

# **Does the European Union have a reverse gear? Environmental policy dismantling, 1992-2014**

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degree of Doctor of Philosophy

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# Abstract

After decades of pushing for deregulation and regulatory reform in its Member States, has the European Union itself become a locus for policy dismantling – *i.e.* leading to a weakening of its policies?

This thesis offers a first systematic study of policy dismantling at EU level. It focuses on environmental policies, an area in which EU action has repeatedly been criticised by politicians for harming competitiveness and not respecting national sovereignty. It combines for the first time insights from comparative politics studies of dismantling with EU governance literature, to offer a theoretical framework specially configured to explaining dismantling at EU level. It investigates *which* EU environmental policies have been targeted for policy dismantling, *by whom, why and how*, from the early 1990s to the end of the second Barroso Commission in 2014.

It reveals how the EU has changed, from a driver of policy dismantling in its Member States to a locus of dismantling in its own right. Dismantling attempts (from the reduction of administrative burdens to the repatriation of competences) have been made by key EU actors – which for some, such as the European Commission, goes against the conventional wisdom in EU studies. These attempts have been justified in terms of criticisms of the EU's legislative outputs – subsidiarity and proportionality – and of European integration itself. But they have not resulted in significant policy dismantling. Dismantling has been the least frequent outcome of legislative reform amongst the many pieces of legislation earmarked for dismantling. This pattern indicates the resilience – until now – of the EU's “green state” (Klyza and Sousa, 2013), but dismantling attempts have markedly changed the way the EU legislates on environmental issues and further hindered policy expansion.

This thesis contributes to the renaissance of dismantling studies in comparative politics by revealing how dismantling strategies and effects at EU level differ from the existing literature which focuses almost exclusively on nation states. Looking at the EU from a policy dismantling perspective, this thesis also questions foundational assumptions in EU studies – on what drives EU actors, on where the EU is headed. Finally it offers a different reading of the history of EU environmental policy, stressing the role that contestation in general, and dismantling in particular, have played in shaping the environmental *acquis*.



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# Acronyms

**ABR** Administrative Burden Reduction

**BEST** Business Environment Simplification Task Force

**DG** Directorate-General

**DG CLIMA** Directorate-General for Climate Action

**DG ENV** Environment Directorate-General

**EIA** Environmental Impact Assessment

**EPA** US Environment Protection Agency

**EMAS** Eco-Management and Audit Scheme

**EU** European Union

**IGC** Intergovernmental Conference

**IPPC** Integrated Pollution Prevention and Control

**MEP** Member of the European Parliament

**NGO** Non Governmental Organisation

**NEPI** New Environmental Policy Instrument

**REFIT** Regulatory Fitness and Performance Programme

**RoHS** Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment

**SLIM** Simpler Legislation for the Internal Market

**UNICE** Union of Industrial and Employers Confederations of Europe

**WEEE** Waste Electrical and Electronic Equipment



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# Chapter 1

## The EU: a new locus of policy dismantling?

The EU has emerged as a new arena in which the politics of dismantling plays out [...] research that seeks to study dismantling in heavily Europeanized sectors should account for the EU's role (direct and indirect) in dismantling activities at both levels of governance.

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Jordan & Turnpenny (2012, p. 196)

### 1.1 Introduction

Environmental policies are often portrayed as a success story of European integration. Not only have they dramatically expanded over the last twenty years – a period in which the European “tortoise” caught the American “hare” (D. Vogel, 2003) – but they are relatively popular with European citizens, thereby offering a possible source of much-needed EU legitimacy (Warleigh-Lack, 2010b; Manners & Murray, 2016). These policies, alongside the EU's green international commitments, support what is arguably one of the EU's most successful diplomatic ventures so far: its standing as a leader in international environmental negotiations, especially regarding climate change (Lenschow & Sprungk, 2010).

But how secure is the EU's green footing? EU environmental policies may have expanded over the last thirty years, but with expansion also came calls for roll-back, from the early 1990s (Agence Europe, 1992j) to the new Juncker Commission's "deregulation agenda" (European Voice, 2014). Some studies point out that the expansion of policies has stalled (Pollack, 2000; Jeppesen, 2000). But has it gone further? Has there even been environmental policy dismantling at EU level?

Although environmental policy dismantling – *i.e.* cuts affecting the number or strength of environmental policies – is not a new notion (see for example Hanf, 1989), it has largely remained unstudied. Scholars of policy dismantling focused on other policy sectors such as the welfare state and utilities reform, while scholars of EU environmental policies – after expansion had been accounted for – investigated other challenges such as reduced expansion rates and non-implementation. At a time where EU environmental policies are presented as "bringing costs rather than benefits" (Potočnik, 2012, p. xvii) this thesis offers a first systemic account of environmental policy dismantling at EU level – shedding light not only on the evolution of EU environmental policy over the last 20 years, but on the European integration process as a whole.

This chapter introduces and defines the object of study – environmental policy dismantling at EU level – as well as the research design followed in this thesis. It concludes by presenting the structure of the whole thesis.

## 1.2 Studying policy dismantling at EU level

Building on the recent renaissance in the US and Europe of policy dismantling studies, this section first presents the definitions of policy and policy dismantling adopted in this work. Second, it sets out the rationales for studying policy dismantling at EU level, and what makes EU environmental policy a good policy area to focus on in a first EU dismantling study.

### 1.2.1 Policy dismantling in this thesis

Howlett and Cashore (2009, p. 41) contend that while research has repeatedly investigated the technicalities of policy change, the directions of change – expansion or dismantling –

have received surprising little attention. Thirty years after the first large national deregulation programmes of the 1980s, research on policy dismantling is far from unified, with scholars of deregulation, welfare retrenchment and institutional change ploughing parallel furrows (Jordan, Green-Pedersen, & Turnpenny, 2012). But this is currently changing, as a renewed interest in policy dismantling on both sides of the Atlantic is bridging the gap between these different literatures, proposing methods – quantitative and qualitative – to study policy dismantling across different policy sectors and polities (Berry, Burden, & Howell, 2010; Ragusa, 2010; Bauer et al., 2012a). This thesis builds on, and contributes to, this renaissance of dismantling studies in political science.

### 1.2.1.1 Defining public policy

The diversity of early dismantling, retrenchment and deregulation research means that different definitions of what is policy dismantling – indeed of what is policy (Capano, 2009) – abound in the literature.

In order to define policy dismantling we must first define what we mean by policy (*i.e.* the target of dismantling) and, more precisely, public policy. Hill (2013) and Birkland (2005) advance different components of policy. First, public policy is the remit of governments – or more exactly of different levels of governance – but does not operate in a vacuum: a variety of public and private actors interact throughout the entire policy process. Second, public policy is as much about inaction as about action, covering “whatever governments choose to do or not to do” (Thomas Dye, 1992 in Birkland, 2005, p. 18). Third, policy does not start or stop with legislation: agenda-setting, consultation, goal settings and communication are all pre-legislative phases of the policy process, while implementation and evaluation take place afterward.

To dismantle policy is hence to adopt a very wide target – potentially any given government’s actions or ‘inactions’. But the existing policy dismantling literature tends to focus on only parts of this very wide definition of policy – dismantling of policy *elements* more than dismantling of policy *lato sensu*. Hence in the 1970s and 1980s, the policy termination literature in the USA analysed policy dismantling by looking at the perpetuation, or removal, of federal programmes (Hogwood & Peters, 1982). More recent US research on dismantling also chose to focus on programmes (Berry et al., 2010), while Bauer et

al. (2012a) studied policy dismantling at two different levels: programmes or pieces of legislation and the different instruments composing them.

This thesis builds on the approach of Bauer et al. (2012a) and focuses on dismantling of legislation and of its components – a focus which chimes with the EU’s reputation as a “regulatory state” (Majone, 1999). As such I use a narrow definition of policy as “a collection of programs [sic] operating in a similar field or aimed at some general objectives” Salamon (2002, p. 20). The policy field studied will be environmental policy, the “collections of programs” the set of directives and regulations which form the EU environmental *acquis*. As Bauer et al. (2012a) before, instruments – such as regulatory standards, trading-schemes or taxes (Taylor et al., 2012) – will be studied alongside the legislation level.

### 1.2.1.2 Defining policy dismantling

Policy dismantling can be defined, and evaluated, by its impacts on *policy outputs*, and especially legislation – hence the US policy termination literature argued dismantling happened if, and only if, the targeted programme was abruptly discontinued (Hogwood & Peters, 1982). But this definition was too crude in many ways. Dismantling, as any other type of policy change, can happen through different channels, at different pace, and be of varying magnitude (Howlett & Cashore, 2009). With regard to pace and the extent of change, the work of Streeck and Thelen (2005) on institutional change offers key insights. They challenge two key preconceptions: that radical change is always of *external* origin and that radical change needs to be *abrupt*. Conversely, they argue that radical change can also come from within institutions – and that over time, gradual changes (such as changes in policy standards or instruments) can add up to major change. This cautions against understanding policy dismantling as a necessarily short, abrupt event – dismantling may sometimes only be apparent over the long-run (Pierson, 2011).

Furthermore, policy dismantling does not necessarily require the entire policy – or the entire piece of legislation – to be discontinued. Policies can be diminished or weakened in other ways – and this can also constitute policy dismantling. To better capture these finer changes Bauer and Knill (2012) introduce a distinction between policy or instruments *density* – the number of public policies or instruments targeting a specific sector – and their

*intensity* – *i.e.* how lenient, generous, or strict a policy is. They further highlight the need to look beyond the central components of the legislation (the instruments, their settings) to its more auxiliary components – the reporting duties, the implementation capacity *etc.* which they group under the heading of formal intensity.

Not only can dismantling affect different dimensions of a given policy, but these different dimensions can move in different directions. This is underpinned by the notion of multidimensionality, first discussed in the 1990s and 2000s to express the idea that not all “change” to welfare states could be understood in terms of retrenchment or expansion (Bonoli & Natali, 2012a). Hence for example Pierson (2001b, p. 421-425) suggests that beyond looking at retrenchment (understood as cost-containment) it is also necessary to study re-commodification (*i.e.* “to restrict the alternatives to participation in the labour market” (Pierson, 2001b, p. 422)) and calibration – the updating and rationalisation of existing programmes. Early discussions of multidimensionality centred on describing how retrenchment (then envisaged as quantitatively measured cuts to welfare budgets and provisions) was not the only sort of change – in particular, not the only sort of effort to weaken the welfare state – taking place (Bonoli & Natali, 2012a). Building on Bauer and Knill’s (2012) distinctions between different dimensions of policy (density, intensity *etc.*), this thesis understands multidimensionality in a looser fashion, as signalling “the potential for various sub-elements of policy to move in different directions and at different speeds” Bauer, Jordan, Green-Pedersen, and Héritier (2012b, p. 205) – hence multidimensionality refers to both the multiple dimensions of policy and their diverse directions of travel.

Additionally, we must be wary of a definition confining dismantling study to measuring changes in policy outputs: not only can *failed* attempts to dismantle policies be of interest, but certain policy dismantling strategies may succeed *without* changing policy outputs. Thus Bauer and Knill (2012, p. 44) call “dismantling by symbolic action,” a strategy in which governments are content with appearing to dismantle to garner political support. Bauer et al. (2012b) highlight how the motivations for dismantling, and the manner in which it is pursued – the “why” and “how” – of policy dismantling is as important, if not more, than the “what” (the policy outputs).

Finally, recent research in policy dismantling has shown that it can take (at least) two distinct routes: it can happen through the legislative process – with a new law repealing

or replacing an older one – or through an administrative process – through funding cuts, administrative reforms, or appointments (Korte & Joergens, 2012).

Considering these issues, this thesis adopts a broad definition of policy dismantling: “the cutting, diminution or removal of existing policy” (Jordan, Bauer, & Green-Pedersen, 2013, p. 795), that is any type of policy change whose objective is the reduction in density or intensity of a given public policy. This broad definition of policy dismantling is useful to capture the variety of forms of policy dismantling which may be found in the European Union political system, a level of governance that has until now not been studied through policy dismantling lenses. This definition will be applied together with a narrow understanding of policy, taking into consideration only certain aspects of policy – in this case EU legislation – and a focus on a single dismantling route: dismantling through the EU legislative process.

### 1.2.2 Policy dismantling at EU level

Whereas the existing literature focuses on dismantling of national policies, both in the US (Berry et al., 2010; Ragusa, 2010) and across Europe (Jordan & Turnpenny, 2012; Bernauer & Knill, 2012), this thesis provides a first look at policy dismantling in another level of governance: the EU. Investigating policy dismantling at EU level matters because in many policy fields a growing amount of legislation is adopted at European, not national level: in the words of Princen and Rhinard (2006, p. 1119) “the EU has now solidified its position as a critical locus of decision-making in Europe”.

Through the process of European integration, Member States have gradually pooled together a number of policy competences at EU level. While Delors’ prediction that eighty percent of legislation in Europe would be produced at EU level has not come to pass (Fekl & Platt, 2010), the influence of EU legislation over national legislation has indubitably grown (Bertонcini, 2009). This means that the ability of a given government to dismantle certain legislation may be circumscribed because of its European origin – meaning dismantling in order to be successful should take place at EU, not national level (Jordan & Turnpenny, 2012). Moreover, EU legislation is crucial to the identity of the EU as a “regulatory state” (Majone, 1999) – and as such opponents of the European integration project, or of European federalism, often take aim at EU regulations and “EU

red tape" (Van den Abeele, 2014).

But dismantling of EU policy appears to have fallen into an analytical blind spot: research on policy dismantling has had a long-standing focus on changes to *redistributive* policies and on welfare state retrenchment in particular. This focus can be easily explained. Firstly, redistributive policies are "highly controversial" (Birkland, 2005, p. 144). They are the policies around which traditional left/right political cleavages are organised. Second, while all kinds of policies can be targeted for ideological reasons (Lodge, 2008), in times of austerity and reductions in tax revenues, the budgetary weight of redistributive policies make them an expected target. In Europe, most redistributive policies remain within the remit of national governments, with a few exceptions, such as the EU Common Agricultural Policy, while the EU focuses on regulatory policies to ensure the working of the Single Market. This limited development of redistributive policies at EU level means that for a long time the consensus in the literature has been that the EU may be a driver of policy dismantling in its Member States (e.g. Knill, Tosun, & Bauer, 2009; Bernauer & Knill, 2012), but not a likely locus or target of policy dismantling itself. This focus on redistributive policies has had consequences in the way policy dismantling is thought of – making it harder for other types of policies, and for the EU with its focus on regulations, to fit within conventional models of policy dismantling.

In studying policy dismantling at EU level, this thesis thus investigates not only a level of governance rarely considered by dismantling scholars, doing so at a time when calls for EU policy dismantling appear to multiply (e.g. Business Taskforce, 2013; Ministerie van Buitenlandse Zaken, 2013; High Level Group on Administrative Burdens, 2014); but also a type of policy (regulatory policies) often ignored.

### 1.2.3 Dismantling the environmental *acquis*

This thesis focuses on a specific area of EU policy – environmental legislation, or the environmental *acquis communautaire*.<sup>1</sup> The environmental *acquis* was chosen for two key reasons: first, it is an area of mostly regulatory policy, allowing the testing of dismantling theories beyond the realm of redistributive policies. Second, although EU environmental policies are relatively popular with European citizens (Eurobarometer 2014, Lenschow

<sup>1</sup>The *acquis communautaire* refers to "the body of accumulated legislation and regulations of the European Union" (Oxford Dictionary)

& Sprungk, 2010), they have been repeatedly criticised as either impinging on Member States' sovereignty (Golub, 1996) or causing undue costs and harming European companies' competitiveness (Business Taskforce, 2013). As such the environmental *acquis* is a likely target for policy dismantling at EU level and a well-suited sector on which to base this first systematic attempt at capturing evidence of European policy dismantling.

#### 1.2.3.1 Regulatory, not redistributive policy dismantling

The focus within retrenchment studies on redistributive policies shaped the research agenda. In particular, influential work by Pierson drew attention to the importance of blame avoidance:

*Retrenchment is generally an exercise in blame avoidance rather than credit claiming, primarily because the costs of retrenchment are concentrated (and often immediate), while the benefits are not.*

(Pierson, 1996, p. 145)

Pierson's early work fed the idea that policy dismantling has to be about *blame avoidance* – and subsequently that a key question for dismantling research was to explain why re-election-seeking politicians followed a route likely to take them out of office (Vis & van Kersbergen, 2007). Research in the late 2000s and early 2010s marked a change of focus, and highlighted a number of retrenchment efforts for which politicians had not been sanctioned at the following election, or had indeed been able to claim credit (Giger & Nelson, 2011; Vis, 2016). These results did not mean that blame avoidance strategies were not being used as well, but they showed that blame avoidance strategies were not the sole type of dismantling strategies mobilised. Even when it comes to welfare state retrenchment other rationales may be at work, from pursuing a better policy, to claiming credit (Weaver, 1986).

But would the hypotheses and methods in dismantling studies have traction beyond the welfare state? Would similar dismantling patterns be found in other policies? Or are dismantling studies on the welfare state unable to shed light on dismantling in general? Jordan, Green-Pedersen, and Turnpenny (2012, p. 8) address these questions by arguing that, if redistributive policies are characterised by concentrated benefits and diffuse costs, regulatory policies – including environmental ones – are *a contrario* characterised by concentrated costs and diffuse benefits. As such different types of policy (and more broadly,

policy sectors) would see different dismantling drivers: while blame avoidance is conventionally considered as central to social policy dismantling, credit claiming could be expected to be more frequent for environmental policy dismantling. The different environmental case studies in Bauer et al. (2012a) tested this, and the dismantling strategies that they found tended to veer toward credit claiming.

Hence, looking at environmental policy dismantling allows the testing of key assumptions in the dismantling literature, highlighting points which may be specific to social policies, and others which may have broader explanatory powers.

### 1.2.3.2 A policy sector under siege?

There is a well developed literature on EU environmental legislation, and notably on the challenges it has faced since its inception in the 1970s (Hey, 2005; Knill & Liefferink, 2012). A first challenge has been poor implementation: environmental legislation in the EU is renowned for a high level of implementation deficit – with Member States failing to fully implement or apply EU environmental legislation (Panke, 2007; Jordan & Tosun, 2013; Versluis, 2007; Mastenbroek, 2006). A second challenge has been a slow-down in policy expansion, and difficulties to achieve agreement on further ambitious legislation: this has been illustrated by growing demands for more voluntary and business-friendly approaches to environmental regulation (Jordan, Wurzel, & Zito, 2005, 2013) and by the reduced environmental ambitions of a former green champion among EU institutions, the European Parliament (Burns, Carter, & Worsfold, 2012; Burns, 2013).

In this thesis I argue that we can regroup these challenges to EU legislation – and to the environmental *acquis* in particular – in four categories, depending on whether the challenge takes place inside the institutions in Brussels or in the Member States, and on whether the targeted legislation has been passed or is merely a legislative proposal. This distinction, further developed in Chapter 2, is not perfect – not all challenges fit perfectly within their category, as lobbying for example can take place both in Brussels and in the Member States – but it helps to differentiate between policy dismantling and other concurrent challenges to EU environmental policy.

	IN BRUSSELS	IN MEMBER STATES
<i>Existing legislation</i>	Policy dismantling	Non-implementation (failure to transpose, apply or enforce)
<i>Planned legislation</i>	Obstruction by legislators, or self-censorship by the Commission	Opposition by lobby groups, grassroots movements or media

**Figure 1.1:** Four types of challenge to EU legislation.

Policy dismantling in this perspective is only concerned with challenges to the EU environmental *acquis*, in Brussels, within the institutions – in particular through the process of legislative reform. This thesis focuses on policy dismantling, but as different challenges to the *acquis* may be connected, the interconnections between non-implementation and dismantling, or between obstruction or stalled expansion and dismantling form part of the analysis.

### 1.3 Research design

To study EU environmental policy dismantling, this thesis relied on a specific research design. A research design brings together philosophical and practical elements: the philosophical assumptions (ontology and epistemology) together with the theoretical perspective on the one hand; and the initial puzzle or issue to be addressed, the research questions, aims and objectives, on the other hand. Together these two philosophical and practical elements inform the methodology and methods used throughout a research project (Cunningham, 2014).

There is a multitude of entry points to build a coherent research design. Thus “the researcher can begin by considering his or her philosophical assumptions or theoretical perspectives or the issue to be addressed” (Cunningham, 2014, p. 34). In this research project, my two starting points have been a question – is the EU a possible locus of policy dismantling? – and a theoretical perspective, namely the policy dismantling framework developed by Bauer and Knill (2012). Consequently this section first introduces the theories and analytical framework, before moving on to the more practical elements – aims, research questions, organisation of empirical work – and concludes with a discussion of the philosophical underpinnings of this research.

### 1.3.1 Theoretical perspectives: comparative politics and EU studies

In studying the EU, we are faced with a choice: either to use theories developed to study the EU (as an integration process, as a *sui generis* multilevel governance entity), or to import theories from comparative politics on the functioning of political systems (Pollack, 2005). In this research project I am interested in whether the EU, as any other political system, can experience policy dismantling, and how dismantling patterns at EU level can inform both our understanding of the EU, and of policy dismantling in general.

As such, I was interested from the beginning in using comparative politics approaches of policy dismantling and applying them to the EU. Two further options were then available, either to adopt an existing framework of policy change or to build a new one. Taking into consideration the present “extreme fragmentation in definitions and approaches,” and the risk that policy studies are becoming a “veritable Tower of Babel” (Capano, 2009, p. 27), I decided not to contribute to further fragmentation, and instead to choose and adapt an existing framework. Among different frameworks of policy change, I chose to focus on frameworks interested in the *direction* of policy change – expansion or dismantling. The current renaissance of dismantling studies on both sides of the Atlantic meant there were many approaches to choose from. Two important criteria guiding my choice were the flexibility of the theoretical framework (*i.e.* its transferability to EU level) and its ability to capture a variety of dismantling events. In particular I was interested in capturing events of dismantling over a long period of time, and in capturing failed events of dismantling as well. While the quantitative approaches developed in the US (Berry et al., 2010; Ragusa, 2010) or in the EU (Knill, Steinebach, Hanschmann, Bianculli, & Juanatey, 2014) were able to track policy dismantling over the long-run, these approaches focus on measuring dismantling in changed policy outputs and are blind to attempted but failed dismantling, or to symbolic dismantling. The theoretical framework proposed in Bauer and Knill (2012, 2014) combines both dismantling strategies and outputs, hereby addressing this issue. Furthermore, its authors have striven to “develop and apply concepts that travel across different policy areas” (Bauer & Knill, 2012, p. 34) – a sign of flexibility of the framework (further evidenced by its attention to both regulatory and redistributive policies) which may help its application at EU level.

Bauer and Knill (2012) offer a framework for policy dismantling studies, *i.e.* an “approach that political scientists can adopt in order to generate explanations about politics in answering specific research questions” (Stanley, 2012, p. 475) which isolates key variables and offers potential links between them. Within this framework, they mobilise a series of “middle range concepts such as veto players, windows of opportunity, policy framing and so on” (Bauer et al., 2012b, p. 221). Similarly, the theoretical approach adopted in this thesis combines the framework developed in Bauer et al. (2012a) with a number of concepts or theories of EU decision-making – regarding policy framing (Princen & Rhinard, 2006; Princen, 2011), decision-making in the EU (Hix, 2002; Versluis, Van Keulen, & Stephenson, 2011) as well as insights from qualitative studies of US policy dismantling (Layzer, 2012; Klyza & Sousa, 2013). These additions will help adapt a framework developed for dismantling studies at national level to its application to the “world’s most complex” (Schmitter, 2005, p 268) and most “consensus-oriented” polity (Hix, 2006, p. 145).

### 1.3.2 Aims, objectives and research questions

Using the theoretical approach presented above, the aim of this thesis is to understand how policy dismantling has affected EU legislation in general, and the development of the EU environmental *acquis* in particular. In addressing this aim this thesis has three objectives:

**Objective 1:** To formulate and test a theoretical and methodological framework able to capture policy dismantling both in terms of strategies and their effects at EU level.

**Objective 2:** To explain the dynamics of and rationales for policy dismantling at EU level.

**Objective 3:** To relate findings on policy dismantling at EU level with conventional accounts of European integration, the evolution of EU environmental policy, and the present focus of dismantling studies in national settings.

These objectives will be supported throughout the empirical part of this thesis by two main research questions: first, how and why have EU politicians attempted to dismantle EU environmental policies? Second, what have been the effects of these strategies, and have parts of the EU environmental *acquis* been dismantled as a result?

### 1.3.3 Structure and methods of empirical study

This thesis aims at offering a first systematic study of policy dismantling at EU level – focusing on changes to EU environmental legislation since the early 1990s, the moment

when dismantling demands first gained traction (Golub, 1996; Jeppesen, 2000). This will be done through first, a set of three chronological case studies, and second, a longitudinal study of change in legislative outputs of pieces of legislation identified as targeted for dismantling in at least one of the case studies; “different methods” used to “guide different stages of a research programme” (Ostrom, 2010a, p. 12). Hence, Chapters 4-6 focus on a first dependent variable – dismantling strategies – using qualitative methods, in particular an analysis of official EU documents, “grey” literature from think tanks and NGOs, press coverage and elite interviews. Chapter 7 focuses on a second dependent variable – changes to policy outputs – and relies on a quantitative method: the coding of changes to pieces of EU environmental legislation through a number of legislative reforms. This mixed-method approach with two dependent variables cohabiting under a single analytical framework is deployed in order to provide a richer picture of dismantling in the EU, from its instigation to its success (or lack thereof) and its collateral impacts on the EU legislative process.

#### 1.3.4 Philosophical underpinnings

While the exact number of elements comprising a good research design are still debated (e.g. Maggetti, Gilardi, & Radaelli, 2013; Gorard, 2013), the core of a research design remains broadly consensual: Ostrom (2010a, p. 4) mentions “research goals, theory, data and method”. These different elements should be coherent – methods for data collection and research questions should fit with the theoretical framework and overarching philosophical underpinnings of the research. But how to harmonize these elements, and which element should come first – *i.e.* on which keystone should you build a research design – is far less consensual. Some authors argue over whether epistemological concerns come before, or after ontological ones (Marsh & Smith, 2001; Bates & Jenkins, 2007), while others argue that methods are a key starting point, and that the “choice of method tends to signal one’s theoretical perspective” but are not necessarily determined by it, as “methodological choices are often driven as much by data availability or career incentives” (Ostrom, 2010a, p.10-11).

In this thesis, the mixed-methods adopted throughout – investigating *what* has changed

through quantitative and qualitative approaches as well as *why* and *how* through qualitative methods – can shed light on my understanding of the role of the researcher. First, it stresses the value of looking at a research object (policy dismantling in the EU) from different methodological angles – which is especially needed here in a first in-depth study of dismantling at EU level. Second, it is underpinned by a belief that my “(ultimately biased) perspective” will colour my work (Versluis et al., 2011, p. 23), and that triangulation between different methods and sources will help reduce (although not remove) this bias.

## 1.4 Conclusion

Environmental policy dismantling is a recent area of inquiry, mostly unexplored by either environmental policy or policy change scholars. This is particularly the case regarding EU environmental policies – as it is conventionally assumed that the EU, as a “regulatory state”, is an arena for policy expansion, not dismantling (Thatcher, 2004; Knill et al., 2009). Yet perceived EU environmental policy dismantling has often made the news since the 1990s, and still does, *e.g.* environment has been mentioned by David Cameron as an area in which task repatriation could be desirable (ENDS Europe, 2013c).

This thesis uses new tools of policy dismantling research to study EU environmental policies. It offers a new take on the evolution of EU environmental policies – investigating how these have withstood or succumbed to policy dismantling. To do so this thesis builds on both existing EU literature and new developments in dismantling theories, thereby following a tradition for EU environmental policy studies, which are prone to adopt theories and questions from other fields (or, in the words of Lenschow (2012, p. 66), to “dance at many parties”) and adapt them to their field of study. By offering a first look into dismantling at the EU level, this thesis furthermore contributes to a better understanding of the dynamics of policy dismantling in a multi-level governance setting.

The thesis is organised in the following manner. Chapter 2 reviews policy literature on environmental policy dismantling and policy dismantling at EU level, highlighting the limited amount of existing research, and offering some explanations as to why. Chapter 3 presents the theoretical framework that will be used for both strategies and outputs analyses, highlighting how this framework sits *vis-à-vis* recent developments in dismantling

studies, and what changes are required to apply it to the EU. It also details the methods used in the different empirical sections. The first three empirical chapters (Chapters 4-6) study the dismantling actors, and their strategies, during the subsidiarity, better regulation and austerity debates, from the last Delors Commission to the end of the second Barroso Commission in 2014. The last empirical chapter, Chapter 7, focuses not on the use of particular strategies, but on changes in policy outputs of selected pieces of the EU environmental *acquis* over the last twenty years – the pieces of legislation targeted during all three highlighted periods, before and after they were subjected to high political pressure. Chapter 8 provides a theoretical analysis of the three case studies and of how they relate to the fourth empirical chapter, applying the theories and framework developed in Chapter 3, and reflecting on its capacity to explain dismantling dynamics at EU level. Finally, Chapter 9 presents the key empirical and theoretical contributions in order to address the thesis' three objectives. It concludes by developing further avenues for research.



## Chapter 2

# The dismantling of EU environmental policies: elusive and/or inconceivable?

European integration is a story of growth in integration. There are periods of accelerated growth (the 1950s and the 1990s) and periods of relative stagnation (the 1970s and 2000s) but no rollback.

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Schimmelfennig et al. (2015, p. 768)

### 2.1 Introduction

Environmental policy dismantling, understood as the “cutting, diminution or removal of existing policy” (Jordan, Bauer, & Green-Pedersen, 2013, p. 795), offers an interesting puzzle. Although green rules have been targeted by deregulation efforts in the name of growth and employment since the 1980s (Dunlap, 1987; Hanf, 1989) research on policy dismantling has for long focused on other sectors of the economy, most notably the welfare state and its possible retrenchment (Pierson, 1994, 2011; Green-Pedersen, 2004), and regulatory reform of major utilities (Thatcher, 2004; Lodge, 2008). This gap

between political relevance, media coverage and its academic analysis is particularly striking with regard to the European Union. While the EU is often presented as a green power (Lenschow & Sprungk, 2010), and is conventionally considered to be a major producer of environmental regulations in Europe, the possibility of policy cuts or reduction has rarely been addressed (but see Golub, 1996; Jeppesen, 2000; Jordan & Turnpenny, 2012).

This chapter investigates this apparent gap. It presents the existing literature on environmental policy dismantling in the USA, Europe and at EU level. It then investigates the reason for such limited findings: has EU environmental policy dismantling proven too *elusive* to research until now (a question of definition, case selection *etc.*), or has it been simply *inconceivable*, a possibility ignored by, or even undermining, conventional readings of environmental policy and of European integration on a deeper level?

## **2.2 Environmental policy dismantling in a comparative perspective**

Behind the notion of policy dismantling is the suspicion that policy expansion – that is the addition of new rules, instruments, or the extension of their remit – cannot go on forever. Not only can policy development reach a plateau, it can also go backward, with a reduction in the number, remit, or ambition of rules and instruments. This change in policy direction may occur through a change in public attitude. Downs (1972) contended that all policies are prey to a five-stage “issue attention cycle”, illustrating the evolution of public interest. A first phase of awareness is followed by a great mobilisation for change. But this comes to an end when the public – and organised interests – recognise the cost of achieving “significant progress”, resulting in a “decline in public interest”, leading to reduced political ambitions and possible cuts in policies (Downs, 1972, p.40-41). He argued that the beginning of the 1970s in the USA marked the end of ecology’s golden age, opening the way for policy dismantling.

Building on Downs’ work, Peters and Hogwood (1985) investigated whether different sectors of American public policy experienced such a cycle. Their findings confirmed this idea of a sector gradually climbing to the top of the political agenda, then receding. They further found that the shift was not limited to public attention, but translated into

reduction in policy density – although sectors reaching the “post-problem” state maintained higher policy density than their starting point at the “pre-problem” stage (Peters & Hogwood, 1985, p. 251). But Hogwood & Peters did not limit policy evolution to policy dismantling or termination (Hogwood & Peters, 1982). They argued that “termination”, *i.e.* the complete suppression of a policy item, was only one of three options, two others being “maintenance” of the policy and “succession” – replacement of an old policy by a new one. While Downs focused on ecology, Peters and Hogwood (1985) compared a great variety of policy sectors – agriculture, defense, urban development, health *etc.* This makes their findings on environmental policies particularly interesting as environmental policies comparatively stood out as being prone to greater rates of termination once public attention receded (Peters & Hogwood, 1985, p. 248). Furthermore, while they contended that many policy cycles were triggered and affected by external events, they argued that the environmental policy cycle was closely linked to “a more political type of initiative reflecting political priorities” (Peters & Hogwood, 1985, p.252).

This early work on termination and the issue attention cycle highlight the potential for research – and some of the specificities – on environmental policy dismantling. But they have not been followed by a great development in research. Instead there have been a few isolated case studies, looking at different countries (but with a strong focus on the USA), across different periods.

### 2.2.1 Policy dismantling in the USA

Dunlap (1987) and Cook and Polksky (2005) both study an early example of US environmental policy dismantling: the Reagan administration’s changes to the then 10 year old Environment Protection Agency (EPA) and the impact Reagan’s choices have had on public support for environmental issues in the USA. Elected on a staunch pro-business platform, Reagan targeted environmental “over-regulation” early on, launching an attack on the EPA on a variety of fronts. His administration cut the budget of the EPA – in particular the compliance budget – appointed like-minded officials at its head, and regularly reorganised the agency, leading to a growing compliance back-log and a fall in staff moral. It furthermore decentralised pollution control and severely cut its finance (Cook & Polksky, 2005, p. 592). It finally instituted compulsory cost-benefit analysis for all new

environmental provisions – deemed to be skewed toward business interests as the cost figures originated from industry (Cook & Polksy, 2005, p. 592). These efforts to cut down environmental regulations contributed to the USA's loss of environmental leadership to Europe – the European “tortoise” caught up with the American “hare” by the early 1990s (D. Vogel, 2003).

A second turning point for US policy dismantling was the victory of Republicans led by Newt Gingrich in the 1994 Congressional election, who targeted all US environmental law, attacking its cost and casting doubt on its scientific justification (Layzer, 2012). But these efforts proved “politically disastrous” and short-lived as opposition in the Congress managed to stifle the plans (Klyza & Sousa, 2010, p. 445).

A third moment which garnered academic attention was the two George W Bush presidencies and their impact on US environment and climate policies. Once again appointment decisions to the EPA, and its budget, were shaped to embrace a highly critical stance on environmental regulations (Korte & Joergens, 2012). Thus in the words of Cohen (2004, p. 83) “the White House pushed the U.S. EPA to embrace a strongly reactionary agenda and to stake out purposefully divisive positions that appeal to conservative ideologues”. Thompson (2005, p. 324) presents different strands of conservative thinking on environmental issues and the disappointment in parts of the Republican party to George W. Bush's failure to push for new environmental policy instruments (NEPI) “perhaps due to industry pressure to reduce, rather than reform, environmental regulation”.

More recently, scholarship on policy dismantling in the USA has moved toward longer-term studies. In particular, a number of large  $n$  quantitative studies were conducted in the USA (Berry et al., 2010; Maltzman & Shipan, 2008; Ragusa, 2010). These studies investigated what made certain policies more likely to be dismantled than others – conditions at their inception, changed political majorities *etc.* While environmental policy did not stand out in these studies, qualitative long-term studies of US environmental policy dismantling were also produced.

Both Klyza and Sousa (2013) and Layzer (2012) focused on changes to – and dismantling of – US environmental policy over the long run (since the 1970s and the golden age of US environmental policy). Klyza and Sousa (2013) investigate how gridlock in Congress means that environmental policy-making has moved to other arenas: the courts,

the state-level, non-environmental legislation in the Congress, implementation politics and self-regulation. Klyza and Sousa (2010) argued that the “death of environmentalism” has been overstated, stressing both “the resilience of the basic policy commitments of the golden era of environmentalism” (2010, p. 444) and a slow if partial continued policy expansion – a “green drift”. They stressed the ratchet effect which meant legislation once adopted was hard to roll-back, as “environmental interests need simply to play defense to protect old commitments, typically an advantageous position in the American political system” (*Ibid.*, p. 445); while the implementation of existing legislation gradually pushed toward more environmental ambition. But while existing legislation was mostly maintained, new policy fields such as climate change failed to open up.

Layzer (2012) adopted a less positive tone: while direct attacks tended to fail, US conservatives profoundly reshaped the ground on which the battle is being fought, disseminating “a compelling antiregulatory storyline to counter the environmentalist narrative” (Layzer, 2012, p. 4), undermining both the value of Federal government intervention and of protecting the environment through regulatory tools, reframing these first as “command and control” (*Ibid.*, p. 60) in the late 1970s then as ‘red tape’. Layzer (2012, p. 4) argued conservatives used the “language of reason and moderation” and “procedural requirements such as cost-benefit analysis, risk assessments [...] and regulatory review—to discourage new regulations”. Particularly at risk are biodiversity rules, as the contradictory objectives of preserving nature and fostering development are both in the rulebooks.

Hence US environmental policy dismantling research offers a cautionary tale, stressing the great numbers of venues in which environmental policy is decided, the impact of negative framing of environmental regulation, and the potential for gradual, yet significant change.

### 2.2.2 Policy dismantling in Europe

Hanf’s (1989) study of the Dutch government’s deregulation agenda in the early 1980s offers a greatly different tale compared to Reagan’s frontal attacks on US environmental regulations in the same period. Although in the Netherlands, as in the USA, deregulation of environmental provisions concerned “the streamlining and reduction of regulations having an impact on economic development,” the Dutch government “made clear from the

start that deregulation was not to be equated with the simple abolition of existing rules” (Hanf, 1989, p. 197). The government rationale behind deregulation was that “increasing density of regulations had led to a situation in which those at whom the rules were directed were becoming increasingly confused as to what government granted as rights and imposed as duties” (Hanf, 1989, p. 195). Eventually, what happened in the Netherlands was not so much policy dismantling, as a regulatory reform – or what Peters and Hogwood (1985) qualify as “policy succession”.

Research on dismantling in the 1990s and early 2000s in Europe centered on welfare state retrenchment (Pierson, 1994, 2002; Green-Pedersen, 2004) and changes to the regulatory state: the privatisation of utilities (Lodge, 2008; Thatcher, 2004), role of executive agencies (Thatcher, 2005), and the development of regulatory impact assessments (Adelle, Hertin, & Jordan, 2006). But the early 2010s saw a renaissance of dismantling studies in general – and of environmental case studies in particular.

In European environmental dismantling studies, the focus remains on the national level, although the EU is mentioned as either furthering or hindering national policy dismantling. Bernauer and Knill (2012) look at German recycling policies and at the difficulties to dismantle an ineffective but popular policy. Dismantling a “green” policy – even a bad one – was deemed too costly by politicians from various parties, and as such only limited dismantling took place, capitalising on the opportunity offered by the harmonization of EU waste rules to shift blame to the EU level (Bernauer & Knill, 2012, p. 163). The EU plays a different role in an analysis by Jordan and Turnpenny (2012): whereas in the German case EU rules enabled partial dismantling of a problematic domestic policy, in the British case the cause of grievance is a set of EU water policies. When faced with their bad implementation record – and rising non-compliance costs – the British authorities tried to dismantle specific EU water policies but failed to build a winning coalition at EU level to do so.

What these few case studies highlight is the great variety of forms policy dismantling can take. As Hancher and Moran (1989) argued more than twenty years ago “it is a truism that deregulation, like regulation, has a location – a location in space, a location in time and a location in particular economic and political settings”; but it is a truism

worth keeping in mind. These different case studies offer a glimpse of factors – institutions, respective weight of different political parties, ideologies – that can play a role in shaping policy dismantling. What role do these factors, amongst others, come to play in environmental policy dismantling at EU level?

## 2.3 Environmental policy dismantling in the EU

The history of EU environmental policy is an example of EU technocratic task expansion or “creeping competences” (Pollack, 1994; Benson & Jordan, 2014): despite the absence until the Single European Act of 1986 of a specific EU competence regarding the environment, the EU has legislated on environmental matters since the early 1970s. After acquiring its own Treaty base, environmental policy has been a booming field characterized by strong policy expansion. The run-up to the Single Market in 1992 motivated a great expansion all kinds of EU level policies, and notably environmental ones (Knill & Liefferink, 2012).

But the aftermath of the Maastricht Treaty in 1992 opened a complex period for EU environmental policies (Hey, 2005): while D. Vogel (2003) describes the early nineties as the period when Europe wrestled the environmental leadership title from the USA, opinions on environmental policies were clearly divided in Europe. Although NGOs, amongst others, argued EU environmental policy was doing *too little, too slow*, others contended it was doing *too much, too fast* and raised the alarm that it impinged on Member States’ sovereignty (Golub, 1996), and/or stood in the way of EU competitiveness (Wilkinson, Monkhouse, Herodes, & Farmer, 2005). These latter concerns fed calls for cuts in existing policies, preventing further expansion, and favoring the development of market-based policy instruments (Jordan, Wurzel, Zito, & Bruckner, 2003).

### 2.3.1 Interconnected challenges to EU environmental policies

From this “green backlash” of the nineties (Paterson, 1999) we can distinguish different phenomena affecting EU environmental policies. Three out of the four potential challenges to EU legislation outlined in Chapter 1 (Figure 1.1, p. 10) can be found in the EU environmental policy literature: non-implementation, obstruction and halt of further policy expansion and finally policy dismantling. They differ in terms of targets – existing

or future policies – as well as in terms of arena – domestic or EU level.

Interestingly, whereas policy dismantling – unravelling existing rules – may appear more threatening to the EU’s standing as a green power than the uneven implementation of these same rules, research has given much more attention to non-implementation, and to a lesser extent obstruction, than to policy dismantling.

Environmental policies have been a key area of study for research on implementation in the EU, and remain to this day the “area where most infringement cases remained open” (ENDS Europe, 2015a). Over the last twenty years, studies explored why (goodness of fit, political choice, administrative structures) certain Member States possessed a less pristine implementation record than others (with the development of notions such as green “leaders and laggards” (Börzel, 2003; Knill, Heichel, & Arndt, 2012)), and how European institutions tried to make them comply (Panke, 2007; Tallberg, 2002), yet sometimes failed to do so (Börzel, Hofmann, & Panke, 2012). Some have moved beyond checking for correct transposition of EU rules and have investigated “real” application of EU rules on the ground (Versluis, 2007). Far from remaining a “black hole” (Mastenbroek, 2006), implementation is one of the best studied questions posed by European integration.

The development of studies applying comparative political theories to the EU (and treating the EU as a “normal polity” (e.g. Hix, 1998)) since the early 1990s has lead to a growing number of studies investigating how European actors behave in the EU decision-making process, and how the rules of the game impact their political strategies. With regard to environmental policies, studies have covered the negotiation strategies of green Member States for the Amsterdam Treaty (Liefferink & Andersen, 1998), research on new Member States and the environment (Skjærseth & Wettstad, 2007; Inglis, 2004); studies on the move to the right of the European Commission under Barroso and its decreasing integrationist mission (Dehoussé & Thompson, 2012); or on how the European Parliament’s position on green affairs has been changed by the last two Eastern enlargements (Burns et al., 2012). These studies paint the picture of EU environmental policies having gained in maturity – and of European actors decreasingly keen to set and reach ambitious environmental targets – such as regarding climate change policy after the Copenhagen summit (Jordan, Asselt, Berkhout, & Rayner, 2012).

The study of these two other challenges can be very useful for the study of environmental policy dismantling in general, in that it provides a better understanding of actors' rationales and institutional constraints regarding environmental policies. Furthermore, because in certain cases these studies combine implementation and dismantling (Jordan & Turnpenny, 2012) or obstruction and dismantling (Jeppesen, 2000; Golub, 1996), they help identifying when policy dismantling was high on the EU political agenda.

### 2.3.2 Policy dismantling: the existing literature

Three key periods stand out in the existing EU environmental policy literature, periods during which the environmental *acquis* has been up for (re)negotiation. A first key juncture is the subsidiarity debate, taking place between the 1992 Maastricht and 1997 Amsterdam Treaties, leading to calls for, and fear of, a “green backlash” (Paterson, 1999). Although research tackling this period focused on sovereignty issues (see for example Golub (1996); van Kersbergen and Verbeek (1994); Collier (1997)) epitomized by the ‘hit list’ drawn up by the British, French and German governments and the Commission itself; the costs incurred by businesses were also mentioned, becoming the topic of the 1995 EC-commissioned Molitor report on competitiveness. The different ‘hit lists’ mentioned both existing legislation and proposals for new policies – hence the risk for both policy dismantling and obstruction. But there is a tendency in the literature to focus on the later: hence Golub (1996, p. 699) expects that “the subsidiarity principle could potentially produce fewer EU environmental proposals, a removal of some previous as well as pending proposals, and a general shift in EU environmental proposals towards greater national discretion”. Similarly, Pollack wonders whether growing pressures have meant a “major retrenchment, or even devolution, of EU policy-making” (Pollack, 2000, p. 519) before measuring changes solely in the rate of adoption of *new rules*. Jeppesen (2000) argues that “subsidiarity has been quite successful in reducing the overall volume of Community proposals”, while Jordan and Turnpenny (2012) contend that the British ‘hit list’ is more a matter of implementation than of policy dismantling. When policy dismantling is mentioned, it is to stress that it failed: in the words of Ward (1997, p. 180), “we have yet to see a bonfire of regulation or widespread repatriation of legislation.” Findings regarding that period of policy dismantling then appear to be mostly limited to assertions, often untested,

while attention was targeted on challenges to further policy expansion.

From the mid-nineties onward, the subsidiarity debate evolved into a discussion on “better law-making” (Jordan & Jeppesen, 2000), punctuated by the Commission’s annual report on its application of the subsidiarity and proportionality principles. Dismantling regained prominence with the launch of the “Better Regulation” initiative in the wake of the EU Lisbon Strategy – and its subsequent relaunch – in the 2000s. Although better regulation is in principle about regulatory *quality*, and not, as with deregulation specifically about regulatory *quantity*, the distinction between the two is sometime difficult (Tombs & Whyte, 2012), prompting concerns about the “real” purpose of this agenda. Is this agenda *really* about better regulation, or is it about less regulation – especially in the environmental, but also social policy sectors (Hjerp, Homeyer, Pallemaerts, & Farmer, 2010; Kellett, 2008; Van den Abeele, 2010)? The type of policy instrument to use was also debated, with growing interest at EU level in the use of New Environmental Policy Instruments (NEPIs) (Jordan et al., 2003). Research on better regulation is very interested in the discourses and processes used to review existing legislation and to better prepare new rules (regulatory impact assessment (RIA) in particular) (Radaelli, 2005), envisioning better regulation as a form of “meta-regulation” with which “steer the process of rule formulation, adoption, enforcement, and evaluation” (Radaelli, 2007, p. 191). The uptake of these new processes, and their impact on new policies has led to a number of studies, many of which are doubtful of the impact of the Better Regulation agenda. Hence Radaelli and Meuwese (2009, p. 644) contend that “Better regulation discourse is much more popular than better regulation activities” while Löfstedt (2007, p. 437) wonders whether better regulation is “just rhetoric”. Although some literature does focus once again primarily on expansion – such as Hjerp et al. (2010) who examine “how better regulation approaches have shaped the implementation of the objectives set out in the 6EAP in the process of their translation into legislative measures” – others such as Löfstedt (2007) do address policy dismantling, stressing discontent within the Commission when faced with Commissioner Verheugen’s deregulation agenda, and its limited results.

The limited uptake of new instruments, often in addition and not instead of “old” instruments, and their own failings highlight that NEPIs may not be the solution to EU environmental policy challenges (Jordan, Wurzel, & Zito, 2013). Hence after a decade,

EU environmental policy has again come under the fire in the wake of the financial – then Euro – crises of the late 2000s (Feindt & Cowell, 2010). Commissioner Potočnik warned that “in the current economic climate, there is a real danger that environment is seen as a luxury we can no longer afford” (2012, p.xvii). This warning was substantiated by press reports (e.g. ENDS Europe, 2008, 2012) – of proposals stalled in the Commission, of Ministers calling for loosening of environmental rules, and of the on-going hunt for ‘red tape’ at EU level – making the years since the onset of the financial crisis a third period of intense pressure on EU environmental policies identified in the existing literature.

The picture of EU environmental policy dismantling drawn from the existing literature does not portray policy dismantling as an important or frequent challenge to the environmental *acquis*. The rare studies that do look at policy dismantling tend to agree that it lacks a real bite – and is mostly rhetorics. They further focus on three periods of high – but short-lived – political pressure. But does this mean that policy dismantling at EU level is a non-event? Or does the very limited empirical research, and the number of unsubstantiated claims, highlight that policy dismantling has until now not been properly investigated?

## 2.4 Why so few studies of EU environmental policy dismantling?

Rosamond (2006) argued that we can read the evolution of a field of study – EU studies in particular – according to two different perspectives, internal and external. In his internal perspective, “the trajectory of EU studies in general, and its theoretical repertoire in particular, is a function of the changing nature of the EU over time” (Rosamond, 2006, p. 20). The absence of findings on policy dismantling – and more importantly of theoretical developments – simply means that there was no demand for such a theory/research activity. But the calls for dismantling mentioned notably in Golub (1996), Jeppesen (2000) and Hjerp et al. (2010) testify to intense discussions on dismantling at EU level, which undermine this explanation.

Rosamond’s external perspective tells a different story in which policy dismantling at EU level may be impossible to measure, or even to conceive. Crucially he stresses that “how we read the evolution of the EU is a function of the intellectual lenses we use”

(Rosamond, 2006, p. 21). While a given theory can explain a certain phenomenon, it may render us blind to other phenomena. This contention is central to my understanding of the limitations of research: researchers cannot know everything, and what they know is in part shaped by their own biases. Using this external perspective, I argue that the intellectual lenses used until now – on EU environmental policies in particular, but on EU policies in general – may have failed to capture and explain policy dismantling. In particular, two distinct problems appear: whether policy dismantling at EU level has proven *elusive*, or whether it has been simply *unconceivable*.

### **2.4.1 An elusive phenomenon?**

The first obstacle to the study of EU-level dismantling is a problem faced by students of policy dismantling in general – its elusiveness, the difficulty to capture evidence of it. This difficulty may be compounded by the hyper-consensual nature of the EU's political system (Hix, 2006) and its complexity (Schmitter, 2005) which may render policy dismantling both more difficult to achieve than in unitary state settings but also harder to capture as it encourages diffuse responsibilities and blame avoidance (Pierson, 1994). Considering the elusiveness of policy dismantling raises questions of research design – has evidence of EU policy dismantling fallen through the cracks in of the current EU (environmental) literature? This question is addressed by looking at the time-length studied, the actors considered and the dependent variable(s) chosen.

#### **2.4.1.1 A narrow focus on short-term changes**

A common problem encountered in the literature regarding environmental policy dismantling is a focus on short-term changes in policy outputs. Policy expansion is easy to identify: the evolution of the rate of policy expansion – corrected or not for the “importance” of policies introduced – is a popular illustration (e.g. Jordan, 2000; Pollack, 2000), supporting findings that Member States have managed to slow down the EU green regulation machine (Golub, 1996; Jeppesen, 2000). Compared to these findings, the small changes found in most policy dismantling case studies may appear tepid – a story of “housekeeping” measures (Löfstedt, 2007) of no particular interest. But this early dismissal of policy dismantling is problematic for many reasons. First, what appears to be

a small change today may well in retrospect have been the first building block of a major policy change (Howlett & Cashore, 2009). This stresses the importance of the *time* dimension in public policy analysis (Capano, 2009, p. 12).

In order to capture gradual changes, policies need to be followed over long periods of time. While the work of amongst others Pierson (1996) has done this for welfare policies, environmental policies were for long too immature a policy field to allow for such long term studies. But this is not the case anymore. US environmental policy dismantling has been studied over the long run: *e.g.* Layzer (2012); Klyza and Sousa (2013) both study changes to US environmental policy since its golden age in the 1970s. EU environmental policies have now matured (Jordan & Adelle, 2012), and we are at an opportune time to study whether and how policy dismantling has taken place – with more than 20 years since the subsidiarity crisis following the Danish ‘no’ to Maastricht. Yet in most cases impact of policy dismantling efforts on policies continues to be assessed over a very short period (Golub, 1996; Hjerp et al., 2010), missing what may be an iterative, on-going process.

#### **2.4.1.2 A limited range of empirical studies**

A second problem found in the literature is the choice of case studies. The existing literature on policy dismantling has until now focused on a handful of actors and cases of very public policy dismantling. Hence, with regard to the subsidiarity debate, focus has been on the United Kingdom (Golub, 1996; Jordan, 2000; Jordan & Turnpenny, 2012); although a French and a German ‘hit list’ were also published, no study analyses French or German actions during the ‘hit list’ saga to the same extent it has been made for Britain (Berny, 2011; Wurzel, 2002). Similarly the Commission is only superficially studied, with interest more on Delors’ Presidency and changing discourses than on whether the Commission as an institution was supporting or opposing policy dismantling, and on what kind of legislation or sector of policy (Golub, 1996). Research on “better regulation” follows a greater range of actors, highlighting the tensions between different DGs inside the Commission, and stressing the pioneer roles of key Member States such as Britain and the Netherlands (Radaelli, 2007; Van den Abeele, 2010; Löfstedt, 2007). But there has been only limited comparisons of the two periods (*e.g.* Jordan & Turnpenny, 2012) and no follow up over time of the development of the “better lawmaking”, then “better regulation” agendas and

reports within the European Commission (e.g. Jeppesen's (2000) study stops in the late 1990s). With regard to cases, water policies – in the 1990s – and waste policies – in the 2000s – have received most of the interest, leaving large parts of the environmental *acquis* out. Yet during these different periods lists of “problematic policies”, targeted by policy dismantling, have been produced: e.g. ‘hit lists’, better regulation inventory of policies, inventory of policies with high administrative burdens *etc.*, which go beyond these two policy sectors.

