

Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

4 July 2018 (*)

(Failure of a Member State to fulfil obligations — Environment — Landfill of waste — Directive 1999/31/EC — Existing landfill sites — Article 14 — Definite decision on whether or not operations may continue — Article 13 — Closure procedures — Judgment of the Court declaring a failure to fulfil obligations — Non-compliance — Article 260(2) TFEU — Pecuniary penalties — Penalty payment and lump sum)

In Case C-626/16,

ACTION for failure to fulfil obligations under Article 260(2) TFEU, brought on 30 November 2016,

European Commission, represented by E. Sanfrutos Cano and A. Tokár, acting as Agents,

applicant,

v

Slovak Republic, represented by B. Ricziová, acting as Agent,

defendant,

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Vajda, E. Juhász (Rapporteur), K. Jürimäe and C. Lycourgos, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 11 January 2018,

gives the following

Judgment

1 By its action, the European Commission claims that the Court should:

- declare that, by failing to adopt measures to comply with the judgment of 25 April 2013, *Commission v Slovakia* (C-331/11, not published, ‘the judgment in Case C-331/11’, EU:C:2013:271), in which the Court declared that the Slovak Republic had failed to fulfil its obligations under Article 14(a) to (c) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1), the Slovak Republic has failed to fulfil its obligations under Article 260(1) TFEU;

- order the Slovak Republic to pay the Commission, into the ‘European Union own resources’ account:
 - a penalty payment of EUR 6 793.80 per day of delay in the adoption of measures necessary for the Slovak Republic to comply with the judgment in Case C-331/11, payable from the delivery of the judgment in the present case until the date of adoption of the measures necessary for the Slovak Republic to comply with the judgment in Case C-331/11;
 - a lump sum of EUR 743.60 per day, totalling at least EUR 939 000, per day of delay in the adoption of the measures necessary for the Slovak Republic to comply with the judgment in Case C-331/11, payable from the delivery of that judgment on 25 April 2013,
 - until the delivery of the judgment in the present case; or
 - until the adoption of the measures necessary for the Slovak Republic to comply with the judgment in Case C-331/11, if that date precedes the delivery of the judgment in the present case; and
- order the Slovak Republic to pay the costs.

Legal context

2 Recital 18 of Directive 1999/31 states:

‘Whereas, because of the particular features of the landfill method of waste disposal, it is necessary to introduce a specific permit procedure for all classes of landfill in accordance with the general licensing requirements already set down in [Council] Directive 75/442/EEC [of 15 July 1975 on waste (OJ 1975 L 194, p. 39)] and the general requirements of Directive 96/61/EC concerning integrated pollution prevention and control [(OJ 1996 L 257, p. 26)] whereas the landfill site’s compliance with such a permit must be verified in the course of an inspection by the competent authority before the start of disposal operations’.

3 Article 1(2) of that directive, entitled ‘Overall objective’ provides:

‘In respect of the technical characteristics of landfills, this Directive contains, for those landfills to which Directive [96/61], is applicable, the relevant technical requirements in order to elaborate in concrete terms the general requirements of that Directive. The relevant requirements of Directive 96/61/EC shall be deemed to be fulfilled if the requirements of this Directive are complied with.’

4 Under Article 7(g) of Directive 1999/31, the Member States are to take measures in order that the application for a landfill permit contain particulars of the proposed plan for the closure and after-care procedures.

5 Under Article 8 of the directive, entitled ‘Conditions of the permit’:

‘Member States shall take measures in order that:

- (a) the competent authority does not issue a landfill permit unless it is satisfied that:
 - (i) without prejudice to Article 3(4) and (5), the landfill project complies with all the relevant requirements of this Directive, including the Annexes;
 - (ii) the management of the landfill site will be in the hands of a natural person who is technically competent to manage the site; professional and technical development and training of landfill operators and staff are provided;

- (iii) the landfill shall be operated in such a manner that the necessary measures are taken to prevent accidents and limit their consequences;
 - (iv) adequate provisions, by way of a financial security or any other equivalent, on the basis of modalities to be decided by Member States, has been or will be made by the applicant prior to the commencement of disposal operations to ensure that the obligations (including after-care provisions) arising under the permit issued under the provisions of this Directive are discharged and that the closure procedures required by Article 13 are followed. This security or its equivalent shall be kept as long as required by maintenance and after-care operation of the site in accordance with Article 13(d). Member States may declare, at their own option, that this point does not apply to landfills for inert waste;
- (b) the landfill project is in line with the relevant waste management plan or plans referred to in Article 7 of Directive [75/442];
 - (c) prior to the commencement of disposal operations, the competent authority shall inspect the site in order to ensure that it complies with the relevant conditions of the permit. This will not reduce in any way the responsibility of the operator under the conditions of the permit.'

