Stichting Onderzoek Multinationale Ondernemingen
Centre for Research on Multinational Corporations

ING Group N.V.

Selected CSR issues in 2011

SOMO

May 2012

ING Group N.V.

Selected CSR issues in 2011

SOMO

Amsterdam, May 2012

Colophon

ING Group N.V.
Selected CSR issues in 2011
May 2012

Author: SOMO
Cover Design: Annelies Vlasblom
Text correction: Elise Reynolds
ISBN: 978-90-71284-80-9

Funding
This publication was made possible with financial assistance from the Dutch Ministry of Foreign Affairs. The content of this publication is the sole responsibility of SOMO and can in no way be taken to reflect the views of the Dutch Ministry of Foreign Affairs.

Published by
SOMO
Stichting Onderzoek Multinationale Ondernemingen
Centre for Research on Multinational Corporations

Sarphatistraat 30
1018 GL Amsterdam
The Netherlands
Phone: + 31 (20) 6391291
E-mail: info@somo.nl
Website: www.somo.nl

Introduction

This company profile has been written by SOMO (Centre for Research on Multinational Corporations) and provides a selection of outstanding corporate social responsibility issues that occurred or were addressed in 2011. In the context of the upcoming annual general meeting (AGMs) of shareholders of ING Group N.V. (further referred to as ING), this report aims to provide additional information to shareholders and other stakeholders of ING regarding these selected CSR issues. By highlighting such issues, this report 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 the company's corporate responsibility performance.

Rather than an exhaustive analysis of ING's corporate responsibility policies, the operational aspects of its corporate responsibility management, implementation systems, reporting and transparency, or its total performance on any issue, this report provides a description of a limited number of corporate responsibility-related issues and cases that merit further attention or reflection. ING's positive sustainability achievements in 2011 are not discussed here.

The research methodology for this overview primarily involved desk research methods, drawing information from SOMO's global network of civil society organisations, the website and publications of ING and of the branch organisations of which it is a member, as well as media reports and company information databases. In meetings with ING on 2 and 22 March and through email correspondence, ING's policy and position have been further clarified. 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 two weeks to review a draft report and provide comments and corrections of any factual errors in the draft version prior to publication. ING made use of this opportunity and provided SOMO with a written response on 26 April that has been taken into account in the final text. Despite this intensive dialogue all remaining factual errors remain fully SOMO's responsibility and all judgements and opinions are SOMO's and not necessarily shared by ING.

This company profile is part of a joint project of SOMO and the VBDO (Dutch Association of Investors for Sustainable Development – *Vereniging van Beleggers voor Duurzame Ontwikkeling*).

About SOMO

SOMO is an independent, non-profit research and network organisation working on social, ecological and economic issues related to sustainable development. Since 1973, the organisation has been investigating multinational corporations and the consequences of their activities for people and the environment around the world. SOMO supports social organisations by providing training, coordinating networks and generating and disseminating knowledge on multinational corporations in a context of international production, trade, financing and regulation.

Selected CSR issues in 2011

In this report two issues are highlighted:

1. ING shareholdings in controversial companies
2. ING's lobby on financial reform issues

This is not an exhaustive overview of social and/or environmental issues, but a selection of issues that we deem of interest to raise with ING at this point in time and in this manner. For both issues a number of recommendations are formulated.

1. ING shareholdings in controversial companies

Summary

This part of the report looks at the way ING implements its Corporate Social Responsibility (CSR) policies in the field of asset management. Asset management is an important activity of ING. With €322 billion in assets under management, ING Investment Management (ING IM) is one of the larger asset managers worldwide and therefore has a role to play in the governance of the companies that it funds through its investments, including the social and environmental performance of these companies. Here, we focus solely on the exclusion of companies by ING from the investment universe due to CSR-considerations.

Since 2009 ING started identifying companies that are considered the worst offenders in all sensitive CSR areas in order to exclude them from the investment universe with respect to investments made under the aegis of ING. In addition, ING also applies a 'defence policy' to assets managed for third parties. In practice, this exclusion policy does not extend to ING's passive index funds[1] and US mutual funds. The reasons for this are, respectively:

- it is too costly and complex to create and market an index that excludes the companies on the exclusion list;
- ING has proposed to the fiduciary boards of its US mutual funds to apply the exclusion list, but all of these fiduciary boards decided to reject the proposal.

In 2011 SOMO found[2] that ING does hold shares and bonds of companies that are on publicly available and widely used exclusion lists. ING still invests in controversial companies that do not comply with international treaties, including the production of cluster munitions and landmines. On the basis of the publicly available data it is not possible to judge whether these investments are made through (passive) index trackers, mutual funds with fiduciary boards that resist implementation of the exclusion list, or whether these companies are not on the ING exclusion list.

We conclude that even though ING has taken meaningful steps in recent years by broadening the scope of its CSR policy to the management of its own assets and partly to those managed for third parties, more can and should be done. That more is possible can be concluded from the fact that other major financial institutions currently already act in line with our recommendations to ING to:

- Increase transparency on the criteria and procedures used for making the list of excluded companies and publish the list of excluded companies itself, as is done by for instance Danske Bank.[3]
- Be transparent about where the actual shareholdings by ING of companies on this exclusion list are held.

