Dismantling the Acquis? Twenty Years of Environmental Policy

Reform in the European Union

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Abstract

The financial crisis triggered yet more demands to halt and even reverse the expansion of EU policies. But have these and previous demands resulted in policy dismantling? The existing literature has certainly charted the rise of dismantling discourses (including better regulation), but not the net effect on the acquis. For the first time, this paper empirically addresses this gap in the literature through a diachronic study of changes in a policy area repeatedly targeted for dismantling. It is guided by a coding framework capturing the direction of policy change. Despite its disposition towards consensus, it reveals that the EU has become a locus for activities aimed directly at dismantling. However, not all policies targeted have been cut; many have stayed the same and some have expanded. It concludes by identifying new directions for research on a topic that has continually fallen into the analytical blind spot of EU scholars.

1. INTRODUCTION

From the Dutch declaration on the end of an "ever closer union" (Ministerie van Buitenlandse Zaken 2013), to British demands to "cut EU red tape" (Business Taskforce 2013), recent years have witnessed repeated calls for policy dismantling at EU level. Yet such calls appear somewhat counter intuitive as dismantling has long been dismissed as not simply improbable at EU level but philosophically incompatible with the very idea of policy expansion supporting an "ever closer union". How in this context could policy dismantling, defined as the "cutting, diminution or removal of existing policy" (Jordan *et al.* 2013: 795) take place? It is telling that a recent research agenda section (Jordan *et al.* 2013), argued strongly for a renewed focus on policy dismantling, but made very little reference to the EU as either an agent or a locus of dismantling.

Policy dismantling is certainly not a new concept, but it has been identified as a means to bring a number of older debates into a new dialogue with one another. For a long time, similar concepts were used in a number of related but otherwise separate fields. In particular, questions of retrenchment were raised in relation to the welfare state (Green-Pedersen 2004), while concepts such as deregulation, regulatory reform and the regulatory state were developed by scholars interested in the changing nature of state-led regulation (see e.g., Majone 1994). Policy dismantling has the potential to usefully unite some of these debates. First, it can be used as an umbrella term to bring together different strands of literature that have until now developed in parallel (Jordan *et al.* 2013). Second, as it is not yet strongly linked to a particular focus of dismantling (regulation or the welfare state for example), policy type (regulatory vs distributive), or level of governance, it is open enough to be applied to a new locus, namely the EU level, where for a long time, it has been uncritically assumed that public policies – and more precisely EU legislation – can and indeed will only expand *ad infinitum*.

Aside from any prior normative commitment to European integration, this is not an entirely unreasonable starting point for EU scholars to enter the debate. Studies of policy dismantling in many other settings – such as the welfare state (Pierson, 1994) – have revealed the difficulties encountered by politicians trying to dismantle policies in contexts of distributed power. Thus Pierson (1994: 177) argued that distributed power makes it easier for politicians to "duck accountability" (and hence blame) for cutting, but much harder to secure the adoption of policy dismantling measures, in the face of opposition from veto players. As one of the world's most consensus-oriented (Hix 2007: 145) – perhaps even hyperconsensual – political systems in the world (*Ibid.*), would be dismantlers are, as shall be explained more fully below, expected to struggle to achieve this objective at EU level. Yet without empirical research on how far dismantling discourses have translated into concrete instances of policy dismantling, it is impossible to know if this indeed the case.

To explore whether, through dismantling, the EU has a 'reverse gear', this paper investigates – for the first time – how far political demands for dismantling have fed through to empirical instances of policy dismantling at EU level. Dismantling is treated as a relative concept (just as is its opposite, policy expansion), that can be measured in respect to changes from a baseline, i.e. the status quo. It assumes that dismantling can adopt many forms. Jordan *et al.* (2013: 802) define it as "a change in a particular policy area that either diminishes the number of policies in a particular area, reduces the number of policy instruments used and/or lowers their intensity". This definition stresses first, that a whole policy area – or item of legislation (directive or regulation) – can be targeted. Second, change to different internal attributes of a policy – number of instruments, their intensity etc. – can constitute dismantling. The case studies in Bauer *et al.* (2012) further show that dismantling can happen at different stages of the policy process, through legislative reform (i.e. decision-making) as well as through implementation and

enforcement. This paper explores dismantling at EU level as this constitutes a gap in the literature. Given space constraints we elect to focus only on dismantling through legislative reform, as we recognise that implementation is overwhelmingly the responsibility of other levels of governance.

This paper investigates the possibility that dismantling has occurred at EU level by taking a twenty year perspective on policy change in the environmental sector. As dismantling is often empirically difficult to capture (among other reasons because of the well know political motivation to hide it from beneficiaries) (Pierson 1994), we chose this sector, in which active and open dismantling strategies have been repeatedly employed in the past (e.g. Golub 1996; Jordan and Turnpenny 2012), as a test-case for policy dismantling at EU level. In what follows, we reveal that there have been no less than three waves of attempted dismantling.

In order fully to capture all the relevant instances of policy dismantling, this paper investigates whether dismantling of policy outputs occurred. It does so through coding changes to the pieces of EU environmental legislation targeted for dismantling over the last twenty years.