6 Under Article 13 of Directive 1999/31, entitled 'Closure and after-care procedures':

'Member States shall take measures in order that, in accordance, where appropriate, with the permit:

- (a) a landfill or part of it shall start the closure procedure:
 - (i) when the relevant conditions stated in the permit are met;
 - or
 - (ii) under the authorisation of the competent authority, at the request of the operator;
 - or
 - (iii) by reasoned decision of the competent authority;
- (b) a landfill or part of it may only be considered as definitely closed after the competent authority has carried out a final on-site inspection, has assessed all the reports submitted by the operator and has communicated to the operator its approval for the closure. This shall not in any way reduce the responsibility of the operator under the conditions of the permit;
- (c) after a landfill has been definitely closed, the operator shall be responsible for its maintenance, monitoring and control in the after-care phase for as long as may be required by the competent authority, taking into account the time during which the landfill could present hazards.

The operator shall notify the competent authority of any significant adverse environmental effects revealed by the control procedures and shall follow the decision of the competent authority on the nature and timing of the corrective measures to be taken;

- (d) for as long as the competent authority considers that a landfill is likely to cause a hazard to the environment and without prejudice to any Community or national legislation as regards liability of the waste holder, the operator of the site shall be responsible for monitoring and analysing landfill gas and leachate from the site and the groundwater regime in the vicinity of the site in accordance with Annex III.'

7 Article 14 of Directive 1999/31, entitled 'Existing landfill sites', provides:

‘Member States shall take measures in order that landfills which have been granted a permit, or which are already in operation at the time of transposition of this Directive, may not continue to operate unless the steps outlined below are accomplished as soon as possible and within eight years after the date laid down in Article 18(1) at the latest:

- (a) with a period of one year after the date laid down in Article 18(1), the operator of a landfill shall prepare and present to the competent authorities, for their approval, a conditioning plan for the site including the particulars listed in Article 8 and any corrective measures which the operator considers will be needed in order to comply with the requirements of this Directive with the exception of the requirements in Annex I, point 1;
- (b) following the presentation of the conditioning plan, the competent authorities shall take a definite decision on whether operations may continue on the basis of the said conditioning plan and this Directive. Member States shall take the necessary measures to close down as soon as possible, in accordance with Article 7(g) and 13, sites which have not been granted, in accordance with Article 8, a permit to continue to operate;
- (c) on the basis of the approved site-conditioning plan, the competent authority shall authorise the necessary work and shall lay down a transitional period for the completion of the plan. Any existing landfill shall comply with the requirements of this Directive with the exception of the requirements in Annex I, point 1 within eight years after the date laid down in Article 18(1);

...

The judgment in Case C-331/11

- 8 In the judgment in Case C-331/11, the Court of Justice found that, by authorising the operation of the Žilina — Považský Chlmec landfill site without a site-conditioning plan and in the absence of a definite decision on the continued operation on the basis of an approved site-conditioning plan, the Slovak Republic had failed to fulfil its obligations under Article 14(a) to (c) of Directive 1999/31.

The pre-litigation procedure under Article 260(2) TFEU and the procedure before the Court

- 9 In the course of monitoring compliance with the judgment in Case C-331/11, the Commission asked the Slovak Republic, by letter of 30 April 2013, for information concerning the measures taken in order to comply with that judgment and the timetable for the adoption of any further measures.
- 10 In its reply of 7 June 2013, the Slovak Republic stated that the competent administrative authority in environmental matters had, on 31 May 2013, initiated a procedure with a view to amending the integrated permit for the landfill site in question. It also stated that it intended to proceed with the closure of the landfill site and undertake the monitoring of the site following its closure, the final decision of which was to be adopted by 31 October 2013 at the latest.
- 11 On 21 November 2013, the Commission sent the Slovak Republic a letter of formal notice, reminding the Slovak Republic that it had not yet complied with the obligations arising from the judgment in Case C-331/11, and asked that Member State to submit its observations within two months.
- 12 On 13 January 2014, in response to that request, the Slovak Republic informed the Commission that, on 21 October 2013, a decision on the closure and restoration of sections 2 a and 2 b of the landfill site in question had been made, but that the procedure for the closure and restoration of section 2 c of that landfill site had been suspended due to a dispute relating to the ownership of the land forming that part of the site. In any event, according to that reply, landfill operations at the site had been prohibited from 7 January 2014.

