JUDGMENT OF THE COURT (Fifth Chamber)
7 September 2016 (*)
(Failure of a Member State to fulfil obligations — Environment –Directive 2006/12/EC — Directive 91/689/EEC — Directive 1999/31/EC — Waste management — Judgment of the Court establishing a failure to fulfil obligations — Non-implementation — Article 260(2) TFEU — Pecuniary penalties — Periodic penalty payment — Lump sum)

In Case C-584/14,

ACTION under Article 260(2) TFEU for failure to fulfil obligations, brought on 18 December 2014,

European Commission, represented by M. Patakia and E. Sanfrutos Cano and by D. Loma-Osorio Lerena, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Hellenic Republic, represented by E. Skandalou, acting as Agent, with an address for service in Luxembourg,

defendant,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, F. Biltgen, A. Borg Barthet (Rapporteur), E. Levits and M. Berger, Judges,

Advocate General: E. Sharpston,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 25 February 2016,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

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

declare that, by failing to adopt the measures necessary to comply with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), the Hellenic Republic has failed to fulfil its obligations under Article 260(1) TFEU,

order the Hellenic Republic to pay the Commission a penalty payment of EUR 72 864 per day of delay in complying with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), from the date of delivery of the present judgment until the date of full compliance with the judgment 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543),

order the Hellenic Republic to pay the Commission a lump sum payment of EUR 8 096 per day, from the date of delivery of the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), until that of the present judgment or until that of full compliance with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), if the latter is implemented earlier,

order the Hellenic Republic to pay the costs.

Legal context

EU law

Directive 75/442/EEC

The essential objective of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) ('Directive 75/442') was the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste.

According to Article 3(1) of Directive 75/442:

'Member States shall take appropriate measures to encourage:

(a) first, the prevention or reduction of waste production and its harmfulness …

…

(b) secondly:

the recovery of waste by means of recycling, re-use or reclamation or any other process with a view to extracting secondary raw materials

or

the use of waste as a source of energy.'

Article 4 of Directive 75/442 provided:

'Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

without risk to water, air, soil and plants and animals,

without causing a nuisance through noise or odours,

without adversely affecting the countryside or places of special interest.

Member States shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.'

Article 5 of Directive 75/442 provided:

'(1) Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of disposal installations, taking account of the best available technology not involving excessive costs. The network must enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.

(2) The network must also enable waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.'

Under the first paragraph of Article 7(1) of Directive 75/442:

'In order to attain the objectives referred to in Articles 3, 4 and 5, the competent authority or authorities referred to in Article 6 shall be required to draw up as soon as possible one or more waste management plans. Such plans shall relate in particular to:

the type, quantity and origin of waste to be recovered or disposed of,

general technical requirements,

any special arrangements for particular wastes,

suitable disposal sites or installations.'

Article 8 of Directive 75/442 was worded as follows:

'Member States shall take the necessary measures to ensure that any holder of waste:

has it handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex II A or II B;

or

recovers or disposes of it himself in accordance with the provisions of this Directive.'

The repeal of Directive 75/442 by Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste, which entered into force on 17 May 2006, has no effect on the present action for failure to fulfil obligations. The latter directive, which, in order to clarify matters, codifies Directive 75/442, reproduces the provisions referred to in paragraphs 3 to 7 of the present judgment. Moreover, the first paragraph of Article 20 of Directive 2006/12 provides that Directive 75/442 'is hereby repealed, without prejudice to Member States' obligations relating to the time-limits for transposition into national law set out in Annex III, Part B'.

Directive 91/689/EEC

Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20) was intended, according to Article 1 thereof, to approximate the laws of the Member States on the controlled management of hazardous waste.

Under Article 1(2) of that directive:

'Subject to … Directive [91/689], [Council] Directive 75/442/EEC [of 15 July 1975 on waste (OJ L 194, p. 39)] shall apply to hazardous waste.'

Article 6(1) of that directive provided:

'As provided in Article 7 of Directive 75/442/EEC, the competent authorities shall draw up, either separately or in the framework of their general waste management plans, plans for the management of hazardous waste and shall make these plans public.'

Directive 91/689 was repealed by Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3). Article 6(1) of Directive 91/689 is reproduced, in essence, by Article 28 of Directive 2008/98.

Directive 1999/31/EC

In accordance with Article 1(1) thereof, the aim of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1) is to provide for measures, procedures and guidance to prevent or reduce as far as possible negative effects on the environment during the whole life-cycle of the landfill.

Under Article 2(g) of that directive:

'For the purposes of this Directive:

…

"landfill" means a waste disposal site for the deposit of the waste onto or into land (i.e. underground), including:

… a permanent site (i.e. more than one year) which is used for temporary storage of waste

…'

Article 3(1) of that directive provides:

'Member States shall apply … Directive [1999/31] to any landfill as defined in Article 2(g).'

