable climate transition, and commit themselves to the then climate goals of the cabinet governing agreement of the Dutch government (49% reduction in 2030 relative to 1990 and 100% in 2050):

“Together we can counter climate change, e.g. by accelerating CO₂ reduction with our financing and investments on the road to a green and low-carbon economy. In addition, we can actively invest in new opportunities that contribute to a climate-positive sustainable economy and to the international goals as laid down in the Paris Climate Agreement. For the Netherlands we are committing ourselves to the climate goals laid down in the cabinet governing agreement (49% CO₂ reduction in 2030, 100% in 2050), with an ambition to accelerate achieving these goals where possible.”⁶⁶⁴

⁶⁶³ Exhibit MD-161, NVB 2015, ‘Klimaatstatement banken’, pp. 2-3.

⁶⁶⁴ Exhibit MD-162, Spitsbergen ambitie 2018-2020, p. 1.

621. Then NVB president Chris Buijink explained the Spitsbergen Ambition as follows:

*"Banks are definitely leaving the era of the non-committal attitude behind. This also means something for their clients and other stakeholders. The desired result can only be achieved through good cooperation."*⁶⁶⁵ (underlining added by legal counsel)

622. The NVB pointed out, in addition, that the non-committal attitude was no longer appropriate, as a method had become available with, for example, PCAF (see Chapter X.2.3) to measure the climate impact of financial institutions. In the words of the NVB:

*"In the 2015 Banks Climate Statement, the banks laid down that they wanted to make the climate impact of their activities measurable. At the time no good methods were available with which the climate impact of a financial institution could be mapped out. Since then, banks and other institutions developed and tested such methods, i.e. the PCAF, 2Dii and similar measuring methods."*⁶⁶⁶

623. In order to give substance to the commitment made in the Spitsbergen Ambition, the relevant financial institutions committed themselves as of 2020 to, inter alia:

- (i) actively measuring and externally reporting on climate impact for all financing and investments, making use of e.g. PCAF (see Chapter X.2.3), and using outcomes for strategies for sustainable investment; and
- (ii) making use of climate scenario analyses and science-based targets to support their financing, investment policy and their strategies, in order to be able to satisfy the Paris Agreement.⁶⁶⁷

624. In addition to the Spitsbergen Ambition, as a Dutch initiative, during COP24 in Katowice an international initiative was established in the form of the Katowice Commitment. In the Katowice Commitment, (in their own words, leading) banks express their support for Article 2(1)(c) of the Paris Agreement and the call encompassed therein for banks to redirect their financing flows. This also applies to ING, that typifies the Katowice Commitment as a *"milestone pledge"*.⁶⁶⁸ The banks in question also assert that this goes further than the management of climate-related financial risks:

"We support the aim of "making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development", which is article 2.1c of the Paris Agreement. To show our support we commit to developing open-source methods and tools for measuring the alignment of lending portfolios with the goals of the Paris Agreement. What's more, we aspire to then lead the implementation of these methodologies and tools to actually align our lending portfolios with these climate goals."

*This is about more than de-risking. It's about making a positive impact."*⁶⁶⁹

X.3.9 **2019: the Financial Sector Climate Commitment, the Principles for Responsible Banking (PRB) and the Collective Commitment to Climate Action**

⁶⁶⁵ Exhibit MD-163, NVB 2018, 'Spitsbergen ambitie sluit aan bij inzet banken voor Klimaatakkoord' (print-out from website 27 February 2025).

⁶⁶⁶ Ibid.

⁶⁶⁷ Exhibit MD-162, Spitsbergen ambitie 2018-2020, p. 1.

⁶⁶⁸ Exhibit MD-165, ING 2018, 'ING talks climate in Katowice at COP24' (print-out of website 27 February 2025).

⁶⁶⁹ Exhibit MD-164, Katowice Commitment 2018, p. 1.

625. In 2019, a number of sectoral initiatives occurred that can be deemed a further reinforcement of (the principles appearing from) earlier initiatives. The first of these is the Dutch Climate Commitment of the Financial Sector, that was introduced in July 2019 in the Netherlands on the initiative of the Dutch financial sector, and that was signed by approx. 50 financial institutions (including ING). It can be deemed an expansion and introduction of greater depth of (inter alia) the previous Climate Statement of Dutch Banks (see Chapter X.3.7). Under the Climate Commitment of the Financial Sector, the participating institutions explicitly accepted an efforts obligation to, inter alia, draw up action plans that included reduction targets for 2030.⁶⁷⁰

626. In September 2019, the Principles for Responsible Banking (PRB) were launched within the context of the UNEP FI that was founded in 1992 (see Chapter X.3.3). By signing the PRB, banks (including ING)⁶⁷¹ committed themselves to six principles, that entailed, inter alia, that the participating banks were to bring their strategy in line with the Paris Agreement and set targets in this respect. The then chairman of the board of ING introduced the PRB with the following statement:

*"Financial institutions have a societal role that goes beyond being facilitators of well-functioning economies. They also have a moral obligation as global corporate citizens to finance positive change. The Principles for Responsible Banking provide banks with a common language and shared foundation on which to build a sustainable future."*⁶⁷² (underlining added by legal counsel)

627. The Collective Commitment to Climate Action (CCCA) was also launched in September 2019, and is an expansion of the PRB. This commitment (which was also signed by ING, together with 37 other international banks), is specifically geared to accelerating the performance of the goals of the Paris Agreement and was presented as the successor of the Katowice Commitment of 2018 (see Chapter X.3.8). The central commitment was *"to align our portfolios to reflect and finance the low-carbon, climate-resilient economy required to limit global warming to well below 2, striving for 1.5 degrees Celsius"*.⁶⁷³ The CCCA came to an end in 2023 following the creation of the Net-Zero Banking Alliance.⁶⁷⁴

X.3.10 **2021: the Glasgow Climate Pact, the Glasgow Financial Alliance for Net-Zero (GFANZ) and the Net-Zero Banking Alliance (NZBA)**

628. In 2021, a next milestone in international climate policy followed in the form of the Glasgow Climate Pact (that was established at COP26 in 2021). The Glasgow Climate Pact emphasised the increased urgency of reinforced ambition and measures in the area of (inter alia) financing when realising the goals of the Paris Agreement.⁶⁷⁵

629. The acknowledgement of the importance of (the redirecting) of private financing flows during COP26, did not only have the form of the passages of the Glasgow Climate Pact dedicated thereto by the Conference of the Parties. The financial sector itself also showed to be aware of that interest, through the Glasgow Financial Alliance for Net Zero (GFANZ). This alliance, launched in April 2021, gathered existing and new climate initiatives in the financial sector together in a sector-wide forum for strategic coordination. The GFANZ goal underscored the

⁶⁷⁰ Exhibit MD-166, Klimaatcommitment financiële sector 2019, p. 1.

⁶⁷¹ Exhibit MD-167, UNEP FI, 'Signatories PRB' (print-out of website 27 February 2025).

⁶⁷² Exhibit MD-168, UNEP FI, 'Signatory CEO Statements' (print-out of website 27 February 2025), p. 2.

⁶⁷³ Exhibit MD-169, UNEP FI 2019, 'Collective Commitment to Climate Action', p. 1.

⁶⁷⁴ Exhibit MD-170, UNEP FI, 'Commitment to Climate Action' (print-out of website 3 March 2025).

⁶⁷⁵ Exhibit MD-088, UNFCCC COP26 2021 (Glasgow), 'Glasgow Climate Pact', para. 5.

enormous importance - and the ambition - of the financial sector:

*"GFANZ will work to mobilise the trillions of dollars necessary to build a global zero emissions economy and deliver the goals of the Paris Agreement."*⁶⁷⁶

630. The Net Zero Banking Alliance (NZBA) was launched at the same time as GFANZ. The NZBA (with which ING has been affiliated since 2021)⁶⁷⁷ was established as a part of both the PRB and the sectoral GFANZ alliance for the banking sector. The NZBA banks undertook to bring both the emissions from their own operations and their portfolio emissions in line with pathways to net zero in 2050 or earlier. As part of GFANZ, NZBA banks bound themselves to the UN Race to Zero criteria, including:

"Using science-based guidelines to reach net-zero emissions across all emissions scopes by 2050

Setting 2030 interim targets that represent a fair share of the 50% decarbonization required by the end of the decade

Setting and executing on a net-zero transition plan

Transparent reporting and accounting on progress against those targets

*Adhering to strict restrictions on the use of offsets"*⁶⁷⁸

X.3.11 **2022: the Climate Conference of Sharm el-Sheikh (COP27)**

631. During COP27 in 2022, the Conference of the Parties in the Sharm el-Sheikh Implementation Plan paid attention to the important role that the financial sector will have to play in the climate approach. Based on findings of the International Energy Agency (IEA), the Conference of the Parties made it clear that globally 4 trillion dollars must be invested annually in renewable energy up to 2030, in order to achieve net zero emissions in 2050, and that the global transformation to a low-carbon economy will require another 4-6 trillion dollars a year in investments.⁶⁷⁹

632. The Conference of the Parties emphasised in this respect that nothing less than a transformation of the financial system and its processes and structures is necessary, whereby governments, central banks, commercial banks, institutional investors and other financial investors will have to play a role:

*"Also highlights that delivering such funding will require a transformation of the financial system and its structures and processes, engaging governments, central banks, commercial banks, institutional investors and other financial actors;"*⁶⁸⁰

X.3.12 **2023: the Dubai Climate Conference (COP28)**

633. During the Dubai Climate Conference in 2023 (COP28) the Conference of the Parties also paid attention to the important role of banks. This against the background of the important

⁶⁷⁶ Exhibit MD-171, UNFCCC 2021, 'New Financial Alliance for Net Zero Emissions Launches' (print-out from website 27 February 2025), p. 2.

⁶⁷⁷ Exhibit MD-172, UNEP FI, 'Members Net-Zero Banking Alliance' (print-out from website 27 February 2025).

⁶⁷⁸ Exhibit MD-173, GFANZ, 'Our Members' (print-out from website 27 February 2025), p. 3.

⁶⁷⁹ Exhibit MD-089, UNFCCC COP27 2022 (Sharm el-Sheikh), 'Sharm el-Sheikh Implementation Plan', para. 31.

⁶⁸⁰ Ibid.

findings of the first ‘*global stocktake*’ under the Paris Agreement of 2015, which led to the conclusion that insufficient progress had been made in all areas of climate action (as explained in greater detail in Chapter VII.6).

634. In light of those findings, the COP concluded, inter alia, that (again) only limited progress had been made in the central goal of Article 2(1)(c) of the Paris Agreement to make financing flows consistent with a path to low greenhouse gas emissions and climate-proof development, moreover, it (again) acknowledged the importance of that goal.⁶⁸¹

635. Within that context the COP also (again) recognised the importance of ambitious climate action by ‘non-Party stakeholders’, including financial institutions,⁶⁸² and it underscores the important role that commercial banks such as ING have to play.⁶⁸³

X.3.13 **2024: the Baku Climate Conference (COP29)**

636. As was briefly touched upon in Chapter VII.7, COP29 in 2024 in Baku was characterised as the first ‘finance COP’, at which time the ‘*Climate Unity Pact*’ was established. A key part of this pact is the ‘*New collective quantified goal on climate finance*’.⁶⁸⁴

637. The background of this climate financing goal lies in the *climate financing gaps*, i.e. the difference between finance that is required to take the necessary climate measures on the one hand, and the actual available financing on the other.

638. The new climate financing target of COP29 specifically focuses on the climate financing gap that developing countries are confronted with. The COP concluded, with concern, that there was a (large) gap between the financing available for these countries and the many trillions of dollars that these countries need annually for the climate measures that are required to realise their nationally determined contributions (NDCs).⁶⁸⁵ It was decided that – led by the developed countries – there will be a tripling of the climate financing goal of 100 billion dollars a year that developed countries had committed years earlier.⁶⁸⁶

639. Although this decision to triple the financing goal is progress of a kind, many saw it as a great disappointment. The committed 300 billion dollars a year considerably lags behind the 1.3 trillion dollars a year requested by developing countries.⁶⁸⁷ UN Secretary General Guterres indicated in his statement about COP29 that the result had been less than he had hoped.⁶⁸⁸ At the same time, he called the agreements that had been made “*a base on which to build*”.⁶⁸⁹

640. According to the COP, this very explicitly included a task for private financing, in line with the necessary role that the IPCC and UNEP, among others, see for private actors (see Chapter X.4 hereinafter). The committed 300 billion dollars a year thus derive from “*a wide variety of sources, public and private*”.⁶⁹⁰ In addition, the 1.3 trillion dollars a year required by the

⁶⁸¹ Exhibit MD-090, UNFCCC COP28 2023 (Dubai), ‘Outcome of the First Global Stocktake’, paras. 90 and 91.

⁶⁸² Ibid, para. 158.

⁶⁸³ Ibid, para. 96.

⁶⁸⁴ Exhibit MD-091, UNFCCC COP29 2024 (Baku), ‘New collective quantified goal on climate finance’.

⁶⁸⁵ Ibid, para. 3.

⁶⁸⁶ Ibid, para. 8.

⁶⁸⁷ Exhibit MD-174, BBC 2024, ‘COP29: Why a \$300bn climate deal to help poorer countries has been criticised’ (print-out of website 27 February 2025).

⁶⁸⁸ Exhibit MD-092, UN Secretary-General Statement on COP29 (print-out from website 27 February 2025).

⁶⁸⁹ Ibid.

⁶⁹⁰ Ibid, para. 8.

developing countries was given a place in the Climate Unity Pact – albeit in a more non-committal form – whereby an appeal is also made to private actors such as ING to close the climate finance gaps of developing countries. In the words of the COP, it is calling “*on all actors to work together to enable the scaling up of financing to developing country Parties for climate action from all public and private sources to at least USD 1.3 trillion per year by 2035*”.⁶⁹¹

X.4 BANKS ARE NOT IMPLEMENTING THEIR KEY ROLE AS REQUIRED

641. Despite the above-described, widely acknowledged key role of banks in limiting climate change, banks are still not properly implementing that role. An indication of this has already been given in the conclusions described in the preceding paragraph of the COP relating to the poor progression in making financing flows consistent with a path toward low greenhouse gas emissions and climate-proof development.

642. The UNEP 2022 Emissions Gap Report also shows that the necessary action on the part of banks is lagging behind. The report points out that a recalibration of the financial system is of vital importance for the success of the transformations that are necessary to close the emissions gap, and at the same time concluded that actors in the financial system have only taken limited action:

“A realignment of the financial system is vitally important to enable the transformations needed are to be achieved. The financial system is a network of private and public institutions such as banks, institutional investors and public institutions that regulate the safety and soundness of the system, but also co-lend or finance directly. [...]”

“To date, most financial actors have shown limited action on climate change mitigation because of short-term interests and conflicting objectives, and because climate risks are not adequately recognized.”⁶⁹² (underlining added by legal counsel)

643. However, without action of important financial institutions like ING, the required recalibration cannot succeed. As the report also emphasises, the success of that recalibration depends on “*the willingness of key financial system actors to take on their roles*”.⁶⁹³

644. This dependency on (the willingness of) financial institutions like ING is particularly problematic, because these institutions are not taking sufficient action to enable the required, large-scale redirection of money flows to succeed. The IPCC believes that the persistence in providing significant fossil fuel financing is a great concern, while the financing that is required for the sustainable climate transition falls short (leading to “*climate financing gaps*”). It presented this view in the following summary of a part of its analysis of ‘investment and finance’:

“Progress on the alignment of financial flows with low-GHG emissions pathways remains slow. There is a climate financing gap which reflects a persistent misallocation of global capital (high confidence) {15.2, 15.3}. Persistently high levels of both public and private fossil fuel-related financing continue to be of major concern despite promising recent commitments.”⁶⁹⁴ (underlining added by legal counsel)

⁶⁹¹ Ibid, para. 7.

⁶⁹² Exhibit MD-147, UNEP 2022, ‘Emissions Gap Report 2022’, p. XXVI.

⁶⁹³ Ibid.

⁶⁹⁴ Exhibit MD-050, IPCC 2022, AR6, WGIII, TS, TS.6.4, p. 133.

645. Private financial institutions, such as banks, are therefore, on the one part, financing too many activities that cause or contribute to dangerous climate change and, on the other, are financing too few activities that can prevent or limit climate change. In other words: their financing activities are at odds with what their (twofold) key role demands when preventing or limiting dangerous climate change.

646. The IPCC points in this respect, in particular, to the financing and facilitating of the fossil fuel industry by banks:

*"In terms of financing provided to fossil fuel investments, available analyses point out a still significant role played by commercial banks and export credit agencies. Commercial banks provide both direct lending as well as underwriting services, the latter facilitating capital raising from investors in the form of bond or share issuance. Available estimates indicate that lending and underwriting extended over 2016– 2019 by 35 of the world's largest banks to 2100 companies active across the fossil fuel lifecycle reached USD687 billion yr–1 on average (Rainforest Action Network et al. 2020)."*⁶⁹⁵

647. The financing of fossil fuels is therefore very substantial, and cannot be reconciled with climate policy. This applies in particular to new fossil fuel projects, because the expected CO₂ emissions that are connected with existing fossil fuel infrastructure already exceed the remaining carbon budget to maintain the 1.5°C limit, according to the IPCC:

*"Estimates of future CO₂ emissions from existing fossil fuel infrastructures without additional abatement already exceed the remaining carbon budget for limiting warming to 1.5°C (50%)"*⁶⁹⁶

648. The financing of new fossil fuel projects therefore commits the world to future emissions – a "carbon lock-in" – for which there is no room in a 1.5°C reduction pathway, a conclusion drawn by both UNEP and the IPCC:

*"Investments in fossil fuel assets need to decline rapidly, because they work against the clean energy transition now and lock in GHG emissions for decades to come [...]"*⁶⁹⁷ (underlining added by legal counsel)

*"Finance for new fossil fuel-related assets lock in future GHG emissions that may be inconsistent with remaining carbon budgets and, as discussed above, with emission pathways to reach the Paris Agreement goals."*⁶⁹⁸ (underlining added by legal counsel)

649. The financing and facilitation by banks of new fossil fuel infrastructure therefore leads to a 'carbon lock-in' effect. As already discussed in the introduction of this summons, the carbon lock-in effect maintains the demand for fossil fuels and delays the transition to sustainable alternatives, as acknowledged by the Court of Appeal in the Shell case. In Chapter XIV.3.5, Milieudéfensie goes into the carbon lock-in effect and the findings of UNEP and the IPCC in that respect in greater detail.

650. Not only is too much financing going to existing and new fossil fuel projects (that increase the supply). There is also too much financing going to economic activities that lead to an excessive consumption of fossil fuels (and therefore increase demand).

⁶⁹⁵ Ibid, para. 15.3.3, p. 1567.

⁶⁹⁶ Exhibit MD-001, IPCC 2023, AR6, SYR, para. B.5.3, pp. 20.

⁶⁹⁷ Exhibit MD-147, UNEP 2022, 'Emissions Gap Report 2022', p. 67.

⁶⁹⁸ IPCC 2022, AR6, WGIII, para. 15.3.3, p. 1567 (see

https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf).

651. With regard to the excessive investments on both the supply and the demand side of fossil fuels (and the associated financing), reference is made to the findings of the International Energy Agency (IEA). The IEA has warned that the planned accumulated investments between 2023 and 2035 in the production of fossil fuels, fossil fuel electricity generation and infrastructure for end use are now 3600 billion dollars higher than the investments that are necessary according to the own IEA NZE scenario (a 1.5°C scenario):

*"Between 2023 and 2035, cumulative investments in fossil fuel supply, fossil-based power generation and end-uses are currently planned to be USD 3.6 trillion higher than in the NZE Scenario, despite current net zero emissions pledges. Much of this investment would be for assets with long lives in which operations would need to be curtailed or lifetimes shortened if the goal of returning the temperature increase to below 1.5 °C is to be achieved."*⁶⁹⁹

652. What is more, the excessive investments in economic activities for which there is no room within the 1.5°C goal – and the associated financing – increase the risk of dangerous climate change even further because those investments and financing are no longer available for the economic activities that are necessary to go through the sustainable climate transition.

653. The IPCC made it clear in this respect that the lack of financing for the sustainable climate transition is not the result of a global lack of financial resources. Globally there are enough financial resources, but they are not made sufficiently available, according to the IPCC:

*"Total investments in mitigation need to increase by around three and six times with significant gaps existing across sectors and regions (high confidence). The findings on still significant gaps and limited progress over the past few years to some extent seem to contradict the massive increase in commitments by financial institutions. As discussed in Section 15.6, the investment gap is not due to global scarcity of funds."*⁷⁰⁰ (underlining added by legal counsel)

X.5 CONCLUSION

654. In this chapter Milieudéfense has shown that banks like ING contribute to dangerous climate change (and thus to the consequences thereof) because they provide too much financing for greenhouse gas-intensive economic activities that lead to a quantity of greenhouse gas emissions into the atmosphere that cannot be reconciled with the 1.5°C target; and because, moreover, as a result thereof, too little financing is made available for the sustainable climate transition. Milieudéfense elaborated this twofold key role of banks, and explained that the role of banks in preventing climate change has been known for decades, and has been acknowledged by the sector as such.

655. What has been described above with regard to banks in general, also applies to ING. ING's climate policy also falls short, as will be demonstrated further on in this summons, and consequently ING has not sufficiently performed its key role. In the following chapters Milieudéfense will, against the factual background of the preceding chapters, substantiate the position that ING is acting tortiously with regard to the societal interests that Milieudéfense seeks to protect.

XI. THE LEGAL FRAMEWORK OF ASSESSMENT OF ING'S CLIMATE POLICY BEING

⁶⁹⁹ Exhibit MD-085, IEA 2023, 'Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update', pp. 150-151.

⁷⁰⁰ IPCC 2022, AR6, WGIII, para. 15.5.1, p. 1576 (see https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf).

TORTIOUS

XI.1 INTRODUCTION

656. On the basis of the preceding chapters it is clear that financial institutions like ING must play a role in helping prevent dangerous climate change. They must do so by establishing and implementing climate policy to reduce their greenhouse gas emissions in line with the 1.5°C target. If ING does not do so, it will be acting contrary to its societal duty of care on the basis of Article 6:162(2) DCC and on the basis of Article 3:296(1) DCC can be ordered to perform its legal obligation. Milieudefensie will set out in this chapter what framework of assessment applies to determining this societal duty of care to which ING is subject. The recent judgment of the Court of Appeal of The Hague in the Shell case will also be discussed.

XI.2 THE FRAMEWORK FOR ASSESSMENT UNDER ARTICLE 3:296 DCC AND ARTICLE 6:162 DCC

XI.2.1 The court order of Article 3:296 DCC

657. Article 3:296 DCC stipulates in the first paragraph that unless the contrary ensues from the law, the nature of the obligation or from a legal transaction, the individual who is obliged with regard to another person to give something, do something or refrain from doing something, is ordered to do so by the court on the claim of the entitled party. An addition is made in the second paragraph of this article that if someone is under some obligation pursuant to a condition or a time specification, can be made subject to a court order under that condition or time specification.

658. The essence of Article 3:296 DCC is that a legal obligation must be performed. It is Milieudefensie's task to demonstrate the existence of ING's legal obligation "to give something, do something or refrain from doing something". If that has been demonstrated and the obligation is breached by ING, or is at risk of being breached, the court must award Milieudefensie's demand and order ING to perform its legal obligation.

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.

XI.2.2 ING's societal duty of care of Article 6:162(2) DCC

660. The societal duties of care covered by Article 6:162(2) DCC are characterised by how closely they are associated with the circumstances of the case, i.e. their context-related character. This concerns unwritten standards, the content of which is not defined in advance by a subjective right that is acknowledged as such or a legal obligation that is described as such, and these standards must therefore be determined on a case-by-case basis, based on the concrete circumstances of the case.⁷⁰¹

661. This case revolves around the question whether ING, considering the background of its specific circumstances, has a legal obligation to take precautionary measures demanded by Milieudefensie to protect the interest that Milieudefensie is representing.

662. Whether ING is indeed subject to a legal obligations, must be determined by a weighing on the one hand of ING's interest to freely pursue its own interests with regard to its climate

⁷⁰¹ GS Onrechtmatige daad, art. 6:162 BW, aant. 3.1:3.1 and GS Onrechtmatige daad, art. 6:162 BW, aant. 6.1.4.1.

policy, and on the other the interest represented by Milieudefensie to remain indemnified against the (wrongful) consequences of that climate policy.⁷⁰² The justified expectations of ING and Milieudefensie can serve as the overarching criterion in this consideration.⁷⁰³ The societal duty of care entails that a party must weigh its own interests against those of others and must be led in this respect by “*what people can reasonably expect of each other in society*”.⁷⁰⁴

663. When applying this criterion in a specific case – aside from the concrete circumstances of that case – objective reference points can serve as sources of (or perspectives to supplement) societal standards of care.⁷⁰⁵ Such objective reference points can, for example, be found in jurisprudence, general principles of law, fundamental rights, legislation, soft law and science.⁷⁰⁶ The insight into possible sources of reference points as set out by A-G Valk in his Advisory Opinion with the judgment of the Dutch Supreme Court from 2020 regarding the repatriation of women who had travelled to joint ISIS, is helpful in this respect.⁷⁰⁷ With reference to, inter alia, the Advisory Opinion of P-G Langemeijer and A-G Wissink with the Urgenda judgment of the Dutch Supreme Court, A-G Valk stated that “*the court does [not] operate in a vacuum or elevate its subjective view on what is ‘right’ to law*” but “*seeks [or should seek] as much alignment as possible with objective references, with which the case to be decided can be compared*”.⁷⁰⁸ A-G Valk then mentions as ‘objective references’:

“[S]tatutory provisions [...] that do not directly apply to the case to be decided [...] The ‘Langemeijer correction’ as accepted by the Dutch Supreme Court in 1951 in the ‘Dentist’ case is only too familiar among jurists: the breach of a statutory standard that does not extend to protection of the injured party for the damage suffered by the injured party (and therefore, on the basis of the relativity requirement, will not itself lead to liability), can function as perspective when answering the question whether action has been taken with regard to the injured party in contravention of what according to unwritten law is deemed acceptable in society.”

“In the same sense treaty provisions can also have an effect in the duty of care criterion, even if it has no direct effect as referred to in Arts. 93 and 94 of the Dutch Constitution. A known example of this is the ‘indirect horizontal effect’ that can come from rights under the ECHR (written in relation to the ‘vertical relationship’ between government and citizen) in legal relationships between private parties.”

“Judgments of judicial instances (jurisprudence) function as an important reference point, in part against the background of the principle of legal unity. In a case like this one, in my opinion the case law of foreign judicial instances also provides a perspective of potential significance, in particular with regard to the countries around us, with a comparable social order and legal tradition.”

“Private regulations and other forms of soft law, in all forms and degrees, are eligible. The Urgenda case, in which the State was ordered to limit the emissions of greenhouse gases from the territory of

⁷⁰² GS Onrechtmatige daad, art. 6:162 BW, aant. 6.1.4.2. See in this sense, e.g., Asser/Sieburgh 6-IV 2019/56 and 75; and T.F.E. Tjong Tjin Tai, *RMTh* 2019, p. 27. With regard to this weighing of interests, see also the Advisory Opinion of deputy P-G Langemeijer and A-G Wissink, ECLI:NL:PHR:2019:887, with the judgment of the Dutch Supreme Court, 20 December 2019, ECLI:NL:HR:2019:2006, paras. 2.18 et seq.

⁷⁰³ GS Onrechtmatige daad, art. 6:162 BW, aant. 3.1:3.1 and 6.1.4.

⁷⁰⁴ Asser/Sieburgh 6-IV 2019/56 and Asser/Sieburgh 6-IV 2019/75.

⁷⁰⁵ GS Onrechtmatige daad, art. 6:162 BW, aant. 6.1.9.

⁷⁰⁶ Ibid See also Asser/Sieburgh 6-IV 2023/76 et seq.

⁷⁰⁷ Advisory Opinion of A-G Valk, ECLI:NL:PHR:2020:412, with the judgment of the Dutch Supreme Court, 26 June 2020, ECLI:NL:HR:2020:1148.

⁷⁰⁸ Advisory Opinion of A-G Valk, ECLI:NL:PHR:2020:412, with the judgment with the Dutch Supreme Court, 26 June 2020, ECLI:NL:HR:2020:1148, para. 6.1. A-G Valk uses the expression ‘objective references’ where Milieudefensie speaks of ‘objective starting points’ (the term that, e.g., the Court of Appeal of The Hague uses in the Shell case, see Court of Appeal of the Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2100, para. 7.2). In any event, the same thing is meant.

the Netherlands by at least 25% as at the end of 2020 relative to 1990 is an illustrative case in point. This reduction order based on Arts. 2 and 8 ECHR was, taking account of the assertions of the parties in the proceedings, in part based on widely shared insights from climate science and the international community.”⁷⁰⁹ (underlining added by legal counsel)

664. A-G Valk also made it clear that if societal standards of care cannot be interpreted (further) on the basis of objective reference points, when applying Article 6:162(2) DCC the court will have to rely more heavily on a case-bound weighing of interests. Jurisprudence (like the ‘Kelderluik’ case and the ‘Kalimijnen’ case) provide guidance for the weighing of interests to be made. In the words of A-G Valk:

“If and insofar as objective reference points for the (further) interpretation of unwritten standards of care are lacking, the court – partly in view of the prohibition on the denial of justice (Art. 13 General Provisions (Kingdom Relations) Act) – must rely on a weighing of the interests as these appear in the proceedings. The interpretation of the standard of care receives a highly case-specific character. The well-known factors of the ‘Kelderluik’ case function as a useful pattern for the reasoned weighing that the court is to carry out. In the ‘Kalimijnen’ case too, which the Court of Appeal of The Hague has taken as the starting point, the duty of care criterion had the character of a context-related weighing of interests.”⁷¹⁰

665. In this case, Milieudefensie is taking as the starting point for its claims against ING, that it has a legitimate expectation that ING’s policy will not lead to an adverse impact, or excessive adverse impact, of the interest represented by Milieudefensie in having a sustainable society (as specified in further detail in Chapter III.2.1). This starting point aligns with the weighing of interests that according to jurisprudence of the Dutch Supreme Court must be made when applying Article 6:162(2) DCC. In the above-mentioned ‘Kalimijnen’ case, the Dutch Supreme Court considered that when weighing the various interests of the polluters and the downstream users of the river, the interests of the latter have an exceptional weight since the downstream user “*may in principle expect that the river will not be excessively polluted by substantial discharges*”.⁷¹¹ Nieuwenhuis remarked that the “*legitimacy of this expectation*” does not lie in a comparison of the financial costs and benefits of the discharges, but in the belief that a river is intended for “*sustainable and common use*”.⁷¹²

666. In relation to climate change, Milieudefensie may therefore expect of ING that ING’s climate policy will not lead to an adverse impact, or in any event an excessive adverse impact, on the interest represented by Milieudefensie of present and future Dutch citizens to be protected against the enormous danger of a climate change of more than 1.5°C. There can be no doubt that this expectation is legitimate. Many objective reference points show that ING is subject to a societal duty of care to reduce its emissions, and these objective reference points, moreover, offer more than enough scope to determine what ING’s concrete obligations are under that societal duty of care.

667. Many of these objective reference points have already been discussed in the preceding chapters. An extensive explanation is provided in Chapters VII and VIII – based on, inter alia, climate science, international climate conventions and other instruments of international climate policy such as decisions of the COP – that climate change of more than 1.5°C undeniably leads to an (excessive) adverse impact on the interest that Milieudefensie seeks

⁷⁰⁹ Ibid, paras. 6.1 to 6.7.

⁷¹⁰ Ibid, para. 6.8.

⁷¹¹ Note of J.H. Nieuwenhuis with the judgment of the Dutch Supreme Court, 23 September 1988, ECLI:NL:HR:1988:AD5713, NJ 1989/743.

⁷¹² Netherlands Supreme Court, 23 September 1988, ECLI:NL:HR:1988:AD5713, para. 3.3.2.

to protect, in view of the gravity and scope of the danger involved in such climate change. Chapters IX and X – on the basis of, inter alia, UN initiatives and collaborations, expert reports, soft law (such as the UNGP and OECD Guidelines), legislation (such as the CSRD and CSDDD) and sectoral climate protocols – extensively show that companies, including banks like ING, play a very important role in both causing and countering dangerous climate change, and that consequently there have been for a long time already very widely supported societal insights into the precautionary measures that banks thus have to take.

668. A large part of these objective reference points have also been discussed in the Shell case, and the Court of Appeal of The Hague therefore (rightly) included many of them in its opinion that pursuant to Article 6:162(2) DCC, companies are subject to a societal duty of care to reduce their emissions, including Scope 3.⁷¹³
669. In addition to the objective reference points discussed in the preceding chapters, ING's legal obligation also follows from various additional reference points. These demonstrate not only that ING is subject to a societal duty of care, but – in line with the advisory opinion of A-G Valk (see para. 664) – also offer a framework for assessing how they are to be specifically interpreted for ING.
670. Below, Milieudefensie will discuss the additional reference points in further detail, starting with the doctrine of hazardous negligence and the 'Kelderluik' criteria encompassed therein. Milieudefensie will also go into the meaning of those reference points in the Shell case, and will make it clear that the Court of Appeal of The Hague did not include a number of reference points to a sufficient degree in its assessment as to whether Shell is bound by a concrete reduction percentage in the interpretation of its duty of care.

XI.2.3 Doctrine of hazardous negligence

671. The duty of care that Milieudefensie is holding ING to, goes back to the principle that ING under (in part unwritten) law should not create danger and/or allow danger to continue in its societal interactions, including failing to take sufficient precautionary measures to prevent the realisation of that danger ('hazardous negligence', or 'endangerment').⁷¹⁴
672. The doctrine of hazardous negligence, developed in jurisprudence and literature, offers an appropriate and usable assessment framework for determining whether ING, with its current climate policy does justice to its duty of care obligations under Article 6:162(2) DCC. The key point is the question whether ING, due to implementing an inadequate climate policy, is creating the great danger of a climate change of more than 1.5°C or allowing this great danger to continue, i.e. climate policy that contains insufficient precautionary measures to keep a reasonable chance of limiting climate change of a maximum of 1.5°C, or in any event climate policy of ING that is not making an adequate contribution to the precautionary measures that are necessary for this on a global scale.⁷¹⁵
673. In order to assess if certain behaviour is unlawful on account of the hazardous negligence that is exuded by such behaviour, the so-called trapdoor criteria, formulated by the Supreme

⁷¹³ Court of Appeal of The Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2100, paras. 7.1 to 7.57 and 7.67.

⁷¹⁴ See in a similar sense, inter alia: *Asser/Sieburgh 6-IV 2019/58*; and C.H.M. Jansen, *Onrechtmatige daad: algemene bepalingen* (Mon. BW nr. B45) 2009/21.

⁷¹⁵ *Ibid.*

Court in the ‘Kelderluik’ case, have been used in case law for decades.⁷¹⁶ Whether or not hazardous negligence breaches the societal standard of care is, according to case law and legal literature, determined by the extent of care or lack thereof on the part of the party causing the damage (in this case: ING) and the gravity of the hazard on the part of the injured party (in this case: Milieudéfensie). The (extent of) due care to be observed by the party causing the damage depends on the nature of said party’s behaviour and the onerousness of the precautionary measures to be taken. The hazard is assessed on the basis of the extent of the feared damage, the recognisability thereof and the likelihood that such damage will occur.⁷¹⁷

674. The ‘Kelderluik’ criteria were applied for the first time in relation to dangerous climate change in the Urgenda case. The district court of The Hague used the same criteria to assess what the extent of the due care to be observed by the state of the Netherlands should be, given the legitimate interests of Urgenda to remain protected against the danger linked to climate change and, in particular, to a dangerous climate change. Following the ‘Kelderluik’ criteria and the application and implementation thereof in later judgments of the Dutch Supreme Court on hazardous negligence, the district court mentioned five criteria that are also relevant and usable in this case. In the words of the district court (para. 4.63):

- (i) the nature and the scope of the damage caused by climate change;
- (ii) the knowledge and foreseeability of this damage;
- (iii) the likelihood that dangerous climate change will manifest itself;
- (iv) the nature of the behaviour (or the omissions) of the state and
- (v) the inconvenience of the precautionary measures to be taken;

these criteria should be applied with a view to the scientific state of the art, the available (technical) possibilities to take safety measures, and the cost/benefit ratio of the safety measures to be taken, according to the court.

675. After a substantive discussion of these criteria, the district court then came to the factual determinations and considerations that lead to an opinion of the district court that the Dutch state is guilty of hazardous negligence (para. 4.53 in conjunction with 4.63 et seq.) and was therefore in breach of its societal duty of care by not reducing its emissions enough (or having them reduced), so that the legitimate interests of Urgenda had been violated. In order to eliminate the unlawfulness of the hazardous negligence, the court subsequently ordered the state to realise the specific emission reductions which (as an interim step) on the basis of best scientific insights are at least required in order to prevent dangerous climate change.

676. Milieudéfensie believes that the district court thereby, in relation to the climate problem, formulated a legal standard that determines for similar cases what the degree of the care to be shown by the party causing the damage is, i.e. that the party causing the damage must apply emissions reductions that are at least necessary to be able to achieve the global goal, i.e. the preventing of dangerous climate change, to be determined in part by the circumstances of the case.

⁷¹⁶ Dutch Supreme Court, 5 November 1965, NJ 1966, 136 (the Kelderluik case) ECLI:NL:HR:1965:AB7079

⁷¹⁷ C.H. Sieburgh 2000, *Toerekening van een onrechtmatige daad*, Kluwer, 1 July 2000 p. 74.

677. In line with the district court's opinion in the Urgenda case, the district court of The Hague also applied the five aforementioned criteria in the Shell case. They are encompassed in, inter alia, the considerations of the district court on climate change and the consequences thereof⁷¹⁸ including in the Netherlands and the Wadden Sea region,⁷¹⁹ Shell's awareness thereof,⁷²⁰ Shell's CO₂ emissions,⁷²¹ Shell's control and influence,⁷²² the options for preventing dangerous climate change⁷²³ and how onerous the reduction demanded by Milieudefensie is for Shell.⁷²⁴
678. In appeal, the court of appeal of The Hague also based its judgment regarding Shell's duty of care, in part, on the 'Kelderluik' criteria. Although the court of appeal did not systematically review the case against the 'Kelderluik' criteria, it did determine that these criteria are an interpretation of the general standard of care under Article 6:162(2) DCC.⁷²⁵ These criteria are also clear in the considerations with which the court of appeal provided reasoning that Shell is obliged to reduce its emissions. In the words of the court of appeal:
- "Whether the social standard of care is breached depends on a variety of factors. The severity of the threat of a particular danger, the contribution to the creation of the danger and the capacity to contribute to the combating of the danger, are factors to be considered."*⁷²⁶
679. In its judgment, the court of appeal, moreover, extensively went into the plausibility, the foreseeability, the nature and the scope of the damage resulting from climate change ('Kelderluik' criteria (i) to (iii)), for which it has been established according to the court of appeal – in view of all of this – that this is *"the greatest issue of our time"*.⁷²⁷ The court of appeal also paid a lot of attention to the significance of the nature of the acts (and omissions) of companies (in this case Shell) and to the options for companies to take precautionary measures to counter climate change, in the light of which the court of appeal determines that *"[e]specially companies whose products have contributed to the creation of the climate problem and have it in their power to combating it, are obliged to do so vis-à-vis other inhabitants of the earth"*, and that therefore *"companies like Shell, which contribute significantly to the climate problem and have it in their power to contribute to combating it, have an obligation to limit CO₂ emissions in order to counter dangerous climate change."*⁷²⁸
680. The court of appeal, moreover, (rightly) also included other objective reference points that lead to comparable outcomes as the outcome when applying the 'Kelderluik' criteria. This includes things like, inter alia, soft law (like the UNGP and the OECD Guidelines) and the climate protocols for companies developed in UN context: these also indicate that companies have a responsibility to reduce their emissions, the content of which depends on the company's contribution to climate change and the company's options for countering climate change.⁷²⁹

⁷¹⁸ District Court of The Hague, 26 May 2021, ECLI:NL:RBDHA:2021:5337, para. 2.3.

⁷¹⁹ Ibid, paras. 4.4.6 . e.v.

⁷²⁰ Ibid, para. 4.4.20.

⁷²¹ Ibid, para. 4.4.5.

⁷²² Ibid, paras. 4.4.22 et seq.

⁷²³ Ibid, paras. 4.4.26 et seq.

⁷²⁴ Ibid, paras. 4.4.53 et seq.

⁷²⁵ Court of Appeal of The Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2100, para. 7.3.

⁷²⁶ Ibid, para. 7.24.

⁷²⁷ Ibid, specifically paras. 3.3 to 3.20, 7.6 to 7.17 and 7.25.

⁷²⁸ Ibid, specifically paras. 3.21 to 3.54, 7.26 and 7.27.

⁷²⁹ Ibid, e.g., paras. 7.20 to 7.23, 7.26, 7.28 to 7.46, 7.55 to 7.57.

681. Although the court of appeal therefore had rightly included a part of the ‘Kelderluik’ criteria (and other objective reference points) in its opinion that companies are subject to an obligation to reduce their emissions, the court of appeal did not consider the ‘Kelderluik’ criteria (and a large number of other objective reference points) when assessing the question whether Shell is bound by a concrete reduction percentage. From para. 7.67, the court of appeal narrowed its framework of assessment to the single criterion whether such a percentage appears from climate legislation or a consensus in climate science. When assessing the reduction percentage to be applied, the court of appeal failed to consider the relevant objective reference points to a sufficient degree and to make the necessary broad weighing of interests that is required on the basis of Article 6:162 DCC, and failed in this respect, *inter alia*, to attribute significance to the factor of “onerousness” as an important part of the ‘Kelderluik’ criteria.
682. Due to this narrowing of its consideration, the court of appeal of The Hague, contrary to the district court, did not consider, *inter alia*, the ‘Kelderluik’ criteria (and other objective reference points), or did not consider such sufficiently, when answering the question whether any concrete reduction percentage can be required of Shell. The court of appeal’s interpretation deviates from the interpretation that Milieudefensie believes should be given to Article 6:162(2) DCC, and which appears, e.g., from the previously mentioned advisory opinion of A-G Valk (see Chapter XI.2.1). After all, A-G Valk concluded that when applying Article 6:162(2) DCC, significance should precisely be given to statutory provisions (even if they do not apply directly to the case to be decided), convention provisions, soft law (“*in all forms and degrees*”) and jurisprudence (see para. 663). In addition, he concluded that he, if on basis thereof, a (further) interpretation of a standard of care is not possible, the weighing of the court does not end there. The court will then have to rely upon a case-bound weighing of interests, whereby jurisprudence (such as the ‘Kelderluik’ case and the ‘Kalimijnen’ case) then “*functions as a useful pattern for the reasoned weighing that the court is to carry out*” (see para. 664).
683. It is therefore clear to Milieudefensie that this Court, when setting concrete obligations for ING’s legal duty, cannot rely only on climate legislation and climate science consensus. When establishing concrete obligations for this legal duty, the Court could, according to the established interpretation of Article 6:162(2) DCC be able to (and must) find guidance by means of other objective reference points, including jurisprudence, climate conventions, international legal principles, human rights law and soft law, including climate protocols relating to the responsibility of companies and financial institutions. These reference points were discussed in the previous chapters and will be elaborated in the following chapters.
684. In particular, Milieudefensie wants to emphasise that the following also has important significance with regard to establishing concrete obligations for ING’s legal duty:
- (i) The ‘Kelderluik’ criteria, in particular criterion (v) concerning the onerousness of the measures to be taken by ING in relation to the seriousness and nature of the danger of climate change. In Chapter XII, Milieudefensie will apply the endangerment criteria to ING, and show that implementing an inadequate climate policy entails that ING is acting in a manner that constitutes hazardous negligence, so that ING is bound to take the demanded climate measures.
 - (ii) The precautionary principle, the CBDR principle and the principle of intergenerational

equity, as these follow from various (climate) conventions and widely supported expectations on the role of companies when countering climate change. These principles also support the view that ING is bound to take the concrete climate measures that Milieudefensie is demanding of ING. Milieudefensie will discuss the more specific meaning of the aforementioned principles when determining ING's concrete obligations in relation to its legal duty in Chapter XI.2.5.

XI.2.4 Horizontal effect of human rights

685. As also follows from Chapter XI.2.1 – in addition to the above-discussed doctrine of hazardous negligence – human rights law also specifies ING's duty of care under Article 6:162(2) DCC.

686. Under Dutch case law, (indirect) horizontal effect has been allocated to the ECHR on a large scale via open standards of private law such as the societal standard of care of Article 6:162 of the Dutch Civil Code.⁷³⁰ This way, the ECHR also colours the duty of care which private individuals and legal entities have towards each other. The following quotation of Prof. A.S. Hartkamp, LL.M, strikingly represents why this horizontal effect exists and why it is important that it exists:

*"[The] values embodied in the fundamental rights are important to society as a whole that it is desirable that such rights can also, that is, to a certain extent, be invoked by citizens in their relationship with other citizens, including associations and other organisations of a private law nature. This corresponds with today's reality in which these organisations are able to exert such legal, economic or actual control over individuals that the need for protection against such control is comparable to the need for protection against the control exerted by public organisations."*⁷³¹

687. Hartkamp indicates that certain private legal entities have such legal, economic or actual control over (the fate of) individuals that individuals have to be protected against such control in a similar way as they are protected against the control over these individuals by public organisations such as the State. Individuals are increasingly being confronted with private law organisations which possess considerable power and which determine their living conditions and circumstances to a significant degree. It is thus no longer only governments which are in a position of power with regard to citizens.

688. The societal development which this trend specifically causes – and to which explicit reference is made in this framework – is the phenomenon of globalisation.⁷³² This development is also the basis of the work of a prominent author in the area of commercial enterprises and human rights, Prof. Cees Van Dam. He aptly describes the relationship between globalisation and the increasing attention for human rights with the words *"Trade has been globalised – justice not yet"*.⁷³³ Whereas constitutional rights were once established to protect individual citizens against the state as authority, inter alia as a result of the aforementioned globalisation, multinationals, in particular, are, in his opinion, now equally powerful societal actors.⁷³⁴

⁷³⁰ Asser/Hartkamp 3-I 2023/226-231 (*Europees Recht en Nederlands Vermogensrecht*) with further references to the relevant jurisprudence and literature.

⁷³¹ Asser/Hartkamp 3-I 2023/226 (*Europees Recht en Nederlands Vermogensrecht*).

⁷³² See in the context of the European Convention on Human Rights: R. Nehmelman and C.W. Noorlander, *Horizontale werking van grondrechten* (Handboeken staats- en bestuursrecht), Deventer: Kluwer 2013, p. 316.

⁷³³ C. Van Dam, 'Onderneming en mensenrechten' Speech University of Utrecht, The Hague: Boom Juridische uitgevers, 2008, pp. 17 et seq.

⁷³⁴ Ibid, p. 24.

689. The application of the (indirect) horizontal effect of human rights in Dutch private law in general and in relation to the interpretation of the unwritten standard of care of Article 6:162(2) DCC in particular, is, in view of the above, of great importance in relation to the protection of human rights. It is these fundamental rights that Milieudefensie wishes to protect in these proceedings and it is therefore important that ING's duty of care is interpreted in a manner that actually protects these fundamental rights in a practical and effective manner (as required by Articles 6 and 13 ECHR).

690. That liability law is of great importance in relation to protecting human rights and that it must also provide this protection, including in horizontal situations, is evident. Van Dam writes:

*"Obligations that are incumbent upon the State on the basis of the ECHR, can have a horizontal effect (between citizens and companies). National courts are obliged to protect convention rights in horizontal relationships as well. They do so by interpreting liability law, in particular the corresponding duties of care, in such way that the fundamental rights of the injured party are adequately protected. If the courts fail to do so, they are in breach of the ECHR as a body of the state."*⁷³⁵

691. Elsewhere, Van Dam says:

*"It is therefore the task of the State to protect fundamental rights, inter alia by means of liability law, that has consequently become a part of the constitutional tapestry of a state based on the rule of law."*⁷³⁶

692. Human rights, and the horizontal effect thereof, are of great importance when interpreting ING's duty of care in relation to dangerous climate change. In the Urgenda case, the court of appeal sharpened the extent of due care to be observed by the State by (inter alia) ruling that insufficient emissions reductions, required to prevent dangerous climate change, is a breach of the duty of care directly ensuing for the State of the Netherlands from the right to life and a peaceful family life, as laid down in Articles 2 and 8 ECHR respectively.⁷³⁷ The Dutch Supreme Court affirmed this opinion of the court of appeal.⁷³⁸

693. Human rights were also attributed a lot of weight in the Shell case. At first instance, the District Court used human rights law, and in particular Articles 2 and 8 ECHR, to interpret the unwritten standard of care.⁷³⁹ The Court of Appeal also aligns with these human rights to interpret the standard of care to which Shell (and other companies) are subject in relation to dangerous climate change.⁷⁴⁰ The Court of Appeal leaves no room for misunderstanding that this resulted in an obligation for companies to reduce their emissions:

"For the court, there is no doubt that the climate problem is the greatest issue of our time. The threat posed by climate change is so great that it could be life-threatening in several places on earth and will start to have a profound and negative impact on human and animal existence in many other places. Climate change damages the rights protected by Articles 2 and 8 ECHR, both in the Netherlands and abroad, and will damage them even further. Those rights are also decisive for the interpretation of the social standard of care and for answering the question of what can be required of Shell, as a large and international company, under that standard. [...]"

⁷³⁵ Van Dam, *Aansprakelijkheidsrecht* (2023), 820-1.

⁷³⁶ Van Dam, *Aansprakelijkheidsrecht* (2023), para. 107.

⁷³⁷ Court of Appeal of The Hague, 09 October 2018, ECLI:NL:GHDHA:2018:2591, paras. 40 et seq.

⁷³⁸ Dutch Supreme Court, 20 December 2019, ECLI:NL:HR:2019:2006, paras. 5.2.1 et seq.

⁷³⁹ District Court of The Hague, 26 May 2021, ECLI:NL:RBDHA:2021:5337, para. 4.4.9 et seq.

⁷⁴⁰ Court of Appeal of The Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2100, paras. 7.6. et seq.

In summary, the court of appeal is of the opinion that companies like Shell, which contribute significantly to the climate problem and have it within their power to contribute to combating it, have an obligation to limit CO2 emissions in order to counter dangerous climate change, even if this obligation is not explicitly laid down in (public law) regulations of the countries in which the company operates. Companies like Shell thus have their own responsibility in achieving the targets of the Paris Agreement.”⁷⁴¹

694. To further interpret these human rights responsibilities, both the district court and the court of appeal referred to the effect of soft law under Article 6:162(2) DCC, in particular that of the UNGP and the OECD Guidelines discussed in Chapter IX.3.⁷⁴² The court of appeal came to the following conclusion in this respect:

“Especially companies whose products have contributed to the creation of the climate problem and have it in their power to contribute to combating it are obliged to do so vis-à-vis other inhabitants of the earth, even when (public law) rules do not necessarily compel them to do so. This follows from the instruments discussed above, including the OECD guidelines and the UNGP, to which Shell has subscribed. Those instruments place responsibility for protection against dangerous climate change also on (large) companies and call on them to take appropriate measures themselves to counter dangerous climate change.”⁷⁴³

695. In Chapter XIII Milieudefensie will apply the human rights framework – in part on the basis of the UNGP and the OECD Guidelines – to ING, and explain that implementing an inadequate climate policy entails that ING is breaching its human rights responsibilities.

XI.2.5 Relevant legal principles

XI.2.5.1 Legal principles as benchmarks for ING’s contribution to the global climate task

696. As follows from Chapter XI.2, the societal standard of care to which ING is subject must be determined as much as possible on the basis of objective reference points, such as general legal principles, fundamental rights, statute provisions, treaty provisions, soft law, science and jurisprudence.
697. The standard of care applicable to ING should consequently not only be determined by the above-discussed doctrine of hazardous negligence and the (horizontal effect of) human rights. All relevant objective reference points must be involved in the assessment of ING’s duty of care, whereby they must be viewed and weighed in conjunction with each other.
698. Various legal principles are of great importance for ING’s societal duty of care. These legal principles – viewed in conjunction with other relevant reference points like the onerousness criterion under the doctrine of hazardous negligence – not only confirm that ING is bound to contribute to the globally necessary emissions reductions, but also form decisive criteria for the minimum content and scope thereof to be required of ING. Put differently, they provide criteria with which the specification of the climate measures to be taken by ING can be reasoned, found and determined in line with the legal obligation to which ING is subject (including determining specific reduction percentages on the road to net zero emissions in 2050).

⁷⁴¹ Ibid, paras. 7.25 and 7.27.

⁷⁴² Ibid, paras. 7.18 et seq. and District Court of The Hague, 26 May 2021, ECLI:NL:RBDHA:2021:5337, paras. 4.4.11 et seq.

⁷⁴³ Ibid, para. 7.26.

699. Milieudefensie will explain below what legal principles are concerned, what legal bases they are based upon, and what decisive criteria they provide to assess by what minimum climate measures ING is bound. Milieudefensie will explain shortly after that in what manner these principles must be applied to the (specification of) ING's societal duty of care.

XI.2.5.2 The precautionary principle

700. As has been set out above, this case concerns ING's societal duty of care to take sufficient precautionary measures to prevent or limit a danger that it contributed to and helps to maintain, in this case dangerous climate change. The key principle that this obligation is based on – the precautionary principle – is already encompassed in the essence of the doctrine of hazardous negligence (see Chapter XI.2.3), but also follows from various (including specific climate-related) sources.
701. The importance and the significance of the precautionary principle appears from, inter alia, Article 3(3) of the UN Climate Convention, from various international (environmental) conventions and from the Treaty on the Functioning of the European Union (see Chapter VI.6.3), the support for global temperature goals by the EU since 1996 (see Chapter VII.2.2), from the human rights frameworks for companies that demand precautions to prevent environmental and human rights violations (including climate change) by companies (Chapter IX.3) and from various position papers of UNEP FI, which since 1996 are also explicitly geared to the necessary precautions of financial institutions to counter climate change (see Chapters X.3.3 and X.3.4).
702. Milieudefensie also explained, on the basis of climate science, precisely why in the case of climate change the precautionary principle is of great importance. Climate science makes it clear that the consequences and risks of climate change are already considerable and increase with every fraction of further warming. In addition, every fraction of further warming increases the risk of passing tipping points in the climate system (see Chapter VIII). It is therefore necessary to apply an approach based on the precautionary principle when determining and interpreting ING's societal duty of care.
703. The above-mentioned forms of the precautionary principle do not stand alone. Other sources also offer objective reference points on the basis of which the precautionary principle must be involved in the determining and interpretation of ING's societal duty of care.
704. In the first place, Milieudefensie refers to the ECHR (which – as discussed in the previous chapter – also has an effect in a broader sense under Article 6:162 DCC), and in particular the manner in which the ECHR is interpreted by the ECtHR. According to the ECtHR, in case of a sufficiently realistic chance of an adverse impact on the health of citizens (as in the case of dangerous climate change, the precautionary principle results in an obligation to protect citizens against such adverse impacts, even if there is not yet any absolute certainty regarding the causal link between the act (or omission) that is causing damage and the (threatened) damage.⁷⁴⁴ The ECtHR called upon case law of the International Court of Justice and referred to the codification of the precautionary principle in EU law.⁷⁴⁵

⁷⁴⁴ ECtHR, 27 January 2009, AB 2009/285 (*Tatar/Romania*) ECLI:NL:XX:2009:BIO380. See also ECtHR, 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020, paras. 439 to 444.

⁷⁴⁵ T. Barkhuysen & F. Onrust, 'De betekenis van het voorzorgsbeginsel voor de Nederlandse (milieu)rechtspraak', in: M.N. Boeve & R. Uylenberg (ed.), *Kansen in het Omgevingsrecht. Opstellen aangeboden aan prof. Mr. N.S.J. Koeman*, Groningen: Europa Law Publishing 2010, p. 62.

