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No national tightening of EU emission limit values: French industrial group Saint-Gobain successful with Luther against the state of North Rhine-Westphalia

Dusseldorf – German environmental authorities should not request stricter emission limit values from industry than required by the best available technique approach, as determined in particular by the European Union. Neither is the pollution control committee of Germany’s states and the Federal Ministry for the Environment (LAI) authorized to do so. This was decided by the Administrative Court of Aachen in two judgments announced on 11 October 2017.

The decision was based on two lawsuits filed by Saint-Gobain Glass Deutschland GmbH, a subsidiary of the French building materials group Compagnie de Saint-Gobain, against the state of North Rhine-Westphalia (District Government of Cologne). The industrial company was represented by German law firm Luther (Administrative Court Aachen, judgements of 11 October 2017, case no 6 K 996/16 and 6 K 997/16).

“The suits filed by Saint-Gobain were directed against new emission limit values for the North Rhine-Westphalia glass factories set by the district government of Cologne. The district government was instructed by North Rhine-Westphalia’s Ministry of Environment to specify stricter values for certain substances than those required by

the European Commission's BAT conclusions on best available techniques in the EU glass industry. The Ministry of Environment wanted to implement the corresponding specifications of the pollution control committee of Germany's states of Germany's states and the Federal Ministry for the Environment (LAI). According to Saint-Gobain, the Federal and State Ministries of Environment represented in the LAI made decisions on stricter specifications without giving any acceptable justification. The administrative court in Aachen was also unable to discern any factual explanation for the LAI specifications and accused the German environmental authorities of acting in a manifest error of assessment by determining the relevant best available technique standards," says Luther partner Dr Stefan Altenschmidt, explaining the background of the judge's decision in Aachen.

The significance of the decision of the Administrative Court of Aachen extends beyond the specific case, emphasizes Dr Stefan Altenschmidt:

"Following the implementation of the EU Industrial Emissions Directive 2010/75/EU (IED), the role of the European Union in setting emission limit values for industrial companies and power plants has been strengthened. The European Commission is now allowed to use the so-called Seville process to establish Union-wide emission limits. However, German environmental policymakers are partly dissatisfied with the EU's environmental standards. The lack of transparency of the political processes in Brussels is often criticised. Or it is criticised that the interests of other Member States were able to assert themselves better than German ideas. The current judgments clearly indicate that these critics provide no grounds for a national derogation from harmonised EU environmental standards. In fact, they strengthen European processes and contribute to the harmonisation of competitive conditions for companies operating throughout Europe."

Legal representation at the Administrative Court of Aachen:

For Saint-Gobain:

Luther Rechtsanwaltsgesellschaft, Environment, Planning, Regulation: Dr Stefan Altenschmidt (Partner), Philipp-Alexander Schütter (both Dusseldorf)

In-house: Attorney at law and in-house counsel Rainer Surberg, legal department of Compagnie de Saint-Gobain, branch office Germany, Aachen

Other parties involved:

District Government of Cologne, Department 53, Government's
Director Halmschlag

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Brief Profile Luther

Luther is a leading German commercial law firm that offers comprehensive legal and tax services. The full-service law firm employs more than 350 lawyers and tax advisors and is represented at 10 German economic centres and at important investment locations and financial centres in Europe and Asia with international offices in Brussels, London, Luxembourg, Shanghai, Singapore and Yangon. Our clients are 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 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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