Article 6 of Directive 1999/31 is worded as follows:

'Member States shall take measures in order that:

only waste that has been subject to treatment is landfilled. This provision may not apply to inert waste for which treatment is not technically feasible, nor to any other waste for which such treatment does not contribute to the objectives of this Directive, as set out in Article 1, by reducing the quantity of the waste or the hazards to human health or the environment;

only hazardous waste that fulfils the criteria set out in accordance with Annex II is assigned to a hazardous landfill;

landfill for non-hazardous waste may be used for:

municipal waste;

non-hazardous waste of any other origin, which fulfil the criteria for the acceptance of waste at landfill for non-hazardous waste set out in accordance with Annex II;

able, non-reactive hazardous wastes (e.g. solidified, vitrified), with leaching behaviour equivalent to those of the non-hazardous wastes referred to in point (ii), which fulfil the relevant acceptance criteria set out in accordance with Annex II. These hazardous wastes shall not be deposited in cells destined for biodegradable non-hazardous waste,

inert waste landfill sites shall be used only for inert waste.

According to Article 7 of that directive:

'Member States shall take measures in order that the application for a landfill permit must contain at least particulars of the following:

the identity of the applicant and of the operator when they are different entities;

the description of the types and total quantity of waste to be deposited;

the proposed capacity of the disposal site;

the description of the site, including its hydrogeological and geological characteristics;

the proposed methods for pollution prevention and abatement;

the proposed operation, monitoring and control plan;

the proposed plan for the closure and after-care procedures;

where an impact assessment is required under Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment [(OJ 1985 L 175, p. 40)], the information provided by the developer in accordance with Article 5 of that Directive;

the financial security by the applicant, or any other equivalent provision, as required under Article 8(a)(iv) of this Directive.

Following a successful application for a permit, this information shall be made available to the competent national and Community statistical authorities when requested for statistical purposes.'

Article 8 of that directive provides:

'Member States shall take measures in order that:

the competent authority does not issue a landfill permit unless it is satisfied that:

without prejudice to Article 3(4) and (5), the landfill project complies with all the relevant requirements of this Directive, including the Annexes;

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;

e landfill shall be operated in such a manner that the necessary measures are taken to prevent accidents and limit their consequences;

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;

the landfill project is in line with the relevant waste management plan or plans referred to in Article 7 of Directive 75/442/EEC;

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.'

Article 9 of Directive 1999/31 states:

'Specifying and supplementing the provisions set out in Article 9 of Directive 75/442/EEC and Article 9 of Directive 96/61/EC, the landfill permit shall state at least the following:

the class of the landfill;

the list of defined types and the total quantity of waste which are authorised to be deposited in the landfill;

requirements for the landfill preparations, landfilling operations and monitoring and control procedures, including contingency plans (Annex III, point 4.B), as well as provisional requirements for the closure and after-care operations;

the obligation on the applicant to report at least annually to the competent authority on the types and quantities of waste disposed of and on the results of the monitoring programme as required in Articles 12 and 13 and Annex III.'

Article 13 of Directive 1999/31 provides:

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

a landfill or part of it shall start the closure procedure:

when the relevant conditions stated in the permit are met;

under the authorisation of the competent authority, at the request of the operator;

reasoned decision of the competent authority;

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;

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.

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;

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.'

In accordance with Article 14 of Directive 1999/31:

'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:

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;

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;

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);

within one year after the date laid down in Article 18(1), Articles 4, 5, and 11 and Annex II shall apply to landfills for hazardous waste;

within three years after the date laid down in Article 18(1), Article 6 shall apply to landfills for hazardous waste.'

The judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543)

In the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), the Court upheld the infringement proceedings brought by the Commission under Article 226 EC, now Article 258 TFEU, and held that:

'by failing to draw up and adopt within a reasonable period a hazardous-waste management plan that accords with the requirements of the relevant Community legislation, and by failing to establish an integrated and adequate network of disposal installations for hazardous waste characterised by the most appropriate methods in order to ensure a high level of protection for the environment and public health.

by failing to take all the necessary measures to ensure, as regards the management of hazardous waste, compliance with Articles 4 and 8 of Directive 2006/12, and Articles 3(1), 6 to 9, 13 and 14 of Directive 1999/31,

the Hellenic Republic has failed to fulfil its obligations under, first, Articles 1(2) and 6 of Council Directive 91/689, read in conjunction with Articles 5(1) and (2) and 7(1) of Directive 2006/12, second, Article 1(2) of Directive 91/689, read in conjunction with the provisions of Articles 4 and 8 of Directive 2006/12, and, third, Articles 3(1), 6 to 9, 13 and 14 of Directive 1999/31.'

