DETAILED SUMMARY OF MILIEUDEFENSIE'S SUMMONS FOR ING

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I INTRODUCTION

The Earth is heating up at an astonishing rate. Since the beginning of the industrial revolution the concentration of greenhouse gases, like CO_2, greatly increased in the atmosphere, in particular due to the **burning of fossil fuels.** Science has known for over 100 years that extra CO_2 causes additional global warming, and climate science has been warning for decades about the far-reaching consequences of global warming.

In order to prevent dangerous climate change, warming must in any event be kept well under 2°C and should preferably be **limited to 1.5°C**, as was determined in 2015 in the Paris Agreement. The danger limit was set at 1.5°C at the Glasgow Climate Pact in 2021. Nevertheless, global average emissions have continued to increase.

In 2018, the UN climate panel (IPCC) published a report indicating that an increase of more than 1.5°C will already entail serious risks worldwide. The average temperature has **in the meantime increased by 1.3 degrees.** With the current policy we are at risk of reaching a temperature increase of more than 3°, which would have catastrophic consequences for the planet. Even now global warming is creating a serious danger to the lives and health of humans and ecosystems.

This temperature increase would have been impossible without the activities of banks – banks finance and facilitate the economic activities that cause greenhouse gas emissions in all kinds of ways. That is why Milieudefensie has been studying the climate policy of the banking sector since 2006, and has been in discussion with banks since that time, including ING, to encourage them to take responsibility for their role in causing and countering climate change.

ING is the biggest bank in the Netherlands, and it also has influence at the international level. According to ING itself, ING's emissions in 2024 were **261.6 megatons**, which is comparable to more than 1.75 times the emissions of all citizens and companies in the Netherlands. ING has not set any reduction targets for at least 70% of its emissions. As a so-called systemic bank, ING has a large influence on the direction in which the economy is developing and has a dual key role in the climate crisis. By ceasing or phasing out greenhouse gas-intensive activities, **ING can reduce**

its emissions. By financing 'green' activities it can contribute to the desperately needed transition.

Milieudefensie has been trying to persuade ING for a very long time to bring its policy in line with the Paris Agreement. **ING has a duty of care** to counter dangerous climate change and protect human rights. This obligation for big companies was recently confirmed in the judgment of the court of appeal in the climate case against Shell.

The necessary changes in ING's flawed climate policies are still missing, even though the bank does have the capacity to truly become sustainable. In ING's response to Milieudefensie's final attempt to reach out to ING this past January, the bank indicated it was not willing to take the climate measures that Milieudefensie was asking for, the measures that are necessary to achieve the climate goals of the Paris Agreement. Hence this summons, in which we claim that ING should take its responsibility to counter dangerous climate change.

The summons is summarised below per chapter.

II JURISDICTION OF THE DISTRICT COURT

The District Court of Amsterdam has jurisdiction to adjudicate the matter because the registered office of ING Groep NV and ING Bank NV (together referred to as 'ING' in the summons) is in Amsterdam.

III STANDING

The legal requirements and rules for standing require that the party bringing the lawsuit (Milieudefensie) represents the collective interests that the party is seeking to protect 1) in its articles of association, 2) in practice and 3) that the party is sufficiently representative. Milieudefensie meets all three of these requirements. First of all, Milieudefensie's articles of association state as their objects "to make a contribution to solving and preventing environmental issues (...), and to **strive for a sustainable society (...) for current and future generations."** Milieudefensie has been putting this into practice since the early 1970s with numerous campaigns and initiatives. In its most recent multi-year policy plan 2016 - 2025 Milieudefensie explained that it would specifically be taking action to build an effective social movement that would realise a fair climate transition by holding companies to

account for their climate impact in their own country and abroad. Milieudefensie carries out these activities on behalf of more than 100,000 members and donors and specifically for this climate case on behalf of around 30.000 co-claimants. This makes it clear that Milieudefensie is sufficiently representative. Milieudefensie also satisfies additional requirements relating to transparency and governance.

Lastly, it should be noted that Milieudefensie tried to achieve its demands in consultation with ING. Milieudefensie has been in discussion with ING for a considerable time and specifically addressed the CEO of ING with clear demands by letter of 19 January 2024, and again by letter of 16 January 2025. ING's response to both letters was dismissive and it indicated that there is a fundamental difference of opinion regarding how ING's climate policy is to be given substance.

IV APPLICATION OF DUTCH LAW

According to the Rome II Regulation, there are two ways to determine what law applies to environmental damage. The starting point is the law of the place where the damage occurs (*Erfolgsort*). But who suffers or wants to prevent damage can also choose for the law of the place where the event giving rise to the damage has occurred (*Handlungsort*). In the case of ING, both ways point to Dutch law. ING is based in the Netherlands and manages the worldwide ING Group from its head office in Amsterdam. This also means that ING's (inadequate) climate policy is determined and implemented in the Netherlands. The activities that are carried out within the framework of the ING Group policy then lead to environmental damage and other kinds of damage (for example, damage to health), including in the Netherlands. So Dutch law applies whichever way.

V IMPORTANT FACTS FROM CLIMATE SCIENCE

According to the IPCC it has **been known for more than 100 years** that CO_2 is a greenhouse gas that warms the Earth. In 1859 the Irish physicist John Tyndall showed that changes in CO_2 could explain the historical climate changes.

