

# **How an environmental good governance should look like?**

## **The impact of EU on Romania's environmental transition**

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**Paper submitted for the 2006 Berlin Conference on the Human Dimensions of Global  
Environmental Change  
Berlin 17 – 18 November 2006**

### **Abstract**

It is a commonplace that former socialist countries reached the 1990s with a very polluted environmental background due to the communist regime's ideology: heavy industrial production, mono-industrial areas, weak environmental regulations, etc. In the first years of political and social transition such countries usually have realized a so called 'clean-up by default' since polluting branches of the national economy collapsed. Then came the mirage of EU accession conditioned to acquis adoption. In the present paper, based on the Romanian case I'll explore to what extent the EU can generate a kind of environmental good governance. The main question is whether environmental acquis transposition and structural reforms like institutional restructuring are enough for real improvements? The last EU issued country reports suggest Romania has not been a story of success: environmental debt is as serious as corruption, considered the country's main problems. After presenting some theoretical insights in relation to good environmental governance and data concerning environmental transition in Romania, I'll be mostly concerned about what has really happened regarding the environment since the country has opened the negotiations for EU accession and implicitly began acquis adoption, what Romania did well and what did not at all.

## Introduction

Environmental transition understood as the development of new environmental policies and laws, the formation of political institutions, and the remediation of past environmental degradation (Carmin & Vandever, 2005) in case of Romania took place through three different processes- from within, by default and through external constraints- I've assessed elsewhere (Nistor, 2005; 2006)<sup>1</sup>. Within this paper I'll refer to the latter of them, to environmental transition through external constraints, and will consider the role of the European Union (EU) in generating a good environmental governance in Romania, particularly in relation to waste-management activities. In this context, I'll shortly analyze how good to date is the Romanian waste-related policy, and appreciatively when will Romania be able to meet the EU *acquis* on this regard.

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<sup>1</sup> Environmental transition from within in case of Romania refers to those political action which emerged voluntarily inside the country, without external pressure. For example, Romania began a process of environmental legislation harmonization by adopting and ratifying several international or bilateral environmental accords and conventions. Environmental transition by default is the answer on the question why regarding various emissions Romania is nowadays better situated than before 1990. For example, the annual emission rate of the greenhouse gases, taken together or separately follows a dawn warding trend. According to the Kyoto Protocol Romania engaged to cut the annual rate of the greenhouse gas emissions between 2008-2012 with 8% below the 1989's rate. This target has been already achieved: Romania in 2000 has already been with 33,9 % below the '89's average (European Environment Agency, 2003). The annual average of acid rain responsible emissions has also the same trend and generally speaking the same can be said about heavy metals, too. This favorable picture however is illusory: the above data refer to a country-level average, and if we take industrial regions or towns separately statistics is definitely darker. Let's take just a few examples: the urban region around Zlatna, due to the activity of an old copper processing plant is strongly polluted with acid rain generating substances and heavy metals, and the annual average concentration of sulphur dioxide overpasses with 2.4 times the annual MAC; in Copsa Mica region in the year 2003 the frequency of admitted limits overpassing at Pb varies from 98.6% to 74.2%, and from 100% to 86.1% at Cd. (Ministry of Environment and Waters Management, 2004). However the early issued WB paper (World Bank, 1992) attracted attention to the environmental challenges Copsa Mica represent, significantly improvements did not occur. Ecological modernization theory in its classical approach considers that the state has a central and indispensable role in environmental reform, in adopting and implementing a 'political program' for improving environmental quality (Mol, 1997). The case of Romania and also of other CEE countries, however show that the improvement of the country's environmental quality as a whole, during post-communist transition has not occurred due to serious environmental reforms, to the so called ecological modernization from within and even not due to the perfect compliance with external conditionality, but to the so called 'clean-up by default' (Klaus, 2002- cited by Pavlinek & Pickles, 2005, p. 258), which means that the last regime's massive industries rapidly showed their inefficiency and collapsed or had been closed.

Environmental transition through external constraints refers to those policies practice by international financial institutions (IFIs), like World Bank and International Monetary Found, and later the EU, which put the cleaning of the country as a condition for further financial assistance or accession (in case of the EU). With other words, such policies represent the case of 'aid buys reforms' technique of government (Collier, 1997:56) in case of IFIs, respectively the technique of accession is the reward of cleaning in case of EU (Schimmelfennig and Sedelmeier, 2004).

## **Generating a good environmental governance. From IFIs' towards EU-type conditionality**

Good governance is a World Bank defined guiding term of developmental aid politics, and means- according to Jeffries (2001:14) who cites James Wolfehnsen (International Herald Tribune,1996:6) - open, transparent, accountable public institutions. More specifically, it refers to efficiency in public service, rule of law with regard to contracts, effective judiciary sector, respect for human rights, a free press, and pluralistic institutional structure (Rhodes, 1996: 656-quoted by Zanotti, 2005:468). Developmental interventions of the International Financial Institutions (IFIs) promote this kind of governance and aim to reorganize local practices into functional policy-making through 'performance techniques' like reward or punish (Zanotti, 2005).

Such techniques have been widely criticized over time because linking aid to policy reforms and because of the conditionality and selectivity associated with them, meaning that financial support can be suspended if countries do not conform to rules, with other words if the 'governance is weak' (Ahrens, 2001). Critics also argue that the indicators of good governance - accountability, transparency, predictability - are highly abstract terms which made the concept hardly useful (Rojas, 2004). On the other hand, we have to recognize, that the concept of good governance is a step forward regarding the definition of development which at least theoretically does not mean in this approach solely an economic progress, but has also normative aspects, and even the applicability of the term has certain shortcomings, theoretically good governance represents a kind of politically correct dimension of development (Zanotti, 2005), or broadly speaking, approaches the problem from the perspective that neo-liberal solutions need a state that 'could anticipate, mediate between and motivate the many different changes that our societies were experiencing' (Touraine, 2001:90).

Within such a framework we can also refer to an 'environmental good governance'. For this purpose a great help is that of Heldeweg (2005). The author, based on the 2001 European Commission White Paper presents and exemplifies an environmental good governance from the perspective of environmental legal policy making in Europe. Starting with the five underlying principles of good governance: openness, participation, accountability, effectiveness and coherence, Heldeweg explores how these principles appear when considering environmental policy-making: *openness* and *participation*- access to environmental information, public participation, access to judicial review in environmental cases; *accountability*- environmental principles like the precautionary, the prevention, the intervention at the source, the polluter pays principles and the safeguard clause are benchmarks for accountability in environmental policy-making; *effectiveness*-

to make more use of horizontal instruments; *coherence*- the need for overall consistency across sector policies (e.g. IPPC).

Similarly, Steiner et al. (2003: 17-18) explain the need for and the characteristics of an environmental good governance based on the necessary conditions of good governance in general and list the main challenges for building-up an environmental good governance: strengthening national and sub-national environmental institutions; developing institutional capacity for implementation; increasing institutional competence; building political authority of environmental institutions and decentralizing environmental management; establishing mechanisms for public access to environmental information and public participation in decision-making; developing environmental legislation in accordance with international directives; setting priorities; policy integration of concern for environment and environmental criteria in all developmental areas and decision-making processes; increasing financial resources for the environment from governmental budgets; engaging in international environmental regimes and processes.