Section 2 explores why dismantling at EU level has not received more attention. It discusses the tendency for the dismantling literature to focus on redistributive policies and for the EU scholars to focus mainly on dismantling at the national level. Section 3 identifies three periods of active and observable dismantling pressure over the last twenty years, the environmental directives and regulations that were targeted for dismantling and the methods we used to quantify them. In particular it presents how the coding scheme used throughout this paper builds on the dismantling dimensions put forward in Bauer *et al.* (2012), but codes these dimensions in a significantly different manner than Knill *et al.* (2014).Section

4 summarises our results. Empirically it confirms that in spite of its inherent hyperconsensuality (and hence bias towards stability), the EU has become a locus for dismantling activities. However, not all policies targeted have been cut; many have stayed the same or even expanded. Section 5 discusses these findings in the light of recent, growing political demands for dismantling. The paper concludes by identifying new directions for research on a topic that has continually fallen into an analytical blind spot within EU studies.

2. THE EU AS A NEW LOCUS OF POLICY DISMANTLING?

Political calls for policy dismantling at EU level are running well ahead of policy research. Early work on subsidiarity and deregulation in the mid-1990s (Collier 1997; Golub 1996; Jeppesen 2000) failed to translate into a comprehensive research programme. Consequently, as scholars we lack systematic studies of policy dismantling at EU level – what drives actors to dismantle European policies, what strategies are deployed to achieve dismantling, do dismantling pressures translate into cuts to the acquis, etc.? This is particularly surprising given that policy dismantling is experiencing a renaissance on both sides of the Atlantic (Jordan *et al.* 2013; Bauer *et al.* 2012; Berry *et al.* 2010; Ragusa 2010). This section explores possible reasons for the lack of EU dismantling studies.

As policy dismantling research in Europe long focused on welfare state retrenchment (Pierson 1994; Green-Pedersen 2004), the EU, described in the 1990s as a "regulatory state" was an unlikely object of research (Majone 1994). Redistributive policies, not regulatory policies, were deemed to be a key target for retrenchment. Hence, the rare retrenchment studies that did look at the EU in the 1990s were concerned with changes to the EU Common Agricultural Policy, one of its rare redistributive policies (Coleman *et al.* 1997, Sheingate 2000). But over the last decade research on both sides of the Atlantic has

increasingly investigated cuts, retrenchment or roll-back in other types of policy area. In the US, Berry *et al.* (2010) and Ragusa (2010) have produced cross-sectoral comparison of the "life and death of federal programs" (Berry *et al.* 2010). In Europe Bauer *et al.* regrouped environmental and social cases studies and sought "to develop and apply concepts that travel across different policy areas" (2012: 34). Yet research remains focused on a single level of governance – the nation state (but see Leibfried 2010, Jordan and Turnpenny 2012). As European integration has repeatedly led to policy competences moving to EU level (Pollack, 1994), one wonders why dismantling at EU level has not received more attention?

Rosamond (2007) argues that we can understand EU studies using two different perspectives. In an internal perspective the trajectory of the field is "a function of the changing nature of the EU over time" (2007: 20). Hence growing demands for dismantling by prominent EU actors and debates about subsidiarity or Better Regulation should have triggered research on the topic. Yet while the launch of the Better Regulation agenda in the 2000s did lead to a surge in research, EU scholars mostly focused on the discourses of change and/or the more expansionary aspects of policy agenda (e.g. the emergence of impact assessment) (Turnpenny *et al.* 2009), *not* on its dismantling aspects.

An explanation for this analytical response may be found in Rosamond's second, more external perspective (2007: 21), where he argues that "how we read the evolution of the EU is a function of the intellectual lenses we use." How might key theoretical approaches have blinded scholars to the possibility of policy dismantling at EU level? EU theories are multitudinous (Pollack 2005: 357) and certainly not all are blind to the possibility of dismantling: for example it can easily be linked to spillback and other concepts developed by later neofunctionalists (Malamud, 2010). Yet three theoretical features have arguably militated against dismantling research at EU level.

First, policy dismantling in Europe has long been considered as something that happened to other levels of governance – with the EU understood as an external force enabling (Knill *et al.* 2009; Bernauer and Knill 2012) or hindering (Jordan and Turnpenny 2012) domestic policy dismantling. Dismantling has been seen as an effect of Europeanisation, of the EU's impact on its member states. Hence the key Treaty commitment for an "ever closer union among the peoples of Europe" has been interpreted as meaning an increase in EU level policies going hand in hand with dismantling of diverse national rules – "positive integration" (Scharpf 1996) going hand in hand with "creeping competences" (Pollack 1994).

Once competences are located at EU level, two further obstacles stand out: commonly perceived preferences of EU institutions – in particular the Commission and Parliament – and the EU hyperconsensual nature. Taking the first of these, the policy dismantling literature has tended to assume a "meta-preference for re-election" amongst dismantling actors (elected politicians) (Bauer and Knill 2012: 32). Yet in the EU, the instigator of most policy changes – the European Commission – is often assumed to want to increase its powers. For example:

> 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 (Pollack 1994: 102).

