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Europeanisation of Environmental Policies and the Limitations

Capacity Building

 Springer

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Contents

1	The Long Shadow of the Past: Europeanization Meets Institutional Backwardness	1
	Arpad Todor and Florența-Elena Helepciuc	
2	Municipal Waste Management	15
	Arpad Todor	
3	Synthetic Assessment of the Governance of Forests and Protected Areas, Related EU Policies, and Their Domestic Implementation . . .	29
	Ines Gavrilut, Lukas Feiler, and Metodi Sotirov	
4	Air Pollution and Environmental Policies, EU and Romania: Where We Stand, What the Data Reveals, What Should Be Done in the Future?	51
	Gabriela Iorga	
5	Europeanzing Environmental Public Policy Funding Through the Environmental Fund	75
	Arpad Todor, Oana Hroștea, Maria Băran, and Robert Udrea	
6	The Evolution of the First Matriculation Tax	89
	Oana Hroștea and Arpad Todor	
7	Buying Green? How a Green Public Procurement-Dedicated Law Can Do More Harm than Good	101
	Alina Bilan	
8	Promoting Alternative Methods for Environmentally Friendly Agriculture in Romania	121
	Arpad Todor and Florența-Elena Helepciuc	
9	Romania’s Capacity to Plan and Implement a Sustainable Development Strategy	133
	Oana-Andreea Ion and Cătălin-Gabriel Done	

**10 Romania and Post-accession Compliance with EU
Environmental Policy** 151
Natalia Cugleşan

11 Formal and Output Europeanization 165
Arpad Todor

Abbreviations

ABC	Augmentative Biological Control
AC	Advocacy Coalition
ACF	Advocacy Coalition Framework
AQ	Air Quality
CAMS	Atmospheric Monitoring Service
CBD	Convention on Biological Diversity
CCs	County Councils
CEE	Central and Eastern European
CIRCABC	Limited Lifetime Derogations
CJEU	Court of Justice of the European Union
CoC	Chain of Custody
CVM	Co-operation and Verification Mechanism
DD	Due Diligence
EC	European Commission
ECJ	European Court of Justice
EMEP	European Monitoring Programme
ENGO	Environmental Nongovernmental Organization
EO	Emergency Ordinances
EPIA	Environmental Policy Implementation Assessment
EPR	Extended Producer Responsibility
ESPP	Electronic System for Public Procurement
EU	European Union
EUTR	EU Timber Regulation
FLEGT	EU Forest Law Enforcement, Governance and Trade
FMP	Forest Management Plan
FSC	Forest Stewardship Council
GHG	Greenhouse Gas
GD	Government Decisions
GPP	Green Public Procurement
IDAs	Intercommunity Development Associations
IPM	Integrated Pest Management

IWMS	Integrated Waste Management System
LULUCF	Land use, Land-use Change, and Forestry
MBCAs	Microbiological Control Agents
MEAT	Most Economically Advantageous Tender
MMAP	Ministry of Environment, Water, and Forests
NAP	National Action Plan for Public Procurement
N.APP	National Agency for Public Procurement
NFA	National Forest Administration
NFI	National Forest Inventory
NGO	Nongovernmental Organization
NIS	Romanian National Institute of Statistics
NMVOCs	Non-Methane Volatile Organic Compounds
NSDS	National Sustainable Development Strategies
PEFC	Programme for the Endorsement of Forest Certification Schemes
PRGDs	Regional Waste Management Plans
REBECA	Regulation of Biological Control Agents in Europe
RNSDS	Romania's National Sustainable Development Strategy 2030
SACs	Special Areas of Conservation
SFM	Sustainable Forest Management
SNGD	National Waste Management Strategy
SPAs	Special Protection Areas
TFEU	Treaty of Functioning of the European Union
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNFF	United Nations Forum on Forests
WWF	World Wildlife Fund

Chapter 1

The Long Shadow of the Past: Europeanization Meets Institutional Backwardness



Arpad Todor and Florența-Elena Helepciuc

Abstract This chapter presents the structure of the edited volume and reviews the most important theoretical tools useful for studying the degree of success in the Europeanization of environmental public policies in one of the newest EU member state, Romania. We approach this problem as an outlier cross-sectoral case study by reviewing the evolutions of several environmental public policies. This edited volume reunites a series of environmental public policy case studies aiming to answer how countries with inadequate environmental protection track records upgrade their policy capacity when they join a higher-standard environmental regulatory regime. We present the analytic structure followed by all chapters, how each policy field's success is defined, and the most important issues specific to each environmental public policy. Subsequently, we briefly review the most important Europeanization theories with a specific focus on environmental public policies.