The IPCC again confirmed in its most recent report that from a scientific perspective there is no doubt that the Earth is warming due to human influence and that the scale and speed of this warming is unprecedented. In 2023 the concentration of CO_2 in the atmosphere was already **50% higher than the pre-industrial level, and is still**

increasing every year. The rate of the current increase in CO_2 is far greater than the increases of all known natural climate change of the past 56 million years.

CO_2 emissions must be reduced to net zero worldwide in order to stop the warming. In order to limit warming to 1.5°C, it is necessary to remain within the **carbon budget**. The carbon budget is the maximum quantity of CO_2 that can still be emitted. According to the UN Climate Panel, in order to still have a 50% chance to limit warming to 1.5°C, it is **necessary for global CO_2 emissions to be at least 48% lower in 2030 relative to 2019.** In 2035 global CO_2 emissions must be at least 65% lower and in 2040 at least 80% lower, and must have been reduced to net zero in 2050. For all greenhouse gases together, the percentages are somewhat lower: a 43% reduction in 2030.

According to the IPCC, global warming is now increasing by 0.2°C per decade. At present, global warming is already 1.3°C. If countries continue to follow their current policy, according to the UN Climate Panel this will lead **to a warming of 3.2°C this century.** The announced emissions reduction targets (at the COP26 in Glasgow) could lower the warming to 2.8°C, but have not yet been converted into actual policy. This is why the UN Climate Panel speaks of an '**implementation gap**'. At present, the world is heading for climate change that will be catastrophic for humans and the environment.

Even if the energy transition accelerates, the CO_2 concentration will continue to rise, because the phase-out of fossil fuels and infrastructure is slow and the transition to sustainable energy cannot take place overnight. The period to 2030 is therefore the critical decade for the global climate approach.

VI THE ORIGINS OF INTERNATIONAL CLIMATE POLICY AND THE UNFCCC

This chapter provides an overview of how the topic 'climate change' is discussed within the context of the United Nations. The most important events that are mentioned:

- The first time climate change featured on the agenda of the United Nations was in 1972, during the UN conference in Stockholm. The first climate conference took place in Geneva a few years later (1979).

- In 1988, a new conference was held in Toronto, Canada, which attracted not only more than 300 scientists but also politicians and policymakers from 48 countries. For the first time, important causers of the climate problem were called upon to take urgent action.
- In 1988 the IPCC was founded, which published its first report in 1990.
- The UN Framework Convention on Climate Change (UNFCCC) was established in 1992 and had 197 countries and the EU as members. The main goal of the UNFCCC is to prevent human-caused dangerous climate change. The treaty outlines several key principles that must be followed in this regard.
    - The UNFCCC emphasises that preventing dangerous climate change is important for both current and future generations on the basis of the principle of **"intergenerational justice."**
    - The UNFCCC discusses the principle of **"Common but Differentiated Responsibilities and Respective Capabilities" (CBDR)**, that obliges countries to take account of their various responsibilities and capabilities. The CBDR principle states that developed countries have a greater responsibility for historical emissions, compared to developing countries (in short, 'the polluter pays').
    - The **precautionary principle** is also important; it obliges countries to take measures to prevent climate change and limit the harmful consequences, even if the possible consequences of continuing the current situation or the measures to be taken are not yet completely clear. Prevention is better than cure.
    - The UNFCCC establishes the Conference of the Parties (COP) as the highest decision-making body.

VII THE TERM 'DANGEROUS CLIMATE CHANGE'

In preventing dangerous climate change on the basis of the UNFCCC, contracting states base their position on the best available scientific knowledge. This chapter outlines how contracting states concretely give substance to this goal. It also makes clear what was or should already have been clear to ING for the past decades.

Science has indicated since at least 1990 that warming of 2°C is the outer upper limit that may not be exceeded in order to prevent a very serious danger and that warming past 1°C might have rapid, unpredictable and non-linear consequences

and could cause serious damage to ecosystems. It is partly for this reason that the European Council expressed its support for a 2°C target in 1996, bearing in mind the precautionary principle as well. The 2°C target was confirmed in 2009 by the Copenhagen Accord, that was established during COP15. It was also already clear in this period that substantial emissions reductions would be necessary to achieve this goal.

During COP16 in Cancun (2010) it was concluded that the 2°C goal might have to be revised to 1.5°C. In addition, COP16 concluded that **climate change is a threat to human rights worldwide**, with reference to Resolution 10/4 of the UN Human Rights Council of 2009. During COP21 in Paris the goal was in fact revised to "*well below 2°C and preferably 1.5°C.*" In the context of ING it is also relevant that the Paris Agreement also explicitly formulates the goal in Article 2(1)(c) of making **financing flows** consistent with the global path to lower emissions and a climate-proof development.

The Glasgow Climate Pact was made during COP26 in Glasgow. The COP expressed their utmost concern regarding the fact that human activities have already caused 1.1°C warming and indicated that in the meantime the critical decade has arrived in which substantial emissions reductions must be realised. The Glasgow Climate Pact reconfirmed the 1.5°C goal and acknowledged that to achieve this goal '*rapid, deep and sustained*' emissions reductions are necessary, including a worldwide reduction in CO_2 emissions of 45% in 2030. The Glasgow Climate Pact was also the first formal decision to implement the UNFCCC that concretely focused on the need to move away from fossil fuels to prevent dangerous climate change.

COP28 in Dubai emphasised that urgent action is necessary to keep the 1.5°C goal within reach, and formulated concrete measures in this respect, such as the phasing out of fossil fuels. The COP also concluded that at that time financing flows were being made consistent with the Paris goal to a very limited extent and pointed to the **important role that both governments and commercial banks** and other private financial actors have to play in this respect.