The pre-litigation procedure under Article 260(2) TFEU

In the course of monitoring compliance with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), on 5 October 2009, the services of the Commission requested from the Greek authorities information about the measures taken for its implementation. On 22 June 2011, the Commission requested those authorities to inform it every six months about the progress made in the implementation of that judgment and to accompany that information with a complete and up-dated calendar.

The Greek authorities responded to the Commission with letters of 24 November 2009, 2 March 2010, 16 May and 22 December 2011 and 3 July 2012.

After examining all the information provided by the Greek authorities, the Commission, since it considered that the Hellenic Republic had not yet taken all the measures necessary in order to comply with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), requested that Member State, by letter of formal notice of 25 January 2013, to submit its observations in that regard within two months.

The Hellenic Republic replied to that letter of formal notice by letters of 22 March and 19 August 2013.

Since it considers that the Hellenic Republic failed to take, within the time limit prescribed, all the necessary measures to comply with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published,

EU:C:2009:543), the Commission brought the present action.

The failure to fulfil obligations

Arguments of the parties

The Commission invokes three heads of claim in support of its action.

Concerning the first head of claim relating to the preparation and adoption of a plan for the management of hazardous waste, in accordance with Article 1(2) and Article 6(1) of Directive 91/689, read in conjunction with Article 7(1) of Directive 2006/12, the Commission notes that, despite the fact that some of the criteria set out in the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), appear to have been reproduced in the Greek legislation, in particular in circular 18/2011, and that maps allow the different hazardous waste treatment installations to be clearly located, the plan has still, for various reasons, not been approved and the Greek authorities have not yet set out a timetable in that regard.

The Commission also points out that mere administrative practices, which by their nature are alterable at will by the authorities and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of obligations to transpose a directive (judgment of 10 September 2009 in *Commission* v *Greece*, C-286/08, not published, EU:C:2009:543, paragraph 51 and the case-law cited). Accordingly, a circular cannot replace a ministerial decree.

Concerning the second head of claim relating to the lack of an adequate integrated network of hazardous waste disposal installations, which use the most appropriate methods in order to ensure a high level of protection of the environment and public health, in accordance with Article 1(2) of Directive 91/689, read in conjunction with Article 5 of Directive 2006/12, the Commission claims that, despite the existence of certain hazardous waste treatment installations and of certain decisions to grant authorisations for the others, the network cannot be regarded as 'adequate and integrated' within the meaning of those provisions.

The Commission notes, first, that the Greek authorities acknowledge that 33% of the hazardous waste is not managed appropriately.

It states, secondly, that the national hazardous waste management plan was not approved by a joint ministerial decree and that, therefore, the medium-term measures have not yet been communicated to it.

The Commission notes moreover that, given that the difficult economic environment not permitting waste producers or other investors to invest in the creation of hazardous waste management facilities, the obligation on the part of those producers and investors to create those installations is not respected. In that regard, the Commission points out that the Greek authorities consider that another solution is applicable, namely the recognition of a public entity which can be entrusted with the construction of landfills for hazardous waste.

As regards, finally, the third head of claim relating to the measures which must be taken in order to ensure, concerning hazardous waste management, compliance with Articles 4 and 8 of Directive 2006/12 and with Article 3(1) and Articles 6 to 9, 13 and 14 of Directive 1999/31, the Commission claims that since the Hellenic Republic has not yet established the integrated and adequate network of installations for the disposal of hazardous waste, it cannot, consequently, be in a position to correctly manage that type of waste.

According to the Commission, that is apparent not only from the fact that a significant proportion of the waste, namely 33% of it, is still not treated, but also from the existence of 'historical waste'.

The Commission also notes that the Hellenic Republic could help alleviate the problem of the presence of 'historical waste' or even of the production of new waste if it exported, for a transitional period, hazardous waste to installations located in the territory of other Member States. However, it seems that the total production of hazardous waste for 2011 amounts to 184 863.50 tonnes, that the 'historical waste' represents approximately 323 452.40 tonnes and that exports are limited to 5 147.40 tonnes.

The Hellenic Republic contends that the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), has for the most part been implemented.

In that regard, the study of the revised national waste management plan was completed and published on the Internet site of the Ministry of Productive Reconstruction, Environment and Energy (Ypapen). That plan defines the policy, strategies and objectives of national waste management and determines the appropriate measures and actions necessary in order to comply with the provisions of Directive 2008/98. In the context of that plan, the national hazardous waste management plan was updated.

The Hellenic Republic notes that, for the purposes of assessing the impact of the national waste management plan on the environment, a strategic environmental assessment is currently being carried out. Once that strategic environmental assessment is completed, the revised national waste management plan and, consequently, the updated national hazardous waste management plan will be adopted and immediately sent to the Commission.

