

Motion

tabled by the Members of the Bundestag Agnes Malczak, Dr Gerhard Schick, Dr Thomas Gambke, Britta Haßelmann, Lisa Paus, Marieluise Beck, Volker Beck, Viola von Cramon-Taubadel, Kai Gehring, Katrin Göring-Eckardt, Ulrike Höfken, Thilo Hoppe, Uwe Kekeritz, Katja Keul, Maria Klein-Schmeink, Ute Koczy, Tom Koenigs, Markus Kurth, Kerstin Müller, Beate Müller-Gemmeke, Ingrid Nestle, Omid Nouripour, Claudia Roth, Manuel Sarrazin, Christine Scheel, Dr Frithjof Schmidt, Dr Wolfgang Strengmann-Kuhn, Hans-Christian Ströbele, Dr Harald Terpe and the Alliance 90/The Greens parliamentary group

Enacting legislation to ban investments in anti-personnel mines and cluster munitions, and removing tax incentives for such investments

The Bundestag is requested to adopt the following motion:

I. The German Bundestag notes:

Anti-personnel mines and cluster munitions are terrible weapons. By far the overwhelming majority of their victims are civilians, children above all. Because they often do not explode immediately, people are also killed or mutilated by them long after they have been dropped or laid. Today, millions of unexploded mines and cluster munitions still threaten the populations of many states.

The Mine Ban Treaty and the Convention on Cluster Munitions are milestones in the protection of the civilian population from these barbaric weapons. The ratification of both conventions places a series of wide-ranging obligations to implement the ban on the use, stockpiling, production, development and transfer of anti-personnel mines and cluster munitions on the Federal Republic of Germany. This involves ensuring that the goals of the Conventions are not undermined in any relevant areas. These include, in particular, the financial sector, where an explicit ban on investments in enterprises that produce or develop anti-personnel mines or cluster munitions is required.

Section 18a(1) of the German War Weapons Control Act transposes the obligations introduced into international law by the Mine Ban Treaty and the Convention on Cluster Munitions into national law. However, the ban on encouragement for outlawed activities anchored in the Act does not explicitly include a ban on investments in these weapons. This allows scope for interpretation that endangers the effective implementation of the ban on anti-personnel mines and cluster munitions.

It is particularly problematic if state investments and incentives result in support being given to the production and development of anti-personnel mines and cluster munitions. Tax incentives for investments in companies that produce or develop these weapons are not precluded at present because the state-certified private pension products that are treated favourably for tax purposes in Germany ('Riester pensions') are not vetted to ascertain whether some of the capital invested is being channelled to such enterprises.

It is not enough to rely on financially literate investors and the voluntary commitments made by the sector. On account of the lack of transparency shown by financial institutions, it is usually impossible to find out whether an institution engages in transactions of some kind with producers of anti-personnel mines or cluster munitions. And the sector's voluntary commitments are evidently worth nothing if only a low, single-figure percentage of the enterprises that provide Riester pension plans rule out investments in these weapons. On account of the complexity of these investment products, there is a need for a form of state regulation that precludes investments in anti-personnel mines and cluster munitions.

Any state that is serious about fighting weapons that contravene international law must impose a general ban on investment in enterprises that produce or develop anti-personnel mines and cluster munitions.

II. The German Bundestag calls upon the German Federal Government

1. to amend Section 18a(1) of the War Weapons Control Act in such a way that the ban on encouragement for the use, stockpiling, production, development and trading of anti-personnel mines and cluster munitions set out in that part of the Act also explicitly includes, among other things, a ban on investments. In order to preclude opportunities to circumvent the ban, this should cover both direct and indirect investments, as well as any form of financing, and should relate to all investments in enterprises anywhere in the world that are involved in the production and development of anti-personnel mines and cluster munitions;
2. to act without delay to remove any tax incentives for investments in cluster munitions by amending the Act Governing the Certification of Contracts for Retirement Provision (*Altersvorsorge-Zertifizierungsgesetz, AltZertG*) so that certification will be withheld or withdrawn from financial products that are associated with the financing of anti-personnel mines or cluster munitions, and thus achieve the comprehensive implementation of Article 1(1)(c) of the Convention on Cluster Munitions;
3. to act without delay, in its function as a (co)owner of public sector and private banks, to exert influence on their commercial policies so as to prevent investments in the production and development of anti-personnel mines and cluster munitions;
4. to act without delay to invest the state's financial assets, for instance special funds, the assets held by the social insurance agencies and the assets held by the cash settlement office that settles the pension payments to the civil servants of the former public post office on behalf of its successor companies (*Postbeamtenversorgungskasse*), in such a way that any investment in the production and development of anti-personnel mines and cluster munitions is ruled out;
5. to act as rapidly as possible to exclude enterprises that produce or develop anti-personnel mines and cluster munitions from the award of public contracts;

6. to act without delay to ensure that no assets held by charitable foundations are used to make investments in enterprises that produce anti-personnel mines or cluster munitions.

Berlin, 8 February 2011

Renate Künast, Jürgen Trittin and parliamentary group

Explanatory statement

Only by agreeing on a wide-ranging definition is it possible to realise the goals and intentions of the Mine Ban Treaty and the Convention on Cluster Munitions.

The ban on encouragement for the use, stockpiling, production, development and trading of these weapons anchored in Section 18a(1) of the War Weapons Control Act must therefore encompass a strict ban on investments as well. In particular, state investments and incentives must not result in support being given to the production and development of anti-personnel mines and cluster munitions. Tax incentives for investments in companies that produce or develop these weapons must therefore be precluded.

