

UACES 44th Annual Conference

Cork, 1-3 September 2014

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Dismantling the acquis? 20 years of environmental policy reform in the EU

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Paper prepared for the 2014 UACES general conference

University College Cork, Ireland

Abstract

The current European crisis has seen renewed calls at EU level – from within the Commission and from certain Member States – to slow down, halt or even reverse the expansion of EU environmental policy. Are these calls a credible threat to the integrity of the EU green acquis? This paper investigates for the first time policy dismantling, *i.e.* the weakening or removal of existing policy, with a focus on EU environmental policies. It contends that the EU is not only a driver of dismantling in the Member States but also an emerging locus of dismantling. It sheds light on the current pressures on EU legislation by reflecting on two previous periods in which similar dismantling calls were aired - the subsidiarity crisis in the early 1990s and the Better Regulation programmes of the mid-2000s. Showcasing the results of coding changes in pieces of the environmental *acquis* targeted for dismantling, it highlights that dismantling has in fact already taken place at EU level – but that expansion, and the continuation of the *status quo*, are much more frequent outcomes of legislative reform. It concludes by speculating that a growing consensus at EU level around the idea of policy dismantling may lead to more successful dismantling attempts in the future – highlighting the need for further research on policy dismantling at EU level.

*Draft – feedback welcomed (v.gravey@uea.ac.uk). Please do not cite or quote before checking with me for an updated version.

1 Introduction

From the Dutch declaration on the end of an “ever closer union” (Ministrie van Buitenlandse Zaken, 2013a), to British demands to “cut EU red tape” (Business Taskforce, 2013) and President Barroso’s remarks that “useless laws weaken the necessary ones” (Barroso, 2013), the last few years have seen mounting calls for policy dismantling at EU level. Yet such calls appear counter intuitive as dismantling has long been dismissed as impossible at EU level – the idea of European integration going hand in hand with policy expansion toward an “ever closer union”. How in this context could policy dismantling, the “cutting, diminution or removal of existing policy” (Bauer, Jordan, Green-Pedersen, & Héritier, 2012) take place?

This paper contends that as we move toward understanding the EU as a “normal” political system (Kreppel, 2012), we should stop assuming that EU public policies – and more precisely EU legislation – will expand *ad infinitum*. Instead this paper highlights that changes in the way the EU works and the need to reform an aging corpus of legislation have made it increasingly possible for policy dismantling to take place at EU level.

If the EU is a possible *locus* for policy dismantling, what does it mean for the *acquis*? Has policy dismantling already taken place at EU level? This paper addresses these questions in a case study spanning twenty years of EU environmental policies. EU environmental policies were chosen as a sector of EU policies that has long experienced implementation problems (Jordan & Tosun, 2013), and where further policy expansion is greatly debated. Policy dismantling can be understood as yet another challenge to the resilience and efficiency of the *acquis*: taking place at EU level, through the EU decision-making process (as expansion), but targeting and affecting *existing* policies (as non-implementation).

In order to capture events of policy dismantling, this paper uses a novel coding scheme – inspired, amongst others by the works of Knill, Steinebach, Hanschmann, Bianculli, & Juanatey, 2014 – to analyse policy changes in terms of expansion, dismantling, *status quo* or mixed changes across six different dimensions. The existing literature on policy dismantling in other settings – such as on welfare retrenchment – have shown the difficulties encountered by politicians trying to dismantle social policies (but also environmental ones, e.g. Bernauer & Knill, 2012). Taking into account changes to the EU environmental directives and regulations that were targeted for dismantling and subsequently reformed between 1992 and 2012, this paper finds contrasting evidence of policy dismantling, widespread yet shallow. This confirms that policy dismantling can

take place, and already has taken place at EU level. Although these results reveal limited impacts to environmental policy outputs, they do not necessarily mean that environmental policy dismantling at EU level cannot threaten the *acquis*. In its concluding section this paper showcases recent development in policy dismantling at EU level, and limits to the present study, arguing for further research in policy dismantling at EU level and its impacts on policy outputs and policy-making in general.

2 The European Union as an emerging locus of policy dismantling

When policy dismantling is mentioned in conjunction with the EU in the existing literature, it tends to present the EU as a possible driver for policy dismantling in the Member States (see for example Knill, Tosun, & Bauer, 2009). Indeed the European Single Market is partly built on the suppression of diverging national regulations, and their replacement by common EU-wide rules – a process conventionally known as “positive integration” (Scharpf, 1996). This section argues that the EU is not only a dismantling *driver*, it can also be a *locus* of policy dismantling. To do so it first defines policy dismantling in a EU context, then addresses potential barriers to dismantling at EU level – the Commission’s aim to expand its power and the difficulties to reform EU policies.

2.1 Defining policy dismantling

Dismantling is a relative concept – just as its opposite expansion, it is measured in respect to changes to a baseline, a *status quo*. Hence policy dismantling only concerns *existing* policy; and to be precise the “cutting, diminution or removal of existing policy” (Bauer et al., 2012). Building on this definition, this paper adopts a narrow view on policy dismantling. First, it uses throughout a narrow understanding of policy, as “a collection of programs operating in a similar field or aimed at some general objectives” (Salamon, 2002). Thus it focuses on policy as legislation. Second, it is only concerned with one potential avenue for policy dismantling: dismantling of existing legislation that happens through the legislative process – *i.e.* during legislative reforms. But policy dismantling can also take place at other moments, in particular during the implementation phase (see for example Korte & Joergens, 2012).