As regards the 33% proportion of the total waste products which is not subject to integrated and appropriate management, the Hellenic Republic states that, in accordance with the updated national hazardous waste management plan, that proportion concerns 'unregistered management covering the remainder of the annual production of waste as evaluated at the final stage of the treatment, a proportion in respect of which there is no sufficient data'. It is apparent from the management data that, in the case of hazardous industrial waste, 30% of that waste is stored in production installations pending further treatment, whereas a similar quantity of waste, approximately 37%, was subject to valuation.

Concerning the hazardous waste management infrastructure, the Hellenic Republic contends that there are currently in operation three systems relating to waste batteries and vehicle batteries and to industrial waste, one system relating to waste oils and one system relating to end-of-life vehicles. It states that, on its territory, all of the waste oils collected are sent to regeneration installations, of which there were nine in 2013, and that waste oils are imported so as to cover the

needs of those installations. Moreover, during that year, seven installations for the recycling of batteries and lead-acid batteries were identified, those installations broadly covering the needs of the country, and waste is also imported in that case. As regards the decontamination/dismantling of end-of-life vehicle installations, there were 120 of them in 2013. Furthermore, five sterilisation units and one unit for the incineration of hazardous waste from health units were in operation in Greece.

Regarding the recent data on the environmental authorisation granted to hazardous waste management installations, the Hellenic Republic states that the following are currently under examination: the project file concerning the construction and the financing of a landfill site for hazardous asbestos waste, the file relating to a unit for the incineration of hazardous waste from health units in the industrial area of Tripoli (Greece), the revision file relating to the construction of a unit for the neutralisation of lead slag and the file on the construction and operation of a landfill site for waste (sludge from units for the physico-chemical treatment of waste water, namely an estimated 130 000 tonnes of 'historical waste' in 2010), on the land of the industrial unit of the company Anonymi Elliniki Etaireia Halyva (AEEX) which operates in Ionia (Greece) (as a support project of the industrial unit).

As regards the landfill sites for hazardous waste and/or the landfill sites for hazardous waste containing a pre-treatment of hazardous waste installation, a protocol for cooperation between and the Ypapen and the Ministry of National Defence was signed, in order to put in place different measures.

As regards the management of 'historical waste', the Hellenic Republic states that the implementation of a project involving the inventory and classification of contaminated sites, the assessment of the effect on receptors, the guide for the identification, registration and assessment of risks presented by the sites and the compilation of a database of contaminated sites is currently ongoing. It notes that the sites examined include the areas for disposal of hazardous 'historical waste'.

It states that the actions provided for in the revised national hazardous waste management plan include several categories of measures such as organisational and administrative measures, projects for the development of management infrastructure, improvements of/extensions to and development of networks for the collection, transhipment and transport of waste, financial measures and information, awareness and educational measures, implementation of which will allow full compliance with the requirements of Directives 2008/98 and 1999/31.

Findings of the Court

The first point to be noted is that, since the TFEU abolished the reasoned opinion stage in infringement proceedings under Article 260(2) TFEU, the reference date for assessing whether there has been such an infringement is the deadline set in the letter of formal notice issued in accordance with the first subparagraph of Article 260(2) TFEU (judgment of 2 December 2014 in *Commission* v *Italy*, C-196/13, EU:C:2014:2407, paragraph 45 and the case-law cited).

In the present case, since the Commission issued a letter of formal notice on 25 January 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 25 March 2013.

It is not contested that, on that date, the Hellenic Republic had not implemented the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543).

In the first place, concerning the Commission's head of claim alleging an infringement of Article 1(2) and Article 6(1) of Directive 91/689, read in conjunction with Article 7(1) of Directive 2006/12, the Hellenic Republic itself acknowledged at the hearing that, although the plan for the management of hazardous waste had been approved, it had however not yet been adopted. Therefore, on the reference date for the finding of a failure to fulfil obligations, namely 25 March 2013, it is not disputed that the Hellenic Republic had not adopted the plan for the management of hazardous waste, in accordance with Article 1(2) and Article 6(1) of Directive 91/689, read in conjunction with Article 7(1) of Directive 2006/12. Therefore, the first head of claim is well founded.

Concerning, in the second place, the head of claim alleging a failure to comply with Article 5 of Directive 2006/12, according to which the integrated and adequate network of installations for the disposal of hazardous waste established by the Member States, in cooperation with other Member States, 'must enable the [Union] as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually', the Hellenic Republic acknowledges that the projects for hazardous waste management infrastructure within the country are still being considered. In those circumstances, the second head of claim is also well founded.

Concerning, in the third place, the head of claim relating to the measures which need to be taken in order to ensure, as regards the management of hazardous waste, compliance with Articles 4 and 8 of Directive 2006/12 and with Article 3(1) and Articles 6 to 9, 13 and 14 of Directive 1999/31, the Hellenic Republic merely draws attention to the measures which are currently being implemented in order to comply with those provisions. It is however not disputed that, at the expiry of the deadline set in the letter of formal notice, the Hellenic Republic failed to manage the hazardous waste and also the 'historical waste', in accordance with the requirements of Directives 1999/31 and 2006/12. Therefore, the third head of claim is well founded.

