The crusade against 'red tape':

How the European Commission and big business push for deregulation

A crusade for big business-friendly deregulation, waged during José Manuel Barroso's Presidency of the European Commission, shows no signs of ending. This neoliberal push to weaken or block new legislation and scrap existing rules, especially environmental and social protection laws, under the misleading banner of tackling "red tape", promoting "better regulation" or safeguarding "competitiveness" appears likely to expand with Jean-Claude Juncker's new Commission team.

Whilst British and some other national tabloids love to highlight examples of EU over-regulation, from dictating light bulbs and vacuum cleaners to banning olive oil jugs, they propagate exaggerated 'red tape myths' that overlook the benefits of regulation to people or planet. In fact, light bulbs and vacuum cleaners are both subject to the Eco-Design directive which achieves significant annual energy savings, playing a vital part in energy security and tackling climate change.

As with the EU olive oil jug case, of course it is not true that the EU never over-regulates or creates bureaucracy. However the media picture is nonetheless not just overblown, it provides a populist cover for the political agenda of big business lobby groups and enables the European Commission to claim popular demand for deregulating – or not regulating – dangerous substances, vital environmental protections, and workers rights. This deregulatory agenda has, over the last decade, entirely permeated the European Commission. With the entrenchment of REFIT (Regulatory Fitness and Performance Programme), the original goal of cutting 'unnecessary regulatory burdens' has turned into a crusade against any potential regulation that raise costs for business – and

protects the environment, workers, and consumers. For anyone concerned about the major threat to regulatory standards from EU-US trade agreement TTIP, for example, the accelerating crusade of the European Commission against so-called 'red tape' should also sound loud alarm bells.

This article casts light on the many visible and less visible deregulatory initiatives under the Barroso Commission, as well as looking forward to what's in store for Juncker's presidency. It highlights the vast amount of big business lobbying going on behind the scenes, and the various ways that industry interests have had privileged access in shaping this agenda. It shows how much of the 'red tape' that was cut has in fact been environmental and social regulations. It looks at some of the driving forces of deregulation, from big-business associations and ex-EU officials who've gone through the revolving door to business, to the push to keep the particularly 'red tape-phobic' UK in the EU. Particular attention is paid in the first section about the Barroso Commission, to the anti-red tape REFIT agenda and the High Level Group on Administrative Burdens. The second section on the upcoming Juncker Commission, focuses on its new structure, Juncker's political priorities and the creation of the First Vice President for Better Regulation.

Better Regulation, Smart Regulation and REFIT: the numbers

2002: Commission announces 'Better Regulation' programme, to simplify and improve the regulatory environment.

2007: Commission launches Action Programme for Reducing Administrative Burdens in the EU, and:
- sets a target to reduce administrative burdens to business by 25% by 2012;
- sets up the High-Level Group on Administrative Burdens, chaired by Edmund Stoiber, to advise it on cutting red tape.

2012: 'Smart Regulation' policy announced, emphasis on efficiency.

December 2012: REFIT launched, to eliminate unnecessary regulatory burdens and ensure EU laws are 'fit for purpose'.

October 2013: Commission announces 100 REFIT actions, including:
- 46 laws to simplify,
- 7 laws to repeal,
- 9 proposals for new regulation to withdraw,
- 47 Fitness Checks or evaluations to assess the efficiency and effectiveness of existing and planned legislation.

June 2014: Commission publishes first annual REFIT scoreboard, which lists:
- 133 initiatives identified by REFIT for further actions (simplifications, repeals, etc);
- 53 legislative initiatives scrapped in May 2014, 9 explicitly identified under REFIT.

October 2014: The High-Level Group on Administrative Burdens publishes its final recommendations.

1. Barroso's Deregulatory Agenda: REFIT, Stoiber, and Red Tape Watch

In this section, we look back at the Barroso Commission's crusade to cut red tape, and its gradual shift in approach from reducing *administrative* burdens which create bureaucracy to *regulatory* burdens on business. Beginning with a summary of Barroso's REFIT programme, we consider the trend towards environmental deregulation, exhibited by the slashing of proposals on the protection of soil and access to environmental justice. We then look at trade unions' critique of REFIT as an attack on worker rights, health and safety, and the flawed use of a rhetoric based on the competitiveness of small and medium-sized enterprises (SMEs). We look at how British Prime Minister David Cameron has led the European Council in its support of REFIT, and at the role of Fitness Checks and Impact Assessments in promoting big business interests. We then examine the influential role of the High-Level Group on Administrative Burdens, chaired by conservative politician Edmund Stoiber, and reveal how its recommendations mirror those of powerful industry lobbies. Finally, we take a glance at the European Parliament's 'Red Tape Watch'.

The Regulatory Fitness and Performance Programme (REFIT): The European Commission's main instrument to cut 'red tape' – its regulatory scissors – is known as REFIT. Launched by Barroso in December 2012, REFIT aims to "make EU law lighter, simpler and less costly,"[1] the latest initiative in the Commission's "Smart Regulation" agenda. It follows the achievement of a 2007 target to reduce administrative burdens to businesses by 25% by 2012. The Commission claims these regulatory cuts were equivalent to savings of €30.8 billion.[2] REFIT is an annual rolling programme, which means that every year the EU must screen its entire body of law to find new regulations to scrap, weaken or simplify. It is worrying how many of the rules REFIT cuts are labour and environmental protections.

In October 2013, the Commission announced over 100 planned REFIT actions, from repeals and withdrawals to simplifications and evaluations (see box 1).[3] It also welcomed the confirmation by business that REFIT is "necessary and important", whilst attempting to reassure critics that it doesn't "come at the expense of the health and safety of citizens, consumers, workers or of the environment".[4] However, the facts show the opposite. REFIT's first annual scoreboard published in June 2014 lists 133 initiatives it identified for further action, and boasts that among 53 pending legislative proposals the Commission had just scrapped, nine had been identified under REFIT (eg on access to justice in environmental matters and the protection of soil). It also lists several legislative proposals it had decided to drop (including on musculoskeletal disorders, environmental tobacco smoke and carcinogens and mutagens) and numerous planned repeals (eg legislation on the classification, packaging and labelling of dangerous chemical preparations). Furthermore, it states that it had started several Fitness Checks (including on waste, and the protection of birds and habitats) as a basis for further regulatory burden reduction. Finally, it announced new plans for withdrawing proposals for new legislation (eg on a minimum maternity leave period and a compensation fund for oil pollution damage), more planned repeals (eg concerning energy labelling and environmental reporting), more simplifications and more Fitness Checks (eg rules on car CO_2 emissions).[5]

It doesn't take an analyst to notice the number of environment, health or safety-related proposals that REFIT is chopping as perceived 'red tape'. Yet amazingly, the Commission also complained that its estimated cost savings from cutting this red tape

1 European Commission, Memo, REFIT: State of play and outlook - Questions and Answers, 18 June 2014, http://europa.eu/rapid/press-release_MEMO-14-426_en.htm

2 High Level Group on Administrative Burdens, Cutting Red Tape in Europe, Legacy and outlook Final Report, 24 July 2014, http://ec.europa.eu/smart-regulation/refit/admin_burden/docs/08-10web_ce-brocuttingredtape_en.pdf and European Commission, COM(2013) 685 final, Communication on Regulatory Fitness and Performance (REFIT): Results and Next Steps, 2 October 2013, http://ec.europa.eu/commission_2010-2014/president/news/archives/2013/10/pdf/20131002-refit_en.pdf

3 European Commission, Memo, REFIT: State of play and outlook - Questions and Answers, 18 June 2014, http://europa.eu/rapid/press-release_MEMO-14-426_en.htm

4 European Commission, COM(2013) 685 final, ibid.

5 European Commission, COM(2013) 685 final, ibid.

53 legislative proposals dropped in May 2014

These included proposals on:

- access to environmental justice;
- the protection of soil;
- establishing a European Agency for Health and Safety at Work;
- procedures for the authorisation and supervision of medicines;
- information to the public on medicines subject to prescription;
- the exhaust systems of motor vehicles.