705. In its case law the ECtHR also refers to the Rio de Janeiro declaration on the Environment and Development of 1992, which the UN General Assembly made part of the ‘Earth Summit’ (at which time the UN Climate Convention was signed).⁷⁴⁶ The precautionary principle was laid down in principle 15 of this declaration.⁷⁴⁷
706. The 1992 Earth Summit in Rio de Janeiro is not only relevant for those reasons. In the framework of the Earth Summit (and the instruments established there, like the UN Climate Convention and the Rio de Janeiro declaration), financial institutions also subscribed to the precautionary principle in 1992 (see Chapter X.3.3).
707. In addition, principle 15 of the Rio de Janeiro declaration was a starting point for a wider recognition of the meaning of the precautionary principle for companies. This recognition appears not only from the OECD Guidelines and the UNGP (see Chapter IX.3), but also from the fundamental principles of the UN Global Compact. ING also subscribes to these.⁷⁴⁸
708. Principle 7 of the UN Global Compact – that leads back to Article 15 of the Rio de Janeiro declaration⁷⁴⁹ – reads: *“Businesses should support a precautionary approach to environmental challenges”*. According to the UN Global Compact, this means that companies may not cause any unacceptable risks by postponing precautionary measures due to scientific uncertainties.
709. According to the UN Global Compact, what is to be deemed an ‘unacceptable’ risk requires a consideration that goes beyond purely scientific and/or economic considerations. The societal acceptability or unacceptability of risks must also be included in the consideration. This means that precaution is required if scientific uncertainty leads to risks that are unacceptable for society.⁷⁵⁰
710. The UN Global Compact clarifies in this respect that precaution not only forces a company to make a systematic *estimate* of the risks of scientific uncertainties, but also to the *controlling* of these risks (and communication on these risks):
- “Precaution involves the systematic application of risk assessment, risk management and risk communication.”⁷⁵¹*
711. The precautionary principle offers a normative framework for dealing with scientific uncertainties in case of risks, such as uncertainties regarding the possible effects that might occur, the causes of those effects, the time span within which the effects may arise and the measures to be taken to prevent those effects. The company will not be able to wait for scientific certainty and in case of absence of that scientific certainty, will have to take precautionary measures that can be seen as acceptable to society. These will more likely have to be farther-reaching rather than less farther-reaching measures, as follows from the judgment of the Dutch Supreme Court in the Urgenda case:

⁷⁴⁶ Ibid.

⁷⁴⁷ Exhibit MD-175, UN General Assembly, ‘Rio .

⁷⁴⁸ Exhibit MD-176, UN Global Compact, ‘Company Information, ING Group’ (print-out from website 27 February 2025). See also footnote **Error! Unknown switch argument..**

⁷⁴⁹ Exhibit MD-177, UN Global Compact, ‘The Ten Principles of the UN Global Compact, Principle 7: Environment’ (print-out from website 27 February 2025).

⁷⁵⁰ Ibid.

⁷⁵¹ Ibid.

*"It is therefore possible that dangerous climate change will occur even with less global warming and a lower concentration of greenhouse gases, for example because a tipping point is reached or because ice melts at a higher rate [...]. The precautionary principle therefore means that more far-reaching measures should be taken to reduce greenhouse gas emissions, rather than less."*⁷⁵²

712. The precautionary principle must also be applied to possible scientific uncertainty on the percentage reduction contribution that a company must make to limit that collective threat.⁷⁵³ In case of such uncertainty, the company 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.
713. As far as Milieudéfensie is concerned there is no (scientific or other kind of) uncertainty regarding the danger of climate change, regarding ING's contribution to this, or regarding the answer to the question whether the measures demanded by Milieudéfensie are an appropriate contribution for ING to the only effective remedy against dangerous climate change: an absolute global emissions reduction. These points have been explained in Chapters VIII to X, XII, XIV and XV.
714. But even if such uncertainty were to be deemed to exist, ING is bound on the basis of its societal duty of care to take the demanded climate measures. It ensues from the precautionary principle that ING will in such case have to take measures to limit the risk affiliated with such uncertainty to a level that is deemed acceptable to society.

XI.2.5.3 The CBDR principle

715. In addition to the precautionary principle, the principle of *Common But Differentiated Responsibilities and Respective Capabilities* (the CBDR principle) also forms an important (legal) principle that – as objective reference point – assists in interpreting ING's societal duty of care under Article 6:162(2) DCC. The CBDR principle not only confirms that ING is bound to contribute to the globally necessary emissions reductions, but also provides decisive criteria for the minimum content and scope thereof to be required of ING.
716. Reference has been made several times in the preceding chapters to the bases and the purport of the CBDR principle. The discussion mentioned, inter alia, that the CBDR principle is rooted in Articles 3.1 and 4.1. of the UN Climate Convention (see Chapter VI.6.3) and in Articles 2.2, 4.3 and 4.19 of the Paris Agreement (see Chapter VII.3.2.1). Milieudéfensie has also explained that the CBDR principle under the UN climate regime also assists in interpreting the climate responsibilities of companies (see Chapter IX.2).

⁷⁵² Dutch Supreme Court, 20 December 2019, ECLI:NL:HR:2019:2006, para. 7.2.10.

⁷⁵³ The precautionary principle has special weight when determining the (nature and scope) of the contribution of an individual company to the limiting of a collective threat, like dangerous climate change. Science, by its nature, cannot provide any conclusive answer regarding to that contribution, because when determining the contribution, non-scientific criteria will unavoidably also have to be considered (including the legal principles discussed in this Chapter XI.1, as applied to the individual circumstances of the company). The precautionary principle prevents that the specification of the nature and scope of the individual contribution of the company can be permanently postponed, including because there is and will remain a specific degree of inherent uncertainty regarding the measures to be taken, and because the specification of the individual contribution of the company by its nature does not demand a purely scientific approach. P-G Langemeijer and A-G Wissink have the following to say on that approach in their Advisory Opinion with the Dutch Supreme Court's judgment in the Urgenda case: *"The division of the reduction efforts needed worldwide cannot be defined in terms of physics, but it can be reasoned using broad, common normative premises that are embedded in the UNFCCC, for example."* Advisory Opinion of deputy P-G Langemeijer and A-G Wissink, ECLI:NL:PHR:2019:887, with the judgment of the Dutch Supreme Court, 20 December 2019, ECLI:NL:HR:2019:2006, paras. 6.8.

717. As has been explained in greater detail in those chapters, the CBDR principle entails that although the climate task is a common responsibility of various actors, these actors have various individual (shared) responsibilities in this respect. The differences give expression to the equity principle where an individual actor has a greater responsibility the more such actor (i) has a larger share in the causes of climate change and/or (ii) a greater (e.g. economic) capacity to help limit climate change. According to the CBDR principle, the starting point is that a proportionately greater responsibility lies with actors from the more industrialised, developed (Annex I) countries.⁷⁵⁴ It is for this reason that the UN Race to Zero, when determining the appropriate “fair share” of an individual actor states that “many actors in Race to Zero can and must go beyond 50% of emissions reductions by 2030, and must achieve an end state net zero well before 2050” (see Chapter IX.2).
718. The relevance of the CBDR principle has also been recognised in climate cases, such as in the judgment of the ECtHR in the *KlimaSeniorinnen* case.⁷⁵⁵ As appears from this judgment, the CBDR principle is first of all important for determining that individual actors have a legally relevant (individual) shared responsibility in solving the (collective) problem of climate change. Milieudefensie goes into this in detail in the discussion regarding the effectiveness of Milieudefensie’s demands in Chapter XVI.3.
719. There can be no doubt that the CBDR principle also has an effect in the specification of the societal standard of care of Article 6:162(2) DCC, in view of the importance thereof in the UN Climate Convention the Paris Agreement and the UN climate protocols for non-state actors, in which the CBDR principle is also applied to companies and financial institutions. It follows, moreover, from the meaning that the district court, the court of appeal and the Dutch Supreme Court attributed to the CBDR principle in the *Urgenda* case. When determining the concrete reduction percentage to be realised by the State, these judicial instances considered that the Netherlands is one of the richest countries, has a relatively large amount of emissions per capita and consequently has a greater responsibility than average to reduce emissions. According to these instances, the State must at least maintain the average emissions reduction level that applies to the group of developed (Annex I) countries as a whole. This is clearly expressed in the following consideration of the court of appeal of The Hague (which was supported in the appeal to the Dutch Supreme Court by P-G Langemeijer and A-G Wissink):⁷⁵⁶

*The State has furthermore argued that the emissions reduction percentage of 25-40% in 2020 is intended for the Annex I countries as a whole, and consequently cannot be taken as the basis for the emissions reduction which an individual Annex I country like the Netherlands would have to realise. The State has not, however, substantiated why a lower emissions reduction percentage should apply for the Netherlands than for the Annex I countries as a whole. This is not logical, based on a division pro rata to the GDP per head of the population, which has, inter alia in the Effort Sharing Decision of the EU, been taken as the basic principle in the division of the emissions reduction obligation of the EU over the Member States [...] It may be assumed that the GDP per head of the population of the Netherlands is among the highest of the Annex I countries, and it is in any event above the average of those countries [...] It can therefore be assumed that what applies to the Annex I countries as a whole, should also at least apply to the Netherlands.*⁷⁵⁷

720. Therefore, when establishing the (concrete obligations of the) societal duty of care of ING,

⁷⁵⁴ See footnote **Error! Unknown switch argument.**

⁷⁵⁵ ECtHR, 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020, paras. 442 and 478.

⁷⁵⁶ Advisory Opinion of Deputy P-G Langemeijer and A-G Wissink, ECLI:NL:PHR:2019:887, with the judgment of the Dutch Supreme Court, 20 December 2019, ECLI:NL:HR:2019:2006, paras. 4180-4183.

⁷⁵⁷ Court of Appeal of The Hague, 09 October 2018, ECLI:NL:GHDHA:2018:2591, paras. 60.

justice must be done to the CBDR principle. Milieudefensie will explain in Chapter XIV.3.1 why ING is subject to a greater than average responsibility, in view of (i) its (historical and current) share in causing climate change and (ii) its large capacity for change.

721. It is partly due to this circumstance that when specifying ING's reduction task, it must be assessed to what degree the (scientific or other) insights used (like global or sectoral percentage reduction scenarios) can be reconciled with the CBDR principle. In that respect, it is very important that such insights in many cases do *not* take account of the CBDR principle.
722. For example, the IPCC acknowledges that most reduction scenarios are based on the principle of cost effectiveness.⁷⁵⁸ The typical outcome of these scenarios is therefore that most emissions reductions take place in those countries and sectors where they can be realised the cheapest. A result of this is that these scenarios rely to a great degree on emissions reductions in developing countries, and the developed (Annex I) countries are disproportionately spared. They thus place the greatest burdens with the developing countries, even though historically they contributed less to the climate problem and also have a lesser (economic) capacity for change than the developed (Annex I) countries. The IPCC therefore indicated that the scenarios do not take account of what the IPCC calls 'equity', i.e. the division of the global reduction task in accordance with, inter alia, international conventions such as the UN Climate Convention and the Paris Agreement, and the CBDR principle laid down therein.⁷⁵⁹ These scenarios thus cannot be reconciled with the CBDR principle, that prescribes that precisely the developed (Annex I) countries must take the lead with regard to the climate task. This also has consequences for companies that primarily operate in those developed countries.
723. Companies and financial institutions that are part of the economies of the developed (Annex I) countries must also take the lead in relation to the climate approach as the economies they form part of, as also appears from the climate protocols for non-state actors. The starting point is therefore that a company that is based in an Annex I country and in particular provides its products and services in Annex I countries, is deemed to have a greater responsibility for the climate task and is deemed to have above-average knowledge, skill and (financial) transition capacity. The latter applies, inter alia, because its clients and other business relations in these rich countries also have a larger transition capacity. This means that such a company (together with the aforementioned clients and business relations) can and will have to go through the transition required for the climate task at an accelerated pace.
724. In the Emissions Gap Report of 2023, UNEP underscores that a fair division of efforts is essential for a successful implementation of the Paris Agreement.⁷⁶⁰ According to UNEP, the CBDR principle entails that countries with a greater transition capacity and a greater historical responsibility for emissions must take more ambitious and faster climate measures, but model-based calculations do not sufficiently take this into account. If the CBDR principle were to be taken into account, a greater effort would be placed with developed countries

⁷⁵⁸ IPCC 2022, AR6, WGIII, Ch. 3 under 3.2, pp. 3-12 to 3-15 (see https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf).

⁷⁵⁹ Ibid. With regard to the interpretation of the term 'equity' see Exhibit MD-050, IPCC 2022, AR6, WGIII, TS, p. 36. The IPCC clarifies there, inter alia, that interpretation of the principles of equity is important for the acceleration of the global reduction task: "*Equity can be an important enabler, increasing the level of ambition for accelerated mitigation (high confidence).*"

⁷⁶⁰ Exhibit MD-018, UNEP 2023, 'Emissions Gap Report 2023', p. 34.

and their economies, and therefore also with the companies operating in these countries as part of those economies.⁷⁶¹

725. The shortcoming in (the model calculations for) reduction scenarios has not gone unnoticed. The International Energy Agency (IEA) takes account of the above findings in its modelling. In its NZE scenario of 2023 (that is in part the basis of the climate measures that Milieudefensie is demanding of ING; see Chapter XIV) the IEA took account of the CBDR principle.⁷⁶² The IEA speaks in this respect of a difference in the pace of reduction between ‘advanced economies’ (whereby the IEA means OECD countries)⁷⁶³ and ‘emerging markets and developing economies’ or ‘EMDEs’ (non-OECD countries), which leads to the OECD countries in this critical decade having to reduce their emissions almost two times faster than non-OECD countries.⁷⁶⁴ The meaning of this for ING will be explained in Chapter XIV.3.

XI.2.5.4 The principle of intergenerational equity

726. In addition to the above-discussed precautionary principle and CBDR principle, Milieudefensie refers to the principle of ‘intergenerational equity’ as an important legal principle that is in part decisive for finding and determining the societal standard of care to which ING is subject under Article 6:162(2) DCC.
727. Just like the precautionary principle and the CBDR principle, the principle of intergenerational equity also finds its legal basis in various sources already discussed in this summons. Milieudefensie refers in this respect to the UN Climate Convention (see Chapter VI.6.2) and to the Paris Agreement (see Chapter VII.3.2.1), that codify intergenerational equity as a principle to be respected by the contracting states.
728. The principle of intergenerational equity goes back to the UN World Commission on Environment and Development (also known as the Brundtland committee), that defines the concept of sustainable development as follows in the well-known report “Our Common Future” of 1987:

“Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁷⁶⁵

729. Following this development, in addition to the UN Climate Convention and the Paris Agreement, other sources of international law confirm the principle of intergenerational equity. For instance, this principle has also been enshrined in the Charter of Fundamental Rights of the European Union (close of preamble) and in the Aarhus Convention concerning access to information, a say in decision making and access to the courts relating to environmental matters (preamble, seventh paragraph). Moreover, in 2021, the UN Human Rights Council adopted Resolution 48/13, in which it was established that the right to a clean, healthy and sustainable living environment is a fundamental human right and that climate change is one of the greatest threats to the human rights of present and future generations,

⁷⁶¹ Ibid.

⁷⁶² Exhibit MD-085, IEA 2023, ‘Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update’, p. 59. The IEA speaks of ‘equity’, just like the IPCC (see footnote **Error! Unknown switch argument.**).

⁷⁶³ Ibid, p. 213. The IEA uses this term to refer to the OECD countries and Bulgaria, Croatia, Cyprus, Malta and Romania.

⁷⁶⁴ Ibid, p. 59, Box 2.1, *Integrating equity into the NZE Scenario design*.

⁷⁶⁵ Exhibit MD-178, UN World Commission on Environment and Development 1987, ‘Our Common Future’ (selected pages), part I, Chapter 2.I, para. 1.

including the right to life.⁷⁶⁶

730. The relationship between the principle and climate change was already made in an international context in 1988. In that year, in Resolution 43/53, the UN General Assembly called for the protection of the climate “*for present and future generations*”, recognising climate change as “*common concern of mankind*”, “*the effects of which could be disastrous for mankind if timely steps are not taken at all levels*”.⁷⁶⁷
731. That the principle of intergenerational equity also has significance in civil law cases is made evident in the Urgenda case, in which the interests of future generations are considered when determining and establishing the state’s duty of care.⁷⁶⁸
732. Other judicial instances have also considered the principle of intergenerational equity in their assessment of climate cases. An important judgment in this respect is that of the German Constitutional Court (*Bundesverfassungsgericht*) in the Neubauer case, in which it held that the emissions reductions up to 2030 must be carried out by the German government with great haste and urgency. This is because they otherwise place a disproportionate burden on younger generations:
- “Provisions that allow for CO2 emissions in the present time constitute an irreversible legal threat to future freedom [...] One generation must not be allowed to consume large portions of the CO2 budget while bearing a relatively minor share of the reduction effort if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to comprehensive losses of freedom.”*⁷⁶⁹
733. According to the German Constitutional Court, the principle of intergenerational equity therefore has relevance when determining the reduction obligation to 2030 (and after).
734. In the Belgian Climate Case, the Brussels Court of Appeal also explicitly considered the principle of intergenerational equity in its decision that the Belgian federal state and the Brussels and Flemish region in 2030 must realise an emissions reduction of at least 55%. The Court of Appeal deemed this reduction (as a minimum measure) necessary to protect future generations against the risks that they would otherwise be exposed to, e.g. because a part of the territory available to them would be uninhabitable due to rising sea levels and floods.⁷⁷⁰ The Court of Appeal also considered that these future generations will suffer damage due to the inadequate climate policy of the Belgian government, including the (intangible) damage due to the awareness of the inadequacy of that policy in protecting the interests of future generations.⁷⁷¹ The Court of Appeal took into account that the inadequate climate policy of the Belgian government – that postpones the reduction task and up to 2030 has insufficient emissions reduction targets – leads to an excessive reduction of the remaining carbon budget, with as a result that future generations might be confronted with the need to reduce their greenhouse gas emissions faster and without an appropriate transition. This leads to an

⁷⁶⁶ Exhibit MD-179, UN Human Rights Council, Resolution 48/13, p. 2.

⁷⁶⁷ Exhibit MD-180, UN General Assembly, Resolution 43/53.

⁷⁶⁸ District Court of The Hague, 24 June 2015, ECLI:NL:RBDHA:2015:7145, para. 4.89 and Court of Appeal of The Hague, 9 October 2018, ECLI:NL:GHDHA:2018:2591, para. 37.

⁷⁶⁹ BVerfG, 24 March 2021, ECLI:DE:BVerfG:2021:rs20210324.1bvr265618, para. 192. See also Exhibit MD-181, BVerfG 24 March 2021, Neubauer, Official English translation.

⁷⁷⁰ Cour d’Appel Bruxelles, 30 November 2023, 2021/AR/15gs 2022/AR/737 and 2022/AR891, para. 244. See also Exhibit MD-182, Cour d’Appel Bruxelles 30 November 2023, Klimaatzaak, from the Unofficial Dutch translation.

⁷⁷¹ Ibid, paras. 266, 268 and 283.

undermining of the human rights of these generations.⁷⁷²

735. The Brussels Court of Appeal – just like the German Constitutional Court – thus attributes relevance to the principle of intergenerational equity in determining the reduction obligation to 2030 (and after).
736. According to the ECtHR, the principle of intergenerational equity has great significance, certainly in the context of climate change. In its *KlimaSeniorinnen* decision of 2024, the ECtHR emphasises that future generations will bear an increasingly heavy burden due to the failure and negligence of today. According to the ECtHR, the current (short-term) decision making entails a particularly serious risk for future generations, while these generations cannot participate in the decision making. This also makes it clear that the climate approach cannot be left purely up to the legislator, if that legislator chooses for an approach that offers insufficient protection to the interests of future generations. The principle of intergenerational equity is, according to the ECtHR, therefore of exceptional importance, and justifies that the decision making of today must be subject to legal assessment in the interest of future generations as well:

“[T]he Court notes that, in the specific context of climate change, intergenerational burden-sharing assumes particular importance both in regard to the different generations of those currently living and in regard to future generations. [...] [I]t is clear that future generations are likely to bear an increasingly severe burden of the consequences of present failures and omissions to combat climate change [...] and that, at the same time, they have no possibility of participating in the relevant current decision-making processes. [...] In the present context, having regard to the prospect of aggravating consequences arising for future generations, the intergenerational perspective underscores the risk inherent in the relevant political decision-making processes, namely that short-term interests and concerns may come to prevail over, and at the expense of, pressing needs for sustainable policy-making, rendering that risk particularly serious and adding justification for the possibility of judicial review.”⁷⁷³ (underlining added by legal counsel)

737. The above shows that the principle of intergenerational equity creates a responsibility to prevent that the interest of future generations (which interest Milieudefensie also seeks to protect in this case; see Chapter III.2) is unfairly damaged by today’s emissions. The principle is therefore not only decisive in terms of determining that responsibility, but also offers a framework to assess how that responsibility must be made specific in the form of percentage emissions reductions and other climate measures.
738. This is of great importance because many reduction scenarios were calculated based on the principle of cost effectiveness, as explained in the context of the CBDR principle (see para. 721). In addition to an unfair shifting of reduction burdens to developing countries, this leads to an unfair shift to future generations, as recognised by the IPCC.⁷⁷⁴
739. In line with the above-cited considerations of the German Constitutional Court, the Brussels Court of Appeal and the ECtHR, the principle of intergenerational equity thus entails that emissions reduction scenarios that allocate such disproportionate reduction burdens to future generations can be impermissible. Such reduction pathways should therefore not be taken into consideration when specifying ING’s obligations under its societal duty of care.

⁷⁷² Ibid, para. 266.

⁷⁷³ ECtHR, 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020, para. 420.

⁷⁷⁴ See footnote **Error! Unknown switch argument..**

XI.2.5.5 Application of the principles to (the specification of) ING's societal duty of care

740. It follows from the above that the precautionary principle, the CBDR principle and the principle of intergenerational equity must (in part) serve as the starting point when determining and specifying ING's societal duty of care. All these principles appear extensively from (internationally authoritative) objective reference points. In supplementation of the doctrine of hazardous negligence, human rights law and the other reference points discussed in this summons (see para. 667), these principles once again confirm Milieudefensie's legitimate expectation that ING must take measures to reduce emissions, thereby helping to counter the danger of climate change.
741. These principles not only entail *that* emissions reductions are necessary, but they also set out *how* they are to be realised: reductions must be realised urgently and without delay, with the strongest bearing the heaviest burdens, and with developed countries and large corporations from those countries having to take the lead. This starting point fully aligns with soft law sources such as the UN Race to Zero and the UN Expert Group, that – with an eye on the principles that have been discussed – confirm that companies must reduce their emissions as quickly and as much as possible, and that for many companies this means that as of 2030 they can and much achieve more extensive reductions than the global average of 50% and should also achieve net zero far before 2050 (see Chapter IX.2).
742. The discussed principles not only provide further support to the existence of a societal reduction obligation, but also provide decisive criteria to be able to assess (the nature and scope of) the specific climate measures to be taken by ING. In particular, these criteria can be used to assess how scientific and other insights (like emissions reduction scenarios) can be involved in the specification of those climate measures. In addition, these principles require that account is taken of ING's specific circumstances. When applying the CBDR principle, account will also have to be taken of the degree in which ING (i) has a share in the causes of climate change and (ii) has the capacity to help limit climate change.

XI.3 CONCLUSION

743. As explained in established case law and literature, Article 6:162(2) DCC offers a clear framework for assessing what climate measures ING is obliged to take. The overarching criterion that ING is obliged to take the climate measures that Milieudefensie can reasonably expect of ING, which reasonable expectation must be interpreted as much as possible on the basis of objective reference points. An important reference point is the (jurisprudence regarding) the doctrine of hazardous negligence, that – both viewed on its own and in conjunction with the other objective reference points discussed in this summons – leads to the conclusion that ING is obliged to take the climate measures demanded by Milieudefensie.
744. Numerous objective reference points are available in this case which can be used to assess what climate measures Milieudefensie can reasonably demand of ING. In addition to the doctrine of hazardous negligence, this includes the human rights (with horizontal effect), that have also already been applied in earlier case law to determine obligations under the societal duty of care of governments and private actors in relation to climate change. In addition, various important legal principles will have to be included as objective reference points in the review (in any event the precautionary principle, the CBDR principle and the principle of intergenerational equity, the legal significance of which in relation to climate change has also already been confirmed in various climate cases). Naturally all of this is in addition to all other

objective reference points already mentioned and yet to be mentioned in this summons, such as climate science, UN initiatives and collaborations, sectoral climate protocols and other soft law (like the UNGP and OECD Guidelines) and legislation (like the CSRD and CSDDD).

745. If all these objective reference points are viewed and considered in conjunction with each other, it is established that ING is obliged to Milieudéfense to reduce its Scope 1, 2 and 3 emissions in line with the 1.5°C goal.
746. In the following chapters, Milieudéfense will explain how this obligation is to be further interpreted on the basis of the above-discussed framework of assessment. Milieudéfense will first explain that ING's current inadequate climate policy leads to hazardous negligence by ING and to a breach by ING of its human rights responsibilities (Chapters XII and XIII). Milieudéfense will then explain what concrete climate measures ING will have to take, in view of the applicable legal framework for assessment and the associated significance that is consequently attributed to all circumstances and objective reference points that are relevant in this case (Chapter XIV).
747. Lastly, Milieudéfense will show that ING is not taking these climate measures at present, resulting in the conclusion that ING, with its inadequate climate policy is breaching its legal obligations and threatens to keep breaching them (Chapter XV).

XII. ING IS ACTING IN A MANNER CAUSING ENDANGERMENT BY EXECUTING AN INADEQUATE CLIMATE POLICY

XII.1 INTRODUCTION

748. In Chapter XI.2.3 Milieudéfense pointed out that the standard of care to which ING is subject, according to the judgments in the Urgenda and Shell case that were discussed there, must in part be determined by an (explicit) review against the five ('Kelderluik') criteria that are encompassed in the doctrine of hazardous negligence.
749. As was discussed there, it follows from this that the due care that ING must show with regard to Milieudéfense in relation to dangerous climate change must (in part) be determined on the basis of:
- (i) the nature and the scope of the damage caused by climate change;
 - (ii) ING's knowledge and ability to foresee such damage;
 - (iii) the likelihood that dangerous climate change will manifest itself;
 - (iv) the nature of the acts (or omissions) of ING; and
 - (v) the onerousness of the precautionary measures to be taken for ING.
750. Based on these five criteria, ING too has a societal duty of care to make an appropriate contribution to preventing dangerous climate change. Milieudéfense explains this in further detail below.

XII.2 CRITERIA (I) AND (III): THE NATURE AND EXTENT OF THE CLIMATE DAMAGE AND THE RISK

THAT DANGEROUS CLIMATE CHANGE WILL MANIFEST ITSELF.

751. The nature and extent of the damage caused by climate change are extensively discussed in Chapter VIII. Naturally this concerns the damage that has already been described in the Urgenda and Shell cases discussed in Chapter XI.2. It concerns global damage to the environment, resulting in global financial loss and personal injury of potentially catastrophic proportions and as such, of unprecedented gravity in terms of nature and extent. So it concerns environmental damage as well as financial loss and personal injury that harms mankind due to the damage caused to the environment. Above all, it concerns damage that will affect the right to life and the right to an undisturbed family life, as was found in the Urgenda and Shell cases.
752. The environmental damage is evident. For instance, the greenhouse gas emissions caused by human activities affect the atmosphere and have already increased atmospheric CO₂ levels by 50%, resulting in global warming, climate change and, among other things, deterioration of ecosystems, flora, fauna and biodiversity. Because of this environmental damage, ecosystem goods, functions and services that are important to mankind are also affected. Examples include food, drinking water, raw materials, atmospheric conditions necessary for life to exist, pollination, pest control and disease regulation, etc. (see Chapter VIII). This environmental damage results in damage for and to mankind. In this case, both forms of damage play a role, which is why we continuously speak of damage to man and the environment. Both forms of damage are, evidently, linked to each other.
753. More frequent and more drastic forms of extreme weather (heat, drought, storms, hurricanes, deluges and flooding, etc.) affect food supplies, they pose a threat to our lives and health and they result in many forms of damage and financial loss. Take, for instance, the consequences of the anticipated intensifying storms and hurricanes in the case of continued global warming and the increasing risk of flooding caused by sea level rises and torrential rainfall: these situations claim victims, they destroy areas where we work and live, as well as infrastructures that are important and vital to society. Evidently, such destruction results in a loss of property, but it also creates a chain of other damage and personal injury as explained by the former advocate general of the Supreme Court, Jaap Spier.⁷⁷⁵ He describes this chain of damage in, among others, an English-language report from 2018. Referring to the report in question, this can be represented as follows in the following two paragraphs.
754. People are temporarily unable to live or work normally because the ICT and electricity infrastructures are damaged or because hospitals and businesses are damaged or can no longer be reached due to damage to the road infrastructure. If people or businesses cannot bear the loss they suffered, for instance, due to a prolonged stoppage of business activities or the destruction of crops on which farmers rely for their income, people may lose their business or job. The loss of businesses and jobs may, in its turn, negatively affect local shops near these businesses and residents, loans can perhaps not be paid off as a result of which banks may run into trouble, etc. For this to happen, it is not even necessary for extreme weather conditions to occur in your own environment; when suppliers from a faraway country are hit by a hurricane or floods, production in our own environment may also come to a standstill. Everyone can experience such supply insecurity, also with regard to important matters such as food and medication.

⁷⁷⁵ KNVIR Preadviezen, *Climate Change: Options and Duties under International Law*, Notifications of the Royal Netherlands Society of International Law no. 145.

755. When the electricity infrastructure is hit and areas lose their power supplies, services and facilities such as banks, hospitals and households will run into trouble. Payments can no longer be made, surgery cannot be performed. In time, we will no longer be able to protect against rising sea levels coastal towns and cities, as a result of which property will be lost, businesses will have to close down, people will have to start a new life elsewhere or, if they can't, they will be reduced to poverty. Tourist areas will disappear due to climate change and when people have to start living elsewhere, they will need new infrastructure for roads, hospitals, etc.⁷⁷⁶
756. These are only a couple of examples of how changes to the climate and our living environment, as a result of global warming, will have an impact on our daily lives, with all kinds of damage and risk of damage for all residents. The damage is so great that the future picture for society becomes very glum, and the deaths and health ailments resulting from extreme weather and related disasters (including physical and psychological traumas) in case of increased warming have not even been taken into account. Preventing damage is the motto, if only because the damage will be so all-encompassing and irreversible that subsequent compensation will not be possible.
757. When global warming continues to increase, the damage to humans and the environment caused each year will only increase and there will also be a growing risk of reaching the already discussed dangerous tipping points in the climate system which may speed up continued global warming and make it irreversible. There are thus plenty of reasons to qualify the countering of dangerous climate change as a legitimate interest of Milieudefensie that should be protected by law.
758. With regard to the ('Kelderluik') criterion, the chance that the feared danger will occur, it was discussed in Chapter IX and Chapter X that there is a very considerable chance that without modified policy of public and private actors with a significant influence on greenhouse gas emissions, the carbon budget will be exhausted in the short term and dangerous climate change is unavoidable.
759. It follows from Chapter X that the adjustment of the policy of banks is an unavoidable prerequisite for the necessary limitation of the danger of climate change. Through their financing banks cause a large part of the greenhouse gas emissions that lead to dangerous climate change (see Chapter X.2). In addition, it is evident that the large-scale redirecting of financing flows for which it has been established that this is necessary to realise the task to limit dangerous climate change, cannot succeed if private banks do not redirect their financing flows as well (see Chapter X.2 and Chapter X.3). This while it has been established that the necessary redirecting of financing flows falls far short at this point (see Chapter X.4), which is also the case for ING (see Chapter XV). To put it more succinctly, it is evident (or at least very probable) that without the urgent redirecting by private banks of their financing flows, the chance of preventing dangerous climate change will soon be definitely out of the question.
760. In lawsuits domestically and abroad, including in the Urgenda and Shell cases, it has been concluded that the nature and the extent of climate damage to humans and the environment is so serious and the chance of dangerous climate change if our approach does not change is

⁷⁷⁶ KNVIR Preadviezen, *Climate Change: Options and Duties under International Law*, Notifications of the Royal Netherlands Society of International Law no. 145

so great, that this justifies and necessitates legal intervention. Milieudefensie is therefore seeking legal protection before the court against this damage to humans and the environment in the form of a (preventive) order (order to take action) to be imposed on ING pursuant to Article 3:296 DCC. Milieudefensie's goal in this proceedings is damage prevention, Milieudefensie is not seeking damages.

761. All in all, we can conclude that the nature and extent of climate damage and the chance that dangerous climate change will manifest itself if ING, among others, does not take action, will be very high. This is a reason to demand a special duty of care and a high level of care from ING.

XII.3 CRITERION (II): ING'S KNOWLEDGE AND ABILITY TO FORESEE SUCH DAMAGE

XII.3.1 Overview of the facts known to ING

762. It follows from Chapter V to Chapter X and from what is set out below, that ING could have known and must have known back in the 1990s, the decade of its founding, of the damage that climate change would cause to humans and the environment. It also follows that ING even then could and should have known that as a private bank it performs a key role in the arising of, and in the prevention of, that damage. In particular, ING can be deemed to have been aware in the 1990s that:

- (i) a warming of 2°C means dangerous climate change (in line with the danger limit known at that time, which has since been adjusted to 1.5°C; see Chapter VII.3);
- (ii) dangerous climate change is caused by anthropogenic greenhouse gas emissions;
- (iii) burning fossil fuels is the primary source of these emissions;
- (iv) the consequence of this should be that only limited quantities of fossil fuels can be used;
- (v) Western countries and their economies must take the lead in preventing dangerous climate change;
- (vi) there is a need to redirect investments, with immediate effect, to energy forms that emit no or less CO₂;
- (vii) continuing to finance the exploration, production, distribution and the use of fossil fuels and of other economic activities that cause a lot of anthropogenic greenhouse gas emissions, increases the risk of dangerous climate change;
- (viii) ING runs bigger financial risks as a result of dangerous climate change; and
- (ix) ING plays an important role in the arising of, and can and must play a role in preventing, the threatened damage resulting from dangerous climate change.

763. From what is discussed hereinafter, it will be clear that as of at least 2003, ING showed, in various ways, that it was increasingly explicitly aware of the above facts. In addition, in these years there was an ever-more defined and widely supported concept of the purport of the

responsibility of ING, as a private bank. ING could be and had to be aware of this additional interpretation of ING's responsibility, as follows from Chapters IX and X, this chapter and Chapters XIII and XIV hereinafter. ING has shown that since 2002 it has been increasingly, explicitly familiar with these facts. It can therefore be concluded that ING at the time was not only aware of the facts referred to in para. 762, but that it was also aware that:

- (i) account had to be taken of a 450 ppm of CO₂-eq scenario or another reduction of concentrations;
- (ii) ING, as a private bank with its financed and facilitated emissions, makes a measurable and substantial contribution to the climate problem;
- (iii) this contribution also encompasses the financing and facilitation of the Scope 3 emissions of clients;
- (iv) ING should take precautionary measures against the danger of climate change; and
- (v) these precautionary measures are also possible for ING and even benefit ING, inter alia because these measures limit the climate-related financial risks to which ING is exposed.

764. Milieudefensie discusses and explains this crucial awareness and foreseeability at ING of not just the damage and ING's role in causing the damage, but also the need and options for ING to help prevent this damage below.

XII.3.2 From its founding in 1991, ING could and must have been aware of the nature and extent of the danger of climate change, and since 2002 ING has shown that it knows this

765. ING came into being following a merger of Nationale Nederlanden and NMB Postbank Groep in 1991. At that time, the threat and the danger of climate change were long known and an important topic in the international community, whereby it was also known that (see Chapter X.3.2):

- (i) the investment decisions of banks and investors substantially affect the emissions of greenhouse gases into the atmosphere (and consequently the arising and extent of climate change and the consequences thereof); and
- (ii) banks and investors in their planning and operational agendas must also take account of climate change.

766. In the year after ING's founding, the UN Climate Convention was established in 1992. The convention's goal was to counter the dangerous climate change caused by humans. Through the UNEP FI's initiative (see Chapter X.3.3) the financial sector increasingly paid attention to and recognized the relevance for financial institutions of responsible business conduct in the area of the environment and sustainable development. These subjects were already seen as belonging the highest priorities for all activities back in 1992, whereby a precautionary approach had to be the starting point.

767. At this time climate change was already deemed a threat to the environment and sustainable development within the financial sector as well. This appears from the explicit reference to

climate change in the “*Statement of Environmental Commitment by the Insurance Industry*” (that relates to the insurance industry, in which ING was also active at the time), and from the various “position papers” of UNEP FI that focused on climate change. These position papers not only underline the need for emissions reductions (whereby developed countries and their economies have to take the lead) and the significance of climate change for the financial sector (see Chapter X.3.3). They also demonstrate an acknowledgement of the nature and scope of the danger of climate change, the task to prevent this and the science on which this was based as mapped out by the IPCC.

768. A position paper of the UNEP FI “Insurance Initiative” of 1996 shows that within the insurance sector (in which ING was also active at the time) it was not only widely recognised that climate change is human in origin, but also that human activity is already affecting the climate at a global scale. The report also recognises that climate change will increase, lead to weather extremes and adverse health effects, and requires mitigation measures that change entire industries (including the shift from fossil fuels to sustainable energy sources). The report sets out the following, inter alia:

“1.2 The cost of such [extreme weather events] could escalate dramatically as a consequence of the increased greenhouse effect due to human activities. The resultant climate change may alter the frequency and/or severity of extreme weather events and/or their regional distribution [...] [E]ven small shifts of regional climate zones and/or storm patterns carry the potential of increased property damage, exacerbated by inadequate planning and construction in certain areas.

1.3 The implication of climate change for other lines of insurance cannot be assessed with confidence but cannot be ignored. Changes in human health (e.g. spreading of diseases) may affect the life assurance and pension industries. Returns on long-term investments and capital projects may be affected by mitigation measures that alter the economics of whole industries for example, shifting from carbon fuels to renewable sources. The economics of selected regions, such as coastal zones and islands, may be disadvantaged.

[...]

2.1.1 Human activity is already affecting climate on a global scale, e.g. through the enhanced greenhouse effect. According to IPCC “the balance of evidence suggests a discernible human influence on global climate”⁷⁷⁷ (underlining added by legal counsel)

769. A position paper from 1997 of the “Insurance Initiative” of UNEP FI of a similar purport adds to this a recognition of the average global warming whereby these dangers will manifest themselves:

“1.1 According to IPCC the balance of evidence suggests a discernible human influence on global climate change. The global mean surface air temperature is expected to increase by 1 to 3.5 °C by the year 2100. Sea levels are expected to rise beyond critical levels in several regions, as a consequence of thermal expansion and melting of ice masses.”⁷⁷⁸ (underlining added by legal counsel)

770. A position paper from 1998 of the UNEP Financial Institutions Initiative (that covers the wider financial sector) shows that the aforementioned recognitions not only applied within the insurance sector, but within the entire financial (and therefore also banking) sector.

“1.1 The Intergovernmental Panel on Climate Change (IPCC), established by UNEP and the World

⁷⁷⁷ Exhibit MD-150, Delphi International et al. 1997, ‘The role of financial institutions in achieving sustainable development, report to the European Commission’, para. 17.5, VI.5, p. 139 (including cover sheet).

⁷⁷⁸ Exhibit MD-152, UNEP FI 1997, ‘Working Group: Climate Change and the Financial Sector, Position Paper’, p. 1.

Meteorological Organisation in 1988 produced their Second Assessment Report in 1995. This concluded that the balance of evidence suggests that there is a discernible human influence on global climate.

1.2 The Kyoto Protocol, agreed in December 1997, was a major achievement and will have significant long term impacts for business. It is designed to combat the perceived risks resulting from a rise in the temperature of the planet, including the risk of reduced crop yields, rising sea levels threatening low lying coastal areas and small islands, as well as the risk of more severe weather changes.

*1.3 This has implications for virtually every aspect of the world's economy, including the financial services sector from agriculture, forestry and water resources to manufacturing, transport, energy, and construction and because its consequences to biodiversity, human health, and human welfare extend over space and time, into other regions, continents, and future generations.*⁷⁷⁹ (underlining added by legal counsel)

771. This growing attention and recognition resulted in 2000 in an anchoring of climate change within UNEP FI in the Climate Change Working Group, that covers the financial sector in a broad sense and in its position paper of 2001 explicitly asserts that “a precautionary approach is the appropriate way to deal with climate change” and that “the financial sector can play an important part in meeting the challenges posed by climate change” (see Chapter X.3.4). This is based on the following acknowledgement:

“2.1. Climate Change poses major risks to the natural environment, and to society, in terms of damage to economic systems and human health, as reported in the Third Assessment Report of The Intergovernmental Panel on Climate Change (IPCC TAR).”

772. It follows from Chapter V to Chapter X that the awareness of the nature and scope of the danger of climate change has only increased since then.

773. In 2002 it turned out that the above-discussed growing attention and recognition within the financial sector was not only something that ING could have been aware of in the 1990s, but ING did indeed have in-depth knowledge thereof. In May 2002, ING explicitly demonstrated this as signatory of the first survey of the Carbon Disclosure Project (CDP; see: Chapter X.3.4) that had been established in 2000.⁷⁸⁰ ING’s awareness of the climate problem is all the more apparent from the fact that ING was not only a signatory, but (as major listed company) was also one of the parties surveyed by the CDP. The CDP report of 2003, that reported on the results of this survey, noted that ING possessed “*Superior Awareness of Climate Change Risks and Opportunities*”.⁷⁸¹

774. The same report made it possible to deduce what knowledge this “superior awareness” of ING encompassed. The report thus established beyond any doubt that ING was very much aware in May 2002 of the nature and scope of the risk of climate change, with the intensifying consequences of climate change, with the significance thereof for different (including less emissions-intensive) sectors in the real economy and with the (every stronger) scientific proof regarding the danger and its consequences. The report also recognises the consequences of climate change on (human rights-related) topics such as life, health, food security and energy supply:

“The financial impacts of climate change extend well beyond the obvious, emissions-intensive sectors. Companies in the financial services, transportation, semi-conductor, telecoms, electronic

⁷⁷⁹ Exhibit MD-153, UNEP FI 1998, ‘Working Group: Climate Change and the Financial Sector, Position Paper’, p. 1.

⁷⁸⁰ Exhibit MD-155, CDP, letter of 21 May 2002 ‘Greenhouse Gas Emissions’, p. 2.

⁷⁸¹ Exhibit MD-156, CDP 2003, ‘Carbon Finance and the Global Equity Markets’ (selected pages), p. 38.

equipment, food, agriculture, and tourism sectors among others are also affected."⁷⁸²

"Climate-driven risks will continue to grow: Looking ahead, a series of secular "mega-trends" will continue to amplify the financial impacts of climate change.

- *Strengthening evidence about the reality, gravity, and causes of climate change*
- *Increase in extreme weather events*
- *Further regulatory action by government at local, national, regional, and global levels*
- *Continuing growth of renewable energy and clean technology markets*
- *Improved understanding of the variability of company-specific impacts*
- *Improved quantification of the potential financial impacts of inaction*
- *Increasing exposure of investors to overseas regulatory regimes*
- *Growing institutional shareholder activism on corporate carbon risks*
- *Global momentum for improved disclosure on corporate risks"*⁷⁸³

*"The U.N.'s Intergovernmental Panel on Climate Change (IPCC) is reportedly 90-99% confident there will be higher maximum temperatures and more hot days over nearly all land areas, and is 67-95% confident that in some areas this will result in increased incidence of death and serious illness in older age groups and the urban poor, in increased risk of damage to a number of crops, in increased heat stress in livestock and wildlife, in reduced energy supply reliability and in a shift in tourist destinations."*⁷⁸⁴

775. In the years after that ING showed itself to be increasingly aware of the danger of climate change, the role that it plays as a bank in the causes and consequences thereof, and the role that it can and must play to prevent dangerous climate change. This awareness was evident in the years 2006 and 2007. This appears from the following.

776. A first indication for this is the appearance in October 2006 of an ING report entitled "*Climate Change: When Hell Freezes Over*".⁷⁸⁵ This report shows that ING is aware of the risk of a global temperature increase in the event of lack of intervention in greenhouse gas emissions. The report summarises this as follows:

"There is (virtually) no debate today surrounding the proposition that the greater the level of greenhouse gas concentrations in the atmosphere, the greater the equilibrium temperature on the earth. There is also little doubt that rising use of fossil-fuels increases the concentration of greenhouse gases in the atmosphere and contributes to a global warming effect.

There is also little doubt that carbon dioxide concentrations are rising at a relatively rapid rate in the atmosphere, from a level of 280ppmv before the industrial revolution to nearly 380ppmv today, and on a business as usual assumption, that figure could be close to 750ppmv before the end of this century. Many scientists predict that this will put us into dangerously uncharted waters in terms of potential climate instability. In terms of the impact of such increases in CO2 concentrations on global temperature, opinions are more diverse, but the consensus is that we could see temperatures rising by between 1.40 C and 5.80 C this century."⁷⁸⁶ (underlining added by legal counsel)

777. The report then analyses what the consequences of an increase in global temperatures would be. The tables in which ING presents a number of these consequences is illustrative:⁷⁸⁷

⁷⁸² Ibid, p. 1.

⁷⁸³ Ibid, p. 2.

⁷⁸⁴ Ibid, p. 31.

⁷⁸⁵ Exhibit MD-184, ING 2006, 'Climate Change: when hell freezes over'.

⁷⁸⁶ Ibid, p. 3.

⁷⁸⁷ Ibid, p. 19.

Fig 17 Some potential ‘non catastrophic’ effects of climate change

Change	Region	Comment/consequences
Increased frequency of heatwaves	Continental areas	Recent apparent increase in heatwaves across Europe
Less snow and receding glaciers	Northern latitudes and areas depending on snowmelt for summer water supply (China, India)	Potential serious implications for parts of developing world, the Arctic and sub-Arctic regions, and (less seriously) marginalisation of lower-situated ski resorts
Sea-level rise	Low-lying island areas especially parts of SE Asia	1m rise in sea level could affect up to 6m people in Egypt, 13m in Bangladesh, and 72m in China
Droughts and drier summers	Mid-latitude continental areas	
More intense precipitation events	Northern latitudes	Greater flooding and weather-related damage
Increased ocean acidity	Global oceans	Impact on marine ecosystems

Source: Stern Review/IPCC (2001)

Fig 18 Potential ‘catastrophic’ effects of climate change

Global temperature increase (relative to 2000)	Impact
2-3° Centigrade	Melt of Greenland ice sheet, eventually leading to increase in sea-levels by over 7m Collapse of Amazon rainforest Desertification of many world regions, with widespread loss of forest and greenland
2-5° Centigrade	Melt of West Antarctic Ice sheet, raising sea-levels eventually by further 5-6m Collapse of Thermohaline circulation, cooling (yes not warming!) Northern Hemisphere by several degrees Release of methane from melting tundra and shallow seas, accelerating global warming

Source: Adapted from Schneider and Lane (2006)

778. The report continues:

*“The consensus is increasingly convinced that man-made forces are at play in explaining recent climate events. Indeed, for some scientists including respected figures such as David King, the UK government’s Chief Scientific Adviser, the case for man-made global warming is sufficiently strong to make it the single biggest threat facing the world today.”*⁷⁸⁸ (underlining added by legal counsel)

779. A second indication of ING’s awareness of the danger of climate change (and of the role that ING can and must play in order to prevent dangerous climate change) is ING’s participation in the “Global Roundtable on Climate Change” (GROCC) since its launch in 2004.⁷⁸⁹ In February 2007, the GROCC led to a joint declaration, which ING also signed.⁷⁹⁰ In this declaration, ING not only acknowledged that it has an undeniable role in countering climate change (see Chapter X.3.5), but also the nature and scope of dangerous climate change, the role of fossil fuels in the occurring thereof, the risk of a lock-in, and the urgent task of countering dangerous climate change. For example, the declaration that ING signed in 2007 considered, inter alia, the following:

“Climate change is an urgent problem that requires global action to reduce emissions of greenhouse gases in a time frame that minimizes the risk of serious human impact on the Earth’s natural systems. While undeniably complex, confronting the issue of climate change depends, in many ways, on developing and deploying low-carbon energy technologies.

The modern age is powered largely by fossil fuels: coal, oil, and gas. The fossil-fuel era has been a period of unprecedented economic advance, with the world’s average life expectancy roughly doubling and its per capita income rising roughly ten-fold since the start of the Industrial Revolution. Yet we now understand that fossil fuels—as they are currently used—increase the amount of carbon dioxide (CO2)

⁷⁸⁸ Ibid, p. 22.

⁷⁸⁹ ING Annual Report 2007, p. 55 (see <https://www.ing.com/web/file?uuid=cd4762d2-f2dd-4265-9bb9-d4d81f705c39&owner=b03bc017-e0db-4b5d-abbf-003b12934429&contentid=6438>).

⁷⁹⁰ Exhibit MD-159, The Earth Institute at Columbia University 2007, ‘Global Roundtable on Climate Change, The Path to Climate Sustainability’, p. 5.

in the atmosphere which, along with the release of other greenhouse gases (GHGs), warms the planet and leads to other impacts of global climate change.

Human-caused, or anthropogenic, climate change is now underway. If it continues on the current trajectory, it will become increasingly dangerous and costly for current and future generations through myriad impacts on the environment and human society and lead to the extinction of many species.⁷⁹¹

"The impacts of climate change are already being observed, and each new power plant or factory constructed using standard fossil-fuel technology (especially without provision for CCS) locks in place a path of high CO₂ emissions during the life of the facility, which can be 50 years or more. Every year that passes without significant global efforts to reduce emissions means a higher concentration of atmospheric CO₂ and an increased risk that the world will surpass levels of atmospheric CO₂ that make "dangerous anthropogenic interference" unavoidable."⁷⁹²

780. As is clear from the last cited paragraph, ING knew back in 2007 that every power station or factory that was still to be built as of that time and that would be dependent on fossil fuels, would result in a long-term lock-in effect of greenhouse gases, even for a period of 50 years or more into the future. This part of the declaration also shows that ING was aware that every year that passed as of 2007 without significant emissions reductions, would lead to an ever-increasing concentration of greenhouse gases in the atmosphere, with the risk that the world will reach concentration levels that make dangerous climate change unavoidable.

781. A third indication of ING's awareness of the danger of climate change and the need to itself take action, is that in its 2007 annual report, ING explicitly mentioned the proportions of the danger of climate change and the role ING played in this respect:

*"Climate change is widely considered to be one of the greatest threats facing the planet. ING believes that it has a role to play in dealing with this challenge."*⁷⁹³

782. After these acknowledgements in the period 2002-2007, ING frequently indicated its awareness of the danger of climate change. For example, ING has been affiliated with the UNEP FI Climate Change Working Group since 2009 (see para. 771).⁷⁹⁴ It appears, moreover, from the various climate commitments and initiatives to which ING subsequently agreed to be bound; see: Chapter X.3.8 to Chapter X.3.10.

XII.3.3 From its founding in 1991, ING could and must have been aware of its substantial contribution to danger of climate change, and since 2007 ING has shown that it knows this

783. As explained above, at the time ING was founded it was known that the investment decisions of banks and investors substantially affect the emissions of greenhouse gases into the atmosphere, and in the years immediately after the founding of ING this was also recognised by the financial sector itself to an increasing degree, inter alia within the context of UNEP FI.

784. ING too has recognised this since 2002, because it was involved both as a surveyor and respondent in the first survey of the Carbon Disclosure Project (CDP), where ING showed a "superior awareness" of the climate risks and opportunities attached to these assets (see para. 773). This classification was the result of ING's response to a questionnaire that focuses

⁷⁹¹ Ibid, p. 4.

⁷⁹² Ibid, p. 5.

⁷⁹³ ING Annual Report 2007, p. 55 (see <https://www.ing.com/web/file?uuid=cd4762d2-f2dd-4265-9bb9-d4d81f705c39&owner=b03bc017-e0db-4b5d-abbf-003b12934429&contentid=6438>).

⁷⁹⁴ Exhibit MD-185, UNEP FI 2010, 'UNEP FI 2009 Overview', p. 3.

on (and thus evidences the recognition by ING of the need and the possibility of):

- (i) reporting emissions data based on the aforementioned GHG Protocol;
- (ii) measuring the quantity of emissions in the supply chain (Scope 3 emissions);
- (iii) applying emissions reduction programmes and targets; and
- (iv) the possibilities for emissions reductions to 20% within five years;

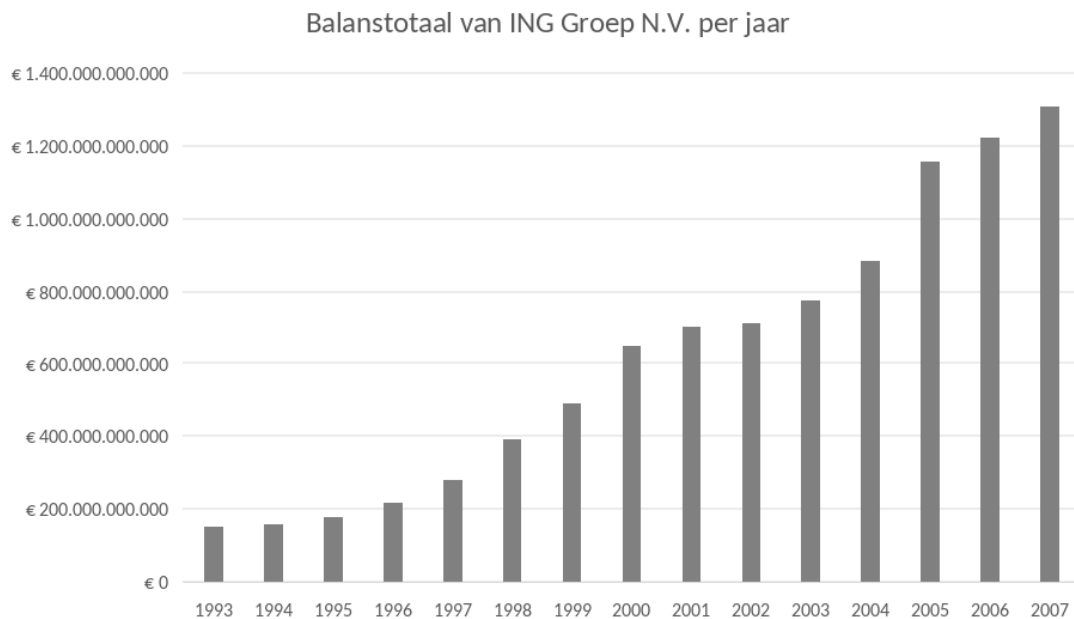
whereby in the case of a financial institution this should also relate to the assets held by that institution (see Chapter X.3.4).

785. ING could and should therefore have known as of the time of its founding that as a financial institution it makes a considerable contribution to causing climate change. And in view of what has been discussed above, ING did in fact know this as of 2002. In the interim period, moreover, ING went through a considerable growth that, as ING could and should have understood, also led to a considerable increase in its contribution to the cause of climate change. The increase in ING's balance sheet total, which in 2002 was 716.37 billion euros (some 4.5 more than in the years of its founding) is illustrative of this growth.⁷⁹⁵
786. In the years after 2002 ING continued its strong growth, whereby its balance sheet total in 2007 was no less than 1312.51 billion euros: more than 1.8 larger than in 2002 (and thus almost a doubling over a period of five years).⁷⁹⁶ The following figure shows the growth of (the balance sheet total of) ING from its founding in 1993 to 2007 in a more illustrative manner.⁷⁹⁷

⁷⁹⁵ ING Annual Report 2002, p. 58 (see <https://www.ing.com/MediaEditPage/2002-Annual-Report-ING-Groep-N.V..htm>).

⁷⁹⁶ ING Annual Report 2007, p. 88 (<https://www.ing.com/web/file?uuid=cd4762d2-f2dd-4265-9bb9-d4d81f705c39&owner=b03bc017-e0db-4b5d-abbf-003b12934429&contentid=6438>).

⁷⁹⁷ The balance sheet totals set out in the figure are ING's balance sheet totals as these are stated in ING's annual reports. For the reporting years 1993 to 1999, Milieudefensie based itself on the figures presented for these years in the ING Annual Report 2002 (see <https://www.ing.com/MediaEditPage/2002-Annual-Report-ING-Groep-N.V..htm>).



