

BY REGISTERED MAIL TO:

ING Group N.V.

attn. Steven van Rijswijk
Bijlmerdreef 106
1102 CT Amsterdam
the Netherlands

and

ING Bank N.V.

attn. Steven van Rijswijk
Bijlmerdreef 106
1102 CT Amsterdam
the Netherlands

Subject: notice of liability for unlawful climate policy

January 19th, 2024

Dear Steven van Rijswijk,

The association *Milieudefensie* (Friends of the Earth - Netherlands) is addressing this letter to you as the Chairman of the Board of ING Group N.V. and ING Bank N.V. (hereinafter collectively: 'ING').¹

Milieudefensie has established that ING is in breach of its legal societal standard of care by contributing to dangerous climate change.² ING's current climate policy is flawed and leads to unacceptable greenhouse gas emissions. ING is consequently undermining achieving the 1.5°C target required by the Paris Agreement. This poses a great danger to society, the environment and nature. It also leads to human rights violations in the Netherlands and in the rest of the world, for current and future generations.

In this letter Milieudefensie explains that ING's current policy is unlawful with regard to the public interest that Milieudefensie seeks to protect. Milieudefensie holds ING liable for this and requests that it eradicate this unlawful situation urgently. ING must see to it that ING's climate policy, financing and services be brought in accordance with the 1.5°C target of the Paris Agreement.

1 | **ING Group N.V.** is a listed company and heads a group of companies that engages in banking activities all over the world, with **ING Bank N.V.** as the most important bank entity (of which ING Group N.V. is the direct and sole shareholder). In this letter we refer to this group (including all subsidiaries consolidated in the ING Group N.V. financial statements, other group companies and other legal entities, including all their branch offices and representative offices, inside and outside of the Netherlands) as the 'ING Group'. ING Group N.V. or ING Bank N.V. must be deemed the legal entity that determines the climate policy of the ING Group and also bears the legal responsibility for said climate policy. As public documents do not clearly indicate whether such legal responsibility only lies with one of these two legal entities (and if so, which one) or with both, this letter and the notice of liability encompassed in this letter are addressed to both ING Group N.V. and ING Bank N.V.

2 | In this letter, 'dangerous climate change' means climate change exceeding the 1.5°C limit. The term's origin is in Article 2 of the UN Climate Convention of 1992, where mention is made of preventing 'dangerous anthropogenic interference with the climate system'. If the warming of the earth exceeds the 1.5°C agreed in the Paris Agreement, the international consensus is that human rights will be breached on a large scale and that human lives will be at risk on a large scale. Obviously, climate change is already having a large impact on human rights (see section 1).

In this letter we will explain and present the basis for our claims. We will explain the legal obligations and ING's breach of these obligations.³

1. Introduction

'The era of global warming has ended; the era of global boiling has arrived.'⁴ These are the words of António Guterres, Secretary-General of the United Nations, on 27 July 2023. Guterres is correct, 2023 was a year with heat records across the planet and other extreme circumstances such as severe flooding and destructive forest fires. Last September, Storm Daniel left a trail of destruction, with at least 5,200 dead in Libya.⁵ These increasing weather extremes are not a coincidence. The risk of storms like Daniel will increase significantly due to the climate crisis.⁶ It is a sign climate change is not a problem for the future, but is a threat to life right now.

Guterres continued his speech, stating: 'The air is unbreathable. The heat is unbearable. And the level of fossil-fuel profits and climate inaction is unacceptable.'⁷ This lack of climate action also characterises the financial sector. The financial sector is still financing the climate crisis, resulting in an increase in greenhouse gas emissions. ING is no exception. In 2022, the bank was responsible for at least 61 megatons of greenhouse gases.⁸ ING consequently has the largest emissions of all Dutch financial institutions⁹ and emits more than countries like Sweden, Switzerland, Ghana and Cambodia.¹⁰ ING not only has substantial emissions, but also a greater emissions intensity than most other Dutch financial institutions, i.e.: at ING, more emissions are released per financed euro.¹¹

3 | The terms we use in this letter are defined in the technical explanation of the measures demanded by Milieudefensie (section 2.2), unless another meaning explicitly follows from the context in which those terms were used.

4 | António Guterres, 'Press Conference by Secretary-General António Guterres at United Nations Headquarters' (27 July 2023), <https://press.un.org/en/2023/sgsm21893.doc.htm>.

5 | NOS news, 'Zeker 5200 doden en duizenden vermisten in Libie na storm Daniel [At least 5200 dead and thousands missing in Libya after Storm Daniel]' (12 September 2023), <https://nos.nl/collectie/13950/artikel/2490194-zeker-5200-doden-en-duizenden-vermisten-in-libie-na-storm-daniel>.

6 | IPCC, 'Climate Change 2023: Synthesis Report. Summary for Policymakers' (2023), 14, https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf.

7 | António Guterres, 'Press Conference by Secretary-General António Guterres at United Nations Headquarters' (27 July 2023), <https://press.un.org/en/2023/sgsm21893.doc.htm>.

8 | ING, 'Climate Report 2022' (2023), 85. Note: ING's actual emissions are many times higher, see section 7.1.

9 | The emissions that ING has reported for 2022 are 61.4 megatons. We explain in section 7.1 that ING's actual emissions are much greater. The emissions reported by other financial institutions in the Netherlands are lower than those reported by ING. For example, the most recent emissions reported by Rabobank (for 2021) are 51.5 megatons, the emissions of ABN Amro for 2022 are 17.8 megatons, the emissions of Aegon for 2022 are 10.2 megatons, and the emissions reported by ABP—the biggest pension fund in Europe—are 8.2 megatons. All other financial institutions of the Netherlands do not report on the emissions resulting from their financing, or report fewer than 10 megatons.

10 | ING's emissions were 61.4 megatons at the end of 2022, see ING, 'Climate Report 2022' (2023), 85. In reality, ING's emissions are much higher, see section 7.1. The emissions of Sweden were 60.6 megatons, the emissions of Switzerland (and Liechtenstein) were 45.6 megatons, of Ghana 53 megatons and the emissions of Cambodia were 50 megatons in 2022, see Emission Database for Global Atmospheric Research (EDGAR) of the European Commission, 'GHG Emissions of All World Countries 2023' (2023), 43ff, https://edgar.jrc.ec.europa.eu/report_2023.

11 | We compared the reported economic emissions intensity of ING with that of all other Dutch financial institutions. Only the reported emissions intensities of Rabobank, Aegon and NBIC are greater than those of ING.

Although on paper ING has numerous green intentions, in practice it is short of the mark. ING's climate policy is miles away from what is necessary to achieve the 1.5°C target. In addition to the substantial emissions of ING, this also becomes painfully clear when we zoom in on ING's fossil fuel portfolio. ING still finances companies that start new oil, gas, and coal projects, while the science clearly states that starting new fossil projects is incompatible with limiting climate change to 1.5°C.¹² There is no doubt that the use of fossil fuels must be phased out as quickly as possible to prevent dangerous climate change.¹³ Nevertheless, the bank continues to provide billions in financing to this sector. Even the revised climate policies that ING announced in December 2023, are merely a small step and remain insufficient. In 2022 ING had over 15 billion euros in loans to the oil and gas industry outstanding, of which some 5 billion in new loans were issued in that year.¹⁴ In addition, research of Investico and Follow The Money shows that ING has supported the fossil fuel industry since the Paris Agreement through the issue of 83.2 billion euros in bonds.¹⁵

The dangerous climate change that ING contributes to leads to large-scale human rights violations for current and future generations all over the world, including in the Netherlands. In order to prevent dangerous climate change as much as possible, it is essential that ING takes responsibility and takes serious steps to get its climate policy in line with the 1.5°C target of the Paris Agreement.

ING has been aware of the seriousness of the climate crisis since at least 2007 (see section 4). You previously described the situation exactly as it is: 'flooding, widespread heatwaves and forest fires across the globe all signalled an existential crisis that cannot be ignored.'¹⁶ Climate change is 'threatening both our planet and its people.'¹⁷ Despite all internal knowledge, ING still continues to finance and support clients and activities that cause this crisis to get worse by the day.

Milieudefensie has often reminded ING of the responsibility that ING has in this respect and has made attempts in numerous ways to have the company change direction: through the publication of reports, through discussions and through actions right outside

12 | IEA, 'Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach – Analysis' (September 2023), 15, <https://www.iea.org/reports/net-zero-roadmap-a-global-pathway-to-keep-the-15-0c-goal-in-reach>. The IPCC too says that new fossil fuel projects are not compatible with the 1.5°C-carbon budget: 'Projected cumulative future CO₂ emissions over the lifetime of existing and currently planned fossil fuel infrastructure without additional abatement exceed the total cumulative net CO₂ emissions in pathways that limit warming to 1.5°C (>50%) with no or limited overshoot. They are approximately equal to total cumulative net CO₂ emissions in pathways that limit warming to 2°C (>67%)'. IPCC, 'Climate Change 2022: Mitigation of Climate Change. Working Group III. Summary for Policymakers' (2022), 16, <https://www.ipcc.ch/report/ar6/wg3/>.

13 | UNFCCC, 'Technical dialogue of the first global stocktake. Synthesis report by the co-facilitators on the technical dialogue' UNFCCC/SB/2023/9 (8 September 2023), 21; Luis de Guindos, 'Need for speed on the Road to Paris,' ECB (6 September 2023), <https://www.ecb.europa.eu/press/blog/date/2023/html/ecb.blog230906~8ab6e40722.en.html>.

14 | Banktrack et al., 'Banking on Climate Chaos' (2023), 10-11; ING, 'ING Results Presentation 2023 Q1' (2023), 21, <https://www.ing.com/Investor-relations/Financial-performance/Quarterly-results/ING-Results-Presentation-1Q2023.htm>.

15 | Ties Joosten et al., 'ING Bank en ABN Amro helpen de fossiele industrie aan tientallen miljarden,' ['ING Bank and ABN Amro are helping the fossil fuel industry receive financing of tens of billions'] Follow the Money (26 September 2023), <https://www.ftm.nl/artikelen/ggij-2-fossil-finance-biljoen-fossiele-obligaties-ing-abn-amro>.

16 | ING, 'Annual Report 2021' (2022), 33.

17 | Climate change is one of the world's biggest challenges, threatening both our planet and its people' ING, 'Annual Report 2022' (2023), 19.

its offices. In 2023, Milieudefensie, together with 70 concerned shareholders, attended the ING shareholders' meeting, where we asked whether ING would halve its emissions in 2030. Milieudefensie is not the only party to believe that banks should become more sustainable. Leading bodies like the UN climate panel (IPCC) emphasise that it is very concerning that so much financing is still going to the fossil fuel economy, while at the same time there is a dearth of the necessary financing for climate-friendly activities.¹⁸ ING is taking small steps in the right direction, but has refused up to now to make the leap that is necessary to prevent dangerous climate change. This is a violation of human rights and is contrary to the legal societal standard of care that is binding for everyone, including ING. Milieudefensie thus does not see any other option than to hold ING liable for breaching Dutch law and holding it responsible for contributing to dangerous climate change.

In this letter Milieudefensie will provide further explanation as to what ING should do. Milieudefensie has four concrete claims for this (section 2). This will be followed by a more in-depth discussion of ING's legal obligation to stop contributing to dangerous climate change on the basis of the societal standard of care (section 3), the serious consequences of the climate crisis and ING's knowledge in this respect (section 4), the special responsibility that ING has in this respect (section 5), and measures that ING can take (section 6). Milieudefensie will demonstrate that ING is currently in breach of this obligation (section 7) and will then explain why Milieudefensie therefore believes it is forced to hold ING liable (section 8).

2. Notice of liability to ING and claims

2.1. Milieudefensie demands that the following measures be implemented

Milieudefensie is hereby holding ING liable for its substantial contribution to dangerous climate change, for the damage that ING is consequently inflicting on society, the environment and nature, and for the human rights violations resulting from this damage (see section 3 for legal basis). In order to put an end to these unlawful acts of ING and to prevent unlawful acts in the future, Milieudefensie is demanding that:

1. ING sees to it that its climate policy is in accordance with the 1.5°C target of the Paris Agreement;
2. ING reduces its emissions by at least 48% CO₂ and at least 43% CO₂e in 2030 compared to 2019;
3. ING, in addition, ensures that it is not linked to adverse climate impacts of large business clients, such as:
 - a. ING demands that all large corporate clients provide a good climate plan;
 - b. ING ceases financing and supporting large corporate clients who do not have a good climate plan within one year;
 - c. ING demands that fossil fuel clients stop fossil fuel expansion *and* draw up a good phase-out plan;

18 | 'Persistently high levels of both public and private fossil fuel-related financing continue to be of major concern despite promising recent commitments.' IPCC, 'Climate Change 2022: Mitigation of Climate Change. Working Group III' (2022), 134, <https://www.ipcc.ch/report/ar6/wg3/>.

- d. ING ceases *new* financing and support for fossil fuel clients who continue fossil fuel expansion or who do not have a good phase-out plan;
 - e. ING ceases *all* financing and support for fossil fuel clients who after a year still continue fossil fuel expansion or who do not have a good phase-out plan; and
4. ING engages in a conversation with Milieudefensie in order to properly give substance to the above-mentioned measures.

Measure 1 is comprehensive and is geared to ING's overall climate policy. Measure 2 ensures that by means of this climate policy, ING will make a suitable contribution to the emission reductions that are necessary to achieve the 1.5°C target of the Paris Agreement. Measure 3 arranges that ING will use its leverage to ensure that large corporate clients also bring about that their climate policy is in accordance with the 1.5°C target of the Paris Agreement and that ING is no longer involved in financing and supporting large corporate clients who undermine the 1.5°C target of the Paris Agreement. This third measure thus also applies even if ING sufficiently reduces its total emissions as a result of measure 2. Measure 4 ensures that ING will realise the aforementioned three measures in an appropriate manner. The technical explanation in section 2.2 below provides more precise details on what we understand by these four measures. We explain the effectiveness, proportionality and non-onerous character of the four measures in section 6.2. In section 7 we demonstrate that ING is in breach of its legal obligations, and will continue to be so without these four measures.

Milieudefensie requests you to confirm to Milieudefensie in writing within eight weeks after the date of this letter on behalf of ING that ING agrees to these measures and acknowledges its legal obligation to take these measures. Such confirmation should be based on the recognition of the need for, the urgency of and the importance of these measures. We will present further substantiation for these measures in the following chapters.

If ING does not present a positive answer to Milieudefensie's claims within the requested period of time, Milieudefensie will assume that ING is unwilling to comply with this request. Milieudefensie will in such case see no other option than to issue summons against ING with the goal of obtaining a court order instructing ING to take the aforementioned measures.

2.2. Technical explanation of the measures

1. ING sees to it that its climate policy is in accordance with the 1.5°C target of the Paris Agreement. ING must bring its climate policy¹⁹ in accordance with the 1.5°C target of the Paris Agreement,²⁰ inter alia by means of the measures referred to hereinafter under 2. and 3.;

2. ING reduces its emissions by at least 48% CO₂ and at least 43% CO₂e in 2030 compared to 2019. ING must reduce²¹ the total absolute quantity of scope 1, 2 and 3 greenhouse gas emissions of the ING Group²² to make a fully-fledged contribution to the global reductions that are necessary to achieve the 1.5°C target of the Paris Agreement. The reduction to be realised by ING is a reduction of the total absolute quantity of CO₂ emissions by at least 48% and of the total absolute quantity of greenhouse gas emissions²³ by at least 43% in 2030 compared to 2019;

19 | 'Climate policy' in any event includes all forms of strategy, governance, financial management, risk management, administrative organisation and internal control, commercial and operational activities, and other forms of formal or actual business practices applied by the ING Group, always insofar as they are or may be of influence on the options of the ING Group to make a fully-fledged contribution to achieving the 1.5°C of the Paris Agreement.

20 | By 'the 1.5°C target of the Paris Agreement' we mean a limiting of the increase in the global average temperature to 1.5°C as stated in Article 2.1(a) of the Paris Agreement.

21 | By 'reducing' and 'reduction' of emissions we mean the reduction of greenhouse gas emissions up to 2030 without the use of carbon credits or avoided emissions or greenhouse gas removals. Milieudefensie acknowledges that greenhouse gas removals (like direct air capture with carbon storage (DACCS) and bio-energy combined with carbon capture and storage (BECCS)) play a role in reduction scenarios of the IPCC, but DACCS and CCS are not yet proven technologies at scale and do not diminish the need for rapid and significant emissions reductions in all sectors. That is why Milieudefensie expects ING to focus on reducing emissions. If ING finances greenhouse gas removal, such should be in addition to and not instead of reducing its own emissions. This is consistent with the UN initiative Race to Zero (2022, p10): 'Members are required to prioritise internal emissions reductions in line with global efforts to halve emissions by 2030 and reach global net zero by 2050 through deep decarbonization. In parallel—but by no means as a substitute for reducing their own emissions—entities are encouraged to contribute beyond their value chain or territory to a global net zero state by [...] removing carbon to compensate for unabated emissions on their pathway towards the end state net zero.'

