



Belgium no longer an international frontrunner

Necessary and legally required tool to implement ban on financing cluster munitions still not established.

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Netwerk Vlaanderen vzw – IKV Pax Christi

The Convention on Cluster Munitions (CCM), which opened for signature in December 2008 has now been signed by 104ⁱ states and ratified by 27ⁱⁱ. Article 1c of the CCM states that: “Each State Party undertakes never under any circumstances to assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention. The Cluster Munition Coalitionⁱⁱⁱ believes that the prohibition on assistance includes a prohibition on investments in cluster munitions.

The IKV Pax Christi/Netwerk Vlaanderen report “Worldwide investments in cluster munitions; a shared responsibility” maps worldwide investments in producers of cluster munitions and also highlights various divestment initiatives.^{iv} On the day this report was published, the CMC launched a divestment campaign named “Stop Explosive Investments”^v. Following the launch of this campaign, a number of national level divestment campaigns were launched, with a number of countries issuing national level reports. A number of countries have also taken legislative steps to ban investment in producers of cluster munitions.

In 2007 Belgium became the first country in the world to adopt a law banning investment in companies that produce anti-personnel mines and cluster munitions. The law was expanded to investments in producers of weapons with depleted uranium in the summer of 2009. The Belgian government has so far failed to implement this law.

This paper calls upon the Belgian government to implement their law and retake their position as an international frontrunner with regard to investments in producers of cluster munitions.^{vi} Belgium was the first country to forbid investments in cluster munitions. Belgium can and should continue to be an example to the rest of the world and start the implementation of their law today.

1. Belgium becomes first country to legally ban investments in anti-personnel mines and cluster munitions

On 20th March 2007 the Belgian Parliament unanimously adopted a law^{vii} that prohibits Belgian investors from financing producers of cluster munitions. The law is not only of concern to Belgium, but has inspired campaigners and politicians in various other countries.

The law, that was published in the Belgian State Monitor on 27th April 2007 forbids “the

financing of companies under Belgian law or foreign law that produce, use, repair, distribute, import, export, store or transport anti-personnel mines and/or sub-munitions in the meaning of this law, and with regard to the spreading thereof.”

The law also defines what is covered by the term “financing”. *“Financing of one of the companies included in the list also includes all forms of financial support, namely credits, bank guarantees and the acquisition of financial instruments issued by that company.”*

In order to provide Belgian investors and the financial world with clear guidelines, the law stipulates that the King (represented by the Belgian government) is given the task of publishing a list:

“i) of the companies that are shown to carry out an activity in contravention of the previous sentence;

ii) of the companies that own a majority share in the companies covered by part i) and;

iii) the institutions for collective investment that hold financial instruments of companies covered by parts i) and ii).”

This law, which is supported by debates in both houses of the Belgian parliament, makes it clear that there should be a list of companies (both Belgian and foreign) that are involved in the production of cluster munitions. The list also should include the majority shareholders of these companies and the investment funds that hold shares in these companies.

2. Where is the list, Mr Reynders?

On 24th April 2008, one year after the publication of the law in the Belgian State Monitor, a number of organisations called on Minister of Finance Reynders to begin work on the implementation of the law.^{viii} One year later, in April 2009 Netwerk Vlaanderen conducted research on public information which outlined investment portfolios of a number of investment funds that are being offered on the Belgian market. Netwerk Vlaanderen revealed that the law is being breached, and that funds that invest in companies including producers of cluster munitions still exist.^{ix}

Establishing a black list is part of the law, and would provide the necessary information for both individual investors and financial institutions to be sure they are not breaking the law. Whereas the list should have been published on the 1st of May 2008, almost two years later this is still not the case.

We hereby list some of the criteria that will make the list a successful tool for monitoring the law and ensuring that no investments are made in producers of cluster munitions.

