

New Horizons in European Studies

Aston University, 24-25 April 2014

Conference papers are works-in-progress - they should not be cited without the author's permission. The views and opinions expressed in this paper are those of the author(s).

www.uaces.org

Are EU environmental policies at risk?
Learning from the 1990s subsidiarity crisis
and the 2000s Better Regulation agenda

Viviane Gravey*

Tyndall Centre for Climate Change Research
University of East Anglia, Norwich, UK

*Paper prepared for the 2014 UACES Student Forum Conference
Aston University, Birmingham, UK*

Abstract

The current crisis has seen a number of 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 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 possible driver of dismantling in the Member States but also a possible locus for dismantling. It sheds light on the current pressures on EU legislation by reflecting on two key historical 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 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 arguing that the growing consensus at EU level around the idea of policy dismantling may lead to more successful dismantling attempts in the future.

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 Please do not cite or quote before checking with me for an updated version.

Introduction

From George Osborne’s criticism of the Habitats directive ¹, to David Cameron’s January 2013 Speech on Europe², from the Business Taskforce report on cutting EU red Tape (Business Taskforce, 2013) to the government-wide review of the balance of competence between the EU and the UK³, the last few years have seen Britain mount numerous attacks on the EU *acquis communautaire*. Are these repeated criticisms aimed at pacifying the national debate on Europe...or at actually dismantling part of the EU *acquis*?

Such calls for dismantling are profoundly paradoxical 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 in its first section that changes in the way the EU works and the need to reform an aging corpus of legislation has made it possible for policy dismantling to take place at EU level.

In a second section I investigate whether policy dismantling has already taken place at EU level, with a case study of the EU environmental *acquis*. As one of the EU’s most popular policy among European citizens, a policy on whose successes the EU could regain some legitimacy (Lenschow & Sprungk, 2010; Warleigh-Lack, 2010) EU environmental policy appear as a very unlikely setting for policy dismantling. As such it is a very useful case study, as if EU environmental policies are dismantled other less popular policies are also likely to be dismantled. The paper identifies which directives and regulations have been targeted by EU actors for dismantling in the 1990s and early 2000s. It then introduces a new method to code changes in legislation in order to track dismantling events. This coding exercise reveals that policy dismantling has indeed taken place at EU level – but that it has until now been less frequent as further expansion or the absence of change.

Finally, in a third section this paper compares currents call for policy dismantling at EU level – lead by the Commission, the UK and the Netherlands

¹<http://www.bbc.co.uk/news/uk-politics-15969592>, accessed 23/03/2014

²<http://www.theguardian.com/politics/2013/jan/23/david-cameron-eu-speech-referendum>, accessed 23/03/2014

³<https://www.gov.uk/review-of-the-balance-of-competences>, accessed 23/03/2014

– with the past dismantling exercises of the 1990s and 2000s. Building on this comparison, I argue that although dismantling had only limited impact in these two earlier periods, current calls are broader, faster, and more consensual – which could render dismantling more likely to take place, and to have a greater impact on the *acquis*’ integrity.

Is policy dismantling possible at EU level?

Defining policy dismantling

Dismantling is a relative concept – just as its opposite expansion, it is measured in respect to changes with 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. Korte and Joergens (2012) have shown that dismantling can take place during the implementation phase as well as during the legislative phase. This paper investigates the latter: dismantling of existing legislation that happens through the legislative process – *i.e.* during legislative reforms.

Dismantling is not a new concept ⁴, but for a long time other similar concepts were more popular each in their own subfield. In particular, questions of retrenchment were raised relative to social policies and welfare state (Green-Pedersen, 2004), while concepts such 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 because of this previous lack of uptake. First, it can be used as an umbrella term to bring together different strand of literature that have until now developed in parallel (Jordan, Green-Pedersen, & Turnpenny, 2012). Second, it is less normative than the highly politicised terms of (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

⁴Thus Paul Pierson named his seminal 1994 book on changes in western welfare states *Dismantling the welfare State*

level.

A radical idea? Policy 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, Tosun, & Bauer, 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 integration” 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, the idea that the Commission’s *raison d’être* is to increase its powers, and concomitantly the number and breadth of EU level policies. 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 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, 2006). Hence policy dismantling at EU level appears not only unlikely, but almost impossible.

But this vision of the impossibility of dismantling at EU level 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, 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.

At least two different reasons can be found for actors to support dismantling at EU level. First, 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. 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 (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 result, what constitutes unnecessary administrative burdens.

Thus we can identify two distinct motivations for policy dismantling at EU level – subsidiarity and proportionality. Interestingly, 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.

Has dismantling already taken place? Tracking changes in EU environmental legislation 1992-2007

Policy dismantling at EU level is then possible – especially through the legislative reform process where the content and ambition of a directive and regulation are up for renegotiation. In order to assess whether it has already taken place, this section presents the results of a case studies of the changes experienced by parts of the EU environmental *acquis* during two previous attempts at policy dismantling: the hit lists produced in the wake of the Maastricht Treaty ratification crisis and the Commission-led Better Regulation initiative in the early 2000s.

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. 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).

Families of directives and regulations	I	II	III	IV
<i>AIR - Air Quality directive</i>	5 dir. 80-92	5 dir. 96-04	2008	
<i>INDUS. POLLUTION - Seveso</i>	1982	1996	2003	2012
<i>NATURE - Birds directive</i>	1979	1994	2009	
<i>PRODUCTION - Eco-label</i>	1992	2000	2010	
<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 - WEEE</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

Figure 1: Different generations of the 13 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)

A decade later, the Commission launched an agenda of “better regulation” at EU level in parallel with its Lisbon strategy (Radaelli, 2007). While deregulation is about legislative quantity, better regulation is supposed to be about legislative quality (Tombs & Whyte, 2012). Contrary to the 1990s, the primary focus of this exercise was thus proportionality – making EU level legislation more efficient – and not subsidiarity – questioning EU action in the first place. Although the UK was again a strong supporter of better regulation, the key driver was found inside the European Commission, especially inside DG Enterprise and Industry under the leadership of Günter Verheugen (Löfsted, 2007; Radaelli, 2007).