---

[1] The publicized policy excludes all index funds, but according to ING it does apply its defence policy to its actively managed enhanced index trackers.

[2] SOMO, ING Group N.V. Selected CSR issues 2010 (May 2011)

[3] See http://www.danskebank.com/en-uk/CSR/business/SRI/Pages/exclusionlist.aspx

- Apply the whole exclusion list (not only the weapon theme) to all assets managed (also to those managed for third parties). This is already being done by large Scandinavian financial institutions like Danske Bank and DnB ASA. But BNP Paribas, with its palm oil-policy, has also broadened its CSR-assessment of assets managed for third parties beyond weapon-policy.
- Apply the exclusion list also to all investments in index trackers. This is done by for instance the Blackrock Russell 1000 Landmine Free index fund and Storebrand's MSCI index trackers. By only offering clean index funds ING would in a meaningful way take the lead in the sector on this issue of growing importance.
- ING could reopen the discussion with the fiduciary boards of US mutual funds as in recent years the exclusion of companies producing cluster ammunition and landmines has become more mainstream, showing this can be done without compromising the interest of investors. If this still does not lead to improvement of the situation, ING should reconsider the ownership of US mutual funds whose fiduciary boards oppose excluding controversial companies.

Context

Asset management

Banks offer their customers a wide range of investment products. The various forms of asset management are:

- Proprietary trading

Asset management through proprietary trading involves the management of investments in shares, bonds and other securities, which the bank realises for its own account. The gains 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 should be invested in.

- Investment for the account of and at the risk of third parties

In the case of investments for the account of and at the risk of third parties, the bank manages the assets but the customer is the legal owner of the investments. The forms of investments for the account of third parties are individual asset management and collective asset management, e.g. mutual funds. Most private investors invest their money in these investment funds. Institutional investors such as insurance companies or pension funds also invest in these products.

CSR and asset management

While there is no generally accepted description of CSR, most definitions emphasise the application of CSR to all business activities.[4] Asset management, being an important business line of many banks, is therefore not exempt from CSR considerations. Through buying and holding shares of a company, the share price of this company is supported and also its ability to attract finance through either issuing new shares (the current share price being the most important indicator for the cost of attracting new funds) or through related financial instruments like bonds or loans.

A financial institution that holds shares of a company therefore contributes to the financing of that company and so enables its operations. Banks should avoid complicity in the violation of

4 The European Union defines CSR as 'a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.'

internationally agreed core standards and principles throughout the whole range of their activities and financing. This report focuses exclusively on the CSR policy related to the exclusion of companies from the investment universe.

With regard to implementing the exclusion policy in asset management, two fields of asset management have initially been exempted from this by most major banks, although as we will see to an ever lesser degree.[5] Below we will discuss these investments in index funds and asset management for third parties in more detail.

CSR and index funds

In asset management the use of index-tracker funds is increasingly popular as they provide a low cost way to match the overall market return. At first glance, this strategy seems hard to reconcile with a CSR exclusion policy. Since index-tracker funds are meant to follow the index, they normally include all shares that are part of a certain index. The exclusion of certain shares therefore seems at odds with the basic principle of index funds.

However, in practice the number of companies excluded due to CSR policies is relatively low. For instance, several Dutch pension funds invest in index funds that have excluded companies involved in breaching international agreements. So far, this means that 19 companies are excluded due to breaches of international weapon treaties only.[6] Excluding these companies does not seem to prevent composing a fund that closely follows the much broader index, as is done by Blackrock BGI through their Russell 1000 Landmine Free index fund.[7] An even larger group of companies is excluded from index funds managed by Storebrand's Group, a leading player in the Nordic markets for pensions, life and health insurance, banking and asset management. As of Q1 2011, 92 companies were excluded from investments by Storebrand’s Group index funds due to involvement in serious human rights violations, grand corruption, serious climate and environmental damage, the production of cluster munitions, landmines or nuclear weapons and the production of tobacco. Storebrand has been able to do this for indexes that track the MSCI World, MSCI Europe, MSCI North-America and MSCI Asia Pacific.[8]

The pressure to exclude controversial weapons companies is not only coming from consumers and civil society organisations. Increasingly governments are legally prohibiting investments in cluster bombs. The Dutch Minister of Finance has stated he wants to introduce such a ban in the Netherlands as of January 2013,[9] thereby joining other countries where such a ban already exists.[10] The Dutch proposal does explicitly exclude index investments.

5 SOMO, Investing responsibly: a financial puzzle; the limited scope of sustainable asset management (September 2010)

6 MN Services, MVO kwartaalrapportage Verantwoord Beleggen (Q4 2011) http://www.mn.nl/pls/portal/docs/PAGE/MN_CORPORATE_2011/CONTENT_MN/PDF_BIJLAGEN/MN%20VERMOGENSBEHEER/KWARTAALRAPPORTAGE%20VERANTWOORD%20AANDEELHOUDERSCHAP/KWARTAALRAPPORTAGE_VERANTWOORD_AANDEELHOUDERSCHAP_Q4_2011.PDF

7 This index fund excludes companies with a direct involvement (full ownership of > 20% stake) in production, maintenance or distribution of products/services that are non compliant with international treaties signed by the Netherlands (on controversial weapons and CITES and the Montreal Protocol).