These specificities and challenges of good governance have circumscribed several steps in international assistance towards post-socialist countries: firstly an environmental governance should be built and after improved according to good governance and international or global environmental governance guidelines. Pavlinek and Pickles (2005) talk in this regard about a specific transition of environmental reforms in post-socialist countries which is also true for Romania: the creation or restructuring of existing environmental ministries and related environmental management institutions; the overhaul of existing environmental legislation resulted in the preparation and enactment of new environmental laws; the sense of urgency to deal with environmental problems in the early 1990s which quickly evaporated as economic problems overwhelmed both the governments and the public; the role of the EU in shaping environmental policies and legislation in the candidate countries increased in the second half of the 1990s, as a result of political requirements to meet the EU's environmental *acquis*.

Taking the CEE region as a whole, one can assess, that usually, IFIs came first and influenced the institutional and procedural (for example environmental impact assessment) frameworks, usually through 'aid buys reforms' techniques (Collier, 1997:56), meaning that

"International aid, in the form of grants and loans, became centerpiece of the structure of governance by international institutions such as the World Bank and the IMF. Conditionality was the instrument linking aid to policy reform under structural adjustment loans" (Rojas, 2004:104)

From this perspective, financial conditionality represents a governing technology. Later, the case of *acquis* adoption (the harmonization) represents another type of technology on this regard, which Barry (1994- quoted by Walters, 2004) calls the ‘art of European government’ or the ‘technique of standardization’.

Although assumptions which question IFIs-type conditionality and even the good or democratic character of the EU<sup>2</sup> are not rare, when talking about their interventions in post-socialist countries, such institutions and especially the EU on basis of regulations they’ve promoted are referred to as important motors in generating good political and institutional practices in relation to environment. For example: Reed (1997:236) considers that there are cases when the Bank does not give sufficient attention to environmental issues and ‘its structural adjustment programs have been driven by the logic of <<getting the prices right>> without recognizing the social and environmental impacts of the restructuring process’, but he also notes that the Bank has an important function to national governments on environment-related policy issues: developing national environmental action plans; integration of those plans into national economic growth strategies; rebuild national regulatory and enforcement capacity; integrate environmental performance into government ministries; improve data collection capabilities; develop market-based environmental incentives; strengthen civil participation; develop national environmental education programs (p. 242-243).

Opinions are even more homogenous when it comes about the role of the EU in the case of Central and Eastern Europe, where practically completed the financial conditionality of the World Bank. Garvey (2005) for example, considers that there are four arguments when assessing the impact of EU accession on CEE countries’ environment: the adoption and implementation of EU’s environmental *acquis*, and it is assumed that changing the Soviet type environmental legislation with EU type regulations would produce improvements in CEE’s environmental quality; the economic transformation of CEEs, meaning that the author supposes that replacing the central planning system of economy with a market economy would result in green and clean technology (cf. ecological modernization theory); a third argument is that the environment will again be a political priority in this countries, as far as it was once, after the liberation, but its saliency fall because of other urgent social and economic problems; the final argument Garvey lists is that improving the environment in the CEE region, implicitly will have an effect on EU’s environment as a whole.

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<sup>2</sup> John Coultrap (1999) for example speaks about a ‘democratic deficiency’ regarding the EU, meaning that “the flow of influence from the people to government is impeded in some way” (p. 108), due to the deficit of mainly three institutions: the supranational Euro-elections, transnational party federations and the European Parliament, and to different causes: the lack of coordination, dominance of national over supranational politics and to the marginal institutional position of the EP.

IFIs also agree that their adjustment programs started to turn into positive results when EU also entered the playground:

“The decision by the EU Council of Ministers in December 1999 to open EU accession negotiations for Romania appears to have had a further catalytic effect on the momentum for reform. Since then good progress have been made in stabilization, growth and private sector development.” (World Bank, 2005: v)

Schimmelfennig and Sedelmeier (2004, see also Bartlett, 2001) consider that the rule transfer towards such countries occurred through the ‘policy of conditionality’, however differing from the IFIs case the reward in this case has not been the further financial assistance but the promise of accession, of course with its specific steps: trade and co-operation agreements, association agreements and full membership. According to their determinacy hypothesis, the effectiveness of rule transfer increases if rules are set as conditions for rewards while reward hypothesis suggests that the effectiveness of rule transfer increases with the size and speed of rewards.

Besides both hypothesis, it should be stressed, that in the EU-type promotion of environmental good governance, not only the reward in sense of further membership, but financial instruments like ISPA and PHARE have also played an important role. Taking the whole CEE region, it is assumed that the total cost of adopting the environmental acquis will range from 80 to 100 billion Euro (Carmine & VanDeveer, 2005: 8). In case of Romania, between 2004-2018 the total of estimated costs concerning acquis adoption and implementation is about 29.3 billion Euro (Ministerul Mediului si Gospodarii Apelor, 2005). Within a framework where the most important sources of environmental financing are represented by state and local budgets, the Environmental Fund and external credits, EU-financed programs like PHARE, SAPARD, ISPA, LIFE had an important role in financing. Between 2000-2005 have been approved 42 ISPA financed projects in Romania, with a total value of 1.457 billion Euro. Through PHARE now are running in Romania projects with a total value of 88.3 million Euro, while through LIFE projects totalizing 16.27 million Euro (Guvernul Romaniei, 2005).

### **Romania towards EU- accession. The case of environmental policy-making**

Romania has diplomatic relations with the EU since 1990, and signed a Trade and Co-operation Agreement in 1991. On 22 June 1995, Romania submitted its application for EU

membership. The European Union Council of Ministers in December 1999 decided to open the EU accession negotiations for Romania and as a result, Romania officially started accession negotiations with the EU on 15 February 2000. Negotiations regarding the 22<sup>nd</sup> chapter of integration (Environment) were opened in March 2002 at Brussels within the framework of Intergovernmental Conference. By this date the government reorganized the local and central environmental institutions and founded in 2001 the Environmental Guard- a controlling body with a specific status in controlling the implementation and comply with environmental regulations among state owned and private enterprises. In the same year, the Environmental Fund, an economic and financial instrument designed to sustain and elaborate environmental projects, especially in relation to the *acquis* was created (Ministry of Waters and Environmental Protection, 2001). According to the negotiation document, Romania engaged to conform itself to the European regulation regarding the environment, and negotiated deadlines for conforming. Negotiations for this chapter have been closed in December 2004.

