

ING

Overview of controversial business practices in 2009



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SOMO

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Colophon

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Introduction

This brief company profile is a joint initiative of SOMO (Centre for Research on Multinational Corporations) and the VBDO (Vereniging van Beleggers voor Duurzame Ontwikkeling). It provides an overview of business practices that may be considered unsustainable, irresponsible, or controversial and that took place or were addressed in 2009. In the context of the upcoming annual general meetings (AGMs) of shareholders of Dutch corporations, the overview aims to provide additional information to ING's shareholders and other stakeholders on potentially controversial issues that may or may not be detected or reported by the company itself. By highlighting such issues, the overview can be used to identify areas of the company's corporate responsibility policies and practices that need improvement and to formulate a more informed assessment of a company's corporate responsibility performance.

The range of sustainability and corporate responsibility issues eligible for inclusion in this overview is broadly based on the issues and principles identified in the OECD Guidelines for Multinational Enterprises, which is one of the leading global normative standards for responsible business behaviour and which is applicable to all Netherlands-based companies by virtue of the Dutch government's membership in the OECD. Rather than an exhaustive analysis of ING's corporate responsibility policies, operational aspects of corporate responsibility management, implementation systems, reporting and transparency, or total performance on any issue, the overview provides a descriptive depiction of a limited number of corporate responsibility-related issues and cases that might merit further attention or reflection. ING's positive sustainability achievements in 2009 are not addressed here.

The research methodology for this overview involved primarily desk research methods, relying on information from SOMO's global network of civil society organisations, the company's own website and publications, media reports, and company information databases. All sources are cited in footnotes in the text. As per SOMO's standard research methodology, ING was informed about the research in advance and was given time to review a draft report and provide comments and corrections of any factual errors in the draft version prior to publication.

The overview has been researched and drafted by SOMO. SOMO is an independent research organisation that was founded in 1973 to provide civil society organizations with knowledge on the structure and organisation of multinationals.

Controversial Business Practices in 2009

1. Shareholdings in controversial companies

Summary

ING Group N.V. is a global financial institution offering banking, investments, life insurance and retirement services. ING serves more than 85 million private, corporate and institutional customers in Europe, North and Latin America, Asia and Australia, making it one of the world's largest financial services companies.¹ In its capacity of investment manager, ING manages assets for its own account and on behalf of its customers. 30% of ING's total assets are assets under management, of which 53% is managed on behalf of its customers.²

Below, part of ING's investments in shares are examined in order to determine the companies of which ING holds shares. This reveals the financial linkages between ING and controversial companies, selected by SOMO and defined as weapons manufacturers, environmentally damaging companies, and companies linked to human rights abuses.

Context

Banks offer their customers a wide range of investment products, but also invest assets which the bank itself owns. The various forms of asset management are:

- Investments at the expense and risk of the bank
 - Asset management at the expense of the bank involves the management of investments in shares, bonds and other securities which the bank realises at its own expense. The income and losses arising from these investments accrue directly to the bank; after all, the risks of these investments are also borne by the bank. As the bank is the legal owner of these investments, the bank itself determines what the funds are invested in.
- Investment at the expense and risk of third parties
 - In the case of investments at the expense and risk of third parties, the bank manages the assets but the customer is the legal owner of the investments. The forms of investments at the expense and risk of third parties are:
 - Individual asset management
 - In the case of individual asset management, an amount of capital is entrusted by a private investor to a bank. The bank invests the capital for the private investor.
 - Collective asset management
 - Investment funds: Most private investors invest their money in investment funds offered by banks. These funds can consist of shares, bonds, property investments, investments in commodities and a wide range of other types of investments, or a mix of these.

¹ ING website, About us, Profile & fast facts, "Our profile", 1 April 2010, http://www.ing.com/group/showdoc.jsp?docid=092825_EN&menopt=abolfct (01-04-2010).

² Total assets in 2009: EUR 1,164 billion, Total Assets under Management in 2009: EUR 343.2 billion. ING Annual Report 2009, http://www.ing.com/cms/idc.cgi_isapi.dll?IdcService=GET_FILE&dDocName=440367_EN&RevisionSelectionMethod=latestReleased (19-04-2010).

- Institutional investments: As well as private individuals and banks, institutional investors such as insurance companies or pension funds also invest. Pension funds invest capital which is paid by participants in the pension fund, for example. The participants, all policyholders, do not have any - individual - influence on the way in which assets are managed.

A financial institution that holds shares of a company contributes to the financing of that company and therefore enables its operations by way of those shares. SOMO takes the position that financial institutions have a responsibility to respect human rights and the environment throughout their operations and financing, from which they derive profits, irrespective of whether the financial institution holds the shares on its own account or on behalf of its customers. While certain sustainability criteria and ethical values of the financial institution may be part of the financing or investment policy for its own assets and accounts, complicity in the violation of core internationally agreed standards and principles should be avoided throughout the whole range of its activities and financing.

In addition, this report does not distinguish between the specific activities of a controversial company that a financial institution finances because it is impossible for a financial institution to ensure that the financial means provided to a company will not be used for certain business activities. It is difficult if not impossible to prevent a company from legally reallocating capital within a group, including clauses that restrict a company's use of the financing.

