



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

14 December 2023*

(Environment – Directive 1999/31/EC – Landfill of waste – Obligation to close landfill sites which have not been granted the required permit – Closure procedures – Judgment of the Court establishing a failure to fulfil obligations – Non-compliance – Article 260(2) TFEU – Pecuniary penalties – Penalty payments – Lump sum)

In Case C-109/22,

ACTION for failure to fulfil obligations under Article 260(2) TFEU, brought on 15 February 2022,
European Commission, represented by L. Nicolae and E. Sanfrutos Cano, acting as Agents,
applicant,

v

Romania, represented by L.-E. Bațagoi, E. Gane, O.-C. Ichim and L. Lițu, acting as Agents,
defendant,

THE COURT (Sixth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, P.G. Xuereb and I. Ziemele,
Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

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

* Language of the case: Romanian.

Judgment

- 1 By its application, the European Commission claims that the Court should:
 - declare that, by failing to take all the necessary measures to comply with the judgment of 18 October 2018, *Commission v Romania* (C-301/17, ‘the judgment in *Commission v Romania*’, EU:C:2018:846), Romania has failed to fulfil its obligations under Article 260(1) TFEU;
 - impose on Romania, in accordance with the provisions of Article 260(2) TFEU, penalty payments in the amount of EUR 29 781.30 for each day of delay in fulfilling its obligation to take the necessary measures to comply with the judgment in *Commission v Romania* from the date of delivery of the judgment in the present case until all the measures necessary to comply with the judgment in *Commission v Romania* have been adopted;
 - impose on Romania, in accordance with the provisions of Article 260(2) TFEU, payment of a lump sum, based on a daily amount of EUR 3 311.50 multiplied by the number of days which have elapsed from the day following the delivery of the judgment in *Commission v Romania* until the date on which all the necessary measures have been taken by Romania to comply with that judgment, or, failing that, until the date of delivery of the judgment of the Court in the present case, with a minimum lump sum of EUR 1 643 000; and
 - order Romania to pay the costs.

Legal context

Directive 1999/31/EC

- 2 According to Article 1(1) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1), the aim of that directive is to provide for measures, procedures and guidance to prevent or reduce as far as possible negative effects on the environment, in particular the pollution of surface water, groundwater, soil and air, and on the global environment, including the greenhouse effect, as well as any resulting risk to human health, from landfilling of waste, during the whole life-cycle of the landfill.
- 3 Article 2(g) of that directive reads as follows:

‘For the purposes of this Directive:

...

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

 - internal waste disposal sites (i.e. landfill where a producer of waste is carrying out its own waste disposal at the place of production), and
 - a permanent site (i.e. more than one year) which is used for temporary storage of waste,

but excluding:

- facilities where waste is unloaded in order to permit its preparation for further transport for recovery, treatment or [disposal] elsewhere, and
- [storage] of waste prior to recovery or treatment for a period less than three years as a general rule, or
- storage of waste prior to disposal for a period less than one year’.

4 Article 8 of that directive lays down the conditions for issuing a landfill permit. Article 13 thereof governs the closure and after-care procedures.

5 Article 14 of the directive, 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:

...

(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);

...’

6 Article 18(1) of Directive 1999/31, entitled ‘Transposition’, provides:

‘Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than two years after its entry into force. They shall forthwith inform the Commission thereof.

...’

7 Article 19 of that directive, entitled ‘Entry into force’, provides:

‘This Directive will enter into force on the day of its publication in the *Official Journal of the European Communities*.’

The Act of Accession of 2005

- 8 Under Article 52 of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded (OJ 2005 L 157, p. 203), ‘upon accession, ... Romania shall be considered as being [an addressee] of directives and decisions within the meaning of Article 249 of the EC Treaty and of Article 161 of the Euratom Treaty, provided that those directives and decisions have been addressed to all the present Member States.’
- 9 Under Article 53(1) of that act, Romania must put into effect the measures necessary for it to comply, from the date of its accession to the European Union, with the provisions of directives and decisions, within the meaning of Article 249 of the EC Treaty and of Article 161 of the Euratom Treaty, unless another time limit is provided for in that act.
- 10 In accordance with point 3(a) of Chapter 9, Section B, of Annex VII to the same act, a derogation from Article 14(c) of Directive 1999/31 and from points 2 to 4 and 6 of Annex I to that directive was provided for in respect of 101 existing municipal landfills in Romania until 16 July 2017.