The European Parliament is presented as a natural ally of the Commission, taking "the most pro-integration and harmonisation position" (Thomson *et al.* 2004: 250), while Member States preferences greatly vary (*Ibid.*: 240). Hence only certain Member States appear as the most likely actors to favour and motivate dismantling at EU level. Thus policy dismantling at EU level appears very difficult: not only would the Commission have to propose a piece of legislation going again its own interest, but the

hyperconsensual nature of the EU means that pro-dismantling Member States would have to convince both their peers inside the Council as well as the Parliament, now a co-legislator, to support dismantling – which could be expected to limit its effects. One can see how many scholars would find this pattern so unlikely to appear as to be not worth even studying.

But in recent years, these perspectives have changed somewhat. Internally (and as noted above), more actors seem willing to countenance – even actively seek – 'less Europe'. Assuming that the Commission and the Parliament are for ever tied to a project of "an ever closer union is no longer tenable. As Dimitrakopoulos (2004) argues, the Commission should henceforth be considered both as an actor and as an arena in which different Directorate Generals vie for attention and support for their own policies – thus DG environment may oppose environmental policy dismantling, whilst the rest of the Commission supports it. Similarly different committees within the Parliament have different policy expertise and may support different political priorities (Burns 2013). Furthermore, the EU level is becoming increasingly politicised: thus for example MEPs tend to vote on ideological lines (Scully *et al.* 2012) and the Commission itself has markedly shifted to the right over the last 10 years (Wille 2012). Political debate at EU level implies discussions and disagreement between actors on the degree of optimal public intervention. This in turn fuels calls for dismantling: Berry *et al.* (2010) showed that the US Congress was more likely to dismantle policies agreed under a different majority.

Related to that – and from an external perspective – the entry of comparative politics approaches and ontologies has led to the questioning of some of these old orthodoxies, including the idea that policy-led integration may move backwards and forwards (Jordan *et al.* 2013). This has opened up new lines of research. For example (and going back to Pierson (1994)), the hyperconsensual nature of EU decision-

making may mean that dismantling is difficult, but (by blurring responsibilities and making blame avoidance comparatively easy) by no means impossible. Indeed the limited development of a European public sphere – with greater salience for certain policies, in certain Member States (Viehrig and Oppermann, 2008) – could be regarded as further facilitating blame avoidance at EU level. Yet crucially, blame avoidance may be more necessary for certain targets of dismantling than others. While proposals to dismantle the CAP, a redistributive policy with concentred benefits to well organised farmers' interests and diffuse costs are likely to generate public opposition in certain key Member States, the dismantling of EU environmental policies with their diffuse benefits and concentrated costs may escape the notice of the public. In fact Jordan *et al.* (2013: 803) contend that environmental policy dismantling could be motivated by a credit claiming rationale and pursued through open and active dismantling strategies. At EU level, many very powerful actors devote their energies to eroding the ambition level of new policies – a struggle that does not necessarily end when a policy has been adopted.

3. THE ATTEMPTED DISMANTLING O F   EU POLICY

This section explores three periods of high dismantling pressure on the EU environmental acquis. It presents the directives and regulations that were targeted for dismantling by Member States and/or the Commission. It then describes the methods used to code the observed policy changes.

3.1. Three periods of high dismantling pressure

The early 1990s, a period centred on the adoption of the Maastricht Treaty, are commonly perceived as marking the point when the "permissive consensus" on European integration ended (Taggart and Szczerbiak, 2013) and dismantling began to be discussed. In the aftermath of the Danish 'no' vote, subsidiarity was seized upon as a concept around which a new balance of competence could be struck at

EU level. It imposed on the Commission a need to justify new EU level action, and led to demands for many existing pieces of legislation and proposals to be rethought (Collier 1997; Jeppesen 2000). A small number of Member States (the UK, France and Germany), and the Commission put together "hit lists" of items that were to be reconsidered, leading to a number of reforms of a what was an ageing acquis (Golub 1996; Wurzel 2002). Environmental items – water and air directives in particular – featured prominently on these lists (Jordan and Turnpenny, 2012).

A decade later, the Commission launched an agenda of "Better Regulation" at EU level in parallel to its Lisbon strategy (Radaelli, 2007). While deregulation is about legislative quantity, better regulation is supposed to be about legislative quality (Tombs and Whyte, 2012). Compared to the early 1990s, the focus had shifted from subsidiarity – questioning the merits for EU action – to proportionality – making EU level legislation more efficient (Jeppesen 2000: 99). After the 2005 review of the Lisbon Strategy, better regulation was re-launched with a focus on growth and jobs, and in 2007 with a focus on administrative burdens reduction (Van Den Abeele 2010). Supporters included leading member states on the issue (the UK, the Netherlands) as well as DG Enterprise under the leadership of Günter Verheugen (Löfsted 2007, Radaelli 2007, Wegrich 2009). The focus on "growth and jobs" made environmental policy an evident target: the Commission's better regulation initiative targeted in particular EU waste legislation (Hjerp *et al.* 2010), while environment was one of 13 priority areas identified for administrative burdens reduction (European Commission, 2009).

