

# Stop Explosive Investments

Guidance for financial institutions' to disinvest from cluster munitions

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**PAX**

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# 1 Introduction

## 1.1 Cluster Munitions

Cluster munitions pose a serious threat to civilian populations during and after an attack. They consist of a larger munition that spreads smaller bomblets (submunitions) over an area. They can be fired by artillery and rocket systems or dropped by aircraft, and are designed to blanket a large area with smaller submunitions. The submunitions are designed to explode upon impact and kill or maim anyone that is in that area, be they military or civilian. Many submunitions fail to explode on impact however: they remain on the ground and will explode when picked up or moved later. Like landmines, they kill and injure civilians long after the conflict has ended.

## 1.2 The Convention on Cluster Munitions (CCM)

Cluster munitions are prohibited by an international treaty, the 2008 Convention on Cluster Munitions (CCM). As of December 2023, 124 states – a large majority of all states worldwide - have joined the CCM. The so-called ‘Oslo process’ that led to the adoption of the treaty was marked by resolute cooperation among a broad range of actors whose common goal was to stop the humanitarian harm that cluster munitions cause. The global coalition of NGOs that was the driving force of the Oslo process is the Cluster Munition Coalition.<sup>1</sup>

The Convention categorically bans the use, production, stockpiling and transfer of cluster munitions. It also prohibits any assistance with the aforementioned acts.<sup>2</sup>

## 1.3 Stop Explosive Investments

The ‘Stop Explosive Investments’ campaign aims to stop money going to producers of cluster munitions. It is an initiative of the Cluster Munition Coalition, in close cooperation with one of its member organizations PAX.

Financing is an act of support with production: financing a cluster munitions producer facilitates production. Simply put: without money there can be no production and any weapon that is not produced, cannot cause harm to civilians.

Financial institutions sometimes regard financing or providing financial services to companies as a neutral activity. However, financing and investing are active choices based on knowledge of the activities the companies that seek capital engage in. Investing in a cluster munitions producer therefore is a choice to support the production of these weapons that cause unacceptable harm. In addition, investments are made with the intention of making profit. Investing in a producer of cluster munitions therefore also means profiting from the production of a weapon that is prohibited because of the inhumane consequences for the men, women and children who become victims of the use of these weapons.

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<sup>1</sup> [Cluster Munition Coalition | CMC \(stopclustermunitions.org\)](https://www.stopclustermunitions.org/)

<sup>2</sup> Article 1(1)c of the Convention on Cluster Munitions states, “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; see: [www.clusterconvention.org/files/2011/01/Convention-ENG.pdf](https://www.clusterconvention.org/files/2011/01/Convention-ENG.pdf), last viewed February 2024.

The Convention on Cluster Munitions provides a strong legal basis for banning investments in the companies producing cluster munitions. In its wake, a growing group of financial institutions has come to accept responsibility for implementing a clear and far-reaching policy on dealing with cluster munitions producers.

Article 1(1)c of the Convention on Cluster Munitions states, “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.”

Considering the fact that financing enables the production of cluster munitions, financing is a type of assistance that is prohibited under the convention.

The consensus among investors has evolved massively since the treaty came into being in 2008. Where only a few financial institutions excluded companies producing cluster munitions when the Oslo process started, a wider group of investors seems to have become aware that producers of cluster munitions are not acceptable business partners. They do not condone business relations with cluster munitions producers, regardless of the nature of the business relation and regardless the other activities of the cluster munitions producer they want to invest in. Producing cluster munitions, regardless of their importance in a company's total turnover, makes a company a no-go business partner for these investors.

We welcome these initiatives and encourage other financial institutions to follow suit.

## 2 Guidance for Disinvestment Policies

### 2.1 Good disinvestment policies that exclude any financial link with cluster munition producers meet the following criteria:

- The financial institution is transparent and accountable on its cluster munitions policy. This means that the investor has published its policy and/or a summary of it.
- The policy must exclude investment in cluster munitions producers (recalling past investment and avoiding further investment).
- The policy is on group level. Since the banking group usually sets the investment policy, and since this group directly or indirectly supervises its subsidiaries, a good investment policy is set on group level, and is therefore implemented by all its subsidiaries.
- The policy must have an 'all-in' comprehensive scope:
  - no exceptions for any type of cluster munitions producers
  - no exceptions for any type of activities by cluster munitions producers
  - no exceptions for any type of financing or investment

### 2.2 Definitions

The following definitions are advised for use in disinvestment policies and their implementation furthermore:

#### 2.2.1 Cluster Munitions

The definition of cluster munitions is included in article 2 of the Convention on Cluster Munitions. This reads as follows:

**“Cluster munition** 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:

1. A munition or submunition designed to dispense flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defence role;
2. A munition or submunition designed to produce electrical or electronic effects;
3. 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;

### 2.2.2 Explosive submunition

The Convention on Cluster Munitions also includes the definition of an explosive submunition in article 2. From the Convention we can read that:

**“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;”

### 2.2.3 Cluster munition producer

In our view, and in order to exclude any financial link with cluster munition producers, the definition of a cluster munition producer in a divestment policy should be:

“Any company or group of companies that, in its own name or through a subsidiary, develops or produces cluster munitions and/or explosive submunitions according to the definitions in the Convention on Cluster Munitions, or key components thereof.”