787. In addition, the year 2007 is characterised by an expansion and further recognition of this knowledge of ING. This consisted of, inter alia, the link between private financing and greenhouse gas emissions being recognised in more detail in that year in the UNFCCC report “Investment and Financial Flows to Address Climate Change” (see Chapter X.3.5). ING showed that it was aware of the purport of this report when it aligned with UNEP FI in that year, which in itself, as an initiative, was partly based on the notion that financial institutions can contribute to environmental problems through their financing (see Chapter X.3.3 and Chapter X.3.4), where ING itself indicated the following:

“Our financing activities may involve us indirectly in operations which can be harmful to the environment. This mainly applies to financing of the oil, gas, mining, forestry, paper and agricultural sectors.”⁷⁹⁸

788. In its annual report for 2007 ING again showed awareness that its products and services have an environmental impact, and that this must also include climate change:

“ING is fully aware of the social and environmental impact of its products and services. However, certain trends, such as climate change and ageing populations, not only present risks, but also opportunities for ING.”⁷⁹⁹

789. In those same years, moreover, publications appeared (including Milieudefensie publications) in which reference was made to the contribution of the products and services of specifically Dutch banks (including ING) to climate change (and the role that these banks can play in countering climate change).⁸⁰⁰

790. It is therefore established that in 2007 ING was clearly aware of the fact that with its

⁷⁹⁸ Exhibit MD-186, UNEP FI, ‘Members, ING’ (print-out of website 27 February 2025).

⁷⁹⁹ ING Annual Report 2007, p. 56 (see <https://www.ing.com/web/file?uuid=cd4762d2-f2dd-4265-9bb9-d4d81f705c39&owner=b03bc017-e0db-4b5d-abbf-003b12934429&contentid=6438>).

⁸⁰⁰ Exhibit MD-003, Milieudefensie 2006, ‘Investing in climate change: the role of Dutch banks’, pp. 7-9 and pp. 53-56, Exhibit 187, Milieudefensie 2007, ‘Investing in climate change, Dutch banks compared’, pp. 9-10 and pp. 105-106.

substantial range of products and services (that at the time resulted in a balance sheet total of 1312.51 billion euros)⁸⁰¹ makes a considerable contribution to environmental problems, like climate change.

791. In the following years, ING could be, and had to be, increasingly aware of the scale of its contribution to climate change. In the first place because in these years the basis was laid for the quantification of ING's contribution, through the establishing of GHG Corporate Value Chain (Scope 3) Accounting and Reporting Standard between 2009 and 2011, which once again explicitly makes it clear that ING's financing portfolio provided a substantial contribution to greenhouse gas emissions (see Chapter X.3.6).
792. In addition, a report was published in 2011 by the German NGO, Urgewald, that focused on the consequences for the climate of the financing activities of, inter alia, ING. The report places ING at 22 in the top 25 banks that globally finance the extraction of coal and the electricity generation with coal.⁸⁰² This is based on the in total 3.3 billion euros in financing that ING provided for coal use after 2005, when the risk of dangerous climate change, the role of coal in this process, and the role of financiers had already been known for some time.
793. In 2015, in connection with the making of the Paris Agreement, PCAF resulted in an initiative that would make it possible to quantify the emissions connected with the financing of banks in a more accurate manner (see Chapter X.3.7). Although ING did not commit itself to this initiative, its signing of the Climate Statement of Dutch Banks in that same year shows its awareness that through its financing it has a considerable effect on climate change. By supporting the Climate Statement ING was making the commitment that it, inter alia, will work toward transparency regarding the (positive and negative) impact of its loans and investments on climate change (see Chapter X.3.7).
794. In its annual report for 2015, ING again showed its explicit awareness of the climate impact of its financing. Again, as ING also showed this awareness in its annual report for 2007 (see para. 788), but this time ING more explicitly showed *"the understanding that our [environmental] impact is much greater in our financing choices"*, and that the environmental impact of ING's own operational activities (such as the climate impact of ING's office buildings or business trips) were therefore of only relatively minor importance. The key is the mitigation of the climate impact of its financing activities, i.e. ING's Scope 3 emissions, a point underscored by ING itself in this annual report.⁸⁰³
795. In more quantitative terms, in 2016 there was attention for this climate impact of ING's financing in a following report that ranks ING among the biggest financiers of emissions-intensive activities worldwide.⁸⁰⁴ This report (contrary to the report of 2011; see: para. 792) not only focused on the financing of the extraction of and electricity generation of coal, but also on the financing of unconventional oil and gas activities (from tar sands or in the Arctic) and LNG exports. This is based on the financing provided between 2013 and 2015. Once again ING was in the lists of major global financiers; with regard to the extraction of coal and electricity generation with coal, ING had even moved up in these lists compared to its spot in

⁸⁰¹ ING Annual Report 2007, p. 88, (see <https://www.ing.com/web/file?uuid=cd4762d2-f2dd-4265-9bb9-d4d81f705c39&owner=b03bc017-e0db-4b5d-abbf-003b12934429&contentid=6438>).

⁸⁰² Exhibit MD-188, Urgewald 2011, 'Bankrolling climate change', p. 54.

⁸⁰³ ING Annual Report 2015, p. 18 (see <https://www.ing.com/web/file?uuid=edb1ce3f-532f-4ddb-a58f-c91c6212d37e&owner=b03bc017-e0db-4b5d-abbf-003b12934429&contentid=36989>).

⁸⁰⁴ Exhibit MD-189, Rainforest Action Network et al. 2016, 'Shorting the Climate, Fossil Fuel Finance Report Card 2016', pp. 4 to 7.

2011:

- (i) extraction of coal: 18th place worldwide (0.61 billion dollars);⁸⁰⁵
- (ii) Electricity generation by coal: 13th place worldwide (4.91 billion dollars);⁸⁰⁶
- (iii) Unconventional oil and gas: 23rd place worldwide (0.78 billion dollars);⁸⁰⁷
- (iv) LNG export: 18th place worldwide (2.93 billion dollars).⁸⁰⁸

796. It is also the year in which ING indicated that it started the quantification of the greenhouse gas emissions connected with its financing, but had not yet sufficiently succeeded in reporting on this, because of a lack of data. It stated in its 2016 annual report:

“ING sees climate change as one of the biggest challenges of our time and we are committed to reducing the impact of our own operations as well as helping clients to reduce theirs.

In 2016, we conducted a pilot to measure the indirect emissions impact and performance of two specific asset classes within our lending portfolio. This provided us with insight into what is needed to be able to properly measure the emissions impact of our entire portfolio. While we arrived at a reasonable measurement, we struggle with the outcome as we found that the margin of error was unacceptable for disclosure. This is a result of the lack of data availability.”⁸⁰⁹

797. This notice of ING followed:

- (i) five years after the establishing of the Scope 3 Standard of the GHG Protocol with as a separate category for private banks “category 15: investments” (see Chapter X.3.6);
- (ii) nine years after NGOs pointed out the importance of measuring and reporting the emissions connected with financing during the COP13 in Bali and, for example, Bank of America was already reporting on the greenhouse gas emissions connected with its energy and utilities portfolio;⁸¹⁰
- (iii) nine years after the time when ING was obviously aware of the existence of a considerable effect of its financing on climate change (see para. 786 to para. 790); and
- (iv) fourteen years after the time when ING as signatory and respondent of the CDP acknowledged the importance of measuring and reporting the emissions connected with its assets and, according to the CDP, had a “superior awareness” of the matter (see para. 784 and para 785).

798. The notice in 2016 is in line with ING’s recognition of the contribution of its financing to climate change as this appears from the sector-specific climate commitments and initiatives to which ING bound itself since 2015 (see Chapter X.3.7 to Chapter X.3.10).

⁸⁰⁵ Ibid, p. 17.

⁸⁰⁶ Ibid, p. 25.

⁸⁰⁷ Ibid, p. 33.

⁸⁰⁸ Ibid, p. 41.

⁸⁰⁹ ING Annual Report 2016, p. 439 (see <https://www.ing.com/web/file?uuid=bbbb6628-52ea-4469-8232-2a0d0d60f099&owner=b03bc017-e0db-4b5d-abbf-003b12934429&contentid=39230>).

⁸¹⁰ Exhibit MD-190, BankTrack 2007, ‘A Challenging Climate, What international banks should do to combat climate change’, p. 9 and note 34.

799. Nevertheless, since this commitment of ING it took more than five years, up to its annual report for 2020, before ING presented a quantified report for the first time regarding its contribution to climate change by reporting (a part of) its financed emissions.

800. This is without prejudice to the fact that in these five years ING also indicated on several occasions to be aware that its contribution to climate change is considerable. For example, in its annual report for 2017, in which ING reports for the first time in accordance with the recommendations of the Task-force on Climate-Related Financial Disclosures (the TCFD). This was based on the repeated recognition that the economic activities that ING finances can have an environmental impact. It stated:

*“As a financial institution, we recognise that we have a direct economic, social and environmental impact, but also a significant indirect impact, through credit, loans and investments.”*⁸¹¹

*“We recognise that the projects and businesses we finance could potentially have a negative impact on the environment.”*⁸¹²

*“Our activities impact the environment we operate in - both directly, through the operations of our buildings, IT systems and business travel, but also indirectly, through our lending portfolio and through our procurement supply chains.”*⁸¹³

801. Because of alleged data limitations ING was not yet reporting on the scope of its financed and facilitated emissions. ING realised very well even then that transparency is useful in redirecting financing flows to low-emissions activities, and is consequently an “important step” in achieving the goals of the Paris Agreement:

*“We believe transparency will encourage investors and banks to shift to more low-carbon and climate-smart options as companies become more open about reporting on the current and potential financial implications of climate change – an important step towards delivering on the commitments of the Paris Agreement to keep global warming below two degrees Celsius.”*⁸¹⁴ (underlining added by legal counsel)

802. In addition, the alleged data limitations do not stand in the way of ING’s own understanding that its emissions are “material”. It states in the same annual report.

*“While scope 3, category 15 (emissions through lending and investments) is material to ING’s indirect emissions footprint, due to measurement complexity and lack of quality data, ING is not able accurately to measure and disclose this figure.”*⁸¹⁵ (underlining added by legal counsel)

803. Moreover, it has been established that also according to ING, the alleged data limitations did not stand in the way of the necessary action (even if these data limitations were to continue for several years):

“It is estimated that it will take several years for companies like ING and its clients to be able to align fully with the recommendations. In fact, it is only as our clients start to disclose more completely that we can use that data for our own analyses and disclosures. However, we are not waiting for a perfect

⁸¹¹ ING Annual Report 2017, p. 55 (see <https://www.ing.com/web/file?uuid=984d63ab-14e4-4a37-abcd-8326d8196f76&owner=b03bc017-e0db-4b5d-abbf-003b12934429&contentid=42779>).

⁸¹² Ibid, p. 343.

⁸¹³ Ibid, p. 349.

⁸¹⁴ Ibid, p. 343.

⁸¹⁵ Ibid, p. 350.

world before we take action.⁸¹⁶ (underlining added by legal counsel)

804. Nor did the alleged data limitations stand in the way of ING binding itself in 2018 to the development of “PACTA for Banks”. Although the application of PACTA and ING’s “Terra Approach” that is partly based thereon⁸¹⁷ is as such insufficient for ING to show the due care that it is bound to apply on the basis of Article 6:162(2) DCC (see Chapter XV), this persuaded ING in 2019 to report on the physical emissions intensity of its loan portfolios in five sectors, being the sectors of Commercial Real Estate, Residential Real Estate, Power Generation, Automotive and Cement.⁸¹⁸ This means that ING at that time possessed sufficient data to be able to quantify the emissions connected with these loan portfolios (and consequently contribute to climate change).
805. Since reporting year 2020, ING has reported only a part of its absolute emissions on the basis of PCAF (see Chapter X.2.3). This concerns a part of the Scope 1 and 2 emissions of clients, where Scope 3 is often the most important category of emissions. The reporting is limited to the emissions connected with a part of its financing activities, whereby ING sometime in the following years adjusted the reported emissions in the preceding year based on the improved availability of emissions data. Based on the data reported by ING over reporting years 2020 to 2024 (that are not yet complete, as will be clear hereafter), we see the following picture:

Year end	Initial emissions reporting (Scope 1 and 2 of clients)	Initial portfolio cover	Improved emissions reporting
2020	42 MtCO ₂ -eq ⁸¹⁹	69% loans	63 MtCO ₂ -eq ⁸²⁰
2021	55.92 MtCO ₂ -eq ⁸²¹	94.7% loans 83.8% shares	N/a
2022	61.36 MtCO ₂ -eq ⁸²²	94% loans 98% shares	N/a
2023	57.29 MtCO ₂ -eq ⁸²³	97.1% loans 99% shares 100% corporate bonds	57.63 MtCO ₂ -eq. ⁸²⁴
2024	60.51 MtCO ₂ -eq ⁸²⁵	96.6% loans % shares not given % bonds not given	N/a

* These percentages concern stocks and bonds that ING holds on its own book (and thus not the stocks and bonds for which ING has supervised the issuance as facilitator of capital market transactions or that ING has under its control as asset manager).

806. In addition to the aforementioned reporting on financed Scope 1 and 2 emissions of clients, ING first reported on a part of the Scope 3 emissions of clients financed by ING over 2023.

⁸¹⁶ Ibid, p. 343.

⁸¹⁷ ING Climate Report 2019, p. 8 (see <https://www.ing.com/web/file?uuid=29c2b247-27eb-4020-a117-a87ce8f642b4&owner=b03bc017-e0db-4b5d-abbf-003b12934429&contentid=47771>).

⁸¹⁸ Ibid, p. 11.

⁸¹⁹ ING Climate Report 2021, p. 29 (see <https://www.ing.com/Sustainability/Performance-and-reporting/Reporting/2021-Climate-Report.htm>).

⁸²⁰ ING Climate Report 2022, pp. 82-83 (see <https://www.ing.com/Sustainability/Performance-and-reporting/Reporting/2022-Climate-Report.htm>).

⁸²¹ Ibid, p. 81.

⁸²² ING Climate Report 2023, pp. 85 (see <https://www.ing.com/Sustainability/Performance-and-reporting/Reporting/2023-Climate-Report.htm>).

⁸²³ Exhibit MD-005, ING Climate Report 2024, p. 70.

⁸²⁴ Exhibit MD-004, ING Annual Report 2024, p. 125.

⁸²⁵ Ibid, p. 124.

Although ING was presenting an inventory of the Scope 3 emissions for only 54% of the total outstanding amount in company loans,⁸²⁶ according to ING itself, this represented 80% of the Scope 3 emissions of its loan portfolio.⁸²⁷ The Scope 3 emissions of clients reported for 2023 was 206.77 MtCO₂-eq, bringing the combined reported Scope 1, 2 and 3 emissions of ING to 264 MtCO₂-eq in 2023. ING adjusted these figures in 2024 because in the meantime it has charted the Scope 3 emissions for 98% of its total outstanding amount in company loans. On that basis, it adjusted its financed Scope 3 emissions of clients reported for 2023 to 251.3 MtCO₂-eq, bringing the (adjusted) combined reported Scope 1, 2 and 3 emissions of ING to 308.8 MtCO₂-eq in 2023.⁸²⁸

807. ING reported the Scope 3 emissions for 98.4% of its total outstanding amount in company loans over 2024. Partly on that basis, in its annual report for 2024 ING reported financed Scope 3 emissions of 201.11 MtCO₂-eq, bringing the most recent total financed Scope 1, 2, and 3 emissions reported by ING to (rounded) 262 MtCO₂-eq.⁸²⁹
808. In its reporting, ING provides little insight into the changes in the data and methodologies it used, and the degree in which these fluctuations affected the reported emissions. Nevertheless, the above picture provides insight into the quantified, substantial contribution of ING to the danger of climate change, and ING's awareness thereof. This insight encompasses the following:
- (i) the first time when ING publicly reported on its quantification of its financed emissions (in its annual report for 2020), which reporting had limited cover (in terms of portfolio and client emissions) and was based on alleged limited emissions data, those at the time publicly known emissions of 42 MtCO₂-eq were already substantial;
 - (ii) ING is able to increase the cover of its quantification and the quality of the data on which this quantification is based, and to thereby improve the cover and quality of its quantification over the preceding years;
 - (iii) although there are some fluctuations in the precise scope of the financed Scope 1 and 2 emissions of clients reported by ING between various years, on the basis of the most accurate information since 2020 these have continued to fluctuate within a bandwidth between lowest 55.92 MtCO₂-eq (2021) and highest 63 MtCO₂-eq (2020), whereby in addition to decreases, increases in the emissions reported by ING are also visible;
 - (iv) for 2024, the Scope 1 and 2 emissions reported by ING, together with the reported financed Scope 3 emissions of ING's loan book comes to a total of reported financed emissions of 262 MtCO₂-eq. 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 (see para. 12);
 - (v) up to now ING has not reported on all parts of its financed and facilitated emissions. For instance, ING does not report at all on facilitated emissions and emissions

⁸²⁶ ING Climate Report 2023, p. 85 (see <https://www.ing.com/Sustainability/Performance-and-reporting/Reporting/2023-Climate-Report.htm>)

⁸²⁷ Exhibit MD-191, Volkskrant 2024, 'ING breekt met 'pure' olie- en gasbedrijven, Milieudefensie noemt het 'een PR-trucje', p. 2.

⁸²⁸ Exhibit MD-004, ING Annual Report 2024, p. 125.

⁸²⁹ Ibid, p. 124.

connected with assets ING manages for clients, see Chapter XV.2.1), so that a considerable improvement is necessary for a fully-fledged quantification by ING of its full financed and facilitated emissions;

- (vi) the foregoing establishes that if the parts of ING's financed and facilitated emissions that have not yet been reported are added, ING's emissions are considerably larger than the above-mentioned 262 MtCO₂-eq.

XII.3.4 From its existence in 1991 ING could and must have known that global warming has to remain below 2°C/450 ppm, and since 2006 ING has shown that it knows this

- 809. In 1990, the year before ING was founded, an international climate study was set up - participants include the Ministry of Housing, Spatial Planning and the Environment (VROM) and the National Institute for Public Health and Environmental Protection (RIVM) - which concluded that an average global warming of 1°C can cause major damage across the world and that global warming of 2°C should at all times be avoided, which is why it should be considered an upper limit (see Chapter VII.2.1).⁸³⁰
- 810. On the basis of the scientific findings of the IPCC, the EU has been pursuing the policy since 1996 that global warming should be reduced to less than 2°C in order to avert a great danger. In the 1990s, based on the then available knowledge, it was assumed that in order to achieve this, the concentration of greenhouse gases in the atmosphere had to remain below 550 ppm (parts per million).⁸³¹
- 811. Science continued to develop in subsequent years and it became clear that the situation was more serious than initially assumed. Reducing global warming to 2°C means we have to keep the concentration of greenhouse gases a lot lower than the previously assumed 550 ppm. It emerges that atmospheric concentration of greenhouse gases has to be kept below 450 ppm because even with this 450 scenario, the chance to remain below 2°C is only 50%.
- 812. In 2006 it turned out that ING was definitely aware that a CO₂ concentration of more than 450 ppm can lead to a temperature increase that well exceeds a 2°C warming. The ING report "*Climate Change: When Hell Freezes Over*" shows this clearly:⁸³²

Fig 16 Increase in temperature by 2100 estimates degrees centigrade

CO ₂ concentration	IPCC (2001 model)	Hadley Centre (2004 model)
400ppmv	1.2-2.5	1.6-2.8
450ppmv	1.3-2.7	1.8-3.0
550ppmv	1.5-3.2	2.2-3.6

Source: Based on Stern Review and Elzen and Meinhausen

- 813. ING also showed that it was aware of the danger and the consequences of a concentration

⁸³⁰ Exhibit MD-071, Stockholm Environment Institute 1990, 'Targets and Indicators of Climate Change' (selected pages) pp. viii and ix. With regard to the involvement of RIVM and VROM, see p. iv, 165 and 166 of this report.

⁸³¹ Exhibit MD-073, European Council 1996, 'Community Strategy on Climate Change', para. 6. 550 ppm (parts per million) means that out of every million particles in the atmosphere, 550 consist of carbon dioxide. Based on the scientific status of that moment, the EU assumed, during that period, that the atmospheric concentration of CO₂ should not exceed 550 ppm if there is to be a realistic chance of keeping global warming below 2°C.

⁸³² Exhibit MD-184, ING 2006, 'Climate Change: when hell freezes over', p. 18.

(and thus temperature increase) that is higher than this (see paras. 776 et seq.). In addition, it follows from the report that ING is aware that a stabilisation of the concentration of greenhouse gases at a specific level does not mean that the net emissions can remain the same, but that they will have to be reduced to zero:

*"Thus, this approach uses a number of around 500ppmv as a trigger point beyond which the disproportionate or non-linear damage from carbon concentrations may be reached. Note, however, that to finally stabilise concentrations at this or any other level requires that net emissions eventually drop to zero."*⁸³³

814. ING then agreed that according to leading scientists the CO₂ concentration must stabilise at 450 ppm in 2007 in the joint statement *"Global Roundtable on Climate Change"* (GROCC; see: para. 779):

*"As the CO₂ concentration rises, the impacts on the planet also mount. Some leading scientists put the threshold for "dangerous anthropogenic interference" as low as 450 ppm because of serious risks of major sea level rises, changes in weather patterns, and the extinction of many species."*⁸³⁴

815. Shortly after that, during COP13 in December 2007, the 450 ppm scenario was recorded in the Bali Action Plan (see Chapter VII.2.3 and Chapter X.3.5), with the explanation that this scenario urgently requires substantial emissions reductions.⁸³⁵ That is why from 2007, the EU has also assumed the 450 ppm scenario, as evidenced by a statement from the Commission that year:

*"The objective of the EU is to reduce the average global rise in temperature to less than 2°C. [...] If in the long term, concentrations stabilise on a level of about 450 ppm of CO₂-eq, there is a 50% chance we will achieve this objective."*⁸³⁶

XII.3.5 From the Copenhagen Accord in 2009, ING could and must have known that global warming might have to remain below 1.5°C, and since 2021 ING has shown that it knows this

816. In all following annual UN climate conferences, this climate goal (<2°C/<450 ppm) was confirmed, while from 2009 (COP15 Copenhagen) the target was possibly to be tightened to 1.5°C (see Chapter VII.2.4). In 2015, the global climate target in the Paris Agreement was indeed tightened further to 1.5°C.

817. This tightening is the result of the most recent scientific insights at that time, that demonstrated that the gravity of the global consequences of global warming of 2°C was worse than previously thought.⁸³⁷ Since Paris, in order to prevent dangerous climate change, global warming must preferably be limited to 1.5°C,⁸³⁸ from it follows that the concentration of greenhouse gases should furthermore be limited to the aforementioned 450 ppm. In 2021,

⁸³³ Ibid, p. 29.

⁸³⁴ Exhibit MD-159, The Earth Institute at Columbia University 2007, 'Global Roundtable on Climate Change, The Path to Climate Sustainability', p. 5.

⁸³⁵ Exhibit MD-075, UNFCCC COP13 2007 (Bali), 'Bali Action Plan'. The Bali Action Plan states: *"Deep cuts in global emissions will be required to achieve the ultimate objective of the Convention and emphasizing the urgency to address climate change as is indicated in the Fourth Assessment Report of the [IPCC]"* (p. 3). The word urgency in the action plan is followed by a footnote that refers to the paragraphs in the IPCC report that discusses the 450 ppm scenario.

⁸³⁶ Exhibit MD-192, European Commission 2007, 'Limiting global climate change to 2 degrees Celsius' under 2.

⁸³⁷ Exhibit MD-083, UNFCCC 2015, 'Report on the structured expert dialogue on the 2013–2015 review', pp. 30 to 34. It concludes that the 2°C target is no longer a safe target and that global warming should be kept below 2°C as far as possible, preferably under 1.5°C. See in addition Chapter **Error! Reference source not found..**

⁸³⁸ Exhibit MD-070, Paris Agreement (original English version), Art. 2.

the 1.5°C target was explicitly recognised by the international community as the danger limit in the Glasgow Climate Pact (see Chapter VII.4). This is also the year in which ING itself no longer takes 2°C but the 1.5°C target as the starting point.⁸³⁹

XII.3.6 From its founding in 1991, ING could and must have known that it must take measures, and since at least 2007 ING has shown that it knows this

818. As Milieudefensie explained above (see Chapter XII.3.2), at the time of ING's founding it was already known that banks and investors in their planning and operational agendas must also take account of climate change. For that reason alone ING could and should have been aware at its founding that preventing climate change would require that measures be taken, including for a financial institution like ING.

819. In the years immediately thereafter, this notion received ever broader recognition, including for the financial sector itself in the framework of UNEP FI. This recognition appears from various statements and position papers within the context of UNEP FI in the period from 1992 to 2001; see Chapter X.3.3 and Chapter X.3.4).

820. This recognition encompasses that (and ING thus could and should have been aware of this):

(i) as of 1992:

- (a) banks, insurers and other financial institutions have a responsibility in protecting the environment (including the climate) and sustainable development, that deserves the highest priority and requires integration thereof into their operational activities and commercial decisions (see para. 596);
- (b) a precautionary approach is required to prevent an adverse impact on the environment (including the climate) (see para. 596); and
- (c) this in part entails that the aforementioned institutions not only expect of their clients that they meet environmental standards, but also that they view sound environmental practices as a key factor for effective business operations (see para. 596); and

(ii) as of 1996:

- (a) when taking measures to counter climate change, a precautionary approach had to be applied and that there was no time to wait for quantification of the adverse consequences of climate change (see para. 598); and
- (b) the most effective precautionary approach to counter the risk of climate change consists of "*a substantial reduction of greenhouse gas emissions with respect to a "business as usual" scenario*" (see para. 598); and

(iii) as of 2001, the importance concerned with the measures to be taken by the financial sector is huge because of "*its business skills - particularly in innovation - and its size*" (see para. 605).

⁸³⁹ ING Annual Report 2021, p. 35 (see <https://www.ing.com/web/file?uuid=1e9ea651-53d9-4b61-88c8-9b357b311262&owner=b03bc017-e0db-4b5d-abbf-003b12934429&contentid=55701>).

821. In 2007, ING showed it was familiar with this, because it aligned with UNEP FI and was a co-signor of a joint statement of the Global Roundtable on Climate Change ("GROCC") (see Chapter XII.3.2 and Chapter XII.3.3).
822. 2007 is also the year in which ING could and should have been aware of the wider and more detailed recognition of the importance of redirecting private financing flows, and consequently of the measures this would require in the case of ING. This follows the broader recognition that, inter alia (see Chapter X.3.5):
- (i) financing decisions for a longer period of sometimes more than 30 years determine the worldwide emissions profile, and therefore financing flows must be led as quickly as possible to more climate-friendly and climate-proof infrastructure (in particular from traditional fossil fuel energy sources and technology to alternatives with low emissions) (see para. 608); and
 - (ii) when redirecting investment and financing flows the focus must be on private flows, as they represent the greatest share of those flows (at the time 86%) (see para. 609).

XII.3.7 Conclusion regarding the knowledge and foreseeability of the damage

823. Against the background of all of the above facts and circumstances, there cannot be any doubt that ING has been aware for more than 23 years (from 2002) of the enormous danger of climate change for both humans and the environment, and that ING obviously could and should have known this much earlier (in the years after its founding, some 34 years ago).
824. Equally, in those years ING could and should have known that its products and services contributed to the arising of this danger and that it could take precautionary measures to counter this. That this contribution is a substantial one, and that ING therefore has a meaningful and legally relevant effect on deflecting the danger of climate change, has also been demonstrated above. For at least 18 years (from 2007), ING itself also undeniably indicated that it was aware of this, and to understand that it has a responsibility to limit the associated danger (and that this, moreover, creates opportunities for it).
825. At that time, ING could and should have long been aware what its responsibility should cover. Outside of the generally available knowledge at the time, ING showed in 2006 that it was already aware in detail that global warming had to be limited, according to the understanding at the time, to 2°C/450 ppm. In 2006, ING also showed that it was aware that the need of a stabilisation of the concentration of greenhouse gases in the atmosphere means that the net emissions of greenhouse gases would have to be reduced to zero. From 2009 (the Copenhagen Accord), it could, furthermore, have been aware that the tipping point to dangerous climate change could already occur at 1.5°C warming. As of 2015 (the Paris Accord), that 1.5°C also became the reference point and was then noted as the universal danger limit by the global community, which is why this goal is now the universal starting point and was taken over by ING as of 2021.
826. All this knowledge and science that was available for such a long period of time makes it all the more reproachable that ING did not reduce its substantial emissions, even when in possession of this knowledge, and continued to appear and even rise in the ranking of biggest fossil fuel financiers worldwide.

XII.4 CRITERION (IV): THE NATURE OF ING'S ACTIONS

827. Whether or not the actions which the injuring party is charged with according to their nature pose a great danger, will affect the importance to be attached to the other 'Kelderluik' criteria. Behaviour that does not pose a great danger will only be negligent if there is a reasonable likelihood that damage will occur. Actions that pose a great danger and concerns, for instance, safety, will more quickly be considered negligent, even though the chance of damage is very small and the onerousness of the precautionary measures to be taken is considerable.⁸⁴⁰
828. The court judgments in the Urgenda and Shell cases discussed in Chapter XI show that the relevant court instances applied similar reasoning: in the case of actions which by their nature create a danger that is as substantial as that of (dangerous) climate change and that, moreover, also entails a very large chance of damage, high duty of care requirements may and must be set, even if the onerousness of the precautionary measures to be taken are considerable for the party causing the damage. Due to the serious threats and risks of climate change, private companies may also be required to take drastic measures and make financial sacrifices to limit CO2 emissions to prevent dangerous climate change. This also applies to reducing the company's Scope 3 emissions, because companies also have a degree of control and influence over those Scope 3 emissions. In that same sense, it was decided in the Urgenda case that although the national emissions are caused by citizens and companies (and barely by the state itself), the state can exercise a degree of control over the collective Dutch emissions level of citizens and companies (the Scope 3 emissions of the State, as it were) and that this possibility for control, in view of the large scope of the danger that must be countered, entails that a high degree of due care can be required of the State. It was also considered that the State plays an important role in the transition to a sustainable society.
829. Milieudefensie believes that these points also apply to ING, with regard to the importance of its role in the sustainable climate transition, the far-reaching measures demanded of it and with regard to its Scope 3 responsibility. ING too contributes through (primarily) its Scope 3 emissions in a relevant degree to the enormous gravity of the climate danger and ING too has influence on and control over the Scope 3 emissions that are connected with its financing and services. ING has full control over whether or not to finance certain economic activities, and consequently also has control over the greenhouse gas emissions connected with its financing decisions. Growth in the financing of emissions-intensive activities will also see ING's contribution to climate change grow. When production decreases, so will the contribution. All of this in ING's own hands.
830. That ING has control over the Scope 3 emissions associated with its financing, also follows from the fact that ING has formulated certain (albeit inadequate) targets to reduce these Scope 3 emissions (see Chapter XV).
831. Just like the State and Shell, ING therefore, because of its influence on and control over its Scope 1, 2 and 3 emissions, has a share in causing dangerous climate change that cannot be ignored. With the scope of its global banking activities and as a globally operating bank in the top 25 of the biggest banks in the fossil fuel industry, ING has an important influence on climate action and it exercises that influence, only incorrectly. Annually ING provides many

⁸⁴⁰ C.H. Sieburgh 2000, *Toerekening van een onrechtmatige daad*, Kluwer 1 July 2000, pp. 75 to 77. See also: Asser 6-IV, 2023/76 (A.S. Hartkamp en C. Sieburgh, *De verbintenis uit de wet*, 2023/76).

billions in financing to economic activities which involve substantial greenhouse gas emissions, without steering toward an adequate reduction of those emissions in line with the 1.5°C target. If ING were to do so, this would certainly have influence on the sustainable climate transition.

832. In view of the large and all-encompassing danger connected with ING's actions, the criterion discussed here regarding the nature of the actions that are the subject to the dispute, entail that high due care requirements must be set for ING, even if the onerousness of the precautionary measures to be taken would be considerable for ING.

XII.5 **CRITERION (V): THE ONEROUSNESS (OR LACK THEREOF) OF THE MEASURES FOR ING**

833. In this case these precautionary measures concern the measures that ING must take in order to guarantee that it ceases or phases out financing for specific greenhouse gas-intensive economic activities, in order to reduce its emissions to such degree that they are brought in line with the 1.5°C target (as explained in further detail by Milieudefensie in Chapter XIV). Insofar as the relevant measures were onerous, that onerousness may not be of decisive significance for ING's legal obligation to take those measures. This applies even if there were a high degree of onerousness, in view of the gravity of the risks and the risk of dangerous climate change.

834. Nor is it clear why the entire world should have to suffer catastrophic climate change and suffer the consequences thereof because it would be too onerous for ING (and other big greenhouse gas emitters) to change.

835. Without changes to the policies of all major and substantial emitters in the world, the world will be confronted with dangerous climate change with unforeseeable consequences for humans and the environment and with a big chance of a tipping points in the climate system. Against this background it cannot be tolerated that ING would not have to change because this is too onerous. That is inexplicable. ING will therefore have to change, onerous or not.

836. ING can change and there does not, in any event, appear to be a great degree of onerousness with regard to changing. This appears, inter alia, from a letter from 2017, which was (co-)signed by ING.⁸⁴¹ This shows that ING is of the opinion that doing nothing is not an option and will in the end be more costly, and that ING (together with other Dutch financial institutions) sees good opportunities for going through the required climate transition, inter alia by phasing out the financial services to the most polluting industry, assisting in building the economy in a more focused manner and thus creating opportunities for new prosperity:

"As the climate goals have been determined with worldwide agreement, we all share in the responsibility of realising these goals. [...] We are aware that doing nothing is not an option and will be more costly in the long run. In addition, this transition also offers large opportunities of new prosperity. [...]"

*With a good understanding of impact, financial institutions can phase out the services they provide to the most polluting economic activities and help in a more focused manner to build the economy of the future."*⁸⁴²

⁸⁴¹ Exhibit MD-193, Letter from banks and pension funds to political representatives 2017 (print-out from website 27 February 2025).

⁸⁴² Ibid, p. 2.

837. Since 2017, the opportunities for ING to change have not become any the worse. On the contrary. The real economy, and the regulatory and social frameworks within which society is developing, are increasingly focused on addressing the climate problem.

838. In addition, the ECB and other financial supervisory agencies, when exercising their supervisory tasks, are increasingly demanding that financial institutions like ING take adequate measures to manage the climate-related financial risks to which ING and other financial institutions are exposed. The legislative frameworks within which ING and other financial institutions operate (compliance with which is supervised by supervisory agencies like the ECB) recognise and promote the management of climate-related financial risks. The consequences of climate change such as extreme heat, drought, flooding, forest fires, storms, rising sea levels and the like can, after all, affect the assets of (the clients of) the banks and thus the financial stability of the financial system. For these reasons too, doing nothing or not doing enough to help prevent dangerous climate change is not an option. Indeed, the ECB shows that a fast and decisive transition is the best way forward, from the perspective of financial stability, the economy and keeping energy affordable:

“[A]cting immediately and decisively (the accelerated transition scenario) would provide significant benefits for firms, households, and the financial system, not only by maintaining the economy on the optimal net-zero emissions path (and therefore limiting the impact of climate change), but also by rapidly reducing their energy expenses and lessening the financial risk.”⁸⁴³

“[T]he sooner and faster we complete the necessary green transition, the lower the overall costs and risks.”⁸⁴⁴

839. In short, not only from the perspective of avoiding hazardous negligence and the human rights perspective to be discussed hereinafter it is necessary that ING carry out an adequate climate policy, but this will also benefit the wider economy, energy costs and financial stability. ING will itself benefit from this in turn, in view of how entwined it is with the wider economy. For these reasons too it is not clear why implementing the adequate climate policy that Milieudefensie is demanding of ING would be onerous for ING, let alone that such would be onerous so onerous that ING could not be made subject to an order to implement a good climate policy.

840. With all of this, lastly, the demands of Milieudefensie only focus on the prerequisites that ING must satisfy in order to guarantee that it ceases or phases out financing certain greenhouse gas-intensive economic activities, in order to reduce its emissions to such degree that it be brought in line with the 1.5°C target. Within these prerequisites it is up to ING to, according to its own insight and in a manner is the least onerous for it to perform its legal obligations.

841. Milieudefensie therefore repeats that in the light of all facts and circumstances, demanding a change in ING’s business operations is legitimate.

XIII. THE RELEVANCE OF HUMAN RIGHTS FOR ING’S LEGAL OBLIGATION

XIII.1 INTRODUCTION

⁸⁴³ Exhibit MD-194, Emambakhsh et al. 2023, ECB Occasional Paper Series, ‘The Road to Paris: stress testing the transition towards a net-zero economy’, p. 5.

⁸⁴⁴ Exhibit MD-195, De Guindos 2023, The ECB Blog, ‘Need for Speed on the Road to Paris’ (print-out from website 27 February 2025), p. 1.

842. It was explained in the preceding chapter that the reduction obligation to which ING is subject arises from application of the doctrine of hazardous negligence, that co-determines ING's duty of care under Article 6:162(2) DCC.
843. It was discussed in Chapter XI that human rights give substance to the legal obligations under ING's duty of care as well. Human rights have a(n) (indirect) horizontal effect in the legal relationship between private actors such as ING and Milieudefensie. Milieudefensie explained in this respect that this horizontal effect is of great importance for duty of care obligations in relation to climate change, in view of the meaning given to Articles 2 and 8 ECHR in the Urgenda and Shell cases. It was also discussed that according to the judgments in the Shell case (including the recent judgment of the court of appeal), the UNGP and the OECD Guidelines provide further guidance for interpreting the human rights responsibilities of companies.
844. Expanding on this position, Milieudefensie will explain in this chapter what meaning human rights have for ING's obligations under its duty of care pursuant to Article 6:162 DCC in relation to climate change. This discussion will show that in the horizontal relationship between ING and Milieudefensie, significant weight is attributed to human rights and the values embodied therein because of their fundamental importance for society as a whole. The findings of (international) courts and tribunals, human rights committees, other international (UN) bodies, and the specific soft law instruments that have been developed in the area of companies and human rights, also give substance to the due care that these private (legal) persons must observe with regard to each other.

XIII.2 CLIMATE CHANGE FORMS A SERIOUS THREAT TO HUMAN RIGHTS

845. That climate change has serious consequences for internationally recognised human rights is undisputed, partly in view of the judgment of the Dutch Supreme Court in the Urgenda case,⁸⁴⁵ the recent judgment of the European Court of Human rights in the KlimaSeniorinnen case (in which the ECtHR refers in that respect to, inter alia, the "*scientific, political and judicial recognition of a link between the adverse effects of climate change and the enjoyment of (various aspects of) human rights*")⁸⁴⁶ and the recent judgment of the Court of Appeal of The Hague that describes climate change as "*the greatest issue of our time*" because it "*damages the rights protected by Articles 2 and 8 ECHR, both in the Netherlands and abroad, and will damage them even further.*"⁸⁴⁷
846. It also follows from the extensive discussion in Chapter VIII of the serious consequences of climate change globally, in Europe and also in the Netherlands, in particular if there is an overshoot of the universal danger limit of 1.5°C.
847. Earlier in this summons, when discussing the Cancun Agreements of 2010, Milieudefensie also referred to Resolution 10/4 of the UN Human Rights Council, which was adopted in 2009. In that resolution, this important body within the UN human rights system explicitly established the relationship between climate change and human rights violations already

⁸⁴⁵ Dutch Supreme Court, 20 December 2019, ECLI:NL:HR:2019:2006, para. 5.7.9: "*It concludes that the 2°C target is no longer a safe target and that global warming should be kept below 2°C as far as possible, preferably under 1.5°C. This is also internationally recognised outside of the framework of the Council of Europe.*"

⁸⁴⁶ ECtHR, 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020, paras. 434, 436. See, inter alia, also para. 542.

⁸⁴⁷ Court of Appeal of The Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2100, para. 7.25.

more than fifteen years ago, whereby it is recognised that climate change has direct and indirect consequences for respecting a whole series of human rights, including the most fundamental rights such as the right to life, the right to health and the right to all kinds of basic needs.⁸⁴⁸ In the past few years, the UN Human Rights Council adopted a whole series of resolutions in which these points were recognised and confirmed again.⁸⁴⁹

848. But there is more. In the meantime, there has been an almost overwhelming number of declarations, resolutions, decisions and reports of international and regional human rights bodies and national courts in which it was confirmed that climate change is threatening human rights, now and in the future, and is even qualified as an *existential* threat. A useful overview of these sources is included in, inter alia, the KlimaSeniorinnen judgment⁸⁵⁰ and also in part VIII of the very detailed documentation that the Secretariat of the United Nations sent to the International Court of Justice in the framework of the request of the UN General Assembly to this court to provide an advisory opinion on international law and climate change. It concerns more than 1400 pages in sources specifically regarding the relationship between human rights and climate change of UN human rights agencies.⁸⁵¹

849. Hereinafter, Milieudefensie will only refer to a number of sources that provide a picture of the wide international consensus on this point.

850. In 2022 the UN General Assembly determined that climate change is one of the most urgent and serious threats to human rights of present and future generations:

*"Recognizing further that environmental degradation, climate change, biodiversity loss, desertification and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights [...]"*⁸⁵²

851. That climate change forms a particularly serious threat to human rights is also confirmed by the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change in a report from 2022 to the UN General Assembly:

*"We are faced with a global crisis in the name of climate change. Throughout the world, human rights are being negatively affected and violated as a consequence of climate change. For many millions, climate change constitutes a serious threat to the ability of present and future generations to enjoy the right to life. Human-induced climate change is the largest, most pervasive threat to the natural environment and human societies the world has ever experienced. In its article 28, the Universal Declaration of Human Rights guarantees that all human beings are entitled to a social and international order in which their rights and freedoms can be fully realized. Climate change already undermines this order and the rights and freedoms of all people. We are being confronted with an enormous climate change crisis of catastrophic proportions. It is happening now."*⁸⁵³

852. The very serious impact of climate change on the right to life in particular was recognised by

⁸⁴⁸ Chapter VII.2.5, 2010: The Cancun Agreements (COP16) with reference to Exhibit MD-079, UN Human Rights Council, Resolution 10/4.

⁸⁴⁹ See for an overview: <https://www.ohchr.org/en/climate-change/human-rights-council-resolutions-human-rights-and-climate-change>.

⁸⁵⁰ ECtHR, 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020, paras. 144-272.

⁸⁵¹ Available on: <https://www.icj-cij.org/case/187>.

⁸⁵² Exhibit MD-196, UN General Assembly, Resolution 76/300, pp. 2-3.

⁸⁵³ Exhibit MD-197, UN Special Rapporteur on the promotion and protection of human rights in the context of climate change Special Rapporteur on the promotion and protection of human rights in the context of climate change 2022, 'Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation', para. 1.

the UN Human Rights Committee in 2018. The UN Human Rights Committee is the convention agency that supervises compliance with the International Covenant on Civil and Political Rights (“ICCPR”), including the right to life laid down in Article 6 ICCPR:

*“Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”*⁸⁵⁴

853. In addition, climate change is also acknowledged as a “grave threat” to the right to health, as can be concluded from a study of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on this issue from 2016:

*“In the Human Rights Council panel discussion and in their written submissions, stakeholders overwhelmingly agreed that climate change posed a grave threat to human health, including the social and environmental determinants of health such as clean air, safe drinking water, sufficient food and secure shelter [...].”*⁸⁵⁵

854. This right to health has been internationally recorded in, inter alia, Article 25 of the Universal Declaration of Human Rights, Article 12 of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) and in the preamble of the Constitution of the World Health Organisation (an international convention). This international human right to health also overlaps with the broader right to an undisturbed family life laid down in Article 8 ECHR, as also follows from the judgment of the ECtHR in the KlimaSeniorinnen case: “Article 8 must be seen as encompassing a right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life.”⁸⁵⁶

855. In the meantime, climate change is also one of the strategic priorities of the World Health Organisation (WHO) and the World Health Assembly (the general assembly) of the WHO adopted a resolution on climate change and health in May 2024, in which climate change is deemed one of the biggest threats to public health worldwide:

“Recognizing that climate change is one of the major threats to global public health, and noting the urgent call issued by the WHO Director-General for global climate action to promote health and build climate-resilient and sustainable health systems;

*Aware that increasingly frequent extreme weather events and conditions are taking a rising toll on people’s well-being, livelihoods and physical and mental health, as well as threatening health systems and health facilities; and that changes in weather and climate are threatening biodiversity and ecosystems, food security, nutrition, air quality and safe and sufficient access to water, and driving up food-, water-, and vector-borne diseases, [...]”*⁸⁵⁷

856. The International Tribunal for the Law of the Sea also concluded in May 2024 in an advisory opinion on climate change and international law, that climate change “represents an existential threat and raises human rights concerns.”⁸⁵⁸

⁸⁵⁴ Exhibit MD-198, UN CCPR Human Rights Committee, General comment No. 36, Article 6: right to life, para. 62.

⁸⁵⁵ Exhibit MD-199, OHCHR 2016, ‘Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health’, para. 9.

⁸⁵⁶ ECtHR, 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020, paras. 519. See also para. 544.

⁸⁵⁷ Exhibit MD-200, WHO World Health Assembly 2024, ‘Climate change and health’, p. 1.

⁸⁵⁸ Exhibit MD-201, International Tribunal for the Law of the Sea, ‘Advisory Opinion on Climate Change and International Law’, para. 66.

857. These are only a few examples of the findings, as in essence all UN bodies, international organisations and national and international courts and tribunals have determined, also on the basis of climate science, that climate change poses a grave threat to the life and well-being of people, and consequently for a multitude of human rights.

XIII.3 HUMAN RIGHTS PROVIDE PROTECTION AGAINST CLIMATE CHANGE

858. In light of the above developments, various high courts and, in addition, various UN Human Rights Committees rightly held that human rights law also provides de facto protection against these concrete and real threats due to climate change. This protection must be offered by adequate emission reductions, because this is the only effective remedy against climate change.
859. This follows in the first place, naturally, from the judgment of the Dutch Supreme Court in the Urgenda case, in which the State is obliged, pursuant to Article 2 and Article 8 ECHR, to 'do its part', inter alia by reducing greenhouse gas emissions as a necessary contribution to the global climate task.⁸⁵⁹
860. Following the judgment of the Dutch Supreme Court, courts in Belgium and Germany decided on the requirements that must be set for national climate policy, on the basis of, inter alia, human rights law. On 30 November 2023 the Court of Appeal in Brussels came to the conclusion that the Belgian Federal State, the Flemish Region and the Brussels-Capital Region, due to their inadequate climate policy, are violating fundamental rights, in particular Articles 2 and 8 of the ECHR.⁸⁶⁰ The Belgian court ordered these three governments to reduce their emissions in 2030 by at least 55% relative to 1990. This was done with a reference to the obligation to provide effective protection of human rights as required on the basis of Article 13 ECHR.⁸⁶¹ When determining the reduction percentage of 55%, the Belgian Court of Appeal also made use of soft law, including the UNEP Emissions Gap reports, as well as climate science.⁸⁶²
861. Earlier, the German Constitutional Court (*Bundesverfassungsgericht*) held in the Neubauer case that the provisions in the German climate legislation in force at the time, which included national climate goals and in which the annually permitted emissions quantities were determined up to 2030, cannot be reconciled with the fundamental rights in the German Constitution (that correspond with Articles 2 and 8 ECHR).⁸⁶³ This is because insufficient specification had been included in the law for the reductions that had to take place after 2030, so that it was unclear how the statutory goal of net zero emissions would be reached in 2050. The Court concluded that the climate legislation encompasses a mismatch between the reduction effort to 2030 and that after 2030 because (with a reduction target for 2030 that is too low) the reductions after 2030 must be carried out with greater speed and urgency and that this places a disproportionate burden on the younger generation(s).⁸⁶⁴ All of this was, naturally, based on the determination that emissions reductions are the sole way to

⁸⁵⁹ Dutch Supreme Court, 20 December 2019, ECLI:NL:HR:2019:2006, summary, under *Protection of human rights based on the ECHR and Global problem and national responsibility*.

⁸⁶⁰ Cour d'Appel Bruxelles, 30 November 2023, 2021/AR/15gs 2022/AR/737 and 2022/AR891, paras. 211, 213 and 214. See also Exhibit MD-182, Cour d'Appel Bruxelles 30 November 2023, Klimaatzaak, from the Unofficial Dutch translation.

⁸⁶¹ Ibid, para. 277.

⁸⁶² Ibid, para. 240.

⁸⁶³ BVerfG, 24 March 2021, ECLI:DE:BVerfG:2021:rs20210324.1bvr265618, para. 192. See also Exhibit MD-181, BVerfG 24 March 2021, Neubauer, Official English translation.

⁸⁶⁴ Ibid, p. 1, 2nd paragraph; p. 2, 8th paragraph and p. 3, 1st paragraph; p. 3, 2nd paragraph; p. 4, under a).

limit climate change and that preventing dangerous climate change requires that the total (accumulated) greenhouse gas emissions remain within a limited carbon budget. In short, this case shows that far-reaching emissions reductions are necessary and that these must take place in the short term to protect fundamental constitutional and human rights. The necessary action may therefore not be postponed.

862. In the meantime, the protection that the ECHR provides against dangerous climate change has also been confirmed by the ECtHR in its judgment of 9 April 2024 in the above-mentioned *KlimaSeniorinnen* case, so that it has been made clear for all 46 member states of the Council of Europe what starting points must in any event be observed in order to prevent that climate policy is contrary to the ECHR. The ECtHR only assessed the complaints on the basis of Article 8 ECHR, but also analysed the principles that the ECtHR developed in jurisprudence on the basis of Article 2 ECHR “*which to a very large extent are similar to those under Article 8*”.⁸⁶⁵
863. The weight that this judgment carries follows from, inter alia, the circumstances under which the ECtHR arrived at this judgment. The judgment in the *KlimaSeniorinnen* case, 224 pages in total, is a judgment of the Grand Chamber of the ECtHR, which comprises 17 judges of the ECtHR, which only deals with cases in exceptional cases. In addition to the parties directly involved, no fewer than 8 contracting states, the UN High Commissioner for Human Rights, 3 UN ‘Special Procedures’, and dozens of prominent international NGOs and academics intervened.⁸⁶⁶
864. The result is a very extensively substantiated judgment, in which, in essence, all important considerations of the *Urgenda* case are confirmed, including:
- (i) the importance of access to the court in climate cases, including the access of collective interest groups;^{867,868}
 - (ii) the key role of national courts in insuring compliance with the ECHR in the context of climate change and providing effective human rights protection;⁸⁶⁹
 - (iii) that the ECHR must be interpreted in the light of, inter alia, the best available climate science, international climate agreements and (other) relevant sources of international law;⁸⁷⁰
 - (iv) that when formulating climate policy, account must be taken of the fact that the remaining carbon budget is limited, that in principle the point of net zero must have been reached within 30 years, that accumulated emissions must be limited, that therefore ambitious interim reduction targets must be set and that in all of this, the

⁸⁶⁵ ECtHR, 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020, paras. 537 & 538.

⁸⁶⁶ Ibid, paras. 366-409.

⁸⁶⁷ Ibid, paras. 480 to 503 and 521 to 526. Para. 499 considers: “*the special feature of climate change as a common concern of humankind and the necessity of promoting intergenerational burden-sharing in this context (see paragraph 489 above), speak in favour of recognising the standing of associations before the Court in climate-change cases.*” See also paras. 412, 420, 450-451 and 629 to 639.

⁸⁶⁸ See also: Besselink, ‘De Actio popularis in ‘Verein KlimaSeniorinnen Schweiz’ – Klimaatjurisprudentie tussen Straatsburg en Den Haag’, 22 April 2024, available on: <https://www.nederlandrechtsstaat.nl/de-actio-popularis-in-verein-klimaseniorinnen-schweiz-klimaatjurisprudentie-tussen-straatsburg-en-den-haag/>.

⁸⁶⁹ Ibid, paras. 629 to 639. Para. 639 considers: “[...] *the Court considers it essential to emphasise the key role which domestic courts have played and will play in climate-change litigation, a fact reflected in the case-law adopted to date in certain Council of Europe member States, highlighting the importance of access to justice in this field.*”

⁸⁷⁰ Ibid, para. 456. See also paras. 429 and 434.

best available knowledge must be observed, including the CBDR principle;⁸⁷¹

- (v) that this concerns an individual, independent (shared) responsibility that cannot be avoided by pointing to the responsibility of other actors;⁸⁷² and
- (vi) that this shared responsibility cannot be evaded by pointing to the fact that a party's individual contribution may be relatively minor on a global scale, with reference to the importance of taking account of the precautionary principle as laid down in Article 3(3) of the UN Climate Convention.⁸⁷³

865. With the Urgenda case and the KlimaSeniorinnen case as its foundation, it was held in the Shell case that the human rights (that also have a horizontal effect) of Articles 2 and 8 ECHR provide protection against climate change. The court of appeal held that *"It follows from the above that there can be no doubt that protection from dangerous climate change is a human right"*.⁸⁷⁴

866. Courts outside of Europe have also held that human rights provide protection against dangerous climate change. On 21 March 2024, the Supreme Court of India acknowledged the existence of *"a right to be free from the adverse effects of climate change"*.⁸⁷⁵ It deduced this right to be free of the adverse effects of climate change from Articles 21 and 14 of the Indian Constitution, which protect the right to life - which also covers the right to health - (Article 21) and the right to equality (Article 14).

867. In 2022, the Supreme Court of Brazil held that the Paris Agreement, as an international environmental convention, must also be seen as a human rights convention that prevails over national legislation and against which the Brazilian climate policy can be reviewed by the court. According to an English summary of the judgment by Columbia University in New York, the Supreme Court specifically decided in the judgment:

*"[T]hat environmental law treaties constitute a particular type of human rights treaty, which enjoy 'supranational' status. This 'supralegality' of human rights treaties means that they are above 'regular' laws in the legal hierarchy. Accordingly, any Brazilian law or decree that contradicts the Paris Agreement, including the nationally determined contribution, may be invalidated. Any action or omission contrary to this protection is a direct violation of the Constitution and human rights."*⁸⁷⁶

868. At UN level, the UN Human Rights Committee had already determined in 2019 and 2020 that Articles 6 and 17 of the ICCPR provides protection against dangerous climate change and the consequences thereof.⁸⁷⁷ Milieudefensie also previously referred to various authoritative UN findings that support the application of the human rights law in the context of climate change. Milieudefensie additionally refers to the finding of the UN Special Rapporteur for

⁸⁷¹ Ibid, paras. 442, 544 to 550 and 571.

⁸⁷² Ibid, para. 442.

⁸⁷³ Ibid, para. 444.

⁸⁷⁴ Court of Appeal of The Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2100, para. 7.17. See also District Court of The Hague, 26 May 2021, ECLI:NL:RBDHA:2021:5337, para. 4.4.10.

⁸⁷⁵ Exhibit MD-202, Supreme Court of India 21 March 2024, M K Ranjitsinh & Ors v. Union of India & Ors, paras. 24-27.

⁸⁷⁶ Exhibit MD-203, Supremo Tribunal Federal 7 January 2022, PSB et al. v. Brazil (on Climate Fund), English summary Columbia University (print-out from website 27 February 2025).

⁸⁷⁷ With regard to Article 6 ICCPR: see HRC, 23 September 2020, CCPR/C/127/D/2728/2016 (Ioane Teitiota - New Zealand), para. 9.4. See also Exhibit MD-198, UN CCPR Human Rights Committee, General comment No. 36, Article 6: right to life, pp. 14-15. With regard to Article 17 ICCPR: see HRC, 20 September 2019, CCPR/C/126/D/2751/2016 (Norma Potillo Cáceres – Paraguay), para. 7.7.

human rights and the environment who determined in 2019 that “[t]here is now global agreement that human rights norms apply to the full spectrum of environmental issues, including climate change.”⁸⁷⁸

869. The above examples confirm the widely supported international consensus that human rights, including the rights under Articles 2 and 8 ECHR, provide protection against the consequences of dangerous climate change and provide clear starting points and reference points for determining the necessary measures to prevent such. These findings are also relevant in the horizontal legal relationship between ING and Milieudefensie (and the collective interests it seeks to protect in court, as will be explained hereinafter in paragraph XIII.5.

