

**Post-accession compliance with EU environmental legislation in Romania and Bulgaria
in the first ten years of EU membership
Conditionality and social learning, as drivers of success?**

**Paper prepared for the 2019 Biennial Conference of the European Union Studies
Association, Denver, Colorado, 9-11 May 2019**

**Author: Natalia Cugleşan, PhD
Lecturer, Babeş-Bolyai University, Romania
email: natalia.cuglesan@ubbcluj.ro**

Abstract

The positive rates of post-accession compliance exhibited by the member states of the 2004 and 2007 accession waves, raises the question on the factors that have influenced this unexpected rather positive record, when compared to the old member states. In this context, this paper aims to examine the issue of compliance of the successful laggards of the EU Integration process, Romania and Bulgaria, in the first ten years of EU membership. Drawing on a qualitative approach, the critical policy area of environment was selected for testing and interpretation, as in the first ten years of accession it was one of the main sources of infringement cases, particularly in the field of waste. The paper argues that the *pre-accession conditionality* and *post-accession sanctioning mechanisms coupled with social learning* through the internalization of norms explain the moderate success of both countries. In conclusion, this paper makes an empirical contribution and fills a gap in the implementation literature on the case of the post-communist member states, which represented a challenge for the European Commission in the context of accession talks, due to key domestic condition, the limited political will and state capacity to implement reforms.

Introduction

The implementation and enlargement scholarship argues that the states which have joined the EU in 2004 and 2007 display good transposition rates with EU law or even outperform the old member states (Sedelmeier 2016). This claim contravenes the more negative expectations, that in the absence of conditionality, the new accession states will be affected by *compliance fatigue* or even by a *world of revenge* (Falkner and Treib 2008). However, in spite of this positive record, which showed that the countries of Central and Eastern Europe have continued to comply with EU law even in the absence of sticks and carrots policy game played by the European Commission, the question arises if these states show the same positive pattern of compliance at a closer examination of key policy areas. Which policies should be of interest and relevance for the implementation scholarship? Why should the environmental policy be suited and selected for analysis? Even if it is one of the most studied policy areas in the implementation literature (Toshkov 2011) the focus on the countries belonging to Central and Eastern Europe, so far, have benefited of limited attention in the implementation literature, with few qualitative studies connecting the issue of environmental policy with the case of Central and Eastern European states. Second, quantitative studies examining the performance

of the old member states(EU-15) versus the new member states(EU-27) dominate the research agenda of the compliance and implementation literature; third, few works devote attention to cross-country comparative studies in policy areas between or within the states of the most important accession waves: the big bang enlargement of 2004 and the accession of Romania and Bulgaria in 2007.

In this sense, this paper investigates the 2007 enlargement wave and aims to explore if Romania and Bulgaria have complied with environmental law in the first ten years of EU membership or have continued to be further defined by their negative reputation of laggardness, specific for both countries during the accession times. The selection of these two countries is not accidental and builds on the following criteria. First, there is consensus amongst EU policy-makers and academic scholarship, that one of the most challenging enlargement rounds in the history of EU accession was represented by the accession of Romania and Bulgaria, as both countries faced tremendous challenges in the accession period due to unfavorable domestic conditions. Second, they have faced similar problems and were detached from the enlargement wave of 2004, due to the lack of political will and capacity to carry out the reforms. Despite a broad scholarship on the implementation performance of the new member states, an uneven distribution in the number of academic papers examining the 2007 enlargement still persists, compared to previous enlargement rounds. Authors have been keen to analyse the big bang enlargement wave by employing quantitative approaches and comparing the new member states versus the old member states. The majority of studies cover the transition period from communism to democracy or focus on the first years after the accession of Romania and Bulgaria, but fail to cover the more recent developments in the transposition and enforcement of environmental law. Third, the field of environment represents a critical area for both countries due to the heavy industrialization of communist times and its effects on the environment and benefited of extended transitional arrangements of the environmental policy *acquis communautaire* and implementation deficits are expected to take place.

Accordingly, this paper aims to examine what is the state of play in an area of the environment where both countries have benefited of long term transitional arrangements. For the purpose of analysis, the waste management sector was selected out of the following reasons: first, there is a striking misfit between the EU and the domestic level; second, it is one of the areas where Romania and Bulgaria share common problems and similar traits, understood here also

as being the countries with the highest number of transitional arrangements, as compared to other sectors as air or water quality. Third, the choice to evaluate the first ten years of EU membership, allows us to capture their implementation behaviour for a longer period of time. In line with the argumentation presented above, this paper addresses the following research questions: *What are the factors that shape the post-accession compliance behaviour of Romania and Bulgaria in the field of waste management?* This paper argues that conditionality has played a significant role in the successful closing of the accession negotiations, especially chapter 22 Environment, having in mind that Romania managed to align its legislation in accordance with the European rules, but needed extended deadlines for problematic areas of the environment, where adjustment pressures were high due to financial and administrative costs. In the post-accession stage the monitoring and sanctioning mechanisms employed by the European Commission through the infringement procedures have been a defining variable in explaining the good transposition record of Romania and Bulgaria. And not lastly, this paper builds on the argument advanced by Tanja Borzel(2000) that pressure to comply can derive from the mobilization of domestic actors through the exploitation of EU norms.

Thus, this article seeks to make a contribution to the implementation literature focused on the critical case of the enlargement wave of 2007. It aims to shed light on the implementation behavior of the new member states, by evaluating their performance in the field of environmental policy, with an emphasis on the area of waste, in the first ten years after their accession. The area of waste management benefits of limited attention in the political science literature. And not lastly, it covers a double gap in the implementation literature, characterized by limited cross-country comparative studies in the field of environmental policy. Despite the rich scholarship, the enlargement wave of 2007 is partially overlooked.