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, 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 – 12 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 13 directives and regulations have spawned across multiple generations representing a total of 49 directives and regulations listed in figure 1.

Measuring policy dismantling: a new tool to code policy change

In order to assess whether policy dismantling has taken place, the successive legislative reforms of the thirteen 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 (Knill, Tosun, Schmitt, & Schulze, n.d.), 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.

Thus for example, the Ecolabel regulation is coded in the following manner:

Legislations	Instruments
Regulation 880/92/EC	6 instruments <ul style="list-style-type: none"> • Methodological prescription “cradle to grave” approach • Consultation of interest groups • labeling instrument • Information on Ecolabel by the Commission • information campaigns on Ecolabel by each Member States • Market surveillance by the Commission
Regulation 1980/2000/EC	9 instruments, 6 previous ones and in addition: <ul style="list-style-type: none"> • consultation of consumer organisation on label design • Commission working plan on diffusion of ecolabel • Development of ecolabel criterias
Regulation 66/2010/EU	Same 9 instruments

Figure 2: Two levels of measurement: changes at legislation and instrument levels across three generations of Ecolabel regulations.

Source: Council of the European Union (1992); European Parliament and Council of the European Union (2000, 2010)

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).

Three possible dismantling dimensions, at two different levels

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 settings.

- *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 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 dimensions 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 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. (n.d.) as it is very difficult to summarize 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.

Third, it measures changes for each events using four possible values: 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). To go back to the Ecolabel regulation presented in figure 2, changes in instrument density will compare the number of instruments used in each generations. Changes from 6 to 9 between the 1992 and 2000 regulations denote expansion and will

be awarded a 1. The absence of change from the 2000 and 2010 regulations will be coded as 0.

Measuring changes in scope and settings

Changes in instrument scope and settings are only measured for the instruments found in the two generations of the same family of directive or regulation compared. Thus, changes in instrument scope between the 1992 and 2000 regulation are compared for the six instruments they have in common, while all nine instruments are compared for changes between the 2000 and 2010 regulations.

For example, in the consultation of interests groups instrument, only four groups – industry, commerce, consumers and environmental organizations – were mentioned in the 1992 Ecolabel regulation (Council of the European Union, 1992, art. 6). Additional groups were mentioned in the following 2000 regulation: notably industry and services providers, SMEs, retailers and trade unions. This constitutes expansion of scope for this instrument (European Parliament & Council of the European Union, 2000, art. 15). But in the 2010 regulation, trade unions are omitted from groups that need to be consulted, meaning a dismantling of scope for this instrument (European Parliament & Council of the European Union, 2010). For the same instruments the call for “balanced representation” between consulted groups added in the 2000 regulation indicate an expansion of settings.

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 programme (see figure 1).

Widespread dismantling...

A first question to address is whether dismantling has taken place. Out of the thirteen families of directives and regulations coded, twelve have experienced some forms of policy dismantling. The directive on shellfish waters is the only exception, as its codification in 2006 fully maintained the status quo (European Parliament & Council of the European Union, 2006a). But this does not mean that all directives and regulations experienced dismantling along the same dimension.

Although the remaining twelve all experienced some sort of policy dismantling, figure 3 highlights the diversity of dismantling taking place. Hence dismantling occurs 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. Dismantling of legislative density and of legislative scope happen twice each, with most of dismantling taking place at the levels of instruments. This variety of dismantling targets also means that certain directives or regulations can experience dismantling across different dimensions simultaneously: while four out of twelve experienced only one form of dismantling, three experienced three or more.

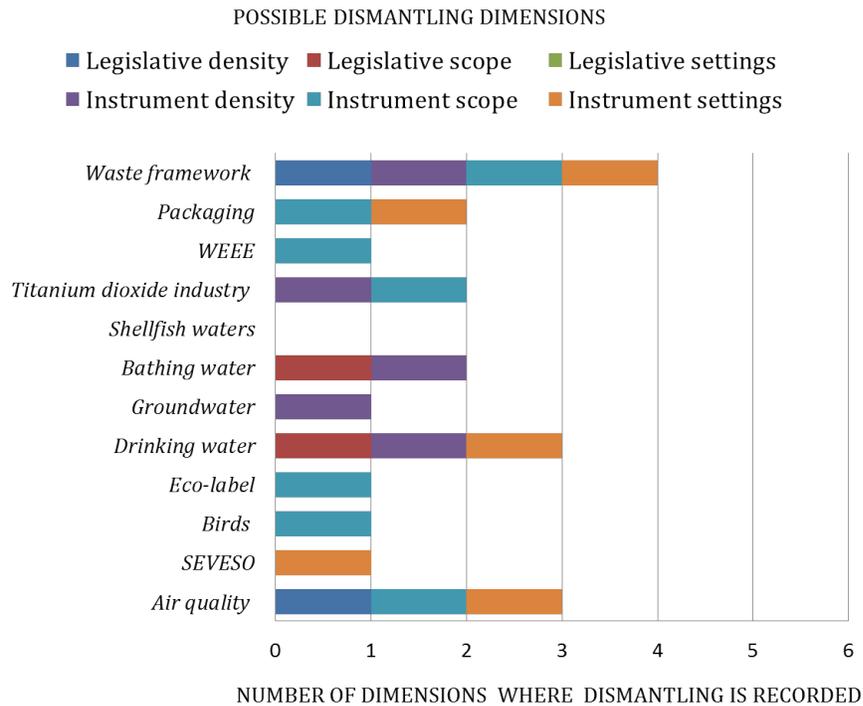


Figure 3: Presence of dismantling events along 6 potential dismantling dimensions, across 13 families of environmental directives and regulations targeted in the 1990s and 2000s (own data)

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. As figure 3 shows, most dismantling appears to occur at instrument level, the rest of this result section will hereby investigate the frequency of these three outcomes from reform, across density, scope and settings in order to better understand the impact policy dismantling has had on the instrument levels.

