

Complaint against ING for violation of the OECD Guidelines for Multinational Enterprises as they relate to the climate

To:

National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP)
Department of International Trade Policy and Economic Governance (IMH)
Directorate-General for Foreign Economic Relations
Ministry of Foreign Affairs of the Netherlands
Bezuidenhoutseweg 67
2500EB Den Haag
Telephone: 070-348 4200

Complainants:

Oxfam Novib
Mauritskade 9
Postbus 30919
2500 GX Den Haag
Contact: Peter Ras, Senior Policy Adviser, Sustainable Financial Sector
Telephone: 070 342 16 21
e-mail: Peter.Ras@oxfamnovib.nl

Stichting Greenpeace Nederland
NDSM-plein 32
1033WB Amsterdam
Contact: Kim Schoppink, Campaign Leader, Climate and Energy
Telephone: 06-81410797
e-mail: kim.schoppink@greenpeace.org

Stichting BankTrack
Vismarkt 15
6511 VJ Nijmegen
Contact: Johan Frijns, Director
Telephone: 024-324 9220
e-mail: johan@banktrack.org

Vereniging Milieudefensie
Nieuwe Looiersstraat 31
1017 VA Amsterdam
Contact: Ike Teuling
Telephone: 020 5507 300
e-mail: ike.teuling@milieudefensie.nl

Complaint (summary):

Under the international climate agreement concluded in Paris in 2015, it was agreed that the increase in the global average temperature must be kept well below 2°C, and preferably be limited to 1.5°C above pre-industrial levels. This means that everyone — governments, citizens and companies — must make an effort to limit their greenhouse gas emissions as quickly as possible. In this regard, ING is falling a long way short. With a global presence (according to its own information it is active in 40 countries) and investments all over the world, ING provides financial backing for many companies and projects in industries that release large quantities of greenhouse gasses. Yet the bank does not disclose the volume of the greenhouse gasses emitted as a result of its financing activities, nor has it announced plans to do so in the near future. Moreover, the company has not set a goal to reduce greenhouse gas emissions resulting from its finance activities. This is in conflict with the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, namely:

- Chapter III, article 3 (sub-sections a, b and c) and paragraph 33 of the commentary;
- Chapter VI, article 1 (sub-sections b and c); article 4; article 6 (sub-sections b, c and d) and paragraphs 63 and 69 of the commentary.
- Chapter VIII, article 4.

Request to ING:

The complainants request that ING starts reporting on its indirect greenhouse gas emissions and that it establishes and pursues goals which will bring the bank's indirect greenhouse gas emissions in line with the goals of the Paris Agreement.

The complainants also request that, before 1 September 2017, ING at the very least makes a public promise to take the following steps, in 2018 at the latest:

1. Publish its total carbon footprint: i.e. direct and indirect emissions. ING could also commit to using the final outcome of the Platform Carbon Accounting Financials (PCAF) initiative.¹
2. Publish ambitious, concrete and measurable targets to lower its indirect greenhouse gas emissions.² These targets must bring emissions financed by ING in line with efforts to limit global warming to 1.5°C, as agreed under the Paris Agreement.

Complaint (in full):

A. ING does not disclose its indirect greenhouse gas emissions

ING finances many companies and projects in industries that emit large quantities of greenhouse gases, yet the bank does not disclose the volume of the greenhouse gases emitted as a result of its financing activities, nor has it announced plans to do so in the near future.³

¹ PCAF is an initiative of 11 Dutch financial institutions including banks. ING is not a member of PCAF, but does participate in its sounding board group. PCAF published an interim report in May 2017 and is expected to issue its final report in September 2017. Its aim is to produce an unambiguous scale to measure the environmental impact of finances and investments. <https://nieuws.asnbank.nl/financiele-instellingen-ontwikkelen-meetlat-voor-hun-klimaatimpact>. ING has not yet made any public commitment to take any kind of concrete action based on this process. Some earlier measurement instruments are described in the methodology of Fair Finance Guide International: <http://eerlijkegeldwijzer.nl/media/373664/ffg-methodology-2016-final-160421-edited-170413.pdf> (page 32).

² Positive examples include the ABP pension fund, which in 2016 published a new policy stating that CO₂ emissions by companies whose shares ABP holds must decrease by 25% by 2020. The pension fund PFZW goes even further in devising an achievable ambition, stating that it will halve the CO₂ footprint of its investment by 2020.

³ <http://eerlijkegeldwijzer.nl/media/373541/2015-66-eerlijke-bankwijzer-rapport-beleidsupdate-161214.pdf> (page 36, criteria 2 and 3).