Recommended guidelines for the blacklist

The list must contain companies involved in the production or development of cluster munitions. In order to publish the list, a ministry would have to commission a specialised research bureau. Such a bureau would be able to conduct research in order to deliver a list. At regular intervals (or example every 6 months) the list would have to be reviewed in order to contain up to date information and no companies are punished for sins of the past.

A black list of producers of cluster munitions needs to be established by certain guidelines. The Convention on Cluster Munitions^x provides us with the necessary definition on cluster munitions and explosive submunitions:^{xi}

Cluster munitions means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions. It does not mean the following:

- a. *A munition or submunition designed to dispense flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defence role;*
- b. *A munition or submunition designed to produce electrical or electronic effects;*
- c. *A munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions, has all of the following characteristics:*
 - i. *Each munition contains fewer than ten explosive submunitions;*
 - ii. *Each explosive submunition weighs more than four kilograms;*
 - iii. *Each explosive submunition is designed to detect and engage a single target object;*
 - iv. *Each explosive submunition is equipped with an electronic self-destruction mechanism;*
 - v. *Each explosive submunition is equipped with an electronic self-deactivating feature;*

Explosive submunition means a conventional munition that in order to perform its task is dispersed or released by a cluster munitions and is designed to function by detonating an explosive charge prior to, on or after impact;

Producer of cluster munition^{xii}:

- Any company or group of companies that, itself or through a subsidiary, develops or produces cluster munitions and/or explosive submunitions according to the definition in the Convention on Cluster Munitions.
- Any company or group of companies that, itself or through a subsidiary, develops or produces key components for cluster munitions or explosive submunitions.

A company or group of companies should be considered a cluster munition producer when any part, however small, of its total turnover is derived from production of cluster munitions, regardless of the nature of the company's other activities.

A company is considered a producer of cluster munitions when there is clear evidence of production of cluster munitions since the adoption of the Convention on Cluster Munitions, (since May 2008), or if there is involvement in planned production or a development phase (even if this involvement is yet to be confirmed).

Law has been in force since April 2007

Despite the fact that the list does not yet exist, and despite the fact that law is not yet being controlled, all Belgian investors (private individuals, banks, investment funds, pension funds, ...) have been required to abide by the law and have been forbidden from financing the producers of anti-personnel mines and cluster munitions. The current situation is a situation in which there are too many insecurities for financial institutions, therefore the law is not as effective as it can and should be.

3. The world is waiting for Belgium

With the signing of the Convention on Cluster Munitions by 94 countries in December 2008, an international treaty came about that categorically bans cluster munitions. Article 1c of the Convention prohibits State Parties to undertake to assist, encourage or induce anyone to engage in any activity prohibited under this Convention. Lebanon, Mexico, Norway and Rwanda have identified investment among the prohibited forms of assistance. The following countries have proposed or enacted legislation to prohibit investments in producers of cluster munitions: Denmark, Ireland, Luxembourg, the Netherlands, New Zealand, Switzerland and Norway. |

To include an obligation for the government to draw up a list of cluster munition producers is

an effective way to ensure full compliance with the legislation. It is essential to provide clear guidelines so that all financial institutions abide by the law. Moreover, a blacklist is a highly effective way for private investors to know whether or not their money is used for the production of cluster munitions. It is therefore not surprising that the coalition of Belgian banks have spoken out in favour of the government publishing a black list. Finally, establishing a black list puts transparency into practice: it makes it clear to everyone which companies are investing in cluster munitions so that they can cease their involvement with them.

The Belgian law is exemplary because of the obligation for the government to draw up a list of cluster munitions producers. However, since Belgium until now has failed to do so, it weakens the frontrunner role Belgium once had. States like Denmark, The Netherlands and Switzerland are in the process of establishing the language of the law, and wonder why Belgium, after two years still hasn't produced the black list.