The paper is structured as follows. In the next section I will review the literature on the factors explaining the transposition and enforcement outcome, by looking at the transformative role played by the European Union in the accession and post-accesion stage, but also by highlighting the importance of domestic factors as explanatory variables in understanding the response of Romania and Bulgaria to EU legislation. The next section will briefly summarize the pre-accesssion stage and then the article looks at the overall performance in the area of environment in Romania and Bulgaria, while the last sections examines the area of waste management.

What are the factors that shape post-accession compliance? Research on post-accession compliance

The issue of post-accession compliance of the EU member states has attracted the interest of a prolific scholarship, with key contributions from the Europeanization, enlargement or the implementation literature. This issue of how member state respond to EU policies in the implementation stage, has remained, throughout the years, a salient issue in the field of EU Integration Studies, but was given a new boost by the enlargement waves from 2004 and 2007, with the accession of twelve new member states. Highly emblematic was the case of the countries from Central and Eastern Europe which opened up new research on the compliance behaviour of the new member states, as these states experienced domestic conditions which caused more hurdles than advantages when it came to the transposition and enforcement of EU legislation. In this section I will briefly review the scholarly contribution on the factors causing (non)compliance. The contributions of the academic research scholarship in the field of compliance are grouped along three lines: a.) metaevaluations of the implementation scholarship; b) a body of research focused on the role played by the European Union in fostering transposition and enforcement of EU law; c) scholarly work on the domestic factors, as explanatory variables.

According to D. Toshkov(Toshkov 2011, 5) in his metareview of compliance research, the new member states have been on the radar of the implementation scholarship with a significant number of case studies dedicated to the new accession states. This view is also supported by other scholars, like (Angelova, Dannwolf, and König 2012), who in their synthesis of research on compliance with EU directives show that a significant number of quantitative studies explore the countries which have joined the EU in the accession waves of 2004 and 2007. What Toshkov and Angelova et al fail to reveal whether there is a gap in the number of studies examining the 2004 and 2007 enlargement waves and if so, how severe are these discrepancies.

When it comes to the the role played by top-down factors, the academic literature stresses on the role played by the EU governance. Discussed will be the role played by conditionality and the post-accession monitoring mechanisms. First, a key factor is attributed to the the role played by conditionality during the accession negotiations. Kristoph Knil and Jale Tosun state that the dirigiste governance style applied to the candidate states has played significant influence on the organisational culture and institutional arrangements during the accession stage(Richardson 2012,

327). (Sedelmeier 2016, 6) reinforces this perspective and argues that due to conditionality states have consolidated their administrative capacity and the legacy of conditionality fosters favorable conditions for post-accession compliance as states learn that compliance is the expected behaviour. In contrast with these positive assumptions, a more pessimistic stance is embraced by other scholars who argue that in the absence of conditionality, the EU will be stripped of its pressure mechanisms and the new member states having secured their strategic objective of joining the EU, will display a negative implementation behaviour; what (Falkner and Treib 2008) define as a *world of revenge or dead-letter regimes*. In the same note, but using a different line of argument, Orru and Rothstein question the legacy of conditionality and show that old regulatory communist practices have been reinforced, rather than overcome, contradicting the more positive outcome of conditionality. In their research on the implementation of the Drinking Water directive in Estonia and Lithuania, they conclude that states embrace/resort to what is called a *blind eyes policy*, choosing to tackle/implement rules that fall under the watchful eye of the EU, but deciding to neglect the more pressing issues which require their attention and action (Orru and Rothstein 2015, 12–14). This is similar to the perspective proposed by Henrik Selin and Stacy D. Van Deveer who also question the value of conditionality and emphasize that sometimes "states respond selectively and on paper and without altering more fundamental norms and practices" (Selin and VanDeveer 2015, 13).

Second, countries like Romania and Bulgaria represent a particular case and can be labeled as exceptional cases, due to the fact they were the first countries in the enlargement history of the EU which had to accept the extension of conditionality after 2007, through the Cooperation and Verification Mechanism (CVM); an instrument especially designed for the enlargement countries of 2007, it has led to good compliance rates, as shown by the quantitative research. In this context, Trauner showed that the European Commission gained new opportunities to continue to exert pressure (Trauner 2009) on the countries of the enlargement wave of 2007 by using the CVM as a naming and shaming instrument. On the other hand, many studies point out to the lack of effectiveness of this instrument in fostering change and advocated for the need to be supplemented with other mechanisms like issue linkage. U. Sedelmeier shows that as Romania and Bulgaria were not admitted into Schengen, but were eager to join, there was ample room for the Commission to play this card with success (Sedelmeier 2014, 113). Twelve years later, Romania and Bulgaria still continue to be monitored through the Cooperation and Verification Mechanism, demonstrating the shortcomings of this instrument.

Turning to the domestic factors, a consistent body of scholarship emphasizes on the internal factors triggering compliance or hindering/disrupting the implementation process. One of the aspects which are frequently invoked by implementation scholars is the issue of the willingness and state capacity to implement the provisions of the EU policy legislation. In his book, *Constructing a Policy-Making State*,

J. Richardson argues that policy implementation varies across policy sectors and the disposition and capacity of the member states to respond in a compliant manner to EU legislation depends on the pressure of adjustment exerted by the European Union. The higher the misfit and pressure, the more the state will play the implementation game, blocking the adoption of the EU law (Jeremy Richardson, n.d., 314–15) This argument is related to the rational choice approaches, which claim that states are governed by a cost-benefit behavior in the implementation of EU law. The costs of compliance as a significant variable is highlighted by U. Sedelmeier which argues that for countries of Central and Eastern Europe the compliance costs are higher than for the old member states due to the misfit between EU norms and regulations and domestic policies (Sedelmeier 2016, 8).

A second important explanatory variable tested in the compliance and implementation literature is the issue of the administrative capacity. As stressed by the European Commission in the monitoring reports, the shortcomings of Romanian and Bulgarian administration risked to jeopardize the implementation of EU legislation even in the post-accession stage, contributing to the EU implementation deficit. This empirical reality was backed also by the EU Studies literature with case studies examining the challenges of state building with institutions on reformed and competent bases and accompanied by merit based recruitment practices, due to the communist legacy (A. Dimitrova 2002), clientelism and corruption which were deeply entrenched practices. This is one of the issues that has not been solved in the pre-accession stage and was likely to continue to affect the implementation of the EU rules after the accession to the EU.