VIII THE CONSEQUENCES OF CLIMATE CHANGE

The dangers of climate change have long been known, that is why it has been agreed worldwide to keep warming below 1.5°C. New insights reveal, however, that

the consequences are occurring more quickly and the risks are even greater than originally thought.

From 2001, the IPCC has mentioned the following five significant 'Reasons for Concern':

1. Unique and threatened systems: Climate change forms a great risk to **ecosystems, biodiversity** and vulnerable regions, like coral reefs and the Arctic region.
2. **Extreme weather conditions:** There is an increased risk of extreme weather conditions like heatwaves, heavy rainfall, droughts and storms, that occur more often and are more intense due to climate change. These extreme weather conditions lead to water scarcity and consequently to food shortages and peaks in food prices, endangering the lives of millions of people.
3. Division of the consequences: Climate change particularly affects the poor, **marginalised communities in the Global South**, with serious consequences for public health and sustenance.
4. Global cumulative consequences: The **accumulation of consequences** of climate change, like rising sea levels, reduced agricultural production and economic disruptions, can lead to considerable global environmental damage with large economic consequences.
5. Large-scale, far-reaching events: There is concern about '**tipping points**', that can lead to abrupt, irreversible changes in the climate.

The greater the warming, the greater the risks connected with the five Reasons for Concern. The IPCC therefore concluded:

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

Tipping points. The fifth Reason for Concern is particularly important: *tipping points* are points in time when small changes can have large, irreversible consequences, and have a domino effect that puts other processes in motion. As soon as a tipping point has been reached, climate change will accelerate, even if we stop emitting greenhouse gases. Examples of tipping points are the melting of the ice caps, the disappearance of the Amazon forest and the thawing of permafrost.

Another critical tipping point is the collapse or severe weakening of the warm Gulf Stream in the North Atlantic Ocean (AMOC) due to the inflow of the melting sweet water of the Greenland ice caps. Scientists researching this matter are "*shocked at the forecast speed of collapse once the point is reached.*" The AMOC could collapse or severely weaken within a few decades, with catastrophic consequences, including in Europe, because the vegetation in large parts of the world will be severely affected, with far-reaching consequences for food security. The collapse or severe weakening of the AMOC will also have a great influence on other sub-systems, which could cause 'tipping cascades'.

An important point to note: we already find ourselves in the danger zone in which tipping points can be reached *now*.

The consequences for Europe and the Netherlands. The climate problem is a global problem, and the consequences elsewhere will affect the Netherlands as well. Climate change will also threaten our food and energy security, and will lead to global instability and refugee flows. This was also noted in the letter from the State Secretary of Infrastructure & the Environment of 17 June 2014, in which the Dutch House of Representatives responded to the IPCC's Fifth Report on behalf of the cabinet.

The Netherlands will also be affected economically. According to the European Commission, for example, more than half of global GDP depends on nature and the services it provides. Climate change will have consequences for the global financial system, and therefore also for the Netherlands.

Direct consequences are already noticeable in the Netherlands right now. Due to heat stress many people are seeing adverse effects on their health and quality of life, for example due to heat-related ailments such as respiratory problems, strokes and kidney failure, but also due to sleep disturbance and greater aggression. Research of the PBL Netherlands Environmental Assessment Agency shows that one heatwave in July 2019 even led to four hundred additional deaths.

The Netherlands is running risks due to water problems, such as flooding of seas, rivers or lakes. Hundreds of thousands of people can be affected by this with billions of euros in damage and irreversible damage to nature and the environment. The flooding in Limburg in 2021 caused more than 430 million euros in damage.

The records are stacking up: 2023 was by far the **warmest year ever** with a record number of days of **extreme heat stress**, the surface temperature of the ocean was never so high, in the United Kingdom temperatures exceeded 40°C for the first time ever in 2022, the Wadden Sea reached 21°C (the highest temperature ever recorded), in 2023 in all of Europe there were 5000 km^2 of **wildfires**, the glaciers in the Alps melted at record speed, and 1.6 million people were affected by **flooding**. In the meantime, 2024 was the hottest year ever and the records keep building up.

If we reach climate tipping points, the Netherlands will have to deal with catastrophic consequences. The threat is already a reality now with the current warming and with an increase of 1.5°C and will only increase with each further overshoot.

IX THE IMPORTANT ROLE OF NON-STATE ACTORS

There is a serious gap between what must occur globally to reduce emissions, and what is actually being done by individual countries, according to the UNEP Emissions Gap report of 2011 — a message that has often been repeated ever since. To close this emissions gap, non-state actors like companies, cities and investors (also called 'non-party stakeholders') also have an important role to play.

A large conference was organised in 2014 by the UN Secretary General in which, in addition to the countries affiliated with the UN, the directors of large companies and banks and leaders from other public and private sectors were gathered. As of this Climate Summit 2014, non-state climate action became one of the four main pillars for closing the emission gap.

Non-state actors can significantly reduce the emissions gap for 2030 if they take more climate action, creating a flywheel effect in their sector or region. This influence goes even further than reducing emissions, a point underscored by UNEP:

> *Non-state and subnational actors provide important contributions to climate action beyond their quantified emission reductions. They build confidence in governments concerning climate policy and push for more ambitious national goals.*

UN Race to Zero. The UN Race to Zero initiative was launched in 2020 to reinforce the role of the private sector in climate action, as acknowledged in the Paris Agreement by means of "*rigorous and immediate action to halve global emissions by 2030 and deliver a healthier, fairer, net zero world.*" According to the minimum criteria of the

UN Race to Zero, participating companies must "*reach net zero emissions as quickly as possible, at latest in 2050*", in alignment with the scientific consensus to limit warming to 1.5°C. This also means phasing out and ultimately ceasing the use of fossil fuels. For banks this applies to Scope 1, 2 and 3, and to all emissions, both financed emissions and facilitated emissions.

