
GERMANY

Court Upholds Conviction of Former Deutsche Bank Official**by William Hoke**

Germany's Federal Court of Justice has upheld the conviction of a former Deutsche Bank AG official in a VAT carousel fraud case involving carbon emissions trading certificates and affirmed his three-year prison sentence.

Helmut Hohnholz and six other ex-employees of Deutsche Bank had been found guilty in 2016 for their roles in the scheme, which cheated the government out of €145.5 million in VAT in 2009 and 2010. The other six defendants were convicted of aiding and abetting the VAT fraud and were given suspended prison sentences, and were ordered to pay fines ranging from €10,000 to €200,000.

Under the version of the carousel fraud scheme for which the former Deutsche bank employees were convicted, buyers in EU member states purchased emissions permits without paying VAT. The buyers then sold the permits in a series of transactions for which VAT refunds were claimed on tax that was never paid.

The Federal Court of Justice, Germany's highest court for criminal and civil law, said May 15 that Hohnholz coordinated the trading of the greenhouse gas emission certificates. Four of the other defendants appealed their 2016 convictions, as did the prosecutor's office, which said they were guilty of direct participation in the scheme and were not mere accessories to the fraud. The Court's formal decision will be published at a later date.

Wibke Stark, a lawyer with Grützmaker, Gravert, Viegener, said the Frankfurt District Court found that the defendants were aware that Deutsche Bank would not be entitled to claim refunds under the scheme. The court determined that "it was also in their own interest to continue the lucrative [carbon dioxide] business with margins easily achievable for Deutsche Bank AG," she said.

Stark said the Federal Court of Justice held that the lower court's decision didn't support a guilty verdict for one of the defendants. The case was remanded to the district court for further

consideration. The federal court upheld the other convictions and rejected the prosecutor's claim that the defendants, other than Hohnholz, had taken a more active role in the fraud.

Deutsche Bank was not indicted in the scheme. Andreas Erdbrügger, a lawyer with Flick Gocke Schaumburg, said companies cannot be prosecuted criminally under German law. "The company might also be liable to the respective tax offices for damages caused by other companies participating in the carousel scheme," he said. "Additionally, it might happen that they have to pay a fine for insufficient internal controls."

Deutsche Bank declined comment on the decision. The bank previously said it had stopped trading emission certificates in 2010 and has repaid the illegal VAT refunds.

Europol, the EU's law enforcement agency, said in 2009 that carbon emissions trading fraud had cost member-state governments approximately €5 billion in lost tax revenues. Stark said German prosecutors have brought over 100 legal proceedings related to emissions trading schemes. "It is unlikely that this decision will end any and all cases, as each case is decided separately according to German law," she said. ■