
THE FITNESS CHECK: A Threat to EU legislation?

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June 22, 2015

Executive Summary

The European Commission's Fitness Check exercise, as part of the Better Regulation agenda is a very hot topic at the moment and has already covered six policy areas since 2010. At the moment, a Fitness Check is being performed on the Birds & Habitats Directives, which can be seen as the most controversial Fitness Check until now. This research examines the key drivers and forces that influence the outcomes of the Fitness Checks and aims to give constructive recommendations basing on the conclusions drawn from the research. To answer the central research question, a research method that consisted of a mixture of primary data collection (semi-structured interviews) and secondary data collection was chosen, focusing on gathering qualitative data.

In the Literature Review, background information was provided on Better Regulation, eventually narrowing the information down to a thorough description of the Fitness Check. In addition, the policies that were subjected to a Fitness Check were described.

The study examined the way policy areas and specific pieces of legislation were selected for revision and the responses that were provided by stakeholders during the public consultation processes. Also, the outcomes of the Fitness Checks were studied, followed by the determination of follow-up actions resulting from these outcomes.

The research produced a number of key findings. Firstly, it was found that improving the business environment and the reduction of administrative burdens were key drivers behind setting up the Fitness Check exercises. Secondly, this research did not find a clear answer as to why certain policy areas were chosen for revision. It concluded that it was not the policy area that was the criterion for selection, but rather the amount of administrative burden generated from the policies. Thirdly, providing a solution for the aftermath of the Crisis and reducing the rising euro-scepticism were mentioned as key elements in the process as well.

This study produced some concluding recommendations as well, one of them being that a transition is needed from environmental NGO campaigning against deregulation to campaigning for better implementation of legislation, so that all stakeholders affected by certain pieces of legislation benefit from regulation.

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List of Abbreviations

EU	European Union
DG MOVE	Directorate-General for Mobility and Transport
DG ENV	Directorate-General for the Environment
DG ENTR	Directorate-General for Enterprise and Industry
ELV	End-of-life Vehicles
HLG	High Level Group
I&C	Information & Consultation
IEEP	Institute for European Environmental Policy
MS	Member State
NGO	Non-governmental Organisation
OECD	Organization for Economic Cooperation and Development
POP	Persistent Organic Pollutants
PPWD	Packaging and Packaging Waste Directive
SSD	Sewage Sludge Directive
WFD	Waste Framework Directive

Introduction

“Jobs, growth and investment will only return to Europe if we create the right regulatory environment and promote a climate of entrepreneurship and job creation.”

Jean-Claude Juncker, President of the European Commission, as cited from the Political Guidelines for the next European Commission (2014)

Regulation can be seen as a tool, used to make sure that policies are being delivered and to live up to the expectations of citizens. Governments are looking to improve themselves in designing these policies, laws and regulations. They want to make sure that the right assets are being used to maximise the benefits, while minimising the negative impacts. Regulating on the EU level serves a number of purposes. Ensuring food safety, protecting the environment and setting rules for businesses in order to create a fairer marketplace are just a few examples. According to the Commission, “regulation is a necessary and accepted aspect of modern society” (European Commission, 2006a, p. 3).

Being a governmental body that plays an important role in initiating the introduction of new legislation or adapting existing legislation, the European Commission is largely in charge of regulatory activities as well. In recent years, “better regulation” has been high on the Commission’s agenda, aiming to “streamline legislation and reduce administrative burdens” (High Level Group on Administrative Burdens, 2014, p. 13). Thus, the Commission started an ambitious “Better Regulation” programme in 2002 to “simplify and generally improve the regulatory environment” (High Level Group on Administrative Burdens, 2014, p. 13). This trend seems to have continued and evolved and appears to have been reinforced by Jean-Claude Juncker’s mandate and the appointment of Frans Timmerman as first Vice-President of the Commission, whose “main attributions will be the fight against excessive bureaucracy” (Simon, 2014, para. 20). As part of his priorities, Juncker mentioned that he wants “a European Union that is bigger and more ambitious on big things, and smaller and more modest on small things” (Juncker, 2014, p. 3). These “big things” include “A New Boost for Jobs, Growth and Investment”, “A Connected Digital Single Market”, “A Resilient Energy Union” and “A Deeper and Fairer Internal Market” (Juncker, 2014, pp. 5-6). “Fitness Checks”, as part of the “Better Regulation” agenda, seem to play a significant role in trying to realize these ambitions.

The “Fitness Check” policy assessment was first introduced under Manuel Barroso’s Commission, whose mandate ended in November 2014. Pilot exercises started in 2010 in the areas of

environment, transport, employment and social and industrial policy. The results of the first round of assessments were published in 2012 and five more final reports were finalized in 2013 and 2014. The Fitness Checks, as part of the Commission's REFIT programme, aim to evaluate policy, "assessing whether the regulatory framework for a policy sector is fit for purpose" (European Commission, 2012c, para. 1). Identifying "excessive regulatory burdens, overlaps, gaps, inconsistencies and/or obsolete measures which may have appeared over time" (European Commission, 2012c, para. 1) is their main purpose, as well as to provide support in identifying cumulative impacts of certain pieces of legislation. The Fitness Check is an ongoing exercise and currently, six mandates are being prepared or processed, one of them being the assessment of nature legislation or more specific, the Birds and Habitats Directives.

The EU's Birds and Habitats Directives serve as "the cornerstone of Europe's nature conservation policy" (European Commission, 2015c, para. 1). It is a remarkable piece of legislation, having been virtually unchanged since 1994, with the exception of enlargement-related modification (Born, Cliquet, Schoukens, Misonne, & Van Hoorick, 2014, p. 4). In contrast, a piece of legislation like the EU's Batteries Directive only came into force in 2006 and has seen "regularly updated amendments" since then (European Commission, 2014a, p. 46). There are those, however, who fear that the resilience of the Nature Directives has come to an end with nature legislation being selected for a Fitness Check. Environmental NGO's like BirdLife Europe worry that "the Fitness Check will be the moment when the enemies of nature conservation will wake up and will seek to weaken the legislation for their narrow interests, to the detriment of Europe's citizens" (Langhout, 2015, para.5). They are afraid that important aspects of the directives will be altered or removed from the text and that the "Better Regulation" agenda is under major influence of the business world. For example, Kaucher (2015) states that "major business lobbying structures BusinessEurope and Eurochambres have a strong influence both on the EU internal REFIT program as well as on the EU's external trade agenda" (para. 12). It is also worth noting that the European Commission allegedly "sidelines sustainability issues and risks undoing years of environmental legislation" (Long, 2014, para. 1)

The controversy regarding the Fitness Checks (especially the one on nature legislation) under the umbrella of Better Regulation is obvious. This discontent gives rise to speculation and concern from certain stakeholders, especially the NGOs in this case. Evidence remains scarce and that is why there is a need for an extensive analysis of this particular aspect of the EU's regulatory activities. This dissertation is an attempt to define the key drivers behind the outcomes of the Fitness Checks and give clarification on whether the fear of the Fitness Check is well-founded or not, the central research question being,

What are the key drivers and forces behind the outcomes of the Fitness Check procedures of the European Commission's REFIT programme?

Research Objectives

In order to effectively answer the research question, four research objectives were defined to enable a constructive analysis:

1. *Define* and explain the key terms, players and processes that are related to the run-up of the Fitness Check and the policies that have been subjected to or are currently subject to a Fitness Check
2. *Summarize* the examined literature and the finished Fitness Checks
3. *Explore* the possible influences and opinions of civil society in the form of NGOs, business representatives, institutional bodies and other relevant stakeholders in the Fitness Check processes
4. *Determine* the key drivers and forces that play significant roles in shaping the outcomes of Fitness Checks carried out on different types of legislation
5. *Formulate* recommendations regarding Fitness Checks of environmental legislation

Structure

The report has been structured as following in order to reach each research objective in a structured and comprehensible manner. Firstly, it attempts to provide the reader with basic knowledge of “Better Regulation” in general, after which the information is narrowed down to the Fitness Check exercise. In doing so, the first two research objectives are addressed. The chapter on Research Methods then provides an explanation for the methods that had been chosen in order to answer the research question. As seen in the Results chapter, three interviews have been conducted with specialists in the area of Fitness Checks and Better Regulation in general. The interviews were placed in contrast with the overall findings of the performed desk research. The interviews, together with the desk research, contributed to achieving the third research objective and a part of the fourth objective. An Analysis chapter follows, meeting the remainder of the fourth research objective. Objective five will be answered through a Conclusion chapter.

Literature on Fitness Checks and the Subject EU Policies

The Literature Review discusses the key terms and topics that are closely related to the subject of this dissertation. The review mainly focuses on research objective 1 and 2 as described in the Introduction. First, the Fitness Check will be placed in the wider context of Better Regulation and some historical background will be provided. In this section, relevant trends, concepts and stakeholders are defined and examined. This context will eventually be narrowed down to the Fitness Check, the purpose, structure and process of which will be thoroughly described. Next, the EU policies that are subject to a Fitness Check will be pointed out and summarized.

After this chapter, the major trends and terms are hopefully clear, giving way for analysis, drawing conclusions and providing answers to the questions raised.

Background

Even though the history of this trend is debatable, there are those who assume that Better Regulation is a modern form of the idea of deregulation, which is “essentially derived from the neo-liberal economic ideology, which gained dominance in the 1980’s, starting in the UK and the US”(S. Devlin, personal communication, April 24, 2015). Tracing back the roots of Better Regulation in general is difficult. Weatherill (2007) claims that “within the European Union, it was in the mid-1990s that the search for better quality regulation became systematic” (p. 29). It is important to be aware of where the origins lie of the agenda as we know it today. The principles of the current Better Regulation were first mentioned in a report produced by the “Mandelkern Group”, which was an expert group consisting of representatives of EU Member States and the European Commission (Konzendorf, Wordelmann, Bölck, & Veit, 2005, p. 14). This group was set up to achieve some of the goals defined in the Lisbon Special European Council: “improve research conditions and create a more favourable climate for entrepreneurship, in particular by reducing the administrative costs associated with bureaucracy” (Europa, 2005, para. 11).

The Mandelkern Report’s recommendations set down seven core principles of the “better regulation” agenda: Necessity, proportionality, subsidiarity, transparency, accountability, accessibility and simplicity (Mandelkern Group on Better Regulation, 2001, p. 9). The findings of this report, which had “improving the quality of regulation and making compliance easier” (Mandelkern Group on Better Regulation, 2001, p. 80) as one of the most prominent recommendations, translated into the Commission’s Better Regulation programme. The Commission gradually committed itself to performing impact assessments of major policy initiatives, as well as carrying out regulatory activities, like removing obsolete legal texts and replacing old policy approaches with new, adjusted ones (Weatherill, 2007, p. 29-30).

As part of the Better Regulation programme, the Commission proposed a strategy, in which it was aiming for “an updated simplification programme, aimed at generating tangible economic benefits, particularly through reducing administrative burdens and integrated in the Commission’s legislative and work programme” (European Commission, 2006a). This strategy, called the “Action Programme for Reducing Administrative Burdens in the EU” was subsequently endorsed by the European Council in March 2007 and “set the target, to be achieved jointly by the EU and Member States, to reduce administrative burdens to businesses by 25% by 2012” (High Level Group on Administrative Burdens, 2014, p. 13). In 2010, the Action Programme was accompanied by a redefined definition of “Better Regulation” to “Smart Regulation”. This “new” policy claims to aim to “deliver EU policies and laws that bring the greatest possible benefits to people and businesses in the most effective way” (High Level Group on Administrative Burdens, 2014, p. 13). As the Commission announced to have the intention to be transparent throughout the implementation of the Action Programme by involving stakeholders in the process, the High Level Group on Administrative Burdens (HLG) was set up, chaired by Edmund Stoiber. This independent expert group was put together to assist implementing the Action Programme and consisted of representatives from bodies responsible for cutting costs at national level, the industry world, SMEs, environmental organisations and consumer organisations (High Level Group on Administrative Burdens, 2014).

REFIT and the Fitness Check

To further engage in attempting to achieve the goals that are in line with the Smart Regulation agenda on EU level, the Commission launched the “Regulatory Fitness and Performance Programme (REFIT)”. This programme is aimed at eliminating regulatory burdens and “ensuring that the body of EU legislation remains fit for purpose” (High Level Group on Administrative Burdens, 2014, p. 14). The programme is said to take care of continual screening for gaps, burdens and inefficiencies in order to evaluate and revise laws that are in need of such measures. The Commission also claims that the programme “streamlines EU legislation to make it more understandable and user-friendly for EU citizens” (European Commission, 2015d, para. 1). Simplification of laws and policies can be done in several ways. The first two forms of changing existing laws are defined as codification and recasting, which basically means that some pieces of legislation are downsized and/or compiled into less complex, more consolidated texts. Repealing (removing) law is another form of simplification and may happen when legislation becomes unnecessary or irrelevant. Law may also be reviewed or automatically removed after a certain period and it may be revised if legislation becomes outdated. Another possible function of the REFIT programme is replacing directives with regulations, making them directly applicable in all MS. This option can be seen as a way around the “burden” of having to transpose European law into national law. Withdrawal of pending proposals may also occur when these proposals are found

to be obsolete or if they are no longer in line with current policy objectives and “self-regulation and co-regulation can be simpler alternatives to imposing detailed rules in legally binding agreements” (European Commission, 2015d). Probably the most important and controversial tool of the overarching REFIT programme is the “Fitness Check”.

The “fitness checks will assess if the regulatory framework for a policy area is fit for purpose and, if not, what should be changed” (European Commission, 2010a). This procedure usually undergoes a series of steps. First, a mandate in the form of a report is developed, which defines and explains the overall scope and aim of the exercise. The mandate is usually developed based on a preliminary study or other initiative. It puts forward a number of key questions that need to be addressed related to the Fitness Check criteria. The first criterion is the selected policy’s effectiveness, which raises the question of whether objectives have been met. Secondly, the efficiency of the policy is examined. The costs involved need to be reasonable and in balance with the policy’s benefits. Thirdly, the issue of coherence is brought up, which means that the policy should compliment other pieces of legislation, rather than contradict other policies in a related field. Relevance is also an important point. It has to be defined whether EU action is still necessary or whether the issue can also be taken care of in a different way. Taking these questions into consideration, the evaluation will examine integration and implementation successes and problems, costs of implementation or non-implementation of the policy, opportunities to improve implementation and the reduction of administrative burdens without undermining the purpose of the directives, the situation of implementing legislation in various MS and the views of stakeholder groups. Relevant reports that have explored similar topics are often taken into consideration as input (European Commission, 2015c).

Evidence-gathering and public consultation are also characteristic aspects of the Fitness Checks. The European Commission (2015c) states that “ensuring that all interested parties are able to provide input and make their views known is crucial to the process” (para. 7). It seems that the Commission tries to involve all stakeholders in gathering and assessing relevant information on implementation and integration achievements and problems. Meetings are organized by the Commission with these stakeholders in different MS to gather and examine evidence in more detail, particularly in relation to costs and excessive administrative burden caused by the Directives. The second phase of the consultation is a public internet consultation, which usually lasts around 12 weeks. This is done in the form of an online questionnaire. The results of the public consultation are usually summarized in a document, which then supports the Commission in producing the final reports of the Fitness Checks (European Commission, 2015c).

The final reports or “Commission Staff Working Documents” aim to provide a comprehensive presentation of the evidence on the Fitness Checks “through analytical research and stakeholder

consultation” (European Commission, 2012d, p. 2). As said before, 6 reports have been finalized until now. All final reports slightly differ from each other, but generally speaking, every report assesses the relevance, effectiveness, efficiency and coherence of the evaluated Directives and/or Regulations. At present, Fitness Checks have been carried out on the Internal Aviation Market, the Food Chain, Information and Consultation of Workers, the legal framework for the type-approval of motor vehicles, the EU Freshwater Policy and on the five Waste Stream Directives. It has to be noted that it is unusual for the Fitness Check to cover the entire range of legislation of each policy area. In most cases, several Directives or Regulations were selected for revisions. Reasons for this include excluded pieces of legislation having been revised recently (European Commission, 2013c, p. 13), recent transposition of the Directive(s), being planned to be subject to specific ex post evaluation in the near future (European Commission, 2013d, p. 5) and failure of Member States to transpose the Directive(s) into national law in time (European Commission, 2014a, p. 80).