Dismantling is not a new concept,¹ but for a long time other similar concepts were more popular each in their own academic subfield. In particular, questions of retrenchment were raised relative to social policies and welfare States (Green-Pedersen, 2004), while concepts such as deregulation, regulatory reform and the regulatory state were developed by scholars interested in the changing nature of the State, and of its economic role (e.g., Majone, 1999; Lodge, 2008). Policy dismantling is a very useful concept in part because of this previous lack of uptake. First, it can be used as an umbrella term to bring together different strands of literature that have until now developed in parallel (Jordan, Green-Pedersen, & Turnpenny, 2012). Second, it is less politicized than (welfare state) retrenchment and deregulation. Third, it is not yet strongly linked to any policy sector, or any level of governance – as such it is flexible enough to be applied in a new setting, to investigate policy dismantling at EU level.

2.2 Two motivations for dismantling at EU level

For long, policy dismantling was considered as something that happened to other levels of governance. If the European Union had a role in dismantling it was as a driver, not as a locus (Knill et al., 2009). Thus Hancher and Moran argued that EU institutions provided “an important forum for the diffusion of deregulation between the member states.” (1989, p. 134). Indeed, not only did the EU drive dismantling, it benefited from it. The idea of positive integration is built around the replacement of diverging national legislations by a common EU rule – thus dismantling in each Member States went hand in hand with expansion at EU level. With the idea of “ever closer union” enshrined in the EU treaties, dismantling understood as disintegration appears unlikely. The idea of EU level dismantling is also discordant with two key tenets of EU integration literature: first that the Commission’s whole *raison d’être* is to increase its powers, and concomitantly the number and breadth of EU level policies, and second that EU policies are extremely difficult to reform. Thus, as argued by Pollack (1994, p. 102), it is commonly assumed that:

“The Commission’s primary organizational goals are (a) to expand the scope of Community competence to new areas and (b) to increase its own competence and influence within the policy process.”

As such, the Commission, who has agenda-setting monopoly for most areas of EU legislation is expected to prevent dismantling from occurring. Interestingly a

¹Thus Paul Pierson named his seminal 1994 book on changes in western welfare states *Dismantling the welfare State*

rare policy area where dismantling is often mentioned is the much-decried Common Agricultural Policy (e.g., Coleman, Atkinson, & Montpetit, 1997; Sheingate, 2000). But attempts at dismantling the CAP highlight a second tenet of EU integration literature and a further obstacle to widespread dismantling at EU level: the sheer difficulty of reforming EU policies, first identified by Scharpf as a “joint-decision trap” (Scharpf, 1988). Hence policy dismantling at EU level appears not only unlikely, but almost impossible.

But this vision relies on a very narrow understanding of the EU, as the result of a linear, apolitical process of integration. With the Treaty of Rome more than fifty years old, decisions to make certain policies at EU level and agreement on their content happened years if not decades ago. While the EU is still pursuing new policies, it has for the last 25 years at least spent time reforming existing policies – in that respect the EU is a political system like any other (Kreppel, 2012), it has to update its existing lawbook, the *acquis communautaire*. Legislative reform undermines the idea of a linear integration process, as through reform the *status quo* is opened to change – to further expansion, or to dismantling.

Introduced in the Maastricht Treaty in 1992, the twin principles of proportionality and subsidiarity can both be used to justify policy dismantling at EU level (see for example, Financial Times, 16/11/2005²). Thus, while actors at a given time agreed to pool their sovereignty in the belief that action at EU level would yield better results than at national or local levels; circumstances and opinion may change, and the case for EU level action may be undermined over time. Especially, it may not be felt that a given directive or regulation confirms with the principle of subsidiarity. Second, different actors at EU level will have divergent opinions on the way the EU should regulate – from favoring the use of rigid common and control instruments to supporting lighter touch regulation, relying amongst others on New Political Instruments such as voluntary agreements or economic incentives (Jordan, Wurzel, Zito, & Bruckner, 2003). Whether these differences express themselves along a left-right political cleavage (particularly strong within the European Parliament, see Hix, Noury, & Roland, 2007), or whether it expresses itself through differences in Member States legislative styles, these discussions are not about subsidiarity – which level of governance should be in charge – but about proportionality – what is the necessary amount of constraints put on economic actors to achieve a given

²Atzo Nicolai & Douglas Alexander, “Europe must be heavy on values, light on red tape” in Financial Times, 16/11/2005 <http://www.ft.com/cms/s/1/25d280ce-56d6-11da-b98c-00000e25118c.html#axzz3A53Qf0PZ>

result, what constitutes unnecessary administrative burdens.

These two motivations do not only apply to the Member States themselves. They can also motivate the actions of members of the European Parliament, and more importantly of the European Commission itself. To contend that the European Commission would condone, or even instigate policy dismantling at EU level contradicts commonly shared assumptions on the motivations of the European executive (Pollack, 1994). But these assumptions have been repeatedly undermined by further research on the inner workings of this institution. For example, Dimitrakopoulos (2004) makes the case that the Commission should be seen both as an actor and an organisation, in which different DGs vie for attention and support for their own policies. This matters for policy dismantling as, as in domestic settings, you would expect DGs working with industries and businesses to favour lighter approach to regulation than DGs delivering social or environmental policies. Thus whether policy dismantling motivated by proportionality is condoned by the Commission ultimately depends on the balance of power within this institution. Dehousse and Thompson (2012) go a step further and highlight that divergence within the Commission also concerns debates on modes of governance, with a growing number of intergovernmentalists, in favour of a State-led EU, within the Commission ranks. This matters for policy dismantling as Commission officials in favour of an intergovernmental Europe may be less likely to oppose dismantling pushed for by Member States.