1.1 Introduction

What happens when countries with inadequate track records in environmental protection and low administrative capacity join one of the most ambitious environmental regulatory regimes with some of the highest environmental protection standards in the world? To address this question, in this volume, we take Romania as a representative example of a country with historically low capacity and interest to design and implement environmental policies and analyze its evolution across a wide range of environmental policies after it joined the European Union. The sectoral analyses

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brought together within this volume ask the following overarching question: to what extent has the European Union (EU) integration led to a significant success in the Europeanization of Romania's environmental policies? Europeanization is understood as a mix of norms, formal regulations transfer, and administrative capacity building that would result in sensible improvements in countries' implementation of the environmental policies and policy outcomes, resulting directly or indirectly from EU membership. In other words, each chapter and the volume evaluate the mechanisms through which the EU membership upgrades a country's administrative capacity, policy orientation, and capacity to achieve its environmental policy successfully. We propose a cross-sectoral comparative analysis of the trends exhibited across various environmental policies to provide a tentative.

The European Union is a world leader in many policies designed to improve environmental protection and mitigate climate change and in recent decades has become an environmental policy regulatory powerhouse. The European Green Deal should further advance the European Union's leadership in the global efforts to tackle climate change. Since 1999, with the opening of accession negotiations for the postcommunist countries, the EU has also developed some of the most complex and comprehensive national-level integration processes by employing a mix of conditionality and financial and administrative capacity-building assistance programs. During the accession process, each future EU member had to negotiate a dedicated chapter on the environment, defining the timing by which all the EU *acquis* dealing with environmental matters had to be fully implemented and specific targets would be met. Despite their poor historical track record on environmental protection, all ten of the postcommunist countries starting accession negotiations in 2000 should have achieved the capacity to fully implement EU's environmental *acquis* by 2018 at the latest while simultaneously implementing the policies adopted after their EU accession. For Romania, Environmental Chapter 22 represented one of the most challenging negotiation chapters during the EU accession process. Consequently, Romania negotiated the highest number of transitional arrangements (Cugleşan 2019) derogation from the EU *acquis* when signing the *Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded* (Accession Treaty) (European Union 2005).

Having up to 11 years to reach the EU's standards and significant financial support from EU funds, Romania signed on an ambitious environmental policy effort agenda. So, what came out of this project of integration? Recent evaluations raise serious question marks on the success of this effort. In July 2019, the European Commission started a new infringement procedure against Romania for failing to monitor air quality and pollution, permitting industrial installations to operate without appropriate permits, and failing to complete the Natura 2000 network for nature protected areas (European Commission 2019a). In October 2020, the European Commission announced a new series of infringement procedures in waste disposal, air pollution, water pollution, and nature protection (European Commission 2020). These are not the only issues Romania faces. A 2007 assessment stressed that legislation implementation is generally problematic, given the lack of planning, poor

coordination, and competent institutions' underfunding (Bertelsmann 2017). With the expiry of the period of grace laid down in the Accession Treaty, Romania demonstrates low compliance with the EU water and urban waste legislation. It needs to improve coordination and strengthen the administrative capacity of authorities and agencies involved in implementing EU legislation, particularly on water and waste management and the protection and management of Natura 2000 sites. The 2019 EU Environmental Implementation Review (European Commission 2019b) revealed the limited progress made by Romania since its accession in 2007 in such areas as the circular economy (1.5% in 2015 and decreasing, compared with an 11.7% EU average). As such, it has the lowest "resource productivity" in the EU, only limited support measures to increase resource efficiency and stagnating rates of recycling since 2013 (European Commission 2019b, p. 4). No surprise, given its poor compliance record, the environmental policy has been the most critical source of infringement cases in the first decade after accession (Cugleşan 2019, p. 1). This trend has continued up until 2020.

Given that the environmental public policy is a shared competency of the EU, Europeanization occurs along several dimensions and not only those regulated by the *acquis*. We evaluate Europeanization in the broadest sense as the sectoral analyses go from areas with strict targets set in the Accession Treaty, policy fields regulated by the *acquis*, to policies where the *acquis* is minimal or nonexistent, or other international norms regulate the domain.