Transport

One of the four pilot Fitness Check exercises was the evaluation of the Internal Aviation Market, which represented the area of Transport in the first round of exercises. “The Internal Air Transport Market, created progressively in the period 1993–1997, was based on three key Regulations of the Third Air Liberalisation Package, adopted in 1992” (Žabokrtský, 2011, p. 162). The Fitness Check focused its evaluation on the area of economic regulation of the aviation sector. The three themes that guided the analysis were mostly related to market access and competition, some aspects of consumer protection and the impact of liberalisation and ensuing market developments on employment and employment conditions. Generally speaking, the Fitness Check followed the structure and steps described in the “REFIT and the Fitness Check” section, including public consultations in the form of workshops, stakeholder consultations and stakeholder meetings (European Commission, 2013b).

Three specific pieces of legislation were selected for revision, the first one being Regulation 1008/2008 on common rules for the operation services in the Community (European Commission, 2011c, p. 2). The policy objectives of this Regulation include increasing market efficiency through creating a level playing field between competitors, enhancing the safety of air services, reinforcing the internal market by removing inconsistencies between the internal aviation market and services to third countries and enhancing consumer rights. Secondly, Regulation 80/2009 on a Code of Conduct for computerised reservation systems was singled out for an in-depth analysis. This piece of legislation mainly aims to “simplify the legislative framework to adapt the Code of Conduct to current market conditions” (European Commission, 2013b, p. 43), maintain competition between parent and participating carriers, make sure that the supply of neutral information and transparent prices are maintained, increase information on environmental issues given to consumers and to increase personal data protection. The third Regulation was 785/2004 on insurance requirements

for air carriers and aircraft operators, which has the objective to provide airlines the possibility to meet their financial commitments when accidents occur, enhance consumer protection, extend the list of insurable risks, create a level playing field for European and third-country operators, ensure that no aircraft shall fly within, out of, into or over MS without meeting the required criteria and to update the insurance cover minimum for liability regarding cargo and baggage due to inflation (European Commission, 2013b, pp. 36-47).

Employment & Social Affairs

Another pilot exercise was carried out in the policy sphere of Employment and Social Affairs on EU law in the area of Information and Consultation of Workers (I&C). This policy framework, on the one hand, tries to “harmonize the existing rules on national level on the information and consultation of worker representatives” (Schulze & Schulte-Nölke, 2011, p. 199). On the other, the Commission has been trying to establish these procedures in transnational companies (Schulze & Schulte-Nölke, 2011).

Other than the previously mentioned Fitness Check, the evaluation of the I&C policy focuses on Directives, instead of Regulations. Just like the Fitness Check on the Internal Aviation Market, three pieces of legislation had been selected for re-evaluation. The main objective of Directive 98/59/EC is to provide better protection to workers in the event of collective redundancies, whilst making sure that a level playing field for companies is maintained. Secondly, Directive 2001/23/EC contains procedural and material provisions that aim to “safeguard employees’ jobs and rights in the event of transfers of undertakings” (European Commission, 2013, p. 8). However, the Fitness Check focused only on the procedural provisions, described in Article 7 of the Directive. The central aim of Directive 2002/14/EC was to ensure a general and permanent right to information and consultation of employees at national establishment level. Examples of expectations from this piece of legislation included strengthened dialogue and the promotion of trust between labour and management.

Enterprise

The third pilot Fitness Check in the area of Enterprise was the evaluation of the EU legal framework for the type-approval of motor vehicles. In the EU, technical requirements for motor vehicles are fully harmonised and the certification of the requirements is done through a type-approval system. Under this system, “a national Regulatory Body certifies that a type of vehicle or separate technical units satisfy technical requirements as specified in relevant EU Directives” (OECD, 2000, p. 214). Domestically produced, as well as imported motor vehicles, have to be brought to a testing facility, where it can be tested and certified when it meets the relevant regulations. These requirements are laid down in this policy framework, which covers motor vehicles and their trailers, motorcycles and agricultural or forestry tractors (OECD, 2000, p. 214).

Even though the type-approval legal framework covers three categories of vehicles, the scope of the Fitness Check was limited to the policy framework for the type-approval of motor vehicles and their trailers, because the framework of the other two vehicle categories has been the subject of a major overhaul very recently (European Commission, 2013c, p. 2). The Fitness Check covered eight pieces of legislation, consisting of Directives, as well as Regulations. Framework Directive 2007/46/EC is the cornerstone of the legal framework for this policy area and is based on the principle of total harmonisation. The Directive has the objective to contribute to “the overall policy objectives of ensuring a proper functioning of the Internal Market, enhancing the competitiveness of the EU automotive industry, increasing road safety and reducing emissions” (European Commission, 2013c, p. 4). The second evaluated piece of legislation is the General Safety Regulation 2009/661/EC. It mainly aims to simplify legislation regarding type-approval base Directives by internationally harmonised requirements and has the objective to further enhance the safety of motor vehicles. In addition, the Pedestrian Protection Regulation 2009/78/EC was selected, which aims to improve the safety of pedestrians and other vulnerable road users related to injuries resulting from vehicle collisions. Regulation 2009/79/EC on the type-approval of hydrogen-powered motor vehicles sets out safety requirements for hydrogen components and systems and contributes to encouraging the use of alternative fuels. Other pieces of legislation that were chosen for revision were Regulation 2007/715/EC on the emissions of light duty motor vehicles, Regulation 2009/595/EC on the emissions of heavy duty motor vehicles, Directive 2006/40/EC relating to emissions from air-conditioning systems in motor vehicles (MAC Directive) and Directive 2005/64/EC on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability (European Commission, 2013c).

Environment

The Fitness Check on the EU Freshwater Policy represented the revision of environmental legislation. The Water Framework Directive (WFD) was agreed on by the EU in 2000. Its implementation intended to take an integrated approach to managing water resources, aiming to set out a long-term framework within which MS are required to act. The EU Freshwater policy also includes other elements, however, the WFD is considered to be of over-arching importance (Great Britain: Parliament: House of Lords: European Union Committee, Stationery Office, 2012, p. 7).

A number of pieces of legislation within the EU Freshwater Policy was selected. The above mentioned Water Framework Directive 2000/60/EC was one of them. Directive 2006/118/EC on the protection of groundwater against pollution and deterioration (Groundwater Directive) was also included. In addition, Directive 2008/105/EC on environmental quality standards in the field of water policy was selected for revision, which established standards that constitute the chemical status criteria for the WFD. Another revised piece of legislation is the Council Directive 91/676/EEC (Nitrates Directive), which concerns the protection of waters against pollution

originating from agriculture in the form of nitrates. Council Directive 91/271/EEC (Urban Waste Water Treatment Directive) was also included in the Fitness Check. This Directive aims to address the problem of human-introduced nutrients and microbial contaminants (European Commission, 2012b, p. 5). Lastly, Directive 2007/60/EC (Floods Directive) was assessed, which obliges MS to evaluate flood risks and establish management plans related to these risks (European Commission, 2012b, pp. 4-5). Policy recommendations from the Commission's 2007 Communication on Water Scarcity and Drought and the 2009 White Paper on adaption to climate change supported the Fitness Check by identifying important policy options that MS may implement to reduce risks (European Commission, 2012b, pp. 10-11).

In the sixth and final evaluation that has been rounded off until now, following the first Fitness Check of the Freshwater Policy, DG ENV of the European Commission presented an evaluation of specific categories in the area of waste legislation. The EU strategy regarding waste management throughout the Union has developed from various Policy and Strategy documents. The legislation under the EU's waste policy includes a number of key measures which apply to an array of waste sectors, waste treatment, waste streams and disposal processes (Williams, 2013, p. 15). Williams (2013) states that "the most important EU Directive concerning waste was the main controlling Waste Framework Directive introduced in 1975 (75/442/EEC), which established the general rules for waste management" (p. 16). The Directive also played a role in simplifying and streamlining legislation. The European Commission argues that "it sets the waste policy agenda for the 21st century, giving effect to European resource and climate policy by prioritizing waste prevention and recycling of waste and stipulating a European recycling society as an important long-term objective" (European Commission, 2014a, p. 3).

For the Fitness Check, five Directives were selected. The European Commission states that "these directives have similar objectives in that they each ensure the efficient and environmentally sound management of specific waste categories" (European Commission, 2014a, p. 78). First of all, Directive 86/278/EEC on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture, was included. The main aim of this Directive is to encourage proper use of sewage sludge in agricultural activities and to make sure that regulation is in place to prevent the harmful effects on vegetation, soil, humans and animals. Secondly, Directive 94/62/EC on packaging and packaging waste (PPW) was revised. This Directive has the Single Market Treaty Article as its legal base and has the objective to prevent impacts on the environment by providing provisions on re-using, prevention and recycling of packaging waste and to ensure a good functioning Internal Market. Also, Directive 96/59/EC on the disposal of polychlorinated terphenyls (PCB/PCT) was subjected to the Fitness Check, which aims to implement the international PARCOM obligation, which "implies to make PCBs subject of an inventory and to soundly dispose of them or to decontaminate PCB equipment before the end of 2010" (European

Commission, 2014a, p. 6). In addition, Directive 2000/53/EC on end-of life (ELV) vehicles was included. Its aim is to ensure the correct management of ELV waste in the EU. The fifth piece of legislation that was selected in the area of waste was Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators, which has improving the environmental performance of batteries and accumulators and the activities of all operators that have to do with the lifecycle of batteries and accumulators as its main objective (European Commission, 2014a, p. 7).

In addition, as mentioned before, a Fitness Check has been initiated on the Birds and Habitats Directives. The first phase of public consultation finished in April and currently, the public Internet consultation is running and will stay open for input until July 2015 (European Commission, 2015c). To raise awareness about the concerns regarding the Fitness Checks, expressed in the Introduction, and to engage society in the public consultation, a cooperation of four environmental NGOs, consisting of Friends of the Earth Europe, BirdLife Europe, the European Environmental Bureau and WWF, have initiated a campaign called “Nature Alert”. Civil society is asked to fill in the online questionnaire on a website set up specifically for the campaign and the answers are directly channelled to the Commission’s database. So far, the campaign has received more than 230.000 responses (BirdLife Europe, Friends of the Earth Europe, EEB & WWF, 2015), generating “more public responses to an EU public consultation than ever before” (Nutall Jones, 2015, para. 1). The results of the final report are planned to be published in the beginning of 2016.

Methodology

The preliminary research has shown that no objective analysis of the Fitness Check has been done until now. So far, it was the Commission that carried out all reports, sometimes without effective use of external consultation. The lack of academic sources on this topic creates a gap in the literature about the Fitness Check. This report aims to narrow down that gap by providing in-depth comparison of all Fitness Checks in order to find out what the driving forces behind it are. By examining the main incentives of the Fitness Check, this knowledge can be further applied on various legislations and therefore, a projection of the outcome of future Fitness Checks can be made. This chapter will describe the methods that were chosen by the researcher in order to address all the research objectives.

Research Strategy

The researcher has chosen to use an iterative strategy, as this approach is based on both deduction and induction. Though, it should be noted that this study is based mostly on induction (see Figure 1), which is an “approach in social research, which argues that empirical generalization and theoretical statements should be derived from the data” (Brewer, 2003, para. 1). This means that a broad range of data will be used to formulate a general theory of the key drivers behind the Fitness Check. However, this general theory will then be applied on the Birds & Habitats Directives, which demonstrates the process of deduction. “It is often assumed that a scientific‘ approach will and should be followed, in which a hypothesis is formulated and then tested using precise measurement techniques“ (Bryman, 2012, p. 6). Due to limited knowledge on the topic, a hypothesis was not formulated prior, but rather during the research. Additionally,

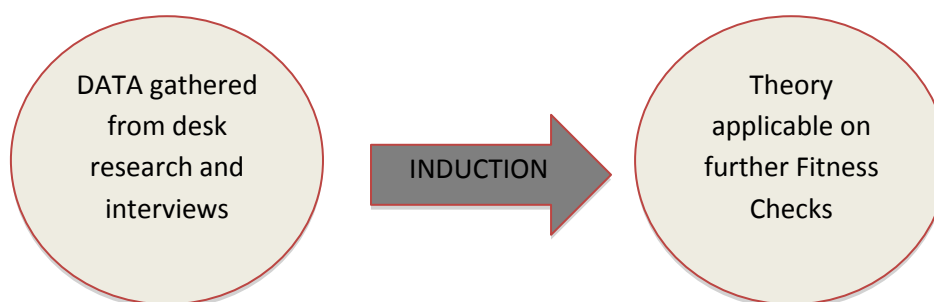


Figure 1: Process of induction

Induction is often associated with qualitative research methods. Qualitative research “gathers data through interviews or analyses the meaning of document” (Gilbert, p.35), while in “quantitative designs, the aim is to create a numerical description” (Gilbert, p.35). As this report aims to provide

a better understanding of the topic rather than some sort of statistical conclusion, qualitative methods were chosen over quantitative methods. Hence, in-depth semi-structured interviews were used as a method of primary data collection. The interviewees contributed to narrowing the gap of missing literature on the topic.

Data Collection

As it was already outlined, the research consists of the collections of qualitative primary and secondary data, whilst quality and reliability remain key criteria. The main method used in this report is Policy Analysis. Dunn (as cited in Fischer, Miller and Sidney 2007) described Policy Analysis as “an applied social science discipline, which uses multiple methods of inquiry and arguments to produce and transform policy-relevant information that may be utilized in political settings to resolve policy problems” (p. xix). Most of the policy documents were accessed through the European Commission web site. Due to the fact that the documents that were collected are official EU publications, they can be considered highly credible and generally unbiased. Usually, all interest groups are represented during the consultations with the Commission and therefore, the published documents should be not just unbiased and credible, as already stated, but also representative. It is also important to explain that the majority of secondary sources originate from the EC due to the fact that the Commission itself is one of the most important actors in the Fitness Check process, as in most of the cases it chooses the policy area and guides the Fitness Check procedure as a whole. The examination of the key driving forces behind the Fitness Check would not be possible without the collection of compilations of minutes that were taken during stakeholder meetings, reports produced by external consultancies, Mandate Reports for the Fitness Checks or Commission Staff Working documents that contained the Fitness Check process and outcomes.

The primary data have been collected through three semi-structured interviews. All three interviewees were systematically chosen as they have considerable knowledge on the Fitness Check and therefore, information accessed is considered relevant and of a high quality (see Figure 3). Also, each interviewee had knowledge in a different area, which adds value and variability of opinions to this research. Due to differing expertise on the topic, each interviewee was asked an adapted set of question. Thanks to this strategy, interviewees got more space to provide in-depth information in the field of their specialization. All interviews were recorded with the permission of the interviewee, as “careful recording is vital because one’s analysis is founded on this written record” (Gilbert p. 283). Basing on the record, a transcript was created in order to be able to properly analyze the information (see Appendix). All interviews were conducted in English and through the phone, as geographical limitations did not allow otherwise.

<i>Name</i>	<i>Position</i>	<i>Affiliation with Fitness Check</i>
Stephen Devlin	Economist at New Economics Foundation	Mr. Devlin has done extensive research on Better regulation
Alistair Taylor	EU Biodiversity Policy Officer at the Royal Society for the Protection of Birds	Mr. Taylor deals with Fitness Check on nature legislation, specifically Birds and Habitat Directive. Also, he closely followed Fitness Check on the EU Freshwater Policy
Pieter de Pous	Head of EU Policy at European Environmental Bureau	Mr. Pous was member of the High Level Group on Administrative Burdens that supported Commission in setting Better Regulation agenda. Also, he was closely affiliated with Fitness Checks on Environmental legislation.