870. Hereinafter, Milieudefensie will, however, first briefly discuss the latest developments relating to the recognition of the right to a clean, healthy and sustainable living environment. This is because this human right also seeks to provide protection against climate change and is thus of importance when interpreting the duty of care of Articles 2 and 8 ECHR and that of Article 6:162(2) DCC.

XIII.4 THE IMPORTANCE OF THE RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE LIVING ENVIRONMENT

871. The consequences of climate change (as well as loss of biodiversity and environmental pollution) for human rights is deemed to be so serious by the international community that this has led to the recognition of a specific human right that relates to these existential threats: the right to a clean, healthy and sustainable living environment. The UN Human Rights Council recognised this human right in 2021,⁸⁷⁹ followed by the UN General Assembly in 2022.⁸⁸⁰ In addition, the UN Human Rights Council affirmed the right to a clean, healthy and sustainable living environment in a resolution of 4 April 2023, that was adopted by consensus.⁸⁸¹ This international recognition expands upon regional and national recognition of this right in, inter alia, the African Charter on Human and People’s Rights, the San Salvador Protocol, the Aarhus Convention and the Arab Charter on Human Rights; regional conventions ratified by 120 States worldwide.⁸⁸² In Resolution 48/13 reference is, moreover, made to the fact that more than 155 states within the own legal order have already recognised a variant of a right to a healthy living environment.⁸⁸³

872. After the recognition of this right by both the UN Human Rights Council and the UN General Assembly, as well as in view of the regional and national recognition in more than 155 states worldwide, authoritative international agencies now assume that the matter concerns an existing international human right (that is also related to other existing human rights, like the right to life and health).

⁸⁷⁸ Exhibit MD-204, UN Special Rapporteur on Human Rights and the Environment, ‘Safe Climate’, p. 2, ‘Acknowledgements’.

⁸⁷⁹ Exhibit MD-179, UN Human Rights Council, Resolution 48/13 (adopted by 43 in favour, 0 against and 4 abstentions).

⁸⁸⁰ Exhibit MD-196, UN General Assembly, Resolution 76/300 (adopted by 161 in favour, 0 against and 8 abstentions). The abstentions came from Belarus, Cambodia, China, Ethiopia, Iran, Kyrgyzstan, Russia and Syria, see <https://press.un.org/en/2022/ga12437.doc.htm>.

⁸⁸¹ Exhibit MD-205, UN Human Rights Council, Resolution 52/23.

⁸⁸² Boyd, ‘Catalyst for Change: Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment’, in: Knox and Pejan (eds.), *The Human Right to a Healthy Environment* (2018), p. 18.

⁸⁸³ Exhibit MD-179, UN Human Rights Council, Resolution 48/13, p. 2.

873. For example, the UN Committee on the Rights of the Child, the treaty body that supervises compliance with the Convention on the Rights of the Child (“**UNCRC**”), concluded that children are entitled to a clean, healthy and sustainable living environment on the basis of the UNCRC. In General Comment No. 26 of 2023, the Committee provided a further explanation on the rights of children in the UNCRC in relation to environmental issues, with a particular focus on climate change. It is established in said treaty that various rights of children are threatened by climate change, and that Articles 6, 24, 27 28 and 29 provide protection in this respect:

“The extent and magnitude of the triple planetary crisis, comprising the climate emergency, the collapse of biodiversity and pervasive pollution, is an urgent and systemic threat to children’s rights globally. [...] A clean, healthy and sustainable environment is both a human right itself and necessary for the full enjoyment of a broad range of children’s rights. [...] “Climate change, biodiversity loss and the degradation of ecosystems are obstacles to the realization of children’s right to health.”⁸⁸⁴

[...]

“Children have the right to a clean, healthy and sustainable environment. This right is implicit in the Convention and directly linked to, in particular, the rights to life, survival and development, under article 6, to the highest attainable standard of health, including taking into consideration the dangers and risks of environmental pollution, under article 24, to an adequate standard of living, under article 27, and to education, under article 28, including the development of respect for the natural environment, under article 29.”⁸⁸⁵

874. That this matter concerns an existing international human right, also follows from an ‘Information Note’ drawn up by the Office of the UN High Commissioner for Human Rights (OHCHR), United Nations Environment Programme (UNEP) and United Nations Development Programme (UNDP) of January 2023 entitled: ‘What is the Right to a Healthy Environment?’⁸⁸⁶
875. One of the elements of the right to a clean, healthy and sustainable living environment is the right to a safe (and stable) climate.⁸⁸⁷ The UN Special Rapporteur in the area of the living environment and human rights wrote the following about this in a report to the UN General Assembly: “A safe climate is a vital element of the right to a healthy environment and is absolutely essential to human life and well-being.”⁸⁸⁸
876. The further anchoring of the right to a clean, healthy and sustainable living environment is now also high on the agenda of the Council of Europe. This international organisation is, of course, the drafter of the ECHR, in which the ECtHR was established. During a summit on 16 and 17 May 2023, the heads of state and government leaders of the Council of Europe adopted the Reykjavík Declaration.⁸⁸⁹ The following was agreed in that declaration: “We therefore commit to strengthening our work on the human rights aspects of the environment

⁸⁸⁴ Exhibit MD-206, UN Committee on the Rights of the Child 2023, General comment No. 26 on Children’s rights and the environment with a special focus on climate change, paras. 1, 8 and 39.

⁸⁸⁵ Ibid, para. 63. See also para. 64, and p. 78: “Businesses have the responsibility to respect children’s rights in relation to the environment” and para. 107.

⁸⁸⁶ Exhibit MD-207, OHCHR, UNEP and UNDP 2023, ‘What is the right to a healthy environment?’, p. 4: “This Information Note aims to improve understanding of the right to a clean, healthy, and sustainable environment and why it matters.” See also pp. 5 and 17 to 19.

⁸⁸⁷ Ibid, p. 9. See also Exhibit MD-206, UN Committee on the Rights of the Child 2023, General comment No. 26 on Children’s rights and the environment with a special focus on climate change, para. 64.

⁸⁸⁸ Exhibit MD-204, UN Special Rapporteur on Human Rights and the Environment, ‘Safe Climate’, para. 96.

⁸⁸⁹ Exhibit MD-208, Council of Europe/Council of Europe 2023, ‘Reykjavík declaration’.

*and initiate the Reykjavík process of focusing and strengthening the work of the Council of Europe in this field”.*⁸⁹⁰ A further statement was included in an appendix to the Reykjavík Declaration, regarding the reinforcing of the work of the Council of Europe in the area of human rights and the living environment. The following was stated: “*We note that the right to a healthy environment is enshrined in various ways in several constitutions of the Council of Europe member States and the increased recognition of the right to a clean, healthy and sustainable environment in, inter alia, international instruments, regional human rights instruments, national constitutions, legislation and policies.*” It also urges to make progress as quickly as possible relating to “*the consideration of the need for and feasibility of a new instrument or instruments in the field of human rights and the environment*”. On 18 April 2024, the Parliamentary Assembly of the Council of Europe, with 71 votes in favour and 12 against, called upon member states of the Council of Europe to – following the Reykjavík Declaration – draw up a legally binding instrument “*recognising an autonomous right to a healthy environment within the Council of Europe.*”⁸⁹¹

877. Although the ECtHR in its judgment of 9 April 2024 in the *KlimaSeniorinnen* case held that it was not up to the ECtHR to determine whether the international recognition of the right to a clean, healthy and sustainable living environment imposed specific legal obligations on ECHR contracting states, in the context of the common ground method it did include these international developments regarding the recognition of this right in its judgment as relevant international context in the light of which it interprets the ECHR.⁸⁹² The common ground method (also called the method of consensus interpretation or comparative interpretation method) entails that for the interpretation of the ECHR, international law and the legal developments in contracting states should also be taken into consideration. As also follows from the judgment of the Dutch Supreme Court in the *Urgenda* case,⁸⁹³ when interpreting the ECHR the Dutch court should also take account of such “*elements of international law other than the Convention, the interpretation of such elements by competent organs, and the practice of European States reflecting their common value*”.⁸⁹⁴ The Dutch court can (and must), when interpreting the ECHR and the effect of ECHR rights in open standards of Dutch law, therefore also take account of the above-mentioned broad international recognition of the right to a clean, healthy and sustainable living environment.
878. When observing this international ‘common ground’, the case law of judicial bodies outside Europe can also be relevant. As the ECtHR states in *KlimaSeniorinnen*:

*“The Court cannot ignore the pressing scientific evidence and the growing international consensus regarding the critical effects of climate change on the enjoyment of human rights [...].”*⁸⁹⁵

879. This international consensus is partly formed by the jurisprudence of national courts (including those outside of Europe), to which reference is regularly made in authoritative international sources on climate change and human rights.⁸⁹⁶ This also follows from the Advisory Opinion of the P-G and A-G in the *Urgenda* case, in which reference is made to national judgments in climate cases in other countries in the context of the discussion of the

⁸⁹⁰ Ibid, pp. 6-7.

⁸⁹¹ Exhibit MD-209, Parliamentary Assembly of the Council of Europe, Resolution 2545 (2024), para. 8.

⁸⁹² ECtHR, 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020, para. 448.

⁸⁹³ Dutch Supreme Court, 20 December 2019, ECLI:NL:HR:2019:2006, para. 5.4.2.

⁸⁹⁴ ECtHR, 12 November 2008, *Demir and Baykara v. Turkey*, para. 85.

⁸⁹⁵ ECtHR, 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020, para. 456.

⁸⁹⁶ See, e.g., Exhibit MD-210, UN Secretary General/UN Secretary General 2022, ‘The impacts of climate change on the human rights of people in vulnerable situations’, para. 37.

ECtHR's common ground method.⁸⁹⁷ That judgments of national courts can be of importance for the interpretation of international law is not surprising when looking at the commonly accepted sources of international law. It follows from Article 38(1) (sub d) of the Statute of the International Court of Justice, the authoritative article on this point, that these sources, in addition to international treaties, customary international law and general principles, can also be national court judgments.⁸⁹⁸

880. The jurisprudence of foreign courts recognises the right to a clean, healthy and sustainable living environment, a link has been established between this right and other human rights and this right has provided actual protection to individuals, including in the context of climate change.

881. Furthermore, the Inter-American Court of Human Rights in an *advisory opinion* of 2017 stipulated that the right to a clean living environment is an autonomous right that can be derived from Article 26 of the American Convention on Human Rights. It also made a connection between this right and other human rights like the right to health, personal integrity and life:

*"That said, the right to a healthy environment also has an individual dimension insofar as its violation may have a direct and an indirect impact on the individual owing to its connectivity to other rights, such as the rights to health, personal integrity, and life. Environmental degradation may cause irreparable harm to human beings; thus, a healthy environment is a fundamental right for the existence of humankind."*⁸⁹⁹

882. It can be concluded from the above that the now internationally acknowledged right to a clean, healthy and sustainable living environment also provides protection against dangerous climate change. In the interpretation of the rights protected in, inter alia, the ECHR, including Articles 2 and 8 ECHR – and in line with this, in the interpretation of open standards in national law – these international developments also have significance. This is also completely in accordance with the catalytic effects expected by OHCHR, UNEP and UNDP of the recognition of the right to a clean, healthy and sustainable living environment by the international community, including:

*"Enhancement of the enjoyment of rights holders, and the accountability of duty bearers to respect, protect and fulfill the right to a healthy environment; for example, the right to a healthy environment can serve as an additional legal basis or reference for environmental-related cases in national and international courts and tribunals."*⁹⁰⁰

XIII.5 THE HORIZONTAL EFFECT OF HUMAN RIGHTS BETWEEN ING AND MILIEUDEFENSIE

883. The above-mentioned findings of various courts and tribunals and many UN agencies that human rights, including the right to a clean, sustainable and healthy living environment, provide protection against dangerous climate change, also have consequences for the legal

⁸⁹⁷ Advisory Opinion of P-G Langemeijer and A-G Wissink, ECLI:NL:PHR:2019:887, paras. 2.79 et seq., which cite an example from Pakistani case law with reference to footnote 228 for further information on national climate litigation conducted across the world.

⁸⁹⁸ In the same vein, see the relevance of judgments of foreign courts as a perspective of potential significance when interpreting the societal duty of care: A-G Valk in his advisory opinion in the case of women who had travelled to join ISIS, ECLI:NL:PHR:2020:412, para. 6.6.

⁸⁹⁹ Exhibit MD-211, Inter-American Court of Human Rights 2017, Advisory Opinion, 'The Environment and Human Rights', para. 59.

⁹⁰⁰ Exhibit MD-207, OHCHR, UNEP and UNDP 2023, 'What is the right to a healthy environment?', pp. 10-11.

obligation to which ING is subject.

884. In Chapter XI.2.4 Milieudefensie already referred to the broad basis in jurisprudence (including the recent judgment of the court of appeal in the Shell case) and legal literature for awarding (indirect) horizontal effect to the ECHR via open standards of private law, such as the societal standard of care of Article 6:162 DCC.⁹⁰¹
885. There can be no doubt regarding the relevance of this horizontal effect in the legal relationship between ING and Milieudefensie in relation to climate change. As already explained in Chapter XII, ING is a party with control and influence over a substantial amount of emissions, with which it makes a contribution to dangerous climate change that cannot be ignored. The emissions connected with ING's activities are greater than the CO₂ emissions of many states, so that ING has a power comparable to a state to partly decide on (the fate of) present and future generations.
886. As already explained above, it is important in this framework to emphasise that there is only one remedy to limit global warming, and consequently there is only one remedy to offer effective protection in that respect, i.e. urgent and progressive emissions reductions by states and non-state actors in line with the 1.5°C target. In view of this, Article 13 ECHR requires that the court provide effective legal protection against (potential) violations of human rights by means of imposing an order to take the necessary climate measures.
887. In conclusion, according to Milieudefensie the above-discussed horizontal effect of human rights entails that ING has a legal obligation to make an adequate proportional contribution to preventing dangerous climate change.

XIII.6 THE CLIMATE-RELATED HUMAN RIGHTS RESPONSIBILITIES OF ING UNDER 'SOFT LAW'

888. The conclusion that ING has a legal obligation on the basis of both the 'Kelderluik' criteria and the (indirect) horizontal effect of human rights law, is a conclusion that is endorsed and supported by authoritative sources of soft law. Those sources endorse that companies have their own independent responsibility to respect human rights and – in addition to the above-discussed findings – also provide important reference points for the concrete interpretation of that responsibility. The direct application of the doctrine of hazardous negligence and the horizontal application of human rights consequently lead to an outcome that is proportional to what (international) society expects of large companies like ING.
889. It was discussed in Chapter IX that at UN level it was established in 2008 that the increased globalisation and the concomitant increased power of companies that operated internationally resulted in a governance gap, which entailed that national governments are not properly able to regulate multinational companies. Various sources of soft law arose against that background, including the UN Guiding Principles and the OECD Guidelines, that reflect the international consensus that companies must also respect human rights and act accordingly.
890. Chapter IX.3 demonstrated that in the context of climate change it has been recognised that in order to protect human rights, companies must reduce their Scope 1, 2 and 3 emissions in line with the science, and must determine whether they are not otherwise involved via

⁹⁰¹ Asser/Hartkamp 3-I 2023/226-231 (*Europees Recht en Nederlands Vermogensrecht*) with further references to the relevant jurisprudence and literature.

business relations in or are directly affiliated with actual or potential human rights violations. It has also been explained in this respect that the relevant guidelines also provide important reference points for the measures that may be expected in that respect in the framework of the approach to dangerous climate change. The determining of absolute reduction targets for Scope 1, 2 and 3 emissions (and where relevant, intensity targets) is an important part of this. The OECD Guidelines state, for example:

“Enterprises should ensure that their greenhouse gas emissions and impact on carbon sinks are consistent with internationally agreed global temperature goals based on best available science, including as assessed by the Intergovernmental Panel on Climate Change (IPCC).

[...] This includes the introduction and implementation of science-based policies, strategies and transition plans on climate change mitigation and adaptation as well as adopting, implementing, monitoring and reporting on short, medium and long-term mitigation targets. These targets should be science-based, include absolute and also, where relevant, intensity-based GHG reduction targets and take into account scope 1, 2, and, to the extent possible based on best available information, scope 3 GHG emissions.”⁹⁰² (underlining added by legal counsel)

891. In addition to the UNGP and the OECD Guidelines, reference can in this respect also be made to many findings of (UN) human rights experts, that also refer to the responsibility of companies to respect human rights and confirm the importance thereof, including findings of, inter alia, the UN Committee on the Rights of the Child,⁹⁰³ the UN Special Rapporteur for human rights and the environment,⁹⁰⁴ the Secretary General of the UN,⁹⁰⁵ the UN Special Rapporteur in the area of human rights obligations concerning a safe, clean, healthy and sustainable living environment⁹⁰⁶ and the Commission on Human Rights of the Philippines.⁹⁰⁷
892. This responsibility to respect human rights applies to all companies, including financial institutions like banks.
893. In Chapter IX.3 reference has already been made in this respect to the Information Note of the special UN *Working Group on the issue of human rights and transnational corporations and other business enterprises* under the mandate of the UN Human Rights Council. Reference was also made to the procedure of the UN Working Group together with various UN Special Rapporteurs, in which the Saudi national oil company Aramco and a large number of its financiers have each individually been addressed for their own role and responsibility relating to climate change.
894. The UN Guiding Principles clarifies that this responsibility of companies extends to virtually

⁹⁰² Exhibit MD-137, OECD Guidelines (original English version) (2023), commentary 76 and 77. See also Chapter IX.3. The court of appeal of The Hague, in its judgment in the Shell case, therefore wrongly did not take account of the fact that companies have the responsibility to realise *absolute* percentage reduction targets under the soft law that according to the court of appeal also has an effect in the societal standard of care of Article 6:162(2) DCC. See: Court of Appeal of The Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2100, specifically paras. 7.21 and 7.22.

⁹⁰³ Exhibit MD-206, UN Committee on the Rights of the Child 2023, General comment No. 26 on Children’s rights and the environment with a special focus on climate change, para. 78.

⁹⁰⁴ Exhibit MD-204, UN Special Rapporteur on Human Rights and the Environment, ‘Safe Climate’, p. 32 (paras. 71-72).

⁹⁰⁵ Exhibit MD-210, UN Secretary General 2022, ‘The impacts of climate change on the human rights of people in vulnerable situations’, paras. 23 and 37.

⁹⁰⁶ Exhibit MD-212, UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment 2024, ‘Business, planetary boundaries, and the right to a clean, healthy and sustainable environment’, paras. 14 et seq.

⁹⁰⁷ Commission on Human Rights of the Philippines 2022, ‘National Inquiry on Climate Change Report’, p. 84-88 (see https://chr2bucket.storage.googleapis.com/wp-content/uploads/2022/12/08152514/CHRP_National-Inquiry-on-Climate-Change-Report.pdf).

the entire spectrum of internationally recognised human rights, including in any event the human rights recognised in the Universal Declaration of Human Rights, the IVBPR, the IVESCR and ILO Declaration on Fundamental Principles and Rights at Work.⁹⁰⁸ Several UN human rights bodies have in the meantime also made it explicit that companies too must respect the right to a healthy, clean and sustainable living environment, and this is self-evident in view of the above-described developments concerning the recognition of that right:

“All businesses, regardless of size or sector, have a responsibility to respect all internationally recognized human rights, including the right to a clean, healthy and sustainable environment, throughout their value chains. This responsibility exists over and above compliance with national laws and regulations protecting human rights and the environment. The responsibility to respect human rights applies not only to businesses whose activities may directly damage the climate and environment, but also to the full array of enterprises supporting these businesses, including financial institutions, law firms, public relations firms, accounting firms, and consultancies.”⁹⁰⁹ [...]

“Businesses must respect the right to a healthy environment and should seek to proactively advance it through responsible business practice.”⁹¹⁰

895. These soft law sources serve as important objective reference points for interpreting the societal standard of care and the interpretation of the human rights responsibility of non-state actors like ING.
896. In any event, the distinction between soft law and hard law is difficult to clarify and in the international law context, soft law regularly serves to pave the way for hard law. P-G Langemeijer and A-G Wissink concluded in that respect in their advisory opinion for the Urgenda judgment that with regard to international soft law *“significance is increasingly attributed to them in the implementation of generally formulated obligations under international law and, by extension, in the implementation of open standards in national law.”*⁹¹¹ In that case the Dutch Supreme Court then explicitly referred to the interpretation criteria of the ECtHR, including the ‘common ground method’. On that basis the ECtHR also attributes value to soft law when interpreting the ECHR, for example in relation to WHO noise standards.^{912,913}
897. Other case law of the Dutch Supreme Court clearly shows that soft law is increasingly significant in finding the unwritten standard of care in Article 6:162(2) DCC. For example, the Dutch Supreme Court decided in the *Achmea/Rijnberg* case from 2014⁹¹⁴ and the *Graafrichtlijn* case [‘Excavation Guideline’ case] from 2018 that soft law could be taken as the starting point when adjudicating the tort claim.⁹¹⁵ This legal opinion has been confirmed several times since then.⁹¹⁶

⁹⁰⁸ Exhibit MD-136, UN Guiding Principles (2011), Principle 12 and related commentary.

⁹⁰⁹ Exhibit MD-212, UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment 2024, ‘Business, planetary boundaries, and the right to a clean, healthy and sustainable environment’, par. 16.

⁹¹⁰ Exhibit MD-207, OHCHR, UNEP and UNDP 2023, ‘What is the right to a healthy environment?’, p. 19.

⁹¹¹ Advisory Opinion of P-G Langemeijer and A-G Wissink, 13 September 2019, ECLI:NL:PHR:2019:887 (*Urgenda*), para. 2.31.

⁹¹² Dutch Supreme Court, 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*), para. 5.4.3., with reference to, inter alia, ECtHR, 20 May 2010, no. 61260/08 (*Oluić/Croatia*), paras. 29-31, 49, 60 and 62 (WHO noise standards).

⁹¹³ See also M.E. Coenraads and J.E.S. Hamster, ‘Verantwoord ondernemen: van soft law naar harde verplichtingen via strategisch procederen’, *TOP* 2019/8, pp. 35-36 and the examples included there.

⁹¹⁴ Netherlands Supreme Court 18 May 2014, ECLI:NL:HR:2014:942, paras. 5.2.1.

⁹¹⁵ Netherlands Supreme Court 25 May 2018, ECLI:NL:HR:2018:772, paras. 3.7.2.

⁹¹⁶ Netherlands Supreme Court 15 December 2023, ECLI:NL:HR:2023:1750, para. 3.2.

898. This also follows from the judgment of the Court of Appeal of The Hague regarding shutting off drinking water. When determining what was to be deemed ‘access to sufficient water’, the Court of Appeal sought alignment with soft law of the WHO and reference was also made to *General Comments* of UN treaty bodies in the area of human rights.⁹¹⁷
899. Specifically in relation to companies and human rights, the late John Ruggie – the founder of the UN Guiding Principles – also referred to the need to convert soft law at case-specific level into hard law in order to provide citizens with effective legal protection.
900. In Chapter IX, when discussing the background of the establishing of the UNGP, it was explained that the governance gap leads to inadequate regulation of internationally operating companies. That is why self-regulation by means of a new international guideline as a code of conduct for businesses was considered necessary. This code of conduct was intended to encourage businesses to respect human rights independently.
901. Ruggie stated that in case of lack of adequate self-regulation by companies and the political reality that a universal convention to regulate the human rights obligations of companies is doomed to fail for many reasons, allowing soft law to have an effect in national legal systems can offer a way out of the impasse. In other words, the rise of soft law is connected with the increasing role of non-state actors in a globalising world, in which the creation of traditional sources of national and international law becomes ever more complex.⁹¹⁸ In this manner soft law can therefore pave the way for hard law and serve as a building block for the development of unwritten law.⁹¹⁹
902. This applies par excellence to the soft law sources that Milieudefensie is calling upon in this summons, including the UN Guiding Principles, the OECD Guidelines, the climate protocols for companies and the many acknowledgements and recommendations of the international community in COP context and from the United Nations. As Milieudefensie has shown, these sources point in the same direction to a significant degree and these sources specifically show the great importance of climate action by non-state actors that is in accordance with the Paris Agreement, in order for global climate action and the protection of human rights to succeed.
903. In conclusion, it can be determined that the soft law sources that Milieudefensie is calling endorse the individual responsibility of non-state actors to realise percentage-based emissions reductions and thereby reduce their Scope 1, 2 and 3 emissions in an absolute sense, to protect human rights and the climate. Application of these soft law sources via the open standard of tort law consequently leads to the same outcome as the application of the doctrine of hazardous negligence and the (indirect) horizontal application of human rights law.

XIV. THE CLIMATE MEASURES THAT ING MUST AND CAN TAKE TO IMPLEMENT ADEQUATE CLIMATE POLICY

⁹¹⁷ Court of Appeal of The Hague, 19 March 2024, ECLI:NL:GHDHA:2024:363, paras. 6.12, 6.13, 6.16, 6.18 & footnote 42.

⁹¹⁸ J.G. Ruggie, *Multinationals as global institution: Power, authority and relative autonomy*, Regulation and Governance (2018), 12, 317-333, p. 329. Zie ook Alston & Goodman, *International Human Rights* (2013), p. 88; Shelton, ‘Soft Law’, *The George Washington University Law School Public Law and Legal Theory Working Paper* no. 322 (2008), p. 16; Rodriguez-Garavito, ‘A Human Right to a Healthy Environment’, in: Knox and Pejan (eds.), *The Human Right to a Healthy Environment* (2018), pp. 162-163.

⁹¹⁹ Van Dam, *Aansprakelijkheidsrecht* (2023), 225-4.

XIV.1 INTRODUCTION

904. The legal obligations described in the previous chapters result in ING being bound to follow a climate policy that brings ING's Scope 1, 2 and 3 emissions in line with limiting the warming to 1.5°C. Milieudefensie will explain in this chapter what climate measures ING's climate policy must consequently fulfil.
905. Toward this end Milieudefensie will first describe what global task must be realised in order to counter danger climate change (Chapter XIV.2).
906. Milieudefensie will then set out what measures ING must take to make its minimum necessary contribution to this global task (Chapter XIV.3). It will be explained in this respect that the appropriate contribution of ING must, inter alia, consists of the following measures:
- (i) An absolute reduction at the overarching level, encompassing the total financed and facilitated greenhouse gas emissions of ING (the overarching reduction demand);
 - (ii) An absolute reduction and a reduction in emissions intensity of the financed and facilitated emissions of ING at sectoral level, which sectoral demands have been divided into the various sectors that use energy; and
 - (iii) An absolute reduction of ING's financed and facilitated emissions within the sector that produces and sells fossil energy (the fossil fuel sector).
907. Milieudefensie's demands as these will be discussed in Chapter XIV.3 therefore primarily consist of an overarching reduction demand and various sectoral reduction demands. These demands stand side by side. Milieudefensie will explain why the appropriate contribution of ING consists of the combination of these demands. Milieudefensie will also explain a number of related demands.
908. Lastly, Milieudefensie will explain that ING possesses a wide range of options to implement the requisite climate measures (Chapter XIV.4). ING has a wide range of options to support its clients, and to bring them to reducing their emissions. Because this also leads to a reduction in ING's Scope 3 emissions, it is possible that ING can continue its financing of the client, while taking account of the requisite climate measures. It will be explained that these measures do not imply a necessary decline of (financing) activities for ING, as will be explained.

XIV.2 THE GLOBAL TASK

909. To provide protection against dangerous climate change it is necessary to limit the temperature increase to 1.5°C. As explained in Chapter VII, during the Conferences of the Parties in Glasgow (COP26), Sharm el-Sheikh (COP27), Dubai (COP28) and Baku (COP29), the global community made it clear time and again that it is necessary to limit the global temperature increase to this danger limit and decided that that was to be the focus of global efforts. This is subject to the recognition – on the basis of the best available science – that the consequences and dangers of climate change will be much smaller if warming is 1.5°C rather than 2°C.⁹²⁰

⁹²⁰ See Chapters VII.4 to VII.7.

910. On the basis of scientific findings, the global community then determined what has to happen globally in order to limit the temperature increase to 1.5°C. During the past three Conferences of the Parties it was considered in this respect that it is necessary that emissions of all greenhouse gas must fall by 43% by 2030 and by 60% in 2035, both relative to 2019. In 2050, CO₂ emissions must have been reduced to net zero:

“The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement [...] recognizes that limiting global warming to 1.5 °C with no or limited overshoot requires deep, rapid and sustained reductions in global greenhouse gas emissions of 43 per cent by 2030 and 60 per cent by 2035 relative to the 2019 level and reaching net zero carbon dioxide emissions by 2050;”⁹²¹

911. These reduction percentages determined by the COP relate to the necessary reductions mentioned by the IPCC in its Sixth Assessment Report (AR6) to have a 50% chance to limit the warming at the end of this century to 1.5°C. In its AR6 Synthesis Report, the IPCC made it clear by means of a table what this reduction pathway means for both CO₂ and all greenhouse gases together in the period from 2030 to 2050.⁹²² This shows that the CO₂ emissions must fall faster than the 43% in 2030 of the combined greenhouse gases (‘GHG’), rather they must fall by 48% in 2030. According to this table, also for the other years the CO₂ emissions must fall faster than those of combined greenhouse gases.

Table SPM.1: Greenhouse gas and CO₂ emission reductions from 2019, median and 5-95 percentiles. [3.3.1, 4.1, Table 3.1, Figure 2.5, Box SPM.1]

		Reductions from 2019 emission levels (%)			
		2030	2035	2040	2050
Limit warming to 1.5°C (>50%) with no or limited overshoot	GHG	43 [34-60]	60 [49-77]	69 [58-90]	84 [73-98]
	CO ₂	48 [36-69]	65 [50-96]	80 [61-109]	99 [79-119]

912. This table therefore shows what reductions must be achieved globally according to the IPCC between now and 2050 in order to limit the warming at the end of this century to 1.5°C. If all global emissions are reduced in line with this reduction pathway that was outlined by the IPCC and taken over by the climate conferences, the chance that by the end of this century the warming will remain below 1.5°C is 50% or more and the chance that warming will remain below 2°C this century is around 90%, according to the IPCC.⁹²³
913. In other words, even with these strong reductions in CO₂ and greenhouse gas emissions as of 2030 and achieving the zero point of CO₂ emissions in 2050, there is still a 50% chance that the 1.5°C limit will be exceeded this century and a 10% chance that warming will even exceed 2°C this century. Achieving the aforementioned emissions reductions therefore does not guarantee that warming will actually remain below 1.5°C or indeed, under 2°C.
914. There is thus even a chance when following this reduction pathway that warming will exceed 2°C, with all concomitant significant risks (see Chapter VIII). If it is not possible to follow this reduction pathway on a global scale, the chance of warming of 2°C or more is naturally only greater and the risks will increase even more. For this reason alone, the aforementioned reduction pathway must be seen as the absolute minimum reduction pathway of what must happen in order to prevent dangerous climate change.
915. It can also be determined from the table that it is not only important to achieve (virtually) net zero CO₂ emissions in 2050. In order to retain a 50% chance of limiting the temperature

⁹²¹ Exhibit MD-090, UNFCCC COP28 2023 (Dubai), ‘Outcome of the First Global Stocktake’, para. 27. The Conference of the Parties based these percentages on the findings in Exhibit MD-001, IPCC 2023, AR6, SYR, Table SPM.1, p. 21.

⁹²² Exhibit MD-001, IPCC 2023, AR6, SYR, Table SPM.1, p. 21.

⁹²³ Exhibit MD-049, IPCC 2022, AR6, WGIII, SPM, C1.1 and note 41, p. 17.

to 1.5°C (and a 90% chance of limiting the temperature to 2°C) it is just as important to follow the correct reduction pathway on the road to net zero and to also achieve the interim reductions in 2030, 2035 and 2040. The importance of achieving these interim emissions reductions is once again underscored by the following.

916. It has been explained in Chapters V.2 and VII.3.3 that what is necessary to limit warming to a specific temperature level, can be expressed by means of a carbon budget.⁹²⁴ This means a budget in CO₂ that can still be emitted to the atmosphere before a temperature limit is exceeded.⁹²⁵ According to the most recent *Assessment Report (AR6)* of the IPCC the carbon budget for having a 50% chance of limiting the temperature increase to 1.5°C was 500 GtCO₂ at the beginning of 2020.⁹²⁶ On the road to net zero CO₂ emissions in 2050, the accumulated emissions of the world will therefore have to remain within this carbon budget in order to have a 50% chance to limit the temperature increase 1.5°C (and to have a 90% chance to limit the temperature increase to 2°C). This shows once again that not only the goal – achieving net zero emissions in 2050 – is important, but that the road to net zero is also (at least as) important. This view has already been explained in the introduction in para. 29 by means of a graph.
917. In other words: if on the road to net zero the interim emissions reductions are too low and consequently accumulated emissions are excessive, the carbon budget will be exhausted and this will lead to a further increasing chance of exceeding the 1.5°C degree limit and in addition an increasing chance of exceeding 2°C warming. This shows the importance of rapid and far-reaching emissions reductions in the (very) short term, by means of achieving adequate interim reduction targets.
918. In this respect it is worrying that the remaining carbon budget is only small and is being depleted very rapidly. In June 2024, a group of more than 50 scientists published an important update in this respect on the developments since the publication of the Sixth Assessment Report (AR6) of the IPCC. A crucial finding is that the best estimate of the remaining carbon budget for a 50% chance of 1.5°C was adjusted at the beginning of 2020 to 400 Gt (instead of 500 GtCO₂) and as of the beginning of 2024 is only 200 Gt GtCO₂.⁹²⁷ This is because in the four years since 2020 a great part of the remaining carbon budget has been depleted.
919. This remaining carbon budget of 200 GtCO₂ means that on the basis of the current level of annual CO₂ emissions⁹²⁸ as of 2024 only about five years remain before the carbon budget

⁹²⁴ Exhibit MD-011, IPCC 2021, AR6, WGI, SPM, D.1.1 SPM, p. 28, and Exhibit MD-010, IPCC 2021, AR6, WGI, TS, TS.3.3, pp. 97 and 98.

⁹²⁵ Up to and including the Fifth Assessment Report (AR5) it was usual to express the reduction task in terms of the concentration of greenhouse gases in the atmosphere, such as the need to limit it to 430 ppm CO₂-eq for a 50% chance of 1.5°C. In view of this, the discussion on the reduction task was structured in the same manner during the Conferences of the Parties (see, e.g., the Bali Action Plan in Chapter **Error! Reference source not found.**). Since the IPCC's SR15 report, however, the IPCC has primarily tended to use carbon budgets to express how far the world is still removed from reaching temperature limits. This provides an easier and better insight into how many emissions are still permitted and what the reduction task is. Since then, the remaining carbon budgets tend to also be involved in the considerations of decisions of the global community during the COP.

⁹²⁶ Exhibit MD-010, IPCC 2021, AR6, WGI, TS, TS.3.3, p. 98, and Ch. 5, p. 678.

⁹²⁷ Exhibit MD-006, Forster et al. 2024, 'Indicators of Global Climate Change 2023: annual update of key indicators of the state of the climate system and human influence', pp. 2643-2645.

⁹²⁸ In 2023, CO₂ emissions were estimated to be 40.9 GtCO₂. See Exhibit MD-006, Forster et al. 2024, 'Indicators of Global Climate Change 2023: annual update of key indicators of the state of the climate system and human influence', p. 2630 and p. 2645.

with a 50% chance of 1.5°C has been depleted. This makes it clear that the need for maximum efforts to reduce CO₂ emissions as fast as possible is more urgent than ever. There is simply no other option than to limit the all-encompassing dangers of climate change, including the risks of crossing tipping points, as much as possible.

920. In addition, the global reduction pathway encompassed in the table with para. 911, already encompasses more climate risks than perhaps thought. Following the above-described global reduction pathway will result in a real chance of an ‘overshoot’. An overshoot means that the carbon budget of a 50% chance of 1.5°C is exceeded and that the temperature will (temporarily) exceed 1.5°C. The reduction scenarios on which the global reduction pathway is based have not been set up to prevent an overshoot. An overshoot is indeed ‘baked into’ these scenarios, as it were, because in these scenarios the peak temperature will first rise to almost 1.6°C, before returning to 1.5°C before the end of this century.⁹²⁹
921. In order to reduce the temperature after an overshoot to 1.5°C, in the second half of this century, large-scale CO₂ can be removed from the atmosphere and stored underground. Whether this is possible is highly uncertain. The only way this would be possible is by the development large-scale use of technology for *Carbon Dioxide Removal* (hereinafter: “CDR”).
922. However, CDR is not yet available at scale and it is widely recognised in science that it is highly uncertain whether CDR will be available at the necessary scale and in time.⁹³⁰ The ecosystems that can store CO₂ are, moreover, according to the IPCC, very vulnerable and come under greater pressure with every increase in warming.⁹³¹ What is more, according to the IPCC, scaling up CDR is “*tightly limited by techno-economic, social, political, institutional and sustainability constraints.*”⁹³² Nevertheless, this CDR hypothesis – and therefore the associated large uncertainties and dangers – is already ‘baked in’ to a certain degree in the global reduction pathway, from which the reduction percentages of the aforementioned table have been derived.⁹³³
923. The overshoot that the global reduction pathway assumes demands – in the words of the IPCC – to “*massive deployment*” of CDR.⁹³⁴ In addition, according to the IPCC there is still

⁹²⁹ IPCC 2022, AR6, WGIII, section A. III.II.3.2.1, p. 1889 (see https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf). The median for the maximum warming in these scenarios is 1.58°C. The chance that the peak temperature in these scenarios will in fact remain below 1.5°C is consequently not 50%, but only 38%: “*As a result, the scenarios in the lowest category have also a lower probability of staying below 1.5°C peak warming. Using the WGI emulators, we find that the median probability of staying below 1.5°C in the lowest category (C1) has dropped from about 46% in the SR1.5 scenarios to 38% among the AR6 scenarios.*”

⁹³⁰ Exhibit MD-058, Nature Climate Change 2024, ‘Editorial: Cautious carbon removal’, p. 1.

⁹³¹ See, inter alia, Exhibit MD-057, IPCC 2022, AR6, WGII, TS, TS.C.1.4, p. 56 (TS. C. 1.4) and B.1.2 SPM, p. 9.

⁹³² IPCC 2022, AR6, WGIII, pp. 354-355 (https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf).

⁹³³ Exhibit MD-001, IPCC 2023, AR6, SYR, Chp. 3, p. 87. The global reduction pathway for a 50% chance of 1.5°C assumes that by the end of the century, 220 GtCO₂ will have been removed from the atmosphere, in order to reduce the temperature by 0.1°C. For every 0.1°C temperature drop, more than 5.5 years of the current annual CO₂ emissions have to be removed from the atmosphere and permanently stored. This is an extraordinary amount. By way of comparison: in 2022, 0.002 GtCO₂ was removed from the atmosphere by CDR techniques, see Exhibit MD-018, UNEP 2023, ‘Emissions Gap Report 2023’, p. XXVI: “*Direct removals through novel CDR methods [...] are currently miniscule at 0.002 GtCO₂ annually.*” In the global pathway the total quantity of modelled CDR is, however, even higher than 220 GtCO₂, because CDR is also modelled in these scenarios to achieve net zero emissions, see Exhibit MD-049, IPCC 2022, AR6, WGIII, SPM, C.3.5 SPM, footnote 53, p. 29.

⁹³⁴ IPCC 2022, AR6, WGIII, pp. 354-355 (https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf).

uncertainty about the possibility of actually turning back the ‘thermostat’.⁹³⁵ Whether an overshoot can be reversed is therefore highly uncertain.

924. It is also important to know in this respect that any form of overshoot comes with great risks.

925. It has been explained in detail in Chapter VIII above how much greater the risks and dangers are when exceeding the temperature limit of 1.5°C. An overshoot of 1.5°C warming, even if temporary, increases risks and consequences that are related to climate change, including the chance of passing tipping points. It therefore cannot be a surprise that the IPCC explicitly warns against the dangers of an overshoot (even a temporary one):

“Overshoot of a warming level results in more adverse impacts, some irreversible, and additional risks for human and natural systems compared to staying below that warming level, with risks growing with the magnitude and duration of overshoot (high confidence). Compared to pathways without overshoot, societies and ecosystems would be exposed to greater and more widespread changes in climatic impact-drivers, such as extreme heat and extreme precipitation, with increasing risks to infrastructure, low-lying coastal settlements, and associated livelihoods (high confidence)”⁹³⁶

926. An overshoot of the 1.5°C limit in any event leads to irreversible negative consequences for certain ecosystems such as those in the polar region, the mountains and by the coast, according to the IPCC:

“Overshooting 1.5°C will result in irreversible adverse impacts on certain ecosystems with low resilience, such as polar, mountain, and coastal ecosystems, impacted by ice-sheet melt, glacier melt, or by accelerating and higher committed sea level rise (high confidence).”⁹³⁷

927. In addition, overshoot reduces the options for adaptation. Adaptation limits have already been reached with the current warming.⁹³⁸ According to the IPCC, at 1.5°C more limits will be reached.⁹³⁹

928. A (temporary) overshoot of the 1.5°C limit also leads to a substantial increase in the risk of additional greenhouse gas emissions due to consequences such as forest fires, tree die-off, drying out of peat areas and melting of permafrost, which will make it more difficult to bring the temperature back to 1.5°C after an overshoot:

“Overshoot increases the risks of severe impacts, such as increased wildfires, mass mortality of trees, drying of peatlands, thawing of permafrost and weakening natural land carbon sinks; such impacts could increase releases of GHGs making temperature reversal more challenging (medium confidence).”⁹⁴⁰

⁹³⁵ Ibid, p. 354.

⁹³⁶ Exhibit MD-001, IPCC 2023, AR6, SYR, Chp. 3, p. 87. See also p. 77: *The likelihood of abrupt and irreversible changes and their impacts increase with higher global warming levels (high confidence). As warming levels increase, so do the risks of species extinction or irreversible loss of biodiversity in ecosystems such as forests (medium confidence), coral reefs (very high confidence) and in Arctic regions (high confidence). Risks associated with large-scale singular events or tipping points, such as ice sheet instability or ecosystem loss from tropical forests, transition to high risk between 1.5°C to 2.5°C (medium confidence).*

⁹³⁷ Exhibit MD-001, IPCC 2023, AR6, SYR, Ch. 3, p. 87.

⁹³⁸ Exhibit MD-057, IPCC 2022, AR6, WGII, TS, TS.D.2.1, p. 84.

⁹³⁹ Exhibit MD-057, IPCC 2022, AR6, WGII, TS, TS.D.2, p. 84 and p. 85. See also TS.C.1.2, p. 55, and C3 SPM, p. 26.

⁹⁴⁰ Exhibit MD-001, IPCC 2023, AR6, SYR, Ch. 3, p. 87. See also Exhibit MD-057, IPCC 2022, AR6, WGII, TS, Cp. 3, p. 69:

“Overshoot substantially increases risk of carbon stored in the biosphere being released into the atmosphere due to increases in processes such as wildfires, tree mortality, insect pest outbreaks, peatland drying and permafrost thaw (high confidence). These phenomena exacerbate self-reinforcing feedbacks between emissions from high-carbon ecosystems (which currently store around 3030–4090 GtC) and increasing global temperatures.”

929. These findings are of crucial importance, because the IPCC makes it clear what significant risks are associated with even just a temporary overshoot of the 1.5°C limit. The best available climate science leaves no doubt about the fact that a(n) (temporary) overshoot is particularly dangerous. This means that the overshoot that is already baked into the global reduction pathway that Milieudefensie depends on, encompasses these dangers. This therefore makes it all the more evident that the reduction percentages of the discussed global reduction pathway must be deemed the absolute lower limit of what has to be achieved globally.
930. Partly in connection with the above-described risks of an overshoot it is also necessary to not only reduce the CO₂ emissions as quickly as possible, but also the emissions of other greenhouse gases, including, in particular, methane. The IPCC makes it clear that a faster reduction of these other greenhouse gases limits the peak level of warming and leads to a reduction of the dependence of net negative CO₂ emissions to bring the temperature back to 1.5°C.⁹⁴¹
931. The International Energy Agency came to the same conclusion and indicated that the rapid reduction of, in particular, methane, is the key to limit warming in the short term and to limit an overshoot of 1.5°C in duration and scope.⁹⁴²
932. Milieudefensie has substantiated in this chapter that far-reaching and fast global emissions reductions are necessary and that the reduction percentages included in the table with paragraph 911 must be deemed the absolute minimum, because even these reductions are accompanied by significant risks. Milieudefensie will explain in the following Chapter XIV.3 what measures ING must take to make its minimum necessary contribution to this global task.
- XIV.3 THE MEASURES REQUIRED OF ING**
- XIV.3.1 The absolute reduction of ING's total greenhouse gas emissions (overarching)**
933. The minimally necessary contribution of ING first of all consists of ING having to reduce both its total CO₂ emissions and the emissions of other greenhouse gases in an absolute sense in line with the reduction percentages included in the table with paragraph 911, for the years 2030, 2035, 2040 and 2050. Milieudefensie will explain below that it may be expected of ING that it must at least align with the global reduction pathway.
934. The UN Race to Zero and the UN Expert Report discussed in Chapter IX make it clear that when determining reduction targets, the following basic principles apply:⁹⁴³
- (i) financial institutions must reduce their emissions to net zero as quickly as possible – but at the latest in 2050 – and must set ambitious and credible interim reduction targets, that must represent a fair share of the global reduction task. For 2030 this means a fair share of the global minimum necessary halving (a reduction of 50%) of CO₂ emissions; and

⁹⁴¹ Exhibit MD-001, IPCC 2023, AR6, SYR, B7.3, p. 23.

⁹⁴² Exhibit MD-085, IEA 2023, 'Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update', p. 129.

⁹⁴³ See Chapter IX.

- (ii) for most financial institutions, in particular those from developed countries, a fair share entails that they will have to reduce their Scope 1, 2 and 3 emissions faster than the reduction percentages that have to be realised at the global level. For 2030 this therefore means a reduction of more than the globally necessary 50%.
935. These sources require (interim) targets for *all* Scope 1, 2 and 3 emissions. In addition, these instruments are in agreement that these (interim) targets must cover absolute emissions reductions, possibly in addition to targets for the reduction of emissions intensity insofar as these are relevant (see para. 497, para. 514 and para. 541). PCAF, the standard for determining the emissions financed and facilitated by banks (see Chapter X.2.3) explicitly underscores the importance of the reduction of absolute emissions:
- "The volume of GHG emissions emitted and financed by an institution is commonly referred to as its generated emissions. To limit climate change and meet the goals of the Paris Agreement, financiers must actively seek out actions that reduce generated emissions in absolute terms, i.e., absolute emissions."*⁹⁴⁴ (underlining added by legal counsel)
936. It is therefore established that both the UN Race to Zero and the UN Expert Report (and the human rights frameworks of the UNGP and the OECD Guidelines that ING also supports) demand of ING that it sets and realises adequate (interim) reduction targets. It is equally clear that these targets must also encompass overarching reduction targets, in such sense that the intended reductions concern all its emissions (and therefore also the emissions associated with all its products and services, for all its clients and other kinds of financing relationships, in all cases for Scope 1, 2 and 3).
937. What the overarching reduction targets of ING should at least encompass in percentages, is also clear. It follows from the application of the doctrine of hazardous negligence in the first place that ING is subject to a very great degree of precaution, in the light of the very grave danger of the climate change to which ING contributed. This is also evident from the application of the precautionary principle, the CBDR principle and the principle of intergenerational equity, as are the starting points to be applied when determining the specific reduction obligations of ING (see Chapter XI.2.5).
938. What is particularly important in this respect is that ING, in light of the CBDR principle, is bound to contribute its fair share to the global reduction task. From various perspectives ING is to be deemed an influential Western company, with substantial emissions, a large transition capacity, and a historical responsibility. Under the previously mentioned climate protocols, all of this forms - according to, inter alia, the reference to the CBDR principle and the need to contribute a fair share to the global task – a relevant circumstance to seek a greater than average responsibility from ING and to demand that it reduce its emissions faster than the global average.
939. This is logical. When making the UN Climate Convention, the industrialised countries that (at the time) were members of the OECD – together with a number of emerging economies – were attributed an above-average responsibility. The reason for this was that these developed (Annex I) countries⁹⁴⁵ because of their historical responsibility for the climate problem and their above-average knowledge, skill and (financial and institutional) transition

⁹⁴⁴ Exhibit MD-141, PCAF Global GHG Accounting and Reporting Standard Part A: Financed Emissions (Second Edition), p. 21.

⁹⁴⁵ See: <https://unfccc.int/process/parties-non-party-stakeholders/parties-convention-and-observer-states>.

capacity, must take the lead in the UN climate regime. This is in line with the principle of common but differentiated responsibilities and respective capabilities (the CBDR principle). As already explained in Chapter IX (in particular in para. 496 and para. 511) this CBDR principle in the climate protocols is also applied to companies and financial institutions. This means that companies and financial institutions that are part of the economies of the developed (Annex I) countries, individually should just as much take the lead as the economies they form part of. The starting point is therefore that a company that is based in an Annex I country and in particular provides its products and services in Annex I countries, is deemed to have a greater responsibility for the climate task and is deemed to have above-average knowledge, skill and (financial) transition capacity. The latter applies, inter alia, because its clients and other business relations in these rich industrialised countries also have a larger transition capacity. This means that such a company (together with the aforementioned clients and business relations) can and will have to go through the transition required for the climate task at an accelerated pace.

940. That ING must also be deemed such a company, and thus has an above-average responsibility, appears from various circumstances. To name a few relevant circumstances:

- (i) ING is a group based in the Netherlands (an “Annex I country” under the UN Climate Convention, an OECD country and number 12 in the world measured by GDP per capita).⁹⁴⁶
- (ii) A (rounded) 97% of ING’s turnover comes from Annex I countries, 93% comes from OECD countries.⁹⁴⁷
- (iii) Of the shares in ING held by institutional investors (no information is available about other kinds of investors) at least 93% is held by investors in Europe or the US, and consequently by investors in the most prosperous countries (Annex I and OECD countries).⁹⁴⁸
- (iv) A (rounded) 90% of ING’s workforce works in Annex I countries, a (rounded) 82% works in OECD countries.⁹⁴⁹
- (v) Of the credit provided by ING, approx. 80% (765 billion euros) has been loaned to European clients.⁹⁵⁰
- (vi) Of the credit provided by ING to the private sector, approx. 91% (886 billion euros) has been loaned to clients in Annex I countries and approx. 90% to clients in OECD countries.⁹⁵¹

941. Milieudefensie has already discussed the substantial emissions of ING and the (historical) contribution of ING to the climate problem (as this appears, for example, from rankings of

⁹⁴⁶ See: <https://www.imf.org/external/datamapper/NGDPDPC@WEO/OEMDC/ADVEC/WEOWORLD>.

⁹⁴⁷ Exhibit MD-004, ING Annual Report 2024, pp. 278 and 279.

⁹⁴⁸ Exhibit MD-004, ING Annual Report 2024, p. 11.

⁹⁴⁹ Exhibit MD-004, ING Annual Report 2024, pp. 278 and 279.

⁹⁵⁰ ING Annual Report 2024, Additional Pillar III Disclosures - Template EU CCyB1 - Geographical distribution of credit exposures relevant for the calculation of the countercyclical buffer (tab: CCyB1), (see <https://www.ing.com/Investors/Financial-performance/Annual-reports/2024/2024-ING-Groep-NV-appendices-additional-pillar-III-disclosures.htm>).

⁹⁵¹ Ibid.

credit provision to the fossil fuel sector) in Chapter XII.3.3. ING's broad transition capacity has been set out in Chapter XII.5 and will be made clearer in Chapter XIV.4.

942. As stated, these circumstances help determine the emissions reductions required of ING. The UN Race to Zero and the UN Expert Report explicitly formulate the expectation that the reduction targets of non-state actors must represent a *"fair share"* of the global average required reductions. They also make it clear that this *"fair share"* in the aforementioned circumstances of ING must be translated into reduction percentages that encompass more than these global averages (see para. 493 and para. 511). For that reason, Milieudefensie bases a part of its demands on (sectoral) reduction pathways for 'advanced economies' (this will be explained in further detail under XIV.3.3 et seq.).
943. The overarching demand, that relates to ING's full Scope 1, 2 and 3 emissions, is based on the global average necessary reductions. For ING, as an influential Western company with large emissions, that has a large historical responsibility and a large transition capacity, these are to be deemed an absolute minimum. This has been explained in detail above. The global reduction percentages as included in the table with para. 911 must therefore be deemed the lower limit of ING's legal responsibility with regard to its full Scope 1, 2 and 3 emissions.
944. That Milieudefensie is not demanding too much of ING in this respect, is not only clear from the UN Race to Zero, the UN Expert Report, the UNGP and the OECD Guidelines, but also from various initiatives that were established within the financial sector with an eye on the responsibility of financial institutions in deflecting dangerous climate change. These initiatives also recognise ING's responsibility to realise emissions reductions for all its emissions (including the emissions connected with all its products and services, for all its clients and other kinds of financing relations, and always for Scope 1, 2 and 3).
945. This appears, for example, from the PRB (Principles for Responsible Banking; see: Chapter X.3.9), that form part of UNEP FI (see Chapter X.3.3). The PRB can be deemed the most widely supported framework for responsible banking in the world.⁹⁵² ING also signed the PRB. Banks that sign the PRB, commit themselves to six principles, which in part extend to bringing their strategy in line with the Paris Agreement, and sets targets to reduce negative impact.⁹⁵³ The PRB specify that PRB signatories are expected to bring their portfolio in line with a 1.5°C reduction pathway.⁹⁵⁴ The PRB require that signatories, inter alia, record emissions reduction targets in line with the principles, in addition to targets for, e.g., engagement with clients.⁹⁵⁵ The Target Setting FAQ of the PRB also name explicit reduction targets for both financed and facilitated emissions.⁹⁵⁶ In addition, the PRB document *Foundations of Climate Mitigation Target Setting* emphasises that, in addition to intensity targets, absolute reduction targets are also necessary:

"An intensity target allows a business to set emissions reduction targets while accounting for economic growth or increased market share, however this approach could hide a rise in your absolute financed emissions and is often subject to more scrutiny. Therefore, while an intermediate sector

⁹⁵² With more than 330 signatory banks, the PRB represent more than half of the global banking industry. Exhibit MD-213, UNEP FI, 'Principles for Responsible Banking, About' (print-out from website 27 February 2025).

⁹⁵³ Exhibit MD-214, UNEP FI, 'Principles for Responsible Banking', p. 1.

⁹⁵⁴ Exhibit MD-215, UNEP FI 2023, 'Principles for Responsible Banking to strengthen climate ambition to meet increased expectations' (print-out from website 27 February 2025)

⁹⁵⁵ Exhibit MD-213, UNEP FI, 'Principles for Responsible Banking, About' (print-out from website 27 February 2025); Exhibit MD-216, UNEP FI PRB 2023, 'Theory of Change for Climate Mitigation', pp. 2 to 4; Exhibit MD-217, UNEP FI PRB 2023, 'Target Setting FAQ', pp. 5-7.