As we compare evolutions in very different environmental field policies, each chapter's structure is relatively similar to achieve cross-sectoral comparability. In the introduction, the authors describe the general context and whether the regulations for that area stem from the international, EU, or national level. Then, success in implementation for each specific environmental policy is defined. In some areas, success is achieved by meeting the Accession Treaty targets or those set in subsequent directives. In others, it is sufficient to transpose in the national legislation the *acquis* to avoid triggering an infringement procedure in other policy areas. Some environmental policy areas do not have a specific *acquis* but are regulated by the *acquis* in other policy areas. If no supranational level goals are set, success is defined as achieving the aims of relevant national strategies or legislation. After determining the *dependent variable* and discussing its operationalization, the authors analyze the combination of political, institutional, and environmental factors that have led to the observed evolutions.

In the next section of each chapter, the reader is introduced to the prominent historical landmarks of that policy development at the international and European levels. Subsequently, each chapter presents Romania's main conditionality in that policy area at the moment of EU accession. Then, they show the relevant data to assess the evolutions between 2007 and today, the public policies adopted before and after EU accession to alleviate the identified problems. Chapters continue with a theoretically informed analysis of the observed evolutions, underlining different explanatory factors' weight. In the Conclusions, each chapter highlights the main lessons from the study and possible avenues for improving the policy area's situation.

This Introduction presents the underlying logic of the volume, the focus of each chapter, and provides a literature review relevant to this edited volume's core interest. We locate the contributions of the volume within the broader scholarly debate on Europeanization with a particular focus on the evolution of EU environmental policy elaboration, transposition, implementation, monitoring and institution-building, and Europeanization through normative transfer.

Chapter 2 analyzes the structural causes that have led to Romania's constant failure to fulfill its obligations laid down in the Accession Treaty and Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste (Cugleşan 2019). The authors show how the policy solution chosen to create a new municipal waste management system almost from scratch leads to a structural misalignment of local, country, and national actors' incentives. This misalignment prevented faster progress in implementing the county-level systems and stalled progress in achieving the targets in closing noncompliant land fields, limiting landfilling and recycling.

Chapter 3 evaluates forest management development and the causes that generated widespread discontent over the destruction of some of Europe's last virgin forests. Despite progress, changes in the property structure, incoherent policies, and limited enforcement caused by administrative inefficiency limit progress in protecting the forests.

Chapter 4 focuses on some of the core reasons Romania has performed poorly in the area of air quality. It reviews Romania's implementation of EU *acquis* and how this is reflected in emissions and measured atmospheric major pollutants' levels, analyzes Romania's capacity to monitor air pollutants, looks at EC's infringement procedures against Romania, and discusses possible factors that led to Romania's failure to fulfill its obligations under Directive 2008/50/EC as a result of a review of environmental policy literature.

In Chap. 5, we analyze the evolution of the most crucial source of funding for environmental protection projects, the Environmental Fund, and the factors that explain its failure to contribute substantially to the improvement of Romania's environmental performance.

Chapter 6 analyzes the evolution of one of the essential programs funded through the Environmental Fund – the first matriculation and the scrappage programs. Given that the initial policy choice and the subsequent modifications were not compliant with the EU *acquis*, the continuous legislative changes, and finally, the drop of the tax prevented a significant positive effect as an environmental policy.

Chapter 7 examines the slow progress in adopting the green public procurement legislation and implementation and explores some of the avenues for future accelerated progress in this area. Given that The GPP Law rather deters than encourages the use of GPP, the author identifies the unclear legislation and limited administrative incapacity as the core explanation for this policy failure, affecting the uptake of GPP in Romania due to several factors.

Chapter 8 focuses on Romania's implementation of the 2009 "pesticide package" and the country-level efforts to develop environmentally sustainable agriculture by fostering the usage of low-risk MBCA, implementing IPM, and promoting

organic farming. The authors show that while Romania undertook all the proper steps to meet the “pesticide package” requirement, more efforts are needed to meet some of the aims that have not been quantified.

Chapter 9 discusses Romania’s capacity to affect a sustainable development plan. It analyzes the degree to which the aims set out in its Sustainable Development Strategy 2013–2020–2030 have been achieved so far and the degree to which the new strategy has incorporated the lessons learned from its first strategy’s failures.

Chapter 10 will discuss the most critical factors that affected the evolution of compliance with EU environmental law in Romania. The author shows Romania achieving a general compliant behavior regarding environmental policies, despite significant deficiencies caused by the governance architecture and limited enforcement capacities.

Finally, Chap. 11 will analyze the common patterns identified from the policy chapters’ synthesis and discuss the main implications of the analysis on the core question in the literature and understand the main factors that explain Romania’s deficiencies in policy implementation. We systematically address the commonalities identified at the level of all policies that have been analyzed. We explore some concrete steps that could be taken to improve the future design and implementation of environmental public policies.