Figure 2 Interviewees

Data Analysis

All data that were collected (policies, academic sources, internet sources, interviews) were carefully analyzed before usage. As the main method of this research is Policy Analysis, a big emphasis was put on the actual analysis of directives that were subject to the Fitness Check. “Document, like an untrustworthy witness must be cross-examined and its motives assessed” (Gilbert, p. 286). Hence, the most important was to evaluate the quality of the documents, their credibility, representativeness, but also their potential contribution to this study. Main themes could have been extracted from transcripts (Bryman, 2012). The topics of the transcript slightly varied, as each interviewee answered questions adapted to his position and expertise.

Nevertheless, the researcher attentively analyzed all the key findings, and consequently linked them to the literature that was reviewed, in order to find ultimate answer to the research question. This process can be seen in the Analysis section, that is divided into two parts. While first part analyzes the main issues that supported the selection of certain policy areas, while the second part focuses on the entire process of the Fitness Check itself.

Ethical Issues

Ethical issues always have to be considered while conducting research. It should be mentioned that the intellectual property of the authors of secondary sources is strictly protected in this report, as all the sources are properly cited according to the APA rules. “The decision to use ethnographic methods must be ethical” (Gilbert, p. 281). Indeed, as this research involves other individuals, the researcher ensures the protection of ideas and thoughts of the interviewees. This is done by citing or paraphrasing in a good manner. The interviewees were informed about the character of this

project before the interview started and all of them signed an “Informed Consent Form” (see Appendix 1), giving approval for recording. The recording was done responsibly and will not be misused under any circumstances.

Potential Research Limitations

Even though this report aims to be highly credible, different factors limit the findings, however, just to a certain extent. The limitations may be caused by the diverse character of the collected documents, due to timing or bias. Hopefully, by illustrating and admitting the potential limitations of this research, the reader will understand the high extent of command the research had over this study.

The very first limitation of this research is coming from the variety in the Commission’s structuring of the Fitness Checks. The diversification of the outlook and structure of the documents make it more difficult to compare them. This problem was especially present during the analysis of the Public Consultations. As a result, conclusions drawn from comparison may be limited, as certain reports may lack information that is, however, present in other reports.

Moreover, this study is conducted within a limited time frame. This means that the research also just captures the current developments. Naturally, there are more directives that will be under the Fitness Check in the future and therefore, the sample of the analyzed documents could have been bigger and hence, conclusion could have been deeper.

Finally, there is a danger of bias. Firstly, risk of bias may occur in the interviewees’ explanations, as they are based on one’s personal opinion and experience. However, the personal bias of the researcher may also influence the results of the study, as the whole research design and methods are chosen in very subjective manner.

Results and Findings of the Fitness Check Process

The following section will present the main findings obtained through an in-depth study of the main documents related to the Fitness Checks¹ that have been completed until now, mostly presented by the European Commission. First, the identification process of specific issues that were chosen for revision within the policy areas is identified and its outcomes are presented. Secondly, the reports that contain the outcomes of the public consultations will be brought forward and its results will be presented. This section contains the general responses from stakeholders, provided either by documents from the Commission, minutes taken at stakeholder meetings or reports produced by external consultancy bodies. In addition, the most relevant results of the final reports of the Fitness Checks will be defined and summarized. Conclusively, the follow-ups of the results of the final reports will be determined. The entire Results section will be supported by the findings of interviews conducted with experts who have been deeply involved in better regulation or the Fitness Check process.

Identification of main issue areas

In this section, the main reasons for selecting the policy areas for the Fitness Checks are defined, as well as for choosing the specific Regulations or Directives. The information is mainly based on statements made in Commission documents, but is also derived from the conducted interviews and other external sources.

Internal Aviation Market

Concerning the Fitness Check in the transport sector, the Internal Aviation Market was chosen by DG MOVE “because it comprises a large policy area consisting of many different elements. In addition, the aviation market is a fast-moving market” (European Commission, 2011c, p. 1). The last claim is supported by the OECD (1997, p. 42). Even though the main regulatory framework had been in force for only three years at the time of choosing this policy area for revision, the European Commission argues that the market is changing rapidly and that the framework had to adapt to the changes that may have taken place in the recent years before revision (European Commission, 2011c, p. 1).

As mentioned in the second chapter, three pieces of legislation had been chosen for revision. As for Regulation 1008/2008, the subjects that have been identified for closer examination were brought forward “in internal discussion” (European Commission, 2011c, p. 2). For example, the issue of airline insolvencies has been brought forward in an adopted resolution in 2009, urging the Commission to make a legislative proposal (European Parliament, 2009). The European Commission (2009) argues that the Fitness Check could have been an opportunity to assess

¹ The Fitness Check of the food chain has not been covered by this research, due to the vast coverage of this evaluation and the absence of sufficient information. After studying the documents related to the policy assessment of the food chain, it was decided that the findings gained would not be sufficiently satisfactory.

whether objectives were achieved while satisfying EU Carriers. Regarding Regulation 80/2009, no clear reasons were given for the selection of this more specific type of legislation. However, it was noted that there was an absence of complaints connected to competition with parent carriers. The Fitness Check was therefore deemed useful to assess possible market changes over preceding years. The evaluation of Regulation 785/2004 was done following the terrorist attacks of 9/11. This was supported by Holton (2012, p. 9).

Information & Consultation of Workers

It was stated by the Commission that “some stakeholders initially expressed misgivings about the fitness check of the I&C Directives. They were concerned that its purpose might be deregulation in the social area” (European Commission, 2013d, p. 5). According to the Commission, one of the main drivers for selecting the I&C Directives for revision was the expression of the European Parliament that there was a need to assess the operation of the Directives and their effects. “A European Parliament study published in 2007 encouraged the Commission to pursue the consolidation of Community I&C legislation to identify potential benefits and costs, and clarify the practical options and implications as a basis for consultation” (European Commission, 2013d, p. 6). In this study, Applica², on behalf of the European Parliament, encouraged the European Commission “to pursue its proposal to consolidate Community information and consultation legislation in order to identify the potential benefits and costs, and clarify the practical options and implications (including in relation to the legal base) as a basis for consultation” (Applica, 2007, p. 60). A clear reason for the choice of the three specific pieces of legislation within the I&C framework is not provided by the Commission. The absence of information, in combination with “plenty of time to generate effects” (European Commission, 2013d, p. 13) at the time of revision under the Fitness Check were brought forward as reasons for selecting these Directives for the Fitness Check.

EU legal framework for the type-approval of motor vehicles

The reasons behind selecting this policy area for a Fitness Check by DG ENTR were clearly stated in the Roadmap report that was published by the European Commission. First of all, the “continuous evolution of the global automotive industry” (European Commission, 2012d, p. 2) is mentioned, which was expected to result in changes in the industry and its markets worldwide. Also, the recent historical successes of smart regulation were brought forward, pointing out the effectiveness of replacing Directives with Regulations in the policy framework to avoid transposition related burden. Because of this recent revision, the Fitness Check was performed to clearly identify additional needs and possibly continue the trend of replacing Directives with directly applicable pieces of legislation (European Commission, 2013e, pp. 2-4). The decision to

² Applica is an independent research company, which was entrusted by the European Parliament to produce this report.

perform a Fitness Check on the legal framework for the type-approval of motor vehicles was largely supported by a report submitted by the CARS 21 High Level Group³, which confirmed that “a far-reaching simplification of administrative procedures is absolutely key” (CARS 21 High Level Group, 2011, p. 40).

Specific reasons for the selection of each of the eight pieces of legislation that had been selected for revision were not given by the Commission. However, it was noted that “the scope of the FC will be limited to those regulations and directives that are having a direct impact on and relevance for the type-approval of motor vehicles, and which have been adopted and whose implementation has started” (European Commission, 2012d, p. 8).

EU Freshwater Policy

At the time of the selection of the EU Freshwater Policy for a Fitness Check, the European Commission was preparing a Blueprint to Safeguard Europe’s Water. This report had the purpose to assess the implementation and achievements of the policy at that time and identifying shortcomings. In addition, the Blueprint aimed to “ensure a sustainable use of good quality water in the EU in the long term” (European Commission, 2011b, p. 2). The Fitness Check, according to the European Commission, was a “building block of the Blueprint” (European Commission, 2011b, p. 2). According to the Commission (2012b), the specific 6 Directives were chosen so that the scope would be reconciled with the Blueprint report (p. 5). It was mentioned that the Blueprint was made in order to review policies and measures to ensure the availability and protection of the EU’s water resources.

The 5 Waste Stream Directives

The Thematic Strategy on the Prevention and Recycling of Waste, published in January 2011 by the European Commission, is considered by the Commission (2013g) as a good starting point for the Fitness Check of the Waste Stream Directives (p. 2). In this report, limitations of existing legislation and its implementation are both examined. This examination, together with other studies on gaps, inconsistencies, burdens, socio-economic effects and cost savings potentials showed that some MS faced significant challenges, which were in need of further examination (European Commission, 2013g, p. 2). Generally speaking, the combination of outdated legislation and implementation gaps, was the main reason for revising the EU’s waste legislation (European Commission, 2013g, p. 3). According to Pieter de Pous, Head of EU Policy at the European Environmental Bureau, (personal communication, May 7, 2015), the Fitness Check “actually didn’t focus on the Waste Framework Directive itself but on what they call a “daughter” or “recycling” Directive”. The Directives chosen for revision have a similar framework in certain areas and the

³ CARS 21 stands for “Competitive Automotive Regulatory System for the 21st century” and the group aimed at making “policy recommendations to support the competitiveness and sustainable growth of the European automotive industry” (CARS 21 High Level Group, 2011, p. 3)

objectives are also comparable, given that each aims to ensure effective and environmentally proper management of these specific waste categories (European Commission, 2013g, p. 79).

Critical views

There are those who have their own beliefs about what drivers behind the choices within the Commission are largely based on concerning the Fitness Checks, as part of the better regulation agenda. Basing on his experience of the Better Regulation agenda in the UK, S. Devlin (personal communication, April 24, 2015) believes that “it is very difficult to determine these kinds of things”. Yet, he argues that “the focus is not in terms of issue areas, necessarily, but the focus certainly is in terms of where the greatest direct costs to business are” (S. Devlin, personal communication, April 24, 2015). S. Devlin brings up the “one-in-one-out” rules, which means that areas are chosen for deregulation or better regulation, basing on how high the cost to business is in that particular area, regardless of what the costs or benefits to other parts of society are. The Better Regulation Watchdog (hereinafter the Watchdog), a group of organizations consisting of consumer, environmental, development, citizen and public health organisations and trade unions, agrees with the idea that this rule is being applied, not just in the UK, but on EU level as well. The group believes that “European Commission’s Better Regulation agenda does not further public interest, but rather aims to weaken or neglect essential regulations protecting workers, consumers, citizens and the environment” (Better Regulation Watchdog, 2015, para. 4).

The Watchdog specifically mentions Edmund Stoiber, chair of the former High Level Group on Administrative Burdens (HLG), which was briefly described in the Literature Review, and express their concern “that the appointment of Edmund Stoiber to the post of Special Adviser for Better Regulation sends a wrongly conceived and ill-considered policy on Better Regulation” (Better Regulation Watchdog, 2015, para. 5). His alleged system of offsetting new burdens by removing existing ones, setting a net target for reducing regulatory costs and exempting SMEs from EU obligations is not at all appreciated by the group. It was also argued that this strategy was “under increasing pressure from a large number of major business groups” (Better Regulation Watchdog, 2015, para. 6).

Even though the HLG was set up by the Commission to ensure “a transparent approach towards implementing the Action Programme by involving stakeholders from all over the EU” (High Level Group on Administrative Burdens, 2014, p. 14), this objective was doubted by some. P. de Pous (personal communication, 7 May, 2015) was a member of the HLG, representing the environmental interest in the group. When asked about the degree of balance within the group, he replied that “the group was not balanced from beginning” and that “they were always outnumbered by pro-industry, private interest groups”. A “dissenting opinion” was even produced next to the final report of the HLG, expressing the discontent of certain members within the group about the

content of the report (Kosinska, Murray, & Rønne Møller, 2014). It might also be worth mentioning that Mr. Stoiber was appointed to chair the advisory board of the Deloitte consultancy firm (European Trade Union Institute, 2009), which provided preliminary studies of at least 2 policy areas that were selected for the Fitness Checks.

In addition, A. Taylor (personal communication, 7 May, 2015) mentioned the policy makers' response "to citizens' fear for their economic future". According to A. Taylor, as the economic crisis put a lot of people out of their jobs, the policy makers believe that they must restart the economy and that the way to do that is to cut regulation. P. de Pous (personal communication, 7 May, 2015) confirms this, by stating that "the different institutions are reacting to the rising Euro-scepticism". A. Taylor (personal communication, May 7, 2015) sees this issue as a "misguided attempt to try and deliver on what the politicians think the EU citizens want". He also believes that "the policy makers and decision makers at the EU level seem to have prejudged the outcome of the Fitness Checks and have decided that they want to change the Directive, whatever the Fitness Check says".

Concerning environmental legislation, P. de Pous (personal communication, May 7, 2015) argues that there is no real evidence that supports the claim that there is any excessive administrative burden. He states that "the admin burdens of the environment is 0.6 percent of the overall". In the HLG it also became evident that there is no evidence in this sense, according to P. de Pous (personal communication, 7 May, 2015), who claims that the idea was present that, according to some, environmental protection is a nuisance that complicates life. Predominantly, it was seen as "an irritation factor" (P. de Pous, personal communication, 7 May, 2015).

A. Taylor (personal communication, 7 May, 2015) also gave an explanation for why the Birds and Habitats Directives were chosen for the Fitness Check. He claimed that MS governments have a significant influence, explaining that in the UK, for example, a chancellor claimed that the Habitats Directive was a burden on business, even though national studies showed that it was not. "The logic then was a MS government having failed to find a way to weaken implementation at national level, then went looking for a way to weaken it at EU level". He believes that "the reason that those policy areas were chosen for revision, specifically the Birds and Habitats Directives, was in response to political pressure and ideology" (A. Taylor, personal communication, 7 May, 2015).

Outcomes of the Public Consultation

“The consultation of civil society in terms of gathering evidence is critical for getting evidence on the ground of what’s going on. The reason for that is the degree of involvement from civil society and actually implementing the directives on the ground”.

(A. Taylor, personal communication, 7 May, 2015)

Internal Aviation Market

In the case of the Fitness Check on the EU Internal Aviation Market, two types of stakeholder consultations had been organised to support the process. The first type was an in-house Commission service and the second was a study commissioned by one of the Commission’s external consultants (European Commission, 2013b, p. 31). It has to be noted that “the issue of administrative burden has not been invoked in the stakeholders’ consultation” (European Commission, 2013b, p. 95), because “the issue of the existence of an excessive administrative burden has not been raised by stakeholders in the consultation process” (European Commission, 2013b, p. 27).

First of all, a workshop was organised dedicated to passenger protection in the case of airline insolvency. This was organised to consult stakeholders about their views on a study conducted by the consultancy firm, which aimed specifically at this issue and concluded that the establishment of general reserve funds and self-regulation were two options to reduce insolvency. Industry generally believed that competition must be preserved and that proportionality needs to be maintained (European Commission, 2011a, p. 1). On consumer detriment, airline associations mainly noted that no regulatory intervention is required. Consumers brought up that travellers should not be treated differently on this issue. Regarding risk prevention, airline associations stated that “regulatory bodies should exercise their responsibility of oversight of airlines” (European Commission, 2011a, p. 4). On existing protection schemes, airlines noted that these schemes are already satisfactorily available. Travel agents agree with this, but consumer associations claim that “passenger information on existing schemes is totally insufficient and scattered” (European Commission, 2011a, p. 5). Concerning compulsory airline insurance, airlines and insurance companies argued that this would be very negative and ineffective, especially due to possible market disruptions. Travel agents disagreed and argued that this disruption is unlikely. Consumer associations also doubted insurance companies’ reasoning. About compulsory reserve funds, airlines explained that this would create more administrative burdens, but travel agents and consumers stated that it would promote a level playing field and avoid confusion among consumers. There was no strong consensus among airlines on self regulation, but travel agents and consumers oppose this option (European Commission, 2011a). MS argued that a licensing authority could be established that could coordinate making contingency preparations (European Commission, 2013b, p. 94).

