



Netwerk Vlaanderen briefing paper

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The Belgian law that prohibits the financing of the production, trade and use of anti-personnel mines and cluster munitions

Questions & Answers

Q: What is the law about?

A: The law states that 'the financing of any Belgian or foreign company that has the activity to produce, use, repair, offer, sell, distribute, import, export, stock or export anti personnel mines or submunitions with the aim to spread them, is forbidden'.

Q: Does the law prohibit only the financing of Belgian companies?

A: No, the financing of any company in the world that is involved in cluster munitions or anti-personnel mines is forbidden. The nationality of the company is irrelevant. So for example, a Belgian investor can not finance a US producer of anti-personnel mines or a French or Israeli producer of cluster munitions.

Q: What is the exact meaning of financing in this law?

A: Belgium law defines financing as 'any kind of financial support, more concrete credits, bank guarantees or the acquisition for own account of the financial instruments these companies have issued'.

In other words, a Belgian investor cannot give a credit, loan facility or bank guarantee to a company involved in anti-personnel mines (APM) or cluster munitions (CM). Investment funds, banks, pension funds and other investors are forbidden to acquire shares, notes or obligations issued by such a company.

Two exceptions are explicitly mentioned in the law:

- ❖ 'The ban is not applicable to investment companies which investment policies, due to their statutes or management rules, are designed to follow a certain share or obligation index'. This means that the well-known index funds still have the right to contain shares or obligations of APM and CM producers. This is an unnecessary and regrettable exception and is not recommended for similar legislation.
- ❖ The ban is not applicable to the financing of specific projects by these companies only if it can be proven that financing cannot be used for their APM or CM activities. To ensure exemption, the financier needs a written declaration to confirm the nature of the project and the fact that financing will not be used for APM or CM related issues. This means that project financing for a company identified as APM or CM producer is still possible, but only if the project has nothing to do with the forbidden activities. For example, an export finance for a civil aircraft, even if the producer is also involved in the production of antipersonnel mines, would be admitted. This may sound like an understandable exception, but it leaves space for companies to take advantage of internal capital transfer and can legitimise the financing of companies involved in very controversial activities breaching international humanitarian law. This loophole should not appear in similar legislation.

Q: What is the punishment for investing in anti-personnel mines or cluster munitions?

A: There is no clear reference made to sanctions in the law, however Belgium lawmaker has indicated that offences will not be dealt with lightly. Investments in cluster munitions or anti-personnel mines is incorporated into the law on 'the prevention of the use of the financial system for money laundering and financing of terrorism' which now states, amongst other things, that "the origin of money or assets is illegal when it comes from ... the illegal trade in weapons, goods or tradeables, including anti personnel mines and cluster munitions."

Q: What is the scope of this law? Which financial institutions have to abide to this law?

A: The law is applicable to everyone who has to abide to Belgian law. The law itself doesn't mention the scope. It merely forbids the financing of APM and CM production..

The law prohibiting money laundering has a clear identification on who has to abide to that law. This law including a ban on investments in APM and CM, is applicable to every Belgian citizen, every bank registered in Belgium, any investment fund, insurance company under Belgian justice, or any Belgian subsidiary of foreign based financial institutions.

Q: How will investors know if a company is a cluster munition or antipersonnel mine producer?

A: Large investors like banks and investment companies have enough resources to take their responsibility. They can buy-in knowledge on the producers of these weapons. Some banks, such as the Belgian bank insurance company KBC, have already completed research on stock-listed producers of cluster munitions. Another example is BEAMA, an umbrella organisation of the Belgian financial institutions, which hired Ethix, a Swedish based screener for ethical investors to obtain a list of stock-listed APM producers

The Belgian government will soon help banks and investors identify CM and APM producers. The law states that within one year after the law is published, that is by 1st of May 2008, the Belgian government will produce and make publicly available a list of

- ❖ producers of APM or CM;
- ❖ companies owning more than 50% of the shares of these producers;
- ❖ investment funds holding shares or obligations of these producers and their owners.

Note that investing in or financing any of these three kinds of listed companies is forbidden.

Q: Who will control this law?

A: The responsibility for enforcement is not clearly stated. However, it seems appropriate that the bank authorities in Belgium (CBFA) will be an important player in this area.

Due to very limited transparency requirements on Belgium's financial sector regarding the investment and credit portfolio of financial institutions, the quality of the control will be a crucial factor to determine the overall effectiveness of this law.

Q: Did this law come out of the blue?

Not at all. Since 2004 Netwerk Vlaanderen and three Flemish peace organisations¹ have been running the campaign 'My Money. Clear Conscience?' against investments in amongst other weapons APM and CM. In addition, Handicap International successfully ran a campaign in Belgium against cluster munitions, resulting in Belgium becoming the first country to ban the production and use cluster munitions on November 2006. More recently in February 2007, Norway embarked upon an initiative to work towards an international treaty banning cluster munitions.

Back in 1996, Belgium became the first country to ban anti personnel mines and signed the international Ottawa Treaty against anti personnel mines in 1997.

Since in Belgium APM and CM were already banned weapons, it was logical to prevent any Belgian financial support to the production of these weapons abroad as well.

Q: How effective will this law be?

A: As previously mentioned, the law's effectiveness will depend on implementation and control of by Belgian authorities. Even with strict enforcement, it is clear that global financial flows enabling APM and CM production will not be halted. Only when wealthy nations ban wholesale investment in weapons producers of this type will real change be felt.

Q: What is the status of international treaties on investments in anti personnel mines?

The 1997 Ottawa Treaty, otherwise known as the mine ban treaty, states "Each State Party undertakes never under any circumstances to assist, encourage or induce, in any way anyone to engage in any activity prohibited to a State Party under this Convention." These activities are explicitly defined as the use, development, production, acquisition, stockpiling, retention and transfer, both directly and indirectly, of anti-personnel mines. Although financing APM production seems to be a clear 'assistance' or 'encouragement', apart from Belgium countries ratifying the convention have not implemented laws to

¹ Vrede, Vredesactie and Friends of the Earth Flanders and Brussels

prevent this occurring. Nevertheless, the treaty paves the way for legislative change in the 153 ratifying countries to impose a law banning investments in APM's.

As the process to establish an international treaty on banning cluster munitions gathers momentum, we think it would be appropriate, to include investments in the ban defined by that treaty.

On a European level, policy makers have another tool to rely on. In July 2005 a European Parliament Resolution "Calls on the EU and its Member States to prohibit through appropriate legislation financial institutions under their jurisdiction or control from investing directly or indirectly in companies involved in production, stockpiling or transfers of anti-personnel mines and other related controversial weapons systems such as cluster sub-munitions;"

It is clear that international and regional instruments are driving countries to enact laws such as Belgium, and States are encouraged to outlaw financial institutions operating in their jurisdiction from becoming complicit in APM and CM productions.

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