

## PLEADING NOTES IN RESPECT OF [REDACTED]

### General section

ING clearly discriminates unlawfully in terms of race and/or nationality.

#### Why discriminate (whether directly or indirectly)?

Our clients do not dispute the bank's being obliged to screen transactions, or that the Dutch Money Laundering and Terrorist Financing (Prevention) Act (Wwft) and sanctions legislation must be strictly complied with. It goes without saying that ING must endeavour to combat money laundering and terrorist financing.

The question is how ING goes about it. That is to say, ING has a great deal of freedom in relation to how it performs this task. ING has freely chosen a specific approach, using a specific algorithm and deploying human resources in a specific way. The discrimination we refer to here relates to the manner in which ING chooses to perform its verification task. It is drawing a distinction (indirectly, at least) for which there is no justification.

That is to say, it is discriminating – in any case, indirectly – in terms of names, and by extension, of origin: those with 'non-white' names such as Abdelhamid, Aslan or Mohamed are singled out far more quickly and often than those with names such as Albert, Klaas or De Vries.

The sanctions lists used are very political in nature. The names selected to be on those lists have to a great extent been determined by the US, the *war on terror* and various other geopolitical considerations. Regardless of the variety of opinions in this regard, the fact is that due to these political decisions and developments, there are a relatively greater number of Islamic sounding names on those lists than 'white-Western' sounding names.

It is also the case that a great deal of discrimination exists towards Muslims, migrants and coloured people.

As recently as 4 June 2024, the Dutch Minister of Social Affairs and Employment sent a letter to the Lower House of the Dutch Parliament stating that: 'discrimination in the labour market is commonplace for Muslim women and girls', and that 'whether headscarf-wearing or not, Muslim women and girls are rejected far more often when applying for jobs than non-Muslim women.'

It has previously been shown that coloured people, and in particular Muslims, are frequently discriminated against in the labour market. Muslims are also unjustly discriminated against by the tax authorities, and more often suspected of fraud and other forms of criminality.

Put briefly, in the Netherlands, there is unquestionably a situation in which Muslims, coloured people and those with migrant backgrounds experience a great deal of discrimination.

In this context, ING has freely chosen a system which has resulted in transactions being frozen merely due to the mention of the names Abdelhamid or Mohamed, and people being checked to see if they may be financing terrorism.

A 'neutral rule', i.e. that of checking all names on the sanctions lists, therefore indirectly affects everyone with such names far more than those with names such as Jan or Piet. See also the KPMG study which makes clear which groups which are being affected by this 'neutral' selection. Apparently, the fact that such 'neutral' selection primarily affects these groups is no longer a contentious issue.

See also the three cases before the court today: clearly none of these have anything whatsoever to do with money laundering or terrorist financing. This is spectacularly obvious. Nonetheless, my clients were singled out and questioned in the context of anti-terrorism screening. That is very stigmatising. As we now know from the statements of response, they were really only selected because the system and the people behind it followed up on the names Aslan, N. Mohamed and Abdelhamid. All typical Muslim names.

Precisely because of the broader context of Islamophobia and discrimination, ING had a duty of care to prevent completely innocent customers with Muslim names from being faced with anti-terrorism screening merely due to their having or using such names.

Was this indirect discrimination objectively justified?

It is not in dispute that a legitimate purpose exists.

Were the means used to achieve this legitimate purpose (i.e. algorithm and questions) appropriate and necessary?

The essence of this case is that the system used by ING affected people with non-Western names disproportionately, that the way in which the system is currently set up is unnecessary and that a less sweeping approach is possible.

ING chose this algorithm specifically.

ING set up the algorithm so broadly that not only names which match those on the sanctions list exactly are detected, but also those which are similar thereto.

That the system functions so poorly is evident from the case of [REDACTED]. Even after everything had been made clear, including that the Mohamed in question is her husband (and also an ING customer), the system continued to ask questions.

In its statement of response, ING even wrote that the name "Abdelhamid" is almost identical to the name "Abdul Hamid" on the sanctions list. That is like saying that the name "Annabel" is almost identical to that of the person "Anna Bol".

ING chose to freeze transactions in cases where only part of the name matched with a name on the sanctions list.

Moreover, ING consciously chose not to have the filtering out of this kind of discrimination – which has such severe consequences for its customers – built in prior to the freezing of transactions and posing of questions.

This approach is completely disproportionate.

The system ING uses is also not fit for purpose, as the checks may be carried out in a far less sweeping fashion, whereby someone is not deemed suspect simply because they have referred to the name Mohamed in a transaction. There are other practically applicable means available resulting in far fewer adverse effects on customers. For example, in the US, where sanctions legislation also applies to banks, action may only be undertaken when at least one other factor may be deemed suspect in addition to a hit returned for a matching name.

This system does not work for tracing terrorist financing. It has been applied too widely, and the safety net is far too broad. Moreover, with very few exceptions, for the most part, it affects innocent civilians with 'non-Western' surnames who the bank considers suspect. The bank itself has chosen this mode of operation, and it appears to be unable to put a stop to the continuing indirect discrimination.