8 See http://www.storebrand.no/site/stb.nsf/Pages/responsibleinvestments.html

9 See http://www.rijksoverheid.nl/onderwerpen/integriteit-financiele-markten/nieuws/2012/03/21/de-jager-wil-investeringsverbod-clusterbommen-per-1-januari-2013.html and for the actual proposal (p.26) http://www.internetconsultatie.nl/wijzigingsbesluitfm2013

10 See http://www.stopexplosiveinvestments.org/legislation

An interesting development in this respect is also the strong growth in Islamic finance and in particular in sharia-compliant Islamic-index funds. Index funds like the Dow Jones Islamic Market Index exclude companies involved in alcohol, gambling or tobacco.

CSR and investment for third parties

In 2009 SOMO found that the large Dutch banks only exclude companies that produce the most controversial weapons (e.g. cluster bombs and landmines) for assets invested for the account of and at the risk of the bank itself. Smaller banks like Triodos Bank and ASN bank did apply their CSR policies to all activities in which the bank is involved, including assets managed for third parties.[11] In 2010, SOMO made an international comparison and found that ING, like the French bank BNP Paribas, had now also extended its defence policy to assets managed for third parties.

In the banking sector, this trend of broadening the scope of CSR policies still continues. Large Scandinavian banks like DnB ASA [12] and Danske Bank[13] are leading in this field. Recently, the French bank BNP Paribas explicitly included asset management for third parties in the new sector policy for palm oil: 'BNP Paribas entities managing third-party assets (with the exception of index-linked products) reflect this policy and develop standards adapted to their businesses which will exclude any stock or issuer that do not comply with their standards.'[14]

Role of company

ING Investment Management (ING IM) is the principal asset manager of ING Group, managing assets for institutional clients, fund distributors and the ING labels. ING Investment Management has approximately €322 billion assets under management (4Q2011).[15]

Almost half of these funds are ING's own (proprietary) assets, invested at the expense and risk of the bank and mainly funds from its pension and insurance services. The majority of funds (and especially shares) is managed for third parties (retail and institutional investors).

Table 1: ING IM assets under management 4Q2011 by investor category and investor class (in EUR billion)

	Proprietary	Retail	Institutional	Total
Equity	6.1	44.2	22.9	73.3
Fixed income	143.9	29.2	64.9	238.0
Money market	3.0	5.3	2.1	10.4
Total	153.0	78.8	89.9	321.7

Source: ING Group Statistical Supplement 4Q2011, p.34

With €322 billion of assets under management ING IM belongs to the biggest asset managers in the world. Even though ING IM almost never holds more than 5% of shares in a company, being amongst the top 30 asset managers in the world does give it substantial clout and its investments are closely

11 SOMO, *De beperkte reikwijdte van maatschappelijk verantwoord beleggen* [The limited scope of socially responsible investment],*(*January 2009).
12 See https://www.dnbnor.no/about-us/csr/socially-responsible-investment.html
13 See http://www.danskebank.com/en-uk/CSR/business/SRI/Pages/SRI-policy.aspx
14 See page 3 in http://compresse.bnpparibas.com/applis/wCorporate/wCorporate.nsf/docsByCode/LDIO-8CJF3M/$FILE/Politique%20Sectorielle%20Huile%20de%20palme.pdf
15 See Statistical supplement (PDF) on http://www.ing.com/group/investorrelations.jsp?&menopt=ivr&menopt=ivr|ivr

watched by its competitors and the companies seeking the investment of large institutional investors like ING IM.

CSR policy and asset management

ING has CSR policies for several different themes.[16] Since 2009 the ING CSR policies apply integrally to the management of ING's assets invested for the bank's own account.[17] This means that companies which severely and enduringly violate the CSR principles of ING are excluded from investments for the account of ING. At this moment it is not clear what criteria and procedures ING uses in drafting its exclusion list. The list itself is not made public, as is the case with most banks that have an exclusion list.

ING has informed SOMO that in 2011 the exclusion list numbered approximately 60 companies, of whom around 30 have been excluded for enduring violation of the defence policy.[18] Other companies are on the exclusion list due to breaching the guidelines on gambling, animal testing, adult entertainment, health & safety, environment and human rights.

In addition, ING applies its defence policy also to assets managed for third parties: '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, we consider 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.'

Despite explicitly excluding trackers from the scope of the weapons-policy, ING has informed SOMO that in practice it does apply its exclusion list to its enhanced index tracker funds, which is the bulk of the index funds that ING manages.[19]

In practice, these exclusion policies therefore do not extend to passive index funds[20] and US mutual funds. The reasons for this are respectively:[21]

- it is too costly and complex to create and market an index that excludes the companies on the exclusion list.
- It has proposed to the fiduciary boards of its US mutual funds to apply the exclusion list but all these fiduciary boards declined.