22 | By 'total absolute quantity of greenhouse gas emissions' of the ING Group we mean all scope 1, 2 and 3 emissions of the ING Group. This also includes all scope 3 category 15 emissions as described in the GHG Protocol Corporate Value Chain Standard. This concerns, among other things, all emissions connected with equity investments of the ING Group (on a project basis or otherwise), debt investments of the ING Group (in the form of bonds and loans, on a project basis or otherwise) and services to clients (including the underwriting of bonds or shares issued by clients, sometimes called 'facilitated emissions', and investments that the ING Group manages for clients). In this letter we refer to all these emissions as 'financed emissions'. These financed emissions of the ING Group must be determined on the basis of, among other things, the emissions of the clients of the ING Group, the entities in which the ING Group invests and the entities in which clients have made investments managed by the ING Group, including the scope 3 emissions of the relevant clients and entities.

23 | By (the reduction of) 'all greenhouse emissions' we mean (the reduction of) all emissions of all greenhouse gases (i.e. including the emissions of non-CO₂ greenhouse gases) of the ING Group, expressed in CO₂e. 'CO₂e' stands for CO₂ equivalents. To determine CO₂e, greenhouse gases are first converted to CO₂ and are then added up. This conversion is necessary because non-CO₂ greenhouse gases like methane and nitrous oxide have a different effect on the warming of the earth than CO₂. For example, 1 megaton of methane has just as much effect on the warming of the earth as approx. 28 megatons of CO₂. For this conversion method, see IPCC, 'Climate Change 2022: Mitigation of Climate Change. Working Group III' (2022), Annex II table 9, 1831, <https://www.ipcc.ch/report/ar6/wg3/>.

3. ING ensures it is not linked to adverse climate impacts of large corporate clients. In addition to sufficiently reducing ING's greenhouse gas emissions as stated under 2. above, ING must take appropriate measures to address the adverse climate impacts of its large corporate clients²⁴, including at least:

- a. ING demands that all large corporate clients provide a good climate plan.** At latest three months after the date of this letter, the ING Group must use its leverage on large corporate clients to urge them to develop, publish and implement a good climate plan;²⁵
- b. ING ceases financing and supporting large corporate clients who do not have a good climate plan within one year.** The ING Group must cease the existing and new financing of and support²⁶ for every large corporate client that (i) at latest one year after the first impetus (under a. above) has not developed and published a good climate plan or (ii) after the development and publication of a good climate plan, cannot demonstrate the adequate implementation²⁷ thereof within a reasonable term;
- c. ING demands that fossil fuel clients stop fossil fuel expansion and draw up a good phase-out plan.** At latest three months after the date of this letter, the ING Group must use its leverage on every fossil fuel client²⁸ by urging it to (i) not be involved or cease involvement in fossil fuel

24 | By '**large corporate client**' we mean every existing and new client of the ING Group or other entity (such as investee companies) that ING finances or supports and who may be expected to publish a climate plan on the basis of the 2023 OECD Guidelines for Multinational Enterprises on Responsible Business Conduct in the light of, among other things, the nature, size and location of their business. We include in this group, in any event, (i) every client or other entity who is obliged to report on their greenhouse gas emissions and/or climate plan on the basis of the Corporate Sustainability Reporting Directive (Directive (EU) 2022/2464) or on the basis of other applicable regulations (e.g. local or industry regulations, inside or outside of the European Union) and (ii) every client or other entity who would be obliged to make such reporting if said client or other entity had been based in a member state of the European Union. This means, among other things, that as of 2024 the ING Group must take appropriate measures with regard to at least listed companies and other public interest organisations with more than 500 employees. As of 1 January 2025 the ING Group must also take appropriate measures with regard to other large companies that meet at least two of the following criteria: the company has a balance sheet total of at least 20 million euros, a net turnover of at least 40 million euros and/or more than 250 employees.

25 | By '**good climate plan**' we mean a climate plan (also called a '**transition plan**') that at least provides for (i) absolute emissions reduction targets for 2030 and thereafter that reflect a maximum effort of the company's 'fair share' in the necessary halving of greenhouse gas emissions in 2030 and beyond. And (ii) a description of implementation measures which make the feasibility of these targets sufficiently credible. This aligns with the criteria for climate plans of the UN High Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities (2022, p21) and the UN initiative Race To Zero (2022, pp. 8-9). These leading organisations have indicated a preference for or expect just, absolute reduction targets on the part of companies.

26 | By '**finance and support**' and '**financing and supporting**' we mean all ways in which the ING Group provides financing or has financing outstanding to a client (or other entity) or supports a client (or other entity) in some other way, including at least the providing of project financing, the providing of general corporate financing, making the issue of shares or bonds possible as bookrunner or underwriter, and as asset manager for clients. By 'financing and support' we are therefore not only referring to ways in which the ING Group provides the financing to the client at its own expense and risk, but also ways in which the ING Group 'facilitates' the financing by third parties of the client, and other forms of services.

27 | By '**adequate implementation**' we mean that the client at least (i) makes sufficient progress in realising the absolute goals for reducing the scope 1, 2 and 3 emissions included in the climate plan (which will in any event not be the case in the event of late realisation of these goals) and (ii) has taken implementation measures that make the feasibility of these targets sufficiently credible.

28 | By '**fossil fuel client**' we mean any existing and new large corporate client (see footnote 24) of the ING Group that is active in one or more 'fossil fuel' chains, like oil, gas (including liquid gas) or coal (including metallurgical coal).

expansion,²⁹ (ii) publish a commitment that it is not involved in fossil fuel expansion and (iii) develop, publish and implement a good phase-out plan for fossil fuels;³⁰

- d. ING ceases new financing and support for fossil fuel clients who continue fossil fuel expansion or who do not have a good phase-out plan.** At latest three months after the date of this letter, the ING Group must cease new financing and support for every fossil fuel client if and as long as such client (i) is involved in fossil fuel expansion, (ii) has not published a commitment that it is not involved in fossil fuel expansion or (iii) does not have a good phase-out plan for fossil fuels.
- e. ING ceases all financing and support for fossil fuel clients who after a year still continue fossil fuel expansion or who do not have a good phase-out plan.** The ING Group must cease existing and new financing and support for every fossil fuel client if and as long as such client, at latest one year after the first impetus under c. above, (i) is still involved in fossil fuel expansion, (ii) has not published a commitment that it is not involved in fossil fuel expansion or (iii) does not have a good phase-out plan for fossil fuels.

If convincing and compelling legal restrictions impede the ING Group from implementing these measures, the ING Group will use its best efforts to avoid or address these legal restrictions. If there are convincing and compelling legal restrictions that the ING Group cannot avoid or address, the ING Group will take the most ambitious and effective alternative measures.

- 4. ING engages in a conversation with Milieudefensie.** ING must be willing, for the further elaboration, implementation, safeguarding and public accounting for this critical task, to make further agreements with Milieudefensie within eight weeks after the date of this letter.

Why not 45% CO₂ reduction in 2030? In the climate case against Shell, Milieudefensie asked at the shareholders' meeting of ING Group N.V. and in our campaign up to now for at least a 45% absolute CO₂ reduction in 2030 compared to 2019. Now we are asking

29 | By '**being involved in fossil fuel expansion**' we mean being involved in the expansion of the capacity for upstream, midstream or downstream activities for fossil fuels, including at least (i) looking for new sources (like new oil or gas fields or new coal seams), (ii) exploiting new sources, (iii) building new or developing existing infrastructure or other kinds of projects, making it possible to get more fossil fuels from an existing source than planned and (iv) building new or developing existing infrastructure or other kinds of projects which make it likely that the supply of or the demand for fossil fuels will increase.

30 | By '**good phase-out plan for fossil fuels**' we mean a phase-out plan that corresponds with a 1.5°C pathway, with no or limited overshoot, which is a just realisation of the global reduction pathway for fossil fuels. By 'no overshoot' we mean that the warming of the earth remains limited to 1.5°C. With 'limited overshoot' the warming of the earth will be able to rise to a maximum of 0.1°C over 1.5°C, but it will have to be limited to 1.5°C again within a few decades. By '**just realisation**' we mean realisation whereby projects and companies in richer countries with historically high emissions that benefited from fossil fuels also make a greater contribution to the phasing out of fossil fuels. This must be distinguished from the type of sector emissions scenarios that ING uses now. An example of an elaboration in which rich countries do more is provided in the draft SBTi Fossil Fuel Finance Position Paper (June 2023, pp. 8-9). This paper proposes that phase-out efforts differentiate between projects and companies in rich, middle income and poor countries. For example, oil and gas projects and companies in rich countries are subject to a 74% output reduction by 2030 and total phase-out by 2034; middle income countries are subject to a 28% output reduction by 2030 and total phase-out by 2043; and poor countries are subject to a 14% output reduction by 2030 and total phase-out by 2050.

that ING reduce its CO₂ emissions by at least 48%, as well as reducing its greenhouse gas emissions by at least 43% CO₂e.

We are now asking for a 48% instead of a 45% CO₂ reduction because this 48% is the most up-to-date reduction percentage that is necessary to have a 50% chance of preventing dangerous climate change, according to the *Intergovernmental Panel on Climate Change* (IPCC) of the United Nations (UN).³¹ All states that are affiliated with the UN have agreed to the need for a 48% reduction in CO₂. International consensus therefore exists on this reduction percentage.

In addition to reducing CO₂ alone, Milieudefensie is also demanding a reduction of all of ING's greenhouse gas emissions. ING is active in virtually all sectors of the economy. This includes in sectors that release greenhouse gases other than CO₂, like methane and nitrous oxide. This includes such things as fertiliser, agriculture and pumping up and processing natural gas. Reduction is necessary in these sectors too in order to achieve the 1.5°C target of the Paris Agreement.³² It is therefore important that financial institutions like ING not only focus on a reduction of CO₂, but also on other greenhouse gases. Once again, this 43% is what the IPCC asserts is necessary to give us a 50% chance of avoiding dangerous climate change.

3. ING has a legal obligation

Under Dutch law, companies have a responsibility to respect human rights. They also have the legal obligation to ensure that they do not create any danger that can lead to avoidable damage to property and personal injury (also called 'endangerment'). This obligation is called the duty of care and arises from the legal general societal standard of care and the related case law.³³ The content of the duty of care is determined on the basis of relevant facts and circumstances. This includes things such as scientific findings, treaty provisions, national and international case law, soft law, legislation and codes of conduct. The influence of these sources on the societal standard of care (i.e. also the duty of care) is generally acknowledged in the case law and literature.³⁴

If a company does not comply with its duty of care, it will be acting unlawfully with regard to the persons who suffer or are at risk of suffering damage as a result. This can lead to, among other things, a court order to stop the unlawful acts or avoid further

31 | The Glasgow Climate Pact (2021, Art. IV.22) acknowledges the need for a 45% global reduction in CO₂ in 2030 to still be able to reach the 1.5°C target. The court in Milieudefensie's climate case against Shell held in 2021 that Shell must reduce its emissions by 45% in 2030. This percentage—in the Glasgow Climate Pact, and in the Shell case—is based on the global reduction that according to the UN climate panel, the IPCC, was necessary at that time. The IPCC has since updated these global reduction percentages and this update has been signed by virtually all countries in the world. That is why we have used these updated percentages in our claims, see IPCC, 'Climate Change 2023: Synthesis Report. Summary for Policymakers' (2023), 21.

32 | IPCC, 'Climate Change 2023: Synthesis Report. Summary for Policymakers' (2023), 21.

33 | Dutch Civil Code, Art. 6:162(2).

34 | In this way, treaty provisions (including the 1.5°C target of the Paris Agreement) help determine the content of the duty of care toward third parties, including the interests that Milieudefensie is representing. In addition, instruments like the UN Guiding Principles on Business and Human Rights (UNGPs), the UN Global Compact and the OECD Guidelines for Multinational Enterprises (OECD Guidelines) have an effect on the duty of care of companies, even if they do not have the status of formal legislation. This also applies to the OECD Guidelines of 2023, that oblige companies to carry out climate due diligence.

damage. The duty of care also applies to contributing to dangerous climate change. If ING fails to modify its policies after this letter, to ensure that it fulfils its duty of care, then Milieudedefensie will be looking to obtain such a court order.

There are four criteria for assessing whether a company creates danger, thereby breaching the duty of care: (i) the ability of the company to be aware of the danger, (ii) the chance that the danger will in fact arise, (iii) the severity of the danger, and (iv) the onerousness and proportionality of the measures to be taken by the company. There may also be unlawful endangerment in cases in which a company is not the only one to create the danger, but multiple parties are jointly responsible for this, such as with climate change. A prerequisite is that the share of this company in causing the danger is not negligibly small. These criteria also apply to contributing to dangerous climate change. Application of these four criteria thus lead to a legally enforceable duty of care for ING.

It has been held in Dutch case law, inter alia on the basis of the above criteria, that inadequate climate policy can be a breach of the duty of care and is therefore contrary to the law. This was the finding of the district court in the case of Urgenda versus the State of the Netherlands. The court of appeal held, moreover, that the Dutch climate policy was a violation of human rights, in particular the right to life and the right to a private and undisturbed family life. The State was required to reduce the emissions of the Netherlands by 25% in 2020 (compared to 1990).³⁵ In the case of Milieudedefensie versus Shell, the court held that Shell's inadequate climate policy is unlawful, among other reasons because it violates human rights. Shell must therefore have reduced its CO₂ emissions in 2030 by 45% (compared to 2019).³⁶ The judgment in this lawsuit provided a basis for the legal responsibility of large companies to avoid dangerous climate change and the resulting human rights violations by means of good climate policy.

In short, companies in the Netherlands have the legal responsibility of respecting human rights and complying with their duty of care. Contributing to dangerous climate change leads to a violation of human rights and is contrary to the duty of care. This duty of care also applies to ING and the bank therefore has a legal obligation to contribute to preventing global warming from exceeding 1.5°C.

4. ING acknowledges the danger of climate change

ING has existed since 1991.³⁷ The threat and the danger of climate change was known at that time and was already an important topic in the political and social debate. It has been scientifically known for over 100 years that extra CO₂ in the atmosphere causes warming of the earth.³⁸ Back in the 1970s a UN conference called on countries to take preventive

35 | Staat der Nederlanden v Stichting Urgenda, Netherlands Supreme Court, ECLI:NL:HR:2019:2006 (20 December 2019), <https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:HR:2019:2006>.

36 | Vereniging Milieudedefensie et al v Royal Dutch Shell plc, District Court of The Hague, ECLI:NL:RBDHA:2021:5337 (25 May 2021), 4.4.53, <https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RBDHA:2021:5337>.

37 | ING Groep N.V. came into being following a merger of Nationale Nederlanden and NMB Postbank Groep in 1991. Around 2015, ING's insurance branch was separated from ING, resulting in the NN Groep, but ING Groep N.V. retained the official name.

38 | IPCC, 'Climate change 2007: the physical science basis. Working group I' (2007), 103, <https://www.ipcc.ch/report/ar4/wg1/>.

measures to combat climate change.³⁹ In 1988 policymakers and scientists made a joint statement at a climate conference: 'Humanity is conducting an unintended, uncontrolled, globally pervasive experiment whose ultimate consequences could be second only to a global nuclear war. [...] It is imperative to act now.'⁴⁰ In that same year, the UN climate panel, the IPCC, was founded, followed in the years thereafter by the first leading international and national reports that clearly described the dangers of the earth warming by 1°C and 2°C.⁴¹ The UN Climate Convention, the forerunner of the Paris Agreement, was established in 1992 and was supported by 165 countries and the EU.⁴² The central goal of this convention was to prevent dangerous climate change in a just manner, with rich countries taking the lead. Although the information on the climate crisis was thus common knowledge when ING was established in 1991, it took another ten years before ING actively started addressing the issue of climate.