The judgment in *Commission v Romania*

- 11 By the judgment in *Commission v Romania*, the Court held that, by having failed to comply, as regards the 68 landfill sites covered by the Commission’s action, with the obligation to adopt all necessary measures to close down as soon as possible, under Article 7(g) and Article 13 of Directive 1999/31, sites which have not been granted, in accordance with Article 8 thereof, a permit to continue to operate, Romania was in breach of its obligations under Article 14(b), together with Article 13, of that directive.

The pre-litigation procedure and the proceedings before the Court

- 12 Following the delivery of the judgment in *Commission v Romania*, the Commission requested information from Romania, by letter of 25 October 2018, on the measures taken by that Member State in order to comply with that judgment.
- 13 In its reply of 14 January 2019, Romania stated that only 19 of the 68 landfill sites in question had been closed.
- 14 By letter of 1 April 2019, the Commission asked Romania to submit a timetable for the closure of the remaining 49 landfill sites and for the provision of the relevant evidence.
- 15 By letter of 28 May 2019, Romania informed the Commission of the closure of an additional landfill site. By letter of 9 January 2020, that Member State informed the Commission that 48 landfill sites had not been closed on that date.
- 16 On 14 May 2020, the Commission sent to Romania a letter of formal notice under Article 260 TFEU, stating that that Member State had not taken all the measures necessary to comply with the judgment in *Commission v Romania*, in so far as 48 of the 68 landfill sites concerned by that judgment had not yet been closed, within the meaning of Directive 1999/31, and invited the Member State to submit its observations within a period of four months from receipt of that letter, which was subsequently extended until 30 September 2020.

- 17 On 29 September 2020, Romania answered that letter by referring to the closure of an additional landfill site. It also sent to the Commission a timetable for compliance with the directive, which envisaged that the work on closure of most of the landfill sites containing hazardous and non-hazardous industrial waste would be completed by December 2023.
- 18 Following a bilateral meeting on 8 February 2021 concerning that timetable, the Commission was informed of the closure of three additional landfill sites.
- 19 By letter of 20 August 2021, Romania informed the Commission that the 44 remaining landfill sites had still not been closed. That Member State also informed the Commission that the diagnostic analyses relating to the closures had been delayed and that, therefore, the timetable would not be adhered to.
- 20 Taking the view that Romania had not taken the measures necessary to comply, as regards those 44 landfill sites, with the judgment in *Commission v Romania* and that it is not adhering to the compliance deadlines set in its own timetable, the Commission brought the present action.
- 21 By letter of 14 September 2023, la Commission informed the Court that, between the date on which the action was brought and 14 September 2023, Romania had complied with the judgment in *Commission v Romania* as regards 13 additional landfill sites.

The admissibility of the action

Arguments of the parties

- 22 Romania claims that the action is inadmissible, on the ground, first, that the Commission failed to grant it a reasonable period of time to comply with its obligations under Article 14 of Directive 1999/31, and that the pre-litigation procedure relating to the present case coincided with the COVID-19 pandemic, which, while not preventing Romania from complying with those obligations, nonetheless delayed the process of compliance with that directive.
- 23 Second, Romania complains that the Commission breached the principle of equal treatment by applying to it a deadline for compliance with that directive which, according to that Member State, is shorter than that granted to other Member States in similar situations.
- 24 The Commission disputes Romania's arguments and contends that the present action is admissible.

Findings of the Court

- 25 As regards Romania's argument that the Commission did not grant Romania a reasonable period of time to comply with its obligations under Article 14 of Directive 1999/31, it must be observed that, according to settled case-law, the purpose of the pre-litigation procedure is to give the Member State concerned an opportunity, on the one hand, to comply with its obligations under EU law and, on the other, to avail itself of its right to defend itself against the objections formulated by the Commission. That dual purpose requires the Commission to allow Member States a reasonable period to reply to letters of formal notice and to comply with reasoned

opinions, or, where appropriate, to prepare their defence. In order to determine whether the period allowed is reasonable, account must be taken of all the circumstances of the case (judgment in *Commission v Romania*, paragraph 32 and the case-law cited).