However, an investigation by *Finanztest* found that, of 174 banks, insurance companies, fund management companies and building societies that offered Riester pension plans, just 12 ruled out investments in cluster bombs. This is less than seven percent. And the real proportion is likely to be even lower because no replies were received from approximately 80 percent of the banks and nearly 50 percent of the insurance companies that were approached. In December 2010, the Facing Finance initiative made it public that the Riester funds subsidised by the state hold stakes amounting to € 500m in manufacturers of weapons that contravene international law. At present, only approximately one percent of Riester products are managed in line with ethical criteria. At the same time, when finanztest.de conducted a non-representative online survey, approximately 75 percent of respondents said they believed their own providers should immediately sell shares in producers of cluster munitions, even if this would mean incurring losses. A total of 96 percent of those surveyed said they were in favour of a statutory ban on any provider of Riester products investing in producers of outlawed weapons.

It is difficult for responsible consumers to monitor these issues. In particular, the investments made by banks, insurance companies and building societies are not disclosed for the most part, and it is only fund management companies that publish the investments they have made every six months. However, investors cannot be expected to work their way laboriously through company reports and annual accounts in order to find out whether their fund management company holds stakes in producers of anti-personnel mines or cluster munitions. This is why it is essential for there to be a statutory ban on investments in these weapons that contravene international law. State-certified Riester products should not be helping to provide financial support for the production and development of such weapons.

In addition to this, it is possible to use public sector financial institutions, the state's investment policy, the criteria for the award of public contracts or the government's influence on the commercial policies of the banks in which the state holds shares to ensure rigorous compliance with the ban on encouragement for the production and development of weapons prohibited by international law, a step that would amount to an investment ban. In this context, there is a need for urgent action, as the following examples clearly indicate:

- numerous public sector banks invest in producers of cluster munitions,¹

- Germany's state investment policy does not provide for assets to be managed in line with ethical criteria,²
- the supplier of body scanners to the Federal Ministry of the Interior, L-3 Communications Corporation, is also a producer of cluster munitions,
- although Commerzbank drew on the government's Special Fund for the Stabilisation of Financial Markets (SoFFin) in December 2008, the bank extended a loan to the cluster bomb producer Raytheon Company in 2009.

States like Norway, Ireland and Mexico, for example, are implementing the ban on assistance for outlawed activities required by Article 1(1)(c) of the Convention on Cluster Munitions more rigorously than the Federal Republic of Germany: State incentives are available exclusively for investments that definitively exclude stakes in producers of cluster munitions. French and British government representatives too have stated publicly that the Convention precludes any direct investment in producers of cluster munitions. The Research Services of the German Bundestag also come to the conclusion that the ban on assistance for outlawed activities under the Convention 'is not limited to particular forms of support payments. This may be viewed as strengthening the assumption that the financing of cluster munitions is also prohibited in principle.'

Furthermore, beyond the issue of direct state assistance, it is in the interests of a State Party to the Convention to prohibit financial support for producers of anti-personnel mines and cluster munitions, given that the substantive provisions and intention of the Convention are directed towards precisely this goal.

According to research by the Facing Finance campaign, the volume of investments administered by German banks in this sector amounts to approximately € 1.3 bn. The frontrunner in this respect is the Deutsche Bank Group, which administers investments worth nearly € 1 bn. At the same time, Deutsche Bank is a signatory of the United Nations' Principles for Responsible Investment, with which it polishes its image in its *Corporate Social Responsibility Report 2009*.³ Markedly higher levels of mandatory transparency are necessary in order to prevent consumers being misled in this way. There is a clear need to catch up here, especially in the field of certified pension products. However, this will not be sufficient because transparency alone will not ensure that investors restructure their holdings on a large scale. Any state that wishes to effectively prevent investment in cluster munitions needs a comprehensive investment ban.

In concrete terms, this could be implemented by, for example, emulating the model of the Belgian law, which requires the government to draw up a list of enterprises that fall under the investment ban. In Belgium, these are not just the manufacturers themselves, but also enterprises that hold at least 50 percent stakes in them, as well as funds that invest in the manufacturers or their owners. Following publication of the list, any investment in the enterprises that feature on it is banned after an appropriate transitional period. Of course, this list has to be updated on an ongoing basis. Once the list has been issued, it is also forbidden to extend new loans to the enterprises in question or undertake forward transactions with bonds issued by them.

¹ Cf. the report *Tödlicher Profit: Deutsche Banken und ihr Investment in Streumunition und Antipersonenminen*, Facing Finance campaign, December 2010.

² Cf. the German Federal Government's answer to the minor interpellation tabled by the Alliance 90/The Greens parliamentary group, Bundestag Printed Paper 16/11820.

³ Cf. *Corporate Social Responsibility Report 2009*, Deutsche Bank, p. 54.



Counterarguments that appropriate controls on the whole investment universe are not possible are unfounded. Otherwise, financial service providers would not be able to completely rule out investments in cluster munitions, as has been done by, for instance, Allianz Global Investors Kapitalanlagegesellschaft mbH and Union Investment, Germany's two biggest fund management companies. There may be no external controls in place, so these commitments cannot be taken wholly at face value – but the companies would destroy a great deal of their credibility if investments in cluster munitions were nevertheless to be exposed within their investment universes. In Japan, the country's three biggest banks took action in July 2010, entering into binding commitments not to make any investments in cluster munitions. It would undoubtedly be complex to vet every fund of funds and indexed fund, for instance, but statutory controls are feasible, as has been demonstrated impressively by the example of the Norwegian Government Pension Fund – Global, for instance.

Germany should follow the examples of Belgium, Luxemburg, Norway and New Zealand, and legislate to generally forbid investments in the production and development of anti-personnel mines and cluster munitions. A country that makes considerable financial resources available for the clearing of anti-personnel mines and cluster bombs around the world each year cannot allow investments in the production of these weapons and certainly cannot treat such investments favourably for tax purposes.