- 13 On 5 May 2014, the Commission received notice from the Slovak Republic of two decisions made on 10 April 2014 by the Directorate-General of the competent administrative authority in environmental matters. By the first decision, the Directorate-General annulled the decision of 21 October 2013 and remitted the case for re-examination. By its second decision, it adopted interim measures ordering the operator to refrain from any landfill waste operations at the site.
- 14 A year later, on 6 May 2015, the Slovak Republic informed the Commission that the date for the closure of the landfill site in question was changed to mid-December 2015.
- 15 On 23 December 2015, that Member State notified the Commission of the updated timetable for the environmental impact assessment procedure and set May 2016 as the date for the decision on the definitive closure of the landfill site in question.
- 16 On 26 August 2016, the Slovak Republic informed the Commission that, on 15 August 2016, the competent administrative authority in environmental matters had again decided to close down sections 2 a and 2b of the landfill site and to end operations on the site in question.
- 17 The decision of 15 August 2016 was upheld by a decision of the Directorate-General of the competent administrative authority in environmental matters of 9 November 2016.
- 18 An appeal was brought against the decisions of 15 August 2016 and 9 November 2016, but the Slovak Republic stated that that appeal did not have suspensive effect on those decisions.
- 19 Having taken the view that the Slovak Republic had not taken the measures necessary to comply with the judgment in Case C-331/11 within the prescribed period, the Commission brought the present action pursuant to Article 260(2) TFEU.
- 20 On 14 November 2017, after the closure of the written procedure, the Slovak Republic sent to the Court further information on the closure and restoration of sections 2 a and 2 b of the landfill site in question and a pending legislative proposal.
- 21 Having reached the view that it could not be concluded from that information that that Member State had complied with the judgment in Case C-331/11, the Commission maintained all the claims in its application.

Admissibility of the action

Arguments of the parties

- 22 The Slovak Republic submits that the action is inadmissible on account of inconsistency between the judgment in Case C-331/11, the letter of formal notice of 21 November 2013 and the application lodged in the present case.
- 23 That Member State contends that in the application the Commission claims that the landfill site in question has not yet been fully closed in accordance with the requirements laid down in Article 13 of Directive 1999/31. Compliance with that provision was not the subject of the judgment in Case C-331/11, nor was it claimed in the letter of formal notice of 21 November 2013 that the provision had been infringed.
- 24 The Commission takes the view that its action is admissible.

Findings of the Court

- 25 In the first place, as regards the alleged inconsistency between the judgment in Case C-331/11 and the application lodged in connection with this case, it should be noted that, in that judgment, the Court found that, by authorising operations at the landfill site in question without a site-conditioning plan and in the

absence of a definite decision on its continued operation on the basis of an approved site-conditioning plan, the Slovak Republic had failed to fulfil its obligations under Article 14(a) to (c) of Directive 1999/31.

- 26 Article 14(a) of Directive 1999/31 requires the operator of an existing landfill site to prepare and present to the competent authorities, for their approval, a conditioning plan for the site in question and Article 14(b) of the directive obliges the Member States, following the presentation of that conditioning plan, to take a definite decision on whether operations may continue on the basis of the plan and that directive. In that regard, Article 14(b) of Directive 1999/31 provides the Member States with two possibilities. Either the competent national authority is to authorise the continued operation of the landfill site in accordance with Article 8 of the directive or the Member State in question is to take the necessary measures to close down the site as soon as possible in accordance with Article 7(g) and Article 13 thereof.
- 27 Thus, the obligation to ensure that only landfill sites satisfying the requirements of Directive 1999/31 remain operational implies the closure of landfill sites which have not been granted a permit to continue to operate (see, to that effect, judgments of 16 July 2015, *Commission v Bulgaria*, C-145/14, not published, EU:C:2015:502, paragraph 30, and of 25 February 2016, *Commission v Spain*, C-454/14, not published, EU:C:2016:117, paragraph 59).
- 28 Consequently, if a Member State complies with the requirements laid down in Article 14 of Directive 1999/31, not by granting a permit to continue landfill operations, but by deciding to close it, that Member State must comply with the requirements of the closure procedure laid down in Article 13 of the directive.
- 29 Thus, compliance with Article 13 of Directive 1999/31 was also required if, in taking the necessary measures to comply with the judgment in Case C-331/11, the Slovak Republic intended to close the landfill site in question. It cannot therefore be argued that, by relying on Article 13 of Directive 1999/31, the Commission has gone beyond the subject matter of the judgment in Case C-331/11.
- 30 In the second place, as regards the alleged inconsistency between the letter of formal notice of 21 November 2013 and the application lodged in the present case, the Court notes that, following the judgment in Case C-331/11, the Slovak Republic did not specifically indicate to the Commission whether it had opted for continued operation of the landfill site in question or its closure.
- 31 Thus, at an initial stage of the pre-litigation procedure, namely before sending the letter of formal notice of 21 November 2013, that Member State merely informed the Commission that the competent administrative authority in environmental matters had initiated a new procedure for the purposes of amending the integrated permit for the landfill site and that a future closure was envisaged, in respect of which a final decision would be made by 31 October 2013 at the latest.
- 32 However, by 21 November 2013, the Slovak Republic had not informed the Commission whether a decision had been made in that regard, so that the Commission was, at that time, unable to know which of the two solutions available to the Slovak Republic for the purposes of compliance with the judgment in Case C-331/11 the Slovak Republic would ultimately adopt.
- 33 The Commission cannot therefore be criticised for failing, in its letter of formal notice, to specify the points in relation to which, in its view, that Member State had not complied with the judgment in Case C-331/11.
- 34 Only in a later stage of the pre-litigation procedure under Article 260(2) TFEU, namely after sending the letter of formal notice of 21 November 2013, did the Slovak Republic provide information to the Commission relating, first, to the adoption of a decision on the closure and restoration of sections 2 a and 2 b of the landfill site, then, to the annulment of that decision and, lastly, to the adoption of a new decision of the competent administrative authority and its subsequent confirmation by the Directorate-General of that authority. Similarly, it was in that later stage of the pre-litigation procedure that the Member State published the date set for the closure of the landfill site before informing the Commission that that date had been deferred.

