Bayerische Motoren Werke AG

Petuelring 130

80788 Munich

3 September 2021

Claim to assert an injunction in the interests of climate protection pursuant to sections 1004 para. 1 sentence 2 and 823 para. 1 BGB (German Civil Code) analogous

Dear Sirs,

Our law firm represents the legal interests of Ms Barbara Metz, Mr Sascha Müller-Kraenner and Mr Jürgen Resch, all of whom can be contacted at the address of Deutsche Umwelthilfe e.V., Fritz-Reichle-Ring 4, 78315 Radolfzell; the corresponding authorisation is assured by a lawyer.

Our clients hereby assert a claim for injunctive relief against your company; they feel it is necessary to do so for reasons of climate protection.

This claim for injunctive relief relates to the fact that you must refrain from doing the following for legal reasons,

1. from placing passenger cars with internal combustion engines on the market for the first time after 31 October 2030, unless your company can demonstrate that the use of any car placed on the market after 31 October 2020 is greenhouse gas neutral,

and

2. from placing passenger cars with an internal combustion engine onto the market for the first time between 1 January 2022 and 31 October 2030, which, globally, emit a total of more than 604 million tons of CO_2 through their actual use (based on a mileage of 200,000 km on average), unless your company can prove greenhouse gas neutrality for the CO_2 emissions exceeding this total.

In many parts of the world, extraordinary temperature records are being set almost daily. This was the case in Canada a few weeks ago, for example, where the previous record was broken on three consecutive days, and temperatures eventually reached almost 50° C. We are experiencing incredible floods, not only in Germany, but also in Belgium and China, with hundreds of people missing and dead and enormous economic damage, as well as huge fires in large parts of the world. In early August, Greece and Turkey were the losers in the climate lottery – a lottery, however, which lacks one thing: a winner.

With the severe forest fires in the (holiday) regions of southern Europe, the devastating floods in the southwest part of Germany, and the drought in the northeast of the country, the impacts of the climate crisis, which are felt by everyone, have finally arrived in Germany, too.

According to the current state of knowledge, the dramatic changes in the climate caused by humans can only be halted by a considerable reduction in the emission of greenhouse gases (hereinafter also known as GHG), in particular CO_2. The Federal Constitutional Court (BVerfG) has constitutionally

enshrined in its decision on the Climate Change Act the fact that the Federal Republic of Germany has a limited total emissions budget of CO_2 emissions at its disposal.

The court also found that extensive depletion of the CO_2 budget by 2030 constitutes a violation of fundamental rights. What is potentially affected by this is virtually any freedom. This is because, today, almost all areas of human life are linked to the emission of greenhouse gases; this means that they may be threatened by drastic restrictions after 2030. As an intertemporal safeguard of freedom, fundamental rights serve to protect the individual from a comprehensive threat to his or her freedom by the unilateral shifting into the future of the burden of greenhouse gas reduction as imposed by Article 20a of the Basic Law.

Thus the Federal Republic of Germany is constitutionally obliged to make a contribution – commensurate with its share of global greenhouse gas emissions – to reducing greenhouse gas emissions and, ultimately, to achieving climate neutrality. According to the Federal Constitutional Court, the Federal Republic can, must and will enforce this obligation by intervening in fundamental rights.

The less CO_2 is saved in the next few years, the more drastic the savings and thus also the restrictions on freedom and encroachments on fundamental rights will have to be in the future in order to achieve the constitutionally prescribed emissions reduction quota for the Federal Republic. The CO_2 emissions of each individual thus affect the future freedoms and development opportunities of us all.

Your company can, at most, continue to consume the above-mentioned emissions budget from the total global CO_2 budget. As of 2045 at the latest, however, greenhouse gas neutrality must be achieved both in Germany and globally. This must be done both to comply with the requirements of the Federal Climate Protection Act and – much more importantly – for scientific reasons so as to prevent catastrophic consequences on top of any restrictions of fundamental freedoms, which is also expressed in the above-mentioned request. Any overstepping of this more than generous (and scientifically restrained) emissions budget by the defendant will result in drastic restrictions of freedom for the citizens of the Federal Republic, and thus for the claimants.

These possible restrictions of virtually all freedoms interfere widely and severely with the general personal rights of the claimants. These restrictions will be all the more drastic the more decisions by companies significantly responsible for the GHG balance place products on the market for which GHG neutrality is not guaranteed even after 2045. These significant interferences cannot be outweighed or justified by the affected rights of your company in the context of the weighing up of legal interests and interests. They are, therefore, unlawful.

By selling cars with combustion engines after exhausting a CO_2 budget that is still available and after a date that contradicts GHG neutrality – despite knowledge of the resulting dangers – your company is responsible for causing any interference with our clients' rights.

The CO_2 emissions resulting from your company's business activities consume a considerable share of the national and global CO_2 budget that is still available. Although a large part of the CO_2 emissions are only caused in the use phase of the products developed, produced and distributed by your firm, your company is a causal contributor to the impending restrictions of our client's freedom. The average useful life of new passenger cars with an internal combustion engine is 14.2 years; in some cases, it is considerably longer. Greenhouse gas neutrality from the year 2045 onwards thus requires the sale of such vehicles to be phased out by 31 October 2030 at the latest.