- 26 It must also be observed in that regard that, under Article 14 of Directive 1999/31, Member States were required to take the measures stated in that article as soon as possible and within eight years after the date laid down in Article 18(1) of that directive. According to the latter provision, that directive had to be transposed by each of the Member States into national law not later than two years after its entry into force. Since Directive 1999/31 entered into force on 16 July 1999, in accordance with Article 19 thereof, the deadline set in Article 14 of that directive consequently expired on 16 July 2009 (see, to that effect, judgment in *Commission v Romania*, paragraphs 23 and 29).
- 27 As a result, in the present case, on the date on which the Commission sent its letter of formal notice, namely 14 May 2020, Romania had already been required to comply with its obligations under Article 14 of Directive 1999/31 for more than 10 years, and had already been the subject of infringement proceedings which culminated in the judgment in *Commission v Romania* delivered on 18 October 2018. Also, by extending the deadline for a reply to that letter until 30 September 2020, the Commission granted that Member State a period of more than four months from receipt of that letter to comply with those obligations and prepare an effective defence. Moreover, the Commission did not bring the present action until 15 February 2022, that is to say, a year and nine months after the letter was sent.
- 28 In those circumstances, Romania failed to establish that it was not allowed a reasonable period within the meaning of the case-law stated in paragraph 25 of the present judgment. In that context, that Member State's argument based on the impact of the COVID-19 pandemic on compliance with those obligations also cannot succeed. The shortcomings of the measures which should have been implemented and adopted since 16 July 2009 cannot be justified by a pandemic which occurred in 2020 (see, by analogy, judgment of 29 June 2023, *Commission v Portugal (Limit values – NO₂)*, C-220/22, EU:C:2023:521, paragraph 101).
- 29 As regards Romania's argument that the Commission breached the principle of equal treatment by applying to it a shorter deadline for compliance with Directive 1999/31 than that allegedly granted to other Member States in similar situations, it must be recalled that, according to settled case-law, it is for the Commission to determine whether it is expedient to take action against a Member State and what provisions, in its view, the Member State has infringed, and to choose the time at which it will bring an action for failure to fulfil obligations; the considerations which determine that choice cannot affect the admissibility of the action. The Court has also held that, given that discretion, the lack of infringement proceedings against one Member State is irrelevant in the assessment of the admissibility of infringement proceedings brought against another Member State (judgment of 2 April 2020, *Commission v Poland, Hungary and Czech Republic (Temporary mechanism for the relocation of applicants for international protection)*, C-715/17, C-718/17 and C-719/17, EU:C:2020:257, paragraphs 75 and 76 and the case-law cited).
- 30 In the present case, Romania failed to establish that the Commission infringed the limits of the discretion cited in the preceding paragraph of the present judgment. It should be noted in that regard that that institution took the decision to bring the present action when it became apparent that that Member State was not complying with the deadline set by the timetable for compliance referred to in paragraph 17 of the present judgment, namely December 2023, that is to say, more than five years after the delivery of the judgment in *Commission v Romania*.

- 31 The Commission's action was therefore based on a neutral and objective criterion relating to the persistence of the infringement which Romania is alleged to have committed (see, by analogy, judgment of 2 April 2020, *Commission v Poland, Hungary and Czech Republic (Temporary mechanism for the relocation of applicants for international protection)*, C-715/17, C-718/17 and C-719/17, EU:C:2020:257, paragraph 81).
- 32 Therefore, the fact that, in allegedly similar situations, Member States other than Romania benefited from a longer period between the date of the letter of formal notice and the date on which proceedings were brought before the Court cannot affect the admissibility of the present action.
- 33 Consequently, the action brought by the Commission is admissible.

The failure to fulfil obligations

Arguments of the parties

- 34 In the light of the operative part of the judgment in *Commission v Romania*, the Commission claims that, under Article 260(1) TFEU, Romania was obliged to take the measures necessary to close the 68 landfill sites concerned by that judgment as soon as possible.
- 35 Romania admits that, on the expiry date of the time limit set in the letter of formal notice, as extended, that is to say, 30 September 2020, it had not taken all the measures necessary to comply with that judgment as regards the closure of 47 of those sites.