Hence contrary to common assumptions that the EU is only a driver of policy dismantling, frequent reforms of EU policies make the EU a possible locus for policy dismantling. As key actors in EU decision-making may be motivated by either subsidiarity or proportionality, policy dismantling is likely to be attempted. Furthermore, changes in our understanding of how the Commission works highlight that the Commission may not always stand in the way of dismantling attempts.

As policy dismantling is possible, even likely, has it already taken place? A review of the existing literature shows that demands for policy dismantling have been frequent over the last 20 years, with in particular two periods of high pressure on the *acquis*.

2.3 Two historical periods of policy dismantling

The early 1990s, and the difficulties surrounding the adoption of the Maastricht Treaty are conventionally perceived as marking the end of the “permissive consensus” which had sustained the European integration process until then

(Taggart & Szczerbiak, 2013). In the aftermath of the Danish no to Maastricht in a first referendum (and of the narrow yes in France), subsidiarity was seized upon as a concept around which a new balance of competence could be struck at EU level: imposing on the Commission to better justify the need for EU level action, but also leading to demands to reconsider certain legislative proposals as well as part of the *acquis* (Kersbergen & Verbeek, 1994; Collier, 1997; Jeppesen, 2000). A number of Member States (the UK, France and Germany), and the Commission put together “hit lists” of directives, regulations or proposals that were to be reconsidered, leading to a number of reforms of an already aging *acquis* (Golub, 1996; Wurzel, 2002).

A decade later, the Commission launched an agenda of “Better Regulation” at EU level in parallel to its Lisbon strategy (Radaelli, 2007). While deregulation is about legislative quantity, better regulation is supposed to be about legislative quality (Tombs & Whyte, 2012). Compared to the early 1990s, the focus had shifted from subsidiarity – questioning the merits for EU action – to proportionality – making EU level legislation more efficient (Jordan & Jeppesen, 2000, p. 67). Although the UK was again a strong supporter of better regulation, key drivers were found inside the European Commission, especially inside DG Enterprise and Industry under the leadership of Günter Verheugen (Löfsted, 2007; Radaelli, 2007). Other member states such as Germany, but in particular the Netherlands were instrumental in the evolution of the agenda toward administrative burdens reduction from 2007 onward (Wegrich, 2009).

Thus calls for dismantling were made – but has this translated in actual dismantling of policy outputs at EU level? The two following sections address this question. The next section presents the case study and the method used to measure policy dismantling. The results are presented afterward.

3 Methods for measuring policy dismantling in EU environmental legislation 1992-2012

Policy dismantling at EU level is then possible and has already been called for. In order to assess whether it has already taken place, this section presents the methods used in the case studies of the changes experienced by parts of the EU environmental *acquis* during the two periods presented above, the hit lists produced in the wake of the Maastricht Treaty ratification crisis in the early 1990s and the Commission-led Better Regulation initiative in the 2000s.

3.1 Identifying targeted policies

Generations of targeted directives and regulations	1st	2nd	3rd	4th	5th
<i>WATER - Drinking Water</i>	1980	1998			
<i>WATER - Groundwater</i>	1980	2006			
<i>WATER - Bathing water</i>	1976	2006			
<i>WATER - Shellfish waters</i>	1979	2006			
<i>WASTE - Titanium dioxide industry</i>	1978	1982	1992	2010	
<i>WASTE - Waste Electrical and Electronic Equipment</i>	2000	2012			
<i>WASTE - Packaging</i>	1985	1994	2004		
<i>WASTE - Waste framework directive</i>	3 dir. 75-78	2 dir. 1991	2008		
<i>WASTE - Shipment of waste</i>	1984	1986	1993	2006	
<i>AIR - Air Quality</i>	5 dir. 80-92	5 dir. 96-04	2008		
<i>AIR - Ozone, Montreal Protocol</i>	1988	1991	1994	2000	2009
<i>AIR - Sulphur content of marine fuels</i>	1975	1987	1993	1999	2005
<i>INDUSTRY - Eco-label</i>	1992	2000	2010		
<i>INDUSTRY - Eco-Management and Audit Scheme</i>	1993	2001	2009		
<i>INDUSTRY - Seveso</i>	1982	1996	2003	2012	
<i>INDUSTRY - Integrated Pollution Prevention and Control</i>	1984	1996	2003	2008	2010
<i>INDUSTRY - Restriction of the Use of certain Hazardous Substances</i>	2002	2011			
<i>HORIZONTAL - Environmental Impact Assessment</i>	1982	1997	2003	2009	2012
<i>NATURE - Trade in wild flora & fauna</i>	1982	1997			
<i>NATURE - Birds directive</i>	1979	1994	2009		

Figure 1: Different generations of the 20 families of directives and regulations targeted for dismantling in the 1990s and 2000s.

Source Golub (1996); European Commission (1993, 2003, 2006); Wilkinson et al. (2005); Hjern et al. (2010)

In both periods, lists of policies to be reviewed and/or removed were drawn. Focusing on a certain type of EU legislation – regulations or directives only, not decision, nor secondary legislation – and a narrow understanding of what environmental policies are – falling under the remit of the Commission Directorate for the Environment, thus excluding for example rules on energy efficiency – 20 environmental directives and regulations can be identified as having been targeted for dismantling between the early 1990s and the late 2000s.

Through legislative reforms, these 20 directives and regulations have spawned

across multiple generations representing a total of 75 directives and regulations listed in figure 1.

3.2 Measuring policy dismantling: a tool to code policy change

In order to assess whether policy dismantling has taken place, the successive legislative reforms of the twenty families of directives and regulations presented in figure 1 were analysed, using a new tool coding events of policy change.