1.2 Literature Review

This volume contributes to the literature that explains the evolution of the EU’s environmental policy elaboration, adoption, implementation, monitoring and institution-building, and Europeanization through normative transfer. The relevant literature can be split into two branches. The first branch focuses on the variation in the ambition, characteristics, and adoption of the EU’s environmental policy in various historical periods. Another branch aims to explain the success in implementing EU’s environmental procedures, focusing either on the EU’s capacities or variations at the EU member state level.

Within the first category, Haigh (2015) analyzes the transformation of EU environmental policy from peripheral to central policy and the factors that affected the successful implementation of EU *acquis* relating to the environment. While the EU’s environmental policy has become one of its central policy areas, an evaluation of the post-2007 economic crisis shows that the environmental policy outputs adopted by the EU indicate a substantial decrease in ambition. The temporary decline is caused by the economic downturn, the EU’s enlargement, and a loss of appetite for stringent goals among the previous leader countries (Burns et al. 2019). A recent volume, *Europeanization of Environmental Policy in the New Europe: Beyond Conditionality* (Braun 2016), evaluates the degree to which the effects of the 2004 and 2007 wave of postcommunist countries’ accession would thwart the progress of the EU’s environmental policy. The volume focuses on how the accession of Central and Eastern European countries affected the EU’s environmental

policy. In the decade before the enlargement, the EU had become a world leader in environmental policy.

Within the second branch, the literature of compliance with EU regulations is part of the broader literature of compliance with international institutions, grouped by Sedelmeier (2016) into three main types of argument: states' cost-benefit calculations for enforcement, the perceived legitimacy of the global institution, and domestic constraints on compliance (see also Börzel et al. 2010). Instead, the Europeanization of compliance literature focuses on two core explanations (Sedelmeier 2016, p. 11). First, the *administrative capacity building through pre-accession conditionality* focuses on the EU's efforts before the accession to generate the coordination capacities and organizational structures at the national level. Second, the literature focusing on socialization stresses the importance of continuous participation in the policy process. Braun (2014) shows that EU climate norms diffused in the new member states through civil servants' participation in the EU institutions and domestic norm entrepreneurs. Nevertheless, the author finds scant evidence that this socialization influenced different countries' environmental policy approaches.

As an alternative, Börzel et al. (2010) organize the main explanatory approaches to compliance into three main groups: enforcement, management, and legitimacy. The edited volume reviews evolutions in several environmental policy areas and identifies the persistence in inefficient and rigid governance command-and-control modes as a core explanatory variable. For example, Buzogány (2009), focusing on Romania, identifies the following variables as explanatory for the limited success of environmental policy (both in opening negotiations and implementing policies): the little importance of the Ministry of Environment, ceremonial law, limited enforcement capacity, lack of coordination among various levels of administration and agencies, command-and-control approaches to transposition, an understaffed Ministry of Environment and agencies, low salaries, and absence of the necessary expertise.

Focusing on the EU's adaptive response, a 2000 edited volume by Knill et al. (2000) has analyzed, for the first time, according to the editors, the factors determining the successful implementation of the EU's policy instruments. The volume focuses on the instruments themselves and not on specific policy areas. Knill and Lenschow (2000) explain how, after the 1987 expansion of the European Community's environmental policy-making with the Single European Act, starting with the 1993 fifth EU Environmental Action Programme, the focus went on the implementation and monitoring of EU environmental policies. Renewed attention was given to the standardization of national institutions responsible for managing and monitoring EU *acquis* implementation. Beyond the increase in environmental policy's importance, the most significant factor contributing to this change was the significant deficiencies in country-level implementation and reporting.

In an article that aimed to evaluate the entire field of compliance, Angelova et al. (2012, pp. 1274–1278) group the literature according to the following causal explanations: EU-level approaches (monitoring and complexity of directives), national-level approaches focusing on preferences and capacities ("goodness-of-fit," veto

players' institutional decision-making constraints, actors' policy preferences, inter-ministerial coordination, administrative efficiency), and constructivist approaches (learning effects and culture).