Substantial attention receive also other independent variables which affect the compliance outcome. Factors like the role played by the veto players which can act as gatekeepers when they preferences and interests do not converge or are in contradiction with EU rules (Sedelmeier 2016); especially when the implementation costs are high, it is assumed that these actors will play an important part leading to delays in the transposition of legislative provisions. In the environmental sector it is expected for the industry to exert pressure on the national governments and try to set the agenda and convince the parties in government of their preferences. Tashkov argues that government coalitions are likely to be affected by non-compliance (Toshkov 2008), while Versluis shows that the participation of green parties in coalition governments contribute to better results in transposing the EU legislative measures in the field of environment. (Spendzharova and Versluis 2013, 14).

Finally, constructivists have also an important contribution to the compliance literature. They argue for the case of learning and socialization. They claim that the positive compliance record of the new member states is not entirely owned to the use of material sanctions through the infringement procedures (Grabbe 2014, 44) by the European Commission, but to the internalization of EU norms. A second argument is that political actors comply with EU rules due to the use of EU norms

by networks of actors, with NGOs as key players, to create pressure on governments to comply with EU norms (Checkel 2001). As post-communist countries are characterized by the existence of weak civil societies, robust activism and political mobilization is imperative if they are to become reliable and effective partners of the EU Commission in monitoring the compliance with EU law. Falkner and Treib argue that given these pessimistic realities in the new member states, many cases of non-compliance remain undetected (Falkner and Treib 2008, 5) while Dimitrova and Buzogány find ground for more optimism by showing that NGOs in Romania and Bulgaria have been successful in exploiting EU norms to limit state capture in the forestry sector (Antoaneta Dimitrova and Buzogány 2014, 152). It has to be underlined that the trust in EU institutions and the perceived legitimacy of the EU are key determinants for triggering the pressure of implementation of EU norms by private actors and citizens. In this sense, Romania and Bulgaria are still ranked high among EU-28, in terms of citizen support for the EU.

The question arises if mobilization happens in any circumstances or is influenced by the salience of the issue? This matter was raised by several scholars, which question if the priorities on the citizens agenda coerces the authorities to exhibit a more compliant behaviour and to be more responsive and accountable towards public matters. This is not always the case, as seen for e.g. in the anticorruption issue in Romania, where the government seemed to be deft to the massive political protests of 2017. But, Spendzarova and Versluis have tested the value of the salience variable in the transposition of EU environmental legislation in ten new member states and conclude that the public support for environmental issues played a positive role by speeding up the transposition of EU environmental directives (Spendzharova and Versluis 2013, 15). This section has examined the most relevant top-down and bottom-up factors which have been advanced by the compliance research scholarship as explanatory factors.

Compliance with EU environmental legislation in Romania and Bulgaria after 2007

This paper argues that due to the high number of transitional arrangements which Romania and Bulgaria inherited from the negotiation accession, the specific problems of the transition which continued to affect both countries after 2007, it was expected to experience difficulties in the post-accession stage, when it came to the transposition and implementation of EU environmental legislation.

In the context of the accession negotiations with Romania and Bulgaria, *chapter 22, Environment*, proved to be a strenuous effort for the two candidate states. Both countries had to transpose more than 200 legal acts (European Commission 2004, 117) in the field of environmental law, which required strong investments and efficient national administrative structures. As such, it is not a surprise that the legacy of conditionality in the area of

environmental law has consisted in transitional arrangements which were agreed with the European Commission, showing the modest performance achieved between 2000-2004. Among the countries of Central and Eastern Europe, as shown in Fig.1 Romania occupies the first place in a negative ranking, displaying a low performance record and benefiting of 18 transitional arrangements in the areas of industrial pollution, air quality, waste management or water quality. with Bulgaria following closely, with 9 transitional periods(European Commission 2004). As stressed by the European Commission in the 2004 Regular Reports on progress towards accession, Romania and Bulgaria needed to further consolidate the administration which was understaffed and needed continuous training as well as assigning financial resources and making environment a priority on the policy agenda(European Commission 2004, 119)in order to maintain and improve the compliance rate in the post-accession stage.

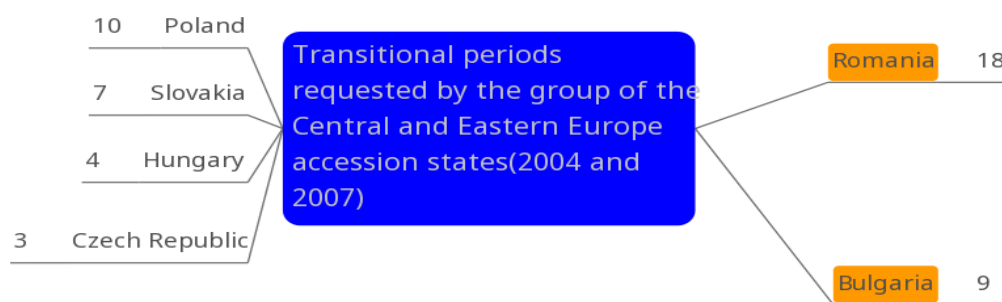


Fig.1 Transitional periods requested by the Central and Eastern Europe accession states

Source: European Commission, Comprehensive monitoring reports on the preparation for membership, 2004.

In the field of waste management, by analyzing the data provided by the European Commission in the Monitoring Reports, Romania emerged as the state with the highest number in transitional arrangements(6), with Bulgaria occupying the second place with four transitional periods. Both countries are in strong contrast with the group of the Central and Eastern European states of the 2004 big bang enlargement wave, which only requested one transitional period, with the exception of Poland, as shown below in Fig.2.