In addition, stakeholders representing industry associations were consulted on Regulation 1008/2008. In general, no problems were brought up concerning the provisions in the Regulation. However, “consistency has to be ensured with the guidelines on financing of airports and start-up aid to airlines departing from regional airports” (“Stakeholder consultation”, 2011, p. 1). Concerning the restriction of traffic rights, stakeholders believed that this should be dealt with at MS level. Regarding market access, industry stakeholders generally commented that scheduled flights and non-scheduled flights should be treated equally, particularly taking into account the removal of administrative burdens. Some recommendations on clarification on an article concerning leasing was also given (“Stakeholder consultation”, 2011). An example of an important point raised by MS was that enforcement of the legislation needs to be improved before changes are made to the content, however, clearer provisions are needed for this to be effective. This was confirmed by another participant, agreeing that existing legislation was sufficient at that moment. On enforcement procedures, guidelines for implementing the existing legislation was proposed (European Commission, 2010b).

Information & Consultation of Workers

As for the public consultation process with regards to the Fitness Check on the three I&C Directives, the amount of published documents seems rather limited and every time a reference is provided to stakeholder input in the final report of the Fitness Check, it refers to a synthesis study performed by a consultancy firm called Deloitte, which allegedly “examined the views of national stakeholders across the Member States (public administrations, social partners, and academics) on the relevance of the I&C Directives” (European Commission, 2013d, p. 17). In this study, employer representatives, employee representatives, public authorities and academia provided input. It followed the general criteria of relevance, effectiveness, efficiency and coherence (Wauters, Lennon, Kapff, & Morley, 2012).

The study showed that overall, employers are the least positive about the Directives and public authorities can be seen as the most positive. Employee representatives were more positive about the effects that the legislation had. Additionally, the consulted public authorities were the most positive and the overall assessments made by academia were largely in line with the overall average. However, it has to be noted that, regarding specific questions, “the assessments of employers and employees can vary from being very similar to very divergent” (Wauters, Lennon, Kapff, & Morley, 2012, p. 134).

Some interesting findings appear when going more into detail about the opinions of the stakeholders, especially the views of employees and employers. Regarding the balance of costs and benefits, even though employers might experience significant costs connected to the legislation, “more than 50% of them nevertheless report the benefits of I&C as exceeding costs” (Wauters,

Lennon, Kapff, & Morley, 2012, p. 135). The vast majority of the employee representatives see the benefits exceeding the costs as well. This agreement is also represented in both views on the Directives reducing conflict and creating a better environment for change. Regarding one of the aspects of Directive 2002/14/EC which concerns productivity and flexibility enhancing, views were divergent between public authorities and employers. Public authorities seem to have much more positive views. The contribution of Directive 98/59/EC is assessed higher by employees, but somewhat lower by employers. The balance of benefits against costs is assessed very low by employers, even though other stakeholders assessed this issue more positively. Differences in views on Directive 2001/23/EC are apparent, given that employees rate its protection capacities very high, but the degree to which it ensures smooth transfer very low. The cost and benefits balance was assessed very negatively by employers, as opposed to a relatively high average (Wauters, Lennon, Kapff, & Morley, 2012, pp. 134-136).

Legal framework for the type-approval of motor vehicles

Similar to the public consultation to the I&C Fitness Check⁴, not much information has been published by the Commission, even though the initial Roadmap report states that “stakeholder consultations will be undertaken and endorsed by means of the above mentioned workshop and conference, the results of which will be widely circulated through the dedicated Fitness Check website” (European Commission, 2012, p. 15). In the same report, it was stated that MS representatives, industry representatives, NGOs and other organisations were consulted (European Commission, 2012, p. 16). Stakeholder responses were summarized in a report that was commissioned to an external contractor, namely, the Centre for Strategy & Evaluation Services (CSES).

Overall, the main idea that emerged from the study was that the “EU type approval legal framework is appropriate for achieving the main goals of harmonisation, effective operation of the single market and fair competition” (CSES, 2013, p. ii). No support was provided by the stakeholders for the adoption of a radically different approach like self-regulation. Also, in general, there was an agreement between stakeholders that the legislation’s relevance and appropriateness was mostly complementary. Concerning the simplification objective, concerns were raised that changes in the legal framework “have so far complicated rather than simplified the overall structure” (CSES, 2013, p. iii). Any weak points that were identified were mostly connected to the interpretation and implementation of legislation (CSES, 2013, pp. ii-iii).

Concerning relevance of the legislation, as mentioned before, the feedback from stakeholders show that the objectives are relevant, appropriate and complementary. In addition “it is also widely

⁴ Even though the report on the public consultation mentions the various participating stakeholders, generally speaking, the stakeholders agreed on basically all points. Therefore, this report does not distinguish between the different parties involved.

agreed that legislation has been and continues to be necessary in order to provide a clear framework and planning horizon for manufacturers” (CSES, 2013, p. 39). The majority of the stakeholders suggest deregulatory or simplifying activities would not be desirable. This is illustrated by the fact that the simplifying nature of the General Safety Regulation has insufficiently reached its objectives (CSES, 2013, p. 40). Concerning coherence of the policy framework, some issues were raised on confusion, interrelation, complexity and lack of streamlining of the legislation. Regarding effectiveness, stakeholders mainly stated that “the legislation had made a very positive contribution” (CSES, 2013, p. 43) to the EU internal market. Also, the competitiveness of the automotive industry was generally positively assessed by the stakeholders. Regarding the impact of the legislation on operating costs, the requirements may have detrimental effects. However, these costs are mostly offset by cost reductions in other areas. In the sphere of environmental and safety policy objectives, the biggest part of the stakeholders were positive about the deliverance of the framework (CSES, 2013, pp. 43-46).

EU Freshwater Policy

Once again, the public consultation for this policy area was performed basing on a preliminary study conducted by the consultancy firm Deloitte, in cooperation with the Institute for European Environmental Policy (IEEP). The report of this study identified categories within the criteria of relevance, coherence, effectiveness and efficiency of the EU Freshwater Policy on which the EU institutions could further act to improve the overall fitness of this policy area. The three main challenges that we identified were the policy’s need to address the achievement and maintenance of a high quality of European freshwaters, addressing water availability and water demand and thirdly, tackling droughts and floods (Volkery, et al., 2011, p. 9). Among others, representatives from the Commission, national authorities, the water sector and NGOs have been consulted in the process (Volkery, et al., 2011, p. 29).

The online public consultation that followed the above described study covered the major themes of the Fitness Check and challenges of the EU Freshwater Policy as mentioned in the section above. Responses on the questions raised in the questionnaire were received from national administrative bodies, river basin authorities, industry, international organisations, academics and members of the general public. The responses were fairly distributed over the mentioned stakeholder groups (Farmer, Cherrier, Johansson, Berman, & Mudgal, 2012, p. 5). For a very large majority of the respondents, EU legislation has contributed to the protection of Europe’s waters. Concerning addressing problems that Europe’s waters are facing, respondents generally “considered that the existing policy framework is good, comprehensive and adequate to tackle the majority of the challenges facing water management” (Farmer, Cherrier, Johansson, Berman, & Mudgal, 2012, p. 8). Mostly, the obstacles identified were related to inconsistent implementation of measures, lack of controls and poor monitoring.

There was an even division between respondents in the issue of gaps in the policy framework. A lack of implementation of the legal provisions was mentioned by the stakeholders (Farmer, Cherrier, Johansson, Berman, & Mudgal, 2012, p. 11). Those that believed that there are gaps in the framework, mentioned insufficient consideration of local issues, insufficient addressing of water reuse and water use rights, a lack of comprehensive approach for wetlands and more. Also, some respondents argued that new instruments would be premature, as the current framework is still being implemented. Regarding addressing the challenge of climate change adaption, respondents were divided in their opinions on how the framework can accommodate the need for climate adaptation. Yet, consensus was reached on necessity of flexibility to act at the level where pressures are the greatest. Concerning the balance between obligations that were set out at EU level and MS action, a large majority stated that this balance was correct in the current policy framework (Farmer, Cherrier, Johansson, Berman, & Mudgal, 2012, pp. 11-14).

As for the coherence with the other pieces of Freshwater Policy that were covered by the Fitness Check, the major part of the respondents considered there to be limited or no inconsistencies. Concerns were brought forward mainly over technical details. Some respondents called for more flexibility, whereas others were afraid that this could cause a difference in interpretation among MS. Regarding coherence with other policies within the EU water legislation, the largest number of respondents stated that these pieces of legislation were partially or completely coherent with the legislative acts covered by the Fitness Check. Some points were raised on confusion about vocabulary and the determination of statuses within the WFD. Again, the issue of practical implementation was raised by one of the respondents. The main issues that were raised were connected to the coherence of the EU water legislation with climate change policies, renewable energy policies, chemicals and diffuse pollution. There were also respondents who did not experience any inconsistencies. During the implementation of policy instrument, interpretations have diverged and misunderstandings arose. Respondents were also asked to comment on the EU water policy's coherence with other sectoral policies, like the CAP, regional policy and energy policy. Most comments identified the CAP and energy policy as main obstacles to an effective water policy, originating from partly contradictory policy content (Farmer, Cherrier, Johansson, Berman, & Mudgal, 2012, pp. 16-20).

5 Waste Stream Directives

No direct stakeholder consultation documentation is provided by the Commission. However, in support of the Fitness Check on the Waste Stream Directives, an external ex-post evaluation study was conducted to “evaluate the effectiveness, efficiency, coherence and relevance of five waste stream Directives” (Mudgal et al., 2014, p. 7). Stakeholder consultation was an integral part of information gathering for the study and stakeholder input is represented throughout the report.

Concerning the PPW Directive, the evaluation of the effectiveness pointed out that significant advances had been made in order to achieve internal market objectives, as well as environmental objectives. Yet, proper implementation remains the largest issue connected to these objectives. The PPW Directive had achieved results beyond its main objectives. Instances of conflict between the objectives may still have been present, however, strong evidence was not present. Regarding efficiency, evidence from stakeholders shows that “recycling is economically more advantageous than treatment as refuse waste, despite the existence of several distortive factors” (Mudgal, et al., 2014, p. 8). The cost-efficiency also increased, yet, a lack of harmonisation sometimes results in lower cost-effectiveness. The Directive is generally coherent with other waste policies, however, there is still room for alignment with the WFD and other waste related legislation. In addition, the Directive has remained relevant over the years (Mudgal, et al., 2014, p. 8).

The effectiveness of the ELV Directive proved to be in place and the assessment showed that progress had been made in achieving its objectives. Analysis on efficiency showed that “various environmental and economic benefits of the ELV Directive outweigh the costs of its implementation” (Mudgal et al., 2014, p. 9). Also the Directive proved to be broadly coherent with the other waste stream Directives and the WFD, alignment with certain provisions within the WFD may still have been desirable. Also, stakeholders pointed out that overlaps exist in certain areas. Relevance evaluation revealed that the Directive had remained generally up to date. There were some concerns, however, related to the introduction of complex electronic systems and composite materials (Mudgal et al., 2014, pp. 9-10).

Regarding the Batteries Directive, the assessment of the effectiveness showed that the objectives were being reached. In general, awareness of consumers on separate collection has increased, but it varies among MS. The evaluation of the efficiency points out that the environmental benefits of the Directive largely outweigh the implementation costs. Due to differences in definitions, inconsistencies regarding the coherence between the Batteries Directive and other waste legislation still existed. Additionally, the relevance of the Directive remains up to date, however, technical advances may cause implications for the future (Mudgal et al., 2014, pp. 10-11).

In the case of the PCB Directive, evaluation of the effectiveness of the legislation showed that progress had been made, especially on the disposal and decontamination of equipment. Regarding the efficiency of the Directive, the benefits outweigh the costs significantly, especially concerning possible health and environment related risks. The PCB Directive is also sufficiently coherent with other waste related policies, however, “there is a partial overlap with the PCB Directive and the POP Regulation (the legislation that implements the Stockholm Convention in the EU)” (Mudgal et al., 2014, p. 12). In addition, the Directive continued its relevance, “as the elimination obligation

under the Directive was not met by most Member States by the stipulated deadline (end of 2010)” (Mudgal, et al., 2014, p. 12).

Lastly, the Sewage Sludge Directive (SSD) had been examined and it had been highly effective in meeting its objectives. Its positive role in protecting human health and the environment are proof of the Directive’s effectiveness. The benefits clearly outweighed the costs of this Directive, given that “if sewage sludge use in agriculture were no longer an option, to be replaced by incineration, the cost would be of the order of EUR 650 million per year” (Mudgal et al., 2014, p. 13). In addition, the SSD complements other EU waste legislation, however, those contributions are not made clear within the provisions of the Directive (Mudgal et al., 2014, p. 13).

Results of the Fitness Checks and follow-up actions

The conclusions that were drawn from the Fitness Check processes, were summarized in the Final Reports or Commission Staff Documents, as described in the Literature Review chapter. The outcomes described in this section will be mostly derived from these documents. However, external views have been consulted as well.

Internal Aviation Market

As mentioned in the Literature Review, the final report of the Fitness Check on this policy area addressed the issues of market access and protection of fair competition, consumer protection and employment and working conditions. The European Commission argues that “the conclusions of this Fitness Check are based largely on Member States’ and other stakeholders’ views” (European Commission, 2013b, p. 75).

As for market access and protection of fair competition, in general, the regulatory environment is seen as adequate. It was concluded that there was no need to alter Regulation 80/2009 nor Regulation 1008/2008, as “the administrative burden related to the enforcement of Regulation 1008/2008 is not excessive” (European Commission, 2013b, p. 75). On the other hand, the Commission did note that softer measures and enforcement measures will be applied (European Commission, 2013b, p. 75). As for consumer protection, it was found that “the regulatory environment is considered as broadly adequate in terms of ensuring price transparency and assisting passengers affected by airline insolvencies” (European Commission, 2013b, p. 96). Therefore, intentions to change Regulation 785/2004 were not expressed by the Commission, even though further enforcement measures or reflexion on the best regulatory answer was considered. In addition, an excessive administrative burden was not identified (European Commission, 2013b, p. 96). Regarding employment and working conditions, it was argued that economic regulation did not address certain issues in the changing air transport market and it is the Commission’s role to monitor the situations. No changes to legislation were proposed, however DG MOVE raised the

point of introducing a database in this respect and more cooperation with other policy areas (European Commission, 2013b, pp. 107-108).

As a continuation of this process, only actions in the form of further assessment, clarification, technical guidance, dissemination of best practices, continued monitoring and better enforcement were seen as suitable. Legislative changes in the form of de-regulation or new regulation were deemed unnecessary. The conclusions are in line with the follow-up actions proposed by the Commission (European Commission, 2013b, pp. 109-110). These actions did not seem to have been exceeded, as no proposals have been made by the Commission to alter the legislation. In addition, no amendments have been proposed connected to pieces of legislation covered by the Fitness Check (European Aviation Safety Agency, 2015), .

Information & Consultation of Workers

The Final Report of the Fitness Check procedure of this policy areas followed the general guidelines of relevance, coherence, efficiency and coherence and the findings of the evaluation of the three pieces of legislation were presented together (European Commission, 2013d).

Regarding relevance, the Commission (2013d) claimed that “the three I&C Directives are relevant in that they address stakeholders’ needs” (p. 18). The point was raised that the right of information and consultation could be further enhanced in some cases, however, the absence of conclusive evidence inhibits further legislative action (European Commission, 2013d). Concerning effectiveness, generally speaking, stakeholder needs have been met in practice. However, the extent to which this had been achieved varied among MS. Particularly “reducing the number of collective redundancies or substantially improving adaptability and employability of workers seems to have been achieved to a lesser degree” (European Commission, 2013d, p. 28). Minor problems related to enforcement and transposition were also present (European Commission, 2013d, p. 28). The legislation proved to be relatively efficient and significant economic, operational and social benefits could be derived from the I&C Directives. Even though some costs for both employees and employers were present, “it may be concluded that the benefits are likely to outweigh the costs incurred” (European Commission, 2013d, p. 32). With regards to coherence, the three Directives “appear coherent and mutually reinforcing” (European Commission, 2013d, p. 35). However, according to the Commission (2013d), “some effort of simplification and consolidation might be justified” and should be “seriously considered” (p. 35).