⁹⁵⁶ Exhibit MD-217, UNEP FI PRB 2023, 'Target Setting FAQ', pp. 5-7, p. 8.

target may be set on an absolute or intensity basis, it is important to disclose both to provide the complete picture.”⁹⁵⁷

946. In addition, the Commitment Statement and the guidelines of the Net-Zero Banking Alliance (NZBA) show that affiliated banks (including ING) are expected to determine emissions reduction targets, that are in line with 1.5°C, are based on science, and relate to loans, investments and capital market activities, including Scope 1 and 2 and the Scope 3 emissions of clients.⁹⁵⁸ The NZBA explicitly points to absolute emissions reduction targets.⁹⁵⁹ 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.⁹⁶⁰

947. As the third leading initiative of the financial sector, reference can also be made to the Glasgow Financial Alliance for Net Zero (GFANZ; see Chapter X.3.10). ING was a member of GFANZ via its participation in the NZBA, the sector-specific alliance for the banking sector (until a recent restructuring of GFANZ, following which financial institutions can no longer participate in GFANZ as a “member”).⁹⁶¹ The report “*Financial Institution Net-zero Transition Plans*”, published through GFANZ, also endorses the view that financial institutions like ING must set reduction targets for all its emissions (including its clients’ Scope 3 emissions).⁹⁶² The report emphasises that the advantage of an absolute reduction target is that such a target can be directly related to the carbon budget that has to be respected in order to achieve the 1.5°C target (contrary to an intensity target, that permits a growth in emissions). The report therefore urges for the application of an absolute reduction target in addition to any intensity targets (that have their own function, as Milieudefensie will explain hereinafter):

“Absolute emissions metrics may offer the benefit of a direct link to the carbon budget and can also be applied consistently across sectors. [...] [I]ntensity metrics can result in total emissions increasing even if the carbon intensity measure used decreases. [...] Ultimately getting absolute emissions to zero is the end goal, and both absolute and intensity metrics should be considered together to measure progress of different pathways to net zero.”⁹⁶³

948. In line with the above, GFANZ emphasises in its report “*Guidance on use of Sectoral Pathways for Financial Institutions*” the importance of overarching goals in addition to targets at sector level (Milieudefensie will discuss these sectoral targets in further detail in Chapter XIV.3.3 et seq.):

“Financial institutions should set targets at sector level while also ensuring that their overall portfolio

⁹⁵⁷ Exhibit MD-218, UNEP FI PRB 2022, ‘Foundations of Climate Mitigation Target Setting’, p. 9.

⁹⁵⁸ Exhibit MD-220, UNEP FI NZBA 2024, ‘Guidelines for Climate Target Setting for Banks Version 2’, pp. 4 and 5.

⁹⁵⁹ Ibid, p. 8.

⁹⁶⁰ Ibid, p. 7.

⁹⁶¹ Exhibit MD-173, GFANZ, ‘Our Members’ (print-out from website 27 February 2025). On 2 January 2025, the GFANZ secretariat announced that GFANZ is restructuring, partly because of the completion of its framework for climate transition plans. GFANZ will be merged into an independent “Principals Group”, led by a group of CEOs and leaders of financial institutions and geared to tackling barriers for mobilising capital for the transition (see <https://www.gfanzero.com/press/2025-new-year-update-from-gfanz-secretariat>). The original structure, whereby financial institutions became a member of GFANZ through their participation in a sector specific alliance, seems to have been deserted. The web pages on the members of GFANZ were removed from the GFANZ website. On the NZBA homepage, a previous reference to GFANZ - “NZBA is [...] the sector-specific alliance for banks under the Glasgow Financial Alliance for Net Zero (GFANZ)” – was removed.

⁹⁶² Exhibit MD-219, GFANZ 2022, ‘Financial Institution Net-Zero Transition Plans’, pp. 25 and 77 et seq.

⁹⁶³ Ibid. p. 78, Box 7

is aligned to a 1.5 degrees C, with low/no overshoot.”⁹⁶⁴

949. Lastly, Milieudefensie points out that GFANZ and the sector-specific alliances (including the NZBA) – were part of the UN Race to Zero until the aforementioned restructuring of GFANZ (see para. 946). Members of the sector-specific alliances, and therefore ING too, were consequently committed to following the UN Race to Zero-criteria, including the criteria that extend to striving for net zero emissions as of 2050 and the determining of “2030 interim targets that represent a fair share of the 50% decarbonization required by the end of the decade”.⁹⁶⁵
950. In conclusion, it must be determined that all of the aforementioned, authoritative sources (including the most important and widely supported initiatives within the financial sector) point in the same direction: ING may be expected to bring its portfolio in line with a 1.5°C reduction pathway and that it effect emissions reductions for its total emissions in line with that pathway (including the emissions connected with all its products and services, for all its clients and other kinds of financing-related parties, and always for Scope 1, 2 and 3). In order to realise emissions reductions for its total emissions, it is necessary that ING sets overarching, absolute reduction targets (and individually for financed emissions and facilitated emissions; see Chapter XIV.3.6). When interpreting and establishing specific percentages for these targets, the global average reduction percentages presented by the IPCC (see again the table in para. 911) must be deemed the absolute minimum for ING’s emissions reductions.
951. It is not clear why precisely ING should be allowed to suffice with *less* than a reduction of its total emissions and/or should have to reduce *less* than the global average deemed necessary. Nevertheless, ING is currently not setting any overarching absolute reduction target for its total emissions. This is why Milieudefensie is demanding, inter alia, that ING reduce its annual operational, financed and facilitated greenhouse gas emissions in line with the reduction percentages set out in para. 911.

XIV.3.2 The absolute and intensity reduction of the greenhouse gas emissions of ING’s crucial financing portfolios (sectoral)

XIV.3.2.1 ING must set sectoral reduction targets, in addition to an overarching reduction target

952. In addition to the need for ING to at least reduce its Scope 1, 2 and 3 emissions at overarching level in line with the global average, additional sectoral targets are necessary to bring about that ING takes the correct climate action in every sector.
953. The global climate task can only be achieved if all sectors immediately embark upon the road to net zero, as the IPCC also makes clear:

“Limiting human-caused global warming requires net zero anthropogenic CO₂ emissions. Pathways consistent with 1.5°C and 2°C carbon budgets imply rapid, deep, and in most cases immediate GHG emission reductions in all sectors (high confidence).”⁹⁶⁶

954. Achieving that task requires a fast and far-reaching transition in all sectors, according to the IPCC, whereby it is pointed out that feasible, effective and affordable options for mitigation

⁹⁶⁴ Exhibit MD-221, GFANZ 2022, ‘Guidance on Use of Sectoral Pathways for Financial Institutions’, p. 42.

⁹⁶⁵ Exhibit MD-173, GFANZ, ‘Our Members’ (print-out from website 27 February 2025).

⁹⁶⁶ Exhibit MD-001, IPCC 2023, AR6, SYR, p. 82 (under 3.3).

(and adaptation) are available:

“Rapid and far-reaching transitions across all sectors and systems are necessary to achieve deep and sustained emissions reductions and secure a liveable and sustainable future for all. [...] Feasible, effective and low-cost options for mitigation and adaptation are already available, with differences across systems and regions. (high confidence)”⁹⁶⁷

955. Bank and other financial institutions will have to ensure that their financing activities in every sector are at least in line with the necessary emissions reductions of that sector.⁹⁶⁸

956. For ING this means that the above-discussed overarching reduction targets are not sufficient in this respect. After all, merely applying these overarching reduction targets does not guarantee that ING can make an appropriate contribution at sectoral level to the necessary emissions reductions for each sector and the associated sectoral transformation that is necessary to achieve net zero in 2050. As the IPCC emphasised in the aforementioned quotation, it is of the greatest importance that the road to net zero is embarked upon in all sectors and waiting is not an option.

957. The sectoral targets are explicitly an addition to the overarching reduction demand. ING cannot suffice with exclusively sectoral targets, because these sectoral targets will not cover all activities and thus all emissions of ING and therefore do not guarantee that the total in absolute emissions reductions that ING realises is sufficiently great. GFANZ supports this in its report *“Guidance on use of Sectoral Pathways for Financial Institutions”*:

“Financial institutions should set targets at sector level while also ensuring that their overall portfolio is aligned to a 1.5 degrees C, with low/no overshoot.”⁹⁶⁹

958. It can thus be noted that ING must bring about both the necessary overarching absolute emissions reductions for the total of its Scope 1, 2 and 3 emissions, and in addition must contribute to the necessary emissions reductions at sectoral level by means of sectoral targets.

XIV.3.2.2 ING must set sectoral reduction targets for all climate-relevant sectors

959. The question then arises for what sectors ING will have to set sectoral targets. In this respect it is first of all important to know that 81% of the CO₂ emissions in the world are caused by the production and burning of oil, coal and gas (29%, 33% and 18% of global CO₂ emissions respectively).⁹⁷⁰ Global CO₂ emissions are thus for the greater part determined by the use of these fossil fuels by economic sectors and households, as also appears from the following figure of the Sixth Assessment Report (AR6) of the IPCC:⁹⁷¹

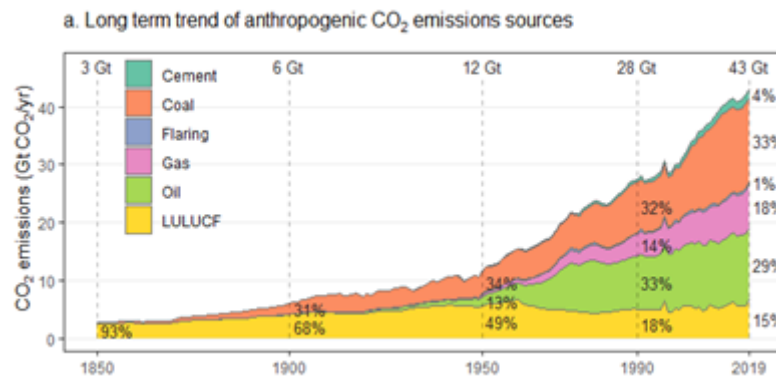
⁹⁶⁷ Ibid, p. 102 (under 4.5).

⁹⁶⁸ For individual clients of ING, it is possible that on the basis of such a client's specific facts and circumstances, there may be reason for the client to reduce its emissions at least in line with the necessary global average emissions reductions (e.g. a halving of emissions in 2030), but in any event, ING's contribution per sector can never be less than the average necessary in that sector.

⁹⁶⁹ Exhibit MD-221, GFANZ 2022, 'Guidance on Use of Sectoral Pathways for Financial Institutions', p. 42.

⁹⁷⁰ An additional 1% of the CO₂ emissions is caused by the flaring of the gases released in the extraction and processing of oil and gas.

⁹⁷¹ Exhibit MD-050, IPCC 2022, AR6, WGIII, TS, Figure TS.3 on p. TS-16. As the IPCC figure shows, the other sources of CO₂ are: cement production (4%) and land use (15%). Land use is indicated by the abbreviation LULUCF that stands for Land Use, Land Use Change, Forestry.



960. The production and burning of fossil fuels consequently accounts for more than 4/5 of global CO₂ emissions. In order to be able to achieve the global reduction targets for 2030 and 2050 it is therefore first of all of crucially important that ING sets adequate targets for the fossil fuel sector that supplies these fuels (Chapter XIV.3.5).
961. In addition, ING must also implement a sectoral policy for the sectors that uses these fossil fuels, so that the emissions in these (fossil fuel) energy-consuming sectors are reduced in line with the 1.5°C target and the sustainability of these sectors is encouraged (Chapters XIV.3.3 and XIV.3.4). The figure from the Sixth Assessment Report (AR6) of the IPCC below provides a picture of what energy-using sectors contribute what share in the global emissions:⁹⁷²

⁹⁷² Exhibit MD-050, IPCC 2022, AR6, WGIII, TS, Figure TS.6, p. 66.

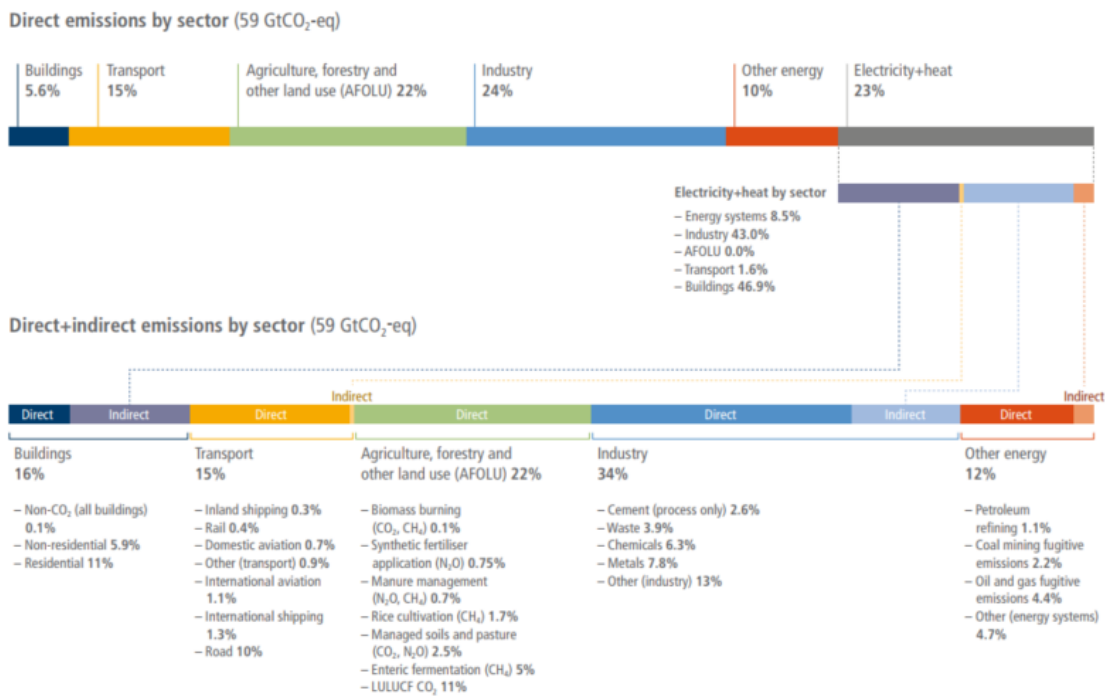


Figure TS.6 | Total anthropogenic direct and indirect GHG emissions for the year 2019 (in GtCO₂-eq) by sector and subsector. Direct emissions estimates assign emissions to the sector in which they arise (scope 1 reporting). Indirect emissions – as used here – refer to the reallocation of emissions from electricity and heat to the sector of final use (scope 2 reporting). Note that cement refers to process emissions only, as a lack of data prevents the full reallocation of indirect emissions to this sector. More comprehensive conceptualisations of indirect emissions including all products and services (scope 3 reporting) are discussed in Section 2.3. Emissions are converted into CO₂-equivalents based on global warming potentials with a 100-year time horizon (GWP100) from the IPCC Sixth Assessment Report. Percentages may not add up to 100 across categories due to rounding at the second significant digit. (Figure 2.12, 2.3)

962. The importance of focusing the sectoral policy on these sectors is furthermore confirmed by the NZBA, that functions under the flag of UNEP FI,⁹⁷³ that ING has joined. 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 carbon-intensive sectors identified by the NZBA. The NZBA refers in this respect to the supply sectors oil, gas and coal and the energy-use sectors of electricity generation, steel, aluminium, cement, transport, commercial and residential real estate and agriculture. NZBA members are primarily expected to set targets for all these sectors.⁹⁷⁴
963. ING also knows that reductions must be realised within the aforementioned climate-relevant sectors. ING primarily bases its sectoral targets on the International Energy Agency's NZE scenario; the NZE scenario is a scenario that is geared to retaining a 50% chance to limit the temperature increase this century to 1.5°C (with an overshoot to 1.6°C). In the NZE scenario, the International Energy Agency indicates for each of the sectors cited by the IPCC above what (absolute) CO₂ emissions reductions must take place according to this scenario for the years 2030, 2035, 2040 and 2050.⁹⁷⁵

⁹⁷³ As previously explained, the NZBA is the climate-specific programme for UNEP FI's Principles for Responsible Banking (PRB) and until the end of 2024 was the sector-specific alliance for banks under the Glasgow Financial Alliance for Net Zero (GFANZ); GFANZ underwent a restructuring at the end of 2024 (see footnote **Error! Unknown switch argument.**).

⁹⁷⁴ Exhibit MD-220, UNEP FI NZBA 2024, 'Guidelines for Climate Target Setting for Banks Version 2', pp. 9 and 10.

⁹⁷⁵ Exhibit MD-085, IEA 2023, 'Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update', p. 198, Table A.4. The only sector that the IEA does not pay any attention to in this table is the land sector, because the IEA only focuses on the energy sector (which encompasses all sectors except for the land sector). In addition, the table contains a number of additional sectors compared to the sectors referred to by the NZBA, such as the Chemicals sector, as these are also seen as emissions-intensive and climate-relevant by the IEA (and by the IPCC).

964. ING's sectoral policy will have to be geared to reducing the emissions in the above-mentioned climate-relevant supply and use sectors, in line with the 1.5°C target.

XIV.3.2.3 ING must set both absolute reduction targets and intensity targets per sector

965. Based on the above, the climate-relevant sectors for which ING has to set targets are thus clear. The following question that has to be answered is what kind of sectoral targets ING has to use when interpreting its legal obligation. Milieudefensie will explain in this respect that ING must apply both absolute reduction targets and intensity targets per sector.
966. It is also pointed out a priori that at this time ING only applies sectoral intensity targets (and therefore not absolute emissions reduction targets).⁹⁷⁶ Due, in part, to a lack of transparency and an unclear methodology, a good deal of critical remarks can be made about the intensity targets applied by ING; this point will be discussed in greater detail later. However, Milieudefensie and ING will not differ in opinion as to the importance of and the need for applying intensity targets as such. Milieudefensie will therefore explain why it is necessary to also apply sectoral absolute emissions reduction targets, supplemented with adequate intensity targets.
967. As has already been discussed several times above, the success of the climate approach depends on reducing the total emissions (absolute emissions) to the atmosphere and every sector will have to make the necessary contribution in this respect. As cited in para. 953, according to the IPCC "*rapid, deep, and in most cases immediate GHG emission reductions in all sectors (high confidence)*" are necessary. For this reason it is necessary that reduction targets – not only at the overarching level of the bank, but also per sector – realise the necessary absolute emissions reductions.⁹⁷⁷ Reducing the absolute emissions in all sectors is the end goal that is to be achieved and only absolute reduction targets actually guarantee these absolute emissions reductions.
968. In addition, it will not be possible to formulate emissions intensity targets for all (sub-)sectors. Emissions intensity targets can only be formulated for sectors for which the productivity can be measured with a uniform measuring unit, which can then be related to the greenhouse gases that are released. This could be something like the quantity steel (in tons) that a company produces, so that it is possible to calculate the intensity (the quantity of CO₂) per ton of steel produced. Or the transport sector, where the quantity of CO₂ can be calculated per kilometre driven. For many sectors with pluriform productivity (e.g. the manufacturing industry, that processes raw materials into very diverse products) it is not always easily possible, however, to determine such a uniform measurement unit. If climate policy were to exclusively focus on emissions intensity, the large emissions of many (sub-)sectors thus remain untouched and targets are not set for many emissions. As the emissions in *all* sectors must be reduced as quickly as possible (in an absolute sense), for this reason too it is not possible to suffice with only emissions-intensity targets, which inherently do not/cannot cover all global and sectoral emissions.
969. An additional goal (in addition to absolute reduction targets) that provides for the reducing

⁹⁷⁶ Except for the reduction target for upstream oil and gas, which Milieudefensie will discuss later.

⁹⁷⁷ This also becomes immediately clear when looking at Table A.4 of the NZE update 2023 cited in the footnote above (Exhibit MD-085, IEA 2023, 'Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update', p. 198). This table shows the substantial emissions reductions that must take place in all sectors.

of the physical emissions intensity, then effects that the absolute reduction that is achieved by absolute reduction targets, will not be achieved purely by ceasing the financing and supporting of a part of its client portfolio in a specific sector, while the bank in the meantime continues its financing and support for other parties in that sector that are not taking any climate action. Only reducing the outstanding financing of clients in a specific sector could lead to ING achieving the absolute emissions reduction target for that sector, while ING and its continuing financing in that sector can simply continue to finance companies that do not take any climate action. Applying emissions intensity targets helps prevent this, or in any event contributes to this to a great degree, because ING must steer toward the necessary sustainability measures for each sector, as it must realise a specific average physical emissions intensity for its portfolio in every sector. This will encourage ING to steer its clients in every sector towards more sustainability.

970. An additional intensity target is thus the stimulant (and the barometer) to ensure that in every sector the bank finances and supports the parties that are taking sustainability measures in line with a 1.5°C reduction pathway (such as, e.g., by reducing the quantity of CO₂ that an energy company emits per generated MWh) and helps to prevent that the bank finances and continues to finance parties that deviate from the necessary reduction pathway. This is how it is encouraged that the necessary absolute emissions reductions are achieved by the sectorally necessary sustainability measures and not (only) by ceasing the financing for specific parties to in that manner achieve a reduction of the financing within a sector and the associated emissions. As stated, simply applying intensity targets does not, in turn, guarantee that the absolute emissions reductions that are necessary in every sector will be achieved and this would entail the risk that sectors grow in a manner that cannot be reconciled with the 1.5°C target.
971. In short, the combination of absolute targets and intensity targets will bring about that ING steers toward the right transformation in every sector.
972. Milieudefensie refers in this respect to the Scope 3 Standard of the GHG Protocol, in which it has already been stated that intensity targets can be useful because this can measure improvements in performance, independent of company growth or shrinkage. Measuring (physical) emissions intensity can also measure the comparability of performance between companies. However, the Scope 3 Standard establishes that (only) applying intensity targets is less robust and less credible from the climate perspective, because this does not guarantee any absolute emissions reduction:

“Less environmentally robust and less credible to stakeholders because absolute emissions may rise even if intensity decreases (e.g., because output increases more than GHG intensity decreases).”⁹⁷⁸

973. The UN expert report also agrees that intensity targets alone are not enough:

“Non-state actors cannot focus on reducing the intensity of their emissions rather than their absolute emissions or tackling only a part of their emissions rather than their full value chain (scopes 1, 2 and 3).”⁹⁷⁹

974. The Interpretation Guide of the Race to Zero points out that a combination of absolute reduction targets and intensity targets is important for financial institutions per sector:

⁹⁷⁸ Exhibit MD-130, GHG Protocol Corporate Value Chain (Scope 3) Standard, p. 102.

⁹⁷⁹ Exhibit MD-134, 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’, p. 7.

*"In most cases, absolute emissions targets are necessary for ensuring real-world reductions. [...] In addition, for finance institutions and others with "indirect" emissions, intensity targets may be helpful for tracking the process of decarbonization. [...] Including both absolute and intensity targets and metrics provides the most clarity."*⁹⁸⁰ (underlining added by legal counsel)

975. GFANZ too endorses the use of both absolute targets and intensity targets as a good approach for the financial sector, with the goal of ultimately reducing the absolute emissions to zero, because merely applying either absolute targets or intensity targets entails disadvantages for most sectors⁹⁸¹:

*"Absolute emissions metrics may offer the benefit of a direct link to the carbon budget and can also be applied consistently across sectors. However, they can discourage the transformation needed. Absolute metrics may disincentivize investment in transition sectors, constrain growth of low emissions entities, and make comparability of different-sized portfolios or entities difficult. [...] Physical intensity metrics address these concerns by scaling emissions relative to a production measure (e.g., MWh produced), which can then encourage a transformation of the business through greater use of carbon-efficient technologies and processes." However: "intensity metrics can result in total emissions increasing even if the carbon intensity measure used decreases. [...] Ultimately getting absolute emissions to zero is the end goal, and both absolute and intensity metrics should be considered together to measure progress of different pathways to net zero."*⁹⁸² (underlining added by legal counsel)

976. The conclusion of the above is that ING's legal obligation – in addition to the necessary emissions reduction at overarching level – extends to the realising of absolute emissions reductions and intensity reductions for the climate-relevant supply and use sectors in which it is active, in such manner that its activities in these sectors are brought in line with the 1.5°C target.

XIV.3.2.4 ING can and must base its reduction targets on the IEA's NZE scenario

977. As set out above, ING already applies intensity targets. For most of the sectors for which ING formulates intensity targets, it takes the NZE scenario of the International Energy Agency as the starting point for these intensity targets – or claims that it will align with it – to ensure in that manner that it is acting in line with the 1.5°C target.⁹⁸³
978. Although Milieudefensie is of the belief that the IEA's NZE scenario is too conservative (because it provides too much protection for the interests of the fossil fuel industry) and has certain shortcomings,⁹⁸⁴ Milieudefensie has no objection to ING, when interpreting and

⁹⁸⁰ Exhibit MD-132, UNFCCC, 'Interpretation Guide Race to Zero Expert Peer Review Group Version 2.0', pp. 8-9, para. 7.

⁹⁸¹ GFANZ would like to point out in this respect that this does not apply to the fossil fuel supply sector as such, because a production reduction is necessary in this sector and intensity targets are not a good barometer or guidance tool for achieving this: "There is also a debate over whether physical intensity metrics are best suited in the fossil fuel sectors where net-zero scenarios suggest a reduction in production is required, which may not be as easily conveyed by intensity metrics". See Exhibit MD-219, GFANZ 2022, 'Financial Institution Net-Zero Transition Plans', p. 79.

⁹⁸² Exhibit MD-219, GFANZ 2022, 'Financial Institution Net-Zero Transition Plans', pp. 78-79.

⁹⁸³ Exhibit MD-005, ING Climate Report 2024, pp. 12, 33 and 36. See the ING press release of 20 December 2023, available on <https://www.ing.com/Newsroom/News/Press-releases/ING-takes-next-steps-on-energy-financing-after-COP28.htm>: "We are guided by the IEA's 1.5-degree climate scenario and will continue to update our targets in line with their net zero by 2050 pathways."

⁹⁸⁴ Among other things, the NZE scenario assumes such quantity of Carbon, Capture and Storage (CCS) to absorb CO₂ that it is very much the question whether this can be realised in the real world. The IEA mentions this in its NZE report of 2021 as one of the 'Key uncertainties' of its scenario. In addition, the IEA opts to model relatively low emissions reductions in the short term and only make up for them after 2030. For example, the NZE scenario only realises a CO₂ reduction of 35% in

giving substance to its legal obligation, aligning at sectoral level with (the updated 2023 version of) this scenario.

979. Milieudefensie believes it is important in this respect that in the NZW scenario, the IEA brings together its knowledge of the energy markets and of the global energy infrastructure. In the scenario, the IEA takes account of elements varying from policy developments, use of technology, investments, supply chains, infrastructure, innovation and costs. The IEA also includes the various circumstances of individual countries and regions in this approach.

“The IEA tracks hundreds of thousands of energy sector datapoints that cover elements ranging from policy developments, technology deployment, investment and supply chains to infrastructure, innovation and costs. This data-driven approach feeds the model used to develop the NZE Scenario, which also factors in the various circumstances of individual countries and regions in great detail. This allows the NZE Scenario to take account of the feasibility of scaling up emissions reduction options at the speed and scale required across various regions, sectors and technologies, and to integrate concerns about equity (Box 2.1).”⁹⁸⁵

980. In its scenario the IEA thus takes account of the emissions reduction options of various regions, sectors and technologies and the speed and scale necessary in this respect. This makes it a suitable (and relatively granular) 1.5°C scenario on which to base sectoral targets.

981. In any event, the above does not mean that in the NZE scenario, the IEA is basing its position on what is possible within each sector in relation to maximum ambition. This concerns a relatively conservative 1.5°C reduction pathway. The NZE scenario only models a global CO₂ reduction in the energy sector of 35% for 2030.⁹⁸⁶ The NZE scenario also assumes an overshoot of the 1.5°C target, with all concomitant risks (discussed in this summons).⁹⁸⁷ The NZE scenario is therefore to be seen as a lower limit for what ING should do on a sectoral basis in order to perform its legal obligation and act in line with the 1.5°C target.

982. Milieudefensie points out in this respect that according to the IPCC, the mitigation potential (utilising all available mitigation options) is such that global emissions in 2030 could fall by more than 50% relative to 2019:

“The total emission mitigation potential achievable by the year 2030, calculated based on sectoral assessments, is sufficient to reduce global greenhouse gas emissions to half of the current (2019) level or less (high confidence). This potential – 31 to 44 GtCO₂-eq – requires the implementation of a wide range of mitigation options.”⁹⁸⁸

983. According to the IPCC, in 2019 the total greenhouse gases, including CO₂, emitted in that

2030 (relative to 2022). These relatively limited emissions reductions of the NZE scenario in the short term are correlated with the IEA’s choice to protect recent investments in the fossil fuel sector, at the expense of fast(er) decarbonisation. An important starting point for the IEA was, where possible, to protect the assets of the fossil fuel industry as much as it could against the accelerated depreciation of assets because of the need to cease the production earlier than planned (stranded assets). In view of this it is therefore not surprising that the NZE scenario is a scenario that already encompasses an overshoot of the 1.5°C target (as regards overshoot, see also Chapter XIV.2).

⁹⁸⁵ Exhibit MD-085, IEA 2023, ‘Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update’, p. 57 (under ‘Spotlight’). See also Exhibit MD-222, IEA 2021, ‘A closer look at the modelling behind our global Roadmap to Net Zero Emissions by 2050’, p. 2: “The NZE Scenario builds on our best understanding of the availability and prospects of technologies, potential for behavioural changes, as well as a fair and balanced approach towards each country’s own circumstances.”

⁹⁸⁶ Exhibit MD-085, IEA 2023, ‘Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update’, p. 13.

⁹⁸⁷ Ibid, p. 56.

⁹⁸⁸ Exhibit MD-050, IPCC 2022, AR6, WGIII, TS, p. 124.

year (and expressed in CO₂-eq) was 59 GtCO₂-eq.⁹⁸⁹ The mitigation potential of 31-44 GtCO₂-eq therefore means that the IPCC acknowledges the possibility of reducing 52.5% to 74.5% emissions in 2030 relative to 2019. An ambitious climate approach is therefore not a matter of being able to, but a matter of wanting to.

984. What is more, according to the IPCC the potential for affordable⁹⁹⁰ emission reductions to 2030 in, among others, the electricity sector, the transport sector and the industry sector, is greater than the emission reductions that follow from the IAM scenarios for those sectors. Certainly in the transport and industry sector the actual mitigation potential according to the IPCC is substantially greater than appears from the models.⁹⁹¹ Among other reasons, this is due to the fact that the 1.5°C scenarios tend not to include mitigation options in their modelling. For example, most scenarios for mitigation in the industry sector do not take account of capabilities for efficient material use and recycling.⁹⁹² This shows that 1.5°C-scenarios tend to be conservative with regard to the emissions reduction options.

985. UNEP also confirms the most recent Emissions Gap report from 2024 that the mitigation potential is still more than enough to close the emissions gap before 2030 (although that potential has fallen somewhat due to time passing and inadequate climate action):

“The updated assessment of sectoral mitigation potentials in this chapter underscores that there is ample opportunity to accelerate mitigation action both by 2030 and by 2035. The global potential to reduce sectoral emissions is estimated at 31 gigatons of carbon dioxide equivalent (GtCO₂e) per year in 2030 (range: 25–35) and 41 GtCO₂e/year in 2035 (range: 36–46) for mitigation measures up to US\$200/tCO₂e, which, if fully implemented, would be more than sufficient to bridge the emissions gap (figure 6.1; table 6.2).”⁹⁹³

986. UNEP also makes it clear that there are more than sufficient options for substantial emissions reductions in all sectors.⁹⁹⁴

987. With regard to the IEA NZE scenario, Milieudefensie furthermore points out that this scenario receives special attention with the financial supervisory framework to which ING is subject, because it is seen as the most appropriate scenario to review in what degree the bank is exposed to climate-related financial risks. ING is therefore obliged to report on the degree in which its credit portfolios correspond with the IEA NZE scenario, as follows from reporting standards for banks that the European Commission established on the instruction of the European Banking Authority (EBA):

“Institutions shall disclose in this template information on their alignment efforts with the objectives of the Paris Agreement for a selected number of sectors. The disclosures on the alignment shall capture the extent to which financial flows are consistent with a pathway towards low greenhouse gas emissions and climate-resilient development as referred to in the Paris Agreement. The economic scenario that describes that decarbonisation pathway is the International Energy Agency (IEA) Net Zero Emissions by 2050 Scenario (NZE2050)”⁹⁹⁵

⁹⁸⁹ Ibid, p. 57, Table TS.1.

⁹⁹⁰ Affordable emissions reductions to 2030 means that the reduction costs are lower than 100 USD per ton CO₂eq.

⁹⁹¹ IPCC 2022, AR6, WGIII, Ch. 12, pp. 1258 to 1260 (see

https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf). See, inter alia, Figure 12.1 on p. 1258.

⁹⁹² Ibid, p. 1260.

⁹⁹³ Exhibit MD-121, UNEP 2024, ‘Emissions Gap Report 2024’, p. 42.

⁹⁹⁴ Exhibit MD-121, UNEP 2024, ‘Emissions Gap Report 2024’, p. 44.

⁹⁹⁵ Commission Implementing Regulation (EU) 2021/637 of 15 March 2021, Commission Delegated Regulation (EU) 2015/1555, Commission Implementing Regulation (EU) 2016/200 and Commission Delegated Regulation (EU) 2017/2295, as

988. The ECB, the supervisory body for ING, with an eye on guaranteeing financial stability, takes the IEA NZE scenario as the starting point for analysing in what degree the financial sector aligns financing to the global climate task.⁹⁹⁶ The ECB has opted for, inter alia, the IEA NZE scenario because it views it as “*science-based*” and reliable, in line with international climate policy (including the European Climate Act), and because it has a global scope (which aligns with the global activities of banks). The ECB also points out that the IEA NZE scenario aligns with, e.g., the expectations of GFANZ.⁹⁹⁷ Lastly, the NZBA explicitly also refers to the IEA NZE scenario as one of the most important scenarios.⁹⁹⁸
989. In short, ING and Milieudefensie can agree that the IEA NZE scenario can for these reasons serve as the starting point for interpreting ING’s legal obligation at sectoral level and consequently for the sectoral targets to be set by ING.
990. Milieudefensie will first explain below what the appropriate absolute reduction targets that follow from the IEA NZE scenario and that ING will have to achieve per energy-using sector in order to perform its legal obligation. Milieudefensie will then explain that ING will, in addition, have to guarantee that the sectoral intensity targets it applies are at least in line with the sectoral reduction pathways determined by the IEA NZE -scenario and the carbon budget as this follows from the IEA NZE scenario for that sector. Because of a lack of transparency on the part of ING, it is not possible to properly determine at this point whether all sectoral intensity targets applied by ING are in fact in line with the IEA NZE scenario. There are, in any event, clear indications that a part of the sectoral intensity targets of ING are inadequate. Lastly, Milieudefensie will individually discuss the fossil fuel supply sector (oil, gas and coal). Because of the special characteristics of this fossil fuel supply sector, Milieudefensie is formulating individual demands for this sector, which entail, inter alia, that ING will have to part ways with fossil fuel clients that are still involved in new fossil fuel projects.

XIV.3.3 Absolute sectoral reduction targets – energy-using sectors

991. Milieudefensie is asking ING to bring the absolute CO₂ emissions of its sectoral portfolios in line with a 1.5°C reduction pathway, interpreted based on the IEA NZE scenario. Based on data from this scenario⁹⁹⁹ the absolute emissions reductions necessary for each sector are easy to calculate. This is best explained using an example.
992. According to the IEA NZE scenario, in 2022 the CO₂ emissions in the iron and steel sector were (rounded) 2623 MtCO₂.¹⁰⁰⁰ In 2030, according to the NZE scenario these CO₂ emissions will have to have fallen in an absolute sense to (rounded) 2118 MtCO₂. A simple calculation shows that this relates to a reduction of 19.2%.¹⁰⁰¹ The absolute CO₂ reductions can be

amended by Commission Implementing Regulation (EU) 2022/2453 of 30 November 2022 amending the implementing technical standards laid down in Implementing Regulation (EU) 2021/637 as regards the disclosure of environmental, social and governance risks, Annex XL, Template 3, under 1.

⁹⁹⁶ Exhibit MD-223, ECB 2024, ‘Risks from misalignment of banks’ financing with the EU climate objectives’, para. 3.3.

⁹⁹⁷ Ibid.

⁹⁹⁸ Exhibit MD-220, UNEP FI NZBA 2024, ‘Guidelines for Climate Target Setting for Banks Version 2’, p. 17.

⁹⁹⁹ WEO 2023 Extended data, World CO₂ emissions, World Indicators and Advanced Economies Balance (ADVECO Balance). The relevant dataset of the IEA is only available under license, and is therefore not publicly available. Milieudefensie assumes that ING already has the relevant dataset in its possession.

¹⁰⁰⁰ WEO 2023 Extended data, World CO₂ emissions.

¹⁰⁰¹ This is calculated by means of the formula: “(new - old) / old”. In the case of the iron and steel sector, for 2030 this leads to the calculation: (2118.14 – 2622.79) / 2622.79 = -19.2%. The quantities of CO₂ are represented in rounded figures

calculated for the years 2035, 2040 and 2050 in the same way for the iron and steel sector, always relative to the base year 2022.

993. The absolute CO₂ emissions reductions can be calculated in the same way for the other (sub-)sectors. This then leads to the table below:

Sector (percentages for 'advanced economies')	Sub-sector (global percentages)	Absolute reductions in CO ₂ relative to base year 2022			
		2030	2035	2040	2050
Electricity and heat		-71.5%	-100%	-103.3%	-104.2%
Other energy sector		-46.5%	-81.3%	-98.8%	-124.8%
Industry		-30.1%	-55.7%	-76.1%	-97.7%
	Chemicals	-13.5%	-36.1%	-60.8%	-96.6%
	Iron and steel	-19.2%	-39.6%	-60.6%	-91.1%
	Cement	-21%	-44.5%	-63.8%	-96.7%
	Aluminium	-17.7%	-35.3%	-59.7%	-97%
Transport		-43.4%	-70.3%	-86.7%	-98.8%
	Road	-29.3%	-54.4%	-75%	-96%
	Aviation	0% ¹⁰⁰²	-6.1%	-30%	-73.8%
	Shipping	-18.7%	-42.1%	-63.4%	-86.9%
Buildings		-50.2%	-75.7%	-90.4%	-99.8%
	Residential	-40.5%	-66.2%	-83.7%	-97.6%
	Services/commercial	-43.8%	-69.9%	-86%	-99.3%

994. It should be noted that the above table (in line with the IEA NZE scenario) makes a distinction into sectors and sub-sectors. The sectors 'Electricity and heat', 'Other energy sector', 'Industry', 'Transport' and 'Buildings' concern the overarching energy-using sectors, that together are responsible for the total global CO₂ emissions, as has already been demonstrated above in paragraph 961 by means of a figure of the IPCC.¹⁰⁰³ Sub-sectors can be designated within these overarching sectors. For example, IEA provides specific reduction pathways for sub-sectors of the industry sector, i.e. for the four sub-sectors: 'Chemicals'; 'Iron and steel'; 'Cement'; and 'Aluminium'. However, the industry sector does not consist of only these four sub-sectors. The reduction pathways of these four sub-sectors can consequently not cover the reduction pathway of the industry sector as a whole. In addition to the aforementioned sub-sectors, the industry sector consists of, inter alia, manufacturing, construction and, e.g., the pulp and paper sector.¹⁰⁰⁴ IEA does not provide any specific reduction pathways for these sectors, but together with the sub-sectors for which specific

in the main text and the tables of the WEO 2023 Extended dataset, but Milieudefensie based its calculations on the non-rounded figures that follow from the digital dataset. This explains any minor differences in the percentages resulting from the calculation.

¹⁰⁰² The NZE scenario of the IEA models globally up to 2030 an increase in emissions in the air travel sector, but the table on p. 94 of the NZE scenario (Exhibit MD-085, IEA 2023, 'Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update') makes it clear that the IEA does not model any emissions increase in the air travel sector for the 'advanced economies' (in which ING is active). For that reason, absolute emissions of ING in the air travel sector may not be allowed to increase to 2030.

¹⁰⁰³ With the exception of the AFOLU sector (the land sector) which is also included in the relevant figure with paragraph 961, for which the IEA does not outline a specific reduction pathway in its tables and that Milieudefensie has therefore not included in the table with reduction percentages.

¹⁰⁰⁴ Exhibit MD-085, IEA 2023, 'Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update', p. 207.

reduction pathways are provided, the other industrial sub-sectors will have to realise the necessary reductions that apply to the industry sector as a whole according to the IEA. Following the IEA NZE scenario, Milieudefensie is therefore demanding both absolute reductions at the level of the overarching sectors, and at the level of the sub-sectors.

995. In addition, the distinction between absolute reductions at the level of the overarching sectors and at the level of the sub-sectors is important because of the following.
996. In its modelling of the NZE scenario, the IEA takes account of the CBDR principle.¹⁰⁰⁵ Previously, in para. 978 and para. 980, Milieudefensie already explained that the IEA takes account of the wide range of emissions reduction options of various countries, regions and sectors. This entails that the reduction task is not the same for every part of the world in the IEA NZE scenario. The (developed) countries with a larger transition capacity and more financial options, that are also responsible for the bulk of the historical emissions, will, according to the NZE scenario, have to become sustainable more quickly than the (still developing) countries with a smaller transition capacity, fewer financial options and a smaller historical responsibility.
997. The IEA speaks in this respect of a difference in the pace of reduction between ‘advanced economies’ – by which the IEA means the OECD countries¹⁰⁰⁶ – and ‘emerging markets and developing economies’. ‘Emerging markets and developing economies’, that the IEA abbreviates to “EMDEs”, means the non-OECD countries. This difference in the pace of reduction is relevant for ING.
998. Where ING bases its sectoral climate targets on the NZE scenario, with one exception¹⁰⁰⁷ it always takes the global average reduction pathway from this scenario as the starting point. This is incorrect, and not an adequate interpretation of its legal obligation. As explained in Chapter XIV.3.1, ING is itself based in an OECD country, it earns virtually all of its turnover in OECD countries (or Annex I countries) and its credit facilities are made available for approx. 90% to clients in OECD countries (or Annex I countries). This fact entails that ING should take the reduction pathway for advanced economies from the NZE scenario as the starting point for its climate targets. After all, the division of the carbon budget and the reduction pathways from the NZE scenario assume that the advanced economies move faster than the global average, so that the EMDEs can move slower than the global average. If this does not happen, because companies in advanced economies like ING and its clients wrongly base their climate policy on the global average reduction pathway from the NZE scenario, it is already excluded beforehand that the reduction targets of the NZE scenario can be achieved. ING will therefore have to take the advanced economies reduction pathway as the starting point for its climate policy and cannot – as long as it fails to do so – claim that it is acting in line with this scenario.
999. Unfortunately, at this point in time, the IEA has not yet published the necessary absolute reductions of the advanced economies reduction pathway for all sub-sectors. At this time, the advanced economies reduction pathways have only been published for the overarching energy-using sectors and for the fossil fuel supply sector (the CO₂ emissions because of the use of oil, gas and coal, for which Milieudefensie sets a separate demand, see Chapter

¹⁰⁰⁵ Ibid, p. 59, Box 2.1 ‘*Integrating equity into the NZE Scenario design*’. The IEA is referring to the integration of equity in its modelling.

¹⁰⁰⁶ Ibid, p. 213. The IEA uses this term to refer to the OECD countries and Bulgaria, Croatia, Cyprus, Malta and Romania.

¹⁰⁰⁷ ING’s target for the upstream oil and gas sector is based on the reduction pathway from the advanced economies scenario.

XIV.3.5). The advanced economies reduction pathways are thus still lacking for the energy-using sub-sectors. This is why Milieudefensie can only base its demands with regard to the overarching energy-using sectors on the advanced economies reduction pathways. Milieudefensie must therefore perforce base its demands with regard to the sub-sectors on the global pathways that follow from the NZE scenario. ING must, however, still ensure that the total of what is reduced at sub-sector level, fulfil the required farther-reaching reduction targets for advanced economies at overarching sectoral level. This enables ING to apply the global pathway for the sub-sectors as the minimum reduction level and to do more in the sub-sectors where it can most easily achieve the bigger emissions reductions. It does not matter what or how, as long as it ultimately achieves the reductions that are appropriate for the advanced economies in which it is active at the level of the overarching sectors.

1000. At present, ING only applies an absolute emissions reduction target for the upstream oil and gas sector, which will be discussed in Chapter XIV.3.5. ING's policy does not set any absolute emissions reduction targets for all other sectors. This constitutes a (threatened) violation of the legal obligation to which ING is subject and Milieudefensie therefore requests this Court to order ING on the basis of Article 3:296 DCC to reduce the absolute financed and facilitated CO₂ emissions of the ING Group in conformity with the table set out at the beginning of this chapter.

1001. Milieudefensie will now go into what it is asking of ING with regard to the intensity targets to be applied per sector.

XIV.3.4 Sectoral intensity targets – energy-consuming sectors

1002. It was explained in Chapter XIV.3.2 that intensity targets have an important function, in addition to absolute reduction targets. These help to guarantee that in every sector parties are financed and supported that take sustainability measures in line with a 1.5°C reduction pathway. As stated, ING itself already applies intensity targets and it indicates that it takes the IEA NZE scenario as the starting point for most of these targets.¹⁰⁰⁸

1003. It is of great importance in this respect to note that sectoral reduction targets necessarily can only be based one – i.e. on one and the same – 1.5°C reduction scenario. After all, a reduction scenario is based on a specific global carbon budget, that must then be divided across the various sectors in the economy. By, starting from the global carbon budget, dividing the budget over sectors in that manner, it is ensured that the total of what has been allocated to the sectors does not exceed the global carbon budget. This can only be guaranteed by deriving the targets for all sectors from one scenario.

1004. It is therefore problematic if various 1.5°C reduction scenarios are applied to determine climate policy for various sectoral targets. It also opens the door to 'cherry picking', i.e. selective shopping in a variety of scenarios. For example, by looking for a 1.5°C reduction scenario for every sector that allocates the biggest carbon budget to that specific sector (thus keeping the necessary emissions reductions for that sector as low as possible), so that in every sector as little action as possible has to be taken to achieve the sectoral targets. In that case the total of all sectors together will far exceed the global carbon budget.

¹⁰⁰⁸ Exhibit MD-005, ING Climate Report 2024, p. 36. See the ING press release: <https://www.ing.com/Newsroom/News/Press-releases/ING-takes-next-steps-on-energy-financing-after-COP28.htm>: "We are guided by the IEA's 1.5-degree climate scenario and will continue to update our targets in line with their net zero by 2050 pathways."

1005. This risk is also acknowledged by GFANZ:

*"[U]sers should consider the implications of selecting different pathways. When pathways are used for setting targets across sectors in a portfolio, financial institutions should ensure that the total carbon budget used across sectors is in line with a 1.5 degree C ambition. Using bottom-up pathways or a combination of different pathways to set targets at sector level can lead to a misalignment in the total carbon budget for the whole portfolio."*¹⁰⁰⁹

1006. ING has also shown that it is aware of the importance of applying consistent sectoral reduction pathways and the associated carbon budget. For example, with regard to the cement sector it has indicated that it switched from the ISF-NZ scenario to the IEA NZE scenario *"So this would ensure we align with the carbon budget that the IEA uses as underlying assumption."*¹⁰¹⁰ ING thus fully realises the importance of acting on the basis of one consistent underlying carbon budget for 1.5°C, so that the addition of what is attributed to various sectors will not exceed the global carbon budget.

1007. In line with this, Milieudefensie is demanding that ING as a minimum brings the intensity targets it applies with the reduction pathways of the IEA NZE scenario for *every* sector and that by doing so it consistently operates within the 1.5°C carbon budget associated with this scenario.

1008. ING does not take the NZE scenarios as the starting point for a number of its intensity targets, but in those cases bases its position on a method specifically developed for the sector in question. If there were good reasons for ING to opt for a different starting point for a specific sector than the NZE scenario or to apply a special sector-specific method (e.g. because that method provides more information or guidance in relation to making this sector sustainable), this is not by definition problematic, but, as has been explained, must lead to the applied intensity targets at least being in line with the reduction pathway and the carbon budget as this follows from the IEA NZE scenario with regard to that sector. Applying another reduction scenario or a specific method is therefore only permissible if this leads to more ambitious or at least equally ambitious sectoral reductions like the IEA NZE scenario.

1009. Based on the explanation provided by ING with the sector-specific methods applied by it at this time, it cannot, however, be determined how these sector-specific methods and the intensity targets ensuing therefrom stand in relation to the reduction pathways and sectoral carbon budgets that follow from the NZE scenario. ING must be transparent about this, so that it is clear whether and how it will guarantee that the pace of reduction and the overarching carbon budget as provided for in the NZE scenario is not jeopardised. As stated, at this time this is unclear and ING is not sufficiently transparent about this.

1010. Furthermore, Milieudefensie has noticed that where relevant ING claims that its intensity targets are in line with the NZE scenario, even though this is not actually the case. This is best explained using an example. For example, ING applies an intensity target for the automotive sector. Via this intensity target, ING is focusing on the Scope 3 emissions of the car manufacturers that it finances and the emissions intensity of *new* light-duty vehicles, produced by these manufacturers must be brought in line with the NZE scenario. In short: these car manufacturers will have to produce and sell ever-more economical cars that have

¹⁰⁰⁹ Exhibit MD-221, GFANZ 2022, 'Guidance on Use of Sectoral Pathways for Financial Institutions', p. 13.

¹⁰¹⁰ Exhibit MD-005, ING Climate Report 2024, p. 53.

ever-lower CO₂ emissions ('tank-to-tailpipe' emissions) during use. This will in particular have to be realised by the rapid increase in the production and sale of electric cars, that have no emissions during use.

1011. For this intensity target, however, ING appears to take the emissions intensity as the starting point that the global car fleet of light-duty vehicles will have to have *on average* in 2030 according to the NZE scenario.¹⁰¹¹ This therefore concerns all light-duty vehicles in use worldwide, including all cars that were sold in the years and decades before 2030 and are still driving around, but that are far more emissions-intensive than the *new* cars produced and sold in 2030. If *newly* produced light-duty vehicles only have to satisfy that average, insufficient sustainability measures are being taken.
1012. In order to come to the necessary (average) sustainability measures of the worldwide car fleet, new vehicles will necessarily have to be a good deal less emissions-intensive than the average intensity of the global car fleet in use in 2030. Only in that manner – by the inflow of new, economical and low-emissions vehicles with emissions (far) below the average emissions – will it be possible to achieve the necessary lower average emissions intensity on a global scale. The IEA also makes this clear: *"In the NZE Scenario, electric car sales reach around 65% of total car sales in 2030."*¹⁰¹² This means that according to the NZE scenario, 65% of the *new* cars may no longer have any CO₂ emissions ('tank-to-tailpipe emissions') in 2030. Indeed, by 2035 virtually 100% of the sale of new light-duty vehicles must be electric according to the IEA.¹⁰¹³
1013. The emissions intensity target formulated for new light-duty vehicles does not appear to take this into account and indeed appears to be less ambitious than the emissions intensity targets that the European legislator formulated for new vehicles for the period 2030-2034.¹⁰¹⁴ So even though ING claims to take the NZE scenario as the starting point for its intensity target, in essence it is acting contrary to this scenario. After all, its intensity target for new vehicles does not in any way satisfy the requirements that the IEA sets for new vehicles in the NZE scenario.
1014. Lastly, the intensity targets applied by ING are without commitment. ING reserves the right to adjust its reduction targets when it sees fit, e.g. because of changes in (or a lack of) government policy and other developments that are of influence on clients, their sectors or

¹⁰¹¹ The intensity target that ING has set for itself for 2030 (on page 45 of Exhibit MD-005, ING Climate Report 2024 and p. 115 of Exhibit MD-004, ING Annual Report 2024) more or less corresponds with the emissions intensity that on the basis of Tables A.4 and A.5 of the IEA NZE scenario of 2021 (Exhibit MD-224, IEA 2021, 'Net Zero by 2050' (selected pages), pp. 199-200) can be calculated for the entire global fleet of passenger vehicles in 2030. This calculation is made by dividing the CO₂ emissions of all these passenger vehicles in Table A.4 by the number of kilometres that these vehicles are driving according to Table A.5. This results in an emissions intensity of 0.103 kg CO₂/km, which is virtually identical to the 0.101 kg CO₂/km that ING has set as the target for 2030.

¹⁰¹² See <https://www.iea.org/energy-system/transport/electric-vehicles>: *"In the NZE Scenario, electric car sales reach around 65% of total car sales in 2030. To get on track with this scenario, electric car sales must increase by an average of 23% per year from 2024 to 2030. For comparison, electric car sales increased by almost 35% in 2023 compared to 2022."*

¹⁰¹³ Exhibit MD-085, IEA 2023, 'Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update', p. 93.

¹⁰¹⁴ The European legislator has an emissions intensity target for the years 2030-2034 of 49.5 g CO₂/km for new vehicles and 90.6 g CO₂/km for new vans. ING applies an emissions intensity target of 101 g CO₂/km for the category light-duty vehicles (cars and vans fall in this category), which is (substantially) higher than these emissions intensity targets of the European legislator. From 2035, the emissions intensity target set by the European legislator for both new cars and new vans is 0 g CO₂/km, which – just as the NZE scenario prescribes – means that new cars may no longer have any emissions. See https://climate.ec.europa.eu/eu-action/transport/road-transport-reducing-co2-emissions-vehicles/co2-emission-performance-standards-cars-and-vans_en?prefLang=nl.

society as a whole.¹⁰¹⁵ This reservation of rights has been formulated so broadly, that it boils down to a license for ING to ignore its reduction targets as it sees fit, and for whatever reason. With this reservation, ING is introducing such a degree of non-commitment to its climate policy, that it can never be sufficient for the performance of ING's legal obligation.

1015. In view of all of the above, Milieudefensie is demanding a declaratory judgment that ING is acting wrongfully if it has not at least brought the activities of the ING Group in each of the climate-relevant sub-sectors identified in the preceding paragraph in line with the emissions intensity reduction targets and the associated carbon budgets at the end of the years 2030, 2035, 2040 and 2050, as these follow from the NZE scenario of the IEA. In addition, Milieudefensie is also requesting that ING be *ordered* to bring its activities in line with these emissions intensity reduction targets, to thereby guarantee that ING actually adjusts its policy and actions in time for the sectors for which the applied targets are not sufficient at this time (like the automotive sector). By means of this declaratory judgment and this order, ING can give its intensity policy further substance within the framework offered by the NZE scenario, but without the lack of commitment that characterises its climate policy at this time.

XIV.3.5 The fossil fuel sector

1016. As already remarked above with the explanation of the need for sectoral targets (Chapter XIV.3.2), Milieudefensie formulates individual demands for the fossil fuel sector, which entail, inter alia, that ING will not only have to realise percentage-based emissions reductions, but will also have to part ways with fossil fuel clients that are still involved in new fossil fuel projects (as defined hereinafter).
1017. The fossil fuel sector means companies that are engaged in exploring, mining, extracting, producing, processing, distributing and/or putting on the market of oil, coal and/or gas. The fossil fuel sector in essence forms the source of the climate problem and for the time being keeps the world dependent on fossil fuel energy sources to far too great a degree (which leads to a 'carbon lock-in', as will be explained in greater detail hereinafter). Without the phase-out of the production and the use of fossil fuels, the global climate approach will not succeed.
1018. The need for the individual demands for the fossil fuel sector lies in the special characteristics of the fossil fuel sector, and in the particular danger that is caused by (the financing and facilitation of) new fossil fuel projects. That this is of independent significance for the societal duties of care of companies appears, in part, from the judgment of the Court of Appeal of The Hague in the Shell case. The Court of Appeal explicitly considered that investments in new oil and gas fields, because of the carbon lock-in, can be at odds with the responsibility to take account of the negative consequences for the feasibility of the 1.5°C target of the Paris Agreement.¹⁰¹⁶
1019. As far as Milieudefensie is concerned, there can be no doubt that ING is indeed breaching its societal responsibility by financing and facilitating (companies that are involved with) new fossil fuel projects. In Chapter X.4 Milieudefensie already explained that the IPCC, UNEP and the IEA have pointed out that commercial banks like ING, due to their excessive financing of fossil fuel activities, contribute to a carbon lock-in that cannot be reconciled with the 1.5°C target.

¹⁰¹⁵ Exhibit MD-004, ING Annual Report 2024, p. 110 and Exhibit MD-005, ING Climate Report 2024, p. 9.