The UN Race to Zero Interpretation Guide explains that a 'fair share' means that many organisations must reduce their emissions by more than 50% before 2030 and must have reached net zero well before 2050.

Companies must respect human rights. The UN Guiding Principles on Business and Human Rights (UNGPs) were adopted in 2011 with the unanimous support of the UN Human Rights Council. Companies violate human rights more and more often because governments cannot properly keep an eye on companies because of rapid globalisation. Due to a lack of international supervision and rules, multinationals can easily circumvent the law without fear of sanctions. The state must protect citizens against human rights violations by companies, but companies must themselves respect human rights.

UNGPs and the OECD Guidelines. The UN Guiding Principles, that ING has also embraced, set out that companies have their own, independent responsibility to respect human rights in all their activities. This means that they must carry out due diligence: companies must themselves track down, prevent and tackle risks to human rights and the environment.

ING has also committed itself to the OECD Guidelines. The OECD is a joint venture of 38 primarily prosperous countries (including the Netherlands) to discuss, study and coordinate social and economic policy. The OECD Guidelines present the joint position on the role of multinational companies in society and their responsibility for human rights and the environment. The environmental paragraph of the OECD Guidelines makes it clear that companies, including banks, play a key role in the climate approach.

In short, the international community has made it clear in various ways that an important role has been set aside for non-state actors – including banks – to ensure that global warming is limited to 1.5°C.

X WHAT BANKS CAN AND MUST DO

The financing of, for example, the fossil fuel sector, the production of steel, cement and chemicals or the transport sector, forms the essential link in activities that lead to greenhouse gas emissions. The influence of a bank consequently covers the entire economy — it is thanks to banks that these activities can be carried out. A bank has the control over whether or not it will finance certain economic activities, or whether it will only provide financing on certain conditions. Banks thus play a key role in financing the economy and are therefore also responsible for the greenhouse gas emissions that take place as a result of activities in the economy.

That banks play a key role has been known since the UN Climate Conference of 1988, and has been acknowledged in the financial sector since 1992, and since 2007 has been an explicit part of international climate policy.

Banks play a crucial role in making the financing available that is necessary to be able to carry out activities that lead to greenhouse gas emissions. A bank has three important functions in this respect:

1. providing **loans**, including commercial loans for companies (project financing or general company financing),
2. facilitating **capital market transactions**, such as underwriting company bonds, where the bank provides essential services that allow capital of investors to flow to parties that have a demand for capital,
3. providing **asset management services**.

The contribution of banks to climate change can be calculated:

- The GHG Protocol is the leading framework in this respect. This protocol can also be used for the emissions of banks, Scope 1, 2 and 3.
- 'Partnership for Carbon Accounting Financials', also known as PCAF, is the framework that is specifically geared to quantifying the Scope 3 emissions as a result of the products and services of banks. ING too uses PCAF in its reporting. PCAF divides a bank's Scope 3 emissions into 3 categories, namely
    - (1) financed emissions, i.e. emissions connected with loans and asset management provided by the bank,

    - (2) facilitated emissions, i.e. emissions that are connected with the activities of the bank as facilitator of capital market transactions, and
    - (3) insured emissions, that relate to the emissions connected with taking out insurance and reinsurance.
- Both the GHG Protocol and PCAF serve as the standard for sustainability reporting in accordance with the European CSRD Directive.

Various research reports show how enormous the emissions from banks are, and how much money is invested in harmful fossil fuel activities. According to the annual *Banking on Climate Chaos* report, which focuses on the financing by banks of a selection of controversial activities such as drilling for new fossil fuel sources, it turns out that the total financing for fossil fuels of the 60 biggest banks is USD 6.896 trillion dollars, with ING, with 106.442 billion dollars, holding 26th place of the biggest financers worldwide. According to a Profundo report, the emissions of the biggest banks in the Netherlands come to 500 Mt CO_2-eq. A great majority of this is for the account of ING alone.

Banks play a twofold key role in the climate transition: they must see to a rapid phase-out of investments in fossil fuels and must invest more in sustainable projects. On both fronts, however, banks are not taking any responsibility, or they are not taking enough responsibility. Particularly problematic is the financing and facilitating of new fossil fuel infrastructure, that leads to a 'carbon lock-in' effect, in which the demand for fossil fuels is maintained and the transition to sustainable alternatives is delayed.

XI ING'S DUTY OF CARE

Dutch law stipulates that ING must comply with written and unwritten rules. This also includes the acts or omissions in relation to what society may reasonably expect of ING. This **'societal duty of care'** (the 'duty of care') arises from Article 6:162 Dutch Civil Code. The court determines the precise content of this duty of care on the basis of all concrete circumstances of the case and **objective leads**. For instance, the court looks at laws, international conventions, international legal principles and case law. Widely supported insights from climate science and the international community also provide objective leads. These insights can be found, inter alia, in **international protocols and guidelines** and other **soft law** instruments, such as the UNGPs and the OECD Guidelines. A large part of these objective leads were already discussed in the

preceding chapters. In addition, other leads give substance to this duty of care of companies.

