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Die Unternehmer-Anwälte

Press Release

21 June 2012

Luther legal opinion:
Brussels' plans for CO_2 set-aside violate EU law

Dusseldorf/Brussels – A legal opinion by German law firm Luther compiled on behalf of the Alliance of Energy Intensive Industries in the EU criticises the plans by the European Commission for stricter climate change regulations. According to the legal opinion, the Brussels considerations violate EU law.

The legal opinion compiled in the middle of June 2012 by Luther analyses the plans of the European Commission to artificially reduce the amount of the CO_2 emissions allowances traded on the market to increase the currently low CO_2 price and to generate additional climate protection incentives (so-called "Set-aside"). It was compiled on behalf of the Alliance of Energy Intensive Industries in the EU. Members of the alliance are the leading European associations of the steel, cement, glass and paper industry, amongst others.

Attorney Dr Stefan Altenschmidt, Head of the Practice Group Environment/Planning/Regulatory in the Dusseldorf office of Luther, states: "The plans of the EU Commission for a Set-aside of CO_2 allowances with the aim to increase the market prices violate the Emissions Trading Directive. According to the Directive, the Commission is not entitled to interfere with the market through the change of the Auctioning Regulation intended by it. Such interference would not be permitted under European law for lack of a competence base".

The EU Emissions Trading Directive

The expert opinion compiled by Dr Stefan Altenschmidt is based on the provisions of the EU Emissions Trading Directive (inter alia Article 10 of the Emissions Trading Directive as amended in 2009). According to the Directive, the Commission is not competent to interfere into the carbon market market as discussed by it. It is neither entitled to a temporary reduction of the amount of the CO_2 allowances to be auctioned, nor to a permanent reduction of the tradable CO_2 budget.

Dr Stefan Altenschmidt: "The Emissions Trading Directive only grants the EU Commission the right to interfere with the market in case of CO_2 prices that are too high to reduce the burden on businesses. However, the Directive does not allow the Commission to work towards a price increase in case of CO_2 rates that are too low. According to the Directive, the overall amount of emission allowances available in the market until 2020 is also already determined. This amount may only be reduced in case of a change of the Emissions Trading Directive. The political idea to use the Auctioning Regulation to stimulate a stronger carbon price signal is incompatible with applicable European law".

Member associations of the Alliance of energy intensive industries in the EU:

- EUROFER (steel)
- Cembureau (cement)
- Eurométaux (nonferrous metals)
- Eula (lime industry)
- Cepi (paper industry)
- CeramUnie (ceramic industry)
- Eurogypsum (gypsum industry)
- EurAlliages (ferro-alloys and silicon industry)
- Europia (oil refining industry)
- Glass Alliance Europe (glass)

Contact Attorney Dr Stefan Altenschmidt
Graf-Adolf-Platz 15
40213 Dusseldorf | Germany

Telephone: +49 211 5660 18737
Fax: +49 211 5660 110
stefan.altenschmidt@luther-lawfirm.com

Brief Profile Luther Rechtsanwaltsgesellschaft mbH

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 11 German economic centres and at important investment locations and financial centres in Europe and Asia with international offices in Brussels, Budapest, Istanbul, 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

Press contact

Luther Rechtsanwaltsgesellschaft mbH
Katja Hilbig | Press Officer
Anna-Schneider-Steig 22
50678 Cologne | Germany

Phone: +49 221 9937 25070
Mobile: +49 1520 16 25070
Email: katja.hilbig@luther-lawfirm.com