Since the first EU-issued country-report one can clearly follow the weak and progressing parts of the measures taken by Romanian authorities towards conforming to the EU environmental *acquis*. Challenges on this regard are exactly those related to the problem of building-up a good environmental governance: the creation or restructuring of existing environmental ministries and related environmental management institutions; the overhaul of existing environmental legislation resulted in the preparation and enactment of new environmental laws (Pavlinek and Pickles, 2005)

Regular Reports of the Commission concerning Romania continuously mention the positive as well as the negative aspects on this regard:

“There has been little progress in transposition of environmental legislation since early 1997. There is no comprehensive policy approach in this core area of Community legislation. [...] There is an urgent need for comprehensive reorganization of the Ministry of Waters, Forests and Environmental Protection” (Commission of the European Communities, 1998: 38-39).

“The overall status of Romania’s approximation efforts is low and the pace of legal approximation should be accelerated. [...] Only very limited progress has been achieved on the environmental *acquis* despite the priorities included in the Accession Partnership. There is no comprehensive policy approach in this core area of Community legislation. [...] No progress has been made on the transposition in the horizontal legislation “ (Commission of the European Communities, 1999: 52)

“Romania has introduced several reforms to reinforce administrative capacity at local level. [...] At the national level, the administrative capacity is still low and there is a lack of resources devoted to

EC approximation. [...] In contrast to previous years, Romania has made some progress with preparing strategies for transposing the acquis. The National Action Plan for Environmental Protection was updated in November 1999. [...] In the field of horizontal legislation, a framework law establishing an environmental fund was adopted in May 2000.” (Commission of the European Communities, 2000:71)

“[...]Romania has made progress with ratification of international conventions, elaboration of action plans for alignment, and adoption of some elements of the acquis. [...] With regard to the integration of the environment with other policies, no significant progress has been achieved.” (Commission of the European Communities, 2001: 81)

“[...] Romania has made progress with transposition of the environmental acquis – although much of the new legislation appears to have been adopted without due consideration for the administrative and financial resources necessary for its implementation” (Commission of the European Communities, 2002: 104)

“Significant progress has been made in legal alignment in the field of horizontal legislation by adopting laws on environmental impact assessment.” (Commission of the European Communities, 2003:95)

“[...] Romania has continued to make progress in terms of transposition and has taken some steps with regard to implementation and enforcement. Romania has, in particular, taken measures to plan and enhance its administrative capacity in this area” (Commission of the European Communities, 2004: 117)

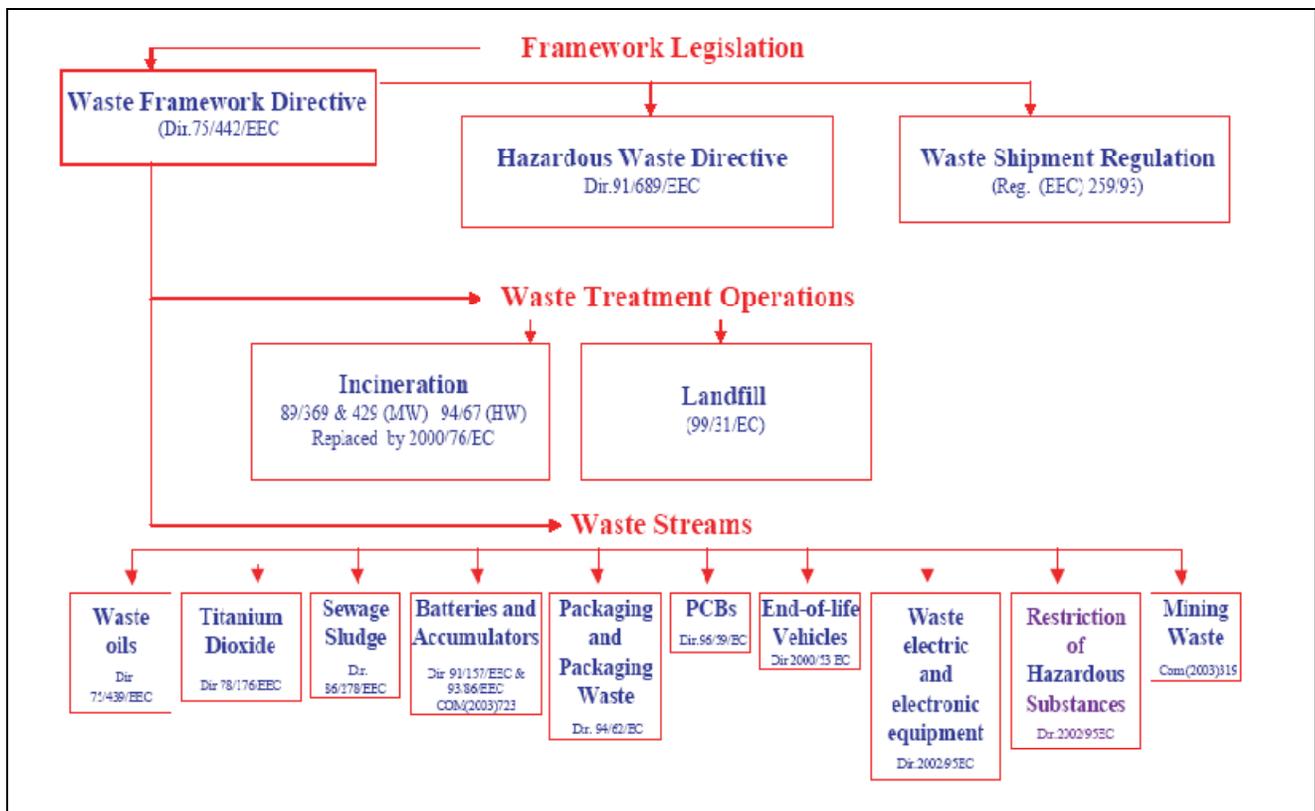
Finally, the Commission’s concluding monitoring Report issued in May 2006, with less than a year before Romania’s effective accession to the EU, summarizes the measures taken by Romanian authorities with a kind of *okay guys, but you have to continue* attitude:

“Progress has taken place in the areas of horizontal legislation, waste management and water quality. Legal transposition and the necessary implementation steps remain to be completed. Administrative capacity in these sectors should be further reinforced particularly at local / regional level. Important progress has been made in the area of industrial pollution. Efforts should be continued [...]. The National Environmental Guard should be able to ensure appropriate enforcement of environmental legislation. [...] In particular, strengthening of the administrative capacities, of the cooperation and coordinating mechanisms as well as the completion of the preparations for special nature protection areas are needed. All these areas require increased efforts and swift action” (Commission of the European Communities, 2006: 33).

With these considerations in mind in relations to the Romanian state of play regarding the transposition of environmental acquis, I turn to ask what will happen regarding the effective implementation and enforcement. The EU does not wait that member states to be prepared by the date of accession regarding all these aspects of a real transposing. Transition periods negotiated between the countries and the EU are means through which a country can legitimize its further commitments towards effective implementation. Romania, however showed real results in transposing the acquis on paper, is not by far so well situated when it comes about implementation. There are 11 thematic transition periods concerning acquis application in Romania: emissions of volatile organic compounds from storage of petrol until 2009; recovery and recycling of packaging waste until 2013; landfill of certain liquid wastes until 2013, waste landfills until July 2017; shipment of waste until 2011; waste electrical and electronic equipment until 2008; IPPC until 2015; treatment of urban waste water until 2018; quality of drinking water until 2015; discharges of dangerous substances into surface water until 2009; air pollution from large combustion plants until 2013 and 2016-2017; incineration of hazardous medical waste until 2009 (European Commission, 2004). Most of these transition periods refer to waste management and policy-application. Now, I turn to ask why exactly regarding the problem of waste Romania needs long periods of transition. Firstly, I'll take a short look to the EU-level waste policy, then analyze some waste-indicators in Romania and the adoption by the country of the EU-level policy.