The modest transposition record in the field of environment achieved by Romania and Bulgaria in the pre-accession stage, can be explained by the fact that both countries had to transpose more than 80.000 pages of the *acquis coomunitaire* and environment represented only one of the priorities out of the 31 chapters it had to secure between 2000-2004. As the results were not very encouraging, how did Romania and Bulgaria evolve after 2007 in implementing the environmental *acquis* in the area of waste management?

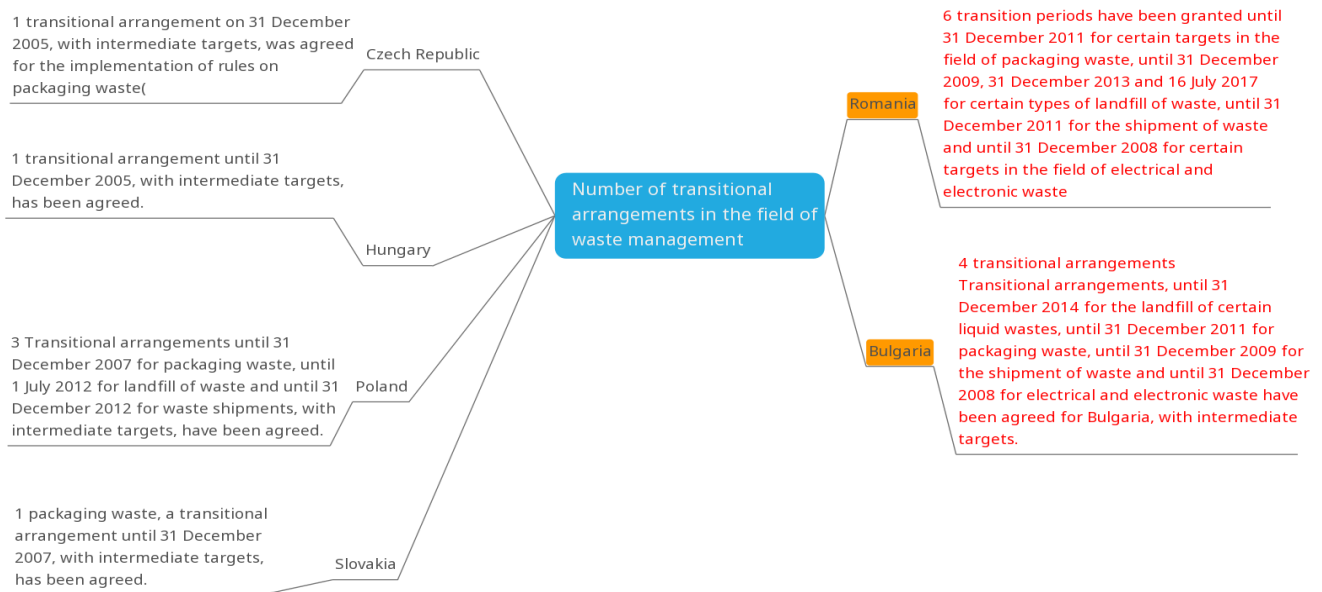


Fig.2. Numer of transitional arrangements/ Source: Comprehensive monitoring reports on the preparation for membership.

General evaluation on the transposition of environmental policy after 2007

The European Commission was not very optimistic when it came to the positive post-accession evolution of both countries. The dominating view in Brussels and not only, was that they were unprepared for membership and “came in too early” (Grabbe 2014, 45). Of course, this label attached to the reputation of these countries holds its foundation also in the case of the transposition behavior of Romania and Bulgaria.

Given the volume of the environmental legislation the states of the fifth enlargement wave had to comply with, I have to state that overall, both countries have complied with the transposition of the legislation; For example, in the aftermath of accession, Romania and Bulgaria had to focus their attention and efforts on transposing more than 100 directives (Bulgaria-126, Romania-124) that had to be applied by January 1st or by December 31st (European Commission, 2008), while 2008 was mostly reserved for the transposition of overdue directives and their transposition in the national legislation, with cca 23 directives set for 2008 and 2009. Both countries faced difficulties as a result of the short periods of time the governments had at their disposal to adopt Government Decisions (GD) and Emergency Ordinances (EO) and they often did not fully transpose the directives and further completion with other GD or EO was needed. In the transposition process, Romania and Bulgaria favored the role played by the governments in the transposition of EU law, as the adoption through the Parliament implied longer periods of time especially in the case of a bicameral parliament

system, where each chamber had its own adoption pace, plus the additional deadline for aggregating the solutions adopted by the two chambers of the Parliament.

Hence, it is not surprisingly, that at the level of 2007, Romania failed the timely transposition of 45 directives, while Bulgaria was late in transposing only 6 directives, but all infringement proceedings have been closed in 2007. The reason behind the small numbers of infringement proceedings which were open by the European Commission in 2007 in accordance to the high number of directives that had to be transposed, is explained by the long periods of time Romania and Bulgaria had at their disposal to comply with the EU provisions; the transposition process was initiated shortly after the start of the accession negotiations, when chapter 22, Environment was open. In the case of waste management, the number of infringement procedures reported to the total number of infringements in the field of environmental policy, in the first four years after the accession (**Fig.3**), reveals that both states experienced difficulties in implementing the provisions in the area of waste management.