This coding framework builds on a methodology developed by (Bauer & Knill, 2014; Knill et al., 2014), which has been adapted to reform of EU legislation. It has four main characteristics. First, it measures changes in legislative outputs – not outcomes on the ground *i.e.* changes in the state of the European environment. Dismantling happens when an environmental piece of legislation is weakened, not when the state of the European environment worsens. Second, it is interested in changes at two different levels: the level of the piece of legislation (directive or regulation) as a whole, and the level of the legislative instruments – such as a pollution standard, a research programme, a information label etc. which compose the legislation.

The number of instruments comprising a legislation is greatly varied: the high number of pollutants regulated mean that a directive such as the 1980 Drinking Water Directive has a much great number of instruments (70).

3.2.1 Six possible dismantling dimensions

Third, it is not only interested in measuring whether change – such as dismantling – is taking place, but the kind of change that is taking place. As such it measures dismantling across three of the four possible dismantling dimensions developed in Bauer and Knill (2012): density, scope and settings³.

- *Density* – *i.e.* the number of directives/regulations or instruments which comprise them. A move from 4 directives to one framework directive is a form of density dismantling. Changes in the number of instruments comprising a regulation is a form of density expansion.
- *Scope* – *i.e.* how what or whom is affected by a specific instrument or legislation. For example, a tax targeting only companies employing more

³Bauer & Knill, 2012 put together scope and settings under the heading of substantial intensity, and capacity as formal intensity.

than 500 people within a sector has a smaller scope than a tax targeting all companies within that sector.

- *Settings* – i.e. how strict or loose the instrument or legislation are. Using the same example, a higher tax will have a stricter setting than a lower one.

The fourth possible dimension is *capacity*. It concerns the implementation potential of a given legislation. Going back to the tax example, what matters here is whether there are sufficient tax inspectors, and credible penalties in case of tax-avoidance. While changes in capacity have already been studied in qualitative studies of policy dismantling (Bauer et al., 2012), they have not yet been coded in quantitative studies such as Knill et al. (2014) as it is very difficult to code changes in administrative arrangements – such as whether implementation is overseen by the Commission, an Agency or the Member States – in terms of expansion or dismantling.

3.2.2 Overview of the coding scheme

Changes to the different directives and regulations were analysed along six different dimensions:

1. **Legislative density**
2. **Legislative scope**
3. **Legislative settings**
4. **Instrument density**
5. **Instrument scope**
6. **Instrument settings**

Different events of change were coded with values ranging between 0 and 3: 0 for no change, 1 for expansion, 2 for dismantling and 3 for mixed (if changes are unclear, or both expansion and dismantling happened simultaneously).

Changes in instrument scope and settings were only measured for the instruments found in the two generations of the same family of directive or regulation compared.

After all directives and regulations were coded, comparison were made between periods (whether they were targeted in the 1990s or 2000s) and type of environmental policy (air, water, waste, etc.).

4 Results: Widespread dismantling...but of limited impact?

This section presents the results of coding changes across multiple generations of the thirteen families of directives and regulations targeted for dismantling by either the 1990s subsidiarity hit lists or the 2000s Better Regulation programmes (see figure 1). It focuses on different dismantling dimensions, policy sectors and time periods. It finds evidence of policy dismantling at EU level, but highlights that policy dismantling has not been the main source of policy change, even though the directives and regulations studied here were targeted for policy dismantling.

4.1 Widespread dismantling...

A first question to address is whether dismantling has taken place. Out of the twenty families of directives and regulations, four experienced no dismantling at all when reformed: Shellfish water, RoHS, IPPC directives and EMAS regulation. The directive on Shellfish Waters is particularly striking as its codification in 2006 fully maintained the *status quo* (European Parliament & Council of the European Union, 2006a).

Although the remaining sixteen cases all experienced events of policy dismantling, figure 2 highlights the diversity of dismantling taking place. Policy dismantling occurred along five out of the six dimensions identified – the coding exercise found no instance of dismantled legislative settings. There is furthermore a strong difference in dismantling frequency along the different dimensions, with instrument scope being the most frequent dimension for dismantling (11 cases) and legislative scope the least frequent (1 case).

This data thus shows that dismantling is happening. But it does not tell us how important is dismantling *vis-à-vis* the other two possible outcomes from legislative reform: continuation of the *status quo* and further expansion.

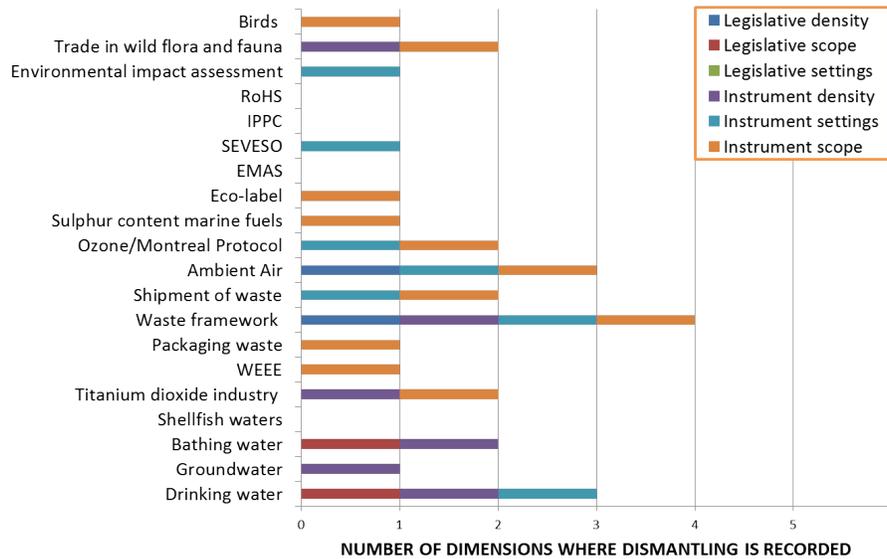


Figure 2: Presence of dismantling events along 6 potential dismantling dimensions, across 20 families of environmental directives and regulations targeted in the 1990s and 2000s (own data)

4.2 ...but of limited impact?