As regards the Hellenic Republic's argument concerning the difficulties it had been facing in complying with the obligations at issue, it should be noted that, since 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, that argument cannot be accepted (judgment of 15 October 2015 in *Commission* v *Greece*, C-167/14, not published, EU:C:2015:684, paragraph 35 and the case-law cited).

In those circumstances, it must be stated that, by failing to take all the measures necessary to comply with the judgment in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), the Hellenic Republic has failed to fulfil its

obligations under Article 260(1) TFEU.

The financial penalties

The Commission claims that the payment of both a penalty payment and a lump sum should be ordered, on the ground that the imposition of a penalty payment alone, under Article 260 TFEU, is not a sufficient inducement to Member States to comply with their obligations without delay following the establishment of a failure to fulfil obligations under Article 258 TFEU.

As regards the amount of the penalty payment and the lump sum, the Commission bases its approach on its Communication of 13 December 2005, entitled 'Application of Article [260 TFEU]' (SEC(2005) 1658), as updated by the Commission Communication C(2014) 6767 final of 17 September 2014, 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' ('the Commission Communication of 13 December 2005').

The penalty payment

Arguments of the parties

Under point 6 of the Commission Communication of 13 December 2005, the amount of the penalty payment to be proposed is 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.

The Commission states that the amount of the daily penalty payment which it proposes is calculated by multiplying a standard flat-rate amount by coefficients for seriousness and duration, the result obtained being multiplied by a fixed factor per country taking into account both the capacity of the Member State concerned to pay and the number of voting rights it has in the Council of the European Union.

Concerning the seriousness of the infringement found, the Commission claims that, in the light of, in the first place, the importance of the rules of EU law which have been infringed, in the second place, the consequences of that infringement for public and private interests, such as, in particular, the high risk environmental pollution, the detrimental effects for health and the proper functioning of economic activity of the country, in the third place, the attenuating circumstance consisting in the creation of specific criteria for the selection of appropriate sites and of the annual inventory of hazardous waste, but also of the aggravating circumstance relating to the small amount of progress made so far and to the hazardousness of the waste, in the fourth place, the clarity of the provisions infringed and, in the last place, the repeated unlawful conduct of the Hellenic Republic concerning compliance with EU rules in the area of waste, a coefficient for seriousness of 10 is appropriate.

As regards the duration of the infringement, the Commission claims that the decision to initiate the proceedings was taken on 25 September 2014, that is to say 60 months after the delivery of the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), which justifies the application of the maximum coefficient for duration of 3.

As regards the coefficient relating to the defendant Member State's ability to pay, known as the 'n' factor, the Commission states that its communication of 13 December 2005 fixes that coefficient at 3.68 for the Hellenic Republic.

The Commission notes that, according to the formula set out in paragraph 58 of the present judgment, the daily periodic penalty payment is to be equal to the standard flat-rate amount of EUR 660 multiplied by the coefficient for seriousness, the coefficient for duration and the 'n' factor. Accordingly, in the present case, it proposes the imposition of a daily penalty payment of EUR 72 864 (660 x 10 x 3 x 3.68).

However, that institution proposes a decreasing daily penalty payment, calculated every six months, in order to take account of the progress made in complying with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543). Therefore, in order to ensure the degressivity of the penalty payment, it proposes to review compliance in relation to the three heads of claim put forward, namely the approval of the management plan, the development of appropriate infrastructure and the proper management of historical waste provisionally stored in sites not designated for that purpose. Therefore, the amount of the daily penalty payment is divided into three categories corresponding to the Commission's three heads of claim, which amounts, in respect of the first category, to 30% of the total amount of the penalty payment, namely EUR 21 859.20, and, in respect of the second and third categories, to 35% each, of the total amount thereof, namely EUR 25 502.40 in respect of each category.

In accordance with that method of calculation, the daily penalty payment is thus reduced by an amount of EUR 21 859.20 when the new national management plan will have been approved, subject to the condition that it complies with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543). As regards the creation of appropriate networks for hazardous waste, the Commission proposes to spread the sum of EUR 25 502.40 over the total volume of hazardous waste to be treated in the installations to be constructed and to deduct from the amount of the daily penalty payment, at the time of each commissioning of a hazardous waste treatment installation, the sum corresponding to the volume of waste that that new installation will be able to treat. As regards 'historical waste', the Commission intends to distribute the sum of EUR 25 502.40 on the basis of the volumes of that waste defined in the new draft.

The Hellenic Republic contends that, taking into account the seriousness and duration of the infringement, the co-operation and the diligence which it has demonstrated throughout the proceedings and the progress made in complying with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), there are no grounds for imposing a penalty payment and lump sum in the present case. In the alternative, the Hellenic Republic contests the method used to calculate the amounts proposed.