Also, the first four years of EU membership have been particularly marked by efforts to comply and implement the new legislation which was adopted after both countries were admitted to the EU, but also to meet the intermediary targets established for the transitional arrangements in the area of water and air quality, etc. But, similar to other EU member states, both countries were the object of infringement cases, in particular, due to the low administrative capacity and lack of sufficient expertise of the bureaucrats employed in the national administration. Hence, the infringement proceedings opened against Romania and Bulgaria were caused by late transposition or lack of conformity and wrongful application, as exemplified by Fig.3. These findings are in line with other scholarly works focused on the implementation of environmental policy in the new member states, as identified in the study of Michael Baun and Dan Marek on the case of Czech Republic (Baun and Marek 2013)

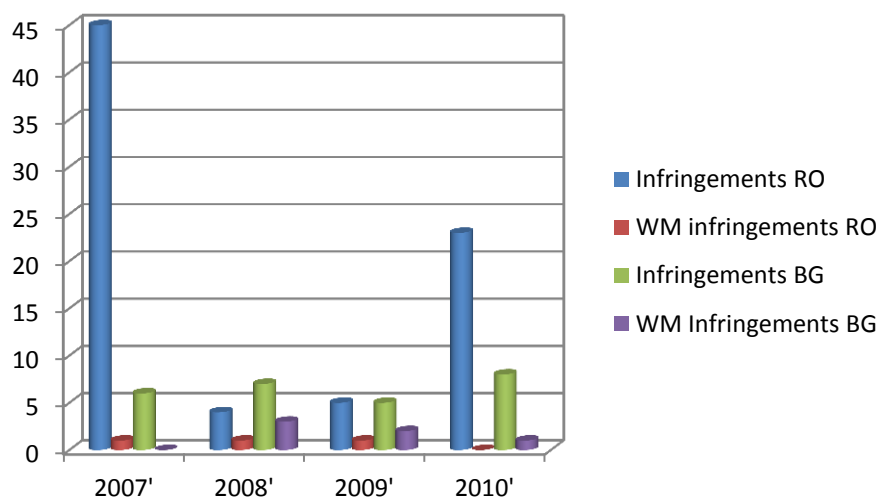


Fig. 3 Transposition of environmental directives in Romania and Bulgaria between 2007 and 2010 [Source: Annual Reports on Monitoring the application of EU law, 2007-2010]

Examining the realities after 2010, we can identify positive developments in the response of the new member states in the transposition of environmental policy provisions. Romania and Bulgaria have settled and closed the cases before being referred to the Court of Justice; between 2011 and 2017, in only 6 cases (Romania) and 5 cases (Bulgaria) were referred to the EU Court of Justice, as shown in Table 1. The data on the infringement cases against Romania and Bulgaria contradicts the argument found in the academic literature that political actors like national governments, parliaments or the administration will act as gatekeepers, trying to prevent any adjustments or transformation of their administrative traditions and will resort to deliberate opposition in the transposition of the directives, when adjustment pressures are high (Falkner et al. 2004, 453). These results are more consistent with the line of reasoning that the EU member states are governed by rational choice behavior, functioning in the logic of cost-benefits analysis (Checkel 2001).

The pressure exerted by the European Commission through the infringement instrument as a sanctioning mechanism, has contributed to the Europeanization of administrative structures, even if some authors have questioned this line of argument, preferring to advance the concept of shallow Europeanization (Dąbrowski 2012). Of course, these data tells only the story of the moderate formal transposition success, but the enforcement and application is closer to the model advanced by Falkner et al, a "world of dead-letters" (Falkner and Treib 2008). This argument is supported also by Trauner who finds that the vulnerabilities of the Romanian and Bulgarian law enforcement and the quality of governance might compromise the application of

EU law in the post-accession stage (Trauner 2009, 5.). The picture painted by Trauner has been a constant feature of Romanian and Bulgarian governance in the first ten years of EU membership.

Table 1. Romanian and Bulgarian achievements in the field of environmental policy, 2011-2017

Criteria	Country	2011	2012	2013	2014	2015	2016	2017
Infringement procedures referred to the Court of Justice of the EU	Bulgaria	0	1	1	2	1	0	1
	Romania	0	0	0	0	3	1	1
Open infringement procedures	Bulgaria	14	14	16	19	3	5	9
	Romania		5	12	11	14	9	10
Reporting on the number of transposed directives	Bulgaria							
	Romania	13	6	7	25	13	19	6
Information requested through the EU Pilot Project	Bulgaria			10	6	4	5	3
	Romania	14	18	10	6	7	7	3
Monitoring of priority measures	Bulgaria							
	Romania	84	55	60	79	28	-	-
Monitoring of overdue measures	Bulgaria							
	Romania	20	29	40	42	35	-	-

Source: European Commission, Annual reports on monitoring the application of EU law (2011-2017)/Annual Reports of the Romanian Ministry of Environment (2011-2017)

Post-accession compliance of waste management provisions after 2007

In the final year of the accession negotiations with the EU, waste was defined as one of the issues that had to be prioritized by the Romanian government, as evidenced by the 2004 Regular Report of Romania/s progress towards accession. Having a strong impact on human health and the environment, the European Commission recognized the existence of financial resources as a precondition for progress in this area; thus, it has assigned 127 million Euro for environmental projects (European Commission 2004, 11). The European Commission stressed throughout the years, from the 1997 Opinion to the annual monitoring reports (2000-2004) that Romania had to assign financial resources, consolidate the administration and coordination capacity and improve the expertise of the staff. With a slow pace of reforms and requesting 6 transitional periods in the area of waste management, it is not surprisingly that the Romanian authorities were not successful in closing this chapter by the end of 2004. Environment was not an exceptional situation, as Romania was experiencing problems with settling two additional chapters of the community acquis, Competition Policy and the Judiciary, a new expression of the laggardness syndrome. Also, two years later, in 2006, with one year before the accession, the Report of the European Parliament on the accession of

Romania to the EU, urged Romania to continue to make efforts in the implementation of environmental legislation and mentioned the case of management of waste from extractive industries (European Parliament, 2006, 6). Bulgaria experienced similar political, economic, social or environmental problems, but was successful in provisionally closing in 2004 the Environmental Policy Chapter, due to state budget allocation and efficient use of the Instrument for Structural Policies for Pre-Accession(ISPA) (World Bank, 2011,14). Still, Bulgaria was not able to avoid the request of transitional arrangements in the field of waste.