¹⁰¹⁶ Court of Appeal of The Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2100, paras. 7.58 to 7.62

1020. What is more, Milieudefensie again points out that no less than 81% of the CO₂ emissions in the world are caused by the production and burning of oil, coal and gas (see also Chapter VIII.2.2.3). This makes the global CO₂ emissions to a great extent equal to the CO₂ emissions of the use of these fossil fuels.
1021. It was explained in, inter alia, Chapter XIV.2 that the carbon budget for limiting the warming of the Earth to 1.5°C is rapidly decreasing and becoming depleted, because year after year far too much CO₂ is being emitted. In the words of the IPCC there is therefore only *“a brief and rapidly closing window of opportunity to secure a liveable and sustainable future for all.”*¹⁰¹⁷
1022. It was also discussed in this respect that during COP28, the international community of states called for an accelerated move away from all fossil fuels in this critical decade, in order to be able to reach the point of net zero by 2050.
1023. However, the fossil fuel industry has an inhibitory effect on this very necessary acceleration of the climate approach and the concomitant acceleration of the sustainable energy transition. This inhibitory effect arises from the aforementioned carbon lock-in. Carbon lock-in is the scientific umbrella term for a large number of obstacles that impede the required societal transformation from a fossil fuel system to a sustainable energy system.¹⁰¹⁸
1024. For example, there is a physical and economic lock-in of fossil fuel infrastructure, because fossil fuel projects are capital-intensive projects. Large capital-intensive investments are made for long-term projects. As soon as those investment decisions are made and financing is obtained, the fossil fuel companies, their financiers and other stakeholders will defend their position against any limitation on that exploitation of fossil fuel assets.
1025. In addition, the permanently high supply of fossil fuels also maintains and further encourages the demand for fossil fuels. All of this presents both an economic and a societal hurdle to change.
1026. In the Shell case, the court of appeal of The Hague also explicitly referred to the carbon lock-in and that the carbon lock-in maintains the demand for fossil fuels and delays the transition to sustainable alternatives.¹⁰¹⁹ This is in connection with, inter alia, the long earn-back time of such fossil fuel investments.¹⁰²⁰ According to the court of appeal, the use of fossil fuel pushed by the supply side of the market can seriously delay the energy transition.¹⁰²¹
1027. The carbon lock-in is, for the moment, keeping society dependent on fossil fuels and is consequently standing in the way of the transformation to a sustainable energy system. In the words of the IPCC:

¹⁰¹⁷ Exhibit MD-001, IPCC 2023, AR6, SYR, p. 89: *“The cumulative scientific evidence is unequivocal: climate change is a threat to human well-being and planetary health (very high confidence). Any further delay in concerted anticipatory global action on adaptation and mitigation will miss a brief and rapidly closing window of opportunity to secure a liveable and sustainable future for all (very high confidence).”*

¹⁰¹⁸ IPCC 2022, AR6, WGIII, Ch. 1, p. 189 (see

https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf).

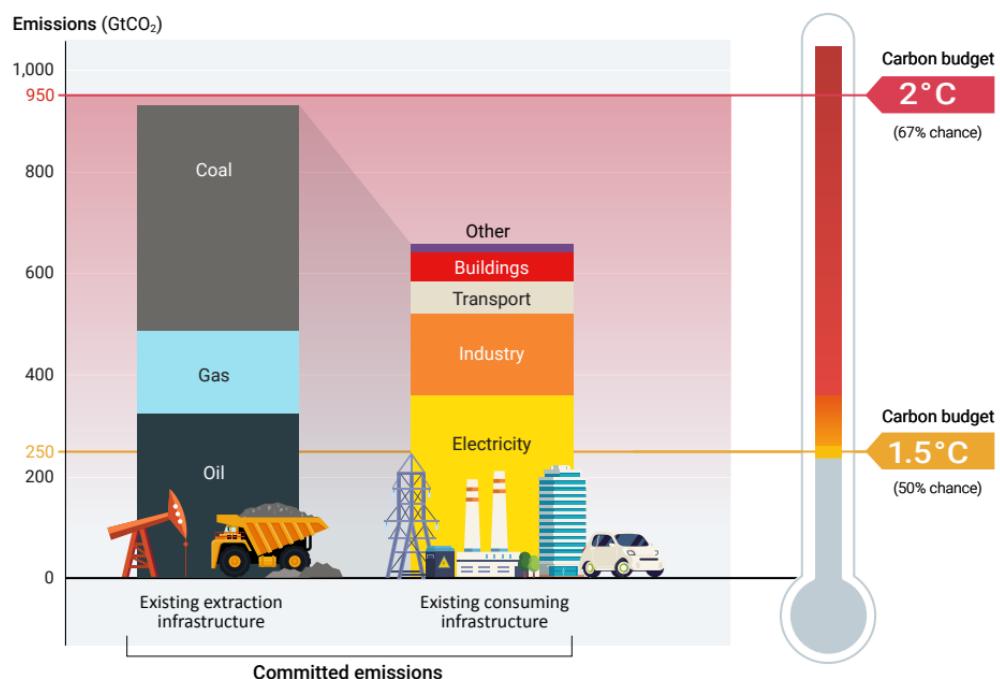
¹⁰¹⁹ Court of Appeal of The Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2100, para. 7.59.

¹⁰²⁰ Ibid.

¹⁰²¹ Ibid.

“Still existing locked-in infrastructures and business models advantages fossil fuel industry over renewable and energy efficient end use industry. The fossil fuel energy generation and delivery system therefore epitomises a barrier to the acceptance and implementation of new and cleaner renewable energy technologies.”¹⁰²²

1028. According to the IPCC, the fossil fuel energy system is therefore an important impediment to the acceptance and implementation of new and cleaner technologies for renewable energy.
1029. The global fossil fuel lock-in is so substantial, that the expected emissions that are associated with existing fossil fuel infrastructure will far exceed the still available carbon budget for 1.5°C, as follows, inter alia, from the UNEP Emissions Gap Report of 2023, which represents this matter in the figure below.¹⁰²³



1030. It follows from this UNEP figure that the CO₂ emissions associated with the oil fields that are in production or for which an investment decision has already been made (“committed emissions”) on their own are enough to exceed the carbon budget for 1.5°C. Oil and gas fields together represent almost twice the remaining carbon budget for 1.5°C in emissions and coal causes a doubling. The figure also makes it clear that the emissions that are encompassed in the supply side (represented in the left-hand column) are substantially higher than the emissions that are encompassed in the demand side (represented in the right-hand column). UNEP also points out that this information is probably an underestimate, because in the meantime more infrastructure has been added than has been decommissioned.¹⁰²⁴ It makes

¹⁰²² IPCC 2022, AR6, WGIII, p. 557 (see https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf).

¹⁰²³ Exhibit MD-018, UNEP 2023, ‘Emissions Gap Report 2023’, p. 35. For the same conclusion that the emissions from existing fossil fuel infrastructure exceeds the carbon budget for (a 50% chance of) 1.5°C, see also Exhibit MD-001, IPCC 2023, AR6, SYR, pp. 19-20 (under B.5 and B.5.3). It is pointed out that the figure from the UNEP Emissions Gap Report 2023 is based on a carbon budget of 250 GtCO₂ as at the beginning of 2023. As explained above, the matter now concerns a carbon budget of 200 GtCO₂ as at the beginning of 2024.

¹⁰²⁴ Exhibit MD-018, UNEP 2023, ‘Emissions Gap Report 2023’, p. 35. UNEP bases its position on the infrastructure for which the investment decisions have been made up to the beginning of 2018. Although no full details are available, since then

it clear that the supply of fossil fuels must be phased out as quickly as possible and that there is no room at all for expansion of fossil fuel production with new oil and gas fields or new coal mines. The investments in new oil and gas fields and coal mines must cease as quickly as possible, in order to embark upon the road to reduction.

1031. The above makes it clear that the existing stock of fossil fuels cannot be used up when limiting the warming to 1.5°C and that this existing supply of fossil fuels must be phased out as quickly as possible. The appeal of the global community during COP28 to move away from fossil fuels in this critical decade endorses this position. There is no room whatsoever to expand fossil fuel production with new oil and gas fields or new coal projects. Ceasing investments in new fossil fuel projects is consequently a prerequisite for limiting warming to 1.5°C.

1032. As the editorial board of the renowned scientific journal *Nature* puts it succinctly in its editorial following COP28, '*COP28: the science is clear — fossil fuels must go*':

*"There is only one viable path forward, and that is for everybody to phase out almost all fossil fuels as quickly as possible."*¹⁰²⁵

1033. An important recent article in the renowned scientific magazine *Science* entitled '*No new fossil fuel projects: The norm we need*', supports the above analysis and comes to the conclusion that a 'no new fossil fuel projects' norm is necessary to realise the phasing out of the production and use of fossil fuels and to achieve the goal of the Paris Agreement.¹⁰²⁶

1034. The IEA also acknowledges that the supply of fossil fuels for a 1.5°C scenario is too large and that too much is invested in this. This is the reason why the IEA indicates that no investments or very little investment in new oil and gas fields are needed and that some already existing fields have to be closed, before the end of their (technical) lifespan.¹⁰²⁷ Too much LNG infrastructure (liquefaction capacity) has already been built, so that from the mid-2020s there is a risk of a global supply surplus of LNG.¹⁰²⁸ This fact is now also acknowledged by ING.¹⁰²⁹ Furthermore, according to the IEA, no new coal mines or extensions of the lifespan of existing coal mines are necessary and no new coal power stations will be built in the NZE scenario.¹⁰³⁰

1035. The IEA thus acknowledges the problem of fossil fuel companies that simply keep investing in new fossil fuel projects (financed and facilitated by banks and other investors). The warnings about this frequently recur in its reports.¹⁰³¹ To quote one of those warnings: "*new projects would risk locking in emissions that push the world over the 1.5°C threshold.*"¹⁰³²

more infrastructure has been added than has been decommissioned, so that the figure underestimates the scope of the '*committed emissions*', according to UNEP.

¹⁰²⁵ Exhibit MD-225, *Nature* 2023, '*COP28: the science is clear — fossil fuels must go*', p. 225.

¹⁰²⁶ Exhibit MD-226, Green et al. 2024, '*No new fossil fuel projects: The norm we need*', p. 955.

¹⁰²⁷ Exhibit MD-085, IEA 2023, '*Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update*', p. 76.

¹⁰²⁸ Exhibit MD-227, IEA 2023, '*World Energy Outlook 2023*' (selected pages), pp. 139 – 140.

¹⁰²⁹ Exhibit MD-228, ING 2024, '*Global LNG supply set to balloon*' (print-out website 27 February 2025). ING itself first made large-scale investments in new LNG capacity and even recently turned out to be one of the biggest investors in American LNG, see <https://www.duurzaam-beleggen.nl/2022/11/18/ing-op-twee-na-grootste-financier-vervuilende-amerikaanse-vloeibaar-gasfabrieken/>.

¹⁰³⁰ Exhibit MD-085, IEA 2023, '*Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update*', pp. 16 and 76.

¹⁰³¹ See, inter alia, Exhibit MD-085, IEA 2023, '*Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update*', see e.g. p. 16 and p. 164. See also Exhibit MD-229, IEA 2023, '*The Oil and Gas Industry in Net Zero Transitions*', p. 14, p. 19 and p. 60.

¹⁰³² Exhibit MD-085, IEA 2023, '*Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update*',

1036. The IEA warned in 2023 that the planned investments up to 2035 in the production of fossil fuels, fossil fuel electricity generation and infrastructure for end use are now 3.6 trillion dollars higher than the investments that are necessary according to the own IEA NZE scenario.¹⁰³³
1037. It is therefore of the greatest importance that further fossil fuel lock-in is prevented. And this is possible. The IEA shows that with the existing oil and gas fields and coal mines, more than enough fossil fuel production can be supplied for the coming decades to complete the IEA NZE scenario up to 2050. As already discussed above, the NZE scenario therefore no longer requires any new oil or gas fields or new coal mines (or expansions thereof).¹⁰³⁴
1038. The IEA also warns that it is not possible to wait any longer with regard to making the difficult choices that are necessary to globally reach net zero emissions in 2050. Further postponing of difficult choices will only make the transition more difficult. To quote the IEA: *“Further delaying the hard choices necessary to reach global net zero emissions by 2050 would make the problems substantially worse, and much harder to solve.”*¹⁰³⁵
1039. The IPCC also recognises the risk of waiting longer and allowing the fossil fuel infrastructure to continue growing. The IPCC has indicated that maintaining the same course and following the current national climate plans to 2030, make it impossible to limit the temperature increase to 1.5°C. But not only that. The IPCC also warns that it will then be much more difficult to limit the warming to 2°C, precisely because of the continuing construction of infrastructure for fossil fuels that will take place between now and 2030.¹⁰³⁶
1040. Ceasing investments in new oil and gas fields and coal mines (and related infrastructure) is the sole option for limiting the temperature increase to 1.5°C and creating the scope for the accelerated phase-out of an energy system based on sustainable energy sources.
1041. This means that not one single oil and gas producer may develop new fields and no single coal producer may develop (or expand) new mines. In view of the above, it is not surprising that the UN Expert Report – partly based on the findings of the IEA and the IPCC – confirms that all companies and financial institutions must cease investing in new fossil fuel projects:
- “Non-state actors cannot claim to be net zero while continuing to build or invest in new fossil fuel supply. [...] net zero is entirely incompatible with continued investment in fossil fuels.”*¹⁰³⁷
1042. There are no exceptions: every fossil fuel company will have to shrink its fossil fuel activities to make the phasing out of fossil fuels a reality and this starts by ceasing new fossil fuel projects.

p. 164.

¹⁰³³ Exhibit MD-085, IEA 2023, ‘Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update’, pp. 150-151.

¹⁰³⁴ As explained above in para. 978 the IEA NZE scenario explicitly takes account of the sustainability options in every sector and region.

¹⁰³⁵ Exhibit MD-085, IEA 2023, ‘Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update’, pp. 150-151.

¹⁰³⁶ IPCC 2022, AR6, WGIII, H3, Executive Summary, p. 298 (see https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf).

¹⁰³⁷ Exhibit MD-134, 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’, p. 7.

1043. The above leads to the following conclusion. Because of the great lock-in effect and the fact that exploitation of already existing fossil fuel projects already exceed the available carbon budget for 1.5°C, it is evident that there is no longer any room for new fossil fuel extraction (and the related infrastructure). This means that it is urgently necessary that ING ensures that it is not involved in any way with financing or other kinds of support for companies that still start up projects for the exploration for new oil and gas fields, projects for the 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 ("**New Fossil Fuel Projects**").
1044. In view of the above, Milieudefensie is demanding of ING that it cease providing *new* financing and facilitation to companies that are still involved with New Fossil Fuel Projects, or for which a group company of the group to which the company in question belongs is still involved with New Fossil Fuel Projects within three months after the requested judgment. The issue is thus that ING cease financing and facilitation when their client, or the group to which that client belongs, still approves New Fossil Projects or intends to do so in the future. In addition, Milieudefensie is demanding of ING that it cease *all* (existing and new) financing and facilitation of companies that are still involved in New Fossil Fuel Projects and have shown a lack of willingness to change, within twelve months. Milieudefensie is hereby aligning with the 12-month time limit that the UN Race to Zero applies for escalation in such cases (see para. 498).
1045. ING itself also acknowledges that it is necessary to cease New Fossil Fuel Projects, including infrastructure that facilitates the development of new fossil fuel extraction, but it is not taking sufficient measures in this respect.¹⁰³⁸ For example, ING ceased project financing for new oil and gas fields, but it continues to provide general company financing to and facilitates capital market financing for companies that are still involved in New Fossil Fuel Projects. In addition, ING's asset management division is still investing in stocks and bonds of these companies. ING has furthermore announced that it will not provide any new financing to "pure-play upstream oil & gas" companies that will continue to develop new fields, but these are only companies that are exclusively active in the upstream market.¹⁰³⁹ This leaves quite a few companies, including the influential vertically integrated oil and gas majors (like Shell, BP, ExxonMobil and Saudi Aramco) out of the picture. ING is also still not including its activities as facilitator of capital market transactions for a large part in its policy and practice. Milieudefensie explains in further detail in Chapter XV that the policy followed by ING on this point does not suffice. Nevertheless, it can in any event be determined that ING agrees with the important starting point that there is no longer any room for New Fossil Fuel Projects.
1046. Ceasing the financing and other facilitation of companies involved with New Fossil Fuel Projects alone is not sufficient, however. It has already been explained above that the CO₂ emissions that are associated with the existing stocks of coal, oil and gas considerably exceed the remaining carbon budget and that the IEA also indicates that a part of the existing oil and gas fields will have to be closed before the end of their (technical) lifespan. In view of this, in addition to ceasing the financing and facilitation of New Fossil Fuel Projects, ING will have to phase out the emissions associated with the fossil fuels financed and facilitated by it to such degree that they are in line with limiting warming to 1.5°C.
1047. The IEA NZE scenario makes a distinction in this respect with regard to the pace at which

¹⁰³⁸ Exhibit MD-005, ING Climate Report 2024, p. 12: "*In line with the IEA's net-zero roadmap, we stopped providing dedicated finance to new oil and gas fields, along with midstream infrastructure that unlocks these new fields.*"

¹⁰³⁹ Ibid, p. 3.

different countries reduce their emissions:

*"[E]missions in advanced economies fall nearly two-times faster in the current decade than emissions in emerging market and developing economies."*¹⁰⁴⁰

1048. As already discussed above (in paras. 938 et seq.), in view of ING's specific facts and circumstance it is appropriate for ING to seek alignment with the pace of reduction for advanced economies. ING, indeed, shares this opinion.¹⁰⁴¹
1049. That is why Milieudefensie is demanding of ING that ING bring the absolute CO₂ emissions of its fossil fuel client portfolio in line with a 1.5°C reduction pathway, interpreted and given substance based on the IEA NZE scenario and, where the data are available, the reduction pathway for advanced economies.
1050. Milieudefensie will now explain what reduction pathways follow for the fossil fuel sector from the IEA NZE scenario.
1051. For Scope 1 and 2 emissions (in CO₂-eq), only reduction pathways for oil and gas are available, not for coal. In addition, the IEA NZE scenario only encompasses the average global Scope 1 and 2 reductions for oil and gas, and does not encompass any specific accelerated reductions in Scope 1 and 2 for oil and gas for advanced economies. The IEA's view is that these feasible and affordable emissions reductions for the entire oil and gas sector can be realised, whereby it is remarked that *"forward-looking companies are likely to need to move faster than this"*.¹⁰⁴² The IEA NZE scenario contains the following reductions of Scope 1 and 2 emissions in the oil and gas sector.¹⁰⁴³

Emission reductions in CO ₂ -eq up to and including 2050 (relative to base year 2022)				
Scope 1 and 2	2030	2035	2040	2050
Oil	-62.9%	-79.4%	-92.1%	-97.9%
Gas	-65%	-81.9%	-92.8%	-98.3%

1052. With regard to the Scope 3 emissions, the IEA NZE scenario does have a reduction pathway for advanced economies, for coal, oil and gas, as set out below:¹⁰⁴⁴

Emission reductions in CO ₂ up to and including 2050 (relative to base year 2022)				
Sector	2030	2035	2040	2050
Coal	-79.3%	-92.6%	-96%	-99.4%
Oil	-44.4%	-70.3%	-86.1%	-97.9%

¹⁰⁴⁰ Exhibit MD-085, IEA 2023, 'Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update', p. 59, Box 2.1 'Integrating equity into the NZE Scenario design'.

¹⁰⁴¹ Exhibit MD-005, ING Climate Report 2024, p. 33 and p. 97. See also Exhibit MD-231, ING 2023, 'ING takes next steps on energy financing after COP28' (print-out website 27 February 2025): *"With our Terra approach we aim to steer our oil and gas portfolio in line with the Net Zero Emissions scenario for Advanced Economies of the International Energy Agency (IEA)."*

¹⁰⁴² Exhibit MD-229, IEA 2023, 'The Oil and Gas Industry in Net Zero Transitions', p. 148.

¹⁰⁴³ Exhibit MD-229, IEA 2023, 'The Oil and Gas Industry in Net Zero Transitions', p. 71, Figure 2.6 and Exhibit MD-230, IEA 2023, 'The Oil and Gas Industry in Net Zero Transitions' (onderliggende data bij Figure 2.6). This relates to the data with Figure 2.6, 'Scope 1 and 2 oil and gas emissions in the APS and NZE Scenario'. This data only contains the data used to calculate the reduction percentages for 2030, 2040 and 2050 (relative to 2022). The data for 2035 can be found in Exhibit MD-085, IEA 2023, 'Net Zero Roadmap, A Global Pathway to Keep the 1.5 °C Goal in Reach, 2023 Update', p. 105.

¹⁰⁴⁴ World Energy Outlook 2023 Extended Dataset, CO₂ emissions: Advanced Economies. As explained above in footnote 999, the relevant dataset of the IEA is only available under license, and is therefore not publicly available.

Gas	-41.5%	-78.3%	-89.5%	-97.7%
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1053. In Chapter XV.2.2 Milieudéfensie will explain in further detail that ING's climate policy is inadequate for the fossil fuel sector. There is a (threatened) breach of ING's legal obligation and Milieudéfensie asks this Court to order ING to reduce the absolute financed and facilitated CO₂-eq emissions or the absolute financed and facilitated CO₂ emissions of the ING Group in accordance with the reductions set out in the above tables, and to order ING to cease financing and facilitating companies that are still involved in New Fossil Fuel Projects, as explained above.

XIV.3.6 Separate targets for financed and facilitated emissions

1054. When determining the above-mentioned targets, ING must furthermore make a distinction between financed and facilitated emissions.
1055. As was discussed in Chapter X.2.3, the PCAF, the framework for measuring and reporting emissions as a result of the products and services of banks, makes a distinction between different categories of Scope 3 emissions, whereby it prescribes the principles and methodologies specifically geared thereto for each category. In the case of ING, the matter concerns financed emissions and facilitated emissions.
1056. In short, financed emissions are emissions that are associated with loans and investments, where the bank makes assets available for the financing of companies and their economic activities.
1057. Facilitated emissions are the emissions that are connected with the activities of the bank as facilitator of capital market transactions. In addition to financing, capital market transactions play a crucial role in acquiring funds for economic activities:

*"Within the financial sector, Capital Markets (where companies and governments raise debt and equity) play a crucial role in fueling economic activity and providing needed funding."*¹⁰⁴⁵

1058. For that reason, these facilitating activities on the capital markets are equally crucial to be able to address climate change and actually shift money flows toward the 1.5°C target:

*"Capital Markets sit at the nexus of financial flows that must increasingly be directed towards more sustainable practices if we are to avoid the worst effects of climate change. Furthermore, a capital market issuance that occurs in a particular year will impact the climate for many subsequent years. Actors within these markets have an opportunity to help those financial flows move into activities that minimize climate impact."*¹⁰⁴⁶

1059. To illustrate the importance of facilitated emissions, Milieudéfensie refers to the research of journalism platform Follow the Money and Investico, in collaboration with dozens of international media, including The Guardian and El País. This research shows that in addition to loans, bonds have become an important source of financing for the fossil fuel sector.¹⁰⁴⁷ Where banks are increasingly promising not to provide any more (project) financing to new fossil fuel projects, fossil fuel companies can still go to banks (and other advisers) to facilitate

¹⁰⁴⁵ Exhibit MD-142, PCAF Global GHG Accounting and Reporting Standard Part B: Facilitated Emissions, p. 6.

¹⁰⁴⁶ Ibid.

¹⁰⁴⁷ Exhibit MD-232, Joosten et al. 2023, 'ING Bank en ABN Amro helpen de fossielindustrie aan tientallen miljarden' (print-out from website 27 February 2025), p. 13.

the issue of bonds for fossil fuel projects.¹⁰⁴⁸ According to Follow the Money, ING helped fossil fuel companies acquire 83.2 billion euros since the Paris Agreement via this pathway:

“In the meantime, since the signing of the Paris Climate Agreement, ING has made the issuance of 108 fossil fuel bonds possible – including that of Antero Resources. [...] In addition, ING Bank has been selling its services to companies like Mesquite Energy (which just like Antero Resources, is drilling for shale gas and oil in America), Sinopec and KazMunayGas (the Chinese and Kazach state-owned oil companies respectively) and even to Var Energy and Aker BP: companies searching for new fossil fuel sources in the vulnerable North Pole region.

The total value of the bonds that ING supported with its services to fossil fuel companies is 83.2 billion euros: an amount comparable to the annual net health care expenditure of the national government.”¹⁰⁴⁹

1060. PCAF also refers specifically to the important role of banks in these kinds of facilitating activities on the capital markets:

“Facilitators are mostly large international banks that conduct substantial capital market facilitation activities including advising issuers on structure, pricing, and process; preparing materials for, and engaging with, investors; and arranging and guiding clients on roadshows. These facilitation services are critical to the functioning of Capital Markets. Through this facilitation role, banks are in a unique position to help their clients meet the growing sustainability demands and climate considerations of investors. To help limit climate change and achieve net-zero emission targets by 2050, Capital Markets need to redistribute a large amount of capital to green and sustainable companies that follow GHG emissions protocols with net-zero targets with projects, products, and services to support decarbonization on the real economy.”¹⁰⁵⁰ (underlining added by legal counsel)

1061. Because of the large difference between financed and facilitated emissions, PCAF explicitly prescribes separate reporting on the two. An important difference is, inter alia, that the facilitated emissions can seldom be found on the balance sheet of a financial institution, because they concern services and not financing. But the activities of the bank as facilitator of capital market transactions does have a significant influence on the allocation of capital to economic activities that make the transition to net zero possible by 2050, according to PCAF:

“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. PCAF views facilitation as a separate but important metric, which exerts a material impact on the direction of capital towards economic activities that will enable the transition to net-zero by 2050.”¹⁰⁵¹

1062. In short, banks must reduce both their financed and their facilitated emissions. For that reason, Milieudefensie will formulate separate reduction demands for both categories of emissions.

XIV.3.7 Linear reductions

1063. When realising the above-mentioned goals, ING must – in any case as of the date of the judgment requested by Milieudefensie – use substantial efforts to realise its reductions every year in a linear manner or faster than that.

¹⁰⁴⁸ Ibid, p. 12.

¹⁰⁴⁹ Ibid, pp. 6-7.

¹⁰⁵⁰ Exhibit MD-142, PCAF Global GHG Accounting and Reporting Standard Part B: Facilitated Emissions, pp. 6-7.

¹⁰⁵¹ Ibid, p. 8.

1064. The great importance thereof is clear from the introduction in Chapter I and from Chapter XIV.2. It is described there that the 1.5°C target will only remain within reach if the (global) accumulated emissions are not higher than the carbon budget that has to be respected to keep the 1.5°C target within reach. By reducing more slowly than in a linear manner, ING would be postponing the required reductions, whereby more accumulated emissions would be emitted and a greater and impermissible risk will arise that the carbon budget will be exceeded. Put more simply: ING is undermining the 1.5°C target by following a slower reduction pathway than a linear reduction pathway. This is illustrated by the figure included in the introduction with para. 29.

1065. In their advisory opinion with the Urgenda case, P-G Langemeijer and A-G Wissink also refer to the legal significance of remaining within the carbon budget and following a sufficiently fast reduction pathway (whereby they refer to the figure presented by Urgenda, that is comparable to the figure that is included in this summons with para. 29):

“It therefore follows from the fact that only a limited carbon budget remains for achieving the 2°C target that reducing emissions faster and more will improve the chance of realising that target. [...] The [...] figure illustrates that not only the reduction targets for a certain year - such as 49% lower reductions in 2030 as compared to 1990 - but also the speed for realising that reduction target in that year must be taken into account (referred to as reduction pathways in the figure shown below). The later emission reductions commence, the faster the carbon budget is exhausted.”¹⁰⁵²

1066. When assessing the question to what degree this means that *“postponing reductions will already be problematic in the short term, or whether there is still so much room in the remaining carbon budget that postponing reductions will only become problematic if the reductions do not take place in the medium to long term”*, P-G Langemeijer and A-G Wissink refer to different facts established by the district court and the court of appeal, including the unlikelihood demonstrated by UNEP that the Paris climate goals are still feasible if in 2030 the emissions gap has not been closed.¹⁰⁵³ An emissions gap that still exists, and can only be closed if private actors, like ING, also contribute to this (see Chapter IX). The P-G and A-G also include in their assessment that the feasibility of the climate goals depends on the use of CDR technology (the scalability of which is doubtful; see Chapter XIV.2). They rightly conclude that *“reliance on such technologies in order to achieve the necessary negative emissions will increase as the commencement of the reduction of greenhouse gas emissions is postponed”*.¹⁰⁵⁴

1067. Foreign case law also confirms that a sufficiently fast reduction pathway must be followed. In the French climate case of Notre Affaires à Tous it was held, for example, that the French state had exceeded its carbon budget for the period 2015-2018, and that it therefore had to compensate for that excess in the following years (extra reduction on top of the emissions reductions already planned for that period).¹⁰⁵⁵ Future exceeding of carbon budgets must be compensated in the same manner. Put simply: according to the French court the pure realisation of future climate goals is not sufficient, and it is important that accumulated

¹⁰⁵² Advisory Opinion of P-G Langemeijer and A-G Wissink, 13 September 2019, ECLI:NL:PHR:2019:887 (*Urgenda*), para. 4.62.

¹⁰⁵³ Ibid, para. 4.65.

¹⁰⁵⁴ Ibid, para. 4.67.

¹⁰⁵⁵ Tribunal Administratif de Paris, 14 October 2021, N°s 1904967, 1904968, 1904972, 1904976/4-1. See also Exhibit MD-233, Tribunal Administratif de Paris, 14 October 2021, Notre Affaire à Tous, Unofficial English translation, pp. 43 to 46 (from para. 11, under ‘on the content of the injunction).

emissions on the road to achieving these goals do not lead to exceeding the carbon budget.

1068. The previously mentioned judgment of the German Federal Constitutional Court in the Neubauer case endorses the position that not only target levels and target years are important, but so is the reduction pathway to achieving them.¹⁰⁵⁶ The Constitutional Court held in this case that national climate goals in German climate legislation are insufficient. The reason for this is that although these climate goals determine what the annually permitted emissions are up to 2030 (leading to an emissions reduction of 55% in 2030), but do not specify how the statutory goal of net zero emissions will be reached in 2050. The Constitutional Court concluded that the German climate legislation is a mismatch between the reduction effort to 2030 and that from after 2030 because (with a 55% reduction target for 2030) the reductions after 2030 must be carried out with greater speed and urgency. According to the Constitutional Court, this has consequences for future generations, that cannot be reconciled with the principle of intergenerational equity (see Chapter XI.2.5.4). In the words of the Constitutional Court:

“The provisions irreversibly offload major emission reduction burdens onto periods after 2030 [...] For this [climate] target to be reached, the reductions still necessary after 2030 will have to be achieved with even greater speed and urgency [...] Provisions that allow for CO₂ emissions in the present time constitute an irreversible legal threat to future freedom because every amount of CO₂ that is allowed today narrows the remaining options for reducing emissions in compliance with Art. 20a GG [...] Another precondition of constitutional justification is that the provisions on the emission amounts do not lead to disproportionate burdens being placed on the future freedom of the complainants [...] According to this requirement, one generation must not be allowed to consume large portions of the CO₂ budget while bearing a relatively minor share of the reduction effort if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to comprehensive losses of freedom.”¹⁰⁵⁷

1069. In this case against ING too, the (impermissible) consequences of an overly slow reduction pathway have legal meaning. The fact that ING would undermine the 1.5°C target with excessively high accumulated emissions and would place an impermissible burden on future generations, has a comparable significance for ING’s societal duty of care as it does for the duty of care of the Dutch, French and German state. For this reason, ING must ensure that it realise linear (or faster) reductions of emissions as much as possible in the period between the base year and the target year.

XIV.3.8 **Alternative: dynamic absolute sectoral reduction targets**

1070. The above-discussed climate measures concern reduction targets that are intended to realise a reduction of absolute emissions and emission intensity during the above-indicated periods between the base year and the target year. In the case of the reduction target for ING’s total greenhouse gas emissions, this concerns the global reductions mapped by IPCC, which the global community has also taken as the starting point. In the case of the sectoral demands, this relates to the reductions that follow from the NZE scenario of the IEA from 2023.
1071. In the Shell case, the Court of Appeal of The Hague saw an obstacle to awarding fixed reduction percentages in a target year (in that case 2030), because reduction scenarios are sometimes updated. Milieudefensie is disputing the Court of Appeal’s opinion that an update

¹⁰⁵⁶ BVerfG, 24 March 2021, ECLI:DE:BVerfG:2021:rs20210324.1bvr265618, paras. 202 and 203. See also Exhibit MD-181, BVerfG 24 March 2021, Neubauer, Official English translation.

¹⁰⁵⁷ Ibid, p. 1, 2nd paragraph; p. 2, 8th paragraph and p. 3, 1st paragraph; p. 3, 2nd paragraph; p. 4, under a).

of a reduction pathway (in this case the NZE scenario) cannot be reconciled with an order for Shell to achieve a fixed reduction percentage in the period to 2030 in its appeal to the Dutch Supreme Court. If there were a justification for ING to evade its responsibility because of possible updates in scenarios, it would be de facto impossible to hold ING to account for its societal duty of care. Measures are necessary now and it may be expected of ING that it takes those measures now.

1072. A possible interest claimed by ING to take account of updates of scenarios, cannot and may not stand in the way of awarding Milieudefensie's demands to take the above-mentioned climate measures. This applies all the more in the event this Court were to hold that ING's legal obligation to take the measures must be tolerated as a substantial best effort obligation (in line with Chapter **Error! Reference source not found.**, demand 12).
1073. Insofar as the Court were to nevertheless believe that taking account of scenario updates has some importance, Milieudefensie refers to the option of a percentage-based absolute reduction target that is dynamic over time. This is as an alternative to the above-mentioned climate measures. Milieudefensie based is alternative demand on this option (see Chapter **Error! Reference source not found.**, demand 7).
1074. More specifically, this concerns the option that this Court will make the legal obligation of ING concrete in a percentage-based reduction obligation based on the *Compound Average Annual Growth Rate* ("**CAAGR**") of absolute emissions that the IEA publishes annually in its World Energy Outlook.
1075. In its World Energy Outlook, the IEA annually models the CAAGRs of absolute emissions for every (sub-)sector. These reflect the average annual absolute CO₂ emissions change heading toward the target years of 2030 and 2050.¹⁰⁵⁸ The base year that IEA uses is always the calendar year directly preceding the year in which it publishes the relevant edition of the World Energy Outlook.
1076. By way of illustration, Milieudefensie has included the overview below of the CAAGRs of sectoral CO₂ emissions in the NZE scenario as encompassed in the World Energy Outlook of 2023 (see the righthand column):¹⁰⁵⁹

¹⁰⁵⁸ Although the acronym CAAGR refers to growth, it can also concern a reduction. The IEA not only uses the CAAGR as a statistical benchmark for changes in CO₂ emissions, but also to reflect changes in energy production and consumption (for example, if the CAAGR of solar energy is 25% between 2023 and 2030, this means that the capacity of solar energy annually increases by 25% on average).

¹⁰⁵⁹ Exhibit MD-227, IEA 2023, 'World Energy Outlook 2023' (selected pages), p. 280.

Table A.4c: World CO₂ emissions

	Net Zero Emissions by 2050 Scenario (Mt CO ₂)							CAAGR (%) 2022 to:	
	2010	2021	2022	2030	2035	2040	2050	2030	2050
Total CO₂* 	32 877	36 589	36 930	24 030	13 375	6 471	-	-5.2	n.a.
Combustion activities (+)	30 624	33 634	34 042	21 958	12 017	5 820	655	-5.3	-13
Coal	13 846	15 104	15 330	8 173	3 541	1 200	171	-7.6	-15
Oil	10 545	10 683	10 963	7 910	5 325	3 219	824	-4.0	-8.8
Natural gas	6 052	7 577	7 499	5 795	3 327	1 780	358	-3.2	-10
Bioenergy and waste	181	269	251	80	- 176	- 379	- 698	-13	n.a.
Other removals** (-)	-	1	2	167	348	523	933	78	25
Biofuels production	-	1	2	98	186	227	312	67	21
Direct air capture	-	-	-	69	162	295	621	n.a.	n.a.
Electricity and heat sectors	12 511	14 598	14 822	8 113	2 854	411	- 275	-7.3	n.a.
Coal	8 946	10 646	10 876	5 156	1 545	42	21	-8.9	-20
Oil	828	574	596	135	45	23	0	-17	-23
Natural gas	2 623	3 227	3 201	2 781	1 401	604	78	-1.7	-12
Bioenergy and waste	114	151	149	41	- 138	- 257	- 374	-15	n.a.
Other energy sector**	1 438	1 530	1 554	782	322	108	- 198	-8.2	n.a.
Final consumption**	18 668	20 191	20 293	15 187	10 350	6 241	1 088	-3.6	-9.9
Coal	4 699	4 355	4 352	2 983	1 971	1 142	138	-4.6	-12
Oil	9 087	9 552	9 815	7 398	4 993	2 989	711	-3.5	-9.0
Natural gas	2 842	3 566	3 500	2 543	1 718	1 036	173	-3.9	-10
Bioenergy and waste	66	118	102	43	- 26	- 93	- 205	-10	n.a.
Industry**	8 324	9 185	8 998	7 158	5 111	3 222	440	-2.8	-10
Chemicals**	1 201	1 329	1 330	1 150	850	521	45	-1.8	-11
Iron and steel**	2 083	2 733	2 623	2 118	1 584	1 032	233	-2.6	-8.3
Cement**	1 916	2 514	2 418	1 911	1 343	875	79	-2.9	-12
Aluminium**	185	261	265	218	172	107	8	-2.4	-12
Transport	7 014	7 599	7 874	5 992	4 062	2 430	578	-3.4	-8.9
Road	5 216	5 847	5 964	4 213	2 718	1 491	236	-4.2	-11
Passenger cars	2 609	2 930	2 975	1 752	916	403	37	-6.4	-14
Heavy-duty trucks	1 489	1 766	1 812	1 610	1 284	856	178	-1.5	-8.0
Aviation	754	661	792	932	744	554	208	2.0	-4.7
Shipping	797	827	855	695	495	313	112	-2.6	-7.0
Buildings	2 891	2 973	2 979	1 741	971	463	54	-6.5	-13
Residential	1 961	2 013	1 997	1 189	675	326	48	-6.3	-12
Services	929	959	983	552	296	137	6	-7.0	-16
Total CO₂ removals**	-	2	2	234	632	995	1 710	85	28
Total CO₂ captured**	15	41	42	1 024	2 421	3 724	6 040	49	19

*Includes industrial process and flaring emissions.

**Includes industrial process emissions.

1077. The above-mentioned annual updating of the CAAGRs per (sub-)sector ensures that in every last edition of the World Energy Outlook, these CAAGRs are a reflection of the most recent developments and insights into the global economy.
1078. If ING were to reduce its financed and facilitated CO₂ emissions in the above-mentioned (sub-)sectors every year in an absolute sense by a percentage that is the same as the CAAGRs published by the IEA in the World Energy Outlook of that year for these (sub-)sectors, ING would be following an annually updated emissions reduction pathway.
1079. Insofar as this Court were to believe that the importance of following an updated scenario is so great that it stands in the way of awarding Milieudefensie's to take the above-discussed climate measures, this Court can accommodate that interest by awarding the alternative demand set out in Chapter **Error! Reference source not found.**, demand 7.
- XIV.4 **ING HAS A WIDE RANGE OF OPTIONS FOR IMPLEMENTING THE NECESSARY CLIMATE MEASURES**

XIV.4.1 ING retains policy freedom

1080. As will be made clear in Chapter XV, ING is being negligent with regard to taking the above-mentioned necessary climate measures, which leads to a reproachable contribution to the danger and the consequences of climate change. In addition to being reproachable, this contribution to climate change is also unnecessary, because ING has a wide range of options for effectively implementing climate measures.
1081. Milieudéfense will explain below what ING's options can consist of. This explanation is not exhaustive. In all probability, there will be more options for ING to comply with the demand. The starting point must be that ING is also free to utilise these options; within the frameworks of the relief claimed, ING remains fully free to determine at its own discretion which options it wants to utilise and which it does not. ING thus retains the freedom to determine its policy with regard to performing its legal obligation in a manner that is the most appropriate and least onerous for it.

XIV.4.2 ING has an effect on its clients' sustainability actions (which is broadly acknowledged)

1082. The options that Milieudéfense wants to point to here, consist of the broad options of ING to support its clients in the sustainability measures they must take in order to make their contribution to the sustainable climate transition. These options go back to the relationship that ING, just like every bank, has with its (existing and potential) clients, and within which it can exercise a specific influence and control.
1083. The influence and control in question first of all consist of ING's option to increase its involvement with a client (also known as "engagement"), and to thereby exercise influence on the client (also called "leverage"). This is possible, for example, by focusing financing on the client's sustainability measures. If ING uses and increases its engagement and leverage, it can encourage its clients to become more sustainable. ING can make use of its unique knowledge relating to individual clients and sectors.
1084. These sustainability measures of clients will then lead to a reduction in ING's Scope 3 emissions. ING can thus retain its relationship with clients and still bring its financing (and its Scope 3 emissions ensuing therefrom) in line with the 1.5°C goal. The climate measures to be taken by ING therefore do not necessarily imply any reduction of (financing) activities for ING.
1085. If 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"). For example, by deciding after the end of the financing term against refinancing, and if necessary by terminating current financing early (in accordance with the applicable legal frameworks). After an effective use of its engagement options, ING will have broad options for disengagement, and the client will be able to see disengagement coming in due time. Disengagement does not imply a necessary reduction of ING's (financing) activities either. After all, ING is free to intensify the financing of other economic activities, as long as that financing can be reconciled with its legal obligation.
1086. Engagement and disengagement are widely recognised options with which banks can prevent their involvement in the environmental and human rights impacts of clients, including in relation to climate change. Chapter XIV.4.4 will show that ING itself also

recognises and applies these options (albeit in an inadequate manner).

1087. In addition, the widely recognised (and ING-endorsed) UNGP and OECD Guidelines demand of ING that it applies engagement and (if necessary) disengagement in the performance of its due diligence responsibilities. It was already discussed in Chapter IX that both of these frameworks demand of ING that it prevents and counters climate-related human rights and environmental impacts, even if they are (in part) being caused by clients and other business relations. Indeed: according to the OECD Guidelines, engagement and using leverage on clients and other business relations is crucial in order to deflect dangerous climate change:

“The use of leverage [...] and funding to [...] business relationships for climate mitigation and adaptation efforts will be crucial for meeting targets and addressing impacts.”¹⁰⁶⁰

1088. The UN Race to Zero initiative aligns with this and also underscores the importance of engagement. It emphasises, moreover, that engagement is not non-committal and must lead to escalation after 12 months:

“For finance entities, engagement with clients 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.”¹⁰⁶¹

1089. Nor is engagement non-committal under the UNGP and the OECD Guidelines. If it turns out that ING’s leverage falls short with regard to countering the negative climate impacts, they require that ING try to increase its leverage. For example, through contractual conditions¹⁰⁶² or by pointing out to the client that the relationship is at risk of being terminated (“disengagement”).¹⁰⁶³ If ING has to conclude that it does not have enough influence, or that its influence does not lead to termination by the client of its negative climate impact, according to these human rights frameworks this entails that ING will in fact terminate the relationship with the client.¹⁰⁶⁴ This too is explicitly supported by the UN Race to Zero initiative:

“where there is no transition plan, divestment may be the only way to drive net zero alignment.”¹⁰⁶⁵

1090. ING has numerous options for effective interpretation and giving substance to the aforementioned responsibilities, thereby effecting that the emissions of clients are brought in accordance with ING’s legal obligation. These options encompass the following, inter alia:

- (i) ING can determine what new financing it will or will not provide to a client in order to bring about that the emissions of that client are made to be in accordance with ING’s

¹⁰⁶⁰ Exhibit MD-137, OECD Guidelines (original English version) (2023), Commentary on Chapter VI, para. 78.

¹⁰⁶¹ Exhibit MD-132, UNFCCC, ‘Interpretation Guide Race to Zero Expert Peer Review Group Version 2.0’, p. 8.

¹⁰⁶² Exhibit MD-137, OECD Guidelines (original English version) (2023), Commentary on Chapter II, no. 23; Exhibit MD-234, OECD RBC Guidance (2018), p. 79; Exhibit MD-235, OECD Banking Guide (2019), p. 49; Exhibit MD-236, OECD Project and Asset Finance Guide (2022), p. 40.

¹⁰⁶³ Exhibit MD-137, OECD Guidelines (original English version) (2023), Commentary on Chapter II, no. 23 and Commentary on Chapter IV, no. 48; Exhibit MD-234, OECD RBC Guidance (2018), p. 78-81, Exhibit 236, OECD Project and Asset Finance Guide (2022), p. 47.

¹⁰⁶⁴ Exhibit MD-137, OECD Guidelines (original English version) (2023), Commentary on Chapter II, nos. 15, 22 and 25, Commentary on Chapter IV, no. 47 and Commentary on Chapter VI, nos. 76 and 77; Exhibit MD-234, OECD RBC Guidance (2018), p. 31; Exhibit MD-235, OECD Banking Guide (2019), Measure 3.2(c); Exhibit MD-236, OECD Project and Asset Finance Guide (2022), Measure 3, p. 47; Exhibit MD-136, UN Guiding Principles (2011), Principles 13(b) and 19 (incl. Commentary with Principle 19, p. 22).

¹⁰⁶⁵ Exhibit MD-132, UNFCCC, ‘Interpretation Guide Race to Zero Expert Peer Review Group Version 2.0’, p. 8 (para. 7c).

legal obligation.

- (ii) ING can clearly communicate to clients what conditions the client must satisfy in order to ensure that the financing that ING provided to the client can be reconciled with ING's legal obligation.
 - (iii) ING can clearly communicate to clients what consequences it attaches to the non-fulfilling of these conditions by the client, and the (threatened) breach of ING's legal obligation arising therefrom.
 - (iv) ING can embed the aforementioned conditions in the contractual conditions of the financing, in order to encourage clients to make the necessary emissions reductions and to be able to attach the necessary consequences to a breach of the aforementioned conditions.¹⁰⁶⁶
 - (v) ING can decide to terminate financing facilities or client relationships, in accordance with the applicable legal frameworks, insofar as this is required to comply with its legal obligations.
1091. In principle, ING is free to determine which of these (or other) options it will or will not use to adequately perform its responsibilities, as well as the measures it must take on the basis of its legal obligation. It is ING that determines whether and on what conditions it is willing to provide its services and products to clients. It is, moreover, ING that determines whether and how it will embed those conditions in contractual conditions, and then uses its influence to bring its emissions in line with its legal obligation not to contribute to dangerous climate change.
- XIV.4.3 ING can assess the climate transition plans and the climate performance of its clients (which is broadly acknowledged)**
1092. ING can deploy a variety of instruments to adequately implement the above-mentioned responsibilities. An obvious instrument is that ING demands that its (large corporate) clients provide climate transition plans and assesses these plans. Through the introduction of the CSDDD, many large corporate clients of ING are in any event already obliged to draw up and annually update a climate plan, setting out targets for the reduction of Scope 1, 2 and 3 emissions in line with limiting warming to 1.5°C and in line with the climate science. ING can then periodically assess whether the climate performance of clients improves in line with their climate transition plans. After these initial and periodic assessments, ING can always attach the consequences to its findings that are necessary to satisfy its responsibilities, and to adequately implement the measures that it must take on the basis of its legal obligation.
1093. ING's responsibility to request and assess the climate transition plans and climate performance of clients aligns with various sector initiatives, by which ING is also bound. In line with the three initiatives that Milieudefensie also highlighted in Chapter XIV.3.1, this appears from, inter alia, the following:
- (i) *Principles for Responsible Banking (PRB)* – Working together with clients is one of the six principles of the PRB. This collaboration is not purely without commitment: the

¹⁰⁶⁶ Such as contractual climate performance indicators, interest mark-up and early termination rights on the basis thereof, and/or shorter time periods.

theory of change and the *Target Setting FAQ* of the PRB encourage signatories to record engagement goals. In the theory of change, the determining and implementation of climate transition plans of clients plays a central role in realising the emissions reduction targets of banks. In addition, the PRB theory of change contains a decision tree that shows the options that PRB banks have with regard to clients who do not (yet) or only partly fulfil the 1.5°C scenario required for them. If it turns out that engagement does not work, this decision tree provides for escalation options, termination of the client relationship or a managed phasing out of assets, to in that manner reduce and ultimately cease the financing by the bank of emissions-intensive activities.¹⁰⁶⁷ The *Target Setting FAQ* mentions policy in the area of engagement, including requirements for climate transition plans, explicitly as part of a bank's climate policy.¹⁰⁶⁸ The PRB see banks requiring climate transition plans of (large corporate) clients and ceasing the financing of clients that have not drawn up a good climate transition plan or have failed to properly implement such a plan, thus as necessary and feasible measures too.

- (ii) *Glasgow Financial Alliance for Net Zero (GFANZ)* – Engagement strategy is also an important topic in the GFANZ' framework for *Financial Institution Net-zero Transition Plans*. GFANZ has broadly described this strategy as a strategy for engagement with external stakeholders (including clients) to support the global climate task. GFANZ wants to support and accelerate the development of climate transition plans of companies in the real economy.¹⁰⁶⁹ 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:

“For the global economy to reach net zero, annual greenhouse gas emissions from activities of real economy companies need to rapidly reduce, while financial institutions allocate capital and use their influence as shareholders and/or financial partners to support and catalyze such action.”¹⁰⁷⁰

Toward this end banks must flesh out a concrete engagement strategy, that provides clarity to the clients regarding, inter alia, the engagement goals, the requirements relating to clients (such as determining and implementing a climate transition plan), the timeline and the escalation strategy with cessation of the client relationship or divestment as the final option:

“An escalation process with consistent and transparent criteria that are communicated to the client and portfolio companies should also be a critical part of an engagement strategy. This may include sharing the financial institution's net-zero transition plan and policies and conditions with clients and portfolio companies. When clients or portfolio companies show little or no response to the engagement, a financial institution should consider using the business levers available to it according to its business relationship. These levers will differ and include stewardship actions such as proxy voting, shareholder resolutions, and voting to remove directors who have failed in their accountability; financing levers such as more onerous/costly lending conditions and refusal to engage in new business; and, as a last resort, cessation of the relationship either as a service or product provider, or opting to divest.”¹⁰⁷¹

In short, GFANZ also shows that banks can set concrete climate requirements for (large

¹⁰⁶⁷ Exhibit MD-216, UNEP FI PRB 2023, 'Theory of Change for Climate Mitigation', p. 3.

¹⁰⁶⁸ Exhibit MD-217, UNEP FI PRB 2023, 'Target Setting FAQ' p. 12.

¹⁰⁶⁹ Exhibit MD-237, GFANZ 2022, 'Introductory Note on Expectations for Real-Economy Transition Plans', p. 1.

¹⁰⁷⁰ Exhibit MD-238, GFANZ 2022, 'Expectations for Real-Economy Transition Plans', p. i.

¹⁰⁷¹ Exhibit MD-238, GFANZ 2022, 'Expectations for Real-Economy Transition Plans', p. 62.

corporate) clients and that ceasing financing of clients that do not have a good climate approach, are necessary and feasible measures for financial institutions.

- (iii) *Net-Zero Banking Alliance (NZBA)* – Lastly, the NZBA emphasises the option and importance of engagement. Guidelines of the NZBA mention engagement with clients as one of the categories of actions that banks can take to realise their goals, and refers in that context to, inter alia, the evaluation of clients’ transition plans. Disengagement (‘divestment’) is mentioned as an option by the guidelines of the NZBA.¹⁰⁷²

1094. In conclusion, it can be stated that ING has very broad options to reduce its financed and facilitated emissions. As a crucial instrument in this respect, ING can demand a climate transition plan of its (large corporate) clients and periodically assess whether the client is making sufficient progress. This enables ING to bring its financing and leverage on clients in line with its responsibilities and to implement the climate policy that ING is obliged to follow as set out in Chapter XI. Due to the introduction of the CSDDD many large corporate clients of ING are already in any event obliged to draw up and annually update a climate plan so that for that reason too, asking clients for a climate transition plan will be an effective instrument for ING to perform its own legal obligation.

XIV.4.4 **ING is already applying the above-mentioned options (but not adequately)**

1095. ING is not unfamiliar with the above-mentioned wide range of options. As has been explained, these can be found in numerous human rights frameworks and sector initiatives, that are not only very widely supported, but to which ING has committed itself. In addition, ING already (partly) applies these options.

1096. In its 2023 annual report, ING claims that it assesses the climate transition plans and climate performance of clients because this provides ING with insight into the risks and opportunities connected with the client’s sustainability transition. ING then uses that insight to improve its engagement with clients, and in (the credit approval processes on behalf of) its financing decisions:

“To be able to better assess the climate performance of our clients, and then use these insights to identify risks and opportunities for supporting clients in their transitions, we have developed a bespoke ‘client transition plan’ tool. This online platform is where we’ve started to centrally collect, assess and monitor publicly disclosed climate transition plans of our largest corporate clients, starting with those in scope of Terra. The transition plan data collected includes, where possible, historic emissions (scope 1, 2 and 3), commitments, targets, action and investment plans, governance and strategy (such as low-emission products and services). The data is sourced from the Carbon Disclosure Project (CDP), the Science-Based Targets initiative and public sustainability reports, and where possible including scope 1, 2 and 3 emissions, targets and investment plans of each client, starting with those in Scope of Terra and eventually expanding to cover all Wholesale Banking clients. By aggregating this information, we can engage in data-driven discussions with our clients that should lead to greater impact. The tool will also help make our credit approval process more efficient.”¹⁰⁷³

1097. In its climate report of 2024 ING also indicates that engagement based on the climate transition plans and the client’s climate performance can be a useful instrument for promoting clients’ sustainability transition:

¹⁰⁷² Exhibit MD-220, UNEP FI NZBA 2024, ‘Guidelines for Climate Target Setting for Banks Version 2’, p. 11.

¹⁰⁷³ ING Annual Report 2023, p. 48 (see <https://www.ing.com/MediaEditPage/2023-ING-Groep-N.V.-annual-report.htm>).

“Client and customer engagement is our biggest lever for change, and in Wholesale Banking our aim is to actively support clients that are working to transform their businesses and drive progress in this transition.”¹⁰⁷⁴

1098. ING stated that it already makes use of various options mentioned in para. 1090. For example, ING in part bases its financing decisions on this information:

“In 2023 we collected publicly available data on the climate disclosures and transition planning of around 2,000 clients. This has allowed us to assess and evaluate the maturity of the disclosures of our biggest clients, as well as all clients in the most carbon-intensive parts of our portfolio (i.e. clients in scope of our Terra approach). This will enhance our client-related decision-making process and improve how we engage with existing and prospective clients.”

This large-scale assessment resulted in a CTP [“Client Transition Plan”; adv.] score for each client in scope, which we have placed into bands: Advanced, Moderate and Low (maturity of disclosure).

These scores are now incorporated into our transition risk assessment and transaction approval processes to support a more data-rich and fact-based approach to better understand where our clients stand in their transition journey, how we can support them, and finally how we can steer our funding towards those clients who are willing and able to transition to meet our net zero ambition.”¹⁰⁷⁵ (underlining added by legal counsel)

1099. ING has also indicated that it includes the client’s sustainability performance in conversations with clients, whereby it advises clients on their sustainability measures and the role that financing can play in this respect. ING can also involve the sustainability performance of the client in the contractual conditions of certain types of financing, in order to encourage its clients to become more sustainable. In the words of the climate report of 2024:

“The nature of client conversations in sustainable finance – and ING’s offering – is also broadening from a focus on the structuring of sustainability-linked products – where companies set their sustainability goals and where related KPIs are closely tied to their financing – to the execution of broader green investment plans, as companies seek to make progress towards with their transition goals.”¹⁰⁷⁶

1100. Indeed, in its 2023 climate report ING calls itself a pioneer in the area of the “sustainability linked loan” (a loan for which the interest is in part dependent on the client’s climate performance):

“Sustainability-linked loans – where the sustainability performance of the company (as measured by specific KPIs derived from the client’s overall sustainability strategy and/or ESG rating) is connected to the interest margin of the loan – are one of the key products offered by ING. ING is the creator of the sustainability-linked loan - pioneering it in 2017 for Philips. The original loan was linked to the improvement of Philips’ Sustainalytics ESG rating and later converted into a KPI-linked loan with KPIs aligned with Philips’ sustainability goals for lives improved, lives improved in underserved communities, circular revenues, and operational carbon footprint.”¹⁰⁷⁷

1101. These statements of ING show that the above-discussed options are realistic options for ING, and that they have already been applied (in part).

¹⁰⁷⁴ Exhibit MD-005, ING Climate Report 2024, p. 18.

¹⁰⁷⁵ Ibid, p. 19.

¹⁰⁷⁶ Ibid, p. 76.

¹⁰⁷⁷ ING Climate Report 2023, p. 26 (see <https://www.ing.com/Sustainability/Performance-and-reporting/Reporting/2023-Climate-Report.htm>).