#### 2.4.1.3 The dependent variable problem in policy research

How we define the dependent variable, or the *explanandum*, is a key issue in retrenchment studies, and more broadly in the study of policy change. It raises the fundamental question of “what changes when policy changes” (Real-Dato, 2009, p. 121), an apparent simple question but which has profound epistemological consequences (Capano, 2009, p. 8), shaping the variables we use, the way we perceive change, and the methods of study and the type of data that is appropriate:

*First, what should be measured in empirical investigations? In other words, what should the theoretical definition of retrenchment be? Second, how can retrenchment actually be measured?*

(Green-Pedersen, 2004, p. 4)

There are multiple ways to define the dependent variable in dismantling studies: Green-Pedersen (2004) argues retrenchment can be seen as “cut-backs”, to be investigated by either changes in policy outputs or outcomes, or “institutional changes”, in the “institutional structure of Welfare States” (2004, p. 9), taking into account some of the multidimensionality of dismantling (Bonoli & Natali, 2012a). To these two possibilities, Real-Dato (2009, p. 122) adds a third one arguing that “policy change could be assessed by examining the variations along time of the different empirically observable components of policy designs”. Bauer et al. (2012a) add a fourth possible dependent variable, dismantling strategies:

*It is [...] the (contested) decision whether or not to dismantle and the subsequent selection and use of a dismantling strategy that we principally focus on, and not on the long-term effects of dismantling.*

(Bauer & Knill, 2012, p. 33)

These different dependent variables matter crucially – not only may different dependent variables require different types of data to be studied, but different variables may lead to very different answers to questions such as whether policy dismantling is taking place. Hence Green-Pedersen (2004, p. 11-12) argues that “the same change may be evaluated differently from the two perspectives” – one may find evidence of policy dismantling while the other may not.

This means that the choice of dependent variables can circumscribe whether one finds any evidence of policy dismantling. For example, Schimmelfennig, Leuffen, and Rittberger (2015, p. 768) contend that “European integration is a story of growth in integration. There are periods of accelerated growth (the 1950s and the 1990s) and periods of relative stagnation (the 1970s and 2000s) but no rollback”. But does such a statement mean that policy dismantling never occurred at EU level? Not necessarily. Crucially, it focuses only on whether policies were integrated or not – hence Schimmelfennig et al. (2015) are interested in the institutional arrangements behind policies (the level of governance responsible for decision-making, the decision-making rules) and not in the *content* of these policies. An environmental directive could have been emptied of its substance and yet not recorded as ‘rolled-back’ as long as the institutional arrangements overseeing environmental legislation in the EU Treaties remained the same.

How to define and measure the content of policy is also highly debated. Hence, Howlett and Cashore (2009, p. 37) argue that “existing taxonomies designed to measure policy conflate very different forms or elements of policy”, highlighting “the need to precisely disaggregate different elements of policy in order to construct accurate models of policy dynamics”. Existing dismantling studies tend to focus on changes to key elements of a regulation – e.g. the number of pollutants measured in water – not on changes to the regulation as a whole or to all of its components. As such changes to what Bauer et al. (2012a) call “formal intensity”, *i.e.* administrative capacity and rules overseeing implementation are a blind spot in recent dismantling studies (e.g. in Knill et al., 2014; Steinebach & Knill, 2016). But the growing interest at EU level for administrative burdens reduction (European Commission, 2009a) highlights that changes to administrative elements of regulations may be an increasingly common form of policy dismantling.

Hence policy dismantling – attempted and/or successful – of EU environmental policies may still be ‘out there’: the existing literature has adopted an overly narrow outlook on policy dismantling, focusing on a handful of actors and cases, over a short period of time. This section has shown how research designs may affect whether policy dismantling is observable, and which types of policy dismantling may be measurable.

## **2.4.2   Simply inconceivable?**

### **2.4.2.1   Dismantling as inconceivable in EU studies**

In a seminal article, Puchala (1971) compared different theorists of integration to blind men describing an elephant based on which part of the animal they touched. Oblong like its ears, long and slender as its trunk – each theorist failed to grasp the full “nature of the beast”, but crucially, “each man had gained enough evidence from his own experience to disbelieve his fellows and to maintain a lively debate” (1971, p. 267). In terms of theory development two ways were then open: either to develop a theory able to explain the whole beast, or to compartmentalise into different questions, or different focus areas. The latter choice appears to have won, as “almost everyone recognises that no single theory or approach can explain everything one would like to know and to predict about the EU” (Schmitter, 2005, p. 268). Peterson (2001, p. 289) put forward a key proposal for a varied theoretical portfolio, arguing that developments in EU studies were about “developing theories that do not compete so much as they aim to explain distinctly different pieces of the EU puzzle”. He divided the field between those looking at the “super-systemic” “history-making decisions” such as Treaty change; those looking at “policy setting decisions” concerned with the working of the EU as a political system producing legislation and those looking at “policy shaping decisions” at a “sub-systemic” level in executive committees and expert groups (2001, p. 296).

While the 1990s have been marked by a profound “governance turn” (Kohler-Koch & Rittberger, 2006) or “domestic turn” (Tortola, 2015) in EU studies – a focus on the EU as a political system – the multitudinous recent crises (2008-2015) have raised questions of European integration, putting its future direction and shape back on the research agenda (Tortola, 2015, p. 129). This is evidenced by a growing interest in Differentiated Integration studies (*e.g.* Schimmelfennig et al., 2015) and Disintegration (*e.g.* Webber, 2014).

But where does the possibility of dismantling at EU level sit within the field – is policy dismantling conceivable within the principal EU studies approach?

#### **2.4.2.2 Dismantling European Integration?**

A first place to look is at the top – *i.e.* at the history-making decisions – and in particular at the debates between neofunctionalists and intergovernmentalists. Scholars of the two schools argued whether these decisions were better explained by a functional spill-over which meant that growing inter-dependencies between European economies would lead to task expansion in the Treaty followed by policy expansion; or by Member States' own independent national interests.

While neofunctionalists are intimately linked to the notion of spill-over, they did not necessarily consider it an inevitable process. Thus, with regard to neofunctionalism, the idea of “politicization” of EU affairs – *i.e.* “the likelihood of increasing controversiality and difficulty in reaching agreement, as the process expanded to affect more actors and adjacent issue arenas” (Schmitter, 2005, p.261) is particularly interesting. It shows how this theory – based on the idea that actors, thrust together working in or around the same international organisation, would come to slowly reformulate their interests – is not blind to the possibility that “interests and values considered salient and positively linked to integration may give way to different interests and to values with a more equivocal impact on integration” (Haas, 1975, p. 8 cited in Rosamond, 2005, p. 242), and thus to dismantling – which could be linked to spillback and other concepts developed by later neofunctionalists (Malamud, 2010). On the other side of that debate, (liberal) intergovernmentalists argue that big Member States remain the key players of the EU game, and that their preferences are determined nationally (Moravcsik, 2005). In that respect liberal intergovernmentalism appears to fit very well with a certain narrative that dismantling attempts happen when Member States revolt against cumbersome rules curtailing their competitiveness as much as their sovereignty (such as during the subsidiarity crisis of the early 1990s (Golub, 1996)). Thus the notion of policy dismantling at EU level fits well with those two founding theories of EU studies – the notion of policy dismantling at EU level is perfectly *conceivable* at the super-systemic stage.

Interestingly, recent debates on European Integration are divided on the importance or

likelihood of dismantling: hence, discussing Differentiated Integration, Schimmelfennig et al. (2015, p. 768) contend that “European integration is a story of growth in integration” with “no rollback”, while one of the six hypotheses underpinning the recent New Inter-governmentalism research agenda is that “supranational institutions are not hard-wired to seek ever-closer union” (Bickerton, Hodson, & Puetter, 2015, p. 712).

#### 2.4.2.3 Dismantling in the EU political system

A different picture emerges if we look at literature focusing on the EU as a polity (Pollack, 2005), interested in the policy-setting or policy-shaping decisions. In that respect the key debate is whether the EU is a unique body, a new form of governance – or whether we can consider it as a “normal political system” (Kreppel, 2012, p. 636).

Key elements of the EU as a *sui generis* system narrative appear to go against the possibility of dismantling at EU level. A first issue regards the division of tasks between the EU and its Member States in a system of multi-level governance. Majone (1999) presents the EU as a regulatory state. While its component Member States remain welfare states and do not pull together redistributive policies at EU level, the EU develops regulations for all, in a technocratic fashion aimed at Pareto optimality and output legitimacy. As it is the EU’s task to produce good regulations acceptable by all, why would there be policy dismantling? Furthermore policy dismantling, if it happens, should happen in the Member States, with the EU understood as an external force enabling (Knill et al., 2009; Bernauer & Knill, 2012) or hindering (Jordan & Turnpenny, 2012) domestic policy dismantling. In this perspective, the EU is “an important forum for the diffusion of deregulation between the member states.” (Hancher & Moran, 1989, p. 134). Positive integration (Scharpf, 1996), *i.e.* the replacement of diverse national rules by a common European rule, means that policy expansion at EU level is built on policy dismantling in its Member States.

The key Treaty commitment for an “ever closer union among the peoples of Europe” has long been interpreted as meaning continued expansion in EU level policy-making, with a process of “creeping competences” to EU level (Pollack, 1994, 2000). How widely a notion such as “ever closer union” is shared matters – especially if, as in Rosamond’s (2006) internal perspective, scholars focus on the debates and issues animating political actors at EU level. If “ever closer union” is not questioned, it may become the “desired

end state” in a teleological model of policy change (Capano, 2009, p. 10), in which the logical and expected result of policy change is ever further expansion – what Scheller and Eppler (2014, p. 6) calls the “normative bias” in EU studies. Hence, Schimmelfennig et al. (2015, p. 765) argue that in EU studies “the issue has been why and under what conditions the EU deepens or widens and what this tells us about its nature”.

A second issue concerns the motivation of EU actors. In that perspective, the European Commission and European Parliament are presented as having “broadly similar” preferences, “namely to increase the scope of European integration and to maximize its own influence in EC policy-making” (Pollack, 1994, p. 102). Even if some Member States were pushing for policy dismantling, how could this happen if the Commission, the only institution able to propose legislation, would always oppose it? And if it were to be proposed, how would it go past the “unquestionably green” (Golub, 1996) and pro-integration European Parliament, now co-legislator with the Council of the European Union on most pieces of legislation (Hix & Høyland, 2013)? These two obstacles make policy dismantling at EU level hard to conceive.

Yet these obstacles to seriously considering dismantling at EU level are lessened if we look at the EU as an increasingly normal political system producing legislation. The growing powers since the early 1990s of the European Parliament have led to a greater politicisation of EU decision-making (Hix & Høyland, 2013): not all discussions at EU level are organised around a pro- and anti-EU integration cleavage; other cleavages such as left/right matter (Peterson, 2001, p. 292). This means that debates at EU level are not limited to whether the EU should regulate, but also cover issues such as how much, using which kind of instruments, and for how long. As literature on policy dismantling in the USA has shown, changes in political majorities are key factors in explaining policy dismantling (Ragusa, 2010; Berry et al., 2010). Could the change in political colours in the Council and Parliament lead to dismantling of pieces of legislation agreed by their predecessors? This move toward left/right dynamics also affects the European Commission. If we understand the Commission as both an actor and an arena in which different Directorate Generals vie for political support (Dimitrakopoulos, 2004), we can identify a potential conflict between DG Environment (trying to regulate polluting activities) and DGs working on different economic sectors (Agriculture, Enterprise and Industry, Fisheries, *etc.*)

that will feel keenly the economic costs of environmental legislation and will try to reduce these costs (Kassim et al., 2013; Hartlapp, Metz, & Rauh, 2014). The Commission has been increasingly politicised over the last 15 years (Wille, 2012), as indicated by the growing number of former ministers in the college of Commissioners. This change has gone hand-in-hand with a move to the right at Commissioner level and toward euroscepticism and intergovernmentalism in its staff (Dehousse & Thompson, 2012) – undermining the idea that the Commission would *automatically* stop any attempts to cut back policies. Similarly, the European Parliament has moved to the right (Hix, 2007) and away from environmental activism (Burns et al., 2012; Burns, Rasmussen, & Reh, 2013).

To conclude, while policy dismantling at first appears to be at odds with conventional expectations of EU actors' preferences and actions, the growing politicisation of decision-making at EU level makes the discussion of the direction of policy change – and thus the possibility of policy dismantling – very likely. Kreppel (2012, p. 638) contends that, as the EU is “now more generally understood as a political system [...] it can and should be studied from a variety of perspectives”. One of these perspectives is policy dismantling: if the EU is an increasingly normal political system, then we need to start considering dismantling at EU level.

#### **2.4.2.4 Environmental policies as an unlikely target**

While EU policy as a whole may be hard to conceive as a dismantling target, EU environmental policies is particularly unlikely. In their review of work on policy dismantling Jordan, Green-Pedersen, and Turnpenny (2012) present how welfare retrenchment literature and work on utilities reform have dominated the field for now – a rare exception being the work of Coleman, Atkinson, and Montpetit (1997) and Sheingate (2000) on agricultural policies. Following Pierson (1996) on “the politics of blame avoidance,” research on policy dismantling focused on explaining why politicians pursued “politically risky reform” (Vis & van Kersbergen, 2007) – such as cutting down redistributive programmes or privatising state-owned companies. The idea that regulation can also be the object of policy dismantling is not really new – regulations, even environmental ones, were parts of the case studies regrouped in Hancher and Moran (1989) – but was a decidedly minor object of study until Bauer et al. (2012a).

Nonetheless, the lack of limited environmental policy dismantling research is not down to policy dismantling scholars alone – it also denotes a clear lack of demand and interest from environmental policy scholars. Paterson (1999) highlight how the idea of a “green backlash” drew outrage and incomprehension among environmentalists. He argues that there is a sense “still pervasive within environmental movements, that since responding to the ecological crisis and creating sustainable societies is in everyone’s interests, there can be no legitimate reasons for opposing the goals of environmentalists” (1999, p. 183). What opposition there is is labelled “as irrational and ultimately futile” (*Ibid.*). This refusal among many environmentalists to present greening as a choice and an object of debate instead of a certainty can impact how students of environmental policy and politics conduct their research. It effectively reduces environmental policy dismantling to a futile, illegitimate phenomenon – not worthy of study.

Finally, environmental policy dismantling seems especially unlikely at EU level. The EU level is keen to be portrayed as a “Green Europe” (Lenschow & Sprungk, 2010; Manners & Murray, 2016), and its environmental policies are relatively popular with European citizens (European Commission, 2014a). While the EU’s relatively green image may appear to be an impediment to EU environmental policy dismantling, the paradoxical nature of policy dismantling – why political actors follow such a risky path – is at the very heart of dismantling research (e.g. Vis & van Kersbergen, 2007; Giger & Nelson, 2011). EU environmental policies would not be the first “popular” policies to be dismantled (or targeted for dismantling).

As with EU level policy dismantling in general, obstacles to environmental policy dismantling appear to be receding. Not only has the American example of Reagan’s attacks on the EPA (Cook & Polksky, 2005) shown us that it is possible, but if we agree with Paterson that “the simple narrative of progress in responding to environmental change cannot be presumed” (Paterson, 1999, p. 187), then political debate on environmental policies – and potential policy dismantling – cannot be ignored, in all sorts of political systems. Intense discussions in the years following the financial and Euro crises on whether Europe should expand or retract its environmental policies are a clear sign that environmental issues are political issues at European level (Warleigh-Lack, 2010b; Potočnik, 2012).

## 2.5 Conclusion

Environmental policy dismantling has made the news in the USA since the eighties under Reagan's presidency (Cook & Polsky, 2005) – and did so again under George W. Bush (Korte & Joergens, 2012). At EU level environmental policies have regularly been “up for grabs” (ENDS Report, 1992b) over the last twenty years. Yet research on environmental policy dismantling – excepting a handful of pioneers such as Hanf (1989) – is only just starting (see for example Bauer et al., 2012a; Layzer, 2012). Academics interested in dismantling have tended to focus on redistributive policies, while environmental policy researchers tackled other challenges, especially at EU level: the lack of implementation, falling rates of policy expansion *etc.* This chapter attempted to explain the lack of research on EU policy dismantling by shedding light on two issues – whether EU policy dismantling had proven too *elusive*, or whether it was simply *inconceivable*.

Research on policy dismantling in other settings has long discussed difficulties in agreeing how to define and measure it. These difficulties are compounded by the complexity of the EU political system. In particular, this chapter highlighted three different obstacles to taking EU policy dismantling seriously and offered correctives to each: first, the consensual nature of EU politics and the relative popularity of EU environmental policy – but the difficult or counter-intuitive nature of policy dismantling is not specific to the EU, and has long animated debates within retrenchment studies (Giger & Nelson, 2011; Vis, 2009). Second, the notion that supranational actors would always oppose policy dismantling – but research on the European Parliament and the European Commission over the last decade have repeatedly questioned this conventional belief (e.g. Burns et al., 2012; Hartlapp et al., 2014). And finally, theoretical blinkers within EU studies, which made policy dismantling not necessarily elusive, but difficult to conceive. Hence, this chapter discussed the prevalence of a linear, teleological model of policy making, toward ever-closer union – yet as EU studies gradually consider the EU as “just another political system” (Kreppel, 2012, p. 638), the inevitability of ever closer union is more and more questioned (e.g. Radaelli, 2014; Schimmelfennig et al., 2015; Bickerton et al., 2015).

Thus, dismantling research at EU level is faced not only with well-known problems of elusiveness – stressing the need for careful research design, in particular considering

the choice of case studies and dependent variables – but also with the weight of a EU Studies corpus which has long considered further integration and policy expansion as the sole logical outcome of the European project (Schimmelfennig et al., 2015). The following chapter sets out how this thesis rises to this particular challenge, in building on the theoretical framework proposed by Bauer and Knill (2012), in structuring the empirical analysis and in selecting the methods.



# Chapter 3

## Capturing policy dismantling: theories & methods

How one approaches EU policy analysis is shaped *inter alia* by beliefs, ideas, familiarity and personal experience. Individual perceptions about what the EU is about – its rationale, purpose, direction and ultimate goals – will indelibly colour one's research findings.

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Versluis et al. (2011, p. 3)

### 3.1 Introduction

This chapter sets out the research design underpinning the rest of the thesis, which was first introduced in Chapter 1. Research design is a “set of decisions we take in order to reduce bias” (Maggetti et al., 2013, p. 10) – and is concerned with building coherence and connections between a variety of research elements such as the real world problem analysed, the research questions asked, the theories mobilised, the chosen methods, the choice of delivery medium and research ethics.

Chapter 1 sketched out the overall approach followed in this thesis. This chapter goes back in more detail to three central elements of research design, building on the gaps and limits in the existing literatures presented in Chapter 2. It addresses concerns regarding,

amongst others, the narrow case studies previously studied and the choice of dependent variables, to set out how policy dismantling at EU level will be studied in this thesis.

Section 3.2 presents the analytical framework which will guide the analysis of EU policy making and discusses its application and adaptation at EU level. Section 3.3 explains how the two dependent variables will be studied in the empirical part of the thesis. Three chronological case studies of EU environmental policy dismantling in the 1990s, 2000s and 2010s will be followed by a longitudinal analysis of changes to policy outputs (and not outcomes) across the three decades. Finally, Section 3.4 describes the types of data used to support the empirical chapters and subsequent analysis – documentary analysis, elite interviews, coding of policy change – and reflects on the methods mobilised to collect these data.

### **3.2 An analytical framework for studying policy dismantling at EU level**

The thesis applies Bauer & Knill's theoretical framework to the EU (Bauer & Knill, 2012, 2014). As argued in Chapter 1 and 2, I chose in this thesis to adapt and test an existing comparative politics framework instead of developing an EU-dismantling framework based on European Integration literature. This choice was grounded first in an effort to not contribute to concepts over-proliferation, second in the understanding that evidence of dismantling is hard to capture (Green-Pedersen, 2004) and requires a framework tailored to this task. Bauer & Knill's framework was chosen – against for example the approach developed in US dismantling studies, (e.g. Ragusa, 2010; Klyza & Sousa, 2013) – for its flexibility: used for both social and environmental policies, across diverse political systems (Bauer et al., 2012a), used in conjunction with both quantitative (Jensen, Knill, Schulze, & Tosun, 2014; Knill et al., 2014) and qualitative data (Bauer et al., 2012a). This thesis tests Bauer & Knill's adaptability to another political system, and another level of governance than those studied in the original book Bauer et al. (2012a). While “different frameworks probably differ with regard to the political systems they are suited to analyze” (Zohlnhöfer, 2009, p. 111), where and when a framework may be successful cannot always be decided *a priori*. Instead, “the bounds of applicability [...] should be assessed by empirical analysis” (Henry, Ingold, Nohrstedt, & Weible, 2014, p. 102).

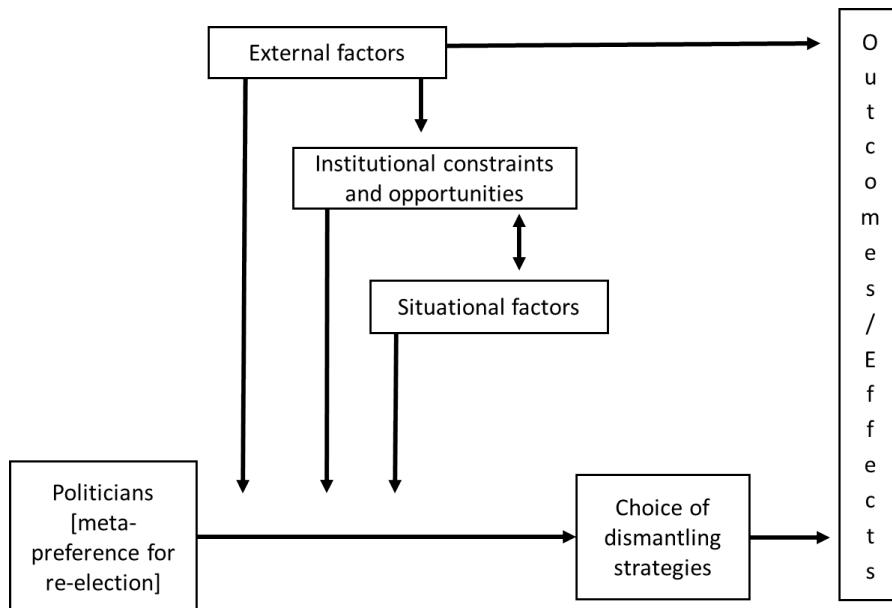
The framework is composed of three different main elements. First, an understanding of policy outputs built on Knill, Schulze, and Tosun (2012), which makes the distinction between policy density and intensity. Second, an understanding of dismantling strategies, building on Welfare State retrenchment literature, and the duality between credit claiming and blame avoidance (Bauer & Knill, 2014). Third, the analytical framework itself, linking actors, opportunity structures, dismantling strategies and policy outputs. Since Bauer and Knill (2012) published their framework, there has a number of contributions to the development of the two first elements, *i.e.* how density and intensity should be measured (Schaffrin, Sewerin, & Seubert, 2014, 2015; Steinebach & Knill, 2016) (further developed in section 3.4.3, 63) and the type of strategies followed (Jordana, 2014; Jensen et al., 2014; Wenzelburger, 2014; Vis, 2016) (further developed in section 3.2.4, 50). A *contrario* there has been little engagement with the overall framework itself.

This section describes how the original framework works and how it relies on a number of middle range concepts. As in its original application in Bauer et al. (2012a) this thesis brings together both the Bauer & Knill framework and a number of middle range concepts and approaches found in EU studies: from studies of how the EU political system work to studies of the drivers of European Integration. Considering Capano's (2009, p. 26) warning against borrowing concepts without “proper contextualization of the new concepts in relation to the object of our analysis”, it investigates potential tensions between the original framework and EU literature on the drivers and conditions of political action at EU level. These tensions, and the chosen research questions, lead to a limited *a priori* adaptation of the framework to reflect the choice to use the effects of policy dismantling strategies as a fully-fledged dependent variable.

Bauer and Knill (2012) developed their framework – *i.e.* a tool “composed of pre-packaged ontological assumptions and methodological strategies that allow researchers to construct explanations or theories of political phenomena” (Stanley, 2012, p. 477) – within a specific context (the CONSENSUS project<sup>1</sup>), in order to study and compare environmental and social policy dismantling in a variety of national settings. A theoretical framework is used “to help categorise and reduce [the political world’s] inherent complexity”(Stanley, 2012, p. 476), and their dismantling framework identifies and connects four elements. Opportunity constraints (external, institutional and situational)

<sup>1</sup>[http://cordis.europa.eu/project/rcn/88441\\_en.html](http://cordis.europa.eu/project/rcn/88441_en.html)

first impact actors' choices of dismantling strategies. These strategies, alongside opportunity constraints (in particular external factors), in turn lead to outcomes and effects. Hence, Figure 3.1 visualises the causal links between the four elements – a “causal chain” linking actors preferences to dismantling strategies (mediated by opportunity structures), and another linking strategies to effects – once more mediated by opportunity structures (Maggetti et al., 2013, p. 59).



**Figure 3.1:** Original dismantling framework in four steps, adapted from (Bauer & Knill, 2012, p. 34)

### 3.2.1 The choice of dependent and independent variables

Theoretical frameworks detail “the elements and relationships among these elements that one needs to consider for institutional analysis” (Ostrom, 2007, p.25) – in particular they connect independent and dependent variables, exposing the relationship between the two. Figure 3.1 sets out how actors' preferences and opportunity structures are expected to shape dismantling strategies, while strategies and opportunity structures will impact effects and outcomes (Jordan, Green-Pedersen, & Turnpenny, 2012, p. 22).

Hence the model appears to contain two independent variables (preferences and opportunity structures), and two dependent variables (strategies and effects), with the caveat that strategies can also be considered as an independent variable in explaining changes to outcomes or effects. Yet out of these two dependent variables, Bauer et al. (2012a) openly chose to focus on dismantling strategies:

*It is (...) the (contested) decision whether or not to dismantle and the subsequent selection and use of a dismantling strategy that we principally focus on, and not on the long-term effects of dismantling.*

(Bauer & Knill, 2012, p. 33)

As Green-Pedersen (2004, p. 7) argue, “there is no retrenchment *per se*” – different conceptualisations of policy dismantling exist, and one conceptualisation is not necessarily more valid than another. As shown in Chapter 2, the existing literature on challenges to EU environmental policy dismantling has tended to focus on short-term case studies, interested in the immediate effects of political actions – effects on policy proposals and expansion – not policy dismantling as defined in this thesis. As such, while this thesis will use dismantling strategies as a dependent variable, it will also address the lack of detailed accounts of what happened to targeted legislation. This means considering dismantling effects, and more precisely changes to legislative outputs, as a second dependent variable – to a much greater degree than was done in the case studies of Bauer et al. (2012a).

Considering different dependent variables can have consequences on the entire research design (Green-Pedersen, 2004, p. 7). Hence, Green-Pedersen (2004) highlights how researchers investigating retrenchment as cut-backs will look at changes in policy outputs and outcomes for data, but these results will not be useful for researchers investigating changes to institutional structures. As will be developed below, adopting different dependent variables means using different types of data to answer different research questions. While investigating choices of dismantling strategies will shed light on *who* the EU level dismantling actors are, their preferences (*why*) and the strategies they use (*how*), investigating dismantling effects will expose exactly *what* was dismantled – if anything.

### 3.2.2 Actors

The dismantling framework starts with the concerned actors – “politicians” – motivated by their “meta-preference for reelection”, what Pierson called “retrenchment advocates” (1994). While a great number of potential dismantling advocates could be considered, Bauer and Knill (2012) focus on political actors. This is a sensible way to limit the number of actors to a manageable amount:

*Although all different kinds of actors or events may trigger policy change, formally they need to be adopted by governments and parliaments. Therefore, it seems obvious to start the theoretical considerations with the actors whose agreement is*

*formally required for a change in the status quo, i.e. veto players in George Tsebelis' (2002) terminology.*

(Zohlnhöfer, 2009, p. 98)

### 3.2.2.1 Relevant actors at EU level

Before applying this framework to EU level, it is necessary to compare Bauer and Knill's assumptions on who are relevant actors and how we can explain their preferences, with EU studies literature on political actors at EU level. The number of actors – and more precisely the number of veto players – influences the ease and modality of policy dismantling. Pierson (1994) argues that it is comparatively easy to dismantle in unitary political systems, characterised by low numbers of veto players (as government and the parliamentary majority tend to be of the same political colour) – but hard to escape the blame that may be attached to it. Conversely in a more consensual system such as the USA, with a large number of veto players, blame avoidance is easier, as responsibilities are shared, but it is harder to achieve dismantling.

The EU is conventionally considered one of the world's most consensual polities (Hix, 2006): legislative decision-making at EU level requires, first, a proposal for legislation to be tabled by the Commission, and second, in most cases, for it to be agreed on by a qualified majority of Member States represented in the Council of the European Union and a majority of members of the European Parliament.

None of these institutions are homogenous – internal veto players matter. For example, in the Commission, the College of Commissioners is distinct from the President, but also from the services; there are divisions between policy Directorate Generals (DGs) and the rest of the services, and between policy DGs dealing with economic matters and those – notably DG Environment and DG SANCO – that do not. Before a proposal is tabled by the Commission, it will be discussed within a given Directorate General (DG), it may receive input from other concerned DGs, and then be debated inside the college of Commissioners, at which stage Commissioners working with different sectors of the economy, as well as the Commission's Secretariat General will weigh in (Kurpas & Maciej, 2008; Hartlapp et al., 2014; Kassim et al., 2013).

Hence, compared to the small numbers of politicians assumed to be dismantling advocates in Bauer and Knill (2012), dismantling advocates at EU level are likely to be

much more varied, belonging to non-homogenous institutions, and driven by other goals than re-election (as developed below). Thus as an *a priori* change, this thesis will not use “politicians” but actors or dismantling advocates as the first step of the analytical model.

### 3.2.2.2 Actors’ motivations

Bauer and Knill (2012) present actors’ motivations in two different ways. First, actors – politicians – are motivated by a “meta-preference for reelection” (as seen in Figure 3.1). Second, they “select dismantling strategies” (and arguably targets) “to maximize their utility in a certain political opportunity structure” (Bauer & Knill, 2012, p. 38). This decision is based on their own perception of the costs and benefits of doing so (bounded rationality). How do these assumptions on actors’ motivations translate at EU level?

Not all potential EU dismantling actors are elected politicians. What could then motivate the European Commission – and in particular, its Commissioners – to pursue dismantling? As the Commission is far from homogenous, the best way to understand the Commission’s preferences may be to accept that different parts of the Commission may hold different preferences, and may be motivated by different rationales. Hence Hartlapp et al. (2014) argue there are three competing rationales behind Commission actions: first, a technocratic, problem solving rationale – akin to the idea of the Commission as central to the EU’s “regulatory state” as described by (Majone, 1999). A second rationale, is bureaucratic, competence-seeking, echoing how the European Commission has long been presented as an institution that “like most bureaucracies” aims “to expand its powers, or at least to avoid having its powers curtailed” (Cram, 1997, p.156). Finally, the third option is a policy-seeking rationale, which sees the Commission as an increasingly political body driven by ideology (Hartlapp et al., 2014, p. 14). That ideology could include support for “ever closer union” – indeed, Pollack (1994, p. 102) argued 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.” But much has been written in the last decade on the changes within the Commission – especially the growing politicisation of Commissioners and the move of the College to the right under the two Barroso Commissions. (Dimitrakopoulos, 2004; Wille, 2012; Dehousse & Thompson, 2012). That ideological, policy-seeking rationale may thus lead

(parts of) the Commission to pursue a liberal economic agenda and to push for a reduction in political intervention in markets.

Going back to policy dismantling, these competing rationales shed very different lights: support for dismantling within the Commission could be understood as a technocratic attempt at cleaning up an ageing *acquis*, as the desperate decision of a “besieged citadel” (Kassim et al., 2013, p. 133) giving in on some competences in order to keep hold of most others, as an ideologically-driven move toward a smaller or larger EU “state”, or as a combination of two or even three of these rationales. Cost-benefit analysis may be considered in that respect as a way for Commission actors to weigh these different motivations or justifications, which may undermine or reinforce each others.

Members of the European Parliament (MEPs) and the governments represented in the Council of the EU are overwhelmingly elected politicians for which we can assume a meta-preference for re-election. But the complexities of the EU political system render this *a priori* preference very complicated (Schmitter, 2005). MEPs, while elected at the same time, are not elected under the same rules (for selection and election) in different EU countries. Moreover MEPs have moreover been represented as agents with “two principals”: their European party, or political group within the European Parliament, whose support and good graces are required to gain access to important role and influence within the Parliament, and their home party, whose support is required to be selected, if not elected in the following European election (Hix, 2002).

Similarly, each government in the EU faces different election dates, electoral systems, public perceptions of the EU (Viehrig & Oppermann, 2008) and public support for government intervention in the economy. As there is no common European election cycle, actors within the Council face diverging demands from their constituents – for more or less Europe, for more or less intervention *etc.* – simultaneously. Combined with the limited development of a common European public sphere (stronger on certain topics, in certain Member States, more or less positively framed (Kumlin, 2011)), this gives rise to the following situation:

*If that same constituency is, however, fragmented into a number of disconnected national publics, as is often the case in the European Union, publicity can easily lead to a situation in which different speakers talk to different audiences and serve different, and sometimes even mutually exclusive, normative expectations.*

(Neyer, 2003, p. 694)

Hence actors' motivations for dismantling at EU level appear to be much more diverse – and potentially contradictory – than in the case studies presented in Bauer et al. (2012a). Thus achieving policy dismantling at EU level may be extremely difficult, considering that the EU's consensual nature requires actors to build large majorities on a case by case basis (Hix, Noury, & Roland, 2007).

### 3.2.3 Opportunity structures

In Bauer and Knill (2012), opportunity structures cover three different aspects (as shown in Figure 3.1, p. 44): external factors, institutional constraints and situational factors. External factors refer to international economic trends, long-term technological shifts, as well as changes in ideologies and dominant public policy paradigms: e.g. the rise of deregulation or 'better regulation' discourses (Wegrich, 2010), public-private partnerships, or growing concerns about climate change (Bauer & Knill, 2012, p. 38). When considering policy dismantling as taking place at the "systemic level" of policy setting (Peterson, 2001), changes to the EU "super systemic" level can also constitute external factors affecting dismantling at EU level. Such changes cover, amongst others, treaty change, enlargement and referendums on EU issues. Another key external factor which may set the EU apart from other political system is its participation in a system of multi-level governance. Policy dismantling at EU level may be offset by policy expansion in different Member States, and failed policy dismantling at EU level could lead to less implementation in the Member States. Crucially, while some EU level actors (Member State governments in particular) are active at different levels of governance, others are not.

Institutional constraints refer to the political system in which dismantling is attempted, and how it functions. Bauer and Knill (2012) indicate a number of comparative politics concepts that can be of use to understand institutional constraints, some of which, such as veto players, have already been applied to EU level decision-making (Tsebelis & Yataganas, 2002). The hyperconsensual nature of the EU (Hix, 2006) makes coalition building and convincing veto players not to oppose a piece of legislation particularly important – if difficult. The "overwhelming consensus" required (Follesdal & Hix, 2006, p. 540) may have consequences in terms of the time needed to achieve an agreement, and in the coherence and degree of moderation (or radicalism) of the final piece of legislation.

Finally situational factors group together the remaining “softer” contextual elements – actors’ working relationships, mobilisation of affected parties *etc.* or the preexisting framing of an issue (S. Schmidt, 2012, p. 62). The above discussion on motivation for EU political actors – with regard to European integration, what is an acceptable degree of intervention in the economy, and who should be competent on certain issues – highlights how framing or “the terms in which an issue is discussed” (Princen, 2011, p. 1) can be crucial, in order to explain why policy dismantling is discussed at EU level and its likelihood of success.

Institutional and situational factors both point to the importance of “agenda setting processes”, which “determine which issues are taken up for decision-making” (Princen, 2007, p. 21). Institutional constraints echo, in part, the concept of *venues*, the “institutional decision making arenas” which, combined with frames (part of situational factors) “determines the participation of actors in decision-making processes” (Princen, 2011, p. 10). As such, agenda setting literature will be mobilised in order to consider how opportunity structures shape dismantling strategies at EU level – taking into account the variety of venues, frames, and agendas at EU level (Princen, 2011, p. 22).

### 3.2.4 Selection of dismantling strategies

In the Bauer and Knill framework (2012, p. 37-38), actors pursuing policy dismantling choose strategies based on two different scenarios:

- If the political *benefits* of dismantling are greater than those of maintaining the *status quo*, policy dismantling will be motivated by *credit claiming* – leading to politicians pursuing public dismantling strategies.
- If the political *costs* of maintaining the *status quo* are greater than the cost of dismantling, policy dismantling will be enacted, but actors will pursue *blame avoidance* tactics. Dismantling strategies will attempt to escape media and public attention.

Building on these two scenarios, Bauer and Knill (2012) introduce two cleavages around which different strategies are organised: the existence, or not, of an active decision to dismantle, and the low or high visibility of the political scheme proposed. Accordingly, Bauer and Knill (2012, p.43-44) present four different strategies, in which open and visible strategies are linked to credit claiming (the first scenario), while hidden strategies focus on blame avoidance (second scenario).

		VISIBILITY	
		Low	High
ACTION	Low	Dismantling by default	Symbolic dismantling
	High	Arena shifting	Active dismantling

**Figure 3.2:** Four dismantling strategies adapted from Bauer and Knill (2012, p.43-44)

These strategies are not interchangeable – different targets and contexts will warrant different strategic choices. Hence, contending that dismantling of redistributive policies – such as social policies – is more likely to lead to public protest (as distributive policies present concentrated benefits and spread-out costs), Bauer and Knill (2012) expect that blame avoidance will dominate social policy dismantling, whereas dismantling of regulatory policies – such as environmental policies – is more likely to lead to credit claiming because of concentrated costs and diffuse benefits. Studies building on Bauer and Knill (2012) have since questioned this sharp distinction in the social policy sector. Thus on the one hand Jordana (2014, p. 226) found a mix of high and low visibility strategies were used in the social policy sector, depending on the scope of policy targeted. Moreover, Jensen et al. (2014, p. 529) argued social policies were cut through an alternative “expansionary dismantling” strategy, where political actors introduce some new policy instruments alongside dismantling to “obfuscate the extent of cutbacks”.

These expectations build on Pierson’s work on retrenchment (Pierson, 1996, 2001b), where he argued that the concentrated, immediate costs of retrenchment made blame avoidance more likely than credit claiming. In developing the idea that credit claiming would instead matter more for regulatory policies, Bauer and Knill (2012) made two assumptions, on topics which are far from settled in the welfare state retrenchment literature, and have been actively discussed since 2012. First, that politicians would face the same type of costs and benefits for all sorts of social policy dismantling – and not just retrenchment (*i.e.* cost-containment) *per se* (Bonoli & Natali, 2012a, p. 290). Second, as illustrated by the two incompatible scenarios, that politicians would have a tendency to use either credit claiming or blame avoidance strategies – not both. Whether the two types of strategies are antinomic or complementary is still currently debated: for example Vis (2016) explained how blame avoidance strategies and in particular reframing the issue, could be a key requirement to later claim credit, while Wenzelburger (2014) argued that the absence of electoral sanction could very well indicate a successful blame avoidance

strategy. But the environmental case studies brought together in Bauer et al. (2012a) all tended toward credit claiming.

Regarding how opportunities structure influence policy dismantling strategies, the cases studies build on Pierson's (1994) arguments that a greater number of veto players hinder dismantling (but help blame avoidance). Hence Korte and Joergens (2012) showed how the Bush administration pursued environmental policy dismantling outside of the legislative arena (where it would have faced opposition even within his own party), by focusing on implementation capacity.

Two particularities of the EU political system may render the application of these strategies to EU dismantling difficult. First, the relatively low and asymmetrical salience of EU level politics means that EU political actors are very unequal when it comes to the media and public attention given to their actions. Thus Viehrig and Oppermann (2008) showed how German politicians have more leeway at EU level than their British counterparts, whose press is more vigilant on EU affairs. High visibility is not guaranteed even in cases of active dismantling. But this also means that it may be easier to avoid blame in certain cases, for certain actors at EU level. Second, as mentioned previously, the EU is only one level within a system of multi-level governance (Piattoni, 2009). In this context, arena-shifting, especially if it is about shifting a policy back to the national level, may be of high – not low – visibility.

Dismantling strategies at EU level may also be linked to other types of strategies studied in the EU literature. Hence for example Princen (2011, p. 933) describes how framing an issue by tying it to “big words” (the “overall values that are held to be central to the EU’s purpose and identity”) or “stated policy priorities and commitments” can be a successful strategy for arousing interest in other EU level actors. The choice of venue can also be highly strategic, with Princen and Rhinard (2006, p. 1121) developing how issues can come “crashing or creeping in” on the EU agenda, following a “high politics” route “from above” (with discussions in the European Council) or following a low politics route “from below” which sees national experts or low-level Commission officials develop policy ideas.

### 3.2.5 Effects

The fourth element of the Bauer and Knill (2012) framework is outcomes or effects. This category is at the heart of what Green-Pedersen (2004) called the “dependent variable problem” – indicating both a lack of clarity and consistency within Welfare State retrenchment research as to the exact definition of the object of study.

Chapter 2 highlighted the fact that literature on the challenges to EU environmental policy had stopped short of investigating detailed changes to outputs – but had shown that calls for policy dismantling tended to impact policy proposals instead (Golub, 1996). As such, while there is a need to better understand the change (or the absence of change) in legislative outputs, dismantling effects are much broader. This creates a trade-off between the need for, on the one hand, focused attention to specific changes to legislation during reform and on the other hand, the need for a better understanding of the pervasive impacts of dismantling discourses and attempts at EU level, and the connections between apparently separate challenges to EU environmental policy (cf. Figure 1.1, p. 10).

The Bauer and Knill framework’s formulation of “outcomes or effects” is open to multiple interpretations: it could be used to study changes to environmental quality (outcomes on the ground), to environmental policy (outputs) or to the environmental policy-making process. Bauer and Knill address this trade-off by, first developing a multidimensional approach to policy change and second drawing predictions which link strategic choices to changes in policy outputs (Figure 3.3). They offer a way to categorise different dimensions of policy to be able to distinguish between the effects of dismantling on two aspects of policies: policy density – the number of pieces of legislation in a given policy sector – and policy intensity. In their approach, intensity “provides a basis for measuring the relative strictness and/or generosity of policies” (Bauer & Knill, 2012, p. 34). This distinction between density and intensity draws on the concept of multidimensionality of policy change, understood by Bauer et al. as “the potential for various sub-elements of policy to move in different directions and at different speeds” (2012b, p. 205). But intensity itself is a multifaceted concept (Bauer & Knill, 2012, p. 34), which the authors subdivide in substantial and formal intensity. Hence under the umbrella of substantial intensity the authors bring together questions of *settings* – for example, how strict is an emission limit – with questions of *scope* – for example, how many factories are affected

by the emission limit. Formal intensity on the other hand “refers to the factors affecting the probability that substantial requirements are effectively achieved” (Bauer & Knill, 2012, p. 35), factors influencing implementation and compliance.

DISMANTLING STRATEGIES	PREDICTED EFFECTS
<i>Dismantling by default</i>	Non-adjustment of substantial intensity.
<i>Arena shifting</i>	Transfer/delegation of policy responsibilities, manipulation of formal intensity, <i>i.e.</i> of enforcement capacity, administrative capacities and procedural requirements.
<i>Symbolic action</i>	Announcement of a reduction in policy density or intensity; relabeling policies; commissioning consultations/evaluation reports.
<i>Active dismantling</i>	Reduction in policy density, reduction in substantial intensity.

**Figure 3.3:** Dismantling strategies and their predicted effects (Bauer & Knill, 2012, p.46)

The trade-off between understanding detailed policy change and understanding the pervasive, diffuse impacts of dismantling discourse *lato sensu* is addressed in a different manner in this thesis. Firstly, as discussed above, and in order to address the difficulties of capturing evidence of policy dismantling and to provide a richer picture of dismantling at EU level, this thesis is built on two dependent variables: the choice of *dismantling strategies*, and their *outcomes or effects* – including changes to legislative outputs as well as broader, more pervasive effects. These different variable which will be studied using different methods. While the sections of this thesis dealing with legislative outputs will focus on this narrow understanding of effects, the sections that study dismantling strategies will be able to consider those strategies’ effects beyond existing pieces of legislation, notably their effects on policy expansion. These two dependent variables (and two approaches to effects) will be analysed separately in the empirical section. Secondly, taking multidimensionality fully into consideration this thesis will study the three facets of policy intensity separately to better understand which types of intensity are affected by a given dismantling effort, allowing for the possibility that settings, scope and formal intensity do not necessarily change in the same direction simultaneously.

### 3.3 Organisation of the empirics

The four empirical chapters are built around the two dependent variables. Dismantling strategies will be examined in the broader context of challenges to EU environmental legislation, in order to capture the varied ways in which attempts to cut, reduce or remove EU policies are made – irrespective of their success or lack of success in changing the *acquis*. This will be done in the first three empirical chapters (Chapters 4-6), focusing on understanding dismantling patterns at EU level. Chapters 4, 5 and 6 provide chronological case studies of dismantling attempts at EU level, focusing on the strategies of dismantling advocates, on identifying the directives and regulations targeted for dismantling and describing their effects beyond changes to legislative outputs.

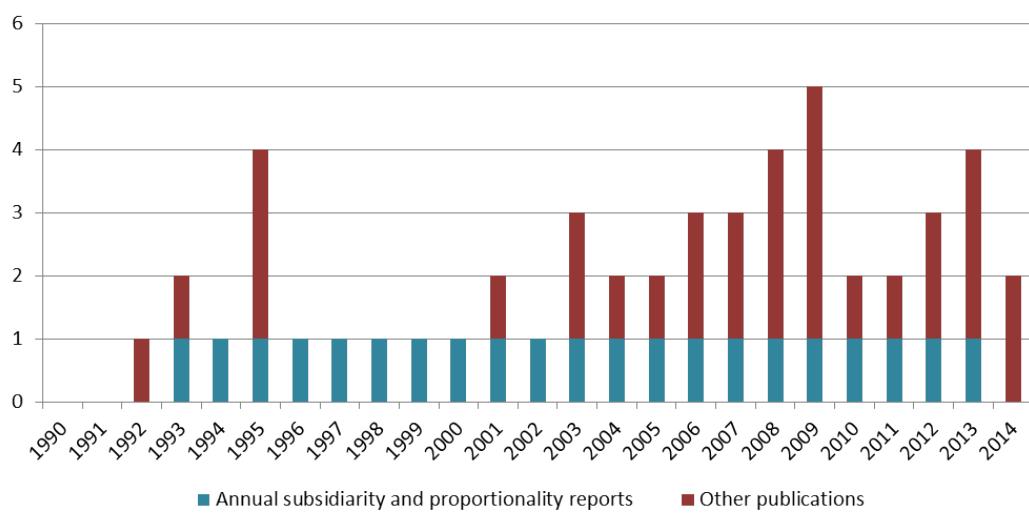
On the other hand, studying changes to legislative outputs requires a focus on a finite number of directives and regulations, over a certain period, and to study the direction of policy change (and the form it took), irrespective of the strategies that may have triggered legislative reform. This will be done in Chapter 7, which presents and discusses data from a coding exercise of the outcomes of legislative reform of the 19 directives and regulations identified as targeted for dismantling. These four empirical chapters will be mostly descriptive – conversely Chapter 8 will attempt to explain dismantling patterns, analysing the results of the four empirical chapters through the prism of the dismantling framework presented in the previous section, bringing together the two.

#### 3.3.1 Case study selection

The literature review in Chapter 2 identified three different periods during which EU environmental policies were particularly challenged: the early 1990s subsidiarity crisis, the mid-2000s relaunch of the EU Lisbon initiative, with a stronger focus on competitiveness (Radaelli, 2007) and finally the aftermath of the financial crisis with the perception that environmental policies are a “luxury we can no longer afford” (Potočnik, 2012, p. xvii).

All three periods have been studied – although, the third more recent one to a much shorter extent – but these accounts do not cover the entire history of the EU *acquis*, nor crucially, the entire length of time since the start of the “green backlash” in the early 1990s (Paterson, 1999). This provides an inconsistent account that limits comparison – how can we be sure for example, that better regulation gained further traction in 2005, if

we ignore what happened during the early years of better regulation at EU level? This focus on short periods of time gives the impression that policy dismantling at EU level only occurred in finite periods. While this may be the case, this cannot be assumed prior to any experimental work or analysis. Indeed, a different picture emerges when looking at the Commission's communications: Figure 3.4, regrouping both annual publications on subsidiarity and more topical Communications on better regulation programmes, shows that the Commission never stopped publishing on subsidiarity and better regulation since the early 1990s.



**Figure 3.4:** Spread of Commission publications on revising the acquis between 1990 and 2014.(own compilation)

Differences between the key periods studied in the literature and what appeared to be moments of high activity within the Commission motivated the choice to cover the entire period of interest – 1992 to 2014. This period of 22 years saw 6 different European Commissions: Chapter 4 covers most of the 1990s, the Delors II and III Commissions, as well as its successor, the Santer Commission (1992-1999). Chapter 5 will focus on the Prodi and Barroso I Commissions (1999-2009). Finally Chapter 6 investigates the Barroso II Commission (2009-2014).

### 3.3.2 Longitudinal coding of policy outputs

Chapter 7 covers the same time period (1992 to 2014) as studied in Chapters 4 to 6, but it does so using different methods to address a different research question, namely have parts of the EU environmental *acquis* been dismantled – and if so, which parts? It presents the

results of a coding exercise, investigating the direction and type of policy change through legislative reform of 19 EU environmental directives and regulations, covering 75 distinct legislative texts. The pieces of legislation coded met the following criteria:

<i>Type of legislation</i>	Generally binding EU legislative acts – <i>i.e.</i> directives and regulations only, and excluding decisions and comitology rules.
<i>Legislative reform</i>	For a piece of legislation to be considered, it needed to have been targeted. It also needed to have been reformed at least once after being targeted, with 2014 as the last year covered.
<i>Policy sector</i>	Only directives and regulations falling under the remit of the Commission’s Directorate General for the Environment were considered – this excluded for example directives and regulations pertaining to energy efficiency.

**Figure 3.5:** Coding selection criteria.

The time lag between the moment the Commission lists a piece of legislation as requiring reform, and the moment at which a formal reform proposal is made, and finally when it is agreed by the Council and Parliament (European Parliament, 2014) mean there may be a discrepancy between a list of targeted policies and list of reformed (and subsequently coded) pieces of legislation, especially in later years.

## 3.4 Data collection – methods and practice

Chapters 4-7 are built on three types of data – documentary analysis, elite interviews and coding of legislative change. This section presents data collections efforts and rationales and the different manners in which these three types of data are mobilised.

### 3.4.1 Documentary analysis

Documentary analysis in this thesis was conducted on a great variety of documents: primary sources – pieces of legislation, Communications by the European Commission, Parliamentary reports *etc.* – and a number of secondary sources – existing academic literature, “grey” publications such as the work of think tanks and NGOs, but also press articles, of key national newspapers such as the Financial Times or Le Monde and of EU-focused online sources, such as Agence Europe, ENDS Europe, European Voice<sup>2</sup>; different language versions of the Euractiv news-portal as well as sources specialised in

<sup>2</sup>Now politico.eu

environmental news such as ENDS reports and ENDS Europe.

Documents were used for a number of purposes. Firstly, they were used as a source of factual information. While primary sources were key for this – e.g. in identifying the exact list of directives or regulations targeted in a given year by the European Commission – secondary sources were also used. For example, references to earlier dismantling events or precise actors in EU environmental policy literature such as Golub (1996) were used as a first step to find primary sources confirming the information given in the academic articles. But secondary sources – in particular press articles – were also used to complement primary sources such as press release to understand what had happened at certain key events such as notably opaque European Council summits.

A second purpose for analysing these documents – both primary and secondary – was to identify the way policy dismantling was framed at a given time, by a given actor and how this has evolved over the last twenty years. As such articles in European media such as European Voice were useful in relating not just the content of key Commission's communications but also the content of the question and answer sessions following their publication.

Documents were mainly obtained online. In particular press articles spanning the last twenty years were obtained using the online archives of key journals – ENDS, ENDS Europe, European Voice – and the press database Factiva, to provide a broader number of sources and the different perspective found in varied national newspapers.<sup>3</sup> These databases were searched using a set of keywords:

- Broad terms relating to regulatory reform: subsidiarity, better regulation, ‘red tape’, austerity *etc.*
- Environment-specific key words: relating to a specific piece of legislation, a specific sector, or to different European Environment Action Programmes
- In connections with key names identified in the literature, or in interviews – relevant Commissioners, High Level Groups: e.g. Molitor, Stoiber, Bjerregaard

Hundreds of articles were thus collected and analysed using the NVivo10 software. While some repetition across sources is good – as it strengthened the credibility of the

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<sup>3</sup>I focused in particular on British and French newspapers: in Figure 3.6 the British Press category covers The Times, Reuters, Financial Times, The Guardian and The Economist, while the French Press category covers Le Monde, Contexte and L'Expansion

SOURCE	NUMBER	ACCESS
Agence Europe	118	Factiva
British Press	60	Factiva and respective websites
French Press	12	Respective websites
ENDS Europe	86	Website
ENDS Report	81	Website
Euractiv	10	Website
European Voice, Politico	53	Website
<b>Total</b>	<b>412</b>	

**Figure 3.6:** Repartition of press data collected.

information contained – not all articles were kept, as not all appeared relevant upon reading. In total, 412 articles were retained (Figure 3.6) for further analysis. I ran a number of queries in Nvivo – to isolate articles based on source, years, or to check for certain keywords – to complement the information obtained from official Commission and Member State documents. For example articles in the ENDS Report or in the Financial Times during the 1992 British Presidency were examined to gauge the reception of the British ‘hit list’ – not only its content.

### 3.4.2 Elite interviewing

In addition to documentary analysis, I conducted 17 interviews between June 2014 and June 2015. These interviews were used to cast light on the political rationales and strategies that are not always made evident in published documents, as well as to gather information about recent dismantling developments.