...but of limited impact?

Instrument density

Looking at instrument density means charting changes in the number of instruments used in each of the thirteen 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 4 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 4 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 five out of thirteen groups of legislation have not experienced any dismantling of instrument density, four have experienced some dismantling but expansion and/or status quo have had more impact; and only four have experienced major amounts of policy dismantling: three EU water directives and the Air Quality directive. 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).

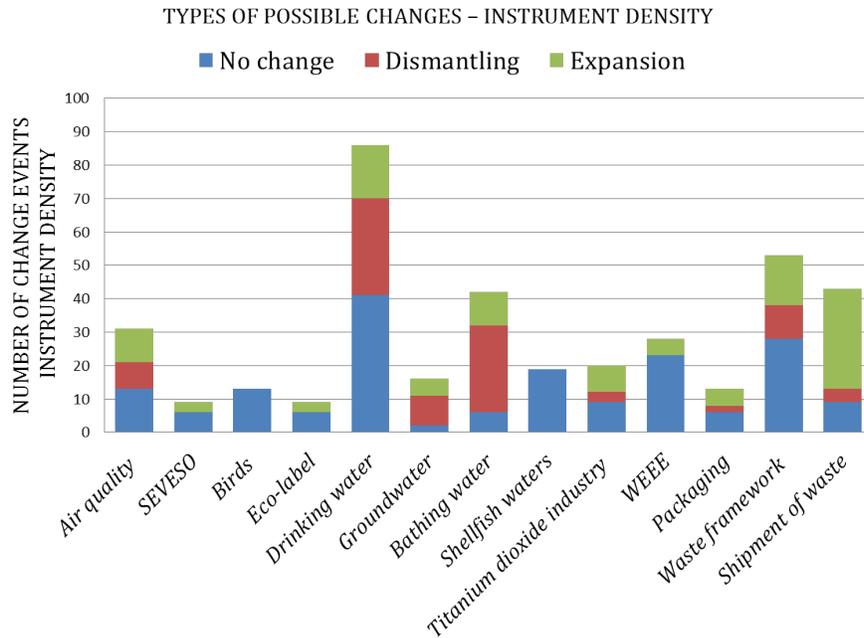


Figure 4: Type and number of changes – instrument density dimension across all generations of 13 families of environmental directives and regulations targeted in the 1990s and 2000s (own data)

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 5 is built similarly to figure 4 by taking into account all generations of the same directive or regulation.

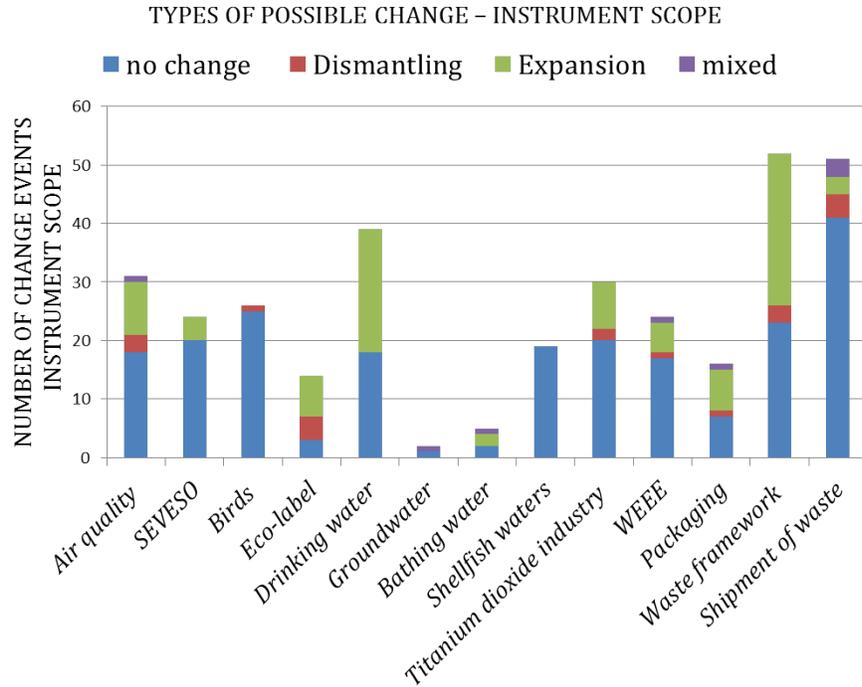


Figure 5: Type and number of changes – instrument scope dimension across all generations of 13 families of environmental directives and regulations targeted in the 1990s and 2000s (own data)

As figure 5 shows, five out of twelve families of directives and regulations experienced no dismantling for instruments scope, six experienced some, and in only one case was dismantling the main type of change taking place. This means that only for shipment of waste were events of dismantling more frequent than events of expansion (European Parliament & Council of the European Union, 2006c). The figure further shows a great differences in the number of change events coded for each piece of legislation. While some of this difference is due to differences in the number of instruments used in each directives and regulations, an important part of this difference is due to radical changes made to instruments (replacement of a great proportion of existing instruments by new ones) which reduce the number of “surviving” instruments from which comparison for scope and settings can be made. 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.