First of all, ING is obliged not to cause danger and/or let danger continue. This is called **'endangerment'**. This also includes the duty to take sufficient precautionary measures to prevent the manifestation of the danger. Criteria have been developed in the case law to determine whether the duty has been fulfilled (the 'Kelderluik criteria', established in the Kelderluik case). In the Shell case, the district court formulated a legal standard based on these criteria in the context of climate change and companies. This entails that **companies have a duty of care to limit CO_2 emissions to counter dangerous climate change**.

Secondly, courts compel companies to fulfil their obligations arising from **human rights**. This is called the (indirect) horizontal effect of human rights. Human rights therefore give significant substance to the content of ING's duty of care. This also ensues from the judgments of the district court and the court of appeal in the Shell case.

Thirdly, other relevant objective leads must also be involved by the court when assessing ING's duty of care. The following legal principles are, in any event, concerned: (1) the **precautionary principle**, (2) the principle of common but differentiated responsibilities and respective capabilities (**CBDR principle**), and (3) the principle of **intergenerational equity**.

All these different objective leads are not only relevant for determining *whether* ING has a duty of care to take sufficient measures to counter dangerous climate change, but also *what* this obligation concretely entails. In other words, to determine a **reduction percentage**.

XII ING IS ACTING IN A HAZARDOUS AND NEGLIGENT MANNER

ING's current inadequate climate policy leads to hazardous negligence. Partly based on the previously mentioned five *Kelderluik* criteria, ING too has a societal duty of care to prevent hazardous climate change:

(i) the nature and the scope of the damage caused by climate change;
(ii) ING's knowledge and ability to foresee such damage;

(iii) the likelihood that dangerous climate change will manifest itself;
(iv) the nature of the acts (or omissions) of ING; and
(v) the onerousness of the precautionary measures to be taken for ING.

Points (i) and (iii) have already been discussed in detail in earlier chapters. With regard to (ii) ING has known for more than 23 years (since 2002) that global warming entails enormous dangers for humans and the environment, and knew this, or should have known this, far earlier than that (in the years after the bank was founded, 34 years ago). Among other things, by participating in the Carbon Disclosure Project (CDP), by signing the Global Roundtable on Climate Change, and ING's internal report 'Climate Change: When Hell Freezes over', ING has been aware since 2007 of the risk of a global temperature increase in the event of lack of intervention in greenhouse gas emissions. As ING itself stated in the latter report:

> *There is (virtually) no debate today surrounding the proposition that the greater the level of greenhouse gas concentrations in the atmosphere, the greater the equilibrium temperature on the earth. There is also little doubt that rising use of fossil-fuels increases the concentration of greenhouse gases in the atmosphere and contributes to a global warming effect.*

ING therefore knowingly and intentionally has not reduced its emissions, and has in fact chosen to rise in the ranks of the largest fossil fuel financiers in the world.

Criterion (iv) is about whether the 'nature of the acts' constitutes a great danger or not. In earlier judgments, such as in the Urgenda case or Shell case, it became clear that when actions create a serious danger with great risk of damage, that high standards of care can and must be set. Even if the requirements are 'onerous' for the party causing the damage, and the party causing damage suffers adverse consequences and has to make sacrifices. This also applies to ING, including with regard to Scope 3 emissions.

With regard to criterion (v): if necessary measures were in fact onerous - which is doubtful, as ING itself has said that doing nothing about climate change will be even more expensive - this onerousness may not be of decisive meaning for ING's duty of care to take necessary measures. It is not conceivable that the entire world should undergo catastrophic climate change and suffer the consequences of catastrophic climate change, purely because it would be too 'onerous' for ING to change. ING must change, onerous or not.

XIII HUMAN RIGHTS REQUIRE AN EFFECTIVE CLIMATE POLICY FROM ING

ING's duty of care is furthermore given substance by human rights and soft law. The impact of climate change on human rights is undisputed. International and national courts and (UN) agencies underscore the negative impact of climate change on various rights, including the right to life, the right to respect for a family life and the right to health. In the Shell case, the court of appeal also described climate change "as the greatest issue of this time" because it damages and will continue to damage human rights, both in the Netherlands and in the rest of the world.

Against this background, national and international courts and (UN) agencies have determined that human rights provide protection against dangerous climate change. The European Court of Human Rights (ECtHR) emphasised in the KlimaSeniorinnen case, inter alia, that everyone has a partial responsibility to make a contribution to countering climate change and cannot escape this responsibility. Not by pointing at the responsibility of others, and not by pointing at its own, relatively minor contribution to the climate problem. The ECtHR also emphasised the importance of access to the court in climate cases, including for collective interest groups, and the key role of national courts in assuring effective protection of ECHR rights.

The international acknowledgement of the **right to a clean, healthy and sustainable living environment** is also relevant for giving substance to human rights and the interpretation of ING's duty of care. This right also encompasses protection against dangerous climate change. The UN Human Rights Council and the UN General Assembly already recognised this right in 2021 and 2022, and this right was also recognised at regional and national level, including in the Aarhus Convention and in the national legal systems of 155 states. At the level of the Council of Europe, reinforcing the right to a healthy living environment has been emphasised, and a discussion is going on regarding the establishing of a (binding) right.

Because of the (indirect) horizontal effect of human rights, ING's duty of care entails that it must provide **effective protection** against climate change. In order to protect human rights and the climate, companies like ING will therefore have to realise percentage-based emissions reductions and reduce their Scope 1, 2 and 3 emissions

in an absolute sense. After all, adequate emissions reductions are the only effective remedies against climate change. Because of the important role of national courts in providing effective protection of human rights, the Dutch court must impose an obligation on ING to reduce emissions.