Conducting interviews is a very common tool in political science (Morris, 2009; McEvoy & Richards, 2003; Zachariadis, Scott, & Barrett, 2013), and elite interviews in particular can be extremely useful as elites are “often gatekeepers of information and potential sources of rich data for researchers” (Drew, 2014, p. 77). But while elite interviews are a common method for data collection, the literature stresses a number of questions or difficulties for the researcher set on conducting them.

The concept of elite interviews is open to debate, especially the notion and definition of “elites”. As Harvey (2011, p. 432) argues, “there is no clear-cut definition of the term elite”, and each researcher tends to adopt a different definition, putting the emphasis for example either on *influence* or *expertise* on a given issue. For my thesis I followed Rice (2010, p. 71) and “selected elites on the basis of their privileged knowledge and ability to

best answer my interview questions”.

How a researcher selects their interviewees, and how he or she negotiates access also needs to be taken into account. As my interviews were instrumental in my investigation of political strategies for policy dismantling, the actors I identified as potential dismantling actors themselves – in the Commission, in the Council *etc.* – were the most obvious elites to interview. Within the European Commission, I thus interviewed three civil servants in DG Growth, DG Environment and the Secretariat General, directly involved with better regulation efforts during the 2000s and 2010s, which I complemented with interviews with two high-ranking officials in the environmental domain to gain both an understanding of the detailed better regulation work and power-dynamics within the Commission.

While I strove to interview actors directly involved in the EU decision-making process, I was also keen to interview other types of elite – keen observers of EU decision-making: NGOs, lobbies, researchers *etc.* – who could provide different sorts of insights, and in some cases longer-term perspectives on changes at EU level. In particular think tanks were targeted because they are often used as contractors by their respective governments to work on policy reform or dismantling projects. Thus I conducted interviews with researchers at three different think tanks which had either been directly working on regulatory reform in cooperation with their respective governments, or had been facilitating cooperation on regulatory reform with between member states. Overall, 11 interviewees were directly involved with better regulation and regulatory reform exercises, while the remaining 6 provided crucial information to understand the context in which these exercises were being led.

Other elements weighed on my selection process: while I tried at first to identify relevant actors in different institutions, in both Brussels and certain Member States such as the UK and the Netherlands, the interview process is rather serendipitous, depending on who makes the time, and the names suggested by interviewees. The high visibility of my research topic following the 2014 European elections and prior to the 2015 British General Election made my task easier in some respects – environmental NGOs in Brussels were very keen to discuss what they perceived as a growing threat – but it may have prevented other interviews: MEPs were running re-election campaigns, civil servants were wary to discuss on a “political” topic *etc.* While I did follow a snowballing selection process to a

certain extent, I was also reluctant to have the direction of my interview campaign fully decided by my interviewees, and tried to maintain balance between countries, institutions, levels of expertise and periods of activity. Overall, the 17 interviews represent wide-ranging attitudes to better regulation and policy dismantling, from strong supporters (4) to equally strong opponents (4), the rest falling somewhere in between.

INTERVIEWEE TYPE		LOCATION & DATE
1	Think Tank	Brussels, 02/06/2014
2	Think Tank	The Hague, 04/06/2014
3	Former MEP	Oxford (by phone), 21/10/2014
4	Environmental NGO	Brussels, 10/11/2014
5	European Commission (Sec Gen)	Brussels, 11/11/2014
6	Former Environmental NGO	Brussels, 12/11/2014
7	Environmental NGO	Brussels, 12/11/2014
8	Environmental NGO	Brussels, 13/11/2014
9	Belgian Permanent Representation to the EU	Brussels, 13/11/2014
10	Think Tank	London, 29/01/2015
11	DEFRA	London, 30/01/2014
12	European Commission (DG Growth)	Brussels (by phone), 05/02/2015
13	Think Tank	London, 06/02/2015
14	Former European Commission (DG ENV)	Brussels, 11/02/2015
15	European Commission (DG ENV)	Brussels 12/02/2015
16	Business Representation	Brussels, 12/02/2015
17	European Commission (DG CLIMA)	Oxford (by phone) 26/06/2015

**Figure 3.7:** List of interviewees.

A third major issue is the question of power in the interview process. As mentioned above, elite interviewees tend to be gatekeepers, who may have received “extensive media training about how to avoid answering questions” (Harvey, 2011, p. 438). One of the main distinctions between elite interviews and interviews with members of the public lies in the assumption that elite interviewees will be those in a position of power in the interview process – apt at deflecting sensitive questions, asking questions to test the interviewer’s knowledge of the topic *etc.* As such there are a number of strategies presented in the literature on how to deal with this power imbalance. For example Mikecz (2012) stresses the need to come prepared, while Harvey (2011) debates the usefulness of sometimes playing dumb. Another key strategy for gaining interviewees’ trust – and thus better information – is to learn how to present yourself by, for example changing key words and emphasis when presenting your research. Thus for example, when asking for interviews with environmental NGOs, I found it useful to mention my University’s department – the School of Environmental Sciences – while when asking for interviews with non-environmental

actors I would focus on my discipline – political science.

Yet as Morris (2009, p. 214) argues, while these tips and tools are useful, they rest on two strong assumptions that can be contested: that interviewees are more powerful than interviewers in the interview process, and that this imbalance should be corrected: “The power of the researcher, if discussed at all, is assumed to be justified”. Indeed, to a certain extent these strategies are even “duplicitous” in that “they involve the researcher doing precisely what they criticise elites for doing: being selective in what they present in order to elicit a particular response in others” Morris (2009, p. 213).

Hence, while interviewees may refuse to be interviewed, to be recorded, or more simply to answer a given question, the interviewer is the one making contact (and thus offering the opportunity to the potential interviewee to contribute), asking questions and handling the interview content afterward. This raises ethical questions and should incite researchers to be careful and respectful: while in the interview, “interviewers should be aware of the risk of dominating the interview and leading the respondent to answer in a particular way that does not necessarily correspond to their true feelings” (Drew, 2014). Once the interview is finished, the interviewer has to ensure that the content is used carefully, with proper procedure for attribution followed. I addressed these issues in my own interviews in different ways: first, by making clear to the interviewees beforehand the aims of my research, and how their interview, and the data collected, would be used. During early contacts via e-mail and on the day of the interview, interviewees were asked whether they accepted to be recorded – which all of them did. We also discussed attribution rules. I found that preferences differed among interviewees, and chose to preserve the anonymity of all interviewees – presenting quotes in Chapters 4-6 so that the role, position of the interviewee is understood but his or her exact identity remains confidential.

Another key factor in addressing this power imbalance in the interview-process was the choice to use semi-structured interviews. Semi-structured interviews are composed of open questions, often of a general nature and small number which are designed to let the interviewee speak for himself, in his own words, on a topic initiated by the interviewer (example questions in Appendix A). Open-ended questions may be more comfortable to elite interviewees than closed questions (Harvey, 2011, p. 434). This may help the interview itself run more smoothly. Crucially, this process may lead to the interviewee making

connections that may have escaped the researcher. For example, some interviewees immediately connected my theme of EU environmental policy dismantling to TTIP negotiation – the free trade agreement with the USA – a connection that had eluded me.

As Morris (2009) argues, semi-structured interviews are often underlined by a constructivist ontology, they are not about teasing out the truth from potentially reluctant speakers but about collecting different narratives and meanings. As I was strongly interested in how policy dismantling at EU level was framed and perceived this approach to interviews was a very useful tool. Each semi-structured interview was built around a set of questions or themes, usually five or six, prepared exclusively for this interview. I would refer to these during the interview to make sure the key elements I wanted addressed were indeed touched upon, using follow-up questions either to gain an answer or comment on a key theme, or to pursue a new line of inquiry introduced by the speaker. Each interview was recorded with the interviewee's consent, and while I also took notes during the interview, knowing I could rely on the recorder to keep a full transcript of our discussion, I was able to spend more time focusing on the answers and influencing the direction of the discussion. In doing so, I found face to face interviews much more conducive to in-depth (and often longer) discussions, and as such I favoured face to face interviews as much as possible under time and financial constraints.

A final issue is the number of interviews – how many is enough? In planning a field work campaign, one needs to consider “the costs of collecting qualitative data, and the voluminous yet difficult-to-process data yielded by qualitative research” (Ostrom, 2010a, p. 17), and one needs also to know when to stop. Arranging, conducting and analysing the results of elite interviews is incredibly time consuming. As such, I decided early in my thesis that I would use elite interviews to complement other data sources, and not as the sole (or principal) source of data in this research.

### 3.4.3 Coding changes in legislative outputs

The greater attention to the effects of strategies on policy outputs means that, contrary to Bauer and Knill (2012, 2014); Steinebach and Knill (2016), this thesis will also consider detailed changes to targeted pieces of legislation. The environmental directives and regulations targeted for dismantling, subsequently reformed through the EU legislative

process, were coded under a coding scheme developed for this thesis. The scheme is inspired by the coding framework devised in the quantitative half of the EUFP7 CONSENSUS project (2009) which was applied to social and environmental policies in Knill et al. (2014); Steinebach and Knill (2016). While the CONSENSUS framework focused on key elements of legislation – such as comparing standards for lead in water across different countries over time – the approach chosen in this thesis has been to track changes of the entire piece of legislation, including all of its instruments as well as taking into account formal intensity. Indeed, while formal intensity was one of the main dimensions developed in Bauer and Knill (2012), it was not coded in the quantitative half of the CONSENSUS project (Knill et al., 2014). This choice required a number of adjustments to identify the instruments, categorise the type and direction of change, measure or grade change, and tackle the issue of coding formal intensity.

### 3.4.3.1 Choosing an instrument typology

Policy instruments typologies abound in the literature, with terms such as tools, instruments or policy all having fluctuating meanings, which make it difficult to compare different typologies. One of the main principles on policy outputs supported by Bauer and Knill (2012, p. 33) is to adopt a “differentiated” view of dismantling, in which “many various aspects [...] may not always move in parallel or at the same speed”. This requires a careful choice of instrument typology, as Howlett and Cashore (2009, p. 37) argue, “existing taxonomies designed to measure policy conflate very different forms or elements of policy”. Furthermore, it is good to keep in mind that different typologies were developed to answer different questions – not all typologies will be adapted (or adaptable) to either a study of policy dismantling (and especially, an interest in the *direction* of policy change) or to a study of EU policies.

In order to sort through these different typologies, I relied on Schaffrin et al.’s (2015) three-fold categorisation. A first approach to segmenting policies is to distinguish between different levels of abstractions, from changes in the *ends*, to changes in the *means*. Thus for example Howlett and Cashore (2009) propose a taxonomy with six components, where ends and means come in three different levels of abstraction, from a high level of abstraction, to “programme level operationalization” down to “on-the-ground measures”

(Howlett & Cashore, 2009, p. 39). Similarly, the approach of Salamon (2002), defined tools as “bundle of attributes”, covering the type of good or activity, the delivery vehicle, the delivery system (bank, government agency) and the set of rules organising the relationship among the components of the delivery system. But Salamon’s approach is aimed at analysing the effectiveness of tools, while I was interested in identifying the different instruments and sorting them into coherent groups, in order to ascertain whether legislative reform went hand in hand with changes to the types of policy instruments.

A second approach is to “compare policy instruments across time, policy fields, and cross-nationally” (Schaffrin et al., 2015, p. 258), a perspective which includes the work of Knill, Schulze, and Tosun (2012) and Bauer and Knill (2012) on density and intensity. This approach is the one used in Bauer and Knill’s analytical framework. Yet because in this thesis I treat the effect of policy differently – because I chose to code changes to pieces of legislation – it is not sufficient for my purpose, as it does not help to categorise among different policy instruments.

Conversely, the third approach “adds a qualitative component” (Schaffrin et al., 2015, p. 258) and tries to differentiate between types of policy instruments – as, for example, typologies developed by Salamon (2002) or Bemelmans-Videc, Rist, and Vedung (2003). This later one “categorize environmental instruments according to the degree of constraint that the instrument imposes on target groups: carrots, sticks and sermons” (Jordan et al., 2003, p. 556). This simple typology identifies three main types of instruments in environmental legislation: command and control instruments (sticks), economic instruments such as subsidies or tax breaks (carrots) and information tools (sermons). But this typology lacked precision, with a great number of very different instruments grouped together under one heading. In order to better account for the variety of EU level policy instruments, I reviewed Halpern’s (2010) work on the instrumentation of EU environmental policy. But I could not adopt Halpern’s typology as it mixed elements that in my thesis were of different nature, such as the use of a directive and the use of quotas (Halpern, 2010, p. 43). Eventually I worked with the typology developed by Taylor et al. (2012). It is built around a small number of instrument types each subdivided in multiple variants, allowing me to keep track of changes both within and between instrument categories. Using Halpern (2010), I made some minor changes to the instrument variants during the coding

process, in order to be sure to be able to identify each policy instrument encountered (see Appendix B for final instrument typology).

Instead of choosing one of these three perspectives, the approach followed in this thesis is a combination of the three: based on the first perspective on different levels of abstraction, I chose to investigate dismantling both at the level of the individual instrument and of the whole piece of legislation. Applying Bauer and Knill's (2012) framework, I followed the second perspective in attempting to measure changes in density and intensity. Finally, I used approaches linked to the third perspective to build a typology of EU environmental policy instruments. Such a triadic approach was also recently followed by Schaffrin et al. (2015) and Schaffrin et al. (2014), but they combined the three perspectives differently, notably in how to operationalise intensity, and how to measure policy change.

### **3.4.3.2 Seven policy dimensions**

Knill, Schulze, and Tosun's (2012) original concept of density and intensity was divided in four sub-dimensions. Studies adopting the density/intensity concepts since 2012 have either maintained the same number of dimensions Bauer and Knill (2012), aggregated changes across multiple dimensions Steinebach and Knill (2016) or increased the number of dimensions (Schaffrin et al., 2015). Considering both the presumed hidden nature of policy dismantling and the multidimensional nature of policy change, I chose to increase, not decrease, the level of details and raise the number of dimensions to seven. In that respect, it is a comparable approach to Schaffrin et al.'s (2015) which defines intensity as “the amount of resources, effort, or activity that is invested or allocated to a specific policy instrument” and derived six “specific intensity measures” based on different stages of the policy process (2015, p. 261-262). But contrary to Schaffrin et al. (2015), in this thesis both density and intensity are subdivided, building on the different types of intensity introduced in Bauer and Knill (2012), which had not been coded in a disaggregated fashion until now.

The seven policy dimensions, further detail Knill, Schulze, and Tosun's (2012) notions of density and intensity, stretched to two and five measures respectively. I investigated changes in density, at both the instrument and legislation level: *i.e.* changes in the number

of policy instruments and the number of directives or regulations. With regard to intensity, I further unpacked the distinction drawn in Bauer and Knill (2012) between formal and substantial intensity. Formal intensity, can be understood as “the factors affecting the probability that substantial requirements are effectively achieved”, such as “the conditions of enforcement”, “administrative capacities” and implementation procedures (Bauer & Knill, 2012, p. 35). Substantial intensity on the other hand refers to “the scope and level of interventions” (*Ibid.*). Both forms of intensity are very broad – indeed even scope itself can be used to refer to a variety of characteristics such as the number of environmental impacts taken into account as well as the number of industries targeted – and as such I chose to code changes along sub-categories of intensity to better capture the (potentially diverging) directions of policy change.

	DEFINITION	EXAMPLE OF POLICY CHANGE
<i>Legislative density</i>	Presence, absence or number of policies in a given area	One framework directive replacing 6 directives reduces policy density
<i>Legislative scope</i>	Number of topics and recipients covered by policy	Air pollution rules expanded to cover smaller factories
<i>Legislative level</i>	How environmentally friendly a policy's objectives are	Shift from “minimal environmental protection” to “high standard of environmental protection” in the opening articles of a directive
<i>Instrument density</i>	Number of instruments used in policy	Reduction in instrument numbers is dismantling
<i>Instrument scope</i>	Number of topics and recipients covered by instrument	Expansion if label certifying environmental impact takes more environmental problems into account
<i>Instrument level</i>	Instrument's strictness/leniency	Dismantling if acceptable level of pollutant in air is raised
<i>Formal intensity</i>	Policy's level of constraint and applicability	How easy it is to obtain derogations, frequency and scope of compliance checks.

**Figure 3.8:** Seven indicators for coding policy change adapted from Bauer et al. (2012a).

In order to derive my own specific intensity measures, I treated substantial intensity and formal intensity differently. Substantial intensity – which had already been coded in for example Knill et al. (2014) – was divided into scope and settings, and measured at both instrument and legislation level (Figure 3.8).

Formal intensity, which had not yet been coded, was coded in two waves. First, I

CATEGORIES	ELEMENTS
<i>Implementation and evaluation</i>	comitology procedure, competent authority, implementation report (MS), implementation report (Commission), MLG cooperation, Other.
<i>Revision</i>	Who can revise? Revision of methods, revision of content, plan for new legislation, other.
<i>Flexibility</i>	Number and extent of derogations, MS can adopt stricter rules, MS can adopt more lenient rules.
<i>Compliance and enforcement</i>	Deadline for compliance, inspection regime, penalty regime, other.
<i>Public and NGO participation</i>	NGO participation, public participation, other.

**Figure 3.9:** Elements of formal intensity: first wave of coding

coded in a much more exploratory fashion, in order to first identify key issues for formal intensity and “the factors affecting the probability that substantial requirements are effectively achieved” (Bauer & Knill, 2012, p. 35), considering the variety of approaches in the literature. Hence Bauer and Knill (2012) mentioned “the conditions of enforcement” and “administrative capacities” while Schaffrin et al. (2015, p. 267-268) wrote about the existence of implementation procedures, sanctions and of a monitoring process. This first wave of exploratory coding led to Figure 3.9, which presents five categories for formal intensity, each filled with multiple elements. This first coding wave allowed for feasibility testing (Gorard, 2013, p. 14).

Based on this first coding wave, a smaller subset of formal intensity elements were selected – this smaller subset made coding for formal intensity more feasible (in terms of time needed to code), but also focused, as this selection was based on how relevant the different elements appeared to be in connection with key discussions surrounding implementation and compliance of EU environmental legislation raised during interviews and in the literature review (see Figure 3.10).

CATEGORIES	ELEMENTS
<i>Implementation</i>	Reports from MS and Commission (frequency)
<i>Derogations</i>	Can MS adopt stricter rules or more lenient rules?
<i>Compliance and enforcement</i>	Inspection & penalty regimes

**Figure 3.10:** Narrowed elements of formal intensity: second wave of coding

### 3.4.3.3 Four policy directions

Once these dimensions were identified, another issue arose: how would the direction of policy change be measured across these seven dimensions? A first approach to measuring policy change in the literature is to measure its ambition. For example, Burns et al. (2012, p. 59) developed an “environmental ambition typology”. In this typology, environmental ambition is graded on a scale from having a negative impact (-1) to sustaining strong ecological modernization (3). This typology is very useful in giving an overview, across many issues (the type of instruments used, the use of the polluter pay principles...) but it is too broad to be used for each of the dimensions chosen for this thesis. A more detailed ambition grading is developed by Schaffrin et al. (2015), which grades 6 different intensity measures between 0 and 1 depending, for example, on the level of budget or monitoring provided. But the approach in Schaffrin et al. (2015), while it is intended to be “generally applicable” was developed specifically for a certain type of climate policies (for the energy-supply sector). As the directives and regulations coded in this thesis ranged from nature conservation to air pollution and eco-labeling, I needed an approach less specifically tailored to a given type of policy. The greater variety of legislation also meant that I could not be an expert in all EU environmental policy sectors – which raised the question of how to grade the ambition, or in my case, direction of policy change, in an absolute manner.

As I could not rely on a team of experts for each policy field (or on a team of coders), I chose instead to grade change *relatively* (see Figure 3.11). This especially suited my investigation into the *direction* of policy change: what mattered in coding was whether change led to expansion or dismantling, not the *degree* of change best captured by the environmental ambition typologies presented above.

CLASSIFICATION	CODE
<i>Status Quo</i>	0
<i>Expansion</i>	1
<i>Dismantling</i>	-1
<i>Mixed</i>	n/a

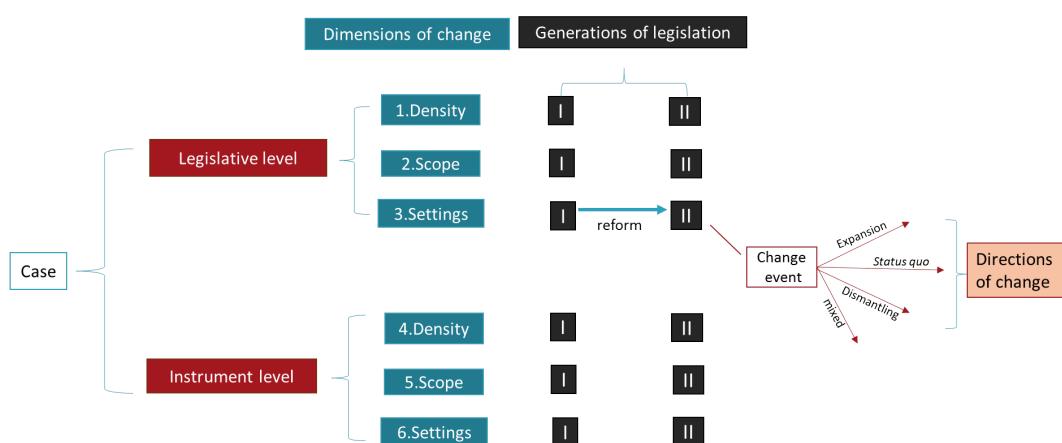
**Figure 3.11:** Four policy directions.

Categories outlined in Figure 3.11 apply easily to density, scope and settings at both instrument and legislation level. Changes are graded as mixed under two conditions:

either both expansion and dismantling is happening, or changes are unclear. As argued above, these categories are harder to apply to a newer field of inquiry such as formal intensity. Hence, formal intensity elements presented in Figure 3.10 were coded in two different fashions: first on a binary basis of presence/absence. Second, once an element was present I, coded the direction of policy change as presented in Figure 3.11.

#### 3.4.3.4 The coding schemes

Two coding schemes in total were mobilised – one for the six first dimensions, one for the seventh dimension. When coding for the first six *dimensions*, I would first identify the two levels of each *case* – the legislative level, in particular the relevant legislative articles setting out legislative scope and settings and the instrument level, *i.e.* the individual policy instruments (applying the instrument typology in Appendix B). Second, for both *Legislative* and *Instrument level*, I would analyse change along three dimensions each – density, scope and settings. This would be done once for the legislative level, but also for each of the different instruments. In order to analyse change, I would focus on legislative *reform*, from one *generation* of the piece of legislation to another. For each of these reforms, I would then examine specific *change events* – *i.e.* change of instrument density, or of legislative scope – and code its *direction of change* (using the typology introduced in Figure 3.11). This coding scheme is summarised in Figure 3.12.



**Figure 3.12:** Coding scheme – first six dimensions

As explained above, coding formal intensity (the seventh dimension) required a different coding scheme (summarised in Figure 3.13). Instead of identifying precise policy instruments, I identified articles mentioning either derogations, inspections and penalties

or implementation reports. Then I compared reforms, from one generation of legislation to another, identifying precise change events. Instead of directly coding for the direction of policy change, I first coded for whether derogations, inspections or implementation reports were mentioned at all, and then if it was the case, coded for the direction of change.

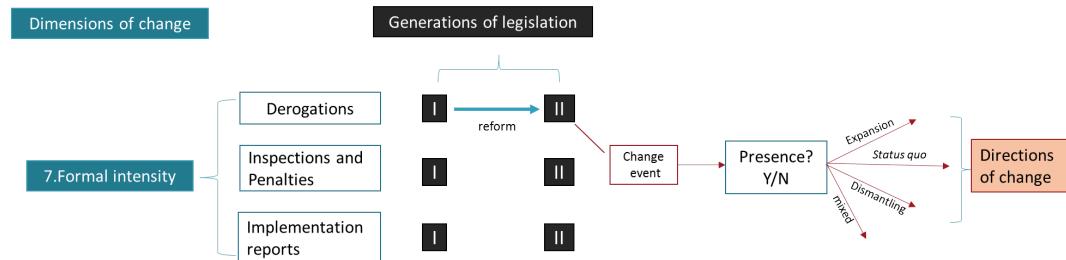


Figure 3.13: Coding scheme – seventh dimension, formal intensity

#### 3.4.4 Triangulation between types and sources of data

The three types of data presented above can be organised in a variety of ways: both what I call documentary analysis and coding can be based on the same legislative texts; both have quantitative and qualitative elements. For example documentary analysis can be used to track mentions of “deregulation” in articles dealing with EU environmental policies, or as a basis for coding when analysing the content of a directive to ascertain its level of environmental ambition. Similarly, while interviews and coding results form primary resources *i.e.* data “collected by the researcher specifically for the purpose of the research” (Adelle, 2008, p. 111), documents used in the documentary analysis are split between primary sources such as pieces of EU legislation and secondary sources *i.e.* “the reuse of data collected for another purpose” (*Ibid.*) such as existing academic literature or NGOs and think tanks “grey” literature which already interprets primary sources.

Throughout this thesis I hence use a great variety of data sources – primary and secondary, qualitative and quantitative – for different purposes, both descriptive and analytic. This variety of sources makes it necessary to think about triangulation, that is “using more than one kind of method to study a phenomenon” (Bekhet, 2012, p. 40). What are the advantages of using multiple methods, and how should triangulation be done?

A key rationale for using mixed methods is that while “all methods generate results that contain some level of uncertainty” (Poteete, Janssen, & Ostrom, 2010, p. 4), in certain

conditions “multiple viewpoints allow for greater accuracy” (Jick, 1979, p.602). Different sources, but also different types of source can offer corroboration, strengthening the reliability of the event, discourse or object described (Davies, 2001). This corroboration can be achieved using either within or across methods triangulation (Bekhet, 2012, p. 40). In the first sort of triangulation, triangulation takes place within qualitative or quantitative methods respectively. Thus for example data from an interview is combined with data from a document, or two interviewees provide corroborative information. Davies (2001, p. 78) gives advice on the level of corroboration needed, putting the emphasis on primary sources (secondary sources are held in “cautious reserve”), requiring at least two interviews “for any item to be treated with any real confidence”. When there is disparity in accounts between a written and spoken source, the document should prevail, and if there is no consensus on which account is more credible, the uncertainty should be reported in the text (Davies, 2001, p. 79). The second sort of triangulation concerns mixing quantitative and qualitative data. Thus for example, the three chronological case studies will report perceived changes to the *acquis*, as related in interviews, and in primary and secondary documents. Chapter 7 on the other hand will present the result of a quantitative study of change to the environmental *acquis*.

A second rationale for mixed methods and triangulation is their possible additive value, by allowing the researcher to “develop a more complex understanding of a phenomenon” (McEvoy & Richards, 2003, p.414):

*The use of different standpoints for qualitative perception rather than quantitative measurement means that one not only sees the same thing from a different angle, one sees entirely different facets of that thing.*

Davies (2001, p. 75)

Going back to the comparison of results on dismantled effects in Chapters 4-6 and dismantled policy outputs in Chapter 7, triangulation of these two different type of sources – done in Chapter 8 – will thus yield not only possible corroboration between the two methods but also a new outlook on policy dismantling impacts in the EU – a fuller understanding of the impacts of dismantling strategies.

Yet triangulation, despite its numerous advantages, is not an unproblematic method – first because it tends to mix apples (facts) and oranges (perceptions); second because while it may reduce certain elements of bias in data use, it does not necessarily do so

(Jick, 1979), as “no method is immune to poor applications” (Ostrom, 2010a, p. 4).

Davies (2001, p. 77) contends that “the epistemological status of information elicited through qualitative interviewing is, necessarily, another fraught matter”. Indeed interviews are not only, or even mainly used to produce “facts”, but as argued before to “determine motives, drivers and perceptions” (Adelle, 2008, p. 136). As such, they may not produce the same type of data as documentary analysis – but this does not mean that interviews can only be used as source of opinions and documents as sources of “pure” facts. Hence in this thesis, I’ve used both documents and interviews as sources of both facts and perceptions or motives: for example multiple interviews in Brussels in November 2014 drew my attention to a new British-Dutch initiative on reviewing the *acquis*, whose existence was later confirmed by documents; while speeches, press articles and European Commission communications were useful to capture evidence of the discourse used to discuss policy dismantling in the early 1990s, and take account of various expressed opinions. This use of interviews is coherent with the analytical framework developed by Bauer and Knill (2012), which puts the onus on actors’ *perception* of cost and benefits.

Finally, in using triangulation for corroboration, Jick (1979, p. 604) warns about a strong underlining assumption, that “the weaknesses in each single method will be compensated by the counter-balancing strengths of another”, *i.e.* that “multiple and independent measures do not share the same weaknesses or potential for bias”. Of all the sources of data that I use in this thesis, none can be considered neutral or bias free. Although I have attempted to gather a wide range of documents, there is always an inescapable selection bias, and a tendency to use certain documents over others; interviews are shaped by the questions asked, and even the quantitative coding is influenced by my own personal analysis (in attributing an instrument to a category or another for example). Careful triangulation, and in particular making sure that each point made is supported by multiple sources may limit the bias in this work – but it will not necessarily eliminate it.

## 3.5 Conclusion

This chapter has outlined the research design (theories and methods) which will be followed throughout this thesis. The four empirical chapters (Chapters 4-7) will be built on the three different types of data collected: documentary analysis, elite interviews and

coding of legislative outputs. Chapter 8 will apply the analytical framework presented here to the results of the four empirical chapters. It will thus test the applicability of the Bauer and Knill framework to the EU level, assessing whether the tensions described in this chapter hindered its usefulness.

# Chapter 4

## Subsidiarity: the original rationale for policy dismantling in the 1990s?

Subsidiarity often seems like a proverb: a simple maxim based on homely wisdom. The problem is that most proverbs have an opposite twin: a stitch in time may save nine, but haste makes waste.

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Peterson (1994, p. 116)

### 4.1 Introduction

This chapter describes the shift, in the 1990s, from the EU as driver of national level policy dismantling to the focus of dismantling demands. It traces discussions around subsidiarity and policy dismantling from the aftermath of the Danish ‘no’ to the Maastricht Treaty in 1992, to the shift toward proportionality and competitiveness under the Santer Commission. Throughout, it compares the understanding of policy dismantling presented in chapters 1 to 3 with discussions at EU level on changes to the *acquis*, investigating who was advocating dismantling, in what context, and what were their strategies and effects.

To do so, in a first section it tracks the journey of dismantling pressures on to the EU “political agenda” (Princen, 2011) from its entrance, in European Council discussions on how to deal with the Danish ‘no’ vote, to its specification and apparent watering down in

a series of yearly reports by the European Commission. It concludes with a review of the effects of these discussions, on the *acquis* and more broadly on EU environmental policies in the 1990s and beyond. It then shows how calls for policy dismantling resurfaced during the Santer Commission, framed in terms of proportionality and competitiveness, leading to new dismantling methods and programmes and then discusses their own effects on the *acquis*.

## 4.2 The end of the Delors years: diffusing the Maastricht subsidiarity crisis?

The drive for policy dismantling – or deregulation or retrenchment – is conventionally traced back to the arrival of Ronald Reagan in the White House (Starke, 2006). In Europe, early adopters were the UK and Dutch governments (Pierson, 1994; Hanf, 1989). These national discussions rapidly moved to the European level as the EU (and in particular the Commission), increasingly relied on removing national barriers to trade through deregulation of national policies in the run-up to the 1992 Single Market completion target (Collier, 1997, p. 11). According to one commentary,

*In the past two or three years, however, the Commission has swum with the current tide of conventional wisdom, that governments' top priority should be the fight against inflation and the control of public expenditure, and in the place of Keynesian demand management to substitute deregulation, privatisation and the free play of market forces.*

(Financial Times, 1987)

These “Commission-led” deregulation programmes at the national level in the late 1980s and early 1990s covered a variety of sectors, including aviation, road transport, financial markets and broadcasting (Agence Europe, 1985). The EU more generally became “a forum for the diffusion of deregulation between the Member States” (Hancher & Moran, 1989, p. 139).

While these EU programmes can be understood as the Commission espousing “conventional wisdom” (Financial Times, 1987) and becoming a dismantling advocate, the literature on the EU as a regulatory state (e.g. Majone, 1999; Lodge, 2008) suggests that this move toward deregulation in Member States and re-regulation at EU level was also in the institution’s own interests. Thus Lodge (2008, p. 280) talks about the Commission’s

“use of influence over policy content in the absence of other, especially budgetary tools”.

Analysing aviation liberalisation, Cullen and Yannopoulos (1989) argue that:

*The Commission has [...] used the opportunity offered by the US deregulation movement to push reluctant governments towards a course of action that will ultimately lead to the redistribution of regulatory power in its favour.*

(Cullen & Yannopoulos, 1989, p. 156)

This was described by Pollack (1994) as “creeping competences”, an expansion of EU competences which “has been determined almost entirely by their functional links to the Internal Market” (Pollack, 1994, p. 139).

The Commission’s push for deregulation in the Member States was strongly criticised on three grounds: diverging views on economic policy, sovereignty and regulatory quality. First, trade unions feared that to further economic liberalisation and integration on its own would weaken the social fabric of Member States. Second, the scale of proposed integration fuelled concerns among Member States regarding the centralisation of power at EU level and the fear of a “hollowing out” of European states (Lodge, 2008, p. 286). Third, there was growing concerns that EU re-regulation was of questionable (drafting, and more broadly, regulatory) quality (Voermans, 2009; Robinson, 2014). Delors responded to the first array of concern by arguing for a new ‘social dimension’ to be built alongside the Single Market (Financial Times, 1988) – thereby worsening the second type of concerns, as it appeared the EU’s “regulatory State” (Majone, 1999) was becoming increasingly interested in welfare policies. He responded to the third one by commissioning a report, (Sutherland, 1992, p. 3) which highlighted a number of ways in which EU legislation could avoid becoming too “heavy handed”.

### 4.2.1 Aligning subsidiarity and dismantling

#### 4.2.1.1 EU policies as a new target for policy dismantling?

Criticisms of EU re-regulation, and of the content of EU policies led to some calls for EU policy dismantling over the years: a prime example being the Common Agricultural Policy. Indeed, the French-led ‘Empty Chair Crisis’ in the early 1960s arose, in part, from French fears that letting the UK into the EEC would lead to agricultural policy dismantling (Moravcsik, 2012). Discussions on policy dismantling, while rare and far between, went beyond agricultural policies: during the “euro-sclerosis” decade of the 1970s the

Commission vowed to focus on its core tasks, with new environmental legislation being questioned from the outset (Respondent 10). A decade later, while Delors pushed for a greater EU social dimension, the UK, Ireland and Italy argued for dismantling of social and labour legislation at EU level (Financial Times, 1986).

Hence EU policy dismantling had been pushed for by a small number of Member States at precise moments in time, targeting limited policies. But the aftermath of the Maastricht Treaty would see a step change, as it would for the first time be discussed by all EU political actors at the highest level. This was achieved through a specific strategy, the connection between policy dismantling and a growing concept at EU level, subsidiarity. This strategy is what Princen (2011, p. 933) call “framing through big words”, which “consists of tying in with established overall values that are held to be central to the EU’s purpose and identity” or “with stated policy priorities and commitment”.

#### 4.2.1.2 The development of subsidiarity as a guiding EU principle

Subsidiarity is a principle used to guide which level of governance – from local to international – should be producing policies to address a given problem.

While there is a consensus on the origin of the idea as a concept linked to, or mentioned in, discussions by Catholic and Protestant thinkers since the middle age (and more recently publicised by Catholic social doctrine in the late 19th century (Neunreither, 1993; van Kersbergen & Verbeek, 1994)), diverging histories of subsidiarity as a concept of European-level politics coexist in the literature. These different accounts highlight the debates taking place over the meaning of subsidiarity.

A first account is given by van Kersbergen and Verbeek (1994), who traced the first uses of subsidiarity back to Christian Democrat Members of the European Parliament in the 1970s. Within the Parliament, they contend that:

*Subsidiarity was mainly presented as an efficiency criterion in a predominantly federal setting: certain policy goals could no longer be effected nationally and thus called for Community competence.*

(van Kersbergen & Verbeek, 1994, p. 218)

Hence subsidiarity in the mind of the Christian Democrat MEPs was a justification for an increase in Community competence. Subsidiarity was mentioned in that sense in the 1984 Draft Treaty on the European Union produced within the European Parliament

(Agence Europe, 1991). Only in the late 1980s did other actors, first German Länder seeking to protect their own powers from advancing European integration (Peterson, 1994, p. 119)), then Member States such as the UK, seize the concept to address a growing fear that the Commission would abuse its authority. From then on, the use of the concept of subsidiarity changed radically, from promoting to *limiting* the growth of Community competences.

But a second account by Golub (1996) highlights that certain Member States, “especially the UK”, were involved in the subsidiarity debate early on. Hence Golub argues that subsidiarity, in essence if not in name, informed UK positions on EU environmental policy since the early 1970s. In particular, UK lobbying was instrumental in incorporating subsidiarity concerns in the Single European Act of 1987 (Article 130R(4)), hoping it would help limit the growth of European legislation in the environmental sector. With the Maastricht negotiation, the UK pushed for a broader application of the principle, and UK Prime Minister John Major argued that “the Treaty of Maastricht marks the point at which, for the first time, we have begun to reverse that centralising trend” (Major, 1992).

These different accounts tell us that the rise of subsidiarity to the top of the EU agenda happened through a very unlikely coalition of federalists within the European Parliament, a Eurosceptic UK government (Teasdale, 1993, p. 189) and German Länder worried about their own competences (Peterson, 1994). Second, they highlight the sheer elasticity of the concept which “can do the trick of legitimizing both the expansion and restriction of authority” (van Kersbergen & Verbeek, 1994, p. 217). Crucially, at that time discussions on subsidiarity appeared to focus on *competences*, as listed in Treaties – not legislation, and thus not policy dismantling.

#### **4.2.1.3 The Danish ‘no’ vote: subsidiarity and policy dismantling come together**

On 2 June 1992 the Danes voted down the ratification of the Maastricht Treaty on the European Union, hereby dramatically changing the opportunity structure for policy dismantling at EU level. After the Danish ‘no’, and in a context of “deep misgivings” as to whether ratification would go smoothly in France<sup>1</sup> and in the UK (Teasdale, 1993, p. 193), European foreign ministers agreed to press on with the Treaty’s ratification, refusing to

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<sup>1</sup>The Danish ‘no’ pushed French President Mitterand to call for a ratification via referendum in France (Le Monde, 1992).

renegotiate it, while still “signalling to Denmark that the door was [...] open” (Agence Europe, 1992e). Part of that “open door” policy was a renewed discussion on subsidiarity, which would eventually lead to the negotiation of an additional protocol to the Treaty. According to Teasdale (1993, p. 193):

*The effect of the Danish ‘no’ vote [...] was to reopen the debate about subsidiarity, with a view to instituting additional, extra-Treaty safe-guards against the growth of Community power.*

This diagnosis was echoed at the highest levels of the European Parliament and Commission. The European Parliament President, Egon Klepsch, called for a “more open, clear and comprehensible” European Union, in which “the principle of subsidiarity has to be translated into fact” (Agence Europe, 1992e). Furthermore, the UK Commissioner Leon Brittan (Commissioner for Competition) presented the Danish vote as a reaction to the fast pace of policy expansion:

*The referendum in Denmark rejected the Maastricht Treaty because of the feeling that it was part of an inexorable process of a European Community without end...*  
(Agence Europe, 1992j)

In that same speech, he argued for “self-restraint” on the Commission’s behalf, showing that European integration was a “two-way street”. In order to demonstrate that integration worked both ways, he called for the Commission to “examine its existing legislation and, where it finds that it has gone too far or has achieved its original purpose and is no longer needed, propose to the Council that it be repealed”. He strongly urged the Commission to take the initiative and “propose handing certain centralised powers back” to demonstrate that it is not “a body wanting power for its own sake” (Agence Europe, 1992j). While his remarks on repatriating “powers” echo earlier links between subsidiarity and the balance of competence, Brittan’s call for the Commission to propose repealing part of its legislation mark a key change in framing. Increased subsidiarity was now being framed in terms of (suggested) policy dismantling.

This link to policy dismantling went beyond Brittan. That same month, Jacques Delors, the French President of the European Commission, was reported to have offered to repatriate certain competences in fields where “legislation was seen as intrusive” (Teasdale, 1993, p. 194).

Furthermore, discussions on policy dismantling, framed as an answer to a perceived need for greater subsidiarity, were started at the highest EU levels – at European Council summits of Heads of State and governments and at the top of the European Commission. This exemplifies an agenda-setting route characterised by Princen and Rhinard (2006, p. 1122) as “crashing from above”, a high politics route in which discussions are initiated “by political leaders due to a politically salient event”, in this case the Danish ‘no’. It highlights how, in 1992, (vocal) dismantling advocates at EU level were principally found at the highest EU levels. Discussions would continue at the highest levels throughout the UK 1992 Presidency of the Council which put subsidiarity – and the clarification of its meaning – at the top of its priorities (Agence Europe, 1992i), something which Prime Minister John Major considered a personal initiative (Respondent 10).

Thus the Danish ‘no’ opened a window of opportunity to discuss policy dismantling at EU level. But this was just a first step: while statements from Delors or the UK Presidency highlight how in 1992 (vocal) dismantling advocates at EU level were found at the highest EU levels, it does not necessarily follow that other actors at EU level agreed.

A number of EU actors expressed doubts regarding dismantling in general – and in particular considering environmental legislation. Hence, the Irish government expressed its doubts on the value of subsidiarity and its impact on the Commission’s ability to propose legislation (Agence Europe, 1992k). The EP President similarly argued the Parliament would “energetically oppose any attempt to misuse the principle of subsidiarity in order to return to national policies or to intergovernmental cooperation.”(Agence Europe, 1992a).

The European Environmental Bureau had long feared that “poor interpretation of the principle of subsidiarity could lead to a dismantling of the European environmental policy”, if it were to be used “as a pretext not to take measures at the European level” (Agence Europe, 1990). As these fears appeared to materialise, the EP’s Environment Committee raised the alarm (Agence Europe, 1992f), and Karel Van Miert, the Commissioner for the Environment strongly came against any policy dismantling:

*It would be a tragic error to go backwards in the field of consumer and environmental protection, the two policies which are the most popular with public opinion*  
(Agence Europe, 1992d)

The debates, during the UK presidency and beyond, on what subsidiarity should mean for the *acquis* illustrated the difficulties in forging a consensus on policy dismantling at EU level and ultimately to move from discussing dismantling to deciding to dismantle.

#### 4.2.2 Building an EU-level response to subsidiarity demands

Although a number of EU actors argued the Danish no“ to Maastricht warranted an increase subsidiarity at EU level, the flexibility of the notion of subsidiarity accommodated very different perspectives of how it should be done, and how far it should go. This became apparent in the process of “issue specification”, *i.e.* “the further elaboration of a general issue into a set of specific demands (*i.e.* proposals)” (Princen & Rhinard, 2006, p. 1121).

##### 4.2.2.1 Debating how to apply subsidiarity to the *acquis*

Starting in the summer of 1992, discussions on the application of the subsidiarity principle to EU legislation raised a number of issues. Did subsidiarity concern existing or new legislation (limits to future policy expansion or dismantling of current policy)? And what tests should EU action meet in order to conform with the subsidiarity principle?

A first option, discussed at a European Summit in June 1992, focused on future policies (ENDS Report, 1992b). A second option was voiced by Jacques Delors in July 1992. In response to strong reactions within the European Parliament Environmental committee to his remarks linking EU environmental policies and subsidiarity, he argued that subsidiarity should apply to environmental policy *implementation* (Agence Europe, 1992h; ENDS Report, 1992b).

Under neither of these two options would greater subsidiarity constitute policy dismantling, as defined in Chapters 1 to 3. Instead, two other challenges to EU legislation – implementation and a halt to expansion – were considered. However, under a third option, subsidiarity could lead to policy dismantling. UK Competition Commissioner Leon Brittan pushed for such a broad target as early as June 1992:

*This requires that the Commission not only ensure that each new act respects the principle of subsidiarity, but also that it examines its existing legislation and, where it finds that it has gone too far or has achieved its original purpose and is no longer needed, propose to the Council that it be repealed.*

(Agence Europe, 1992j)

These different options as to whether subsidiarity should concern the *acquis* divided the Commission. The division is best illustrated by the October 1992 Communication on the principle of subsidiarity, prepared for the Birmingham summit:

*Subsidiarity is a dynamic concept in the Community system. Far from putting Community action in a straitjacket, it allows it to be expanded where circumstances so require, and conversely, to be restricted or abandoned where it is no longer justified.*  
 (European Commission, 1992, p. 1).

This appears to support the idea that EU-level policies should not always expand – dismantling or roll-back, of policies but also potentially of competences, could be envisaged. Yet in the same communication – in fact in the following paragraph – subsidiarity was presented as a principle already applied for “more than forty years”: thus giving the impression that for the Commission the *acquis* respected subsidiarity *a priori*. A similar impression was given by DG XI (environment) Director General Tom Garvey, who argued that subsidiarity had been applied to environmental legislation since its onset (Garvey, 1994).

Despite these divisions the Communication set out two tests that further EU action should meet: a “test of comparative efficiency between Community action and that of member states” and a test of efficiency (European Commission, 1992, p. 2). The first test, in which the Commission had to prove it was better placed to act than the Member States revolved around a set of criteria such as “effect of scale”, “the cost of inaction, the necessity to maintain a reasonable coherence, the possible limits on action at national level” and the “necessity to ensure that competition is not distorted within the common market” (European Commission, 1992, p. 2). The second test, interestingly, was very close to another guiding principle of EU legislation – the principle of proportionality (Neunreither, 1993, p. 210).

#### 4.2.2.2 Debating the targeted policies

After the Birmingham summit in October 1992, a clearer picture started to emerge. Based on the Commission communication, subsidiarity could be applied to both future legislation and existing texts. But which texts would be up for review and which ones would be scrapped?

Jacques Delors was tasked by the UK Presidency to produce a list by the final Edinburgh summit in December 1992 (The Independent, 1992). In parallel, the UK Presidency produced its own list, leaked a week before the summit (The Times, 1992). It contained 71 elements – 37 of which were already implemented policies. It revealed how “The UK has chosen consumer, social, and environment policy as its targets” (Financial Times, 1992). UK demands for changes to the environmental *acquis* ranged from repeal (quality of shell-fish water) to amendment (wildlife habitats, hazardous waste, and bathing, drinking and ground water) (Financial Times, 1992; ENDS Report, 1992a).

In comparison, the Delors’ list appeared more modest and was presented as a set of “examples of the review of pending proposals and existing legislation” (European Council, 1992). It listed 20 proposals of interest, three of which it had already removed, six of which were considered to be too detailed and prescriptive, and eleven that could be withdrawn after consultation with the Parliament. These mostly dealt with taxation, with only one environmental proposal mentioned, concerning the conditions under which animals were kept in zoos. But parts of the environmental *acquis* were included elsewhere in Delors’ list:

*On the environment, the Commission intends to simplify, consolidate and update existing texts, particularly those on air and water, to take new knowledge and technical progress into account.*

(European Council, 1992, p. 30)

Delors’ list can be seen as a “clever negotiating ploy” by the Commission (The Times, 1992), to undermine the UK list, but more importantly it showed how the Commission appeared willing, to a certain extent, and under certain conditions, to cooperate with the subsidiarity agenda. Although the list may appear modest, it was nevertheless a key document. It required the whole Commission to agree on which pieces of legislation to “sacrifice” and which should be reviewed – a difficult process, which Delors compared to “tearing out the same number of teeth from each Commissioner” (Reuters, 1992). Crucially, it did not contain some of the directives Delors himself had singled out, such as the 1979 Birds directive (ENDS Report, 1992b).

But that does not mean that the Birds directive was not to be revised. Indeed, its revision process had already started, with the goal of “softening it” and making implementation easier on Member States, such as the UK, which were being prosecuted for

infringements (Agence Europe, 1992c). Hence dismantling efforts were not necessarily all listed in the document.

Comparing the environmental components of the two lists reveals some commonalities, notably regarding the review of water directives. Yet in this case the language used was very different: whereas the Commission wanted to take new knowledge into account (European Council, 1992, p. 30), the UK position was that they were too “prescriptive and expensive” (Financial Times, 1992).

#### 4.2.2.3 The European Commission’s annual reports and Member States’ reactions

The Edinburgh summit marked the end of the UK’s 1992 Presidency, and the start of “issue expansion”, *i.e.* the move of discussions on subsidiarity down from European Council summits “towards lower levels of decision-making in the EU” (Princen & Rhinard, 2006, p. 1122). In particular, the European Commission was tasked at Edinburgh to produce a further list of targets as well as processes to be agreed on by Member States. As the European Commission – and the European Parliament (Agence Europe, 1992a) – seized this opportunity to reframe the issue (and to limit the possibility of dismantling), certain Member States contested both targets and framing, issuing new ‘hit lists’ to influence the reform plans.

At the instigation of the two supranational institutions, the Inter-institutional Declaration on Democracy, Transparency and Subsidiarity, adopted at the October 1993 Luxembourg summit put in place two safeguards, hindering swift and radical dismantling: first, that procedures to apply subsidiarity “shall not call into question the *acquis communautaire*”, and second, that compliance with the principle “shall be reviewed under the normal Community process”. The review process should furthermore be in the hands of the Commission which “shall draw up an annual report [...] on compliance with the principle of subsidiarity” (Council of the European Union, European Parliament, & European Commission, 1993, p. 119-120).

These principles do not prevent policy dismantling entirely. Contending that “the *acquis communautaire* should not be called into question” (European Commission, 1993, p. 6) does not mean preserving every single word of each and every piece of EU legislation. Hence the *acquis* was defined by the Commission as the “fundamental principles of

Community policies” and the “particular points of an instrument considered essential by one or other Member States” (*Ibid.*). Beyond these “essential” and “fundamental” points, the Commission argued for the revision of the *acquis*, starting with the oldest pieces of legislation.

The Commission listed three categories: rules to be recast (smallest degree of change), simplified (removing “excessive detail which could be covered by a national or regional instrument” (European Commission, 1993, p. 6)) and finally repealed. The amount of legislation for simplification and recasting was increased, while repealing remained very tentative and dependent on prior recasting, simplification or greater mutual recognition. This meant that a highly visible form of dismantling such as a cut in policy density – repeal of legislation – would only happen as a last resort. The same environmental directives – on water and air – were mentioned, with the possibility under new framework legislation for 4 or 5 water directives to be scrapped (European Commission, 1993, p. 24).

Even as it set out safeguards to contain policy dismantling, this report attempted to normalise dismantling at EU level, linking it to previous efforts. Hence it stressed that the Commission’s work to simplify the *acquis* was a second step in the overall simplification of legislation across Europe, following previous EU harmonization (European Commission, 1993, p. 5).<sup>2</sup>

Member States remained active on the issue, even though responsibility formally lay with the Commission. In particular, the UK, France and Germany all tried to influence the content of the Commission’s list. Firstly the French, who, according to then Environment minister Michel Barnier had “invented the word subsidiarity” agreed to work with the UK government in proposing a new ‘hit list’ of proposals and existing legislation that should be either abolished or amended (Reuters, 1993). This marked a departure from earlier French demands, focusing on drafting quality of EU legislation, rather than subsidiarity (Kellermann, 1999, p. 25). The French Maastricht referendum, and its narrow victory for the ‘yes’ campaign, highlighted that the European consensus was fast disappearing in France, with EU environmental policy becoming a target for French right-wing governments in the early 1990s (Berny, 2011). This joint UK-French list of 22 proposals and pieces of legislation was shorter than the earlier UK list but shared many commonalities

<sup>2</sup>But this narrative does not apply to all dismantling attempts – hence the EU eco-label legislation, which would be targeted by the Commission in 1994 (ENDS Report, 1994a), was created at a time where only few national eco-label schemes existed.

– with mentions of water and air directives. Such a joint effort can be seen both as an attempt by the UK to continue to influence these discussion after its Presidency, and to increase its credibility by working with a founding Member State, less openly favourable towards deregulation (Reuters, 1993).

Secondly, the Germans entered the debate. They had been instrumental in obtaining the inclusion of subsidiarity as an overarching principle for the EU in Maastricht (Teasdale, 1993). But although they also played an important role in refining how to best implement the principle (with the publication in October 1992 of a memorandum on the topic), they had yet to follow in the UK footsteps by calling for dismantling to be linked to subsidiarity (Agence Europe, 1992g). Germany eventually circulated a list of 54 pieces of legislation and legislative proposals at the end of 1993 (Reuters, 1994). Interestingly, the list comprised only one environmental proposal (zoo animal welfare, which had already figured in Delors' 1992 list), a much lower proportion than in the French and UK lists. Although there were debates in Germany on the inclusion of more environmental regulations, overall the German environment ministry had managed to keep environmental legislation, such as the Bathing Water Directive, off the list (Wurzel, 2002, p. 59). This lack of interest in Germany in linking subsidiarity and policy dismantling would be confirmed in the run-up to the 1994 German Council Presidency, which would attempt to reframe dismantling as a requirement for greater competitiveness.

### **4.2.3 The effects of Delors' Subsidiarity reports and actions**

As highlighted in Chapter 2, the existing literature does not fully distinguish between implementation problems, policy expansion and policy dismantling. In order to address this issue, this section first focuses on the dismantling outputs solely, before discussing the broader picture.

#### **4.2.3.1 The subsidiarity years: dismantled legislative outputs?**

The following directives and regulations<sup>3</sup> (Figure 4.1) were targeted by either the Commission or at least one Member State in the years following the Danish 'no' to Maastricht. This list shows that some targeted policies were reformed, while others were not (or at

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<sup>3</sup>Policy proposals including those on packaging and packaging waste and on zoo animals were also targeted, (Agence Europe, 1992b)

LEGISLATION	WHO TARGETED IT?	WHEN?	REVISED IN THE 1990S?
<i>Drinking water Directive</i>	UK + French governments and European Commission	1992 UK ‘hit list’, 1993 UK-FR ‘hit list’, 1993 Commission subsidiarity report	Yes, in 1998.
<i>Groundwater Directive</i>	UK and European Commission	1992 UK ‘hit list’, 1993 Commission subsidiarity reports	No.
<i>Bathing water Directive</i>	UK and European Commission	1992 UK ‘hit list’, 1993 Commission subsidiarity report	No.
<i>Shellfish waters Directive</i>	UK and European Commission	1992 UK ‘hit list’, 1993 Commission subsidiarity report	No.
<i>Birds Directive</i>	UK government and Delors	1992 UK ‘hit list’, 1992 Delors speech	Yes in 1994.
<i>Eco-label Regulation</i>	European Commission	1994 revision proposal	No.
<i>Air quality Directives</i>	European Commission	1993 Commission Report	Yes from 1996 onward.

