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Recognition of Climate Protection Measures: Success at ECJ for the Lime Industry with Luther

Düsseldorf – The European Commission's refusal to date to allow the so-called Carbon Capture & Utilisation (CCU) in the lime industry as a way to reduce greenhouse gas emissions is deemed illegal. This was held by the European Court of Justice on 19 January 2017.

The judgement was based on a complaint by lime producer Schaefer Kalk, which is considered a test case for the entire European lime industry. The industrial enterprise was represented by Luther Rechtsanwaltsgesellschaft (ECJ, judgement of 19 January 2017, case C-460/15, Schaefer Kalk).

"There are numerous companies in the European lime industry which use a special procedure to reduce carbon dioxide emissions: They capture carbon dioxide produced in the operation of lime kilns and transfer it to a precipitated calcium carbonate installation. There, carbon dioxide is then chemically transformed and bound. This procedure, also known as Carbon Capture and Utilisation (CCU), protects the environment as it prevents the release of greenhouse gases into the atmosphere. At the same time, it can provide financial savings for lime producers because no expensive emissions certificates need to be surrendered for the transformed carbon dioxide", Dr Stefan Altenschmidt, attorney and partner for environmental, planning and regulatory law with Luther Rechtsanwaltsgesellschaft, explains the technical and economic background of the case.

"The European Commission, however, has refused to accept CCU in the lime industry to date. In its monitoring directive it has set forth explicitly that carbon dioxide which is transferred and chemically transformed by way of CCU must also be regarded as an emission into the atmosphere. The lime producers in question were thus forced to purchase and surrender emissions certificates even though no greenhouse gases ever entered the atmosphere. Brussels justified this with the risk of a loophole. The Commission wanted to prevent provisions of the emissions trading system being hereby circumvented. The Commission also considers that competition between lime companies would be distorted if some companies can reduce their emissions by way of CCU and thus need to purchase and surrender fewer emissions certificates," Dr Adina Sitzer, attorney at Luther Rechtsanwaltsgesellschaft, summarizes the position of the authority in Brussels. The Federal Government of Germany and the German Emissions Trading Authority at the Federal Environment Agency (DEHSt) supported the European Commission in the proceedings at the ECJ.

With this recent judgement, the ECJ has rejected the arguments of the Commission and the German authorities and has invalidated the respective provisions of the EU monitoring directive (Art. 49 para. 1 p. 2 and exhibit IV section 10 sub-section B directive (EU) no. 601/2012). Dr Stefan Altenschmidt, attorney and partner for environmental, planning and regulatory law with Luther Rechtsanwaltsgesellschaft: "The ECJ has determined in its judgement that the European Commission has violated its rights resulting from the emissions trading directive 2003/87/EC and shall allow the CCU for the lime industry. The Court of Justice justified this with the existence of sufficient means of monitoring. Therefore, loopholes need not to be feared. Moreover, the competition between companies is not distorted because there is an objective difference between using CCU and merely releasing carbon dioxide into the atmosphere. This current judgement in Luxembourg clarifies that lime producers who actively reduce their emissions by way of CCU will also be rewarded appropriately within the European emissions trading system."

Legal representation at the ECJ:

For Schaefer Kalk:

Luther Rechtsanwaltsgesellschaft, Environment and Planning Law,
Regulatory: Dr Stefan Altenschmidt (Partner), Dr Adina Sitzer (both
Düsseldorf)

Additional parties:

European Commission: Eric White, Katarzyna Herrmann, both Legal Service of the European Commission

German Emissions Trading Authority at the Federal Environment Agency (DEHSt): Martin Fleckner, Legal Department DEHSt

Federal Government: Thomas Henze, Dr Kathrin Petersen, both Federal Ministry of Economics and Technology

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Brief Profile Luther

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Luther works closely with other commercial law firms in all the prevailing jurisdictions worldwide. On the Continent, Luther is part of a group of independent leading law firms who have worked together for many years on joint cross-border projects.

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.

Our lawyers and tax advisors have a solid understanding of interdisciplinary matters and a wealth of experience in collaborating on complex tasks. Further information is available at: www.luther-lawfirm.com

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