Soft law sources that are specifically geared to companies also underscore this human rights obligation. For example, the UNGPs and the OECD Guidelines. These instruments reflect an international consensus on the responsibility of companies, including banks, to respect human rights. This applies with regard to all human rights, and in particular the right to a clean, healthy and sustainable living environment. These sources show the great importance of climate action in line with the Paris Agreement by non-state actors, including banks, to have the global climate approach succeed and to protect human rights.

XIV WHAT ING CAN AND MUST DO

This chapter first describes what global tasks exist, and then discusses the minimum that can be required of ING in order to fulfil its tasks.

(1) What has to happen globally

In order to limit the temperature to 1.5°C, it is necessary for all greenhouse gas emissions to be reduced by 43% in 2030 and by 60% in 2035, both relative to 2019. In 2050, CO_2 emissions must have been reduced to net zero. This is what the global community determined at the last three COPs based on scientific findings.

Reduction pathways of the IPCC: an absolute lower limit. The above-mentioned reduction percentages come from the Sixth Assessment Report of the IPCC (AR6), in which these percentages are mentioned as necessary to keep a 50% chance of limiting the warming at the end of this century to 1.5°C. This report also clarifies in a table that specifically CO_2 emissions must fall more quickly in 2030, i.e. by 48%:

Table SPM.1: Greenhouse gas and CO_2 emission reductions from 2019, median and 5-95 percentiles. *{3.3.1, 4.1, Table 3.1, Figure 2.5, Box SPM.1}*

		Reductions from 2019 emission levels (%)			
		2030	2035	2040	2050
Limit warming to1.5°C (>50%) with no or limited overshoot	GHG	43 [34-60]	60 [49-77]	69 [58-90]	84 [73-98]
	CO_2	48 [36-69]	65 [50-96]	80 [61-109]	99 [79-119]

Even if this is followed, there is still a 50% chance that the temperature will exceed 1.5°C at the end of this century. These reduction pathways are therefore the absolute lower limit. The remaining carbon budget is 200 $GtCO_2$. Based on the current annual CO_2 emissions, this means that we have only five years before this budget is depleted — this makes it more urgent than ever to resolutely reduce CO_2 emissions.

(2) What ING must minimally do

ING will have to reduce its emissions in 2030, 2035, 2040 and 2050 to such extent that they are in line with the 1.5°C reduction pathway.

Fair share. The reduction goals of financial institutions must be a fair share of the halving of emissions that is necessary at the global level, a point emphasised by the UN Race to Zero, the UN expert report and human rights frameworks for companies.

A fair share entails that companies in the Global North, that have disproportionally caused the climate crisis and have more opportunities to contribute to the solution, most do more than countries in the Global South. ING, a large bank that makes its policy in the Global North and 97% of whose revenue comes from countries in the Global North, should in any event have to at least do what is globally necessary. There is no conceivable reason why a bank like ING should do *less* than is globally necessary.

Absolute targets and intensity targets. In addition to its intensity targets, ING must also set absolute targets, as PCAF (together with Race To Zero, the UN Expert Report and the Glasgow Financial Alliance for Net Zero) underscores:

> *To limit climate change and meet the goals of the Paris Agreement, financiers must actively seek out actions that reduce generated emissions in absolute terms, i.e., absolute emissions.*

At present, save for 1 sub-sector, ING has no absolute reduction targets (for further explanation, see XV below).

Targets across the entire portfolio and sectoral reduction targets. In order to guarantee that ING takes the right climate action, a target that extends across the entire portfolio is necessary to ensure that ING brings all its activities in line with the requisite reduction. In addition, reduction targets per sector are necessary, such as

the IPCC (in addition to the UN expert report and the Interpretation Guide of the Race to Zero) make clear:

> *Pathways consistent with 1.5°C and 2°C carbon budgets imply rapid, deep, and in most cases immediate GHG emission reductions in all sectors (high confidence).*

One of the reasons for this is that it is undesirable (as it would result in ineffective policy), if ING were, for example, to achieve reduction targets by ceasing to finance one part of its portfolio, while failing to take action in other sectors. ING must instead reduce its emissions in every sector. In this sense, sectoral reduction targets form a certain barometer or guarantee for ensuring that the necessary absolute emissions reductions are achieved by achieving sustainability goals in all sectors.

It must be emphasised that sectoral targets exist in addition to targets across the portfolio, i.e. form an addition, not an alternative, inter alia because sectoral targets will not cover all of ING's activities.

With regard to sectoral targets, in the first place this concerns the fossil fuel sector, as 81% of the CO_2 emissions in the world are caused by the production and burning of oil, coal and (supply sectors). ING will also have to set targets for sectors that use these fossil fuels (use sectors), like steel, cement and air travel.

IEA NZE scenario. The Net Zero Emissions (NZE) scenario of the International Energy Agency (IEA) can be taken as the basis for establishing sectoral targets, as ING is already doing now. Although this NZE scenario is conservative, both Milieudefensie and ING itself is a proponent of using this scenario as the starting point for ING's sectoral emissions reduction targets. Based on data from this scenario, the absolute emissions reductions necessary for each sector are easy to calculate (see table para 991).