35 Given that the scope of the present case, as circumscribed by the judgment in Case C-331/11, also covers Article 13 of Directive 1999/31 and that the intentions of the Slovak Republic in relation to compliance with that judgment, of which the Commission was informed, with sufficient clarity, only after notification of the letter of formal notice of 21 November 2013, relate precisely to closure of the landfill site, the Commission is entitled to rely, in its application in the present case, on Article 13 of the directive and on the requirements it lays down.

Failure to fulfil obligations

Arguments of the parties

36 By its first plea in law, the Commission claims that the Slovak Republic failed to adopt a definite decision on the continuation or closure of the landfill site in question in accordance with Article 14 of Directive 1999/31. In particular, the Commission claims that that Member State, which had nonetheless stated to it on 7 June 2013, 8 July 2014, 6 May 2015 and 23 December 2015 that it intended to close the landfill site definitively, still has not presented such a definite decision in that regard.

37 In its reply, the Commission adds that, in view of the fact that the Slovak authorities have not approved any conditioning plan for the landfill site in question, nor adopted a definite decision granting a permit to continue operations there, the site should have been closed down in accordance with Article 7(g) and Article 13 of Directive 1999/31, pursuant to Article 14(b) of that directive. In that regard, the Commission is of the view that the decision of 9 November 2016 confirming the decision of 15 August 2016 to discontinue operations at the landfill site in question does not amount to a definite decision within the meaning of Article 14(b) of Directive 1999/31, since no reference is made to any conditioning plan for the landfill site in question and that an appeal has been made against that decision.

38 In response to the present plea, the Slovak Republic maintains that it was legally entitled to comply with the obligations arising from the judgment in Case C-331/11 in two different ways, namely by granting a permit to continue to operate the landfill site in question in accordance with a site-conditioning plan and a definite decision on the continued operation of the site, on the one hand, or, on the other, by not granting a permit to operate. The Slovak Republic states that it followed the second option, since it decided not to grant a permit to continue to operate the site and instead to proceed with its closure and restoration.

39 That Member State maintains that Article 14 of Directive 1999/31 does not require the adoption of a definite decision not to continue to operate an existing landfill site to be preceded by the submission and approval of a site-conditioning plan. In the alternative, if a site-conditioning plan were necessary in the present case, it submits that such a plan had been approved on 15 December 2015 by decision of the competent administrative authority in environmental matters.

40 Furthermore, the Slovak Republic states that no waste disposal operations were authorised at the landfill site in question after 7 January 2014. In addition, a decision prohibiting the continued operation of that site and ordering its closure and restoration, with the exception of section 2 c, was adopted on 15 August 2016, with effect no later than from 9 November 2016.

41 By its second plea in law, the Commission claims that the Slovak Republic failed to adopt, in conformity with Article 13 of Directive 1999/31, the measures necessary for the effective closure of the landfill site. According to the Commission, whereas that Member State had stated to the Commission that the competent administrative authority in environmental matters would determine the conditions and measures for monitoring the landfill site after its closure, the measures taken by that Member State in that regard are insufficient.

42 The Commission notes that, under Article 14(b) of Directive 1999/31, the Member States are to take the necessary measures to close down as soon as possible, in accordance with Article 7(g) and Article 13 thereof, sites which have not been granted a permit to continue to operate.

- 43 The Commission states that, according to Article 13(b) of Directive 1999/31, a landfill site may only be considered as definitely closed after the competent authority has carried out a final on-site inspection, has assessed all the reports submitted by the operator and has communicated its approval for the closure. Thus, in the present case, the overall process of definitive closure of the landfill site in question can be considered as completed only after certification by the national authority responsible for waste management in accordance with the Slovak legislation transposing Article 13 of Directive 1999/31.
- 44 Lastly, according to the Commission, the decision of 15 August 2016 cannot be regarded as final, since an appeal has been brought against it.
- 45 In response to this plea, the Slovak Republic contends that the timetable of the procedure to be carried out for the definitive closure of the landfill site in question clearly shows that the actual closure of the site objectively requires a considerable period of time.
- 46 Thus, despite the substantial efforts made by national competent authorities, the Slovak Republic maintains that it has not yet been possible to close the site completely and definitively.