Finally, the years following the 2008 crisis saw a strengthening of dismantling discourse from within the Commission – with the notion of simplifying and reducing regulatory burdens replacing previous concerns about raising the quality of the acquis (Van Den Abeele 2010; European Commission 2014).

As the Commission's Regulatory Fitness and Performance Programme (REFIT) was rolled out, Environment Commissioner Potočnik complained that the environment should not be seen as a "luxury we can no longer afford" (2012: xvii). In parallel, Member States such as the UK and the Netherlands launched their own reviews of the acquis (Ministerie van Buitenlandse Zaken 2013; Business Taskforce 2013).

Thus strong actors at EU level – some of the key member states, and even the Commission – have increasingly supported calls for dismantling over the last twenty years. They have done so through publicly available reports, as part of a much publicised agenda – for example during British Council presidencies in 1992 and 2005 – confirming Jordan *et al.* (2013: 803) contention that environmental policy dismantling takes active forms, underpinned by a credit-claiming logic. As for the biggest obstacle to EU level dismantling – the hyperconsensual nature of the European polity – there appears to be a growing consensus on the value of better regulation. In the words of the then Commission President Barroso (2014: 1,5), the topic had moved from being "something for specialists, for gourmets" to being the conventional "common wisdom in European circles." But has this shift in discourse been reflected in actual changes to the acquis?

3.2. Policies targeted

In order to ascertain whether the acquis experienced dismantling, a subset of EU environmental legislation was chosen according to the following criteria. First, we focused on directives and regulations under the remit of DG environment. Second, only directives and regulations actively and openly targeted for dismantling i.e. listed either in Commission's reports on simplifying the acquis or in hit lists were chosen. Third, as dismantling scholars remind us, dismantling should be identified by comparing different

generations of the same text. Thus we chose cases that were reformed at least once after being targeted.

Fourth, the reforms had to be finalised by the end of 2012, as the coding exercise was conducted during

2013.

Directives and regulations	Different Generations				
	1st	2nd	3rd	4th	5th
Drinking Water	1980	1998			
Groundwater	1980	2006			
Bathing water	1976	2006			
Shellfish waters	1979	2006			
Titanium dioxide industry (TDI)	1978	1982	1992	2010	
Waste Electrical & Electronic Equipment (WEEE)	2000	2012			
Packaging waste	1985	1994	2004		
Waste framework directive	3 dir. 75-78	2 dir. 1991	2008		
Shipment of waste	1984	1986	1993	2006	
Air Quality	5 dir. 80-92	5 dir. 96-04	2008		
Ozone (Montreal Protocol)	1988	1991	1994	2000	2009
Eco-label	1992	2000	2010		
Eco-Management and Audit Scheme (EMAS)	1993	2001	2009		
SEVESO	1982	1996	2003	2012	
Integrated Pollution Prevention and Control (IPPC)	1984	1996	2003	2008	2010
Restriction of the use of certain Hazardous Substances (RoHS)	2002	2011			
Environmental Impact Assessment (EIA)	1982	1997	2003	2009	2012
Birds	1979	1994	2009		

Figure 1: Different generations of targeted directives and regulations coded for dismantling Source
Golub (1996); European Commission (1993, 2003); Wilkinson et al. (2005); Hjerp et al. (2010)

These criteria mean that not all environmental directives and regulations targeted over the last 20 years

were included. For example, most environmental policies concerned by REFIT have not yet been

reformed (European Commission 2014: 70-77). Furthermore, revisions through comitology are also

outside the remit of this study.

Applying these criteria, 18 environmental directives and regulations were identified. They have each been

reformed at least once (and sometimes multiple times), culminating in the 68 directives and regulations

listed in Figure 1.

3.3 Methods to capture the direction of policy change

Using a new coding scheme, the successive legislative reforms presented in Figure 1 were analysed to identify whether dismantling took place. It builds on the approach to policy dismantling (comprising different dimensions) developed by Bauer *et al.* (2012). Crucially, while we and Knill *et al.* (2014) start from the same definition of and approach to understanding dismantling, different coding frameworks are employed. Thus, while Knill *et al.* (2014) coding scheme was developed to capture changes to environmental and social policies across 30 years and multiple countries – hereby requiring a coding approach applicable to multiple policy settings and jurisdictional contexts – this paper pursues a more fine-grained study of a limited number of pieces of legislation of the same broad type and all belonging to the same political system. This leads to two key differences: in the number of dismantling dimensions studied (this paper studies separately changes to instrument scope and settings which Knill *et al.* regroup within substantial intensity); and in the type of policy instruments coded. Thus while Knill *et al.* may focus on pollution standards only, our coding scheme also considers changes to non-environmental instruments present in each directive or regulation, such as information sharing, reporting duties etc..

