

THE SUMMONS IN MILIEUDEFENSIE'S CLIMATE CASE AGAINST ING: SHORT SUMMARY

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ING received a summons on 28 March. In the summons, *Paulussen Advocaten* argues on behalf of Milieudefensie that ING is jeopardising the climate goals of the Paris Agreement. In doing so, ING is in breach of its duty of care to counter dangerous climate change and protect human rights. ING is consequently acting contrary to the law.

MORE THAN 1.5 DEGREES WARMING IS CATASTROPHIC

The Earth is heating up at an astonishing rate. Since the beginning of the industrial revolution the concentration of greenhouse gases, like CO₂, have greatly increased in the atmosphere, in particular due to the **burning of fossil fuels**. Scientists have known for over 100 years that extra CO₂ causes additional global warming, and climate scientists have been warning for decades of the far-reaching consequences of global warming.

In 2018, the UN climate panel (IPCC) published a report indicating that an increase of more than 1.5°C already entails serious risk worldwide. In the meantime, the average **temperature has risen by 1.3 degrees**. Already at this moment, global warming is creating a serious danger to the lives and health of humans and ecosystems. At current greenhouse gas emission levels we are even at risk of reaching a temperature increase of 3°C, which would have catastrophic consequences for the planet.

Climate change threatens unique ecosystems and biodiversity and causes extreme weather conditions that lead to water scarcity and food shortages, endangering the lives of millions, in particular communities in the **Global South**. Once **tipping points** have been reached, the warming can accelerate

uncontrollably. The consequences of climate change are already noticeable in the Netherlands as well. The heatwave in July 2019 led to four hundred extra deaths, the flooding in Limburg resulted in more than 430 million euros of damage, the Wadden Sea reached a temperature of 21°C for the first time. Climate change will also threaten our food security and economy, and will lead to global instability and refugee flows.

WHAT NEEDS TO HAPPEN?

In order to prevent dangerous climate change, global warming must in any event be kept well under 2°C and preferably below 1.5°C, as was determined in 2015 in the Paris Agreement. In 2021, world leaders set the **danger limit at 1.5°C** in the Glasgow Climate Pact. To this end, reduction pathways were established: in 2030 greenhouse gas emissions must have fallen by 43% worldwide relative to 2019 and CO₂ emissions by 48%. CO₂ emissions must be net zero in 2050. Even if these reduction pathways are followed, there is still a 50% chance that the temperature will exceed 1.5°C by the end of this century. These reduction pathways are therefore the **absolute lower limit**.

BANKS AS CRUCIAL KEY FIGURES

Banks have considerable power in the economy because they can determine which companies or sectors will or will not be financed. This means that banks play a key role in the greenhouse gas emissions of the activities that they finance. A bank can choose to invest in sustainable projects or to see to a **fast phase-out of investments in fossil fuels**. On both fronts, however, banks are not taking their responsibility, or insufficiently so.

The international community has made it clear (inter alia in the UN Race to Zero, the UN Guiding Principles and the OECD Guidelines) that non-state actors, including banks, play a crucial role in ensuring that global warming is limited to 1.5°C. This absolutely applies to an important systemic bank like ING.

WHAT MUST ING DO?

ING too will have to reduce its emissions in 2030, 2035, 2040 and 2050 to such extent that they are in line with the global reduction pathway for a 50% chance of 1.5°C as referred to above. There are no conceivable reasons why a bank like ING should do *less* than is globally necessary.

- **Fair share.** Indeed, the reduction targets of financial institutions must be a fair share of the global halving of emissions, a point emphasised by among others the UN Race to Zero and the UN expert report on the emission commitments of non-state actors. Financial institutions in developed countries, like ING, must, in other words, do more than the global average to reduce their emissions, in view of their **greater responsibility**.
- **Absolute targets and intensity targets.** ING must formulate absolute targets, not only intensity targets. The latter targets are only concerned with reducing (making more efficient) emissions per unit of product.
- **Targets across the entire portfolio and sectoral reduction targets.** In addition to formulating targets per sector, ING must also establish targets across its entire portfolio. For example, if ING were to achieve reduction targets by ceasing to finance only one part of its portfolio, while failing to take action in other sectors, this would be an ineffective policy.
- **New fossil fuel projects.** ING must stop financing companies that are still developing new fossil fuel projects. New fossil fuel projects result in an even larger 'carbon lock-in', whereby the demand for fossil fuels is maintained and the transition to sustainable alternatives is hindered.
- **Financed and facilitated emissions.** ING has both financed and facilitated emissions, that is: emissions connected to loans provided by the bank, and emissions connected with the services of the bank in capital market transactions, such as underwriting shares and bonds. It is necessary to set reduction targets for both categories.