Instrument settings

Concerning settings, as shown by figure 5 seven out of thirteen directives and regulations escaped dismantling completely and five experienced limited dismantling. Across these eleven families of directive status quo is predominant, and when change happens, expansion is the principal direction for change. 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.

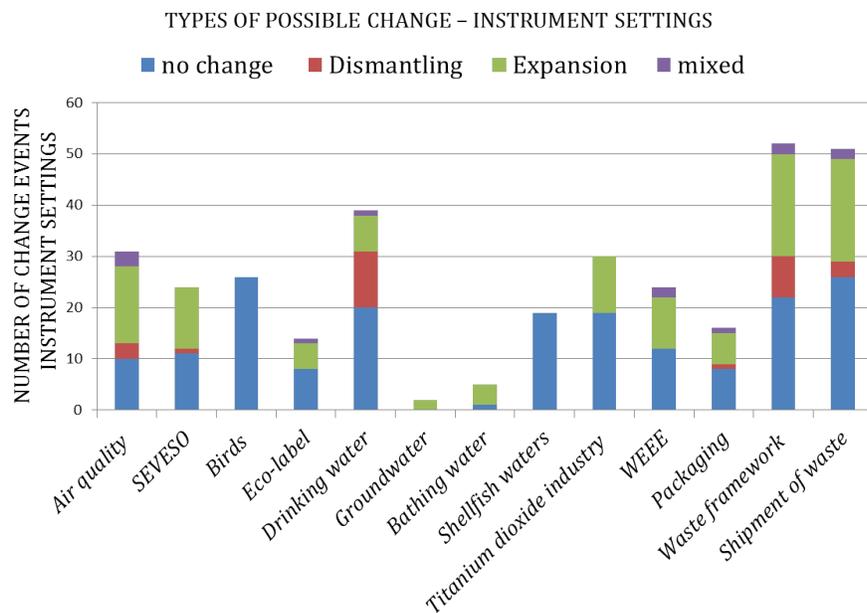


Figure 6: Type and number of changes – instrument settings dimension across all generations of 13 families of environmental directives and regulations targeted in the 1990s and 2000s (own data)

The prevalence of status quo

Figure 7 highlights that, despite being targeted for policy dismantling, status quo – *i.e.* the absence of change – is the most frequent outcome of reform at instruments’ 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).

	Dismantling	Expansion	Status Quo
Instrument density	24%	29 %	47 %
Instrument scope	6%	28%	64%
Instrument settings	8%	34%	55%

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

Learning from historical dismantling experiences

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 where found in the data.

Looking at the impacts dismantling has had on policy instruments (the level most affected, figure 3), dismantling does not appear to have seriously impacted the EU environmental *acquis* in either the 1990s or 2000s. Indeed figure 7 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%).

What more can we learn from this case study? First, that dismantling is becoming a quicker process (figure 1). Thus, while the EU Bathing water directive was targeted in 1993 (Golub, 1996), and the Commission made a proposal in 1994 it never went beyond first reading in the European Parliament and had to be withdrawn by the Commission in 2000. The new Bathing water directive was finally voted in 2006 – thirty years after the first, and more than 10 years after it was targeted for dismantling. Although the Bathing water directive reform took an especially long time, five out of nine directives and regulation targeted during the subsidiarity crisis were not reformed before 2000.

Conversely, after being targeted between 2003 and 2006, all policies were

reformed by 2012 (European Commission, 2003, 2006).

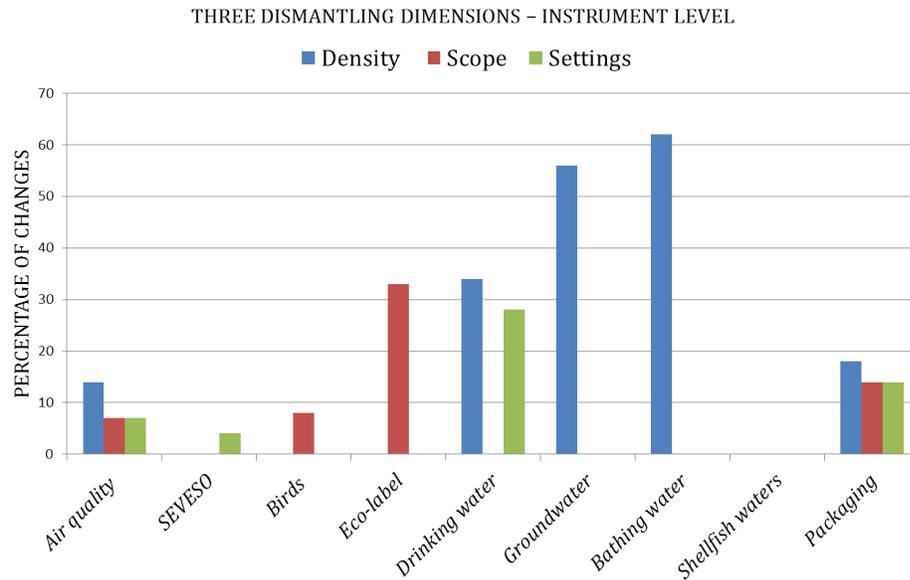


Figure 8: Instrument dismantling in the 1990s as percentage of reform events (own data)

Second, that there is no evident connection between the type of motivation (subsidiarity or proportionality) and the type of dismantling (scope, settings or density). In order to compare changes which occurred in the 1990s and 2000s, the four directives and regulations targeted twice were further analysed (see figures 8 and 9). As no reform took place between 1991 and 2008 for the waste framework directive, all changes occurring in 2008 were counted as a result of dismantling pressures under the Better Regulation agenda. For the three others, changes in the 1990s were linked to subsidiarity, later changes to the Better Regulation. Although changes in water policies targeted during the subsidiarity crisis are characterized by a strong change in density, the same cannot be said for other directives and regulations at that same period. Similarly, as shown by figures 8 and 9 while the proportion of dismantling events (compared to events of status quo or expansion) appear higher for the subsidiarity period, it is also mainly due to the reform of the three water directives (Bathing, Drinking and Groundwater).