4. Conclusion

Both Belgian individual investors and financial institutions, who have to abide by the law, and countries who are working on similar legislation, are waiting for Belgium. We therefore strongly urge the Belgian government to establish a black list of producers of cluster munitions, landmines and weapons with depleted uranium, as required by the Belgian law. It is not too late for Belgium to be an example to the world as the parliament envisioned when they installed the investment legislation in 2007. The time to act is now.

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For more information on the law:

<http://www.netwerkvlaanderen.be/nl/files/documenten/campagnes/bankenenwapens/Q&A.pdf>

- ⁱ By 9 Februari 2010 the following countries had signed the Convention on Cluster Munitions: Afghanistan, Albania, Angola, Australia, Austria, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, Colombia, Comoros, The Dominican Republic, DR Congo, Republic of Congo, Cook Islands, Costa Rica, Côte D'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Fiji, France, Gambia, Germany, Ghana, Guatemala, Guinea, Guinea Bissau, Haiti, The Holy See, Honduras, Hungary, Iceland, Indonesia, Iraq, Ireland, Italy, Jamaica, Japan, Kenya, Lao PDR, Lebanon, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Malta, Mexico, Republic of Moldova, Monaco, Montenegro, Mozambique, Namibia, Nauru, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Palau, Panama, Paraguay, Peru, Philippines, Portugal, Rwanda, Samoa, San Marino, Sao Tomé and Príncipe, St. Vincent and Grenadines, Senegal, Sierra Leone, Slovenia, Somalia, South Africa, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Togo, Tunisia, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay and Zambia.
- ⁱⁱ By 9 Februari 2010 the following countries had ratified the Convention on Cluster Munitions: Norway, Ireland, The Holy See, Sierra Leone, Lao PDR, Austria, Mexico, Niger, Albania, Spain, Germany, Luxembourg, San Marino, Japan, Zambia, Croatia, Slovenia, Uruguay, Malta, France, Burundi, Malawi, Macedonia, Nicaragua, New Zealand, Belgium and Montenegro.
- ⁱⁱⁱ The Cluster Munition Coalition (CMC) is an international coalition working to protect civilians from the effects of cluster munitions by promoting universal adherence to, and full implementation of, the Convention on Cluster Munitions. The CMC has a membership of around 300 civil society organisations from more than 80 countries.
- ^{iv} "Worldwide Investments in Cluster Munitions; a shared responsibility", IKV Pax Christi and Netwerk Vlaanderen (October 2009), available at: www.stopexplosiveinvestments.org
- ^v See: www.stopexplosiveinvestments.org
- ^{vi} Therefore we focus this paper on disinvestment from cluster munitions.
- ^{vii} Wet inzake het verbod op de financiering van de productie, gebruik en bezit van antipersoonsmijnen en submunitie, Federale Overheidsdienst Financiën, 20 maart 2007, Belgisch Staatsblad (27th April 2007)
- ^{viii} Minister van Financiën mist deadline van 1 mei, Press release Netwerk Vlaanderen, Réseau Financement Alternatif, Vrede, Vredesactie, Friends of the Earth Vlaanderen & Brussel, Brussel, 24th April 2008.
- ^{ix} Netwerk Vlaanderen vzw, Belgian investors on illegal course?, Friday 8th of May 2009, available at <http://www.netwerkvlaanderen.be/en/files/documenten/campaigns/banksandweapons/Rapport%20overtredingen%20wet%20fin%20clusterm%20apm%20090508%20-%20EN.pdf>
- ^x The Convention on Cluster Munitions (CCM) was signed the 3d of December 2008 in Oslo and categorically prohibits the use, production, transfer and stockpiling of cluster munitions.
- ^{xi} Convention on Cluster Munitions. Article 2: Definitions. The Convention on Cluster Munitions is available at: http://untreaty.un.org/English/Opening_Signature/english.pdf
- ^{xii} See also "Worldwide Investments in Cluster Munitions; a shared responsibility", IKV Pax Christi and Netwerk Vlaanderen (October 2009), available at: www.stopexplosiveinvestments.org