Official Journal 153 of 21 May 2014

(estimated in 2013 at €3 billion) were not being fully delivered "due to amendments in the legislative process" ie changes made by the Parliament and Council, objecting to or amending the planned cuts. Damn democracy getting in the way!

Goodbye to healthy soil and environmental justice: With alarm bells already ringing at the number and significance of scrapped proposals aimed at social and environmental protection, the 53 withdrawals in May this year[6] include two that deserve special attention. First, the Framework Directive on the Protection of Soil. George Monbiot has described the torpedoing of this directive as a coup by the British government and the UK's farming lobby, the National Farmers' Union (NFU). The NFU lobbied aggressively against mandatory rules, reporting or sanctions on soil protection, and for the EU soil directive to be "thrown out" as red tape.[7]

The Commission justified scrapping it on the grounds that it didn't get sufficient support in the Council, and it is "good legislative management to withdraw proposals that are obsolete or do not advance in the legislative process", a practice which REFIT will continue.[8] The soil directive would have required landowners to protect soil from degradation, so its scrapping is doubly disturbing given that the Commission's own research showed soil biodiversity is under threat in over half of EU territory, with soil deterioration costing €38 billion a year.[9] So, as the proposal was not obsolete, ie it was needed to tackle a serious and EU-wide problem, the Commission's justification must have been the delay in the Council (where the proposal stalled in 2007 and was blocked again in 2009). This precedent sends a clear signal to big business interest groups that if they can stall a proposal that might dampen their profits, by lobbying Members of the European Parliament (MEP) allies or business-friendly member states, they can effectively stop it. Because REFIT promises to withdraw what doesn't advance fast enough.

A second significant example in this trend towards environmental deregulation – or the move from cutting 'red tape' to 'green tape' – is the withdrawal of the proposal on access to environmental justice. This draft directive was required to implement the third pillar of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. At present, the implementation of access to environmental justice across EU member states is "incomplete and piecemeal".[10] Although the proposal had been stalled since 2003, environmental groups have pointed out that both the European Court of Justice, and studies by the Commission, have demonstrated that the legal vacuum in this area is a "denial of the rights the EU is supposed to guarantee to its citizens under international law".[11]

Despite the need or obligation for these pieces of legislation, the Commission's High-Level Group on Reducing Administrative Burdens, chaired by Edmund Stoiber (see below) "especially supports" the

6 Official Journal 153 of 21 May 2014, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2014:153:FULL&from=EN Including withdrawals of: COM(2003) 624, 2003/0246/COD, Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters; COM(2006) 232 Proposal for a Directive of the European Parliament and of the Council establishing a framework for the protection of soil and amending Directive 2004/35/EC

7 George Monbiot, 'The farming lobby has wrecked efforts to defend our soil', *The Guardian*, 5 June 2014, http://www.theguardian.com/environment/georgemonbiot/2014/jun/05/the-farming-lobby-has-wrecked-efforts-to-defend-our-soil

8 European Commission withdraws 53 legislative proposals, http://ec.europa.eu/commission_2010-2014/president/news/archives/2014/05/20140521_1_en.htm

9 EuropeanVoice, Commission considers withdrawing stalled proposals, Dave Keating, 2 October 2013, http://www.europeanvoice.com/article/commission-considers-withdrawing-stalled-proposals/

10 EuropeanVoice, Commission considers withdrawing stalled proposals, *ibid.*

11 EEB, Birdlife, WWF Letter to Heads of State, 'REFIT – Fit for Growth' initiative, 22 October 2013 www.etui.org/content/download/12335/106024/file/EEB+press+release+Refit.pdf

withdrawals as evidence of "the Commission's ambition to achieve fast results". Stoiber's group recommends that "for the sake of credibility the impression should be avoided that repeals can be reconsidered within a few years' time", and points in particular to these two directives.[12] This recommendation is bizarre and outrageous: a democracy must allow for a proposal to be re-tabled, even if previously withdrawn, for example, because political majorities or external circumstances change. Their recommendation is not only an attack on vital environmental regulation, but an attempt to *indefinitely* ban any green law that falls into REFIT's clutches.

Trade union outrage at attack on worker rights, health and safety: REFIT has faced a barrage of criticisms from European trade unions, which argue that it could tear apart many EU rules on health and safety at work, social dialogue, and information and consultation with workers.[13] Analysis by the European Trade Union Institute (ETUI) points out that REFIT's presumption of regulation as 'burdensome' is imprecise and not defined".[14] The British trade union TUC has also complained that the Commission, rather than offering evidence for its deregulatory agenda, instead points to opinion polls showing a "perception" of over-regulation. This agenda, ETUI argues, relies on the specious assumption that every administrative burden is simply unnecessary red tape, when in fact "administrative procedures are essential for ensuring legal security, democratic control, and governance."

The unions also note a problematic issue related to REFIT attempting to exempt SMEs from regulations. The EU's current definition of an SME comprises 99% of all European businesses. An SME can have up to €50million annual turnover and 250 employees.[15] SMEs employ 66% of the EU workforce but are responsible for 82% of injuries and 90% of fatalities. Thus the unions point out, "any exemption for them will mean removal of protection from over half the workforce, many of whom are in the most dangerous occupations such as agriculture, waste and construction."[16] It is unjustified that workers in smaller businesses have lower protection, or greater health risks, merely because of their employer's size. Significantly, the European Association of Craft, Small and Medium-sized Enterprises (UEAPME), the major representative of SMEs at EU-level, also opposes exemptions for SMEs, arguing that it does not make sense: "What's the point in any legislation if you're exempting 99%?"[17]

Unions have also accused REFIT of "unpicking employment legislation",[18] with Barroso's REFIT announcement in 2012 declaring the end to all current initiatives connected to health and safety at work, including directives on two of Europe's biggest health issues, musculoskeletal disorders and carcinogens. This despite the fact that health experts had urged rules protecting workers against carcinogenic substances, that would cover substances behind genetic deformities (mutagens and reprotoxins).[19]

Another area of major concern is REFIT's implications for the process of social dialogue, a procedure set out in the EU Treaties which requires the Commission to assess and act in cases where social partners (the bodies representing employees and employers in a given sector) agree on the need for legislation.[20] This concern is based on the Commission's refusal to bring forward agreements reached between employers and workers in areas such as fisheries and hairdressing. Barroso has made derogatory remarks about not

12 High Level Group on Administrative Burdens, Cutting Red Tape in Europe Final Report, *ibid.*

13 ETUI, "Better regulation is not deregulation", says probable future Commission First Vice-President, 10 October 2014, http://www.etui.org/News/Better-regulation-is-not-deregulation-says-probable-future-Commission-First-Vice-President

14 ETUI, The EU's REFIT strategy: a new bureaucracy in the service of competitiveness?' Author, Éric Van den Abeele, Working Paper 2014.05 http://www.etui.org/Publications2/Working-Papers/The-EU-s-REFIT-strategy-a-new-bureaucracy-in-the-service-of-competitiveness

15 European Commission, Fact and figures about the EU´s Small and Medium Enterprise (SME), http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/index_en.htm and What is an SME? http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index_en.htm

16 Stronger Unions, 'Stoiber report: The dead hand of the European de-regulators' by Hugh Robertson, TUC, 14 Oct 2014, http://strongerunions.org/2014/10/14/the-dead-hand-of-the-european-de-regulators/

17 'Bonfire of red tape proposed in 'bid to keep Britain in EU': Guardian told that Edmund Stoiber's proposals are partly aimed at keeping the UK part of the European Union', *The Guardian,* 12 October 2014, http://www.theguardian.com/world/2014/oct/12/eu-business-deregulation-concern-worker-rights

