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Limitation of the EEG apportionment: Industry files suit against European Commission with Luther

Brussels – Yesterday, Luther Rechtsanwaltsgesellschaft mbH has filed suit against the European Commission with the European Court in Luxembourg for several German industrial companies. The companies are addressing the imminent loss of their multi-million relief from the EEG apportionment with their nullity actions. This risk has existed since the opening of the state aid control procedures in December 2013. The assessment of the EEG apportionment as a state aid by the Brussels authority as "preliminary" leads to considerable disadvantages for the German industry.

Several steel and paper manufacturers as well as companies from the glass and wood working industry are part of the plaintiffs represented by Luther.

Attorney-at-law Dr. Helmut Janssen, Partner at the Brussels office of Luther and state aid legal expert explained: "Two dangerous state aid legal developments are coming together as an explosive mixture in these proceedings. On the one hand, the preliminary assessment of the Commission that the EEG is a state aid. On the other hand, a new judgment of the European Court of Justice, according to which German courts must do everything to stop the granting of the - alleged - aids. This is what the complaints are addressing in the core with two arguments: First of all, the EEG apportionment is not a state aid. This is because neither the apportionment nor its limitation in favor of the industry affect the public budgets. Secondly, the Commission can examine the EEG, without violating the rights of the

companies and causing economic damage. It could have and should have chosen a different procedure for this purpose."

Regarding the political environment of the suit, Dr. Stefan Altenschmidt, Partner at the Düsseldorf office of Luther Rechtsanwaltsgesellschaft and energy law expert states: "The agreement between the minister of economic affairs, Gabriel, and the European Commission about the future of the German EEG does not solve all problems that have been caused for companies by the assessment of the so-called green electricity rebate as state aid. In the last years, the European Court of Justice has clearly tightened its case law regarding the consequences of the opening of a state aid examination proceeding, such as in favor of competitors of the aided companies. Brussels has thus exposed the German industry without any justification to the risk of an ex post burden with the EEG apportionment for the years 2013 and 2014."

Attorney-at-law Dr. Gernot-Rüdiger Engel, Partner at the Hamburg office of Luther and in the counseling field "Environment, Planning, Regulation" presents the point of view of the industry: "The state aid proceedings of the Commission constitutes the risk of an approaching doubling of the price of electricity for the plaintiffs. In part, this would mean a burden in the amount of hundreds of millions for the industrial companies. For this reason, it is appropriate to effect a speedy clarification with a lawsuit in Luxembourg and not to rely on political attempts for agreement and the lawsuit filed by the German Federal Government itself."

For the industry

Luther Rechtsanwaltsgesellschaft, Brussels: Dr. Helmut Janssen (Partner, state aid laws)

Luther Rechtsanwaltsgesellschaft, Düsseldorf: Dr. Stefan Altenschmidt (Partner), Philipp-Alexander Schütter (both environmental, planning, regulation)

Luther Rechtsanwaltsgesellschaft, Hamburg: Dr. Gernot-Rüdiger Engel (Partner), Dr. Mathias Mailänder (both environmental, planning, regulation)

Brief Profile Luther

Luther is a leading German commercial law firm that offers comprehensive legal and tax services. The full-service law firm employs over 350 lawyers and tax advisors and is represented at 11 German economic centres and at important

investment locations and financial centres in Europe and Asia with international offices in Brussels, Budapest, London, Luxembourg, Shanghai and Singapore. 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 is also the German member of Taxand, a global organisation of tax advisory firms.

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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