

(b) If the Court considers that the action for annulment brought by TRANSPORTES EVARISTO MOLINA SA is time-barred, the applicant submits that that should be regarded as excusable since the conduct of the Commission caused confusion on the applicant's part.

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- (<sup>1</sup>) Commission Decision 2006/446/of 12 April 2006 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case COMP/B-1/38.348 — Repsol CPP) (summary published in OJ 2006 L 176, p. 104).
- (<sup>2</sup>) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC] of the Treaty (OJ 2003 L 1, p. 1).
- (<sup>3</sup>) Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article 85(3) of the Treaty to categories of exclusive purchasing agreements (OJ 1983 L 173, p. 5).
- (<sup>4</sup>) Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices.
- (<sup>5</sup>) Commission Decision 2006/446/of 12 April 2006 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case COMP/B-1/38.348 — Repsol CPP) (summary published in OJ 2006 L 176, p. 104).

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**Action brought on 28 January 2009 — Commission of the European Communities v Portuguese Republic**

(Case C-37/09)

(2009/C 82/31)

*Language of the case: Portuguese*

**Parties**

*Applicant:* Commission of the European Communities (represented by: J.-B. Laignelot, S. Pardo Quintillán and P. Guerra e Andrade, Agents)

*Defendant:* Portuguese Republic

**Form of order sought**

— A declaration, first, that by not having adopted the measures necessary to ensure that waste tipped in the dos Limas, dos Linos and dos Barreiras quarries in the district of Lourosa is disposed of or recovered without endangering human health or harming the environment, in particular without creating risks to water or soil, and to ensure that the waste is entrusted to a private or public collection service or to an undertaking responsible for its disposal or recovery and, secondly, by not having adopted the measures necessary to restrict the introduction into groundwater of substances included in List II of Directive 80/68/EEC so as to prevent the pollution of groundwater by those substances, the Portuguese Republic has failed to fulfil its obligations under Articles 4 and 8 of Directive 2006/12/EC on waste, codifying

Directive 75/442/EEC on waste, and under Articles 3 and 5 of Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances;

— an order that the Portuguese Republic should pay the costs.

**Pleas in law and main arguments**

Starting in the 1980s, waste from various sources began to be tipped in disused quarries without any supervision by the authorities whatsoever. Discharging of waste into the quarries continued until February 2004. Only in June 2004 were those areas closed off.

Analysis of the water at separate points in the old quarry area disclosed troubling levels of chemical contamination. The water table in that area is contaminated.

For many years the Portuguese authorities did not take the measures necessary to prevent holders of unidentified waste from discharging and abandoning waste in disused quarries. They did not check the discharge or abandonment of waste in the quarries or monitor its disposal.

Furthermore, the Portuguese authorities did not take the measures necessary to prevent the introduction into groundwater of harmful toxic substances. They did not make subject to prior investigation the tipping of waste capable of leading to the indirect discharge of noxious substances into groundwater. Nor did they check the surface discharge of waste.

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**Appeal brought on 29 January 2009 by Mr Ralf Schröder against the judgment of the Court of First Instance (Seventh Chamber) delivered on 19 November 2008 in Case T-187/06 Ralf Schröder v Community Plant Variety Office**

(Case C-38/09 P)

(2009/C 82/32)

*Language of the case: German*

**Parties**

*Appellant:* Ralf Schröder (represented by: T. Leidereiter and W.-A. Schmidt, Rechtsanwälte)

*Other party to the proceedings:* Community Plant Variety Office (CPVO)

**Form of order sought**

— Set aside the judgment of the Court of First Instance (Seventh Chamber) of 18 November 2008 in Case T-187/06;