WHAT DOES ING DO?

- ING is the biggest bank in the Netherlands, and one of the 29 globally important systemic banks. According to ING itself, ING's emissions in 2024 were **262 megatons**, which is comparable to more than 1.5 times the emissions of all citizens and companies in the Netherlands. The bank has **not set any reduction targets for over 70% of its emissions**.
- At this point in time ING **does not have any absolute reduction targets** – indeed, the bank has actively resisted setting targets. Because ING is focusing on intensity targets and not on absolute targets, strictly speaking it is even possible that the bank's absolute emissions will increase.
- ING still has 17,1 billion euros in outstanding loans to oil and gas companies, of which the majority are still **developing new fossil projects**, and another 13,4 billion euro to fossil fuel power generation. Together this adds up to over **30 billion** euros.
- ING has announced it will cease financing "*pure-play upstream oil & gas companies*". The greater part of the new oil and gas projects, however, is being developed by oil and gas companies that, in addition to drilling for oil, are also engaged in activities like trading oil (think of Shell or ExxonMobil), and ING will simply continue to finance these companies.
- ING has also announced it will cease 'project financing' for new oil and gas fields, but it will continue providing general company loans and capital market services for companies that are developing such projects.
- ING does not report on **facilitated emissions**, including in its last annual report, even though for years ING has been promising to do so by 2025 at the latest. ING does not have any emissions reduction targets for capital market financing. According to Follow the Money, ING has helped fossil fuel companies gain access to EUR 83.2 billion since the Paris Agreement through this route.

ING KNEW

Under Dutch law, causing a great danger, despite measures being available to prevent that danger, is not allowed. This is called **unlawful hazardous negligence** (Article 6:162 of the Dutch Civil Code). For there to be unlawful hazardous negligence, certain criteria must be satisfied: for example, the danger must be sufficiently great (which is clear from the above); ING must have had the capacity to have acted differently (clarified above); and ING must have been aware of the danger.

ING has known about the severity of the climate crisis since 2007, the responsibility of banks like ING, the need for phasing out fossil fuels, and the options available to ING to reduce its emissions. ING has therefore **knowingly** not reduced its emissions, and has in fact chosen to finance the fossil industry to such an extent that ING has risen in the ranks of the largest fossil fuel banks in the world.

ING MUST RESPECT HUMAN RIGHTS

ING's duty of care includes respecting human rights. This particularly applies to the **right to life**, the **right to a family life**, as well as the **right to a clean, healthy and sustainable living environment**, which includes the right to a safe climate. Dangerous climate change harms many human rights, and will continue harming them. For that reason, courts all over the world have determined that human rights also provide protection against dangerous climate change. For example, the Dutch courts in the Urgenda case and the Shell case. Companies, like ING, are therefore also obliged to reduce their emissions and to contribute to protecting human rights. This obligation applies to ING's total impact: both for its direct emissions (Scope 1), and its indirect emissions (Scope 2 and 3).

WHY A JUDGMENT IS EFFECTIVE

ING might argue that Milieudefensie's demands are not effective, for example because ING's emissions are only a part of global emissions, or that other parties will take over ING's financing. High courts, both in the Netherlands and abroad, have repeatedly rejected this defence as they did in the Urgenda case, the F35 case, the German Neubauer and Belgian climate cases, and

the KlimaSeniorinnen case before the European Court of Human Rights. In addition, a judgment will send a broader message: that banks must also take responsibility. In this sense a judgment will therefore cause a **'flywheel effect'**.

THE DEMANDS OF MILIEUDEFENSIE

In short (the full package of demands can be found in Chapter XX of the summons), Milieudefensie is seeking the following:

1. ING is to halve its total emissions in 2030 and continue reducing its emissions in the years thereafter in line with science.
2. ING is to reduce its emissions in 8 polluting sectors that ING finances, such as steel and aviation, in line with the reduction pathways of the NZE scenario of the International Energy Agency.
3. ING is to stop financing companies that are developing new oil and gas projects.
4. ING is to ask that all large companies that ING finances provide a good climate plan.