### **EU-level waste policy. A short review**

Waste, understood as an unavoidable by-product of economic activity, production and consumption (EEA, 2003) continues to be an important issue in relation to environmental problems and raises a number of questions about how to deal with in an ecologically manner. Not surprisingly, waste-related policies are an important part of the EU-level environmental governance, being referred to as the core-problem of the EU environmental policy *per se* (European Commission, no data). The first regulation on this regard is the Framework Directive on Waste (75/442 EC) adopted in 1975. Since then a number of amendments and special regulations to different types of waste have been issued and became part of the EU-level policy in relation to waste (Fig.1).



**Fig. 1. EU-level waste policy**

Source: European Commission (2005). EU waste policy. The story behind the strategy, p. 10.

Since the adoption of the Waste Framework Directive, waste legislation has been several times modified according to how during these 30 years waste-related good governance was reinterpreted. *Grosso modo*, one can summarize these changes as follows: in the first years of the Directive, waste problems were considered something should be treat *post facto* through end-of-pipe technologies (usually through landfilling and incineration) while later *waste prevention* became a priority on this regard (through recycling, re-use and energy recovery) (see Gille, 2005). As a result of such conceptual reinterpretations, today the EU-level waste management is assumed to be hierarchical, from the best to the worst treatments, waste-related management techniques being the followings: 1. Prevent waste in the first place. 2. Re-use the product. 3. Recycle or compost the material. 4. Recover the energy by incinerating. 5. Dispose the product in a landfill (European Commission, 2005: 9). In order to achieve these goals in relation to EU-level waste policy, there are a number of principles which, together with the above mentioned hierarchy, represent the good governance / good practice requirements of waste-related practices: 1. Prevention principle (top-priority should be given to waste prevention and minimizing). 2. Proximity principle (waste should

be disposed of as close as possible to where it is generated). 3. Producer responsibility principle (waste producers should bear cradle-to-grave responsibility for any damage caused by the waste they generate. 4. Polluter pays principle (polluters should bear the costs of safe management and disposal). 5. Precautionary principle (waste management strategies should not take risks even if the causal relation between waste and damage is not fully proved) (Gille, 2005: 117).

As a consequence, based on the theoretical approaches in relation to environmental good governance presented in the first paragraph (Heldeweg, 2005; Steiner et al., 2003) and on the more specific principles and strategies concerning EU-level waste-policy, a good environmental governance in relation to waste can be summarized as follows (Table 1.).

**Table 1. Integrative framework of good governance requirements in relation to EU waste-policy**

<b>Good governance requirements in relation to waste-management</b>	<b>Indicators of the requirements</b>
<i>Harmonization</i>	<i>Adoption of the environmental (waste) acquis by the member states</i>
<i>Openness and participation</i>	<i>Access to environmental information in relation to waste, public participation, access to judicial review, local decision-making in accordance with national and international law.</i>
<i>Accountability</i>	<i>Policy-making makes use of the prevention, proximity, producer responsibility, polluter pays and precautionary principles in relation to waste generation and management.</i>
<i>Effectiveness</i>	<i>Real use of legal instruments: implementation and enforcement</i>
<i>Coherence</i>	<i>Consistency across sector policies: waste policy is integrated into other policies in relation to waste (e.g. IPPC)</i>
<i>Hierarchy</i>	<i>The more use of the higher value and the less use of the lower value techniques in relation to waste from 1. Prevent waste in the first place. 2. Re-use the product. 3. Recycle or compost the material. 4. Recover the energy by incinerating. 5. Dispose the product in a landfill</i>

Made by the author based on the ideas of Heldeweg (2005) and Steiner et al. (2003)

## The problem of waste in Romania

The problem of waste and particularly its management is a common and stressing issue for all post-socialist countries, and practically the still non-resolved character of the waste management in such countries illustrates the legacy of the communist past. It is a commonplace that former socialist countries reached the 1990s with a very polluted environmental background as a result of the communist type industrial politics: heavy industrial production, especially in mono-industrial areas, weak environmental regulations, etc. There are a number of myths on this regard, for example, the myth of ‘ecocide’, toxic nightmare’, ‘ecological disaster’ which all reflect the ignorant attitude of communist authorities towards environmental problems (Pavlinek & Pickles, 2005). However, it would not be really correct to assume, that such phenomena which are nowadays near to myths are characteristics only of communist regimes. Western type capitalism is also a generator of polluting emissions and waste and in some aspects capitalism itself considers that the natural environment has no intrinsic value. As a consequence, communism as polluter exists not so in the sense of industrial production, but in the sense of *how* this production and controlling activity took place: forced industrialization, especially in mono-industrial areas which thus laid only on production of a single industry and the inner contradiction of the system *per se*. As far as communism defines itself as a contra-system to that of capitalism, it has to negate the problems of the latter with all aspects it implies, including also the fact that

“Communist ideology held that planned economies were inherently more environmentally friendly than capitalist ones, because the former are not driven by the profit motive and were therefore able to ensure development that served environmental as well as social imperatives” (Cherp & Vrbinsky, 2002: 26).

Albeit there were a number of serious environmental shortcomings in communist regimes, the system could not officially recognize them, because it would mean to accept the system’s weaknesses themselves. So, Pavlinek & Pickles (2005: 242) correctly assume that

“the excessive environmental degradation in hot spots did not result merely from ignorance on the part of state socialist governments but from their failures to deal with environmental problems successfully within the limits of state socialist system and the type of development model pursued.”