**Figure 4.1:** Pieces of legislation targeted for repeal or revision to meet subsidiarity principle (own compilation)

least not until after 1999). Interestingly, while in certain cases – such as the Shellfish waters directive – the Commission did not publish a legislative proposal, in other cases proposals were published but failed to reach the end of the decision-making process. Commentators raised the spectre of the EU’s “formidable procedural hurdles” as early as June 1992 (ENDS Report, 1992b), arguing that the European Parliament and even the Court of Justice could delay matters. But two cases show dismantling at EU level is more complex than simply supranational institutions standing in the way. Hence, in the Eco-label case the Council opposed the Commission’s dismantling proposition, rejecting repatriation to Member States of a task the Commission did not deem to warrant EU intervention (ENDS Report, 1994c). In the Bathing Water case, the Commission produced a proposal in 1994, and then an amended proposal in 1997 before dropping the case (ENDS Report, 1994b). The 1976 directive would eventually be revised in 2006 (after a new 2002 proposal).

The failure of EU decision-makers to agree on what was “the first real test of this simplification process” (ENDS Report, 1994b) and one of the EU’s oldest environmental directive (and as such the Commission’s own focus for subsidiarity revision (European Commission, 1993)) illustrates the difficulty of dismantling at EU level:

*Simplification is extremely difficult for the [environmental] directives as they were for the most part very simple anyway.*

Respondent 3

Finally, while Figure 4.1 demonstrates that certain directives and regulations were indeed revised, it says nothing on the extent of the revision (whether they were “fully revised” (Jordan, 1999, p. 19) nor crucially on the *direction* of policy change. Have these reforms led to policy dismantling? While the revision of the EU water directives did yield some simplification, Jordan and Turnpenny (2012, p. 190-191) argued that “in some crucial respects, the revised laws were *more*, not less, ambitious than the ones they had replaced”.

#### 4.2.3.2 Other effects

What about the broader effects the subsidiarity discussion has had on the EU environmental *acquis*? The ‘hit lists’ – from both the Commission and some Member States – also targeted proposals. Hence Golub (1996, p. 699) contended that “the reduction of Commission initiatives is particularly striking in the area of EC environmental proposals”, with less than 20 environmental proposals in 1995, compared to 38 in 1992. But these numbers hid the difficulties encountered by the Commission in withdrawing these proposals. Thus the Parliament opposed the 1992 Edinburgh Council decision to remove 18 proposals (Agence Europe, 1993). Interestingly, one of the proposals removed – on the zoos directive – eventually garnered strong support in, amongst others places, the UK, and was eventually voted for against the wishes of the Commission, which had agreed to settle for a recommendation (Respondents 10 & 14, Benson & Jordan, 2014).

### 4.3 Better lawmaking in the Santer Commission

#### 4.3.1 Reframing dismantling: from subsidiarity, to proportionality and competitiveness

The Santer Commission came into office in early 1995, marking the end of Delors’ decade at the head of the European Commission. From the outset, the Santer Commission strove to strike a different tone from its illustrious predecessor. Jacques Santer argued repeatedly that he wanted the Commission to “do less, do it better” (European Commission, 1995a,

p. 1b). Interestingly, what was to become known as Santer's motto was not new at EU level – it was, for example, mentioned in the Commission's October 1992 Communication on the principle of subsidiarity<sup>4</sup> – but Santer would interpret it differently, moving away from subsidiarity.

This move had started before Santer. The German Council Presidency of 1994 had played a crucial role. While Council President Rexrodt called for deregulation in July 1994 to “make Brussels more acceptable to citizens” (Agence Europe, 1994a), he nevertheless stressed two months later that he was not aiming to “renationalise community powers”, well aware that with a Single Market more common rules may be needed (Agence Europe, 1994b). The acknowledged reason behind the German call for deregulation was competitiveness:

*According to the German Government, the deregulation of legislative and administrative provisions constituted an essential means of helping community business (notably SMEs) to increase their competitiveness and, hence, contribute in the creation of new jobs in the EU.*

(Agence Europe, 1994b)

Rexrodt stressed that “Germany's intention was not to criticise the European Commission” (Agence Europe, 1994a), indeed that the German position “has not to be understood as an anti-European act but, on the contrary, as a pro-European gesture” (Agence Europe, 1994b). This was then a *europophile* dismantling strategy, aimed at getting the Commission on board. Germany's avowed aim was to help the Commission identify rules to dismantle. In order to do so, Germany suggested that the Commission set up an independent body of experts to review the *acquis*. This “controversial proposal” (Financial Times, 1994c) was based on the idea that an external team was more likely to objectively test the merit of EU regulation than the European Commission itself. This suggestion was at first strongly rejected by Delors (Financial Times, 1994b), but he eventually caved in (Agence Europe, 1994a) and agreed to the creation of what would become the Molitor group on the simplification of legislation and administration shortly before the end of his term in January 1995. Interestingly, Germany did not wait for the Commission to accept, and in conjunction with the UK organised its own “independent” Anglo-German panel of business experts, an Anglo-German panel to review the *acquis*, focusing on EU working

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<sup>4</sup>This document calls on the Commission both “to do less to achieve more” and word for word Santer's motto of “to do less but do it better” (European Commission, 1992, p. 2,20).

time legislation (Financial Times, 1994a).

While the move toward competitiveness had started before its time, the Santer Commission embraced it much more fully than its predecessor. The first two annual subsidiarity reports published by the Santer Commission (European Commission, 1995a, 1996a) highlighted how it espoused the German-led reframing of dismantling.

First, the reports were renamed, to refer not only to subsidiarity but to “better law-making” (Jeppesen, 2000). In particular, the Santer Commission favoured proportionality over subsidiarity: “the proportionality principle, more strictly applied, commonly underpins these exercises” (European Commission, 1996a, p. 7). While the Commission stressed proportionality, competitiveness was also a key concern. Hence the Commission presented a dual rationale for these exercises, arguing that “improving legislation meets an aspiration of the general public and the business world” (European Commission, 1996a, p. 7). Second, the Santer Commission stressed the need for “clear rules that are easy to apply” – hereby linking back to the Sutherland (1992) report – and that the Commission “do[es] not impose excessive burdens” (European Commission, 1996a, p. 7). It further adopted strongly derogatory terms when talking about EU legislation:

*The momentum generated in 1993 must be kept up. The Commission remains on the look-out for rules that are cumbersome, excessive and archaic, rendering Community law obscure and impairing its implementation*

(European Commission, 1995a, p. 10) (emphasis in the original).

The key “big words” (Princen, 2011, p. 933) had changed, but attention to dismantling the *acquis* remained, with a continued interest in “simplification and consolidation” (European Commission, 1995a).

Reframing dismantling in terms of proportionality and competitiveness was a way of “shaping participation” (Princen, 2011, p. 931), encouraging certain stakeholders – especially the business community – to participate in the debate. This proved successful: compared to the early 1990s, the European business community, such as UNICE<sup>5</sup>, seized on the discussions, and lobbied the Commission as well as the Member State, to deregulate for further competitiveness (Porta, 1997, p. 167). Hence the 1995 UNICE regulatory report called for “releasing Europe’s potential through targeted regulatory reform” – including the appointment of a Commissioner to oversee the regulatory process and its

<sup>5</sup>Union of Industrial and Employers’ Confederations of Europe, now called BUSINESSEUROPE.

quality (Kellermann, 1999, p. 20).

### 4.3.2 Reviewing the *acquis* in the Santer Commission

This focus on business, and interest in business participation in reviewing the *acquis*, can further be observed through three different initiatives launched in the mid-1990s: the Molitor report, the SLIM review (Simpler Legislation for the Internal Market) and the BEST initiative (Business Environment Simplification Task Force), which were produced alongside continued efforts to apply the Edinburgh programme (European Commission, 1995a).

#### 4.3.2.1 The 1995 Molitor report

The Molitor report, published in Spring 1995, was the first external review of the EU *acquis* sanctioned by the European Commission, led by Dr Bernhard Molitor, a former economic advisor to the German government (Breyer & Heyvaert, 2000; Molitor Group, 1995a). It contained an environmental chapter written by McKinsey & Company, focusing on five items of legislation: large-scale emissions, emissions to surface water, packaging, combustible waste and environmental impact assessments (Molitor Group, 1995a, p. 101). Crucially, it went much further than the Commission had ever done in advocating for a “new approach to environmental regulation” (Collier, 1997, p. 11):

*Proposal 1.*

*The new approach to environmental regulation, which stresses the setting of general environmental targets whilst leaving the Member States and, in particular, industry the flexibility to choose the means of implementation, should be pursued vigorously, and should be the basis for a full scale phased review of existing environmental legislation.*

(Molitor Group, 1995b, p. 14), emphasis added.

The report was not warmly received by the 1995 French Presidency (ENDS Report, 1995) – but found, on the other hand, strong support in the Netherlands (Voermans, 2009, p.70). It led the Dutch 1996 EU Presidency to commission a further report on the quality of EU legislation (the Koopmans Report), feeding discussions at the Amsterdam Inter-governmental Conference (Kellermann, 1999, p. 22).

#### 4.3.2.2 The SLIM programme

Although not a “full scale” review, in that it focused on only a part of the *acquis* (regulation of the Internal Market), the Commission’s SLIM programme was a sign of this change in approach at EU level, and of the growing inclusion of independent experts and/or business interests in the review of the *acquis* (European Commission, 1996b). Launched in 1996 as a pilot scheme (leading to 3 further phases up to 2000) the project saw SLIM teams composed of “the Commission and the representatives of a few Member States and of the users of the legislation, such as business (producers and traders, including SMEs) and where appropriate, consumers” (European Commission, 1996b, p. 4) review existing legislation in 4 areas “known to be of concern to business or other interested parties” such as the recognition of diplomas (European Commission, 1996b, p. 3).

#### 4.3.2.3 The BEST initiative

The focus on business was further clarified with the start of the BEST initiative. Launched by the Commission in 1997 it aimed to:

*See how we can improve the environment of businesses by simplifying the regulatory and administrative burdens which businesses, particularly small and medium sized enterprises (SMEs), have to bear with a view to increasing their job creation potential.*

(European Commission, 1997b)

Like the Molitor group two years prior, the BEST task force was composed of “independent experts from the Member States” (European Commission, 1997a, p. 7), with the notable inclusion of representatives from deregulation units (the Swedish, Dutch, Luxembourg, French and Belgian delegates (European Commission, 1997b)).

The BEST Taskforce published two reports in the late 1997 and early 1998. Under its working group IV on business environment and administrative simplification, the task force called for a change in culture, arguing that:

*Public authorities acting as regulators or as providers of support to businesses in the form of advice, assistance and information need to see themselves as delivering a service to enterprises. The better the service the more competitive the enterprises are likely to be.*

(BEST Task force, 1998, p. 4)

### 4.3.3 The effects of Santer's Better Law-making exercises

#### 4.3.3.1 Changes to the environmental *acquis*?

The publication of the Molitor report during the French Presidency of 1995 led to a strong debate on its conclusions, in particular on its environmental chapter. While Molitor personally denied prior to its publication that the report would advocate “scrapping” environmental legislation (Environment Business, 1995), a dissenting minority report fuelled fears of deregulation (ENDS Report, 1995).

Interestingly, while the Molitor group produced a chapter on environmental regulations<sup>6</sup> neither BEST nor SLIM tackled environmental regulation.<sup>7</sup> This is not to say that environmental legislation was not targeted. It was targeted as part of the follow-up of the Edinburgh programme, as detailed in the yearly Better Lawmaking reports. For example, the European Commission (1997a, Annex V p. 4) stated that for five environmental policy objectives,<sup>8</sup> work was ongoing and proposals had been sent to legislators.

But what this shows is that while environmental policy may be a common target for dismantling at EU level it is not *always* one. It further highlights the increasing scope of discussions on regulatory reform at EU level: from a discussion on the removal of a handful of directives and regulations in the early 1990s it morphed into a broader debate on the legislative culture of the three institutions, relations between them and between the EU and national levels. Finally, it stresses the long time-lag – at least in the 1990s – between calling for reform and the publication of a proposal and for a decision to be taken.

Crucially, the Molitor environmental case studies did not necessarily make calls for dismantling - hence in its review of environmental impact assessments it argued that EIA legislation was “viewed as a success on all three key dimensions: effectiveness, efficiency and evenness.” (Molitor Group, 1995a, p. 32). But certain reforms in the late 1990s, such as the 1996 IPPC directive, have been interpreted as “a direct outcome of the Molitor report” (Löfsted, 2004, p. 239), striving to give more leeway to business in implementing

<sup>6</sup>In particular on large scale emissions SO2 and NOX, emissions to surface water, packaging (solid and corrugated board), combustible non-hazardous waste and environmental impact assessments (Molitor Group, 1995a, p. 98).

<sup>7</sup>SLIM did address pesticides, but it is a joint SANCO/ENV legislation, not a purely environmental one (European Commission, 2003a, p. 39).

<sup>8</sup>Air quality, drinking water, bathing water, water (general framework) and noise.

legislation. Whether its “more flexible approach” (Breyer & Heyvaert, 2000, p. 336) reinforced or weakened environmental policy is still debated (Respondents 10 & 14).

#### 4.3.3.2 Broader effects: policy proposals and “culture”

The Santer Commission’s openly stated goal was, from the start, to go further than what was agreed in the early 1990s. Thus, the Commission strove to go “beyond the Brussels programme” of 1993 (European Commission, 1995a, p. 10) and pledged to remain “on the look-out for rules that are cumbersome, excessive and archaic” (*Ibid.*). Additional proposals were removed every year – 61 pending proposals were removed in 1995 (European Commission, 1995a, p. 6), 48 in 1996 (European Commission, 1996a, p. 3) – and new projects were launched to evaluate the *acquis* (SLIM, BEST *etc.*).

Beyond targeting precise items of legislation, Molitor, SLIM and BEST all stressed the need to change how, and how often, the EU produces legislation (BEST Task force, 1998; Molitor Group, 1995b; European Commission, 1996b). This message was supported by the Amsterdam Intergovernment Conference (IGC), in which Member States adopted a declaration on the quality of the drafting of EU legislation (Robinson, 2014, p. 613).

The Santer Commission appeared to take this message on board: it pledged to “Legislate less but act better” (European Commission, 1998c), advocating a change of culture:

*The Commission shares BEST’s view that simplification and regulatory reform should be made central to public policy at all levels in the European Union. A change of culture is required in public administrations acting either as regulators or as providers of support to businesses. The primary aim should be to assist and enable rather than control...*

(European Commission, 1998b, p. 4), emphasis added.

The Commission attempted to make certain changes – notably in its use of certain legislative tools – with plans to use directives increasingly and to go back to the original, looser, type as well as to consider alternatives to legislation (Jordan & Jepesen, 2000, p. 68). But these changes were limited in two ways. First, although efforts were made in terms of criteria for new pieces of legislation – the Amsterdam Treaty’s protocol on subsidiarity calls for “qualitative or, wherever possible, quantitative indicators” (Member States of the European Union, 1997) – the Commission stressed that the Member States also had to change, perhaps more so than itself. As such the Commission encouraged

Member States to set up their own better regulation units (European Commission, 1998b, p. 4). Furthermore it focused its 1998 Better Law-making report on the issue of “shared responsibility”, and in particular singled out the Council for criticism, arguing against the “proliferation of specialised Council compositions” and how the SLIM exercise had revealed “some contradiction between the European ministers’ repeatedly stated commitment to simplification and their attitudes when faced with proposals for simplification in practice” (European Commission, 1998a, p. 12-13).

Second, while it was keen to encourage Member States to change their practices, it was more reluctant to change its own. Hence it did not take up the UK suggestion to set up a Better Regulation unit (House of Commons, 1998), nor the Dutch (and French) suggestion to create an independent body to review the quality of EU legislation (Radaelli, 1999, p. 860). Instead, the Commission reinforced the powers of the Secretariat General to ensure that “all actions proposed by the Commission and, in particular, legislation meets clear criteria” of subsidiarity, proportionality, appropriate consultation, and evaluation of impacts and consequences (European Commission, 1998b, p. 4). By the end of its time in office, it stressed its own achievements:

*The Commission can be said to have achieved something in the application of the principles of subsidiarity and proportionality since the Edinburgh European Council. These achievements went far beyond simply reducing the number of proposals.*  
(European Commission, 1998c, p. 1), emphasis added.

#### 4.4 Conclusion

The Danish ‘no’ to Maastricht dramatically altered the opportunity structure at EU level, changing overnight the discussion, from the ratification of a Treaty opening a new phase of European integration, to efforts to salvage the European project and keep the 12 Member States together. Increased subsidiarity was pushed, notably by the 1992 UK Presidency and the Delors Commission (Agence Europe, 1992i), as a solution to the Danish problem.

From the start, calls for greater subsidiarity went beyond policy dismantling: Delors spoke about implementation in July 1992, while the ‘hit lists’ produced by the UK, French, German governments and even the Commission mixed both existing legislation and policy proposals – *i.e.* reductions to policy expansion were pursued alongside dismantling. This was further clarified with the production of criteria to be met by all new

pieces of legislation.

While the UK appeared as a key advocate of dismantling, the European institutions were divided internally on how to interpret subsidiarity, on whether policy dismantling was needed, and on which policies should be targeted.

As demands for subsidiarity were internalised in yearly reports by the Commission and the Maastricht Treaty entered into force, interest in subsidiarity appeared to subside at EU level (Jeppesen, 2000). Significantly, policy dismantling did not follow subsidiarity down the EU political agenda. Instead it remained high, reframed in terms of proportionality and competitiveness, as advocated by the 1994 German Presidency. The German Presidency was keen to stress its *europhile* agenda, arguing less and more flexible EU regulation would benefit the European project, bringing the EU closer to its citizens (Financial Times, 1994c). These efforts at reframing dismantling went hand in hand with a broadening of participation to business interests such as UNICE.

While the Commission contended there was a “growing political consensus within the Union in favour of the simplification of legislation” (European Commission, 1996b, p. 2), key divisions remained. The European Parliament argued neither subsidiarity (Agence Europe, 1992a) nor better-lawmaking should lead to deregulation (Mosiek-Urbahn, 1996), while Environment Commissioner Ritt Bjerregaard admitted counting on the EP to help fight environmental policy dismantling (ENDS Report, 1995). Interestingly dismantling advocates were also not fully united. Thus the European Commission stressed the need for a “change of culture” in all public administrations and for “shared responsibilities”, pointing out “some contradiction between the European ministers’ repeatedly stated commitment to simplification and their attitudes when faced with proposals for simplification in practice” (European Commission, 1998a, p. 12-13) – yet appeared reluctant to change its own practices (European Commission, 1998b, p. 4).

This chapter has shown the level and intensity of dismantling “talk” at EU level in the wake of the Danish ‘no’, with discussions centering primarily first on subsidiarity, then on competitiveness (while regulatory quality remained a minor concern). But has this period witnessed environmental policy dismantling? Figure 4.1, to which we can add discussions on the IPPC directive and on packaging waste following the Molitor report, shows that key

pieces of environmental legislation were indeed targeted – yet only a few of them were revised through the legislative process in the 1990s. Greater effects of subsidiarity and then competitiveness on environmental legislation may be found elsewhere: in the sharp reduction of the number of proposals (Golub, 1996), or in the growing number of criteria to be met with both the subsidiarity test agreed in Edinburgh and the early days of cost-benefit analysis, introduced in DG XI (Environment) in 1995 (Financial Times, 1995). These diverging effects raise two puzzles. First, on the evolution of environmental policy at EU level, the 1990s appeared to have witnessed in parallel growing concerns regarding policy implementation (Jordan & Jeppesen, 2000), a great resurgence of environmental policy expansion (Hey, 2005), and calls to dismantle key pieces of environmental legislation as well as to reduce the number of proposals. Second, in terms of dismantling strategies: the reform efforts of the 1990s are conventionally argued to have had only limited effects (e.g. Radaelli, 1999; Radaelli & Meuwese, 2010) – with “no direct and tangible results in the field of deregulation of EU legislation” (Voermans, 2009, p. 83). This gives rise to the question of whether the 1990s saw *symbolic* dismantling<sup>9</sup>, or whether *active* attempts to dismantle policies were foiled or watered down. In particular the role of the Commission begs further investigation: was it really supportive – or trying to reduce damage to its own policies or competences by playing along?

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<sup>9</sup>Indeed, the use of expert groups, evaluations appears similar to expected symbolic action effects according to Bauer and Knill (2012, p. 46).

# Chapter 5

## Better regulation: a new dismantling rationale in the 2000s?

When I started the whole thing of course I have studied the history of reducing red tape [...] and the history goes back many, many—a thousand years even. I think that the first kingdom to start to reorganise bureaucracy was one of the old kingdoms in Mesopotamia.

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G. Verheugen *in House of Lords EU Committee* (2005, p. 30)

### 5.1 Introduction

This chapter retraces changes to policy dismantling at EU level under the Prodi and Barroso I Commissions. It charts the move away from Santer’s “Better Lawmaking” efforts to Prodi’s “Better Regulation” agenda and its reinvention during the first Barroso Commission. Throughout, it compares the understanding of policy dismantling presented in Chapters 1 to 3 with discussions at EU level on changes to the *acquis*, investigating who was advocating for dismantling, in what context, what their strategies and effects were.

The second section examines how the Prodi Commission (1999-2004) reframed and reformed Santer’s work on Better Lawmaking into a Better Regulation agenda. It then

analyses the *acquis* review and simplification element of this Commission-led agenda, and how it differs from previous efforts, before studying its effects – both in terms of changes to the *acquis* and to the Commission’s “regulatory culture”. The third section subsequently follows the same steps – focusing on debates on agenda setting, simplification programmes and effects – to sketch out changes to policy dismantling patterns during the first Barroso Commission (2004-2009), stressing the growing role of Member States coalitions within and outside the Council in framing and leading policy dismantling attempts.

## 5.2 Building a Better Regulation agenda in the Prodi years

The turn of the century witnessed a new crisis at EU level with the resignation of the Santer Commission in March 1999 after a corruption scandal (European Voice, 1999) and its swift replacement by the Prodi Commission. This section retraces how the new Prodi Commission built its own “Better Regulation” agenda on, and in reaction to, the Better Lawmaking efforts of its predecessor.

### 5.2.1 Reframing “Better Lawmaking” as “Better Regulation”

The early days of the Prodi Commission marked a change in tone in the Better Lawmaking reports, a greater focus on the “effectiveness and acceptability of Community actions” (European Commission, 1999, p. 2), as well as a renewed interest in subsidiarity:

*The effective application of the subsidiarity principle can never be cast in stone [...] the EU's response will likewise have to change constantly*  
(European Commission, 2000, p. 3).

The European Council also stressed the need for change. The conclusions to the March 2000 European Council – the Lisbon Strategy aiming to “strengthen employment, economic reform and social cohesion as part of a knowledge-based economy” (European Council, 2000, p. 1) – discussed the state of the EU regulatory climate:

*The competitiveness and dynamism of businesses are directly dependent on a regulatory climate conducive to investment, innovation, and entrepreneurship. Further efforts are required to lower the costs of doing business and remove unnecessary red tape, both of which are particularly burdensome for SMEs. The European institutions, national governments and regional and local authorities must continue to*

*pay particular attention to the **impact and compliance costs of proposed regulations**, and should pursue their dialogue with business and citizens with this aim in mind.*

(European Council, 2000, p. 4), emphasis added.

These discussions highlighted that, as in the early 1990s, the state and future of the *acquis* were being discussed at the highest level – a case of agenda-setting “from above” (Princen & Rhinard, 2006). The Commission was tasked with delivering “by 2001 a strategy for further coordinated action to simplify the regulatory environment” (European Council, 2000, p. 5).

### 5.2.1.1 Debating the objectives of a better regulation strategy

Launched in 2003, the “Updating and simplifying the Community *acquis*” programme (European Commission, 2003d) was built on an extensive consultation exercise led by the Commission in 2001 and 2002, producing an “impressive number of documents and policies” (Voermans, 2009, p. 84). Alongside two communications to the European Council meetings in Stockholm in March 2001 (European Commission, 2001c) and Laeken in December 2001 on “Simplifying and improving the regulatory environment” (European Commission, 2001a), the Commission also produced its White Paper on European governance (European Commission, 2001b) and received the final report of the Mandelkern group of experts on Better Regulation (European Commission, 2001d). These different documents – as well as Member States’ comments and lobbying from a variety of organisations (e.g. European Voice, 2002) – all contributed to “issue specification”, in elaborating the general objective of better regulation into “specific sets of demands” (Princen & Rhinard, 2006, p. 1121).

These different reports help sketch out the key framing issues raised in defining and building a better regulation policy at EU level – in particular in relation with its simplification component.

A first issue concerned the objectives behind better regulation: for what, for whom? Two different (although connected) frames were put forward. On the one hand, the 2000 Lisbon Strategy and the March 2001 Commission communication stressed the importance of a sound regulatory environment for the economy – framing better regulation in terms of competitiveness and reducing burdens on companies.

A variation on that theme is found in the Mandelkern report which adopted a broader perspective on burdens: “the burden of compliance on citizens, businesses and the public sector itself” (European Commission, 2001d, p. 40).

On the other hand, better regulation was also defined as “a basic condition for the legitimacy of Community action” (European Commission, 2001c, p. 5), with reform needed because “the institutions as a whole are called into question” (European Commission, 2001b, p. 15) – hinting at a “bureaucratic” preference for better regulation (Hartlapp et al., 2014). The later communications merged these two frames – better regulation was about a EU more attuned to the needs of businesses and of citizens:

*The ultimate goal is to ensure a high level of legal certainty across the EU, even after enlargement, enable economic and social operators to be more dynamic and thus help to strengthen the Community's credibility in the eyes of its citizens.*  
(European Commission, 2002, p. 3)

### 5.2.1.2 Distancing simplification from deregulation

A second key issue in framing better regulation was the connection between simplification efforts advocated under the better regulation strategy and the concept of deregulation. The different communications and reports all attempted to differentiate better regulation from the contested and highly politicised notion of deregulation.

Simplification of *existing* legislation was widely presented as one element within a broader better regulation approach, which included legislative proposals of greater quality, swifter and more inclusive decision-making as well as better implementation (European Commission, 2001d, 2001b). Issues pertaining to the quality of legislative proposals and to the reform of the *acquis* were often presented alongside each other, further blurring the line between different challenges to environmental legislation.

The four Commission communications on simplification issued between 2001 and 2003 all tried to distance simplification from deregulation in increasingly strong language. Thus the first March 2001 communication stated that “the aim is better regulation, not deregulation” and that “the Commission sees the drive to improve and simplify the regulatory environment as not just a synonym for ‘deregulation’” (European Commission, 2001c, p. 5). This message was reiterated by the Mandelkern Group, which contended that “better regulation is not about unthinking removal of such regulation” (European Commission,

2001d, p. i). The 2003 communication opened with an even stronger defense of European legislation (in a stark departure from the tone of the previous Santer Commission):

*Legislation lies at the heart of the Union's economic and political success [...] The benefits are there for all to see. Yet Governments, citizens and businesses sometimes criticise laws they perceive as being unnecessarily burdensome and overly complex not always distinguishing between Community law as such and Member States transposition of that law into national legislation. Sometimes such perceptions spill over into an all embracing demand that all EU law should be savagely cut back. The Commission firmly rejects such demands.*

(European Commission, 2003d, p. 5), emphasis added.

This differentiation effort was not wholly successful. Better regulation is commonly distinguished from deregulation (and dismantling) by its focus on regulatory *quality*, not *quantity* (Wegrich, 2009). Yet the Commission plans contained a strong regulatory quantity element. The Commission talked about “simplifying existing legislation, in both qualitative and quantitative terms” (European Commission, 2001a, p. 4). The Commission even put forward a quantitative target – to reduce “the volume of existing texts, if possible by at least 25%, by the end of the present Commission’s term of office in January 2005” (*Ibid.*p. 5)

Furthermore, while the Commission (2003d, p. 6) referred to “the standard approach [to simplification] based on neutrality on the underlying political choices” – what is conventionally understood as protecting the *acquis*, as proposed by the Delors Commission in 1993 – it nevertheless opened the door to much deeper changes:

*Simplification can also mean efforts to simplify the substance of a policy, for example its objectives or its scope. In such specific cases, it may be necessary to adapt or even entirely rethink the legislative approach.*

(European Commission, 2003d, p. 6)

This mixed message from the Prodi Commission on the deregulatory elements of its better regulation plans illustrates what Radaelli (2007, p. 199) called “a battle between quality and quantity as alternative focal points for regulatory reform” at EU level. Prodi’s propositions to reduce the density of EU policies (25% target), or their intensity (scope and objectives) highlight that Prodi’s simplification plans were likely to lead to policy dismantling and both qualitative and quantitative cuts to the *acquis*.

### 5.2.1.3 Shared responsibilities for better regulation

A third and final central issue in framing better regulation is shared responsibilities (first highlighted by the Santer Commission). Throughout its multiple Communications on better regulation, the Prodi Commission stressed how it wanted to give a “clear political signal to the people of Europe” that it was taking the issue seriously (European Commission, 2001a, p. 4), and to do so – departing from the position of its predecessor – it was ready to both make fuller use of its current powers and to change its internal organisation. For instance, the Commission vowed to remove proposals if amendments moved them away from subsidiarity or proportionality (European Commission, 2001b, p. 18).

But the Commission repeatedly stressed it could not act alone. In contrast to proposal removal, the Commission cannot simplify EU legislation on its own. Furthermore, the “new culture” it called for needed to be agreed-upon and embraced by all EU institutions. Hence it again called on the other institutions to not impede its own work, and to give priority to simplification decisions. It also supported the idea of special entities within the Parliament and the Council in charge of simplification (European Commission, 2002, p. 3) – moving away from the approach instigated in the 1993 Interinstitutional Declaration on Subsidiarity, which favored regulatory reform pursued through the normal legislative process.

Finally, in an effort to avoid blame for *all* ‘red tape’, the European Commission stated that Member States were expected to “get moving” too (European Commission, 2001a, p. 2) – indeed “citizens and operators are mainly faced with legislation for which the Member States are responsible” and as such changes were also needed beyond EU level (European Commission, 2003d, p. 3).

In conclusion, the reframing of simplification as an issue of better regulation in the early 2000s showed a clear effort at differentiating new action from past efforts – with greater ambition, new methods (including the first numerical target for reduction of the *acquis’ size*) and the Commission’s pledge to fully use its powers to remove proposals and pursue infringement. There were also changes to publicised motivations of better regulation actions, with a link made with EU legitimacy and growing attention given to end-users of legislation, whether citizens or businesses. This new attention to citizens may perhaps be read as a reaction to the Irish ‘no’ to the Nice Treaty six months earlier

– but this no vote had much less repercussion (in terms of crisis summit and launching new initiatives) than the 1992 Danish ‘no’ to Maastricht. Furthermore certain elements remained strikingly similar: the wish not to be associated with deregulation – despite calling for a reduction of legislative quantity and trimming of “dead wood” (*Ibid.*) – and the call on other institutions and Member States to fully cooperate.

### 5.2.2 The “Updating and Simplifying the Community *acquis*” programme

The first three years of the Prodi Commission were not only spent discussing the objectives of better regulation and whether it would entail deregulation. They were also key to develop new instruments to identify which parts of the *acquis* to review, and how to simplify it.

The Commission’s judgment of past efforts appeared increasingly damning over time – this judgement was mirrored by a report in the European Parliament pointing out there had “not been much in the way of concrete results” (European Voice, 2001). Commenting on previous Commissions’ efforts, the Prodi Commission contended that

*These efforts have not always produced the expected results. They have never fed into an overall approach; nor have they addressed the legislative cycle as a whole.*  
(European Commission, 2001c, p. 3)

The 2001 White Paper stressed the need to “review and simplify Community legislation adopted before 2000” (European Commission, 2001b, p. 19). This late date – meaning all policies adopted under previous Commissions were likely to be reviewed and simplified – illustrated a key change in attitude, far different from the Santer Commission reports which seemed satisfied “to have achieved something” (European Commission, 1998c, p. 1).

In listing these past failings, the Prodi Commission openly blamed its predecessors for continued regulatory problems. Having dissociated itself with past efforts, it set out to change the Commission’s methods of delivering “better regulation”.

A first hurdle was the notion of the *acquis* itself, which is open to multiple interpretations (European Commission, 2003d, p. 5). As the March 2001 Communication puts it:

*The *acquis communautaire* is highly regarded for its basic raft of rights and integrating provisions and, at the same time, denigrated for its complexity of access, comprehension and application* (European Commission, 2001a, p. 4)

A second hurdle was identifying which parts of the *acquis* should be revised. One of the Prodi Commission's key criticism of its predecessor's approach with the SLIM programme was the lack of rationale underpinning the choice of sectors and legislation targeted for simplification (European Commission, 2000, p. 12). In order to address this perceived shortcoming, it built eight "prioritisation indicators", taking into account, amongst others, the importance of the policy area, whether problems had been reported, as well as current political priorities (European Commission, 2003b, p. 7). Armed with these indicators, the Commission conducted its "first-ever, systematic horizontal screening of the Community *acquis*" (European Commission, 2003d, p. 9) and identified 19 priority sectors, including two environmental ones: waste legislation and air quality legislation (European Commission, 2003b, p. 9).

The Commission started to work on two long-term strategies to simplify these two sectors of environmental legislation (European Commission, 2003a, p. 9), the CAFE (Clean Air for Europe) programme, where steering groups were to discuss "scenarios for simplifying the legislation", and a "thematic strategy on the prevention and recycling of waste" (*Ibid.*).

### 5.2.3 Effects: changes to the *acquis* and to the Commission's culture

After spending the first three years of its term defining its better regulation and simplification strategy and methods, the Prodi Commission only had two more years to deliver on the objective it had set for itself – two years to turn what appeared to be *symbolic* commitments into effects.

These objectives ranged from operating the first rolling screening programme, to starting a change in legislative culture, to more institutionalised collaboration between the different institutions, and finally to a 25% reduction target of the size of the *acquis*.

#### 5.2.3.1 The Commission's rolling programme and the environment

Löfstedt (2007, p. 425) stressed how Prodi's Better Regulation agenda raised concerns, notably among environmental actors that it put "too much focus on the economics of regulation, rather than on environmental and social values". Out of nineteen priority sectors, two were environmental (air and waste). Figure 5.1 indicates how changes to these

TARGETED POLICY	PLANNED CHANGE	STATUS
Pesticides in plant protection (SANCO/ENV), Directives 76/895, 86/362, 86/363, 90/642	“Re-organisation and simplification of regulatory provisions”, “simplification of administrative burdens for private parties”	Revised in 2005
Regulation 259/93 Shipment of waste	“Simplify the regulation [...] reducing the number of waste lists” “envisaged simplification of administrative burdens”	Revised in 2006
Directive 96/62/EC, Air quality framework directive	“Revision for simplification” following Commission’s communication on CAFE	Proposal planned for 2005
Directive 93/12/EEC Sulphur content of certain liquid fuels	“Simplification of administrative burdens for private parties”	Revised in 2005
Directive 97/68/EC on “emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery.”	“simplification of administrative burdens for private parties”	Revised in 2004
“Obsolete” directives or regulations	Repeal	10 pieces repealed by 2004.

**Figure 5.1:** DG Environment targets in Prodi’s rolling programme, based on European Commission (2004a, p. 68-70, 84).

two sectors were pursued in the rolling programme. It shows that the Prodi Commission produced legislative proposals for four environmental targets,<sup>1</sup> which were adopted (apart from one case) after the end of its term. Revision of the air quality framework proceeded slowest, as the Prodi Commission let its successor produce a proposal. The last line of Figure 5.1 highlights the two-pronged approach followed by the Prodi Commission: alongside detailed revision objectives for waste and air, the Commission listed in a scoreboard the number of texts for each DG that it would repeal or codify.<sup>2</sup> Crucially the scoreboard does not specify which individual texts were repealed or codified.

The final key element of the Prodi Commission’s simplification programme was its aim to reduce the size of the *acquis* by 25% between 2001 and the end of 2004. Interestingly, although in 2001 the impetus was put on how “simplifying the substance of the regulatory instrument” could supplement codification efforts in achieving the target (European Commission, 2001a, p. 5) the reduction in the size of the *acquis* was reframed in 2003 as sitting under the codification exercise (European Commission, 2003d, p. 12).

<sup>1</sup> Including a piece of legislation shared between DG SANCO and DG ENV.

<sup>2</sup> both Commission texts – which are not relevant for this thesis – and Directives and Regulations, which are.

Codification along with repeal of obsolete legislation<sup>3</sup> were identified in the different implementation reports as parts of the programme where results were the least satisfactory. As such the Commission argued that “the 25% reduction objective is unlikely to be reached by end-2004” – hereby admitting its failure to reach its first quantitative target to reduce the size of the *acquis* (European Commission, 2004b, p. 4).

### 5.2.3.2 A new Better Regulation culture in the EU?

The Commission presented its own change of culture as “the main positive result” of the first phase of its programme (European Commission, 2003b, p. 13), stressing that “objectives and methodology are being integrated into daily Commission work.” It also chose to be transparent on its progress, publishing a scoreboard of its different initiatives – codification, repeal of obsolete legislation, simplification *etc.* (European Commission, 2003b). It wished to signal its seriousness through the removal of “a hundred or so pending proposals dating from before 1999 and which are no longer of topical interest” (*Ibid.* p. 4). It furthermore intended “to set an example by creating an internal legislative network to promote good practice and apply the principles of legislative quality which will emerge from the interinstitutional dialogue” – hence presenting the growing role given to the Secretariat General as an example for the Member States (European Commission, 2001a, p. 9).

The Prodi Commission like its predecessor, criticised the lack of support from the other EU institutions. Asked for feedback on the eight prioritisation indicators, both Parliament and Council had failed to reply (European Commission, 2003b). And while an inter-institutional agreement on better regulation was finally agreed in 2003, it concentrated on issues such as impact assessments and common definitions of co-regulation and self-regulation – not on simplification. The Prodi Commission hoped to change this and reorient the discussion toward fast-track agreement on simplification (European Commission, 2003c, p. 12), but at the end of its term it argued that more action was still more needed to “reverse the current trend of a growing number of simplification proposals pending before the Parliament and Council” (European Commission, 2004a, p. 10).

In the last year of the Prodi Commission, such support appeared to be mounting within

<sup>3</sup> 10 environmental texts were repealed in phase 1, 4 carried over up to phase 3 (European Commission, 2003b, p. 26).

the Council. Two coalitions of better regulation advocates were presented in January 2004. The first was a “Joint Initiative on Regulatory Reform” launched by the four Council Presidencies of 2004 and 2005 (Ireland, the Netherlands, Luxembourg and the UK), arguing that “due consideration should be given to the use of alternatives to regulation” and calling for reductions in administrative burdens for business. The second was a common paper from three of the EU’s biggest Member States (Germany, France and the UK) entitled “Towards an Enterprising Europe” which decried the impact of “inappropriate, uncertain or excessively burdensome regulation” (HM Treasury, 2004, p. 2-3).

### **5.3 The Barroso I Commission: from Lisbon to “administrative burdens”**

The Barroso Commission took office in November 2004, only months after the four Presidencies for 2004-2005 made regulatory reform their priority. Under pressure from a growing number of Member States, and in the wake of the Dutch and French ‘no’ to the European Constitution Treaty, the new Barroso Commission would reframe Prodi’s better regulation agenda into a programme for growth and jobs, and shift from better regulation to the reduction of administrative burdens.

#### **5.3.1 Better Regulation & business: competitiveness framing during the Barroso I Commission**

By the time Barroso took office, the 2000 Lisbon Strategy was due for a revision. This revision would lead to a refocus on competitiveness, with better regulation reframed “to adapt it to the ‘growth and jobs’ priorities of Lisbon” (Radaelli, 2007, p. 190).

##### **5.3.1.1 Agenda setting from above: the Council’s reformulation of Better Regulation**

In its first month in office, the Barroso Commission received the final report from the Kok High Level Group<sup>4</sup> on the Lisbon Strategy (Kok High Level Group, 2004) as well as a ‘hit list’ produced by the Competition Council (Council of the European Union,

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<sup>4</sup>Named after its chair, Wim Kok, former Dutch Prime Minister.

2004). Together these documents illustrate attempts by actors outside of the European Commission to reframe the Better Regulation agenda.

The Kok High Level Group was initiated following demands by the European Council for an independent review of the Lisbon strategy alongside the planned “in-house” mid-term review (Kok High Level Group, 2004). As an independent report it was expected to strike a different tone from the Commission’s own reports.

Two key differences with the former Commission stance on better regulation can be noted. First, better regulation was relegated to a section on creating “the right climate for entrepreneurs” – *i.e.* the quality of EU regulation was solely to be evaluated with respect to whether it fostered or hindered entrepreneurship (Kok High Level Group, 2004, p. 28). Second, arguing that a “balance must be struck between regulation and competition” the authors contended that the balance had become skewed against competition over time. What was needed was “less regulation, but even more importantly better and smarter regulation” (*Ibid.*). Hence, although the authors did shy away from advocating for “across the board deregulation” (*Ibid.*) they called for deregulation to be part of the solution much more openly than the Prodi Commission had.

While the Kok report targeted better regulation concepts, the Council’s contribution was of a more practical nature. It invited the Commission to revise 17 pieces of legislation (including five environmental ones, all in the waste sector<sup>5</sup>). The list was born out of the consultation in June 2004 from the Irish and Dutch presidencies which received 350 “concrete suggestions for simplification of EU legislation” from Member States (Council of the European Union, 2004, p. 9). This list was narrowed down based on multiple criteria set by the Dutch Presidency, with priority given to relieving regulatory and administrative burdens, before finally the 42 remaining items were discussed in the Council, which agreed on 17 items. As such this ‘hit list’ marks a stark change in strategy within the Council – whereas in the 1990s dismantling advocates published their own list independently (or with one partner), in the mid-2000s Member States pursuing policy dismantling started working over multiple Presidencies to achieve a consensual list of targets supported by the Council as a whole.

This growing coordination within the Council to foster better regulation was further

<sup>5</sup>Directive 75/439/EEC on waste oil, Directives 75/442/EEC and 91/156/EEC on waste, Directive 91/689/EEC on hazardous waste and Directive 2000/76/EC on the incineration of waste (Council of the European Union, 2004, p. 5-6)

illustrated by another joint statement by the 6 consecutive Presidencies (IR, NL, LU, UK, AU, FI) in December 2004. In this document, the presidencies stressed their wish to “place regulatory reform at the heart of their consecutive EU Presidencies” (Six Presidencies, 2004, p. 2); in particular calling on the Commission to develop a common methodology to measure and tackle administrative burdens as soon as possible. While reform and continuing simplification were called for, the presidencies agreed on a familiar caveat: this should be done “without calling into question the political objectives of legislation” (Six Presidencies, 2004, p. 6).

### **5.3.1.2 The Commission’s reply: Relaunching Lisbon and the Better Regulation agenda**

In response to these demands, Commission President Barroso and Vice-President Verheugen sent a communication to the February 2005 European Council calling for a “new start for the Lisbon Strategy”:

*A new approach to regulation should seek to remove burdens and cut red tape unnecessary for reaching the underlying policy objectives. Better Regulation should be a cornerstone for decision making at all levels of the Union.*

(Barroso & Verheugen, 2005, p. 18)

The following month the Commission presented its pilot project “with a view to developing a common approach to measure administrative costs” and stressed the importance of proportionality in both existing and proposed legislation (European Commission, 2005b). It pledged to continue Prodi’s rolling simplification programme while “injecting more commitment and urgency into striking the right balance between the policy agenda and the economic costs of regulation” (European Commission, 2005b, p. 4).

The Dutch and French ‘no’ votes to the Constitutional Treaty (in May and June 2005) did not derail the EU’s Better Regulation agenda – quite the reverse, as the two votes highlighted the need for more EU legitimacy which many European actors thought would be best achieved with an “economic twist” on previous better regulation efforts (Voermans, 2009, p. 89). There were no crisis summit as in 1992. The EU’s focus on better regulation continued, with the Dutch and British Prime Ministers subsequently presenting it as a response to this crisis: “Europe must be heavy on values, light on red tape” (Financial Times, 2005).

That same summer, John Hutton (the Minister in charge of Better Regulation elements during the 2005 British Council Presidency) contended that the Commission's communication was "the most encouraging we have had", indicating a perceived closeness between the British approach to better regulation and Commission policy (House of Lords EU Committee, 2005, evidences, p. 2).

### 5.3.1.3 Better regulation, deregulation and the environmental *acquis*

Yet despite British pledges to work together with the Commission to prioritise better regulation (Agence Europe, 2005b), a key difference remained between the position of the British presidency, interested in "reducing the quantity of existing EU legislation" (*Ibid.*, p. 21) and the Commission's official position. Speaking at the Cardiff council in July, Commissioner Verheugen – who had made better regulation his "personal trademark" (European Voice, 2004) – again stressed that better regulation was not about deregulation (Agence Europe, 2005c). Hence, in the debate identified by Radaelli (2007, p. 199) between qualitative and quantitative aspects of better regulation, the British Presidency appeared to favour a more quantitative approach than the Barroso Commission.

This tension – about whether better regulation could be about deregulation, and cuts to policy density – was particularly strong regarding the environmental *acquis*. The then DG Environment Director General, Catherine Day, argued environmental policies were definitely "not the flavour of the month" – in fact, they were the new "whipping boy", replacing EU social policies as a target (ENDS Report, 2005e). This marked a profound shift compared to the late 1990s and early 2000s, during which the "general 'green' political context" gave the upper hand to DG Environment over DG Enterprise and its focus on competitiveness (Allio, 2008, p. 138). Although the renewed Lisbon Strategy mentioned sustainable development, its focus was clearly on growth and jobs (Barroso & Verheugen, 2005). This meant policies that were not obviously contributing to these objectives were under greater scrutiny: President Barroso notably delayed the publication of the first two Thematic Strategies on Air and Waste over the summer of 2005 (ENDS Report, 2005b). Furthermore, business lobbies such as UNICE were calling for the air strategy to be completely scrapped (ENDS Europe, 2005a).

Faced with these difficulties, Environment Commissioner Dimas decided to challenge

the framing environmental policy and better regulation as incompatible. He first added his voice to the actors arguing against deregulation: “It is not acceptable if [better regulation and simplification] are used as code words for ‘weaker legislation’ or for ‘deregulation’” (ENDS Report, 2005c). He then argued in front of the European Parliament that better regulation did not equate to weaker regulation but was in fact a great opportunity for further policy expansion of the *acquis* (ENDS Europe, 2005c), a sentiment echoed at the top of DG Environment (ENDS Report, 2005e). He contented that planned development in environmental legislation under the 6th Environmental Action Programme, the production of thematic strategies, fitted perfectly with the Better Regulation agenda (ENDS Europe, 2005c) – indeed discussion on both the Air and Waste strategies had started as a better regulation initiative under the Prodi Commission (European Commission, 2003a). In so doing he deployed a strategy identified by Princen (2011, p. 933) of linking a policy idea (thematic strategies) with the current “big words” (better regulation and competitiveness), a key agenda setting strategy at EU level.

In July, Barroso called for a special meeting of the whole College to discuss freezing all 7 strategies. Four key Commissioners<sup>6</sup> were in favour of the freeze, but a majority of their peers supported Dimas (ENDS Europe, 2005b).

After the European Parliament and the Commission, Dimas strove to convince the Council. To strengthen the linkage between better regulation and environmental policy, DG Environment published a special communication for the Environmental Council in September 2005 on how to best streamline better regulation within the environmental *acquis* (European Commission, 2005a). In this document, DG Environment stressed the opportunity to modernise and simplify environmental legislation – especially in air, waste and pesticides – by embedding better regulation within the planned thematic strategies. The environment ministers backed his interpretation of better regulation (ENDS Europe, 2005d).

But not all actors agreed with Dimas’ efforts to link better regulation and the environment, fearing more harm than good would come out of it (notably MEPs in the ENVI Committee (ENDS Europe, 2005c)). Hence the IEEP produced a report investigating whether better regulation was “for better or for worse” for the environmental *acquis*

<sup>6</sup>Peter Mandelson (Trade), Charlie McCreevy (Internal Market), Andris Piebalgs (Energy) and Jo Borg (Fisheries).

(Wilkinson et al., 2005). Published in November 2005, the report raised key concerns on the narrowed understanding of better regulation as increasingly connected to competitiveness (a concern echoed in a study for the European Trade Union Institute by Vogel and Van den Abeele (2010)). For the environment specifically, the report raised concerns on the importance given to simplification of existing legislation in the planned thematic strategies on air and waste, and on the increased competitiveness proofing within the Commission. This competitiveness proofing was taking place through the strengthened impact assessment system but also through informal groups within the College of Commissioners: a competitiveness group chaired by Günther Verheugen, with a “monitoring role on the impact on competitiveness of all legislative proposals” (Wilkinson et al., 2005, p. 17) and a further group on the Lisbon agenda chaired by the Commission President himself.

### 5.3.2 The Barroso I simplification programmes

The first Barroso Commission pursued two types of simplification programme – a first, targeting the entire regulatory environment and a second concerned only with administrative burdens.

#### 5.3.2.1 A Strategy for Simplification of the Regulatory Environment

In October 2005, the Commission launched a new communication on simplification. Building on the Prodi rolling simplification programme of 2003, it set out a list of more than 80 policy areas in which simplification was to take place in 2006, 2007 and 2008. Simplification would take various forms, from repeal of old texts to codification (bringing together an act and its amendments into a new act) recasting (amending an act and codifying it) as well as modification of the regulatory approach – advocating a greater use of regulations over directives (European Commission, 2005c). The focus was to be initially on three sectors: automotive, construction and waste (European Commission, 2005c, p. 5), highlighting the importance of environmental policy. It would then be broadened to include all policy sectors – and a number of additional pieces of environmental legislation (see Figure 5.2). Their inclusion can be read either as testimony to Dimas’ success in linking environmental legislation and better regulation – or as putting the environmental *acquis* at risk of policy dismantling (Wilkinson et al., 2005) – or both.

The early focus on waste is not surprising – it was, after all, at the heart of the Competitiveness Council’s 2004 ‘hit list’ (Council of the European Union, 2004), but the sheer number of pieces of environmental legislation concerned distinguished this better regulation exercise from Prodi’s earlier efforts. Moreover, environmental legislation was also targeted for minor changes such as codification.<sup>7</sup>

After its launch in 2005, the Barroso Commission rolling simplification programme was assessed and revised three times, in 2006, 2008 and 2009. These assessments allow us to chart the evolution of the programme according to the Commission: the “most ambitious exercise on simplification ever launched by the Commission” showing its “first results” (European Commission, 2006a, p. 6,18), attaining “cruising speed” in 2008 – a year after the simplification programme was integrated in the Commission’s overall work programme – leading to “convincing results”, and to a reduction of the *acquis* “by almost 10%” over the course of 4 years (European Commission, 2009b, p. 3).

### 5.3.2.2 The Administrative Burdens Reduction programme

Member States (e.g. Six Presidencies, 2004) had asked the Commission to develop a common approach on administrative costs for years. In particular, Germany, under Angela Merkel, had become a staunch proponent of “debureaucratisation” of the European Union (European Voice, 2006a). After a pilot programme launched in 2005, Verheugen argued in April 2006 that the Commission should adopt an objective to reduce administrative burdens by 25% (Van den Abeele, 2009). This same 25% reduction target had been adopted in the Netherlands in 2003, and had been picked up in 2004 in Sweden and Denmark and a year later in the UK and the Czech Republic (Wegrich, 2009, p. 10). The German Presidency of 2007 further supported its adoption at EU level (European Voice, 2006b). Alongside copying the Dutch target, these Member States adopted a methodology, the Standard Cost Model, developed in the Netherlands beginning in the early 1990s (Wegrich, 2009, p. 17).

<sup>7</sup>Directive 78/659 on freshwater, Directive 79/923 on Shellfish waters – targeted by the UK in the 1990s – Directive 90/219 on GMOs, as well as the IPPC directive (96/61) (European Commission, 2006a, p. 46).

TARGETED POLICY	ACTION	OBJECTIVES	STATUS
Waste (Directive 75/442/EEC and Directive 91/156/EEC)	Revision	Waste thematic strategy	Repealed and replaced by Directive 2008/98/EC.
Hazardous waste (Directive 91/689/EEC)	Revision	Waste thematic strategy	Repealed and replaced by Directive 2008/98/EC.
Waste oils (Directive 75/439/EEC)	Repeal	Waste thematic strategy	Repealed and replaced by Directive 2008/98/EC.
Industrial emissions (Directive 96/61/EC IPPC, Directive 2001/80/EC on large combustion plants, Directive 2000/76/EC on the incineration of waste, Directive 1999/13/EC on the use of organic solvents)	Recast	“Streamline interaction between various legislations, while not altering the underlying principles and the level of ambition”	IPPC revision proposal (2007), adopted (2010).
Eco-label (Regulation 1980/2000)	Recast	“Create a more business friendly system by involvement of key stakeholders [...] outsource routine criteria development [...] reduce the procedural burden for the Commission”	Proposal (2008), revised (2009).
Eco-management and audit scheme, EMAS (Regulation 761/2001)	Recast	“Raise attractiveness for SMEs by reducing the administrative burden for companies”	Proposal (2008), revised (2009).
Waste from titanium dioxide industry (78/176/EEC, 82/883/EEC, 91/112/EEC)	Recast	“Simplify the current legislation [...] deleting obsolete provisions, while keeping the same level of environmental protection”	Proposal (2008), revised (2009).
Sulphur content of certain liquid fuels (Directives 1999/32/EC and 2005/33/EC)	Codification and revision	“Codification could be considered as part of the review of the directive currently underway”	Proposal (2011), revised (2012).
Substances depleting ozone layer (Regulation 2037/2000)	Recast	“Simplification as part of an overall assessment of the effectiveness of the present framework in the light of new technical and scientific developments which might require new issues to be addressed or possibly strengthened”	Proposal (2008), revised (2009).
Hazardous substances (Directive 2002/95/EC)	Revision	“Review [...] based on the development of the state of technology, experience gained environmental requirements and the functioning of the internal market.”	Proposal (2008), revised (2011).
Waste electrical and electronic equipment (WEEE) (Directive 2002/96/EC)	Revision	“Review [...] based on the development of the state of technology, experience gained environmental requirements and the functioning of the internal market.”	Proposal (2008), revised (2012).