1102. This does not mean to say, however, that ING has an adequate engagement policy. Its climate report of 2024 provides insight into the goals of ING's engagement policy, and this shows that countering ING's negative climate impacts and its clients is not a primary focus, but a secondary matter. The engagement policy is rather focused on the financial opportunities and risks of ING itself.

1103. This appears from, inter alia, the way in which the climate report of 2024 describes the functions of the engagement policy. This description does not say a word about countering the negative climate impacts of ING and its clients. It does, however, explicitly mention ING's intention to support clients by means of financing products, and the option of ING to limit the financial risk for ING connected with clients (in line with the ECB's expectations in this respect):

"Whereas our Terra approach to date can be considered predominantly portfolio- and sector-focused in that it measures how our most carbon-intensive clients have progressed against their sector net-zero pathways, monitoring our clients' progress in the implementation of their transition strategies and plans offers a new way for us to look forward. It will help us:

- Strengthen strategic client dialogues with the objective to support them in accelerating their transition, through financing solutions.*
- Identify and manage the long-term transition risk associated with our clients.*
- Determine how a client is aligning their transition strategy and business model to a 1.5°C / net-zero pathway, which is relevant as ING is a member of the NZBA, and how they will support our Terra approach.*
- Identify if clients with high transition risk are taking proactive steps to transition, which is also an expectation of our prudential regulator, the European Central Bank."*¹⁰⁷⁸

1104. The financial perspective of ING, that is ignoring its legal obligation, explains the persistence with which ING wishes to continue financing its clients. ING explicitly states that the non-exclusion of clients is a leading principle for ING, and that it – in line with its 'inclusion first' principle – gives priority to continuing to finance clients.¹⁰⁷⁹

1105. ING expresses this 'inclusion first' principle in the 2024 annual report as follows:

*"Our client engagement starting point continues to be inclusion-first, based on the conviction that we can make the most impact by helping clients – especially the carbon-intensive ones – to transition their businesses."*¹⁰⁸⁰

1106. An 'inclusion first' principle can be a good starting point, but the way in which ING gives substance to this principle is without commitment and is therefore at the expense of the effectiveness of its engagement policy. This follows, inter alia, from ING's 2024 climate report in which it announces an 'update' of its engagement policy with regard to the escalation to disengagement.¹⁰⁸¹ This step-by-step plan leaves a lot to be desired with regard to clarity, and ING thus allows itself a lot of room for interpretation. For example, it is insufficiently clear when a client will have 'a sufficiently strong Transition Plan', and it is unclear what meaning is to be attributed to the question whether the client is striving for the reduction pathway

¹⁰⁷⁸ Exhibit MD-005, ING Climate Report 2024, p. 20.

¹⁰⁷⁹ ING Climate Report 2023, p. 26 (see <https://www.ing.com/Sustainability/Performance-and-reporting/Reporting/2023-Climate-Report.htm>).

¹⁰⁸⁰ Exhibit MD-004, ING Annual Report 2024, p. 108. See also Exhibit MD-005, ING Climate Report 2024, p. 21.

¹⁰⁸¹ Exhibit MD-005, ING Climate Report 2024, p. 22.

applicable for his sector.¹⁰⁸² Nor is it clear what consequences ING attaches to the determination that the client is 'Not Aligning'. The step-by-step plan speaks of 'stricter credit conditions OR no new business' (i.e. 'cease financing'), but does not make clear how ING determines which of these options it will apply, what 'no new business' (or 'cease financing') encompasses and when it will be applied, and how 'strict' the new credit conditions are. This is aside from the fact that the application of 'stricter credit conditions' does not qualify as disengagement, because this in fact presumes a continuation of the relationship with the client. Finally, in all of the foregoing the question is whether and in what degree the (in itself unclear) step-by-step plan applies in the case of a concrete client, now that ING has indicated that it will apply it '*on a case-by-case basis*' and then repeats its 'inclusion first' principle.¹⁰⁸³

1107. Because its engagement policy does not provide any clarity regarding the way in which ING will decide on disengagement, ING is violating the principle that the effectiveness of engagement is in part determined by the real prospect of disengagement, and that disengagement can be the only real option to counter negative climate impacts. Consequently ING's engagement policy does not satisfy the expectations in this respect as these appear from many widely acknowledged (and ING-endorsed) sources, such as the UNGP, the OECD Guidelines, the UN Race to Zero initiative and various sector initiatives (see Chapter XIV.4.2 and Chapter XIV.4.3). ING's engagement policy therefore by its nature fails to do justice to ING's responsibility and to be able to contribute to the adequate performance by ING of the legal obligation to which it is subject according to Chapter XI and Chapter XIII.

XV. **ING'S CLIMATE POLICY IS NOT ADEQUATE**

XV.1 **INTRODUCTION**

1108. It has long been clear to ING what it can and must do to make its contribution to preventing dangerous climate change. After all, there cannot be any doubt about the danger of climate change, the globally necessary emissions reductions to counter that danger and ING's legal responsibility to contribute to this. It is equally clear what climate measures ING's contribution should at least encompass, and it is established that ING has a wide range of options for actually making this contribution. This was dealt with in detail in the previous chapter.
1109. ING has nevertheless opted for inadequate climate policy. Now that ING is bound to take the described climate measures on the basis of its legally enforceable duty of care under Article 6:162(2) DCC, this means that ING is committing an unlawful act that must be halted, or in any event ING is threatening to commit a wrongful act that must be prevented. It is this unlawfulness that Milieudefensie is seeking to counter, and why Milieudefensie asks this Court to order ING to take the climate measures described in the last chapter, as worded in further detail in the relief sought. ING is bound to do so on the basis of its legal obligation, and the importance and the urgency when performing that legal obligation by means of an order to be imposed pursuant to Article 3:296 DCC is evident and greater than ever.
1110. In order to further clarify the (threatened) breach by ING of its legal obligation, Milieudefensie will set out the shortcomings in ING's policy below.

¹⁰⁸² Ibid, p. 20 (Figure 2), p. 22. According to Figure 2, ING will only take stock of whether the client has determined any emissions reduction targets, not whether these targets are in line with the client's sectoral reduction pathway.

¹⁰⁸³ Ibid, p. 20 (Figure 2), p. 21.

XV.2 THE SHORTCOMINGS IN ING'S CLIMATE POLICY

XV.2.1 No absolute reduction targets (overarching and sectoral)

1111. The most significant shortcoming in ING's climate policy is the absence of goals for the absolute reduction of ING's emissions.¹⁰⁸⁴ The only exception to this is the absolute reduction target for the sector 'Oil and Gas Upstream' (but this target is inadequate; see Chapter XV.2.2).
1112. This shortcoming in setting absolute reduction targets is of great importance for the degree of negligence that can be attributed to ING, because this shortcoming by its nature makes ING's climate policy unsuitable for performing ING's legal obligation. Without absolute reduction targets, ING's climate policy cannot guarantee that ING can actually help counter the danger of climate change. It is, after all, evident that only an absolute reduction of greenhouse gas emissions can limit the danger of climate change. That is why ING's legal obligation extends to ING reducing its emissions in an absolute sense. This obligation encompasses both an absolute reduction of ING's total greenhouse gas emissions, including Scope 3 (see Chapter XIV.3.1), and an absolute reduction of the Scope 3 emissions of ING within specific sectors (see Chapter XIV.3.2).
1113. ING's climate policy, on the other hand, does not encompass any absolute reduction targets, neither at overarching level nor at sectoral level (with the exception of the aforementioned defective absolute reduction target for 'Oil and Gas Upstream'). ING explicitly objects to the notion that it is bound by an absolute reduction, but its arguments for this position fail (see Chapter XVII).
1114. ING's climate policy has been given substance in ING's Terra approach. The Terra approach is the method developed by ING that contains transition pathways for twelve emission-intensive sectors in which ING invests. In its own words, ING uses the Terra approach to guide its loan portfolio toward net zero emissions in 2050.
1115. However, those Terra targets cannot compensate for the absence of absolute reduction targets. The Terra targets are intensity reduction targets (with the exception of the 'Oil and Gas Upstream' target). They thus fulfil a different target than absolute reduction targets. As explained above in Chapter XIV.3.2, ING applies intensity reduction targets in addition to its (now absent) absolute reduction targets and not instead of them. In addition, the Terra targets are insufficiently transparent, flawed and too non-committal. All of this will be explained in Chapters XV.2.2 and XV.2.4.
1116. But the Terra approach has another flaw: it does not set any reduction targets at all for a relevant part of the emissions financed and facilitated by ING. This is contrary to the previously discussed frameworks from which it appears that ING must set reduction targets for *all* emissions that it finances or facilitates.
1117. Nevertheless, ING's reduction targets under the Terra approach leave a relevant part of ING's emissions unaffected. The scope of these Terra targets is considerably limited from two perspectives:

- (i) First of all, the Terra targets only focus on the emissions that ING finances with its

¹⁰⁸⁴ Ibid, p. 36.

loans. They leave the emissions that are connected to ING's asset management (at least 37 billion euros in assets, that result in financed emissions)¹⁰⁸⁵ and capital market transactions (43 billion euros in underwritten transactions, that result in facilitated emissions)¹⁰⁸⁶ fully unaffected. This will be explained in Chapters XV.2.2 and XV.2.4. How many emissions ING is leaving unaffected is unclear, as ING does not report on this (contrary to PCAF standards, and the reference to those standards in the European reporting standards under the CSRD; see Chapter X.2.3)

- (ii) In the second place, the bulk of the financed emissions that are connected with ING's loans fall outside of the reach of Terra goals. The Terra goals only cover (rounded) 27% of the financed emissions reported by ING related to loans provided by ING.¹⁰⁸⁷ ING is therefore failing to strive for emissions reductions for the greater part of its reported emissions, i.e. 190 MtCO₂-eq on a total of 262 MtCO₂-eq. ING is thereby failing to set reduction targets for a quantity of emissions that is comparable to 1.26 times the total emissions of the Netherlands.¹⁰⁸⁸

1118. The greater part of all emissions financed and facilitated by ING are therefore not covered by any form of climate policy on the part of ING. And although it is clear that the matter concerns at least 190 MtCO₂-eq, ING's flawed transparency does not make it clear how many emissions are actually at issue. Partly in light of the above, at the end of this summons (in Chapter XVIII) Milieudéfense also makes a request to ING to provide further information.

1119. The lack of transparency is concerning because these large, uncovered emissions are decisive for the quantity of emissions over which ING has influence in order to counter dangerous climate change. This applies to the emissions that are connected with the ING loans, but also to other categories of services and products (and the associated emissions). For example, capital market transactions are an important source of financing for emissions-intensive sectors (as explained in Chapter XIV.3.6).

1120. In its climate report for 2024, ING announced that it intends to expand the scope of its Terra approach.¹⁰⁸⁹ The announced modifications do not show that ING will revise its position

¹⁰⁸⁵ Exhibit MD-004, ING Annual Report 2024, p. 388. ING does not report the total value of the assets under management or 'AuM' in its annual reports. The 37 billion euros in AuM referred to here only concerns a part of the total, i.e. namely the part (i) over which ING has discretionary asset management and (ii) that is invested in companies that must comply with the CSRD (ibid, p. 377). It is clear that the total in AuM in reality is considerably higher than the 37 billion euros reported in the annual report. At the beginning of 2024, ING reported in an 'analyst call' that the total AuM at the time was 220 billion euros. See <https://www.ing.com/Investors/Financial-performance/Quarterly-results/1Q2024-ING-analyst-call-transcript.htm>, p. 9.

¹⁰⁸⁶ See <https://www.ing.com/Investors/Financial-performance/Annual-reports/2023/2023-Global-systemically-important-banks-indicators.htm>, p. 1 (under 'Underwritten transactions in debt and equity markets').

¹⁰⁸⁷ In its annual report for 2024, ING reports a total of financed Scope 1, 2 and 3 emissions related to its lending of 260.51 MtCO₂-eq, of which the Terra approach (according to that same report) only covers a total in financed Scope 1, 2 and 3 emissions of 71.23 MtCO₂-eq (27.23% of the total of 261.59 MtCO₂-eq). The Terra approach therefore does not set any reduction targets for the remaining 189.29 MtCO₂-eq in financed Scope 1, 2 and 3 emissions related to its lending (72.66% of the total of 260.51 MtCO₂-eq). See Exhibit MD-005, ING Climate Report 2024, p. 124. When calculating the percentage of emissions that are not covered, Milieudéfense applies the assumption, moreover, that ING has reduction targets for *all* financed emissions that are connected with its mortgages, which is probably not the case. Exhibit MD-005, ING Climate Report 2024, p. 73 shows that in 2023 ING did not have any targets for about a fifth of these emissions. Exhibit MD-004, ING Annual Report 2024 does not clarify whether and to what extent that cover has now become more complete. If ING indeed still does not have any targets for *all* financed emissions that are connected with its mortgages, the percentage of emissions that are not covered is even higher.

¹⁰⁸⁸ The emissions of the Netherlands in 2023 was 150.75 MtCO₂-eq; see Exhibit MD- 002, European Commission JRC 2024, 'GHG emissions of all world countries' (selected pages), p. 184.

¹⁰⁸⁹ Exhibit MD-005, ING Climate Report 2024, p. 32.

regarding absolute reductions, nor that the Terra goals will cover all financed and facilitated emissions of ING. In addition, the announcements are very much without commitment. If ING were to decide at any time in the future to modify its Terra targets, it is thus very doubtful that these targets will ever be sufficient.

1121. ING is therefore miles removed from the determination of adequate absolute reduction targets. The conclusion of the above is that ING is breaching its legal obligation to determine adequate absolute reduction targets, and will continue to breach it should Milieudefensie not be granted the order requested pursuant to Article 3:296 DCC.

XV.2.2 **No adequate absolute reduction target for ‘Oil and Gas Upstream’ (sectoral)**

1122. As mentioned, the only absolute reduction target that ING has set is its reduction target for the sub-sector ‘Oil and Gas Upstream’.¹⁰⁹⁰ In ING’s policy this is a sub-sector of the oil and gas sector, to be distinguished from the sub-sector ‘Oil and Gas Mid- and Downstream’ (for which ING has not set an absolute reduction target).¹⁰⁹¹ In September 2024 ING announced it would be reducing the emissions that are connected with the financing of upstream oil and gas activities in 2030 by 50% relative to 2019.¹⁰⁹² This statement was made in the run-up to a full phasing-out (announced in December 2023) of the financing of ‘Oil and Gas Upstream’ in 2040.¹⁰⁹³ The absolute reduction target for this sub-sector is a step in the right direction, but is inadequate.
1123. This is, in the first place, because the target only applies to emissions that are connected with the financing of companies that ING has placed in the Terra sector ‘Oil and Gas Upstream’. This means that the reduction target is not applicable to the emissions that are connected with the financing of companies in the oil and gas sector that ING categorises differently, e.g. like ‘Oil and Gas Mid- and Downstream’, while these companies also engage in upstream activities, the emissions of which are financed by ING (see also Chapter XV.2.3). In 2024 ING had only placed 1 billion euros in financing within the Terra sector ‘Oil and Gas Upstream’.¹⁰⁹⁴ This is only half of the 2 billion euros in loans that ING had made in that year with upstream companies, and only 5.8% of the total of 17.1 billion euros in financing of ING within the oil and gas sector.¹⁰⁹⁵
1124. In the second place, the target for ‘Oil & Gas Upstream’ is too limited cause it only focuses on the emissions which ING financed by its loans. It therefore does not take account of emissions connected with capital market transactions (facilitated emissions) and asset management. As explained above, ING should apply an absolute reduction target for its facilitated emissions as well. Because of this omission, ING can continue to support clients in the fossil fuel sector – with the exception of the ‘*pure-play*’ upstream oil and gas companies (see para. 1130) – without limitation in the issuance of bonds. This is a substantial shortcoming in the climate policy of ING, because in this sector, bonds in particular have become an important source of external financing for the expansion of fossil fuel activities and infrastructure (see para. 1059).

¹⁰⁹⁰ Ibid, p. 36.

¹⁰⁹¹ Ibid.

¹⁰⁹² Ibid, see also p. 41.

¹⁰⁹³ Ibid, p. 41.

¹⁰⁹⁴ Exhibit MD-004, ING Annual Report 2024, pp. 115 and 124.

¹⁰⁹⁵ Exhibit MD-004, ING Annual Report 2024, p. 115.

1125. This also applies with regard to the final goal of a full phasing out in 2040. ING does not make it clear whether it concerns a phasing out of *all* its products and services, or that ING plans to continue facilitating capital market transactions and/or plans to continue investing managed assets in the ‘Oil and Gas Upstream’ sector.
1126. Lastly, the question arises whether the reduction target for ‘Oil and Gas Upstream’ does not leave ING too much room to effect reductions through a recategorisation of clients, with as a result that they come to fall out the scope of the reduction target. In 2023, ING transferred three integrated oil and gas companies to the ‘Oil and Gas Mid- and Downstream’ sector (for which there is no absolute reduction target),¹⁰⁹⁶ while such companies belong to the biggest and most influential oil and gas companies in the world with sizeable upstream activities. In 2024, all integrated oil and gas companies were transferred to the ‘Oil and Gas Mid- and Downstream’ sector.¹⁰⁹⁷
1127. In any event, the absolute reduction target for ‘Oil and Gas Upstream’ would still not be sufficient if the aforementioned shortcomings were to be rectified. ING reserves the right to adjust its reduction targets when it sees fit, e.g. because of changes in (or a lack of) government policy and other developments that are of influence on clients, their sectors or society as a whole.¹⁰⁹⁸ This reservation of rights has been formulated so broadly, that it comes down to a license for ING to ignore its reduction targets as it sees fit, and for whatever reason. With this reservation of rights ING is non-committal to such degree that it is completely unclear whether ING will comply with its own (currently inadequate) targets, let alone that ING will comply with its legal obligation.
1128. ING’s absolute reduction target for the ‘Oil and Gas Upstream’ sector thus does not do sufficient justice to ING’s legal obligation described in Chapter XIV.3.5 to realise absolute emissions reductions in this sector too.

XV.2.3 No adequate goals for stopping New Fossil Fuel Projects

1129. As has been explained in Chapter XIV.3.5, ING’s legal obligation also extends to ceasing new – and in time, existing – financing and facilitating to companies that are still involved in New Fossil Fuel Projects.
1130. ING recognises the need that globally no new fossil fuel projects will be developed.¹⁰⁹⁹ Its policy also provides for the cessation of certain financing of new fossil fuel projects. ING’s policy entails that ING:
- (i) stops project financing and specific capital market transactions (“*dedicated upstream finance (lending and capital markets)*”) for new oil and gas fields that were approved after 31 December 2021. The same applies to the financing of oil and gas infrastructure that makes the development of new oil and gas fields possible; and
 - (ii) does not provide any general company loans or provide any capital market services for bond issues (“*debt capital market bond issuance services*”) to “*pure-play upstream oil & gas companies*” that are still continuing to develop new fields.

¹⁰⁹⁶ Exhibit MD-005, ING Climate Report 2024, p. 41.

¹⁰⁹⁷ Exhibit MD-004, ING Annual Report 2024, p. 115.

¹⁰⁹⁸ Ibid, p. 110 and Exhibit MD-005, ING Climate Report 2024, p. 9.

¹⁰⁹⁹ Ibid, p. 40.

1131. Although ING is therefore implementing a policy to limit its financing of New Fossil Fuel Projects, ING is not fully complying with its legal obligation with this policy. First, ING's current policy leaves room to continue providing (existing and new) general corporate loans and capital market services to clients that, whether or not via a group company are involved in New Fossil Fuel Projects but are not "pure play" oil and gas companies. ING is thereby disregarding that (the financing and facilitating of) New Fossil Fuel Projects of clients other than pure play clients make a vital contribution to the carbon lock-in (see also para. 1044). Secondly, ING's policy exclusively focuses on new financing and capital market transactions. This even though ING must use its influence to get existing clients to cease their New Fossil Fuel Projects. If these clients do not do this, escalation is to occur after twelve months and ING must terminate its financing (see para. 1043). ING is not implementing such an escalation policy now. In the last place, ING is not implementing any policy at all for the third-party assets it manages (Assets under Management) which finance or facilitate New Fossil Fuel Projects, while ING must also implement engagement and escalation policy for these assets as well.
1132. The conclusion must therefore be that although the current policy sets boundaries for ING's financing activities to a certain degree, it is far too inadequate to ensure that ING addresses all financing and facilitation of New Fossil Fuel Projects in accordance with its legal obligation. The policy allows ING to continue financing and facilitating the bulk of the companies that are still starting New Fossil Fuel Projects, contrary to the evidently large and urgent interest in ceasing (investments in) these projects as a prerequisite for limiting global warming to 1.5°C. This in turn makes ING's climate policy unlawful.
- XV.2.4 **No adequate intensity reduction targets (sectoral)**
1133. Where ING's climate policy does not contain any absolute reduction targets (outside of the inadequate reduction target for 'Oil and Gas Upstream'), it does provide for a number of sectoral intensity reduction targets.¹¹⁰⁰ That ING is striving for intensity reduction targets is a part of its legal obligation. But intensity reduction targets perform a different function than absolute reduction targets and cannot take the place of absolute reduction targets. ING must therefore apply these intensity reduction targets in addition to its (now absent) absolute reduction targets and not instead of them. Milieudefensie explained this in Chapter XIV.3.
1134. Milieudefensie also described in Chapter XIV.3 what conditions intensity reduction targets must satisfy in order to do justice to ING's legal responsibility. Milieudefensie explained in this respect that ING must at least bring its intensity targets for every sector in line with the IEA NZE scenario, so that its targets are consistently in line with the carbon budget that forms the basis thereof.
1135. ING says it bases most of its reduction targets on the IEA's NZE scenario. ING does not take the NZE scenario as the starting point for a number of its intensity targets, but does not make it clear whether applying another scenario or another method will lead to more ambitious or at least equally ambitious intensity reductions as in the IEA's NZE scenario. ING must be transparent regarding the integrity of its intensity reduction targets, so that it is clear whether and how it guarantees that the reduction pace is at least in line with the NZE scenario.

¹¹⁰⁰ Ibid, p. 36.

1136. That the integrity of the intensity reduction targets cannot be verified for these sectors, is also contrary to the principle that banks (and other non-state actors) must explain how they have applied scenarios used by them to their individual situation (and how any differences between these scenarios and the individual reduction targets can be explained). This principle appears, inter alia, from the UN Expert Report '*Integrity Matters*' (see Chapter IX.2), that demands an explanation from non-state actors in case of any differences between their climate transition plan and the reduction pathways on which it is based.¹¹⁰¹ The PRB and the NZBA refer to the same principle specifically for banks.¹¹⁰²
1137. That ING is not sufficiently explaining its intensity reduction targets – contrary to the aforementioned principle – is a significant shortcoming. ING is consequently setting targets that are not transparent, insufficiently reasoned and consequently cannot be inspected. ING is thus impeding the verifiability of the targets that must ensure that it make its necessary contribution to countering the danger of climate change. This is particularly problematic because ING modifies (the methodologies for) its targets over time. Because it is not easy to verify these modifications, it cannot be monitored whether and to what extent ING is actually making progress over time.
1138. Aside from all of the aforementioned defects, the intensity reduction targets fall short for another crucial reason. Just like the (absolute) reduction target for 'Oil and Gas Upstream', ING's intensity reduction targets are not focused on the emissions connected with the assets that ING manages for clients, and on ING's activities as facilitator of capital market transactions. In doing so, ING's intensity reduction targets leave important categories unaffected, while ING must also apply intensity reduction targets in this respect (see Chapter XIV.3.2).
1139. Lastly, just like the (absolute) reduction target for 'Oil and Gas Upstream', ING's intensity reduction targets are too non-committal as well in a general sense. The previously mentioned (impermissibly broad) reservation of ING to modify these targets according to its own insight (see para. 1127), applies equally to its intensity reduction targets.
1140. In sum: ING's intensity reduction targets come with a number of shortcomings: it applies a combination of various scenarios, translates scenarios in a non-verifiable manner to reduction targets and limits the scope of its targets to a too limited selection of emissions categories, as a result of which it is avoiding its legal obligation with regard to important parts of its emissions.

XV.2.5 Shortcomings in supporting policy

1141. The preceding chapters show the most crucial shortcomings in ING's climate policy: it lacks, inter alia, the necessary absolute reduction targets and does not provide for the necessary cessation of involvement in New Fossil Fuel Projects, and the targets it does have are inadequate and too non-committal. But this does not cover all relevant defects in ING's climate policy. In addition to reduction targets, effective climate policy also requires policy that supports the realisation of the reduction targets. ING has also failed in various ways with regard to such supporting policy.

¹¹⁰¹ Exhibit MD-134, 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*', p. 21.

¹¹⁰² Exhibit MD-220, UNEP FI NZBA 2024, '*Guidelines for Climate Target Setting for Banks Version 2*', p. 17.

1142. Milieudefensie will not provide a detailed description of these shortcomings here. Because of the absence of the requisite reduction targets, ING's climate policy is unlawful and that is what Milieudefensie's demands focus on.
1143. Nevertheless, the importance of the shortcomings in ING's supporting policy must be pointed out: these shortcomings prevent ING from taking the required climate measures, and show that ING does not make sufficient work of the (inadequate) measures that its climate policy does provide for. The shortcomings consequently show that ING's climate policy is unsuitable for a proper performance of the claimed climate measures, and underscore the need to compel ING to take those climate measures by awarding the demands.
1144. One example of shortcomings in supporting policy, concerns ING's remuneration policy. The importance of that remuneration policy is rooted in the fact that many parts of ING's organisation make decisions on a daily basis that can either complicate or encourage ING in realising the required emissions reductions. It is not likely that the right decisions will always be taken, if the remuneration policy does not support these decisions (or, indeed, discourages them). It is therefore necessary that the reduction targets – with the correct weight – are embedded in ING's remuneration policy, starting with the remuneration of ING's board members. That is not the case here.
1145. The need to modify the remuneration policy for directors and higher management is widely recognised, inter alia in the UN Expert Report. This report requires the following from ING:
- "Explain governance structure for transition and verification. Describe linking of near- and long-term targets with executive compensation."*¹¹⁰³
1146. In a similar sense, GFANZ refers to the critical importance of, inter alia, remuneration policy for the success of the climate policy of financial institutions:
- "Establishing effective governance processes and structures, with clear roles, responsibilities, and remuneration, is critical to the success of the plan's design and execution."*¹¹⁰⁴
1147. GFANZ therefore presents as a guideline that the remuneration of directors must be linked directly to the reduction targets of the financial institution, whereby remuneration incentives must arise from both achieving and not achieving reduction targets. The guideline also underscores the importance of a correct prioritisation of the reduction targets in the remuneration of all levels of the organisation. GFANZ states:

"Remuneration for C-suite roles could be directly linked to transition plan targets, where structures allow. Incentives should be tailored to individuals' roles, their progress against performance targets, and their contribution to the transition plan implementation. Incentives should be reviewed annually alongside performance and should include outcomes for both when targets are met and when they are not."

These incentives can be designed to:

- *reward performance on net-zero transition objectives, where possible designing incentives to emphasize quantifiable real-economy change;*
- *adjust or influence internal analytics, decisionmaking, and offered products and services; and*
- *build employees' skills and bring innovation to the activities that are aligned with net-zero*

¹¹⁰³ Exhibit MD-134, 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', p. 22.

¹¹⁰⁴ Exhibit MD-219, GFANZ 2022, 'Financial Institution Net-Zero Transition Plans', p. 87.

objectives.

Incentives at all levels of the organization should be commensurate with the priority of the transition plan. They should consider taking into account both interim and long-term climate goals.”¹¹⁰⁵

1148. ING’s policy for the remuneration of directors underscores ING’s role in countering climate change,¹¹⁰⁶ and demands non-financial performance indicators that are consistent with ING’s goals in relation to sustainability and risks (“*environmental, social and governance (ESG) and risk-related objectives*”).¹¹⁰⁷ However, the ‘*Remuneration report*’ in ING’s annual report for 2024¹¹⁰⁸ shows that ING interprets this policy goal in a manner that impedes that (the executive board of) ING establishes and realises the correct emissions reduction targets.
1149. This appears first of all from the ‘*target cards*’ for directors that are included in the annual report, that do not contain any performance indicators that are linked to the reduction of ING’s financed and facilitated emissions.¹¹⁰⁹ For example, although CEO Steven van Rijswijk has a climate-related performance indicator within the target area of ‘*Environment*’, this focuses solely on ‘*support*’ for clients in their transition. The target card does not specify what this support must or may consist of. Although this performance indicator can contribute in an indirect manner to the realising of ING’s reduction targets, it is not linked to those targets. That the target card determines that the support must be ‘*in line with*’ ING’s Terra goals, does not change this (aside from the fact that the Terra goals in themselves were more than insufficient, as explained in detail above). The degree in which these Terra goals are achieved is, according to the formulation of the performance indicator, irrelevant and does not matter in a de facto sense (as follows from the CEO’s score on this performance indicator in 2024).¹¹¹⁰ The performance indicators for the CFO and the CRO are limited to, respectively, the preparation for the CSRD (reporting legislation) and the improving of the framework for managing the (climate and environment-related) financial risks to which ING is exposed.
1150. In addition, the remuneration policy does not attribute sufficient weight to the target area ‘*Environment & Social*’.¹¹¹¹ Within the total of performance indicators that determines ING’s variable remuneration determines, the weighting of ‘*environmental factors*’ is only 10%.¹¹¹² The financial performance of ING, on the other hand, (‘*Profit before tax*’, ‘*Return on equity*’ and ‘*Operational expenses*’) have a weighting of 50% for CEO Steven van Rijswijk and CFO Tanate Phutrakul. In addition, a number of non-financial commercial indicators will be added (such as growth of the client base and expansion of the value proposition for wholesale clients). It is not clear how this combination of weighting can promote that the management gives the target area ‘*Environment & Social*’ priority in cases in which this has adverse consequences for the (short-term) financial and commercial performance of ING.
1151. ING’s remuneration policy therefore does not encompass a link between ING’s performance with regard to its emissions reduction targets and the remuneration of its directors. And even if this link were to be made, that policy would not give these targets the right priority.

¹¹⁰⁵ Ibid, p. 90.

¹¹⁰⁶ Exhibit MD-239, Remuneration Policy Executive Board ING 2024, p. 4.

¹¹⁰⁷ Ibid, p. 11.

¹¹⁰⁸ Exhibit MD-004, ING Annual Report 2024, pp. 69-73.

¹¹⁰⁹ Ibid.

¹¹¹⁰ Ibid, pp. 69, 70 and 112 et seq. The CEO scored 81%, whereby the following assessment was made of the Terra goals: “*Overall, we demonstrated good progress, and most sectors showed significant advancement.*” This even though ING is not on track to achieve at least half of its own (already highly insufficient) reduction targets.

¹¹¹¹ Ibid, p. 69.

¹¹¹² Ibid, p. 79.

Consequently, ING's remuneration policy does not satisfy the guidelines of the UN Expert Group and GFANZ. In addition, the remuneration policy impedes ING's executive board from appropriately considering the necessary emissions reductions in its decision making, and implementing a policy that encourages the entire organisation to make decisions that support these reductions.

XV.3 CONCLUSION

1152. In view of the above, only one conclusion is possible: ING commits an unlawful act (or threatens to commit an unlawful act) by implementing a climate policy that does not provide for the climate measures that it can and must take on the basis of its legal obligation in order to deflect the danger of climate change. In addition, ING's supporting policy has shortcomings, which once again shows that ING will not rectify this (threatened) unlawful situation. Pursuant to Article 3:296 DCC, ING can therefore be ordered to perform the demanded measures.

1153. In the preceding chapters it has become clear that there can be no ambiguity regarding the options and legal responsibilities of ING to take the demanded climate measures and that it will not perform those responsibilities. In the following chapters in conclusion, it will become clear that both the possible effectiveness defence of ING and the defences that ING has already presented in response to being held liable by Milieudefensie, cannot be maintained.

XVI. THE DEMANDED CLIMATE MEASURES ARE EFFECTIVE

XVI.1 INTRODUCTION

1154. It is conceivable that ING will argue in this case that the awarding of Milieudefensie's demands, that are geared to specific reduction of the greenhouse gas emissions of ING, is not effective from a global perspective, because the emissions reductions to be achieved by ING would in such case lead to only a slight reduction of the global greenhouse gas emissions or even because the emissions reductions of ING would not in any way lead to a global emissions reduction. ING could argue in that respect that its emissions only constitute a relatively small percentage of global emissions and/or that ING's emissions reductions will be compensated by an increase in the emissions of other parties.

1155. Such an effectiveness defence can take the form of both a causality defence under Article 6:162 DCC, and a disputing of Milieudefensie's interest as referred to in Article 3:303 DCC.

1156. When assessing such a defence, it must be noted a priori that it is sufficient to demonstrate that there is a real threat of danger and for which the party that has been held to account, must take measures to counter that danger. What is more, this case is a preventive action, and not an action for compensation (just as in, inter alia, the Urgenda case and the Shell case).

1157. Insofar as ING were to indeed present an effectiveness defence, such a defence cannot succeed. The effectiveness defence does not align with Dutch case law, and has also been rejected in foreign case law, and fails to recognise the broad international acknowledgement that the demanded climate measures not only make a direct contribution to countering climate change, but also have (indirect) effects that will help accelerate the global climate approach (including the so-called 'flywheel effect').

1158. Milieudéfensie will explain this below, whereby it will go into the opinion of the Court of Appeal of The Hague on Shell's effectiveness defence (and will indicate why this opinion does not detract from the eligibility of Milieudéfensie's demands to be awarded in this case).

XVI.2 DUTCH CASE LAW

1159. Milieudéfensie explained in the preceding chapters that the unlawfulness of ING's inadequate climate policy consists of ING being negligent with regard to taking the climate measures for which Milieudéfensie is seeking an order, and that ING's societal duty of care ING to take these climate measures follows from a large number of objective starting points. Many of these objective starting points – including various UN initiatives and collaborations, expert reports, soft law (such as the UNGP and OECD Guidelines), legislation (such as the CSRD and CSDDD) and sectoral climate protocols – take as the starting point that companies like ING have the *individual* option and responsibility to make an effective contribution to the global climate goals by taking *individual* climate measures (which include, for banks like ING, the absolute reduction of Scope 1, 2 and 3 emissions, the reduction of emissions intensity and individual measures with regard to corporate clients, in accordance with the climate measures demanded by Milieudéfensie).
1160. This is relevant for two reasons.
1161. The first reason is that, according to the aforementioned objective reference points, it has been established 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 Milieudéfensie can make an effective contribution to the (global) climate goals. The (individual) emissions reductions to be realised by these climate measures will contribute to the necessary (global) limiting of greenhouse gas emissions, which contribution in the case of ING will be of considerable significance in view of ING's large greenhouse gas emissions (see Chapter XII.3.3). In addition, the 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. Furthermore, the judgment of the Court of Appeal in the Shell case shows that all (major) companies have a duty of care to reduce emissions, so that not only ING will have to take adequate climate measures, but that action may also be expected of other banks and their clients. In addition, the climate action of individual (state and non-state) actors will reinforce the confidence in – and thus the effectiveness of – the global climate approach (the so-called 'flywheel effect'; see Chapter IX above), which will certainly also apply to ING as a global systemically important bank (see Chapter XVI.4 hereinafter).
1162. A second reason is that the aforementioned individual ability and responsibility to take individual climate measures, as these are evidenced by the aforementioned objective reference points, form the gist of ING's societal duty of care that Milieudéfensie is seeking to enforce by means of this case. The unlawfulness that Milieudéfensie wishes to address with its demands, consists of ING's climate policy – contrary to that duty of care – not making any provision for the relevant individual climate measures. Awarding of Milieudéfensie's demands to take these measures will therefore address the unlawfulness for which Milieudéfensie is holding ING to account, thereby putting an end to ING's breach of legal

rights. This makes the awarding of Milieudefensie's demands sufficiently effective.

1163. 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. In other words, a claim must be an effective measure with regard to the (individual) unlawful act or omission of the party being held liable, but not necessarily against the (more comprehensive) problem that is also caused by others.
1164. That this is indeed to be deemed a legal principle, appears from established case law of, inter alia, the Dutch Supreme Court. For example, in the Urgenda case, the State's effectiveness defence failed because the State has a shared responsibility that it must be possible to enforce. As the Dutch Supreme Court put it:

*"Nor can the assertion that a country's own share in global greenhouse gas emissions is very small and that reducing emissions from one's own territory makes little difference on a global scale, be accepted as a defence. Indeed, acceptance of these defences would mean that a country could easily evade its partial responsibility by pointing out other countries or its own small share. If, on the other hand, this defence is ruled out, each country can be effectively called to account for its share of emissions and the chance of all countries actually making their contribution will be greatest [...]. Also important in this context is that, as has been considered in 4.6 above about the carbon budget, each reduction of greenhouse gas emissions has a positive effect on combating dangerous climate change, as every reduction means that more room remains in the carbon budget. The defence that a duty to reduce greenhouse gas emissions on the part of the individual states does not help because other countries will continue their emissions cannot be accepted for this reason either: no reduction is negligible."*¹¹¹³

1165. The Dutch Supreme Court followed the Opinion of P-G Langemeijer and A-G Wissink on this point. Langemeijer and Wissink refer in this respect to the judgment of the US Supreme Court in the famous case of Massachusetts versus EPA of 2 April 2007, in which Massachusetts demanded of the EPA (the federal environmental protection agency in America) that – to counter climate change – more stringent measures would have to be taken in relation to emissions reductions in the car sector in the US.¹¹¹⁴ Among other things, the EPA presented the defence that stricter emission reduction measures in the car sector in the US would only result in minor emissions reductions which would, for that matter, be entirely cancelled out by the increase in CO₂ emissions in India and China. The U.S. Supreme Court did not accept this defence as an argument for EPA not to take reduction measures in the car sector. According to the U.S. Supreme Court, it was undisputed that the American emissions that EPA refused to regulate were substantial in themselves and that the positive effects of the regulation by EPA would, indeed, be more than compensated by the emissions increases in China and India but that regulation by EPA would, nevertheless, help to delay and mitigate the process of climate change. The U.S. Supreme Court worded this as follows:

"Its [an] erroneous assumption that a small incremental step, because it is incremental, can never be attacked in a federal judicial forum. Yet accepting that premise would doom most challenges to regulatory action. Agencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop.

[...]

¹¹¹³ Dutch Supreme Court 20 December 2019, ECLI:NL:HR:2019:2006, paras. 5.7.7 and 5.7.8.

¹¹¹⁴ Dutch Supreme Court, 20 December 2019, ECLI:NL:HR:2019:2006, Opinion of F.F. Langemeijer and M.H. Wissink, paras. 2.10 to 2.13.

While it may be true that regulating motor-vehicle emissions will not by itself reverse global warming, it by no means follows that we lack jurisdiction to decide whether EPA has a duty to take steps to slow or reduce it.

[...]

A reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere.”¹¹¹⁵

1166. With reference to the Urgenda case, the Court of Appeal of The Hague decided relatively recently that the possible delivery of F-35 parts by other countries than the Netherlands, does not prevent the State of the Netherlands from being held to account for its own deliveries being unlawful. The defence presented by the State (and rejected by the court of appeal) shows a great degree of similarity with the defence that the emissions reductions of one party (can) be compensated by emissions increases of others:

“The State also argued that the de facto interest of Oxfam Novib et al. in these proceedings was minimal if not nil, because Israel will acquire the F-35 parts in another manner (perhaps with a delay), for example by means of direct delivery by the US. The court of appeal cannot speculate on or anticipate the question whether other countries will deliver the F-35 parts to Israel if the Netherlands would no longer do so, nor can the court of appeal assess whether that would have been lawful. [...] Oxfam Novib et al.’s interest in preventing the unlawful export of military goods from the Netherlands to Israel will not disappear because other countries might also act unlawfully by taking over the deliveries.”¹¹¹⁶

1167. The principle that formed the basis of these considerations also appears from the Pirate Bay judgment of the Dutch Supreme Court, which illustrates, moreover, that this principle will also applies in relationships between private actors. In this case, Stichting Brein sought an order against two internet providers to block the ‘The Pirate Bay’ website, a ‘torrent site’ which infringed copyright by illegally making software available. The internet providers presented the defence, among others, that the order would not be effective, because decreased traffic to The Pirate Bay would not diminish the copyright infringement, because of the existence of other torrent sites. This defence – that is also very similar to the defence that the emissions reductions of one will be compensated by emissions increases of others – was dismissed by the Dutch Supreme Court.¹¹¹⁷

1168. As stated, the aforementioned defence was dealt with in the Shell case. According to the district court this defence did not, however, stand in the way of a reduction order. When rejecting the defence, the district court took as the starting point that – bearing in mind the role of non-state actors – Shell (RDS) had an individual, independent responsibility to do its part to counter dangerous climate change.¹¹¹⁸ The district court then stated that this responsibility detract from the fact that countering climate change also requires action from many other (state and non-state) actors. The district court refers to the fact that any reduction in greenhouse gases will help counter climate change, no matter how slight:

“RDS argues that the reduction obligation will have no effect, or even be counterproductive [...] It is also important here that each reduction of greenhouse gas emissions has a positive effect on countering dangerous climate change. After all, each reduction means that there is more room in the

¹¹¹⁵ US Supreme Court, *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007), 2 April 2007, pp. 21 to 23 (opinion of the court).

¹¹¹⁶ Court of Appeal of The Hague, 12 February 2024, ECLI:NL:GHDHA:2024:191, paras. 5.45.

¹¹¹⁷ Dutch Supreme Court, 13 November 2015, ECLI:NL:HR:2015:3307, paras. 4.2.2 and 4.2.3.

¹¹¹⁸ District Court of The Hague, 26 May 2021, ECLI:NL:RBDHA:2021:5337, paras. 4.4.16, 4.4.49-4.4.52, 4.4.54.

*carbon budget. The court acknowledges that RDS cannot solve this global problem on its own. However, this does not absolve RDS of its individual partial responsibility to do its part regarding the emissions of the Shell group, which it can control and influence.”*¹¹¹⁹

1169. Shell again argued in appeal that a reduction order would not be effective, which reasoning the Court of Appeal followed in part. In doing so, the Court of Appeal disregarded the case law discussed in this chapter and applied an incorrect criterion. Milieudefensie therefore addressed this in its appeal to the Dutch Supreme Court. In addition, the Court of Appeal failed to recognise that the effectiveness defence was also rejected in foreign case law. Milieudefensie explains this below.

XVI.3 OTHER RELEVANT CASE LAW

1170. Various authoritative decisions of foreign courts also show that (and why) an effectiveness defence cannot succeed.
1171. In addition to the above-mentioned judgment of the US Supreme Court in the case of *Massachusetts vs. EPA* of 2007 (see para. 1165), Milieudefensie first of all refers to the more recent judgment of the Supreme Court of Montana in the case of *Held vs. Montana*. This concerned the legitimacy of a provision in the Montana Environmental Policy Act (MEPA), on the basis of which the State of Montana, when granting permits for new energy projects, was *not* allowed to take account of the greenhouse gas emissions of those projects (the ‘MEPA Limitation’), which according to sixteen children and young persons from Montana (including Rikki Held) resulted in a violation of their rights to a clean and healthy environment under Montana’s constitution.¹¹²⁰ The Supreme Court confirmed this position, and in its reasoning refuted the effectiveness defence presented by the State of Montana (with reference to, *inter alia*, the previously mentioned judgment of the US Supreme Court in *Massachusetts vs. EPA*).
1172. The Supreme Court stated that failure to apply the MEPA Limitation hardly contributes to countering climate change in general, but *does* remedy the state’s violation of the (constitutional) rights invoked by the complainants. The Supreme Court, moreover, acknowledged that acceptance of the effectiveness defence would entail that the state would be *de facto* immune to any legal assessment of the performance of its (constitutional) obligations. In the words of the Supreme Court:

“It may be true that the MEPA Limitation is only a small contributor to climate change generally, and that declaring it unconstitutional will do little to reverse climate change. But our focus here, as with Plaintiffs’ injuries and causation, is not on redressing climate change, but on redressing their constitutional injuries [...]

Thus, the question is whether legal relief can effectively alleviate, remedy, or prevent Plaintiffs’ constitutional injury, not on whether declaring a law unconstitutional will effectively stop or reverse climate change. [...]

Plaintiffs allege that the MEPA Limitation causes a violation of their constitutional rights, which is their injury. Declaring that law unconstitutional and enjoining the State from acting in accordance with it will effectively alleviate that constitutional injury—that the State is acting in opposition to its affirmative constitutional duty through the MEPA Limitation—even if other statutes not at issue here also cause constitutional injuries. [...]

¹¹¹⁹ District Court of The Hague, 26 May 2021, ECLI:NL:RBDHA:2021:5337, para. 4.4.49.

¹¹²⁰ Supreme Court of Montana, *Held e.a. v. the State of Montana*, 2024 MT 312, DA 23-0575, 18 December 2024.

Moreover, we recognize that denying Plaintiffs standing under the State's arguments would effectively immunize from review an important constitutional question to the public.[...]

Plaintiffs have standing for the declaratory and injunctive relief they seek because they allege that the MEPA Limitation violates their right to a clean and healthful environment and declaring it unconstitutional will alleviate the harm that that statute causes to their constitutional right.”¹¹²¹

1173. Within the European legal system, Milieudefensie points to the judgment of the German Federal Constitutional Court in the Neubauer case, in which the effectiveness defence was also dealt with. In this case, the court underscored that every emission of greenhouse gas over the still available carbon budget further increased the danger of climate change. That climate measures of the German federal government as such cannot counter dangerous climate change, does not, according to the court, release it from the obligation to take climate measures. According to the court, that this does not in itself suffice to prevent dangerous climate change, because reductions by other states are also required for this, does not detract from this. On the contrary, in the court's opinion this in fact underscores the responsibility of the German federal government to do its part. By taking responsibility, that government will reinforce trust between states, that collaboration will lead to successfully countering climate change:

“There is a direct causal link between anthropogenic climate change and concentrations of human-induced greenhouse gases in the Earth's atmosphere [...] [W]ith every amount of CO₂ emitted over and above a small climate-neutral quantity, the Earth's temperature rises further along its irreversible trajectory and climate change also undergoes an irreversible progression. If global warming is to be halted at a specific temperature limit, nothing more than the amount of CO₂ corresponding to this limit may be emitted. The world has a so-called remaining CO₂ budget. If emissions go beyond this remaining budget, the temperature limit will be exceeded.”¹¹²²

“Either way, the obligation to take national climate action cannot be invalidated by arguing that such action would be incapable of stopping climate change. It is true that Germany would not be capable of preventing climate change on its own. Its isolated activity is clearly not the only causal factor determining the progression of climate change and the effectiveness of climate action. Climate change can only be stopped if climate neutrality is achieved worldwide. In view of the global reduction requirements, Germany's 2% share of worldwide CO₂ emissions (BMU, Climate Action in Figures, 2020 edition, p. 12) is only a small factor, but if Germany's climate action measures are embedded within global efforts, they are capable of playing a part in the overall drive to bring climate change to a halt [...].

The state may not evade its responsibility here by pointing to greenhouse gas emissions in other states (cf. VG Berlin, Judgment of 31 October 2019 - 10 K 412.18 -, para. 74; also BVerwG, Judgment of 30 June 2005 - 7 C 26/04 -, para. 35 f.; High Court of New Zealand, Judgment of 2 November 2017, CIV 2015-485-919 [2017] NZHC 733, para. 133 f.; Gerechtshof Den Haag, Judgment of 9 October 2018, 200.178.245/01, no. 64; Hoge Raad of the Netherlands, Judgment of 20 December 2019, 19/00135, no. 5.7.7; United States Court of Appeals for the Ninth Circuit, Judgment of 17 January 2020, no. 18-36082, p. 19 f.). On the contrary, the particular reliance on the international community gives rise to a constitutional necessity to actually implement one's own climate action measures at the national level – in international agreement wherever possible. [...] Its own activities should serve to strengthen international confidence in the fact that climate action – particularly the pursuit of treaty-based climate targets – can be successful [...]”¹¹²³

¹¹²¹ Ibid, paras. 51 to 53.

¹¹²² BVerfG, 24 March 2021, ECLI:DE:BVerfG:2021:rs20210324.1bvr265618, paras. 119 to 203. See also Exhibit MD-181, BVerfG 24 March 2021, Neubauer, Official English translation.

¹¹²³ Ibid, paras. 202 and 203.

1174. Nor did the effectiveness defence stand in the way of an obligation to take climate measures in the Belgian Climate case. In this case the Brussels Court of Appeal ordered the Belgian federal state and the Brussels and Flemish region to realise an emissions reduction of at least 55% in 2030, contrary to their defence that the impact of emissions on Belgian territory is minimal on a global scale.¹¹²⁴ The Brussels Court of Appeal asserted that the reductions of the emissions – relatively slight on a global scale – of the Belgian federal state and the Brussels and Flemish region will make it possible that dangerous climate change is limited as much as possible. This is partly because – in the same sense as the German Federal Constitutional Court – the mutual trust between states is reinforced. In the words of the Brussels Court of Appeal (unofficial translation):

*“Some of this damage (so-called dangerous global warming and excessive damage to the residual carbon budget) has not yet occurred, however, and the risk of it happening can be limited if Belgium, like other countries, does its part to combat global warming.”*¹¹²⁵

“Contrary to what the Belgian State maintains in particular (its conclusions in point 402, p. 225), the injunction to take sufficient and appropriate measures to achieve a certain objective of reducing GHG emissions from Belgian territory is perfectly consistent with the breaches of articles 2 and 8 of the ECHR noted above. The pursuit and practical implementation of this objective will make it possible to limit as far as possible the risk of dangerous global warming, will put an end to the breaches identified above and is the only way to ensure effective protection of the fundamental rights guaranteed at international level. [...]”

*The national contributions of each of the States party to the UNFCCC, including Belgium, to reducing GHG emissions are the world's main tool for preventing and mitigating the risk of dangerous global warming. These international agreements are based on the mutual trust of the States that are party to them in the fact that each will contribute to the effort required to achieve the desired result, and it is in this way that the contribution of each State, including a “small” State like Belgium (on a global scale), plays a decisive role in the fight against global warming. Enjoining the Belgian State and the Flemish and Brussels Regions to reduce their GHG emissions by 2030 is both the most adequate reparation in kind for damage already done and the prevention of future damage [...].”*¹¹²⁶

1175. As a final example of European case law in which the court rejected the effectiveness defence, Milieudefensie refers to the KlimaSeniorinnen judgment of the ECtHR. In this judgment the ECtHR too confirmed the principle that an individual actor cannot absolve itself of its shared responsibility in the climate task by calling upon the responsibilities of others. The ECtHR refers in this respect to, inter alia, the (widely recognised) CBDR principle (see Chapter XI.2.5.3):

“For its part, the Court notes that while climate change is undoubtedly a global phenomenon which should be addressed at the global level by the community of States, the global climate regime established under the UNFCCC rests on the principle of common but differentiated responsibilities and respective capabilities of States (Article 3 § 1). This principle has been reaffirmed in the Paris Agreement (Article 2 § 2) and endorsed in the Glasgow Climate Pact (cited above, paragraph 18) as well as in the Sharm el-Sheikh Implementation Plan (cited above, paragraph 12). It follows, therefore, that each State has its own share of responsibilities to take measures to tackle climate change and that the taking of those measures is determined by the State’s own capabilities rather than by any specific action (or omission) of any other State (see Duarte Agostinho and Others, cited above, §§ 202-03). The Court considers that a respondent State should not evade its responsibility by pointing

¹¹²⁴ Cour d’Appel Bruxelles, 30 November 2023, 2021/AR/15gs 2022/AR/737 and 2022/AR891, paras. 259, 260 and 261. See also Exhibit MD-182, Cour d’Appel Bruxelles 30 November 2023, Klimaatzaak, from the Unofficial Dutch translation.

¹¹²⁵ Ibid, para. 278.

¹¹²⁶ Ibid, paras. 282 and 283.

to the responsibility of other States, whether Contracting Parties to the Convention or not."¹¹²⁷

XVI.4 WIDER EFFECTS

1176. In para. 1162 et seq. above it was discussed that the effectiveness defence fails simply on the basis of the starting point that it is sufficient for the demanded climate measures that the climate measures address the unlawfulness to which Milieudefensie is holding ING to account in this case, which criterion has been met in this case. Insofar as a farther-reaching effectiveness were required, Milieudefensie refers to the explanation set out in para. 1161. The following is furthermore also of importance.
1177. The demanded climate measures can be deemed not only in a direct sense to decrease greenhouse gas emissions, but they also have wider effects that contribute in a more indirect manner to the success of global climate action, namely by reinforcing the trust between the parties in the performance of individual (shared) responsibilities. Milieudefensie refers in this respect to the so-called "flywheel effect" of emissions reductions by large (state and non-state) emitters introduced in Chapter IX.
1178. That the flywheel effect also has legal relevance, appears from the great significance that the German Federal Constitutional Court and the Brussels Court of Appeal gave it. As has been shown above, these judicial instances explicitly recognised that the performance by large emitters of their individual responsibilities will reinforce trust between the parties, which will accelerate the solving of the climate problem.
1179. Outside of the flywheel effect, if this Court were to award the demands, it would have wider effects which should be considered in the assessment of the effectiveness defence. It is clear to Milieudefensie that it would prefer to see its interest protected without having to go to court. But insofar as lawsuits – just like this one – are unavoidable, it may be expected that they will reinforce the global climate approach. The effect of lawsuits globally on the climate approach, in addition to the direct consequences of the lawsuits for the parties involved, has in the meantime even been recognised by the IPCC:

"Systemic climate litigation that seeks an increase in a country's ambition to tackle climate change has been a growing trend since the first court victories in the Urgenda case in the Netherlands [...] In May 2021, the Hague District Court of the Netherlands issued a groundbreaking judgment holding energy company Royal Dutch Shell (RDS) legally responsible for greenhouse gas emissions from its entire value chain (Macchi and Zeben 2021). [...] These litigation cases also impact on the financial market without directly involving specific financial institutions into the case (Solana 2020) but somehow aim to change their risk perceptions and attitude on high carbon activities (Griffin 2020). [...] The outcomes of climate litigation can affect the stringency and ambitiousness of climate governance (McCormick et al. 2018; Eskander et al. 2021). [...] But these cases can also have impacts outside of the legal proceedings before, during and after the case has been brought and decided (Setzer and Vanhala 2019). These impacts include changes in the behaviour of the parties (Peel and Osofsky 2015; Pals 2021), public opinion (Hilson 2019; Burgers 2020), financial and reputational consequences for involved actors (Solana 2020), and impact on further litigation (Barritt 2020). Individual cases have also attracted considerable media attention, which in turn can influence how climate policy is perceived (Nosek 2018; Barritt and Sediti 2019; Paiement 2020; Hilson 2019). While there is evidence to show the influence of some key cases on climate agenda-setting (Wonneberger and Vliegenthart 2021), it is still unclear the extent to which climate litigation actually results in new climate rules and policies (Peel and Osofsky 2018; Setzer and Vanhala 2019; Peel and Osofsky 2020) and to what degree this holds true for all cases (Jodoin et al. 2020). However, there is now increasing

¹¹²⁷ ECtHR, 9 April 2024, ECLI:CE:ECHR:2024:0409JUD005360020, para. 442. See also para. 478.

academic agreement that climate litigation has become a powerful force in climate governance (Bouwer 2018; Peel and Osofsky 2020; United Nations Environment Programme 2020; Burgers 2020).¹¹²⁸ (underlining added by legal counsel)

1180. There can be no doubt that the above-discussed flywheel effect and the (wider) effects mentioned by the IPCC can also be expected in the case of ING (and in case this Court awards the demand). ING's emissions are very substantial (see Chapter XII.3.3) and in another sense the system relevance of ING is undeniable, certainly in view of its status as a '*globally systemically important bank*' according to the Financial Stability Board (FSB) and the Basel Committee on Banking Supervision (BCBS).¹¹²⁹
1181. ING itself acknowledges that it can bring about a flywheel effect. Its (correct) starting point is that "*systemic solutions are needed in support of transitioning to a low-carbon economy at speed and scale.*"¹¹³⁰ ING leaves no doubt that it can be a catalyst toward realising those solutions. As a systemically important bank it has a leading role in fulfilling the reduction of emissions, because it can help its clients and society to decarbonise. In its own words:

*"As a systemically important bank, we believe that showing leadership means helping our customers and society decarbonise and drive down emissions, with a thriving net-zero world as our mutual goal."*¹¹³¹

1182. For all those reasons, the judgment of the Court of Appeal of The Hague regarding the effectiveness defence in the Shell case is untenable. It is, after all, predicated on the reasoning of the Court of Appeal that "*a possible signalling function of a reduction order [...] is too speculative*";¹¹³² this conclusion breaks with the legal significance that was specifically attributed to this signalling function by, inter alia, the German Federal Constitutional Court and the Brussels Court of Appeal, and does not do justice to the increasing scientific acknowledgement of the wider effect of climate litigation by the IPCC.

