Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

21 March 2019*

(Failure of a Member State to fulfil obligations — Directive 1999/31/EC — Article 14(b) and (c) — Landfill of waste — Existing landfill sites — Infringement)

In Case C-498/17,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 17 August 2017,

European Commission, represented by G. Gattinara, F. Thiran and E. Sanfrutos Cano, acting as Agents,

applicant,

v

Italian Republic, represented by G. Palmieri, acting as Agent, and G. Palatiello, avvocato dello Stato,

defendant,

THE COURT (Fifth Chamber),

composed of E. Regan (Rapporteur), President of the Chamber, C. Lycourgos, E. Juhász, M. Ilešič and I. Jarukaitis, Judges,

Advocate General: Y. Bot,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 22 November 2018,

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

gives the following

Judgment

1 By its application, the European Commission requests the Court to rule that, by having failed to adopt, with regard to the landfill sites of Avigliano (area of Serre Le Brecce), Ferrandina (area of Venita), Genzano di Lucania (area of Matinella), Latronico (area of Torre), Lauria (area of Carpineto), Maratea (area of Montescuro), Moliterno (area of Tempa La Guarella), both landfill sites of Potenza (area of Montegrosso-Pallareta), the landfill sites of Rapolla (area of Albero in Piano), Roccanova (area of

* Language of the case: Italian.

Serre), Sant'Angelo Le Fratte (area of Farisi), Campotosto (area of Reperduso), Capistrello (area of Trasolero), Francavilla (Valle Anzuca), L'Aquila (area of Ponte delle Grotte), Andria (D'Oria G. & C. Snc), Canosa (CO.BE.MA), Bisceglie (CO.GE.SER), Andria (F.lli Acquaviva), Trani (BAT-Igea Srl), Torviscosa (Caffaro (undertaking)), Atella (area of Cafaro), Corleto Perticara (area of Tempa Masone), Marsico Nuovo (area of Galaino), Matera (area of La Martella), Pescopagano (area of Domacchia), Rionero in Volture (area of Ventaruolo), Salandra (area of Piano del Governo), San Mauro Forte (area of Priati), Senise (area of Palomabara), Tito (area of Aia dei Monaci), Tito (area of Valle del Forno), Capestrano (area of Tirassegno), Castellalto (area of Colle Coccu), Castelvecchio Calvisio (area of Termine), Corfinio (area of Cannucce), Corfinio (area of Case querceto), Mosciano S. Angelo (area of Santa Assunta), S. Omero (area of Ficcadenti), Montecorvino Pugliano (area of Parapoti), San Bartolomeo in Galdo (area of Serra Pastore), Trivigano (formerly Cava Zof) and Torviscosa (area of La Valletta), all the measures necessary in order that, as soon as possible, in accordance with Article 7(g) and Article 13 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1), those landfill sites in the above list which have not obtained, in accordance with Article 8 of that directive, a permit to continue to operate, may be closed, or by failing to adopt the measures necessary to bring those landfill sites which have obtained a permit to continue to operate into line with that directive, without prejudice to the conditions laid down in Annex I, point 1, to that directive, the Italian Republic has failed to fulfil its obligations under Article 14(b) and (c) of Directive 1999/31.

Legal context

2 Under Article 1 of Directive 1999/31, entitled 'Overall objective':

'1. With a view to meeting the requirements of [Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39)], and in particular Articles 3 and 4 thereof, the aim of this directive is, by way of stringent operational and technical requirements on the waste and landfills, 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.

2. In respect of the technical characteristics of landfills, this directive contains, for those landfills to which [Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26)] is applicable, the relevant technical requirements in order to elaborate in concrete terms the general requirements of that directive. The relevant requirements of Directive 96/61/EC shall be deemed to be fulfilled if the requirements of this directive are complied with.'

3 Article 7 of Directive 1999/31, entitled 'Application for a permit', provides:

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

…

(g) the proposed plan for the closure and after-care procedures;

…'

4 Pursuant to Article 8 of that directive, entitled 'Conditions of the permit':

'Member States shall take measures in order that:

(a) the competent authority does not issue a landfill permit unless it is satisfied that:
   (i) without prejudice to Article 3(4) and (5), the landfill project complies with all the relevant requirements of this directive, including the annexes;
   (ii) the management of the landfill site will be in the hands of a natural person who is technically competent to manage the site; professional and technical development and training of landfill operators and staff are provided;
   (iii) the landfill shall be operated in such a manner that the necessary measures are taken to prevent accidents and limit their consequences;
   (iv) adequate provisions, by way of a financial security or any other equivalent, on the basis of modalities to be decided by Member States, has been or will be made by the applicant prior to the commencement of disposal operations to ensure that the obligations (including after-care provisions) arising under the permit issued under the provisions of this Directive are discharged and that the closure procedures required by Article 13 are followed. This security or its equivalent shall be kept as long as required by maintenance and after-care operation of the site in accordance with Article 13(d). Member States may declare, at their own option, that this point does not apply to landfills for inert waste;

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

(c) prior to the commencement of disposal operations, the competent authority shall inspect the site in order to ensure that it complies with the relevant conditions of the permit. This will not reduce in any way the responsibility of the operator under the conditions of the permit.'

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

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

(a) a landfill or part of it shall start the closure procedure:
   (i) when the relevant conditions stated in the permit are met;

   or
   (ii) under the authorisation of the competent authority, at the request of the operator;

   or
   (iii) by reasoned decision of the competent authority;

(b) a landfill or part of it may only be considered as definitely closed after the competent authority has carried out a final on-site inspection, has assessed all the reports submitted by the operator and has communicated to the operator its approval for the closure. This shall not in any way reduce the responsibility of the operator under the conditions of the permit;

…'

6 Article 14 of that directive, entitled 'Existing landfill sites', is worded as follows:

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

(a) with a period of one year after the date laid down in Article 18(1), the operator of a landfill shall prepare and present to the competent authorities, for their approval, a conditioning plan for the site including the particulars listed in Article 8 and any corrective measures which the operator considers will be needed in order to comply with the requirements of this directive with the exception of the requirements in Annex I, point 1;

(b) following the presentation of the conditioning plan, the competent authorities 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 [Articles] 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);

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

7 Article 18 of the directive, entitled 'Transposition', provides, in paragraph 1:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this directive two years after the entry into force of the directive at the latest. They shall forthwith inform the Commission thereof.

…'

8 In accordance with Article 19 thereof, Directive 1999/31 entered into force on 16 July 1999.

Pre-litigation procedure

9 After a number of exchanges with the Italian authorities, the Commission sent, on 28 February 2012, a letter of formal notice to the Italian Republic under Article 258 TFEU, in which it stated that there were 102 existing landfill sites in that Member State operating in breach of Article 14 of Directive 1999/31.

10 In their letters of 11 May and 8 June 2012, the Italian authorities reported 46 existing landfills for the purpose of Article 14 thereof.

11 The Commission issued a reasoned opinion on 22 November 2012, to which the Italian Republic replied on 24 January 2013, 3 March and 4 July 2014.

12 In view of certain inaccuracies in the replies provided by the Italian authorities and as a result of the judgment of 2 December 2014, *Commission* v *Italy* (C-196/13, EU:C:2014:2407), in which the Court found that the Italian Republic had infringed Article 260(1) TFEU in relation, inter alia, to some existing landfills within the meaning of Article 14 of Directive 1999/31, the Commission sent, on 19 June 2015, an additional reasoned opinion in which it clarified the distinction between the infringement procedure at issue in the present case and that which gave rise to that judgment. The Commission stated that the latter concerned the obligation on the competent authorities to adopt a decision relating to each of the landfill sites at issue and dealing with either the permit to continue to

operate given to those landfill sites or the closure of the sites, in accordance with Article 14 of Directive 1999/31. It specified that the procedure at issue in the present case relates, however, to the 'completion' obligations, namely the obligations to implement the measures which the Member State concerned has already adopted and which may, depending on the landfill sites concerned, relate to a permit to continue to operate given to the landfill site in question as well as its closure. According to the Commission, those completion obligations, depending on the landfill site concerned, therefore consist in the implementation of the measures necessary to its closure in accordance with the second sentence of Article 14(b) of that directive, as well as the adoption of measures necessary to bring it into line with that directive, where it has been authorised to continue to operate under Article 14(c) of that directive.

13 Following the additional reasoned opinion, the Commission granted the Italian Republic until 19 October 2015 to reply to it, which the Italian Republic did by its letters of 20 October 2015, 9 September 2016, 13 January and 12 April 2017.

14 In its reply of 9 September 2016, the Italian Republic provided a complete list of existing landfill sites, broken down by region, and mentioned four other existing landfill sites which, however, are not the subject of the present proceedings since they were not taken into account in the letter of formal notice.

15 In the light of the answers provided by the Italian Republic to the additional reasoned opinion on 13 January and 12 April 2017, the Commission stated that six landfill sites had been brought into line with Directive 1999/31.

