

Press Release

14 February 2012

European Court of Justice grants public access to the files of the German Ministry for the Environment

Luxembourg – In a landmark ruling, the Court of Justice of the European Union (“European Court of Justice”) has granted the German industry extensive insight into the files of the Federal Ministry of the Environment (Bundesumweltministerium). The judgment made today means the public authorities will no longer be able to refer to the confidentiality of the proceedings of public authorities after an Act of Parliament has been successfully enacted. The judgment was based on a claim filed by the glass manufacturer Flachglas Torgau against the Ministry for the Environment. Flachglas Torgau was successfully represented by the Dusseldorf environmental lawyer Dr Stefan Altenschmidt (European Court of Justice, Judgment dated 14 February 2012, case C-204/09).

Dr Stefan Altenschmidt, a partner at Luther and lead partner in the matter said: "The European Court of Justice has decided that the Ministry for the Environment is obliged to make its files and emails available to the public after an Act of Parliament has been successfully enacted. In addition, in the future environmental ministers won't be able to refer so easily to the confidentiality of internal proceedings of public authorities."

According to the environmental law expert, companies and also environmental organisations and individuals will now have the opportunity to examine the circumstances surrounding the drafting of acts by the Ministry for the Environment. "In the future any individual will be able to ask the Ministry for the Environment to account for how an environmental Act of Parliament has been drafted by the Ministry and whose interests are represented in it. The Ministry for the Environment will become transparent. The passing of controversial laws, such as

cancelling long-term guarantees for the allocation of free emission allowances in emission trading without providing any substitute, or phasing out nuclear energy, can now be monitored in detail. The judgment from Luxembourg will also make it easier to contest such acts at court."

Information about the proceedings

A claim was filed by Flachglas Torgau in 2006 in which the company had requested access to the files and emails of the Ministry for the Environment, according to the German law on environmental information (Umweltinformationsgesetz), relating to the act that had been passed in the summer of 2004 concerning the initial allocation of free emission licences in EU emission trading. Flachglas Torgau filed its claim because it suspected that the Ministry for the Environment - that at that time was being run by Jürgen Trittin (from the Bündnis 90/Die Grünen party) - had been influenced by extrinsic considerations and lobbies from outside the Ministry which had negatively affected the industry. The Ministry for the Environment did not initially decide on the application for access to information submitted by Flachglas Torgau and the company then filed an action against the Ministry for failure to act.

Both the Administrative Court (Verwaltungsgericht) Berlin and also the Higher Administrative Court (Oberverwaltungsgericht) Berlin-Brandenburg only allowed the claim to be brought in part. The courts held that the law on environmental information (Umweltinformationsgesetz) allowed the Ministry to block access to files and emails which related to the legislative process and the Ministry's internal proceedings. However, the Federal Administrative Court (Bundesverwaltungsgericht) held that this was a breach of the EU Directive on free access to environmental information and submitted the proceedings to the Court of Justice for a preliminary ruling. The Grand Chamber of the Court of Justice which is responsible for questions of principle and chaired by the President Vassilios Skouris, today ruled in favour of Flachglas Torgau.

Lower-instance courts: Administrative Court (Verwaltungsgericht) Berlin, judgment dated 17 November 2006 (VG 10 A 182.06), Higher Administrative Court (Oberverwaltungsgericht) Berlin-Brandenburg, judgment dated 8 May 2008 (OVG 12 B 24.07), Federal Administrative Court (Bundesverwaltungsgericht) (BVerwG 7 C 17.08).

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