ING (visibly) started learning about climate change as of approximately 2003.⁴³ In 2004, ING's asset management branch was a signatory to the Carbon Disclosure Project (CDP): together with 94 other institutional investors, the CDP asked the FT500 companies—including ING Bank—to publish information about the risks and opportunities of climate change.⁴⁴ Even then ING was therefore aware that information on the emissions in the value chain formed part of this.⁴⁵

In 2006 ING published an internal report with the shocking title '*Climate Change: When Hell Freezes Over*'.⁴⁶ ING analysed, inter alia, the possible impact of climate change: from increasing heatwaves and floods, the collapse of the Amazon to the melting of polar ice caps.⁴⁷ Although the authors still referred to the climate science as 'provisional', they clearly recognised the danger: 'or perhaps climate change is the largest threat facing

39 | Climate change was discussed for the first time at the United Nations Conference on the Human Environment (Stockholm, June 1972) during a UN conference. During the World Climate Conference (Geneva, February 1979) countries were called upon for the first time to prevent climate change during a UN conference.

40 | From the concluding statement of the 'World Conference on The Changing Atmosphere: Implications for Global Security' (Toronto, 27-30 June 1988).

41 | 'Temperature increases beyond 1.0°C may elicit rapid, unpredictable, and nonlinear 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.' Stockholm Environment Institute, 'Targets and Indicators of Climate Change' (1990), viii; IPCC, 'Climate Change: the IPCC 1990 and 1992 Assessments' (1992), <https://www.ipcc.ch/report/climate-change-the-ipcc-1990-and-1992-assessments/>; KNMI, 'De Toestand van het Klimaat en van de Ozonlaag in Nederland' [The Status of the Climate and of the Ozone Layer in the Netherlands] (1993), <https://www.knmi.nl/research/publications/de-toestand-van-het-klimaat-en-van-de-ozonlaag-in-nederland>.

42 | 'United Nations Framework Convention on Climate Change' (9 May 1992), https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=en#1. In the meantime 197 countries have signed the UN Climate Convention.

43 | ING, 'Annual Report 2005' (2006), 45.

44 | ING Investment Management Europe, ING's asset management branch, was part of CDP2. See CDP, 'Carbon Disclosure Project. Climate Change and Shareholder Value In 2004' (May 2004).

45 | CDP, 'Carbon Disclosure Project. Climate Change and Shareholder Value In 2004' (May 2004), 100.

46 | Harold Hutchinson, 'European Utilities. Climate Change: When Hell Freezes Over,' ING Wholesale Banking (October 2006).

47 | Harold Hutchinson, 'European Utilities. Climate Change: When Hell Freezes Over,' ING Wholesale Banking (October 2006), 19.

mankind.⁴⁸ ING joined the *Global Roundtable on Climate Change*⁴⁹ in 2004 and in 2007 ING signed the Roundtable's joint statement.⁵⁰ In said statement ING acknowledged that every company has the possibility and responsibility to tackle climate change.⁵¹ On the basis of the above reports and initiatives it is clear that ING in any event knew around 2007 that:

- Dangerous climate change is, with a great degree of certainty, caused by the greenhouse gas emissions of humans;⁵²
- Burning fossil fuels is the primary source of this, and continuing to finance fossil fuels contributes to helping the use of these fuels to persist;⁵³
- It is necessary to limit emissions globally, as too high a concentration of greenhouse gases in the atmosphere carries very significant risks;⁵⁴
- Financed emissions, including scope 3 emissions of clients, are significant and that financial institutions must transparently report and reduce them;⁵⁵
- Rich countries in the Global North must take the lead in preventing dangerous climate change.⁵⁶

ING knew this at least as early as 2007. This was the same year when ING proudly announced that the company had become climate neutral. The CEO left out the fact that this merely concerned ING's operational emissions, i.e. air conditioning, computers and business trips – less than 1% of ING's total emissions. Although that announcement thus concerned a very small part of the emissions, it does show that ING, as the CEO himself said at the time, 'has a role to play in dealing with this challenge.'⁵⁷ Although ING did know or could have known what this responsibility entailed, ING did not acknowledge this responsibility. ING was at that time the only Dutch bank that did *not* publicly

48 | 'Harold Hutchinson, 'European Utilities. Climate Change: When Hell Freezes Over,' ING Wholesale Banking (October 2006), 22.

49 | ING, 'Annual Report 2007' (2008), 55.

50 | Global Roundtable on Climate Change, 'The Path to Sustainability. A Joint Statement by the Global Roundtable on Climate Change' (20 February 2007).

51 | 'Each company ... has the opportunity and responsibility to address climate change.' Global Roundtable on Climate Change, 'The Path to Sustainability. A Joint Statement by the Global Roundtable on Climate Change' (20 February 2007), 10.

52 | 'United Nations Framework Convention on Climate Change' (9 May 1992), Art. 2, https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=en#1; Global Roundtable on Climate Change, 'The Path to Sustainability. A Joint Statement by the Global Roundtable on Climate Change' (20 February 2007), 4; Harold Hutchinson, 'European Utilities. Climate Change: When Hell Freezes Over,' ING Wholesale Banking (October 2006), 3, 16-18.

53 | IPCC, 'Climate Change 2001: Synthesis Report. Summary for Policy Makers' (2001), 4, <https://www.ipcc.ch/report/ar3/syr/>; Global Roundtable on Climate Change, 'The Path to Sustainability. A Joint Statement by the Global Roundtable on Climate Change' (20 February 2007), 4; Harold Hutchinson, 'European Utilities. Climate Change: When Hell Freezes Over,' ING Wholesale Banking (October 2006), 3, 13.

54 | IPCC, 'Climate Change 2001: Synthesis Report. Summary for Policy Makers' (2001), <https://www.ipcc.ch/report/ar3/syr/>; Harold Hutchinson, 'European Utilities. Climate Change: When Hell Freezes Over,' ING Wholesale Banking (October 2006), 19. See also footnote 39-42 for climate science at the beginning of the 1990s.

55 | CDP, 'Carbon Disclosure Project. Climate Change and Shareholder Value In 2004' (May 2004).

56 | The Joint Statement of the Global Roundtable on Climate Change (2007, p. 8) refers to common but differentiated responsibilities as described in the UN Climate Convention (1992, Art. 3).

57 | '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.' ING, 'Annual Report 2007' (2008), 55.

acknowledge that its climate impact primarily consists of its financing—the financed emissions.⁵⁸ This acknowledgement was not made until around 2015.⁵⁹

ING now acknowledges in alarming words the danger of climate change. ‘Fires, floods, heatwaves and polar ice melts – the evidence is all around us, and it’s stacking up.’⁶⁰ ING understands that the current carbon budget is rapidly running out, ‘to keep global warming below 1.5 degree Celsius, our CO₂ budget will have been used up within 5 years if emissions remain the same.’⁶¹

ING has analysed the serious consequences of climate change in detail, using ‘heat mapping’.⁶² The results show clearly that ING knows that current and future generations will frequently have to deal with such things as storms, hurricanes, tornadoes, floods, rises in sea level, extreme rain, heatwaves, droughts, melting of permafrost and ice caps, acidification of the ocean, lower ground water levels, water shortages, commodity shortages, species extinction, reduced biodiversity, more illnesses in plants and animals, air pollution and forest fires.⁶³

In short, ING is very well aware of the seriousness of the climate crisis. ING therefore acknowledges that ‘climate change has a profound impact on many fundamental human rights including, but not limited to, the right to food, health, water and sanitation.’⁶⁴ The UN adds to this the right to life, the right to adequate food, the right to the enjoyment of highest attainable standard of physical and mental health, the right to adequate housing, the right to self-determination, the rights to safe drinking water and sanitation, the right to work and the right to development.⁶⁵ These are human rights that ING claims to respect, by endorsing various human rights initiatives like the *UN Guiding Principles on*

58 | Milieudefensie, ‘Investing in Climate Change: the Role of Dutch Banks’ (June 2006), 38.

59 | In 2015, ING published its policy to reduce the financing of coal, and to engage in more sustainable financing. These were the first steps that ING took to reduce its financed emissions. The issue is no longer simply its operational emissions, but the fact that ING has influence ‘as a lender, as an investor and through the services we offer our customers.’ See ING, ‘Let’s partner on climate action. Now! #ClimateCEOs’ (17 April 2015), <https://www.ing.com/Newsroom/News/Features/Lets-partner-on-climate-action.-Now-ClimateCEOs.htm>. ING’s stakeholder engagement showed that stakeholders no longer find ING’s operational emissions so important, but particularly want ING to focus on the financed emissions: ‘Stakeholders attached less importance to ING’s direct environmental impact in the 2015 materiality assessment. This reflects the understanding that our impact is much greater in our financing choices.’ ING, ‘Annual Report 2015’ (2016), 18.

60 | ING, ‘Climate Report 2021’ (2021), 3.

61 | In 2021, ING signed the Paris Proof Commitment of the Dutch Green Building Council, which included the text: ‘We have concluded that reduction of CO₂ emissions must be accelerated to be able to comply with the agreements of the Paris Climate Agreement; to keep global warming below 1.5 degree Celsius, our CO₂ budget will have been used up within 5 years if emissions remain the same.’ See Dutch Green Building Council, ‘Paris Proof Commitment’ (2021), 2, <https://www.dgbc.nl/paris-proof-commitment-18>.

62 | Scientists and policymakers also warn that the current methods for estimating climate risks for banks probably underestimate the dangers of climate change, see, for example, Henk Jan Reinders et al., ‘Climate Stress Testing: A Conceptual Review’ CEPR Discussion Paper no. 17921 (19 February 2023), <https://cepr.org/publications/dp17921>; NGFS, ‘Climate Scenarios for Central Banks and Supervisors’ (June 2020), 26, <https://www.ngfs.net/en/ngfs-climate-scenarios-central-banks-and-supervisors>.

63 | ING, ‘Climate Report 2021’ (2021), 39.

64 | ING, ‘Climate Report 2022’ (2022), 32.

65 | Human Rights Council, ‘Human Rights and Climate Change’ (12 July 2019), resolution 41/21.

Businesses and Human Rights (UNGPs), *UN Global Compact* and the *OECD Guidelines*.⁶⁶ The UNGPs and the *OECD Guidelines* explicitly endorse the view that climate change threatens human rights.⁶⁷ That dangerous climate change is a threat to human rights was confirmed in the judgments in the climate cases against the State of the Netherlands and Shell.⁶⁸ Courts in other countries have drawn similar conclusions.⁶⁹ ING itself calls climate change an ‘existential threat’,⁷⁰ i.e. climate change threatens human lives and humankind as a whole. ING thus acknowledges the significant impact of dangerous climate change for the rights of current and future generations.

ING knows and acknowledges the great importance of limiting global warming to 1.5°C: ‘Climate science has continued to evolve and it has become increasingly clear that a more ambitious course of action is necessary.’⁷¹ That is why in 2021 ING committed itself to a new target: net-zero in 2050 and a loan portfolio in line with 1.5°C.⁷² ING also signed commitments, such as the *Climate Commitment of the Financial Sector* in 2019, in which ING acknowledges that greenhouse gases must be halved worldwide by 2030 compared to 1990, and that ING will contribute to this.⁷³ This halving is indeed necessary to limit the warming of the earth to 1.5°C.⁷⁴ In principle, Milieudedefensie welcomes these commitments.⁷⁵ We will discuss these promises in the following sections of this letter in greater detail, as a promise becomes an empty promise if ING does not attach a clear, concrete and credible climate policy to such a commitment.

66 | ING, ‘How we engage’ (accessed on 27 November 2023), <https://www.ing.com/Sustainability/Partnerships-and-collective-action/How-we-engage.htm>.

67 | OECD, ‘OECD Guidelines for Multinational Enterprises on Responsible Business Conduct’ (2023), 33, <https://doi.org/10.1787/81f92357-en>; UN Working Group on Business and Human Rights, ‘Climate Change and UNGPs’ (accessed on 27 November 2023), <https://www.ohchr.org/en/special-procedures/wg-business/climate-change-and-ungps>.

68 | Milieudedefensie et al v Royal Dutch Shell plc, District Court of The Hague, ECLI:NL:RBDHA:2021:5337 (25 May 2021), <https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RBDHA:2021:5337>; Staat der Nederlanden v Stichting Urgenda, Netherlands Supreme Court, ECLI:NL:HR:2019:2006 (20 December 2019), <https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:HR:2019:2006>.

69 | Klimaatzaak ASBL v België, Cour d’appel Bruxelles, 2023/8411 (30 November 2023), https://affaireclimat.cdn.prismic.io/affaireclimat/df045502-906f-4797-a46d-622dbfe03ec8_SP52019923113012320+fr.pdf; Notre Affaire à Tous v Frankrijk, Tribunal administratif de Paris, 1904967, 1904968, 1904972, 1904976/4-1 (3 February 2021), <https://laffairedu21eme.net/wp-content/uploads/2021/02/20210203-Jugement-Affaire-du-Sie%CC%80cle.pdf>; Neubauer et al v Germany, Bundesverfassungsgericht, 1 BvR 2656/18, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20 (24 March 2021), https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2021/03/rs20210324_1bvr265618.html.

70 | ING, ‘Annual Report 2022’ (2023), 12.

71 | ING, ‘Climate Report 2021’ (2021), 11.

72 | ING, ‘Climate Report 2021’ (2021), 11.

73 | ‘Commitment van de financiële sector’ (2019) [Commitment of the financial sector], <https://klimaatcommitment.nl/>.

74 | IPCC, ‘Climate Change 2023: Synthesis Report. Summary for Policymakers’ (2023), 21.

75 | Milieudedefensie welcomes the acknowledgement of the need for substantial emissions reductions in the *Climate Commitment of the Financial Sector* (and other voluntary sector initiatives), but does not uncritically commend these initiatives.

In short, ING knows through its own research, from following international climate conferences and international leading publications, working together within voluntary sector initiatives and its own heat mapping how dangerous climate change is, and that climate change threatens human rights of current and future generations. ING has known this since at least 2007.

5. ING has a significant and far-reaching responsibility

The emissions that ING is responsible for are enormous. Naturally the issue is not only the emissions from ING's air conditioning, computers and business trips ('operational emissions'), but particularly the emissions of clients that ING finances and supports. This is where more than 99.9% of ING's emissions come from.⁷⁶ ING has itself reported that its financed emissions are 61 megatons CO₂e.⁷⁷ We explain in section 7.1 why the emissions that ING is responsible for are actually much bigger than this. Nevertheless, even these 61 megatons are more than the emissions of the 50 countries with the fewest emissions *added together*,⁷⁸ and more than countries like Cambodia, Ghana, Sweden or Switzerland.⁷⁹

ING's emissions are also greater than those of all other financial institutions of the Netherlands. This applies to ING's total quantity of emissions (the 'absolute emissions').⁸⁰ Per euro that ING finances, more greenhouse gases are released ('emissions intensity') than with most other financial institutions of the Netherlands.⁸¹ ING therefore not only has substantial emissions, it opts far more than other financial institutions to finance polluting activities.

That ING causes so many emissions means that a lot may be expected of ING in preventing dangerous climate change. There are nevertheless more reasons why ING has a significant and far-reaching responsibility. ING is a financial institution and a key actor in a rich country. For all these reasons ING has an above-average responsibility, that ING is ignoring. This is unlawful as well as unjust.

The responsibility of the financial sector. The Paris Agreement clearly states that financial flows must be consistent with the necessary reduction in emissions to prevent

76 | '99.9% of the emissions of our bank relates to those loans,' CEO Steven van Rijswijk said in an interview on BNR Radio, 'ING-ceo over klimaatverandering: Wij denken dat we het goed doen' [ING CEO on climate change: We think we are doing a good job] (30 November 2023), <https://www.bnr.nl/nieuws/duurzaamheid/10533397/ing-ceo-over-klimaatverandering-wij-denken-dat-we-het-goed-doen>. This aligns with ING's own reporting of its operational emissions (29 kilotons of CO₂e) versus its own reporting on financed emissions (61 megatons of CO₂e), see ING, 'Climate Report 2023' (2023), 43 and 85. Note: ING does not report itself on emissions relating to such things as asset management for clients or bond issues, so its financed emissions are even bigger (see section 7.1).

77 | ING, 'Climate Report 2023' (2023), 85.

78 | This group of 50 countries includes Suriname, Curaçao, Aruba, Vanuatu, Fiji and Malta. The emissions of these countries in 2022 come from the European Commission's Emission Database for Global Atmospheric Research (EDGAR), 'GHG Emissions of All World Countries 2023' (2023), https://edgar.jrc.ec.europa.eu/report_2023.

79 | See footnote 10.

80 | See footnote 9.

81 | See footnote 11.

dangerous climate change.⁸² The European Commission now speaks of a ‘key role’,⁸³ the Dutch Central Bank of a ‘pivotal function’,⁸⁴ the European Central Bank and the G20 of a ‘crucial role’,⁸⁵ and the UN Environmental Programme (UNEP) of ‘vitality important’⁸⁶—all these leading institutions agree that the financial sector is essential for the energy transition and to prevent dangerous climate change. Private financial institutions like ING are a crucial player in our entire economic system. As former Minister of Finance Sigrid Kaag described it: ‘What gets water and what does not? The choices of the financial sector determine what grows and what dies off.’⁸⁷ This metaphor shows clearly that the responsibility of the financial sector is twofold: less harm and more green financing.