Another reason for not making a distinction between shares that the bank owns itself and shares that the bank manages for clients, and for not taking into account restrictive clauses, is that transparency is often lacking. It is impossible for consumers to check whether shares that are held by a bank are shares on its own account or on behalf of its customers, and whether clauses apply to these investments. Consumers are therefore unable to see to what extent banks apply their CSR policy to asset management.

Role of ING

Worldwide, ING Investment Management managed EUR 343.2 billion worth of assets in 2009.³ Two third (63.9%) of these assets are managed for clients, one third for ING's own account. ING Investment Management (ING IM) is the principal investment manager to all ING business units and their affiliated clients, excluding Real Estate. It is organised along regional lines: ING IM Europe, ING IM Americas and ING IM Asia Pacific.

A scan of these ING's shareholdings reveals that the company invests, on its own account or for its clients, in a number of companies considered to be controversial by renowned research institutes (such as Ecofacts and Profundo), government divisions (such as the Norwegian Ministry of Finance), and NGOs (such as Netwerk Vlaanderen and the Burma Campaign UK).⁴ Please note that for each controversial company one or two information sources are

³ ING Annual Report 2009, http://www.ing.com/cms/idc.cgi_isapi.dll?IdcService=GET_FILE&dDocName=440367_EN&RevisionSelectionMethod=latestReleased (19-04-2010).

⁴ The shareholdings of ING Group N.V., ING Investment Management Co., and ING Investment Management (Europe) B.V. are acquired from the SEC Forms 13F as of December 31 2009 (SEC Form 13 F, ING Group N.V., 31 December 2009, <http://www.sec.gov/Archives/edgar/data/1039765/000095012310013370/c96266e13fvr.txt>. SEC Form 13 F, ING Investment Management Co, 31 December 2009, <http://www.sec.gov/Archives/edgar/data/33670/000003367010000005/finalwatl.txt>. SEC Form 13 F, ING Investment Management (Europe) B.V., 31 December 2009, http://www.sec.gov/Archives/edgar/data/1359951/000135995110000002/form13fq4_09.txt (29-03-2010).). These forms contain shares worth of USD 27 billion for ING Group N.V., USD 23 billion for ING Investment Management

mentioned in a footnote. However, this does not mean the controversial practices of these companies are not described in other information sources as well. For the purposes of this research, controversial companies are narrowed down to weapon manufacturers, environmentally damaging oil and mining companies, and companies that can be linked to allegations of human rights violations.⁵

In Tables 1, 2, and 3, the controversial companies in which ING Group N.V., ING Investment Management Co., and/or ING Investment Management (Europe) B.V hold shares are depicted. These shareholdings are assets at the expense and risk of the bank and assets at the expense and risk of customers.

Table 1. Weapon manufacturers in which ING Group N.V., ING Investment Management Co, and/or ING Investment Management (Europe) B.V. hold shares

Company	Controversial issues ⁶
Alliant Techsystems Inc.	Production of nuclear weapons and key components for cluster munitions. ⁷
Boeing Co.	Production of nuclear weapons. ⁸
GenCorp Inc.	Production of nuclear weapons. ⁹
General Dynamics Corp.	Production of nuclear weapons and key components for cluster bombs and landmines. ¹⁰
Honeywell International Inc.	Production of nuclear weapons. ¹¹
Jacobs Engineering Group Inc.	Production of nuclear weapons. ¹²
Lockheed Martin Corp.	Production of nuclear weapons and key components for cluster bombs. ¹³
Northrop Grumman Corp.	Production of nuclear weapons. ¹⁴
Raytheon Co.	Production of nuclear weapons and key components for cluster bombs. ¹⁵
Textron Inc.	Production of cluster munitions and anti-personnel mines. ¹⁶
United Technologies Corp.	Production of nuclear weapons and fighter aircrafts. ¹⁷

Co. and 7 billion for ING Investment Management (Europe) B.V.

⁵ For a complete list of controversial companies that was compared with ING's shares, please contact SOMO (info@somo.nl).

⁶ Controversial arm trade is considered here as the delivery of (important parts of) weapons to countries that are under an arms embargo, countries that violate human rights on a large scale or are involved in civil war, countries that are very corrupt or countries with a fragile government or poor countries that spend a big part of their budget on weapons.

⁷ Ministry of Finance Norway website, the Government Pension Fund, "Companies excluded from the investment universe", no date, <http://www.regjeringen.no/en/dep/fin/Selected-topics/the-government-pension-fund/responsible-investments/companies-excluded-from-the-investment-u.html?id=447122> & Profundo, *Banken en wapens: de praktijk*, 2 July 2009, http://www.eerlijkebankwijzer.nl/site/praktijkonderzoek_wapens.pdf (29-03-2010).

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Profundo, *Banken en wapens: de praktijk*, 2 July 2009, http://www.eerlijkebankwijzer.nl/site/praktijkonderzoek_wapens.pdf (20-03-2010).

¹³ Ministry of Finance Norway website, the Government Pension Fund, "Companies excluded from the investment universe", no date, <http://www.regjeringen.no/en/dep/fin/Selected-topics/the-government-pension-fund/responsible-investments/companies-excluded-from-the-investment-u.html?id=447122> & Profundo, *Banken en wapens: de praktijk*, 2 July 2009, http://www.eerlijkebankwijzer.nl/site/praktijkonderzoek_wapens.pdf (20-03-2010).