**Figure 5.2:** DG Environment legislation targeted in Commission's rolling simplification programme (2005-2009) based on European Commission (2005c, 2006a, 2009b).

That same model was taken-up by the German grand coalition government in 2005 (*Ibid.*), and was adapted by the Commission to the EU level. This change of method illustrates for Lodge and Wegrich (2009, p. 149) a deeper change in perspective:

*The ‘invasion’ of the SCM in the better regulation community signaled a move to the deregulation approach towards regulatory policy.*

Hence, with the Administrative Burdens Reduction (ABR) programme, the Commission shifted from its focus on regulatory quality, to a broader agenda which also incorporated reductions in regulatory quantity. Based on the experience in many Member States (European Commission, 2006a, p. 13) the Commission argued such an objective was “ambitious but feasible” (European Commission, 2006b, p. 6). The Commission set out its action plan on ABR during the German Presidency of the EU in 2007, aiming to reduce administrative burdens by 25% by 2012.

In parallel to its own work within DG Enterprise under Verheugen, the Commission set-up a High Level Group on Administrative Burdens, chaired by former Bavarian Ministerpräsident Edmund Stoiber with a mandate to help the Commission reduce EU administrative burdens. The group was, according to an environmental NGO representative, “a tool in the hands of the Commission, to show outside support for this reduction of administrative burdens agenda” (Respondent 6). The Stoiber group tenure would be extended twice, in 2010 and 2012, with an extension of its mandate each time.

While the Commission presented the ABR programme as the “twin” of its rolling simplification agenda (European Commission, 2009b, p. 2), Van den Abeele (2010, p. 59) argues ABR constituted a further narrowing down of the Better Regulation agenda, from its broad focus in 2000 on the quality of legislation and citizen access to legislation to a focus on the impact of ‘red tape’ on businesses. Indeed, while the Commission defined three types of simplification in 2004 (European Commission, 2004b, p. 3) – simplification of legislation, of administrative procedures for public administration and administrative burdens for business – the ABR programme focused solely on the third one.

The ABR programme identified 13 priorities area, including the environment. For each of these areas, a group of private consultants (such as Capgemini, Deloitte, & Ramboll Management, 2010) was tasked with evaluating the level of administrative burdens. The consultants’ work formed the basis of the Stoiber group work, which also reported

TARGETED POLICY	MS OR EU RESPONSIBILITY?	STATUS
Shipment of Waste – shipment control	EU	Adopted (Regulation 1013/2006)
Shipment of Waste – notification system	MS	Commission recommendation, 07/2010
IPPC	EU	Adopted (Directive 2010/75/EU)
WEEE directive	EU	Adopted (Directive 2012/19/EU)
Placing Biocidal products on market	EU	Adopted (Regulation 528/2012)
Dangerous substances notification	MS	Notification procedure handled by Member States
SEVESO and IPPC inspections coordination	EU	Adopted (Directive 2010/75/EU)
IPPC permits update rather than renewal	EU	Adopted (Directive 2010/75/EU)
Vehicle-destruction certificates	MS	Commission recommendation

**Figure 5.3:** DG Environment targets under Administrative Burdens Reduction programme, based on European Commission (2012a, p. 22).

to the Commission on each of these priority areas. Figure 5.3 illustrates which pieces of environmental legislation were targeted by the ABR programme.

No cuts to environmental administrative burdens were incorporated in the “Top 15 recommendations for stand-alone impact”, and only one – integrating WEEE reporting – was listed among the “Top 15 recommendations by percentage reduction relative to current impact” (Capgemini et al., 2010, p. 53-54). Crucially the programme identified the fact that in some cases the administrative burdens were created at the level of Member States – not the EU. This would open the way to the second term of the Stoiber group, focusing on national ‘red tape’.

### 5.3.3 Effects on the environmental *acquis* and beyond

The early days of the Barroso Commission raised many concerns as to whether EU environmental legislation would be dismantled (e.g. European Voice, 2005b; Wilkinson et al., 2005). But did these concerns materialise into actual dismantled policy outputs?

#### 5.3.3.1 Effects on the environmental *acquis*

Figures 5.2 and 5.3 show that, overall, the targeted pieces of legislation were revised, if not during the first Barroso Commission, at least early into his second term. But while

legislative revision is a prerequisite for the form of dismantling studied in this thesis (dismantling through the legislative route), a legislative revision does not guarantee a specific direction of policy change (as shown in Chapter 7).

Speaking about different better regulation activities, Hjerp et al. (2010, p. 27) argued that:

*Regarding environmental requirements, measures which were proposed under the motto of “Better Regulation” not infrequently effectively resulted in the introduction of more demanding provisions.*

This judgment appears very similar to comments on the impact of subsidiarity in the 1990s (e.g. Jordan & Turnpenny, 2012). But with regard to the ABR programme in particular, environmental actors in Brussels were far from supportive. Thus, DG Environment perceived it as “a big threat” which could weaken policy-oriented DGs within the Commission (Respondent 6). In particular, the difficulty to measure the benefits of environmental legislation meant DG ENV rules were “very vulnerable to any argument on cost analysis” (Allio, 2008, p. 140). Similarly, EU environmental NGOs “saw concrete risks” (Respondent 6) with it and with the work of the Stoiber Group. The Green10<sup>8</sup> therefore seized the opportunity to be represented within the group.

A Green10 in the Stoiber group argued that “in the end the Stoiber group has done no harm” (Respondent 6). In part this was due to the organisation of the group itself, each member was rapporteur on one or two issues, and he was rapporteur on the environment file, which gave him strong powers – for example the ability to “get into the first report [...] the conclusion that you can have lighter regimes for SMEs if it does not undermine the purpose of the directive” thereby protecting the *acquis* (*Ibid.*). But this was also due to a disconnect between a great number of individual complaints on environmental matters (European Commission, 2009c, p. 7) and the figures coming out of the consultants’ report which minimised the importance of environmental policy in EU administrative burdens (estimated to represent 0.6% of total EU-induced administrative costs (Capgemini et al., 2010, p. 35)).

In November 2012 the Commission communicated strongly on its success in meeting

<sup>8</sup>Organisation regrouping 10 of the largest environmental NGOs operating at European level: WWF Europe, Birdlife Europe, European Environmental Bureau, Greenpeace Europe, Transport&Environment, Friends of the Earth Europe, Climate Action Network Europe, Nature Friends, CEE Bankwatch and HEAL <http://www.green10.org/>.

its 25% reduction target. Indeed, the Commission had not only met but surpassed its target:

*5.5% of burden reduction, which would take the total to 30.5%, could be achieved if the additional measures already proposed by the Commission were adopted by the European Parliament and the Council.*

(European Commission, 2012a, p. 3).

Yet actors within the NGO community – but also inside the Council and the Commission services in charge of the ABR programme – present a much less enthusiastic reading of the programme. Three criticisms are frequent: the cost of hiring external consultants (Respondents 8 & 5), the weakness of the methods used (Respondents 9 & 5), and the lack of credibility of the estimated savings (*Ibid.*). Based on these issues, the Commission would change tactics after 2012 (European Commission, 2012b).

### 5.3.3.2 Broader effects

Beyond the question as to whether policy outputs were dismantled, the question of dismantling effects also touches on changes to the EU's opportunity structure for environmental policy-making. In particular, have demands for better regulation meant changes in environmental policy expansion, or in the Commission's legislative culture?

As with previous efforts, Barroso & Verheugen's simplification programme also targeted policy proposals. In September 2005, the Commission withdrew 68 proposals predating 2004 (including 7 environmental ones (European Voice, 2005b)), removed for four different reasons: due to obsolescence, because they did not meet better regulation standards, because they were stuck in the legislative process or failed to meet the Lisbon Strategy's objectives for growth and jobs (Agence Europe, 2005a). While European Trade Unions and the Socialist & Democrat Group within the European Parliament strongly opposed the move and its impact on the European Social Model (Le Monde, 2005); UEAPME, the European SMEs' professional organisation, argued that a much greater number of proposals should have been cut – yet stressed the need for new environmental legislation (Agence Europe, 2005d).

Keeping air quality reform on the agenda had been a victory for the environmental Commissioner in July 2005. When the strategy was finally published in October, many environmental campaigners felt this had been an empty victory, describing the final text

as a “toothless tiger” (ENDS Report, 2005a), leading European Voice to ask whether this was “just the standard environmentalist’s lament” or “whether EU green policy really has been crippled by a better regulation blow” (European Voice, 2005b).

A final issue – called for since at least the 1995 Molitor report – was the change of culture at EU level, and especially within the European Commission. During the British 2005 Presidency, the Minister in charge of better regulation, John Hutton MP, argued there was a culture change ongoing within the Commission (House of Lords EU Committee, 2005, p. 22):

*The language is changing and the dynamic is changing. I think we have gone from the perspective of maybe a couple of years ago when there were not many people talking this sort of language in the European Union to now where I think it is probably the common language in the European Union.*

Crucially, while the ENDS Report presented better regulation as a “British disease” (ENDS Report, 2005d), John Hutton argued better regulation was more than an “Anglo-Saxon obsession” but a “shared agenda across the European Union” which required building alliances and being approached “from a pro-European perspective.” (*Ibid.*).

Yet whether this apparent interest in better regulation trickled down to all levels of the Commission is highly debatable. Thus for example Commissioner Verheugen complained in the German press of how high level Commission civil servants were hindering his better regulation work, with in particular strong Director Generals in DG ENV and SANCO standing up to him (European Voice, 2006b). These divisions were felt at all levels of the Commission, with “deep divides along quasi-ideological lines” between DGS supporting or opposing Better Regulation (Allio, 2008, p. 134) These difficulties cast doubt on the depth of the “culture change” at work.

## 5.4 Conclusion

While Chapter 4 examined how dismantling first climbed onto the EU decision-making agenda, Chapter 5 has shown the multiple initiatives pursued under the Prodi and Barroso I Commissions. The Prodi Commission set out to define a better regulation policy at EU level. The Commission presented its work over the early 2000s as a “transitional period towards a changed regulatory culture within the Community” (European Commission, 2003a, p. 3). As with the efforts pursued under the previous Santer Commission,

environment was not a key target for the Prodi Commission's better regulation campaign, with only two sectors of environmental policy (waste and air) part of 19 sectors targeted. In contrast to its predecessor, the Prodi Commission adopted a systematic approach to screening the *acquis*, which emphasised stakeholder consultation about the methods and transparency on the results (epitomised by the scoreboard) (European Commission, 2003d). Interestingly, the Commission set itself a 25% reduction target which it failed to meet.

The first Barroso Commission followed in its predecessor's footsteps notably with the continuation of the rolling programme, but it recentred better regulation efforts on improving competitiveness, with a growing interest in administrative burden reductions in its later years. Environmental policies were a much more prominent target than they were in the Prodi years – especially waste and air policy. It also appears to have had much larger effects than Prodi – for example it met its own (very different) 25% target and it published proposals to revise most targeted pieces of legislation, *etc.*

Despite these differences, these ten years of Better Regulation in the EU highlight a number of commonalities in terms of opportunity structures and strategies for dismantling advocates within the European Commission. In terms of blame avoidance, each Commission strove, first, to differentiate their work on better regulation from deregulation – without wholly convincing MEPs<sup>9</sup> or NGOs – as well as attempting to clearly link simplification to competitiveness and greater proportionality of the *acquis*. In that respect these ten years can be described as “a battle between quality and quantity as alternative focal points for regulatory reform” at EU level (Radaelli, 2007, p. 199), with the Commission gradually moving toward the quantitative end of the spectrum. Second, both the Prodi and Barroso I Commissions used independent high level groups – Mandelkern, Kok, Stoiber – which were able to take a harder line and muster external support for the Commission's ambition for better regulation. In terms of targets, their environmental policy targets – waste, air, IPPC – were also very similar over time (and were only one amongst many targeted policies – stressing that simplification is a much broader agenda). Furthermore they all tried to change the inner workings of the Commission, with a greater role for the Secretariat General under Prodi and the informal Commissioner working groups

<sup>9</sup>i.e. Poul Nyrup Rasmussen, President of the Party of European Socialists asked for proper supervision of this “bonfire of red tape” (European Voice, 2005a).

under Barroso I. But all faced opposition from within the Commission, whether from fellow Commissioners or from within services, casting doubt on the much touted “culture change” within the Commission, and on the ability of the Commission to deliver dismantled policy outputs.

But these ten years did not see the Commission – or more precisely its Presidents and DG Enterprise – as the only dismantling advocates at EU level, with the UK, Netherlands and Germany remaining key dismantling proponents. Crucially, Chapter 5 illustrated how Member States can change dismantling strategies over time. Hence, when arriving in office Angela Merkel was reported to be highly critical of the reduced pace of deregulation, calling for *debureaucratisation*, supporting Verheugen against his opponents within the Commission (European Voice, 2006a, 2006b), and adopting an adversarial tone similar to the one favoured during the 1992 UK presidency. On the other hand during the 2005 UK presidency, the UK copied Germany’s 1994 strategy of presenting regulatory reform as a pro-European initiative:

*We need to have allies for this approach, we need to build up alliances in the European Union, and we are determined to do so because we are doing it very much from a pro-European perspective. To be honest, if we approach it from any other perspective at all it will disappear.*

(House of Lords EU Committee, 2005, p. 22)

Finally, a third key Member State, the Netherlands, provided a tool to achieve administrative burden reduction, with its Standard Cost Model adopted at EU level and throughout most Member States in the mid 2000s. In terms of pursuing dismantling, Member States appeared to favour broader coalitions compared to the early 1990s – another change of strategy compared to this earlier period. Hence these three Member States and others organised growing coalitions to influence the Better Regulation agenda – notably steering it toward administrative burdens. While the European Council played a role in the early 1990s as well, in the 2000s the European Council and the Competitiveness Council were making very frequent, detailed demands, that had been agreed by the entire Council (instead of one or two States’ ‘hit lists’). As such, dismantling in the 2000s appears to be much more a case of “two processes”, agenda setting from above and from below “unfolding simultaneously (or nearly so), each having a reciprocal effect on the other” (Princen & Rhinard, 2006, p. 1123).



# Chapter 6

## Smart & fit regulation: changing dismantling rationales in the 2010s?

I've been quoting Montesquieu several times, to show that better regulation is not just a British agenda. Montesquieu said "Les lois inutiles affaiblissent les lois nécessaires". Useless laws weaken necessary ones.

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J-L. Barroso (2014, p. 6)

### 6.1 Introduction

This chapter examines policy dismantling attempts during the second Barroso Commission (2009-2014). It describes changes to EU level discussions and programmes on regulatory reform and policy simplification, asking whether and to what extent they can be characterised as attempts to dismantle EU environmental policies. To do so, it first studies changes to how the EU better regulation agenda was framed under Barroso II – and how this frame was contested by certain Member States. Second, it analyses the different reform and evaluation programmes proposed and their effects, focusing on the environmental *acquis*. It concludes by stressing the importance throughout this period of tensions within the European Commission, of a growing number of Member States coalitions, and an increasing focus, as in the 1990s, on reforming the environmental *acquis*.

## 6.2 Smart Regulation in the Barroso II Commission

From the onset of his second term, José Manuel Barroso made clear that better regulation would be his very own “leitmotif” (ENDS Europe, 2009). This section shows how he set out to do so with his Smart Regulation plan (European Commission, 2010) with increasingly vocal Member States both supporting and contesting his plans.

### 6.2.1 Framing Smart Regulation: a change in name only?

As Barroso “seize[d] control of the ‘Better Regulation’ agenda” (Euractiv.com, 2009), he implemented two key changes: first, he gave it a new name, “Smart Regulation” (European Commission, 2010). Second, he reorganised better regulation work within the Commission. To show that the Commission President was taking “direct responsibility for smart regulation” (European Commission, 2010, p. 2), the team working on better regulation was moved from DG Enterprise to the Secretariat General. The following section assesses the importance of these changes – in terms of framing and venue (Princen, 2011).

#### 6.2.1.1 Reframing better regulation: smart regulation, regulatory burdens

In terms of framing, the second Barroso Commission oversaw three contested moves: from better to smart regulation, from administrative to regulatory burdens, and tentatively, from *unnecessary* burden reduction to *net* burden reduction.

Two different interpretations of the shift from better to smart regulation co-exist. First, that the move to smart regulation was a logical next step, changing the name, not the content:

*You should not read too much into the change from better to smart regulation – it needed to be something different, somebody over coffee came up with smart regulation, we called it smart regulation. But if you compare the actions there is not a lot of difference.* (Respondent 12)

In that respect, the move to smart regulation in 2010 is not necessarily the start of a new phase of the EU better regulation process – it may be best understood as yet another sign of the growing pressure on the EU to tackle growth and jobs in the wake of the economic crisis (Respondent 5), already epitomised by the EU’s programme to reduce

administrative burdens (2007-2012), or even earlier, by the “competitiveness” targeting of the re-launched Lisbon Strategy in 2005. Thus better regulation at EU level can be seen as a rising tide:

*Certainly the mentality that we see now is not unprecedented. [...] it has been like a tide rising It was rising in the way that everyone got used to it and accepted it. Personally I cannot recall particular shocks to the system, it has been just creeping in.* (Respondent 8).

Conversely, for others, the start of the second Barroso Commission marked a major shift (Van den Abeele, 2014): e.g. for some environmental NGOs, the Commission’s pledge to “step up a gear” (European Commission, 2010, p. 2) meant that “it has clearly gotten worse under [the] Barroso II Commission compared to Barroso I” (Respondent 8).

A second attempt to reframe better regulation was the change of emphasis from *administrative* to *regulatory* burdens. In Commission communications on better regulation and subsidiarity since the early 1990s, the phrase “regulatory burdens” only appears frequently<sup>1</sup> from January 2009 onward (*i.e.* in the last months of Barroso I) (e.g. European Commission, 2009b). This can be compared to very few occurrences between 1990 and 2004; most notably in the Commission’s reply to the Molitor report which uses the term (European Commission, 1995b, p. 1-2) and in a 2005 Communication from Barroso (in coordination with Verheugen) to discuss the relaunch of the Lisbon agenda (Barroso & Verheugen, 2005, p. 18). Once again opinions differ as to the importance of this change, with one interviewee questioning whether there was any real difference between regulatory and administrative burdens (Respondent 12). Conversely, Van den Abeele (2014, p. 13) characterises the shift in terminology as “a fundamental change of direction on the part of the Commission [...] a change of goal post”. That opinion was mirrored by an environmental NGO representative involved with the Stoiber Group (Respondent 6). He contended that, although the Stoiber group was supposed to deal only with *administrative* burdens in its first two terms, many members were keen to expand their focus to regulatory burdens as well. But such a shift would clearly change the picture: while environmental legislation might have limited administrative burdens, certain key pieces of legislation such as IPPC, REACH or the directive on Environmental Impact Assessment imposed considerable regulatory burdens on businesses. Hence changing the type of

<sup>1</sup>In 10 out of 13 reports on better regulation from 2009 to 2014, *e.g.* European Commission (2009d, p. 3)

burden considered made it more likely that the environmental *acquis* would be targeted. While administrative burden reduction is often presented as being about “whether the aims, which nobody debated, could also be reached in a simpler way” (Respondent 12), L. Vogel and Van den Abeele (2010, p. 60) argued that talking about regulatory burdens means moving from “better regulation” to “deregulation proper” – more openly signaling policy dismantling intent and debates on the “purpose of the legislation” (Respondent 6).

Crucially, Van den Abeele (2014, p. 13) argued that this change “prompted no objection from the co-legislators”. Notably, Vogel and Van den Abeele (2010, p. 60) show that this move was largely supported by the Competitiveness Council in December 2009 (Council of the European Union, 2009). This is perhaps not surprising. While regulatory burdens may have been a new target at EU level, it had long been discussed and targeted in the UK, the Netherlands and Germany (e.g. HM Treasury, 2004; Regulatory Reform Group, 2008; Actal, National Normenkontrollrat, Regelradet, & Committee Regulatory Policy, 2011). Yet this shift is remarkable as it shows that the conventional caveat – protecting the *acquis* and policy objectives – which had been frequently reiterated since 1993, was being debated and contested.

The final and most contested reframing attempt was the move from reducing *unnecessary burdens* to a net reduction in burdens (irrespective of any necessity). Such a move had already been done in certain Member States such as the UK. Hence, the coalition government (2010-2015) put in place a one-in/one-out policy for business regulation in 2011, followed by a one-in/two-out policy in December 2012 (BIS, 2012). Parts of the UK government were keen to upload this objective at EU level. Thus, in 2011 the UK Department for Business presented its plan for “unlocking growth by reducing the overall EU regulatory burden” (BIS, 2011, p. 13). Interestingly, different departments focused on different types of burdens. DEFRA, the UK department which oversees the largest number of EU regulations<sup>2</sup> (as it deals with the Common Agriculture & Fisheries Policies alongside the environment) stressed only *unnecessary* burden reduction (DEFRA, 2011b).

The Commission’s position on the “unnecessary burden” issue is rather unclear. References to “unnecessary” are often omitted. In its 2006 plan for administrative burdens reduction, the reduction targeted *unnecessary* burdens, and the 25% target was not a net

<sup>2</sup>In DEFRA’s 2011 cost-benefit analysis of its own regulations estimated that about 81% of total costs on business were associated with EU or international regulations (DEFRA, 2011a, p. 15).

target – more burden could have been added through new legislation in the meantime (Respondent 16). In 2011, in a communication about SMEs, the Commission planned on “minimising the regulatory burden of legislation that is deemed necessary at EU level” (European Commission, 2011, p. 2). Presenting its programme on Regulatory Fitness (REFIT), the Commission stated that the European Council had asked for it to reduce the “overall regulatory burden” (European Commission, 2012b, p. 1) but clearly contended that REFIT would focus on *unnecessary burdens* (*ibid.*, p.3). Yet in the accompanying staff document, the institution called for a “broader and deeper overall reduction in the regulatory burden at EU level” (European Commission, 2012a, p. 3) thus blurring the lines between what the Commission presented as its own position (unnecessary burdens), and that of the European Council (net reduction). Interestingly, the final Stoiber report presented in the last months of the Barroso Commission openly supported the adoption of a net reduction target (High Level Group on Administrative Burdens, 2014).

#### 6.2.1.2 Change in venue: the growing role of the Secretariat General

Alongside his shift to Smart Regulation, President Barroso changed the Commission’s internal-organisation by making the Secretariat General (SecGen) and not DG Enterprise responsible for the better regulation agenda. It marked the end of a fragmented governance system on this issue at EU level (Lodge & Wegrich, 2009), in which DG Enterprise was “the main administrative backbone of a range of better regulation initiatives” (Lodge & Wegrich, 2009, p. 150), while the SecGen oversaw the EU’s impact assessment process. In effect, this shift was a continuation of efforts to reinforce the SecGen dating as far back as the discussions surrounding the Molitor Report of 1995 (European Commission, 1995b) and the ensuing Santer reforms, marking a wish to centralise all better regulation activities under the President (European Commission, 2010).

This shift can be linked to “horizontal venue shopping” (Princen, 2011, p. 931), a way to favor one framing of an issue over another – as different venues will frame issues differently. But in this case, the staff working on better regulation moved to the SecGen, taking, for example, the coordination of the Stoiber Group to the SecGen (Respondent 12). What changed then was perhaps not so much the staff, or framing, but their position within the Commission, and their power over policy DGs (Respondents 12 & 16). While

Verheugen made better regulation his key agenda, the team at DG Enterprise had no direct authority over other DGs.

*At the time, Mr Verheugen was then more or less in charge of Better Regulation in DG enterprise. He had already said he was quite in favour of BR but there were still some resistance in other DGs and it was clearly seen as a DG enterprise issue and as such would not have made much of a difference as it was just coming from one DG. So I think the move eventually to the SecGen was to create a more overall endorsement of the policy. It became less easy I think for other DGs to play DG enterprise against other interests, when the SecGen took control of it it became a little bit more neutral issue.*

(Respondent 16)

This made the propagation of better regulation practices across the Commission highly complicated, especially when it came to certain DGs, such as ENV or SANCO (Respondent 12), where officials felt strongly about the need for policy expansion in their own issue areas (Allio, 2008; European Voice, 2006b):

*If you talk to people in environment ministries and DG they have a mission, an almost religious mission. You tell them that the way in which they achieve their mission is wrong and then you are an heretic.*

(Respondent 12)

The move meant that the push for better regulation now came from the heart of the Commission (Respondent 12). This central position meant more power (“some formal power and a lot of informal power over the DGs”, Respondent 12), and a new figure-head for better regulation at EU level: the Secretary General Catherine Day, formerly Environment Director General.

Whether that change of venue reduced the tensions surrounding better regulation within the Commission is strongly debated among respondents. While the move away from DG Enterprise may have made better regulation a “more neutral issue” (Respondent 16), tensions remained. Hence, a former DG Environment official argued the move further exemplified DG ENV’s minority position within the Commission (Respondent 17 & 14):

*DG Environment is very isolated inside the Commission [...] The environment has perhaps allies in climate, social affairs and consumer affairs, that’s it, there are no others. [...] This means environment is always in a minority position.*

(Respondent 14)

The opposition between DG Environment and the SecGen was not the only line of contention identified – nor, for certain interviewees, the most important one. Hence, an important distinction was also made between lower Commission officials who were more reluctant to cut regulation, and the higher strata of the Commission (Respondent 14). For another DG Environment official, opinions on the Commission’s own Regulatory Fitness plan (REFIT) differed more within DG ENV and the SecGen than between these two institutions (Respondent 15). Crucially, debates within the Commission on REFIT went beyond frictions between different departments to touch on the future of the European project:

*REFIT is a very controversial programme for the Commission, especially with the policy DGs which are not very supportive with very few exceptions. [...] They think is something that weakens the Commission, that weakens the European project: it is not something we should do, at least not in the way we are doing it. [...] We feel that this is one of the tipping points of the European project: if we do not get that right we are going to fail dramatically [...]*

(Respondent 5)

These discussions surrounding REFIT within the Commission are indicative of a broader debate on the importance of dismantling ‘red tape’ in order to save the EU and bringing it closer to its citizens – going back to the 1994 German Presidency and the 2000 Lisbon European Strategy. The debate is still very active: whereas Edmund Stoiber argued for a “bonfire of EU red tape in a bid to keep Britain in EU” (The Guardian, 2014), Emerson (2014, p. 7) cast doubt on the possibility to claim credit through cutting ‘red tape’:

*How much would a robust recovery now across the EU economy do to limit euroscepticism, or turn around public opinion towards the EU? Probably quite a lot. By comparison, how much difference would a “cut Brussels red tape” programme make? Probably not so much.*

#### 6.2.1.3 Contested framing: Dutch and UK views on subsidiarity and EU ‘red tape’

While these debates were taking place within the Commission, other actors were trying to influence the better regulation (and dismantling) agenda. In particular, two Member States, the UK and the Netherlands, were keen to put forward two distinct frames: one, stressing the need for increased competitiveness and the importance of cutting EU ‘red

‘tape’, the second focusing on the need to revisit discussions on subsidiarity and its application at EU level.

Both countries mobilised these two frames – sometimes in parallel. In the UK, attention to ‘red tape’ and the pledge to cut it, was at the heart of the coalition government’s policy programme when it took office in 2010. Different domestic programmes – the one in/one out objective, the Red Tape Challenge – raised questions regarding the EU origin of some red tape (DEFRA, 2012). This was particularly the case for DEFRA where 52% of the regulatory stock is of EU or international origin (DEFRA, 2011a, p. 13). As such, DEFRA argued that a “strong engagement with the EU has to be part of creating the right regulatory framework” and developed an action plan to be more influential in Brussels (DEFRA, 2011b, p. 14). This British agenda was strongly pushed at EU level by David Cameron during multiple European Council Summits. For example, he was the first signatory of “a plan for growth in Europe”, signed by 10 of his peers, a joint-letter to the Commission and European Council Presidents in which the signatories argued that they “need to sustain and make more ambitious our programme to reduce the burden of EU regulation” (Cameron et al., 2012, p.4). The language was much stronger in October 2013, in the British “cut EU red tape” report, which notably asked for clear targets for burden reduction, a one-in, one-out rule and the need for exemptions and lighter regimes (Business Taskforce, 2013, p. 8). It was presented at a European Council meeting by David Cameron (European Voice, 2013a). This time, a smaller number, 7 out of 28 Heads of State or Government, chose to stand with the UK Prime Minister and to attend a meeting to discuss the report (Agence Europe, 2013) – a sign according to the British PM that this was not solely a “British agenda”. The French President, François Hollande argued against the report, and “blind deregulation” which could negatively impact social and environmental standards (L’Expansion, 2013).

Remarkably, red tape did not figure prominently in Cameron’s speech on Europe at Bloomberg in January 2013 (Cameron, 2013). This “long-awaited and much postponed speech on the UK’s relations with Europe” (European Voice, 2013d) was supposed to set out Cameron’s vision of Europe. This vision was articulated around 5 principles: competitiveness, flexibility, an apparent reference to subsidiarity, democratic accountability and

fairness. In his speech, the only vague reference to red tape is found under the competitiveness heading, when he calls for “a leaner, less bureaucratic Union, relentlessly focused on helping its member countries to compete”. But what is key in this speech is this third principle – which, contrary to the others, he fails to name:

*[...] Power must be able to flow back to Member States, not just away from them. This was promised by European Leaders at Laeken a decade ago. It was put in the Treaty. But the promise has never really been fulfilled. [...] we need to examine whether the balance is right in so many areas where the European Union has legislated including on the environment, social affairs and crime. Nothing should be off the table.* (Cameron, 2013)

This return of subsidiarity (power flowing back, finding the “right balance”) could be understood as a call for policy dismantling (changes to legislation) or for treaty change (changes to competences). In a subsequent discussion in the House of Commons, Cameron stated that “there are series of areas, social legislation, employment legislation, environmental legislation, where Europe has gone far too far” (ENDS Europe, 2013c). Exactly which competences, or pieces of legislation should be rolled back was to be decided after the Balance of Competence review – “an audit of what the EU does and how it affects the UK” launched in December 2012 (Foreign & Commonwealth Office, 2012). Crucially, the move to subsidiarity was presented in the speech as stemming from a Dutch invitation to “to examine thoroughly what the EU as a whole should do and should stop doing” (Cameron, 2013). Which begs the question: were Dutch and British approaches to Europe aligned?

As presented in Chapter 5, the Dutch were instrumental in developing the methods and targets around administrative burdens reduction that would later be taken-up at EU level (Wegrich, 2009). Subsequently, the Dutch government had continued to engage with and attempt to influence the Commission on ABR. Hence, when the Commission asked Member States to suggest further areas of improvement, the Dutch government sent a letter listing “62 concrete reduction proposals” (Ministerie van Algemene Zaken, 2009). Two years later, the Dutch, Swedish, German and British better regulation authorities wrote to the Commission, presenting their own experience in continuing to reduce administrative burdens beyond the 25% reduction target (Actal et al., 2011).

Yet in the aftermath of the Dutch ‘no’ to the Constitution Treaty in 2005, and the electoral success for Eurosceptic parties that followed (Rood, 2007), Dutch governments

engaged differently with their European partners – opting for a more critical tone. Regarding EU environmental policy, this was illustrated by the very public demands to revise downward the Birds directive in 2009 (ENDS Europe, 2014b) – which was publicly turned down by Barroso (Respondent 8). The 2010 election of a new Rutte minority government, supported by the anti-immigration and Eurosceptic Freedom Party marked a further deterioration of relations (Schout & Wiersma, 2012, p. 2).

The Netherlands and the UK can be seen as “traditional allies” (Wiersma & Schout, 2014), and the more critical tone espoused in the Netherlands in the early 2010s appeared to be a perfect match for the UK. Thus, at first glance, they pursued a very similar strategy in 2013. Both the UK and the Netherlands set out to produce a “subsidiarity review”, the UK Balance of Competences Review (Foreign & Commonwealth Office, 2012), and the Dutch report on “Testing European legislation for subsidiarity and proportionality” (Ministerie van Buitenlandse Zaken, 2013). Yet looking closer, both the objectives and scope of the two reviews are markedly different:

*The British Balance of Competences Review is a huge and comprehensive exercise in the collection of evidence from independent sources on how EU competences are being exercised [...] The Dutch project has been far quicker and simpler, with government departments and various professional bodies invited to submit their wishes for EU regulation that would better respect the principles of subsidiarity and proportionality.*

(Emerson, 2014, p. 2)

Writing on the Dutch review, Wiersma and Schout (2014, p. 53) mentioned the “positive tone” attempted by the second Rutte government and Emerson (2014, p. 2) spoke of a “pragmatic collection of specific proposals” which is “entirely politically correct”. The Dutch review can thus be seen as an attempt to push for greater respect of the EU treaties’ principle of proportionality and subsidiarity in the EU’s application of its competences (Emerson, 2013) – without treaty change or great upheaval (Corbett, n.d., p. 47). The UK Balance of Competences report presented by David Cameron, on the other hand, was about identifying whether the EU has gone too far – about the potential repatriation of competence (requiring overall treaty changes or further British opt-outs).

Not only did the two allies have diverging objectives, but their strategies were very different. The Dutch judged the UK approach “unnecessarily provocative” (Wiersma & Schout, 2014, p. 56), too toxic for the Rutte government which was trying to mend bridges

with Brussels. In attempting to build a broader coalition, the Netherlands invited speakers from around Europe and from the EU institutions to discuss subsidiarity and “better governance” (Respondent 2). But this exercise did not bring the Netherlands and the UK closer. The final report further distances itself from the UK’s “mixed attempt towards a repeal or improvement of EU competencies” (Blockmans, Hoevenaars, Schout, & Wiersma, 2014, p. 6), stressing that much can be done “within the given legal frameworks and procedures” (*Ibid.*, p. 5). Crucially, this report argued that “in itself the principle [of subsidiarity] is insufficient to forge a constructive European reform agenda” (Blockmans et al., 2014, p. 7): the “overall objective of better regulation is regarded as the more important goal”. Hence the Dutch report emphasised that by talking about subsidiarity and competences the UK government chose the wrong “big word”, subsidiarity concerns were not sufficient to build a coalition, and could only lead to *symbolic* dismantling at most.

Nevertheless, while Dutch and UK interests appeared to diverge on subsidiarity (notably on the Eurozone, where the Dutch felt the British position was “you more, we less” (Wiersma & Schout, 2014, p. 55)), their interests were much closer on better regulation and regulatory burdens reduction (Respondents 7 & 8). Thus both the Dutch and British better regulation authorities (alongside their Swedish and German counterparts) produced a report in 2011 encouraging the Commission to continue using targets (net targets for reduction if possible) and to extend its ABR programme to broader regulatory burdens (Actal et al., 2011). However the Dutch were again keen to distinguish themselves from British approaches. Emerson (2014, p. 5) argued that “The ‘Cut Brussels red tape’ proposition undoubtedly has some validity, but if it is presented in a populist and disproportionate manner it may fail to win a groundswell of support across the EU” – *i.e.* the “big word” (Princen, 2011, p. 933) underlining these dismantling demands may have been different but the confrontational tone remained. For some, this difference was highly strategic, with the Dutch trying to offer a more politically palatable version of the same agenda:

*The Dutch and the UK are very close on this. I mean if you tell it to the Dutch they will strongly deny it and they'll say 'we are very different from the UK, we don't want to leave the EU we just want to do things better, more effectively, smarter, clever while the UK is really trying to deregulate'. And they really feel strongly about that, it's interesting. But I mean let's call a spade a spade, they work closely with the UK and follow the same agenda.*

(Respondent 7)

These two strategies appeared to be complementary:

*The Brits are playing the outside bully and the Dutch are playing inside the system and they are supporting each other.*

(Respondent 8)

The Dutch and UK governments hence appeared to be the most vocal proponent of policy dismantling at EU level in the early 2010s. This did not necessarily mean that other Member States did not favour policy dismantling, nor that they worked alone – their successful attempts at building coalitions (e.g. the Blockmans et al., 2014 report) show that this was not the case. But this choice of open dismantling strategies going beyond the Commission’s own plans, highlighted key differences with other Member States. Thus, at the October 2013 summit where Cameron presented his own plan for cutting EU red tape (Business Taskforce, 2013), Hollande was outspoken in his opposition to a reduction in environmental or social standards (L’Expansion, 2013), while Angela Merkel chose to highly praise the Commission’s own REFIT plan (Bundesregierung.de, 2013). The failure of the Freie Demokratische Partei in Germany – the liberal party most intent on deregulation – during the 2013 general election had “certainly damped the popularity of this agenda in Germany” – or at least, how visible (and advertised) dismantling demands were (Respondent 8).

### 6.2.2 Commission & Member State initiatives to revise the *acquis*

Growing discussions on the reduction of administrative and regulatory burdens at EU level were further specified in a series of initiatives criticising specific aspects of the *acquis* (and/or of legislative proposals) and calling for policy revision and dismantling. These initiatives fell into three categories: work led by the European Commission, work led by a single Member State, and work led by a coalition of Member States. The following section presents these different initiatives, how targeted policies were selected and whether environmental legislation was targeted.

#### 6.2.2.1 Commission-led initiatives: Regulatory Fitness

Following its Communication on Smart Regulation in 2010, the second Barroso Commission set out a programme for ‘Regulatory Fitness and Performance’ in 2012 (European Commission, 2012b), promising to “take Smart Regulation to the next level” (European

Commission, 2012a, p. 10). REFIT was presented right as the 2007-2012 programme to reduce administrative burdens (ABR) was coming to an end, having successfully met (in fact overachieved) its 25% target.

But REFIT was not a direct follow-up of the ABR programme. While a follow-up programme was indeed announced – the ABR Plus programme – it would “focus on follow-up in the Member States” (European Commission, 2012b, p. 5) – not at EU level. Departing from the ABR template, REFIT eschewed any quantitative target (both relative or net) as well as the use of external consultants, stating that it “does not believe that setting global targets and/or quantitative formulae for managing the stock of legislation will produce the desired results”(European Commission, 2012b, p. 3).

Instead REFIT was a “tailored approach”(European Commission, 2012b, p. 3), an umbrella programme regrouping different initiatives launched under Barroso II: “the ongoing rolling simplification programme and work on reducing regulatory burdens for smaller businesses will also be immediately merged into the new programme” (European Commission, 2012b, p. 4). Another existing initiative, the “fitness checks” piloted with water policies in 2010 would be extended. Compared to the ABR programme which relied on external expertise (e.g. Capgemini et al., 2010), REFIT was an in-house Commission programme under SecGen leadership:

*REFIT is an administrative approach: REFIT is based on the one hand on an internal review of its *acquis* under the lead of the Secretariat General, looking at what are the problems, what are performance difficulties. You know there is a lot of experience with legislation, we know a bit what works and what does not work. And on the other hand there are complaints of certain stake-holders, and also consultations such as TOP10 consultation to identify most burdensome legislation for SMEs. In addition we also run a permanent dialogue with stakeholders, to pick up ideas from the ground, businesses, local authorities etc. whoever wants to share with us.*

*We screen the complaints we receive and for example if they target a piece of environmental legislation we contact DG environment and ask them for their reaction and then we will start an informal trilateral dialogue between the complainant, DG environment and ourselves and overtime we will establish inside the SG a position toward that complaint: not justified nothing to do, or they may have a point, lets do something about this. But even then there are many ways of acting: if you are quite sure and know quite well what the problem is you can amend the piece of legislation where it is burdensome, complicated or not working etc. or you could if it is outdated and unworkable, you could withdraw it while still within the decision-making system or repeal it after it is enacted.*

(Respondent 5.)

Underpinning REFIT efforts was a mapping of the entire *acquis*:

*The REFIT process will start with a mapping exercise to identify the regulatory areas and pieces of legislation with the greatest potential for simplifying rules and reducing regulatory cost for businesses and citizens without compromising public policy objectives.*

(European Commission, 2012b, p. 4)

This mapping exercise was conducted twice under Barroso II, with results from the first mapping published in October 2013, and from the second in June 2014 (European Commission, 2013c, 2014c). These Barroso II mappings were built on previous mappings – going all the way back to the 1990s – but while recent mapping efforts had focused on priority areas (e.g. 13 under ABR), REFIT aimed to review the entire *acquis*. It also distinguished itself from previous programmes in the importance given to consultation and transparency. Hence, the communication pledged that “stakeholders will be informed throughout the process and their views will be essential for the prioritisation of activities” (European Commission, 2012b, p. 4). While the mapping itself would identify problematic pieces of legislation, further information would be obtained through consultation (e.g. European Commission, 2013b) as well as through direct “complaints from stakeholders” (Respondent 5), leading to better prioritisation of evaluation and revision activity. A further key change was related to the transparency of the programme. The Commission already had a track record for the transparency of its better regulation activities – e.g. minutes of the Stoiber group meeting are available online (Respondent 6) – but REFIT took this further, attempting to address two issues with the REFIT scoreboard (European Commission, 2012b, p. 4): first, a lack of available information on the Commission’s better regulation efforts and second, a tendency for other EU institutions to blame the Commission for the state of the *acquis*.

As such, the REFIT scoreboard addressed what had remained a Commission *leitmotiv* since the late 1990s, the “shared responsibilities” among different EU actors since the late 1990s (European Commission, 1998a). Interestingly, while this was a departure from better regulation efforts under the first Barroso Commission, this attention to transparency echoed Prodi’s rolling simplification programme which also used a scoreboard to present its results.

This notion of shared responsibility was also applied within the Commission. Although REFIT was led by the Secretariat General, all DGs contributed to the mapping of

the acquis and to the subsequent evaluation programmes (“fitness checks”). While ABR targets were identified by consultants, REFIT priorities were identified in an exchange between the Secretariat General and each respective DG. Specific stakeholder demands also fed into these discussions (Respondents 5 & 15). Different types of REFIT initiatives, evaluations, withdrawal of proposals or legislative actions (tabling a legislative proposal) were identified for each DG, and “a particular effort [was] made in the areas of environment (12 initiatives), enterprise and industry (8 initiatives) and employment (5 initiatives)” (European Commission, 2013c, p. 7). The second mapping exercise in 2014 suggested further initiatives in the environmental field, one repeal and five further evaluations or fitness checks,<sup>3</sup> some of which would be taken up by the following Juncker Commission.

These targets are interesting for two reasons: first, a number of pieces of legislation<sup>4</sup> were first targeted for dismantling in the 1990s and/or in the early 2000s. Second, the type of REFIT initiative and the repartition between legislative action and other types of actions is striking. Hence the crux of the work was expected to be accomplished through evaluation (either of a single piece of legislation (evaluation) or of a whole policy field (fitness check)), highlighting that REFIT is first and foremost an evaluation programme:

*We had a mapping exercise [...] we identified 40-50 pieces of environmental legislation, and checked when they last had a review, an evaluation, an impact assessment, what are the legal commitments we have in terms of review etc. Are there any problems with it (that is very subjective) and we said, everything that has an implementation report coming up, or a review, let's turn this into a full-blown evaluation.*

(Respondent 15)

As for DG Environment, this meant a new focus on evaluation (from approximately 1 a year to 12 a year (Respondent 15)), to be conducted around 5 principles: efficiency, effectiveness, coherence, relevance and EU added-value (DG Environment, 2015).

<sup>3</sup>Suggested repeal: Standardised Reporting Directive (91/692/EC). Evaluations or fitness checks: Directive 87/217/EEC on Asbestos, Directive 2010/63/EU on Animals used for Scientific Purposes, the Strategic Environmental Assessment Directive (2001/42/EC), Floods Risk Directive (2007/60/EC) and Stage I VOC (94/63/EC)

<sup>4</sup>e.g. Shipment of Waste, EIA, WEEE, EU Nature legislation, EMAS and Eco-label, Waste policy, Wild Animals in Zoos

TARGETED POLICY	REFIT INITIATIVE	STATUS
<i>Shipment of waste</i>	Legislative action	Adopted 05/2014
<i>Environmental impact assessment</i>	Legislative action	Adopted 04/2014
<i>Waste waste electrical and electronic equipment (WEEE)</i>	Legislative action	Adopted 07/2012
<i>Soil framework directive</i>	Withdrawal	Withdrawn 05/2014
<i>Access to justice in environment</i>	Withdrawal	Withdrawn 05/2014
<i>Water policy</i> (6 directives)	Fitness Check	Check completed 11/2012, no change in legislation
<i>Waste policy</i> (5 directives)	Fitness Check	Fitness check 2012-2014
<i>Nature 2000 (Birds &amp; Habitats directive)</i>	Fitness Check	Fitness check 2014-2016
<i>EMAS &amp; Eco-label</i>	Fitness Checks	Fitness check 2014-2015
<i>REACH</i>	Evaluation	Completed 02/2013, followed by fee reductions for SMEs and change in guidance
<i>Environmental liability</i>	Evaluation	Ongoing evaluation, due 2015, delayed
<i>Infrastructure for Spatial Information</i>	Evaluation	Ongoing evaluation, due 2015, delayed
<i>Environmental noise</i>	Evaluation	Ongoing, due to end 2016
<i>Volatile organic compound emissions II</i>	Evaluation	Ongoing, due to end 2016
<i>European Pollutant release and Transfer register</i>	Evaluation	Ongoing, due to end 2016
<i>Wild Animals in Zoos</i>	Evaluation	Planned for 2015/2016
<i>Strategic environmental assessment</i>	Evaluation	Planned for 2015/2016

**Figure 6.1:** REFIT environmental targets, based on European Commission (2013a, p. 54,58-71), European Commission (2014b, p. 70-77) and European Commission (2015, p. 6-9)

### 6.2.2.2 Commission-led initiatives: “Think small first” and the Top 10

A second key initiative was the application of the EU’s “think small first” principle, notably through the 2012 Top 10 consultation. This consultation sat under the broader REFIT umbrella, and it was an interesting example of both how the Commission tried to garner business input in its better regulation plans, and of how SMEs in particular were treated. Following the 2008 Small Business Act for Europe, the Commission produced a Communication in 2011 on minimising regulatory burdens for SMEs (European Commission, 2011). As with “shared responsibilities”, this focus on SMEs was not *per se* something new at EU level – SME-specific rules were suggested in the 1995 Molitor report (European Commission, 1995b). But the efforts under Barroso II are interesting in terms of how policy dismantling is framed – should existing policies be dismantled to help SMEs?

As part of its SME policy, the Commission conducted the Top 10 consultation over three months (October-December 2012), receiving 1000 replies, with large proportion of responses coming from SMEs from three Member States: Belgium, Italy and Germany (European Commission, 2013d, p. 8). Respondents could list any pieces of EU legislation which they found most burdensome. The collated replies reveal the perceived and declared importance of environmental policy burdens for SMEs – out of the 14 directives and regulations singled out, three are environmental: REACH (most cited) and two pieces of waste legislation.<sup>5</sup> In that respect, the Top10 consultation confirmed the ‘irritant’ nature of the environmental *acquis* for European companies:

*Environment was apparently an irritating area for industry. Of course in other areas like fiscal or transport issues there are a few directives that have an enormous impact but in the environment the impact is spread over many areas. It means that many specific industries have many specific concerns that are very important for them but not for industry as a whole.*

Respondent 6.

Having identified burdensome legislation for SMEs, the Commission attempted to reduce them in existing and future legislation. In the overall REFIT communication, the impetus was put on simplification and reduced costs “without compromising public policy objectives” (European Commission, 2012b, p. 4). A similar caveat was introduced regarding SMEs: the 2011 communication states that the Commission “aims to help small businesses by minimising the regulatory burden of legislation that is *deemed necessary* at EU level” (emphasis added European Commission, 2011, p. 2).

As argued in Chapters 4 and 5, this is a frequent caveat. But while it arguably stands in the way of ‘across the board’ or ‘blind’ deregulation, it does not preclude all forms of policy dismantling. A reform meeting this requirement can still lead to policy dismantling: whether public policy objectives are compromised is a matter of *political* opinion. Furthermore, under the definition of policy dismantling adopted in this thesis, the relaxation of standards or reduction in scope constitutes dismantling – irrespective of whether policy objectives are impacted or not.

Efforts to ‘think small first’ under Barroso II appear to have made policy dismantling for SMEs easier – yet still highly debated. While the Commission argued “it is not always

<sup>5</sup>Directive 2008/98 on waste, Regulation 1013/2006 on shipments of waste (European Commission, 2013b, p. 11).

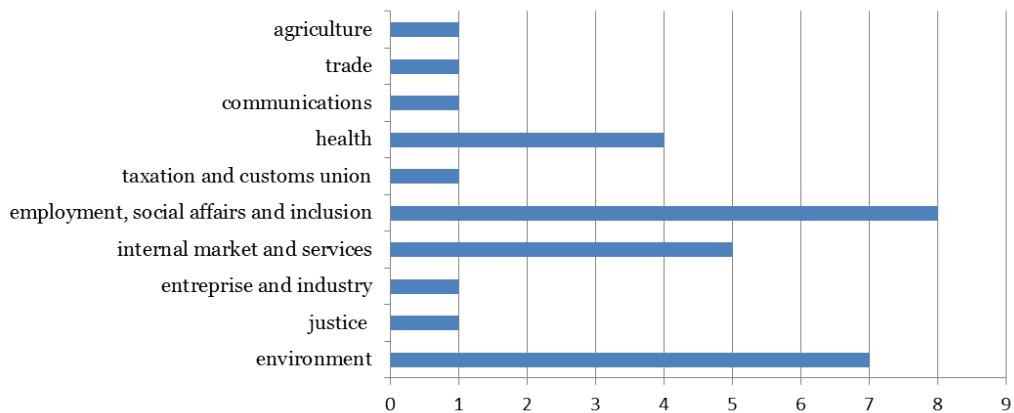
possible to exempt micro-enterprises" (European Commission, 2013d, p. 3), the impetus with the "SME test" was put on justifying why SMEs should not be exempted – hereby reversing the burden of proof (European Commission, 2011, p. 5). When exemptions were not possible, lighter regimes for SMEs would be pursued (European Commission, 2013d, p. 4). These exemptions mostly concerned "administrative burdens" and reporting duties, and had to be considered every time a piece of legislation was revised. As such, the application of this SME test appeared to open the way for frequent cuts in formal intensity in particular. How far reaching these cuts would be depends, crucially, on how SMEs are defined. Corporate Europe Observatory and Friends of the Earth Europe (2014, p. 5) argued that the present Commission definition – up to 250 employees – cover 99% of EU businesses and 66% of the EU workforce. Exemptions would thus become the rule for most EU businesses.

#### 6.2.2.3 Single-State initiatives

Alongside the Commission's own plans, a number of single-State initiatives emerged. As indicated above, the most developed ones were put forward by the UK and Dutch governments. In the UK, both the "Cut EU red tape" report by the Business Taskforce and the Balance of Competences review went further than simply contributing to framing the discussion on dismantling. The Balance of Competences offered in depth discussion on the challenges of the EU environmental *acquis*, with contributions from 150 industries, environmental NGOs and academics. It highlighted the "contested" nature of environmental policy (HM Government, 2014, p. 5) and of the EU's environmental competence:

*The evidence showed that a large number of organisations representing all sectors considered that it is in the UK's national interest for the EU to have a degree of competence in the broad areas of environment and climate change because of the advantages that this brings for the Single Market and environmental protection. However, there continues to be considerable debate on how far this competence should extend and whether the EU always acts in accordance with the principles of subsidiarity and proportionality laid down in the EU Treaties, in a way which benefits our national interest and is compatible with the principle of localism.*  
(HM Government, 2014, p. 6)

A sign of this "considerable debate" (*Ibid.*) was visible in the work of the Business Taskforce, composed of UK business leaders reporting directly to the Prime Minister. It offered a Business-led 'hit list' of thirty precise targets, built on 'input from hundreds of



**Figure 6.2:** Legislations targeted across policy areas, based on Business Taskforce (2013)

firms, individuals and business associations across Europe" (Business Taskforce, 2013, p. 5).

In the UK Business Taskforce report, environment came second to social policy with 7 items, ranging from access to justice in environmental matters to chemicals policy and the REACH regulation. But the focus appeared to be on *new* legislative proposals not on the *acquis* – hence not what is defined in this thesis as calls for dismantling, but as obstruction of further policy expansion. Thus the Taskforce asked that proposals on environmental impact assessments, access to justice in environmental matters, soil protection be dropped, as well as changes to the proposal on fuel quality. In addition, the report asked the Commission to refrain from legislating on shale gas. Only two existing pieces of legislation were targeted, the Waste Framework Directive and the REACH regulation. But for REACH, changes were requested to implementation guidance – not legislation. This means that out of a ‘hit list’ of 7, only one – Waste Framework Directive – qualifies as a call for dismantling.

The Dutch 2013 subsidiarity review listed 54 policy targets, 7 of which were environmental (Ministerie van Buitenlandse Zaken, 2013) – a much smaller proportion than the Business Taskforce report. But many of the directives and regulations picked up in the Dutch review were similar to the Business Taskforce report and/or the Commission’s own REFIT list: the Noise Directive, Environmental Impact Assessment, Air Quality and the Soil Directive. Others such as the proposed directive on maritime spatial planning or the floods directive were specific Dutch concerns. As with the Business Taskforce report, the

list mixed both proposals (e.g. soil directive) and existing pieces of legislation (e.g. Water Framework Directive), and in the case of impact assessment, using the then on-going legislative reform to call for policy dismantling and increased leeway for Member States.

A remarkable aspect of this ‘hit list’ is the highly conciliatory tone used throughout, as shown by the following example regarding the Air Quality directive:

*If the Directive or its annexes are amended in the future, the Netherlands would urge that member states be given more leeway in interpreting the measurements and the implications of excess values at hotspots.*

(Ministerie van Buitenlandse Zaken, 2013, p. 14)

But while the Dutch review listed precise targets, its objective may have been elsewhere: the Dutch review was a way for the Dutch government to signal its return to European affairs, and the start of a more constructive discussion (Respondent 2). Subsidiarity may have been its focus in early 2013, but by the end of 2013 Dutch Foreign Minister Frans Timmermans made clear that Dutch priorities for Europe were a reformed European Commission, less connected to the European Parliament (Wiersma & Schout, 2014, p. 54) – with public policy aims falling far behind.

