

This is an English translation of the summary of the motion filed against Volkswagen on November 9th, 2021. The full motion in German can be found here:

<https://www.greenpeace.de/presse/publikationen/greenpeace-reicht-klage-gegen-volkswagen-ein>

Motion

1. Martin Kaiser
2. Roland Hipp
3. Clara Mayer

- Plaintiffs -

Legal representatives: Günther Attorneys at Law, Mittelweg 150, 20148 Hamburg, Germany

against

the
Volkswagen AG,
represented by the Board of Management,
Berliner Ring 2
38440 Wolfsburg

- Defendant -

for: Cease and desist from excessive CO2 emissions from business activities

Applications

In the name of and on behalf of the claimants, we are bringing legal action and request that a date and time be set for the hearing, at which we will request that

the defendant be ordered

1. under threat of a fine of up to EUR 250,000 (or, in the alternative, imprisonment) or imprisonment of up to six months

to refrain

- a) from delivering or distributing after the end of 2029 — this applies to both the defendant and all fully consolidated subsidiaries — new passenger cars equipped with an internal combustion engine (motor vehicles which are designed and equipped for the transport of no more than nine persons including the driver) and light commercial vehicles (motor vehicles designed and equipped for the transport of persons or goods with a maximum permissible total weight of up to 3.5 tons), whether for consideration or free of charge

- b) from permitting any vehicles specified under a), which it manufactures or causes to be manufactured by any of its fully consolidated subsidiaries, to be distributed and/or delivered after the end of 2029, whether for consideration or free of charge

2. to implement appropriate measures

– with regard to the vehicle classes listed in motion 1 –

- a) to ensure that annual aggregated CO₂ emissions (scopes 1, 2 and 3) resulting from the corporation's and its fully consolidated subsidiaries' development, production and sale of passenger cars and light commercial vehicles, as well as passenger car services, are reduced by at least 65 percent by 2030 relative to 2018 levels, and that this reduction is maintained at or below this level, applying the accounting and reporting standards of the World Resources Institute — the Greenhouse Gas Protocol — or similar recognised scientific standards

- b) to ensure that across the corporation, that is, across all fully consolidated subsidiaries and brands engaged in the development, production, sale of passenger cars and light commercial vehicles, as well as passenger car services, not more than 25 percent of all passenger cars and light commercial vehicles sold from 2021 to the end of 2029 are vehicles with internal combustion engines

3. to implement appropriate measures to ensure

– with regard to the vehicle classes listed in motion 1 –

a) that the defendant exercise continuous legal and actual influence on its joint enterprises (joint ventures and unconsolidated subsidiaries) engaged in the development, production and sale of passenger cars and light commercial vehicles, as well as services related to these vehicles, in such a way that annual aggregated CO₂ emissions (scopes 1, 2 and 3) are reduced by 65 percent by 2030 relative to 2018 levels, and that this reduction is maintained at or below this level, using the reporting and accounting standards specified in motion 2. a), as well as generally accepted accounting principles, to prove that it is exercising said influence,

b) that the defendant exercise continuous legal and actual influence on its joint enterprises (joint ventures and unconsolidated subsidiaries), engaged in the development, production and sale of passenger cars and light commercial vehicles, as well as services related to these vehicles, to limit the sale and distribution of vehicles with internal combustion engines to the maximum number specified in motion 2. b) by the specified date,

c) that the defendant exercise continuous legal and actual influence on its joint enterprises (joint ventures and unconsolidated subsidiaries), engaged in the development, production and sale of passenger cars and light commercial vehicles, as well as services related to these vehicles, to ensure that the sale and distribution of new passenger cars and light commercial vehicles with internal combustion engines is completely discontinued by the end of 2029 at the latest, regardless whether sold or distributed by said joint enterprises or others.

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The claimants bring their claim against the defendant to ensure that their legally protected rights, such as their property rights, their right to health, and their right to be free of greenhouse gas-related civil liberty restrictions, are not interfered with in the future due to excessive CO₂ emissions attributable to the defendant.

Climate change and its consequences already noticeably interfere with the claimants' above-mentioned rights and threaten to infringe upon these rights even more drastically in the future. The irreversibility of said consequences forces the claimants to act now.

The defendant contributes significantly to climate change and its consequences through its CO₂ emissions. All CO₂ emissions of the VW Group are attributable to the defendant. The VW Group's carbon footprint in 2018 was 582 million tons. That corresponds roughly to Australia's annual CO₂ emissions or one percent of global CO₂ emissions. In short, the defendant is a major emitter of CO₂ emissions as its level of contribution to climate change is comparable to that of a nation state; consequently, the defendant carries a corresponding share of responsibility. This is the reason why the claimants are bringing a claim against the defendant

The claimants' applications for relief seek that the defendant reduce its future CO₂ emissions in line with the International Energy Agency's (IEA) Net Zero by 2050 scenario, All-Electric Case (NZE AEC scenario) and the CO₂ budget to which the defendant is entitled.