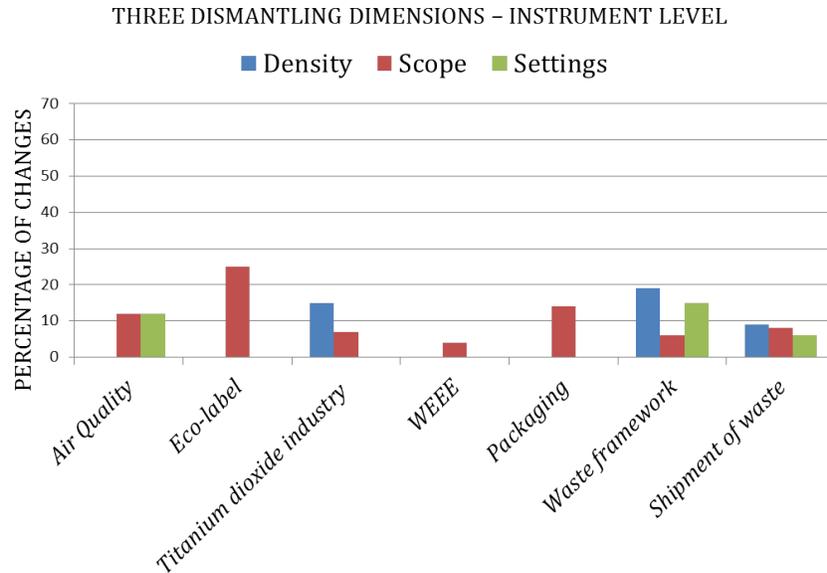


Figure 9: Instrument dismantling in the 2000s, as percentage of reform events (own data)

Growing dismantling? Understanding current calls for policy dismantling

In the light of the case study, current calls for policy dismantling at EU level need to be taken at face value – although political actors may be using calls for policy dismantling as a message to their home constituency, calls for policy dismantling may materialize in actual policy dismantling at EU level.

Who is currently calling for dismantling and how?

At first, similarities between current calls and historical ones are striking. First, as in earlier periods, calls for dismantling come from both within the Commission and within the Council.

Current dismantling projects

As a follow-up to its Better Regulation agenda, the Commission launched in 2007 an action programme to reduce administrative burdens (European Com-

mission, 2007), now known as the REFIT programme (for Regulatory Fitness and Performance Programme) which “identifies opportunities to reduce regulatory burdens and simplify existing laws.” The Commission, which stresses that this programme requires a “shared responsibility and a common endeavour by the Member States and the European Institutions” (European Commission, 2007) is assisted in this task by the High Level Group on Administrative Burden chaired by y former Bavarian Minister-president Edmund Stoiber (European Commission, 2013a).

The British government has launched an in depth review of the “balance of competence” between the UK and the EU, presented as “an audit of what the EU does and how it affects the UK”⁵. Another initiative through which the UK currently questions the acquis is The Business Task Force, a group made of 6 leading British business figures (such as the CEOs of Marks & Spencer and Diageo). It was commissioned by David Cameron to investigate the cost of EU regulations on British businesses. It published in October 2013 a report entitled “Cut EU red tape” (Business Taskforce, 2013). Following this publication, David Cameron held a meeting with seven of his European counterparts on EU red tape, and has since then pushed for this agenda at EU level. One of the other Member States present at that informal summit was the Netherlands.

In June 2013, the Dutch government published its own report on reforming the acquis. British and Dutch demands are similar in two ways. First, both governments argue that the time for “ever closer union” has passed. While David Cameron highlighted this view in the Telegraph⁶ the Dutch Foreign Affairs Ministry stresses the following in an explanatory note on its report:

NL government is convinced that the time of an “ever closer union” in every possible policy area is behind us, as the result of the 2005 referendum on the Constitutional Treaty made clear, the Dutch people were, and still are, discontented with a Union that is continually expanding its scope, as if this were a goal in itself (Ministrie van Buitenlandse Zaken, 2013a)

What motivates current calls for dismantling?

Second, as in earlier calls, both proportionality and subsidiarity arguments are raised.

⁵<https://www.gov.uk/review-of-the-balance-of-competence>, accessed 23/03/2014

⁶The Telegraph, 15/03/2014 “David Cameron: the EU is not working and we will change it” <http://www.telegraph.co.uk/news/newstoppers/eureferendum/10700644/David-Cameron-the-EU-is-not-working>

Motivation	Mentioned in...
Subsidiarity	UK Balance of Competence, NL Subsidiarity Review, Commission Smart Regulation
Proportionality	UK “Cut EU Red Tape”, NL Subsidiarity Review, Commission Smart Regulation

Figure 10: Motivations for dismantling – current calls for dismantling
Source: Business Taskforce (2013); Ministrie van Buitenlandse Zaken (2013a); European Commission (2010)

Targeting the environment?

As in earlier calls, EU environmental policies are part of the *acquis* to be reviewed. It is one of the thirteen priority area identified by the Commission (European Commission, 2009a), one of the seven areas mentioned in the “Think small first” initiative aiming at reducing burdens for SMEs (European Commission, 2013b), as well as mentioned in both the British “cut EU red tape” and Dutch 2013 subsidiarity report (Business Taskforce, 2013; Ministrie van Buitenlandse Zaken, 2013b).