What was the state of play after 2007? According to the World Bank the most pressing issue Romania had to deal with in the post-accession stage was the issue of solid waste management, especially in the area of landfill waste, where Romania had certain intermediary targets to meet and was supposed by 2015 to close 150 municipal landfills, 1500 illegal dump sites and build 30 solid waste management systems (World Bank, 2011, 11-13). This issue is also raised in the EU Country Report- Environmental Implementation Review in Romania (European Commission, 2017, 8), showing that Romania has low recycling (5%) and high landfilling (82%). This evaluation highlights that it has not made significant progress to meet the 2020 standards.

Due to the weak capacity to implement the Waste Management Strategies, the coordination problems between the national and local level in the area of waste management and the costs associated for meeting EU norms, Romania was referred in 2014 to the CJEU for failing to close down more than 68 municipal landfills of waste in accordance to Directive 1999/31/EC, as shown in Table 1. Also, Romania was referred to the Court of Justice also for failing to comply with the 2008/98/EC Waste Framework Directive on the adoption of National Waste Management Plans. Still, all four infringement cases were closed without financial penalties.

Bulgaria experienced similar problems and had to close non-environmental friendly landfills, but as it did not request any transitional periods for this area(European Commission, 2004), it displayed a slightly superior transposition and implementation record. Still, it did not manage to escape the watchful eye of the EU and was referred to the CJEU in two cases files. In sum, in the timeframe 2011-2017, out of the 6 infringement proceedings that reached the final stage and involved the Court of Justice of the EU, four envisaged waste management(Romania), while for Bulgaria, 2 infringement case for waste management out of 5 environmental proceedings which were triggered by the Commission(Table 1).

Table 2 Infringement procedures opened against Romania and Bulgaria in the field of waste management

Main waste management directives	Bulgaria		Romania	
	Infringement [year]	Closed at the CJEU [year]	Infringement [year]	Closed at the CJEU [year]
Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste	Yes [2012]	Yes 2015]	Yes [2014]	Yes [2017]
Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industry	No	No	Yes [2012]	Yes [2016]
European Parliament and Council Directive 94/62/EC of 20 December 1994 on waste packaging	No	No	Yes [2014]	Yes [2015]
Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment	No	No	Yes [2011]	No
Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives	Yes [2011]	Yes* [2012]	Yes [2015]	No
Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators.	No	No	No	No
Directive 2000/53/EC of the European Parliament and of the Council of 18 september 2000 on end-of life vehicles	No	No	Yes [2013]	Yes [2016]

Note: *- The Commission has requested for the Court of Justice of the European Union to approve the payment of penalties for Bulgaria of 15.220 Euro/day

Source: European Commission, Annual reports on monitoring the application of EU law (2011-2017)

An important moment in the transposition of waste management provisions was represented by the infringement proceedings launched against Romania by the European Commission in 2012, following complaints from citizens. It shows that the pressure to comply through the exploitation of the pressure mechanisms of the EU (infringement instrument) can be triggered by domestic actors, focusing on the role played by citizens and civil society organizations. The case envisaged the dust pollution in the city of Moldova Nouă(Western Romania) through the Boşneag decantation pond which belonged to Moldomin, a state mining company. The infringement procedure reached the final stage and Romania was referred to the Court of Justice, due to non-compliance by wrongful application with Directive 2006/21/CE on waste management from extractive industries. The decantation pond was not closed, although landfill waste ended after the company seized its activity at the end of 2006 and in 2010 it

went filed for bankruptcy. Citizens complained that the bond is a source of pollution with fine particles, anytime the wind blows in the area. In the letter of formal notice, the Commission requested information on the waste management facilities (Romanian Ministry of Environment, 2014) set up by the authorities to prevent further pollution.

This case is emblematic, out of two reasons: first, it shows the weak monitoring and inspection practices of Romanian authorities, validating the argument of (Falkner and Treib, 2008) that transposition of EU law is not always followed by effective enforcement, but can be conceptualized by a world of dead letters. The poor performance of the Romanian authorities can also be explained by the fact that waste management is an area which requires the allocation of huge financial investments. For this project, the state assigned in 2016, over 1.6 million Euro to prevent further air pollution ((Zaharia 2016). Still, at the moment of writing this paper, the situation has not improved significantly and the practical application of measures needed to correct the problem have yet to be enforced.

Second, it is one of the cases that shows that the European Union has acted as a political game changer(Zeff and Pirro 2014, 393) empowering citizens to exploit the use of EU norms, through the infringement procedures of the European Commission. As this infringement file was the result of citizens' complaints, this case shows that Europeanization has begun to produce effects on the civic engagement of Romanian citizens. If one year after the accession, in 2008, environmental protection was important only for 40% of Romanian citizens(Eurobarometer survey, 2008, 11), in 2011, 89% of Romanian citizens believed that individual citizens can play an important part in protecting the environment(Eurobarometer survey, 2011, 17). Also, Romania ranks third among EU-28 when it comes to trust the EU in environmental issues (Eurobarometer survey, 2011, p. 94). These findings are in line with the scholarly works on the post-communist transition and Standard Eurobarometers, which showed that Romanian and Bulgarian citizens trusted more European institutions, as democratic consolidation was produced from above. And not lastly, the empowerment argument is supported also by the protests of 2014, against the extraction of gold by the Canadian Goldmine Corporation from Roșia Montană by using cyanides, which gave rise to a civic movement.(Zeff and Pirro 2014, 394)

Third, local NGOs like the *Ecologic Collaboration Group(NERA)* was active for more than ten years in monitoring and pressuring the national authorities to adopt the necessary measures

and put an end to the human health and environmental damage through the extractive mining pollution in Moldova Nouă. As more than half of infringements are the result of complaints, with only one third coming from its own initiative of the Commission (Scheuer, 2014, 3), the European Commission was fully aware of the need to strengthen the dialogue with the citizens and other stakeholders (interest groups). In this sense, it has set up in 2008 the EU Pilot Project, designed "to deal with citizens and business enquiries or complaints on the application of EU law." (European Commission, 2010). Romania has joined EU Pilot in 2011 and it is a new opportunity for a variety of actors to closely monitor the implementation of EU law. NERA Ecological Group dissatisfied with the new episodes of pollution in Moldova Nouă and with the lack of progress in implementing Directive 2006/21/CE after the rule of the Court of Justice of the European Union in the infringement case against Romania, which set a new deadline for August 2018, declared that they will notify the Commission on the breach of EU law (Romania Curata 2019). This particular case shows that civil society groups can be active players and partner up with the Commission in notifying the breach with EU law and create pressure on the national authorities to comply with EU law. Although, it was a case of transnational pollution, there is no evidence that there was coordination between Romanian civil society groups from Romania and Serbia.