Findings of the Court

- 36 Under Article 260(2) TFEU, if the Commission considers that the Member State concerned has not taken the necessary measures to comply with a judgment of the Court, it may bring the case before the Court after giving that Member State the opportunity to submit its observations, specifying the amount of the lump sum or penalty to be paid by that State which it considers appropriate in the circumstances.
- 37 In that regard, the reference date which must be used for assessing whether there has been a failure to fulfil obligations under Article 260(2) TFEU is that of the expiry of the period prescribed in the letter of formal notice issued under that provision (see, to that effect, judgments of 12 November 2020, *Commission v Belgium (Income from foreign immovable property)*, C-842/19, EU:C:2020:915, paragraph 12, and of 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)*, C-51/20, EU:C:2022:36, paragraph 61 and the case-law cited).
- 38 In the present case, as Romania recognised in its defence and in its rejoinder, it is not in dispute that, on the expiry date of the time limit set in the letter of formal notice, as extended, that is to say, 30 September 2020, that Member State had failed to adopt the measures necessary to comply with the judgment in *Commission v Romania* as regards the closure of 47 of the 68 landfill sites concerned by that judgment.

- 39 In those circumstances, it must be held that, by failing to take the necessary measures to comply with the judgment in *Commission v Romania*, Romania has failed to fulfil its obligations under Article 260(1) TFEU.

The financial penalties

The penalty payment

Arguments of the parties

- 40 The Commission claims that the infringement alleged against Romania has continued up to the time of the Court's examination of the facts and proposes that the failure to comply with the judgment in *Commission v Romania* should be penalised by ordering that Member State to pay a penalty payment, on the basis, in particular, of Communication SEC(2005) 1658 of 12 December 2005, entitled 'Application of Article [260 TFEU]', ('the 2005 Communication'), and its communication entitled 'Adjustment of the calculation for lump sum and penalty payments proposed by the Commission in infringement proceedings before the Court of Justice of the European Union, following the withdrawal of the United Kingdom' (OJ 2021 C 129, p. 1). The Commission observes that, according to the formula referred to in the 2005 Communication, the amount of the daily penalty payment is equal to the standard flat rate multiplied by a coefficient of seriousness, a coefficient of duration and an 'n' factor, taking account, in particular, of the ability to pay of the Member State in question.
- 41 As regards the coefficient of seriousness, the Commission states that, although any offence resulting from the non-compliance with a judgment of the Court is, in itself, quite serious, non-compliance with the obligation to remove waste without endangering human health or harming the environment must be classified as particularly serious. As to the existence of mitigating or aggravating circumstances, the Commission observes, on the one hand, that Romania's cooperation in the procedure under Article 260 TFEU and the progress made by that Member State in reducing the number of landfill sites to be closed and in adopting national legislation aimed at facilitating the expropriation of those landfill sites may constitute mitigating circumstances. On the other hand, the fact that Romania has failed to comply with the requirements of Directive 1999/31 since 16 July 2009 constitutes an aggravating circumstance. Accordingly, the Commission proposes to apply a coefficient of seriousness of 5 on the scale of 1 to 20 referred to in the 2005 Communication.
- 42 As regards the coefficient of duration, since more than 36 months elapsed between the date of delivery of the judgment in *Commission v Romania* and the date on which the Commission decided to bring proceedings before the Court, the Commission proposes that that coefficient should be set at the maximum level set out in the 2005 Communication, that is to say, 3 on a scale of 1 to 3.
- 43 Finally, as regards the 'n' factor, although the Commission takes note of the findings of the judgment of 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)* (C-51/20, EU:C:2022:36), from which it is apparent that the gross domestic product (GDP) of the Member State concerned is the predominant factor, whereas the consideration of its institutional weight, on the other hand, is not essential, that institution nonetheless relies on the parameters set out in the communications referred to in paragraph 40 of the present judgment, which have not

yet been adjusted following that judgment of 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)* (C-51/20, EU:C:2022:36). In those circumstances, the Commission proposes that the ‘n’ factor for Romania should be set at 0.74.