Findings of the Court

- 47 The Court notes that compliance with the judgment in Case C-331/11 required that, in accordance with Article 14(b) of Directive 1999/31, the Slovak competent authorities either grant a permit to continue to operate the landfill site in question pursuant to a site-conditioning plan satisfying the requirements of that directive or order that operations be discontinued and proceed with the definitive closure of that site in accordance with Article 13 of the directive.
- 48 It must therefore be ascertained whether the Slovak authorities have, within the prescribed period, adopted a definite decision on the continued operation of that landfill site or on its closure and, where applicable, whether the measures taken by those authorities for the purposes of its effective closure should be regarded as sufficient, which the Commission contends, in its first and second plea, is not the case.
- 49 The reference date for assessing whether there has been a failure to fulfil obligations under Article 260(1) TFEU is the date of expiry of the period prescribed in the letter of formal notice issued under that provision (judgment of 13 July 2017, *Commission v Spain*, C-388/16, not published, EU:C:2017:548, paragraph 21 and the case-law cited).
- 50 In the present case, since the Commission issued a letter of formal notice on 21 November 2013, the reference date for assessing whether there has been a failure to fulfil obligations is the expiry of the deadline prescribed in that letter, namely 21 January 2014.
- 51 As regards the first plea in law, it should be noted that, in its reply of 13 January 2014 to the letter of formal notice of 21 November 2013, the Slovak Republic indicated that landfill operations at the site in question had been prohibited from 7 January 2014 and that there had been a decision on the closure and restoration of sections 2 a and 2 b of the landfill site in question as of 21 October 2013.
- 52 Nevertheless, the Court finds that the decision of 21 October 2013 is incapable of invalidating the substance of the Commission's first plea.
- 53 First, the Slovak Republic itself acknowledges that section 2 c of the landfill site was not covered by the decision of 21 October 2013, since the procedure for the closure and restoration of that section had been suspended.
- 54 Second, although the decision of 21 October 2013 ordered the closure and restoration of sections 2 a and 2 b of the landfill site, the decision was annulled *ab initio*, on 10 April 2014, by the Directorate-General of the competent administrative authority in environmental matters, since that authority had decided to submit the case for re-examination.

- 55 It follows that, on the expiry of the period prescribed in the letter of formal notice, namely 21 January 2014, no definite decision on the continued operation of the site or its closure had been adopted at that time within the meaning of Article 14(b) of Directive 1999/31.
- 56 In those circumstances, the Commission's first plea in law is well founded.
- 57 As regards the second plea in law, it must be borne in mind that, under the second sentence of Article 14(b) of Directive 1999/31, where a Member State does not grant a permit to continue to operate a landfill site, it is required to proceed with its definitive closure in accordance with the procedure laid down in Article 13 of Directive 1999/31.
- 58 In that regard, it should be noted that it is, for the purposes of that obligation, insufficient to discontinue landfill of new waste; rather the Member State is required to ensure that those preparations for closure are carried out which are necessary for the landfill site in question to comply with the requirements of Directive 1999/31 (see, to that effect, judgment of 25 February 2016, *Commission v Spain*, C-454/14, not published, EU:C:2016:117, paragraphs 60 and 61).
- 59 In the present case, the Slovak Republic does not claim that, as of 21 January 2014, the closure procedure referred to in Article 13 of Directive 1999/31 had, as regards the landfill site in question, been completed. It merely notes that, having regard to the number of procedures to be carried out, the final closure of that landfill site required a considerable period of time and that, despite the substantial efforts of the competent authorities, it has not yet been possible to proceed with a complete and definitive closure of that site.
- 60 However, such a justification for the delay in complying with the judgment in Case C-331/11 cannot be accepted. As the Court has repeatedly held, a Member State cannot plead provisions, practices or situations prevailing in its domestic legal order to justify failure to observe obligations arising under EU law (judgment of 13 July 2017, *Commission v Spain*, C-388/16, not published, EU:C:2017:548, paragraph 41 and the case-law cited).
- 61 That being so, the Commission's second plea in law is well founded.
- 62 Accordingly, it must be held that, by failing to take all the measures necessary to comply with Case C-530/07, the Slovak Republic has failed to fulfil its obligations under Article 260(1) TFEU.

Financial penalties

- 63 Having explained that a prolonged failure to comply with a judgment of this Court in itself seriously undermines the principles of legality and legal certainty within the European Union, the Commission claims that the Slovak Republic should be ordered not only to pay a penalty payment but also a lump sum.
- 64 As regards the amounts of that penalty payment and lump sum, the Commission bases its approach on its communication of 13 December 2005, entitled 'Application of Article 228 EC Treaty' (SEC(2005) 1658), as updated by its Communication of 6 August 2015, entitled 'Updating of data used to calculate lump sum and penalty payments to be proposed by the Commission to the Court of Justice in infringement proceedings' (OJ 2015 C 257, p. 1) ('the 2005 Communication').