B. It is a major financier of fossil energy

Research conducted in November 2015 found that 89% of ING's loans and underwriting to the energy sector in the period 2009-2014 went to the fossil energy sector. During this period, ING financed the fossil fuel and power generation sector with US\$ 24.484 billion. By comparison, the other two large Dutch banks, Rabobank and ABN AMRO, together "only" provided about US\$ 2.5 billion in finance for the fossil fuel sector. And in the same period, ING only provided US\$ 2.881 billion to the sustainable energy sector.

Financial institution	Country	Sustainable energy	Fossil fuels	Proportion of fossil fuels	Change in proportion of fossil fuels
ING Group	Netherlands	2.881	24.484	89%	4%
Rabobank	Netherlands	1.888	1.879	50%	-21%
ABN AMRO	Netherlands	209	600	74%	n/a
Aegon	Netherlands	29	90	75%	n/a
ASN Bank	Netherlands	360	-	0%	0%
NIBC Holding	Netherlands	9	-	0%	-100%
Triodos Bank	Netherlands	130	-	0%	0%

C. The company's new coal policy does not do enough to protect the climate

In November 2015, ING published a new coal policy⁵ under which it no longer finances new coal-fired power plants or coal mines. Neither will ING accept any new clients whose business is over 50% reliant on the coal industry. This policy is a good first step that will prevent emissions, but it still falls short of bringing ING's indirect emissions into line with the reduction that is needed to be able to forestall climate change.⁶

ING continues to finance existing coal projects and companies as usual. The bank also still provides finance for the conversion of old coal-fired plants into what are actually new power stations that could operate for decades.

In 2016, ING provided SUEK —the leading coal producer in Russia and one of the world's largest coal companies— with a new loan of US\$ 121.5 million.⁷ Also in 2016, it awarded a new €300.1 million credit facility to Uniper,⁸ the fossil fuel part of E.ON. Uniper has coal- and gas-fired power plants in the Netherlands, but also holds interests in gas fields, pipelines and storage facilities in Russia. ING is the only Dutch bank financing this company.

⁴ <http://eerlijkegeldwijzer.nl/media/60921/2015-11-nl-samenvatting-undermining-our-future.pdf> (page 9).

⁵ <https://www.ing.com/Newsroom/All-news/ING-ends-new-coal-financing-continues-to-reduce-coal-portfolio.htm>.

⁶ ING's new policy is currently limited to new coal-fired power stations and companies that receive more than 50% of their turnover from coal. Insurers such as Allianz and Aegon have gone further in terms of their policy: since 2016, Aegon excludes investment in companies that derive more than 30% of their revenue from the sale of coal. ING's new policy also has no impact on its financing of other fossil fuels. <http://eerlijkebankwijzer.blogspot.nl/2015/11/ing-wordtvoorzichtig-minder-fossiel-na.html#!/2015/11/ing-wordtvoorzichtig-minder-fossiel-na.html>, <http://eerlijkegeldwijzer.nl/media/373484/persbericht-jaarupdate-2016-eerlijke-bankwijzer-1-12-16.pdf>

⁷ <http://eerlijkegeldwijzer.nl/media/277128/deal-ing-rabobank-en-suek-2016.pdf>

⁸ <http://eerlijkegeldwijzer.nl/media/277253/uniper-kredietfaciliteit-onderzoek-sept-2016.pdf>

ING is also still planning to finance four new coal-fired power stations. The bank says that financing discussions regarding these plants had already commenced before its new policy came into effect and that therefore the discussions will continue, irrespective of the fact that the contracts had not yet been signed when ING published its reinforced coal policy.⁹ These four new/as yet unbuilt coal power stations include Cirebon 2 (Indonesia)¹⁰ and Punta Catalina (Dominican Republic).

In late 2016, one year later than ING, the French banks Crédit Agricole and Société Générale also unveiled new policies to end their financing of new coal-fired plants. These banks were also engaged in financing discussions regarding a number of new coal-fired power stations. However, they set a deadline for the arrangement to be finalized, beyond which the banks would withdraw. That deadline has since expired for two Indonesian coal power projects, and the banks indeed withdrew. One of those plants is Cirebon 2, which ING also intends to finance. So even though the French banks did not decide to stop financing new coal-fired plants until one year after ING, they have been able to withdraw from projects they were already involved in. ING could have done the same.