In the NZE scenario, the IEA takes account of the fact that 'advanced economies' have to reduce faster and more than 'emerging markets and developing economies'. ING comes under the first group. But, save for 1 sector, ING itself currently applies even less ambitious reduction targets. Wrongly, seeing as ING should take the NZE scenario as the starting point.

Financed and facilitated emissions. As described above, ING has both financed emissions and facilitated emissions. It is necessary to set separate reduction targets for both categories. The journalistic platform Follow the Money and Investico showed,

for example, that bonds have become far and away the most important source of financing for the fossil fuel sector. According to Follow the Money, ING has helped fossil fuel companies gain access to EUR 83.2 billion since the Paris Agreement. ING does not report on this (ING says this is "not material"), and therefore has not formulated any reduction targets for this.

ING has the possibilities, but is not utilising them. ING has enough possibilities to reduce its emissions: the bank can encourage clients to become more sustainable via engagement, for example by setting financing conditions, and can ask (large) clients for a climate transition plan and can assess whether the client has made enough progress. If engagement does not provide the intended results, ING can opt to move toward disengagement and if necessary terminate a relationship with a client, as underscored by the UN Race to Zero initiative:

> *where there is no transition plan, divestment may be the only way to drive net zero alignment.*

ING is aware of all these options, but only applies them on a limited or inadequate basis. The bank's engagement policy is not so much geared to preventing dangerous climate change, but to the financial opportunities and risks of ING itself. When the bank writes about engagement in the 2024 climate report, not one word is said, for example, about the negative climate impact of the bank and its clients. ING also continues to maintain the 'inclusion first' principle, whereby the bank opts to give priority to the financing of its clients. In short, ING's engagement policy falls short.

XV ING'S CLIMATE POLICY IS NOT ADEQUATE

Despite the fact that it is clear that ING can and must change, ING continues to opt for an inadequate climate policy. Because ING is subject to an enforceable duty of care, this means that ING is committing a tortious act. Following is a clarification of the points on which ING's policy falls short.

No absolute reduction targets. A serious shortcoming of ING's policy is that no absolute reduction targets are set – indeed, the bank has explicitly objected to this. As only absolute reductions can reduce the danger of climate change, without absolute reduction targets it is impossible for ING's policy to be effective.

The targets that ING has set in its 'Terra approach', are virtually all intensity targets. With an intensity target, ING only ensures that the emissions *per product unit* decrease (e.g. per barrel of oil or per passenger in an airplane), but this means that it is still possible for ING's total financed emissions to keep increasing. For example, ING focuses on closing methane leaks in the production of oil or on making airplanes more sustainable, but if in the meantime more oil is extracted or more airplanes are in the air, absolute emissions will still increase. Consequently, intensity targets alone are insufficient, and it is necessary for ING to set *both* absolute targets and intensity targets, and not intensity targets *instead* of absolute targets.

The Terra approach has no reduction targets at all for a considerable part of its financed emissions and facilitated emissions.

- ING has no targets for financed emissions and facilitated emissions of ING's capital market financing and asset management.
- ING has no emission reduction targets for over 70% of the emissions of its loan portfolio. This equals the emissions of 1.75 times the Netherlands.

ING's emissions reduction target for upstream oil & gas is inadequate. As the only exception, ING has set absolute reduction targets for 'Oil and Gas Upstream' (exploration and extraction in oil and gas fields), but they are inadequate.

- ING has no reduction targets for financed emissions and facilitated emissions of capital market financing and asset management for upstream oil and gas companies.
- ING's absolute target only applies to companies that ING classifies as 'Upstream oil and gas companies'. Many companies that are engaged in upstream activities, but that ING categorises under another label, fall outside of this absolute emissions reduction goal.

ING continues financing companies that are starting new oil and gas projects. ING acknowledges the need to cease financing and facilitating for new fossil fuel projects. ING has announced, for example, that it will be ceasing the financing of projects for new oil and gas fields and infrastructure that is directly linked to this, and that it will be ceasing general company loans and capital market services to "*pure-play upstream oil & gas companies*". This is inadequate because:

- ING only excludes project financing, but this is an insignificant form of financing for new oil and gas fields. ING will continue to provide financing to companies that start new oil and gas projects via general company loans, capital market financing and asset management.
- ING only excludes *pure play* companies - companies that purely and alone have pumping up oil as an activity. But the bulk of the new oil and gas projects is started by diversified companies, companies like ExxonMobil, BP and Shell that trade oil or install pipelines in addition to pumping up oil. This policy does not exclude these companies.

ING's intensity targets are inadequate. ING does not apply the NZE scenario to a number of intensity targets. ING does not make it clear, however, whether the scenarios and methods that ING applies will lead to sufficient reduction. This means that ING's policy cannot be verified. In addition, these intensity targets do not cover the emissions connected with ING's function as facilitator of capital market transactions.

Further shortcomings. ING's policy regarding the remuneration of directors also greatly creates the impression that countering climate change is not a priority. Reducing financed emissions is not part of the remuneration policy of ING's top directors.

Lastly, ING itself indicates that ING can modify its climate policy at any time. Only one conclusion can be drawn from this and from the above, and that is that ING is committing a tortious act, or in any event is threatening to do so, due to an inadequate climate policy.

XVI WHY A JUDGMENT IS EFFECTIVE

There is a great chance that ING will present as its defence that Milieudefensie's claims are not effective or have limited effect, for example because a limiting of ING's emissions will change little to nothing in relation to global emissions, or that the emissions that ING would reduce will be compensated by other parties causing greater emissions. This chapter argues that the claims are indeed effective, and any 'effectiveness defence' that ING might have, cannot succeed.