18 Rethink Refit website, http://www.rethinkrefit.eu/#/20

19 ETUI, The EU's REFIT strategy: a new bureaucracy in the service of competitiveness?' *ibid.*

20 Articles 152, 154 and 155, TFEU. For more on social partners and social dialogue, see http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/europeansocialpartners.htm and http://www.etuc.org/who-are-european-social-partners and http://ec.europa.eu/social/main.jsp?catId=329&langId=en

wanting to "ban high heels for hair dressers", following tabloid press ridicule. But the hairdressing sector proposal was the outcome of a social partner agreement intended to address established risks of cancer and dermatitis. By suppressing the agreement, Unions argue that the Commission is failing to fulfil its role as guardian of the Treaties.[21]

UNI Europa, trade union federation for the service and skills sectors, believes that under Barroso there has been a paradigm shift from *administrative* to *regulatory* burden reduction.[22] ETUI describes how the goals of simplification and improvement have been gradually replaced by the fight against regulations as such. Big business lobbies have long been using the mantra of competitiveness to argue against 'costly' laws, for example that require high-levels of employee or environmental protection. Which is why the adoption of the same rhetoric by the Commission – and subsequent scrapping of regulations particularly in these two areas – is especially worrying. All things considered, trade unions are united in the fear that "the European Commission is on a one-way road to a regulatory free-for-all, and where the only voices to be listened to are those of business".[23]

Council support for REFIT led by Cameron: Despite all of the above concerns, the European Council has come out in support of REFIT: the October 2013 Council Conclusions urged for its rapid implementation.[24] At the same summit, British Prime Minister David Cameron presented a report by his Business Taskforce (six "business leaders", including CEOs of supermarket chain Marks & Spencer, alcohol giant Diageo, and pharmaceutical company BTG[25]) entitled 'Cut EU Red Tape'. At a media event with President Barroso and several EU leaders, Cameron praised the Council conclusions as "very strong on deregulation."[26]

'Cut EU Red Tape' report, proposals to scrap or weaken

Scrap proposals, including on:
- access to environmental justice;
- the protection of soil;
- minimum maternity leave;
- any regulation on shale gas (fracking);
- the requirement to write down health and safety risk assessments;
- environmental impact assessments;
- rules on food labelling.

Weaken proposals, for example:
- data protection rules, so they "don't place unreasonable costs on business";
- exempt small business from information and consultation of workers;
- an opt-out on the working time directive.

Cut EU Red Tape report, October 2013

The Cut EU Red Tape report has proved very influential. It promoted exemptions for SMEs, and explicitly recommended that the access to environmental justice, soil protection, and maternity leave directives be withdrawn.[27] All have since been scrapped under REFIT, and regulatory proposals on fracking have been replaced by voluntary guidelines for gas companies. It also advocated a so-called "common sense filter" for all new EU proposals, based on six COMPETE Principles. This recipe for red-tape reduction includes a competitiveness test (to pass, legislative proposals must show they boost European competitiveness) and a one-in, one-out system (for every new piece of legislation, an old one must go; new burdens must be offset elsewhere). It also includes an overall target to

21 ETUC resolution Stop the deregulation of Europe: Rethink Refit, 3 December 2012, http://www.etuc.org/documents/etuc-resolution-stop-deregulation-europe-rethink-refit#.VEEtZBbxtLM and ETUI, The EU's REFIT strategy: a new bureaucracy in the service of competitiveness?' ibid.

22 UniEuropa, 'EU Commission pursues its REFIT agenda, despite voiced opposition', 25 June 2014, http://www.uniglobalunion.org/news/eu-commission-pursues-its-refit-agenda-despite-voiced-opposition

23 TUC, Europe Gets The Cameron Disease, Hugh Robertson, 29 November 2013, http://strongerunions.org/2013/11/29/europe-gets-the-cameron-disease/

24 Conclusion EU-summit 24-25 October 2013 on Refit (repeated in Council conclusions 2-3 December 2013)

25 Taskforce members from Marks & Spencer, Kingfisher, ATG Access, BTG, and Diageo. See UK Government press release 'Government welcomes business-led plan to cut EU red tape', 15 October 2013, Department for Business, Innovation & Skills and Prime Minister's Office, 10 Downing Street, https://www.gov.uk/government/news/government-welcomes-business-led-plan-to-cut-eu-red-tape

26 David Cameron, Speech PM's European Council press conference: 25 October 2013, https://www.gov.uk/government/speeches/pms-european-council-press-conference-october-2013 see also Reuters, Cameron attacks EU red tape before reform drive, 15 October 2013, http://uk.reuters.com/article/2013/10/14/uk-britain-europe-idUKBRE99C0DW20131014

27 Cut the EU Red Tape, Report from the Business Taskforce (UK Government), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249969/TaskForce-report-15-October.pdf

reduce regulatory burdens on business, and exempting SMEs from EU law wherever possible.

This industry wish-list would have the effect of freezing any new law not primarily designed to increase big-business profits (eg environmentally or socially-based proposals). Worryingly, the REFIT agenda is moving us closer to this big business dream. UK commentators have seen the strength of REFIT proposals as a "testament to the PM's continued efforts in the European Council... to secure greater ambition on better regulation".[28] The June 2014 Council Conclusions once again heralded an "ambitious REFIT programme" as the route to competitiveness.[29]

Fitness Checks and Impact Assessments promoting big business interests: A key REFIT tool, Fitness Checks, are policy evaluations to assess if a regulatory framework is "fit for purpose", and identify "excessive burdens, overlaps, gaps, inconsistencies and/or obsolete measures",[30] including by consulting constituencies "interested in or affected by" a regulation. In practice this is another opportunity for narrow business interests to influence our common laws for their gain. The findings of a Fitness Check determine if a law will be revised, simplified, or scrapped. EU Nature legislation – the Habitats and Birds Directives, including Natura 2000 protected sites – is one of the first areas up for a Fitness Check.[31] The laws will be evaluated according to five criteria: effectiveness, efficiency, coherence, relevance, and EU added value. The efficiency criteria determine if the costs of implementation are "reasonable" or "out of proportion with the benefits", and seeks evidence of "unnecessary administrative burden".[32] Fitness Checks thus have a clear emphasis on (economic) costs and administrative burdens, rather than wider environmental/social benefits and protections.

Fitness Checks are also outsourced to professional services firms such as Deloitte, which was the consultant for Fitness Checks on EU legislation on protection of freshwater, and on information and consultation of workers.[33] Deloitte is the largest professional services firm in the world, providing audit, tax, consulting and financial advisory services to clients that range from Starbucks and Microsoft, to Siemens and General Motors.[34] A company that makes billions of euros in profits serving the interests of many of the largest corporations in the world, is assessing EU environmental legislation and laws affecting workers' rights, in order that the Commission can weaken or scrap rules deemed too burdensome to big business. This smells like 'the butcher testing its own meat'.

REFIT envisages ever-more regular evaluations of policies "to allow stakeholders including business, SMEs, and all other interested parties to suggest areas in which they see potential for Fitness Checks".[35] This offers a great opportunity for corporate lobbies; a chance to get the ball rolling towards deregulation in areas they deem too costly. UniEuropa has criticised and opposed the proliferation of Fitness Checks, Impact Assessments and ex-post evaluations throughout the legislative process as undemocratic, because they "neither involve the European Parliament nor the social partners".[36] In other words, these 'evaluations' shift power from the democratically elected Parliament, and its oversight role, into the hands of external experts, consultants and 'interested' stakeholders (predominantly business and industry lobbies), raising questions about legitimacy and democratic control.