Financing far fewer emissions is essential in this respect. It is the emission of greenhouse gases that causes climate change, and we will have used up our carbon budget in a few years if we continue on the current footing. As we explained above, financial institutions with significant emissions have the responsibility of reducing their emissions—including ING. In addition, financial institutions have a legal responsibility with regard to their clients. ING must see to it that it does not contribute to dangerous climate change through its clients.⁸⁸ For example, via loans and other services to companies that have policies that are not in line with the 1.5°C target of the Paris Agreement. The IPCC calls the persistent large degree of financing for the fossil industry a ‘major concern’.⁸⁹

In addition, financial institutions must finance more sustainable projects. A lot of the current infrastructure must be replaced so that we can use more renewable energy. We must also make greater energy savings, for example by insulating all houses and office buildings. Government funding is not enough to finance this energy transition – banks are indispensable in this respect.⁹⁰

82 | ‘Paris Agreement to the United Nations Framework Convention on Climate Change’ (12 December 2015), Art. 2.1(c).

83 | European Commission, ‘Communication from the Commission. Action Plan: Financing Sustainable Growth,’ COM/2018/97 final (8 March 2018), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A52018DC0097>.

84 | The Dutch Central Bank (DNB) Platform voor Duurzame financiering, ‘Visie, strategie en werkwijze Platform voor Duurzame Financiering’ [Vision, strategy and working method of the Platform for Sustainable Financing] (September 2022), 2, <https://www.dnb.nl/media/mythes0w/visie-strategie-en-werkwijze-platform-voor-duurzame-financiering.pdf>.

85 | G20, ‘G20 Sustainable Finance Roadmap’ (7 October 2021), 6, <https://g20sfwg.org/wp-content/uploads/2021/10/G20-Sustainable-Finance-Roadmap.pdf>; European Central Bank, ‘Supporting the Green Transition’ (accessed on 23 November 2023), https://www.ecb.europa.eu/ecb/climate/green_transition/html/index.en.html.

86 | UNEP, ‘The Closing Window. Climate Crisis Calls for Rapid Transformation of Societies. Emission Gap Report 2022’ (2022), xxvi, <https://wedocs.unep.org/bitstream/handle/20.500.11822/40874/EGR2022.pdf?sequence=3>.

87 | ‘Wat geven we water en wat niet? De keuzes van de financiële sector bepalen wat groeit en wat uitsterft.’ Sigrid Kaag, ‘Speech of Minister Kaag at 10-year anniversary of SFL’ (7 June 2022), <https://www.rijksoverheid.nl/documenten/toespraken/2022/06/07/toespraak-minister-kaag-bij-jubileum-10-jaar-sfl>.

88 | OECD, ‘OECD Guidelines for Multinational Enterprises on Responsible Business Conduct’ (2023), 33, <https://doi.org/10.1787/81f92357-en>.

89 | ‘Persistently high levels of both public and private fossil fuel-related financing continue to be of major concern despite promising recent commitments.’ IPCC, ‘Climate Change 2022: Mitigation of Climate Change. Working Group III’ (2022), 134, <https://www.ipcc.ch/report/ar6/wg3/>.

90 | European Court of Auditors, ‘EU auditors see 2030 climate and energy targets at risk’ (26 June 2023), <https://www.eca.europa.eu/nl/news/NEWS-SR-2023-18>.

Financial institutions thus have a great responsibility. That ING is not taking its responsibility is demonstrated, for example, in section 7.4 of this letter, which shows that ING is still financing new oil and gas projects. This oil and gas must stay in the ground if we wish to prevent dangerous climate change.

The responsibility of systemic players. ING is officially classified as a *global systemically important bank* (GSIB).⁹¹ These are banks that are so big and important that they can cause a global financial crisis, thereby destabilising the global economy and by extension global society. The phenomenon of ‘systemic players’ is given a much broader interpretation in science. Here it refers to players around which a whole ecosystem of parties has developed.⁹² Systemic players have a key function in society, good political connections and many resources at their disposal.⁹³ They are very important in bringing about great changes in society: they have the power of influencing or disrupting the entire value chain, or bringing about a change in direction. In other words, if these companies fundamentally change in course or position, this will have a lot of influence on their sector and their value chain. ING is such a key actor. ING is therefore not only ‘systemically important’ in safeguarding the stability of our financial system, but also the stability of our climate.

The responsibility of rich countries. International climate justice has been anchored in climate regulations since the UN Climate Convention of 1992. The attending countries decided at that time that emissions reductions had to take place on the basis of a principle of equity: ‘The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.’⁹⁴ Although everyone, in particular countries and companies, has a responsibility for climate action, it has been internationally established that those who are the strongest and have the biggest share in causing the climate crisis, must put in the greatest effort.

Rich countries such as those in Northwestern Europe and North America therefore have an extra large responsibility. And although ING’s business covers the entire world, ING has a very strong focus on rich countries. The Executive and Supervisory Board members, who are responsible for ING’s climate policy, are in Northwestern Europe.⁹⁵ The greater part of ING’s corporate and private clients are in Europe and North America.⁹⁶ In the past

91 | Financial Stability Board, ‘2023 List of Global Systemically Important Banks (G-SIBs)’ (27 November 2023), <https://www.fsb.org/2023/11/2023-list-of-global-systemically-important-banks-g-sibs/>.

92 | Jacob Hileman et al., ‘Keystone actors do not act alone: A business ecosystem perspective on sustainability in the global clothing industry’ (2020) Plos one 15(10), e0241453, <https://doi.org/10.1371/journal.pone.0241453>; Henrik Österblom et al., ‘Transnational Corporations as ‘Keystone Actors’ in Marine Ecosystems’ (2015) PLoS ONE 10(5), e0127533, <https://doi.org/10.1371/journal.pone.0127533>.

93 | Rick Bosman, ‘Into Transition Space. Destabilisation and incumbent agency in an accelerating energy transition’ (2022).

94 | ‘United Nations Framework Convention on Climate Change’ (9 May 1992), Art. 3.1. See also ‘Paris Agreement to the United Nations Framework Convention on Climate Change’ (12 December 2015), Art. 2.1(c).

95 | ING, ‘Annual Report 2022’ (2023), 100.

96 | ING’s Annual Report 2022 (2023, p. 123) describes the geographical spread of ING’s portfolio. Of the total (938 billion euros), 86% (804 billion euros) has been issued in countries that must take the lead in preventing dangerous climate change in Europe and Australia. 5% (51 billion) is issued in Africa and Asia. The rest of the clients are in North and South America, but these are not reported separately, so that we cannot make a distinction between clients in the Global North and Global South for this region.

ten years ING consistently made a profit every quarter,⁹⁷ and much of this profit was paid out to ING's shareholders, some 80% of which are in the United States and Northwestern Europe.⁹⁸ In other words, ING comes from a rich country with a greater than average responsibility for climate action, primarily does business in rich countries and it is primarily parties in rich countries that benefit from ING's business activities.

In short, financial institutions play a pivotal role in the energy transition and the mitigation of the climate crisis. In addition, ING is a key actor, which means that it has far more power than other parties to influence the financial sector and its value chain. There is international consensus that rich countries, and important companies in those countries, have a greater-than-average degree of responsibility to prevent dangerous climate change. ING is primarily active in rich countries, which only increases its responsibility. It is therefore more than reasonable that Milieudedefensie asks ING to reduce its emissions by *at least* the globally required percentage.

6. ING can take its responsibility

6.1. The measures are the prerequisites for ING's duty of care

The first half of this notice of liability shows that a great deal may be demanded of ING. ING has long been aware of the seriousness of climate change (section 4) and ING has a significant and far-reaching responsibility to do a lot to mitigate the climate crisis (section 5). That is why the measures demanded by Milieudedefensie are logical and, moreover, align with the public interest in limiting the warming of the earth to the 1.5°C target laid down in the Paris Agreement. In the case of Milieudedefensie versus Shell, the court held that this interest—mitigating climate change and potential human rights violations—weighs more heavily than Shell's economic interests. And that therefore private companies such as Shell may also be required to take 'drastic measures and make financial sacrifices'.⁹⁹

That the measures that ING is being demanded to take require drastic measures and financial sacrifices is, in any event, certainly not an absolute given. ING has a multitude of options for considerably reducing its share in the climate crisis. The measures demanded by Milieudedefensie are the prerequisites for ING to comply with its duty of care. They simply ensure *that* ING will do at least the minimum that can be demanded. *How* ING does so, is a matter for ING. Below we will explain why the measures that Milieudedefensie is claiming from ING are effective, proportional and not onerous and can even be in ING's interest.

97 | ING, 'Quarterly Results' (accessed on 27 November 2023), <https://www.ing.com/Investors/Financial-performance/Quarterly-results.htm>.

98 | ING's Annual Report 2022 (2023, p. 10) describes that 44% of the shareholders is based in the United States, 17% in the United Kingdom, 9% in France, 8% in Scandinavia, 4% in Germany and 2% in the Netherlands. Together this comes to 84%.

99 | Vereniging Milieudedefensie et al v Royal Dutch Shell plc, District Court of The Hague, ECLI:NL:RBDHA:2021:5337 (25 May 2021), 4.4.53, <https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RBDHA:2021:5337>.

6.2. The measures are effective, proportional and not onerous

The previous section clearly shows that ING's responsibility is also a far-reaching responsibility. ING must make climate policy that is in line with the 1.5°C target of the Paris Agreement, inter alia by reducing its CO₂ emissions by 48% and by reducing all its greenhouse gas emissions by 43% CO₂e in 2030. Up to now ING has clearly shown that it is unwilling to take its responsibility. At the recent shareholders' meeting in April 2023, 70 of ING's shareholders asked whether ING is willing to reduce ING's CO₂ emissions by 45%. You said no. ING believes that this global average reduction percentage does not apply to ING, because according to ING, its portfolio is not a representative reflection of the world.¹⁰⁰ In section 5 we saw that more than the global average reduction percentage would be reasonable for ING. This answer of ING ('no') shows that the demands that Milieudedefensie has laid down in this notice of liability are necessary to prevent further unlawful endangerment.

In this section we will explain that the measures that Milieudedefensie presented in section 2.2 are effective, proportional and not onerous.

Measure 1: ING sees to it that its climate policy is in accordance with the 1.5°C target of the Paris Agreement. The most important point is that ING must bring its decisions and actions in line with ING's significant and far-reaching responsibility in preventing dangerous climate change. This requires broad adjustments on the part of ING and its climate policy. Measure 1 gives ING a great degree of freedom to give substance to its climate policy according to its own insight. The measure only demands that ING do the minimum that is necessary on the basis of its duty of care to contribute to preventing dangerous climate change. This at least requires that the climate policy provides for the minimum necessary measures to ensure that ING ceases further unlawful endangerment: measures 2 and 3, as explained hereinafter.

Measure 2: ING reduces its emissions by at least 48% CO₂ and at least 43% CO₂e in 2030 compared to 2019. If ING wishes to reduce its contribution to dangerous climate change, this requires an absolute reduction of ING's emissions. ING's most important emissions are its financed emissions. ING has a lot of influence on the quantity of the emissions. ING can influence clients ('engagement') by, for example, sharing knowledge, pricing in climate performance and risks, and setting clear financing conditions. ING can make a conscious choice whether or not to (re)finance (sustainable or polluting) clients or project, for example by parting ways with polluting clients ('disengagement') that do not improve their climate policy after ING's engagement. Emissions reduction on the part of clients also means emissions reduction on the part of ING. In view of ING's far-reaching responsibility, ING's absolute reduction must be at least 48% CO₂ and 43% CO₂e in 2030 compared to 2019.

100 | When someone asked ING whether, as a rich company in a rich country, it will reduce its emissions by 45% in 2030, CEO Steven van Rijswijk answered at the ING Groep Annual General Meeting (24 April 2023): 'the bank is not the exact representation of the globe. There are differences in the representation of the globe. If we were to be an exact globe, that is what it would mean, but not in terms of the different relative emission levels we are not an exact globe.' For a recording of the livestream, see https://online.ing.com/watch_ondemand/i-tlZbByjbVKi9aB2Zzl-v8mobaUf9yjkXd6qG1k4U/.

ING's current reduction targets are primarily intensity targets.¹⁰¹ Intensity targets do not by definition reduce the total quantity of greenhouse gases, but the quantity of greenhouse gas *per*, for example, kilometre flown for a passenger in an airplane, *per* generated kilowatt hour or *per* kilometre driven in a car. Suppose all of us drive and fly much more, but do so more efficiently (more electric, more passengers in one airplane), ING will achieve its *intensity* targets, while from an *absolute perspective*, more emissions might occur. These intensity targets therefore do not give any guarantee that ING's total emissions are in fact being reduced to a sufficient degree. Therefore, although these intensity targets may be a handy instrument for focusing on energy efficiency, they do not guarantee that ING will reduce its unlawful share in dangerous climate change. Indeed, with these intensity targets, ING's financed emissions can even continue to rise. ING's current emissions reduction targets are therefore not effective.

In order to achieve effective reduction of ING's share in the climate crisis, intensity targets may thus not take the place of absolute reduction targets. It is established that absolute reduction—not only the reduction of intensity—is necessary to limit the warming of the earth to 1.5°C.¹⁰² The UN initiative *Race to Zero* and the UN *High-Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities* (UN HLEG) believe that an absolute reduction target is essential for financial institutions.¹⁰³ These leading institutions thus acknowledge that an absolute target is necessary for the short term to achieve the long term climate targets. Pensioenfondsen ABP and PFZW have already put this into practice, and in the past few years have set an overall absolute reduction target of 50% in 2030.¹⁰⁴

Measure 3a and 3b: ING demands a good climate plan from all large corporate clients and ceases financing and support if they do not have a good plan within one year. In addition to reducing ING's total emissions, ING also has the responsibility of taking action if large corporate clients are themselves involved in contributing to dangerous climate change. For example, when clients do not bring their activities in line with the 1.5°C target. ING must ask large corporate clients to provide a good climate plan. With this information ING will know whether it is breaching its legal duty of care by enabling the unlawful actions of clients. In addition, (publicly) asking for a climate plan is an effective engagement tool that puts pressure on clients to become more sustainable. It is not

101 | ING sets emissions reduction targets for ten (parts of) sectors. ING has an absolute financing target (i.e. not an intensity target) for upstream oil and gas. For shipping ING uses an 'alignment delta', the purpose of which is to improve the efficiency of ships (and therefore not specifically to reduce the absolute total quantity of emissions of this part of ING's portfolio). All other sectors for which ING sets a target only have intensity targets. See ING, 'Climate Report 2022' (2023), 54.

102 | 'Paris Agreement to the United Nations Framework Convention on Climate Change' (12 December 2015), Art. 2.1(a); 'Glasgow Climate Pact' (13 November 2023), Art. IV.22; IPCC, 'Climate Change 2022: Mitigation of Climate Change. Working Group III' (2022), 134, <https://www.ipcc.ch/report/ar6/wg3/>.

103 | UN High-Level Expert Group (UNHLEG) on the Net Zero Emissions Commitments of Non-State Entities, 'Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions' (November 2022), 17, https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf; Race to Zero Expert Peer Review Group, 'Interpretation Guide Race to Zero Expert Peer Review Group Version 2.0' (June 2022), 8, <https://climatechampions.unfccc.int/wp-content/uploads/2022/09/EPRG-interpretation-guide.pdf>.

104 | Pensioenfondsen ABP has an absolute reduction target of 50% CO₂e for scope 1, 2 and 3 of its financed emissions, for the entire portfolio, for 2030 compared to 2019. PFZW has an absolute reduction target of 50% CO₂ for scope 1 and 2 of its financed emissions, for the greater part of its portfolio (but not the entire portfolio), for 2030 compared to 2019. See ABP, 'Klimaatbeleid ABP 2022-2030. Versnellen met beleggingen die het verschil maken' [ABP Climate Policy 2022-2030. Accelerating investments that make a difference] (15 December 2022), 4; PFZW, 'Klimaatplan PFZW' [PFZW Climate Plan] (May 2023), 4.

onerous for ING to ask large corporate clients to provide a climate plan, as this measure is comparable to what the OECD and the European Central Bank are asking of ING.¹⁰⁵

In this case too, engagement and disengagement are measures that ING can take. ING appears to believe strongly in the power of engagement.¹⁰⁶ Milieudefensie also has the goal of powerful engagement—that is why Milieudefensie demanded that ING and 28 other polluting companies provide good climate plans in our campaign. We discussed this with you, asked questions at ING's shareholders' meetings and tried to use our influence in other ways to convince ING to develop an appropriate climate policy (see section 8.1).¹⁰⁷ But if a client does not have a climate plan, or only has an inadequate climate plan after having had sufficient time to prepare such, or has a good plan but does not implement it or fails to implement it adequately, disengagement is necessary. ING itself explicitly dismisses disengagement. ING believes that we must include polluting companies in the energy transition, not leave them behind, and that talking with companies will encourage them to go green.¹⁰⁸ ING therefore does not believe disengagement to be effective or desirable.