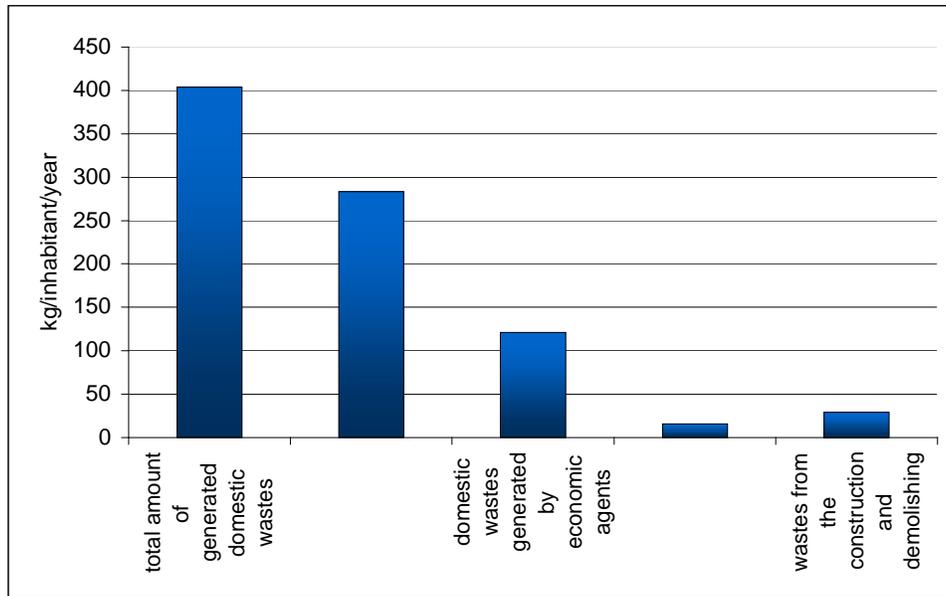
Since there have not been comprehensive waste-management strategies in Romania during communism, excepting some recycling activities with questionable results, during the transition period the country has not been able to work off such a legacy, and one can say without any doubt

that the Romanian waste management does not fit at all the good governance or good practice requirements listed above. Waste is usually dealt with the lower value procedures of the hierarchy (incineration and landfilling) and however – as we'll see later – the environmental acquis has been transposed on this regard, practices remained under the acquis requirements.

In Romania the major part of generated waste is represented by industrial waste (mining, productive industry and agriculture), totalising for the year 2002 a generated amount of 372.4 million tons, 90 % of which generated by mining. The generated quantity of hazardous waste in the same year was over 2.5 million tons, 88 % of which was eliminated through storage and incineration (Ministry of Environment and Waters Management, 2004). Industrial waste is most commonly stored in landfills which in 70 % do not meet the EU acquis (Directive no. 1999/31/EC), most of them being uncovered and according to the accession negotiations will be closed until 2007. Regarding hazardous waste, there are 59 hazardous industrial waste landfills, from which only 4 are in compliance with EC Directive 1999/31 (*ibidem*).

In Romania the problem of waste continues to be one of the most pressing environmental problems, especially on community level. According to the Public Opinion Barometer (The Gallup Organization, 2005a), 65 % of those questioned consider the problem of waste collection and sewage in general are very serious (39 %) or serious problems (26 %) in the community they live. This percent, where both urban and rural population is considered, seems completely reasonable, as far as only a small percent of the rural population benefits from sanitation services (5 % in 2002 – Ministry of Environment and Waters Management, 2004). If only urban population is considered, the percent of those are not satisfied by sanitation however does not allow us to become calm: 47 % of the urban population consider waste is not properly stored in their residential area (The Gallup Organization, 2005b), in spite of the fact, that according to official data, percentage of urban population which benefits from sanitation services has increased from 78 % in 1998 to 90 % in 2002 and an average of 87 % of the total waste generated in urban areas is collected (data for 2002- Ministry of Environment and Waters Management, 2004).

The figure below (Fig. 2) shows the amounts of generated municipal waste for the year 2002.

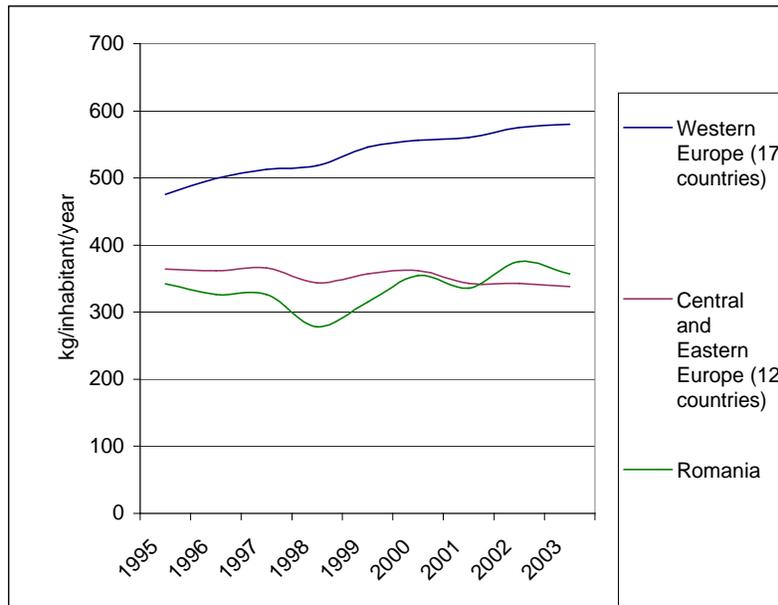


**Fig. 2. The state of generated municipal wastes (data for the year 2002)**

Source: Figure made by the author based on Ministry of Environment and Waters Management, 2004.

According to the definition of the Romanian Ministry of Environment and Waters Management (2004) municipal waste is made up from population and economic agents' domestic waste, waste from social overheads (e.g. street waste) and waste from construction and demolishing. Summing up these kind of wastes, the total amount of generated municipal waste for the year 2002 is 449 kg/inhabitant. Other organizations use other type of definitions of what municipal waste is including. EIONET for example does not include materials from construction and demolishing, saying that municipal waste is made up to residual waste, bulky waste, secondary materials from separate collection (e.g., paper and glass), household hazardous waste, street sweepings and litter collections. It is made up of materials such as paper, cardboard, metals, textiles, organics (food and garden waste) and wood. EEA (2005) also notes that different countries use different kind of definitions regarding municipal waste, in consequence it is hard to get comparable data. From this definitional perspective it is completely reasonable why there is a difference of 74 kg/inhabitant in the total amount of municipal waste generated in 2002 in Romania [according to the European Environment Agency 375 kg/capita, while according to the Ministry of Environment and Waters Management 449 kg/capita]. Now, in order to see the evolutions in municipal waste generating over the last decade in Romania comparatively to other European countries, I'll make use of the data provided by the EEA, and as in the next graph we can observe the evolution over time of generated municipal

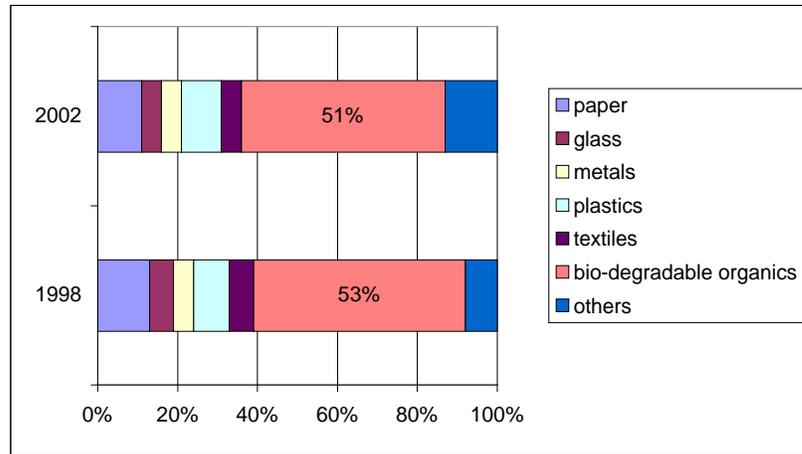
waste amounts in Romania at the end of the period is over the amount generated by the CEE media, but lower than the amount generated by Western European media.