In recent years, a series of articles have analyzed the effects of the EU's conditionality and environmental policy monitoring in terms of governance. Based on the analysis of directives in air quality, flooding, and water quality, Neewig and Koontz argue that EU effort in environmental policy has produced a policy innovation that combines participatory and multilevel governance for policy implementation. The authors coin this innovation as the "mandated participatory planning" approach. The approach means drafting EU general policy goals while leaving the planning and implementation at the member state level (Newig and Koontz 2014). Another recent volume edited by Börzel (2009) investigates the role of nonhierarchical new modes of governance involving nonstate actors adopted in accession countries (from the Southern and Eastern enlargements) to improve the adoption and implementation of EU's environmental *acquis*. Despite the limited staffing and expertise to apply and enforce the *acquis*, given the lack of "state and nonstate actors with sufficient resources to engage in nonhierarchical coordination," the public administration has not involved nonstate actors and maintained the traditional command-and-control modes of governance (Börzel 2009, p. 4). The Romania chapter by Buzogány (2009) analyzed water management evolutions, industrial air pollution, and nature protection, showing that accession had reinforced the command-and-control approach to regulation, despite its suboptimal results.

Bondarouk and Mastenbroek (2018) identified the desire to learn, the quest for increased accountability, and the efforts to manipulate political opportunity structures as the factors that have led to the EU's improved capacity for environmental policy evaluation 1990s. The process accelerated after 2007 when 140 full-time posts were created. Increased evaluation capacity led to many ex-post evaluations that generated essential policy-relevant knowledge (Schoenefeld and Jordan 2019). After analyzing 18 directives, Bondarouk and Mastenbroek propose conceptualizing the EU's environmental policies' compliant implementation along three dimensions of policy outputs: substance, scope, and effort. Using an analytical grid, the authors found knowledge deficits regarding the scope and effort of implementation and disproportionate attention on specific directives (water) and areas (North and West Europe).

Within the same analytic focus, but concentrating on the largest EU enlargement in history, Carmin and VanDeveer (2005) analyzed the institutional and policy changes experienced by the postcommunist countries from the start of their accession negotiations and the reform of environmental governance. They described several case studies in Hungary (waste policies) and the Czech Republic (its sustainable rural development). Schreurs (2005) explains how, despite the integration of countries with very different environmental policy traditions, the overall EU approach has become more comprehensive and stringent. The EU has demonstrated considerable environmental policy-building capacity across all member states. Thus, EU accessions have not become a drag on the EU's environmental programs. Success is attributed to the EU's capacity to force states with lower environmental standards to

upgrade, but also the continuous democratization of decisional processes, employing new environmental policy instruments, and appealing to the European Court of Justice, extending the EU's environmental expertise.

Furthermore, Börzel and Sedelmeier (2017) and Börzel and Buzogány (2019) show that despite new members' accession with a poor track record on environmental protection, the EU's environmental policy has expanded. The implementation gap has narrowed, as the European Commission has opted for less burdensome regulations, incremental amendments, and the development of new instruments to strengthen member states' implementation capacity. Most importantly, the Commission's power to employ pre-accession conditionality and assistance and the negotiations of some lengthy transition periods are essential explanatory factors (Börzel and Buzogány 2019, p. 232). Focusing on compliance in general, Sedelmeier (2016, p. 24) identified two different causal paths: "weak states with governments supportive of European integration, in combination with either an efficient mechanism to coordinate EU affairs or a lack of domestic veto players." Converging on the same question and comparing Romania and Bulgaria's evolutions in the field of waste management, Cugleşan (2019, p. 1) argues "pre-accession conditionality and post-accession sanctioning mechanisms coupled with social learning through the internalization of norms explain the moderate success of both countries."

While most of the literature sees the usage of conditionality during pre-accession as the first step of the Europeanization of environmental policies, a series of articles critique this approach. Falkner and Treib (2008) argue that the new EU member states fall into a different approach to compliance than the old ones, called the "world of dead letters." Also, Orru and Rothstein (2015) found evidence that their "blind-eye" Europeanization style might explain new EU member states' good record on compliance. They focus on those rules that can be monitored by the EU while ignoring structural problems, an approach inherited from the Communist regimes.

Approaches based on the EU-level complexity of directives evaluate whether various characteristics of the *acquis*, such as length, latitude, and timing of adoption (Ion 2016), affect the outcomes. Instead, monitoring arguments focus on the capacity and intensity of the Commission in detecting noncompliance and imposing sanctions (Kaeding 2008; Toshkov 2008).