- 44 According to the Commission, since the standard flat rate has been established as EUR 2 683, the amount of the penalty payment should be EUR 29 781.30 per day. In order to ensure a progressive reduction of that amount according to the progress made by Romania in complying with its obligations, that institution proposes that decreasing penalty payments should be applied by dividing that amount by the number of landfill sites referred to in the application, that is to say, 44, so that the amount thereby obtained, which would be equivalent to EUR 676.85 per day, would be deducted from the daily penalty payment relating to each landfill site in respect of which Romania has taken the measures necessary to comply with the judgment in *Commission v Romania*.
- 45 Romania contends that the Court should dismiss the Commission’s application for a penalty payment or, in the alternative, reduce the amount of that payment, taking into account the progress made by that Member State in its process of compliance with Directive 1999/31.
- 46 As regards the coefficient of seriousness, Romania submits that not all infringements of Directive 1999/31 can be considered to be particularly serious and that, in that regard, the progress made in closing the landfill sites in question must be taken into consideration.
- 47 Irrespective of the mitigating circumstances identified by the Commission, Romania maintains that the fact that that Member State has never been found previously to have failed to comply with a judgment of the Court also constitutes a mitigating circumstance. Moreover, according to that Member State, the duration of the infringement cannot be taken into account as an aggravating circumstance.
- 48 As regards the coefficient of duration, Romania submits in particular that, by taking as a basis the date on which it decided to bring proceedings before the Court, the Commission is relying on a factor which does not depend on the will of the Member State concerned but on the working method and workload of that institution’s own services.
- 49 Finally, as regards the ‘n’ factor, Romania submits that reference to the institutional weight of the Member State concerned is not consistent with the case-law referred to in paragraph 43 of the present judgment. Romania also asks the Court to take into account the change in its GDP in the period between 2020 and 2022.

Findings of the Court

- 50 As a preliminary point, it must be recalled that the procedure laid down in Article 260(2) TFEU is aimed at inducing a defaulting Member State to comply with a judgment establishing a failure to fulfil obligations, thereby ensuring that EU law is in fact applied, and the measures provided for by that provision, namely a lump sum and a penalty payment, are both intended to achieve that objective (judgment of 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)*, C-51/20, EU:C:2022:36, paragraph 85 and the case-law cited).
- 51 It should also be recalled that, in each case, it is for the Court to determine, in the light of the circumstances of the case before it and according to the degree of persuasion and deterrence which appears to it to be required, the financial penalties appropriate, in particular, for

preventing the recurrence of similar infringements of EU law (judgment of 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)*, C-51/20, EU:C:2022:36, paragraph 86 and the case-law cited).

- 52 According to the settled case-law of the Court, 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 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)*, C-51/20, EU:C:2022:36, paragraph 87 and the case-law cited).
- 53 In order to determine whether the failure to fulfil obligations of which the defendant stands criticised continued up until the Court's examination of the facts, it is necessary to consider the measures which were adopted, according to the defendant Member State, after the period prescribed in the letter of formal notice (judgment of 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)*, C-51/20, EU:C:2022:36, paragraph 88 and the case-law cited).
- 54 In the present case, it is established that, in the light of the circumstances set out in paragraph 21 of the present judgment, Romania has failed to comply with the judgment in *Commission v Romania* in respect of 31 landfill sites, and that, therefore, the failure to fulfil obligations of which Romania is criticised continued up until the Court's examination of the facts in the present case.
- 55 In those circumstances, an order imposing a periodic penalty payment on Romania is an appropriate financial means by which to encourage that Member State to take the measures necessary to put an end to the infringement established and to ensure full compliance with the judgment in *Commission v Romania* (see, by analogy, judgment of 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)*, C-51/20, EU:C:2022:36, paragraph 92).
- 56 In that regard, according to settled case-law, the periodic penalty payment must be decided upon according to the degree of persuasion needed in order for the Member State concerned to alter its conduct and bring to an end the conduct established (see, to that effect, judgment of 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)*, C-51/20, EU:C:2022:36, paragraph 93 and the case-law cited).
- 57 In exercising its discretion, it is for the Court to set the penalty payment at a level that is both appropriate to the circumstances and proportionate to the infringement established and to the ability to pay of the Member State concerned (judgment of 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)*, C-51/20, EU:C:2022:36, paragraph 94 and the case-law cited).
- 58 The Commission's proposals regarding the amount of the penalty payment cannot bind the Court and are merely a useful point of reference. The Court must remain free to set the penalty payment to be imposed in an amount and in a form that it considers appropriate for the purposes of inducing the Member State concerned to bring to an end its failure to comply with its obligations arising under EU law (judgment of 12 November 2020, *Commission v Belgium (Income from foreign immovable property)*, C-842/19, EU:C:2020:915, paragraph 64 and the case-law cited).
- 59 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 (judgments of 12 November 2020, *Commission v Belgium (Income from foreign immovable property)*, C-842/19, EU:C:2020:915, paragraph 65, and of 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)*, C-51/20, EU:C:2022:36, paragraph 96 and the case-law cited).

