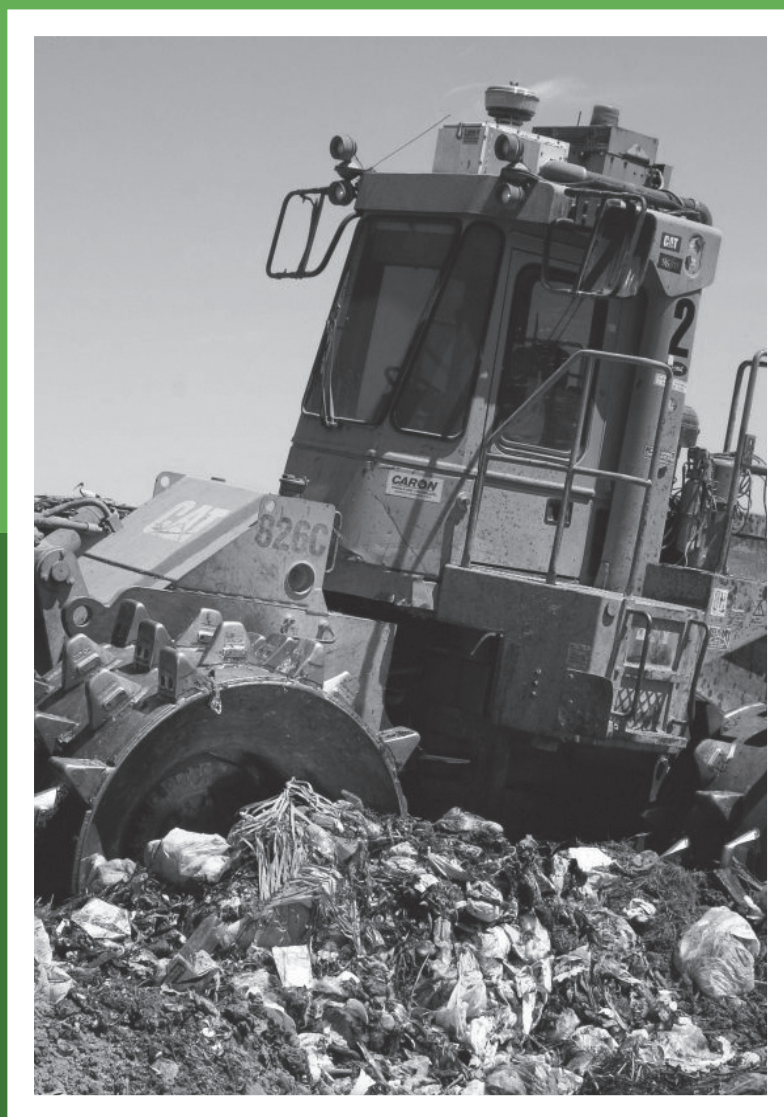


## Justice & Environment Position Paper

# WASTE – 2008



## Justice & Environment

Justice & Environment (J&E) is a European network of environmental law organisations. J&E is a non-profit association with a mission that *aims for better legislation and implementation of environmental law on the national and European Union (EU) level to protect the environment, people and nature*. J&E fulfils this mission by ensuring the enforcement of EU legislation through the use of European law and exchange of information.

J&E was created in January 2003 and founded as a non-profit association in September 2004. J&E currently comprises six full-member organisations: Environmental Law Service, Czech Republic (EPS); Estonian Environmental Law Centre, Estonia (EELC); Environmental Management and Law Association, Hungary (EMLA); ÖKOBURO – Coordination Office of Austrian Environmental Organisations, Austria; Legal-Informational Centre for NGOs, Slovenia (PIC); and the Centre for Public Advocacy, Slovakia (VIA IURIS). J&E also has six associate members: Environmental Justice Association, Spain (AJA); Centre for Legal Resources, Romania (CRJ); Front 21/42 Citizens' Association, Macedonia (Front 21/42); MilieuKontakt International, the Netherlands (MKI); Independent Institute of Environmental Concerns, Germany (UfU); and Green Action – Friends of the Earth Croatia, Croatia (ZA).