	OVERLAP WITH 1990S HIT LISTS	OVERLAP WITH 2000S BETTER REGULATION	NEW
EC RE-FIT	<ul style="list-style-type: none"> • Drinking water directive • Groundwater directive • Environmental Impact Assessments • Waste framework Directive 	<ul style="list-style-type: none"> • Waste framework directive • Shipment of waste directive • Hazardous substance directive 	<ul style="list-style-type: none"> • Ozone-depleting substances regulation • Sulphur content of marine fuels directive • Fuel quality directive • End of life vehicle directive • Trade in wild flora and fauna regulation • IPPC directive
BRITISH “CUT EU RED TAPE”	<ul style="list-style-type: none"> • Environmental Impact Assessment 		<ul style="list-style-type: none"> • Soil directive proposal • Access to justice in environmental matters • Fuel quality directive • REACH
DUTCH REVIEW	<ul style="list-style-type: none"> • Environmental Impact Assessments • Air quality directive 	<ul style="list-style-type: none"> • Air quality directive 	<ul style="list-style-type: none"> • Water framework directive • Environmental Noise directive • Soil directive proposal • Integrated Coastal Management proposal

Figure 11: Comparison dismantling targets, EC, British and Dutch calls for dismantling

Source: own compilation from European Commission (2009b); Business Taskforce (2013); Ministrie van Buitenlandse Zaken (2013b)

What environmental legislation is being targeted? As figure 11 illustrates, there is a certain overlap with previous schemes, but there are also pieces of legislation that were never targeted before – whether they were decided since the early 2000s or they did not gather similar criticism until now.

Toward more successful dismantling?

Yet for all the commonalities between the two periods studied in the case study and current calls for policy dismantling three elements highlight that this episode of policy dismantling may well prove to be more successful than the two previous ones.

First, dismantling has been mainstreamed within the Commission . The Commission has vowed to “step up a gear” and to ensure that Smart Regulation will “be further embedded in the Commission’s working culture” (European Commission, 2010, p. 2). In order to do so, the responsibility for Smart Regulation sits now with the European Commission President directly instead of within DG Enterprise and Industry.

Second, dismantling appears to occur even more quickly. Thus, in September 2013, the Commission announced it had met its objective of reducing administrative burdens by 25% over the last five years: the European Parliament and Council have adopted measures saving “32.3 billion in administrative costs for business across Europe, which “is expected, in the medium-term, to lead to an increase of 1.4% in EU GDP, equivalent to “150 billion” (European Commission, 2013c). This means that, while dismantling under Better Regulation was quicker than dismantling under Subsidiarity, dismantling under REFIT and Smart regulation is again quicker.

Third, dismantling appears increasingly consensual. This can first be seen by comparing the terms used to describe policy dismantling. Earlier calls for dismantling were linked to demands for deregulation (Collier, 1997). In the 2000s this was rephrased to be not about legislative *quantity* but legislative *quality* under the umbrella term of “better regulation” (Löfsted, 2007). Current calls for dismantling, especially the REFIT programme now focus on “unnecessary administrative burdens”. The political aspect of dismantling is negated as the “unnecessary administrative burdens” are measured through the Standard Cost Model, “a method to quantitatively appraise the administrative burdens on businesses, breaking down regulation into information obligations”(Torriti, 2012, p. 90) without taking into account the policy objectives of the regulation (and thus any normative debates on whether this regulation should exist, and

how strict it should be).

Another way in which the growing consensus surrounding dismantling at EU level is demonstrated is by looking at changes not in EU policies directly, but in the EU budget. The negotiation on the EU’s next multi-annual financial framework (MFF) agreed on a real cut in the EU budget for the first time since MFF were created in the late 1980s (Schild, 2008; European Commission, 2013d):

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

This decision is very important for two reasons. First because the cuts agreed on where not cuts “across the board”. Certain policy areas saw expansion – such as the budget title relating to competitiveness – while others saw real cuts – such as the one relating to cohesion policies. Second, because agreement on the Multiannual financial framework requires a very high level of consensus at EU level: the consent of the European Parliament, and the unanimity within the Council, on a proposition from the European Commission.

Conclusion

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 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 for dismantling – stressing that the Commission would not necessarily prevent cuts of the *acquis*.

It then investigated whether dismantling had already taken place in previous calls for dismantling in the 1990s and 2000s. To do so it coded reform events for dismantling, expansion and no change across six different dimensions of possi-

ble dismantling: legislative density, scope and settings and instrument density, scope and settings, building on previous works by Knill et al. (n.d.); Bauer et al. (2012). For this case study, it focused on thirteen families of directives and regulations targeted over these two periods. It found widespread dismantling, in that twelve out of thirteen of the families of directives and regulation coded experienced at least one form of dismantling. But further analysis showed that although dismantling happened it was much less frequent than expansion, and even more than status quo. Thus despite being targeted for dismantling most of these directives and regulations experienced overall expansion or status quo across all six dimensions. While 1990s calls for dismantling were principally motivated by concerns about subsidiarity and in the 2000s the focus was on better regulation, the data showed no strong link between different dismantling dimensions and different motivations.

Finally, the case study was put into perspective with a comparison with current calls for policy dismantling. While there are many commonalities – the UK and the Commission as key dismantling actors, mentions of both proportionality and subsidiarity etc. – changes in the context in which dismantling is taking place may lead to a greater success for dismantling attempts in the 2010s. Thus, the focus on “administrative burdens” is consensual, and the first real time reduction in the EU multi-annual financial framework highlight that dismantling at EU level is gaining grounds from policy dismantling to dismantling of the budget.