Through its passive index- and US mutual funds ING still holds shares in some of the companies that are on its exclusion list for producing controversial arms. In 2011, SOMO established that ING was a shareholder in six out of eight companies that were identified by the Norway pension fund as involved

[16] For an overview see the website http://www.ingforsomethingbetter.com/
[17] See ING Corporate Responsibility Report 2009, page 16 'In 2009, we broadened the scope of our environmental and social risk policies from just Commercial Banking activities to include all of our business lines. To do this, we created a Restrictive List of companies that are considered to be worst offenders in all sensitive areas.'
[18] ING, e-mail, 26 April 2012
[19] ING, e-mail, 26 April 2012
[20] In practice, ING has indicated, ING does exclude these companies from its 'enhanced' or actively managed index funds.
[21] ING, interview, 2 March 2012

in the production of cluster ammunition, weapons that through their normal use may violate fundamental humanitarian principles.[22]

Besides, ING also held shares in other controversial companies: [23]

- Mining corporations that have been banned from the investment universe of the Norway Pension Fund for constituting an unacceptable risk due to the severe environmental damage they cause (such as Barrick Gold Corp, Rio Tinto Plc. and Freeport McMoRan Copper & Gold Inc.).
- Seven of the companies that are on the exclusion list of MN Services for breaching international agreements.

The question is whether ING's arguments for not integrating its CSR policies through exclusion, starting with defence-policy, in index funds and US mutual funds are valid.
We are especially sceptical about their arguments in the field of the index funds. So far no clear convincing argument has been put forward either on why for ING creating clean indexes is not an option (for instance through a quantitative cost-benefit analysis) as it is for some other large asset managers that are frontrunners in this field. Reputable asset managers such as Blackrock and Storebrand have demonstrated that this can be done without compromising the nature of passive index funds (low management cost, and tracking the index with a small error) for many years now. With index funds becoming an ever more popular product in asset management, not excluding companies that produce cluster ammunition and landmines will become an ever larger transgression of ING's own stated principles, a point that was raised by VBDO on the AGM of 2011.[24] ING could take on a global leadership position in this increasingly important field of CSR.

Recommendations

ING has expanded the scope of its CSR policies to cover ever greater parts of its asset management business. The most far-reaching policy now is ING's policy with regard to 'Anti-personnel landmines, cluster munitions, depleted uranium ammunition and biological or chemical weapons'. For companies producing these defence products, clear exclusion criteria exist and are applied also to assets managed for third parties. This policy, however, does not include passive index-tracker funds and the implementation has been hindered, mostly in the US, due to legal requirements with regard to mutual funds.

Now that other large banks such as Danske Bank, DnB NOR ASA and BNP Paribas are expanding their CSR policies, also in asset management for third parties, and, for instance, asset managers like Blackrock have landmine-free index funds, the question arises why ING is not joining these frontrunners but instead remains compromising its basic CSR principles. As there is no practical, financial or legal requirement to do this, SOMO recommends ING further expand its CSR policies in the realm of asset management.

[22] SOMO, ING; overview of controversial business practices in 2010 (2011)
[23] SOMO, ING; overview of controversial business practices in 2010 (2011)
[24] See http://webcast.ing.com/ing20110509ava-ams/video.php?lang=1#

Specifically SOMO recommends that ING:

- Increase transparency on the criteria and procedures used for making the list of excluded companies and publish the list of excluded companies, as is done by for instance Danske Bank.[25]
- Be transparent about where the actual ING shareholdings of companies on this exclusion list are held.
- Apply the whole exclusion list (not only the weapon theme) to all assets managed (also to those managed for third parties). This is done by large Scandinavian financial institutions like Danske Bank and DnB ASA. But also BNP Paribas, with its palm oil-policy, has broadened its CSR-assessment of assets managed for third parties beyond weapon-policy.
- Apply the exclusion list also to all investments in index trackers. This is done by for instance the Blackrock Russell 1000 Landmine Free index fund and Storebrand's MSCI index trackers. By only offering clean index funds ING would in a meaningful way take the lead in the sector on this issue of growing importance.
- Reopen the discussion with the fiduciary boards as in recent years the exclusion of companies producing cluster ammunition and landmines has become more mainstream, showing this can be done without compromising the interest of investors. If this still does not lead to improvement of the situation, ING should reconsider the ownership of US mutual funds where fiduciary boards oppose excluding controversial companies.

[25] See http://www.danskebank.com/en-uk/CSR/business/SRI/Pages/exclusionlist.aspx

2. ING lobby on financial reform

Summary

Banks, like any private entity or stakeholder, can play a socially useful role in public policy making. However, there is also the danger that in doing this, banks do not put the public interest first but their more limited private interest instead.

Many analyses of the recent financial crisis find that regulatory capture, where public policymakers, regulators and supervisors serviced the private interest of the financial sector and institutions at a cost to the public at large, did play a significant role. One of the lessons of the financial crisis, therefore, is that the involvement of the financial industry in public policymaking should be done with adequate transparency and restraint, allowing other stakeholders to contribute. The importance of lobby as a CSR issue is also reflected in the fact that leading international standards (like GRI and ISO 26000) explicitly refer to it.

However, despite the fact that lobby activities were raised as a CSR issue at the last AGM, ING has is 2011 not yet taken steps to either increase the transparency of its lobby activities and/or to set specific guidelines for these activities.