Disengagement is most certainly effective. Disengagement is a 'big stick' to accompany speaking softly, as it were. Engagement only becomes effective with clear targets, escalation and a threatened end point.¹⁰⁹ Parting ways with the most polluting businesses within a sector, but not with others, sends clear signals to the market and stimulates companies to compete on sustainability.¹¹⁰ That is why the measure that Milieudefensie is demanding is effective: it *combines* asking for a climate plan and discussions with the company *and* attaches consequences to failure to meet these requirements.

In addition to disengagement being effective, it is sometimes also unavoidable. ING has an individual legal responsibility to respect human rights (such as those relating to climate change), even if other parties are involved in the violation of such human rights in addition to ING. Recently a UN human rights commission pointed out that banks can violate human rights by financing Saudi Aramco, the biggest fossil company in the world,

105 | ECB, 'Guide on climate-related and environmental risks. Supervisory expectations relating to risk management and disclosure' (November 2020), 34. The OECD Guidelines emphasise that due diligence also encompasses 'downstream impact', including scope 3 emissions, see OECD Guidelines (2023, Chapter IV.77)

106 | ING, 'Climate Report 2023' (2023), 26.

107 | See footnote 25 for definition of 'good climate plan.'

108 | ING, 'Climate Report 2023' (2023), 26.

109 | Measure 3.2(c): 'disengagement with the business relationship either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact.' OECD, 'Due Diligence for Responsible Corporate Lending and Securities Underwriting' (2019), 47, <https://www.oecd.org/investment/due-diligence-for-responsible-corporate-lending-and-securities-underwriting.htm>.

110 | 'divesting from assets within, but not across, a sector can send important market signals and enhance the competitive position of best-in-class actors in the sector.' OECD, 'Managing Climate Risks and Impacts Through Due Diligence for Responsible Business Conduct: A Tool for Institutional Investors' (October 2023), https://www.oecd-ilibrary.org/sites/8aee4fce-en/1/3/3/index.html?itemId=/content/publication/8aee4fce-en&_csp_=ed1a71fe57ed671337257727d20b8e07&itemIGO=oecd&itemContentType=book.

in connection with its climate impact.¹¹¹ The question whether disengagement is more or less effective than engagement is ultimately irrelevant. The OECD Guidelines also demand disengagement if engagement fails to yield results.¹¹²

In view of the significant danger that climate change constitutes for human rights, and in view of ING's individual legal responsibility not to finance and support clients who contribute to that danger, engagement—combined with disengagement policy on the basis of climate plans—is legally necessary.

Measure 3c-e: ING demands that fossil fuel clients stop fossil fuel expansion and draw up a good phase-out plan, and stop financing and supporting fossil fuel clients in case of inadequate change. ING's individual legal responsibility for financing and supporting clients, as explained above, naturally also applies to clients in the fossil fuel sector. Because of the central role of this sector in contributing to dangerous climate change, that legal responsibility acquires a specific substance.

The International Energy Agency (IEA) clearly says that new oil and gas fields and coal mines cannot be reconciled with limiting climate warming to 1.5°C.¹¹³ As Fatih Birol, director of the IEA, puts it: 'New large-scale fossil fuel projects not only carry major climate risks, but also business and financial risks for the companies and their investors.'¹¹⁴ Nevertheless, virtually all companies in the fossil fuel sector remain involved in fossil fuel expansion, and consequently with human rights violations.

111 | 'A financial business can move from being directly linked to an adverse human rights impact to contributing to that impact if it does not take action to prevent or mitigate the business relationship to which it is directly linked, including by undertaking human rights due diligence. 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.' See 'Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the promotion and protection of human rights in the context of climate change; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and the Special Rapporteur on the human rights to safe drinking water and sanitation' (27 June 2023), ref. AL OTH 84/2023, 7.

112 | OECD, 'Managing Climate Risks and Impacts Through Due Diligence for Responsible Business Conduct: A Tool for Institutional Investors' (October 2023), https://www.oecd-ilibrary.org/sites/8aee4fce-en/1/3/3/index.html?itemId=/content/publication/8aee4fce-en&csp=_ed1a71fe57ed671337257727d20b8e07&itemGO=oecd&itemContentType=book. With regard to the need for disengagement in case a good climate plan is not provided, see also: SBTi, 'Foundations for science-based net-zero target setting in the financial sector. Version 1' (April 2022), 9; Race to Zero, 'Interpretation guide Race to Zero Expert Peer Review Group' (June 2022), 8.

113 | 'As clean energy expands and fossil fuel demand declines in the NZE Scenario, there is no need for investment in new coal, oil and natural gas' IEA, 'Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach – Analysis' (September 2023), 15, <https://www.iea.org/reports/net-zero-roadmap-a-global-pathway-to-keep-the-15-0c-goal-in-reach>.

114 | Fiona Harvey, 'New Fossil Fuel Projects 'Very Unwise Economic Risk' Says Global Energy Chief,' The Guardian (14 September 2023), <https://www.theguardian.com/environment/2023/sep/14/fossil-fuel-investment-very-unwise-economic-risk-energy-expert-fatih-birol>.

The fossil fuel clients in ING's portfolio are no exception. ING is nevertheless still supporting the fossil fuel industry to the tune of at least 15 billion euros.¹¹⁵

Nor do any of the fossil fuel clients in ING's portfolio have a good phase-out plan for fossil fuels that is in line with achieving the 1.5°C target. An example of a company that denies the shrinkage of the fossil fuel sector is Vitol, a big Dutch oil trader, to which ING lent over 2 billion euros in the past two years.¹¹⁶ This is contrary to the international consensus that the fossil fuel sector must be phased out.¹¹⁷

ING says that the world still needs a lot of fossil fuels.¹¹⁸ However, ING is financing far more than the world needs, it is financing an *expansion* of fossil fuels. ING has no responsibility to continue financing or support fossil fuel companies. At the same time, ING does have the legal responsibility of not contributing to dangerous climate change. ING nevertheless persists in financing and supporting fossil fuel companies that are absolutely not acting in line with 1.5°C. Believing that engagement will change anything in these companies is naive, and continuing to finance and support these companies is unlawful.

(1) Engagement at fossil fuel clients is naive. In the past few decades many tried to seek engagement with the fossil fuel industry, yet this never caused the industry to change course, or it led to negligible changes. A number of the biggest pension funds of the world, ABP and PFZW, also had extensive engagement discussions with oil and gas

115 | ING, 'ING Results Presentation 2023 Q1' (2023), 21, <https://www.ing.com/Investor-relations/Financial-performance/Quarterly-results/ING-Results-Presentation-1Q2023.htm>. This number contains all outstanding amounts in oil and gas companies in ING's portfolio. This does contain (a) oil and gas companies, but not coal companies; (b) up-, mid- and downstream oil and gas companies, but no traders; (c) loans, investments, very short term loans ('money markets'), but no guarantees and letters of credit and no underwriting of bonds and shares for oil and gas companies. In addition to these 15 billion euros for oil and gas companies, ING is still financing (a) coal companies; (b) traders in oil and gas (the most up-to-date figure we know of for the financing of fossil fuel traders is 15.7 billion euros, see ING's quarterly report 2020-Q1); and (c) the issue of shares and bonds (ING does not report on this, but research of Follow the Money shows that ING helped fossil fuel companies receive 82 billion euros through this path, see section 7.3).

116 | According to the Banking on Climate Chaos report of Banktrack et al. (2023), Vitol is the fossil fuel company to which ING lent the most money. This was almost 4 billion dollars since 2016, of which 2 billion in 2021 and 387 million in 2022. After Vitol, ING lent the most money to Mercuria (2.2 billion dollars) and Trafigura (1.7 billion), both of which companies also trade in fossil fuels.

117 | 'Oil and gas phase-out policies from financial institutions must include a commitment to end financing and investing in support of: (i) exploration for new oil and gas fields, (ii) expansion of oil and gas reserves, and (iii) oil and gas production' UN High-Level Expert Group (UNHLEG) on the Net Zero Emissions Commitments of Non-State Entities, 'Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions' (November 2022), 24, https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf. 'To comply with the carbon budget for a 50:50 chance of not exceeding 1.5°C of warming requires immediate and deep cuts in the production of all fossil fuels. There are no exceptions; all nations need to begin a rapid and just phaseout of existing production.' Dan Calverley and Kevin Anderson, 'Phaseout Pathways for Fossil Fuel Production Within Paris-Compliant Carbon Budgets' Tyndall Centre (March 2022), 6, <https://www.iisd.org/publications/report/phaseout-pathways-fossil-fuel-production-within-paris-compliant-carbon-budgets>. See also: SBTi, 'The SBTi Fossil Fuel Finance Position Paper. Consultation Draft.' (June 2023), 3; Fiona Harvey, 'New Fossil Fuel Projects 'Very Unwise Economic Risk' Says Global Energy Chief,' The Guardian (14 September 2023), <https://www.theguardian.com/environment/2023/sep/14/fossil-fuel-investment-very-unwise-economic-risk-energy-expert-fatih-birol>.

118 | ING, 'ING takes next step in aligning oil & gas portfolio with climate goals' (accessed on 28 November 2023), <https://www.ing.com/Newsroom/News/ING-takes-next-step-in-aligning-oil-gas-portfolio-with-climate-goals.htm>.

companies. In the end they concluded that disengagement was the only logical choice.¹¹⁹ And they are not alone: more than 80% of the institutional investors no longer believe that engagement in relation to climate topics will lead to positive change among oil and gas companies.¹²⁰ If so many parties have tried engagement with these companies and get nowhere, ING cannot continue to maintain its position that engagement is by definition more effective than disengagement.

(2) Disengagement from fossil fuel clients is effective. Contrary to ING's misguided view, disengagement from a destructive sector is indeed effective. New research shows that it certainly has impact when financiers collectively refuse to finance polluting activities. If financial institutions publicly say 'no' to polluting activities or sectors, this undermines a company's social licence to operate. For the coal sector, disengagement and exclusion policy are common practice—a practice that ING proudly participates in.¹²¹ Disengagement in relation to coal companies has a negative impact on existing and future financing for coal projects.¹²² When some financiers distanced themselves from the coal industry, other financiers were not exactly chomping at the bit to take their place.¹²³ Because fewer and fewer institutions were willing to finance coal companies, and the financing of coal became more expensive, coal-fired power stations are shutting down prematurely and no new coal projects are taking their place. This will lead to a reduction in greenhouse gas emissions.¹²⁴ Ceasing financing is not exceptional and is often used by governments as a policy instrument. Examples of this are ceasing the financing for the oil trade with Russia and the prohibition of financing for cluster munition.¹²⁵

These two observations—the lack of impact via engagement with fossil fuel companies and the clear effect of disengagement on the part of coal companies—force a specific

119 | 'We see insufficient opportunity, through our influence as shareholder, to have these companies make the transition from fossil fuels to sustainable energy.' ABP, 'ABP bouwt beleggingen in producenten van fossiele energie af' [ABP phasing out investments in fossil energy producers] (announcement 2021, accessed on 28 November 2023), <https://www.abp.nl/over-abp/duurzaam-en-verantwoord-beleggen/ABP-stopt-met-beleggen-in-producenten-van-fossiele-energie>; PFZW, 'Engagement met duidelijke doelen en mijlpalen [Engagement with clear targets and milestones]' (accessed on 15 December 2023), <https://www.pfzw.nl/over-pfzw/zo-beleggen-we/hoe-we-duurzaam-beleggen/we-dragen-bij-aan-de-energietransitie/doorzicht-engagement.html>.

120 | 'a survey of 64 institutional investors, with almost \$11tn in assets, found that only 17 per cent believe oil groups will transform their businesses to focus on green energy.' Attracta Mooney and Billy Nooman, 'Most big investors sceptical over oil majors' green ambitions' Financial Times (3 May 2023), <https://www.ft.com/content/fdb34abf-5990-474a-a5c9-6d601ae41826>.

121 | ING, 'ING further sharpens coal policy to support transition to low-carbon economy' (12 December 2017), <https://www.ing.com/Newsroom/News/ING-further-sharpens-coal-policy-to-support-transition-to-low-carbon-economy.htm>.

122 | Green and Vallée (2023) observed 'large effects of the [divestment] policies on coal firm loan issuances, as well as on their outstanding debt and total assets'. The NewClimateInstitute (2022, p. 17) stated that, 'depending of the scope of the divestment, the company receiving the investment can be confronted with higher financing costs, which can lead to the company having to give up or shut down a specific project or business activity.'

123 | Green and Vallée (2023) observed that 'substitution between divesting lenders and non-divesting ones, as well as with bond and equity issuances, appears to be limited.'

124 | Zhou et al. (2021) compare the 'loan spread' (the spread of the costs of lending money) for coal between 2000-2010 and 2011-2020, and show that it has clearly become more expensive to borrow money for coal companies and projects. Green and Vallée (2023) show that 'coal power plants owned by firms exposed to bank divestment policies are more likely to be retired.'

125 | European Council, 'EU sanctions against Russia explained' (accessed on 28 November 2023), <https://www.consilium.europa.eu/nl/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>; AFM, 'Investeringsverbod clustermunition' [Investment Prohibition on Cluster Munition] (accessed on 28 November 2023), <https://www.afm.nl/nl-nl/sector/themas/marktmisbruik/clustermunitie>.

engagement and disengagement policy for the fossil fuel sector. A policy that is geared to the exceptional and, above all, significant and urgent danger that is connected with financing this sector. In order to stop the current unlawful actions of ING, ING must demand that its fossil fuel clients stop fossil fuel expansion and adopt a good phase-out plan for fossil fuels. ING must also stop as soon as possible with new financing and support for clients who fail to comply, and proceed to total disengagement if the fossil fuel client has still not changed after one year.

Measure 4: ING engages in conversation with Milieudefensie. We understand that ING must translate measures 1 through 3 to its own operations to concretely give them substance. In order to ensure that ING can properly lawfully realise this goal, but also in order to provide ING with support when it comes to this critical task, we ask ING within eight weeks after the date of this letter to sit down with Milieudefensie to discuss this matter.

The same thing applies to all of the above measures: lack of knowledge (higher quality data, available methodologies, etc.) is not an excuse. Various bodies and initiatives, including regulators and the NGFS, emphasise that incomplete data should never be an impediment to taking action.¹²⁶

6.3. A better climate policy will make ING future-proof

One of the four focus points in ING's climate policy is 'managing climate risks'.¹²⁷ This does *not* concern the risks of the climate crisis for human lives, nature and the environment, but the risks of climate change for ING's business operations. For example, when an area with houses financed by ING is destroyed by a major flood, the repayment of mortgages to ING will be in jeopardy.¹²⁸ ING is obliged to chart, manage and report on these risks toward its shareholders and bondholders and supervisors like the European Central Bank. These supervisors ensure that risks are managed and the stability of the financial system is guaranteed. They concluded that from that perspective too financial institutions must actively ensure that their clients engage in responsible business conduct,¹²⁹ but also that banks that do *not* implement climate policy will lose out on

126 | DNB director Olaf Sleijpen stated in a speech in November 2022: 'Based on the data that is already available now, it is possible to form a reasonably detailed opinion on the carbon footprint of the financial sector. Both at macro level and for your own portfolio. You can get to work with this now.' DNB, 'Speech Olaf Sleijpen 'Beheers je risico's, word duurzamer' [Manage your risks, focus on sustainability]', held at the Board Dinner Netspar' (The Hague, 15 November 2022); NGFS, 'First Comprehensive Report – A Call to Action' (April 2019), 22; NGFS, 'Progress Report on Bridging Data Gaps' (May 2021), 28; Race to Zero, 'Interpretation guide Race to Zero Expert Peer Review Group' (June 2022), 4.

127 | ING, 'Climate Report 2023' (2023), 7.

128 | DNB, 'Financial Stability Report' (autumn 2021), 52-66.

129 | 'Institutions are expected to conduct a proper climate-related and environmental due diligence, both at the inception of a client relationship and on an ongoing basis' ECB, 'Guide on climate-related and environmental risks Supervisory expectations relating to risk management and disclosure' (November 2020), 34.

profit.¹³⁰ By taking the requested measures in time, ING can phase out its own risks in an orderly manner and gain a lot of knowledge. The requested measures therefore not only reduce the risks of ING's inadequate climate policy for others, but also the risks of inadequate climate policy for ING itself.