D. ING is neglecting many opportunities to reduce its environmental impact

Apart from disclosing its indirect emissions and setting goals to reduce them, ING has multiple unused options at its disposal to reduce the climate impact of its financing activities.¹¹ Some examples are provided below:

- ING does not finance companies that are more than 50% reliant on coal-related activities for their income. Yet a number of other financial institutions maintain a 30% threshold. While ING defends itself on this point by stating that those institutions are insurers and investors, there is nothing to prevent ING from bringing the percentage down to below 50%. This is a choice that has nothing to do with the nature of financial institutions and could also be applied by banks.
- ING has no policy in place to reduce (gradually or otherwise) its financing of the oil and gas industry.
- ING has no policy in place to encourage its clients to prevent the conversion of peatland or other land with high carbon stock into agricultural land.
- ING has no goals to increase its investments in sustainable energy projects, businesses or solutions.
- ING is a leading financer of the real estate sector, which accounts for approximately half of its investments. A large proportion of the CO₂ emissions from homes and buildings can already be prevented through better insulation and the generation of clean electricity. As a mortgage provider, ING can encourage such practices by inserting requirements in new mortgage contracts relating to the energy label of the house or building. ING does seek to improve the energy labels of its clients' office buildings (it is worth mentioning in this connection that these will also be obliged by law to have a C-label by 2023). ING does not impose any requirements in relation to the energy labels of homes for which it provides mortgages, nor does it yet offer owners any financial incentives through their mortgages to enhance the sustainability of their homes.¹²

⁹ <https://www.ing.com/ING-in-Society/Sustainability/Our-Stance/Energy.htm>

¹⁰ <http://www.banktrack.org/show/dodgydeals/cirebon3>

¹¹ <http://eerlijkegeldwijzer.nl/bankwijzer/themas/klimaatverandering/>, <http://eerlijkegeldwijzer.nl/media/373541/2015-66-eerlijke-bankwijzer-rapport-beleidsupdate-161214.pdf> (pages 36-37).

¹² Triodos Bank does this by offering reduced interest rates for mortgages on homes with more efficient energy labels: <https://www.triodos.nl/nl/particulieren/hypotheken/rentetarieven/>. Rabobank has also launched a noteworthy initiative: <https://www.rabobank.nl/particulieren/actueel/items/rabobank-introduceert-de-rabo-groenhypotheek>.

E. ING is misleading customers with its “climate neutral” statement.

ING is misleading its customers through its frequent publication of the statement “ING has been climate neutral since 2007”.¹³ This is misleading because it ignores the environmental impact caused by the bank’s indirect emissions, which is substantially larger than its direct environmental impact.

Violations of the OECD Guidelines for Multinational Enterprises by ING

Due to the aforementioned absence of measures, the complainants consider that ING is in breach of the following provisions of the OECD Guidelines:

1. Chapter III (“Disclosure”), article 3 and paragraph 33 of the commentary, which state that:

“3. Enterprises are encouraged to communicate additional information that could include: a) value statements or statements of business conduct intended for public disclosure including, depending on its relevance for the enterprise’s activities, information on the enterprise’s policies relating to matters covered by the Guidelines; b) policies and other codes of conduct to which the enterprise subscribes, their date of adoption and the countries and entities to which such statements apply; c) its performance in relation to these statements and codes; [...]

33. The Guidelines also encourage a second set of disclosure or communication practices in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting. This is particularly the case with greenhouse gas emissions, as the scope of their monitoring is expanding to cover direct and indirect, current and future, corporate and product emissions; biodiversity is another example. Many enterprises provide information on a broader set of topics than financial performance and consider disclosure of such information a method by which they can demonstrate a commitment to socially acceptable practices. In some cases, this second type of disclosure – or communication with the public and with other parties directly affected by the enterprise’s activities – may pertain to entities that extend beyond those covered in the enterprise’s financial accounts.

For example, it may also cover information on the activities of subcontractors and suppliers or of joint venture partners. This is particularly appropriate to monitor the transfer of environmentally harmful activities to partners.”

Here the Guidelines mention the importance of developing reporting standards for greenhouse gas emissions that “cover **direct and indirect, current and future, corporate and product emissions**”. ING does disclose “direct” and “corporate” emissions, but not “indirect” or “product” emissions. In the case of major financial institutions such as ING, the indirect emissions caused by their financial products are many times greater than their direct emissions. It follows that the disclosure of these figures is much more important.

¹³ <https://www.ing.com/ING-in-Society/Sustainability/Our-Stance/Climate.htm>

2. Chapter VI (“Environment”), article 1 and paragraph 63 of the commentary, which state that:

“Enterprises should [...] 1. Establish and maintain a system of environmental management appropriate to the enterprise, including: a) collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities; b) establishment of measurable objectives and, where appropriate, targets for improved environmental performance and resource utilisation, including periodically reviewing the continuing relevance of these objectives; where appropriate, targets should be consistent with relevant national policies and international environmental commitments; and c) regular monitoring and verification of progress toward environmental, health, and safety objectives or targets. [...] 63. In the context of these Guidelines, “sound environmental management” should be interpreted in its broadest sense, embodying activities aimed at controlling both direct and indirect environmental impacts of enterprise activities over the long-term, and involving both pollution control and resource management elements.”