#### 6.2.2.4 Multiple state coalitions

While the UK and the Netherlands were the most vocal Member States in pushing for a certain framing of the EU better regulation agenda, they, and other Member States, tended to be part of bigger coalitions when it came to calling for specific methods or targets. These coalitions could be short-lived, simply leading to a joint press column (e.g. Wall Street Journal, 2012), to a bigger report (e.g. the report by the Danish, Dutch and British governments on smart regulation (Danish Government, Dutch Government, & HM Government, 2010)), or lead to a pluri-annual joint initiative, such as the Make It Work initiative led by the Dutch, British and German governments since 2014 (Make It Work Initiative, 2014). Yet despite the multiplication of these coalitions during the second Barroso Commission, they rarely led to precise calls for policy dismantling. Hence, the joint op-ed by 5 Industry ministers (Wall Street Journal, 2012) published two days before the Commission’s 2012 REFIT communication could only agree on very vague demands such as “ensuring that regulation is enacted in a way that supports competitiveness”, and calling for a “constructive review” of horizontal rules (including social and environmental

rules) affecting industrial competitiveness. These reports sometimes stressed favoured methods (such as Danish Government et al. (2010) arguing for the need to better integrate the opinion of end-users, or Actal et al. (2011) calling for regulatory burdens reduction targets).

The closest these reports came to precise targets was with the Dutch, British and German Make It Work initiative. The initiative was started in 2014, at the behest of the Dutch government, after its attempt to create a single environmental act in the Netherlands drew its attention to problems of coherence between different parts of the EU environmental *acquis* (Respondent 11). The British government was soon on board, as was its German counterpart:

*Our thinking is very similar; we've got governments who have very similar philosophies about it. So we have become part of the project team for the project, Make It Work, which has been running now for about 18 months. And then the Germans came on board latterly, because the Dutch always said to us you have to have the Germans on board otherwise it will not work, also their position is slightly different. They said they've joined the project team to make sure we don't go too far, which is actually quite helpful, to have that perspective.*

(Respondent 11).

This initiative drew heavy scepticism from NGOs and from parts of DG Environment (Respondents 11, 4, 7, 13), leading the Green MP Caroline Lucas to inquire about its content in the House of Commons (Eustice, 2014). Yet the initiative, led by the IEEP, apparently tried to avoid controversial topics:

*The project does not aim to challenge the subsidiarity of existing EU environmental legislation. The current level of environmental protection is taken as a given, and not up for discussion.*

(Make It Work Initiative, 2014, p. 2)

While eventually this initiative aims to build a network of EU actors interested in investigating the incoherence and inconsistencies in the environmental *acquis*, and to present clear and precise proposals to feed into the legislative process, its work is only starting, with a first focus on environmental inspection (Respondent 11).

### 6.2.3 The effects on the *acquis* and beyond

What were the effects of these discussions and programmes on revising and updating the *acquis* under the second Barroso Commission? This section analyses effects in two

different ways. It first reviews whether these programmes led to change in policy outputs (and to dismantled outputs in particular). It then moves on to broader effects – impacts on new legislation at EU level and on the “culture” of the Commission – changes to what Bauer and Knill (2012) describe as institutional constraints – who is in charge of dismantling – and situational factors such as actors working relationships *etc.*

### 6.2.3.1 Dismantled policy outputs?

As Figure 6.1 showed, REFIT actions are mostly evaluation. This means that only three pieces of environmental legislation were revised after being targeted under REFIT: REACH (but only under comitology<sup>6</sup>), the Shipment of Waste Regulation and the Environmental Impact Assessment (EIA) Directive. The waste fitness check further lead to a proposal on the Circular Economy presented in July 2014, but it was not agreed by the end of the second Barroso Commission (ENDS Europe, 2014c).

For REACH, changes were in line with the criticisms listed in the Commission’s Top 10 evaluation and the British Business Taskforce report (Business Taskforce, 2014). Interestingly, while the EIA directive was described as too prescriptive in the Dutch subsidiarity review in June 2013 (Ministerie van Buitenlandse Zaken, 2013, p. 13), the UK Business Taskforce criticised its reform proposal, born out of REFIT, considering it “would significantly extend its scope and requirements” and “significantly increase burdens on developers” (Business Taskforce, 2013, p. 31).

Contrary opinions were aired as to whether the new EIA Directive, Directive 2014/52/EU, signaled dismantling or expansion. Hence, the scope of the impact under consideration were extended to cover “climate change, biodiversity and hydromorphology”, and only experts with “sufficient expertise” could be consulted (ENDS Europe, 2013b). But some feared the greater responsibilities given to companies with regard to the assessment, where “the public authorities say yes or no at the end” may lead to less comprehensive and more biased assessments (Respondent 14).

Hence while a number of dismantling demands were made under Barroso II, and discussions shifted to open calls for regulatory burdens reduction, these changes have not (yet) had a dramatic impact on the environmental *acquis*. This is particularly striking

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<sup>6</sup>As this was not a revision through the legislative process, it is outside of the boundaries of this thesis.

as environmental legislation is one of the areas in which the Commission has made a particular effort (European Commission, 2013c, p. 7).

### 6.2.3.2 Broader effects: reduced policy expansion and changes in “culture”

While effects in terms of dismantled policy outputs were small, greater changes took place regarding policy proposals, and the Commission’s own policy-making culture. As shown in Figure 6.1, two emblematic environmental policy proposals were withdrawn shortly before the 2014 EP elections: the soil directive, and access to justice in environmental matters. While for some, these withdrawals were a sign that these proposals were not going to succeed – they were both stuck in the Council since 2007 and 2003 respectively (European Voice, 2013c) – for interviewees within the Commission it signaled a weakening of DG Environment within the institution (Respondents 5 & 17).

*In particular with regard to the environment we have had very animated discussions, in relation to the soil directive. Commissioner Potočnik was not happy. This was the major issue for the first REFIT list in October 2013. In the end the decision was such, it was a college decision, a collective decision.*

(Respondent 5)

This collective decision of the College against the Environment Commissioner stood in stark contrast to a previous stand-of, in the Barroso I Commission, which saw then Commissioner Dimas emerge victorious (ENDS Report, 2005b). It indicates that the balance of power within the Commission has shifted (Respondent 17), a point stressed by NGOs such as Corporate Europe Observatory and Friends of the Earth Europe (2014, p. 17) which argued:

*A deregulatory agenda favourable to big business interests has, over the last decade, entirely permeated the European Commission.*

Changes in proposals went beyond removing long-standing “stalled” proposals (European Voice, 2013b). It also concerned slowing down or postponing new proposals – such as those on plastic bags or environmental inspections – because they did not meet the Commission’s priorities (“growth and the euro”) (ENDS Europe, 2013a). These decisions to postpone the publication of proposals were made when they were “good to go” according to the Environment Commissioner Potočnik (ENDS Europe, 2014c), *i.e.* ready for adoption by the Commission College.

This delay in the publication of environmental proposals marks a stronger use of the Commission President's power to decide what goes to vote in front of the College. Publishing policy proposals was becoming increasingly not just a matter of convincing other DGs to support an initiative, but to convince the President, and the Secretariat General, that a proposal fits the overall Commission's strategy (Kurpas & Maciej, 2008).

This more active gatekeeping had impacts beyond environmental policy: "the number of new proposals introduced by the Commission plummeted in recent years and hit rock bottom in 2010 with 122 new proposals, representing the lowest point of the 18 year period that we cover here" (Votewatch Europe, 2012, p. 2).

Gatekeeping by the Secretariat General can be understood as part of a broader "culture change" in the Commission – something which had been called for since the early 2000s (European Commission, 2001c). Shortly before leaving his post as President of the Commission, Barroso gave a speech in which he described how he had affected such a change, in arguing that less regulation does not mean less ambition, something "which for some in the 'Brussels bubble' had been unthinkable until recently" and was now "common wisdom in European circles" (Barroso, 2014, p. 5).

This idea of a culture change was mirrored by Stoiber, in the last Stoiber Group report published in October 2014:

*President Barroso and the Commission as a whole have initiated a fundamental change in the EU law-making process. I believe that this redirection, which has led to a change of working methods within the Commission, is a real 'quantum leap'.*

(High Level Group on Administrative Burdens, 2014, p. 8)

There have thus been key changes in how the policy DGs work, both due to impact assessment (Respondent 16) and to the rise of evaluation (Respondent 15). Yet the importance of these changes is up for debate, with some arguing that the "focus on the cost of legislation, on burdens on business, on implementation costs for the Member States has become so obsessive" (Respondent 8), while others arguing that Barroso's changes were dwarfed by his successor's ambitions (Respondent 12).

*The change from Barroso II to Juncker is [...] a change from 'saying to doing'*  
(Respondent 12)

### 6.3 Conclusion

As in the 2000s, dismantling advocates were found within the European Commission (close to the President) – with opposition from policy DGs. Similarly, the UK, Netherlands and Germany made their support for better regulation – and policy dismantling – at EU level clear both through single-State and multi-State initiatives, as well as through open support for the Commission’s work on REFIT.

What greatly differentiates the 2010s from the 2000s was the new opportunities available to dismantling actors, and the balance of power between proponents and opponents of dismantling at EU level. Reforms by Barroso II – especially making the Commission president responsible for Smart Regulation – greatly increased the power of the Secretariat General over the policy DGs. The Netherlands returned to the centre of EU discussions on regulatory reform, in leading work on both subsidiarity and “Make it Work” initiative. As for the UK, the shadow of a British in/out referendum appeared to make other EU actors more willing to compromise to keep the UK in (Juncker, 2014a; The Guardian, 2014). Crucially, DG Environment appeared to lose support in the College of Commissioners (Respondents 17 & 14) – with multiple cases in which environmental proposals were postponed. Changes to the way the Commission operated – e.g. power of the SecGen and the President to delay or halt legislative proposals, and growing focus on evaluation etc. – were seen both as a threat to the EU environmental *acquis*, strengthening its opponents (Respondents 14 & 8) and as an opportunity to update and strengthen the *acquis* (Respondents 13 & 15).

In terms of dismantling strategies, the UK under the Coalition government reverted to a more negative framing of European reform – away from the positive outlook espoused in the 2005 Presidency (House of Lords EU Committee, 2005). But this negative tone and the focus on subsidiarity and the repatriation of competences was badly received in their “natural ally” the Netherlands (Wiersma & Schout, 2014), as well as by Barroso himself, who stressed that this “anti-European angle” was “not helpful” (2014, p. 3-4). British attacks on EU ‘red tape’ were better received (High Level Group on Administrative Burdens, 2014) – yet they still drew criticism, notably from France (L’Expansion, 2013). Crucially, Germany preferred advocating support for the Commission-led REFIT agenda

over the British “Cut EU red tape” report (Bundesregierung.de, 2013). The Dutch government earlier support for environmental legislation at EU level (Respondent 7), alongside their more positive tone in advocating for regulatory reform (Ministerie van Buitenlandse Zaken, 2013) increased their clout – as illustrated by the success of the Make It Work initiative, initiated by the Netherlands, joined by the UK and Germany, and supported in early 2015 by half of the EU Member States (Respondent 11). Yet, despite important differences in tone and framing, the UK and the Netherlands (and in many cases Germany as well) appeared very close on the need to reduce EU ‘red tape’ and to dismantle certain EU policies. Within the European Commission, regulatory reform was increasingly presented in terms of either saving or ruining the European integration project (Respondents 5, 8, 9) – with the added incentive to reduce ‘red tape’ to keep the UK in (The Guardian, 2014)

The early 2010s further confirmed a trend started in the first Barroso Commission: the renewed focus on environmental policy as a problematic area in terms of ‘red tape’ and/or subsidiarity. While review and revision programmes in the 2000s included environment as part as a much broader agenda, in the 2010s environmental policies were expressly targeted by the UK (ENDS Europe, 2013c; Business Taskforce, 2013), the Barroso II Commission (European Commission, 2013a; ENDS Europe, 2013a, 2014a) and business lobbies (Business Europe, 2014). The immediate impacts in terms of policy dismantling were partly mitigated by a much greater focus on limiting further policy expansion and on lengthy evaluation prior to reform than in swift dismantling of existing legislation.

## Chapter 7

# Changes to EU environmental legislative outputs 1992-2014

Historically, the Commission has never been known for promoting regulatory reduction. In fact, rather the opposite has been the case.

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R. Löfsted (2007, p. 436)

### 7.1 Introduction

Throughout this thesis, policy dismantling is studied in terms of both political strategies and their effects. While Chapters 4, 5 and 6 explored dismantling strategies at EU level in the 1990s, 2000s and 2010s and their effects *lato sensu*, on how EU environmental policy is decided, this chapter focuses on effects *stricto sensu*: changes to legislative outputs. It presents the results of a coding exercise (detailed in Appendix B) which analyses the directions of policy change (dismantling, expansion and *status quo*) taken through reform of directives and regulations which have been identified in Chapters 4 to 6 as targeted for policy dismantling and subsequently revised.

The second section presents the dataset – the nineteen cases, which include 75 legislative texts over a number of generations (from two to six) – and examines whether policy dismantling has occurred by coding these legislative reforms. The third section reveals changes to the legislative level across three dimensions – density, scope and settings.

Similarly, section four investigates changes to these three dimensions at instrument level. The fifth section presents the results of an innovative coding of a seventh dismantling dimension – formal intensity. These results are then used to address three questions: how do policy dismantling patterns differ across periods and across sectors? And does dismantling only occur in reforms which openly called for dismantling, or in other reforms as well?

## 7.2 The coding dataset

Chapter 4, 5, and 6 identified a number of EU directives and regulations that have been targeted for dismantling – through *e.g.* programmes for simplification, reduction of administrative burdens, REFIT. These chapters showed that not all targeted pieces of legislation were identified by the European Commission as requiring reform (first barrier) and that not all of these were subsequently reformed through the legislative process (second barrier) – highlighting both the difficulties of putting policy dismantling on the legislators' agenda and the potential for limited 'symbolic dismantling' at EU level.

### 7.2.1 The nineteen cases

This chapter focuses on the pieces of EU environmental legislation that were reformed after being targeted. Nineteen such pieces of legislation were identified and can be found in Figure 7.1.<sup>1</sup> This figure highlights the multiple generations (hence the number of reforms) these nineteen cases have gone through. Thus while the Bathing Water directive has only been reformed once, the directive on Environmental Impact Assessment has been reformed five times since 1985.

The different directives and regulations are categorised according to seven different policy areas.<sup>2</sup> This repartition highlights the strong focus of dismantling demands on a handful of environmental policy areas – waste, water, industrial pollution and air. Furthermore, looking at the dates of the first generation of each targeted directives and regulation reveals that a majority of old, long-standing policy initiatives, were targeted.

<sup>1</sup>Discussion on how this figure was built can be found in Appendix B, p. 234

<sup>2</sup>Based on DG Environment's own typology shown on its website [http://ec.europa.eu/dgs/environment/index\\_en.htm](http://ec.europa.eu/dgs/environment/index_en.htm)

Sector	Nb	Legislation	1st Generation	2nd Generation	3rd Generation	4th Generation	5th Generation	6th Generation
Water	1	Drinking Water	80/778/EEC	98/83/EC				
	2	Groundwater	80/68/EEC	2006/118/EC				
	3	Bathing Water	76/160/EEC	2006/7/EC				
	4	Shellfish Waters	79/923/EEC	2006/113/EC				
	5	Titanium Dioxide Industry (TDI)	78/176/EEC	82/883/EEC	92/11/EEC	2010/75/EU		
	6	Waste Electrical and Electronic Equipment Recycling (WEEE)	2002/96/EC	2012/19/EU				
Waste	7	Packaging Waste	85/339/EEC	94/62/EC	2004/12/EC			
			75/442/EEC	1991/689/EC				
	8	Waste Framework Directive (WFD)	78/319/EEC	75/439/EEC	1991/156/EC	2006/12/EC	2008/98/EC	
	9	Shipment of Waste	84/631/EEC	86/279/EEC	259/93/EC	1013/2006/EC	660/2014/EU	
	10	Hazardous Substances in Electrical & Electronic Equipment (RoHS)	2002/95/EC	2011/65/EU				
Air			82/884/EEC	1999/30/EC				
			85/203/EEC	2000/69/EC				
			89/427/EEC	2002/3/EC				
			92/72/EEC	2004/107/EC				
	11	Ambient Air	80/779/EEC	96/62/EC	2008/50/EC			
Industry	12	Marine Fuels	75/716/EEC	87/219/EEC	93/12/EC	99/32/EC	2005/33/EC	2012/33/EU
	13	Eco-label	880/92/EEC	1980/2000/EC	66/2010/EU			
	14	EMAS	1836/93/EC	761/2001/EC	1211/2009/EEC			
	15	Industrial Accidents (Seveso)	82/501/EEC	96/82/EC	2003/105/EC	2012/18/EU		
	16	Integrated Pollution Prevention and Control (IPPC)	84/360/EEC	96/61/EC	2003/35/EC	2008/1/EC	2010/75/EU	
Environmental Assessment	17	Environmental Impact Assessment (EIA)	85/337/EEC	97/11/EC	2003/35/EC	2009/31/EC	2011/92/EU	2014/52/EU
Nature	18	Birds	79/409/EEC	94/24/EC	2009/147/EC			
Chemicals	19	Ozone (Montreal Protocol)	3322/88/EEC	549/91/EEC	3093/94/EC	2037/2000/EC	1005/2009/EC	

Figure 7.1: Nineteen cases stretching over six generations and seven sectors

Hence 20 directives or regulations date back to the 1970s or 1980s, while only 3 started in the early 1990s and 2 in the early 2000s, which confirms the focus on older pieces of legislation, notably articulated by the Prodi Commission (European Commission, 2001b, p. 19).

Figure 7.2 shows which of the nineteen cases were targeted for dismantling (and subsequently reformed) across the three time periods investigated in Chapters 4-6, with each 'X' marking the period in which a piece of legislation was targeted. This figure shows that while eleven of the nineteen cases were only targeted once, eight were targeted more often. These multiple targets highlight that certain items of legislation were found contentious and worthy of (multiple) reforms by different European Commissions. Figure 7.2 further reveals that a much greater number of pieces of legislation were revised after being targeted in the 1990s and 2000s compared to the third more recent period. This difference could be interpreted as indicating a greater use of 'symbolic dismantling' under Barroso II, but it could also be explained by the shorter length of the period covered in Chapter 6, or by the length of the EU decision-making process – the coding exercise stopped at 2014 – and by the strong focus on ex-post evaluation of the second Barroso Commission which further lengthened this revision process.

Comparing Figure 7.2 and Figure 7.1 further reveals that many pieces of legislation targeted in the 1990s, 2000s and 2010s have been reformed more frequently than they have been targeted – hence for example, Figure 7.1 shows how Environmental Impact Assessment legislation went through six generations despite being targeted for dismantling only three times. *A contrario*, the second WEEE directive was adopted after its predecessor had been targeted for dismantling under both Barroso Commissions.

This lack of fit between the number of reforms, and how often pieces of legislation were openly targeted for dismantling serves as an important reminder that reform is a frequent, normal event in the life-cycle of a piece of legislation (even more so if it is an old piece of legislation). This reform can be motivated on grounds of policy dismantling as well as on other grounds – e.g. the need to modernise a piece of legislation, to address issues raised by its implementation *etc.*

Nb	Legislation	1990s	2000s	2010s
1	Drinking Water	X		
2	Groundwater	X		
3	Bathing Water	X		
4	Shellfish Waters	X		
5	TDI		X	
6	WEEE		X	X
7	Packaging Waste	X		
8	WFD		X	
9	Shipment of Waste		X	X
10	RoHS		X	
11	Ambient Air	X	X	
12	Marine Fuels		X	
13	Eco-label	X	X	
14	EMAS		X	
15	Seveso	X	X	
16	IPPC	X	X	
17	EIA	X	X	X
18	Birds	X		
19	Montreal Protocol		X	

**Figure 7.2:** When were pieces of legislation targeted and subsequently revised? comparison across cases and periods. (Based on Chapters 4-6)

Bauer et al. (2012a) found that not all policy dismantling is “open” – not all dismantling attempts will be presented as such, or take place within reform processes focusing on policy dismantling. This is why all reforms of targeted pieces of legislation were coded – even the ones which did not occur after these pieces of legislation were targeted (Figure 7.3). The difference between dismantling events under these two types of reforms (targeted and non-targeted) will be investigated below in Figure 7.23.

<i>Reformed after targets</i>	29
<i>Reformed between targets</i>	5
<i>Reformed before targets</i>	13

**Figure 7.3:** Does reform take place after a piece of legislation is targeted?

### 7.2.2 Dismantling across seven dimensions

These nineteen cases were coded for change along seven potential dimensions, in order to consider the potential multidimensionality of policy change at EU level. These dimensions, introduced in Chapter 3 are summarised again below (Figure 7.4).

DIMENSION	DEFINITION
<i>Legislative density</i>	Presence, absence or number of pieces of legislation in a given area
<i>Legislative scope</i>	Width, numbers of topics and recipients covered by pieces of legislation
<i>Legislative settings</i>	How environmentally friendly a pieces of legislation's objectives are
<i>Instrument density</i>	Number of instruments used in pieces of legislation
<i>Instrument scope</i>	Width, number of topics and recipients covered by instrument
<i>Instrument settings</i>	Instrument's strictness/leniency
<i>Formal intensity</i>	Pieces of legislation's level of constraint and applicability

**Figure 7.4:** Seven indicators for coding policy change adapted from Bauer et al. (2012a).

Once changes to all nineteen cases were coded, a first step in analysing the result was to ask whether dismantling had taken place at all: had at least one event of dismantling been captured in these cases and dimensions?

Figure 7.5 provides an overview of dismantling across all seven dimensions used in coding. It shows that 16 cases out of 19 experienced at least one dismantling event across at least one of seven dimensions. This means that policy dismantling *did* take place at EU level over the last twenty-three years, which goes against conventional wisdom on the EU, as described in Chapter 2. But interestingly, although the nineteen cases were chosen as 'most likely' cases,<sup>3</sup> three of the nineteen cases experienced no dismantling events at all. The Shellfish Water directive, despite being targeted in the 1990s was only codified (*i.e.* a revision with no change in substance), and both the EMAS regulation and the RoHS directive experienced expansion – in the case of the RoHS directive, a dramatic expansion of instrument density, as presented below in Figure 7.6.

Figure 7.5 furthermore shows that dismantling occurred along multiple dimensions – there was more than one type of dismantling occurring at EU level. Dismantling took place at the two levels (legislation and instruments), but dismantling events were much more frequent at the *instrument* level (28 occurrences) than at the *legislative* level (4 occurrences). Dismantling furthermore took place not only along the two levels studied, but also across the different categories developed: density, scope, settings and formal intensity. Furthermore, all but two cases in which dismantling was recorded experienced more than one type of dismantling, with certain cases such as Ambient Air, Packaging Waste or the Waste Framework Directive, experiencing dismantling along four or even five dimensions.

<sup>3</sup>Not only were they openly targeted by political actors at EU level, but the Commission proposed to reform these cases on dismantling grounds and at least one new piece of legislation was voted for each case.

While Figure 7.5 indicates that dismantling took place, it does not address the relative importance, or frequency, of dismantling *vis-à-vis* other directions of change or whether different chronological patterns emerge. These questions will be addressed below.

Nb	Legislation	Leg. Density	Leg. Scope	Leg. Settings	Ins. Density	Ins. Scope	Ins. Settings	Formal Intensity
1	Drinking Water		X		X		X	
2	Groundwater				X			X
3	Bathing Water		X		X			
4	Shellfish Waters							
5	TDI				X	X		X
6	WEEE					X		X
7	Packaging Waste				X	X	X	X
8	WFD		X		X	X	X	
9	Shipment of Waste					X	X	
10	RoHS							
11	Ambient Air	X			X	X	X	X
12	Marine Fuels				X	X		
13	Eco-label					X		
14	EMAS							
15	Seveso					X		X
16	IPPC				X			X
17	EIA	X					X	X
18	Birds					X		
19	Montreal Protocol				X	X	X	

**Figure 7.5:** Dismantling across seven dismantling dimensions (all nineteen cases).

### 7.3 Changes at the legislative level

Changes at the legislation level tend to be more visible – in particular changes to legislative density, which could lead to complete policy ‘termination’ if entire pieces of legislation are removed. In that respect it is noteworthy that across the 19 cases study only 4 directives were found to have experienced evidence of dismantling at the legislation level. Furthermore, despite recurrent discussions at EU level on the need to favour directives over regulation (and vice-versa), the legislative type only changed in one case: Shipment of Waste, which changed from directives to regulations in 2006.

#### 7.3.1 Legislative density

Legislative density is a peculiar dimension at EU level, as the way the EU legislates, and in particular the way it reforms existing pieces of legislation, tends to foster changes across this dimension. Hence, amending a directive without replacing it will increase legislative density, while codifying in a single directive multiple revisions of a parent text will reduce

legislative density. Similarly creating a framework directive may reduce density – but the adoption of multiple daughter directives would result in expansion. Hence the EU discussion is quite different from concerns in US literature on policy “termination” (e.g. Hogwood & Peters, 1982; Ragusa, 2010): at EU level, changes to legislative density tend to indicate changes in the type of directive used – framework directive or not – or in the type of revision process – amending directive or codification – not in the outright removal of an entire piece of legislation.

Taking this into account, it is important to note that in most of the cases (12) legislative density remained unchanged: a new generation of a directive or regulation replaced and repealed its predecessor. Dismantling happened in only three cases. Two framework directives, on Waste and Air, replaced a greater number of more specialised directives. The most interesting ‘dismantling’ case is Environmental Impact Assessment. It started in 1985 with a legislative density of one, finishing with the same density in its latest version in 2014. In between, a great number of amending directives were adopted in 1997, 1999 and 2003 which increased its density to four. This was then brought down back to one through codification in 2011. The impact that a practice such as codification – which does not change the content of the text – can have on legislative density makes a clear case for not using legislative density on its own but only as one of many dimensions to capture policy dismantling.

### 7.3.2 Legislative scope and settings

Legislative settings refer to the level of environmental ambition of a particular directive or regulation. In order to differentiate between changes in legislative settings and that changes in instrument settings, the directives’ purposes, usually set out in the very first few articles, were used as a proxy for environmental ambition. Most of these introductory articles are vague and interchangeable from one piece of legislation to another. For example:

*The purpose of this Directive is to preserve, protect and improve the quality of the environment and to protect human health...*

Directive 2006/7/EC (Bathing Water)

Applying this approach to legislative settings, the coding exercise found no evidence of dismantling. Indeed most directives and regulations (12) experienced expansion during

reform. Hence while the original directive 84/360/EEC on combating air pollution from industrial plants aims to “prevent or reduce” air pollution, the new IPPC directive (directive 2008/01/EC) added that this objective should be pursued “in order to achieve a high level of protection of the environment taken as a whole”.

Similar to legislative settings, the direction of change for legislative scope is overwhelmingly expansion (15 cases), with only two cases of dismantling, both in the water sector: Bathing Water and Drinking Water. In both cases this is due to additional exemptions granted – for foodstuff production or artificially created confined waters. Hence focusing solely on the legislative level reveals very limited dismantling events.

## 7.4 Changes at the instrument level

As Figure 7.5 showed, most dismantling events took place at the instrument level. Dismantling instruments is both less blunt – it focuses on a specific instrument *e.g.* a pollution standard, not on the entire piece of legislation – and less easily apparent (targeting one instrument among many instead of the whole text can be more easily hidden). As such it may appeal more to advocates preferring to use blame avoidance strategies and ‘hidden’ dismantling.

### 7.4.1 Instrument type

As explained in Chapter 3, each instrument was first assigned a type, based on a two-tier typology. This typology departs from the one used in Knill et al. (2014) in order to better capture EU-specific instruments (Appendix B).<sup>4</sup> In an adaptation of the work of Taylor et al. (2012), instruments were coded for six broad categories – regulatory instruments, economic instruments, information instruments, co-regulation and self-regulation, support mechanisms and capacity building, and others. Tracking change to instrument type across these different categories shed light on whether dismantling pressures were used to move targeted directives and regulations away from ‘old’ regulatory instruments and towards New Environmental Policy Instruments (NEPI) (Jordan et al., 2005). In addition to tracking changes in instrument type, all instruments were coded for changes to instrument

<sup>4</sup>How this typology was built and how it differs from the work of Knill et al. (2014) and Taylor et al. (2012) is discussed in Chapter 3.

density, scope and setting.

Figure 7.6 reveals significant differences in instrument bundles across different sub-areas of environmental policy. Hence co-regulation and self-regulation instruments were only used in legislation such as Eco-label and EMAS, while economic instruments were much more frequent in waste policy than for example in air or water. Interestingly these bundles do not appear to change much over time – in most cases the type of instruments found in the last generation are the same as those found in the first generation. Yet in a few cases later generations are composed of a greater variety of instruments. For example, over time the case of the IPPC directive started to use more support mechanism and capacity building instruments.

Crucially this figure stresses the resilience of old ‘command and control’ regulatory instruments which continue to dominate – they are used in all cases but Environmental Impact Assessment. In addition, information instruments are very frequently used – in part because of the need to share information across different levels of governance as well as to share information between regulators and regulated parties.

Finally, Figure 7.6 illustrates changes in instrument density – which can be very stark, as exemplified by the Shipment of Waste or Hazardous Substances (RoHS). This is examined more fully below.

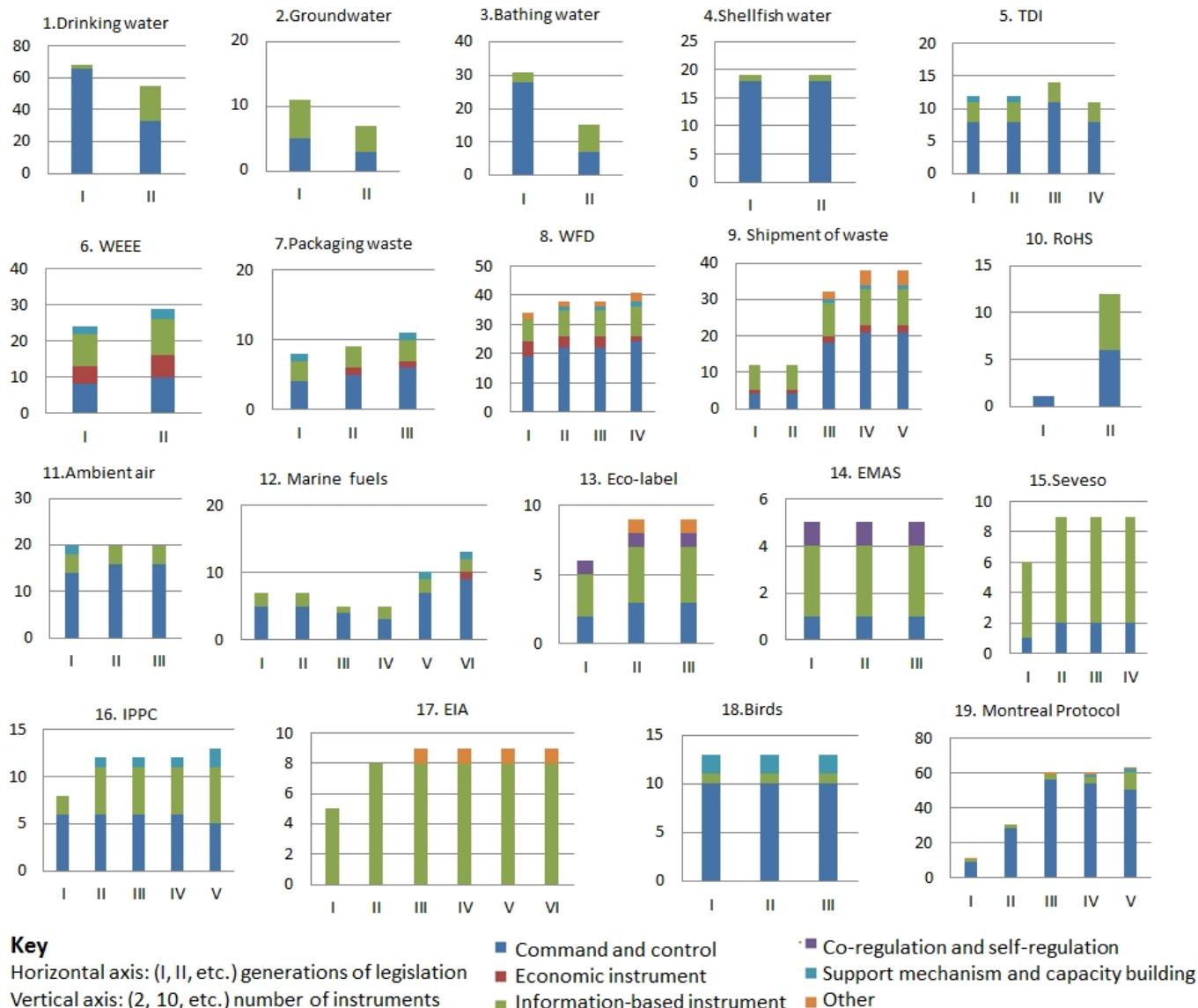
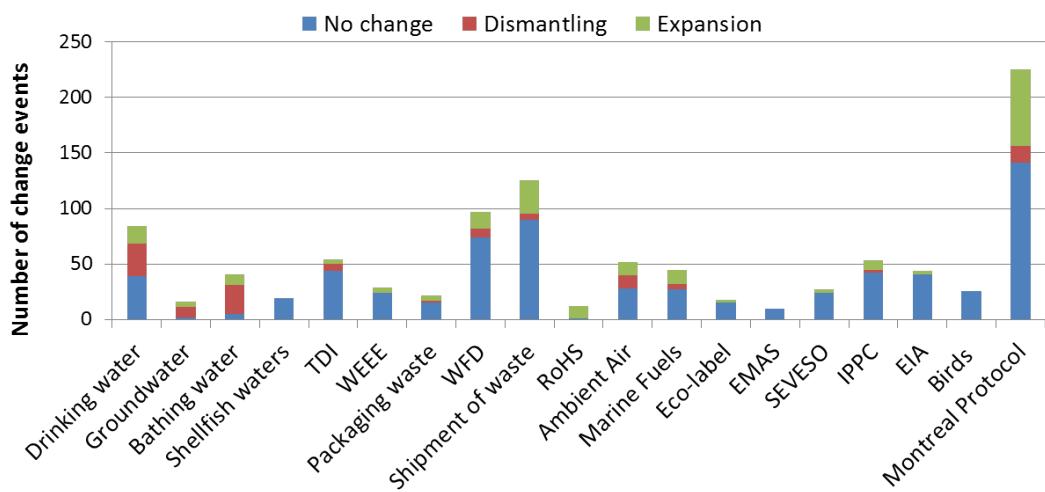


Figure 7.6: Changes to density and instrument type over different reforms (all 19 cases)

### 7.4.2 Instrument density

The direction of change for instrument density can be measured in different ways. First, Figure 7.5 indicates that ten out of nineteen cases experienced reduction in instrument density. Second, comparing instrument density across the first and last generation of each directive and regulation (as is possible with 7.6), highlights that only four of the nineteen cases experienced an overall reduction in instrument density, four maintained the same number of instruments while eleven experienced an increase. Of the four cases in which dismantling is a more frequent direction than, expansion three are water directives.<sup>5</sup>



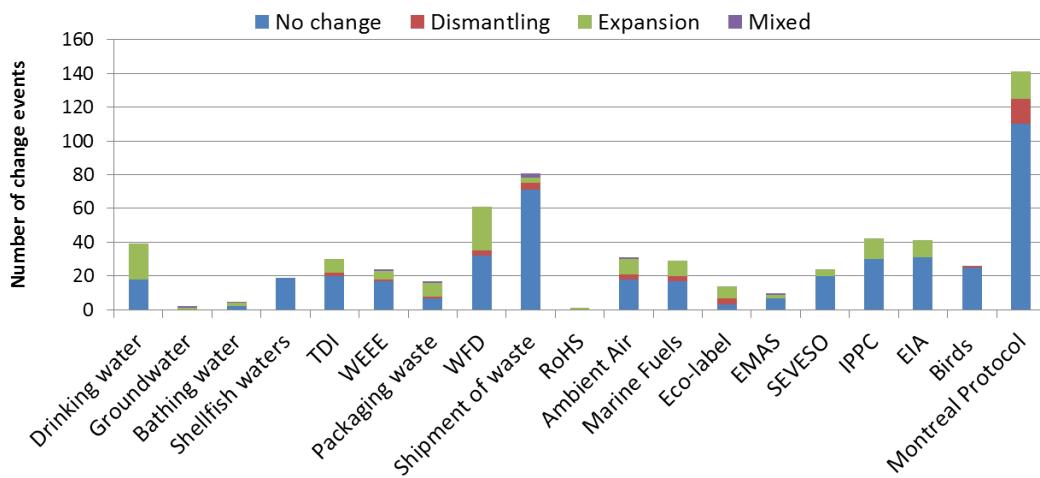
**Figure 7.7:** Directions of change – cumulative changes to instrument density

Figure 7.7 displays the results of adopting a third approach, *i.e.* measuring cumulative changes to instrument density across four directions: expansion, *status quo*, dismantling and mixed, with each change events being coded as going in one direction. Differences in column sizes for each directive and regulation are explained by both the original number of instruments present in each legislative text – which can range from one (first RoHS Directive 2002/09/EC) to sixty-eight (first Drinking Water directive 80/778/EEC) – and by the number of legislative reforms (from one, for six cases, to five revisions for Marine Fuels or Environmental Impact Assessment). Presenting alongside the data in this way different directions of policy change further shows the importance of the *status quo* in instrument density: dismantling or expansion, taken together, are more frequent directions of change in only four of the nineteen cases (the same three water directives and RoHS).

<sup>5</sup>Drinking Water, Bathing Water and Groundwater directives, the fourth case is the Titanium Dioxide Industry.

### 7.4.3 Instrument scope

Instrument scope refers to the breadth of economic activities covered by an instrument, or the breadth of environmental impacts considered. Figure 7.5 shows that ten out of nineteen cases experienced some form of dismantling of instrument scope. Changes to scope are highly variable from one case to the other (as shown by Figure 7.8). This is explained in part by the connections between instrument density on the one hand and scope and settings on the other. Only instruments which are maintained for two generations (*i.e.* *status quo* for instrument density) can be compared in order to evaluate whether expansion, dismantling, or no change has taken place (for instrument scope and settings).



**Figure 7.8:** Directions of change – cumulative changes to instrument scope

Changes to instrument density constrain measurements of instrument scope – frequent changes to density reduce the number of instruments maintained for more than one generation (as is the case, for example, with the Water directives). As scope (and settings) are measured in comparison with a previous generation, they cannot be measured if an instrument has just been introduced, or was removed after a single generation. This explains the smaller number of change events reported in Figure 7.8 compared to Figure 7.7.

Figure 7.8 reveals how, as with changes to instrument density, there were only four cases out of nineteen in which dismantling and expansion taken together were more frequent than *status quo*.<sup>6</sup>

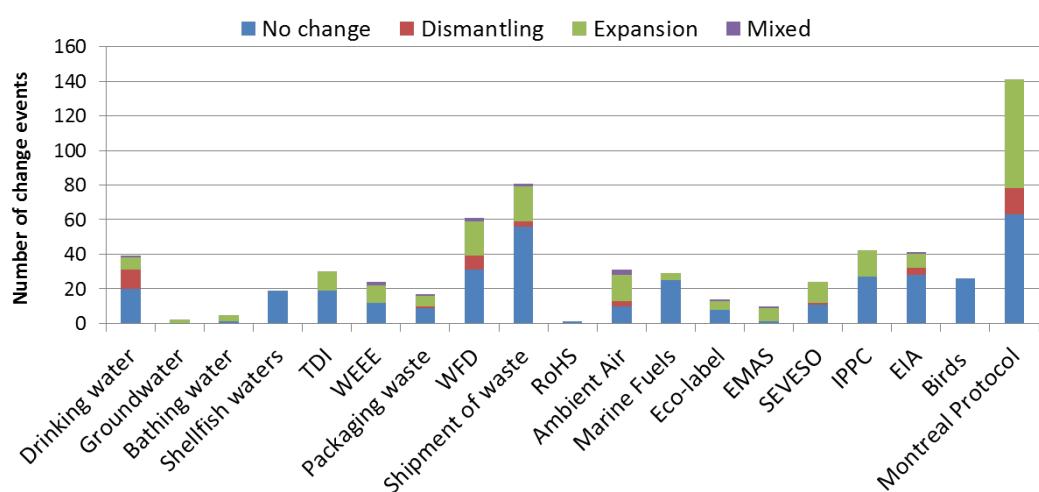
Out of the nineteen, the case with the greatest number of dismantling events is the

<sup>6</sup>Drinking Water, Groundwater, Ambient Air and Eco-label.

Montreal Protocol regulation. Fifteen such events were recorded, fourteen of which occurred during the latest 2009 revision (Regulation 1005/2009). Yet when looking in detail at these dismantling events they do not infer a relaxing of the Montreal Protocol regulation. The instruments which saw their scope reduced were instruments such as licenses to use ozone-depleting substances.

#### 7.4.4 Instrument settings

Figure 7.5 showed that eight of the nineteen cases experienced dismantling of instrument settings, making this the least frequent out of the three dimensions of dismantling at instrument level. The pieces of legislation where the most dismantling events were coded are the Montreal Protocol regulation, the Waste Framework directive and the Drinking Water directive. For the Montreal Protocol case, dismantling in terms of instrument settings in the last two generations of the regulation was due for example to a growing number of exemptions to different bans, to delayed dates for compliance and to a transfer of responsibility for notification of use from the users themselves to the Commission. Changes to the Waste Framework directive are particularly interesting as they reveal stark differences between the way the EU legislated in the early 1990s (Directive 91/156/EC) and in the late 2000s (Directive 2008/98/EC), with changes of wording moving away from the precautionary principle, injunction to public authorities to reduce administrative burdens and to fill-out registration forms themselves based on previously held records, and clean technology development plans becoming optional.



**Figure 7.9:** Direction of change – cumulative changes to instrument settings

#### 7.4.5 Comparing across instrument dimensions

Figure 7.5 shows that most EU environmental policy dismantling occurred at the instrument level. Yet this section has shown that it is crucial not to overestimate the relative importance of dismantling as a direction of policy change, even at the instrument level. Figure 7.10 further illustrates how dismantling remains a relatively rare direction of policy change: it accounts for twelve percent of changes to instrument density, and only seven and six percent for instrument scope and settings respectively. This figure stresses the overwhelming importance of the *status quo* – legislative reforms do not result in a complete overhaul of a particular piece of legislation, most instruments are maintained from one generation to the other with their scope and settings unchanged. What is perhaps most striking about Figure 7.10 is the importance of expansion – in directives and regulations targeted for dismantling. This figure confirms that dismantling, expansion, and the *status quo* can occur in parallel, during the same legislative reform.



**Figure 7.10:** Comparison of policy change directions across instrument density, scope and settings

Finally, the Drinking Water directive exhibited the clearest cases of instrument dismantling, with a number of numerical standards being raised to higher tolerated levels (chloride, nitrites, conductivity).

Figure 7.9 reveals that dismantling was the least frequent direction of change in all nineteen cases. Figure 7.9 shows how there were only six cases where dismantling and expansion taken together are more frequent than *status quo*.<sup>7</sup>

<sup>7</sup>Groundwater, Bathing Water, Ambient Air, EMAS, Seveso and Montreal Protocol cases.

## 7.5 Coding changes in formal intensity

Bauer et al. (2012a, p. 42) argue that changes to formal intensity are linked to the most “opaque” of all dismantling strategies, *i.e.* those involving “manipulations of the basis of policy”:

*Enforcement capacities, administrative capacities and the other procedural requirements of a particular policy will be changed in ways that make policy dismantling (as an indirect effect) more likely.*

(Bauer et al., 2012a, p. 42)

Compared to density and substantial intensity (scope and settings) presented above, Chapter 3 has described how formal intensity could be even more elusive and difficult to capture. As such, previous coding schemes did not directly address it (Knill et al., 2014, e.g.). The coding scheme created for this thesis aimed at addressing this gap by developing a coding approach that captures key elements of formal intensity, and how they change overtime. As described in Chapter 3, a first wave of coding identified five categories of formal intensity (Figure 3.9), which were narrowed down to three for further investigation (Figure 3.10): these were reporting on implementation, measures to increase compliance (inspections and penalties), and derogations.

The directions of change for these three elements were then coded (dismantling, expansion or *status quo*). While originally the approach was intended to produce only one value – the direction of change – analysing the data generated suggested the picture was more complicated. Two sets of values could be identified. First, on *presence or absence*: were these elements found in all directives and regulations or only in some of them? Had this changed between the first and last generation of each text? Second how had these elements evolved over time in terms of intensity? Data on formal intensity (presence/absence and intensity changes to all three indicators) was collated in Figure 7.5 which shows that formal intensity dismantling took place in eight out of nineteen cases.

### 7.5.1 Implementation reports

The first indicator chosen to evaluate changes to formal intensity was implementation reports. EU legislation – especially directives – by necessity straddle different levels of governance, with different bodies overseeing the implementation of the content of a

directive adopted at EU level. This makes communication between the different levels of governance crucial – and also very common, as shown by the frequent use of information instruments (Figure 7.6).

In addition to day to day exchange between the different levels of governance (or between two neighbouring Member States), implementation reports, produced both by the Member States and by the Commission (which creates a composite reports based on the information provided by the Member States) are a key component of formal intensity at EU level – a central “administrative procedure” (Bauer & Knill, 2014, p. 33).

Figure 7.11 shows whether reporting requirements were used in the nineteen case studies. It shows that not all targeted pieces of legislation call for implementation reports. This is not simply the case for regulations (although Eco-label or Montreal Protocol regulations do not indeed, in their first generations call for implementation reports) but for directives as well. This is remarkable as implementation reports are a way for the Commission (and the other Member States) to check how each Member State implemented each directive in what can be many different manners. Hence for example Drinking Water, SEVESO and Groundwater only called for implementation reports from Member States and the Commission after their first reform. Other cases such as Environmental Impact Assessments, while asking for exchange between the different levels of governance, do not formalise them into implementation reports. Hence Figure 7.11 reveals that implementation reports were not always common but that over time their use has become generalised.

	FIRST GENERATION	LAST GENERATION
<i>Member States implementation report</i>	10	16
<i>Commission implementation report</i>	13	17

**Figure 7.11:** Formal intensity – reporting requirements (presence)

While Figure 7.11 shows a rise in reports’ presence, Figure 7.12 highlights changes to their intensity. To evaluate intensity change, the frequency of implementation reports (how often are Member States called on to account for their progress in meeting with EU requirements?) was used as a proxy. Figure 7.12 indicates that in most cases frequency requirements remained the same or were increased. Yet it notes a few cases of dismantling. Thus the latest revision of the Seveso Directive (Directive 2012/18/EU) reduced the

frequency of implementation reports from every three to four years, while the new Environmental Impact assessment directive (Directive 2014/52/EU) removed the Commission's implementation report, after its 2012 predecessor had merged it with reports from other directives.

	EXPANSION	NO CHANGE	DISMANTLING
<i>Member States implementation report</i>	5	6	1
<i>Commission implementation report</i>	5	7	2

**Figure 7.12:** Formal intensity – reporting requirements (intensity)

### 7.5.2 Inspections and penalties

A second element of formal intensity, “affecting the probability that substantial requirements are effectively achieved” (Bauer & Knill, 2014, p. 33), are inspections and penalties imposed on non-compliant parties. Environmental inspections are politically salient at EU level – discussed since the early 1990s, and at the heart of the on-going Make It Work Initiative pursued by the British, Dutch and German governments (Make It Work Initiative, 2014). As such, it can be expected that their use would be less common than that of implementation reports. Figure 7.13 confirms this point, but shows that their use has increased over time. Interestingly, mentions of penalties – and not solely of the Polluter Pays Principle – have also risen to cover more than half of the nineteen cases. Thus for example the second RoHS directive states:

*Member States shall also provide for penalties for infringements, which may include criminal sanctions for serious infringements. Those penalties shall be proportionate to the seriousness of the offence and constitute an effective deterrent against improper use.*

(European Parliament & Council of the European Union, 2011, p. 97)

	FIRST GENERATION	LAST GENERATION
<i>Inspections</i>	5	8
<i>Penalties</i>	3	10

**Figure 7.13:** Formal intensity – compliance (presence)

Together with an increase in presence, Figure 7.14 indicates that both inspections and penalties have tended to become stricter over time. For example explicit references were

made in recent Air Quality directives to Member States' duties to ensure that penalties are implemented (Directive 2004/107/EC onward), while in the latest Montreal Protocol regulation (1005/2009/EC) random inspections were replaced by risk-based inspections.

	EXPANSION	NO CHANGE	DISMANTLING
<i>Inspections</i>	6	0	0
<i>Penalties</i>	5	0	0

**Figure 7.14:** Formal intensity – compliance (intensity)

Hence unlike the implementation reports indicator, coding this second indicator for formal intensity did not reveal any dismantling events.

### 7.5.3 Derogations

An even more contentious topic than inspections are derogations, which enable a Member State to apply both stricter and more lenient versions of a given item of legislation. Derogations can negatively influence the EU's level playing field – discriminating against either domestic producers when stricter domestic rules are applied<sup>8</sup> or against other EU competitors in case of more lenient derogations.

	FIRST GENERATION	LAST GENERATION
<i>Looser derogations</i>	10	15
<i>Stricter derogations</i>	12	11

**Figure 7.15:** Formal intensity – derogations (presence)

Figure 7.15 stresses how the use of looser derogation has grown over-time – in part explained by a growing number of derogations available to Eastern and Central European Member States. Stricter derogations followed a slightly different path: while older generations of many directives contained a specific article stating that Member States could adopt stricter legislation (e.g. include further pollutants, or more stringent pollution standards), this has been replaced over time by references in the directives' preamble to the Treaty, which guarantees Member States' right to go beyond what is agreed at EU level.

*Member States may lay down more stringent provisions than those provided for in this Directive.*

<sup>8</sup>What is often called “gold-plating”, although gold-plating has many different meanings.

(Article 16, Directive 80/778/EEC)

*It is necessary to revise Directive 80/778/EEC so as to focus on compliance with essential quality and health parameters, leaving Member States free to add other parameters if they see fit*

(2nd Preamble, Directive 98/83/EC)

Crucially, Figure 7.16 reveals that changes to looser derogation intensity followed diverging directions with almost as many becoming looser as stricter. For example the 2010 IPPC directive listed many more potential derogations than earlier versions of that directive, while the latest Montreal Protocol regulation reduced the number of available derogations. As for stricter derogations, while most directives replaced a targeted article with a reference in the preamble, one case – Ambient Air – removed all mentions of Member States' ability to adopt more stringent requirements.

	EXPANSION	NO CHANGE	DISMANTLING
<i>Looser derogations</i>	5	2	6
<i>Stricter derogations</i>	0	10	1

**Figure 7.16:** Formal intensity – derogations (intensity)

Hence rules on derogations, contrary to inspections and penalties, followed diverging paths, with dismantling and expansion occurring depending on the policy area.

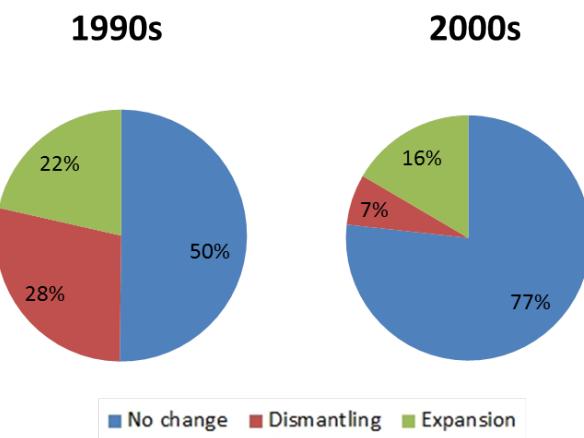
## 7.6 Identifying dismantling patterns

The three previous sections looked at all generations of the nineteen cases together. This section looks at a subset of the dataset to address three different questions and identify dismantling patterns: First, are there differences regarding dismantling between time periods? Second, do dismantling patterns differ between environmental policy sub-sectors? And finally, does dismantling only occur in the reforms taking place after a piece of legislation was targeted, or is dismantling happening in other reforms as well (Figure 7.3)?

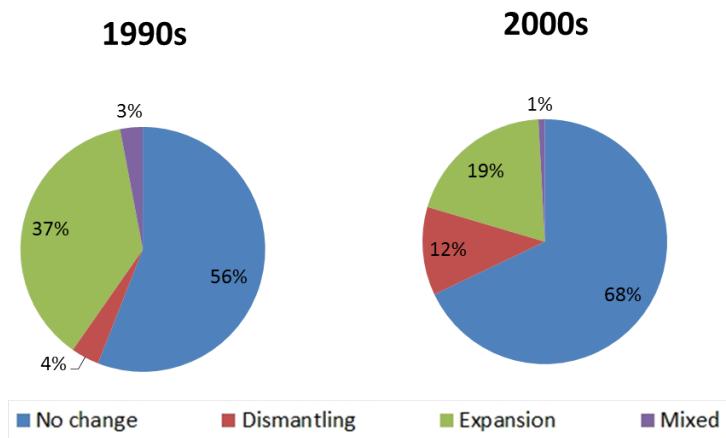
### 7.6.1 Dismantling over time: diverging patterns in the 1990s and 2000s?

Figure 7.2 compares the three periods studied in Chapters 4 to 6. It shows that more legislation targeted in the first two periods was subsequently reformed. Due to the limited

data available for dismantling in the 2010s, the comparison will focus on the first two periods. By focusing solely on the reforms which took place directly after a piece of legislation was targeted, Figures 7.17, 7.18 and 7.19 make it possible to compare the outputs of dismantling attempts in the 1990s and 2000s.