As Ralph Hamers, ING's previous CEO, acknowledged in a lobby letter in 2017: 'We are aware that doing nothing is not an option and will be more costly in the long run.'¹³¹

6.4. Conclusion

ING can take measures to comply with its significant and far-reaching responsibility. These measures are effective, proportional and not onerous. Indeed, better climate policy will even be advantageous for ING in many areas. Although ING is well aware of the danger of climate change and there are plenty of measures to take to mitigate this danger, ING has had an inadequate climate policy year in year out. ING is consequently breaching its legal obligation.

7. ING is breaching its legal obligation

7.1. ING's emissions are far greater than ING itself acknowledges

ING reported itself that its financed greenhouse gas emissions were 61 megatons of CO₂e in 2022.¹³² This is in itself a great amount, and is sufficient to conclude that ING is in breach of its legal duty of care (see section 5). However, ING's actual emissions are in fact much greater. ING's report leaves out large parts of its financed emissions. This report falls short in at least three ways:

(1) Scope 3 emissions of ING's clients. The greenhouse gas emissions of companies is often divided into three 'scopes'. Let us take the example of a company that pumps up oil and gas. Scope 1 of this company is the emissions that are released in the company's own operations, for example the methane that is released or that leaks when extracting gas. Scope 2 is the emissions caused by the generation of the energy that the company purchases for its own business activities, e.g. to operate machinery. Scope 3 is the emissions in the company's value chain, e.g. the emissions that are released when the oil that is sold is burned in a consumer's petrol car.

130 | 'acting 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.' Tina Emambakshsh et al., 'The Road to Paris: Stress Testing the Transition towards a net-zero economy,' ECB Occasional Paper Series, no. 328 (September 2023), 5. 'the sooner and faster we complete the necessary green transition, the lower the overall costs and risks.' Luis de Guindos, 'Need for speed on the Road to Paris,' ECB (6 September 2023), <https://www.ecb.europa.eu/press/blog/date/2023/html/ecb.blog230906~8ab6e40722.en.html>.

131 | Peter Blom et al., 'Duurzame omslag vraagt actief samenspel van overheid, bedrijfsleven en financiële sector' [Sustainable transition requires an active interplay of government, business community and the financial sector] (28 June 2017), <https://www.rabobank.nl/over-ons/pers/persberichten/011337052/duurzame-omslag-vraagt-actief-samenspel-van-overheid-bedrijfsleven-en-financiele-sector>.

132 | ING, 'Climate Report 2023' (2023), 85.

ING itself has scope 1, 2 and 3 emissions. ING's scope 1 and 2 emissions are very small. These 'operational emissions' are, for example, linked to the energy that ING purchases for its air conditioning and computers, and will not be discussed further in this letter. ING's scope 3 emissions—the emissions in the bank's value chain—are very large, on the other hand. This also includes the scope 1, 2 and 3 emissions of the clients that ING finances and to which it provides services¹³³—together over 99% of ING's emissions. We call these emissions 'financed emissions'.¹³⁴ These emissions fall within ING's value chain, and ING therefore bears a responsibility for this.

Unfortunately ING does not report on the scope 3 emissions of clients and it has fallen short in improving its reporting. To measure emissions, ING uses the standard of the *Partnership for Carbon Accounting Financials* (PCAF). PCAF asks financial institutions to report the scope 3 emissions of clients and companies in which they invest in the oil and gas and mining sectors as of 2021—ING has not done so to date.¹³⁵ As of 2023 ING was required to publish the scope 3 of the transport, construction, materials and industrial activities sectors—ING failed to do so. As of 2025 ING must publish this for all activities—ING has promised that it is working on this, but has not yet promised to actually report this.¹³⁶ Authoritative international initiatives (including the Net Zero Banking Alliance that ING itself endorses) required that the emissions reduction targets of banks also relate to the scope 3 emissions of clients.¹³⁷ In case of a lack of data they require that this scope 3 be estimated and/or that banks explain what efforts they are taking to improve the availability of data. ING fails to take its responsibility. In order to estimate ING's climate risks, ING says that it does request the scope 3 emissions of the 15 biggest clients per sector (but ING fails to publish this data).¹³⁸ Other banks, such as NatWestGroup and Lloyd's, are already reporting the scope 3 emissions of their clients in the oil and gas sector.¹³⁹ This shows that this is possible, but ING opts not to do so.

How big ING's actual financed emissions are, is therefore unclear. ING does not report its clients' scope 3 emissions. External studies estimate this scope 3 of ING's financed

133 | PCAF, 'Financed Emissions (2nd ed.)' (December 2021), 68-69, <https://carbonaccountingfinancials.com/files/downloads/PCAF-Global-GHG-Standard.pdf>; Greenhouse Gas Protocol, 'Corporate Value Chain (Scope 3) Accounting and Reporting Standard. Corporate Value Chain (Scope 3) Accounting and Reporting Standard. Supplement to the GHG Protocol Corporate Accounting and Reporting Standard' (September 2011), 51. Note: these standards currently do not ask to report the scope 3 emissions of all clients, although they do ask to report those of many clients, such as oil and gas companies, and ING is failing to do so.

134 | See footnote 22 for the definition of 'financed emissions'.

135 | PCAF, 'Financed Emissions (2nd ed.)' (December 2021), 68-69, <https://carbonaccountingfinancials.com/files/downloads/PCAF-Global-GHG-Standard.pdf>.

136 | ING says it is working on scope 3 reporting: 'While our financed emissions disclosure is currently limited to the scope 1 and scope 2 emissions of our clients, we aim to disclose client scope 3 emissions in coming disclosures where data quality allows. Our membership of PCAF (as from April 2023) also comes with a commitment to disclose the scope 3 emissions of clients for certain sectors, and we aim to fulfil this commitment as soon as possible.' ING, 'Climate Report 2023' (2023), 85.

137 | UN High Level Group on the Net-Zero Emissions Commitments of Non-State Entities, 'Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions' (2022), 17; Race to Zero Expert Peer Review Group, 'Interpretation Guide Race to Zero Expert Peer Review Group. Version 2.0' (2022), 4; UNEP FI, 'Net-Zero Banking Alliance Commitment Statement' (2021), 2.

138 | ING, 'Climate Report 2022' (2022), 37.

139 | NatWestGroup, 'Championing potential. 2022 Climate-related disclosures report' (2022), 79-80; Lloyd's Banking Group, 'Building a Sustainable Future. Environmental Sustainability Report 2022' (2023), 11.

emissions to be four to five times as large as the emissions reported by ING.¹⁴⁰ If this is correct, the emissions over which ING has control are considerably greater than the emissions of all of the Netherlands.¹⁴¹

(2) Asset management for clients. ING invests its own money in companies ('direct investments'), but also invests the money of *clients* on their behalf ('asset management for clients'). This asset management for clients concerns a large amount of investments—at the end of 2021 over 176.7 billion euros¹⁴²- but ING does not report on these emissions. In 2021, Fair Finance Guide Netherlands looked at ING's investments in the energy sector, and this presented a disconcerting picture. On the basis of the data to which they had access, 99% of these investments in the energy sector went to fossil fuels, and only 1% to renewable energy sources.¹⁴³ This is far worse than the loans and the bonds that ING underwrites for the energy sector, of which 62% went to fossil fuels and 38% to renewables in 2020. This research therefore suggests that ING's asset management for clients is proportionally even more polluting than their loans and other services. For example, ING's own fund invests another 2.6 billion euro in TotalEnergies.¹⁴⁴ ING is nevertheless not transparent about this, nor does ING have a policy for reducing these emissions.

(3) Issuance of financial instruments. In addition to loans and asset management, ING also offers other services to clients. These are services whereby ING does not finance clients *itself*, but makes it possible or easier for *third parties* to finance a client. An example of this is underwriting the issue of financial instruments by companies, like shares and bonds. Shares are negotiable 'pieces of a company' that investors can buy. Bonds are negotiable 'pieces of a loan to a company' that investors can buy. This gives the company access to financing of other money providers than just banks. This can be attractive for a company, because it allows it to raise more financing, pay a lower interest rate, or agree better financing conditions. In any event, companies cannot issue financial instruments such as bonds themselves. Estimating risks and determining an appropriate interest on a bond is complex and this requires financial experts. Often a bank (or group of banks) like ING first buys all the bonds itself, to then quickly resell them. By being an intermediary, ING gives investors the confidence that the company bonds themselves, the interest rates and the risks are appropriate.

140 | Ward Warmerdam and Ender Kaynar, 'Dutch financial sector financed emissions. Financed emissions from corporate finance and investment portfolios,' Profundo (23 November 2023), 20-23. This report used the best available estimates at that time, because so little data was publicly available to the research agency, are based on assumptions and extrapolations.

141 | According to the EDGAR database of the European Commission (2023, p. 174), the emissions of the Netherlands, including all industry and agriculture based in the Netherlands, were 167.8 megatons of CO₂e. The Profundo study (2023, pp. 20-23) estimated the scope 1 and 2 emissions in 2022 at 73 megatons and ING's scope 3 emissions at 251 megaton.

142 | ING's Annual Report 2021 (2022, p. 49) describes the assets under management (AuM) for Germany (79 billion euros), Spain (15 billion), Belgium (42.6 billion) and the Netherlands (40.1 billion). Together this comes to 176.7 billion euros. In the following years we did not find any reports on the AuMs, so we have used data from 2021.

143 | Ward Warmerdam et al., 'Fossil Fuel versus Renewable Financing by Financial Institutions active in the Netherlands: A Case Study for Fair Finance Guide Netherlands,' Profundo (October 2021), 42, <https://www.eerlijkegeldwijzer.nl/onderzoeksrapporten/>.

144 | ING Aria, 'Semi-Annual report, including unaudited financial statements as of 30 June 2023', https://www.ing-lu.com/webisim/content/dam/isim/pdf/ing-aria/legal-documents/ING_Aria_SAR_EN.pdf.

Investico's researchers looked into these services and determined that ING supported fossil fuel companies by issuing no less than 83.2 billion euros in bonds since the Paris Agreement.¹⁴⁵ ING provided these services to, e.g., Var Energy and Aker BP, companies involved in oil and gas exploration in the vulnerable North Pole region, and Antero Resources, a company starting up new, highly polluting shale gas projects. These harmful activities can take place partly because ING gives legitimacy to these company bonds. It is ING's role to find investors for the bond—they push the bond onto the market.

Although ING does report on and sets reduction targets for loans for, e.g., fossil fuel companies, at present ING is still not taking any responsibility for other services through which ING helps fossil fuel companies obtain financing. This is concerning, as at the same time, the total value of all bonds issued by fossil fuel companies has increased globally from 96 billion euros in 2016 to 248 billion euros in 2020.¹⁴⁶ Fossil fuel companies are increasingly dependent on bonds: in 2000, three-quarters of the financing derived from bank loans and only 14% from bonds, but in 2020 over half came from bonds and less than half from loans.¹⁴⁷ It is therefore essential that banks take responsibility for these services. Last year Danske Bank stopped issuing bonds for fossil fuel companies that are still embarking on new fossil fuel projects or do not have a good climate plan.¹⁴⁸

Authoritative international initiatives require that banks formulate emissions reduction targets for all their services.¹⁴⁹ In October 2023, ING made the commitment to report on ING's emissions linked to underwriting shares and bonds as soon as the PCAF methodology for this is completed. In December 2023, PCAF published the definite measurement methodology, building on a draft methodology that was already published in 2022.¹⁵⁰ So ING could have taken action earlier, but so far has not reported on these emissions, and is therefore not in line with the PCAF standard. Because ING is not considering the emissions connected with the underwriting of bonds, ING's actual emissions are far greater than what the bank is reporting at this time.

145 | Ties Joosten et al., 'ING Bank en ABN Amro helpen de fossiele industrie aan tientallen miljarden,' ['ING Bank and ABN Amro are helping the fossil industry receive financing of tens of billions'] Follow the Money (26 September 2023), <https://www.ftm.nl/artikelen/ggii-2-fossil-finance-biljoen-fossiele-obligaties-ing-abn-amro>.

146 | Ties Joosten et al., 'ING Bank en ABN Amro helpen de fossiele industrie aan tientallen miljarden,' ['ING Bank and ABN Amro are helping the fossil industry receive financing of tens of billions'] Follow the Money (26 September 2023), <https://www.ftm.nl/artikelen/ggii-2-fossil-finance-biljoen-fossiele-obligaties-ing-abn-amro>.

147 | The research forming the basis of this comparison was conducted by Theodor F Cojoianu et al., 'The city never sleeps' *Regional Studies* 57:2 (2023), 268-286, but the researchers of this article have provided more recent data for the Follow the Money article (2023) data.

148 | 'To further clarify our policies, we have updated our position statement on fossil fuels to make it clear that we do not offer financial services (long term lending, guarantees, primary debt and equity capital markets activities) to oil and gas E&P companies that do not set a credible transition plan in line with the Paris Agreement. In line with the IEA's Net Zero Emissions by 2050 Scenario, we will not offer new long-term financing or refinancing to E&P companies that intend to expand supply of oil and gas beyond what was approved for development by 31 December 2021. We could still support any E&P company in their transition provided that the financing is for ring-fenced renewable energy or carbon capture, utilisation and storage (CCUS) activity.' Danske Bank, 'Danske Bank's Climate Action Plan' (January 2023), 20.

149 | UN High Level Group on the Net-Zero Emissions Commitments of Non-State Entities, 'Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions' (2022), 22; Race to Zero, 'Starting Line and Leadership Practices 3.0 - Minimum criteria required for participation in the Race to Zero campaign' (2022), 2.

150 | PCAF, 'The Global GHG Accounting & Reporting Standard Part B. Facilitated Emissions (2023), <https://carbonaccountingfinancials.com/files/PCAF-PartB-Facilitated-Emissions-Standard-Dec2023.pdf>.

In short, although the financial emissions reported by ING are very large, and enough for a legal duty of care, it is likely that ING's actual emissions are many times higher. That ING provides such incomplete reports on its actual emissions, is a great lack of transparency. This is in itself reproachable, but also shows that ING is not accepting its significant and far-reaching responsibility at this time and is in breach of its legal obligation.

7.2. ING's current targets to do not guarantee a reduction in emissions

ING sets emissions reduction targets in the Terra Approach, a method that ING developed itself on the basis of existing methods and its own methods. In this Terra Approach, ING proposes emissions reduction targets for nine different sectors (with a view to expansion to a limited number of other sectors).¹⁵¹ The targets that ING sets to reduce its emissions have two major flaws.

(1) ING does not set any targets for large parts of ING's emissions. ING only has emissions reduction goals for parts of some sectors of the loan portfolio, but no overall target for all financing and other forms of services. As explained in section 7.1, ING does not report on its emissions from asset management for clients and the issue of financial instruments (e.g. bonds) for clients. ING thus has no targets in this respect. ING also sets a number of targets for just nine sectors, and many polluting companies, e.g. in the agriculture and food and fertiliser industry are not included.¹⁵²

Most importantly of all: ING sets no emissions reduction targets for the bulk of its clients' scope 3 emissions, even though ING has a responsibility to do so (see section 7.1). That ING's clients are also responsible for these emissions in their value chain does not detract from ING's own responsibility in this respect. That the parties in the value chain—including systemic players like ING—all take their individual responsibility is necessary to reduce the emissions in the value chain as quickly as possible.¹⁵³ In short, there is no emissions reduction target for the majority of the emissions linked to ING's loans,¹⁵⁴ and the full emissions linked to ING's other services.

151 | ING launched its Sustainable Aluminium Finance Framework during the COP of December 2023. This method describes how banks can reduce the intensity of the emissions from their financing of aluminium. See section 7.2 for an explanation on the shortcomings of intensity targets (instead of absolute targets).

152 | According to the ING's Loan Portfolio Overview 2022, ING finances the mining for raw materials for and the production of fertiliser to the tune of 1.2 billion euros and agriculture (farming, forestry and fisheries) to the tune of 4.5 billion euros (of which over 1 billion for dairy farming).

153 | 'A scope 3 inventory enables companies to identify their downstream hot spots so that they can credibly engage with customers to reduce their value chain emissions.' Greenhouse Gas Protocol, 'Corporate Value Chain (Scope 3) Accounting and Reporting Standard. Corporate Value Chain (Scope 3) Accounting and Reporting Standard. Supplement to the GHG Protocol Corporate Accounting and Reporting Standard' (September 2011), 14.