The assessment of the public consultation and the conclusions drawn by the Commission both confirm that the three I&C Directives were seen as broadly fit for purpose. The relevance, effectiveness, coherence and mutual reinforcement have been confirmed and the benefits were most likely to outweigh the costs. However, some gaps, shortcomings and inconsistencies had been identified. Even though some of these issues had already been identified in the past and legal

provisions had been made, the amendments were not upheld by the Council. Also after this Fitness Check, legislative intervention was not deemed to be the solution for tackling the issues, as the evidence was not sufficient or compelling enough. Further research and dialogue, raising awareness of I&C rights and effective enforcement were examples of proposed follow-up actions. However, the issue regarding coherence was taken seriously and the Commission called for consolidation or simplification of the three Directives (European Commission, 2013d, p. 38), which was much opposed by trade unions (European Trade Union Confederation, 2013). Nevertheless, the Commission continued to pursue the option of consolidating the Directives, claiming that it “would make the existing body of EU law in this specific area simpler, more accessible and more readable” (European Commission, 2015b, p. 7). This initiative is currently going through the first phase of consultation.

Legal framework for the type-approval of motor vehicles

Overall, the “legal framework for the type approval of motor vehicles is appropriate in achieving the main policy goals of harmonisation, effective operation of the single market and ensuring fair competition” (CSES, 2013, pp. 43-46). Its positive role in providing coherence and promoting access to global markets was also brought forward (European Commission, 2013b, p. 46). Relevance and appropriateness of the framework were said to be complementary despite possible trade-offs between certain objectives. Safety objectives have been achieved and emissions have been reduced through the legislation. Also, positive contributions have been made to innovation by pushing demanding standards (European Commission, 2013b, p. 47). Even though no need for a major overhaul for the legislative framework was expressed and the legislation was deemed fit for purpose, improvements were proposed regarding market surveillance, clarifying the recall system and practical implementation (European Commission, 2013b, p. 48).

As stated above, the Commission concluded that the framework was seen as adequate and that major adjustments of the legislation would be unnecessary. However, it was stated, for example, that “The objective of simplifying the legal framework should continue to be pursued” (European Commission, 2013b, p. 47), despite the disappointment connected to the introduction of the General Safety Regulation. Market surveillance and implementation were identified as an important priority and in that respect, an initiative was launched by the Commission to address “internal market failures arising from non-compliant or unsafe automotive products on the market” (European Commission, 2013b, p. 2). This initiative, however, has not been fortified so far and possible amendments have not been adopted or incorporated.

EU Freshwater Policy

Concerning the relevance of the policy framework, the Directives fulfilled their purpose. The legislation also allowed flexibility for MS to adapt to their local conditions. However, it was noticed that existing instruments need to be better implemented and that even a new tool related to

water demand management and water availability might be considered (European Commission, 2012b, p. 14). With regards to the effectiveness of the legislation, “although there are positive signs in several areas, none of the legislation under consideration has achieved all the objectives it was expected to have achieved by this point” (European Commission, 2012b, p. 25), for a major part because of delayed implementation by MS. However, a good basis has been established for the future (European Commission, 2012b, p. 26). There is evidence that the legislation has contributed to better coordination and cooperation between competent authorities, but enough data is absent in order to properly assess the cost-effectiveness of this issue (European Commission, 2012b, p. 31). In relation to the coherence of the framework, some major advances have been made by incorporating certain issues into one common framework. Issues were raised on the need for further harmonisation with other environmental policies and the harmonisation of scientific data (European Commission, 2012b)

It can be said that the EU Freshwater Policy was broadly fit for purpose and that “the Blueprint does not propose new legislation at this stage” (European Commission, 2012a, para. 8). As for action taken following the Fitness Check no “specific responses to the conclusions that have been reached” were provided (European Commission, 2012b, p. 65). The knowledge gained from the outcomes from the public consultation and the final report from the Commission will most likely support the 2019 revision of the Water Framework Directive (STREAM, 2012, p. 3).

5 Waste Stream Directives

The Fitness Check of this policy area aimed specifically at the effectiveness, efficiency, relevance and coherence of each individual Directive, as “each single instrument has in principle to be seen separately with its own specific objectives and means to reach its objectives” (European Commission, 2014a, p. 14).

Generally speaking, the screening by the Commission demonstrated that “these Directives are examples of meaningful European Law making” (European Commission, 2014a, p. 70). Benefits like spurring “recycling efforts and innovation” (European Commission, 2014a, p. 22), bringing “multiple environmental benefits” (European Commission, 2014a, p. 44) and a “positive impact on stakeholder awareness” (European Commission, 2014a, p. 34) are just a fraction of what was stated by the Commission. Also, the benefits that the legislation entailed usually outweighed the costs and “the body of law screened here, by and large corresponds to what are standards of smart regulation” (European Commission, 2014a, p. 70). However, it was also noted that the legislation is rather complex and has to be in accordance with the EU Internal Market. A call for the same pace of development within framework legislation and waste stream legislation was mentioned (European Commission, 2014a, pp. 70-71). A potential problem in the legal basis and the scope of the PPW Directive was identified. Within the Batteries Directive, there is no focus on waste

prevention, which is seen as a major shortcoming (European Commission, 2014a, p. 72), next to issues “in relation to provisions on collection, recovery, recycling, re-use and waste prevention” with the PPW and ELV Directives.

The results of in-house Commission work has demonstrated that overall, the legislation is very meaningful and up to date. The only exception in this sense is the Sewage Sludge Directive which had not been revised for almost 30 years. A number of aspects that required specific attention were identified, mainly with regards to the PPW Directive and the Batteries Directive. In relation to the 2014 revision of EU waste policy, the Commission proposed amendments for these two Directives and the ELV Directive, concerning legislation that was selected for a Fitness Check. This was confirmed by P. de Pous (personal communication, May 7, 2015), who stated that “the outcome of the waste Fitness Check was effectively integrated into the revision of the new waste package from last year”.

Fitness Check Analysis

Policy Area selection

The publications provided by the Commission on Fitness Checks and the background literature on better regulation in general usually give clear motives for why legislation in the EU is in need of assessment. Better or smart regulation supposedly simplifies and generally improves the regulatory environment (High Level Group on Administrative Burdens, 2014, p. 13), brings great possible benefits to people and businesses and removes unnecessary bureaucracy and administrative burdens (High Level Group on Administrative Burdens, 2014, p. 13). Increasing effectiveness, coherence and efficiency and assessing EU added value through Fitness Checks presents itself as something highly valuable for European law-making and is supposed to significantly reduce costs coming from bureaucracy and administrative activities. However, these intentions are challenged by a significant amount of members coming from certain organizations dealing with environmental, consumer and health issues, for example. These parties are doubtful about the intentions of the Commission's agenda and believe that the Commission side-lines sustainability issues through its activities (Long, 2014, para. 1) and ignores what the costs or benefits to parts of society other than business are (S. Devlin, April 24, 2015). These contradictory views on the Commission's motives facilitate an interesting point of discussion.

The European Commission's motives

One issue that becomes significantly evident when analyzing the Commission's drivers for selecting certain policy areas is that the choices are consistently backed by external consultation from preliminary studies produced by the Commission itself, other institutional bodies and working groups. Transparency seems to be ensured by the publication of more or less all related documents. A well-balanced and unbiased approach usually seems to have been taken through mentioning and applying the contribution of stakeholder input. Also the rationale used by the Commission for selecting the policy areas appears to be legitimate in most cases. Changes that are required due to a "fast-moving market" (European Commission, 2011c, p. 1) and a continuous evolution of the industry (European Commission, 2012d, p. 2) look like sensible reasons for updating legislation. In addition, in the case of the EU legal framework for the type-approval of motor vehicles, the policy area was chosen after the alleged success of smart regulation in this area in the past and the Fitness Check aimed to identify additional needs (European Commission, 2013b, pp. 2-4). In other cases, like the Fitness Check on EU water legislation, the policy assessment was done in order to provide support for the development for the Blueprint to Safeguard Europe's Water outlook report, which appears to be a righteous attempt as well (European Commission, 2011b, p. 2). As for the Fitness Check on waste legislation, the evaluation was performed after the identification of a continued need for further identification of issues that arose from the Thematic Strategy on the Recycling of Waste (European Commission, 2013g, p. 2),

which can be seen as a valid motive. Along with generally well-founded reasons for selecting specific pieces of legislation for revision, no suspicion seems to appear at first glance.

Gaps in the Commission's rhetoric

There are, however, some less justifiable issues that arise when analysing the Commission's motives behind the selection of policy areas and legal acts. In some cases, like the Fitness Check of the I&C Directives, the Commission ignored the concerns of some stakeholders that were expressed before the evaluation of the Directives. These concerns were refuted by arguing that "the fitness check aims rather at improving the quality of regulation" (European Commission, 2013d, p. 5), relying on the main rhetoric of the Fitness Check as a whole, instead of providing a detailed explanation. Concerning the Fitness Check of the Internal Aviation Market, "internal discussion" was a reason for selecting Regulation 1008/2008, which contains "all the rules on the economic framework of air transport services" (European Commission, 2011c, p. 2). This may imply that the piece of legislation with the highest coverage out of the legal acts chosen for revision in this policy area had been selected without sufficient external consultation, giving way for the Commission to proceed as it desires. In the same field, "an absence of complaints" was one of the initiators for revision. One would normally argue that interference is justifiable when complaints are filed and not the other way around. This rhetoric is therefore highly questionable and cannot be seen as a valid reason.

Analysis of the Fitness Check processes

In this section, the most significant outcomes of the public consultations will be brought forward and compared to the conclusions drawn from the final reports of the various completed Fitness Checks. In addition, these outcomes will be compared to the follow-ups of the Fitness Checks where appropriate.

Internal Aviation Market

The outcomes of the Fitness Check on the Internal Aviation Market show that no legislative changes have occurred (European Commission, 2013b, pp. 109-110), which is largely in line with the overall assessment of the stakeholders (European Commission, 2011, p. 5). However, it can be noted that there were some ideas for improvement coming from the consumers regarding passenger information (European Commission, 2011a, p. 5). Consumers were also in favour of introducing compulsory reserve funds (European Commission, 2011a). Yet, both of these issues were refuted by the airline associations and the MS governments, which can be connected to the fact that both ideas would lead to additional administrative burden (European Commission, 2011a), even though the consumer would most likely benefit from these changes, as they mostly cover providing information for consumers and the protection of consumers (European Commission, 2013b), as

explained in the Literature Review. The proposal from MS governments to introduce soft measures and more enforcement, however, was taken into account by the Commission (European Commission, 2013b, p. 75). These issues give rise to the assumption that MS governments and airline associations had more influence in shaping the Commission's conclusions than consumer associations and travel agents did.

Information & Consultation of Workers

While analyzing the process of the evaluation of the I&C Directives, it can be concluded that the Fitness Check took a fairly unexpected turn (European Trade Union Confederation, 2013) by the proposal for a consolidation (European Commission, 2013, p. 38). Despite some negative views from employers' representatives (Wauters, Lennon, Kapff, & Morley, 2012, p. 134), consolidation was not part of any of the stakeholders' recommendations or opinions (Wauters, Lennon, Kapff, & Morley, 2012). However, as the Directives had a socially oriented nature and was not so much focused on economic benefits (European Commission, 2013d), it seems that this proposal mostly benefits employers, as the rules are supposed to become more simplified (European Commission, 2013d, p. 38). Given that the employees were mostly satisfied with the Directives, this simplification may be detrimental to employees, as some aspects of the Directives could be subjected to changes as a result of the consolidation. All in all, the outcome of the Fitness Check seems to have had the most beneficial outcome for employers.

Legal framework for the type-approval of motor vehicles

Basing on an in-depth assessment and comparison of the public consultation, Fitness Check outcomes and proposed follow-up actions, it can be observed that the Commission took the suggestion that was proposed by the stakeholders on proper implementation and interpretation (CSES, 2013, pp. ii-iii) into account (European Commission, 2013c, p. 2). Yet, the initiative that was proposed (European Commission, 2013c, p. 2) has not been put into practice so far. Also, the Commission seemed to have listened (European Commission, 2013, p. 46) to the stakeholders who believed that deregulatory activities were unnecessary (CSES, 2013, p. iii). However, the Commission also argued that simplification is still high on the agenda (European Commission, 2013, p. 47), despite the criticism received from stakeholders as mentioned above and failed simplification measures in the past (CSES, 2013, p. 40). Even though the Commission had taken the input of the stakeholders into account in some cases, even proofs of failure and critical views did not divert the Commission's attention away from having the urge to simplify legislation. This notion may be seen as proof for the Fitness Check being a highly politically influenced process, instead of the evaluation having an evidence-driven outcome, as mentioned by A. Taylor (personal communication, 7 May, 2015).

EU Freshwater Policy

Through analysis of the results gathered from the research, it can be said that stakeholders and the Commission reached a general consensus on the fitness of the policy framework. Generally speaking, stakeholders argued that most obstacles were related to the inconsistent implementation of measures and poor monitoring (Farmer, Cherrier, Johansson, Berman, & Mudgal, 2012, pp. 7-10). The Commission responded to this notion by stating that a new tool might be developed that specifically aims to tackle this issue (European Commission, 2012b, p. 14). When the Commission (2012b) mentioned the success of incorporating certain issues into one common framework, it raised the point that more interaction should be established between pesticide legislation and water (p. 42), even though this issue was not significantly raised by the stakeholders (Farmer et al., 2012). In other policy areas, however, harmonisation was desired by the stakeholders (Farmer et al., 2012 pp. 16-20), which was confirmed by the Commission (European Commission, 2012b, p. 42). Besides the general consensus that was present between the Commission and the stakeholders and the absence of proposals for new or changed legislation (European Commission, 2012b, p. 65), the Commission seemed to push the idea of simplification by proposing the establishments of more integrated frameworks, partly backed by the stakeholders.

5 Waste Stream Directives

Analysis of the public consultation and outcomes of the Fitness Check on EU waste policies has made it clear that it is difficult to generalize the assessment of the Directives, as the objectives of each piece of legislation are highly specific (European Commission, 2014a, p. 14). Even though the public consultation does not reveal any major shortcomings and the Commission seems positive initially (European Commission, 2014a, p. 22), the complexity of the framework is seen as a major issue by the Commission (European Commission, 2014a, pp. 70-71). A problem in the legal basis of the PPW Directive was identified by the Commission and this concern was partly supported by the consulted stakeholders (Mudgal et al., 2014, p. 8). Also, within the Batteries Directive a shortcoming was identified (Mudgal et al., 2014, pp. 10-11), which led to justifiable amendments in 2014 after the EU waste policy revision. The PPW Directive (Mudgal et al., 2014, p. 8) and the ELV Directive (Mudgal et al., 2014, pp. 9-10) was also subjected to amendments during the same revision, which had viable reasons as well. All in all, the justification for the actions taken after the Fitness Check process seem to be well-founded and can be justified.

The Commission's objectives to "simplify" legislation are clearly outlined in the Literature Review and the Results chapter indicated what the initiators behind the development of the Fitness Check exercise were. It also demonstrated the Commission's priorities, mainly related to meeting market objectives. This, in combination with the chair of the former HLG joining one of the most influential consultancy firms for better regulation and a significant amount of suspicion coming from certain stakeholders makes it understandable for some parts of society to have a certain

degree of distrust towards the European Commission's motives. When looking at the initiators for and outcomes of the Fitness Checks, it can be observed that some of this distrust is well-founded in some cases. For example, stating that "internal discussion" was one of the main reason for initiating policy revision seems to undermine the relevance of stakeholder input that was promised from the beginning. Also, in some cases, more attention seems to have been given to industry representatives when considering stakeholder input and in others, the Commission ignored urging stakeholder recommendations or mistakes made in the past. Additionally, studying the Fitness Checks does reveal that legislative changes have been made in the past. Yet, there were also cases where revising legislation made sense to a large extent and where the outcomes were not as impactful as some may fear. Providing evidence for research reports and updating outdated legislation are reasonable causes. In addition, most Fitness Checks have not had a significant impact at all, mainly providing in-depth information about policy effectiveness.