As figure 2 shows, most dismantling appears to occur at instrument level, the rest of this result section will therefore focus on changes to instrument density, scope and settings. This focus on changes to instruments will highlight the respective frequency of dismantling, perpetuation of the *status quo* and expansion as events of change across these three dimensions.

4.2.1 Instrument density

Looking at instrument density means charting changes in the number of instruments used in each of the twenty families of directives and regulations studied. For an instrument to be marked as dismantled it needs to either have been completely removed or for its nature to have been changed – thus if a pollution standard is replaced by a voluntary agreement there will be simultaneous

dismantling of the pollution standard and expansion of the voluntary agreement.

Figure 3 is built by adding changes across all generations of a directive or regulation. If a directive, as the Groundwater directive was only reformed once, changes in density presented in figure 3 only represent these changes. Conversely for a directive such as the SEVESO directive with four generations, the density changes cover all changes that occurred between its first generation in 1982 and its fourth generation in 2012.

This figure highlights that nine out of twenty pieces of legislation have not experienced any dismantling of instrument density, seven have experienced some dismantling but expansion and/or *status quo* were more frequent; and only four have experienced major amounts of policy dismantling: three EU water directives and the Ambient Air directives.

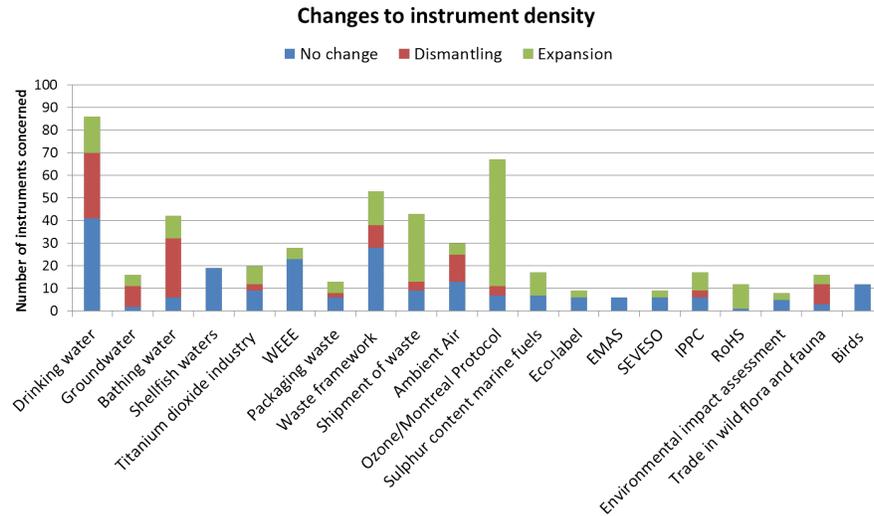


Figure 3: Type and number of changes – instrument density dimension across all generations of 20 families of environmental directives and regulations targeted in the 1990s and 2000s (own data)

Dismantling is particularly important for the 2006 Bathing Water directive: twenty-six instruments were removed, ten added with only six remaining from the previous 1976 directive (European Parliament & Council of the European Union, 2006b). Conversely, between 1984 and 2006, the Shipment of Waste directives lost only four instruments, and gained thirty new ones (European Parliament & Council of the European Union, 2006c).

4.2.2 Instrument scope

Changes in scope and settings can be identified for a subset of instruments – those maintained for more than one generation, as the direction of change regarding both scope and settings is determined by comparing two generations of the same instrument. Figure 4 is built similarly to figure 3 by taking into account all generations of the same directive or regulation.

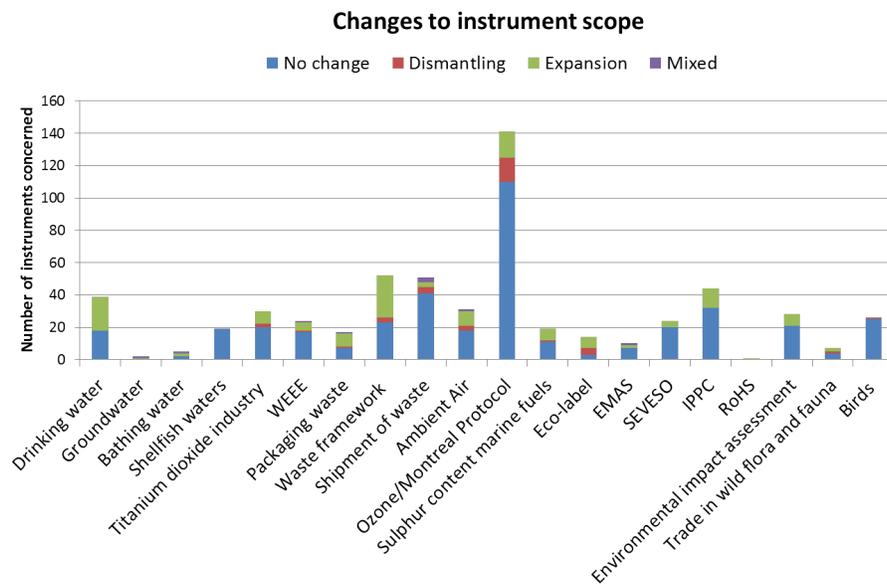


Figure 4: Type and number of changes – instrument scope dimension across all generations of 20 families of environmental directives and regulations targeted in the 1990s and 2000s (own data)

As figure 4 shows, nine out of twenty families of directives and regulations experienced no dismantling for instruments scope and eleven experienced some. Only for Shipment of waste were events of dismantling more frequent than events of expansion (European Parliament & Council of the European Union, 2006c) – but as frequent as “mixed” results, and still far behind the *statu quo*.