154 | In the Climate Report 2023 (2023, pp. 85-86), ING reports on its financed emissions (only scope 1 and 2) of the loans. According to ING, ING's total loan portfolio is responsible for 61.3 megatons in emissions. The seven big-business Terra sectors (for which ING has set an emissions reduction target), are responsible for 23.2 megatons in emissions, mortgages for 7 megatons and commercial real estate is not yet reported. This means that approximately half of the emissions reported by ING has an emissions reduction target. ING has not set any emissions reduction targets for the bulk of the scope 3 emissions in its loan portfolio, but it has for some (sub-)sectors (like automotive). We would like to have included this in our calculation, but this is not possible as ING does not itself report its clients' scope 3 emissions.

(2) ING sets the wrong kind of targets. To the extent that ING does set targets, they are usually the wrong kind of targets: intensity targets. These are not absolute reduction targets, but targets with which ING's emissions can still grow (see section 6.2 for how this works). Only by reducing absolute emissions can ING contribute to the globally necessary absolute emissions reduction. ING can and must do so to prevent dangerous climate change.

Nevertheless, ING is a great proponent of these intensity targets. ING has itself contributed to the developments of many methods in the Terra Approach, like the Sustainable STEEL Principles for steel, the Poseidon Principles for shipping and PACTA for many other sectors. ING is of the opinion that these intensity targets are the best driver for technological development. ING believes that this is *the* solution to the climate crisis and the key in the energy transition. Milieudéfensie understands that technological development is necessary and requires financing, but this development must take place *in addition to* and not *instead of* the necessary absolute reduction of greenhouse gases.

In short, sections 3 to 6 make it clear that ING has a legal responsibility to establish policy that guarantees a minimum reduction of ING's emissions. ING can only guarantee the requisite minimum reduction with a climate policy that contains an absolute reduction target and a clear plan to achieve that target. ING is failing on this point: large parts of ING's portfolio have no emissions reduction targets at all, and the targets that ING does set are frequently intensity targets. It thus does not matter that ING has a climate policy, that ING sets reduction targets, or even that ING usually achieves those targets. The objective of the measures that we demand is for ING to offer the legally required guarantee for an absolute reduction of its emissions that does justice to ING's duty of care, something that ING is not doing now.

7.3. ING is not making sufficient use of its leverage as a bank

As previously discussed, there are two ways in which ING can reduce its financed emissions: engagement and disengagement (see section 6.2). ING itself has indicated a strong preference for engagement. A pillar of ING's climate policy is that ING wants to go through the energy transition *with* all clients—ING wants to help them become more sustainable. Milieudéfensie is also in favour of engagement, but wants such engagement to be transparent and effective when it comes to reducing emissions. At present ING's engagement and disengagement policy leaves a lot to be desired.

In ING's most recent climate report, the bank announced that it will ask for transition plans from large corporate clients and that it will set financing conditions for its clients.¹⁵⁵ Unfortunately, ING does not provide the details that make the difference between a nice chat or making an impact. ING apparently does not have a policy that makes it clear what requirements clients must meet, within what timelines ING wishes to see a result and what ING will do if no result can be achieved. Nor is it established that ING will terminate client relationships if ING's clients continue engaging in excess pollution. What are ING's priorities when it comes to preventing dangerous climate change or making a profitable deal? There is no information available on this point either. How seriously ING

155 | ING, 'Climate Report 2022' (2023), 26.

takes engagement and whether it will in fact lead to a reduction in emissions is therefore completely unclear.

ING also explicitly rejects disengagement. ING therefore does not appear to want to use this as a tool to exert pressure, which makes its engagement policy a toothless instrument. We have explained above that disengagement is a necessary 'big stick' to ensure an effective engagement policy, that many leading organisations believe disengagement to be necessary when engagement does not work, and that disengagement is sometimes legally necessary (see section 6.2). Continuing to talk with polluting companies without a result means that ING shares responsibility for the dangerous climate change caused by clients.

7.4. ING finances and supports new oil and gas projects

ING has made policy geared to the fossil fuel sector in the past few years. ING no longer finances any unconventional forms of extracting oil and gas via project financing, like drilling on the North Pole and looking for shale gas in Europe.¹⁵⁶ ING will also finance almost no coal any more in 2025.¹⁵⁷ A few months ago ING announced it wanted to reduce the greenhouse gas intensity of ING's fossil fuel transport and trade financing ('midstream') by 24% by 2030.¹⁵⁸ And after the UN Climate Summit of December 2023 (COP28), ING announced that it will reduce its financing for exploration and extraction of oil and gas ('upstream') with 35% in 2030 compared to 2019, and to phase out all financing for upstream in 2040.¹⁵⁹ Although this policy is a small first step in the right direction, it leaves many parts of the fossil fuel sector that ING does finance and support.

At the end of 2022, ING had over 15 billion euros in outstanding loans for fossil fuel companies.¹⁶⁰ In 2022 alone ING provided almost 5 billion euros in new loans to fossil fuel companies, over 1 billion euros of which went to the 100 companies engaged in the greatest expansion of fossil fuel capacity.¹⁶¹

156 | ING, 'Environmental social risk framework' (June 2021), 52-53. Note: these restrictions only apply to loans, not to other services such as the issuance of bonds.

157 | ING has promised to reduce the financing of coal mines and coal power stations to almost zero at the end of 2025. This applies to ING loans, but not to other forms of financing and services such as the underwriting of obligations. This also only applies to thermal coal mines, not to the extraction of metallurgical coal. According to research of Reclaim Finance (2023, pp. 34-35) ING is in fact one of the top financiers in the world for metallurgical coal. Since the Paris Agreement, ING has financed metallurgical coal with more than 4 billion euros, inter alia via companies like Glencore, and up to now has no policy of reducing its financing for metallurgical coal.

158 | ING, 'Climate Report 2023' (2023), 54. Note that this relates to a reduction of the intensity of the midstream loans, i.e. how many greenhouse gases are released per barrel of oil, but not to an absolute reduction.

159 | ING.com, 'ING takes next step on energy financing after COP28' (20 december 2023), <https://www.ing.com/Newsroom/News/Press-releases/ING-takes-next-steps-on-energy-financing-after-COP28.htm>.

160 | ING, 'ING Results Presentation 2023 Q1' (2023), 21, <https://www.ing.com/Investor-relations/Financial-performance/Quarterly-results/ING-Results-Presentation-1Q2023.htm>.

161 | Banktrack et al., 'Banking on Climate Chaos' (2023), 51.

This makes ING, out of all Dutch financial institutions, the one that finances and supports fossil fuels the most.¹⁶²

ING closely follows the International Energy Agency (IEA).¹⁶³ As a result ING knows all too well that starting new fossil fuel projects is no longer necessary to meet global energy requirements (in the IEA *Net Zero Emissions by 2050* scenario), and that new fossil fuel projects cannot be reconciled with limiting the warming of the earth to 1.5°C.¹⁶⁴ As Inger Anderson, director of the UN Environmental Programme (UNEP) said recently: the coal, oil and gas from existing and planned mines and fields ‘would obliterate the 1.5°C budget many times over.’¹⁶⁵ ING therefore fully realises that new fossil fuel projects are no longer an option, and in response has taken a symbolic step in the right direction. ING no longer provides ‘project financing’ for new upstream oil and gas projects, nor for new midstream oil and gas projects that are directly connected with new upstream projects.¹⁶⁶ However, there are four gaping holes in ING’s fossil fuel policy:

(1) All financing that is not project financing for new oil and gas projects will simply continue until 2040. Loans can be roughly divided into two types: project financing goes directly to a specific project and is only used for that project. Since 2023 ING has no longer provided any project financing for new fossil fuel projects. In addition, ING provides general company loans—this is over 90% of all bank loans for fossil fuels—whereby the money is not earmarked and the company itself determines what the money can best be spent on.¹⁶⁷ ING itself admits that the money for these loans can also be used for starting new oil and gas projects.¹⁶⁸ And although ING’s recent new policies announce

162 | Ward Warmerdam et al., ‘Fossil Fuel versus Renewable Financing by Financial Institutions active in the Netherlands: A Case Study for Fair Finance Guide Netherlands,’ Profundo (October 2021), <https://www.eerlijkegeldwijzer.nl/onderzoeksrapporten/>. In this research from 2021, ABP and Allianz financed more fossil fuel than ING, but ABP has in the meantime stepped out of fossil fuels and Allianz is a German company. For more up to date figures, but only about banks, see Katrina White, ‘Financing the Transition: Energy Supply Investment and Bank Financing Activity. Comparing low-carbon and fossil fuel activity’ BloombergNEF (28 February 2023).

163 | ING, ‘Climate Report 2023’ (2023), 4.

164 | IEA, ‘Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach – Analysis’ (September 2023), 15, <https://www.iea.org/reports/net-zero-roadmap-a-global-pathway-to-keep-the-15-0c-goal-in-reach>. The IPCC too says that new fossil fuel projects do not fit in the 1.5°C carbon budget: ‘Projected cumulative future CO₂ emissions over the lifetime of existing and currently planned fossil fuel infrastructure without additional abatement exceed the total cumulative net CO₂ emissions in pathways that limit warming to 1.5°C (>50%) with no or limited overshoot. They are approximately equal to total cumulative net CO₂ emissions in pathways that limit warming to 2°C (>67%).’ IPCC, ‘Climate Change 2022: Mitigation of Climate Change. Working Group III. Summary for Policymakers’ (2022), 16, <https://www.ipcc.ch/report/ar6/wg3/>.

165 | Inger Anderson, ‘Call for new records in climate action’ Speech at launch of Emission Gap Report 2023 (29 November 2023), <https://www.unep.org/news-and-stories/speech/call-new-records-climate-action>. See also recent research by Oil Change International (2023, p. 2), that presents an even more depressing picture. The current oil and gas fields already contain 25% more oil and gas than fits within a 1.5°C carbon budget. With coal this would take us to a warming in excess of 2°C.

166 | ING, ‘ING takes next step in aligning oil & gas portfolio with climate goals’ (14 March 2023), <https://www.ing.com/Newsroom/News/ING-takes-next-step-in-aligning-oil-gas-portfolio-with-climate-goals.htm>; ING, ‘ING steps up renewable energy efforts and restricts financing of new oil & gas fields’ (3 March 2022), <https://www.ing.com/Newsroom/News/ING-steps-up-renewable-energy-efforts-and-restricts-financing-of-new-oil-gas-fields.htm>.

167 | The Banking on Climate Chaos report (Banktrack et al., 2022, p. 19) describes that of the companies they studied, 91% of the financing for fossil fuel companies was by means of general (i.e. not ‘earmarked’) company financing, and only 5% via project financing (4% was unclear).

168 | NPO Radio 1 Geld of je Leven, ‘Moet ING stoppen met het financieren van olie- en gassector?’ [Should ING stop financing the oil and gas sector?] (7 March 2023), <https://www.nporadio1.nl/fragmenten/geld-of-je-leven/1bf009b0-9825-477b-a76a-906b5cd43b91/2023-03-07-moet-ing-stoppen-met-het-financieren-van-olie-en-gassector>.

that ING will stop giving out loans to companies that engage in upstream activities in 2040, at the same time this implies ING will continue to finance companies that engage in new fossil fuel projects *until 2040*.¹⁶⁹

(2) There is no policy relating to services, such as the issuance of bonds, for fossil fuel clients. In addition to providing loans, ING also helps fossil fuel companies to obtain financing by underwriting bonds and other forms of services. ING also does this when fossil fuel companies need money to start new oil and gas projects.¹⁷⁰ Even though ING will stop providing loans for coal mines and coal-fired power stations, ING will continue to help coal companies obtain funds via this route. Since the Paris Agreement, ING has helped fossil fuel companies obtain more than 82 billion euros via these services (see section 7.1). ING thus excludes ‘project financing’ for new projects, but simply continues with *all other* forms of financing and services linked to new fossil fuel projects.¹⁷¹

(3) ING is financing a lock-in in fossil fuels. A large part of the oil, gas and coal in existing fields and mines must remain in the ground if we wish to prevent dangerous climate change.¹⁷² The IPCC is clear about what this means for the future: financing fossil fuel infrastructure stimulates the use of fossil fuels in the long term. By doing so it guarantees a ‘lock-in’ of future greenhouse gas emissions: emissions that do not fit within a 1.5°C carbon budget.¹⁷³ The International Energy Agency (IEA) shows that at present only 4% of the investments of fossil fuel companies goes to renewable energy.¹⁷⁴ The fossil fuel companies financed and supported by ING are not making credible efforts toward the energy transition, but rather are focusing on a future based on fossil fuels.

169 | At the moment ING also finances many new oil and gas project, see Data for Good en Éclaircies, ‘Carbon Bombs’ (accessed on 28 November 2023), <https://www.carbonbombs.org/>.

170 | Ties Joosten et al., ‘ING Bank en ABN Amro helpen de fossiele industrie aan tientallen miljarden,’ [‘ING Bank and ABN Amro are helping the fossil industry receive financing of tens of billions’] Follow the Money (26 September 2023), <https://www.ftm.nl/artikelen/ggii-2-fossil-finance-biljoen-fossiele-obligaties-ing-abn-amro>.

171 | ING admits that it only supports the issuance of bonds for existing clients, i.e. companies to which ING also provides loans. Since ING stops providing loans to companies engaging in upstream activities in 2040, it is possible that ING will also stop supporting these companies with bond issuance. However, ING has not stated this publicly. Also, ING has not formulated any reduction targets for the issuance of bonds for fossil fuel companies—this service that ING provides could therefore even grow until 2040.

172 | IEA, ‘Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach – Analysis’ (September 2023), 15, <https://www.iea.org/reports/net-zero-roadmap-a-global-pathway-to-keep-the-15-0c-goal-in-reach>; IPCC, ‘Climate Change 2022: Mitigation of Climate Change. Working Group III. Summary for Policymakers’ (2022), 16, <https://www.ipcc.ch/report/ar6/wg3/>.

173 | ‘Finance for new fossil fuel-related assets lock in future GHG emissions that may be inconsistent with remaining carbon budgets and [...] emission pathways to reach the Paris Agreement goals.’ IPCC, ‘Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III’ (2022), 1567, <https://www.ipcc.ch/report/ar6/wg3/>.

174 | ‘Clean energy investment by oil and gas companies doubled in 2022 to around USD 20 billion, around 4% of their upstream capital investment and 0.5% of net income’. IEA, ‘World Energy Investment 2023’ (May 2023), 81.

(4) ING is financing and supporting fossil fuel clients that are not committed to the necessary phasing-out of fossil fuels. 'It's clear that the oil and gas industry needs to change.'¹⁷⁵ These are your own words. But leading bodies like the UNFCCC¹⁷⁶ and the European Central Bank¹⁷⁷ now no longer speak of a 'phase down' but a 'phase out' of fossil fuels. Nevertheless, fossil fuel companies still do not acknowledge the necessary phase-out of fossil fuels, and many companies do not have a (good) phase-out plan for their production of fossil fuels. ING nevertheless continues to finance and support these fossil fuel companies.

In short, in sections 5 and 6 we discussed that ING's legal responsibility is of particular consequence in the financing and support of the fossil fuel sector, because of the central role that fossil fuels play in the climate crisis. This applies in particular to fossil fuel companies involved in fossil expansion, as new oil and gas fields and coal mines cannot be reconciled with preventing dangerous climate change. In addition, it is essential to phase out fossil fuels in a just manner. ING nevertheless continues to finance and support fossil fuel companies that are involved in fossil fuel expansion and have no phase-out plan. ING's recently announced new policies do not change this sufficiently. Consequently ING is involved in contributing to dangerous climate change and human rights violations caused by these clients, and this is unlawful. ING will continue to be unlawfully involved until ING closes the gaps in its fossil fuel policy. That is why Milieudefensie has specifically dedicated one of the demands to this point.

7.5. ING is acting irresponsibly in other ways

It is now clear that ING's climate policy is inadequate to ensure that ING performs its legal duty of care. The cause thereof does not lie purely in ING's emissions and engagement with clients. Its climate policy is inadequate in a number of other areas as well. As a large influential bank, ING is a systemic player that has an influence on the climate crisis in a number of ways. For example, ING is an employer, advertiser, gives newspaper interviews and lobbies policymakers. ING must therefore take its responsibility in this respect as contributor to the climate crisis as well and continually keep its legal duty of care in mind. If ING fails to do so, ING will most likely never succeed in its legal duty of care.

At this point in time ING is not showing that it is taking on this broader responsibility, rather the contrary. Below we present three brief examples that illustrate that ING is acting irresponsibly on this front.

(1) The bonuses of ING's top executives are independent of emissions reductions.