Impact Assessments, which the Commission carries out on all new legislative proposals, already often allow economic considerations to trump social/environmental ones. But big business lobbies want more. The consistency of lobby positions of many

28 British Influence, Special Report: Cameron pushes Brussels to cut more red tape, http://britishinfluence.org/special-report-cameron-pushes-brussels-cut-red-tape/

29 ETUI, The EU's REFIT strategy: a new bureaucracy in the service of competitiveness?' *ibid.*

30 European Commission, INFORMATION NOTE 'Fitness check' on EU acts in the area of Information and Consultation of Workers http://ec.europa.eu/social/BlobServlet?docId=6671&langId=en

31 European Commission, Natura 2000 Fitness Check, http://ec.europa.eu/environment/nature/legislation/fitness_check/index_en.htm

32 European Commission, Mandate for the Habitats directive fitness check, http://ec.europa.eu/environment/nature/legislation/fitness_check/docs/Mandate%20for%20Nature%20Legislation.pdf

33 See Deloitte, IEEP, Support to Fitness Check Water Policy, June 2011, http://ec.europa.eu/environment/water/blueprint/pdf/safeguard_fitness_freshwater.pdf and ETUI http://www.worker-participation.eu/EU-Framework-for-I-C-P/Latest-developments/Fitness-Checking-the-I-C-Directives

34 See eg http://www2.deloitte.com/ie/en/pages/careers/articles/our-clients.html and http://ledgerlink.monster.com/benefits/articles/128-big-4-accounting-firm-profile-deloitte

35 European Commission, COM(2013) 685 final, *ibid.*

36 UniEuropa, 'EU Commission pursues its REFIT agenda, despite voiced opposition', 25 June 2014, http://www.uniglobalunion.org/news/eu-commission-pursues-its-refit-agenda-despite-voiced-opposition

industry-linked groups on Impact Assessments, and their pushing for an external Impact Assessment Board (IAB), is extremely telling.

Created in 2006, the IAB is chaired by the Deputy Secretary General, responsible for Smart Regulation, and composed of high-level Commission officials. It is tasked with examining draft Impact Assessments, and a positive opinion is needed for the Commission to adopt a proposal.[37] Many business lobbies push instead for an external, "independent" control body to oversee Impact Assessments, one which would presumably be populated by people close to the business community. Another business strategy is to demand that the existing IAB (which promotes the 'Smart Regulation agenda') gets "more teeth" (eg the power to red flag 'harmful' proposals). The third approach is for draft Impact Assessment's to be opened up for stakeholder consultation, ie to give business lobbies bigger influence even earlier on. These positions have been pushed for by big business lobbies BusinessEurope, EuroCommerce and Eurochambres,[38] as well as the European Round Table of Industrialists;[39] the UK government's Business Taskforce, author of the Cut EU Red Tape report;[40] influential neoliberal think tanks the Centre for European Policy Studies[41] and Open Europe;[42] Friends of the European Commission, an informal group of ex-Commission officials who've gone through the revolving-door into industry lobbying (see section on the Juncker Commission);[43] a group of right-wing MEPs calling themselves 'Red Tape Watch' (see below);[44] and the High-Level Group on Administrative Burdens (see below).[45]

It is clear that corporate interests want an external Impact Assessment system that structurally and systematically shuts down legislation that could cost them too much; one that only considers the economic costs of regulations, not the often unquantifiable environmental, health, social, or human rights-related benefits.

Stoiber's High Level Group on Administrative Burdens: The High Level Group on Administrative Burdens – more commonly known as the Stoiber group, after its chair Edmund Stoiber, conservative ex-politician and former Minister-President of Bavaria – was set up in 2007 to advise the Commission on implementing its Action Programme for Reducing Administrative Burdens.[46] Officially, the "independent" group concentrates on "how to simplify existing EU legislation" and make member states

37 European Commission, Impact Assessment Board, http://ec.europa.eu/smart-regulation/impact/iab/iab_en.htm

38 EuroCommerce, BUSINESSEUROPE, EUROCHAMBRES recommendation: "Develop an impact assessment body that is available to all three institutions, responsible for overseeing the process of gathering and analysing evidence and for scrutinising and supporting cost benefit analysis throughout the policy making process". Source BusinessEurope et al. 'Competitiveness First', September 2014, http://www.ueapme.com/IMG/pdf/140926_Competitiveness_4EBO_final.pdf

39 ERT has promoted the creation of an independent body "to guarantee that all business-related policy proposals are assessed for their expected effect on economic growth and, crucially, also for their initial cost for business." Source: CEO, Mad Men of the Roundtable, June 2013, http://corporateeurope.org/eu-crisis/2013/06/mad-men-roundtable

40 The UK government's Business Taskforce recommends that "a single independent Impact Assessment Board should scrutinise all EU Impact Assessments. Proposals which do not receive a positive opinion from the Impact Assessment Board should not proceed." Source: Cut the EU Red Tape, Report from the Business Taskforce (UK Government), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249969/TaskForce-report-15-October.pdf

41 CEPs proposes either "creating an external, independent body in charge of quality oversight...or...publishing draft impact assessments for stakeholder consultation". Source: CEPS, What can the Better Regulation Commissioner do for the EU?, Lorna Schrefler, Andrea Renda, Jacques Pelkmans, 29 September 2014, http://www.ceps.eu/book/what-can-better-regulation-commissioner-do-eu

42 Open Europe recommends "giving the EU's so-called Impact Assessment Board (IAB) more teeth... and the power to 'red flag' harmful EU proposals." Source: Open Europe, UK government's business taskforce launches push to cut EU red tape, http://openeuropeblog.blogspot.co.uk/2013/10/uk-governments-business-taskforce.html

43 Friends of the European Commission suggests the Impact Assessment Board is "externalized to another body which does not belong to the European Commission or should at least be enlarged to non-Commission officials" and that the Commission must "justify itself when the decision to ignore a negative IAB appraisal is taken". Source: Proposal by "the Friends of the European Commission" for a new organization', https://m.contexte.com/docs/4848/proposition-des-amis-de-la-commission.pdf

44 The EPP's Red Tape Watch proposes a European Regulatory Control Board, "an institutionalised control body preventing infringements of the principle of subsidiarity and measuring the cost of bureaucracy". Source: EPP Group sets up 'Red Tape Watch', EPP Group in the European Parliament, 16 September 2014, http://pr.euractiv.com/pr/smes-epp-group-sets-red-tape-watch-119645

45 Stoiber group recommendation: "empower an independent body to scrutinise the Commission´s impact assessments before the legislative proposal is adopted by the Commission and to assess the evidence base and costs and benefits supporting legislative amendments by the European Parliament and Council before the legislation is adopted". Source: Stoiber group final report October 2014, ibid.

46 European Commission, MEMO - The High Level Group on Administrative Burdens – Questions and Answers, 14 October 2014, http://europa.eu/rapid/press-release_MEMO-14-574_en.htm

more responsive to the needs of companies, particularly SMEs, when implementing EU legislation. The group's mandate has twice been extended and broadened by the Commission and its third mandate ends on 31 October 2014, following great fanfare surrounding its recent final report. In his speech at the report's presentation, Barroso expressed his "heartfelt gratitude" to "dear Edmund". Stoiber, in the report's forward, describes REFIT, and the accompanying re-direction of the Commission, as a "quantum leap". He calls for an "ambitious programme of proposals, targets and mechanisms for eliminating unnecessary and bureaucratic red tape".[47] Reflecting on the group's seven year history, the report bemoans that in some cases it took five years from making a suggestion to its adoption by the co-legislators. In other cases, the savings potential it calculated (ie the hypothetical estimate of how much money business would save) didn't come about due to the Commission not taking up their proposal in full – or the co-legislators amending it. Reading these complaints is a surreal experience, a topsy-turvy situation in which an unaccountable group of mainly business experts grumble about democracy derailing the full implementation of its deregulatory wish-list.