That Member State considers that the amount of EUR 72 864 claimed by the Commission as a penalty payment is excessively high and disproportionate to the seriousness of the infringement, the consequences of which for the environment and human health, which have not been concretely evaluated, are hypothetical.

Concerning the seriousness and duration of the infringement, the Commission's proposal to apply a coefficient of 10 does not take account of the practical difficulties involved in complying with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543) or the fact that that judgment has already been partially implemented.

Moreover, in the light of the circumstances of the case, that penalty payment is disproportionate in relation to the duration of the infringement, and the reduced capacity to pay of the Hellenic Republic as a result of the economic crisis suffered by that Member State. The Hellenic Republic disputes also the Commission's claims that it failed in the past, repeatedly, to fulfil its obligations in relation to the treatment of waste.

If the Court had to impose such a penalty payment, the Hellenic Republic requests that the part of the penalty payment attributed to each type of infringement be modified. That Member State proposes thereby that 70% of the amount of the penalty payment, namely EUR 51 004.80, be allocated to the first category of infringements and 15% of the amount thereof, namely EUR 10 929.60, respectively to the second and third categories of infringements.

Findings of the Court

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 15 October 2015 in *Commission* v *Greece*, C-167/14, not published, EU:C:2015:684, paragraph 47).

In the present case, it is not disputed that, on the date of the hearing, the Hellenic Republic had not yet adopted a specific plan for the management of hazardous waste, established an integrated and adequate network of installations for the disposal of hazardous waste or implemented a management of 'historical waste' which complies with the provisions of EU law.

In those circumstances, the Court considers that the imposition of a penalty payment on the Hellenic Republic constitutes an appropriate financial means to ensure full compliance with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543) (judgment of 17 October 2013 in *Commission* v *Belgium*, C-533/11, EU:C:2013:659, paragraph 66).

According to settled case law, the penalty payment must be decided upon according to the degree of persuasion needed in order for the Member State which has failed to comply with a judgment establishing a breach of obligations to alter its conduct and bring to an end the infringement established (judgment of 7 July 2009 in *Commission* v *Greece*, C-369/07, EU:C:2009:428, paragraph 113 and the case-law cited).

In exercising its discretion, 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 (judgments of 17 October 2013 in *Commission* v *Belgium*, C-533/11, EU:C:2013:659, paragraph 68, and of 4 December 2014, *Commission* v *Sweden*, C-243/13, not published, EU:C:2014:2413, paragraph 50).

The Commission's proposals concerning the penalty payment cannot bind the Court and constitute 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 a first judgment delivered under Article 226 EC or 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 first judgment of the Court (judgment of 2 December 2014 in *Commission* v *Greece*, C-378/13, EU:C:2014:2405, paragraph 52).

For the purposes of determining the amount of penalty payments, the basic criteria which must be taken into consideration in order to ensure that penalty payments have coercive effect and that EU law is applied uniformly and effectively are, in principle, the seriousness of the infringement, its duration and the capacity of the Member State concerned to pay. 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 the urgency of compliance by the Member State concerned with its obligations (judgment of 15 October 2015 in *Commission* v *Greece*, C-167/14, not published, EU:C:2015:684, paragraph 54 and the case-law cited).

As regards, in the first place, the seriousness of the infringement, it should be borne in mind, as the Court has held, that the obligation to dispose of waste without endangering human health and without harming the environment is inherent in the key objectives of EU environmental policy as set out in Article 191 TFEU. The failure to comply with the obligation under Article 4 of Directive 2006/12 could, by the very nature of that obligation, endanger human health directly and harm the environment and must be regarded as particularly serious (see judgment of 2 December 2014 in *Commission* v *Greece*, C-378/13, EU:C:2014:2405, paragraph 54).

It must be noted that the situation has however slightly improved in relation to the situation found in the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), in so far as the Hellenic Republic confirmed, during the hearing, that, although the hazardous waste management plan had not yet been adopted, it had however been developed and then approved. It is apparent also from the file submitted to the Court that

the Hellenic Republic agreed to substantial investments in order to comply with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), and cooperated with the Commission.

However, it is not disputed that the Hellenic Republic, at the time of the examination of the facts by the Court, has not yet established an integrated and adequate network of disposal installations and that, consequently, it is not able to properly manage the hazardous waste. In particular, as is clear from the information communicated to the Court during the hearing, the construction of several installations and three landfills for the treatment of hazardous waste had not yet begun. In those circumstances, despite minor reported improvements, it must be noted that the damage to human health and the environment as a result of the original infringement remains particularly serious.