16 However, taking the view that 44 landfill sites still do not comply with Directive 1999/31, the Commission decided to bring the present action.

The action

Arguments of the parties

17 The Commission recalls that, pursuant to Article 14 of Directive 1999/31, Member States must take measures in order that existing landfill sites, that is to say, landfills which have been granted a permit, or which are already in operation before 16 July 2001, may not continue to operate after 16 July 2009 unless the steps outlined in Article 14(b) and (c) of that directive are accomplished as soon as possible. That article thus establishes a transitional arrangement intended to ensure that existing landfills are quickly brought into line with the requirements of that directive.

18 The Commission states that the present infringement procedure concerns only completion obligations which target the completion, by 16 July 2009 at the latest, of the measures necessary for the closure of existing landfill sites pursuant to the second sentence of Article 14(b) of Directive 1999/31 or the completion of the measures necessary to bring into line with the requirements of that directive existing landfill sites which have been granted a permit to continue their operations under Article 14(c) of the directive.

19 As regards, first, the existing landfills that have not been granted a permit to continue their operations under the second sentence of Article 14(b) of Directive 1999/31, the Italian Republic should have adopted the measures necessary to implement, as soon as possible and not later than 16 July 2009, their closure in accordance with Article 7(g) and Article 13 of that directive.

20 Second, as regards existing landfills which are permitted to continue their operations, Article 14(c) of the directive provides that, if the site-conditioning plan has been approved and therefore the permit to continue to operate was issued, the competent authorities must ensure that all those landfills comply with the requirements of that directive by 16 July 2009 at the latest.

21 The Commission notes, in that context, a certain ambiguity in the measures adopted by the Italian authorities, in that they have sometimes decided, first, to adopt a site-conditioning plan and have therefore authorised the continued operation of the landfill concerned, before deciding, as a second step, on its closure. The term 'conditioning' has also been used even in cases of landfill sites covered by a closure decision. For 22 of the 44 landfills concerned by the present action, it is therefore impossible to define without ambiguity whether they are to be closed or to continue to operate.

22 In all cases, the Commission notes that, for the 44 landfills in question, either the work necessary to bring the landfill sites which were to continue to operate into line with Directive 1999/31 had not been carried out by 19 October 2015 as specified in the additional reasoned opinion, or the measures necessary for the closure of the landfill sites for which the operating permit was not renewed have not been taken, contrary to Article 14(b) and (c) of that directive.

23 The Italian Republic disputes the Commission's allegations. As regards the alleged breach of the obligation imposed by Article 14(b) and (c) of the directive to adopt a final decision on the bringing into line or closure of existing landfills and the ambiguity in the measures taken by the Italian authorities, the Italian Republic observes, first, that the competent authorities have adopted a final decision ordering the closure of 18 of the 22 landfills, while 4 other landfills, located in Puglia, were subject to final decisions providing for them to be brought into line with the provisions of that directive and, second, as regards the other 22 landfills identified by the Commission, that the Commission does not dispute the validity of the definitive closure measures adopted by the competent authorities but only the breach of the obligation to complete closure before expiry of the 16 July 2009 deadline.

24 In many cases, the competent authorities have, as a first step, ordered the conditioning of the landfill concerned and authorised its operation, prior to deciding, as a second step, the final closure of that landfill because of the failure to bring it into line within the prescribed period or after the termination of activity. The final closure of the landfill concerned had, in this case, been carried out in implementation of the provisions laid down in the single act which approved both the site-conditioning plan and the closure plan, which explains the alleged ambiguity of the decisions cited by the Italian authorities, which ambiguity is purely in form.

Findings of the Court

25 Under Article 14 of Directive 1999/31, Member States must take measures in order that landfills which have been granted a permit, or which are already in operation at the time of transposition of that directive, namely 16 July 2001 at the latest, may not continue to operate unless all measures mentioned in that article are accomplished as soon as possible and by 16 July 2009 at the latest.

26 It follows from the case-law of the Court that Article 14 introduces a transitional derogating system in order to bring those landfills into line with the new environmental requirements (judgment of 25 February 2016, *Commission* v *Spain*, C-454/14, not published, EU:C:2016:117, paragraph 36 and the case-law cited).

27 In particular, Article 14(b), of Directive 1999/31 requires, first, that the competent authority take a definite decision on whether operations may continue on the basis of a conditioning plan and that directive and, secondly, that the Member States take the necessary measures to close down as soon as possible sites which have not been granted, in accordance with Article 8 of that directive, a permit to continue to operate.

