

PRESS RELEASE

22 April 2009

Emission Trading: Monitoring Concepts to be Approved by Public Authorities

Cologne, 22 April 2009 - Luther Rechtsanwaltsgesellschaft has achieved a landmark decision on behalf of the operators of approximately 1,700 German plants that are subject to emission trading (1 K 1305/08.KO). According to this decision, the state authorities are under obligation to fully approve the monitoring concepts of the plant operators. So far, public authorities approved only deviations and facilitations, but not the concepts as a whole. This means for the trading period 2008 to 2012 that about 7,000 approvals need to be issued.

Background:

The operators of approximately 1,700 German plants that are subject to emission trading have a legal obligation to determine their annual carbon dioxide emissions and to notify the figures to the German emission trading authority (Deutsche Emissionshandelsstelle, "DEHSt"). For each reported metric ton of carbon dioxide emissions, an emission certificate must then be filed with the DEHSt.

The manner in which plant operators have to determine the carbon dioxide emissions is stipulated in detail in the so-called Monitoring Guidelines issued by the European Commission. Besides technical requirements for emission determination, these guidelines provide, *inter alia*, that each operator must describe its manner of determining emissions within the framework of a so-called monitoring concept which relates

specifically to such operator's plant; during the trading period, this concept must be submitted to the competent authority for approval each year anew. This approval is a prerequisite for the examination of the emission report by the competent authority. The approval may additionally save a plant operator from sanctions by the DEHSt if the situation arises. During the trading period from 2008 to 2012, these sanctions amount to EUR 100 for any permit not submitted.

The company represented by Luther, which is one of the largest German manufacturers of ceramics products, was provided with an approval covering merely its deviations from the Monitoring Guidelines, rather than with a full approval for its monitoring concept, as applied for. This endangered not only the assessability of its emission report for the year 2008, but also the protection offered by the approval in the case of possible sanction procedures of the DEHSt.

In its judgment published on 20 April 2009, the Administrative Court of Koblenz has sustained the action brought against the competent state authority in Rhineland Palatinate for full approval of the monitoring concept and has imposed the cost of the proceedings on the authority, which must additionally reimburse the lawyers' fees incurred by the Plaintiff in the context of the opposition proceedings. Due to the fundamental importance of this matter, an appeal is permissible.

After several years, this decision now brings clarity about a key issue concerning the emission trading system. Since the introduction of emission trading in 2005, the state authorities (with the exception of North Rhine-Westphalia) have always refused to fully approve the plant operators' monitoring concepts. This administrative practice, which was to the detriment of plant operators, has now been terminated by the Administrative Court of Koblenz for the time being.

On behalf of the Plaintiff:

Luther Rechtsanwaltsgesellschaft mbH: Dr. Stefan Kobes (Partner),
Gernot-Rüdiger Engel, Dr. Denise Renger (all Public Law).

On behalf of the State of Rhineland Palatinate:

Ministry for the Environment, Forests and Consumer Protection:
Dr. Hofmann (Leitender Ministerialrat)

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Brief Profile of Luther Rechtsanwaltsgesellschaft mbH

Luther is one of the leading German commercial law firms providing comprehensive services in all the relevant fields of legal and tax consulting. The full-service law firm employs more than 280 lawyers and tax advisors and is represented at 13 German economic centres and at important investment locations in Europe and Asia with its five international offices in Brussels, Budapest, Istanbul, Shanghai and Singapore. Our clients include medium-sized enterprises and large corporations, as well as the public sector. Luther is part of the PMLG international group of law firms (www.pmlg.eu) and is the German member of Taxand, a worldwide network of independent tax firms (www.taxand.com).

Luther is a law firm with an entrepreneurial approach: our innovative awareness aspires us to provide our clients with customised legal advice that addresses individual needs and delivers the greatest possible economic benefit. Our lawyers and tax advisors have a solid understanding of interdisciplinary matters and a wealth of experience in collaborating on complex tasks.

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