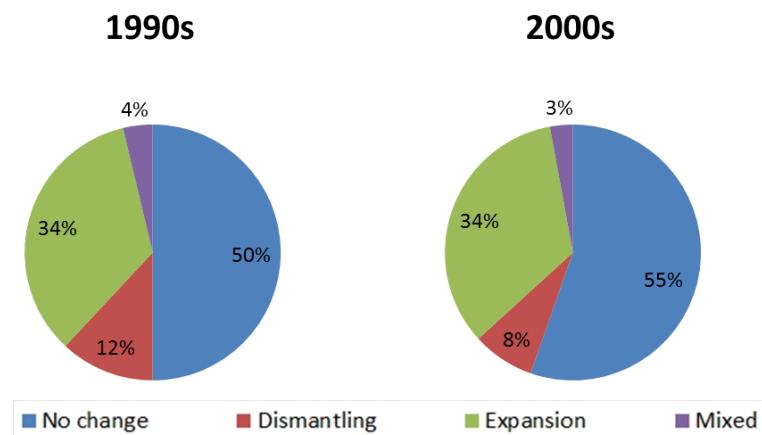


**Figure 7.17:** Comparison of changes to instrument density – 1990s & 2000s



**Figure 7.18:** Comparison of changes to instrument scope – 1990s & 2000s

These three figures reveal stark differences not only across dismantling dimensions (as already shown above) but between periods. Dismantling of instrument density and settings appeared much more frequent in the 1990s than in the 2000s where it fell sharply (from twenty-eight to seven percent for density, from twelve to eight for settings). Conversely after being as low as four percent in the 1990s, dismantling of instrument scope trebled to twelve percent in the following decade. These figures are also significant regarding the dimensions of policy expansion taking place.



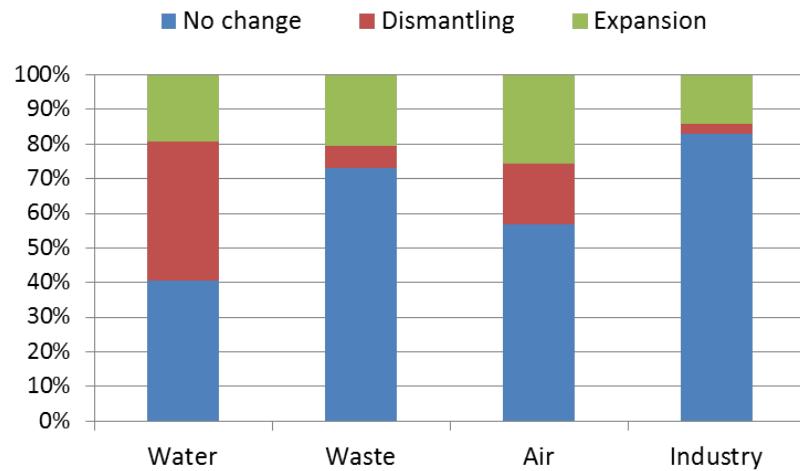
**Figure 7.19:** Comparison of changes to instrument settings – 1990s & 2000s

Hence, throughout both periods, expansion of instrument settings was high (thirty-four and thirty-two percent), while it remained low for instrument density (twenty-two and sixteen percents). It further diminished sharply for instrument scope between the 1990s (thirty-seven percent) and the 2000s (twenty percent). This tells us that there are diverse expansion patterns and expansion of one dimension does not necessarily imply expansion of another. Finally, the *status quo* was the most frequent direction across all three dimensions and two periods, covering at least fifty percent of change events. This is a sharp reminder of the resilience of EU environmental policies – even when looking at pieces of legislation which were targeted and revised, even when focusing on the dimensions in which dismantling is most frequent. It also highlights that EU decision-makers do not dismantle – or indeed reform – blindly. Reforming a piece of legislation does not necessarily mean reopening the debate and changing position on each and every one of its instruments.

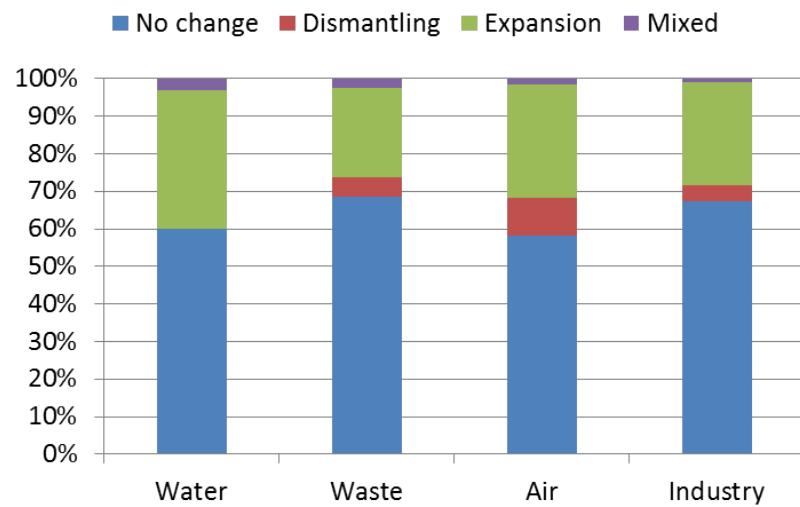
### 7.6.2 Diverging dismantling patterns across policy areas?

Figure 7.1 showed that the nineteen cases are split across seven sub-areas of environmental policy. Three of them (chemicals, biodiversity and impact assessments) only contain one piece of legislation, and as such cannot be considered representative of an entire policy sub-area. Hence this comparison focuses on the other four areas (air, water, waste and industry) which contain at least two pieces of legislation (the smallest is Air, but while Ambient Air is counted as a single case it represents up to 4 directives in a generation). Figures 7.20, 7.21 and 7.22 compare these four policy areas across the three instrument

level dimensions. These dimensions were chosen as they were the ones that came up most frequently in Figure 7.5.

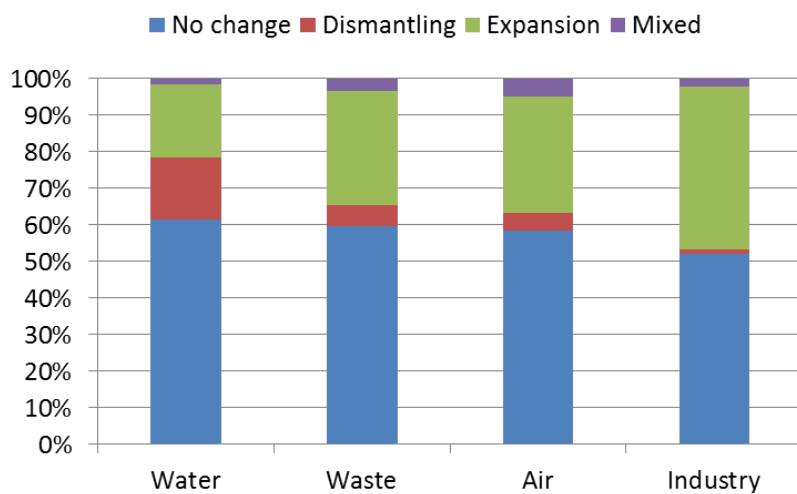


**Figure 7.20:** Changes to instrument density across four policy areas



**Figure 7.21:** Changes to instrument scope across four policy areas

The water directives appear to be outliers: they are the most affected by dismantling of both instrument density and settings, yet they are also the only ones not affected by dismantling of instrument scope. The fact that the water directives experienced high levels of dismantling of instrument settings indicate that reforms of water directives in the 1990s and 2000s were not limited to reducing the number of policy instruments (dismantling instrument density) but also weakened some of the remaining instruments. Out of the 65 water policy instruments which were kept for more than one generation, eleven saw their settings weakened, and thirteen saw them strengthened.



**Figure 7.22:** Changes to instrument settings across four policy areas

That no similar dismantling happened under the instrument scope dimension is also noteworthy, as it shows that only one aspect of substantial intensity was weakened. This finding confirms the usefulness of investigating scope and settings separately. After water, air is the second most dismantled policy area, with relatively more frequent dismantling of density and scope than instrument settings. Finally both waste and industry show similar levels of dismantling across all three dimensions, with industry regulations and directives showing the least out of all four policy areas.

### 7.6.3 Dismantling outputs and targets

Finally, do different dismantling patterns emerge when comparing reforms which were preceded by calls for dismantling and those which were not (Figure 7.3)? In order to determine this, the eighteen reform events which *did not* follow calls for dismantling were isolated – e.g. the 1991, 1994 and 2000 reforms of the Montreal Protocol regulation. As with the preceding comparison, the focus is on instrument dimensions.

Figure 7.23 reveals that dismantling also occurred in reforms which were not following political calls for dismantling. But dismantling is even less frequent. Hence rates of dismantling in instrument density are twelve percent for the whole data set, and are only six percent for the non-targeted reforms. For instrument scope the rates drop from six percent to less than two percent, and for instrument settings they drop from seven percent to four.



**Figure 7.23:** Directions of change – non-targeted reforms

Once again, the most frequent direction of change is *status quo*, with expansion coming second. This indicates that in addition to open dismantling, occurring in reforms openly calling for it, dismantling can also happen in a more overt fashion. But comparing Figures 7.10 and 7.23 indicates that while dismantling is a theoretically possible direction of change in all reforms, reforms disconnected from calls for dismantling appear to have resulted in lower dismantling rates across all three instrument dimensions.

## 7.7 Conclusion

In conclusion, this chapter revealed that policy dismantling had taken place at EU level over the last twenty three years. It investigated how dismantling patterns differed across seven different dismantling dimensions, four policy areas and three time periods. It found that most dismantling events took place at the level of policy instruments – not of entire items of legislation. Across all three instrument dimensions policy dismantling was a rare direction of policy change: policy expansion and the preservation of the *status quo* were more frequent directions. This prevalence of the *status quo* was particularly marked in dismantling of pieces of legislation targeted in the 2000s (in comparison with the 1990s). Another aspect in which the absence of change was noteworthy was in instrument types – the basic make-up of most pieces of legislation remained broadly unchanged despite expansion or cuts in instrument density.

This chapter also served a second purpose – to test whether the coding scheme developed for this thesis successfully captured the complex patterns of dismantling occurring at EU level. The coding exercise departed from the work of Knill et al. (2014) in three key manners. First, in coding settings and scope separately, and not together under the

umbrella of substantial intensity (Bauer & Knill, 2014), second in coding formal intensity for the first time, third in focusing on pieces of environmental legislation most likely to be dismantled (due to being openly targeted for dismantling). The strong differences in results between instrument scope and settings – e.g. the absence of scope dismantling of water policies, while some settings dismantling took place (Figures 7.21 and 7.22) – vindicate this first choice. As for the second choice, this first attempt at coding formal intensity delivered key results on changes to implementation reports, compliance measures, and derogations. These different metrics for formal intensity tend to show a strengthening over time of formal intensity requirements (apart from derogations, which tend to become more numerous). Finally, the choice to focus on most-likely cases was motivated by the dearth of dismantling research at EU level (indeed, the fact that dismantling appeared inconceivable at EU level, as discussed in Chapter Two). Focusing on these most likely cases appeared to be the most efficient way of determining whether dismantling at EU level was possible, and had taken place. But not all reform events coded took place after the piece of legislation was targeted for dismantling (cf. Figure 7.23), which indicates that while dismantling is not frequent, this policy direction is not limited to reforms which occur following explicit calls for policy dismantling.

# Chapter 8

## Twenty years of dismantling at EU level: a systematic analysis

Since the Maastricht Treaty, we have been talking about the correct application of the subsidiarity principle. What we are doing, however, is not sufficient. Our speeches last longer than our efforts to make real headway in reducing red tape (...).

---

J-C. Juncker (2014b, p. 17)

### 8.1 Introduction

This chapter connects the empirical results, developed in the four preceding empirical chapters, to the theoretical discussion developed in Chapter 2 and 3. The empirical chapters have revealed that, despite conventional expectations that EU policy dismantling would be unlikely, or even impossible, policy dismantling *has* been pursued at EU level, and has been successful in a small number of cases. This chapter tests the analytical framework advanced in Chapter 3 against these empirical results, in particular its ability to explain changes to the two dependent variables: dismantling strategies and their effects.

The analytical framework introduced in Chapter 3 stems from the work of Bauer and Knill (2012), who developed it to study policy dismantling of social and environmental

policies at national level. Chapter 3 compared the assumptions underpinning the Bauer & Knill framework and what EU studies literature tells us of how the EU works, highlighting a number of tensions. Subsequently, Chapter 3 proposed some limited *a priori* changes to their framework. This chapter tests both the structure of their model at EU level (which was overall maintained) and also the validity of the *a priori* changes made.

Section 8.2 goes back to the four elements (dismantling advocates, opportunity structures, strategies and effects), showing how they (and their modifications in Chapter 3) can be used to order the empirical results put forward in Chapters 4-7. Section 8.3 then asks whether the analytical framework succeeded in explaining changes to strategies and effects. Finally, Section 8.4 reflects on the limits of the analytical framework – both suggested *a priori* in Chapter 3 and revealed *a posteriori* by the empirical chapters – before advancing an alternative framework.

## 8.2 Applying the analytical framework

The original Bauer & Knill framework (summarised in Figure 8.1), connects four elements: politicians' (dismantling advocates) preferences, their choice of dismantling strategies, which is influenced by opportunity structures (external, institutional and situational factors), and which produces effects on policy. Chapter 3 raised questions regarding the dismantling advocates (and their preferences), the strategies mobilised and the effects considered:

- Dismantling advocates are heterogeneous and numerous at EU level: a variety of meta-preferences (beyond re-election) are to be expected, especially within the European Commission.
- As the EU is a polity 'in the making', changes to EU Treaties or Membership matter in terms of opportunity constraints. Similarly, the EU's consensual political system is expected to make legislative policy dismantling difficult.
- The multi-level governance nature of the EU can be expected to impact dismantling strategies, making it difficult to classify EU dismantling strategies using the typology put forward by Bauer & Knill.
- Bauer & Knill focused on explaining strategies and predicting effects based on these strategies – instead the analytical framework introduced in Chapter 3 considers both strategies and effects as dependent variables, with two understandings of effects: effects *lato sensu*, covering changes to institutions, their culture, and policy proposals (studied in Chapters 4-6) and effects *strico sensu*, changes to directives and regulations targeted for dismantling (studied in Chapter 7).

This section discusses each of the four steps of the analytical framework (described in Figure 8.1) in the light of the empirical findings of Chapters 4-7.

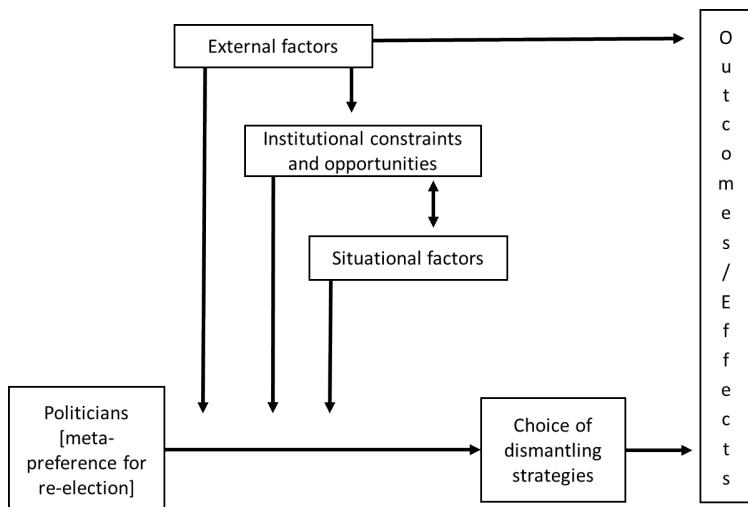


Figure 8.1: Original analytical framework (Bauer & Knill, 2012, p. 34)

### 8.2.1 Dismantling advocates

Bauer and Knill (2012) assume there is a relatively limited number of dismantling advocates (politicians in national governments), motivated by an overwhelming meta-preference for re-election. Chapter 3 raised the point *a contrario* that a great number of political actors matter at EU level: Member States, the European Commission, the European Parliament *etc.* – hence, providing a much larger pool of potential dismantling advocates, some with different meta-preferences.

Chapters 4 to 6 revealed how a great number of EU political actors occasionally supported dismantling over-time. Yet these three chapters found that most dismantling demands and activities were pursued by a relatively small number of actors: three Member States (the UK, Netherlands, Germany) and the European Commission.

#### 8.2.1.1 Three diverse Member States

The UK and the Netherlands were both pioneers in deregulation of national rules in the 1980s (Pierson, 1994; Hanf, 1989). The two countries have also long had a difficult relationship with Brussels, being wary of the more political aspects of European integration (Rood, 2010; Gifford, 2009). Chapters 4 to 6 showed how all British cabinets since the early 1990s have been in favour, to different degrees, of policy dismantling at EU level – irrespective of their political colour. But this was not the case in the Netherlands, which did not contribute to the ‘hit lists’ produced in the wake of the 1992 Danish ‘no’ vote.

Germany produced a ‘hit list’ in late 1993 (long after the UK and the UK-FR list),

and has since played a frequent role in advocating dismantling at EU level. Calls for dismantling have mostly been made by politicians from the right – the fourth Kohl cabinet in the 1990s, the three different Merkel cabinets since 2005 – although Angela Merkel made very strong dismantling demands when she became Chancellor at the head of a grand coalition government (with the left-wing SPD). Contrary to the UK, which was a leading advocate of dismantling throughout the three time periods studied in Chapters 4-6, Germany has played a very different role in each period, ranging from leader (in the mid-1990s and 2000s) to influential follower (in the early 2010s).

### **8.2.1.2 The European Commission: an internally divided dismantling advocate**

As argued in Chapters 2 and 3, the European Commission is conventionally presented in academic literature as interested in continually increasing the EU's competences, and thus its role in the EU. But recent research on the European Commission has highlighted key inconsistencies in how the European Commission is portrayed in the literature, arguing against depictions of an unitary institution aiming at increasing its own powers (Hartlapp et al., 2014; Kassim et al., 2013). Hartlapp et al. (2014) argued that three different rationales underpin the actions of (different parts of) the Commission: a technocratic rationale to deliver good policy, a bureaucratic rationale to increase its influence and a policy-seeking ideological rationale, which over times appears to veer increasingly toward economically liberal politics.

Chapters 4 to 6 found new examples of all three rationales. Answers to dismantling demands at the top of the Commission appeared to shift from the “besieged citadel” attitude under Delors (Kassim et al., 2013, p. 133) – with the onus put on protecting the Commission’s influence – to a much more open ideological rationale under the two Barroso Commissions, illustrated by the adoption of terms such as ‘red tape’ and regulatory burdens to describe the *acquis* (European Commission, 2014c). Since the start of better law-making at EU level in the mid-1990s, the technocratic rationale has also been expressly mentioned, as a way to distinguish between deregulation and what was planned at EU level – appealing to a technocratic rationale that regulatory reform should lead to better policies. Interestingly, these different rationales were also found during interviews with the Commission’s services. Supporters of REFIT within DG ENV or DG CLIMA

argued it would lead to better policies, not blind deregulation, while in the Secretariat General this notion of better policy was coupled with a perceived threat to the EU if it failed to reform – akin to the idea of the Commission as a “besieged citadel” (Kassim et al., 2013, p. 133). But these rationales were not shared by all. Other interviewees expressed serious doubts about the validity of the bureaucratic rationale, while others argued that the strong focus of REFIT and earlier programmes on the environmental *acquis* highlighted an ideological overtone.

These findings confirm the heterogeneity of the European Commission and in so doing, the great number and diversity of meta-preferences at EU level, as suggested in Chapter 3.

### 8.2.1.3 A dearth of dismantling advocates at EU level?

While other Member States have from time to time produced dismantling proposals (such as France in the early 1990s (Berny, 2011), the Czech Republic during its 2008 Presidency (Czech Republic et al., 2008) or Denmark more recently (Danish Government et al., 2010)), most have been produced and sustained over-time by one of the four advocates (with the intermittent support of broader coalitions e.g. Six Presidencies (2004)). In other words, in what is now an EU of 28 Member States, policy dismantling appears to be actively and openly supported over the long-run by only a handful of central EU level actors.

In that respect, while policy dismantling was presented at first as a way of addressing the Danish crisis, Denmark did not, in its post-referendum negotiation, chose to produce a ‘hit list’ or to call for policy dismantling, choosing instead to negotiate opt-outs.<sup>1</sup> Moreover, it is important to note that outside of their rotating presidencies (notably the Czech 2008 Presidency), new Member States have not been prominent dismantling advocates.

Chapter 3 raised two potential issues in adapting the Bauer et al. (2012a) framework to the EU: the high number of dismantling advocates and the great number of meta-preferences. Chapters 4-6 have confirmed the latter, but the low number of committed

<sup>1</sup>Indeed, Denmark was in the late 1980s and early 1990s afraid that common EU rules would degrade its own high environmental standards (Peterson, 1994, p. 118).

dismantling advocates among European political actors is notable. Going back to Pier-  
son's contention that dismantling is harder to achieve in a consensual political system, the  
small number of dismantling advocates – and their internal divisions, especially within  
the European Commission – appears to compound the difficulties of dismantling at EU  
level.

### 8.2.2 Opportunity structures

Bauer and Knill (2012)'s framework contains three types of opportunity structures: ex-  
ternal factors, institutional constraints and opportunities as well as situational factors (Fig-  
ure 8.1). These different factors are assumed to hinder or facilitate policy dismantling,  
and influence dismantling advocates' choice of strategies – as well as how other actors  
respond.

#### 8.2.2.1 External factors

This category encompasses both changes in ideologies or public policy paradigms and  
international economic developments. The global financial crisis of 2008 followed by  
the European economic crisis can be considered a central (though not wholly external)  
factor. It was used as a justification for further regulatory reform, as illustrated by the  
Commission's 2010 Communication on Smart Regulation:

*The crisis has highlighted the need to address incomplete, ineffective, and under-  
performing regulatory measures and, in many cases, to do so urgently.* (European  
Commission, 2010, p. 2)

But Chapters 4 and 5 have shown that demands for dismantling predate the recent  
financial crisis by nearly twenty years. They show that calls for dismantling also coalesced  
at times of crises in the European integration process, often marked by a failed referendum  
– as suggested in Chapter 3.

The first of these crises was the 1992 Danish 'no' to the Maastricht Treaty, which  
effectively re-opened discussions on the meaning of subsidiarity (van Kersbergen & Ver-  
beek, 1994). A similar crisis erupted in 2005 when both France and the Netherlands voted  
down the European Constitution Treaty. Nevertheless it is important to note that not all  
'no' votes led to an upsurge in policy dismantling at EU level: the two Irish 'no' votes  
in 2001 and 2008 were not used as a justification for cutting the *acquis*. While all failed

referendum may offer opportunities to question the direction of European integration and its norm production, these opportunities were not always seized.

Another key external factor concerns ideologies, and in particular “the spread of certain ideas to reform the public sector” (Bauer et al., 2012a, p. 38). Chapters 4 to 6 have sketched out the rise of deregulation and better regulation as organising principles at EU level. The three chapters revealed a certain level of *déjà vu* with recurrent claims of culture change. Hence, the Santer Commission talked of a “growing political consensus within the Union in favour of the simplification of legislation” (European Commission, 1996b, p. 2), the Prodi Commission argued that its better regulation efforts “demonstrates that a change of regulatory culture is taking place.” (European Commission, 2003b, p. 24) while the 2005 British Presidency contended better regulation “is probably the common language in the European Union” (House of Lords EU Committee, 2005, p. 12). Finally, according to President Barroso, better regulation moved from being a concept for “gourmets” to being “common wisdom” in EU circles over the 10 years of his Presidency (Barroso, 2014). This repetition casts doubt on the depth of the culture change at work. Furthermore, the rise of better regulation on the EU agenda does not necessarily reinforce calls for dismantling – hence Commissioner Dimas strongly argued in 2005 that better regulation required environmental policy expansion, and better regulation at EU level is a much broader agenda, with a strong focus on impact assessment (Radaelli & Meuwese, 2009). But, as with subsidiarity in the early 1990s, these “big words” (Princen, 2011, p. 933) offer a platform for dismantling advocates and an opportunity to frame policy dismantling in a manner in line with current preferences.

### 8.2.2.2 Institutional constraints and opportunities

Institutional constraints and opportunities (or factors) refer to the rules of the political game. The EU is a highly consensual polity, with a large number of veto players – occupying different positions, hence facing different opportunity structures. In the field of environmental legislation, pursuing dismantling through the legislative process necessitates first that the Commission produces a legislative proposal, and second that a majority of MEPs and a qualified majority of environmental ministers in the Council vote for it. Therefore two different sets of institutional rules need to be contended with.

First, rules concerning decision-making within the European Commission – namely how a policy proposal becomes endorsed by the College of Commissioners. Second, legislative decision-making, and the balance of power between the agenda-setter, the European Commission, and the two heterogeneous decision-makers, namely the European Parliament and Council. These two sets of institutions have been flux: the EU changed its Treaties four times since 1990 and enlarged four times (in 1995, 2004, 2007 and 2013) during the same period. Not only did the rules of the game change – with greater involvement of the European Parliament in the legislative process (Burns et al., 2013) – but the players changed as well.

Furthermore, changes to institutional factors also cover changes *within* European institutions – changes whose importance were not foreseen in Chapter 3. Within the Council, the six month rotating presidency creates different opportunity structures for the Member State which holds the presidency. Chapters 4-6 showed how the UK (in 1992 and 2005) and Germany (in 1994 and 2007) used part of their presidencies as a springboard to advance dismantling. The lack of traction of British dismantling demands after the end of their 1992 Presidency – despite coalitions with the French in 1993 and the Germans in 1994 – highlighted the key, but short-lived, opportunities offered by these rotating presidencies. Member States may try to shape the agenda in the Council outside of their presidencies – this is particularly the case of the UK, with its “stunt” on ‘red tape’ in October 2013 (Euractiv.com, 2013), and on-going discussions on the EU Brexit referendum (L’Expansion, 2013; The Guardian, 2014) – but this is more likely to succeed with the support of the current Presidency. Hence, Member States have over time become more proficient at coordinating agendas, to extend their influence beyond their short Presidency term. The Dutch 2004 presidency, as one of the drivers of the three-year-long six Presidencies joint-agenda on better regulation (Six Presidencies, 2004) exemplifies this trend.

As for the European Commission, the functioning of this organisation has been deeply reformed over the period studied in Chapters 4-6. In the late 20th century it could be described as composed of feuding “baronies” (Kassim, 2008, p. 652) – each DG developing its own independent agenda, adopting a “natural hair-splitting tendency when proposals

from other DGs are concerned” (Radaelli & Meuwese, 2010, p. 146) – with a President weakly coordinating its barons (Kassim et al., 2013, p. 131). But the last 15 years have seen radical changes in the internal organisation of the Commission (Kassim et al., 2013). These changes followed the Kinnock reforms in the early 2000s and Barroso’s efforts to increase the power of the President over the rest of the College of Commissioners (Peterson, 2008). They have impacted how policy proposals are validated within the European Commission – the first institutional hurdle to dismantling through the legislative process. Two major changes have taken place: a change in procedures, with the rise and gradual tightening of impact assessments for legislative proposals (Van den Abeele, 2010, p. 23), and a change in hierarchy, with the growing powers of coordination given to the Secretariat General, and the evolution of the SG towards a “cabinet office” for the Commission President (Zaun, 2014, p. 430). This has shifted the balance of power within the Commission, meaning that “today the SG can decisively influence the contents or the political direction of the Commission’s legal initiatives” (Hartlapp, Metz, & Rauh, 2013, p. 250).

Going back to the two sets of institutional rules mentioned above (decision-making within the European Commission and legislative decision-making), while the latter became more consensual over the last twenty years (with growing powers given to the European Parliament, and the need to construct broader coalitions within the Council), the former became less so. The Commission President became increasingly able to impose their own legislative agenda – hereby opening new ways to challenge the environmental *acquis* from within the Commission.

### 8.2.2.3 Situational factors

The third type of opportunity structures developed in Bauer and Knill (2012, p. 60) are situational, such as relationships between actors, or the existing “framing of a problem”. Chapters 4 to 6 described numerous re-framing of dismantling at EU level, building on the EU agenda-setting and policy framing literature set out in Chapter 3.

Frequent changes in personnel – in both civil servants and ministers – dealing with the EU in certain Member States can weaken a given state’s influence in Brussels, or its knowledge of the intricacies of EU decision-making practices. Conversely, certain

actors have been influential at EU level over a long period, durably shaping discussions on policy dismantling at EU level: for example José Manuel Barroso, who before his two terms as Commission President was Prime Minister of Portugal, or Catherine Day, who as member of Leon Brittan's cabinet in the 1990s was at the heart of dismantling demands then, before becoming Directorate General for the Environment in the early 2000s, and becoming Secretariat General in 2005, shortly after Barroso became President of the European Commission. The close relationship between the two has helped turn the Secretariat General into an “ally of the Presidency” (Kassim et al., 2013, p. 170) before they both left office in 2014 and 2015 respectively.

Chapters 4-6 have also shown how the reputation of political actors influenced how other actors perceived their calls for policy dismantling – and influenced which strategies they could successfully pursue. Giger and Nelson (2011) argue that certain types of political parties – Liberal and Religious parties – are much more likely to avoid blame (and even to claim credit) for dismantling social policy. The empirical chapters have shown that a similarly differentiated pattern exists at EU level. Hence, the UK has had to repeatedly address criticism that policy dismantling is only an “Anglo-Saxon” agenda (House of Lords EU Committee, 2005; European Voice, 2013a) or a “British disease” (ENDS Report, 2005d) – or that it belongs to “those who say ‘more smart regulation’ but who in reality are attacking the European institutions or the European project as such” (Barroso, 2014, p. 2). This reputation pushed the UK to build coalitions – with France, Germany, the Netherlands – in order to stress that its concerns were shared more broadly. On the other hand, the European Commission did not appear to many commentators as a credible dismantling advocate – as explained by Löfstedt (2007, p. 436) “if the Commission was serious about promoting Verheugen’s agenda, Commission officials would soon be out of a job.” Such a reputation created a specific challenge for the higher echelons of the European Commission – managing to become a credible actor of regulatory reform (in the eyes of Member States and of the business community) while at the same time limiting discord within its own ranks.

### 8.2.3 Strategies

Bauer and Knill (2012) proposed a typology of four dismantling strategies, active and passive as well as open or hidden (Figure 3.2, p. 51). These four strategies were further linked back to credit claiming and blame avoidance concerns – with Bauer et al. (2012a) arguing that open strategies reflect credit claiming, while hidden strategies indicate attempts at blame avoidance. Chapter 3 raised two issues concerning this typology. First, that it was built on a strict differentiation between credit claiming and blame avoidance going against recent development in retrenchment literature (Wenzelburger, 2014; Vis, 2016). Second, that the multi-level nature of the EU may require different strategies.

Chapters 4-6 confirmed a central assumption from Bauer et al. (2012a) – that regulatory policies were more likely than redistributive policies to be *openly* targeted for dismantling. The different ‘hit lists’ and Commission programmes have focused on regulatory policies (including an important share of environmental policy). Although the EU mostly produces regulatory policies, it also produces redistributive policies: the Common Agricultural Policy, Common Fisheries Policies, Cohesion and Regional policies. It is notable that EU redistributive policies tend to be excluded from these discussions – although there were a few exceptions, such as Gordon Brown’s failed attempts at repatriating regional policy (Euractiv.com, 2003). Hence the relationship between open calls for dismantling and regulatory policies appears to overall hold up. But other central assumptions did not.

The first issue raised in Chapter 3 was confirmed in Chapters 4-6. A number of open calls for policy dismantling made at EU level since the early 1990s appear to point toward strategies motivated by credit claiming. Yet Chapters 4-6 have repeatedly shown that dismantling advocates at EU level have *also* tried to avoid blame. Two lines of argument were repeatedly employed to avoid blame. First, actors distinguished regulatory reform at EU level from ‘deregulation’ – a *leitmotiv* for both Commission and Member States concerns, especially in the 2000s. Second, they couched policy dismantling demands in a pro-EU manner – criticising the policy, not the polity behind it (e.g. House of Lords EU Committee, 2005; Agence Europe, 2005c).

The second issue was also confirmed in part. Most dismantling advocates at EU level

appear to pursue dual strategies, in which they claim credit for limiting European interference in their national constituencies, while they attempt to avoid blame at EU level (and accusations that they are weakening the European integration project) by arguing that such self restraint is good for the EU. These dual strategies show how dismantling in a multi-level governance system may differ from dismantling in a unitary system – with, in particular, the opportunity for some dismantling advocates to engage in two-level games. Yet crucially this use of dual strategies is not limited to actors operating over different levels of governance: similar dual strategies can be pursued at the higher echelons of the Commission – in an attempt to claim credit with the business community or Member States for its self-restraint and reforms, while trying to reassure its services that it has not lost its way (e.g. Barroso, 2014).

Beyond the two issues raised in Chapter 3, unforeseen difficulties were experienced in differentiating between strategies along the typology's second dimension – active or passive strategies. According to Bauer and Knill (2012, p. 44), the difference between active and symbolic dismantling relies on whether there is a dismantling decision taken. In the absence of a dismantling decision, open dismantling efforts – such as those studied in this thesis – have to be understood as merely symbolic. Problems with this dimension were not picked up in Chapter 3, and in particular, what qualifies as a dismantling decision in the EU political system.

These decisions can be divided in two groups: first, decisions that aim at fostering policy dismantling within given opportunity structures. These are for example the decision to put policy dismantling high on the agenda of a Council Presidency or Commission's Communication, and to build coalitions to support dismantling among Member States. Second, decisions that aim at facilitating future policy dismantling by removing certain hurdles – in particular institutional hurdles. These can be decisions to fast-track regulatory reform through the legislative process or to change how policy proposals are agreed on within the European Commission. Here again the consensual nature of the EU comes into play – while some of these decisions can be taken by one actor (Member States can choose their presidency agenda, the Commission oversees its own internal structure), most require the support of others. Thus what may appear to be only symbolic policy dismantling – open calls for policy dismantling, not followed by dismantled outputs –

may well be *failed* active dismantling, where dismantling advocates have failed to gain sufficient support to achieve their goals.

The European Commission has thus repeatedly complained about Member States (and the European Parliament) not agreeing swiftly with the simplification proposals it introduces, or for complicating them anew. In that respect it is noteworthy that the second Barroso Commission has appeared to focus on what it could do on its own: removing proposals, centralising power within the Commission, and evaluating existing legislation. But this raises a new challenge, as while these different decisions can be grouped together as decisions that can weaken EU environmental legislation, they do not all fall under the strict remit of dismantling decisions as understood in this thesis – removing a policy proposal is not policy dismantling *per se*. These results highlight that the different challenges to environmental legislation identified in Chapter 1 and 3 are indeed connected – in particular calls for dismantling have repeatedly gone hand in hand with demands to curtail or remove policy proposals.

Hence, Chapters 4-6 showed that the distinctions between overt and covert dismantling strategies, and between dismantling decisions and non-dismantling decisions were hard to make. Many dismantling strategies were not exclusively pursuing credit claiming or blame avoidance but a mix of both. This confirms some of the concerns raised in Chapter 3 notably on credit claiming and blame avoidance regarding the applicability of Bauer & Knill dismantling strategies to the EU.

What does this mean for the four types of dismantling strategies developed in Bauer et al. (2012a)? In the end, most dismantling strategies described in Chapters 4-6 fit loosely under the umbrella of active policy dismantling – in that they were open demands, followed by political action – while a few, such as early policy dismantling by the Delors or Santer Commission, are best characterised as symbolic dismantling – attempts by a “besieged citadel” to pacify critics (Kassim et al., 2013, p. 133). Restructuring within the European Commission – changing who is in charge of better regulation, reinforcing the centre and top of the organisation – as done especially under the second Barroso Commission could be linked to an arena shifting strategy, although in Bauer and Knill (2012) such a strategy implied shifting responsibilities for the targeted policy, not for those doing the targeting.

But this apparent fit between the framework's strategies and the EU attempts discussed above crumbles when we consider credit claiming and blame avoidance. The four Bauer & Knill strategies are built on a clear divide between two strategies aiming for credit claiming (the open strategies) and two opting for blame avoidance (the hidden strategies). This divide is not mirrored at EU level, where many strategies mixed both credit claiming and blame avoidance. While this thesis focuses on EU level dismantling, this mix of credit claiming and blame avoidance may not be specific to the EU: other settings, in particular consensual political systems with a great number of veto players, may present similar dismantling strategies.

What is specific about the EU is that policy dismantling is often discussed in relation to European disintegration: dismantling advocates have to argue not only about whether dismantling a given policy will meet a specific policy goal, but what impact it would have on the EU and on the European integration process. Will dismantling attract citizens and businesses to the EU? Or will it *a contrario* further undermine the foundations of the European project? This creates a tricky situation, especially for the European Commission. President Barroso explained he had to challenge the notion that “less regulation means by definition less ambition” (2014, p. 3). The European Commission if it wishes to support regulatory reform, be it policy dismantling or reducing the number of policy proposals, needs to address concerns that it is failing in its mission to support further European integration. While policy dismantling sits at the systemic and sub-systemic levels of policy-setting and policy-shaping (Peterson, 2001, p. 296), super-systemic elements – the direction of European integration *etc.* – are never far away and need to be borne in mind by dismantling advocates.

#### **8.2.4 Effects**

Effects are the last step in the analytical framework, influenced by both dismantling strategies and external factors (Figure 3.1, p.44). They are also the step most modified *a priori* in Chapter 3. Whereas Bauer & Knill openly focused on dismantling strategies, complemented by the predicted effects of each strategy (Figure 3.3, p.54), this thesis gave as much importance to effects and strategies, considering both as full-fledged dependent variables.

Effects were approached in two different ways. First, Chapters 4-6 described limited effects on the *acquis* – whether pieces of legislation were revised – as well as effects beyond notably, on the culture of the institutions and on policy proposals. Second, Chapter 7 studied effects as changes to policy outputs. It compared and analysed changes to policy outputs based on a coding exercise which measured the direction of policy change for the directives and regulations targeted for dismantling and subsequently revised. This section reflects on the successes and limits of the approach to effects described in Chapter 3, as well as on the original framework’s prediction on linkages between certain strategies and effects.

#### 8.2.4.1 A dual understanding of effects

The two-pronged approach introduced in Chapter 3 sought a more nuanced understanding of the effects of dismantling attempts at EU level. Hence, while Chapter 7 showed that dismantling demands did not necessarily translate into dismantled outputs when looking closely at legislative changes; Chapters 4-6 showed the pervasive impacts of policy dismantling attempts on both the declining number of EU environmental policy proposals and the policy-process within the European Commission. Chapter 1 indicated that non-implementation, obstacles to policy expansion and policy dismantling are distinct challenges to EU environmental legislation – after Chapters 4-6 they appear to be connected. It is, for example, much easier for the Commission to change the way new legislation is produced – especially in the many stages before the policy proposal is sent to the legislators, than to dismantle existing policies, which requires consent from both legislative bodies, and has been increasingly used to demonstrate commitment to regulatory reform, as illustrated by the REFIT programme under the second Barroso Commission. This finding echoes work on US environmental policy dismantling. For example Korte and Jorgens (2012) showed how, faced with legislative gridlock, the Bush Administration pursued environmental policy dismantling through other, administrative means; Klyza and Sousa (2013) argued that policy was made, and dismantled, at a variety of sites beyond Congress, from state legislatures to the courts.

### 8.2.4.2 Reflections on the coding framework

In coding changes to policy outputs, this thesis departed strongly from the Bauer & Knill approach of focusing on dismantling strategies. The coding framework<sup>2</sup> developed for this thesis innovated in several ways. First, it focused on policy dismantling through the legislative process, and as such dealt with dismantling of pieces of legislation (here directives or regulations). Second, it coded these entire pieces of legislation – not only the instruments which were *stricto sensu* environmental, but other instruments such as network building, support mechanisms *etc.* Third, it coded elements of policy (formal intensity) that had not been coded before (*e.g.* Knill et al., 2014). This meant coding the direction of policy change – dismantling, expansion and the continuation of the *status quo* – along seven dimensions (Figure 3.8, p. 67).

The results of the coding scheme revealed a finely grained picture of policy dismantling at EU level (as developed in Chapter 7). Dismantling occurred across most dimensions – although mostly at the instrument, not legislation level. Dismantling patterns were different across periods and policy areas. While dismantling did occur – which indicates that the EU consensual political system is not a complete barrier to policy dismantling – it occurred less frequently than further policy expansion, or the continuation of policy *status quo*. This is remarkable considering that the directives and regulations coded for were directly and openly targeted for dismantling. Hence the coding framework proved successful in providing a detailed picture of how the EU environmental *acquis* has changed after 20 years of calls for dismantling at EU level.

But this coding framework could only offer a partial account of changes to EU environmental policy. Hence, what it did not do was rank changes in order of importance – it focused on the *direction* of change, not on its relative importance. As argued in Chapter 3, the number of case studies and their diversity rendered such expert judgment on the importance of political change impractical.

### 8.2.4.3 Coded outputs and expected effects of dismantling strategies

Bauer and Knill (2012, p. 46) made tentative predictions about the effects on legislation of each of the four types of strategies (Figure 3.3, p.54). These predictions, importantly,

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<sup>2</sup>The codebook is available in Appendix B.

rely on a series of assumptions: that there is one single dismantling actor (a unitary government), adopting a single coherent dismantling strategy, which would then have a specific impact on targeted policies, ranging from commissioning reports, to reducing policy density, or failing to adjust substantial intensity (*i.e.* scope and settings). As the previous sections illustrated, these assumptions do not hold at EU level. The consensual nature of EU policy dismantling, as well as the variety of political actors, means that we cannot assume a unitary government – nor can we assume, at any given time, a single dismantling advocate, or that multiple dismantling advocates would want to dismantle the same pieces of legislation, for the same reasons, in the same manner.

Chapter 7 listed examples of density, scope and settings reduction. This is akin to what is expected as results of active dismantling: “reduction in policy density, *i.e.* the abolition of policies or instruments; reduction in substantial intensity” (Bauer & Knill, 2012, p. 46), with three major caveats. First, most of the dismantling events described in Chapter 7 were at the less visible level of instruments, not of the piece of legislation in general. This is not consistent with the idea in Bauer *et al.* that active dismantling is an open strategy used by actors looking for credit. Second, while Chapter 7 did find examples of dismantling, instances of expansion and, even more so, of continuation of the *status quo*, were much more frequent. At EU level, Chapter 7 found that it was not just dismantling or expansion, but both of them, that were happening simultaneously through legislative reform. Third, density, scope and settings did not follow the same pattern, either over time or across policy areas.

Chapter 4-7 also found examples of events which fall under the expected effects of other strategies. In particular, the large number of consultations and collaboration with stakeholders to identify policies to be dismantled can be linked to the expected effects of a symbolic dismantling strategy: “announcement of a reduction in policy density or intensity; relabeling policies; commissioning consultations/evaluation reports” (Bauer & Knill, 2012, p. 46). It is also noteworthy that while Chapter 7 found instances in which formal intensity was changed, dismantling was a rare occurrence.

### 8.3 Reflections on the theoretical framework used

A key claim of Bauer et al. (2012a, p. 34) is that they have created a theoretical framework which “travels” well, *i.e.* which can be applied to multiple policy areas and multiple polities. While applying this framework to the environmental policy sector is not new, doing so at EU level is. As such, Chapter 3 presented a number of points on which the framework might be challenging to apply at EU level. Although it appeared challenging, the malleability of the framework, and the way it had been applied together with multiple mid-range concepts such as veto players, agenda-setting *etc.* in the case studies regrouped in Bauer et al. (2012a) augured well for its application at EU level. How well this framework traveled could best be tested empirically (Henry et al., 2014), which is what this thesis set out to do.

The previous section showed how, amongst others, the diversity of EU political actors and their lack of homogeneity as well as the multi-level nature of the EU produced a number of challenges when applying the four steps of the analytical framework. Some of these challenges had been foreseen in Chapter 3, some were only revealed through the empirical section – confirming Bauer et al. (2012a, p. 46) contention that “the value of this framework can only be tested by applying it systematically to empirical case studies of policy dismantling”. But while some of the steps of the framework appear difficult to apply, this does not necessarily mean that the framework is not useful – indeed one cannot expect a framework created for one polity to work flawlessly when transferred to another. The analytical framework applied throughout this thesis should be evaluated on its ability to explain both dismantling strategies and their effects – its two dependent variables.

#### 8.3.1 Dismantling strategies

The theoretical framework aims at explaining the choice of dismantling strategies through a greater understanding of political actors’ preferences and the opportunity structures in which they operate. The EU opportunity structures and meta-preferences presented in the first part of this chapter have managed to explain why none of Bauer & Knill’s strategies fit well with the open dismantling strategies on which this thesis focused. In particular, the first part of this chapter shed light on the heterogeneity of EU actors, and their multiple meta-preferences, alongside the EU’s opportunity structures – its multi-level and

consensual polity, the importance for actors of ‘ever closer union’, and of how dismantling impacts the European integration process. Hence, the framework has not “provide[d] every descriptive factor or explanatory mechanism which is important for understanding coalition behavior, learning, and policy change” (Henry et al., 2014, p. 307). But it never set out to do so. Instead, its ability to travel is built on its use of existing concepts, such as veto players, which allow for a different range of theoretical concepts to be harnessed to the framework in different case studies. In that respect, the theoretical framework has fulfilled the author’s aim in providing an explanation for the choice of dismantling strategies at EU level – providing “a shared language and approach for studying similar phenomena and generating shared knowledge” (Henry et al., 2014, p. 307). The overall approach worked, even though the strategies found do not fit with the typology proposed in Bauer and Knill (2012), or with their assumptions on the sharp distinctions between credit claiming and blame avoidance strategies.

### 8.3.2 Dismantling effects

The effects of dismantling strategies were more complex to explain than the choice of dismantling strategies. This is in part due to research design, and the adoption of a dual understanding of dismantling effects. Chapters 4-6 showed how opportunity structures and dismantling strategies can explain effects broadly speaking. Hence for example the symbolic nature of regulatory reform under the Santer Commission explained the limited results in terms of culture change, just as profound divisions between services (notably in terms of meta preference) hindered better regulation progress under Verheugen and Barroso I. Conversely changes to the Commission’s internal organisation in the early days of Barroso II structurally weakened the opposition to regulatory reform within the Commission. Crucially, these examples under the two Barroso Commissions showed that opportunity structures did not matter only in choosing dismantling strategies (as set out in the analytical framework) but for the strategy’s success – and its effects – as well.

Furthermore, these results reveal that when opportunity structures are unfavourable to policy dismantling, dismantling advocates may focus on another way to challenge EU environmental legislation which remains in their control – curtailing proposals for the

Commission; undermining implementation for the Member States, or even, crucially, reforming the opportunity structures (institutional or situational factors), which was not accounted for in the original analytical framework, nor in its *a priori* revision in Chapter 3.

Capano (2009, p. 14) cautioned that “it is not easy to convincingly explain the ongoing process of public policy (with all its various steps) using the same theoretical framework for all the different components of the process itself”. In order to circumvent this difficulty, this thesis adopted a two-pronged approach to effects, mobilising different methods to study changes to policy outputs. Chapter 7 revealed the complex picture of dismantling effects at the level of policy outputs, with results which supported Bauer and Knill (2012, p. 33) contention that a “differentiated view of policy dismantling” was needed to account for “the potential for various sub-elements of policy to move in different directions and at different speeds” (Bauer et al., 2012b, p. 205). But while this central element in their original framework’s understanding of policy outputs was upheld, the link between strategies and outputs was not. Unsurprisingly, as the different dismantling strategies identified in Bauer and Knill (2012) do not match the dismantling strategies found at EU level, the effects described in Chapter 7 do not match the predictions made in the framework (Figure 3.3, p.54). Further work is needed to investigate whether the patterns found in Chapter 7 – dismantling at instrument, more than legislation level; dismantling, expansion and perpetuation of the *status quo* occurring simultaneously – are found in other sections of the *acquis*; and to explain these patterns.

## 8.4 Going forwards: building an EU dismantling framework

The first objective of this thesis was “to combine theoretical and methodological frameworks able to capture policy dismantling both in terms of strategies and changing outputs at EU level”. Applying the Bauer & Knill framework at EU level has done so to a certain extent. When applying a theoretical framework in another political system than the one it was designed for, one cannot expect a perfect fit (Henry et al., 2014). Instead, one needs to gauge how useful the framework has been at explaining the empirical data – and whether its limitations detracted from its successes.

Chapter 3 argued the Bauer & Knill framework rested on three main components:

a multidimensional understanding of policy observable through changes to density and intensity, an approach to dismantling strategies based on an opposition between credit claiming and blame avoidance opposition and finally an analytical framework connecting the two dependent variables (policy outputs and strategies) to actors's preferences and the opportunity structure in which they operate. While discussions have moved on on both density/intensity (e.g. Steinebach & Knill, 2016; Schaffrin et al., 2015) and strategies (e.g. Vis, 2016; Jordana, 2014), there has been little scholarly engagement with the framework itself. This thesis made *a priori* changes to how density and intensity are measured (reflected upon in Section 8.2.4.2). This section discusses *a posteriori* changes to the analytical framework and to dismantling strategies.

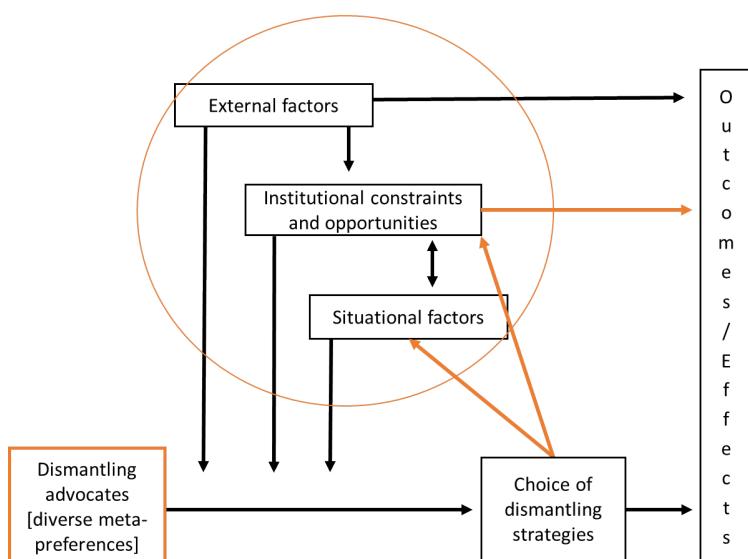
Previous sections have shown that overall, the Bauer & Knill framework has been able to explain how dismantling advocates chose dismantling strategies, and how these strategies led to a variety of effects. But these sections also identified three central problems undermining the analytical framework: first, the heterogeneity of dismantling advocates and of their preferences, second the impacts *of*, and *on* opportunity structures which are missing from the current model (Figure 8.1, p. 179), and third the lack of fit between observed strategies at EU level and the four original strategies.

#### 8.4.1 A revised framework for EU level analysis

A first step in revising the Bauer & Knill framework *a posteriori* is to highlight its limits and gaps. This is done in Figure 8.2, which changes the first step of the model, and adds a number of new connections between different steps. The first box – originally “politicians [meta-preference for re-election]” in Bauer et al. (2012a, p. 34) has been changed to “Dismantling advocates [diverse meta-preferences]”. Dismantling advocates replace politicians to allow for a greater scope in actors studied – not simply (elected) politicians but also other political actors in veto-player positions (Zohlnhöfer, 2009, p. 98), such as the European Commission. Heterogeneity of dismantling advocates means that while they may all share the preference to dismantle policy, no single meta-preference, for re-election or another goal (to weaken or strengthen the EU for example) can be assumed. Finally, by putting the onus on “dismantling advocates” in particular, not “political actors” in general,

Figure 8.2 focuses on explaining the motivations and actions of actors supporting, not opposing dismantling. This focus echoes the general tendency in retrenchment study, as well as answers a gap in EU studies in which expansion tends to be presumed (as explained in Chapter 2).

The new arrows linked to opportunity structures represent causal links. All three arrows stem from the findings of the results chapters. Chapters 4-6 have shown that whether it be through building new coalitions, or reframing dismantling as distinct from deregulation, and as pro-EU, actors attempt to re-shape situational factors is at the heart of many dismantling strategies. Institutional constraints can also be targeted – as exemplified by administrative reform under Barroso II – to curtail the possibility of individual DGs promoting their own distinct legislative agendas.



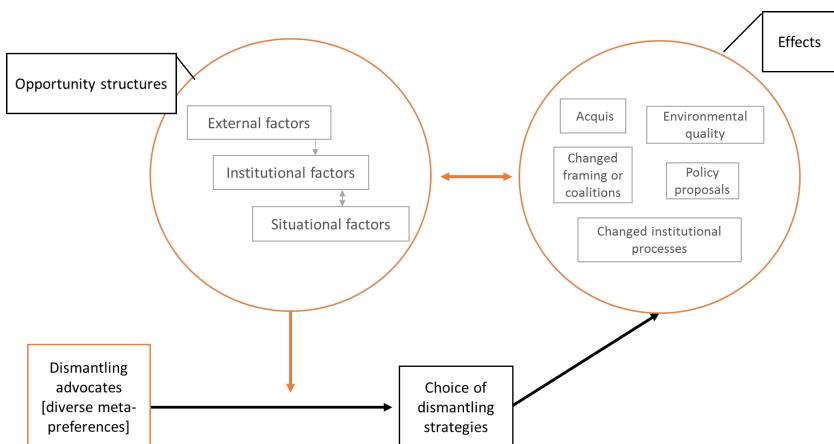
**Figure 8.2:** Missing connections in original framework, adapted from Bauer and Knill (2012, p. 34) and empirical results presented in Chapters 4-6

Finally, institutional constraints also impact the breadth and depth of strategies' outcomes: thus for example, the lack of real support, within Member States, for the better regulation agenda of the Prodi Commission meant that many of its proposals died in the legislative process. Institutional rules and opportunities matter not only when choosing a dismantling strategy, but can also impact its chances of success.

While Figure 8.2 is useful to highlight the missing links in the original framework, it is messy, separating the effects of dismantling strategies on situational and institutional factors from the “outcomes and effects” category. Figure 8.3 offers an alternative, which

“tr[ies] to reduce [...] complexity to a number of manageable dimensions in order to elaborate comprehensive yet useful accounts of policy dynamics” (Capano & Howlett, 2009, p. 4).