Despite subscribing to the standards of the Global Reporting Initiative, ING does not publicise the kind of information required on the indicators 'Public policy positions and participation in public policy development and lobbying' (SO5) and 'Total value of financial and in-kind contributions to political parties, politicians, and related institutions by country' (SO6). This also despite the fact that in the US, through its US Insurance activities, ING has been involved in political financing for many years now.

Also the new standard for corporate responsibility of the International Organization for Standardization (ISO 26000)[26] includes the concept of 'fair operating practices' and more specifically 'responsible political involvement', asking companies, amongst others, to train employees and representatives regarding responsible political involvement and to avoid political contributions that amount to an attempt to control politicians or policymakers. In addition, ISO 26000 prohibits activities that involve misinformation, misrepresentation, threat or compulsion. However, ING's ISO 26000 review is not publicly available.

Like last year, SOMO therefore concludes that the transparency of activities and policies to guide the lobby are still lacking.

We illustrate the problem of the unequal power distribution in policymaking between the financial sector and other stakeholders with the example of the EU-legislative process on new capital and liquidity requirements for banks. Here, banks had access to information that was not available to other stakeholders. It is these practices that make it impossible for ING to live up to its own (and highly relevant) business principle of valuing diverse thinking.

[26] See www.ISO26000.org

ING has stated[27] that starting in 2012 it will become more transparent with regard to its activities in the field of financial policy and supervision, e.g. their contacts with policymakers in this field both as ING and through associations like NVB, EBF and IIF. A section on the website www.ingforsomethingbetter.com is said to be dedicated to this. SOMO welcomes these intentions of ING and looks forward to any increase in transparency on either its activities or internal guidelines with regard to its interaction with public policy makers and supervisors.

This in itself, however, will not solve the larger problem that stakeholders are not able to take part in the discussion on new public policy fully. Starting from its business principle of valuing diverse thinking, ING could address the issue by putting it on the agenda and raising the awareness of this issue, preferably together with other concerned financial institutions and stakeholders.

In this respect SOMO recommends that ING:

- Explicitly make public advocacy a CSR issue with guidelines ensuring that the lobby is in the public interest, the interest of its clients and financial stability.
- Comply with the standards of GRI and ISO 26000 by giving meaningful responses to the questions on ING's positions and participation in public policy development, its financial contributions and its policies concerning political contributions and involvement.
- Engage in a dialogue with stakeholders on these reports.
- Together with other stakeholders and interested financial institutions, raise awareness about the issue of unequal access to information in public policy making and the fact that this is not in the long-term interest of the financial sector itself. This should be the start of a conversation with the sector, stakeholders and public policymakers about ways to remedy this situation.

Context

Banks can play a socially useful role in public policymaking. Through sharing their knowledge of the sector with policymakers and the broader public they can contribute to more effective public policies and avoid any unnecessary side effects of those policies on their private interests. However, there is always the danger that in doing this, banks, like any other private entity, do not place the public interest first, but rather their more narrowly focused private interest, possibly even at a cost to the public. Also, banks have the means to engage in intensive lobbying while other stakeholders do not have the means to have their positions and interests heard. This can result in an unbalanced flow of information to regulators and public debates.

It is in the first place the role of public policymakers to make the distinction between proposals that lead to better policies from a public perspective and those that only serve a special interest at a cost to the public. However, policy making for the financial sector has historically been highly sensitive to what is called 'regulatory capture', the phenomenon of regulators and supervisors becoming dominated by the industry they were intended to regulate. Instead of regulating or supervising the sector, they then rather become advocates of this industry towards the 'outside' world. The vulnerability for this regulatory capture is in the first place due to the dynamic and complex financial environment. Especially in the last decades this complexity and dynamism has grown tremendously due to the use of ICT in the financial sector, the internationalisation and the deregulation of the sector. Add to that the relatively high salaries in the commercial part of the financial sector that enables it to win the 'best and brightest' in the industry and you have an environment where it is especially hard for public policymakers to be as well informed as the private sector that is driving the financial

[27] ING, e-mail, 2 April 2012.

innovations. Moreover, the financial industry has been well aware that its expansion and innovation was possible due to financial rules at the national, regional and international level so that it has engaged in lobbying more and more. These are the reasons that in recent decades the influence of the financial sector on policy making has become so strong.

The financial crisis that erupted in 2008 is to a large extent the result of the dominant influence of financial sector industry lobbyists on public policymakers and supervisors. According to Nobel Prize winner Joseph Stiglitz, 'Much of the inadequacy of current regulations and regulatory structures is the result of financial markets' political influence.'[28] Equally, Charlie Mc Creevy, Commissioner for Single Market and Services of the EU and responsible for financial regulation said: 'In the case of legislators, I am convinced that over the years there has been too much 'regulatory capture' by the sell side of the financial services market: Their lobbies have been strong and powerful.'[29] It has been through the lobbying by the financial industry that the interest of companies was often served at the expense of financial stability and other public interests. One more indication that lobbying often has not been in the interest of the public, but rather the short-term private interest of the financial industry are the findings of the IMF showing that banks that were more involved in lobbying also engaged in riskier lending and had higher loan-to-income ratios.[30]

In the Netherlands, the Dutch Banking Association (NVB) focused its lobbying efforts primarily on the civil servants. The commission of the Dutch parliament (*Commissie de Wit*) that studied the causes of the financial crisis found that the NVB was able to do this with great effect and without this being visible for the outside world. In the case of a regulation from 2003/2004, the commission found that part of a law on the securitisation and selling of loans matched exactly the wording of a letter by the NVB. However, no reference was made to this letter. The commission concluded that lobbying efforts of the financial sector are not transparent at either the international, EU or national level and therefore recommended more transparency in the lobby process and the introduction of a 'legislative footprint' that records which actors, including lobbyists, have been involved in what way in drafting regulation.[31] This is a practice that is already more commonplace in the US.