Birds & Habitats Directives under threat?

This section will apply the knowledge gained from studying the Fitness Checks and give a short ex ante evaluation of the outlook for nature legislation.

As for the Fitness Check of the Birds and Habitats Directives, issues stemming from the two pieces of legislation's similar aims and the relatively outdated nature of the pieces of legislation may be used by the Commission as reasons for either consolidating the Directives or updating them with new provisions or less provisions, which might prove to be detrimental to the legislation in the eyes of environmental protection bodies. However, a policy revision has never seen this scale of public engagement. The amount of awareness that has been raised is enormous, forcing politicians to comment on the concerns that have been widely brought forward. This pressure is something that the Commission has not felt before during previous Fitness Checks and could be one of the decisive factors in determining what will actually change within the Directives. However, stakeholder consultation has been present in every Fitness Check until now and it has happened that recommendations were ignored. The absence of an evidence-driven outcome would sideline stakeholder input and therefore, lead to an unbalanced decision regarding the fitness of nature legislation.

Sidelining stakeholder input would, however, be very unlikely, given that this would be a perfect example of the Commission pursuing deregulatory, anti-environment objectives. In turn, this would demonstrate the lack of democracy in the current Commission, raising dissatisfaction among civil society and discontent towards EU policy making. Therefore, if large amount of stakeholder input in the form of evidence will be offered, the Commission will be unable to ignore it and the resilience of the Birds & Habitats Directives would be maintained

Conclusion

This chapter will restate the research objectives of the research, summarize the key steps of the research process, provide conclusions based on these steps and answer the research question. In addition, recommendations will be offered and options for further study will be provided.

Research Objectives

The general aim of this research was to answer the research question, ‘What are the key drivers behind the outcomes of the Fitness Check procedures of the European Commission’s REFIT programme?’. In the Introduction, five guiding research objectives were defined to systematically answer the question;

1. *Define* and explain the key terms, players and processes that are related to the run-up of the Fitness Check and the policies that have been subjected to or are currently subject to a Fitness Check
2. *Summarize* the examined literature and the finished Fitness Checks
3. *Explore* the possible influences and opinions of civil society in the form of NGOs, business representatives, institutional bodies and other relevant stakeholders in the Fitness Check processes
4. *Determine* the key drivers and forces that play significant roles in shaping the outcomes of Fitness Checks carried out on different types of legislation
5. *Formulate* the most likely outcome of the Fitness Check on the Birds and Habitats Directives

Objective 1 and 2 were met by providing information on the most significant elements of the research. In order to meet objective 3, information was gathered from academic sources and interviews with stakeholder representatives.

To conclude and to answer the central research question, the key drivers and forces behind the Fitness Checks are made up out of a number of trends, backed by mostly pro-industry stakeholders. First of all, the most obvious driver behind this programme has been stated repeatedly by both the Commission and other stakeholders. It has not been made a secret that improving the business landscape and reducing administrative burdens have the highest priority in the Commission at the moment, which was confirmed to a certain degree by looking at some of the outcomes of the Analysis, where the results of the Fitness Checks generally took into account the notifications of business representatives more frequently than other stakeholders. Secondly, this research did not find a clear answer as to why certain policy areas were chosen for revision. It concluded that it was not the policy area that was the criterion for selection, but rather the amount of administrative burden generated from the policies. It has also been argued that there is a greater force at work here. Providing a solution for the aftermath of the Crisis and reducing the rising euro-scepticism

were mentioned as key elements in the process as well. This ideology seems to have influenced the Fitness Check process in the way that decisions are not taken basing on evidence, but rather on prejudice.

While these drivers play significant roles in the Commission's conduct regarding the Fitness Check, it has to be taken into account that the outcomes of the revisions were usually not too drastic. In addition, one has to always keep in mind that the European Commission is an institutional body that is there to upkeep democracy and satisfy the general public as much as possible. At this moment, enhancing the business environment has the main focus, but this might change in the near future.

Recommendations

The Fitness Check is still a relatively new concept. To make a better assessment of its drivers and consequences, it is recommended to let some time pas and wait until more evaluations have been finalized. Thus, more material will be available and the published documents will most likely have a higher degree of clarity, as this research is mainly based on pilot projects. Also, it will take some time before it will become clear what exactly was the influence of the Fitness Check on the modification of the content of certain pieces of legislation. After a policy proposal is made, it may take years before actual legislative change occurs.

At the moment, the environmental NGO community that operates on EU level is mostly campaigning against the better regulation agenda, which can be seen as a good strategy for the moment in raising awareness about the Commission's deregulatory intentions. However, after reaching a certain point on which no further emphasis can be a put on this issue, a transition is needed from campaigning against deregulation to campaigning for better implementation of legislation. Businesses need to be made aware of the opportunities that can be derived from legislation, especially in the environmental arena. Once all parties are up to date on legislative frameworks and are aware of the way in which policies need to be implemented, room will be created for greater harmony between the industry and the environment, which may result in a properly regulated environment in which no excessive administrative costs occur. If this were to happen, REFIT exercises would become more irrelevant, which would mean satisfied businesses, NGOs and MS and a reduced workload for the Commission

In addition, since within this research it was not possible to conduct interviews with all relevant stakeholders, more research could be performed to concentrate on the views of MS and business representatives. This would be useful to have a more balanced view of the situation and could be used to validate this research or come to new conclusions.

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Appendix I: Ethics Form

European Studies

Student Ethics Form

Your name:

Supervisor:

Instructions/Checklist

Before completing this form you should read the APA Ethics Code(<http://www.apa.org/ethics/code/index.aspx>). If you are planning research with human subjects you should also look at the sample consent form available in the Final Project and Dissertation Guide.

- a. [] Read section 3 that your supervisor will have to sign. Make sure that you cover all these issues in section 1.
- b. [] Complete sections 1 and, if you are using human subjects, sections 2, of this form, and sign it.
- c. [] Ask your project supervisor to read these sections (and the draft consent form if you have one) and sign the form.
- d. [] Append this signed form as an appendix to your dissertation.

Section 1. Project Outline (to be completed by student)

(i) Title of Project:

(ii) Aims of project:

(iii) Will you involve other people in your project – e.g. via formal or

informal interviews, group discussions, questionnaires, internet surveys etc. (Note: if you are using data that has already been collected by another researcher – e.g. recordings or transcripts of conversations given to you by your supervisor, you should answer ‘NO’ to this question.)

YES

Section 2 Complete this section only if you answered YES to question (iii) above.

(i) What will the participants have to do? (v. brief outline of procedure):

(ii) What sort of people will the participants be and how will they be recruited?

(iii) What sort stimuli or materials will your participants be exposed to, tick the appropriate boxes and then state what they are in the space below?

Words

In the means of semi-structured Interviews

(iv) Consent: Informed consent must be obtained for all participants before they take part in your project. Either verbally or by means of an informed consent form you should state what participants will be doing, drawing attention to anything they could conceivably object to subsequently. You should also state how they can withdraw from the study at any time and the measures you are taking to ensure the confidentiality of data. A standard informed consent form is available in the Dissertation Manual.

(vi) What procedures will you follow in order to guarantee the confidentiality of participants' data? Personal data (name, addresses etc.) should not be stored in such a way that they can be associated with the participant's data.

Student's signature: **date:**

Supervisor's signature: **date:**

Appendix II: Informed Consent Form

Informed Consent Form

1) Research Project Title:

What are the key drivers and forces behind the outcomes of the Fitness Check procedures of the European Commission's REFIT programme?

2) Project Description:

The Commission's REFIT programme "committed the institution to attempt to establish a simple, clear, stable and predictable regulatory framework for business, workers and citizens, as well as to ensure EU legislation brings benefits at the lowest cost and with the least bureaucracy". Are there only positive consequences connected to these programmes or do they impose threats as well? This project seeks to help understand the effect of the Fitness Check by analysing the drivers, key players, responses and outcomes of previous Fitness Checks. With this information, I hope to formulate a well-founded future projection and possible outcome of the ongoing Birds & Habitats Directives Fitness Check.

If you agree to take part in this study please read the following statement and sign this form.

I am 16 years of age or older.

I can confirm that I have read and understood the description and aims of this research. The researcher has answered all the questions that I had to my satisfaction.

I agree to the audio recording of my interview with the researcher.

I understand that the researcher offers me the following guarantees:

- All information will be treated in the strictest confidence. My name will not be used in the study unless I give permission for it.
- Recordings will be accessible only by the researcher. Unless otherwise agreed, anonymity will be ensured at all times. Pseudonyms will be used in the transcriptions.
- I can ask for the recording to be stopped at any time and anything to be deleted from it.

I consent to take part in the research on the basis of the guarantees outlined above.

Signed: _____ Date: _____

Appendix III: Transcripts of Interviews

Stephen Devlin

Date: 24/04/2015

Means: Phone

- T: Could you give me a short, brief introduction of yourself and your field of research?
- S: Sure. I am an economist. I focus on environmental and natural resource issues. I previously worked in the UK's Environment Administry and now I work at the New Economic Foundation, which is a think tank that does research and advocacy on issues on environmental and social justice. I do a lot of work on, for example, fisheries, agriculture, energy systems and climate change. Eventually I made the economic case on why investing in natural and environmental systems is good, not just for the environment, but also for our economy and our society. A lot of that comes down to regulation in a lot of cases, which is why we became interested in this question of better regulation in the UK.
- T: Yes and that is basically the issue I would like to learn more about. Could you maybe tell me a bit more about the history of deregulation in the UK? Who was in charge of the agenda setting, for example?
- S: I can, but I am no authority on the history of deregulation.
- T: Maybe just where it started?
- S: Basically, the idea of deregulation essentially derived from the neo-liberal economic ideology, which gained dominance in the 1980's, starting in the UK and the US. What that ideology says is that, in general, it is better, in an economic sense, for a government to be less and less in the economy. The natural extension of that is that you need to scale back the activities of the government. There are numerous wrongs to that ideology. One is privatization. One is austerity or reducing spending, more generally, and the third one is deregulation, which is not about the government spending or taxing. It's about restricting the rules that it applies, which obviously have economic implications.
- T: Under the formulation of "reducing administrative burdens".
- S: Exactly, but that is kind of very basic origination of the deregulation agenda, I would say. Of course, these are all just my own view on what has happened. You can't really objectively say for sure where it came from. But, essentially, that was the genesis. The modern form of deregulation, which is misleadingly called "better regulation", in the UK at least, got going under the new labour government, which began in 1997. They were the first to really introduce the principles of "better regulation" and pioneered this technocratic approach to policy-making in general.
- T: So it was a sort of precedence before it all started in the EU in general? In the EU it started around 2002, this better regulation idea. Was the situation in the UK something that lead to the overall better regulation idea in the rest of the EU, you think?
- S: Yes, but as I said before, I am not very familiar with the EU. I wouldn't want to say for sure, but certainly more recently. I think both in the case of the UK and the EU, initially, the better regulation agenda was fairly benign. It was mostly about words. You cannot actually stop the new labour government from regulating or implementing policies. Maybe

that was the case at the EU level as well. What is very clear is what happened more recently. Since 2010 we have had a conservative lib dem coalition, which is a highly new liberal government. We have very rapidly increased the strength of the better regulation or deregulation agenda. More than that, they have very clearly and deliberately exported that model to Brussels. The UK government set up a committee of businesses and academics and things like that to make recommendations to the EU about how we should be approaching the regulation agenda.

T: Was it the Business Taskforce?

S: Yes, that's it! So that was a very clear attempt by our government to put forward what we came up with in the UK to the EU. And you can see in the recommendations that have been made that a lot of those have been adopted, more or less word for word. Maybe not yet adopted, but at least planned to be adopted. It is not explicit, but what seems to be underlying in all of this is this sort of blackmail under the hat of the UK, who is using the threat of a British exit from the EU to try and get changes that it sees as desirable for its own economy and its own businesses and, at least from my perspective, that is a large part of what we are seeing from the Juncker Commission, which is basically appeasing by agreeing on proposals on regulation. I'm not so sure whether it goes as far back as 2002, but recently there has been a very clear relationship between the EU and the UK

T: Do you have any idea about what has been on the UK agenda, concerning better regulation? Are there any specific types of legislation that are being targeted for this "better" regulation?

S: Do you mean for example environmental vs labour market?

T: Yes, exactly.

S: As far as I am aware, I don't think, at least explicitly, there was no focus where they wanted to see regulations removed. It is really a sort of across the board claim that we have, in general, too much regulation. I don't think that there has been any focus. The problem is that it is very difficult to determine these kinds of things. There are two problems, basically. One is that this kind of agenda leads to removing existing regulations. So you can look at them and say, well, that has fallen in certain areas, but a bigger problem is that it reduces the ability to introduce new regulations and that is much less visible. And in that respect it is much more difficult to be able to see, well, the better regulation agenda has stopped us from implementing this environmental protection or improving labour market standards. Because you can't really prove one way or another that that legislation was prevented from coming forward. It is quite obvious that the environment that we are trying to legislate in is extremely hostile to any new types of regulation. So I think the answer to the question is no, but it is very difficult to tell if there has been a focus, but of course, I suppose one way to put it is that the focus is not in terms of issue areas, necessarily, but the focus certainly is in terms of where the greatest direct costs to business are and of course, that is the perverse thing about deregulation, at least in the UK is that and the way they do it is through these one-in-one-out rules or one-in-one-out rules, which basically says that the things we choose to deregulate are the things that have the highest costs to business, regardless of what the costs or benefits to other parts of society are. That's very explicit, it's not part of the rules. The rules are only about whether it's costly to business, so in that sense, there is a focus. And that is crazy, because that is not what regulation is about.

T: I totally agree. Maybe to get back to the basics. What was the driver behind better regulation? What was wrong about regulation in the first place? Why was there suddenly

the idea that we want to have less regulation, even though put regulation in there to protect, for example, small and medium sized businesses in this competitive environment?

S: Well, that's a very complicated question. What has changed, in my opinion, is in the real world nothing has changed. There remains a very strong rationale for choosing to regulate and there remains a strong rationale for at least most of the regulation that is in place. What you have to remember is that no government ever regulates for the sake of it. We only ever regulate if we think that there is an overall social benefit to doing so. We are actually in a very strange position, I think. Essentially what the government is arguing is that we actually got it wrong in the past. We used regulations which we thought were going to be good for society and we decided that they are not any longer. And of course that's very difficult to argue. Either you appraise the policy incorrectly in the first place or something unexpected has happened and circumstances have changed. What we thought was going to be a good idea is not a good idea anymore. And actually neither of those things happened that often. What has changed is not whether or not regulation is a good idea anymore, but rather that what happens now is that the government has changed and the perspective from which it sees regulation. Some people would tell you that this is a very extreme interpretation, but I think there is quite a lot of truth in saying that the government, for a large part, is being captured by the interests of large businesses and that is why they essentially changed their mind. They are no longer looking at the problem, democratically, from the point of what's in the interest of the people they represent. They are now saying, well actually, we think this is not in the interest of large businesses and in that respect, they are probably right. There is probably the case that if you do have a change in perspective you will decide that it is actually better to not have a lot of these regulations, because what they are designed to do is to impose limits on large corporations in the expectation that that will protect smaller businesses, the environment or other parties that should be represented by the government as well, but are, at present, not getting such a strong voice. I have to say that it is important in all of this not to be adopting the position of "regulation is just a good thing" in itself and that is not what I intend to convey. There are some bad regulations. There are some regulations that have been in place for a very long time and don't fulfil their purpose anymore and those ones we should review, but you don't need a sort of arbitrary one-in-one-out rule in order to do that. You can do this one a case by case basis and assess them on business costs, environmental costs, social costs and all of these things and then come to a conclusion on whether they are still relevant or not. We don't need this whole presumption that everything must be re-evaluated on the basis of business costs. That is quite clearly illogical.