The NZE AEC scenario establishes a particularly lenient reduction path for the defendant compared to other CO₂ emitters because it takes into account the scientific consensus on climate change and, in particular, the target of the Paris Agreement to limit global warming¹, as well as the defendant's considerable importance to the global economy and the cost of reducing CO₂ emissions. To the claimants' knowledge, there is no other comparable and suitable scenario, and to date, the defendant has not indicated which suitable scenario it follows. However, dispensing with the use of a scenario would be arbitrary.

Although the defendant has publicly acknowledged its responsibility to substantially reduce its CO₂ emissions as quickly as possible, just as it has acknowledged the 1.5-degree target of the Paris Agreement, the defendant has yet to act on this responsibility, despite the explicit requests of the claimants.

The claimants are therefore forced to bring a civil suit against the defendant.

Specifically, the claimants request that the defendant ensure that

- a maximum of 25 percent of the passenger cars and light commercial vehicles sold by the Group are equipped with internal combustion engines from 2021 to the end of 2029, and that any such vehicles are completely discontinued from 2030 on; and that

¹ See Act ratifying the Paris Agreement of 12 December 2015, of 28 September 2016, BGBl II p. 1082, UNTS No. 54113, hereinafter also: Paris Agreement (PA)

- the VW Group reduce its CO₂ emissions by 65 percent by 2030 compared to 2018 levels.

The applications for relief sought by the claimants are admissible and well-founded under sections 1004 and 823 of the BGB (analogous).

The CO₂ emissions attributable to the defendant impair or pose a threat to the three legal interests of the claimants as mentioned above: their property (here in particular forest land and a working farm), their health, and their right to be free of greenhouse gas-related civil liberty restrictions. The existence and constitutional significance of this last-mentioned right was confirmed by the Federal Constitutional Court (BVerfG) in its decision on climate action of March 24, 2021.² This right, as well as the other framework rights recognized by the BVerfG, namely the general right of personality and the right to established and practiced business, must also be protected in civil law relationships. This protection is most prominently provided in sections 823 and 1004 of the German Civil Code (BGB).

In this landmark decision, the BVerfG emphasized that protection against the consequences of climate change requires the earliest possible action:

*Under certain conditions, the Basic Law imposes an obligation to safeguard fundamental freedom over time and to spread the opportunities associated with freedom proportionately across generations.(...) Respecting future freedom also requires initiating the transition to climate neutrality **in good time**. (...)*

That means that the relative mildness or severity of the restrictions on freedom depends on how much time remains for transitioning to CO₂-free alternatives, how soon this process is initiated, and how far the overall CO₂ emission levels have already been lowered.”³ (Emphasis added)

The other criteria contained in sections 1004, 823 (analogous) for the liability of the defendant are also met. In particular, the defendant is a “tortfeasor” (*Störer*) as defined under section 1004 (1) of the BGB as regards all CO₂ emissions of the VW Group. The liability stems from the defendant’s violation of its duty of care or general standards of nuisance.

The violation of such a duty of care was also the basis for the judgement handed down by the District Court of The Hague as the competent civil court of first instance, ordering the Royal Dutch Shell (RDS) oil company to reduce its CO₂ emissions. It ruled against the company on the grounds of breach of duty of care,

“to limit or cause to be limited the aggregate annual volume of all CO₂ emissions into the atmosphere (Scope 1, 2 and 3) due to the business operations and sold energy-carrying products of the Shell group to such an extent that this volume will have reduced by at least net 45% at end 2030, relative to 2019 levels.”

² See footnote [Fehler! Textmarke nicht definiert.], Ls. 4, para. 183, 121.

³ See The Hague District Court, Judgement of 26 May 2021 – C/09/571932 / HA ZA 19-379, No. 5.3 (Tenor) and No. 4.4.1 ff.; <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339> (accessed 7 July 2021). For a German summary, see Verheyen/Franke, *Deliktsrechtlich begründet CO₂-Reduktionspflichten von Privatunternehmen – Zum “Shell-Urteil“ des Bezirksgericht Den Haag*, ZUR 2021, forthcoming.

The main assessments of the Dutch civil court are also applicable here in connection with sections 1004, 823 of the German Civil Code (analogous) notwithstanding the differences between the tort law systems.

According to the established case law of the Federal Court of Justice (BGH), the party who creates a hazardous situation – regardless of its nature – is in principle obligated to take necessary and reasonable precautions to prevent harm to others to the extent possible.

The applications brought forth by the claimants ensure precisely that.

If ordered as applied the defendant will not cause emissions in the order of 2 Gt CO₂ equivalent – this represents a third of the overall remaining carbon budget for Germany on the basis of the landmark climate decision. This would greatly improve the protection of the legal interests of the claimants.

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