As regards, in the second place, the duration of the infringement since delivery of the initial judgment establishing a failure to fulfil obligations, it should be recalled that that must be assessed by reference not to the date on which the infringement proceedings were brought under Article 260(2) by the Commission, but the date on which the Court assesses the facts in the context of those proceedings (see the judgment of 2 December 2014 in *Commission* v *Greece*, C-378/13, EU:C:2014:2405, paragraph 57 and the case-law cited). In the present case, the duration of the infringement, namely more than six years from the date of delivery of the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), is considerable.

In the third place, as regards the capacity of the Member State concerned to pay, it is appropriate to take account of the Hellenic Republic's argument that its gross domestic product (GDP) has declined since 2012. The Court has held that it is necessary to take account of recent trends in the GDP of a Member State at the time of the Court's examination of the facts (judgment of 2 December 2014 in *Commission* v *Greece*, C-378/13, EU:C:2014:2405, paragraph 58).

In addition, the Commission has proposed that the Court gradually reduce the penalty payment in accordance with the progress made in complying with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543).

It should be noted in this connection that, even if, in order to ensure full compliance with the Court's judgment, the penalty payment should be payable in its entirety until such time as the Member State has taken all the measures necessary to bring to an end the failure to fulfil obligations established, nevertheless, in certain specific cases, a penalty which takes account of the progress that the Member State may have made in complying with its obligations may be envisaged (judgment of 2 December 2014 in *Commission* v *Greece*, C-378/13, EU:C:2014:2405, paragraph 60 and the case-law cited).

In the present case, the Commission proposes to take into consideration, for the purposes of the calculation of the amount of the penalty payment, the progress achieved in the implementation of the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), in relation to the three heads of claim put forward, namely approval of the management plan, the establishment of appropriate infrastructure for the treatment of hazardous waste and the sound management of historical waste stored provisionally in sites which are not designed for that purpose.

In the circumstances of the present case and in the light, in particular, of the information provided by the parties, the Court considers that it is necessary to fix a penalty payment containing a continuous component and a degressive component. Therefore, it is necessary to determine the rules for calculating that penalty payment and the frequency of the degressive element thereof.

As regards the methods of calculation of the penalty payment, it should be noted, as follows from paragraphs 50 to 52 of the present judgment, that the Hellenic Republic failed to comply with three different obligations.

In order to take into consideration the measures adopted by the Hellenic Republic relating to those individual obligations, it is necessary to reduce the amount of the penalty payment on the basis of the degree to which those obligations have been fulfilled.

In the light of all the circumstances of the present case and taking account of the need to encourage the Member State concerned to put an end to the alleged infringement, the Court considers it appropriate, in the exercise of its discretion, to fix a daily penalty payment of EUR 30 000. That amount is divided into three parts, corresponding to the three heads of claim invoked by the Commission and equivalent, with respect to the first head of claim, to 10% of the total amount of the penalty payment, that is to say EUR 3000, and, with respect to the second and third heads of claim, to 45% each of that amount, that is to say EUR 13 500 for each head of claim.

The part of the penalty payment relating to the first two heads of claim contains only one continuous component. Therefore, the penalty payment will be reduced by the total amount corresponding to the first and second heads of claim when the Hellenic Republic takes all the measures necessary to comply with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543).

By contrast, regarding the third part of the penalty payment, relating to the head of claim concerning the management of so-called 'historical' waste, it is necessary to progressively reduce the amount of the penalty payment in proportion to the compliance of the management thereof, that calculation taking place on the basis of the volume of so-called 'historical' waste which will be established by the new hazardous waste management plan. However, the degressivity of the penalty payment with respect to that head of claim should be capped, since that payment can no longer be degressive where the amount of the penalty payment remaining to be paid reaches 50% of the amount of the penalty payment corresponding to that head of claim, that is to say EUR 6 750. Beyond that amount, the penalty payment will be reduced only when the failure to fulfil obligations characterised by the third head of claim is completely brought to an end.

As regards the frequency of the penalty payment, the degressive component thereof is set on a biannual basis so as to allow the Commission to review the progress of the compliant management of 'historical' waste.

In the light of all the above considerations, it is necessary to order the Hellenic Republic to pay the Commission, into the 'European Union own resources' account, a penalty payment of EUR 30 000 for each day of delay in adopting the measures necessary to comply with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), from the date of delivery of the present judgment until full compliance with the judgment of 10 September 2009 in *Commission* v *Greece* (C 286/08, not published, EU:C:2009:543). That amount is divided into three parts, corresponding to the three heads of claim invoked by the Commission and is the equivalent, with respect to the first head of claim, to 10% of the total amount of the penalty payment, namely EUR 3 000, with respect to the second head of claim, to 45% of that amount, namely EUR 13 500, as well as with respect to the third head of claim, which, as regards the proper management of so-called 'historical' waste, will be subject to a six-monthly reduction as a pro rata of the volume of that waste the management of which was in compliance. That reduction is limited to 50% of the amount of the penalty payment corresponding to that head of claim, that is to say EUR 6 750.