28 Article 14(c) of Directive 1999/31 provides, in essence, that, on the basis of the site-conditioning plan, the competent authority is to authorise the necessary work and lay down a transitional period for the implementation of the plan, the requirement being that any existing landfill must comply with the requirements of that directive before 16 July 2009.

29 In order to establish a failure to fulfil obligations under that directive, its existence must, in accordance with the Court's settled case-law, be assessed by reference to the situation in the Member State as it stood at the end of the period laid down in the reasoned opinion, so that subsequent changes cannot be taken into account by the Court (judgment of 18 October 2018, *Commission* v *Romania*, C-301/17, not published, EU:C:2018:846, paragraph 42 and the case-law cited).

30 In the present case, the relevant date is that which was fixed in the additional reasoned opinion, namely 19 October 2015.

31 Admittedly, the Italian Republic has taken steps towards either the closure of sites which have not been granted a permit to continue operating, or the completion of the work required in accordance with the site-conditioning plans approved by the competent authorities.

32 However, it is not in dispute between the parties that, first, the landfill sites of Avigliano (area of Serre Le Brecce), Ferrandina (area of Venita), Genzano di Lucania (area of Matinella), Latronico (area of Torre), Lauria (area of Carpineto), Maratea (area of Montescuro), Moliterno (area of Tempa La Guarella), Potenza (area of Montegrosso-Pallareta), Rapolla (area of Albero in Piano), Sant'Angelo Le Fratte (area of Farisi), Capistrello (area of Trasolero), Francavilla (Valle Anzuca), L'Aquila (area of Ponte delle Grotte), Canosa (CO.BE.MA), Torviscosa (Caffaro (undertaking)), Corleto Perticara (area of Tempa Masone), Marsico Nuovo (area of Galaino), Matera (area of La Martella), Rionero in Volture (area of Ventaruolo), Salandra (area of Piano del Governo), Senise (area of Palomabara), Tito (area of Aia dei Monaci), Capestrano (area of Tirassegno), Castellalto (area of Colle Coccu), Castelvecchio Calvisio (area of Termine), Corfinio (area of Cannucce), Corfinio (area of Case querceto), Mosciano S. Angelo (area of Santa Assunta), S. Omero (area of Ficcadenti), Montecorvino Pugliano (area of Parapoti) and Torviscosa (area of La Valletta) had not been closed, in accordance with Directive 1999/31, by 19 October 2015 and still were not in line with that directive at the date on which the present action was brought.

33 With regard, second, to the landfills of Andria (D'Oria G. & C.) Bisceglie (CO.GE.SER), Andria (F.lli Acquaviva), Trani (BAT-Igea), Atella (area of Cafaro), Pescopagano (area of Domacchia), Tito (area of Valle del Forno), it has been confirmed by the parties at the hearing that the works to bring them into line with that directive were completed during 2017 and 2018, that is to say after 19 October 2015.

34 Thirdly, concerning the landfills of Potenza (area of Montegrosso-Pallareta), Roccanova (area of Serre), Campotosto (area of Reperduso), San Mauro Forte (area of Priati), San Bartolomeo in Galdo (area of Serra Pastore) and Trivigano (formerly Cava Zof), the Italian Republic claimed at the hearing that those landfills had been brought into line with Directive 1999/31. However, even if the Commission had been placed in a position to be aware of the documents produced by the Italian Republic on the eve of the hearing, which tend to show that those landfills were actually brought into line with that directive, which the Commission in fact disputed, it must be pointed out that it is not in dispute that, if that is proven, those landfills were brought into line only after 19 October 2015.

35 Finally, as regards the arguments put forward by the Italian Republic to explain its failure to fulfil its obligations under Directive 1999/31, it should be noted that, in accordance with the settled case-law of the Court, a Member State may not plead situations in its internal legal order in order to justify a failure to comply with obligations and time limits arising under EU law (judgment of 18 October 2018, *Commission* v *Romania*, C-301/17, not published, EU:C:2018:846, paragraph 45 and the case-law cited).