All J&E activities are based on the expertise, knowledge and experience of its member organisations. The members contribute their legal know-how and are instrumental in the initiation, design and implementation of the J&E work programme. The strong grassroots contacts of the members enable J&E to concentrate on Europe-wide legal issues and horizontal legislation, notably the: Aarhus Convention, environmental impact assessment, environmental liability, pollution, Natura 2000, transport and the building of legal capacity. Within these fields J&E: carries out analysis, compiles case studies and joint position papers; formulates strategic complaints, encourages discussion and legal education; and conducts outreach activities. Thus J&E provides added value from civil society to legislators and adds tangible benefits by broadening public knowledge of EU law and legislation.

To carry out its programme of work J&E relies on a number of donors and supporters. First and foremost the members themselves financially contribute to the network. However J&E has been supported by: the European Commission through the LIFE+ programme, the International Visegrad Fund (IVF), The Ministry of Housing, Spatial Planning and the Environment of The Netherlands (VROM), the Sigrid Rausing Trust and its own member organisations

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## 1. Background

Justice & Environment (J&E) is a European based association of public interest environmental law organisations. J&E aims to use law to protect people, the environment and nature. Our primary goal is to ensure the implementation and enforcement of the European Union (EU) legislation through the use of European law and exchange of information about its use.

## 2. Activities

In 2008, J&E chose the issue of transposition and implementation of the European environmental *acquis* relevant for waste management as one of its topics of concern. The primary focus was on the effective transposition of the Landfill Directive (Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste).

J&E members from Austria, the Czech Republic, Hungary and Slovenia compiled a collection of legal analyses and researched pertinent data on their respective national situations regarding landfills.

## 3. Findings and Conclusions

The research was conducted through a number of key questions to be answered by each participating J&E member. Questions were formulated in such a way as to depict the major provisions in the Landfill Directive. They concentrated on the expectations that the EU law has put towards the national legal systems of Member States. The findings of the survey showed the following outcomes<sup>1</sup>:

1. All countries have a considerably **large number of legal enactments in place** to transpose the respective EU environmental

law on waste management, including specific laws on landfills.

2. **Almost no country complied** with the deadline of transposition, although this question seems obsolete today.
3. The competences for implementation are largely **entrusted with the environmental administration**, i.e. the respective Ministry of Environment (MOE) and regional EPA offices.
4. A large number of provisions of the Landfill Directive are **transposed word-by-word** to the national legal systems. This includes: definitions of the most important terminology, the obligation for a landfill to be permitted, the ban on landfill of waste without prior treatment, criteria towards hazardous waste that can go into a landfill, and the use of inert waste landfills.
5. There are **varied types** of landfills in all countries, however, they all stem from the Landfill Directive.
6. There are only **minor differences in the wording** of criteria applied for wastes to be land-filled, but this does not amount to non-compliance in any of the countries.
7. All countries have **more-or-less comprehensive strategies** for the reduction of biodegradable waste to be land-filled.
8. All except one country have a functioning **system of guaranteeing prior financial security** by the landfill operator in order to cover costs of obligations, including after-care. Although that country has a system only lacking the financial security requirement from the operator prior to starting the operation of the landfill.
9. The requirement of **preparing a conditioning plan** for the continued operation of an inappropriate landfill is present only in one country, while one other country finds it irrelevant, whereas the

<sup>1</sup> N.B. when using the term “countries” we refers to those four which have been assessed through the research process.

remaining two have had this provision in place but eventually annulled it.

10. All countries have established the **responsibility of landfill operators for the after-care** phase maintenance, monitoring and control.

Examples of non-compliance with the requirements of the Landfill Directive were only few, they included:

1. In Austria, the legal nature of the Federal Waste Management Plan (*Bundesabfallwirtschaftsplan* - BAWP) issued by the Austrian MOE every five years is unclear because it **does not fit in any format** of Austrian legal acts.
2. Czech law allows flammable and corrosive waste to be land-filled and also allows the landfill operators to create a financial reserve for the remediation and after-care of the landfill only **during and not prior to operation**.
3. In two respects Hungarian law has **eased the burden of operators** of existing inappropriate landfills, *by* deleting the obligation to undergo a full-scale environmental audit and to prepare a conditioning plan.
4. In Slovenia, the obligation of the operators of existing landfills to prepare a conditioning plan **was also annulled** by the entry into force of the new decree on the landfill of waste.