**Fig. 3. Evolution of generated municipal waste (1995-2003)**

Made by the author based on data provided by EEA (2005) – IMS Indicator – Municipal waste generation

If regarding waste generating, Romania fits the CEE media and is better situated than Western European countries, the problem of collecting represents the weak point of the Romanian waste-management. I've already mentioned that rural population benefits only in a very small (5%) percent from collection services. Urban population is almost at all served on this regard, however the above mentioned population scepticisms in relation to urban waste management is reasonable as far as only 2 % (in 2001) respectively 7 % (in 2002) of the domestic waste is collected selectively. Appreciatively 40 % of the urban waste component parts are retrievable materials (Fig. 4), out of which only 20 % is likely to be recycled.



**Fig. 4. The composition of domestic waste generated by the population**

Made by the author base on data of Ministry of Environment and Waters Management, 2004

From the total generated urban waste, approx. 95 % are stored mostly in landfills which do not meet the EU requirements (251 of such landfills will be closed until 2009 and 2017 respectively). Other 11 landfills are new and meet the EU standards (Ministry of Environment and Waters Management, 2004). Only 3 % of the urban sludge resulted from waste water treatment stations is annually capitalized in the agriculture. More than this, the urban wastes are not subject of any kind of treatment process before the final removal through landfilling. Most of the urban landfills are mixed (60%) for both urban and industrial waste. Without entering in details, the same percent are true also for industrial waste: approx. 33% of the industrial waste are capitalized and 67 % are disposed (storage or burning) (*ibidem*).

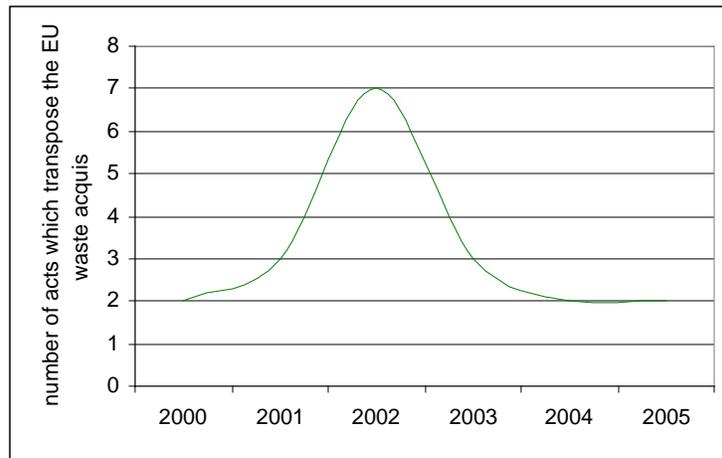
### **Waste policy in Romania. How good it is to date?**

The Ministry for the Environment in Romania was established in 1991 and the Law on Environmental Protection (no. 137/1995) was adopted in 1995, which represents together with a number of normative acts the general legislative framework for environmental protection in relation to waste management. After the decision of the European Union Council of Ministers in December 1999 to open the EU accession negotiations for Romania, in July 1999 a ministerial order established working groups to elaborate the National Plan for Romania's Approximation to the EU Environmental Acquis (Ministry of Waters and Environmental Protection, 2001). In consequence,

negotiations regarding the environmental acquis were opened in March 2002. According to this document, Romania engaged to adopt, implement and enforce the EU-level legislation.

“ The principle is that the candidate countries should be able to take on board and implement all EU environmental legislation by the time they became members. However, in the same time the EU has acknowledged the specific problems the candidate countries are facing. Some of the EU law require heavy investments, and thus *transition periods* will be needed to implement them” (DG Environment, 2002, p. 8 – emphasis mine)

In accordance with this practice, Romania, as well as other candidate countries has negotiated deadlines for conforming. In case of waste-policy - according to the Annex 1 - EU Frameworks and directives on this regard are transposed by now. The figure below illustrates the dynamics of EU-level waste acquis adoption by Romania, measured in number of laws, government decisions and ministerial orders by year through which waste-acquis was transposed.



**Fig. 5. The dynamics of waste acquis adoption in Romania**

Made by the author based on data from Ministry of Environment and Waters Management – National Waste Management Strategy (see Annex 1)

In spite of the fact that Romania has succeeded in transposition, it was not able to effectively imply and enforce the legislation on waste and there are a number of transition periods regarding their effective application and enforce. As I’ve already mentioned within this paper, in case of Romania there are 11 thematic transition periods and most of them refer exactly to waste management, namely: recovery and recycling of packaging waste until 2013; landfill of certain liquid wastes until 2013, waste landfills until July 2017; shipment of waste until 2011; waste electrical and electronic equipment until 2008; IPPC until 2015; treatment of urban waste water until 2018;

discharges of dangerous substances into surface water until 2009; incineration of hazardous medical waste until 2009 (European Commission, 2004)

Now, when we try to respond to the question how good to date the Romanian waste policy or governance in relation to waste is, quite simple to observe that shortcomings occur in relation to effectiveness. But let's turn to analyze in order, how good waste governance requirements presented in the integrative framework within this paper are fulfilled in Romania.

Harmonization: this requirement is fulfilled, Romania has transposed the EU legislation in relation to waste (see Annex 1)

Openness and participation: as I've mentioned, indicators of this *sine qua non* of good environmental governance refer to public participation, open judicial practice, local decision-making in relation to waste. EU-directives related to waste include aspects on this regard, but if one starts from the point that Romania has adopted the Aarhus convention, then may conclude that such requirement is fulfilled. However, I tend not to be so optimistic, because such a requirement send us to another one, namely to that of coherence, which is measured by the fact how environmental policy-making is integrated with other policy-making (judiciary practice but even with other not explicitly waste related acquis directives – IPPC, those referring to water and industrial pollution, etc.). If we refer only to the very general conclusions of the May 2006 Monitoring Report (European Commission of European Communities, 2006) which states that swift action regarding environmental policy-making represents a weak point in case of Romania tend to conclude that coherence is only partially fulfilled.