The intensification (or prevention) of climate change is an important environmental impact of ING’s core activity, which is the financing of projects and companies. ING does not collect or evaluate any information on the climate impact of its financial investments as requested under article VI.1.a), nor does it disclose such information. Moreover, the bank has not formulated any **measurable** objectives or **targets** for this impact, as suggested under article VI.1.b). Accordingly, ING does not “manage in the broadest sense” the indirect environmental impacts of its activities as required under paragraph 63 of the commentary to chapter VI. Neither does it conduct any monitoring or verification in that regard, and therefore it does not comply with article VI.1.c).

3. Chapter VI (“Environment”), articles 4 and 6 and paragraph 69 of the commentary, which state that:

“Enterprises should [...] 4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage; [...]

6. Continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as: [...] b) development and provision of products or services that have no undue environmental impacts; are safe in their intended use; reduce greenhouse gas emissions; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely; c) promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including, by providing accurate information on their products (for example, on greenhouse gas emissions, biodiversity, resource efficiency, or other environmental issues); and d) exploring and assessing ways of improving the environmental performance of the enterprise over the longer term, for instance by developing strategies for emission reduction, efficient resource utilisation and recycling, substitution or reduction of use of toxic substances, or strategies on biodiversity. [...]

69. The basic premise of the Guidelines is that enterprises should act as soon as possible, and in a proactive way, to avoid, for instance, serious or irreversible environmental damages resulting from their activities.”

Articles 4 and 6 and paragraph 69 of the commentary state that companies must do what they can to avoid environmental damage. ING does not comply with these provisions since, as explained above, it does not do enough to reduce its indirect greenhouse gas emissions.

4. Chapter VIII (“Consumer Interests”), article 4, which states that:

“When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide. In particular, they should: [...]

4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair.”

In its public communications, ING often says that it takes the climate problem seriously and undertakes efforts to counteract climate change. It also frequently uses the statement: *“ING has been climate neutral since 2007”*.¹⁴¹⁵¹⁶ The bank’s communication regarding its efforts to combat climate change, and particularly this statement, is misleading in that it only refers to the bank’s direct emissions. In this regard, ING’s indirect emissions, which are substantially greater than its direct emissions, are not taken into consideration.

¹⁴ https://www.ing.nl/nieuws/nieuws_en_persberichten/2015/02/in_het_nieuws_besparen_met_een_warme_trui.html

¹⁵ <https://www.ing.jobs/Netherlands/Why-ING/This-is-ING-too/Committed-to-sustainability.htm>

¹⁶ https://www.ing.nl/media/ING_duurzaam_betrokken_ondernemen_tcm162-40840.pdf

Conclusion

The complainants consider ING's conduct non-compliant, or not sufficiently compliant, with the following paragraphs of the OECD Guidelines for Multinational Enterprises: chapter III ("Disclosure"), article 3 (sub-sections a, b and c) and paragraph 33 of the commentary; chapter VI ("Environment") article 1 (sub-sections b and c), article 4, article 6 (sub-sections b, c and d) and paragraphs 63 and 69 of the commentary; and chapter VIII, article 4. ING does report the environmental footprint of its offices, but not that of its loans and investments. ING does not catalogue its indirect emissions nor has it (publicly) established objectives to reduce them. Lastly, ING misleads consumers and other stakeholders with its "climate neutral" statement.

The complainants therefore request that the National Contact Point offer its services and that it ask ING to bring its policy in line with the OECD Guidelines. Hereafter, if necessary, the NCP might also bring the parties together with the goal of reaching an agreement in which ING publicly commits, not later than 1 September 2017, to complying with the OECD Guidelines in respect of its indirect impact on the climate, in 2018 at the latest.