Penalty payment

Arguments of the parties

- 65 The Commission states that, according to the 2005 Communication, the calculation of penalties must be based on three basic criteria, namely the seriousness of the infringement, the duration thereof and the need to ensure that the penalty itself is a deterrent.

- 66 As regards the seriousness of an infringement which has been established, the Commission emphasises, in the first place, the importance of the EU rules which have been infringed, namely those of Directive 1999/31 and, in the second place, the consequences of that infringement on general and individual interests, such as, inter alia, the protection of human health and the environment. In that regard, it submits that that protection requires landfilled waste not to present a risk to human health and the environment. Therefore, bearing that aim in mind, in accordance with Article 14 of that directive, a definite decision of the competent authorities is essential for the continued operation or closure of existing landfill sites. Similarly, Article 13 of the directive lays down requirements for landfill site closure and after-care procedures. In the third place, the Commission proposes, however, that it be taken into account that only one landfill site is in question and the relevant geographical area is limited to the vicinity of the site in question and that landfill waste at that site has been suspended since 30 December 2013. As a mitigating factor, regard should also be had to the measures which the Slovak Republic has taken to comply with the judgment in Case C-331/11, even if those measures have been insufficient.
- 67 Having regard to all of the foregoing, the Commission considers that it is appropriate to apply a coefficient for seriousness of 2 on the scale of 1 to 20 established in the 2005 Communication.
- 68 Concerning the duration of the infringement, the Commission relies on the fact that it decided to bring the present proceedings 65 months after delivery of the judgment in Case C-530/07, which justifies applying a coefficient of 3.
- 69 As regards the coefficient relating to the defendant Member State's ability to pay, known as the 'n' factor, the Commission states that the 2005 Communication fixes that coefficient at 1.69 for the Slovak Republic.
- 70 Having applied the formula mentioned in that communication, the Commission calculates an appropriate daily penalty payment in the amount of EUR 6 793.80.
- 71 The Slovak Republic maintains, in respect of the duration of the infringement, that no waste disposal operations were authorised at the landfill site in question after 7 January 2014. In addition, it contends that the case is factually and legally highly complex, the processing of which suffered significant delays due to the appeals brought against the various decisions relating to the landfill site and due to the obligation to carry out an environmental impact assessment before the decision of 9 November 2016.
- 72 As regards the seriousness of the infringement, having reiterated its position that the pleas regarding the material requirements under Article 13 of Directive 1999/31 are inadmissible in respect of compliance with the judgment in Case C-331/11, the Slovak Republic submits that, in any event, the consequences of late compliance with the judgment in Case C-331/11 are minimal, since the area concerned is limited and is not contiguous with any border with other Member States. Similarly, the successive efforts made in order to ensure compliance with the judgment in Case C-331/11 should be taken into consideration, particularly the fact that, on 9 November 2016, it was decided to discontinue the landfill operations in question and to close and restore the site, with the exception of section 2 c. The Slovak Republic also points to its full cooperation with the Commission during the pre-litigation procedure and the fact that it has not yet been subject to any penalty in a similar case.
- 73 The Slovak Republic therefore contends that the amount of the fine should be lower than that proposed by the Commission.

Findings of the Court

- 74 According to settled case-law, the imposition of a penalty payment is, in principle, justified only in so far as the failure to comply with an earlier judgment of the Court continues up to the time of the Court's examination of the facts (judgment of 7 September 2016, *Commission v Greece*, C-584/14, EU:C:2016:636, paragraph 70 and the case-law cited).
- 75 That is the case here.