Figure 8.3 has three principal features: first, it regroups the three types of opportunity structures, and changes their names to external, institutional and situational factors for greater clarity. Second, it opens the black box of outcomes and effects to reflect the multifaceted nature of this category: in addition to changes to environmental policy and quality, it distinguishes between changes to the *acquis* and to policy proposals, as well as changed framing or coalitions, or changes to the institutional processes. Third, it revisits the relationship between the different categories. Based on the empirical results advanced in Chapters 4-6, it highlights the two-way relationship between opportunity structures and effects. On the one hand, opportunity structures (all three types of factors) influence not only strategies, but their effects. On the other hand, certain effects, such as changed framing, coalitions, or changed institutional processes, change opportunity structures for future dismantling advocates – in facilitating or hindering their actions.



**Figure 8.3:** Revised theoretical framework

#### 8.4.2 Strategies for EU level dismantling

A typology is “a classificatory device that helps to arrange the observable empirical ‘mess’ in a more ordered, transparent and therefore comprehensible manner” (van Kersbergen & Vis, 2015, p. 116). A good typology meets a number of requirements – and the Bauer & Knill typology failed on two of these in its application to EU level. First, the observed EU level strategies challenged its theoretical assumptions, the “pre-existing theory” on which

this “explanatory typology” drew (Maggetti et al., 2013, p. 36) (the division between credit claiming/overt and blame avoidance/covert strategies). Second, the typology was not exhaustive: not only were not “all theoretically relevant dimensions” included (which meant that, for example, strategies from a variety of actors with different role in the legislative process were conflated), but it proved impossible to “assign all existing cases to one of the types” (as the repatriation of power attempts showed) (van Kersbergen & Vis, 2015, p. 116).

General typologies can be further specified – with categories divided into smaller, more precise categories (Maggetti et al., 2013, p. 37). This would address a common problem with the empirical data – that most dismantling strategies appear to fall under the same active dismantling category. But two further problems remain: that supposedly hidden strategies were discussed openly, and the prevalence of blame avoidance in strategies which should have been characterised by credit claiming.

An alternative typology is thus worth considering, built on the insights from Chapters 4-6. While it is developed for the EU, it addresses a number of problems with the Bauer & Knill strategies – the distinction based on credit claiming or blame avoidance for example – and as such could be useful in other settings as well.

One of the main findings from the empirical chapters is the prevalence of dual strategies, in which dismantling advocates simultaneously adopt two distinct strategies, aimed at different target audiences, and informed by different aims (credit claiming or blame avoidance). This duality echoes Pierson’s (2001a, p. 411) argument that there are two key obstacles to retrenchment. The first obstacle is risky elections and the presumed high political cost of policy dismantling. The second obstacle is institutional arrangements characterised by “stickiness” – the difficulty to achieve policy change of all types, and dismantling in particular. Dismantling strategies can thus be thought of as containing two components, one aimed at affecting policy change and achieving success through the political system, and another at staying in power and maintaining (or even increasing) popular support. The case studies in Bauer et al. (2012a) have shown that these two components are not always of similar importance to dismantling advocates – for example, symbolic dismantling is a strategy in which politicians greatly prioritise popular support over policy change. *A contrario*, a technocratic dismantling could be focused on achieving

policy change irrespective of decreased popular support.

Chapters 4-6 further showed the diversity of these dual strategies at EU level. Hence different actors within the EU political system occupy different positions (e.g. the Commission as principal agenda setter, the Council and Parliament as co-legislators) – and thereby face different obstacles to dismantling, requiring different strategies. Moreover, as Tortola (2015, p. 134) argued, the EU institutional settlement is based on “decoupling the arenas of politics and policymaking” – politics tends to remain in Member States while policy-making is increasingly based in Brussels. This means Member States pursuing dismantling may follow a given strategy to obtain legislative success at EU level in parallel to (and not necessarily coherent with) a separate strategy aimed at securing domestic political support – thus engaging in two-level games.

These dual strategies can be used to put forward an alternative way of creating separate, mutually exclusive categories, which efficiently organise the “empirical mess”(van Kersbergen & Vis, 2015, p. 116). Chapters 4-6 yield four possibilities, around which a new typology could be created (Figure 8.4). A good typology should help make sense of complex empirics. Combining all four options presented in Figure 8.4 would create a very cumbersome typology with a huge number of potential strategies, hereby defeating the typology’s purpose. A central empirical contribution of this thesis has been to show the importance of these different, concurrent dimensions, along which strategies can be studied. Which of these options should be focused on in future dismantling studies, in addition to or in replacement of Bauer & Knill’s typology, is a question for research design. Figure 8.4 illustrates how the dependent variable problem is not limited to policy outcomes vs. outputs (e.g. Green-Pedersen, 2004). This problem also concerns dismantling strategies. A project interested in the two-level game nature of EU policy dismantling could focus on categorising strategies in terms of levels of governance (third option), while a project interested in the effects of dismantling at EU level could focus on the precise targets of dismantling strategies. Hence what elements we consider central to the categorisation of dismantling strategies (be it the level of governance at which they operate, their aim or target) will shape research results as well as practice.

OPTIONS	EXAMPLES
1 <i>Respective weight of components of dual strategies</i> : 3 options, symbolic (focused on public opinion), technocratic (focused on policy change) and mixed (with similar attention devoted to both)	UK “Cut EU red tape” as example of symbolic dismantling while UK-NL-DE “Make it Work” project as technocratic example
2 <i>Level of governance</i> : 4 options, EU/EU, MS/MS, EU/MS and MS/EU	NL subsidiarity review as example of a MS/EU strategy (targeting domestic political debate, but EU level decision), while the Commission’s REFIT programme is an EU/EU strategy
3 <i>Target of strategies</i> : 4 different targets ( <i>acquis</i> , proposals, functioning of the political system, polity legitimacy) leading to 16 potential combinations	UK’s balance of competence exercise (questioning competences and the polity itself) v. Barroso’s Smart Regulation programme (reforming political system, and reducing number of proposals).
4 <i>Aim of strategies</i> : 4 types of strategies aiming at credit claiming and/or blame avoidance	Barroso II REFIT as a CC/CC strategy, claiming credit for reducing ‘red tape’ and for saving the European project v. Barroso I Better Regulation as a CC/BA strategy, combining claiming credit for better regulation with reassurance it would not cause deregulation.

**Figure 8.4:** Toward a typology for EU policy dismantling strategies (own data)

## 8.5 Conclusion

This chapter related the theoretical framework introduced in Chapter 3 to the results of the empirical chapters (Chapters 4-7). Section 8.2 developed the four steps of the Bauer & Knill framework in relation to empirical results, stressing the limited number of dismantling advocates at EU level, the different opportunity structures they face, the variety of dismantling strategies mobilised – cutting across levels of governance and the credit claiming/blame avoidance divide – and their effects on and beyond EU environmental policy outputs. Section 8.3 reflected on the successes and failure of the framework with regard to its ability to ‘travel’ to the EU level and convincingly explain changes to the two dependent variables, *i.e.* how dismantling advocates choose their dismantling strategies and what were their effects.

This chapter identified three central issues raised by the application of Bauer & Knill’s framework to the EU environmental policy case: the overly narrow focus on politicians motivated by re-election concerns (first raised in Chapter 3 and confirmed in the results chapters), missing causal links between strategies, opportunity structures and effects

(stemming from the results chapters); and strategies which fall outside of the proposed typology (first raised, in parts, in Chapter 3 and confirmed in the results chapters). Section 8.4 addressed these issues by first suggesting a reworking of the Bauer & Knill framework to include a looser ‘dismantling advocate’ category, the greater variety of effects found in Chapters 4-6 as well as additional causal links between the different categories. Second it presented different options along which, depending on the research questions mobilised, EU dismantling strategies could be categorised, highlighting the connections between strategies that contest policies and those that contest polities.



# Chapter 9

## Situating policy dismantling research within EU studies

Given the low level of morale in the present EU, the most likely scenario would combine ever greater difficulties in adopting new legislation with an erosion of the existing *acquis* through creeping non-compliance.

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Scharpf (2010, p. 290)

### 9.1 Introduction

This thesis opened with a puzzle: despite repeated calls for EU policy dismantling by influential political actors (which had found echoes in the European media and within the NGO community), neither dismantling nor EU studies scholars had developed comprehensive research on the issue. Not only was EU policy dismantling not deemed to be a relevant area of study, but the mere possibility of EU policy dismantling was discounted in both dismantling and EU scholarship. The former tended to conceptualise the EU at most as an external driver of domestic dismantling, not a locus of dismantling itself, while the scholars working on the latter tended to focus on (obstacles to) further European integration. The lack of EU dismantling research was particularly puzzling as European integration meant that a growing number of policies were being agreed on at EU level:

if discussion on policy content was now taking place at EU level, why would debates on policy direction – expansion, dismantling or keeping the *status quo* – stay within Member States?

Motivated by this puzzle, I set out to deliver the first systematic study of policy dismantling at EU level, and chose to focus on a central aspect of the *acquis* – European environmental policy – an “area ripe for simplification under the ‘better regulation’ agenda” (Anker, de Graaf, Purdy, & Squintani, 2015, p. 18). I aimed at understanding how policy dismantling affects EU legislation in general, and the development of the environmental *acquis* in particular. To address that aim I adopted three research objectives, mixing methodological, theoretical and empirical elements:

**Objective 1:** To formulate and test a theoretical and methodological framework able to capture policy dismantling both in terms of strategies and their effects at EU level.

**Objective 2:** To explain the dynamics of and rationales for policy dismantling at EU level.

**Objective 3:** To relate findings on policy dismantling at EU level with conventional accounts of European integration, the evolution of EU environmental policy, and the present focus of dismantling studies in national settings.

This chapter draws the thesis to a close, and reflects back on its three objectives. Section 9.2 summarises the main empirical findings, and relate them to Objective 2. Section 9.3 discusses principal theoretical contributions, in connection with Objectives 1 and 3. Section 9.4 reflects back on the research process, and section 9.5 concludes by discussing future avenues for research.

## 9.2 Key empirical findings

This section summarises key findings from the four empirical chapters, organised around three main questions: whether dismantling occurred at EU level; whether (and how) it changed EU environmental policies; and whether (and how) it differed from domestic policy dismantling patterns. Together, these questions address Objective 2, in revealing the dynamics of and rationales for policy dismantling at EU level.

### 9.2.1 The EU as a new locus for policy dismantling

Chapters 4 to 6 investigated the calls that have been made for policy dismantling at EU level from the early 1990s to the mid 2010s. Amongst these calls – be it Member States’

‘hit lists’ or Commission reports – certain items of environmental policy have featured prominently (especially in the early 1990s and from the mid 2000s onward).

These chapters further showed that there has been only a handful of actors who have repeatedly advocated for dismantling at EU level – the UK, the Netherlands, Germany and the European Commission. This relatively small number, in a hyperconsensual policy-making system which requires large coalitions to adopt new or reform old policies, compounds the challenges facing dismantling advocates at EU level. Indeed, for policy dismantling to take place at EU level through the legislative process, two institutional barriers must first be overcome. First, either the Commission (in its legislative proposal) or one of the legislators (through amendments) must include dismantling elements in the text under discussion. Second, both co-legislators, namely the Council and European Parliament, must agree on the text.<sup>1</sup>

Dismantling advocates tried to overcome these barriers in three different ways. First, Member States intent on dismantling tried to build increasingly broad coalitions within the Council to support dismantling as part of a broader discussion on the quality and quantity of EU regulation. Chapters 4-6 highlighted the difficulty for dismantling advocates to maintain this issue high on the agenda at the end of their Council Presidencies – a difficulty addressed by the development of shared agendas between subsequent Council Presidencies. These chapters further stressed the importance of framing dismantling demands in certain ways – linked with the “big words” of the day (Princen, 2011, p. 933). Certain frames – competitiveness, regulatory burdens, ‘red tape’ – were more successful than others (such as sovereignty and subsidiarity) in building sufficiently broad support for dismantling.

Second, the higher echelons of the European Commission – more supportive of dismantling than the Commission services more generally (especially under Santer and Barroso) – became advocates for dismantling both within the Commission and during the legislative process. Chapter 6 in particular showed how dismantling gained traction inside the Commission *via* a change of venue, from DG Enterprise to the Secretariat General, under a Commission President intent on imposing its own political agenda on policy DGs. Third, Chapters 4-6 highlighted how the difficulties of legislative dismantling made

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<sup>1</sup>While different decision-making procedures remain, most cases studied in this thesis were decided under codecision.

alternatives such as removing policy proposals, or changing institutional processes, increasingly attractive to dismantling advocates.

Chapters 4 to 7 analysed how these two barriers nevertheless continued to hinder dismantling efforts. Thus, Chapters 4-6 showed that not all calls for dismantling were translated into policy reform proposals – highlighting the gate-keeping role of the European Commission. Furthermore, Chapter 7 revealed that not all pieces of legislation targeted (and subsequently reformed) had experienced dismantling. Instead this chapter described a complex picture of legislative change, with different policy dimensions moving simultaneously in multiple directions. This variety of outcomes revealed a prevalence of the *status quo*, with policy dismantling the least frequent direction of change across the different dimensions. Additionally, while density, scope, settings and formal intensity all evolved differently, most dismantling events occurred at the level of instruments, not of whole pieces of legislation.

### **9.2.2 Lost green momentum at EU level**

Chapters 4-6 showed how dismantling effects are not merely felt in changes to policy outputs. Knill and Liefferink (2012) contend that EU environmental policies after 1992 were “characterized by two opposing trends”, with on the one hand a strengthening of the legal basis for environmental policy, while on the other “EU environmental policy [had] lost momentum on the European agenda as opposed to other policy areas”. Such lost momentum was made apparent in Chapters 4-6 which showed how the narrative of the EU as a “Green Europe” lost credibility. The last ten years have seen scholars and practitioners alike expressing the need for a new narrative for Europe (Jordan, 2008; Warleigh-Lack, 2010b). While hardly new, it is noteworthy that the negative reframing of EU environmental action – as having gone too far, as costing too much to businesses, as impinging on Member States’ sovereignty – has been gaining traction over that same period (Manners & Murray, 2016). This negative reframing has gone hand in hand with dismantling attempts, in particular with efforts to render dismantling consensual.

This loss of momentum is further evidenced by growing concerns in European civil society – and with the growing research agenda – on the impacts of austerity on EU environmental policy (Corporate Europe Observatory & Friends of the Earth Europe, 2014;

Tobin & Burns, 2015; Čavoški, 2015). Austerity is a broad concept, encompassing a wide array of policies such as cuts and reductions in public budgets (Blyth, 2013), raising taxes or cutting certain public policies (Jordan, Bauer, & Green-Pedersen, 2013). While it tends to be studied in relation to the welfare state, cuts to policies in the name of austerity can go beyond traditional social policies, in efforts to trim-down superfluous policies, considered to be standing in the way of competitiveness and the return of growth (Potočnik, 2012). At EU level, particular concerns have been raised about the impact of Commission-led austerity measures on the EU environmental *acquis* – Chapter 6 discussed these concerns up to the end of the second Barroso Commission, and they have since been growing under the new Juncker Commission (Juncker, 2014b; Čavoški, 2015; ENDS Europe, 2015b). Comparing policy dismantling in the 1990s to the early 2010s (in Chapter 4-6) exposed two different trends: first, an impressive similarity in terms of both political discourses and reactions from environmental NGOs, offering a strong sense of *déjà vu*; second, profound changes in opportunity structures, which have removed obstacles to dismantling, notably within the European Commission.

### 9.2.3 Is EU dismantling different?

Chapter 2 stressed how existing dismantling studies have mostly focused on dismantling at national level. My findings allow for comparison between dismantling in states and at EU level. While the EU had not previously been considered a locus for dismantling, this thesis shows dismantling at EU level bears similarities to certain domestic settings. Dismantling at EU level sharply differed from dismantling in unitary majoritarian polities – but it resembled dismantling in more consensual systems. Chapters 4-6 showed how EU dismantling advocates were at certain points numerous and internally divided. These chapters highlighted how hyperconsensual politics at EU level meant that dismantling advocates needed to build coalitions and accept compromises in order to achieve dismantling through the legislative process. These results confirmed for the EU case Bonoli's (2001, p. 240) contention that, in polities characterised by a high number of veto players, "reform tends to combine measures of retrenchment with expansion and improvement of existing programmes", *i.e.* dismantling takes the form of package deals acceptable to all veto players.

Dismantling at EU level also bears similarities with dismantling in other multi-level polities. Hence the multi-level nature of the EU meant dismantling was discussed and pursued at different levels and sites of governance by varied coalitions of actors. This finding echoes recent research on environmental policy dismantling in the US. Thus Klyza and Sousa (2013) described how legislative grid-lock in the US meant environmental policy was changed (both expansion and dismantling) in a growing number of alternative venues(courts, state level *etc.*), while Korte and Joergens (2012) showed how the Bush Administration pursued dismantling through administrative changes in order circumvent Congress. In addition to providing for different venues in which to pursue dismantling, the multi-level nature of the EU also influenced how dismantling calls were framed. Chapters 4-6 revealed how European political actors used dual dismantling strategies, aimed at both securing policy change and maintaining (or increasing) popular support. These dual strategies were often (but not always) targeted at different levels of governance, highlighting the possibility of two-level games in EU policy dismantling. These strategies relied on framing efforts which made claims both about policy and polity – about the relative degree of political intervention preferred and the form it should take, but also crucially about whether the EU was the right level of governance to make these decisions at. Hence policy dismantling at EU level is never solely about tinkering with the degree of political intervention in the economy: the contested nature of European integration (*e.g.* Manners & Murray, 2016; Phinnemore, 2015) means there is always a more or less explicitly acknowledged backdrop discussion about the EU's legitimacy to act. The mix of policy dismantling and criticism of the level of governance producing regulation is also common in the US. Conservative politicians in the US managed to frame discussions on environmental affairs in an anti-regulatory tone, encouraging voters to distrust the national government and the environmental movement (Layzer, 2012).

### **9.3 Key theoretical contributions**

This thesis applied a policy dismantling framework first developed to study policy change in states to the EU. In doing so it drew on both dismantling and EU studies. Bringing these two distinct literatures together contributed to both – as this section develops below. These contributions are connected to Objectives 1 and 3.

### 9.3.1 Contributions to dismantling research

Chapter 2 highlighted how limited the existing literature on EU level policy dismantling was. In attempting to fill this gap – with a systematic study of environmental policy dismantling at EU level – this thesis advanced research on policy dismantling in different ways. First, it broadened the scope of dismantling studies beyond its original focus on national social policies and the welfare state (Chapter 3), contributing to a growing literature on environmental policy dismantling. Second, it offered the opportunity to test a domestic analytical framework at another level of governance, and to develop a suitably different framework for studying policy dismantling at EU level (as detailed in Chapters 3 and 8). Third, applying concepts of retrenchment research to the EU raised questions about the flexibility and elasticity of these concepts.

#### 9.3.1.1 An analytical framework and coding scheme to study EU level policy dismantling

Chapter 1 explained the choice of a pre-existing comparative politics framework to study policy dismantling at EU level. This choice took into account of the “extreme fragmentation in definitions and approaches” used to study policy change (Capano, 2009, p. 27) and of the ‘domestic turn’ in EU studies which saw increasing research applying comparative politics framework instead of *ad hoc* theories of European integration to study the workings of the EU political system (Tortola, 2015). Chapter 3 detailed the chosen framework, by Bauer and Knill (2012), and discussed *a priori* adaptations, in the light of the EU studies literature on what motivates European political actors, and on the multi-level nature of the EU. It also introduced a novel coding scheme (further detailed in Appendix B) to better capture changing outputs at EU level. In particular the coding scheme offered new ways of coding formal intensity and substantial intensity by distinguishing between scope and settings.

This adapted framework was then used to guide empirical work in Chapters 4-7. Chapter 8 subsequently tested the framework, and applied it to the data from all four empirical chapters. While this test proved, in parts, conclusive, Chapter 8 also revealed a number of remaining inconsistencies between the framework and the EU data. Hence for example strategies pursued by dismantling advocates at EU level did not fit within

Bauer & Knill's typology, while some additional connections between the four components of the analytical framework (such as influence of strategies on opportunity structures) were revealed during the empirical chapters. Chapter 8 thus discussed *a posteriori* changes to the framework (Figure 8.3), and introduced alternative typologies for dismantling strategies (Figure 8.4). It also reviewed the use of the coding framework, showing how the decision to open the black box of intensity was warranted, as scope, settings and formal intensity all changed differently. In choosing, testing and adapting an analytical framework and coding scheme to the study of EU level dismantling, this thesis thus fulfilled its first objective.

Moreover, considering the EU from a policy dismantling perspective did more than challenge the specifics of the Bauer & Knill analytical framework. It also raised questions regarding two totemic concepts in dismantling research: blame avoidance and multidimensionality. The rest of this section address these two issues. This contributes to this thesis' third objective, in informing discussions in dismantling research based on this thesis' experience of applying dismantling concepts to the EU.

### **9.3.1.2 Moving beyond blame avoidance**

van Kersbergen and Vis (2015, p. 111,112) recently characterised Esping Andersen's three worlds of welfare state typology as "Kuhnian normal science" – an "unproductive intellectual straightjacket" which constrained research on welfare state retrenchment. Such work is an invitation to reflect on the value and limits of major concepts. Hence Weaver (1986) and Pierson (1994) work on blame avoidance have also had a strong influence over the study of policy dismantling. This thesis drew strongly on these early works, as well as on more recent research on blame avoidance and credit claiming in welfare retrenchment studies (Giger & Nelson, 2011; Bonoli & Natali, 2012b; Vis, 2016). But has the focus on blame avoidance similarly oriented and constrained research on dismantling?

This thesis tested for blame avoidance *and* credit claiming throughout. In so doing, it raised concerns with over-relying on blame avoidance, and on the dichotomy between blame avoidance and credit claiming. As detailed in Chapter 8, a typology of strategies based on a clear-cut dichotomy between blame avoidance and credit claiming is problematic because dismantling advocates tend to pursue a mix of both, irrespective of the

targeted policy or of the overt/covert nature of dismantling. Chapters 4-6 found a number of diverse strategies (dual strategies, to achieve both policy change and public support), and while these different elements could be characterised as linked to blame avoidance, credit claiming or both it is questionable how useful such a categorisation is, *vis-à-vis* alternatives typologies, as illustrated in Figure 8.4.

Figure 8.4 demonstrated dismantling strategies could be categorised based on their targets, the respective importance they give to public support or policy change, or the level of governance at which they were deployed. Beyond offering alternative typologies, this list raises a number of new research questions for dismantling research. Pierson's work on the difficulties of retrenchment and the need for blame avoidance launched a comprehensive research agenda geared toward explaining why politicians would engage in dismantling, and how they could 'get away with it'. But as the dual strategies picked up in Chapters 4-6 highlight, avoiding public discontent is not necessarily the central focus of those designing dismantling strategies, nor is it necessarily the most difficult objective to achieve.

This thesis encourages us to ask other questions about dismantling. Hence why does an actor choose to pursue dismantling instead of non-implementation? Why target an existing piece of legislation instead of new policy proposals? More research is needed to understand how dismantling is achieved – even in hyper consensual systems such as the EU – and in particular to study the kind of compromise between expansion and dismantling which appeared to be common in the items of legislation studied in Chapter 7.

### 9.3.1.3 The multidimensional nature of dismantling

"There is no such thing as retrenchment *per se*" argued Green-Pedersen (2004, p. 7) over a decade ago. Hence studying policy dismantling is first and foremost an exercise in definition: where does dismantling start, where does it stop, and how can it be measured and explained. Chapter 1 built on Jordan, Bauer, and Green-Pedersen's (2013) definition of dismantling as "the cutting, diminution or removal of existing policy" (2013, p. 795), and offered a typology of four distinct challenges to EU (environmental) legislation (Figure 1.1).

Hence policy dismantling at EU level concerns *existing* policy – the *acquis communautaire*, not policy proposals – and focused on challenges to the *acquis* through the EU legislative system – not for example decentralised non-implementation in the Member States. Defining policy dismantling in comparison with other challenges facing environmental policy echoes early discussions of multidimensionality in the retrenchment literature, as a way to acknowledge that retrenchment/expansion is not the only dimension on which welfare states are changing (Pierson, 2001a). While the other dimensions considered (such as cost-containment or recommodification) vary across authors, this understanding remains prevalent in welfare state research (e.g. Bonoli & Natali, 2012a, p.292).

In order to study policy dismantling at EU level, this thesis adopted two different dependent variables: dismantling strategies and their effects. Investigating these two dependent variables together raised a number of questions, on multidimensionality, and on what constituted policy dismantling. Hence, apparent *dismantling* strategies also contained elements, such as the reduction in numbers of proposals, which were considered a distinct challenge to EU environmental policy (Figure 1.1). They often also contained elements, such as the reform of institutional rules, geared toward facilitating future policy dismantling and constraining future policy proposals. These elements were not only absent from the challenges matrix introduced in Chapter 1, but also absent from the original analytical framework, as discussed in Chapter 8. These elements showed how apparent dismantling attempts could be the vehicle for challenges to European institutions, to their regulatory activities, and to European integration itself. These findings highlighted that the different challenges introduced in Figure 1.1 were connected. They further revealed that discussions on *policy* dismantling were embedded in much broader debates on the institutional structure and legitimacy of the European Union.

The diversity of targets is mirrored in the discussion of effects. Although not all dismantling attempts are successful, Chapters 4-6 showed that dismantling strategies had effects beyond changing existing policy outputs. Crucially, even changes to policy outputs proved multidimensional, echoing another understanding of this concept. Bauer et al. (2012b) do not define dismantling (as is the case for retrenchment in Pierson (2001b)) as a potential *dimension* but as a *direction* of policy change. Change can still take place along

multiple dimensions – density, scope, settings, formal intensity – with multidimensionality understood as “the potential for various sub-elements of policy to move in different directions and at different speeds” (Bauer et al., 2012b, p. 205). Such multidimensional changes were measured through the novel coding framework introduced in Chapter 3 and applied in Chapter 7. Hence dismantled policy outputs (*e.g.* laxer pollution standards) are only one of the many possible effects of policy dismantling attempts – which could also include changes to policy outputs in other directions as a result of political compromise, changes to institutional settings or even future policies.

This thesis thus highlighted how the “dependent variable problem” is itself multidimensional. Multidimensionality as a concept has been stretched in the literature to encompass both a variety of challenges to policy (with dismantling amongst others) and a variety of effects of dismantling (going beyond dismantled outputs). This over-use of multidimensionality can be addressed in two different ways. First, by redefining dismantling to encompass a greater variety of effects. Bauer et al. (2012a) already started this process, by inserting within their definition of dismantling not only retrenchment but also notions of scope, *i.e.* of the “encompassing character” of policy, which authors such as Bonoli and Natali (2012a, p. 293) have considered as a distinct dimension of change. Going further, this thesis stressed the existence of strategies geared towards removing barriers to both present and *future* dismantling attempts. Hence, starting from Jordan, Bauer, and Green-Pedersen’s (2013) definition of dismantling as “the cutting, diminution or removal of existing policy” (2013, p. 795), we can add ‘*or* efforts to facilitate such future attempts’. Second, through questioning the use of multidimensionality – is it specific to policy change or dismantling? Or are all explananda potentially multidimensional (Capano, 2009)? And if everything is potentially multidimensional – then, what is the added value of the term for analysing policy change, instead of, for example, recognising different types or directions of change, or the heterogeneity of change?

### 9.3.2 Contributions to EU studies

As indicated above, considering the EU as a case for policy dismantling encourages us to problematise some of the foundational concepts used in dismantling research. Similarly, considering the EU through different (dismantling) lenses also questions some of the

central assumptions in EU studies. In particular, this thesis' findings challenge the current division of labour within EU studies.

### **9.3.2.1 Public policy research and European (dis)integration**

Rosamond (2016, p. 19) argues that “fields of study (including disciplines) [...] are not objectively given” but “are institutionally, socially and discursively constructed”. Over the last twenty years, the field of EU studies has become internally divided, with a growing demarcation between sub-fields: between students of EU integration and of Europeanisation (Radaelli, 2004); between students of the EU political system, and its public policies. Hence for example Peterson (2001, p. 296) argued that EU studies could be divided between scholars studying “history-making” decisions at the “super-systemic level” (European integration), and those studying policy-making or policy-shaping at the “systemic” and “sub-systemic levels” (EU policy-making). This thesis focused on environmental EU public policies, and as such should fall in the latter camp. Yet it also contributed to, and drew on research on European integration and the functioning of the European political system. It did so by setting out the meta-preferences driving dismantling within the European Commission, and by highlighting both the pro and anti integration frames underpinning policy dismantling attempts.

The mix of approaches adopted in this thesis – explained by the decision to bring in a comparative politics approach and the need to adapt it to the EU – demonstrates the value of studying polity, policy and politics closely together in European studies. Such linkages have long been apparent within the EU – thus for example the EU has long made “use of public policy as a means of legitimacy-generation”, pursuing “output legitimacy” (Warleigh-Lack, 2010a, p. 328), which remains central to the Better Regulation agenda. But such linkages are not mirrored in current developments in European integration theory, or the study of the EU policy-making process.

Hence, recent years have seen EU studies scholars grapple with the notion of European disintegration (Radaelli, 2014; Phinnemore, 2015; Menon, 2014; Webber, 2014; Scheller & Eppler, 2014), questioning the notion of ever closer union (Rose & Borz, 2015), with a growing interest in differentiated integration (Leruth & Lord, 2015; Schimmelfennig et al., 2015). While this literature moves away from the “normative bias” in EU studies

(Scheller & Eppler, 2014) (the lack of questioning the likelihood or desirability of ‘ever closer union’ among scholars (Radaelli, 2014)), it tends to do so by focusing on “History-making” decisions (such as Treaty change) or core policies such as the Euro. This thesis has sketched out an alternative angle to study disintegration: to look for it in the details of policy making, in a low politics area. Integration as we know it today, occurred in part “by stealth” (Majone, 2014), the product of “creeping competences” (Pollack, 1994):

*The steady drip of secondary legislation, in seemingly unimportant areas such as environmental protection, [...] is the chief source of new constraints on member states’ autonomy and not the ‘big’ decisions.*

(Fairbrass & Jordan, 2001, p. 514)

Thus when considering the EU’s current situation, this thesis highlights that researchers need to both analyse overt disintegration attempts but also disintegration *by stealth*. This disintegration *by stealth* is illustrated by the challenges to legislation developed in Chapter 1 (Figure 1.1, p. 10): “ever greater difficulties in adopting new legislation” (Scharpf, 2010, p. 290); efforts to minimally implement legislation; to gain increased derogation and attempts to dismantle legislation.

### 9.3.2.2 Considering politics at EU level

Part of the EU studies literature furthers an archetypal vision of politics at EU level. This narrow vision is fueled by the idea that the EU political system is built on “decoupling the arenas of politics and policymaking” (Tortola, 2015, p. 134). Most of the politics are assumed to remain in Member States, with politics at EU level narrowly assumed to focus on the pro v. anti integration axis. Hence for example, Schimmelfennig et al. (2015, p. 768) contend that:

*European integration is a story of growth in integration. There are periods of accelerated growth (the 1950s and the 1990s) and periods of relative stagnation (the 1970s and 2000s) but no rollback.*

Yet we have long known that more/less integration is not the only cleavage in EU politics (e.g. Hix, 2007). This thesis has shown that “rollback” is not simply about integration and level of competence – questions of rollback or dismantling should also tackle policy *content*, such as debating adequate levels of environmental ambition. While focusing on the single integration dimension may appear sensible – as a theory of European

integration – it is problematic in that it assumes that other dimensions of politics do not interact with opinions on integration. Attitudes to the European Union do not exist in a vacuum, beyond left and right. Recent discussions in the UK among pro-environmental actors about whether to remain or leave the EU based on the EU's position on TTIP or on the revision of biodiversity rules epitomise these links (The Guardian, 2015; Lowe, 2015).

This very narrow understanding of politics in differentiated integration research (pro v. anti integration) is mirrored in recent work on policy appraisal and policy evaluation in the EU (e.g. Mastenbroek, van Voorst, & Meuwese, 2015). Mastenbroek et al. (2015, p. 4) conceptualise the Commission as a unitary actor driven solely by a preference for continued expansion that serves integration purposes, irrespective of actual policy outcomes. As such, the authors present the Commission as conflicted about ex-post evaluation – which could act as a “dagger in the back”, fueling calls for repeal (Mastenbroek et al., 2015, p. 15). But research on the European Commission has long shown that the Commission is neither unitary, nor driven by a single meta-preference (Cram, 1997; Dehousse & Thompson, 2012; Kassim et al., 2013; Hartlapp et al., 2014). As Radaelli and Meuwese (2009, p. 650) argued (and was confirmed in Chapter 6), Better Regulation processes (and policy appraisal in general) are concerned with “political control” and “the capacity of key units in the Commission [...] to control the rule-formulation process”. Thus different parts of the Commission can also make a political use of evaluation: with different evaluation demands placed on various DGs, to meet the political agenda of the Commission President. Crucially, this political agenda may be about left/right politics as much as about pro v. anti integration.

#### **9.4 Reflections on research practice and limitations**

As a researcher, I believe that “scientific observations are fallible, as they are shaped by the conceptual frameworks within which scientists operate.” (McEvoy & Richards, 2003, p. 412). Taking into account this “ultimately biased perspective” (Versluis et al., 2011, p. 23), it is important to take stock, at the end of this project, of its own limitations. This means reflection on how these biases may have influenced the research project and the present thesis, and how more generally I have “balanc[ed] competing methodological demands under the inevitable conditions of limited resources” (Ostrom, 2010b, p. 6).

This has, in part, already been done in other sections of this thesis. Hence, Chapter 3 (Section 3.4, p. 57), detailed the three different types of empirical evidence gathered – through documentary analysis, elite interviews and coding of existing EU legislation – and reflected on my own research practice.

Each type of empirical evidence requires selection – leading to potential selection biases. Hence, documentary analysis focused on newspaper articles, which were found either through my own research in the newspapers digital archives (ENDS, ENDS Europe, Le Monde), or via a platform dedicated to this purpose – Factiva. Looking back through twenty five years of material requires being highly selective, through the use of keywords, which can further create biases in results. These biases were dealt with through an iterative research process to unearth a greater variety of keywords (and thus sources).

My interviews were conducted under two central constraints. First, the EU political agenda, with the 2014 European Parliament election, which meant MEPs were campaigning when I attempted to interview them, and the on-going renegotiation of the UK's relationship with the EU which meant I encountered difficulties in obtaining interviews with British civil servants. Second, I made a personal choice, considering my limited fieldwork budget, not to move to Brussels for months to collect my interviews – but instead to concentrate my interviews in short trips to London, Brussels and the Hague. These factors limited the number of interviews. Potential biases in interview data were addressed in two ways. First, I took care to interview a wide-range of actors (from different countries, organisations, role in the decision-making system) with very different views on better regulation and policy dismantling at EU level. Second, I pursued triangulation of evidence both within interviews, through an iterative interview process, and between interview data and other sources such as press data and the European institutions' publications.

Finally, coding proved the most complex and time-consuming source of empirical evidence – as well as the one most open to bias. As detailed in Appendix B, I developed a coding framework based on the CONSENSUS Project (2009) code-book. As that code-book had been developed for the quantitative counterpart of Bauer et al. (2012a) it seemed the best fit for this research. But it was not a simple transfer to the EU context, due to choices made early on to code the entire legislation – and not solely environmental policy instruments – as well as to provide further by coding scope and settings separately, as

well as coding formal intensity for the first time. Coding can deliver a wealth of findings – as presented in Chapter 7 – but coding has limitations: potential for bias in the coding scheme, in selecting what to code and in the act of coding itself. Large research programmes on which multiple coders work can try to address these limitations through measuring inter-coder variability. As the sole coder for this thesis, this approach was not open to me. Instead I developed the following strategies. First, regarding the choice of pieces of legislation for coding, to select directives and regulations which had been openly, officially targeted (Figure 3.5, 57). Second, regarding the coding scheme, I conducted a review of the literature on how to code policy instruments (as described in Chapter 3) before devising an EU specific approach (Appendix B). All three coding schemes – for identifying instruments, for coding density, scope and settings, for coding formal intensity – were tested on a small number of diverse regulations and directives before being fine-tuned. This time-consuming process allowed for all different instruments to be captured, but also for a smaller, more comparable number of formal intensity attributes to be coded. Third, regarding the reliability of the coding results, coding occurred through different waves, and the 75 pieces of legislation were each coded at least twice to ensure I followed a consistent approach throughout. Overall, coding work was spread over 12 months (excluding analytical work on coding results), from identifying policies to be coded and devising the first coding schemes for instruments and the 6 main dimensions (September-December 2013), to coding all 75 directives a first time (January-April 2014), to coding instruments change (November 2014) to devising an approach to code formal intensity and applying it (January 2015) and finally re-coding all 75 directives and taking into account 2014 legislative change (March-April 2015).

Each of the three data sources had their own limitations. Hence the coding scheme chosen made it possible to grasp some of the fine details of policy change but not the respective importance of two change events. The small number of interviews or the fact that press data was limited to francophone and anglophone sources are also limitations. These limitations are interconnected: developing three coding schemes and coding 75 pieces of legislation took time away from my interview campaign. While this thesis provided a first systematic view of EU environmental policy dismantling, further work could address some of its limitations by focusing on one of its dependent variable – either strategies or

effects – and pursue either a wider coding or interview campaign.

Beyond the empirics, I made the choice in this thesis to use general comparative politics tools to study the EU – hereby eschewing, overall, *ad hoc* theory which European studies are sometimes accused of abusing (Radaelli, 2004, p. 15). The use of general tools (such as the analytical framework, or the concepts it mobilised – frames, venues *etc.*) facilitate comparison across different polities within and beyond Europe. Such cross-jurisdictional comparisons were particularly useful to understand what drove actors to dismantle (and what was specific about EU actors), and how dismantling could be successfully framed. I found analysis of changes to US environmental policies over the last twenty years by authors such as Layzer (2012) and Klyza and Sousa (2013) key to characterise and understand more recent changes at EU level. The European “tortoise” might have overcome the American “hare” in the early 1990s (D. Vogel, 2003), but researchers of European environmental policies can still gain critical insights from studying changes to US policies – especially when it comes to the impact of ‘red tape’ discourses and dismantling attempts. Speaking a common (or at least, similar) theoretical language is crucial to do so, and allows a thesis in EU Studies to both study “current developments in European integration”<sup>2</sup> and contribute to broader debates in the wider discipline.

## 9.5 New avenues for research

This thesis provided a first systematic study of policy dismantling at EU level and it has opened many avenues for research. The previous sections outlined two broad options: first, to use findings and insights on EU dismantling to feed into research on policy dismantling in other settings. Hence for example findings on the mix between polity contestation and criticism of policy content as driving dismantling, and the proposed alternative typology for dismantling strategies could provide useful tools to understand dismantling dynamics in other multi-level polities. Second, to use this thesis on dismantling at EU level as a starting point to contribute to current academic debates on the direction of European integration – an option on which this section focuses on.

Three avenues for further research on *EU* dismantling can be sketched out, ranging from research focused solely on dismantling (for example, going beyond environmental

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<sup>2</sup>[http://uaces.org/about/about\\_European\\_studies/](http://uaces.org/about/about_European_studies/)

policy), to research engaging fully with current discussions on the future of the European integration project (investigating connections between dismantling and other challenges to legislation, but also between dismantling and (dis)integration).

### **9.5.1 Policy dismantling and policy ambition**

Starting with this first avenue, while this thesis has demonstrated that the EU had become a new locus for policy dismantling – *i.e.* that the EU has a ‘reverse gear’. But this thesis focused solely on EU environmental policies. Other policy sectors may have experienced different patterns of policy change. While we now know that dismantling is *possible* at EU level, we do not know how *common* it is, nor what all its impacts have been – and whether different sectors were affected differently. This thesis revealed that environmental policies were often earmarked for dismantling – but other sectors such as the internal market, industry or transport were also concerned if less frequently. ‘Hit lists’ and Commission communications on Better Regulation only shed light on *overt* dismantling attempts – dismantling in other sectors may happen more covertly. Comparing all sectors of EU policy would be a daunting task. But comparing dismantling rates (and effects) between a small number of sectors (such as climate, energy and environment for example), could provide key insights into whether dismantling is first and foremost a challenge to EU environmental policies, or to the *acquis* as a whole.

Furthermore, while this thesis analysed the impact of dismantling demands on the EU policy-making institutions, its work on policy outputs has focused on the direction, not the magnitude of policy change. With better regulation and REFIT high on the Juncker Commission agenda (Politico.eu, 2015), more work is needed to gauge the impact of dismantling attempts on EU policy ambitions – in environmental policy as well as other sectors. The revised analytical framework introduced in Chapter 8 offers a starting point to conduct a comparison of dismantling among different sectors, or among environmental policies *lato sensu* (moving beyond DG Environment to include climate and energy for example). To be feasible, such a comparison should focus on a shorter time period, and a precisely defined number of cases (targeted in better regulation exercises or not, depending on whether the focus is on open dismantling or not). Together with the revised analytical framework, a different coding scheme could be mobilised. For example, a

variation of the Schaffrin et al.'s (2015) framework broadened beyond climate policies, is a promising avenue for coding both direction (as done in this thesis) and ambition of policies (as done in, for example, Burns et al. (2012)).

### 9.5.2 Policy dismantling as one of many options to challenge EU policies

Second, while research focused on policy dismantling itself is a promising avenue for investigation, this thesis has revealed how dismantling was connected to other challenges to European public policies, as well as to on-going discussions on European integration or disintegration. Studying policy dismantling in these two contexts is key to engage in broader discussions in EU studies – to make policy dismantling research relevant beyond its small niche. More work is needed on both fronts.

Thus, this thesis argued that the Commission opted for cuts to policy proposals as the easier option, when faced either with long delays in the EU legislative process, or with the possibility that the Parliament or Council would amend legislation toward expansion, not dismantling. It also found some overlap between pieces of legislation considered for evaluation and dismantling and those which Member States struggled to implement. Implementation problems could thus fuel calls for dismantling as well as offer Member States an alternative to dismantling. Hence this thesis suggested these different challenges were connected – new work is needed to systematically test this hypothesis and understand these connections. New research is also needed to gauge the extent of overlap between these different challenges. This could be done by comparing the repartition among policy sectors of new policy proposals (as seen in Commission Work Programmes), pieces of legislation to be evaluated or targeted more broadly as part of a better regulation exercise (as seen in REFIT publications), and pieces of legislation concerned with Commission or Court of Justice proceedings for non-compliance.

This thesis showed how certain pieces of legislation were targeted for dismantling at different periods: such a comparison could also be used to identify within each policy sectors whether certain pieces of legislation are repeatedly challenged. Once a narrowed group of policy sectors (and within sectors, policies) is established, a second step would be to investigate whether (and if so, how) political actors use these connections strategically. For example, investigating whether implementation problems are used to signal

the need to revise existing policy (upward, downward), as was suggested by some interviewees (Respondents 12 & 17), or alternatively to oppose or water-down new legislation.

### 9.5.3 Dismantling, disintegration and legitimacy

Finally, this thesis has shown how everyday discussions of policy dismantling – and better regulation more generally – are frequently framed in terms of fostering or hindering future European integration. While current discussions on European (dis)integration and differentiated integration tend to focus on core policies and treaty changes, research on policy dismantling can contribute a ‘low’ policy-making perspective on both. One way of doing so would be to investigate linkages between better regulation and the EU’s fragile legitimacy. The on-going “conglomerate of crises” (Falkner, 2016) has re-ignited debates on the EU’s lack of legitimacy and how to address it, with growing calls for politicisation and greater input legitimacy (e.g. Scharpf, 2015).

But legitimacy is not only a matter of *input* v. *output*. Chapters 4-6 showed how better regulation efforts have repeatedly been presented by dismantling advocates as a way to increase support for the European institutions, to increase their credibility and legitimacy; while opponents to dismantling argued that framing EU regulation as ‘red tape’ harmed the EU’s legitimacy to regulate (Van den Abeele, 2014). This thesis showed how, in order to attain ‘better’ policies (output legitimacy), the European institutions and the Commission in particular have tried to change policy-making processes, (*i.e.* pursuing faster processes, increased *ex-ante* and *ex-post* evaluations) – thereby impacting another type of legitimacy, “throughput” legitimacy. This other form of legitimacy, introduced by Schmidt, requires “institutional and constructive governance processes that work with efficacy, accountability, transparency, inclusiveness and openness” (2013, p. 7). Further research on better regulation is ideally situated to ask whether the search for greater (output, input) legitimacy has come at the cost of other forms of legitimacy (especially throughput). Angela Merkel famously argued that “if the euro falls, Europe falls”<sup>3</sup> (Merkel, 2010) – dismantling research raises another challenge: if the *acquis* crumbles, what becomes of the EU?

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<sup>3</sup>“Scheitert der Euro, dann scheitert Europa”

## Appendix A

# Interviews

### Sample questions

As I conducted semi-constructed interviews, I developed prior to each interviews a list of themes or broad questions that I wanted addressed during the interview. I would use this list to refer back to during the interview and choose my follow-up questions. The following examples illustrate the breadth of themes/questions raised.

#### Interview with Environmental NGO member

1. Stoiber group: how did it work? How were environmental issues tackled?
2. Would you qualify the work of the Stoiber group as deregulation or better regulation?
3. Is EU environmental policy more ‘at risk’ now than in the 1990s or early 2000s?
4. Same actors, same rhetoric?
5. Subsidiarity, proportionality, euroscepticism?
6. Role of the Commission (Barroso, Verheugen in particular)

#### Interview with Think Tank researcher

1. How did your better regulation programme come-about?
2. How many actors (notably Member States) are involved?
3. How does it differ from previous NL/UK initiatives, or from REFIT and other Commission initiatives?
4. Why focused on the environmental *acquis*?

5. Is it linked to discussions on subsidiarity? With EU renegotiation? With the Balance of Competence report?
6. Does it focus on new or existing legislation?

### **Interview with business interest representative**

1. Better Regulation for your organisation: how important is it, how is it defined and pursued?
2. How does your organisation differs from other business groups with regards to Better Regulation agenda?
3. How has the EU Better Regulation agenda evolved? How have the EU Better Regulation institutions evolved?
4. Are environmental policies an issue of particular concern?
5. Connections between Better Regulation and TTIP, regulatory convergence?



## Appendix B

# Coding scheme

## Coding instruments

	Types in Taylor et al. 2012	Variant in Taylor et al. 2012	Code
10	Direct 'command and control' regulation	Numerical standard Input restriction and output quotas Non-transferable emission licences Technological or methodological prescription zoning and location controls Authorisation Prohibition or ban Other command and control instrument	11 12 13 14 15 16 17 18
20	Economic instruments	Subsidy or tax reduction Tax or levy Tradable rights Payments Liability scheme Other type of economic instrument	21 22 23 24 25 26
30	Information-based instruments	Targeted information provision (business/MS) Naming and shaming/faming Registration, labelling and certification Information sharing across borders and levels of governance Data collection or monitoring programme Consultation of parties Other information instrument	31 32 33 34 35 35 36
40	Co-regulation and self-regulation	Voluntary regulation Covenants and negotiated agreements Private corporate regulation Private professional regulation, self-regulation Civic regulation	41 42 43 44 45
50	Support mechanisms and capacity building	Research and knowledge generation Demonstration projects and knowledge diffusion Network building and joint problem solving Other support mechanism	51 52 53 54
60	Other	Other Instrument	61

**Figure B.1:** Instrument codeboook, adapted from CONSENSUS Project (2009), Halpern (2010) and Taylor et al. (2012)

### Example: Instruments in the SEVESO directive

		Different generations				
	Name	Source	82/501/EC	96/82/EC	2003/105/EC	2012/18/EU
1	Notification of activity	Directive 82 art 5	31	31	31	31
2	External emergency plan	Directive 82 art. 7	31	31	31	31
3	Major accident prevention policy	Directive 96 art. 7		37	37	37
4	Safety report	Directive 96 art. 9		37	37	37
5	Domino plan	Directive 82 art. 5.4	31	31	31	31
6	Information to public	Directive 82 art. 8	36	36	36	36
7	Inquiry in major incidents	Directive 82 art. 10	31	31	31	31
8	Information exchange between MS and Commission	Directive 82 art. 10	34	34	34	34
9	Land Use Planning	Directive 96 art. 12		15	15	15

**Figure B.2:** Coded SEVESO directives instruments

### Coding directions of change

Coding, as explained in Chapter 3 (Figure 3.12), was made for four directions of change: *status quo* (0), expansion (1), dismantling (2) and mixed (3). This section presents two example of coding, from the SEVESO directive and Ecolabel regulation.

## Coding at legislation level

TABLE 1: Density, scope and settings at legislative level

	Dir 82/501/EC	Dir 96/82/EC		Dir 2003/105/EC		Dir 2012/18/EU		Overall
	Description	Description	Grading	Description	Grading	Description	Grading	
Legislative density	1		1	0	1	0	1	0 status quo
Legislative scope	art1. and 2: industrial installations where certain industrial activities (annex 1) use a set of dangerous substances (annex 2,) except activities listed in article 2: military, nuclear, explosives and ammunitions, mining and disposal of dangerous waste	greater scope: (1) no more linked to specific activities -- the use of dangerous substance is enough. (2) actual or anticipated presence of substance suffice--- But clearer exceptions (art2.) e.g does not	1	greater scope: (1) amendment to the exceptions on mining and landfills, some storage + tailing ponds etc. included	1	no change apart from exclusion of gas storage	1	expansion
Legislative settings	art.1 "prevention of major accidents" and "limitation of their consequences for man and the environment"	same + "with a view to ensuring high levels of protection throughout the Community in a consistent and effective manner"	1	no changes to art.1	0	"with a view to ensuring a high level of protection throughout the Union in a consistent and effective manner"	0	expansion

Figure B.3: SEVESO directives: coded changes to legislation level

## Coding at instrument level

TABLE 4: Instrumental scope, instrument per instrument

Inst. Number	Inst. Name	Reg 880/92	Reg 1980/2000	Reg 2010	Grading
1	art 4.4 reg 92, cradle to grave approach	all products and services concerned	all products and services concerned, also energy use and interaction of product w/environment	art 6, much broader definition and specification for life cycle analysis; also social and 1 ethical aspects	1
2	art 5 and 6 reg 92, consultation of interest groups, art 15 reg 2000	4 group types concerned	art 15 more details in groups to consider, more inclusive (ex SMEs) "industry and service providers, including SMEs, crafts and their business organisations, trade unions, traders, retailers, importers, environmental protection groups and consumer organisations."	1 no more trade unions	2
3	eco-label, art 8 reg 92	8 environmental fields to consider, 5 stage of product life	11 environmental fields to consider, 5 stage of product life	1 no details on environmental field	2
4	art 14 reg 92, Commission publication in official journal	publication of product groups, list of products, name and address of competent bodies, consolidated list of eco-label awarded	publication of criteria only and update (art 6.)	2 publication of register also	1
5	art 15 reg 92 info about eco label by MS	art 15 information for consumers and industries on identity of body, list of awarded products, etc. 5 type of info all should know	art 10 promotion, awareness raising campaigns and info campaign but no detail on content of info to be made available	art 12, still no info re info consumers but more details on info promotion businesses 2 and esp. questions of procurement and SMEs	1
6	art 8 reg 2000, consultation of consumers organisation on info available on label	na.	art 8, consultation consumer association consumer committee	na.	na.
7	art 5 reg 2000, institution of commission working plan		art 5, strategy for development of the scheme, links with EMAs etc	art 7.4, same	0
8	art 6 reg 2000 development of criterias		conditions defined according to product groups	6 types of information to provide process	1
9	market surveillance	art 16, same	art 9.2, same	art 10.1 "any false or misleading advertising or use of any label or logo which leads to 0 confusion with the EU ecolable shall be prohibited"	0

Figure B.4: Ecolabel regulation: coded changes to instrument scope

## Coding formal intensity

Coding scheme for formal intensity is set out in Chapter 3 in Figures 3.10 and 3.13. This section presents one example of coding formal intensity – coding for compliance across all cases.

	Presence		Evolution	
	Inspections	Penalties	strength inspections (frequency)	strength penalties (how much etc.)
Drinking Water	0	0		
Groundwater	0	0		
Bathing water	0	0		
Shellfish waters	0	0		
Titanium dioxide industry	1 (only 2010)	1 (only 2010)		
Waste Electrical & Electronic Equipment (WEEE)	1	1	1	1
Packaging waste	0	0		
Waste framework directive	1 (only 2008)		1	
Shipment of waste	1 (only last)	1 (only last)		
Air Quality	0 1 (not in first gen)			1
Ozone, Montreal Protocol	1	1	1	1
Eco-label	0	0		
Eco-Management and Audit Scheme (EMAS)	0	0		
Seveso	1 1 (only last)		1	
Integrated Pollution Prevention and Control (IPPC)	1 (pas first)	0	1	
Restriction of the use of certain Hazardous Substances (RoHS)	0	1		1
Environmental Impact Assessment (EIA)	0 1 (last)			
Birds	0	0		
Sulphur fuel	1 1 (not first gen)		1	1

**Figure B.5:** Coding for compliance (formal intensity), 19 cases

## Analysing coding data

### Building Figure 7.1 p. 153

Three choices were made in building this figure. First, on how to present framework directives. Two of the nineteen cases are framework directives, either regrouping different legislative streams or overseeing multiple daughter directives (Waste Framework Directive, Ambient Air directive), which explains why for each generation multiple legislative texts are listed. For these two precise cases the multiple policy streams were coded in parallel to produce comparable data. Second, on whether to list *all* amending directives. The choice was made to include revisions such as codification – which produces a new piece of legislation by combining in a single document the old directive and its multiple

amendment – but not to include amending directive for the sole purpose of enlargement (e.g. directive 2005/20/EC which offers new Member States the possibility to delay complying with the Packaging Waste directive). Third, on how to deal with directives which revised more than one of the nineteen cases. These directives were included in both cases' generations: e.g. directive 2003/35/EC is listed under both IPPC and EIA, and while directive 2010/75/EU subsumed Titanium Dioxide Industry within the broader new IPPC directive the two cases are here presented distinctly.



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