	Definition	Example of policy change
Legislative density	Presence, absence or number of pieces of legislation in a given area.	A framework directive replacing 6 directives reduces policy density.
Legislative scope	Number of topics and recipients targeted by piece of legislation.	Air pollution rules expanded to cover smaller factories indicate scope expansion.
Legislative setting	Environmental ambition in legislation's objectives.	Shift to "high standard of environmental protection" indicates expansion.
Instrument density	Numbers of instrument within piece of legislation.	Reduction in instrument numbers constitutes dismantling.
Instrument scope	Number of topics and recipients covered by instruments.	Environmental label expanded to cover more environmental issues indicates expansion.
Instrument settings	Instruments' strictness or leniency.	Raising the acceptable level of a given pollutant constitutes dismantling.

Figure 2: Six dimensions for coding policy change adapted from Bauer et al. (2012).

The coding framework used in this paper thus rests on the following principles. First, it measures the direction of policy change in legislative outputs, not changes in environmental outcomes on the grounds. Second, it does so across three dimensions – density, scope and settings – across two levels – the legislation as a whole but also its constituting instruments, meaning six potential dismantling dimensions (see Figure 2). Changes were coded with values ranging between 0 and 3: 0 for no change, 1 for expansion, 2 for dismantling and 3 for mixed (i.e. if changes were unclear, or both expansion and dismantling happened simultaneously).

Another dismantling dimension found in Bauer et al. (2012: 35) is formal intensity which regroup the administrative capacities and enforcement procedures – changes in formal intensity can be very difficult to interpret without in depth knowledge of each cases and implementation habits of the different member states. As such this paper decided to focus on the other six dimensions.

4 RESULTS: WIDESPREAD YET LIMITED DISMANTLING

4.1. Widespread dismantling...

This section presents the results of coding policy change across multiple generations of the policies targeted for dismantling over the last twenty years (see Figure 1). It does so by showcasing changes across six potential dismantling dimensions. A first question to address is whether dismantling has taken place. Out of the eighteen families of directives and regulations, four experienced no dismantling at all when reformed: Shellfish water, RoHS, IPPC directives and EMAS regulation.

Although the remaining fourteen cases all experienced policy dismantling, Figure 3 highlights the multidimensionality of forms it took. Policy dismantling occurred along five out of the six dimensions identified – the coding exercise found no instance of dismantled legislative settings. Furthermore, there is a strong difference in dismantling frequency along the different dimensions, with instrument scope being the most frequent dimension for dismantling (nine cases) and legislative scope the least frequent (one case). This data thus shows that dismantling is happening. But it does not tell us how important it is vis-à-vis the other two possible outcomes of reform: continuation of the status quo; and expansion.
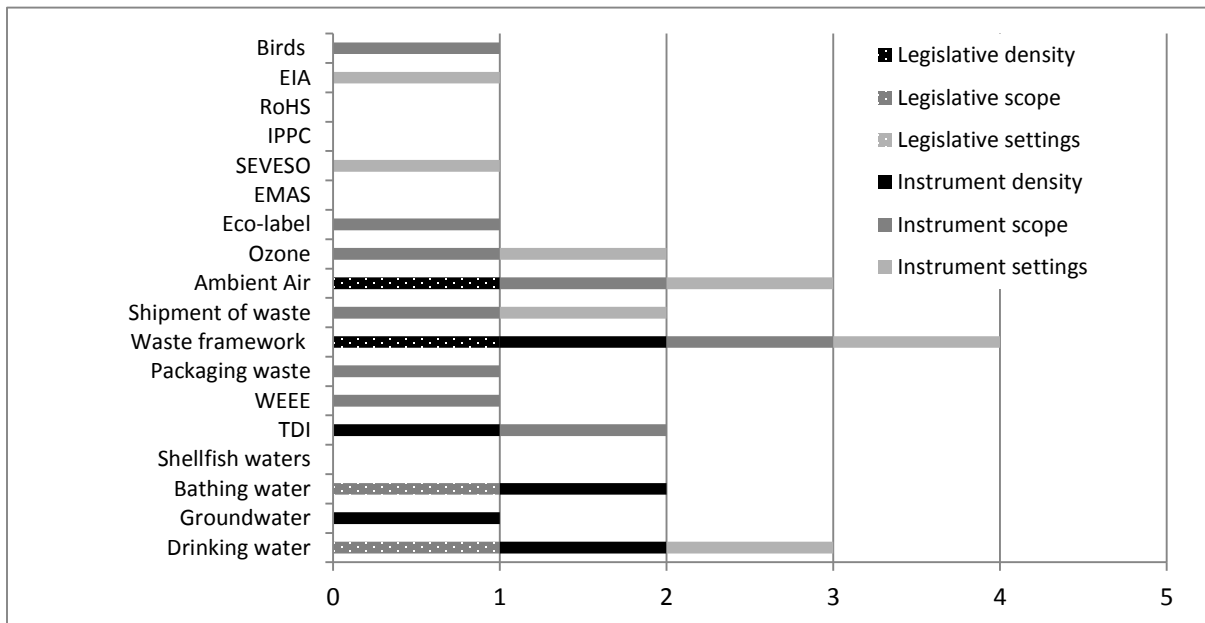
Figure 3: Presence of dismantling events along 6 potential dismantling dimensions, across 20 families of environmental directives and regulations targeted in the 1990s and 2000s (own data).