- 60 As regards the seriousness of the infringement, it must be observed that, in accordance with Article 1(1) of Directive 1999/31, that directive aims, in particular, to prevent or reduce as far as possible negative effects on the environment, as well as any resulting risk to human health, from landfilling of waste.
- 61 According to the settled case-law of the Court, where an infringement and, in particular, a failure to comply with a judgment of the Court are likely to harm the environment and endanger human health, such an infringement must be regarded as particularly serious (see, to that effect, judgments of 9 December 2008, *Commission v France*, C-121/07, EU:C:2008:695, paragraph 77, and of 22 February 2018, *Commission v Greece*, C-328/16, EU:C:2018:98, paragraph 93 and the case-law cited).
- 62 In the present case, as is clear from the file submitted to the Court, the incomplete implementation of the judgment in *Commission v Romania* entails a considerable risk of pollution and of serious consequences for human health, in particular through the release of harmful chemicals into soils, air and water. This is especially the case with landfill sites containing hazardous industrial waste which have not yet been closed.
- 63 In that regard, admittedly, it is necessary to take into consideration, as mitigating circumstances, Romania's cooperation in the procedure under Article 260 TFEU and the progress made in reducing the number of landfill sites to be closed and in adopting national legislation aimed at facilitating the expropriation of those sites. Similarly, the fact that that Member State has never failed to comply with any judgment previously given by the Court under Article 258 TFEU should be taken into account as a mitigating circumstance (see, by analogy, judgment of 30 May 2013, *Commission v Sweden*, C-270/11, EU:C:2013:339, paragraph 55).
- 64 However, it is also necessary to take into consideration, as an aggravating circumstance, the fact that that Member State failed to comply fully with the requirements of Directive 1999/31 by December 2023, that is to say, more than 14 years after the expiry of the deadline referred to in paragraph 26 of the present judgment, and that, therefore, the non-compliance with those requirements is of a particularly lengthy character (see, by analogy, judgment of 22 June 2016, *Commission v Portugal*, C-557/14, EU:C:2016:471, paragraph 74).
- 65 As regards the duration of the infringement, account must be taken of the period between the delivery of the judgment establishing the first failure to fulfil obligations and the date on which the Court assesses the facts (see, to that effect, judgments of 12 November 2020, *Commission v Belgium (Income from foreign immovable property)*, C-842/19, EU:C:2020:915, paragraph 56, and of 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)*, C-51/20, EU:C:2022:36, paragraph 105 and the case-law cited).
- 66 In the present case, it is established that the infringement has continued for more than four years after the date of delivery of the judgment in *Commission v Romania*, which is a considerable period of time (see, by analogy, judgment of 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)*, C-51/20, EU:C:2022:36, paragraph 106).

- 67 Although Article 260(1) TFEU does not specify the period within which a judgment must be complied with, it follows from settled case-law that the importance of immediate and uniform application of EU law means that the process of compliance must be initiated at once and completed as soon as possible (judgment of 12 November 2019, *Commission v Ireland (Derrybrien Wind Farm)*, C-261/18, EU:C:2019:955, paragraph 123 and the case-law cited).
- 68 In that regard, concerning Romania's argument that the Commission's reliance on the duration of the infringement depends on the working method or workload of that institution's own services, it is sufficient to note that that duration is solely attributable to the conduct of the Member State concerned, which failed to implement the judgment concerned in its entirety, with the result that that argument cannot be upheld.
- 69 As regards the ability to pay of the Member State concerned, it is necessary to rely on that State's GDP as the predominant factor, without taking account of its institutional weight. In that regard, it is also necessary to take account of recent trends in that Member State's GDP at the time of the Court's examination of the facts (see, to that effect, judgment of 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)*, C-51/20, EU:C:2022:36, paragraphs 107 and 116).
- 70 Finally, as regards the frequency of the penalty payment, as suggested by the Commission, the Court considers it appropriate to set an amount per landfill site and per day of delay, in order to enable the progress made by Romania in closing the landfill sites concerned to be taken into account.
- 71 In the light of the foregoing and of the Court's discretion under Article 260(2) TFEU, Romania must be ordered to pay to the Commission a periodic penalty payment of EUR 600 per landfill site and per day of delay in implementing the measures necessary to comply with the judgment in *Commission v Romania*, from the date of delivery of the present judgment until the date of full compliance with the judgment in *Commission v Romania*.

