

No anonymity for ministry officials – Luther successful in Federal Administrative Court for glass industry

Düsseldorf, 05.09.2022 – The Federal Ministry of Economics and Technology may not keep the names of its officials secret, even if they may have acted unlawfully. In response to enquiries from citizens and companies, it must disclose which ministry officials were involved and responsible in the enactment of legal ordinances and other measures. This has now been decided by the Federal Administrative Court in a landmark decision on a complaint by a company in the glass industry, overturning contrary decisions by the Berlin Administrative Court and the Berlin-Brandenburg Higher Administrative Court. The glass industry company was represented by Luther Rechtsanwaltsgesellschaft.

The proceedings concerned a request by a glass manufacturer to the Federal Ministry of Economics to provide it with all files in connection with the enactment of a fee ordinance in the area of energy law that burdened the company. The company relied on the provisions of the Environmental Information Act. It wanted to clarify the ministerial files to clarify the legality of a fee ordinance that was later actually annulled by the administrative court. The ministry refused to do so because of the danger of publishing personal data on the internet, which could not be ruled out from its point of view.

After the Administrative Court of Berlin and the Higher Administrative Court of Berlin-Brandenburg initially approved this decision, the 10th Senate of the Federal Administrative Court under its Vice-President Prof Dr Andreas Korbmacher now came to a different decision. Ministerial officials, as agents of government and administrative tasks, would have to accept that their names and official contact details be published. This also applies to employees of associations if they participate in hearings of the federal government in a manner comparable to experts. In this respect, the legislature had generally given priority to the public's interest in the disclosure of personal data over the interest in secrecy.

Dr Stefan Altenschmidt, partner at Luther Rechtsanwaltsgesellschaft and litigation representative of the plaintiff company before the Federal Administrative Court, said: "The decision of the Federal Administrative Court is of fundamental importance for the entire practice of disclosing government and administrative documents, including email communications, in Germany. In future, the names of the persons involved in the processes

may no longer be blacked out here. According to the Federal Administrative Court, there must be no secret administration in the environmental sector; transparency must be established. This applies at both federal and state level, as well as at the municipal level. This makes it easier for companies and citizens to understand their responsibilities. This can facilitate the defence against unlawful measures as well as the assertion of official liability claims."

Reference numbers:

BVerwG 10 C 5.21 – Judgment of 1 September 2022

Previous instances:

OVG Berlin-Brandenburg, OVG 12 B 1.19 – Judgment of 10 June 2020

VG Berlin, VG 2 K 384.16 – Judgment of 22 November 2018

On behalf of the plaintiff Verallia Deutschland AG:

Luther, Environment & Planning Law, Regulatory: Dr Stefan Altenschmidt, LL.M. (Partner), Pauline Müller (Associate)

On behalf of the defendant Federal Ministry of Economics and Climate Protection (BMWK):

Redeker Sellner Dahs: Dr Gernot Schiller (Partner)

Central Legal Department of the BMWK: Dr Davids

On behalf of the representative of the federal interest involved in the proceedings:

Federal Ministry of the Interior: Dr Dr Bernhard Sendler

Luther Rechtsanwaltsgesellschaft mbH

Luther is a leading German commercial law firm that offers comprehensive legal and tax advice. The full-service law firm employs over 420 lawyers and tax advisors and is represented in ten German economic hubs as well as with 11 of its own international offices in key investment locations and financial centres in Europe and Asia. Its clients include medium-sized enterprises and large corporations, as well as the public sector.

Luther works closely with other commercial law firms in all the prevailing jurisdictions. Luther is a founding member of unyer (www.unyer.com), a global organisation of leading professional services firms that cooperate exclusively with each other.

Luther Rechtsanwaltsgesellschaft mbH is a law firm with a business 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. All of Luther's lawyers and tax advisers have a solid understanding of interdisciplinary matters and a wealth of experience in collaborating on complex tasks. Luther has been named "Law Firm of the Year: Germany 2021" and also "European Law Firm of the Year 2021" by The Lawyer, one of the most well-known legal magazines worldwide. Further information is available at: www.luther-lawfirm.com.

Press Contact Luther Rechtsanwaltsgesellschaft mbH

Verena Claasen

verena.claasen@luther-lawfirm.com

T +49 221 9937 18745

Katja Hilbig

katja.hilbig@luther-lawfirm.com

T +49 221 9937 25070