4.2. …yet limited?

As most instances of dismantling appeared at the instrument level, the rest of this section focuses on changes to instrument density, scope and settings.

4.2.1 Instrument density

Looking at instrument density means charting changes in the number of instruments used in each of the twenty families of directives and regulations studied. For an instrument to be coded as dismantled it had to have either been completely removed or to have been replaced by a different type of instrument. Figure 4 adds together all changes across all generations of a directive or regulation. Thus for a directive (such as the SEVESO directive) spanning many (in that case, four) generations, the density changes cover all changes that occurred (i.e. between 1982 and its 2012). Figure 4 thus shows that eight out of eighteen pieces of legislation have not experienced any dismantling at the level of instrument density, seven have experienced some dismantling but expansion and/or status quo were more frequent; and only three have experienced significant policy dismantling (*i.e.* where dismantling is the most frequent direction of change): two EU water directives and the Ambient Air directives.
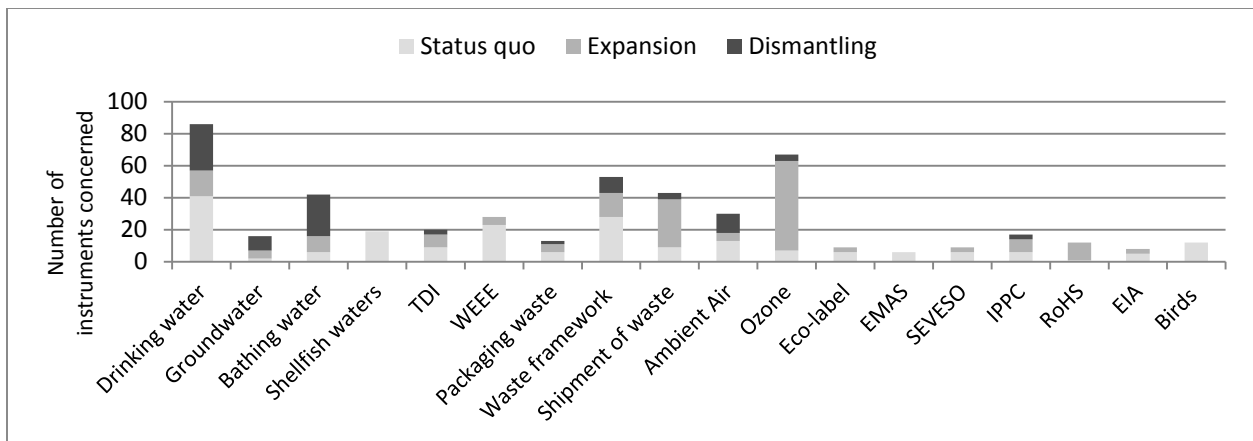

Figure 4: Direction of policy changes – instrument density dimension (own data).

Dismantling is particularly important for the 2006 Bathing Water directive (2006/7/EC): twenty-six instruments were removed, ten added with only six remaining from the previous 1976 directive

(76/160/EEC). Conversely, between 1984 (84/631/EEC) and 2006 (1013/2006/EU), the Shipment of

Waste legislation lost only four instruments, and gained thirty new ones.

4.2.2 Instrument scope

Changes in scope and settings can be identified for a subset of instruments (i.e. maintained for more than

one generation), as the direction of change regarding both scope and settings is determined by comparing

two generations of the same instrument. Figure 5 builds on Figure 4 by taking into account all generations
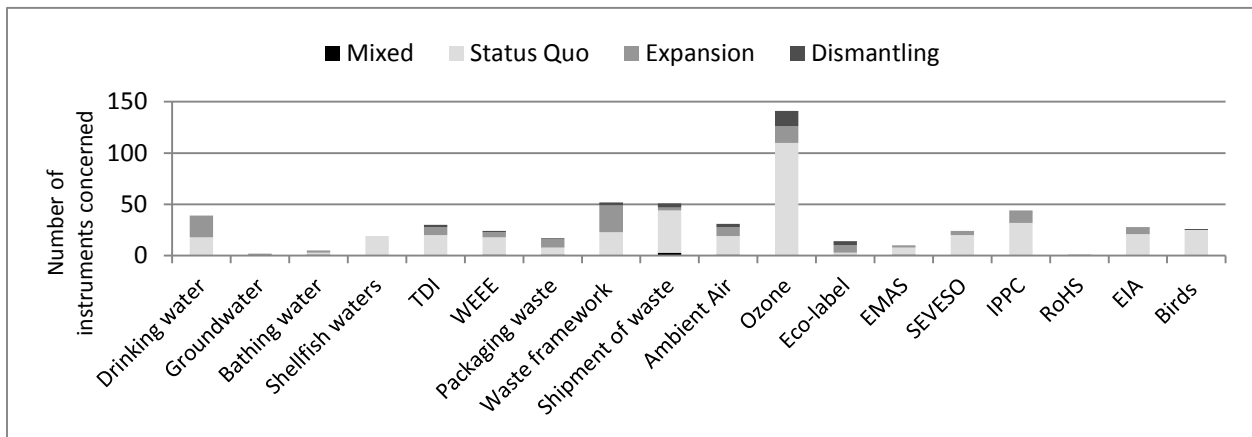
of the same directive or regulation.