The figure further shows a great differences in the number of change events coded for each piece of legislation. This difference is due to two factors. First, certain pieces of legislation use a greater number of instruments than others

(e.g. in particular water or air pollution regulations with a great number of standards). Second, changes to the type of instruments used from one generation to another reduce the pool of instruments existing in multiple generations of the same piece of legislation. Only these instruments can be used to evaluate changes across the instrument scope and settings dimensions. Thus, the 1976 Bathing Water Directive was coded as having thirty one instruments, and after its reform in 2006 the new Bathing Water Directive had only fifteen instruments. But overall, only 5 instruments – such as cooperation between Member States for trans boundary water bodies – are found in both the 1976 and 2006 directives.

4.2.3 Instrument settings

Concerning settings, as shown by figure 4 twelve out of twenty directives and regulations escaped dismantling completely and eight experienced limited dismantling.

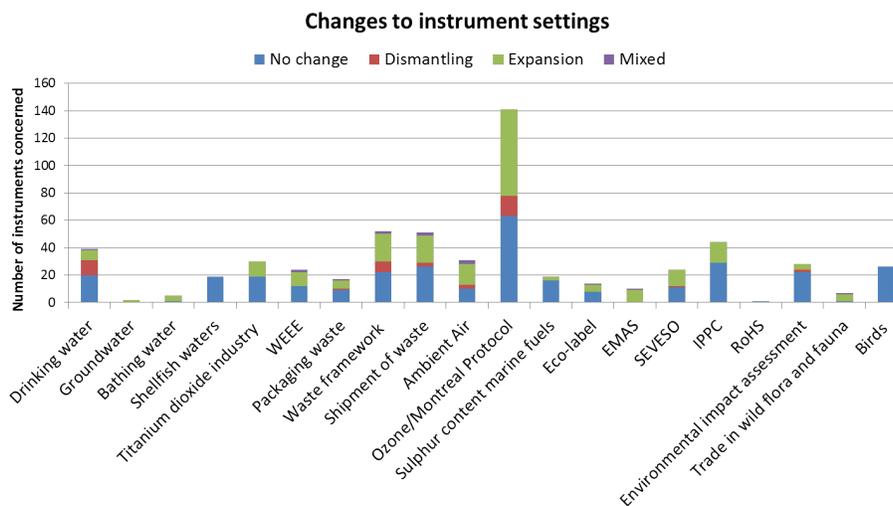


Figure 5: Type and number of changes – instrument settings dimension across all generations of 20 families of environmental directives and regulations targeted in the 1990s and 2000s (own data)

Over all, once more, expansion and “no change” types of events are more frequent than dismantling. The Drinking water directive is the only case where dismantling events, such as looser standards for chloride, nitrites or sodium, occurred more frequently than expansion events (European Parliament & Council

of the European Union, 2006b). But even in this case, the absence of change was more frequent than dismantling.

4.2.4 The prevalence of the status quo

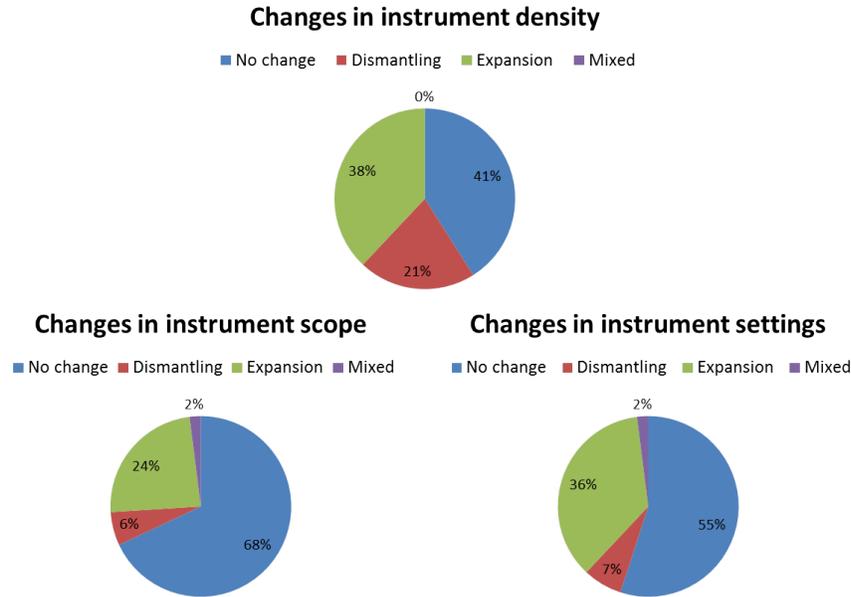


Figure 6: Comparison of dismantling rates across three dismantling capacity: instrument density, scope and settings (own data)

Figure 6 highlights that, despite being targeted for policy dismantling, perpetuation of the *status quo* – *i.e.* the absence of change – is the most frequent outcome of reform at instrument level. For instrument scope and settings, dismantling concerns less than ten percent of all changes. But dismantling does appear to play a bigger role when it comes to instrument density (twenty-four percent).