Your company's responsibility does not disappear because a large part of the emissions occur in the use phase of the vehicles. Your company's business decisions are adequately causal for the significant greenhouse gas emissions of your firm's vehicle fleet. Your firm has not decided on a date on which it will stop selling climate-damaging vehicles with internal combustion engines in line with our clients' request. Thus, you are planning to continue to market significant sources of danger to human health, to the preservation of an environment viable for human beings, and to the general personal rights of those affected in Germany, including our clients, even after 2030.

Ever since the Federal Constitutional Court's decision at the latest, your company can no longer claim to be unaware of the freedom-restricting mechanism that the depletion of the CO_2 budget entails.

With such knowledge of the dangers, your company cannot rely on the legal requirements for the vehicles it places on the market. Just as a company that knows of the carcinogenicity of a product it has placed on the market cannot rely on the fact that this product has not yet been banned and that it is authorised to distribute the product – counter to a claim for injunctive relief and/or damages – your company cannot successfully argue that the authorisation regulations for passenger cars still allow these products to be distributed.

After all, no one is obliged to stand by and watch the irretrievable restriction of their freedom to develop their personality without asserting their rights. The freedom-restricting mechanism associated with the (premature) consumption of the CO_2 budget requires timely legal intervention to protect the freedom of others. The requisite course must be set now, also in the interests of your company. Otherwise, your firm would have to react – at such short notice – in such a way that phasing out production would be the only option, and not a production changeover. Any significant delay – especially when taking into account the time needed to convert production – will ultimately result in the CO_2 budgets being consumed more than is permissible to prevent dramatic climatic consequences and greenhouse gas neutrality not being achieved in 2045. If they are consumed more than your firm is entitled to, reductions will have to be achieved elsewhere, which will inevitably involve a substantial threat to our clients' rights.

Every car with an internal combustion engine that your company puts on the market after 2030 will prevent greenhouse gas neutrality from being achieved in time. This is because your firm has no control over whether and how these products – which harm the climate and counteract greenhouse gas neutrality – will continue to be run for the duration of their useful life. When selling the cars, it must initially be assumed that they will be run for as long as they can and may be run.

As the cars are sold globally – at different levels of trade which cannot be traced in detail – our clients cannot be referred to the fact that they must assert their rights vis-à-vis the state authorities, which are in a position to ban, as of 2045 at the latest, the running of the cars made by your firm.

This is because our clients do not have enforceable rights that they could assert against every state in the world. Also, no legal systems exist that would allow them to assert their rights in every state in the world, from Afghanistan to Congo, from Turkmenistan to North Korea. Your firm's cars are driven everywhere in these countries.

Our clients would not even be able to take legal action against the Federal Republic of Germany to stop passenger cars with combustion engines from being registered any more. This is because the Federal Government would object and state that it has no influence on this; the regulations are fully harmonised under Union law by Regulation (EU) 2019/631 of the European Parliament and of the

Council of 17 April 2019 setting CO_2 emission performance standards for new passenger cars. This does not provide for any phase-out date for internal combustion engine vehicles.

However, no effective individual legal protection is available against the European Union (see with regard to climate protection the rejection of the so-called Peoples Climate Case by ECJ, judgment of 25 March 2021 - C-565/19 P - ECLI:EU:C:2021:252). This pathway is also blocked.

But what our clients have are (German) fundamental rights. And what also exists is your company, which is also obliged to our clients under private law due to the indirect third-party effect of fundamental rights.

Therefore, the rights asserted here against your company must be pursued; any other way is excluded.

The assertion of the rights at issue by way of the present legal action is, therefore, also mandatory for the granting of effective legal protection (Article 19 (4) of the Basic Law).

Even if your firm were to declare that it would attach to any sales contract concluded after 2030 an undertaking that the car would be decommissioned after 2045 at the latest and include appropriate clauses to the effect that this would also apply to any respective legal successor, you would not be able to guarantee that this undertaking would actually be enforced.

To ensure that your company does not cause such a high level of CO_2 pollution by placing new cars on the market until then – e.g. through a sharp increase in production – this legal request must be supplemented by a certain maximum CO_2 budget that still exists. This budget, also mentioned at the beginning, must be adhered to. It is derived in detail from the facts set out in the **attached document**.

In order to avoid legal injunction proceedings, we thus request that you submit to us a declaration of discontinuance, secured by a promise to pay a sufficient contractual penalty, by

10:00 a.m. on 20 September 2021;

this statement corresponds to our claims for injunctive relief mentioned at the beginning.

We would like to point out that only the submission of a sufficient declaration of submission with a penalty clause will eliminate the risk of repetition and settle our claim for injunctive relief.

It is thus not sufficient to state that the act complained of has ceased and/or has been replaced by another. Nor is the acceptance of an obligation without any penalty sufficient.

With kind regards

Professor Dr Remo Klinger

Lawyer