Process leading up to the complaint:

- A. In recent years, civil society organisations have published a number of reports and specific case studies, with accompanying press reports, which explicitly called attention to ING's inadequate climate policy and the importance of shifting energy-sector financing from fossil fuels to sustainable alternatives. Examples include (but are not limited to): the annual policy updates published by the Dutch Fair Bank Guide in September 2015 and November 2016,¹⁷ the Dutch Fair Finance Guide case study "Undermining our future"¹⁸ and other reports with regard to coal companies and coal-fired power plants.¹⁹
- B. Also in recent years, social stakeholders have used substantive blogging as a medium for requesting that ING sharpen its climate policy and rapidly shift its energy-sector investments from fossil fuels to sustainable energies.²⁰
- C. In the period 2015-2017, social stakeholders sought out direct contact with ING on several occasions and requested that it sharpens its climate policy, discontinue its financing of the coal industry and shift its energy-sector financing from fossil fuels to sustainable alternatives. Examples of this include (but are not limited to): the conversation about climate and energy held between the management of ING and the management of Oxfam Novib on 24 February 2016; the conversation about climate policy and other matters held between the Dutch Fair Finance Guide and ING on 2 March 2016; and the conversations on climate and energy held between ING management and Greenpeace management on 21 October 2016 and 28 February 2017.
- D. Through conversations and e-mails, civil society organisations have on several occasions requested that ING actively urge certain firms that it finances in the metal and energy sectors, and which demonstrably engage in lobbying against stricter

¹⁷ <http://eerlijkegeldwijzer.nl/bankwijzer/nieuws/2016/banken-beter-op-duurzaamheid-aanpak-klimaatverandering-en-belastingontwikking-blijft-achter/>, <http://eerlijkegeldwijzer.nl/bankwijzer/nieuws/2015/nieuwe-jaarupdate-eerlijke-bankwijzer/>

¹⁸ <http://eerlijkegeldwijzer.nl/bankwijzer/nieuws/2015/nieuw-praktijkonderzoek-klimaat/>

¹⁹ <http://eerlijkegeldwijzer.nl/bankwijzer/nieuws/2016/franse-bank-trekt-zich-terug-van-financiering-vankolencentrale-in-indonesië-ing-goed-voorbeeld-doet-volgen/>, <http://eerlijkegeldwijzer.nl/bankwijzer/nieuws/2016/ing-leent-opnieuw-honderden-miljoenen-aan-vervuilende-kolenbedrijven/>, <http://eerlijkegeldwijzer.nl/bankwijzer/nieuws/2016/ing-en-rabobank-investeren-in-grootste-russische-kolenproducent/>, <http://www.banktrack.org/show/dodgydeal/cirebon3>, http://www.banktrack.org/project/punta_catalina

²⁰ http://eerlijkebankwijzer.blogspot.nl/2016/11/banken-schieten-tekort-in-aanpak_10.html#!/2016/11/banken-schieten-tekort-in-aanpak_10.html, <http://eerlijkegeldwijzer.nl/bankwijzer/nieuws/2015/reactie-op-klimaatstatement-van-de-banksector/>, <http://eerlijkebankwijzer.blogspot.nl/2015/11/ing-wordtvoorzichtig-minder-fossiel-na.html>

European environmental policy, to refrain from doing so.²¹ Although it was sent a number of reminders by e-mail,²² ING has never been willing to confirm that it has engaged in such efforts.

- E. Civil society organisations in the Netherlands, Asia and the Dominican Republic have repeatedly called upon ING withdraw from the financing of new coal power stations.²³
- F. On 10 November 2016, a demonstration took place in Jakarta against the financing of the Cirebon 2 coal-fired power plant by ING and others. And on 26 January 2017, a demonstration took place in Santo Domingo against the financing by ING and others of the Punta Catalina coal power station.
- G. On 18 April 2017, civil society organisations informed ING that they intended to lodge a complaint with the NCP. At that time, the stakeholders indicated that if ING did not announce any concrete steps towards the disclosure of its greenhouse gas emissions and the setting of an emissions reduction target by 3 May 2017, they would submit the complaint to the NCP and make a public statement in that regard at the ING Annual General Meeting on 8 May 2017.
- H. On 3 May 2017, ING sent an e-mail to the NGOs in which it declared that it “looked forward to further action and to hearing from the NCP in due course”, but did not announce any new measures in response to the matters raised.

²¹ Examples include e-mails sent from Oxfam Novib to ING on 6 and 27 November 2013 and a conversation held on 12 September 2013.

²² E-mail sent from Oxfam Novib to ING on 7 July 2014, among others.

²³ <http://eerlijkegeldwijzer.nl/media/373380/160921-letter-to-ing-on-cirebon-2.pdf>, <https://twitter.com/EGeldwijzer/status/824666195819425793>, <http://eerlijkegeldwijzer.nl/bankwijzer/nieuws/2016/ing-leent-opnieuw-honderden-miljoenen-aan-vervuilende-kolenbedrijven/>, http://www.foejapan.org/aid/ibic02/cirebon/pdf/170228_petition_ING_Tokyo_English.pdf