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Profundo, *Banken en wapens: de praktijk*, 2 July 2009,

Table 2. Companies linked to Human Rights Abuses in which ING Group N.V., ING Investment Management Co, and/or ING Investment Management (Europe) B.V. hold shares

Company	Controversial issues
Baker Hughes	Involvement oil and gas sector Burma. ¹⁸
Celestica Inc.	Bad working conditions in plants. ¹⁹
Chevron Corp.	Involvement oil and gas sector Burma. ²⁰
China Petroleum & Chemical Corporation (Sinopec)	Active business operations in oil sector in Sudan and Burma. ²¹
CRH Plc.	Cement delivery for Israeli wall. ²²
Flextronics	Bad working conditions in plants. ²³
Jabil Circuit	Bad working conditions in plants. ²⁴
PetroChina	Active business operations in oil sector in Sudan and Burma. ²⁵
Total SA	Involvement oil and gas sector Burma. ²⁶
Wal-Mart Stores	Serious or systematic violations of human rights. ²⁷ Nr. 5 on list most controversial companies 2009. ²⁸

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- http://www.eerlijkebankwijzer.nl/site/praktijkonderzoek_wapens.pdf (20-03-2010).
- ¹⁸ The Burma Campaign UK website, Campaigns, Company campaigns, "The dirty list", <http://www.burmacampaign.org.uk/index.php/burma/dirty-and-clean-list/dirty-list/contact-details> (20-03-2010). Extra information from Mark Farmaner, the Burma Campaign; Although Baker Hughes has sold its interests in Burma, it still carries out work for other investors in Burma. See an example on their website via the link <http://www.bakerhughes.com/products-and-services/drilling-and-evaluation/drilling-systems-/measurement-while-drilling-mwd-services/high-speed-telemetry/accelerate-wired-drillpipe-telemetry> (15-06-2010).
- ¹⁹ SOMO, *Playing with labour rights*, March 2009, http://somo.nl/publications-nl/Publication_3008-nl/at_download/fullfile (July 2010).
- ²⁰ The Burma Campaign UK website, Campaigns, Company campaigns, "The dirty list", <http://www.burmacampaign.org.uk/index.php/burma/dirty-and-clean-list/dirty-list/contact-details> (20-03-2010).
- ²¹ Investors against genocide website, Learn more, "Problem companies", <http://investorsagainstgenocide.net/problemcompanies> (29-03-2010).
- ²² Irish Times, *Demonstrators target AGM: CRH should 'divest itself' of Israeli company*, 6 May 2010, <http://www.irishtimes.com/newspaper/finance/2010/0506/1224269791731.html> (08-07-2010).
- ²³ SOMO, *Playing with labour rights*, March 2009, http://somo.nl/publications-nl/Publication_3008-nl/at_download/fullfile. SOMO, *Corporate geography, labour conditions and environmental standards in the mobile phone manufacturing industry in India*, September 2009, http://somo.nl/publications-nl/Publication_3218-nl/at_download/fullfile (06-07-2010).
- ²⁴ VBDO, *Duurzaam stemadvies*, Augustus 2007, http://somo.nl/publications-nl/Publication_2212-nl/at_download/fullfile. SOMO, Hewlett Packard CSR company profile, (May 2007), http://somo.nl/publications-nl/Publication_1943-nl/at_download/fullfile (06-07-2010).
- ²⁵ Investors against genocide website, Learn more, "Problem companies", <http://investorsagainstgenocide.net/problemcompanies> (29-03-2010). Financial Times, *US pension group severs ties to Sudan*, January 2010, <http://www.ft.com/cms/s/0/9ebaaa98-f989-11de-8085-00144feab49a.s01=1.html> (06-07-2010).
- ²⁶ Netwerk Vlaanderen, *Bankgeheimen*, November 2007, <http://www.bankgeheimen.be/dossier/bankgeheimen.pdf> (20-03-2010).
- ²⁷ Ministry of Finance Norway website, the Government Pension Fund, "Companies excluded from the investment universe", no date, <http://www.regjeringen.no/en/dep/fin/Selected-topics/the-government-pension-fund/responsible-investments/companies-excluded-from-the-investment-u.html?id=447122> (20-03-2010). US Courts, *Court case on women discrimination*, April 2010, <http://www.ca9.uscourts.gov/datastore/opinions/2010/04/26/04-16688.pdf> (06-07-2010).
- ²⁸ MO Mondiaal Nieuws, *Meest onethische bedrijven van 2009*, 26 January 2010, http://www.mo.be/index.php?id=63&tx_uwnews_pi2%5Bart_id%5D=27329&cHash=42898c8924 (20-03-2010).

