In advance via e-mail: info@wintershalldea.com
Wintershall Dea AG
Friedrich-Ebert-Strasse 160
32119 Kassel

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 extracting natural gas and/or crude oil that emits more than 0.62 Gt CO2 (natural gas) or more than 0.31 Gt CO2 (crude oil) when burned (calculated as of 1 January 2021), unless your company can demonstrate greenhouse gas neutrality for the CO2 emissions exceeding this amount,

and

2. from opening new oil or gas fields after 31 December 2025 or participating in such openings through equity holdings.

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 CO2. 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 CO2 emissions at its disposal.

The court also found that extensive depletion of the CO2 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 CO2 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 CO2 emissions of each individual thus affect the future freedoms and development opportunities of us all.

Your company can, at most, only consume the above-mentioned budget from the global CO2 budget, even with the generous intellectual starting point that it has only been aware of the freedom-restricting mechanism since the climate decision of the Federal Constitutional Court. 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 interests and legal interests. They are, therefore, unlawful.

By extracting natural gas and crude oil after exhausting the remaining CO2 budget and after a date that contradicts GHG neutrality – despite knowledge of the resulting dangers – your company is causally responsible for any interference with our clients’ rights.

The CO2 emissions resulting from your firm’s business activities consume a considerable share of the remaining global CO2 budget. Your company is, therefore, a causal contributor to the impending restrictions on our clients’ freedom.

Your company’s business decisions are adequately causal for the significant greenhouse gas emissions of your firm’s products. Your firm has not decided on a date on which it will stop extracting oil and gas in line with our clients’ request. You are planning to place on the market significant sources of danger to human health, to the preservation of an environment that is viable for humans, and to the general personal rights of those affected in Germany, including our clients.

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 CO2 budget entails.

With such knowledge of the dangers, your company cannot rely on the legal requirements for the extraction of oil and gas. Just as a company that knows of the carcinogenicity[[1]](#footnote-1) 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 the extraction of oil and gas 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 CO2 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 CO2 budgets being consumed more than is permissible to prevent dramatic climatic consequences and greenhouse gas neutrality not being achieved even 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 new oil field and gas field opened after 2025 will hinder greenhouse gas neutrality from being achieved. This is because your firm has no control over whether and how these products – which harm the climate and counteract greenhouse gas neutrality – will be used for the duration of their useful life. Even if your company sells its shares in these fields, other companies can produce the oil and gas. Therefore, your company must stop participating in the opening of new oil and gas fields so that such a possibility does not arise in the first place.

Nor can we refer our clients the fact that they must assert their rights against the government agencies that are in a position to prohibit the extraction of oil and gas by your company.

This is because our clients have no enforceable rights that they can assert against every state in the world. Nor are there any legal systems that would allow this to happen in every state in the world that extracts or invests in oil and gas.

Our clients would not even be able to take legal action against the Federal Republic of Germany to stop its participation in oil and gas production.

Even vis-à-vis the European Union, there is no effective individual legal protection available (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).

How the CO2 budget to which your company is entitled and which is determined on the basis of fundamental rights is calculated can be found in

**Appendix 1**

of this letter.

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

1. Carcinogen (adj.): carcinogenic; causing or triggering cancerous growths. [↑](#footnote-ref-1)