This paper presented the results of the first study of policy dismantling at EU level. Although the case study yielded useful data, it highlighted limits of the current approach, and opened avenues for further research. First, the need to put this data into further perspective, with the use of a counterfactual – changes in the environmental *acquis* that has not been targeted – to test whether being “targeted” for dismantling actually changes the reform prospect of directives and regulations. Second, as recent calls for dismantling exemplify, dismantling does not solely concern the EU environmental *acquis*: studies of other parts of the *acquis* could be very useful in understanding whether different actors target different parts of the *acquis* for example. Third, the current focus on “administrative burdens” and “information obligations” fall under the category of *capacity*. In order to evaluate the form of dismantling that may currently take place, further work is required to be able to code changes in capacity, thus adding a seventh possible dismantling dimension.

By demonstrating that policy dismantling could take place at EU level – and that it could happen without obvious, major impacts on the *acquis* – this paper

made an important contribution to the studies of environmental policy at EU level as it illustrated that there was another limit of the *acquis*: not only are environmental policies prone to bad implementation and to sluggish expansion, they are also prone to reform undermining earlier advances. This stresses once more the importance of adopting a wider view on the decision-making system and to track what happens to directives and regulations once they have been voted. More generally 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.

References

- Bauer, M. W., Jordan, A., Green-Pedersen, C., & Héritier, A. (2012). *Dismantling Public Policy* (M. W. Bauer, A. Jordan, C. Green-Pedersen, & A. Héritier, Eds.). Oxford: Oxford University Press.
- Bauer, M. W., & Knill, C. (2012). Understanding Policy Dismantling: An Analytical Framework. In M. W. Bauer, A. Jordan, C. Green-Pedersen, & A. Héritier (Eds.), *Dismantling public policy* (pp. 30–51). Oxford: Oxford university press.
- Business Taskforce. (2013). *Cut EU red tape– Report from the Business Taskforce* (No. October).
- Coleman, W. D., Atkinson, M. M., & Montpetit, E. (1997). Against the Odds: Retrenchment in Agriculture in France and the United States. *World Politics*, 49(4), 453–481.
- Collier, U. (1997). Sustainability , subsidiarity and deregulation : New directions in EU environmental policy. *Environmental Politics*, 6(1), 1–23.
- Council of the European Union. (1992). Council Regulation No 880/92 of 23 March 1992 on a Community eco-label award scheme. *Official Journal of the European Communities*(L 99), 1–7.
- Dehousse, R., & Thompson, A. (2012). Intergovernmentalists in the Commission: Foxes in the Henhouse ? *Journal of European Integration*, 34(2), 113–132.
- Dimitrakopoulos, D. (Ed.). (2004). *The changing European Commission*. Manchester University Press.
- European Commission. (1993). *Commission report to the European Council on the adaptation of community legislation to the subsidiarity principle - COM(93) 545 final* (No. November).

- European Commission. (2003). *Updating and simplifying the Community acquis - COM(2003) 71 final.*
- European Commission. (2006). *Commission working document - First progress report on the strategy for the simplification of the regulatory environment - COM(2006) 690 final.*
- European Commission. (2007). *Action Programme for Reducing Administrative Burdens in the European Union - COM(2007) 23 final.*
- European Commission. (2009a). *Action Programme for Reducing Administrative Burdens in the EU Sectoral Reduction Plans and 2009 Actions - COM(2009) 544 final.*
- European Commission. (2009b). *Commission working document - Third progress report on the strategy for simplifying the regulatory environment - COM (2009) 17 final.*
- European Commission. (2010). *Smart Regulation in the European Union - COM(2010) 543 final.*
- European Commission. (2013a). *Commission staff working document - Regulatory Fitness and Performance Programme (REFIT): Initial Results of the Mapping of the Acquis - SWD(2013) 401 final.*
- European Commission. (2013b). *Communication from the Commission - Commission follow-up on the "TOP TEN" Consultation of SMEs on EU Regulation - COM(2013) 446 final.*
- European Commission. (2013c). *Communication from the Commission - Regulatory Fitness and Performance (REFIT): Results and Next Steps - COM (2013) 685 final.*
- European Commission. (2013d). *The Multiannual Financial Framework 2014-2020 Frequently Asked Questions, 19/11/2013.*
- European Parliament, & Council of the European Union. (2000). *Regulation (EC) No 1980/2000 of the European Parliament and of the Council, of 17 July 2000 on a revised Community eco-label award scheme (No. L 237).*
- European Parliament, & Council of the European Union. (2006a). *Directive 2006/113/EC of the European Parliament and of the Council of 12 December 2006 on the quality required of shellfish waters (codified version).*
- European Parliament, & Council of the European Union. (2006b). *Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC (No. 1882).*
- European Parliament, & Council of the European Union. (2006c). *Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14*

June 2006 on shipments of waste.