Many expected that following the financial crisis, the financial sector lobby would refrain from excessively aggressive lobbying practices. However, there are many indications that the financial lobby is behaving just as it did before the crisis. As is clear for instance from the increase in the money spent by the financial sector on lobbying and campaigns in the US ('The financial sector is far and away the largest source of campaign contributions to federal candidates and parties'[32]) and the UK ('City financing of the Conservative Party doubles under Cameron'[33]). Probably, just like before the crisis, most lobbying efforts go unnoticed as few measures have been taken to increase the transparency of the process.

Since 2010, many new regulations need to be decided upon, and the financial lobby is again working at full force. As the Financial Times (FT) noted in an op-ed in 2011 'While everyone pays lip service to the need for a safer system, not everyone's commitment runs very deep. In recent months the

---

28 J.Stiglitz, Testimony to House Financial Services Committee, at the US Congress (21 October 2008), http://www.house.gov/apps/list/hearing/financialsvcs_dem/stiglitz102108.pdf

29 Corporate Europe Observatory, Would you bank on them? (February 2009) http://www.corporateeurope.org/docs/would-you-bank-on-them.pdf (viewed March 2009).

30 Igan, Mishra, Tressel, A fistful of dollars: lobbying and the financial crisis, IMF working paper (2009).

31 Dutch House of Representatives, 2009-2010, 31 980, nos. 3-4

32 http://www.opensecrets.org/industries/indus.php?ind=F (viewed March 2012)

32 http://www.opensecrets.org/industries/indus.php?ind=F (viewed March 2012)

33 http://thebureauinvestigates.com/2011/02/08/city-financing-of-the-conservative-party-doubles-under-cameron/

financial sector has been lobbying ever more fiercely against structural change or higher capital requirements, arguing that banks are pretty much safe as they are.'[34] More recently in FT's series on 'Capitalism in crisis' the financial lobby power was regularly identified as an important obstacle of real financial reform. In reference to Mancur Olson's theory on economic decline as a result of special interest groups whose growing influence fosters economic inefficiency and inequality, John Plender concluded that today the pre-eminent interest group consists of finance professionals: 'Tackling such interest groups both in the US and Europe is one of the biggest post-crisis tasks for policy-makers and a key to addressing concerns about systematic legitimacy.'[35]

Last year's report of SOMO on ING[36] discussed its role in one much debated and controversial example of lobbying by the financial industry in 2010: the impact report of the Institute of International Finance (IIF) of the then proposed Basel III requirements. With this report, which sketched a dramatic picture of the economic consequences of the proposals then on the table, the IIF influenced the perception amongst policy makers and the broader public. It did so, however, by making assumptions that have subsequently been criticised by both academics and policy researchers in fundamental ways as 'a basic fallacy'[37]. On the basis of the SOMO report, VBDO, the Dutch sustainable investor's forum, raised the issue of lobbying during the Annual General Shareholders meeting of ING in Amsterdam in 2011.[38]

ING lobby in 2011

In 2011 ING has not taken steps to either increase the transparency of its lobby and advocacy activities and/or to set specific guidelines for these activities.

Transparency

ING is registered with the EU Transparency Register.[39] ING's Annual Report 2011, like the one before, does contain a chapter on the 'Financial and regulatory environment'[40] in which it lists and comments on the developments with regard to public policy making. However, it does not systematically list activities or specific positions taken.

Some ING lobby (consultation) documents are available on the websites of regulators such as the European Commission (EC).[41] Here ING has chosen to be transparent, not asking for confidentiality of its submission. However, these documents are not easy to find, as they are on different specific websites. Submissions to the Dutch parliament for instance are not publicised on their website, and therefore not public, even though ING has stated not to have any objection to this.[42] It is, therefore, not possible for stakeholders to judge whether the ING advocacy agenda is in line with the interests of the

---

34 Financial Times, King helps the case for banking reform; time for an end to beer and sandwiches with the City, (9 March 2011)

35 J. Plender, The code that forms a bar to harmony, Capitalism in crisis-series, Financial Times (9 January 2012)

36 SOMO, ING Group NV Outstanding CSR-issues 2010 (2011)

37 Admati et al. Much More Bank Equity Is Needed and Is Not Socially Costly, Letter Financial Times (9 November 2010), http://www.gsb.stanford.edu/news/research/admatiopen.html see also Admati, A.R., P.M. DeMarzo, M.F. Hellwig en P. Pfleiderer, Fallacies, Irrelevant Facts, and Myths in the Discussion of Capital Regulation: Why Bank Equity is Not Expensive, Stanford GSB Research Paper 2065 (2010).