36 Accordingly, it must be held that the action brought by the Commission is well founded.

37 Having regard to all the foregoing considerations, it must be held that, by having failed to adopt, with regard to the landfill sites of Avigliano (area of Serre Le Brecce), Ferrandina (area of Venita), Genzano di Lucania (area of Matinella), Latronico (area of Torre), Lauria (area of Carpineto), Maratea (area of Montescuro), Moliterno (area of Tempa La Guarella), both landfill sites of Potenza (area of Montegrosso-Pallareta), the landfill sites of Rapolla (area of Albero in Piano), Roccanova (area of Serre), Sant'Angelo Le Fratte (area of Farisi), Campotosto (area of Reperduso), Capistrello (area of Trasolero), Francavilla (Valle Anzuca), L'Aquila (area of Ponte delle Grotte), Andria (D'Oria G. & C.), Canosa (CO.BE.MA), Bisceglie (CO.GE.SER), Andria (F.lli Acquaviva), Trani (BAT-Igea), Torviscosa (Caffaro (undertaking)), Atella (area of Cafaro), Corleto Perticara (area of Tempa Masone), Marsico Nuovo (area of Galaino), Matera (area of La Martella), Pescopagano (area of Domacchia), Rionero in Volture (area of Ventaruolo), Salandra (area of Piano del Governo), San Mauro Forte (area of Priati), Senise (area of Palomabara), Tito (area of Aia dei Monaci), Tito (area of Valle del Forno), Capestrano (area of Tirassegno), Castellalto (area of Colle Coccu), Castelvecchio Calvisio (area of Termine), Corfinio (area of Cannucce), Corfinio (area of Case querceto), Mosciano S. Angelo (area of Santa Assunta), S. Omero (area of Ficcadenti), Montecorvino Pugliano (area of Parapoti), San Bartolomeo in Galdo (area of Serra Pastore), Trivigano (formerly Cava Zof) and Torviscosa (area of La Valletta), all the measures necessary in order that, as soon as possible, in accordance with Article 7(g) and Article 13 of Directive 1999/31, those landfill sites in the above list which have not obtained, in accordance with Article 8 of that directive, a permit to continue to operate, may be closed, or by failing to adopt the measures necessary to bring those landfill sites which have obtained a permit to continue to operate into line with that directive, without prejudice to the conditions laid down in Annex I, point 1, to that directive, the Italian Republic has failed to fulfil its obligations under Article 14(b) and (c) of Directive 1999/31.

Costs

38 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 has applied for costs and the Italian Republic has been unsuccessful in its submissions, the latter must be ordered to pay the costs.

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

1. **Declares that, by having failed to adopt, with regard to the landfill sites of Avigliano (area of Serre Le Brecce), Ferrandina (area of Venita), Genzano di Lucania (area of Matinella), Latronico (area of Torre), Lauria (area of Carpineto), Maratea (area of Montescuro), Moliterno (area of Tempa La Guarella), both landfill sites of Potenza (area of Montegrosso-Pallareta), the landfill sites of Rapolla (area of Albero in Piano), Roccanova (area of Serre), Sant'Angelo Le Fratte (area of Farisi), Campotosto (area of Reperduso), Capistrello (area of Trasolero), Francavilla (Valle Anzuca), L'Aquila (area of Ponte delle Grotte), Andria (D'Oria G. & C. Snc), Canosa (CO.BE.MA), Bisceglie (CO.GE.SER), Andria (F.lli Acquaviva), Trani (BAT-Igea Srl), Torviscosa (Caffaro (undertaking)), Atella (area of Cafaro), Corleto Perticara (area of Tempa Masone), Marsico Nuovo (area of Galaino), Matera (area of La Martella), Pescopagano (area of Domacchia), Rionero in Volture (area of**

Ventaruolo), Salandra (area of Piano del Governo), San Mauro Forte (area of Priati), Senise (area of Palomabara), Tito (area of Aia dei Monaci), Tito (area of Valle del Forno), Capestrano (area of Tirassegno), Castellalto (area of Colle Coccu), Castelvecchio Calvisio (area of Termine), Corfinio (area of Cannucce), Corfinio (area of Case querceto), Mosciano S. Angelo (area of Santa Assunta), S. Omero (area of Ficcadenti), Montecorvino Pugliano (area of Parapoti), San Bartolomeo in Galdo (area of Serra Pastore), Trivigano (formerly Cava Zof) and Torviscosa (area of La Valletta), all the measures necessary in order that, as soon as possible, in accordance with Article 7(g) and Article 13 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, those landfill sites in the above list which have not obtained, in accordance with Article 8 of that directive, a permit to continue to operate, may be closed, or by failing to adopt the measures necessary to bring those landfill sites which have obtained a permit to continue to operate into line with that directive, without prejudice to the conditions laid down in Annex I, point 1, to that directive, the Italian Republic has failed to fulfil its obligations under Article 14(b) and (c) of Directive 1999/31;

2. **Orders the Italian Republic to pay the costs.**

[Signatures]