Despite these J&E has concluded that the laws and regulations necessary to transpose the waste management regulatory framework of the EU into the assessed Member States **are in place and do not suffer from major shortcomings**. Thus probably they do not give rise to infringement procedures. However, this in no way means that the implementation of these laws is fully compliant with the EU legal framework, which would merit an independent examination.

## 4. Data on Landfills

J&E member organization also researched the situation in their respective countries regarding landfill operations. The major focus was on the number of landfills in the country and their status. Data was compiled by asking the following specific questions:

1. How many permitted or operating landfills are there in the country altogether?
2. How many of the above number is inappropriate (not meeting the requirements of the Landfill Directive 1999/31/EC) and are supposed to be closed?
3. What is the final date when all inappropriate landfills have to be closed permanently, pursuant to the Landfill Directive?
4. How many inappropriate landfills have been closed permanently since the transposition of the Landfill Directive?
5. What percentages of the inappropriate landfills have been closed in time/will be closed in time and have there remained/will there remain inappropriate landfills operating after the mandatory date of closure? Alternatively, if the country is where the date of closure has not expired yet, what is the forecast?



Responses are summarised in the following table:

Country	Austria	Czech Republic	Hungary	Slovenia
<b>Question</b>				
Number of permitted Or operating landfills	457	252	120	83
Number of inappropriate landfills supposed to be closed	-	28	49	45
Final date for the closure of inappropriate landfills	30 June 2009	16 July 2009	16 July 2009	16 July 2009
Number of inappropriate landfills closed already	139	16	220	24
Number of inappropriate landfills operating after the date of closure	0	0	0	0

A few conclusions can be drawn even from this quite basic survey, such as:

1. The number of landfills in a country **does not necessarily correspond** to the size of the country, however, it rather represents the specific concept of subsidiarity and a distinct approach to the principle of vicinity prevailing in waste management regulation.
2. The country that has joined the EU before the New Member States (Austria – 1995) has **no more inappropriate landfills**, which might not only be a result of the longer history of being a Member State, but also from the more environmentally focused approach of the country.
3. The number of inappropriate landfills supposed to be closed compared to the permitted or operating ones again **does not correspond** to the size of the country, and represents an interesting spread of ratios (Czech Republic 11%, Hungary 41%, Slovenia 54%) which would merit a further research.
4. Nevertheless, the final date for the definite closure of such landfills is **uniform**;
5. The number of already closed inappropriate landfills compared to the ones to be closed

by the above deadline is again **not even** (Czech Republic 57%, Hungary 449%, Slovenia 53%), which is again worth further analysis.

6. Interestingly, there is only one thing that the assessed country governments are uniformly confident about and that is that **there will be no inappropriate landfills** operating after the deadline of definite closure.

J&E member organizations regularly perform monitoring activities. They will therefore – as a part of their watchdog function – keenly observe if the confidence of the governments is justified and all inappropriate landfills are closed according to the deadlines set.

## 5. Recommendations

Based on the legal analysis, as well as on the data gathered on landfills, the following recommendations were formulated by the J&E Team:

1. Waste management laws should promote the general EU environmental law targets and goals, for example laws relating to landfills should guarantee the safe disposal of waste.

2. Laws relating to landfills should keep their level of strict approach, as envisaged by EU environmental law, and should not make allowances to landfill operators by easing the burdens of operation either today or in the future;
3. The most pressing and urgent task is to ensure that the deadline for the definite closure of inappropriate landfills is kept by the Member States, therefore state environmental administrations should treat it as priority during 2009.
4. After-care obligations should be enforced without exception and synergies with the respective EU law on environmental liability should be utilised.

J&E member organizations will continue working on the landfill issue in 2009 and make efforts to support those recommendations we have made.