Table 3. Polluting oil and mining companies in which ING Group N.V., ING Investment Management Co, and/or ING Investment Management (Europe) B.V. hold shares

Company	Controversial issues
Alcoa Inc.	Polluted mines. ²⁹
AngloGold Ashanti	Involvement in conflict in Democratic Republic of the Congo. ³⁰
Barrick Gold Corp.	Severe environmental damage ³¹
BHP Billiton	Pollution harming local population. Nr. 10 on list most controversial companies 2009. ³²
Exxon Mobil Corp.	Violation health, environmental and human rights issues. Nr. 8 on list most controversial companies 2009. ³³
Freeport Mc Moran C&G	Severe environmental damage ³⁴
GoldCorp Inc.	Pollution harming local population. ³⁵
Newmont Mining Corp.	Pollution harming local population. Nr 3 on list most controversial companies 2009. ³⁶
Petroleo Brasileiro SA	Oil production in the Amazon of Ecuador. ³⁷
Rio Tinto	Severe environmental damage. Nr. 4 on list most controversial companies 2009. ³⁸
Sterlite Industries	Severe environmental damage. ³⁹
Suncor Energy Inc.	Tar Sands oil production, much more CO2 emissions than conventional oil production. ⁴⁰
Yanzhou Coal Mining	Polluted mines. ⁴¹

²⁹ Bloomberg, *Alcoa may be forced to halt Brazil mine on pollution*, December 2009,

<http://www.bloomberg.com/apps/news?pid=20601086&sid=ajT0nHJIG1yM> (06-07-2010).

³⁰ Sarah Barnett, *Golden opportunity or false hope?*, January 2010,

http://www.cafod.org.uk/content/download/106612/1178506/version/1/file/DRC_reportEN.pdf (29-03-2010).

³¹ Ministry of Finance Norway website, the Government Pension Fund, "Companies excluded from the investment universe", no date, <http://www.regjeringen.no/en/dep/fin/Selected-topics/the-government-pension-fund/responsible-investments/companies-excluded-from-the-investment-u.html?id=447122> (20-03-2010).

³² MO Mondiaal Nieuws, *Meest onethische bedrijven van 2009*, 26 January 2010,

http://www.mo.be/index.php?id=63&tx_uwnews_pi2%5Bart_id%5D=27329&cHash=42898c8924 (20-03-2010).

³³ Ibid.

³⁴ Ministry of Finance Norway website, the Government Pension Fund, "Companies excluded from the investment universe", no date, <http://www.regjeringen.no/en/dep/fin/Selected-topics/the-government-pension-fund/responsible-investments/companies-excluded-from-the-investment-u.html?id=447122> (20-03-2010).

³⁵ Netwerk Vlaanderen, *Bankgeheimen*, November 2007, <http://www.bankgeheimen.be/dossier/bankgeheimen.pdf> (20-03-2010).

³⁶ MO Mondiaal Nieuws, *Meest onethische bedrijven van 2009*, 26 January 2010,

http://www.mo.be/index.php?id=63&tx_uwnews_pi2%5Bart_id%5D=27329&cHash=42898c8924 (20-03-2010).

³⁷ Profundo, *Beleggingen in controversiële bedrijven van enkele goede doelen*, 9 June 2007,

http://zembra.vara.nl/fileadmin/uploads/VARA/be_users/documents/tv/pip/zembra/Goede_doelen_Zembra_070609.pdf (20-03-2010).

³⁸ Ministry of Finance Norway website, the Government Pension Fund, "Companies excluded from the investment universe", no date, <http://www.regjeringen.no/en/dep/fin/Selected-topics/the-government-pension-fund/responsible-investments/companies-excluded-from-the-investment-u.html?id=447122> (20-03-2010) & MO Mondiaal Nieuws, *Meest onethische bedrijven van 2009*, 26 January 2010,

http://www.mo.be/index.php?id=63&tx_uwnews_pi2%5Bart_id%5D=27329&cHash=42898c8924 (20-03-2010).

³⁹ Ministry of Finance Norway website, the Government Pension Fund, "Companies excluded from the investment universe", no date, <http://www.regjeringen.no/en/dep/fin/Selected-topics/the-government-pension-fund/responsible-investments/companies-excluded-from-the-investment-u.html?id=447122> (29-03-2010)

⁴⁰ Netwerk Vlaanderen, *Bank Secrets*, www.banksecrets.eu (29-03-2010).

⁴¹ Profundo, *Beleggingen in controversiële bedrijven van enkele goede doelen*, 9 June 2007,

http://zembra.vara.nl/fileadmin/uploads/VARA/be_users/documents/tv/pip/zembra/Goede_doelen_Zembra_070609.pdf (20-03-2010).

Relevant ING CSR policies

ING developed an extensive framework of exclusion policies and endorses several international guidelines for responsible corporate behaviour. In addition, ING incorporated business ethics and business principles, which are global standards for the behaviour expected of every employee of ING. In this section a summary is given of ING's policies and guidelines with respect to weapons, human rights and the environment.

ING Defence Policy

ING developed a defence policy that describes ING's view on the defence sector. This policy entails:⁴²

1. **Weapon trade**
ING will not have dealings with companies in the defence sector when there is evidence that they make arms available to countries that are under a weapons embargo or to terrorists and other non-governmental armed groups. Furthermore, ING commits not to finance the trade of weapons to countries in which there is a clear risk that the weapons can be used for internal repression, serious violations of international humanitarian law or for any other purpose which cannot reasonably be considered consistent with normal and legitimate national security and defence.
2. **Anti-personnel landmines and cluster munitions**
In light of both international agreements banning anti-personnel landmines and cluster munitions and society's general concern over depleted uranium ammunition, biological and chemical weapons, ING considers these weapons to be controversial. ING will not finance the production, maintenance or trade of these weapons nor provide any financial services to companies involved in these kinds of weapons. ING will not invest its proprietary assets in controversial weapons companies and will, with the exception of discretionary mandates and trackers (ETFs), and wherever legally possible and independently enforceable by ING, ensure customer funds are not placed in such companies through ING managed funds.
3. **Nuclear weapons**
ING considers nuclear weapons to be controversial weapons as they are indiscriminate and are likely to hurt civilians when used. ING therefore does not finance nuclear weapons. However, we may finance the non controversial activities of high tech companies, such as civil aviation activities, if the company guarantees that ING funds will not be used for nuclear weapon-related activities.