Case law. The effective contribution to the global climate approach of the (individual) climate measures that Milieudefensie believes ING should take, appears first of all from the fact that ING, through its Scope 1, 2 and 3 emissions, is contributing to dangerous climate change. A reduction in emissions by ING will have a positive effect on the total greenhouse gas emissions into the atmosphere. In addition, this reduction obligation not only applies to ING, but in line with the Shell case, also applies to all (big) companies.

Secondly, the claimed climate measures are effective because ING is being held liable for its tortious acts, whereby this violation of rights will be ended. It is sufficient in this respect that Milieudefensie's claim is effective with regard to the (individual) tortious act or omission of the party being held liable (ING), and not necessarily against the bigger problem that is also caused by others. If this were the case, no lawsuit would be possible against a large polluter who is guilty of making climate change worse.

In addition, the effectiveness defence is contrary to established Dutch case law, and has also been rejected in foreign lawsuits on various occasions. The Dutch Supreme Court in the Urgenda case, and the court of appeal of The Hague in the weapons export case regarding the delivery of F35 parts by the Netherlands, rejected the State's effectiveness defence based on a partial responsibility. In KlimaSeniorinnen, the ECtHR also emphasised the partial responsibility of states in the climate task. Foreign courts have also rejected effectiveness defences in climate cases, including the US Court, the Appellate Court of Montana, the German Constitutional Court and the Brussels Court of Appeal.

The claimed climate measures also have broader, more indirect effects on having the global climate approach succeed. It reinforces the underlying confidence in fulfilling individual (partial) responsibilities. This is called the '**flywheel effect**'. Other effects can also be expected. The IPCC speaks, inter alia, of the impact of climate cases on the financial market, on the behaviour of the parties, on public opinion, for the finances and reputation of actors involved, on future lawsuits, and on the perception of climate policy. This performs an important signalling function that is of legal significance.

That ING can bring about a flywheel effect is acknowledged by ING itself in its 2024 climate report:

"As a systemically important bank, we believe that showing leadership means helping our customers and society decarbonise and drive down emissions, with a thriving net-zero world as our mutual goal."

XVII ING'S DEFENCES

Milieudefensie and ING agree that the danger of global warming of more than 1.5°C must be prevented, and that banks (and ING) have a responsibility in this respect. The disagreement between Milieudefensie and ING will in all probability therefore concentrate on the question *how* the duty of care is to be given substance. In the words of ING: "We therefore have the same goal, but we do not always agree on the best way to achieve those goals."

ING is of the opinion that it can suffice with the current climate ambitions. ING indicates that the sustainable climate transition in fact demands (or can demand) a growth in the financing of specific sectors and that consequently its emissions would increase. However, at the same time ING will have to reduce the financing of emissions-intensive activities, so that room will automatically be created to allow the financing of transition sectors to increase within the umbrella carbon budget. In addition, to the extent this is the case, that ING's emissions would increase with an increase of the transition financing, those emissions in specific sectors may not be at the expense of the necessary absolute reductions to be able to achieve the 1.5°C goal.

ING is also claiming that the globally required absolute reductions do not apply to ING. ING says, for example:

> *The contribution that banks must make is different [than the global reduction target of 48%] because this depends on the composition of their credit portfolios.*

The greater part of ING's portfolio consists, however, precisely of companies in the richest parts of the global economy (and it is precisely these companies that must move faster, rather than slower). It is therefore not clear why ING believes that it should have to do less than the average global reduction of 48%.

ING has furthermore indicated that an absolute reduction target is not a suitable measure for a bank. That this is indeed necessary, has already been dealt with in the sources cited above. Both UN initiatives and initiatives from the financial sector itself emphasise that a combination of absolute targets and intensity reduction targets is

always necessary. Without absolute reduction targets, there are zero guarantees that ING will actually implement an effective climate policy.

ING asserts that it cannot 'stop financing oil and gas from one day to the next'. But this is not what Milieudefensie is claiming; the claim is for ING to stop, within a specific time, financing companies that are still starting up new oil and gas projects. ING is not, however, willing to do so, even though the bank itself also acknowledges that the current fossil fuel sources are already (more than) enough to provide for the demand for current and future energy needs.

In short, ING interprets its obligations to contribute to achieving the Paris climate goals without major commitment and fights measures it is precisely bound to take because of those obligations.

XVIII REQUEST TO ING FOR INFORMATION

In 2019, ING had not yet reported on the fully financed emissions and facilitated emissions, and only started reporting these in 2020. Milieudefensie's demands take 2019 as the base year, as this is the year that the IPCC applies for the global emissions reduction. Milieudefensie has made its own estimate, based on a trend line, of the Scope 1, 2 and 3 emissions in 2019 (308 Mt CO_2-eq). Milieudefensie could make a similar estimate for the years after 2019, but it is preferable that ING provide this information itself. Such transparency may also be expected of ING.

XIX EVIDENCE AND OFFER TO PRESENT EVIDENCE

Milieudefensie will prove its assertions by means of the documents enclosed in Annex A of the summons.

XX CLAIM

The full package of demands is set out in Chapter XX, as set out in the letter that Milieudefensie sent ING on 16 January 2025. The demands can be summarised as follows:

1. ING is to halve its total emissions in 2030 and continue reducing its emissions in the years thereafter in line with science.

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

ANNEX A LIST OF EXHIBITS

Enclosed are 240 evidentiary items ('exhibits'), which together come to almost 10.000 pages, that support this summons.