Among models that focus on the national-level factors, the "goodness-of-fit" aims to explain variation in compliance by the difference between the national-level status quo and a new directive's aims. According to Angelova et al. (2012, p. 1274), the "goodness-of-fit" refers to the difference between the existing situation at the national level and the requirements of the new EU *acquis*. Still, it is operationalized differently, through either the "policy misfit" (Börzel 2000), structures of national interest groups (Duina 1997), the "the challenges that transnational rules pose on the policy legacies and interest group organization" (Duina and Blithe 1999), or the financial effort required for compliance (Falkner et al. 2005). Concentrating on the problematic implementation of the Urban Waste Water Treatment Directive (UWWTD), Marek et al. (2017) tested the explanatory power of "goodness-of-fit" and administrative capacity explanations. They found that the former explains

variations in implementation between Poland and the Czech Republic. Preeminently most problems “stemmed from the multilevel nature of the implementation process, which places a heavy administrative and financial burden on municipalities and requires cooperation between national and local government authorities.”

Built as a critique of the “goodness-of-fit” approach, Mastenbroek and Kaeding (2006) advance an argument based on veto players’ institutional decision-making constraints, which consider factors such as the federal versus centralized structure, the effective number of parties, and decision-making capacity to explain variations in compliance. Hedemann-Robinson (2016) demonstrates the EU’s increased capacity to enforce environmental policies by pointing to secondary legislation and provisions to strengthen national-level environmental inspections. Another analysis that focuses on EU strategy to increase compliance describes its approach to out-source environmental legislation compliance by encouraging member states’ environmental NGOs access to national courts in parallel with the Commission’s centralized enforcement. The author stresses that while NGO activism is useful, it cannot generate the coherent and comprehensive compliance typical of a central enforcing authority (Hofmann 2019).

On the other hand, the “actors’ policy preferences” approach links a country’s stance while adopting a directive to its willingness to comply with it. The interministerial coordination approach advanced by authors such as van den Bossche (1996) or Mastenbroek and Kaeding (2006) argues that inefficient interministerial coordination can hamper the timely and adequate adoption of directives. The administrative efficiency argument puts more weight on the fact that inefficient bureaucracies are more prone to following private groups’ interests (Berglund et al. 2006).

The learning effects approach emphasizes the importance of continuous interaction between national administration and the EU institutions, a process that leads to an increased acceptance of EU norms (Sedelmeier 2008). The culturalist approaches consider factors such as cultural effects and domestic traditions and approaches to decision-making (Sverdrup 2004, p. 2), norms of democracy, or law observance (Falkner and Treib 2008) significant explanatory variables. Also, Braun (2016) is interested in the degree of normative diffusion and aims to understand how norms developed over time in the EU-15 can take root in the new member states. The book focuses primarily on Bulgaria, the Czech Republic, Poland, and Romania, analyzing the differences in adoption, implementation, and coordination, particularly surrounding the EU’s chemical policy.

In summary, Angelova et al.’s (2012, pp. 1274–1278) evaluation of the approaches that hold explanatory power in qualitative and quantitative studies reveals that the institutional decision-making capacity and “goodness-of-fit” prove consistently powerful and hold across various operationalizations. Instead, the actor’s policy preferences and administrative efficiency arguments do not have good explanatory power.

This volume builds on the analytic efforts of the Europeanization of the environmental public policy literature and aims to bring several contributions. While it is focused on one country, it proposes a comparative approach as it tackles the same set of explanatory models across very different environmental policies. This

approach allows for identifying some systematic factors that affect the implementation of environmental policies in Romania. Therefore, it can inform the reader about the sources of problems for other countries that face similar difficulties in implementing environmental legislation. The volume also represents a case study of the EU's capacity to generate Europeanization of its member states' environmental policy with lower administrative capacity.

While much of the current literature focused on adopting EU *acquis* and equates the absence of infringement procedures as evidence for compliance, the sectoral analyses propose a more nuanced definition of policy implementation success. They show how, under specific circumstances, a country can avoid monitoring and avoid infringement procedures by focusing on policies' formal aspects. Another contribution of the volume comes from its comparison of environmental policy analyses where the EU's monitoring capacity and compliance instrument significantly vary in power. It ranges from areas with strict targets in the Accession Treaty (waste management and air pollution) to areas covered (forests) and indirectly covered (green procurement, environmentally friendly agriculture, "scrapage program") by the *acquis*. Some areas are also covered by the *acquis* but are part of the EU's approach and are regulated at the international level (sustainable development) or national level (Environmental Fund). The chapter dedicated to the functionality of the Environmental Fund and the Environmental Fund administration, an institution that should enforce taxation covering all the environmental policy fields and finance projects in these areas, allows the volume to compare possible differences in approach among policies.

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