- European Parliament, & Council of the European Union. (2010). *Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel.*
- Golub, J. (1996). Sovereignty and Subsidiarity in EU Environmental Policy. *Political Studies*, *XLIV*, 686–703.
- Green-Pedersen, C. (2004, April). The Dependent Variable Problem within the Study of Welfare State Retrenchment: Defining the Problem and Looking for Solutions. *Journal of Comparative Policy Analysis: Research and Practice*, *6*(1), 3–14. Retrieved from <http://www.tandfonline.com/doi/abs/10.1080/1387698042000222763> doi: 10.1080/1387698042000222763
- Hancher, L., & Moran, M. (1989). Introduction : Regulation and deregulation. *European Journal of Political Research*, *17*(2), 129–136.
- Hix, S., Noury, A. G., & Roland, G. (2007). *Democratic Politics in the European Parliament*. Cambridge: Cambridge University Press.
- Hjerp, P., Homeyer, I., Pallemarts, M., & Farmer, A. (2010). *The Impact of Better Regulation on EU Environmental Policy under the Sixth Environment Action Programme An IEEP Report for the Brussels Institute for Environmental Management* (Tech. Rep. No. June). IEEP.
- Jeppesen, T. (2000). EU environmental policy in the 1990s: allowing greater national leeway? *European Environment*, *10*, 96–105.
- Jordan, A., Green-Pedersen, C., & Turnpenny, J. (2012). Policy dismantling: an introduction. In M. W. Bauer, A. Jordan, C. Green-Pedersen, & A. Héritier (Eds.), *Dismantling public policy* (pp. 3–29). Oxford: Oxford university press.
- Jordan, A., Wurzel, R., Zito, A. R., & Bruckner, L. (2003, September). European governance and the transfer of 'new' environmental policy instruments (NEPIs) in the European Union. *Public Administration*, *81*(3), 555–574. Retrieved from <http://doi.wiley.com/10.1111/1467-9299.00361> doi: 10.1111/1467-9299.00361
- Kersbergen, K. V., & Verbeek, B. (1994, June). The Politics of Subsidiarity in the European Union. *JCMS: Journal of Common Market Studies*, *32*(2), 215–236. Retrieved from <http://doi.wiley.com/10.1111/j.1468-5965.1994.tb00494.x> doi: 10.1111/j.1468-5965.1994.tb00494.x
- Knill, C., Tosun, J., & Bauer, M. W. (2009, September). Neglected Faces of Europeanization: the Differential Impact of the Eu on the Dismantling and Expansion of Domestic Policies. *Public Administration*, *87*(3),

- 519–537. Retrieved from <http://doi.wiley.com/10.1111/j.1467-9299.2009.01768.x> doi: 10.1111/j.1467-9299.2009.01768.x
- Knill, C., Tosun, J., Schmitt, S., & Schulze, K. (n.d.). *Economic Pressure and Policy Change: Policy Expansion and Policy Dismantling in Social and Environmental Policy*. Cambridge: Cambridge University Press.
- Korte, S., & Joergens, H. (2012). Active Dismantling Under High Institutional Constraints? Explaining the Bush Administrations Attempts to Weaken US Air Pollution Control Policy. In M. W. Bauer, A. Jordan, C. Green-Pedersen, & A. Héritier (Eds.), *Dismantling public policy* (pp. 81–102). Oxford: Oxford University Press.
- Kreppel, A. (2012). The normalization of the European Union. *Journal of European Public Policy*, 19(5), 635–645.
- Lenschow, A., & Sprungk, C. (2010, January). The Myth of a Green Europe. *JCMS: Journal of Common Market Studies*, 48(1), 133–154. Retrieved from <http://doi.wiley.com/10.1111/j.1468-5965.2009.02045.x> doi: 10.1111/j.1468-5965.2009.02045.x
- Lodge, M. (2008, January). Regulation, the Regulatory State and European Politics. *West European Politics*, 31(1-2), 280–301.
- Löfsted, R. E. (2007, June). The Plateau-ing of the European Better Regulation Agenda: An Analysis of Activities Carried out by the Barroso Commission. *Journal of Risk Research*, 10(4), 423–447. Retrieved from <http://www.tandfonline.com/doi/abs/10.1080/13669870701417793> doi: 10.1080/13669870701417793
- Majone, G. (1999). The regulatory state and its legitimacy problems. *West European Politics*, 22(1), 1–24.
- Ministrie van Buitenlandse Zaken. (2013a). *NL ‘subsidiarity review’ - explanatory note*.
- Ministrie van Buitenlandse Zaken. (2013b). *Testing European legislation for subsidiarity and proportionality Dutch list of points for action*.
- Pollack, M. a. (1994, November). Creeping Competence: The Expanding Agenda of the European Community. *Journal of Public Policy*, 14(02), 95–145. Retrieved from <http://www.journals.cambridge.org/abstract/S0143814X00007418> doi: 10.1017/S0143814X00007418
- Radaelli, C. M. (2007). Whither better regulation for the Lisbon agenda ? *Journal of European Public Policy*, 14(2), 190–207.
- Salamon, L. M. (Ed.). (2002). *The tools of government - a guide to the new governance*. Oxford: Oxford university press.
- Scharpf, F. W. (2006, November). The Joint-Decision Trap Revisited.

- JCMS: Journal of Common Market Studies*, 44(4), 845–864. Retrieved from <http://www.blackwell-synergy.com/doi/abs/10.1111/j.1468-5965.2006.00665.x> doi: 10.1111/j.1468-5965.2006.00665.x
- Schild, J. (2008, June). How to shift the EU's spending priorities? The multi-annual financial framework 200713 in perspective. *Journal of European Public Policy*, 15(4), 531–549. Retrieved from <http://www.tandfonline.com/doi/abs/10.1080/13501760801996725> doi: 10.1080/13501760801996725
- Sheingate, A. D. (2000, July). Agricultural Retrenchment Revisited: Issue Definition and Venue Change in the United States and European Union. *Governance*, 13(3), 335–363. Retrieved from <http://doi.wiley.com/10.1111/0952-1895.00137> doi: 10.1111/0952-1895.00137
- Tombs, S., & Whyte, D. (2012, November). Transcending the deregulation debate? Regulation, risk, and the enforcement of health and safety law in the UK. *Regulation & Governance*(July), 1–19.
- Torriti, J. (2012). Standard Cost Model : Three Different Paths and their Common Problems. *Journal of Contemporary European Research*, 8(1), 90–108.
- Warleigh-Lack, A. (2010, December). Greening the European Union for legitimacy? A cautionary reading of Europe 2020. *Innovation*, 23(4), 297–311.
- Wilkinson, D., Monkhouse, C., Herodes, M., & Farmer, A. (2005). *For Better or for Worse ? The EU s Better Regulation Agenda and the Environment* (Tech. Rep. No. November). London: IEEP.