### Is this mode of operation necessary?

ING gives the impression that it has a statutory obligation to screen each transaction and every customer, and must act immediately when something appears to be wrong. However, this is completely untrue.

There have been a considerable number of court rulings concerning bank customers who have been involved in fraud. These have found that, under the Wwft, the bank should have halted their transactions, and that it would have been obvious from screening that something was wrong.

In such cases, ING argued precisely the opposite to that which it has claimed in this instance: in a case from 2020, for example, ING argued that it was not under any obligation to check all transactions, and that it did not even have to intervene when it received a demand from the Public Prosecution Service regarding a fraud investigation concerning these transactions specifically.<sup>1</sup>

The court agreed with ING in that case and found, despite the Wwft, that:

*'ING is obliged to carry out payment orders benefitting its account holders and, under Section 542 of Book 7 of the Dutch Civil Code (BW), is in principle not obliged to check the transfers (whether automatic or otherwise).'*

In another case dating from 2021, concerning the company Blue Sea and also involving ING, the court stated:

*'Supreme Court case law determines that an obligation to investigate further only arises where there is a specific reason for it. As Blue Sea did not bring forward any facts and circumstances from which it may be concluded that ING knew of unusual activities and the danger related thereto prior to the implementation of the payment order (and nor have such facts and circumstances emerged by other means), ING was not required to investigate the payment order any further. It has therefore not been established that ING acted negligently towards Blue Sea.'*<sup>2</sup>

Therefore, ING is not obliged to check all transactions in the way in which it has done in the case of our clients. Moreover, where a matching (or partly matching) name results in a hit, this in no way implies unusual activity or the need to intervene.

### **The individual cases:**



In its email exchange with this client, ING said – including as late as 10 January 2024 (*appendices 10 and 11 to the application*) – that the questions regarding the transaction purely concerned the sanctioned countries and individuals. It was for this reason that the bank wanted to know more about Mr Aslan.

In the statement of response, rather like a jack-in-the-box, a story suddenly sprung up regarding a customer investigation on the basis of a mysterious signal in the context of financial-economic crime.

We assume that ING entered this ground in the statement of response accidentally, because ING would otherwise have informed our client of this earlier, or at least have provided an explanation regarding the signal that had been given, and the financial-economic activity concerned.

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<sup>1</sup> <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBAMS:2020:2083> (in Dutch)

<sup>2</sup> <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBAMS:2021:1805> (in Dutch)

We assume that it was purely the name Aslan which triggered the subsequent actions.

I would also like to point out that no formal decision whatsoever was taken with regard to the complaint. There was no response whatsoever to the letter of complaint, even following reminders, leading us to conclude that the handling of the complaint was in any case negligent.

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According to ING, the 'hit' purely concerned the use of her husband's name in the descriptions: "N. Mohamed" and "Nasir Mohamed". Despite the fact that our client had already informed ING in this regard that it concerned her husband, and despite the fact that her husband himself was also an ING customer, and that it concerned payments to a German energy company, ING continues to maintain that screening of whether the person concerned was a terrorist is acceptable.

ING refers to three names on the sanctions list in respect of which the bank finds it logical to briefly double check a transaction in which N. Mohamed is mentioned and to bother the customer. This concerns the names:

*Number 9 Mohamed Naceur Ben Mohamed Ben Rhouma TRABELSI*

*Number 11 Mohamed Imed Ben Mohamed Naceur Ben Mohamed TRABELSI*

*Number 21: Housseem Ben Mohamed Naceur Ben Mohamed TRABELSI*

These are not even Nasir Mohameds! It purely concerns the name Mohamed – the most common name in the world. By casting the dragnet in this way, without having any other reason for a check, you haul in only Muslims and people with migrant backgrounds in this type of terrorist financing screening.

I would also like to point out that no formal decision whatsoever was taken with regard to the complaint. There was no response whatsoever to the letter of complaint, even following reminders, leading us to conclude that the handling of the complaint was in any case negligent.

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I have already remarked upon Abdelhamid and Abdul Hamid, and how ING deems them identical. In the statement of response, we can read which people on the sanctions list ING has in mind when it halts a person's transaction because the description field contains the text '100 euro cash Abdelhamid':

First, the Malian Sidan Ag HITTA. One of this man's six alleged aliases is: Abou Abdel Hamid Al Kidali.

And the second is from a sanctions list dating from 2003 including the Iraqi Abid Hamid Mahmud Al-Tikriti, Saddam Hussein's presidential secretary. One of his monikers is Colonel Abdel Hamid Mahmoud.

How on earth are we to explain to our client that his EUR 100 transaction from one of his own accounts to another of his own accounts was halted because they wanted to check whether he had anything to do with this person? It is very clear that ING's focus is on 'exotic' sounding names and not on actually suspicious actions, and that this focus is clearly discriminatory.