The lump sum

Arguments of the parties

- 72 The Commission states that every instance of prolonged failure to comply with a ruling of the Court in itself seriously undermines the principle of legality and legal certainty in a Union based on the rule of law.
- 73 In the present case, according to the Commission, ordering Romania to pay a lump sum is justified by the danger represented by the landfill sites concerned to the environment and to human health and by the need to effectively prevent the recurrence of similar infringements of EU law.
- 74 As regards the amount of the lump sum, the Commission proposes that the same coefficient of seriousness and the same 'n' factor as those put forward in respect of periodic penalty payments should be applied to the standard flat rate of EUR 895 laid down in the communications referred to in paragraph 40 of the present judgment, given that the duration of the infringement has been taken into account in the setting of a daily amount multiplied by the number of days the infringement persists.

- 75 Accordingly, the Commission claims that the Court should order Romania to pay a daily lump sum of EUR 3 311.50, multiplied by the number of days which have elapsed between the day following the delivery of the judgment in *Commission v Romania* and the date on which Romania has taken the measures necessary to comply with that judgment or, failing that, the date of delivery of the Court's judgment in the present case, with a minimum lump sum of EUR 1 643 000. The setting of a minimum lump sum is justified by the need to impose an effective and dissuasive penalty in every case of persistent non-compliance with a judgment of the Court.
- 76 Romania contends, in essence for the same reasons as those relied on with regard to the request for imposition of a penalty payment, that the amount of the lump sum requested by the Commission must be reduced. It also contends that the request for the setting of a minimum lump sum should be rejected, since that sum does not take into account the specific characteristics of the infringement penalised.

Findings of the Court

- 77 As a preliminary point it should be recalled 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 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)*, C-51/20, EU:C:2022:36, paragraph 128 and the case-law cited).
- 78 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. In that regard, the latter 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 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)*, C-51/20, EU:C:2022:36, paragraph 129 and the case-law cited).
- 79 In the present case, as the Commission observed, the facts from which the infringement found by the present judgment arose 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 (see, by analogy, judgment of 4 July 2018, *Commission v Slovakia*, C-626/16, EU:C:2018:525, paragraph 99).
- 80 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 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)*, C-51/20, EU:C:2022:36, paragraph 131 and the case-law cited).
- 81 The circumstances which must be taken into account are apparent, in particular, from the grounds set out in paragraphs 59 to 69 of the present judgment regarding the seriousness and the duration of the infringement and the ability to pay of the Member State in question (see, by analogy, judgment of 20 January 2022, *Commission v Greece (Recovery of State aid – Ferronickel)*, C-51/20, EU:C:2022:36, paragraph 133 and the case-law cited).
- 82 In the light of the foregoing, the Court considers it appropriate to impose a lump sum payment of EUR 1 500 000.

83 Romania must, therefore, be ordered to pay the Commission a lump sum of EUR 1 500 000.

Costs

84 Under Article 138(1) of the Rules of Procedure of the Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and Romania's failure to fulfil its obligations has been established, that Member State must be ordered to pay the costs.

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

- 1. Declares that, by failing to take the measures necessary to comply with the judgment of 18 October 2018, *Commission v Romania* (C-301/17, EU:C:2018:846), Romania has failed to fulfil its obligations under Article 260(1) TFEU;**
- 2. Orders Romania to pay the European Commission a periodic penalty of EUR 600 per landfill site and per day of delay in implementing the measures necessary to comply with the judgment of 18 October 2018, *Commission v Romania* (C-301/17, EU:C:2018:846), from the date of delivery of the present judgment until the date of full compliance with the judgment of 18 October 2018, *Commission v Romania* (C-301/17, EU:C:2018:846);**
- 3. Orders Romania to pay to the European Commission a lump sum of EUR 1 500 000;**
- 4. Orders Romania to pay the costs.**

[Signatures]