- 76 It is common ground between the parties that no definite decision on the closure of section 2 c of the landfill site in question had, until the Court's examination of the facts, been taken in accordance with Article 14(b) of Directive 1999/31.
- 77 It is also common ground between the parties that the procedure for closure of the landfill site had, until the Court's examination, not yet been completed in accordance with Article 13 of that directive.
- 78 Nonetheless, it should be noted that, by decision of the Directorate-General of the competent administrative authority of 9 November 2016 which confirmed the decision of the competent authority of 15 August 2016, a definite decision has been adopted on the closure and restoration of sections 2 a and 2 b of the landfill site in question and the discontinuance of landfill operations at the site.
- 79 Although the Commission calls into question the finality of that decision, in reliance on the fact that an appeal has been brought against it, the Commission does not contest the information provided by the Slovak Republic that such an appeal has no suspensive effect on the decision.
- 80 Furthermore, as the Advocate General stated in point 64 of her Opinion, in a European Union governed by the rule of law which guarantees effective judicial protection, in principle, an administrative decision may be subject to judicial review and the competent authorities cannot prevent an appeal being brought against it.
- 81 However, since compliance with the judgment in Case C-331/11 must be regarded as incomplete because, until the Court's examination of the facts, no definite decision relating to the closure of section 2 c of the landfill site in question had, at that time, been adopted within the meaning of Article 14(b) of Directive 1999/31 and the landfill site closure procedure had not yet been completed in accordance with Article 13 of that directive, the Court considers that the Slovak Republic should be ordered to pay a penalty payment as an appropriate financial means of ensuring full compliance with that judgment.
- 82 In exercising its discretion in the matter, it is for the Court to set the penalty payment so that it is both appropriate to the circumstances and proportionate to the infringement established and the ability to pay of the Member State concerned (judgment of 15 October 2015, *Commission v Greece*, C-167/14, not published, EU:C:2015:684, paragraph 52 and the case-law cited).
- 83 The Commission's proposals regarding the penalty payment cannot bind the Court and are merely a useful point of reference. Similarly, guidelines such as those set out in the communications of the Commission are not binding on the Court but contribute to ensuring that the Commission's own actions are transparent, foreseeable and consistent with legal certainty when that institution makes proposals to the Court. In proceedings under Article 260(2) TFEU relating to a failure to fulfil obligations on the part of a Member State that has persisted notwithstanding the fact that that same failure to fulfil obligations has already been established in an initial judgment delivered under Article 258 TFEU, the Court must remain free to set the penalty payment to be imposed in an amount and in a form that the Court considers appropriate for the purposes of inducing that Member State to bring to an end its failure to comply with the obligations arising under that initial judgment of the Court (judgment of 22 June 2016, *Commission v Portugal*, C-557/14, EU:C:2016:471, paragraph 69).
- 84 For the purposes of determining the amount of a penalty payment, the basic criteria which must be taken into consideration in order to ensure that that payment has coercive effect and that EU law is applied uniformly and effectively are, in principle, the seriousness of the infringement, its duration and the ability to pay of the Member State in question. In applying those criteria, regard must be had, in particular, to the effects on public and private interests of the failure to comply and to how urgent it is for the Member State concerned to be induced to fulfil its obligations (judgment of 22 June 2016, *Commission v Portugal*, C-557/14, EU:C:2016:471, paragraph 70).
- 85 In the first place, as regards the seriousness of the infringement, the Court notes that, notwithstanding the localised nature of the established infringement, the infringement by the Slovak Republic of its obligations

under Articles 13 and 14 of Directive 1999/31 is capable of impacting the environment and human health.

86 However, it should be noted, first of all, that, in addition to the fact that the present action for failure to fulfil obligations concerns only one landfill site, it was decided on 15 August 2016, and confirmed on 9 November 2016, pursuant to Article 14(b) of Directive 1999/31, that sections 2 a and 2 b of that site would be closed definitively.

87 Next, although the definitive closure procedure has not yet been completed in accordance with the requirements of Article 13 of that directive, given that such a procedure requires, in the present case, substantial work and measures, account should be taken of the fact that, as of 7 January 2014, operations at the site were discontinued.

88 Lastly, the Slovak Republic cooperated with the Commission during the pre-litigation procedure relating to the present case.

89 In the second place, regarding the duration of the infringement, that duration must be assessed by reference to the date on which the Court assessed the facts.

90 In the present case, the duration of the infringement, from the delivery of the judgment in Case C-331/11, is substantial, namely around five years.

91 In the third place, the Slovak Republic has not submitted to the Court any evidence relating to its ability to pay.

92 Having regard to all of the circumstances in the present case, the Court considers it appropriate to impose a penalty payment of EUR 5 000 per day to elicit compliance with the judgment in Case C-331/11.

93 The Court therefore orders the Slovak Republic to pay to the Commission a penalty payment in the amount of EUR 5 000 per day of delay in implementing the measures necessary to comply with the judgment in Case C-331/11, from the date of delivery of the present judgment until compliance with that judgment.

Lump sum payment

Arguments of the parties

94 The Commission claims that the Court should order the Slovak Republic to pay a daily lump sum of EUR 743.60, calculated by multiplying the standard flat rate, set at EUR 220, by the coefficient for seriousness of 2 and by the 'n' factor of 1.69, from the date of delivery of the judgment in Case C-331/11 until the date of the delivery of the present judgment or until the date on which the Slovak Republic adopts the measures necessary to comply with the judgment in Case C-331/11, if that date is prior to the delivery of the present judgment, provided nevertheless that the total lump sum is no less than EUR 939 000.

95 The Slovak Republic has submitted to the Court a series of elements concerning the various penalties proposed by the Commission in the present case, namely a penalty payment and a lump sum, the particulars of which have been set out in paragraphs 71 to 73 above.