In sum, compared to Romania, Bulgaria was referred to the EU Court of Justice in the field of waste management in two files, under the 2008/98/EC Waste Framework Directive on the reuse, recycling and recovery for failure of transposing the Directive in national law and was fined by the European Commission. A second case concerned the Directive 1999/31/EC landfill of waste. Bulgaria faced more pressing issues in other areas of the environment, air quality and biodiversity and EU nature protection laws and was also referred to the EU Court of Justice. Both countries have severe enforcement problems with failing supervision capacities, accompanied by institutional fragmentation and low absorption rates of Structural Funds destined for large scale investment projects (World Bank, 2011, 39-42).

Conclusion

This study has set out to map the post-accession evolution of Romania and Bulgaria in the field of environmental policy in the first ten years of EU membership. It aimed to explore how these two countries have mastered the compliance of environmental provisions in the area of waste in order to examine if EU legislation which mainly consisted in EU Directives were transposed correctly and in due time.

It has argued that both countries faced with the prospects of the unfinished transition, after the historical moment of 2007 which marked their return to Europe, have managed to achieve a general compliant behavior in the area of environment, even if the structural deficiencies of their governance architecture did not provide a favorable context for a smooth transposition and enforcement of the EU legislation. For the general positive results on the transposition of environmental legislation, responsible are to a great extent the effects produced by conditionality, followed by the top-down pressure mechanism of the infringement procedure in the post-accession stage and the rational choice behavior of Romania and Bulgaria who were responsive to the EU pressure.

The area of waste management proved to be problematic for both countries as they had to comply with a substantial amount of legislation in the post-accession period and environment was only one policy sector that had to receive the attention of policy-makers. Second, waste management required vast financial resources and investments, political will and effective bureaucracies. Given this context and the negative experience of the transition years, it was difficult for Romania and Bulgaria to overcome the misfit between EU environmental policy and domestic norms very early on in their new capacity as new member states; both countries were targeted by infringement proceedings due to non-communication, late transposition or wrongful application, which supports the argument of the lack of effectiveness of the bureaucratic structures and lack of insufficient expertise. Encouraging is the positive role played by the citizens and the emerging civil society which have been willing to partner up with the Commission and closely monitor the implementation of EU law.

To sum up, this study has investigated only a small facet of the post-accession compliance behavior of Romania and Bulgaria in the field of environmental policy; further research is needed to examine the performance of both countries in other areas of the environmental policy where they have benefited of consistent transitional arrangements and where administrative pressure and costs are high: industrial pollution, water or air quality. The limited number of studies that examine the issue of waste management in the case of Central and Eastern Europe, combined with the limited data on the area of waste management in Bulgaria, have hindered an in-depth cross-country analysis. Also, for a comprehensive account on the post-accession evolution of Romania and Bulgaria-starting from the preliminary results of this paper-I plan to tackle the practical implementation and enforcement of EU environmental legislation in the area of waste management, by testing the theoretical framework advanced by (Falkner and Treib 2008) on the worlds of compliance or the Pull and Push model (Borzel 2000).

References

- Angelova, Mariyana, Tanja Dannwolf, and Thomas König. 2012. "HOW ROBUST ARE COMPLIANCE FINDINGS? A RESEARCH SYNTHESIS." *Journal of European Public Policy* 19 (8): 1269–91. <https://doi.org/10.1080/13501763.2012.705051>.
- Baun, Michael, and Dan Marek. 2013. "The Implementation of EU Environmental Policy in the Czech Republic: Problems with Post-Accession Compliance?" *Europe-Asia Studies* 65 (10): 1877–97. <https://doi.org/10.1080/09668136.2013.848639>.
- Borzel, Tanja A. 2000. "Why There Is No 'Southern Problem'. On Environmental Leaders and Laggards in the European Union." *Journal of European Public Policy* 7 (1): 141–62. <https://doi.org/10.1080/135017600343313>.
- Checkel, Jeffrey T. 2001. "Why Comply? Social Learning and European Identity Change." *International Organization* 55 (3): 553–88. <https://doi.org/10.1162/00208180152507551>.
- Commission**(2005), Communication from the Commission. Application of Article 228 of the EC Treaty, SEC(2005)1658.
- Commission**(2008), 25th Annual report from the Commission on monitoring the application of Community law(2007), Brussels, SEC(2008) 2855 Volume 1.
- Commission**(2016), Report from the Commission Monitoring the application of European Union law 2015 Annual Report, Brussels, SWD(2016) 230 final
- Dąbrowski, Marcin. 2012. "Shallow or Deep Europeanisation? The Uneven Impact of EU Cohesion Policy on the Regional and Local Authorities in Poland." *Environment and Planning C: Government and Policy* 30 (4): 730–45. <https://doi.org/10.1068/c1164r>.
- Dimitrova, A. 2002. "Enlargement, Institution-Building and the EU's Administrative Capacity Requirement." *West European Politics* 25 (4): 171–90. <https://doi.org/10.1080/713601647>.
- Dimitrova, Antoaneta, and Aron Buzogány. 2014. "Post-Accession Policy-Making in Bulgaria and Romania: Can Non-State Actors Use EU Rules to Promote Better Governance?: Post-Accession Policy-Making in Bulgaria and Romania." *JCMS: Journal of Common Market Studies* 52 (1): 139–56. <https://doi.org/10.1111/jcms.12084>.
- "European Commission - PRESS RELEASES - Press Release - EU PILOT – Getting Quick Answers to Complaints by Citizens and Business." n.d. Accessed April 20, 2019. http://europa.eu/rapid/press-release_IP-10-226_en.htm.
- European Commission. 2004. "2004 Regular Report on Romania's Progress towards Accession."
- European Commission, 2017.EU Country Report- Environmental Implementation Review in Romania , http://ec.europa.eu/environment/eir/country-reports/index_en.htm
- Falkner, Gerda, Miriam Hartlapp, Simone Leiber, and Oliver Treib. 2004. "Non-Compliance with EU Directives in the Member States: Opposition through the Backdoor?" *West European Politics* 27 (3): 452–73. <https://doi.org/10.1080/0140238042000228095>.