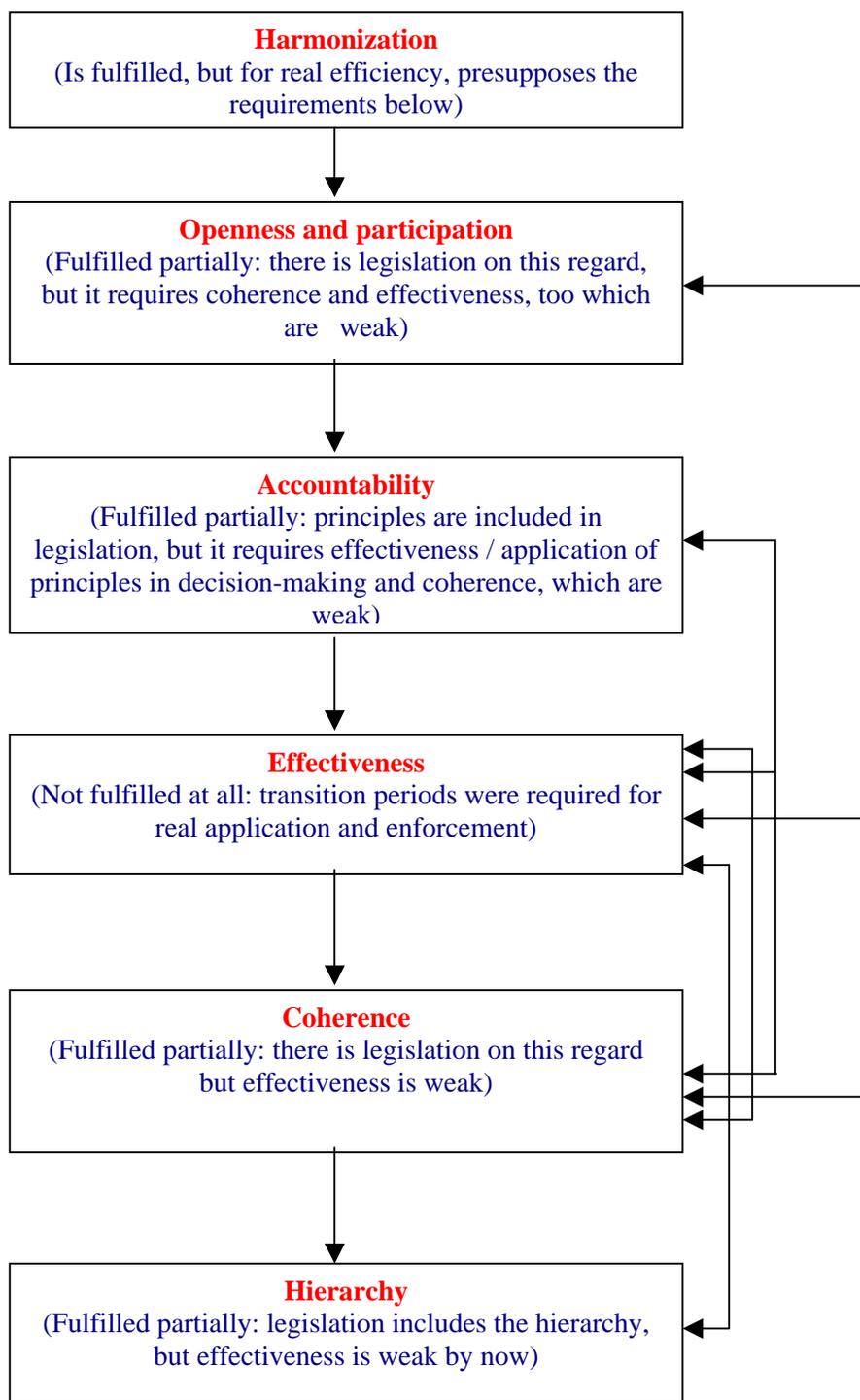
Accountability: In the integrative framework of good governance requirements I've assessed that there should be included some specific principles in relation to good waste governance which use might be clear during decision-making. EU-level waste directives by definition include these 5 principles, and as far as such directives have been adopted by Romania, they became implicitly part of the Romanian good practice towards waste. The insights provided by the Romanian National Waste Management Strategy which was developed by the Ministry of Environment and Water Management, in line with the EU legislation for the period 2003-2013 enforce us on this regard: Romania itself has defined the underlining principles of the waste-management activities: 1. protection of primary resources (minimize and enhancing efficiency in the use of primary resources, particularly non-renewable resources). 2. preliminary measures (BAT); 3. prevention principle (avoiding waste arising, minimizing quantities, treatment for recovery, treatment and disposal in environmentally sound conditions); 4. polluter pays principle (producer responsibility and user

responsibility); 5. substitution principle (the need to replace dangerous raw materials by non-dangerous raw materials); 6. proximity principle and autonomy principle (waste should be treated and disposed of as close as possible to the site where it was generated); 7. subsidiarity principle (waste management decisions to be taken at the lowest administrative level above the source of generation, but based on uniform regional, national and international criteria); 8. integration principle (waste management is an integral part of the social-economic activities generating the waste). With other words, one may conclude that all those criteria referring to the accountability requirement of good governance exist. Let's now turn to see their effective application.

Effectiveness: this requirement denotes the real, in practice use of legal instruments. Having in mind the transition periods, it becomes clear that Romania did not succeed by now in effective application, implementation and enforce and this requirement is the weakest of the integrative good governance framework in relation to waste management in Romania.

Hierarchy: in accordance with the EU-type waste management hierarchy, the Romanian good practice in relation to waste management states that will use waste hierarchy. By now, this engagement occurs only within papers. To make use of hierarchy means to use the better option in relation to waste management in the field. So, this requirement send us back to effectiveness, which we saw is not fulfilled.

Now, having in mind the above consideration, I've summarized in the figure below - within an integrative model - the actual state of the Romanian waste-management / governance in relation to waste. Mentioning in case of any good governance requirements both the positive and negative aspects, it is clear that Romania is by now far from the ideal type of good waste governance. The weakest parts of the model are the requirements of coherence and especially effectiveness, all the other requirements for their real functioning supposing that these two, especially the last being fulfilled.



**Fig. 6. The integrative model of the actual state of the Romanian waste-management**  
(Made by the author)

How can we then conclude the state of the Romanian waste policy and management? While some good governance indicators are totally or partially fulfilled, others are not at all, and thus, one might say the Romanian practice on this regard is somewhere on the way towards good governance. One has also to state, that all these requirements represent an ideal type, which in reality rarely exist. Regarding the EU, there are frequent opinion which assess that while the EU is a great example of strict regulations, such regulations usually fail when they have to be adopt into the national legislation of member states and especially when regulations have to be effectively implement. Let's take for example the case of the IPPC directive (96/61/EC). Old member states faced a real problem when they had to transpose and later apply the directive: it was transposed with delays into the national legislations because in some cases there have already been national regulations on integrative assessments, while in other cases the building-up of a completely new legislative framework posed great challenges to the countries. The 15 old member states have to assess according to IPPC until October 30 2007 a total of 45.000 existing objectives, from which till September 2005 only 13 % have been done (Commission of the European Communities, 2005) Similar consideration could be said about other, not necessary environmental directives, too (e.g. Krislov et al. 1986 – quoted by Jordan, 2002)

Romania is well situated on the first step, that of harmonization, but as we've seen this is not enough by far for effective results. Albeit, there is another aspect of the good governance. Good governance can be conceptualized in a simplistic manner too, which in our case would mean the harmonization and the commitment of the country for further implementations, which would be the case of *formal compliance* (legislation harmonization) and *practical compliance* (the clearly negotiated transition periods) (see Haigh, 1992). As far as Romania has achieved formal compliance and has clearly negotiated deadlines for conforming, one might optimistically conclude that the Romanian waste governance fulfills the requirements of an EU-type good governance. I'm not from those. The above short analysis clearly demonstrated we have to go deeper when judging how a governance is, and I subscribe to the opinion that the crucial turning-point of harmonization is represented by effective implementation, and