In short, this means that ING does not invest saving money (money for ING's own expense and risk), and pension and insurance premiums in cluster bombs and other controversial weapons, such as anti-personnel landmines.⁴³ This policy also applies to investment that are managed by ING for third parties (with the exception of index trackers⁴⁴).⁴⁵

⁴² ING website, Corporate Responsibility, Policies, Investment policies, "ING Defence Policy", 1 October 2009, http://www.ing.com/group/showdoc.jsp?docid=350071_EN&menopt=cre|poll|inv (31-03-2010).

⁴³ ING and your money website, "How does ING invest your money?", no date, <http://www.ingandyourmoney.com/content/page/1/10-Your-savings> (31-03-2010).

⁴⁴ An Index Tracker is a fund that closely follows one of the stock market indices.

⁴⁵ ING response to draft report, 07-06-2010: ING's global implementation process worked good and expediently, except for some investment funds in the US where they found themselves confronted by legal restrictions. These restrictions mean that ING, as an asset manager, cannot always unilaterally decide that companies X, Y and Z should be excluded from fund A or B. Typically in the US there are bodies that specifically represent the interests of those participating in the fund that can block or forbid that. Ignoring these bodies is not possible and would provoke immediate litigation. Therefore, a research to their exposures is likely to show positions in US based funds and might include some limited positions from index trackers. ING declared positions found are not held in Europe or Asia, neither for general account, nor in actively managed funds in these regions.

ING Human Rights Statement

ING's Human Rights Statement, that applies to ING's own employees and organisation, is based on international laws and practices, such as:⁴⁶

- ❑ the Universal Declaration of Human Rights (1948, United Nations)
- ❑ the core conventions of the International Labour Organisation
- ❑ the UN Global Compact Principles

ING strives to act in the spirit and nature of these principles.

In addition, ING supports the aims of the UN's Universal Declaration of Human Rights and endeavours to apply the principles of this declaration throughout the company's operations worldwide.⁴⁷ This is made concrete by the statement that ING does not invest saving money, and pension and insurance premiums in projects in countries such as Burma/Myanmar and Sudan. ING will therefore not finance any activities in these countries other than humanitarian aid activities.⁴⁸ This exclusion policies do not apply to money that is invested at the expense and risk of its clients.⁴⁹

ING Natural Resources (Oil, Gas and Mining) & Chemicals Sector Policy, and Environmental Policy

The policy is designed to guide the financing of the natural resources and amongst others refers to issues on labour rights, local communities, indigenous people, revenue transparency and biodiversity. The policy is applicable to all ING Commercial Banking engagements with entities operating in:⁵⁰

1. Up and downstream oil and gas activities (from exploration to petrol stations);
2. Exploration and development of mines, quarries, and/or processing of minerals, etc.
3. All chemical processing and development activities.

ING refrains from engaging in the financing of plants in UNESCO World Heritage Sites, IUCN protected areas and areas registered by the Ramsar Convention.

In summary, with respect to oil, gas and mining activities, ING chooses not to finance plants in environmentally vulnerable areas. In its environmental policy ING ensures it does not finance activities that irreversibly harm the environment.⁵¹

ING's business principles and ethics also contain several relevant statements regarding responsible corporate behaviour, including:

- ❑ ING complies with applicable laws and regulations, as well as internal and external rules, codes, guidelines and policies.⁵²

⁴⁶ ING Group, *Human Rights Statement*, no date, http://www.ing.com/cms/idc.cgi_isapi.dll?IdcService=GET_FILE&dDocName=199742_EN&RevisionSelectionMethod=latestReleased (31-03-2010).

⁴⁷ ING Website, Corporate Responsibility, Policies, "Human rights statement", 10 October 2008, http://www.ing.com/group/showdoc.jsp?docid=350080_EN&menopt=crelpollhum&lang=en (19-07-2010).

⁴⁸ ING Website, Corporate Responsibility, "People", 15 October 2009, http://www.ing.com/group/showdoc.jsp?docid=413660_EN&menopt=creltemp (31-03-2010).

⁴⁹ ING and your money website, "How does ING invest your money?", no date, <http://www.ingandyourmoney.com/content/page/1/10-Your-savings> (31-03-2010).

⁵⁰ ING Website, Corporate Responsibility, Policies, Investment policies, "Natural Resources (Oil, Gas and Mining) & Chemicals Sector Policy", 1 October 2009, http://www.ing.com/group/showdoc.jsp?docid=350071_EN&menopt=crelpollinv (31-03-2010).

⁵¹ ING Website, Corporate Responsibility, "Environment", 15 October 2009, http://www.ing.com/group/showdoc.jsp?docid=413666_EN&menopt=crelenv (31-03-2010).