The Stoiber group final report makes numerous recommendations, including that the Commission:

* strengthens REFIT, sets a net target for reducing regulatory costs, and launches a new Action Programme on reducing regulatory burdens;
* introduces a system of "offsetting new burdens on businesses stemming from EU legislation by removing existing burdens from elsewhere" (with reference to the 'one-in, one-out' principle championed by the UK);
* comprehensively consults stakeholders on draft legislative proposals, including draft impact assessments;
* rigorously applies the "Think Small First" principle and competitiveness test to all legislative proposals, plus exempts "SMEs...from EU obligations as far as this is possible".

The report also advocates an "independent body to scrutinise the Commission´s impact assessments before the legislative proposal is adopted by the Commission and to assess the evidence base and costs and benefits supporting legislative amendments by the European Parliament and Council before the legislation is adopted." This, as already noted, and along with many of the other Stoiber recommendations, is a very similar demand to that of myriad business lobbies, designed to stop "uncompetitive" proposals outright.

The report's other proposals include a red-tape Ombudsman and requiring member states to explain when they are "gold-plating" – when member states implementing an EU directive go beyond the minimum level it sets. The use of this pejorative term 'gold-plating' can also be seen as an attempt to manipulate our perception of EU law. Many EU directives – particularly in areas like health and safety – are a "minimum floor that [no member state] should go below, but preferably beyond".[48] This is partly so that no member state is forced down to the level of the lowest common denominator. By qualifying everything that goes beyond the minimum as gold plating, the Stoiber group, and the business lobbies it shares its lingo with, is seeking to reset our presumptions, and national laws, to the bare minimum.

The composition of the Stoiber group was, from the outset, "clearly right-wing and highly business-oriented," with the vast majority of its 15 members coming from, or linked-to, industry interests, though appointed on "a personal basis".[49] These included representatives of the pro-GMO farming and agribusiness lobby COPA-COGECA, Polish business

47 High Level Group on Administrative Burdens, Cutting Red Tape in Europe, Legacy and outlook Final Report, 24 July 2014, http://ec.europa.eu/smart-regulation/refit/admin_burden/docs/08-10web_ce-brocuttingredtape_en.pdf

48 ETUC resolution Stop the deregulation of Europe: Rethink Refit, 3 December 2012, http://www.etuc.org/documents/etuc-resolution-stop-deregulation-europe-rethink-refit#.VEEtZBbxtLM

49 ETUI, The EU's REFIT strategy: a new bureaucracy in the service of competitiveness? *ibid.*

lobby Lewiatan (member of BusinessEurope) as well as current and former executives from technology giant Invensys, coffee conglomerate Illy, and 'clean' coal lobby group the Carbon Capture & Storage (CCS) Association.[50] The four exceptions to this big business bonanza were representing public health and environmental organisations, plus a consumer rights body and a trade union The latter two joined last year, following criticisms of the group as a corporate clique.[51] It is therefore very significant that these four civil society members published a "dissenting opinion" to the final report, strongly opposing its "outdated, deregulatory agenda".[52] The opinion argues that the "pursuit of reducing the overall costs of regulation on business will come at the expense of health, safety and environmental protection that these regulations provide". By promoting deregulation as a recipe for more jobs and growth, the group has "entered the realm of fact free policy making", which "fails to recognise the cost to society of not regulating".[53]

Specifically, the civil society dissenters oppose a target for reducing overall regulatory costs, on the grounds that it is arbitrary, short-sighted and could contradict the polluter pays principle; and reject regulatory offsetting on the basis that if a law is "serving a useful purpose it should not be removed, merely because there is a new and necessary proposal in another area." They also oppose a new body to scrutinise Commission Impact Assessments and the "costs and benefits" of amendments proposed by the Council and Parliament, not only due to fundamental questions of governance, composition, and legitimacy, but the likelihood that it would itself be a source of additional administrative burden! They argue that exemptions for SMEs, such a large proportion of the EU economy, would deprive policy making of much of its effectiveness, and that consultation on draft impact assessments would risk 'paralysis by analysis'. Finally, they argue that strengthening the 'competitiveness test' and promoting alternatives to regulation are political value-judgements, and so outside the group's remit.

Trade unions were also outspoken in their opposition to the Stoiber report. The TUC described those who believe deregulation is the ideological answer to every problem as "guilty of dangerous magical thinking".[54] ETUI described the proposal to systematically exempt SMEs, which represent 99% of EU business, from "burdensome" legislation (like health, safety, consultation with workers etc) as bizarre. It would remove protection from workers merely because of the size of their employer. Even the supposed beneficiaries, Europe's SMEs, seem to reject Stoiber's exemptions as senseless, with a UEAPME representative telling *The Guardian* that the proposal is "nonsense" and "pure populism."[55]

The Stoiber report fails to recognise that regulation is about giving protection, and so analysis of costs and benefits must begin by looking at the benefit to who or what is being protected. But the Stoiber group's vision is of the costs and benefits only to business.[56] It is perhaps no wonder then that Stoiber's proposed "bonfire of red tape" – reportedly partly aimed at keeping Britain in the EU – has delighted British officials. When presenting the report, Stoiber praised past suggestions from David Cameron.[57] Stoiber group member Michael Gibbons, chair of the UK's regulatory policy committee and CCS lobbyist,[58] is said to have "played an influential part in directing

50 Małgorzata Starczewska- Krzysztoszek, Chief Economist at Lewiaten, Riccardo Illy, Chairman of Gruppo Illy, see Pekka Pesonen, Secretary General of COPA COGECA - see member list in Stoiber group final report. Rick Haythornthwaite, former CEO of Ivensys, see e.g. http://www.independent.co.uk/news/business/news/haythornthwaite-steps-aside-after-keeping-invensys-afloat-6145773.html and Michael Gibbons, 2CO Energy and Chairman of Carbon Capture & Storage Association, see e.g. http://www.ccsassociation.org/about-us/our-staff/ .

51 Stronger Unions, 'Stoiber report: The dead hand of the European de-regulators' by Hugh Robertson, TUC, 14 Oct 2014 http://strongerunions.org/2014/10/14/the-dead-hand-of-the-european-de-regulators/

52 EPHA, [Joint press statement] Stoiber prescribing the wrong medicine, *14 October 2014,* http://www.epha.org/spip.php?article6192

53 *ibid.*

54 TUC, Workers would be put at risk by Stoiber proposals, says TUC, 14 Oct 2014, http://www.tuc.org.uk/workplace-issues/basic-rights-work/employment-rights/workers-would-be-put-risk-stoiber-proposals

55 'Bonfire of red tape proposed in 'bid to keep Britain in EU': Guardian told that Edmund Stoiber's proposals are partly aimed at keeping the UK part of the European Union', *The Guardian,* 12 October 2014, http://www.theguardian.com/world/2014/oct/12/eu-business-deregulation-concern-worker-rights

56 Stronger Unions, 'Stoiber report: The dead hand of the European de-regulators' by Hugh Robertson, TUC, 14 Oct 2014, http://strongerunions.org/2014/10/14/the-dead-hand-of-the-european-de-regulators/

57 Alex Barker, Stoiber moots plan to exempt micro-businesses from EU rules, Financial Times, 14 October 2014, http://www.ft.com/cms/s/0/f18632ce-53a2-11e4-929b-00144feab7de.html

58 Michael Gibbons, 2CO Energy and Chairman of Carbon Capture & Storage Association, see eg http://www.ccsassociation.org/about-us/our-staff/ .