4.3 Comparisons between sectors and across periods

This case study demonstrated that policy dismantling of EU environmental legislation, repeatedly called for since the early 1990s, has indeed taken place: twelve out of thirteen targeted families of directives and regulations experienced

at least one form of dismantling over the period. This finding confirms that the EU is not only a driver but also a locus for policy dismantling. It further showed that policy dismantling can take place along a variety of dimensions as five out of six dimensions that were coded for were found in the data.

The overall picture is that dismantling does not appear to have seriously impacted the EU environmental *acquis* in either the 1990s or 2000s. Indeed figure 6 shows, dismantling as percentage of reform events is rare, with levels (6-24% reform events), far behind both expansion (28-34%) and continuation of the *status quo* (47-64%).

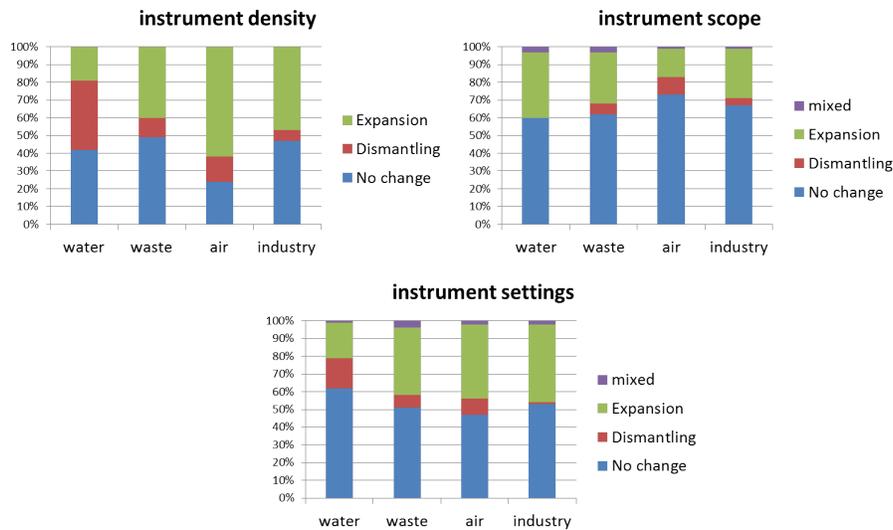


Figure 7: Comparison of dismantling rates across three dismantling capacity: instrument density, scope and settings, by sector (own data)

But there are significant differences between sectors (figure 7). Thus EU water directives have experienced much more dismantling of instrument density and settings than waste, air or industry pollution directives. On the other hand, EU air directives are the one experiencing most instrumental scope dismantling.

There are also some differences between the two periods studied. Out of the 20 families of directives and regulations coded, three were targeted during both periods: Eco-label regulation, Ambient Air directive and Packaging Waste directive. In order to compare the two periods, these three pieces of legislation were omitted, making figure 8 a comparison of changes between 6 pieces of legislation targeted in the 1990s and 11 targeted in the following decade

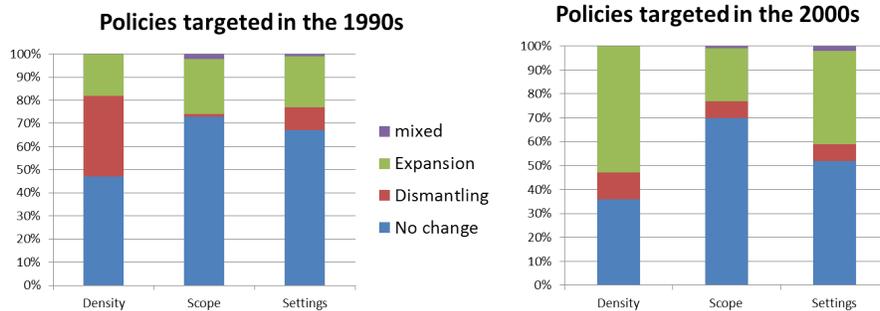


Figure 8: Comparison of dismantling rates across three dismantling capacity: instrument density, scope and settings between the 1990s and 2000s (own data)

In both periods density is the main dismantling event but this is markedly the case for subsidiarity, while there are more instance of scope dismantling in the latter period.

5 Conclusion: Policy dismantling, unraveling the *acquis*?

This paper set out to assess whether the EU environmental *acquis* was at risk of dismantling, *i.e.* the “cutting, diminution or removal of existing policy” (Bauer et al., 2012). The idea of EU environmental policy dismantling can appear counterintuitive : the EU is conventionally considered as a driver, not a locus of dismantling (Knill et al., 2009), and EU environmental policy are often presented as a success story of European integration, positively contributing to the legitimacy of the EU (Lenschow & Sprungk, 2010). Hence in a first section it exposed why we should consider the EU as a possible locus of dismantling – stressing that the Commission would not necessarily prevent cuts of the *acquis*.

It then investigated whether dismantling had already taken place in the 1990s and 2000s. To do so it coded reform events for dismantling, expansion and no change across six different dimensions of possible dismantling: legislative density, scope and settings and instrument density, scope and settings, building on previous works by Knill, Tosun, Schmitt, and Schulze (n.d.); Bauer et al. (2012). The results of this coding exercise showed that the EU had indeed experienced policy dismantling, hereby confirming that the EU can indeed be a locus of policy dismantling. Policy dismantling was found across 5 out of 6

possible dismantling dimensions. Most dismantling happened at the level of instruments, in particular instrument density. But while sixteen out of twenty targeted families of directives and regulations experienced dismantling, a detailed analysis of change at instrument level revealed that perpetuation of the *status quo* and further policy expansion were more frequent outcomes of legislative reform than policy dismantling. Further investigation showed that different patterns emerged when analysing the data in terms of policy subsector (see Figure 7) or periods (see Figure 8), yet in both cases policy dismantling accounts for a minority of change events.

