

Case Study: "A Heatball is a Heatball is a Heatball!"



Legal background: The EU pledged to reduce carbon dioxide (= GHG) emissions by 20 percent by the year 2020. Article 114 TFEU (= ex Article 95 TEC) authorizes to take legislative action by approximating national laws in order to strengthen the internal market.

In 2005 Parliament and Council referred to this authorization and issued the Ecodesign Directive (2005/32/EC) which said that products must be designed in an energy-efficient way. In 2009 the Commission relied on Article 15 of the Ecodesign Directive and issued a Regulation on household lamps (244/2009/EC) under which – step by step from Sept. 1, 2009 to Sept. 1, 2012 – a ban on the production and import of conventional clear-glass light bulbs was introduced.

The case:

Dr No is an engineer from the EU who works in China. With his Chinese partner he produced 40.000 Heatballs (see the picture above) for the EU market. When the Heatballs arrived in the EU they were confiscated by the customs authority. The administrative decision was based on the view that the so called “Heatballs” are nothing else but light bulbs which cannot be put on the EU market anymore.

The action:

Dr No brings an action to the national Court and contends: The confiscation of the sale is illegal. His Heatballs are not conventional light bulbs but pure heating devices. He claims that 95 percent of the energy they consume are converted into „heat“. Apart from that the sale of the Heatballs is protected under the national Constitution (free-speech-clause and/or freedom of art). His project to bring the Heatballs on the EU market is a kind of „electric resistance vs. EU bureaucracy“. Therefore the product is also to be seen as a „piece of art“ under the wide concept of art. Last but not least it should not be forgotten that the new energy-efficient light bulbs are ugly, produce a terrible light and – what the EU is totally missing – set free highly toxic mercury when not disposed of properly.

1. Will the action of Dr. No have success?
2. Can Dr. No invoke the national Constitution? If not, what about fundamental rights?
3. Can the national Court set aside the Regulation on household lamps (244/2009/EC) if it turns out that the mercury problem was not at all considered when establishing the Regulation?
4. What would be an adequate question for a preliminary reference if the court has serious doubts as to the legality of the Regulation on household lamps (244/2009/EC).

I am looking forward to our discussion!