We consider a company or group of companies to be a cluster munitions producer when any part, however small, of its total turnover is derived from producing (key components for) cluster munitions or explosive submunitions, regardless of the nature of the company's other activities.

We do so, because most cluster munitions are produced by companies that also produce other military and/or civil products. Companies and groups can easily reallocate capital internally; profit from one production line can be invested in other production lines; money for general corporate purposes can be used for any of the company's activities, etc. Focusing solely on financing for cluster munitions is impossible and undesirable given the companies' financial structures. Moreover, even if a company only gets 1% of its turnover from cluster munitions, this 1% can represent a considerable amount of money and can mean the production of large amounts of cluster munitions.

### 2.2.4 Key components

Key components are components which form an integral and indispensable part of the cluster munitions or explosive submunitions.

### 2.2.5 Investments

Investments are loans and other forms of credits (commercial banking<sup>3</sup>), underwriting of share and bond issuances (investment banking<sup>4</sup>), investments in shares and

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<sup>3</sup> Commercial banking includes offering or participating in loans to cluster munitions producers via either general corporate financing or project financing. Corporate financing is providing to a company (the possibility of) a loan that is not tied to a specific part or project of the company, which means that the company can use the money as it sees fit. Project financing, on the other hand, means giving credit to a more or less defined project, such as the building of a ship. In our research we have never come across project financing for cluster munition production. This is why for the purposes of our research general corporate financing is more important.

<sup>4</sup> Investment banking services include underwriting of bond and share issuances, which help cluster munitions producers to sell shares and bonds to investors (asset managers, insurance companies, etc.), regardless of how the proceeds are used (most of the time for general corporate services), and offering financial advisory services.

bonds (asset management<sup>5</sup>) and other financial services. This can be done by financial institutions on their own behalf or on behalf of third parties. Any kind of financial link with a cluster munitions producer is considered an investment, and is to be prevented in the policy, regardless of:

- The investor's importance for the cluster munitions producer;
- The investment's importance for the investor's portfolio;
- The contribution of cluster munitions production to the company's total turnover; or
- The cluster munitions producer's other activities.

All these financial links should be covered in the divestment policy, because it is impossible for a financial institution to be sure that the financial services it provides a company will not be used to produce cluster munitions. There is no way to prevent a company from legally reallocating capital within a group. Clauses in a general corporate loan contract that prohibit companies from using borrowed or invested funds to manufacture cluster munitions, or that restrict a company's use of the financing to civilian projects will not prevent the money from being used to manufacture cluster munitions.

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<sup>5</sup> Asset management means holding or managing shares or bonds that cluster munitions producers issued. Shares and bonds can be held either on the investors' behalf or on behalf of third parties (which includes the development and/or sale of investment funds containing stocks or debt securities from cluster munitions producers). Asset management can result in a financial institution's involvement with cluster munitions producers in various ways. The financial institution can buy shares in and bonds issued by a company on its own behalf. This makes the financial institution a shareholder or bondholder in this company. The financial institution can also act on behalf of a third party when buying shares in or bonds issued by a company. Most of the time this means the third party, which can be a person or an institution, is buying one or more shares in an investment fund that the financial institution markets. The financial institution's asset manager manages this fund using an investment strategy. This distinction is often referred to as a financial institution's direct and indirect involvement. However, since there is no universal definition of the terms 'direct' or 'indirect' financing, and since these terms are used for different contents, we choose not to use these terms in the remainder of this report. More information on the difference between direct and indirect financing is given in a background paper by FairFin (formerly *Netwerk Vlaanderen*): *Netwerk Vlaanderen*, "The scope of Banks' Sustainable Investment Policies: The Issue of Direct and Indirect Financing. Background paper by *Netwerk Vlaanderen*", May 2010, available at <https://stopexplosiveinvestments.org/wp-content/uploads/Direct-and-indirect-investments.pdf>, last viewed 12 November 2018.

### 3 Good examples of divestment policies

Throughout the years PAX has documented a (growing) number of financial institutions with comprehensive policies to divest from cluster munition producers. In our research publications we have highlighted these (group level) policies in our so called Hall of Fame.<sup>6</sup>

In order to be included in the Hall of Fame, the following criteria had to be met.

- The financial institutions must be transparent and accountable on its cluster munitions policy. This means that the investor has published its policy and/or a summary of it.
- Its policy must exclude investment in cluster munitions producers (recalling past investment and avoiding further investment).
- The policy has no exceptions for any type of cluster munitions producers
- The policy has no exceptions for any type of activities by cluster munitions producers
- The policy has no exceptions for any type of financing or investment

For concrete examples of good policies, we refer to our annual reports that list all-comprehensive policies in the so called Hall of Fame.<sup>7</sup>

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<sup>6</sup> In the annual research by PAX cluster munition divestment policies were divided in 2 categories: The Hall of Fame consisted of policies that excluded all links with cluster munition producers. The Runners-up category listed financial institutions that installed policies but that had still certain shortcomings.

<sup>7</sup> See [www.stopexplosiveinvestments.org](http://www.stopexplosiveinvestments.org).