38 See http://webcast.ing.com/ing20110509ava-ams/video.php?lang=1#

39 See http://europa.eu/transparency-register/index_en.htm

40 ING Group Annual Report 2011; Building strong businesses in a challenging environment (2012)

41 See for instance http://www.eba.europa.eu/getdoc/9725f525-6cd5-40cf-a2f4-6b8665b045b8/14_ING.aspx

42 ING submission to roundtable on bank structure of Dutch parliament, 31 January 2012.

broader public, or whether it serves primarily the more narrow interest of the company, the clients or the sector itself. Being open and transparent will ensure that signals from society can be given and received when a certain course being taken is not considered acceptable from a public interest perspective.

This lack of transparency of ING's activities as well as the internal guidelines is the more pressing as ING does subscribe to CSR standards (GRI and ISO 26000) that request transparency in these fields. The GRI's G3.1 Sustainability Reporting Framework contains two indicators that specifically require information in this field, respectively:

- 'Public policy positions and participation in public policy development and lobbying' (SO5)[43] and
- 'Total value of financial and in-kind contributions to political parties, politicians, and related institutions by country' (SO6).[44]

The GRI-report on the ING website[45] does make reference to these indicators but the information given does not provide any meaningful insight with regard to the topic at hand. For SO5, ING refers to a website on bribery and corruption and makes a general reference to its Annual Report where, however, the requested info (overview of participation and positions taken in public policy development and lobby) cannot be found.

For SO6, ('contributions to political parties') it refers to page 96 of the CSR Report 2010 where the governance and compliance of ING is described. No information is given on either policies in this field or actual contributions made, like through ING's US Insurance holding that has established a Political Action Committee that has been involved in political financing since at least 1990, with a substantial increase from 2000 onwards.[46] Earlier research by SOMO found that this Corporate PAC money was used 'to support candidates of both parties who are in a position to advocate proposals that recognize the company's business interests.'[47] There is also no mention of ING Insurance's expenditure on lobbying which according to the Centre for Responsive Politics reached almost US$2 million in 2008 and 2009.[48]

Following these findings, ING informed SOMO[49] that according to its 'Gifts, Entertainment and Anti-Bribery Policy' ING businesses are not permitted to make Gifts or Political Donations or to offer Entertainment to political parties or candidates for political office.[50] However, exemptions, deviations

43 https://www.globalreporting.org/reporting/guidelines-online/G31Online/StandardDisclosures/Society/Pages/SO5IndicatorProtocol.aspx
44 https://www.globalreporting.org/reporting/guidelines-online/G31Online/StandardDisclosures/Society/Pages/SO6IndicatorProtocol.aspx
45 http://www.ingforsomethingbetter.com/cr_reports/gri_index_2010/
46 See the filings of ING US PAC at the Federal Election Commission http://images.nictusa.com/cgi-bin/fecimg/?C00184028 (viewed March 2012) and the ING Americas website on OpenSecrets.org http://www.opensecrets.org/pacs/lookup2.php?cycle=2008&strID=C00184028
47 SOMO, AEGON - Overview of controversial business practices in 2008, 2009 http://somo.nl/publications-en/Publication_3044
48 http://www.opensecrets.org/lobby/firmsum.php?id=D000023403&year=2012
49 ING, e-mail 1 May 2012
50 Whereby a political donation is 'A contribution, financial or in kind, to support a political cause. Financial contributions can include both donations and loans whereas in-kind contributions tend to be payments in goods or services. In kind contributions can include Gifts or loans of property, provision of services, advertising or promotional activities endorsing a political party, purchase of tickets to fundraising events, contributions to research organisations or think-tanks with close associations to a political party, or the release of Employees without pay to undertake political campaigning or to stand for office. A political cause may include political parties, election committees, party affiliated organisations, party aligned research bodies, pressure or lobby groups, causes that are politically aligned, party officers and candidates.'

and waivers can be granted by the Chief Compliance Officer, which has exclusively been done for ING US Insurance.[51]

Relevant here is also the standard for corporate responsibility of the International Organization for Standardization (ISO 26000)[52] to which ING also says it wants to adhere.[53] The ISO 26000 includes the concept of 'fair operating practices' and more specifically 'responsible political involvement' (chapter 6.6.4): 'Organizations can support public political processes and encourage the development of public policy that benefits society at large. Organizations should prohibit use of undue influence and avoid behavior, such as manipulation, intimidation and coercion that can undermine the public political process.' ISO 26000 states that an organisation should:

- Explicitly makes public advocacy a CSR issue with guidelines on how to ensure that the lobbying is in the public interest, the interest of its clients and financial stability.
- Train its employees and representatives and raise their awareness regarding responsible political involvement and contributions, and how to deal with conflicts of interest.
- Be transparent regarding its policies and activities related to lobbying, political contributions and political involvement.
- Establish and implement policies and guidelines to manage the activities of people retained to advocate on the organization's behalf.
- Avoid political contributions that amount to an attempt to control or could be perceived as exerting undue influence on politicians or policymakers in favour of specific causes.
- Prohibit activities that involve misinformation, misrepresentation, threat or compulsion.