Findings of the Court

96 In exercising the discretion conferred on it in such matters, the Court is empowered to impose a penalty payment and a lump sum payment cumulatively (judgment of 22 February 2018, *Commission v Greece*, C-328/16, EU:C:2018:98, paragraph 116 and the case-law cited).

97 An order to pay a lump sum is based essentially on the assessment of the effects on public and private interests of the failure of the Member State concerned to comply with its obligations, in particular where

the breach has persisted for a long period after the judgment initially establishing it was delivered (see, to that effect, judgment of 13 May 2014, *Commission v Spain*, C-184/11, EU:C:2014:316, paragraph 59).

- 98 The imposition of a lump sum payment and the fixing of that sum must depend in each individual case on all the relevant factors relating both to the characteristics of the failure to fulfil obligations established and to the conduct of the Member State involved in the procedure initiated under Article 260 TFEU. That provision confers a wide discretion on the Court in deciding whether to impose such a penalty and, if it decides to do so, in determining the amount (judgment of 2 December 2014, *Commission v Italy*, C-196/13, EU:C:2014:2407, paragraph 114).
- 99 In the present case, the facts from which the infringement found by this judgment arose, namely, first, that no definite decision, within the meaning of Article 14(b) of Directive 1999/31 on the closure of the landfill site in question was adopted within the prescribed period and, second, that there was no definitive closure of that site in accordance with Article 13 of that directive, justify the adoption of a dissuasive measure, such as an order for the payment of a lump sum, given that those facts present a risk for the environment and human health, and having regard to the necessity of effectively preventing repetition in the future of similar infringements of EU law.
- 100 In those circumstances, it is for the Court, in the exercise of its discretion, to fix the lump sum in an amount appropriate to the circumstances and proportionate to the infringement (judgment of 15 October 2015, *Commission v Greece*, C-167/14, not published, EU:C:2015:684, paragraph 75).
- 101 Relevant considerations in this respect include factors such as the seriousness of the infringement and the length of time for which the infringement has persisted since the delivery of the judgment establishing it (judgment of 2 December 2014, *Commission v Greece*, C-378/13, EU:C:2014:2405, paragraph 76).
- 102 The circumstances of the present case which must be taken into account are apparent from the considerations set out in paragraphs 85 to 91 above regarding the seriousness and the duration of the infringement and the ability to pay of the Member State in question.
- 103 In that regard, it should be noted in the first place that, despite the successive efforts made by the Slovak authorities to ensure compliance with the judgment in Case C-331/11 and also taking into account the fact that, as of 7 January 2014, operations at the landfill site in question were discontinued, the final decision on closure and restoration of sections 2 a and 2 b of the landfill site and on discontinuance of operations at those sections was adopted only on 15 August 2016, and confirmed on 9 November 2016, that is to say more than three years after the delivery of that judgment, and the landfill site closure procedure was completed only on the Court's examination of the facts. As regards section 2 c, until such examination, no final decision on closure had been taken and the closure procedure had not even begun. The infringement therefore continued over a significant period of time.
- 104 In the second place, as regards the seriousness of the infringement, it is appropriate to take account, notwithstanding the localised nature of the infringement and the Slovak Republic's cooperation with the Commission during the pre-litigation procedure relating to the present proceedings, of the impact that failure by that Member State to comply with the obligations imposed by Articles 13 and 14 of Directive 1999/31 is capable of having on the environment and on human health.
- 105 Having regard to all of the foregoing, the Court considers it a fair assessment of the circumstances of the case to fix the amount of the lump sum payment which the Slovak Republic will have to pay at EUR 1 000 000.
- 106 The Slovak Republic must therefore be ordered to pay to the Commission a lump sum of EUR 1 000 000.

Costs

107 Under Article 138(1) of the Rules of Procedure of the Court, the unsuccessful party must be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the Commission has applied for costs and the Slovak Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Fourth Chamber) hereby:

1. **Declares that, by failing to take all the measures necessary to comply with the judgment of 25 April 2013, *Commission v Slovakia* (C-331/11, not published, EU:C:2013:271), the Slovak Republic has failed to fulfil its obligations under Article 260(1) TFEU;**
2. **Orders that if the failure to fulfil obligations established in point 1 has continued until the day of delivery of the present judgment the Slovak Republic must pay the European Commission a penalty payment of EUR 5 000 for each day of delay in implementing the measures necessary to comply with the judgment of 25 April 2013, *Commission v Slovakia* (C-331/11, not published, EU:C:2013:271), from the date of delivery of the present judgment until the judgment of 25 April 2013, *Commission v Slovakia* (C-331/11, not published, EU:C:2013:271), has been complied with in full;**
3. **Orders the Slovak Republic to pay the European Commission a lump sum of EUR 1 000 000;**
4. **Orders the Slovak Republic to pay the costs.**

[Signatures]

* Language of the case: Slovak.