ING's top executives receive annual bonuses on the basis of targets that are met. Only 15% of these targets have anything to do with sustainability in a broader sense,

175 | ING, 'More renewables, less oil & gas' (23 March 2022), <https://www.ing.com/Newsroom/News/More-renewables-less-oil-gas.htm>.

176 | 'To achieve rapid reductions in emissions, the phase-out of unabated fossil fuels is required and should be undertaken responsibly, including through socially inclusive phase-out plans developed as part of just transitions.' UNFCCC, 'Technical dialogue of the first global stocktake. Synthesis report by the co-facilitators on the technical dialogue' UNFCCC/SB/2023/9 (8 September 2023), 21.

177 | Luis de Guindos, 'Need for speed on the Road to Paris,' ECB (6 September 2023), <https://www.ecb.europa.eu/press/blog/date/2023/html/ecb.blog230906--8ab6e40722.en.html>.

and therefore ING's climate policy constitutes an even smaller share. Reducing ING's financed emissions—a central part of its duty of care—is *not* part of these targets.¹⁷⁸ For ING's remuneration policy, reducing the negative climate impact is therefore barely of importance. The question is thus to what extent ING encourages its top people to give this matter priority.

(2) ING is misleading the public with greenwashing. ING is very active in the public debate and makes statements about climate and sustainability in all kinds of ways. For example, via studies, interviews in the media, social media, posters in public spaces and TV advertising. ING presents itself as being very sustainable and green. However, ING's climate policy and emissions show that in reality ING is not that green and that ING is misleading the public.

In May 2023 the Dutch Advertising Code Committee rapped ING's knuckles in relation to a short film on green financing and policy.¹⁷⁹ ING concealed the billions for the fossil fuel industry and other large polluters. Information that the consumer himself does not have. The Committee concluded that ING was misleading the consumer by presenting this one-sided view.

(3) ING's lobbying trivialises the climate crisis. ING often does not lobby itself, but via industry organisations with which the bank is affiliated. For example, the *Thun Group of Banks* lobbies in the name of and on behalf of ING in relation to human rights standards such as the UNGPs and the OECD Guidelines.¹⁸⁰ This lobby focuses on the question how norms in these standards do or do not apply to banks. The UNGPs and OECD Guidelines are two of the many legal frameworks that force banks to respect human rights. The norms apply just as much to financial institutions as to 'ordinary' companies—financial institutions have no exceptional position when it comes to respecting human rights. Nor do they have an exceptional position when it comes to human rights being at risk due to dangerous climate change, according to human rights experts of the UN.¹⁸¹ Nevertheless,

178 | The 'key performance indicators' in 2022 related to climate risk management, reporting, providing more sustainable loans, coming up with more sustainable financial products for individual clients and retaining net-zero operational emissions. See ING, 'Climate Report 2022' (2022), 16.

179 | Advertising Code Committee, 'Complaint 20231/00116' (11 May 2023), <https://www.reclamecode.nl/uitspraken/ing-bank/financiele-dienstverlening-2023-00116/433506/>.

180 | ING, 'How we engage' (accessed 27 November 2023), <https://www.ing.com/Sustainability/Partnerships-and-collective-action/How-we-engage.htm>.

181 | UN Working Group on Businesses and Human Rights, 'Financial Sector and the European Union Corporate Sustainability Due Diligence Directive. Statement by the United Nations Working Group on Business and Human Rights' (12 July 2023); John Ruggie, 'Comments on Thun Group of Banks Discussion Paper on the Implications of UN Guiding Principles 13 & 17 In a Corporate and Investment Banking Context' (21 February 2017); 'Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the promotion and protection of human rights in the context of climate change; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and the Special Rapporteur on the human rights to safe drinking water and sanitation' (27 June 2023), ref. AL OTH 84/2023, 7.

the *Thun Group* trivialised this responsibility in lobby letters.¹⁸² ING has never distanced itself from the *Thun Group*'s position, and consequently has not distanced itself from the failure to acknowledge human rights made apparent by said position.

7.6. Conclusion

In short, ING's climate policy and conduct are definitely contrary to ING's legal duty of care. ING does not report the greater part of its emissions, ING does not set any reduction goals or sets insufficient reduction goals, ING does not make adequate use of its influence to help clients transition to sustainability, and ING continues to finance and support fossil fuel companies, even though they are not acting in accordance with the Paris Agreement. ING's unlawful conduct goes even further: in ING's internal business practices, public communications and lobbying, ING does not give adequate priority to climate, or, indeed, ING counteracts the achieving of climate targets. Due to this flawed policy, ING is knowingly and willingly contributing to exceeding the 1.5°C target of the Paris Agreement. That ING will properly realise its duty of care without the measures that have been demanded, appears to be out of the question.

8. Why Milieudefensie is holding ING liable now

8.1. ING has ignored all of Milieudefensie's previous requests and warnings

Milieudefensie believes that sending this formal notice of liability is a far-reaching but necessary step. In the past 18 years Milieudefensie made a lot of attempts and used various tools to persuade ING to adopt a better climate policy.

As far back as 2006 we published research in which we analysed the climate policy of Dutch banks.¹⁸³ ING's climate policy fell short, while at the same time ING's intention was concerning: the research showed that in 2006 all Dutch banks covered by the research acknowledged the importance of financed emissions, *except for ING*.¹⁸⁴

In 2009 ING published an interview with Annemarie Goedmakers, at the time the president of Milieudefensie, in its sustainability report. She asked ING at that time to propose concrete emissions reduction targets for ING's financed emissions.¹⁸⁵ Since

182 | Thun Group of Banks, 'Discussion Paper on the implications of the UN Guiding Principles 13 & 17 in a corporate and investment banking context' (2017), https://media.business-humanrights.org/media/documents/files/documents/2017_12_Thun_Group_of_Banks_Paper_UNGPs_13b_and_17.pdf. Dutch industry organisations, like the Dutch Banking Association (NVB) believe that human rights standards fully apply to financial institutions. ING is also part of this, while at the same time, ING never distanced itself from the Thun Group and the position it takes. ING is consequently still supporting the view of the Thun Group, that contradicts the evident responsibility of the financial sector.

183 | Dennis Siemelink, 'Investing in climate change: the role of Dutch banks' Milieudefensie (June 2006), https://www.banktrack.org/download/investing_in_climate_change_the_role_of_dutch_banks/2_rapport_investing_in_climate_change.pdf.

184 | 'All banks, except for ING, explicitly underline the importance of indirect CO₂ emissions.' Dennis Siemelink, 'Investing in climate change: the role of Dutch banks', Milieudefensie (June 2006), 39.

185 | ING, 'Corporate Responsibility Report 2009' (2009), 43.

2009 the Fair Banking Guide (*'Eerlijke Bankwijzer'*), a coalition of NGOs, including Milieudefensie, has assessed ING's policy and made recommendations for improvement. These policy analyses consistently give ING's sustainability a score of 'inadequate'.¹⁸⁶ In addition, Milieudefensie published several reports analysing ING's conduct, in the Fair Finance Guide Netherlands (*'Eerlijke Geldwijzer'*) or independently. A study of the Fair Finance Guide from 2021 showed that ING's energy portfolio in 2018-2020 contained a disproportionately large amount of fossil fuels and little by way of renewables.¹⁸⁷ At the beginning of 2023 the Fair Finance Guide gave ING's climate plan a score of inadequate,¹⁸⁸ and in November 2023 the Fair Finance Guide exposed ING's financing for the coal company, Glencore.¹⁸⁹ In 2022, a report prepared for Milieudefensie estimated ING's absolute financed emissions as being greater than those of all other financial institutions in the Netherlands.¹⁹⁰

In 2017, Oxfam Novib, Greenpeace, Banktrack and Milieudefensie initiated a complaint with the National Contact Point (NCP) for Responsible Business Conduct regarding the need for adequate emissions reporting and emissions reduction targets.¹⁹¹ The NCP concluded that ING must set concrete targets to tackle its impact in accordance with the Paris Agreement and report on its efforts. In NCP's opinion, the responsible business conduct that can be expected of ING also extends to ING's value chain.

In 2022 the NewClimate Institute published a Climate Crisis Index for Milieudefensie.¹⁹² This report analysed the climate plan of ING and 28 other companies. ING had a score of 'inadequate'. Since that time Milieudefensie's volunteers, our Operation Climate group, has showed up on ING's doorstep dozens of times to speak to employees about ING's climate plan. Milieudefensie's director and financial experts have sat down with you several times over the past years to give you direct feedback on ING's climate policy. As a final impetus, Milieudefensie, together with 70 shareholders, attended ING's shareholders meeting last April. Eleven of them spoke of their concerns about climate change and asked you for an absolute emissions reduction target for 2030. You answered no.

186 | For the most recent policy analysis of the Fair Finance Guide Netherlands, see Lennart van Loenen and Mara Werkman, 'Beleidsbeoordeling Nederlandse banken – 19e update,' [Policy Assessment of Dutch banks – 19th update], Profundo (May 2023), <https://www.eerlijkegeldwijzer.nl/onderzoeksrapporten/>.

187 | Ward Warmerdam et al., 'Fossil Fuel versus Renewable Financing by Financial Institutions active in the Netherlands: A Case Study for Fair Finance Guide Netherlands,' Profundo (October 2021), <https://www.eerlijkegeldwijzer.nl/onderzoeksrapporten/>.

188 | Eerlijke Geldwijzer, 'Climate action plans of ten Dutch financial institutions,' (March 2023) <https://www.eerlijkegeldwijzer.nl/media/hl4duxs/2023-03-klimaatplannen-financiele-instellingen.pdf>.

189 | Eerlijke Geldwijzer, 'A toxic legacy. Glencore's footprint in Colombia & Peru' (16 November 2023), <https://www.eerlijkegeldwijzer.nl/media/fmhfughf/egw-rapport-glencore-november-2023.pdf>.

190 | Ward Warmerdam and Ender Kaynar, 'Dutch financial sector financed emissions. Financed emissions from corporate finance and investment portfolios,' Profundo (23 November 2023), <https://Milieudefensie.nl/actueel/rapport-gefinancierde-uitstoot>.

191 | Oxfam Novib et al., 'Klacht tegen ING vanwege schending van de OESO-richtlijnen op het gebied van klimaat' [Complaint against ING because of breach of the OECD Guidelines in relation to climate'] (5 August 2017), <https://www.oxfamnovib.nl/persberichten/klacht-tegen-ing-vanwege-schending-oeso-richtlijnen>.

192 | Thomas Day et al., 'Corporate climate responsibility. Guidance and assessment criteria for good practice corporate emission reduction and net-zero targets. Version 2.0' NewClimateInstitute (July 2022), <https://Milieudefensie.nl/actueel/onderzoek-naar-de-klimaatplannen-van-29-grote-vervuilers>.

In November 2023, Milieudefensie published the Climate Crisis Index for the second time.¹⁹³ ING once again scored 'inadequate'. Milieudefensie announced at that time that it would take legal steps against one of the seven financial institutions that had been researched. Once again ING failed to act. A few days after the announcement you responded to the Milieudefensie announcement in a radio interview on BNR: 'we think we are doing a good job.'¹⁹⁴

In short, in the past 15 years Milieudefensie and many others often made ING face the facts. We published studies to present points for improvement in ING's policy, had discussions with you and ING's policymakers, together with 70 others expressed our concerns at ING's shareholders' meeting and appeared on ING's doorstep many times. ING nevertheless failed to sufficiently modify its climate policy. Milieudefensie therefore believes it is necessary to hold ING formally liable for the failure to act on its legal duty of care.

8.2. Why Milieudefensie may take action in the Netherlands in the public interest

Milieudefensie is a legal entity within the meaning of Section 3:305a of the Dutch Civil Code. Said statute provision sets out that an association such as ours can request collective legal protection for social interests as laid down in our articles of association.

Milieudefensie is an association with some 110,000 members and donors.¹⁹⁵ We set one objective in our articles of association: to make a contribution to solving and preventing environmental problems and striving for a sustainable society at global, national, regional and local level.¹⁹⁶ We are doing this in the interest of the environment and nature, for current and future generations.

Climate change is already leading to large problems and life-threatening climate disasters worldwide. A warming of the earth of more than 1.5°C will lead to immense harm to society, the environment and nature, for current and future generations—including in the Netherlands. According to the KNMI (Royal Netherlands Meteorological Institute), the rise in the sea level is putting low-lying Bonaire at risk.¹⁹⁷ The islands of Saba and St. Eustatius could suffer the heaviest category of hurricanes twice as often from now

193 | Nard Koeman et al., 'Dutch Corporate Climate Responsibility Monitor 2023. Assessing the transparency and integrity of the climate action plans of seven financial institutions' SEO Amsterdam Economics (6 November 2023), <https://Milieudefensie.nl/actueel/onderzoek-naar-de-klimaatplannen-van-7-banken-verzekeraars-en-pensioenfondsen>.

194 | BNR Radio, 'ING-ceo over klimaatverandering: Wij denken dat we het goed doen' [ING CEO on climate change: We think we are doing a good job.] (30 November 2023), <https://www.bnr.nl/nieuws/duurzaamheid/10533397/ing-ceo-over-klimaatverandering-wij-denken-dat-we-het-goed-doen>.

195 | On 31 December 2023, Milieudefensie had 83.025 members and 24.709 donors, together 107.734 members and donors.

196 | Vereniging Milieudefensie, 'Articles of Association' (July 2022), Art. 3.1, <https://milieudefensie.nl/actueel/statuten-juli-2022>.

197 | 'It is expected that the sea level near Bonaire will have risen around 2050 by 14-34 cm (low emissions scenario) or 16-37 cm (high emissions scenario). Around 2100 it is expected to have risen by 31-78 cm (low emissions scenario) to 55-127 cm (high emissions scenario) (Figure 29). The upper threshold can rise to 3.4 metres if uncertain processes, such as the Antarctic ice cap becoming unstable, occur prior to 2100.' KNMI, 'Klimaatscenario's voor Nederland [Climate scenarios for the Netherlands]' (9 October 2023), 39.

on, compared to the past decades.¹⁹⁸ The Netherlands will suffer more severe summer storms, larger hailstones, extreme drought more often and in the worst-case scenario a rise in the sea level of 3 metres in 2100.¹⁹⁹ Preventing these occurrences falls well within the objectives set out in Milieudedefensie's articles of association.

If ING fails to sufficiently modify its policy, Milieudedefensie will file a lawsuit in the Netherlands. ING does business outside of the Netherlands, but ING's head office is in Amsterdam. ING's climate policy is determined by the ING Board of Directors, this happens in the Netherlands. That is why ING's climate policy—including all of ING's business outside of the Netherlands—is subject to Dutch law and Dutch courts.

9. Final word

There is no longer any doubt that the climate crisis is more urgent and visible than ever. The climate crisis is a great danger to human rights, now and in the future. ING is well aware of this. Nevertheless, this knowledge has not led to ING taking appropriate measures to reduce ING's contribution to global emissions of greenhouse gases. ING has the biggest emissions of all Dutch financial institutions and finances and supports polluting sectors on a large scale such as the fossil fuels industry.

Milieudedefensie has set out ING's liability for contributing to dangerous climate change in detail in this letter. The emissions for which ING is responsible contribute significantly to total global emissions. This is contrary to ING's duty of care, and consequently the societal standard of care as laid down in Dutch law. In other words, ING's defective climate policy leads to unlawful endangerment, which is a threat to the lives of humans and the rights of people in the Netherlands and the rest of the world.

Milieudedefensie asks ING to modify its climate policy and do what is necessary to limit global warming to the 1.5°C target agreed in the Paris Agreement. ING is legally obliged to do so on the basis of its duty of care.

Milieudedefensie looks forward to receiving your response within eight weeks. We are available to further discuss the matter in the meantime.

Yours sincerely,

Donald Pols
*Director of
Milieudedefensie*

Laan van Staalduinen
*Director of
Milieudedefensie*

Winnie Oussoren
*President of
Milieudedefensie Jong*

P.S. This letter is digitally available in Dutch, English, French and Spanish on our website: <https://milieudedefensie.nl/klimaatzaak-ing>

198 | Hurricanes in the heaviest category occurred once every 39 years in the period between 1980 and 2017, but the KNMI predicts that they will occur once every 20–34 years in the period between 2015 and 2050, see KNMI, 'Klimaatscenario's voor Nederland' (9 October 2023), 39.

199 | KNMI, 'Nederland voorlopig veilig voor stijgende zee, maar moet leren omgaan met verzilting [The Netherlands is safe from a rising sea level for the time being, but will have to learn how to deal with salinisation]' (09 November 2023), <https://www.rijksoverheid.nl/actueel/nieuws/2023/11/09/nederland-voorlopig-veilig-voor-stijgende-zee-maar-moet-leren-omgaan-met-verzilting>.