⁵² ING Website, Corporate Responsibility, Policies, "Business principles", 18 December 2009, http://www.ing.com/group/showdoc.jsp?docid=350057_EN&menopt=crelpollbus (31-03-2010).

- ❑ ING avoids or responsibly manages any negative impact its business activities may have on people or the environment.⁵³
- ❑ ING aims to pursue a profit but not at the cost of the environment and biodiversity, nor at the expense of people or human rights.⁵⁴

Conclusion

Through ING's exclusion policies, the company makes reference to an extensive framework of international normative standards for responsible corporate behaviour. Nevertheless, ING holds shares in companies that are accused of being involved in the production or trade of controversial weapons, in serious or systematic violations of human rights, or severe environmental damage. Publications by governments, NGOs, the media and renowned research institutions have demonstrated these violations and shown the undesirability of financing these companies.

ING's defence policy states that ING does not finance the production, maintenance or trade of anti-personnel landmines and cluster munitions. This policy applies to investments it does for its own expense and risk and for investment funds that are managed by the company. However, there are some exceptions. The ING defence policy does not apply to discretionary mandates and trackers (ETFs), and with respect to customer funds the defence policy is only applicable wherever legally possible and independently enforceable by ING. Despite the comprehensive defence policy of ING, ING still holds shares of 11 weapon manufacturers. These investments can fall under the exceptions defined in the policy, but do raise questions about the consistency of ING's defence policy.

The investments of ING, for its own account and on behalf of its customers, in companies that have a long history of high-profile labour rights violations, as shown in table 3, are difficult to reconcile with ING's human rights policy that specifically indicates that ING will not finance any activities in Burma/Myanmar and Sudan other than humanitarian aid activities.⁵⁵ ING holds shares in PetroChina, a company that is seen as one of the four oil companies that are providing the funds that the government of Sudan needs to carry on the genocide in Darfur⁵⁶, and in at least five companies that directly contribute to the military regime of Burma by way of oil activities that yield money for the government. The problematic situation in Burma is acknowledged internationally, and business activities in these countries are discouraged by for example the Dutch Ministry of Economic Affairs, the UN and the ILO.⁵⁷

⁵³ Ibid.

⁵⁴ ING Website, Corporate Responsibility, Business, "Business ethics", 15 October 2009, http://www.ing.com/group/showdoc.jsp?docid=413651_EN&menopt=cre|bus (31-03-2010).

⁵⁵ ING response to draft report, 07-06-2010: A loan (financing) is not an investment. We do not finance activities in Burma / Sudan, nor do we invest in the country (in local companies or in government bonds). There are over 300 international companies operating in Burma alone. We cannot exclude these companies from global finance and investment activities. We thus do not exclude their activities outside Burma or investments in their stock. A well known example is Total; we may finance activities in France and invest in their stock, but will NOT finance their activities in Burma,

⁵⁶ Investors against genocide website, Learn more, "Problem companies", no date, <http://investorsagainstgenocide.net/problemcompanies> (31-03-2010).

⁵⁷ MinEZ website, Onderwerpen, Beleid, Birma-ontmoedigingsbeleid, no date, http://www.ez.nl/Onderwerpen/Ruimte_voor_ondernemers/Maatschappelijk_Verantwoord_Ondernemen/Beleid/Birma_ontmoedigingsbeleid. Burma Campaign UK, *UN Burma Human Rights Expert Backs UN Commission of Inquiry Into Abuses*, 11 March 2010, <http://www.burmacampaign.org.uk/index.php/news-and-reports/news-stories/un-burma-human-rights-expert-backs-un-commission-of-inquiry-into-abuses/13>. ILO, Resolution on the widespread use of forced labour in Myanmar, June 1999, <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-myan.htm> (18-03-2010).

Concerning the investments of ING in companies that have been linked to environmental damage, it is striking that ING holds shares in 4 out of the 10 most controversial companies in 2009 as ranked by Ecofact.⁵⁸ This raises the question whether ING has taken adequate steps to ensure that it does not finance activities that irreversibly harm the environment.⁵⁹

For customers it is impossible to check whether ING applies its CSR policies to asset management activities, since it is not public whether the shares that ING holds are shares on its own account, shares it manages for customers, or index trackers. Most of ING's CSR policies only apply to its own shares, and not to the shares ING manages for customers. ING's weapon policy does apply to the shares ING manages for customers but not to index trackers.

It is therefore strongly recommended to define concrete exclusion criteria with the following characteristics:

- ❑ The criteria should allow ING to *completely* exclude all controversial companies whose activities conflict with ING's standards.

It is impossible for ING to be sure that the financial services provided to a company will not be used for controversial activities. There is no way to prevent a company from legally reallocating capital within a group. ING should therefore completely exclude companies it considers controversial, in stead of only excluding the business activity of that company that ING considers controversial.
- ❑ The criteria should be applicable to *all activities* of ING, including all its asset management activities, both for the company's own expense and risk as well as for the expense and risk of its clients.

