

JUDGMENT OF THE COURT

of 15 October 2002

In Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P: Limburgse Vinyl Maatschappij NV (LVM) and Others v Commission of the European Communities⁽¹⁾

(Appeal — Competition — Polyvinylchloride (PVC) — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Annulment of a Commission decision — New decision — Documents predating the first decision — Res judicata — Principle of non bis in idem — Limitation — Reasonable period — Statement of reasons — Access to the file — Fair hearing — Professional secrecy — Self-incrimination — Private life — Fines)

(2002/C 323/09)

(Languages of the case: German, English, French, Italian and Dutch)

In Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, Limburgse Vinyl Maatschappij NV (LVM), established in Brussels (Belgium), (Agent: I. G. F. Cath), (C-238/99 P), DSM NV and DSM Kunststoffen BV, established in Heerlen (Netherlands), (Agent: I. G. F. Cath), (C-244/99 P), Montedison SpA, established in Milan (Italy), (Agents: G. Celona and P. A. M. Ferrari), (C-245/99 P), Elf Atochem SA, established in Paris (France), (Agent: X. de Roux), (C-247/99 P), Degussa AG, formerly Degussa-Hüls AG, before that Hüls AG, established in Marl (Germany), (Agent: F. Montag), (C-250/99 P), Enichem SpA, established in Milan, (Agents: M. Siragusa and F. M. Moretti), (C-251/99 P), Wacker-Chemie GmbH, established in Munich (Germany), Hoechst AG, established in Frankfurt am Main (Germany), (Agent: H. Hellmann), (C-252/99 P), Imperial Chemical Industries plc (ICI), established in London (United Kingdom), (Agents: D. Vaughan and D. Anderson, K. Bacon, barrister, and also by R. J. Coles and S. Turner, solicitors), (C-254/99 P): Appeals against the judgment of the Court of First Instance of the European Communities (Third Chamber, Extended Composition) of 20 April 1999 in Joined Cases T-305/94 to T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 Limburgse Vinyl Maatschappij and Others v Commission [1999] ECR II-931, seeking to have that judgment set aside, the other party to the proceedings being: Commission of the European

Communities (Agents: J. Currall and W. Wils, assisted by M. H. van der Woude) (C-238/99 P and C-244/99 P), (Agent: R. M. Morresi), (C-245/99 P and C-251/99 P), (Agent: E. Morgan de Rivery), (C-247/99 P), and (Agent: A. Böhlke), (C-250/99 P and C-252/99 P), and by (Agent: M. D. Lloyd-Jones, QC (C-254/99 P), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet (President of Chamber), C. Gulmann (Rapporteur), D.A.O. Edward, A. La Pergola, P. Jann, F. Macken, N. Colneric and S. von Bahr, Judges, Advocate General: J. Mischo, Registrar: D. Louterman-Hubeau, Head of Division, and L. Hewlett, Administrator, has given a judgment on 15 October 2002, in which it has ruled:

1. Joins Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P, C-251/99 P, C-252/99 P and C-254/99 P for the purposes of the judgment.
2. Partially annuls the judgment of the Court of First Instance of 20 April 1999 in Joined Cases T-305/94 to T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 Limburgse Vinyl Maatschappij and Others v Commission to the extent that it:
 - dismissed the new plea raised by Montedison SpA alleging infringement of its right of access to the Commission's file;
 - failed to respond to the plea raised by Montedison SpA alleging a definitive transfer to the Community judicature of the power to impose penalties following the Commission's decision.
3. Dismisses the remainder of the appeals.
4. Dismisses the action brought by Montedison SpA to the extent that it is based on, first, the plea alleging infringement of its right of access to the Commission's file and, second, the plea alleging a definitive transfer to the Community judicature of the power to impose penalties following the Commission's decision.
5. Orders the appellants to pay the costs of the present proceedings. The costs of the proceedings before the Court of First Instance leading to the judgment in Limburgse Vinyl Maatschappij v Commission, cited above, are to be borne in accordance with point 5 of the operative part of that judgment.

⁽¹⁾ OJ C 352 of 4.12.1999.