So far no public report of ING on its ISO 26000 implementation has been made public.

Guidelines

No specific guidelines with respect to lobby existed within ING in 2011.[54] However, in lobbying at the level of the European Union, ING adheres to the Code of Conduct of the Society of European Affairs Professionals (SEAP),[55] which is recognised by the EU. There is no national or global equivalent to SEAP. Whereas ING does not have its own specific policies or guidelines with regard to its lobbying, it does have its business principles that should also be upheld in this field, calling for integrity, honest and lawful behaviour.

However laudable these principles are, by their very nature they remain quite abstract. The value of reporting on the implementation of these lies in the discussion that subsequently becomes possible. To give one concrete example of this from 2011: in order to facilitate direct communication between the banking industry, consumers and the European Commission, the Directorate General Internal Market and Services decided in 2010 to set up a Group of Experts in Banking Issues (GEBI).[56] In this group of 42, only 5 seats were taken by either scientific, trade union or consumer representatives, amongst them one member from SOMO. The other seats were for the financial sector or related services industries, amongst whom one member of ING.

---

51 ING, e-mail 1 May 2012
52 www.ISO26000.org
53 See http://www.ingforsomethingbetter.com/nl/news/quick_scan_reveals_ing_compliant_with_new_iso_corporate_responsibility_guid/?page=4
54 ING, interview 22 March 2012
55 See http://www.seap.be/linkdocs/code_conduct.pdf
56 http://ec.europa.eu/internal_market/bank/group_of_experts/index_en.htm

The fourth meeting of GEBI was held on 1 June 2011 in Brussels discussing the CRD 4 proposal on the EU implementation of the new Basel III rules. Despite the European Commission having promised to provide full information on the proposal to be discussed, the SOMO representative to GEBI – who requested to receive preparatory information often and long beforehand – did not get any information.[57] However, during the meeting many of the bank members, including the one from ING, did have the leaked proposal of the European Commission. At the meeting, the EC representative explicitly stated that there was no policy to leak documents and refused to answer to any questions related to the leaked draft CRD 4 text.

Not only does the imbalanced access to information make a serious discussion with all stakeholders (a prerequisite for realising ING's principle of valuing diverse thinking) difficult, it also seems to be a clear breach of the SEAP code asking to 'not obtain any information from EU institutions by illicit or dishonest means' and for honouring 'confidential information and embargoes and always abide by the rules and conventions for the obtaining, distribution and release of all EU documentation'.[58]

This example illustrates that currently in the EU access to information between financial institutions and other stakeholders is not equal. This makes it impossible for non-financial stakeholders to fully participate in the process of public policy making. Given the importance of hearing all relevant voices for the quality of the policy discussion, an issue embraced by ING by establishing 'value diverse thinking' as one of its four business principles, ING could take the lead here and join civil society's organisations that have been addressing the issue for a long time now, while financial institutions fail to speak out in their favour.

Recommendations

Financial policies have proven to be especially sensitive to regulatory capture. Policymakers, supervisors, the financial industry and other stakeholders all have a role to play to avoid this from happening again. As the discussion, public and otherwise, on the role of banks in society is far from over, ING should explicitly see its lobbying activities through the lens of its corporate social responsibility and be as transparent as possible about this issue. Because the discussion about the public interest of banking is such a fluid one, stakeholders can only respond adequately to arguments put forward by ING if transparency is achieved, and it would also allow ING to live up to its business principle of valuing diverse thinking.

ING has stated that starting this year they will become more transparent with regard to their activities in the field of financial policy and supervision, for example regarding their contacts with policymakers both as ING and through associations like NVB, EBF and IIF. A section on the website www.ingforsomethingbetter.com will be dedicated to this.

SOMO looks forward to any increase in transparency on either ING's activities or internal guidelines with regard to its interaction with public policy makers and supervisors. In this respect SOMO recommends that ING:

- Explicitly make public advocacy a CSR issue with guidelines on how to ensure that the lobbying is in the public interest, the interest of its clients and financial stability.

[57] For more information about the GEBI meeting(s), see : http://ec.europa.eu/internal_market/bank/group_of_experts/index_en.htm (viewed 10 April 2012)

[58] See http://seap.be/linkdocs/code_conduct.pdf article 3 (Accuracy) and 4 (Confidentiality).

- Comply with the standards of GRI and ISO 26000 by giving meaningful responses to the questions on ING's positions and participation in public policy development, its financial contributions and its policies related to political contributions and involvement.
- To engage in a dialogue with stakeholders on these reports.
- The webpage that ING will make to enhance the transparency of its lobby efforts should contain both the stated policies and any exemptions granted from this as well as the criteria on the basis of which political donations are being made. Also the content of its public advocacy, both formal letters and other statements, should be accessible from here.
- Together with other stakeholders and interested financial institutions, raise awareness about the issue of unequal access to information in public policy making and the fact that this is not in the long-term interest of the financial sector itself. This should be the start of a conversation with the sector, stakeholders and public policymakers about ways to remedy this situation.