Stoiber's thinking". Gibbons has defended the report's proposals, arguing that voluntary measures can be more flexible and cheaper than regulation.[59] Stoiber has claimed to the press that his group was able to "shrink" the European Commission. He also described Commission President-elect Juncker's appointment of First Vice-President for Better Regulation, Frans Timmermans, "a new central position primarily devoted to the issue of cutting red tape" as "a huge success for my work".[60]

The Stoiber group's final recommendations also strongly resemble demands published one month earlier by BusinessEurope, which notably were for:

* a net regulatory cost reduction target;
* regulatory offsetting;
* the publishing of draft impact assessments;
* and warning against gold-plating.[61]

BusinessEurope also published a joint position with EuroCommerce and EuroChambres in September, calling for "competitiveness to be the priority for any future policy initiative", and the rigorous application of the 'Think Small First' principle, elements also prioritised in Stoiber's final report.[62] It cannot be over-emphasised, when one considers this new wave of deregulatory agenda, how closely it mirrors the agenda of industry lobbies. In the Stoiber group's case, its tone, emphasis, and recommendations are an almost exact replica of big business demands.

As well as the clear business bias of his group, Stoiber himself faced conflict of interest and business lobbying accusations whilst its chair. The group was allocated large sums of public money to pay research consultants, and with a reported €17 million budget, it hired Deloitte (together with Cap Gemini and Ramboll Management). Tasked with quantifying costs to businesses from burdensome regulation, and to discover what legislation was most hampering them, the commissioned "reports proved what they wanted to prove. With exact figures". It was revealed that Stoiber had, during the same period, taken on a paid job as an advisor to Deloitte.[63] Stoiber was also caught in a controversy concerning the Dalligate affair, after lobbying former Health Commissioner Dalli, on behalf of a Bavarian tobacco company, to weaken the tobacco directive.[64]

Despite the concerns about the Stoiber group's pro-business bias, deregulatory agenda, and lack of legitimacy, the Commission seems eager to repeat its mistakes. In its June 2014 REFIT Communication, the Commission expressed its intention to issue a proposal for a new High-level Group, incorporating the High Level Groups on Administrative Burdens (the Stoiber group) and on Better Regulation (composed of national regulatory experts, but also promoting the rhetoric of 'removing regulatory burdens for SMEs' – see endnote[65]). This new group's mandate will be to assess the impact of EU regulation in member states, and contribute to the annual REFIT scoreboard, to the identification of "areas of regulation ripe for evaluation", and to evaluations and Fitness Checks.[66] Whether and in what form such a group emerges in the new Juncker Commission is something to watch out for.

59 'Bonfire of red tape proposed in 'bid to keep Britain in EU'', *The Guardian ibid.*

60 Euractiv, 'Edmund Stoiber: 'I have changed the EU', 26 September 2014, http://www.euractiv.com/sections/justice-home-affairs/mr-red-tape-i-have-changed-eu-308736

61 BUSINESSEUROPE, Smart Regulation, 25 September 2014, http://www.businesseurope.eu/Content/Default.asp?PageID=568&DocID=33331

62 EuroCommerce, BUSINESSEUROPE, EUROCHAMBRES, UEAPME, 'Competitiveness First', September 2014, http://www.ueapme.com/IMG/pdf/140926_Competitiveness_4EBO_final.pdf

63 ibid. and ETUI, 7 November 2012, Stoiber lobbying of former Commissioner Dalli: how independent are Commission expert groups really?, http://www.etui.org/News/Stoiber-lobbying-of-former-Commissioner-Dalli-how-independent-are-Commission-expert-groups-really. Also see https://lobbypedia.de/wiki/Deloitte and http://www.spiegel.de/wirtschaft/soziales/wechsel-in-die-wirtschaft-stoiber-engagiert-sich-bei-wirtschaftspruefer-deloitte-a-661055.html

64 FoEE, Commission must clear smoke about tobacco industry lobbying, January 2013, http://www.foeeurope.org/Commission-must-clear-smoke-tobacco-lobbying-170113

65 European Commission, High Level Group of National Regulatory Experts, http://ec.europa.eu/smart-regulation/impact/high_level_group/index_en.htm
This High Level Group for "Better Regulation" has an SME working group that has been following up the Commission's notorious 2012 "Top Ten consultation of SMEs on the most burdensome EU legislative acts for SMEs". This consultation, by inviting companies to complain about EU legislation, and suggesting a list of directives that protect workers' rights, health an safety etc, has been accused of creating a self-fulfilling prophecy whereby these directives are now presented by the Commission as the most burdensome for SMEs, underpinning its calls for deregulation. Source: ETUC resolution Stop the deregulation of Europe: Rethink Refit, 3 December 2012, http://www.etuc.org/documents/etuc-resolution-stop-deregulation-europe-rethink-refit#.VEEtZBbxtLM

66 REFIT – Commission making EU law lighter, simpler and less costly, Press Release, 18 June 2014 http://europa.eu/rapid/press-release_IP-14-682_en.htm and European Commission, COM(2013) 685 final, *ibid.*

The European Parliament's 'Red Tape Watch': The end of the Barroso II Commission has, since the European Parliament elections of May 2014, seen a new and more euro-sceptical parliament. In September 2014, centre right Members of European Parliament (MEPs) from the European People's Party (EPP) grouping announced to the press that they had set up Red Tape Watch.[67] The group's chairman, German MEP Markus Pieper, stated that "Too detailed regulation is a barrier to economic growth" and pledged that his group will be an "observatory against bureaucratic excess."

In response to Juncker's appointment of a First Vice President for Better Regulation, the group heralded the creation of "a portfolio for better regulation and deregulation at such a senior level". It also called for the post to have not only a veto right but "full intervention rights against excessive bureaucracy". Although Red Tape Watch co-opts the rhetoric of doing-what's-best for SMEs, it has a thinly veiled agenda of promoting big business-friendly policies and deregulation. Pieper for example argues that new data protection rules or regulating banks or energy costs would "create bureaucracy" or "induce costs" for SMEs But both data protection and banking regulation are deeply needed and strongly in the public interest; they should not be weakened because of this kind of excuse. Should there be any doubt about whose interests the group serves, its Vice-Chairmen feature an array of MEPs with close ties to big business lobbies, including:

* Austrian MEP Paul Rübig, member of notorious MEP-industry forum, the Kangaroo Group, whose board members include BP, Goldman Sachs, and Phillip Morris.[68] Rübig also earns €1001 to €5000 a month from the Austrian Federal Economic Chamber (WKÖ), "the voice of Austrian business";[69]
* Polish MEP Michał Boni earns €1001 to €5000 a month as an expert/advisor for Polish big business lobby group Lewiatan, whose members include Google, Tesco, and Alstom. Lewiatan is a also member of BusinessEurope. Both groups list cutting red-tape as a priority;[70]
* Danish MEP Bendt Bendtsen sits on the Advisory Board of Danish banking giant Danske Bank.[71]

67 Euractiv: EPP Group sets up 'Red Tape Watch', EPP Group in the European Parliament, 16 September 2014, http://pr.euractiv.com/pr/smes-epp-group-sets-red-tape-watch-119645

68 Kangaroo Group website, 'The Board Of The Kangaroo Group, Elected On 19 June 2013: Members From Industry, Services And Trade', http://www.kangaroogroup.eu/E/033_members_D.lasso

69 WKÖ website, https://www.wko.at/Content.Node/wir/Austrian_Economic_Chambers_Home.html
Paul Rübig DoI, last updated 06/06/2014, http://www.europarl.europa.eu/mepdif/2278_DFI_revo_DE.pdf

70 Michał Boni DoI, last updated 01/07/2014 http://www.europarl.europa.eu/mepdif/124896_DFI_revo_PL.pdf and Conferderation Lewiaten, The Voice of Business 2014, http://konfederacjalewiatan.pl/en/_files/publications/FOLDER_ENG_www_2014.pdf

71 Bendt Benson DoI, last updated 24/06/2014, http://www.europarl.europa.eu/mepdif/96705_DFI_revo_DA.pdf and Danske Bank website, 'Det rådgivende repræsentantskab', Advisory Board, https://www.danskebank.com/da-dk/om-os/ledelse/bestyrelse/Pages/Det-raadgivende-repraesentantskab.aspx

2. Juncker Commission: Structure, Priorities and Vice-President for Red Tape

New Commission President Jean-Claude Juncker takes office on 1 November 2014, with a newly created structure for the European Commission. In this section, we link the origin of Juncker's thematic, cluster-based Commission structure to several influential big-business-linked groups, most notably the shady Friends of the European Commission, an informal group of business representatives and a high-level ex-officials who've gone through the revolving door into the private sector. We then draw inferences from Juncker's political priorities and public declarations to describe his likely deregulatory path, before considering the role, and implications, of the First Vice-President for Better Regulation, Frans Timmermans.