Figure 5: Direction of policy changes – instrument scope dimension (own data)

Figure 5 shows that nine out of the eighteen families of directives and regulations experienced no

dismantling at the level of instrument scope. Out of the nine in which dismantling was coded, Shipment

of waste (1013/2006/EU) stands out as the only case in which dismantling was a more frequent direction

of change than expansion, – but even in this case dismantling results remained as frequent as "mixed"

ones, and were still far behind the status quo.

Figure 5 further shows a great difference in the number of change events coded for each piece of legislation. This difference is due to two factors. First, certain pieces of legislation use a greater number of instruments than others (e.g. in particular water or air pollution regulations with a great number of standards). Second, changes to the type of instruments used from one generation to another reduce the pool of instruments existing in multiple generations of the same piece of legislation. Thus, the 1976 Bathing Water Directive was coded as having thirty one instruments, and after its reform in 2006 a new Bathing Water Directive had only fifteen instruments. But overall, only 5 instruments – such as cooperation between Member States for transboundary water bodies – are found in both the 1976 and 2006 directives.

4.2.3 Instrument settings

Concerning settings, as shown by Figure 6, ten out of eighteen directives and regulations escaped dismantling completely and eight experienced limited dismantling.
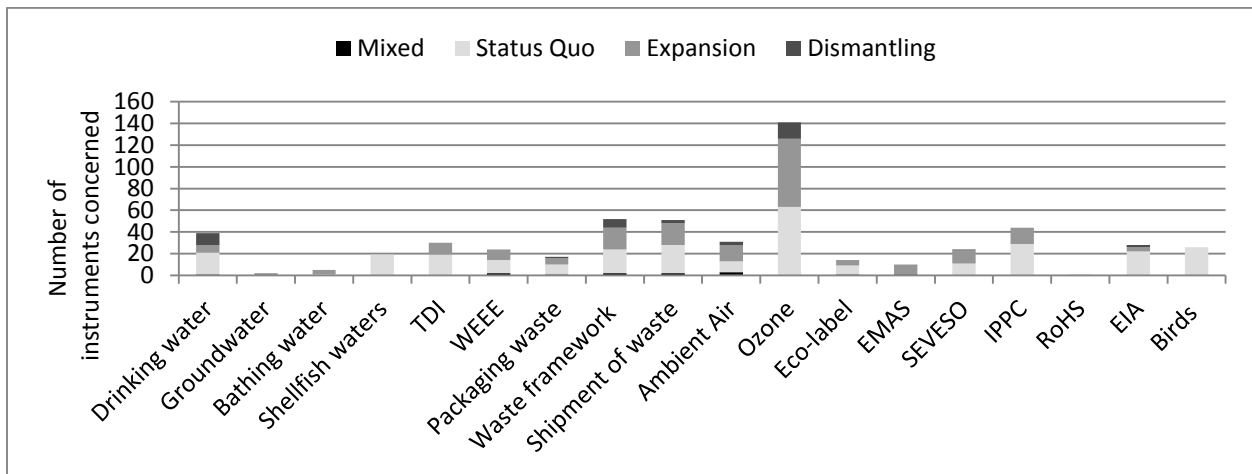

Figure 6: Direction of policy changes – instrument settings dimension (own data).

Once again, expansion and/or the perpetuation of the status quo were more frequent directions of policy change than dismantling. The Drinking Water Directive (98/83/EC) is the only case where dismantling, expressed in terms of weaker standards for chloride, nitrites or sodium, occurred more frequently than expansion events. But even in this case, the absence of policy change was more frequent than dismantling.

Despite being targeted for policy dismantling, Figure 7 highlights that the perpetuation of the status quo – i.e. the absence of change – is the most frequent direction of policy change at the instrument level. For instrument scope and settings, dismantling concerns less than ten percent of coded changes. But dismantling does appear to play a bigger role when it comes to instrument density (twenty-one percent of all coded changes).
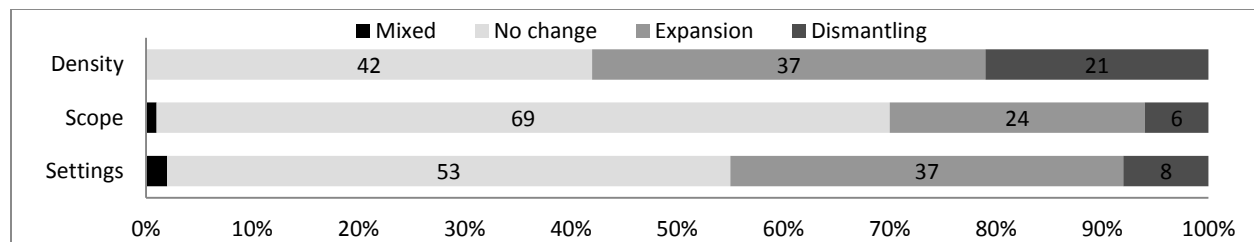

Figure 7: Comparison of policy changes across instrument density, scope and settings (own data).