ING should develop policies that exclude all financial links with companies that do not operate in accordance with ING's CSR policies, or at least international standards and principles such as the International Bill of Human Rights and the ILO core conventions. Because any form of financing enables the continuation of the controversial operations, no exceptions should be made for third-party assets or index funds. Although it might well be difficult to exclude index trackers, if it is possible it should be done. For example, Danske Bank does exclude companies producing cluster munitions from the index it tracks.⁶⁰

2. Tax avoidance through Switzerland route

Summary

In March 2010, ING has been accused of using a Swiss subsidiary to avoid VAT in the Netherlands in at least the last three years. The Switzerland construction that ING uses can minimally be defined as tax avoidance, which is in violation of the OECD Guidelines. The Dutch Ministry of Finance is investigating whether the construction is a case of illegal tax evasion as well.

⁵⁸ Ecofact, *Most Environmentally and Socially Controversial Companies of 2009*, 1 February 2010, http://www.ecofact.com/downloads/100201%20Most_Environmentally_and_Socially_Controversial_Companies_of_2009.pdf (18-03-2010).

⁵⁹ ING response to draft report, 07-06-2010: A loan (financing) is not an investment. A project loan implies direct knowledge of- and involvement in the project. An involvement through equity is indirect. It is not related to any specific project at all and therefore indirect.

⁶⁰ Danske Bank website, Responsibility, Policies, "SRI Policy", 5 February 2009, <http://www.danskebank.com/en-uk/CSR/policies/Pages/sripolicy.aspx> (19-07-2010): *Ethix SRI Advisors, an advisory firm specialising in SRI, screens the portfolios on a regular basis. The screening includes companies in the MSCI World and the MSCI Emerging Markets indices.*

This case was written in March 2010. As of June 2010, The Ministry of Finance is still investigating the case.

Context

CSR statements published by multinational corporations show that companies generally do not regard tax compliance as a part of the CSR agenda, even though attention for the social aspects of tax is growing rapidly amongst companies, NGOs, governments and the society as a whole in the last years.

In brief, tax systems can serve four main goals, called the four Rs:⁶¹

1. Revenue generation: A first goal is to raise government revenues that can be used for social security, infrastructure and basic services such as education and health care. These are investments of which companies that are active in a country make use as well.
2. Redistribution: A second goal is to redistribute income.
3. Re-pricing: A third goal is to re-price economic alternatives, that is, the use of taxes and subsidies to ensure that market prices better reflect social costs and benefits.
4. Representation: A fourth goal is to strengthen political representation. When governments are dependent on tax revenues, this generally stimulates accountability to citizens regarding the use of government funds. The effect is strongest for direct taxes on personal and corporate income.

Multinational corporations can structure their affairs in such a way as to avoid taxes. Tax avoidance is defined as:⁶²

The legal utilisation of the ambiguities and indeterminacies, so called loopholes, in the law to one's own advantage, in order to reduce the amount of tax that is payable.

Aggressive tax avoidance occurs when companies exploit loopholes and flaws in tax laws. Even though this may be legally allowed, such behaviour is in conflict with tax compliance because a company does not aim to pay the right amount of tax at the right time and the right place; it abuses the spirit of the law.

Role of ING

ING has been accused of using a Swiss subsidiary to avoid VAT in the Netherlands. ING artificially runs its purchases of telecom and automation services via an ING office in Switzerland, by passing contracts and invoices through this location. By way of this construction the payment of 19% Dutch VAT is avoided, resulting in a loss of around EUR 10 million a year for the Dutch tax authorities.⁶³ In total, ING avoided VAT payments of EUR 30 million in the last three years, but according to a bank employee ING uses this construction called 'the Swiss procurement hub' already since 2004.⁶⁴ From that year onwards large contracts had to be transferred to the office in Switzerland. ING states that the Global Vendor Management Centre in Switzerland operates since August 2007 and that VAT savings did

⁶¹ A. Cobham, *The tax consensus has failed! Recommendations to policymakers and donors, researchers and civil society*, OCCG Economy Recommendations No. 8, Jan 2007, <http://www.oxfordgovernance.org/fileadmin/Publications/ER008.pdf> (31-03-2010).

⁶² Maaïke Kokke & Francis Weyzig, *Taxation and financing for development*, October 2008, http://somo.nl/publications-en/Publication_2955/at_download/fullfile (01-04-2010).

⁶³ Financieel Dagblad, *ING gebruikt Zwitserse vestiging om Nederlandse BTW te ontlopen*, 22 March 2010, <http://www.fd.nl/artikel/14461927/ing-gebruikt-zwitserse-vestiging-nederlandse-btw-ontlopen> (31-03-2010).

⁶⁴ NRC, *ING ontloopt btw via Zwitserland*, 22 March 2010, http://www.nrc.nl/economie/article2508724.ece/ING_ontloopt_btw_via_Zwitserland (01-04-2010).

play a part in the decision to set up this office⁶⁵, even though cost savings and commercial reasons played a bigger role. ING also points out that the Swiss authorities approved the establishment of the Global Vendor Management Centre in the country, and that the Dutch Tax Authorities know about ING's activities in Switzerland. In 2009, ING decided to execute all its worldwide purchase activities more efficiently and to move them closer to ING's headquarter. The new Global Procurement Centre will therefore be established in the Netherlands. At this moment, 15 people are still working for ING in the Swiss subsidiary.⁶⁶