“The success of EU policies – and with them the whole integration project – must ultimately be judged by the impacts they have on the ground. If [...] the *acquis* is not fully implemented, EU environmental policy risks becoming a paper exercise with little tangible effect on environmental quality.” (Jordan, 2002: 301)

Acquis effective implementation needs a number of crucial steps, which are relevant in case of waste policy, too: identify a national competent authority, establish a timetable, prepare administration, train staff, consult with other government departments, inform affected industrial sectors, monitor implementation, take enforcement action, etc. (DG Environment, 2002). In accordance with these necessities, within the Ministry of Environment and Waters Management there was created a Directorate for waste and hazardous substances which is directly responsible for implementation; the National Waste Management Strategy was developed which credibly defines the timetables and to-do-lists for waste-related EU-directive implementation. Without enter in detail for any directive, for example in case of Directive no. 99/31/EC referring to the landfill of waste, for which Romania has transition periods until 2017, the Strategy establishes besides creating the necessary legislative framework – which is already done, the followings: assigning responsibilities for planning authorization to public authorities; identifying, compiling an inventory and classifying existing municipal and industrial waste disposal site; planning the closure and conditioning of existing municipal waste disposal sites and starting new disposal sites; evaluating the types and quantities of waste existing in industrial deposits.

Administrative and staff-related shortcomings, respectively the lack of swift action of Romanian environment-related departments have been repeatedly mentioned within EU issued country reports. According to a ministerial communiqué (Ministerul Mediului si Gospodarii Apelor, 2006) human capital of environmental related institutions increased and several twinning projects related among others to waste management took place. Coherence, coordination and effectiveness of several institutions were ensured through several measures: The Environmental Guard (a very important branch in supervising, enforce and financing) became directly subordinated to the Ministry; there were developed Regional Waste Management Plans during which consultations with local and regional authorities took place, etc.

To be effective, waste management needs high costs. Romania won several ISPA projects through which aims to overcome the problems of uncontrolled and low hierarchy waste management and storage of waste in urban areas; between 2000-2005 have been approved 42 ISPA financed projects with a total value of 1,457 billion Euro (Guvernul Romaniei, 2005) and several projects have been financed through the amounts collected by the Environmental Found (Ministerul Mediului si Gospodarii Apelor, 2006). All the other issues the communiqué states (closing of several unsuitable waste landfills, selective trial projects, campaigns in order to sensitize the public, etc) are

positive arguments in the direction that transition periods negotiated by the country will finally be honored.

In conclusion, we can state, that by now Romania neither does not fulfill the good governance requirements of waste management, but based on the progresses reported by the Ministry, we are not empowered to suppose that Romania finally- at the end of the transition periods - will not be close to what we've assessed to be a good governance in relation to environment, particularly to waste. In order to not experience an 'implementation deficit', the country has however to make use of real enforce and monitoring in order to avoid sanctions and actions initiated against non-compliance within the European Court of Justice.

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## Annex 1

### State of EU-level waste-related legislation transposition into the Romanian legislation

Source: Ministry of Environment and Waters Management – National Waste Management Strategy  
([http://www.mmediu.ro/dep\\_mediu/strategie\\_deseuri.htm](http://www.mmediu.ro/dep_mediu/strategie_deseuri.htm))

European Law	Romanian law
<b>Framework Directive on waste no. 75/442/EEC, as amended by Directive no. 91/156/EEC</b>	Law no. 426/2001 on approving Emergency Ordinance no. 78/2000 on the regime of waste; Government Decision no. 123/2003 on approving the National Waste Management Plan – stage-level.
<b>Directive no. 91/689/EEC on hazardous waste</b>	Law no. 426/2001 on approving Emergency Ordinance no. 78/2000 on the regime of waste
<b>Directive no. 75/439/EEC on the disposal of waste oils, as amended by Directive no. 87/101/EEC and Directive no. 91/692/EEC</b>	Government Decision no. 662/2001 on the disposal of waste oils, as completed and amended by Government Decision no. 441/2002; Government Decision no. 1159/2003 on amending Government Decision no. 662/2001 on the disposal of waste oils.
<b>Directive no. 91/157/EEC on batteries and accumulators containing certain dangerous substances Directive no. 93/86/EC on the marking of batteries</b>	Government Decision no.1057/2001 on the regime of batteries and accumulators containing dangerous substances
<b>Directive no. 2000/76/EC on the incineration of waste</b>	Government Decision no. 128/2002 on the incineration of waste Order of the Ministry of Wasters and Environment Protection no. 1215 of 10 January 2003 on approving the Technical Norms on waste incineration
<b>Directive no. 94/62/EC on packaging and packaging waste</b>	Government Decision no. 349/2002 on managing packaging and packaging waste Order of the Ministry of Waters and Environment Protection no. 1190/2002 on the procedure for reporting information on packaging and packaging waste
<b>Directive no. 96/59/EC on the disposal of biphenyls and polychlorinated terphenyls (PCB and PCT)</b>	Government Decision no. 173/2000 on the special management and control of polychlorinated biphenyls and other similar compounds Order of the Ministry of Waters and Environment Protection no. 279/2002 on establishing the Technical Secretariat for the Management and Control of PCBs and PCTs within the Directorate for the Management of Waste and Dangerous Chemical Substances
<b>Decision no. 2000/532/EC, as amended by Decision no. 2001/119 establishing a list of wastes (replacing Decision no. 94/3/EC</b>	Government Decision no. 856/2002 on keeping waste management records and approving a list of wastes, including hazardous waste

<p>establishing a list of wastes Decision no. 94/904/EC establishing a list of hazardous waste).</p>	
<p><b>Regulation no. 259/93 on the supervision and control of shipments of waste within, into and out of the European Community</b></p>	<p>Government Decision no. 1357/2002 on establishing the public authorities responsible for the supervision and control of shipments of waste within, into and out of the country</p> <p>Government Decision no. 228/2004 on the supervision and control of shipments of non-hazardous waste destined for import, inward processing and transit</p> <p>Law no. 6/1991 on Romania's accession to the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal</p>
<p><b>Directive no. 86/278/EEC on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture</b></p>	<p>Order of the Minister of Agriculture, Forests, Waters and Environment no. 49/2004 on approving the technical norms for the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture</p>
<p><b>Directive no. 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment, as well as Directive no. 2002/96/EC on waste electrical and electronic equipment (WEEE)</b></p>	<p>(to be drafted in 2005)</p>
<p>Directive no. 78/176/EEC on waste from the titanium dioxide industry</p> <p><b>Directive no. 82/883/EEC on procedures for the surveillance and monitoring of environments concerned by waste from the titanium dioxide industry</b></p> <p><b>Directive no. 92/112/EEC on procedures for harmonising the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry</b></p>	<p>(to be drafted in 2005)</p>

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