XVI.5 CONCLUSION

1183. Milieudefensie explained in this chapter that the climate measures that Milieudefensie is seeking from ING are effective. An awarding of Milieudefensie's demands will result in the breach of standard for which Milieudefensie is holding ING liable being removed, or in any event limited to a considerable degree. In addition, awarding of these demands will entail – including according to the many sources cited by Milieudefensie in this summons – that ING contributes in an effective manner to limiting (the global greenhouse gas emissions as a cause of) dangerous climate change. This means that a possible appeal of ING to the alleged ineffectiveness of the demanded measures cannot succeed as a causality or interest defence.
1184. This conclusion does not stand alone, but also arises from all domestic and foreign case law discussed in this chapter. The considerations in this case law apply equally to ING. As appears from the Urgenda case, that if ING's contribution to global emissions cannot be challenged, there would be no effective remedy against the biggest conceivable danger. This would, in fact, mean that no one could be held to account as long others do not take sufficient action

¹¹²⁸ IPCC 2022, AR6, WGIII, Ch. 13, para. 13.4.2, pp. 13-30 and 13-31 (see https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf).

¹¹²⁹ Exhibit MD-105, **Error! Reference source not found.**, p. 3.

¹¹³⁰ Exhibit MD-005, ING Climate Report 2024, p. 83.

¹¹³¹ Ibid, p. 3.

¹¹³² Ibid, para. 7.109.

either. A global challenge such as countering climate change would be doomed to fail in advance if no one in the world could be compelled to take action. In that case, everyone would be hiding behind the other big polluters and it would be impossible to take those first steps that would make it possible for the problem to be resolved step by step. It would, moreover, undermine confidence that all actors with a responsibility for solving the climate problem, were to in fact take that responsibility (the aforementioned “flywheel effect”).

1185. The climate problem cannot be resolved in one go by means of one major action, but it requires that important state and non-state actors with a societal responsibility for the solution can be held liable in relation to their responsibility if they fail to take it or fail to take sufficient responsibility. A court order for ING to act in accordance with its responsibility must therefore be seen as an important step toward solving the climate problem. As has also been recognised by the science and the IPCC, the above-discussed case law has led to successive lawsuits domestically and abroad, and to a greater awareness within society that climate change is a danger that must be taken seriously and must be combated by both state and important non-state actors. In the same manner, a judgment awarding the claim against ING will make a contribution to deflecting dangerous climate change. Not only because of the changes that ING will have to undergo but also because of the wider message it conveys to, among others, other big financial institutions and their accountants, supervisory bodies and advisers. It will increase the awareness that change is truly necessary, reinforce the confidence that important actors cannot and therefore will not neglect their responsibility, and thus help to realise that change.
1186. What Milieudefensie means to say by this is that – just like the above-discussed case law – a judgment in this case against ING will be an important next step on the road to countering dangerous climate change. Not only will the measures to be taken by ING at that time help reduce the risk of dangerous climate change, a judgment awarding the demands will also lead to follow-up steps domestically and abroad that will bring the solution of the problem one step closer. That such a judgment will not definitely solve the climate problem in one go, does not distract from this. A chain of steps, of which none is all-decisive but all are equally vital, should resolve the issue, not least because we hardly have any time left to resolve the issue and there certainly is no time for wavering. We can only hope that one of these steps will lead to a considerable acceleration of the climate strategy around the world in the next few years because it is desperately needed. In terms of the well-being of the world and the interests of Milieudefensie et al., this case against ING can be seen as an important tool that is guaranteed to leave its mark on the approach to the climate issue and the progress of the sustainable climate transition.

XVII. **ING’S DEFENCES**

1187. As already discussed in the introduction and in Chapter III.4, by letter of 19 January 2024¹¹³³ and letter of 16 January 2025¹¹³⁴ Milieudefensie approached the CEO of ING, Steven van Rijswijk.
1188. In essence, Milieudefensie’s letters encompass a summary of what has been discussed in this summons, culminating in the (primary) claims of Milieudefensie as set out in Chapter **Error! Reference source not found.**

¹¹³³ Exhibit MD-019, Milieudefensie’s letter to ING of 19 January 2024.

¹¹³⁴ Exhibit MD-020, Milieudefensie’s letter to ING of 16 January 2025.

1189. In a letter dated 13 February 2024, ING sent Milieudéfensie a brief response.¹¹³⁵ ING summarised the conclusion of this response in that period as follows on its website:

*"We tend to be in agreement with Milieudéfensie on most matters. We are just as concerned about the climate as they are and we also believe that action has to be taken to ensure that we limit global warming to 1.5 degrees, as laid down in the Paris Agreement. We also all agree that we all share the task of realising the transition to an economy with few CO₂ emissions and that as a bank we have a role to play in this respect."*¹¹³⁶

1190. In its last letter to Milieudéfensie, of 4 February of this year, ING is even more succinct:

*"As you know, we agree on the urgency of the global transition to a low-carbon economy and also on the systematic change that is required to achieve this."*¹¹³⁷

1191. By and large, Milieudéfensie can agree with this representation of the matter. Milieudéfensie and ING do appear to agree with each other on important points of this case: the danger of global warming of more than 1.5°C must be deflected and banks (and therefore also ING) have a responsibility in bringing about the necessary emissions reductions.

1192. Milieudéfensie and ING also appear to agree that ING will have the greatest positive effect on those reductions by bringing its financing in line with the 1.5°C target. ING states in its letter of 13 February 2024:

*"It is clear that our own emissions are slight compared to the impact that we can have through the activities of the clients that we finance."*¹¹³⁸

1193. It is therefore to be expected that in this case, the dispute between Milieudéfensie and ING will not concern the question whether ING has a responsibility to take climate measures, or the question whether these measures can leave ING's financing activities unaffected. The dispute with ING is thus primarily concentrated on interpreting and giving substance to ING's societal duty of care. As ING put it:

*"We therefore have the same goal, but we do not always agree on the best way to achieve those goals."*¹¹³⁹

1194. The dispute will presumably focus on the question as to which climate measures ING will be obliged to take. Milieudéfensie's answer to this question is explained in its letters of 19 January 2024¹¹⁴⁰ and 16 January 2025¹¹⁴¹, and in its presentation of necessary climate measures in Chapter XIV of this summons.

1195. ING's response to Milieudéfensie's letters shows that ING objects to its responsibility extending to the taking of these climate measures and that it believes that it can suffice with its current climate policy. As ING put it on its website:

"We have confidence in our climate action approach and if necessary, we will explain this in

¹¹³⁵ Exhibit MD-041, ING's letter to Milieudéfensie of 13 February 2024.

¹¹³⁶ Exhibit MD-040, ING 2024, 'Mogelijke klimaatzaak' (print-out from website 27 February 2024).

¹¹³⁷ Exhibit MD-021, ING's letter to Milieudéfensie of 4 February 2025.

¹¹³⁸ Exhibit MD-041, ING's letter to Milieudéfensie of 13 February 2024.

¹¹³⁹ Exhibit MD-040, ING 2024, 'Mogelijke klimaatzaak' (print-out from website 27 February 2024).

¹¹⁴⁰ Exhibit MD-019, Milieudéfensie's letter to ING of 19 January 2024.

¹¹⁴¹ Exhibit MD-020, Milieudéfensie's letter to ING of 16 January 2025.

court.”¹¹⁴²

1196. In its last letter to Milieudefensie, ING made it definitely clear that it is not willing to take the demanded climate measures. In this very succinct letter – without any substantive explanation – ING simply sets aside the measures as “*not realistic or reasonable*”.¹¹⁴³

1197. ING asserts that it is not bound to realise the demanded absolute emissions reductions by 2030 (and subsequent target years), because sustainability in the economy requires large investments. ING is apparently of the opinion that those investments must be able to lead to an increase in ING’s emissions in 2030 (and subsequent target years):

*“The transition requires large investments in new technologies. If we finance these, our total financed emissions could even increase, even though it is the right thing to do.”*¹¹⁴⁴

1198. In so doing, ING disregards that making the economy sustainable may not be at the expense of the carbon budget that must be respected to be able to achieve the 1.5°C target. It is clear that this target can only be realised by achieving absolute global CO₂ and CO₂-eq reductions, starting with 48% (CO₂) and 43% (CO₂-eq) in 2030. It is equally clear that ING will have to make a contribution in this respect by reducing its emissions in an absolute sense. In addition, the financial sector, and thus also ING, finances and facilitates a multitude of economic activities, the (current) emissions of which are not in line with the 1.5°C target, or in any event ING’s climate policy (wrongly) provides scope for such (as discussed in, inter alia, Chapters X.4, XII.3.3, XIV.3 and XV). By limiting this financing by means of the demanded climate measures, ING’s emissions would fall and its scope for (the emissions increases that are associated with) sustainable investments would grow. In addition, this limiting of financing that is not in conformity with the 1.5°C limit, can also be achieved by engagement with clients, that can in fact consist of the providing of sustainable financing (see Chapter XIV.4).

1199. Insofar as ING wishes to assert with the above-mentioned position that the sustainable climate transition requires that specific (sub-)sectors grow, and concomitantly the absolute emissions of those sectors, ING fails to recognise that within the global carbon budget the absolute emissions of all sectors will still have to be reduced (see, inter alia, Chapter XIV.3.1).

1200. The above is no different for the financing of (the sustainability transition of) economic activities. If ING says it will finance the sustainability measures of its clients, it may be expected that this too will lead to actual sustainability, and therefore to an absolute reduction in the greenhouse gas emissions that these clients cause and ING’s Scope 3 emissions ensuing therefrom. Insofar as the sustainable climate transition requires an expansion of the financing of certain (sub-)sectors, this cannot be at the expense of the absolute emissions reductions that are necessary to be able to achieve the 1.5°C target (neither at global level, nor at sectoral level).

1201. ING also appears to be wrongly of the opinion that it does not have to align with the globally required absolute reductions because its financing portfolio is not a perfect reflection of the global economy:

¹¹⁴² Exhibit MD-040, ING 2024, ‘Mogelijke klimaatzaak’ (print-out from website 27 February 2024).

¹¹⁴³ Exhibit MD-021, ING’s letter to Milieudefensie of 4 February 2025.

¹¹⁴⁴ Exhibit MD-041, ING’s letter to Milieudefensie of 13 February 2024, p. 2.

“According to scientists, that goal of 48% fewer CO₂ emissions is the total reduction that must be realised globally in order to achieve the goals agreed in the Paris Agreement. The contribution that banks must make is different, because this depends on the composition of their credit portfolios [...]”¹¹⁴⁵

1202. This is an inconsistent reasoning, because ING is in fact active in all emissions-intensive sectors. In addition, the greatest part of ING’s financing portfolio (approx. 90%) comprises clients from the richest parts of the global economy, which are in the best position to move faster than the global average emissions reduction pathway. ING fails to recognise that all of this in fact means that under the CBDR principle it is obliged to make more reductions than the global average necessary reductions. Milieudefensie explained this in Chapter XIV.3.1.
1203. Insofar as ING sought to argue with the above position that although it does have a responsibility, but that does not extend for it – as bank – to an absolute reduction of its financed and facilitated emissions, that defence also fails. In Chapter IX Milieudefensie substantiated the argument that in order to effect the required absolute global reductions, it is necessary that all important non-state actors make their individual contribution, that entails for all these actors (including financial institutions like ING), inter alia, that they realise absolute reductions for their Scope 1, 2 and 3 emissions. In the case of ING this therefore also explicitly concerns its financed and facilitated emissions.
1204. ING furthermore appears to be of the opinion that striving to achieve an absolute reduction target for a bank is an unsuitable policy measure for contributing to the 1.5°C goal (whether or not the matter concerns an absolute overarching or sectoral target, with the exception of oil and gas extraction). It stated:

“Aiming for an absolute reduction of the total financed emissions of our portfolio does not automatically contribute to a responsible transition to an economy with few CO₂ emissions.

[...]”

When financing oil and gas extraction, we will reduce our credit facilities and therefore the CO₂e emissions of the oil and gas production that we finance in an absolute sense by 50% in 2030 relative to 2019. With regard to most sectors that we finance, we are, however, focusing on the emissions intensity of the financed activities, such as the CO₂ emissions per km when producing cars. We believe this approach is specific, effective and in line with the Paris Climate Agreement.”¹¹⁴⁶

1205. This defence cannot succeed either. As already explained above, it is widely acknowledged that a bank like ING will have to achieve an absolute reduction target. As explained in Chapter XIV.3.1, the financial sector also endorses the need for absolute reduction targets. ING therefore cannot suffice with only intensity targets, but must, in addition, also realise absolute reductions.
1206. Insofar as ING wished to assert in the above-mentioned quotation that absolute reductions would hinder it in supporting the sustainable climate transition, this defence also fails. Para. 1197 to para. 1200 show that the sustainability transition of clients can and must take place within the carbon budget for the 1.5°C goal. In addition, Milieudefensie explained in Chapter XIV.4 that ING can stimulate that sustainability transition by providing financing and by other forms of leverage, and can thus bring its (absolute) emissions in line with the 1.5°C target

¹¹⁴⁵ Ibid.

¹¹⁴⁶ Ibid.

without terminating its financing and relationship with the client.

1207. In addition, Milieudefensie emphasises that as far as Milieudefensie is concerned, focusing on (sectoral) intensity targets is also necessary in order to encourage the sustainability transition of ING's clients, assuming that ING applies the right starting points in this respect (see Chapter XIV.3.2). This does not detract from the fact, however, that striving for an absolute overarching reduction target and absolute sectoral reduction targets are equally necessary; intensity targets give ING insight into the extent of sustainability measures of its clients, but without aiming for absolute reduction targets, ING cannot secure that (its financing of) this sustainability transition will take place within the carbon budget and therefore actually contributes to the reductions that are necessary for the 1.5°C goal, as explained in para. 1197 to para. 1200 above.
1208. Lastly, ING takes the position that ING – contrary to what Milieudefensie asserts – is not obliged to cease financing clients in the fossil fuel sector that are still involved in developing new oil and gas fields:

*"You also ask that we stop providing credit to companies that are involved in any way whatsoever with new fields. The greater part of the companies that extract oil and gas, extract it from both existing and new fields. Your request would mean that we are to fully cease providing credit to these oil and gas companies. [...] We do not believe that stopping the financing of oil and gas from one minute to the next is the right approach."*¹¹⁴⁷

1209. These words of ING come down to ING simply accepting that clients in the fossil fuel sector continue to be involved in the expansion of fossil fuels, while these clients are thereby in fact *increasing* the danger of climate change. In addition, Milieudefensie is not requiring ING to fully cease financing oil and gas from one minute to the next. Milieudefensie is only requiring that ING terminate its involvement in New Fossil Fuel Projects. As explained in Chapter XIV.3.5, it has been established that the current fossil fuel sources can more than provide for the present and future energy requirements of the world, and the expected emissions that are associated with existing fossil fuel infrastructure will well exceed the carbon budget that is still available to meet the 1.5°C limit. Clients in the fossil fuel sector who nevertheless continue to invest in new fossil fuel projects (thereby further increasing the *carbon lock-in*) are thus clearly acting contrary to *"the climate pathways that scientists have set out for the transition to net zero emissions in 2050 or that the Paris Agreement calls for"*, contrary to what ING appears to believe.¹¹⁴⁸
1210. In doing so, ING fails to recognise that these clients contribute to the causes of adverse climate impacts, and that by financing these clients, ING is involved in those adverse climate impacts. But this involvement in fact creates a responsibility for ING to prevent and limit said climate impacts, as Milieudefensie explained in great detail in, inter alia, Chapters IX, XIII and XIV.4. And this responsibility also entails that ING must communicate the possibility of disengagement and if necessary, proceed to disengage. But ING dismisses that responsibility:

*"Instead we choose to enter into a discussion with our clients to help them take steps in their climate policy."*¹¹⁴⁹

1211. ING mentions the measures that it has taken up to now to persuade these clients to take the

¹¹⁴⁷ Ibid, p. 3.

¹¹⁴⁸ Ibid.

¹¹⁴⁹ Ibid.

necessary steps, while at the same time concluding that “*most of the companies that extract oil and gas, extract these from both existing and new fields*” (see para. 1208). The measures taken by ING up to now therefore do not have any effect, while according to, inter alia, the UNGP, the OECD Guidelines and the UN Race to Zero initiative this is all the more reason to proceed to disengage, after the passing of the time period of twelve months that Milieudefensie too mentions in its demands (see Chapter XIV.4.2).

1212. None of this gives Milieudefensie much hope. ING is even resisting its responsibility to part ways with fossil fuel clients that evidently contribute to large adverse climate impacts, even if its engagement has demonstrably failed. How will ING be able to adequately implement its wider legal obligation to cease or phase out financing in order to bring its emissions in line with the 1.5°C goal?
1213. In sum, Milieudefensie believes that the dispute between Milieudefensie and ING does not appear to concern the question whether ING has a responsibility to take climate measures, or the question whether these measures can leave ING’s financing activities unaffected. However, ING is too non-committal in the interpretation of its obligations, and challenges climate measures that it is bound to take precisely on the basis of those obligations. Milieudefensie believes that this summons sufficiently substantiates its argument as to why ING has such a legal obligation on the basis of both liability law and human rights law. Pursuant to Article 3:296(1) DCC, ING can and must therefore be ordered to fulfil its legal obligation.

XVIII. **REQUEST TO ING TO PROVIDE INFORMATION ON ITS EMISSIONS AS OF 2019**

1214. Milieudefensie has one final request for ING. In Chapter XII.3.3 Milieudefensie discussed ING’s reporting on its financed and facilitated emissions. Although ING has expanded its emissions reporting over the years, ING has not yet reported on the full emissions that it finances and facilitates (see para. 805 and para. 806). ING also only started reporting in 2020. Part of Milieudefensie’s demands take 2019 as the base year for the emissions reductions to be realised by ING. The reason for this is that this aligns with the base year that IPCC also applies for the global emissions reductions to be realised. ING has not reported on the size of its emissions for the year 2019. Based on the emissions for Scope 1, 2 and 3 of clients reported by ING itself, discussed in Chapter XII.3.3, Milieudefensie made its own estimated of the 2019 emissions financed by ING, based on a trend line.¹¹⁵⁰ Based on the trend line, it is estimated that the CO₂¹¹⁵¹ and CO₂-eq emissions financed by ING in 2019 had the following

¹¹⁵⁰ In order to estimate the financed Scope 1 and Scope 2 emissions in 2019, Milieudefensie determined the trend line on the basis of the financed emissions reported by ING in the years 2020, 2022, 2023 and 2024 (see para. 805), and extended this trend line to the year 2019. The reported financed emissions in the year 2021 form an outlier and have therefore not been taken into account. This estimate for 2019 does not concern all financed emissions of ING; no details are available for the financed emissions connected with ING’s asset management and the facilitated emissions associated with ING’s capital market activities on the basis of which Milieudefensie can determine a trend line. In order to estimate the financed Scope 3 emissions in 2019, Milieudefensie assumes that the relationship between the Scope 1 and 2 emissions of CO₂-eq and the Scope 3 emissions of CO₂-eq – as reported by ING over the period 2023-2024 (the only years for which ING has reported its Scope 3 emissions; see para. 805) – was the same as at year end 2019. This ratio comes down to 3.8 tons financed Scope 3 emissions for every ton of financed Scope 1 and 2 emissions. Just as for the financed Scope 1 and 2 emissions, this estimate does not concern all financed Scope 3 emissions.

¹¹⁵¹ In order to make an estimate of ING’s CO₂ emissions based on the CO₂-eq emissions reported by ING, Milieudefensie assumed that ING’s share in CO₂ emissions in ING’s CO₂-eq emissions are the same as the share of CO₂ in the global anthropogenic CO₂-eq emissions. According to the IPCC, in 2019 this share of CO₂ was 75%, see Exhibit MD-049, IPCC 2022, AR6, WGIII, SPM, p. 7, Figure SPM.1, under a (which figure can be found in this summons in para. **Error! Reference source not found.**). This is the sum of the shares of CO₂-FFI (64%) and CO₂-LULUCF (11%).

size at least:

	Estimate of financed emissions of ING in 2019	
	CO ₂	CO ₂ -eq
Scopes 1 and 2	47.7 Mt	64 Mt
Scope 3	183.11 Mt	244.1 Mt
Total	230.78 Mt	308 Mt

1215. Because ING has not yet reported on its complete financed and facilitated emissions (see para. 805 and para. 806), the missing information has not been included in the above estimate.
1216. Milieudéfensie could make a similar estimate for the years after 2019, but it is more logical for ING to provide that information. For a more complete picture of the emissions financed and facilitated by ING in 2019 and subsequent years, Milieudéfensie is therefore asking ING to provide additional information in these proceedings, whether or not based on ING's best estimates, of (i) the full emissions financed and facilitated by ING in CO₂ and CO₂-eq and (ii) a division into sectors of the full emissions financed and facilitated by ING, i.e. a division across all sectors referred to in the relief sought in this summons.
1217. Milieudéfensie furthermore points out in relation to this that an overview of the full financed and facilitated emissions may also be expected of ING on the basis of the climate protocols for companies. Both the emissions reporting and the reduction targets must relate to (virtually) the full Scope 1, Scope 2 and Scope 3 emissions (including the Scope 3 emissions of clients) and to all its activities (including those as facilitator of capital market transactions and under the heading of management of third-party assets). For instance, the UN Race to Zero requires that emissions reduction targets cover (virtually) all emissions, including the Scope 3 emissions of clients or of companies that receive investments (see, inter alia, para. 493). The same follows from the UN Expert Report (see para. 514). According to the UN Race to Zero, although this only applies if the relevant data is sufficiently measurable, it is made clear that this requirement will be easily met: *"While EPRG recognizes that data availability is a limitation, it interprets "sufficiently" to imply a low bar for inclusion."*¹¹⁵² If primary or representative data of clients or companies that receive investment is not available, financial institutions must make use of secondary data, including 'proxies' based on the precautionary principle, i.e. a standard benchmark which can be used to make an estimate if a direct measurement is not available (such as a presumed quantity of CO₂ emissions per produced unit of steel). In the words of the UN Race to Zero: *"If such data are unavailable, organizations shall use secondary data including reasonable proxies based on precautionary principles while setting targets for greater data completeness and expanded coverage."*¹¹⁵³ The climate protocols therefore recognise that there may be data restrictions, but, in view of the above, these restrictions cannot simply allow ING to leave parts of its emissions uncovered by its emissions reporting and reduction targets.
1218. Aside from the above, Milieudéfensie in any event has a substantial interest in this information, to be judicially respected, because in this case Milieudéfensie is seeking to protect the all-encompassing danger of climate change, and effective protection against the contribution to the climate problem made by ING it is necessary that the complete emissions that are financed and facilitated by ING are reduced, and not just part of them.

¹¹⁵² Exhibit MD-132, UNFCCC, 'Interpretation Guide Race to Zero Expert Peer Review Group Version 2.0', p. 4.

¹¹⁵³ Ibid.

Milieudefensie also refers in this respect to the option that the Court can, if necessary, order ING pursuant to Article 22(1) DCCP to submit the requested information.

XIX. EVIDENCE AND OFFER TO PRESENT EVIDENCE

1219. Milieudefensie will provide the evidence for its arguments by means of the exhibits submitted in the proceedings with this summons. A total overview thereof is attached to this summons as **Annex A: list of exhibits with the summons of 28 March 2025**.
1220. Milieudefensie believes it has satisfactorily proven and sufficiently substantiated its arguments by means of this submitted (documentary) evidence but it hereby offers to further substantiate its arguments - insofar as it is obliged to do so under Article 150 of the Dutch Code of Civil Procedure - by presenting additional documents, including submitting evidence regarding the need to take reduction measures and the reduction orders which are demanded, as well as by hearing relevant expert witnesses.
1221. Without prejudice to this offer to provide evidence, Milieudefensie believes that, given the amount of evidence for their arguments and 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.

XX. DEMANDS

In view of everything that has been discussed in this summons, Milieudefensie is requesting by judgment, which is immediately enforceable insofar as possible:

Primarily:

1. to order:
 - (i) that ING reduces the annual operational, financed and facilitated CO2 emissions (scope 1, 2 and 3) of the ING Group to such extent or brings about such reduction that these CO2 emissions at the end of the years 2030, 2035, 2040 and 2050 in an absolute sense will at least be reduced by 48%, 65%, 80% and 99% respectively, always relative to the level in the reference year of 2019;
 - (ii) that ING reduces the annual operational, financed and facilitated CO2-eq emissions (scope 1, 2 and 3) of the ING Group to such extent or brings about such reduction that these CO2-eq emissions at the end of 2030, 2035, 2040 and 2050 in an absolute sense will at least be reduced by 43%, 60%, 69% and 84% respectively, always relative to the level in the reference year of 2019;
2. to order that ING reduces the financed and facilitated CO2 emissions of the ING Group connected with its activities in the following (sub-)sectors, per (sub-)sector, to such extent or brings about such reduction that these CO2 emissions will have been reduced at the end of 2030, 2035, 2040 and 2050 in an absolute sense in accordance with the goal of limiting global warming to 1.5°C, in line with at least the absolute reduction percentages that follow from the Net Zero Emissions scenario of the International Energy Agency, as set out in the table below:*

Sector (percentages for 'advanced economies')	Sub-sector (global percentages)	Absolute reductions in CO2 relative to base year 2022			
		2030	2035	2040	2050
Electricity and heat		-71.5%	-100%	-103.3%	-104.2%
Other energy sector		-46.5%	-81.3%	-98.8%	-124.8%
Industry		-30.1%	-55.7%	-76.1%	-97.7%
	Chemicals	-13.5%	-36.1%	-60.8%	-96.6%
	Iron and steel	-19.2%	-39.6%	-60.6%	-91.1%
	Cement	-21%	-44.5%	-63.8%	-96.7%
	Aluminium	-17.7%	-35.3%	-59.7%	-97%
Transport		-43.4%	-70.3%	-86.7%	-98.8%
	Road	-29.3%	-54.4%	-75%	-96%
	Aviation	0%	-6.1%	-30%	-73.8%
	Shipping	-18.7%	-42.1%	-63.4%	-86.9%
Buildings		-50.2%	-75.7%	-90.4%	-99.8%
	Residential	-40.5%	-66.2%	-83.7%	-97.6%
	Services/commercial	-43.8%	-69.9%	-86%	-99.3%

3. to provide a declaratory judgment that ING is acting wrongfully with regard to Milieudefensie if it has not reduced the weighted average physical emission intensities of the activities of

the ING Group in the (sub-)sectors referred to in demand 2, per (sub-)sector, at the end of the years 2030, 2035, 2040 and 2050, to such extent or brought about the reduction thereof to such extent that these physical emission intensities are in accordance with the goal of limiting global warming to 1.5°C, in line with at least the physical emission intensities and the (sub-)sector carbon budgets of the Net Zero Emissions scenario of the International Energy Agency;

4. to order that ING reduces the weighted average physical emission intensities of the activities of the ING Group in each of the (sub-)sectors referred to in demand 2, per (sub-)sector, at the end of the years 2030, 2035, 2040 and 2050, to such extent or brings about the reduction thereof to such extent that these physical emission intensities are in accordance with the goal of limiting global warming to 1.5°C, in line with at least the physical emission intensities and the (sub-)sector carbon budgets of the Net Zero Emissions scenario of the International Energy Agency;

5. to order:

(i) that ING reduces the financed and facilitated greenhouse gas emissions of the ING Group associated with its activities in the fossil fuel sector – i.e. the sector formed by businesses engaged in exploring, mining, extracting, producing, processing, distributing and/or putting on the market of oil, coal and/or gas – to such extent or brings about the reduction thereof to such extent that these emissions will have been reduced at the end of the years 2030, 2035, 2040 and 2050 in an absolute sense in accordance with the goal of limiting global warming to 1.5°C, in line with at least the absolute reduction percentages ensuing from the Net Zero Emissions scenario of the International Energy Agency referred to in the tables below:*

(a) with regard to the financed and facilitated scope 1 and 2 CO₂-eq emissions associated with the activities of the ING Group in the fossil fuel sector:

Absolute emissions reductions in CO ₂ -eq relative to the base year 2022				
Sector	2030	2035	2040	2050
Oil	-62.9%	-79.4%	-92.1%	-97.9%
Gas	-65%	-81.9%	-92.8%	-98.3%

(b) with regard to the financed and facilitated scope 3 and 2 CO₂ emissions associated with the activities of the ING Group in the fossil fuel sector:

Absolute emissions reductions in CO ₂ relative to the base year 2022				
Sector	2030	2035	2040	2050
Coal	-79.3%	-92.6%	-96%	-99.4%
Oil	-44.4%	-70.3%	-86.1%	-97.9%
Gas	-41.5%	-78.3%	-89.5%	-97.7%

(ii) that ING effects that the ING Group, with regard to businesses in the fossil fuel sector:

(a) within three months after the date of the judgment ceases new financing and facilitation of any business that is still involved in New Fossil Fuel Projects, or for which a group company of the group to which the business in question belongs is still involved with New Fossil Fuel Projects; and

(b) within twelve months after the date of the judgment ceases all (existing and

new) financing and facilitation of any business that is still involved in New Fossil Fuel Projects, or for which a group company of the group to which the business in question belongs is still involved with New Fossil Fuel Projects;

6. to order that ING effects that the ING Group annually requests a(n) (updated) climate transition plan from its large corporate clients, in which these clients explain in what manner they are making or will make a contribution to achieving the global target of net zero CO₂ emissions in 2050, that provides quantified insight into the current scope 1, 2 and 3 CO₂(eq) emissions of these clients and provides a quantified insight into how these emissions will develop for the years 2030, 2035, 2040 and 2050, both in terms of absolute emissions and emission intensity;

Alternatively:

7. to order, as alternative to demands 2 and 5(i)(b), that ING reduces the financed and facilitated CO₂ emissions of the ING Group associated with its activities in the (sub-)sectors referred to in demands 2 and 5(i)(b), per (sub-)sector, to such extent or brings about the reduction thereof to such extent that as of 2023 these CO₂ emissions will annually be reduced in an absolute sense in accordance with the goal of limiting global warming to 1.5°C, in line with at least the (sub-)sector annual reduction percentages (CAAGR), and insofar as available the CAAGR for 'advanced economies', of the Net Zero Emissions scenario of the International Energy Agency, as set out in the update of the World Energy Outlook report of the preceding year;

Both primarily and alternatively:

8. to order that ING effects the reductions of the financed and facilitated emissions of the ING Group set out in demands 1, 2, 5(i) and 7, and the reductions referred to in demand 4 of the weighted average physical emission intensities of the activities of the ING Group:
 - (i) individually for the following categories of activities of the ING Group:
 - (a) holding and/or managing loans, financial instruments and/or other financial assets at its own expense and risk;
 - (b) holding and/or managing loans, financial instruments and/or other financial assets at the expense and risk of third parties; and
 - (c) facilitating transactions for the issue of capital market instruments;
 - (ii) to be achieved as much as possible linear or faster from at least the date of the judgment sought by Milieudefensie (except for 7, that already prescribes a specific annual reduction pathway);
9. to provide a declaratory judgment that the reductions of the weighted average physical emissions intensities of the activities of the ING Group referred to in demand 3 :
 - (i) apply individually to each of the categories of the ING Group mentioned in demand 8 under (a) to (c);

- (ii) to be achieved as much as possible linear or faster from at least the date of the judgment sought by Milieudefensie;

More alternatively:

- 10. to provide a declaratory judgment that ING is acting wrongfully with regard to Milieudefensie if ING:
 - (i) does not reduce or bring about the reduction of the annual greenhouse gas emissions (Scope 1, 2 and 3) of the ING Group in an absolute sense relative to the level of the base year 2019, in accordance with the goal of limiting global warming to 1.5°C; and
 - (ii) does not reduce or bring about the reduction of the weighted average physical emission intensities of the activities of the ING Group in the (sub-)sectors set out in the demand 2, per (sub-)sector, in accordance with the goal of limiting global warming to 1.5°C;

Both primarily and (more) alternatively:

- 11. to order that ING pays the costs of these proceedings, including the salary of legal counsel and the disbursements, to be increased by the costs arising after judgment pursuant to the fixed costs rate, to be paid within fourteen days after the date of the judgment, and – in case payment of the costs (including the costs arising after judgment) is not made within the stipulated time period – to be increased by the statutory interest over the costs (including the costs arising after judgment) to be calculated as of the aforementioned time period for payment;
- 12. or to make such decision as the Court deems just, including the awarding of lower reduction percentages or higher weighted average physical emission intensities than demanded in this relief sought, the awarding of a part of the alternative demands formulated in this relief sought, the adjustment of a reference year for the reduction of absolute emissions to be realised or the awarding of the claims as a substantial best effort obligation.

* The tables presented here (including the absolute reduction percentages set out in the table) were prepared by Milieudefensie based on the Extended Dataset belonging with the World Energy Outlook 2023, the World Energy Outlook Special Report The Oil and Gas Industry in Net Zero Transitions 2023, and the Net Zero Roadmap 2023 Update of the International Energy Agency.

Costs of writ:

The aforementioned judicial officer

This case is being handled by R.H.J. Cox, LL.M (r.cox@paulussen.nl) and P. Heemskerk, LL.M (p.heemskerk@paulussen.nl) of Paulussen Advocaten N.V. in Maastricht (2878323)

Annex A: list of exhibits with the summons of 28 March 2025

MILIEUDEFENSIE / ING GROUP N.V. & ING BANK N.V.

Exhibit MD-	001	<p>IPCC 2023, AR6, SYR</p> <p>IPCC, 2023: <i>Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change</i> [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, 184 pp., doi: 10.59327/IPCC/AR6-9789291691647.</p> <p>Online: https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf</p>
Exhibit MD-	002	<p>European Commission JRC 2024, 'GHG emissions of all world countries' (selected pages)</p> <p>European Commission, Joint Research Centre, Crippa, M., Guizzardi, D., Pagani, F., Banja, M., Muntean, M., Schaaf, E., Monforti-Ferrario, F., Becker, W.E., Quadrelli, R., Risquez Martin, A., Taghavi-Moharamli, P., Köykkä, J., Grassi, G., Rossi, S., Melo, J., Oom, D., Branco, A., San-Miguel, J., Manca, G., Pisoni, E., Vignati, E. and Pekar, F., <i>GHG emissions of all world countries</i>, Publications Office of the European Union, Luxembourg, 2024, https://data.europa.eu/doi/10.2760/4002897, JRC138862.</p> <p>Online: https://edgar.jrc.ec.europa.eu/booklet/GHG emissions of all world countries booklet 2024report.pdf</p>
Exhibit MD-	003	<p>Milieudefensie 2006, 'Investing in climate change: the role of Dutch banks'</p> <p>D. Siemelink (Dutch Sustainability Research), <i>Investing in climate change: the role of Dutch banks</i>, Amsterdam: Milieudefensie 2006</p> <p>Online: https://www.banktrack.org/download/investing_in_climate_change_the_role_of_dutch_banks/2_rapport_investing_in_climate_change.pdf</p>
Exhibit MD-	004	<p>ING Annual Report 2024</p> <p>ING Group N.V., <i>ING Group Annual Report 2024</i>, Amsterdam: ING Group N.V. 2025</p> <p>Online: https://www.ing.com/MediaEditPage/2024-ING-Groep-NV-annual-report.htm</p>
Exhibit MD-	005	<p>ING Climate Report 2024</p> <p>ING Group N.V., <i>Climate Progress Update 2024</i>, Amsterdam: ING Group N.V. 2024</p> <p>Online: https://www.ingwb.com/binaries/content/assets/insights/news/ing-climate-progress-update-2024.pdf</p>
Exhibit MD-	006	<p>Forster et al. 2024, 'Indicators of Global Climate Change 2023: annual update of key indicators of the state of the climate system and human influence'</p> <p>Forster, P. M., Smith, C., Walsh, T., Lamb, W. F., Lamboll, R., Hall, B., Hauser, M., Ribes,</p>

		<p>A., Rosen, D., Gillett, N. P., Palmer, M. D., Rogelj, J., von Schuckmann, K., Trewin, B., Allen, M., Andrew, R., Betts, R. A., Borger, A., Boyer, T., Broersma, J. A., Buontempo, C., Burgess, S., Cagnazzo, C., Cheng, L., Friedlingstein, P., Gettelman, A., Gütschow, J., Ishii, M., Jenkins, S., Lan, X., Morice, C., Mühle, J., Kadow, C., Kennedy, J., Killick, R. E., Krummel, P. B., Minx, J. C., Myhre, G., Naik, V., Peters, G. P., Pirani, A., Pongratz, J., Schleussner, C.-F., Seneviratne, S. I., Szopa, S., Thorne, P., Kovilakam, M. V. M., Majamäki, E., Jalkanen, J.-P., van Marle, M., Hoesly, R. M., Rohde, R., Schumacher, D., van der Werf, G., Vose, R., Zickfeld, K., Zhang, X., Masson-Delmotte, V., and Zhai, P.: <i>Indicators of Global Climate Change 2023: annual update of key indicators of the state of the climate system and human influence</i>, Earth Syst. Sci. Data, 16, 2625–2658, https://doi.org/10.5194/essd-16-2625-2024, 2024.</p> <p>Online: https://essd.copernicus.org/articles/16/2625/2024/essd-16-2625-2024.pdf</p>
Exhibit MD-	007	<p>Keulemans 2024, ‘De klimaatverandering versnelt’</p> <p>M. Keulemans, <i>De klimaatverandering versnelt: ‘Hiervan zou iedereen recht op in zijn stoel moeten zitten’</i>, Volkskrant 23 July 2024</p> <p>Online: https://www.volkskrant.nl/wetenschap/de-klimaatverandering-is-in-een-stroomversnelling-gekomen~bc4551ce/?referrer=https://www.google.com/</p>
Exhibit MD-	008	<p>Hansen et al. 2023, ‘Global warming in the pipeline’</p> <p>James E Hansen, Makiko Sato, Leon Simons, Larissa S Nazarenko, Isabelle Sangha, Pushker Kharecha, James C Zachos, Karina von Schuckmann, Norman G Loeb, Matthew B Osman, Qinjian Jin, George Tselioudis, Eunbi Jeong, Andrew Lacis, Reto Ruedy, Gary Russell, Junji Cao, Jing Li, <i>Global warming in the pipeline</i>, Oxford Open Climate Change, Volume 3, Issue 1, 2023, kgad008, https://doi.org/10.1093/oxfclm/kgad008</p> <p>Online: https://academic.oup.com/oocc/article-pdf/3/1/kgad008/52763128/kgad008.pdf</p>
Exhibit MD-	009	<p>PBL 2024, ‘Klimaatrisico’s in Nederland’</p> <p>Frank van Gaalen, Ron Franken, Frédérique Kirkels, Samira I. Ibrahim, Jelle van Minnen, Arno Bouwman, Marijke Vonk (Planbureau voor de Leefomgeving), <i>Klimaatrisico’s in Nederland. De Huidige stand van zaken</i>, Den Haag: Planbureau voor de Leefomgeving 2024</p> <p>Online: https://open.overheid.nl/documenten/dpc-b91d9ac6166d24fb9c5470fb43be454cd5ae9451/pdf</p>
Exhibit MD-	010	<p>IPCC 2021, AR6, WGI, TS</p> <p>Arias, P.A., N. Bellouin, E. Coppola, R.G. Jones, G. Krinner, J. Marotzke, V. Naik, M.D. Palmer, G.-K. Plattner, J. Rogelj, M. Rojas, J. Sillmann, T. Storelvmo, P.W. Thorne, B. Trewin, K. Achuta Rao, B. Adhikary, R.P. Allan, K. Armour, G. Bala, R. Barimalala, S. Berger, J.G. Canadell, C. Cassou, A. Cherchi, W. Collins, W.D. Collins, S.L. Connors, S. Corti, F. Cruz, F.J. Dentener, C. Deroczynski, A. Di Luca, A. Diongue Niang, F.J. Doblas-Reyes, A. Dosio, H. Douville, F. Engelbrecht, V. Eyring, E. Fischer, P. Forster, B. Fox-Kemper, J.S. Fuglestad, J.C. Fyfe, N.P. Gillett, L. Goldfarb, I. Gorodetskaya, J.M. Gutierrez, R. Hamdi, E. Hawkins, H.T. Hewitt, P. Hope, A.S. Islam, C. Jones, D.S. Kaufman, R.E. Kopp, Y. Kosaka, J. Kossin, S. Krakovska, J.-Y. Lee, J. Li, T. Mauritsen, T.K. Maycock, M. Meinshausen, S.-K. Min, P.M.S. Monteiro, T. Ngo-Duc, F. Otto, I. Pinto, A. Pirani, K. Raghavan, R. Ranasinghe, A.C. Ruane, L. Ruiz, J.-B. Sallée, B.H. Samset,</p>

S. Sathyendranath, S.I. Seneviratne, A.A. Sörensson, S. Szopa, I. Takayabu, A.-M. Tréguier, B. van den Hurk, R. Vautard, K. von Schuckmann, S. Zaehle, X. Zhang, and K. Zickfeld, 2021: Technical Summary. In *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 33–144. doi:10.1017/9781009157896.002.

Online:

https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_TS.pdf

Exhibit MD- 011 IPCC 2021, AR6, WGI, SPM

IPCC, 2021: Summary for Policymakers. In: *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 3–32. doi:10.1017/9781009157896.001.

Online:

https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf

Exhibit MD- 012 Rounce et al. 2023, 'Global glacier change in the 21st century: Every increase in temperature matters'

David R. Rounce et al., *Global glacier change in the 21st century: Every increase in temperature matters*, *Science* 379, p. 78-83 (2023) doi:10.1126/science.abo1324

Online:

<https://www.science.org/doi/10.1126/science.abo1324>

Exhibit MD- 013 UNDP 2024, 'Peoples' Climate Vote 2024' (Executive Summary)

United Nations Development Programme, *Peoples' Climate Vote 2024: Results*, New York: UNDP 2024

Online:

<https://www.undp.org/sites/g/files/zskgke326/files/2024-09/undp-oxford-peoples-climate-vote-2024-v2.pdf>

Exhibit MD- 014 OECD 2022, 'Climate Tipping Points: Insights for Effective Policy Action'

OECD (2022), *Climate Tipping Points: Insights for Effective Policy Action*, OECD Publishing, Paris, <https://doi.org/10.1787/abc5a69e-en>.

Online:

https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/12/climate-tipping-points_9994de90/abc5a69e-en.pdf

Exhibit MD- 015 Naughten et al. 2023, 'Unavoidable future increase in West Antarctic ice-shelf melting over the twenty-first century'

Naughten, K.A., Holland, P.R. & De Rydt, J. *Unavoidable future increase in West Antarctic ice-shelf melting over the twenty-first century*. *Nat. Clim. Chang.* 13, 1222–

		1228 (2023). https://doi.org/10.1038/s41558-023-01818-x Online: https://www.nature.com/articles/s41558-023-01818-x.pdf
Exhibit MD-	016	ICCI 2023, 'State of the Cryosphere 2023' ICCI, 2023. <i>State of the Cryosphere 2023 – Two Degrees is Too High</i> . International Cryosphere Climate Initiative (ICCI), Stockholm, Sweden. 62 pp. Online: https://drive.google.com/file/d/1QOqYHI0ezrmMCUrmCDV03rF-1aIYE6VB/view?usp=sharing
Exhibit MD-	017	UNFCCC, 'Status of Ratification of the Convention' (print-out of website 27 February 2025) Online: https://unfccc.int/process-and-meetings/the-convention/status-of-ratification-of-the-convention
Exhibit MD-	018	UNEP 2023, 'Emissions Gap Report 2023' United Nations Environment Programme (2023). <i>Emissions Gap Report 2023: Broken Record – Temperatures hit new highs, yet world fails to cut emissions (again)</i> . Nairobi. https://doi.org/10.59117/20.500.11822/43922 Online: https://wedocs.unep.org/bitstream/handle/20.500.11822/43922/EGR2023.pdf?sequence=3&isAllowed=y
Exhibit MD-	019	Milieudefensie's letter to ING of 19 January 2024 Online: https://milieudefensie.nl/actueel/de-brief-van-milieudefensie-aan-ing/@@download/file/De%20offici%C3%ABle%20brief%20van%20Milieudefensie%20aan%20ING.pdf
Exhibit MD-	020	Milieudefensie's letter to ING of 16 January 2025 Online: https://milieudefensie.nl/250115-brief-met-eisenupdate-ing-nl/@@download/file/250115%20Brief%20met%20eisenupdate%20ING%20NL_website-1.pdf
Exhibit MD-	021	ING's letter to Milieudefensie of 4 February 2025 Online: https://www.ing.com/MediaEditPage/ING-brief-Milieudefensie-4-feb-2025.htm
Exhibit MD-	022	CoC extract Milieudefensie Extract from the business register of the Chamber of Commerce relating to Vereniging Milieudefensie of 25 March 2025.
Exhibit MD-	023	Milieudefensie Annual Report 2023 Vereniging Milieudefensie, <i>Jaarverslag 2023</i> , Amsterdam: Vereniging Milieudefensie

	2024	
	Online:	https://milieudefensie.nl/over-ons/jaarverslag-inclusief-jaarrekening-2023.pdf/@@download/file/Jaarverslag%20inclusief%20jaarrekening%202023.pdf
Exhibit MD-	024	<p>Statuten Milieudefensie</p> <p>Full text of the articles of association of Vereniging Milieudefensie as these read after the last deed amending the articles of association (dated 27 December 2023)</p> <p>Online:</p> <p>https://milieudefensie.nl/actueel/statuten-juli-2022/@@download/file/Statuten%20Vereniging%20Milieudefensie%2027-12-23.pdf</p>
Exhibit MD-	025	<p>Milieudefensie 1988, 'Het gat in de Ozonlaag' (selected pages)</p> <p>Milieudefensie, <i>Het gat in de Ozonlaag – broeikaseffect – zure regen: wat hangt ons boven het hoofd</i>, Amsterdam: Milieudefensie 1988</p>
Exhibit MD-	026	<p>Milieudefensie 1986, 'Schoonstroomkrant'</p> <p>Milieudefensie, <i>Schoonstroomkrant</i>, Amsterdam: Milieudefensie 1986</p>
Exhibit MD-	027	<p>Albers et al. 1990, 'Het Broeikaseffect, erop of eronder' (print-out from website)</p> <p>R. Albers et al. (ed.) <i>Het Broeikaseffect, erop of eronder, nationale verkenning aanpak CO2-probleem</i>, Amsterdam: Milieudefensie en Stichting Natuur en Milieu 1990 (print-out from website felnet.eu)</p> <p>Online:</p> <p>https://catalog.felnet.eu/Record/dc70c397-56a7-4e78-ac39-f6be2045b8bd</p>
Exhibit MD-	028	<p>Calmthout 1990, 'Het Broeikas Effect' (selected pages)</p> <p>M. Calmthout, <i>Het Broeikas Effect, Inleiding in de problematiek van het Broeikaseffect</i>, Amsterdam: Milieudefensie 1990</p>
Exhibit MD-	029	<p>Milieudefensie Annual Report 1990 (selected pages)</p> <p>Vereniging Milieudefensie, <i>Jaarverslag 1990</i>, Amsterdam: Vereniging Milieudefensie 1991</p>
Exhibit MD-	030	<p>Milieudefensie Annual Report 1991 (selected pages)</p> <p>Vereniging Milieudefensie, <i>Jaarverslag 1991</i>, Amsterdam: Vereniging Milieudefensie 1992</p>
Exhibit MD-	031	<p>Milieudefensie Annual Report 1994</p> <p>Vereniging Milieudefensie, <i>Jaarverslag 1994</i>, Amsterdam: Vereniging Milieudefensie 1995</p>
Exhibit MD-	032	<p>Buitenkamp 1992, 'Duurzame Ontwikkeling in Nederland en Europa' (selected pages)</p> <p>M. Buitenkamp, <i>Duurzame Ontwikkeling in Nederland en Europa</i>, 1992</p>

Exhibit MD-	033	Milieudefensie 2006, 'Algemeen Beleidsplan 2006-2010: Uitzien naar 2010' (selected pages) Milieudefensie, <i>Algemeen Beleidsplan 2006-2010: Uitzien naar 2010</i> , Amsterdam: Milieudefensie 2006
Exhibit MD-	034	Milieudefensie Annual Report 2006 (foreword and summary) Vereniging Milieudefensie, <i>Jaarverslag 2006</i> , Amsterdam: Vereniging Milieudefensie 2007
Exhibit MD-	035	Milieudefensie Annual Report 2007 (foreword and chapter 'Klimaat en Energie') Vereniging Milieudefensie, <i>Jaarverslag 2007</i> , Amsterdam: Vereniging Milieudefensie 2008
Exhibit MD-	036	Milieudefensie 2010, 'Algemeen Beleidsplan 2010-2015: Met Draagvlak naar Beweging' (selected pages) Milieudefensie, <i>Algemeen Beleidsplan 2010-2015: Met Draagvlak naar Beweging</i> , Amsterdam: Milieudefensie 2010
Exhibit MD-	037	Geurts et al. 2009, 'Versnelde Ontwikkeling van Duurzame energie in Nederland' (selected pages) F. Geurts and M. Rathmann (Ecofys; on instruction of Milieudefensie), <i>Versnelde Ontwikkeling van Duurzame Energie in Nederland, de rol van zon-PV & een verbeterd SDE Systeem</i> , Utrecht: Ecofys 2009
Exhibit MD-	038	Milieudefensie 2016, 'Algemeen Beleidsplan 2016-2025: Samenwerken aan een Eerlijke Transitie' (selected pages) Milieudefensie, <i>Algemeen Beleidsplan 2016-2025: Samenwerken aan een Eerlijke Transitie</i> , Amsterdam: Milieudefensie 2016
Exhibit MD-	039	Lenton et al. 2023, 'The Global Tipping Points Report 2023' (selected pages) T. M. Lenton, D.I. Armstrong McKay, S. Loriani, J.F. Abrams, S.J. Lade, J.F. Donges, M. Milkoreit, T. Powell, S.R. Smith, C. Zimm, J.E. Buxton, E. Bailey, L. Laybourn, A. Ghadiali, J.G. Dyke (eds), 2023, <i>The Global Tipping Points Report 2023</i> . University of Exeter, Exeter, UK Online: https://report-2023.global-tipping-points.org/download/4608/
Exhibit MD-	040	ING 2024, 'Mogelijke klimaatzaak' (print-out from website 27 February 2024) Online: https://web.archive.org/web/20250130145403/https://www.ing.com/Sustainability/Climate-action/Mogelijke-klimaatzaak.htm
Exhibit MD-	041	ING's letter to Milieudefensie of 13 February 2024

		Online: https://www.ing.com/MediaEditPage/ING-brief-aan-Friends-of-the-Earth-Dutch.htm
Exhibit MD-	042	Statuten ING Groep N.V. Full text of the articles of association of ING Groep N.V. as these read after the last deed amendment of the articles of association (dated 12 May 2022)
Exhibit MD-	043	Statuten ING Groep N.V. Full text of the articles of association of ING Bank N.V. as these read after the last deed amendment of the articles of association (dated 29 June 2021)
Exhibit MD-	044	KvK-uittreksel ING Groep N.V. Extract from the business register of the Chamber of Commerce relating to ING Groep N.V. of 27 February 2025
Exhibit MD-	045	KvK-uittreksel ING Groep N.V. (selected pages) Extract from the business register of the Chamber of Commerce relating to ING Bank N.V. of 27 February 2025
Exhibit MD-	046	Charter of the Management Board of ING Groep N.V. and ING Bank N.V. Online: https://www.ing.com/MediaEditPage/ING-Management-Board-Charter-31-December-2023.htm
Exhibit MD-	047	ING's CDP report 2023 (selected pages)
Exhibit MD-	048	PBL 2013, 'De achtergrond van het klimaatprobleem' B. Strengers, R. van Dorland and L. Meyer, <i>PBL-Notitie: De achtergrond van het klimaatprobleem</i> , Den Haag: PBL 2013 Online: https://www.pbl.nl/downloads/pbl-2013-de-achtergrond-van-het-klimaatprobleempdf
Exhibit MD-	049	IPCC 2022, AR6, WGIII, SPM IPCC, 2022: Summary for Policymakers [P.R. Shukla, J. Skea, A. Reisinger, R. Slade, R. Fradera, M. Pathak, A. Al Khourdajie, M. Belkacemi, R. van Diemen, A. Hasija, G. Lisboa, S. Luz, J. Malley, D. McCollum, S. Some, P. Vyas, (eds.)]. In: <i>Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change</i> [P.R. Shukla, J. Skea, R. Slade, A. Al Khourdajie, R. van Diemen, D. McCollum, M. Pathak, S. Some, P. Vyas, R. Fradera, M. Belkacemi, A. Hasija, G. Lisboa, S. Luz, J. Malley, (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA. doi: 10.1017/9781009157926.001. Online: https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf
Exhibit MD-	050	IPCC 2022, AR6, WGIII, TS

		<p>M. Pathak, R. Slade, P.R. Shukla, J. Skea, R. Pichs-Madruga, D. Ürge-Vorsatz, 2022: Technical Summary. In: Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [P.R. Shukla, J. Skea, R. Slade, A. Al Khourdajie, R. van Diemen, D. McCollum, M. Pathak, S. Some, P. Vyas, R. Fradera, M. Belkacemi, A. Hasija, G. Lisboa, S. Luz, J. Malley, (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA. doi: 10.1017/9781009157926.002.</p> <p>Online: https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_Technical_Summary.pdf</p>
Exhibit MD-	051	<p>IEA 2021, 'Methane Tracker 2021, Methane and climate change' (selected pages, print-out from website 13 March 2025)</p> <p>Online: https://www.iea.org/reports/methane-tracker-2021/methane-and-climate-change</p>
Exhibit MD-	052	<p>US EPA, 'The Importance of Methane' (print-out from website 26 February 2025)</p> <p>Online: https://www.epa.gov/gmi/importance-methane</p>
Exhibit MD-	053	<p>NOAA 2024, 'Climate Change: Atmospheric Carbon Dioxide' (print-out from website 26 February 2025)</p> <p>Print-out from a website article of the National Oceanic & Atmospheric Administration (NOAA; www.climate.gov) dated 9 April 2024, with a graph based on data of Lüthi, D., M. Le Floch, B. Bereiter, T. Blunier, J.-M. Barnola, U. Siegenthaler, D. Raynaud, J. Jouzel, H. Fischer, K. Kawamura, and T.F. Stocker. (2008). <i>High-resolution carbon dioxide concentration record 650,000-800,000 years before present</i>. Nature, Vol. 453, pp. 379-382. doi:10.1038/nature06949.</p> <p>Online: https://www.climate.gov/news-features/understanding-climate/climate-change-atmospheric-carbon-dioxide</p>
Exhibit MD-	054	<p>Barras 2015, 'When global warming made our World super-hot' (print-out from website)</p>
Exhibit MD-	055	<p>Ciu et al. 2011, 'Slow release of fossil carbon during the Palaeocene-Eocene Thermal Maximum'</p> <p>Cui, Y., Kump, L., Ridgwell, A. et al. <i>Slow release of fossil carbon during the Palaeocene-Eocene Thermal Maximum</i>. Nature Geosci 4, 481-485 (2011). https://doi.org/10.1038/ngeo1179</p> <p>Online: https://www.nature.com/articles/ngeo1179</p>
Exhibit MD-	056	<p>IPCC 2022, AR6, WGII, SPM</p> <p>IPCC, 2022: Summary for Policymakers [H.-O. Pörtner, D.C. Roberts, E.S. Poloczanska, K. Mintenbeck, M. Tignor, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem (eds.)]. In: Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor,</p>

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