The Dutch government and tax authorities have reacted indignant, especially because ING received state aid of EUR 120 billion from the Dutch government to be able to survive in the turmoil of the financial crisis. The Dutch government and the European Commission have been putting pressure on Dutch banks that received state aid to stop or divest from controversial activities. That is why last year Fortis and ING sold divisions that helped clients with avoiding or evading taxes.⁶⁷

Maria van der Hoeven, the Dutch Minister of Economic Affairs, declared that the case will be investigated by the Ministry of Finance. The Switzerland route is permitted under conditions and the Ministry will investigate whether the construction of ING can be defined as tax avoidance, which is legal, or tax evasion, which is illegal. However, Minister van der Hoeven states that even legal tax avoidance, which can be explained as using loopholes in the tax law to one's own advantage, is never ethical.⁶⁸ The Dutch political parties PvdA, Groenlinks, D66 and SP share the opinion that every company has the social and moral obligation to pay tax in the Netherlands for Dutch activities, and that it does not matter whether this liability to pay tax results from the letter or the spirit of the law. The parties call tax avoidance unethical and inaccurate.⁶⁹

Normative/legal standard violated

It is not yet clear whether ING's Switzerland construction is a case of illegal tax evasion or legal tax avoidance. However, even tax avoidance is considered unethical and condemned in several international standards.

The OECD Guidelines for Multinational Enterprises state the following about taxation:⁷⁰

It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.

This guideline clearly denounces tax avoidance by saying that enterprises should comply with the tax laws and regulations in accordance with both the letter and the spirit of those laws and

⁶⁵ Financieel Dagblad, *ING gebruikt Zwitserse vestiging om Nederlandse BTW te ontlopen*, 22 March 2010, <http://www.fd.nl/artikel/14461927/ing-gebruikt-zwitserse-vestiging-nederlandse-btw-ontlopen> (31-03-2010).

⁶⁶ ING response to draft report, 07-06-2010.

⁶⁷ Ibid.

⁶⁸ NU Politiek, *Onderzoek naar ontwijken belasting door ING*, 23 March 2010, <http://www.nu.nl/politiek/2211109/onderzoek-ontwijken-belasting-ing.html> (01-04-2010).

⁶⁹ Elsevier Fiscaal, *Mogelijke meldingsplicht belastingadviseurs*, 25 March 2010, <http://www.elsevierfiscaal.nl/fiscaal-actueel/nieuws/nieuws/795/mogelijk-meldingsplicht-belastingadviseurs> (01-04-2010).

⁷⁰ OECD website, *OECD Guidelines for Multinational Enterprises*, 2008, <http://www.oecd.org/dataoecd/56/36/1922428.pdf> (31-03-2010).

regulations. With its Switzerland construction ING therefore violated the OECD Guidelines for multinational enterprises.

Another guideline that mentions taxation is the Global Reporting Initiative (GRI), a multi-stakeholder process and independent institution whose mission is to develop applicable sustainability reporting guidelines. With respect to taxes GRI advises to report:⁷¹

All company taxes (corporate, income, property, etc.) and related penalties paid at the international, national, and local levels. This figure should not include deferred taxes because they may not be paid. For organizations operating in more than one country, report taxes paid by country. The organization should report which definition of segmentation has been used.

ING indicates to be a GRI-reporter and to apply the guidelines for reporting on its activities and performance in the field of corporate responsibility. However, in the CR Performance Report 2008 only the result before tax is given and in the Annual Report 2009 only the consolidated tax payments are depicted. Reporting on country level would make ING's tax payments more transparent.⁷²

ING has not developed a corporate tax policy containing ING's behaviour with respect to tax planning.

Conclusion

As set out above, ethical corporate behaviour with respect to taxation implies that a company should comply with the tax laws and regulations in accordance with both the letter and the spirit of those laws and regulations. In addition, companies should be transparent about the taxes paid. In the case of ING, moral and public pressure to behave in an ethical way is increased by the fact that ING has been able to continue to operate during the most turbulent period of the financial crises in 2008 thanks to state aid. However, a comparison between ING's behaviour and the OECD Guidelines and GRI Guidelines shows that ING does not comply with these standards with regard to tax planning.

A first step to take for ING should be to consider tax compliance as a part of the CSR agenda, and to develop a corporate tax policy that explains ING's view on responsible tax planning and that will be applied by ING all over the world.

If ING aims to apply the guidelines for reporting of the GRI completely, the company should list the countries in which the company trades, how much profit is derived from activities in each of these countries, and where these profits are booked for tax purposes, indicating any special purpose vehicles that are used. Only in this way the relevant stakeholders, including governments, shareholders, employees and the general public can obtain the data they need to determine whether the company complies with both the letter and spirit of tax laws.

⁷¹ GRI, *Economic Performance Indicators*, no date, http://www.globalreporting.org/NR/rdonlyres/B52921DA-D802-406B-B067-4EA11CFED835/3883/G3_IP_Economic.pdf (01-04-2010).

⁷² ING CR Performance Report 2008, http://www.ing.com/cms/idc.cgi_isapi.dll?IdcService=GET_FILE&dDocName=376405_EN&RevisionSelectionMethod=latestReleased, ING Annual Report 2009, http://www.ing.com/cms/idc.cgi_isapi.dll?IdcService=GET_FILE&dDocName=440367_EN&RevisionSelectionMethod=latestReleased (01-04-2010).