T: So basically, the idea is that the corporate lobbying platforms are playing a fairly big role nowadays in agenda setting, for example. BusinessEurope in the EU is doing a lot in this area.

S: I actually think it's worse than having external groups like that with lots of influence. At least in the UK, we have not just external impact from corporations. We have actually institutionalized business interests in the policy-making process in the sense that we have a 'deregulatory policy committee' whose job is described as being there to ensure the quality of evidence for policy making, but if you look at the reality of what they actually are.. It's a committee of a dozen or so people, a vast majority of whom are representatives from business lobby groups. All these different organizations are business groups and have a seat on this group that is a governmental institution and this group gets to put a stamp on whether or not policy is being appraised well or not. All they have to assess is whether or not governments have correctly appraised the costs to business. We are basically saying that the way we are going to make policy is largely constrained by whether or not it is costly to business. Who gets to judge whether or not we have done that right? A committee of business.

- T: So it's really one-sided.
- S: Exactly. It is about business lobby groups like BusinessEurope coming from the outside, but we also have to look at them from the inside of policy making as well.
- T: So going forward on this. Was there any role of other stakeholders, for example NGOs and research platforms, who played at least some role in setting the regulation agenda or was it really just the businesses who had a say in it?
- S: I'm not sure to be honest. If you are talking about drivers for a better regulation agenda in general, it is certainly the case that it came from the businesses. Another question is whether or not they have been able to create support from NGOs and research institutes and I think they have been quite successful in that. In the UK at least, it is quite clear that there is no real civil society opposition to the better regulation agenda. It is something that gets under the radar and it happens in the background. It is not a very sexy subject and there are not really any NGOs that are concerned about it. The NGOs that do know about it are sort of going along with the game. They have accepted the rules that have been created in terms of impact assessments, one-in-two-out and those kinds of things and what they all try to do is provide better evidence within that framework in order to see their interests.
- T: So there is not really a pushback from civil society?
- S: I don't think there is, no. Whereas comparing the UK to Europe, at least in my limited experience, I think there is a much greater appreciation of the threat of this agenda at the European level than there is at the UK level. And I think in part that is why it has been so successful in the UK. There has not been an organized opposition to it. At the EU level, it seems like environmental NGOs, as well as many other different issue areas are quite aware of the fact that this going to be a threat to their interests and are starting to organize against it. So there is a real opportunity at the EU level to hold back the risks and threats of this agenda in ways that haven't been done in the UK.
- T: So I guess that is one of the main differences. Concerning the better regulation agenda in the UK, what results have been achieved so far? Have there been any changes within policy making or legislation resulting from this?
- S: Yes. They have reduced large sways of regulations. A lot of it is about simplifying regulations in which they strip things down to the very basics. they have just repealed whole pieces of legislation. When I worked in civil service I had to do the analysis for what would be the costs and benefits of repealing certain bits of legislation that had to do with waste, for example. There has been a very clear reduction in levels of regulation. The way they measure that is through the cost to business, so they way they publish it is "we have achieved a reduction in so many millions or billions in costs to business". What that means in terms of risks to the environment or society is much more difficult to tell, but of course those things aren't quantified in the analysis.
- T: So they haven't been assessed at all or are there external parties who do take care of these kinds of assessments?
- S: Not that I am aware of. It is a very difficult thing to do, because of the nature of it. Environmental costs and benefits are much more difficult to assess. I am not an authority on this. There may be someone who has been looking at the specific threats that have been created in the UK that I don't know about. It goes a bit back to what I was saying before, which is that part of the problem is and part of why it doesn't receive much opposition is that the biggest threat is not necessarily the stuff that the government manages to get rid of. For me the biggest threat is the fact that they can prevent any new regulation. Over the

course of the last 5 years of this government they have gotten rid of quite a lot of regulation, which may or may not have been useful, but what we don't know is what might have happened, what kind of new, progressive, beneficial regulation we might have had if this deregulatory agenda hadn't existed and that is something that you cannot put a number on, for example. That's why I think it is very difficult to get people to mobilize against it, because you cannot really point to any specific thing and say "look, that is going to disappear". It is a much more nuanced and hypothetical threat to get people impassioned about.

T: Are you aware of any negative impacts on environmental legislation or does it also fall under no assessment until now?

S: One good example is the following. There is thing called Marine Conservation Zones in the UK, which is essentially there to set up lots of interconnected protected areas around the coast of the UK. What happened of course is that the Ministry had to do an impact assessment and say what is the impact going to be for businesses, the environment and society and then it submits that to the regulatory policy committee. What happened in this case was that the committee returned that impact assessment with a red stamp, which basically says that it is not satisfactory. The reason for that was that they could not understand why the civil servants had accepted the estimates of cost to business from the regulator, a public body that had to come up with a cost estimate. The civil servants had used that estimate, rather than the estimates that came from the business industry themselves (e.g. fishermen and other businesses that use the sea). For that reason, the RPC returned that impact assessment with a red rating, meaning that they were not happy with this thing to proceed. What happened eventually was that, instead of getting something like 127 marine coastal zones, we ended up with around 10. Again, it is difficult to say for sure and it is difficult to draw the causalities from the RPC ruling, but it is very clear that business interests played a role here in scaling back what was possible in terms of implementing these marine protection zones.

T: So it resulted in less protected areas in the UK, basically?

S: Yes.

T: In the EU, they are now really busy with the fitness checks. I don't know if you have heard about it. It is part of the better regulation agenda. They have been doing one on the Waste stream Directives, one on the EU Freshwater policy and at the moment they are doing a fitness check on nature legislation, on the Birds and Habitats Directives. It seems like environmentally oriented legislation is quite high on the European agenda, but you don't see a similar trend in the UK?

S: No, I don't think so. I think it is clear that at the EU level, they said that the environment is going to get it, basically. They definitely started out with all the environmental legislation, but that is not really the way it happened in the UK. The way it happened in the UK is that we are just going after anything. But of course, that does mean that in the UK, a large part of the impact has been born by environmental legislation, because of the fact that tends to have costs to businesses and doesn't tend to have a very large benefit to businesses. So I think the results are very similar in the UK and the environmental legislation has suffered more than other areas. Though, I don't think it has happened in the same way. Where the government actually set out very clearly to basically attack environmental legislation, which seems to have happened in Brussels. It has similar impacts, but not from the same initiatives.

T: There are some people in the NGOs who have the idea that they are attacking environmental legislation, because the NGOs have less power than the business world, so

they might have less opposition when they attack these kinds of legislation. Do you think that that might be true?

- S: I wouldn't be surprised at all if that would be the reasoning. I think it is also.. The way it seems to have happened is.. The Commission said that the EU itself is in trouble. Britain is considering leaving, Greece is on the verge of leaving, there is massive internal dissatisfaction, so how do we save Europe? Well the way we save Europe is by saving the economy. As long as you get the economy going again, people will become more happy with the EU. How do we get the economy going? Well, that is when they looked at this neo-liberal ideology, which basically tells them that the way we get the economy going is through austerity and deregulation. For me, that is where it came from at the EU level. And so, of course what they were thinking was that we just need to bare down on regulation. We need to be more business-friendly and we need some quick wins on this. Even if it's just symbolic. The reality is and the evidence suggests that actually, if anything, regulation is quite good for the economy. Getting rid of it is probably not a very sensible idea, even if all you care about is the economy. In that sense, the quick wins are environmental things, because as you say, the opposition to that is not very well organized, even compared to something like labour market regulations, where you have trade unions, who are very well organized and have a much louder opposition. Certainly compared to regulation that affects small businesses that probably have a much louder voice. What they don't know is, in other issue areas like labour markets, consumer protection, small businesses.. What they don't understand is that the environment is just the first domino. Really, they ought to be very concerned certain environmental regulations, because they will be next in line. There should be a common cause amongst all of these different areas to say that this is actually something that affects us all, this deregulatory agenda. None of us should be putting up for it. Even if, at the moment, it's only affecting other NGOs that don't seem to have much to do with it.
- T: I feel like I am taking quite a lot of your time here. Let's go on to my last question. Especially the environmental NGOs here in Brussels are quite nervous about how the outcome of the fitness check of the nature legislation is going to look like, because they have put a lot of hard work into it. They have been campaigning, so they are afraid that all of this hard work will be destroyed, because of this deregulation. Do you think that this fear is well-founded or not?
- S: That's hard to say. So basically, you are saying that they are concerned that the entire thing will be removed all together?
- T: Well maybe not the entire thing, but especially the Birds and Habitats Directives are really big pieces of legislation and even the details can be quite important. Things that have required a lot of work. Even the small things. So even the slightest change in the directives can be harmful for them.
- S: Well I think, yes, they are right to be very concerned about it. I mean, I believe what you said that it is very unlikely that they would scrap a whole piece of legislation. Despite all of this, Europe is still very proud that it is a leader in environmental issues and no matter what it does, it has to maintain at least the illusion of having strong environmental standards. So I think, yes, it's more along the sense of what you are saying, which is that the threat is that we sort of keep something that is symbolically strong that actually gets weakened by attempting to make it business-friendly and yes, I think they should be concerned about that. But I think, what they should be more concerned about are two things. One is short-term battles, which about protecting specific details of regulation that we already have, but they also need to be concerned about a much longer term war, which is not just about this specific threat to the Birds and Habitats Directives, but the generic systemic threat to the EU's ability to regulate at all. Even if we manage to protect the Birds and Habitats

Directives in a way that environmental NGOs are happy with, you may still end with a situation in which we can't make any further progress at all, because we have conceded the arguments that the better regulation agenda is something that's acceptable and all we are going to do is fight little battles within that agenda. So I think that is even more pessimistic than the way you posed the questions, but I think you are right to be concerned about short term things, but you definitely shouldn't be forgetting what this means for the long term and about the long term ability to protect the environment.

T: Well, I guess that makes it clear.

Alistair Taylor

Date: 07/05/2015

Means: Phone

T: Let's start. Do you have the questions in front of you?

A: I do, yes.

T: I will just go through them, then. And also, if there is anything else that you feel that might be important or might be worth noting, feel free to go ahead.

T: First of all, In what ways have you been involved in Better Regulation/REFIT/Fitness Check? Have you also studied previous Fitness Checks or are you only working on the current assessment of the EU's nature legislation?

A: Okay, so I have not been involved in any previous fitness checks, for example the Water Framework Directives, but I have been looking very closely at them to see for example how the Water Framework Directive Fitness Check was done and what the conclusions were at the end of it, but I have primarily been working on the Fitness Check on the Birds and Habitats Directives.

T: Okay so, as you know, 6 Fitness Checks have been rounded off, more or less. 2 of them on the environment.

A: Do you know how many Fitness Checks have been done in total?

T: In total, as far as I know, 6 of them have been more or less finished. And they are working on, I think, 3 more at the moment, I'm not sure about the number. One of them being on the nature legislation of course, in which you are involved. Why do you think environmental legislation has this degree of focus from the Commission? Do you have any explanation for that?

A: That's a good question. I think it is partly in response to political pressure from some MS's administration and, I think, a perception of policy makers that environmental legislation is imposing a significant burden. It is driven much by perception and not by fact, because in pretty much every case, when you look, the reason of how much of a burden of environmental legislation lies elsewhere.

T: Yes, there was just a really slight percentage that made up burdens coming from environmental legislation in the total picture.

A: Yes, and every burden that there is is significantly outweighed by the benefits that derives from the legislation.

T: Yes, they are not really taking that into account. Especially with the current Commission and the whole better regulation agenda, it's all about the administrative burdens; burden

burden burden. To what degree, do you think, do these burdens exist within the Birds and Habitats Directives? Are you aware of any that are actually causing any problems?

A: Well, the key here is to differentiate between what a burden is. So there is an administrative burden, which is for the MS authority to deal with in terms of implementation measures. For sure there is a burden. But the question is then whether that burden is necessary or unnecessary burden and whether it is excessive. All the studies that I have seen show that whatever burden there is isn't very big and it is more than justified by the benefits. When you look at other burdens, for example, on companies or business, again what they usually say is that those aren't excessive either and they are certainly not something that they pick out in their day to day business activities. At UK level, one of the businesses that was approached to participate in the Fitness Check said that we cannot answer the question on burden, because we do not differentiate between burden deriving from environmental law and other laws and that is partly just because it is part of the business landscape. They are not significant enough to be picked out by the business. The language that is used in respect of burdens is very loose, but very politically charged. So that leads to the automatic assumption that every burden is unnecessary and excessive. There will always be the burden of legislation. The question is whether that is disproportionate to the objectives that are being achieved. In the case of the Birds and Habitats Directives, it isn't.

T: And that's a general fact, according to you?

A: That's what the evidence shows. So the Stoiber Group, for example, claimed that the Habitats Directive was a significant burden. It did the research, which showed it was not. At UK level you have something called the Administrative Burdens Measurement Exercise, ABME. It studied whether the Habitats Directive imposed any unnecessary or excessive burden on the administrations. Again, it showed that there was no unnecessary or excessive burden.

T: So, they decided in the first place to do the Fitness Check on the nature legislation and I guess they did some preliminary research as well on the Birds and Habitats Directives. Why did they, according to you, decide to do the Fitness Check on nature legislation anyway if this degree of administrative burden isn't there anyway?

A: I am not sure of any research other than listening to MS government claims that the legislation was imposing too much of a burden. So at UK level you have a chancellor who claims that the Habitats Directive was a ridiculous burden on business. This led to a revision on UK level. The review showed that it was not. The logic then was a MS government having failed to find a way to weaken implementation at national level, then went looking for a way to weaken it at EU level and that could only be achieved by opening the directive and changing them.

T: So there was a lot of pressure from the UK.

A: I think the reason that those policy areas were chosen for revision, specifically the Birds and Habitats Directives, was in response to political pressure and ideology.

T: Okay and this political pressure, where do you think it came from, for the biggest part?

A: From the UK and the Netherlands would be the 2 that I'd pick out.

T: And then mainly from the business world, I assume.

A: Well, it would be wrong to say "from the business world". I think it would be more correct to say "from isolated, very vocal businesses, singular", so we know that the review at UK level was launched in response to 2 businessmen, complaining about 2 projects.

T: Okay, well they had a lot of influence then.

A: Yes, they got to see the chancellor. They were friends with the chancellor.

T: Yes, that explains it.

A: Yes, that's how that happened.

T: So, you are currently also heavily involved in the public consultation I believe?

A: Oh yes. I am part of a team of 20 or 30 people in the RSPB that are working on the directive's campaign, including the public consultation and public engagement activities. Your question is then: What other stakeholders take part in this?

T: Yes.

A: So there are 20 or 30 within the RSPB. We are working through something called the Joint LINKF Group. These are 4 separate, partly overlapping networks of NGOs within England, Scotland, Wales and Northern Ireland. For the consultation, we have put in a response that is signed up to by 100 NGOs from the network. That includes a very wide range of environmental NGOs, including National Trust, Bug Life, Plant Life and a host of other ones.

T: Okay, so but it's mainly environmental NGOs?

A: Yes. We are also working very closely with businesses like CEMEX at UK level, we keep them informed. We have also worked very closely with government departments, DEFRA and DECK, who have provided responses to try and influence their response and also working with the, or trying to work, with the industry that was selected as the stakeholder.

T: Okay. How important is the public consultation process in shaping the outcome of the Fitness Check?

A: Do you mean the public online consultation?

T: Well actually both steps.

A: The questionnaire?

T: Yes. How do you think this affects the outcome?

A: I think you should split this in 2, because the consultation of civil society in terms of gathering evidence is critical for getting evidence on the ground of what's going on. The reason for that is the degree of involvement from civil society and actually implementing

the directives on the ground. I think for RSPB that goes further than other BirdLife partners. We actually own and manage Natura 2000 sites, but nevertheless, many of the other partners are involved in the LIFE projects for example to implement the directives. There is a key thing there in gathering information and evidence from people on the ground and NGOs are in one of the positions where they are able to work with governments and industries and with other sectors, all at the same time and act as a sort of “implementation agent” between different parts of the puzzle.