5. CONCLUSION: UNDERMINING THE ACQUIS?

For supporters and analysts of the European integration, policy dismantling has always appeared to be incompatible with the core idea and ontology of heading towards an "ever closer union". But this paper argues that, as we increasingly consider the EU to be a 'normal' political system in its own right (Hix 2007; Kreppel 2012), these foundational ideas may increasingly need to be re-thought. Continued expansion of EU level policies is not a given, and the Commission does not necessarily fight to prevent

cuts to the acquis. Macro-motivations about what motivates policy change (*including* dismantling) should be duly reconsidered. In a sector such as the environment, this paper shows that there have been repeated calls for dismantling – variously linked to subsidiarity, proportionality and better regulation concerns – since the early 1990s (Golub 1996; Wilkinson *et al.* 2005; Van den Abeele 2010), leading to the observable deployment of dismantling strategies (hit lists, legislative reviews etc.). This confirms that the EU, as a political system, has become a locus of policy dismantling – or at least of dismantling discourses and strategies. Rather than seek to document these discourses and strategies and trace their effect of policy outputs (a task better suited to a long length project), in this paper we have focused on an even more fundamental task: that of "empiriciz[ing] the main patterns of change" (Jordan *et al.* 2013: 795).

In order to address this, we have focused on environmental legislation as a test case. We have reviewed multiple dismantling demands, made by key EU actors such as the Commission or the UK in order to identify the most commonly targeted pieces of legislation. These calls were publicly available, often highly publicised and lead to reform in eighteen cases of EU environmental legislation – as such they can be considered as the result of "active dismantling", a dismantling strategy which "exhibits high visibility with a strong and clear preference to dismantle" (Bauer *et al.* 2012: 44).

Changes to these eighteen pieces of EU legislation were coded in order to ascertain the direction of policy change – expansion, perpetuation of the status quo or dismantling. Building on the work of Bauer *et al.* (2012), different potential dismantling dimensions were investigated – changes at the level of the piece of legislation, or of its instruments, change in density (number of instruments) or in their intensity (scope and settings). In that respect, the coding framework used in this paper can be compared to the one used

in Knill *et al.* (2014), although it differs from it in its focus on dismantling of specific items of EU legislation – not general changes at a policy area level.

This coding exercise revealed that policy dismantling has taken place at EU level. To the core question "what is precisely dismantled" (Jordan *et al.* 2013: 802), we found that dismantling mostly concerned policy instruments – regulations and directives were kept-on, but some of their constituting instruments were cut, removed or simplified. Crucially, we found that dismantling was not the main direction of policy change – further expansion, and especially continuation of the status quo were more frequent directions. This result highlights both the resilience of the acquis and the difficulties of dismantling at EU level.

In investigating for the first time the dismantling of EU regulatory policies, this paper has contributed to both the dismantling and the EU literatures. Writing about new directions for dismantling research, Jordan *et al.* (2013: 802-803) asked whether dismantling happened only in "hard times", whether the EU enabled or constrained dismantling and whether dismantling of all kind of policies had to do with "blame avoidance". This paper shows that dismantling demands at EU level predate the 2008 crisis – austerity does not appear to be the only context in which calls for dismantling are aired. Furthermore, this paper shows that we should not only study the EU's impact on other locus of dismantling – in particular its Member States – but as a locus of dismantling itself. Finally, the strategy of "active dismantling" found in this case study confirms that when it comes to dismantling regulatory policies, credit claiming may also be at work, although clearly more work is needed to confirm this point.

Dismantling in a consensual political system is commonly assumed to be more difficult (Pierson 1994). The hyperconsensual nature of the EU (Hix 2007) combined with the assumed preferences of the

European Commission for continued policy expansion (Pollack 1994) should have rendered EU level dismantling highly improbable. Yet this paper shows that not only were dismantling calls made, but that the Commission was instrumental in making them *and* ensuring they led to legislative reform (Barroso 2014). In this respect, dismantling research at EU level can contribute to better understanding changing preferences of EU actors (Wille 2012). At a time when the entire European project is deeply questioned, the issue of policy dismantling at EU level sheds light on a potential form of resistance - the unravelling of the acquis, one directive at a time.

This paper has presented a first look at EU level policy dismantling. Writing on what is still an under-researched area, it has opened up many new avenues for research, at EU level in particular. First, EU environmental policies were chosen as a test case: other EU regulatory (and non-regulatory) policies could be investigated. Second, our coding exercise used six potential dimensions of policy dismantling; arguably integrating changes on a seventh dimension, formal intensity (Bauer *et al.* 2012: 46), is increasingly necessary in the light of the focus in recent years on administrative burdens at EU level (European Commission 2009). Third, more work is needed on understanding how the preferences of actors at EU level might differ from their preferences in national settings – and how different dismantling strategies may be mobilised in Brussels. Together these constitute a research agenda for *EU level* dismantling research (c.f. Jordan *et al.* 2013), that not only moves the topic out of the analytical blind spot of EU scholars but adds to the developing literature on dismantling in general.

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