Hidden architects of Juncker Commission structure: A tribute to the revolving door? The President of the European Commission has, with each successive Treaty, gained more powers. The President is now tasked with defining the College of Commissioners' political guidelines, determining its internal organisation, assigning Commissioners their portfolios and appointing Vice-Presidents. Juncker has used this prerogative to reorganise the way the Commission will work and the roles within it. He has organised his new Commission around a range of thematic clusters (Jobs, Growth, Investment and Competitiveness; Digital Single Market; Energy Union; The Euro and Social Dialogue; Budget and Human Resources – corresponding to key areas of Juncker's political guidelines – see below). Each cluster is overseen by a Vice-President, of which there are a total of seven (six plus the High Representative for Foreign Policy and Security).

Ostensibly to enable better focus, stronger cooperation and to break down silos within the college, the Vice-Presidents will steer and coordinate the work of "a number of Commissioners in compositions that may change according to need and as new projects develop over time".[72] All Vice-Presidents, who will act as "filters" for the Commission President, will have a veto right over any legislative initiative of Commissioners working under their watch.[73] One – the First Vice President, with a mandate for Better Regulation – will have a veto over them all (see below). Several of the Commissioner portfolios have also been "reshaped and streamlined", including the combination of the Environment and the Maritime Affairs and Fisheries portfolios, and the Climate Action and Energy portfolios. Thus, where there were four separate Commissioners for these areas, all of enormous significance, there are now two, both of which will contribute to the Vice-President overseeing the 'Energy Union' cluster (with no mention of environment or climate at the thematic high-level).

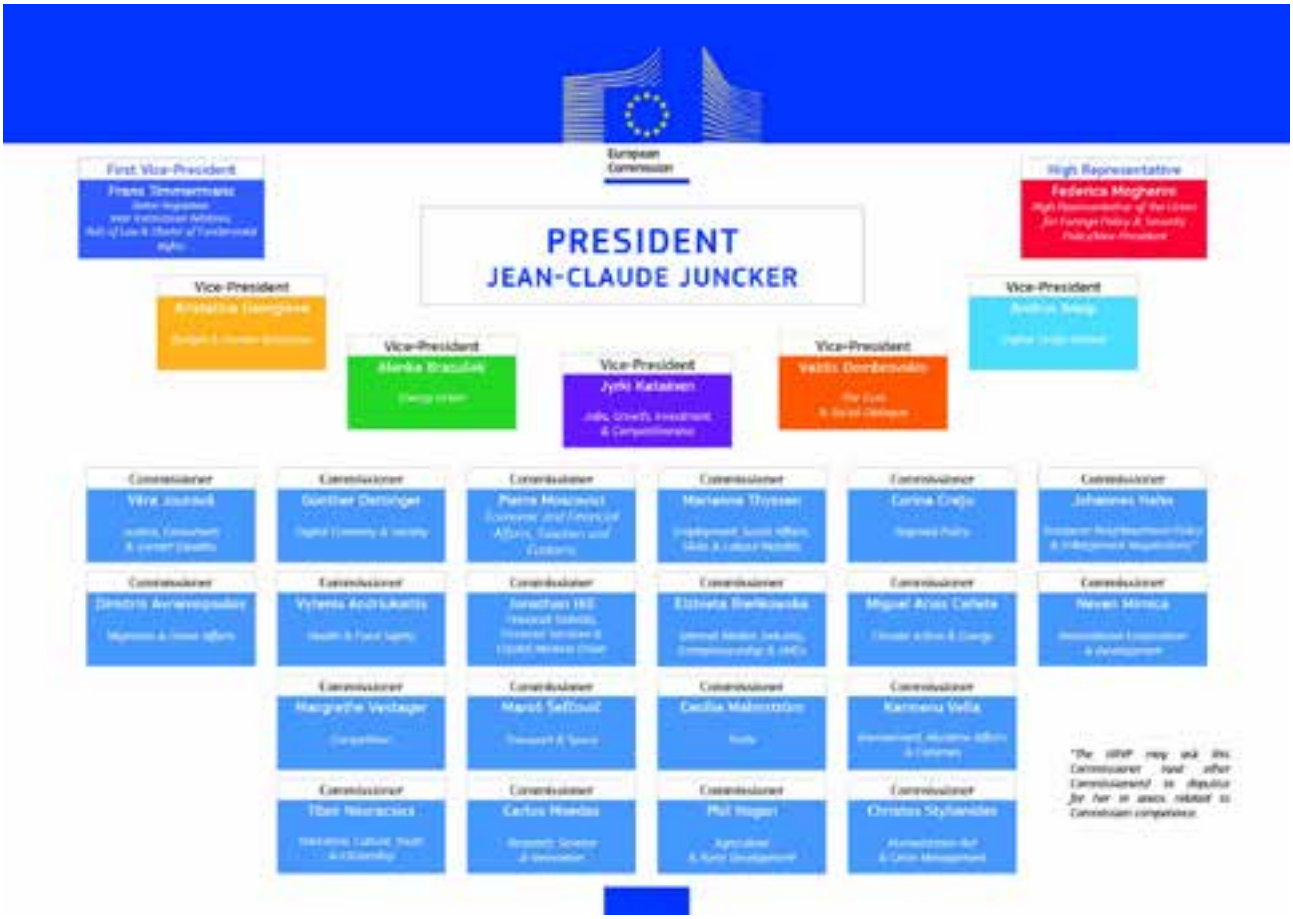
Juncker announced his new Commission structure in September 2014, but it bears an astonishing resemblance to a leaked proposal from a group called the Friends of the European Commission in July. The 'friends' argued that it is "of the utmost importance that the next President reforms the Commission's organizational set-up and way of functioning and redistributes all portfolios into thematic clusters around a system of Vice Presidents".[74] The proposal is almost a blueprint for the structure of Juncker's Commission.I It is revealing that many of the members of this shadowy but high profile group are former EU officials turned industry lobbyists. A notable example is Jim Currie, former Director General for Environment turned Senior Consultant for lobby firm Burson Marsteller.[75] With clients including Bayer, ExxonMobil, CEFIC, Pfizer, and BASF, Burson Marsteller's annual Brussels lobbying turnover is

72 European Commission, Press Release 'The Juncker Commission: A strong and experienced team standing for change', 10 September 2014 http://europa.eu/rapid/press-release_IP-14-984_en.htm#footnote-1

73 Euractiv, Timmermans to wield veto right over 'excessive bureaucracy' (UPDATED), 10 September 2014 http://www.euractiv.com/sections/eu-priorities-2020/dutch-eu-nominee-wield-veto-right-over-excessive-bureaucracy-308344

74 Friends of the European Commission, Proposal by "the Friends of the European Commission" for a new organization', https://m.contexte.com/docs/4848/proposition-des-amis-de-la-commission.pdf