Falkner, Gerda, and Oliver Treib. 2008. "Three Worlds of Compliance or Four? The EU-15 Compared to New Member States." *JCMS: Journal of Common Market Studies* 46 (2): 293–313. <https://doi.org/10.1111/j.1468-5965.2007.00777.x>.

Grabbe, Heather. 2014. "Six Lessons of Enlargement Ten Years On: The EU's Transformative Power in Retrospect and Prospect: Six Lessons of Enlargement Ten Years On." *JCMS: Journal of Common Market Studies* 52 (September): 40–56. <https://doi.org/10.1111/jcms.12174>.

Infocuria(2015) Case-law of the Court of Justice: Case C-366/15, Ordonance of the Court, November, 30

Infocuria(2016a) Case-law of the Court of Justice: Case C-306/15, Ordoance of the Court, January 15.

Infocuria(2016b), Case-law of the Court of Justice: Case C-104/15, Judgement of the Court(Ninth Chamber), Brussels, July, 21

Infocuria(2016c), Case-law of the Court of Justice: Case C-62/16, Judgement of the Court(Ninth Chamber), Brussels, July, 21

Infocuria(2017), Case-law of the Court of Justice: Case C-488/15, Ordonance of the Court, Brussels, July 8.

Orru, Kati, and Henry Rothstein. 2015. "Not 'Dead Letters', Just 'Blind Eyes': The Europeanisation of Drinking Water Risk Regulation in Estonia and Lithuania." *Environment and Planning A: Economy and Space* 47 (2): 356–72. <https://doi.org/10.1068/a130295p>.

Ministerul Mediului si Schimbarilor Climatic(2014), Raport de activitate al Ministerului mediului si Schimbarilor Climatic pentru anul 2013, Bucuresti, http://www.mmediu.gov.ro/app/webroot/uploads/files/2015-0825_Raport_Activitate_Ministerul_Mediului_Apelor_Padurilor

Richardson, Jeremy, ed. 2012. *Constructing a Policy-Making State?: Policy Dynamics in the EU*. Oxford, New York: Oxford University Press.

Romania Curata, J. 8 aprilie 2019. 2019. "Poluarea de la Moldova Nouă oferă „spectacol” în Serbia (video)." *România curată* (blog). 2019. <http://www.romaniacurata.ro/poluarea-de-la-moldova-noua-ofera-spectacol-in-serbia-video/>.

Sedelmeier, Ulrich. 2014. "Anchoring Democracy from Above? The European Union and Democratic Backsliding in Hungary and Romania after Accession: Anchoring Democracy from Above?" *JCMS: Journal of Common Market Studies* 52 (1): 105–21. <https://doi.org/10.1111/jcms.12082>.

Sedelmeir, Ulrich.2016, Why Are the European Union's New Member States So Good?, No. 22, May 2016, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP)..

Selin, Henrik and VanDeveer, Stacy D. (2015) *EU Environmental Policy Making and Implementation: Changing Processes and Mixed Outcomes*. [Conference Proceedings] (Submitted). <http://aei.pitt.edu/79664/>

Spendzharova, Aneta, and Esther Versluis. 2013. "Issue Saliene in the European Policy Process: What Impact on Transposition?" *Journal of European Public Policy* 20 (10): 1499–1516.
<https://doi.org/10.1080/13501763.2013.781802>.

Sprl, Stefan Scheuer. 2014. "Stefan Scheuer Consulting Is a Management Consultancy, Developing and Implementing Training and Advice on Environmental and Energy Policies and EU Public Affairs. Its Objective Is to Support Public Interests in a Transparent Way to Achieve Change on the Ground for People and Their Environment. Www.Stefanscheuer.Eu," 13.

Standard Eurobarometers, 295, Attitudes of European Citizens towards the environment, 2008

Standard Eurobarometers, 416, Attitudes of European Citizens towards the environment, 2014

Standard Eurobarometers, 488, Attitudes of European Citizens towards the environment, 2017

Toshkov, Dimiter. 2008. "Embracing European Law: Compliance with EU Directives in Central and Eastern Europe." *European Union Politics* 9 (3): 379–402.
<https://doi.org/10.1177/1465116508093490>.

D. Toshkov. 2011. "The Quest for Relevance: Research on Compliance with EU Law," 23.

Trauner, Florian. 2009. "Post-Accession Compliance with EU Law in Bulgaria and Romania: A Comparative Perspective." *European Integration Online Papers*, December.
<https://doi.org/10.1695/2009021>.

World Bank.2011. Solid Waste Management in Bulgaria, Croatia, Polanf and Romania. A cross-country analysis of sector challenges towards EU harmonization.

Zaharia, Cosmin. 2016. "Ordonanță de Urgență Pentru Rezolvarea Poluării de La Moldomin." Green Report. March 7, 2016. <https://www.green-report.ro/ordonanta-de-urgenta-pentru-rezolvarea-poluarii-de-la-moldomin/>.

Zeff, Eleanor, and Ellen B. Pirro. 2014. "The European Union and the Member States, 3rd Edn (Boulder, CO: Lynne Rienner)."