The lump sum payment

Arguments of the parties

The Commission requests the Court to order the Hellenic Republic to pay a daily lump sum of EUR 8 096, the amount of which is based on multiplying the uniform basic flat-rate amount, fixed at EUR 220, by the coefficient for seriousness of 10 and by the 'n' factor of 3.68, from the date of delivery of the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), until the date of the present judgment or until the date of compliance with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), if that judgment is implemented before those dates.

The Hellenic Republic contends that it has already undertaken all the steps necessary in order to fully comply with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543) by systematically and loyally cooperating with the Commission services, with the result that, to date, a small proportion of that judgment has not been implemented. Therefore, it is not required to pay the lump sum proposed by the Commission.

In any event, it is for the Court to assess whether, in extremely difficult economic circumstances, the objective conditions allow the imposition of a lump sum payment such as that proposed by the Commission to be ordered or whether, on the contrary, those circumstances call for a complete exemption on the part of the Hellenic Republic.

Moreover, the Hellenic Republic considers that, if such an order is made, the date to be taken into consideration for the calculation of the lump sum cannot coincide with the date of delivery of the judgment declaring the first infringement, since compliance with that judgment could only take place after that date, after a reasonable period.

Findings of the Court

The first point to note is that, 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 2 December 2014 in *Commission* v *Greece*, C-378/13, EU:C:2014:2405, paragraph 71).

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 (judgment of 13 May 2014 in *Commission* v *Spain*, C-184/11, EU:C:2014:316, paragraph 59 and the case-law cited).

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 in *Commission* v *Italy*, C-196/13, EU:C:2014:2407, paragraph 114).

In the present case, all the legal and factual circumstances which led to the infringement established, in particular the fact that the hazardous waste management plan has not yet been adopted, that an integrated and adequate network of installations for the disposal of hazardous waste has not been established and that the management of historical waste had not yet been carried out, although it presents a high level of danger to human health and the environment, is an indication that effective prevention of future repetition of similar infringements of EU law may require the adoption of a dissuasive measure, such as the imposition of a lump sum payment.

In those circumstances, it is for the Court, in the exercise of its discretion, to fix the amount of that lump sum so that it is, first, appropriate to the circumstances and, second, proportionate to the infringement (judgment of 7 July 2009 in *Commission* v *Greece*, C-369/07, EU:C:2009:428, paragraph 146).

The relevant factors in this respect include matters such as the length of time for which the breach of obligations has persisted since the judgment establishing it was delivered and the seriousness of the infringement (judgment of 17 November 2011 in *Commission* v *Italy*, C-496/09, EU:C:2011:740, paragraph 94).

As regards those factors, the circumstances which must be taken into account are clear, inter alia, from the considerations set out in paragraphs 77 to 81 of the present judgment. In that regard, it should, in particular, be noted that the hazardous waste management plan has not been adopted, that the integrated and adequate network of installations for the disposal of hazardous waste has not been established and that sites contain untreated hazardous and historical waste, which presents a high level of danger to human health and the environment.

In the light of the foregoing, the Court considers that proper account of the circumstances of the present case will be taken by setting the amount of the lump sum which the Hellenic Republic will have to pay at EUR 10 million.

The Hellenic Republic must therefore be ordered to pay to the Commission, into the 'European Union own resources' account, a lump sum of EUR 10 million.

Costs

Under Article 138(1) of the Rules of Procedure of the Court of Justice, 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 applied for costs and the Hellenic Republic's failure to fulfil its obligations has been established, the latter must be ordered to pay the costs.

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

Declares that, by failing to adopt the measures necessary to comply with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), the Hellenic Republic has failed to fulfil its obligations under Article 260(1) TFEU;

Orders the Hellenic Republic to pay the European Commission, into the 'European Union own resources' account, a penalty payment of EUR 30 000 for each day of delay in adopting the measures necessary to comply with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543), from the date of delivery of the present judgment until full compliance with the judgment of 10 September 2009 in *Commission* v *Greece* (C-286/08, not published, EU:C:2009:543). That amount is divided into three parts, corresponding to the three heads of claim invoked by the European Commission and is the equivalent, with respect to the first head of claim, to 10% of the total amount of the penalty payment, namely EUR 3 000, with respect to the second head of claim, to 45% of that amount, namely EUR 13 500, as well as with respect to the third head of claim, which, as regards the proper management of so-called 'historical' waste, will be subject to a six-monthly reduction as a pro rata of the volume of that waste the management of which was in compliance. That reduction is limited to 50% of the amount of the penalty payment corresponding to that head of claim, that is to say EUR 6 750;

Orders the Hellenic Republic to pay the European Commission, into the 'European Union own resources' account, a lump sum of EUR 10 million;

Orders the Hellenic Republic to pay the costs.

[Signatures]

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* Language of the case: Greek.