T: Because this was different in the UK right? There was not that much influence from NGOs in Better Regulation?

A: I’m not sure what you mean. There has been a lot of interaction between NGOs and other sectors in the UK.

T: Okay, well I had a talk with Stephen Devlin from the New Economics Foundation and he explained me something about the situation in the UK before it actually all started in the EU, but it’s not really relevant to our interview.

A: I think that the experience of the RSPB has been that the Birds and Habitats Directives helped develop the relationships between industry and NGOs. The industry has not been able to get its own way and now, because these laws are effective, now works much more closely with the NGOs in order to ensure that they work within the rules in the directives. So, first off, the experience in the port sector was that industry was allowed to win, but as a result, the government lost. The government got taken to court by the European Commission and then had to provide compensation. This is in relation to port development in the London area. There was another development case where industry lost. This was the case of Ipton?, I think, where industry wanted to expand a port. They claimed to do so in breach of the BD rules. They were defeated by the NGOs and as a result, they lost a lot of money in terms of share value, but also the costs of legal proceedings. Now, the situation we are in is that industry works with NGOs to develop win-win solutions, so solutions that are good for nature and good for business and that has not held back business. If anything, it made business smarter. It has driven innovation. That’s what happened in terms of the impact of the directives. They forced business to think more sustainably.

T: That’s a good first step indeed.

A: The second question about the public consultation is about the second online consultation in terms of gathering public opinion. I think that is also very important. Those have an awareness raising exercise for the general public and in terms of demonstrating to the Commission and other stakeholders the depth of public feeling about nature. Our experience in the UK is that people care very much about nature. Polls suggest it’s not the most important thing. Other things like jobs or health may rank higher, but it’s still very important to them and the growing membership of RSPB indicates that, so we are at 1.1 million members at the moment and growing.

T: About improving the business environment, the whole better regulation idea that’s going on.

- A: Whether I feel like NGOs are being overruled by businesses in the better regulation agenda?
- T: Yes
- A: No, what I feel is that NGOs and business are being overruled by ideology. The evidence we have from progressive businesses is that they are quite happy with the directives if nothing changes. They've learned how to work with them. If anything, they don't need better regulation, they need better implementation. What they don't want is for the goal post to be shifted, because then all the guidance they got used to and all the processes they have in place become redundant and that costs a lot of money. So I think what's actually going on is that politicians are not keeping up with the businesses, which is the will to work with NGOs to find solutions.
- T: So better regulation in the sense of less regulation is actually not good for business?
- A: Yes.
- T: That's an interesting point.
- A: Also, evidence points out the fact that regulation drives innovation.
- T: I think you have already explained it a bit, but why are NGOs afraid of the Fitness Check on the BH Directives?
- A: I've touched on it. The reason why the NGOs are nervous about the Fitness Check is not really the Fitness Check itself. It's more about the politics around it. The thing that is making the NGOs nervous is that some policy makers and decision makers at the EU level seem to have prejudged the outcome of the Fitness Check and have decided that they want to change the directive, whatever the Fitness Check says. And this is the letter to Vella, which says "merge these two nature directives". So it seems to look like an evidence-led process and more like a politically influenced process or a process that will lead to a politically driven outcome, not an evidence-driven outcome.
- T: So you think that the decision was already made before the Fitness Check actually came into place, in a way?
- A: Yes, indeed and I think that fear is well-founded. There is evidence out there that Juncker and Timmermans have decided to get on with sorting the regulatory framework, almost regardless of what the evidence is. And this is partly in response to some of the things that politicians in the UK and the Netherlands have claimed.
- T: I don't want to take too much of your time.
- A: That's okay. Your last question is: What are the key drivers and forces behind the Commission's Fitness Check exercise?
- T: Yes.
- A: I think politics. I think the politics around being seen to be responding to citizens' fear for their economic future. The economic crisis put a lot of people out of jobs and out of work. So the policy makers are thinking that they must restart the economy and that the way to

do that is to cut regulation. What that ignores is the role of regulation in driving innovation and creating new markets. It also ignores public support for some of the things the EU does as a result of regulation. The Birds and Habitats Directives are delivering a better environment for Europe's citizens and they strongly support that, even in the UK, a Euro-sceptic country, 66% of the population thinks that there is a good reason for having EU environmental law.

T: So they also don't really respond well to the whole idea of better regulation. It almost looks like a last resort of trying to satisfy the European citizens.

A: Yes. It is like a misguided attempt to try and deliver on what the politicians think the EU citizens want. And of course, no business would ever say that they want regulation to be tougher. The more progressive ones actually think that it facilitates their business.

T: Especially the SMEs, I think. They need some sort of security around their business in order to function properly.

T: Okay, well, I think that sums it up nicely. Thanks a lot for your time. If you are interested, I can send you my work as soon as it's finished.

A: Yes, keep me posted! I will hopefully see you in Green Week. I'm coming to Brussels.

Pieter de Pous

Date: 07/05/2015

Means: Phone

T: In what ways have you been involved in Better Regulation/REFIT/Fitness Checks? Have you been actively following the proceedings of specific fitness checks in the past?

P: Yeah, well, up to my neck I would say that I have been particularly involved in the last months, years of the Stoiber High Level Group. Now it is going to the discussion about Better Regulation Package. In terms of Fitness Check we followed the one on Water Framework Directives, Waste Framework Directives and of course now on Natura 2000.

T: Yes, the hot topic at the moment. Like you said and also like I saw, you have been participating in High Level Group on Administrative burden. What role did you play in that group and how influential the group was in shaping Better Regulation?

P: I was formally an assistant to the member for environmental NGOs, Nina Renshaw. Then I sort of replaced her, not fully because the rules of the Group did not allow me to. But I was involved in drafting the dissenting opinion of the Stoiber Group and I think that helped a lot in a not giving much credibility in not giving a final recommendation, so the dissenting opinion has been widely advertised and used and noticed. But I think that the Group had a bit of a different function in a sense that it sort of gave attention and support to the agenda behind it. And quite a few of the ideas that were developed in the group has been taken up, or seems to be taken up by Timmermans in the new Better Regulation Package, including the exemptions to SMEs, regulating as a last resort, extending the focus on regulatory cost in general instead of just administrative cost, which makes a huge difference, because then you include also compliance cost. You get in conflict with the-polluter-pays principle. I think it was not so much Mr Stoiber himself, but it was more the people that used the group behind it. In the UK Sir Givence and from Germany Ludwig, in particular, who are sitting in sort of national level quangos for better regulation and they are very much pushing this idea of EU level quango for better regulation.

T: So in High Level Group you were basically fulfilling the NGOs input. Do you think there was a balanced decision making within a group? Or were there certain part that had more influence?

P: The group was not balanced from beginning. It was slightly more balanced in the last couple of years when it added four seats for public health, but they were always outnumbered by pro-industry, private interest groups, including a personal friend of Stoiber, Roland Berger from the Roland Berger Consultancy who would just fly in every once in a while to help out. Also COPA, BusinessEurope, national deregulation quangoes. So the whole thing was a sort of, I think you can best compare it with an AA club, where everyone just sits around and says how bad they were in passing all of these horrible regulations and then they all discovered better regulation and burden reduction programs and they would talk to each other about how much better they feel about themselves and the world and they would congratulate each other with doing such a courageous thing and encourage them to go on. You know, a very self-congratulatory atmosphere. Every once in

a while they would get this Commissioner to come up and say how much they have done and then tell them to do more. The whole thing became a bit of a joke at the end. I think in the earlier days it was much more serious, when John Hontelez was still the member. There was a more strict definition, methodology and investment studies done, so they actually did some useful work in the end, but that was sort of abandoned in the past 4 years.

T: Is that also the reason why it was finished off in 2014?

P: Well, the reason that it was finished off was that it was too close to Barosso and they needed something new and I think people were a bit fed up with Stoiber pretending that he was a Commissioner, requiring a lot of resources and time etcetera. I think they felt they needed to do something, something else, something different.

T: Just to come back to that dissenting opinion report, as you said before, you also supported the opinions that were expressed. What was the main reason for writing this document?

P: Well, it went quite fast, I mean, one thing that you have to know is that the preparation of the final report started in May 2014. And so, suddenly there was this final recommendation report written by Michael Gibbons, the UK member of the Group. That was basically it, so members fought back against it and said that this is outrageous and unacceptable etc. and then Stoiber first said, let's see, we can have a consensus on it or an agreement. Then he realized that it was going to be difficult, so we couldn't have a consensus, but a vote and that's it. I think it was particularly the Commission who said that a dissenting opinion should be given at least. Stoiber agreed to that and then we were basically given a blank page of paper to write down whatever we wanted for this dissenting opinion, which was between 4 members and assistants, a quick job.

T: So, it was just the people who signed the dissenting opinion who didn't completely agree with the final report of the Group?

P: Yes, exactly.

T: Interesting. Maybe we can move on to the Fitness Checks. Until now, I believe 6 of them have been more or less rounded off in total, out of which 2 were environment related: the one on the Waste Stream and the one on fresh water. Why do you think that environmentally legislation has this degree of focus? 2 have already been rounded off, 1 is ongoing. Do you think that there is a specific reason for that?

P: Well, I think there is a, you know... There isn't any supportive evidence, the admin burdens of the environment is 0,6 of the overall. So it's compliance costs and the fact that these things get confused, so the fact that the investments need to be made. Secondly, it comes on top of a lot of other existing burdens, most of which are caused by tax and customs policies and formalities. And then for a lot of people environmental protection is a relatively new, mostly nuisance thing that complicates life. There is this sort of .. Also you see that in the Stoiber Group they started to say that there is just no evidence for this, there is just an irritation factor. On that point, of course, you're going into gaga land. When you have an irritation factor because there are too many red lights in the traffic in the morning,

you are also not going to the police and ask to get rid of it. That's when things get a bit ridiculous. They had been getting a lot of weight and open ear in the previous Commission already and particularly in this one. It's basically becoming a bit of an ideological, empty environmental fight.

T: So basically, they are scrapping it, because they feel like they can?

P: Well, they are not scrapping it in the end, because the trouble or nuisance is transmitted at a very high political level. Ministers are talking to each other and asking here and there whether they could do something about it. By the time that translates into instructions to the services about what has to be done it becomes almost a normal policy evaluation. At least that's how it was with the Water Framework Directive. You know, you look at the evidence and actually, things are pretty efficient and fine, so not much has changed in the end. But if you look at the difference between the water and the waste, the questions in the Fitness Check on the Waste Framework Directives are already a lot more tough and difficult than the water Fitness Check. So now people are saying that the water fitness check wasn't a real one. They said that it was more of a warm up and that we should do another one which is more tough.

T: Do you also think that the outcomes of the waste Fitness Check will be more severe?

P: Well, the outcome of the waste Fitness Check was effectively integrated into the revision of the new waste package from last year. It's simplifying in a few things, so it's a bit ironic that the current Commission under the heading "better regulation" actually scraps the last Commission's proposal on simplifying and better regulating the waste policy. That shows that the trouble behind better regulation is that it's basically trying to hide the political debate as if it's sort of a technocratic exercise of what's good and what's better and what's the best way of doing something. Different people in the Commission have different views on that.

T: I think you have answered most of it already, but do you have a clear idea of what parties are deciding which policy areas are selected for revision?

P: Well, mostly the EPP, that's the main one. They are the ones who decided that the waste policy was to be killed or withdrawn and the air policy not. That was an EPP decision. I think the fact that the Birds and Habitats Directives got on the list is probably a EPP push. Not openly, they didn't ask for it openly, but in the corridors. S&D is just weak and doesn't really care that much.

T: And this is like in the same trend of being annoyed by it, so this will be the selected legislation?

P: Well, the EPP is closer to the commercial interests. Particularly in the countryside, you know the classic redneck constituency, so yes, they don't really enjoy being told that they shouldn't be ploughing up bird nests and moles or whatever. So that's where it comes from. The other side of course is that farming is, by all evidence, one of the major contributors to biodiversity loss. If you want to fix biodiversity, you need to do something with farming, so I think farmers do see that and go into counter defences.

- T: I think you already mentioned something about it before about the changes that were made on the waste policy. Could you tell me a bit more about that?
- P: It didn't do too much in the end, because they actually didn't focus the Fitness Check on the Waste Framework Directives itself but on what they call a "daughter" or "recycling" directives and also not on the electronic waste recycling directive, because that was also recently revised. The focus was reasonably limited and those policies were sort of overdue anyway, so they adjusted to the recycling targets of the Waste Framework Directives. So basically, the impact or damage of the Fitness Check was limited.
- T: Okay. Also what you are making quite clear is that improving the business environment is quite high on the agenda of the current Commission. Do you feel like NGOs are being strongly overruled by business in the whole better regulation agenda or do you feel like there is a genuine pushback from environmental NGOs? Do they actually have a say in what's happening?
- P: Well there is a pushback, which is for the moment only leading to some superficial, soothing phrases like "we are not here to screw the environment" or "we work with all stakeholders, including environmental". So, yes, there is a pushback. Let's put it this way. We are being overruled, there is a pushback, but it's not yet actually delivering things completely. That's still to be seen.
- T: About the Fitness Check on nature legislation at the moment. What I see here is that people are quite nervous about what the outcomes are going to be. That's the idea I get. What do you think are the main reasons for that and do you think that the NGO fear of the Fitness Check is well-founded?
- P: Well, yes I know where it comes from. You know that you are not being given a fair chance. It depends, I mean the experience of the waste and water directives was that most damage was averted, but then you also hear people saying that the water one wasn't very good. Actually, the impression you get a bit is that you go and do the whole Fitness Check, you jump through all the loops and there is an outcome. And then, the outcome is basically not good enough for whatever reason and they go and kill it anyway. So this is where the fear comes from. Whatever you do is never going to be good enough, because actually what they are after is the policy itself and the objectives. It will never be said explicitly and openly. It will always be packaged as "doing things better, more efficiently and without annoying less people". But, at the end of the day, everyone knows what's it about. Everyone who understand the way the game is played here.
- T: Okay, I guess that makes it quite clear. Maybe some sort of concluding statement, I don't want to take too much of your time. My overall research question is about what the key drivers and forces are behind the Commission's Fitness Check exercise. Do you think you can sum up in a few sentences what that might be?
- P: Well, the key driver is the way the Commission and the different institutions are reacting to the rising Euro-scepticism. So, I think in the Netherlands you see some interesting developments. So, the whole idea of the way the debate about the EU has sort of changed on basically a great, good thing and taking us away from the horrors of the last century to

basically a necessary evil to, for a lot of people in the Netherlands now, an unnecessary evil. The whole perception and debate around Europe has really changed. Starting of course with the referendum in the Netherlands and France the years after that. The reaction of a lot of mainstream political parties is basically just saying that you may not like everything, but it's basically still a good idea. So it's a way for the progressive groups or the thinking part of business to say that we do need the EU and that we do need to keep a minimum, but we can't annoy people too much and we have to make some sacrifices. So the whole logic is basically that you can't make the EU more democratic for the institutional route, because of institutional reform, changes in the Treaty and it puts more of a threat to the nation states, so you're trying to improve legitimacy for the output for what it delivers on. You do more stakeholder consultation etcetera. So they say that the only thing we need to do is fix the economy. In order to fix the economy, we need to be more intrusive in economic governance, economic policies, budgets and deficits and expansion and in order to do that we need to stop doing everything else. The environment is just seen as something else, unrelated to the economy, you just kill it and show that you are doing something different. I think people are genuinely confused about business lobbyists being upset about environmental rules and general public opinion. So when there is a new backlash on a new rule on vacuum cleaners, it's because of the industry who is pushing that back and then some newspapers are just copy pasting press releases from the industry. But, they sort of mistake that as the view on Europe as showing that Europe regulates too much and therefore we have to say that we do it differently. That's really what's driving this and why it is happening and the environment just happens to be a victim of that.

T: That sums it up nicely. That's it from my side. I would like to thank you very much!