

## **Case C-425/08**

**Enviro Tech (Europe) Ltd**

**v**

**État belge**

(Reference for a preliminary ruling  
from the Conseil d'État (Belgium))

(Environment and consumer protection — Classification, packaging and labelling of  
n-propyl bromide as a dangerous substance — Directive 2004/73/EC —  
Directive 67/548/EEC — Duty to transpose)

Judgment of the Court (Second Chamber), 15 October 2009 . . . . . I - 10037

### **Summary of the Judgment**

*Approximation of laws — Classification, packaging and labelling of dangerous substances —  
Directive 67/548 — Adaptation to technical progress*

*(Council Directive 67/548; Commission Directive 2004/73)*

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Where the Community authorities have a broad discretion, as is the case when the Commission adopts measures to adapt to technical progress the Annexes to Directive 67/548 on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, in particular as to the assessment of highly complex scientific and technical facts in order to determine the nature and scope of the measures which they adopt, review by the Community judicature is limited to verifying whether there has been a manifest error of appraisal or a misuse of powers, or whether those authorities have manifestly exceeded the limits of their discretion. In such a context, the Community judicature cannot substitute its assessment of scientific and technical facts for that of the institutions on which alone the Treaty has placed that task. In addition, when a Community authority is called upon, in the performance of its duties, to make complex assessments, its discretion applies also, to a certain extent, to the finding of facts underlying its action.

Thus, when the Commission, by Directive 2004/73 adapting to technical progress for the 29th time Directive 67/548, to classify n-propyl bromide as a highly flammable substance, follows the opinion of the flammability expert group, which is based on the results of a number of tests carried out using different methods, confirmed by information taken from specialist publications, or where it classifies the same substance as toxic for reproduction in category 2 following the opinion of experts, itself based on the criteria set out in point 4.2.3 of Annex VI to Directive 67/548 and, in particular, in point 4.2.3.3 of that annex, the Commission's exercise of its discretion is not vitiated by manifest error or by an abuse of power and does not manifestly exceed the limits of its discretion.

(see paras 47, 62, 64, 70, 71, operative part)