This paper contributed to the broader literature on policy dismantling, offering a new area of study – the EU – while most studies remain national in scope (but see Jordan & Turnpenny, 2012). While current studies such as Knill et al. (2014) adopt a very wide definition of policy, the proposed narrow focus of this case study on policy as legislation offered great insight in the sometimes parallel process of expansion and dismantling, with diverging changes happening in scope, settings or density, but also within the same dimension, and sometimes even within the same instrument. But this paper also contributed to a better understanding of the challenges facing EU (environmental) policy. At a time when the European project is deeply questioned the issue of policy dismantling at EU level sheds light on another way of resisting the EU project, by unraveling its *acquis*, one directive at a time.

In the introduction I presented policy dismantling as one of three key challenges facing the (environmental) *acquis*, alongside stalled expansion (the inability to produce legislation to answer societal demands) and failed implementation. While the results above demonstrate that policy dismantling can indeed take place at EU level, dismantling of environmental policies as coded and presented in the previous section does not appear to greatly impact the *acquis*. Indeed while dismantling impacts were widespread, they were also shallow, or limited, with expansion events more frequent than dismantling events, and an overall prevalence of the *status quo*.

This paper presented a first look at EU level policy dismantling. Writing on what is still an under-researched area, it allows to identify new avenues for research on policy dismantling at EU level. Three distinct avenues in particular can be derived from the present work: toward better coding, the need for taking into account recent changes at EU level and a better understanding of the different strategies and rationales for dismantling at EU level and how they may differ from what drive politicians in national settings.

First, concerning the measure of policy dismantling through coding. The

case studies presented in this paper have a narrow focus on EU environmental policies, excluding policies conventionally linked to the environment and that would fall under the jurisdiction of other Directorate Generals in the European Commission (e.g. in DG Energy, DG Agri, DG Clima etc.). This means that the results should not be extrapolated to other part of the *acquis*, where dismantling may have had more important impacts. Another choice made with this case study was to focus on density, settings and scope – not capacity. Yet changes to capacity, that is administrative enforcement capacities, information obligations from businesses etc. have been one of the main focus of Better Regulation since 2007. Thus, following a Dutch administrative burdens reduction programme set in 2003, the Commission set out to reduce EU administrative burdens by 25% by 2012. EU environmental policies were part of the 13 issues area targeted for administrative burdens reduction (European Commission, 2007). Although their share of the EU administrative burden was later estimated at less than one percent, targeted EU environmental directives and regulations were modified in order to reduce their burden to companies by 21% (European Commission, 2009). Hence further work on changes to capacity are required to provide a better picture of the impacts of policy dismantling on the EU *acquis*.

A second avenue for further research concerns recent developments at EU level. The situation at EU level has greatly changed in the last few years not covered by this study. The second Barroso Commission put better regulation (relaunched as Smart Regulation in 2010 European Commission, 2010) at the heart of its action, with the President and Secretariat General having direct responsibility over the programme. Member States such as the UK and the Netherlands launched multiple reports demanding both increased subsidiarity and proportionality (e.g. Ministrie van Buitenlandse Zaken, 2013b; Business Taskforce, 2013) while the Commission operated with smart regulation a move from administrative burden to *regulatory* burden reduction – a move called for by pro-dismantling Member States, but opposed for long by Member States such as Belgium, Italy or France (Van Den Abeele, 2009).

1st MFF	1988-1992	+3.4%
2nd MFF	1993-1999	+3.3%
3rd MFF	1999-2006	+2.6%
4th MFF	2007-2013	+0.9%
5th MFF	2014-2020	-3.4%

Figure 9: Evolution in EU multiannual financial framework, in real terms
Source: Schild (2008); European Commission (2013)

There appears to be a shift toward greater acceptability of policy dismantling at EU level, illustrated by the last Multiannual Financial Framework – where for the first time the Parliament and Council agreed to cut the EU budget (figure 9) – and the 2014 election campaign in which both Martin Schultz⁴ and Jean-Claude Juncker⁵ supported stronger subsidiarity and a reduction of red tape.

Thirdly, policy dismantling at EU level may have important impacts that are not reflected in changed policy outputs. This study focused on outputs, but much can be gained from studying the legislative processes through which policy dismantling takes place: a number of actors – Member States, MEPs, Commissioners, NGOs etc. – may have mobilised to prevent demand for policy dismantling to transform into cuts in policy outputs. As Layzer (2012) argue on the American case, increased opposition to environmental regulations force pro-environmental actors to devote an increasing amount of time and money to maintain the *status quo* instead of pushing for further policy expansion – ultimately running to stand still. Furthermore, limited changes to policy outputs do not necessarily imply a failed dismantling strategy. As Bauer et al. (2012) argue, policy dismantling strategies do not always aim at changing policy outputs. In some cases demand for changes are “symbolic”, aiming at changing perceptions (in the EU context notably appearing more Eurosceptic to its electorate) than policies.

These different findings open a broad research agenda in policy dismantling at EU level notably for a finer understanding of changes in outputs, including changes to capacity, for comparisons across policy sectors and periods and for further research in what drives EU political actors to push for, or oppose, policy dismantling.

⁴Le Monde, 03/11/2013 http://www.lemonde.fr/europe/article/2013/11/03/martin-schulz-pourquoi-je-suis-candidat-a-la-presidence-de-la-commission_3506987_3214.html and EPP 17/04/2014 <http://pr.euractiv.com/node/106193>

⁵OpenEurope 14/07/2014 <http://openeuropeblog.blogspot.co.uk/2014/07/is-juncker-saddling-up-to-take-on-eus.html>

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