75 Burson Marsteller website, Jim Currie, http://burson-marsteller.be/about/team/senior-consultants/#profile.jim.currie



around €9 million.[76] Currie has not only served as a Director of Total, but is also a former non-Executive Director of the UK bank RBS, from the time of its catastrophic collapse and £46bn public bail-out.[77] Other notable revolving door cases include Hervé Jouanjean, Former Director General Budget turned lobbyist/lawyer for Fidal International[78] and Nancy Kontou, Former Head of Cabinet of Commissioner Dimas who set up her own Brussels-based European affairs firm.[79] Finally, Jean Paul Mingasson, Former Director General of DG Enterprise turned BusinessEurope advisor, went from writing EU chemicals legislation REACH to lobbying against it.[80] Other members include business big wigs from Alstom and Airbus, plus two top lobbyists from EU public affairs firm Avisa Partners, whose clients range from the arms industry to financial ratings services.[81]

It has been reported that the Friends of the European Commission pushed for REFIT to be enhanced,[82] with the press revealing as early as July that their proposal was "likely to influence" Juncker, having received a "positive initial response from Martin Selmayr, Juncker's likely chief-of-staff" as well as advisers to Cameron and Merkel.[83] As perturbing as it is to think that a shadowy bunch of ex-officials turned industry lobbyists were the hidden architects of Juncker's new Commission structure, it appears that several other industry-linked think tanks also recommended a Vice-President-led cluster-based structure. These include

76 Lobbyfacts, Burson Marsteller, http://lobbyfacts.eu/explore/data/6146bcef681b48c2b819c813e3f766333

77 See for example http://investing.businessweek.com/research/stocks/people/person.asp?personId=8461768&ticker=RBS:LN&previousCapId=1585508&previousTitle=Goldman%20Sachs%20International; http://www.bbc.co.uk/news/business-13600060 ; http://www.scotsman.com/news/rbs-the-silent-nine-1-755397 ;

78 CEO, Revolving Door Watch: Hervé Jouanjean, http://corporateeurope.org/revolvingdoorwatch/cases/herv-jouanjean

79 Linked-in, Nancy Kontou, https://www.linkedin.com/pub/nancy-kontou/21/790/65a

80 ALTER-EU, Block the Revolving Door report, http://www.alter-eu.org/sites/default/files/AlterEU_revolving_doors_report_0.pdf NB. Mingasson went to work for UNICE, which has since become BusinessEurope.

81 Clients include ALCOA, Argus and McGraw Hill. Joint Transparency Register, Avisa Partners, http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=54210841652-13

82 Euractiv, 'Ex-Commission officials: 'reshape the EU executive", 1 July 2014, http://www.euractiv.com/sections/eu-priorities-2020/ex-commission-officials-reshape-eu-executive-303217

83 Irish Examiner, Streamline commission, says EU team, 3 July 2014, http://www.irishexaminer.com/business/streamline-commission-says-eu-team-274114.html

Notre Europe-Jacques Delors Institute[84] (which receives funding from GDF Suez, Macif, and Compagnia di San Paolo)[85] and the European Policy Centre[86] (which is part funded by BP, Johnson&Johnson, and Nestle),[87] plus EPP-affiliated think tank the Robert Schuman Foundation.[88]

The new Juncker Commission structure, with more mechanisms to filter out proposals that don't serve the competitiveness or better regulation agendas, is a coup for big business, but of deep concern for democracy. It is foreseeable that this more hierarchical structure will be harder for civil society groups to access. Not to mention the implications of the Vice President for Better Regulation (see below).

Juncker priority "An EU that no longer regulates the energy intensity of shower caps": Juncker's Political Guidelines, which form the basis for the clusters in his Commission, take their foundation from his oft-repeated catch phrase, "I want a European Union that is bigger and more ambitious on big things, and smaller and more modest on small things".[89] Of his ten political priorities, number one is 'A New Boost For Jobs, Growth And Investment', which once again puts considerable emphasis on cutting red tape and getting rid of burdensome regulation. Juncker has already taken up the populist, but unjustified, argument that "we must not stifle innovation and competitiveness with too prescriptive and too detailed regulations", emphasising SMEs in particular.

In his election campaign, Juncker was even more candid about his deregulatory agenda, pledging to step up Barroso's work reducing red tape and regulatory burdens. But, said Juncker, this requires clear policy choices:

> **"We can ensure that the EU no longer regulates the energy intensity of shower caps and coffee machines. But... to be honest about this, we will then have to abolish the EU's Eco Design Directive, which had the support of a majority of member states and of the European Parliament. As Commission President, I will... see whether Europe is ready to abolish this... in spite of our common commitment to a healthy environment and to fighting climate change."**[90]

In this remarkable statement, Juncker seems to imply that deregulation has become an end in itself, over and above the need to tackle climate change or ensure energy security, or even the fulfilment of democratically decided policies. Environmentalists have reacted to the Juncker campaign's flippant remarks about not wanting "to regulate toilet flushing" by pointing out that the annual savings on all devices covered by the Eco Design Directive by 2020 could be equivalent to more than 12% of the EU's electricity consumption in 2009.[91] Nonetheless, fear of a rapid unravelling of EU environmental policies is fed further by Juncker's appointment of a Vice President tasked with keeping "the competitiveness dimension prominently at the heart of the Commission's policy work",[92] and even more worryingly, as we will see next, of a First Vice President for "Better Regulation".

Junckers's Gatekeeper, Vice President for Red Tape: Juncker has created the unprecedented post

84 Notre Europe: The Jaques Delors Institute, policy paper, the commission reform: between efficiency and legitimacy, 7 July 2014, www.notre-europe.eu/media/eucommissionreform-bertoncini-vitorino-ne-jdi-july14.pdf?pdf=ok

85 Notre Europe - Jacques Delors Institute, Our partners, http://www.eng.notre-europe.eu/011-16673-Our-partners.html

86 European Policy Centre (EPC), A more effective structure for the Commission, 7 March 2014, Fabian Zuleeg, http://www.epc.eu/pub_details.php?cat_id=4&pub_id=4230

87 EPC, Programme Contributions, http://www.epc.eu/documents/5000_plus_contributions%202013.pdf

88 Robert Schuman Foundation, What should Brussels change? How can the functioning of the European institutions be improved rapidly, Jean-Dominique Giuliani, European Issue No. 317,16.06.2014, http://www.robert-schuman.eu/en/european-issues/0317-what-should-brussels-change-how-can-the-functioning-of-the-european-institutions-be-improved

89 Political guidelines (short) A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change, Strasbourg, 15 July 2014, http://ec.europa.eu/about/juncker-commission/docs/political-guidelines-short_en.pdf

90 Jean-Claude Juncker, New Growth without Debt: My Priorities as Commission President, Speech at the Suomalainen klub, Helsinki, 16 April 2014, http://www.epp.eu/new-growth-without-debt-my-priorities-commission-president

91 EuroPolitics, Less legislation in EU, but just as many lobbyists, Ophélie Spanneut, 22 September 2014, http://europolitics.info/eu-governance/less-legislation-eu-just-many-lobbyists

92 Jean-Claude Juncker, President-elect of the European Commission, Mission Letter to,Vice-President for Jobs, Growth, Investment and Competitivenes, 10 September 2014, http://ec.europa.eu/about/juncker-commission/docs/katainen_en.pdf

of first Vice-President for Better Regulation, Inter-Institutional Relations, the Rule of Law and the Charter of Fundamental Rights. Assigned to former Dutch Foreign Minister Frans Timmermans, Juncker has said Timmermans "will be my right-arm". His role includes a veto right over any proposal – including legislative initiatives – coming from any of the Commission departments.[93] In his mission letter to Timmermans, Juncker said his first and foremost focus would be coordinating the work on better regulation, working with the European Parliament and the Council to **remove unnecessary "red tape",** steering **REFIT** and ensuring the quality of **impact assessments**.[94]

Juncker also includes the provision that Timmermans should "take stock of experience" and report within the first year of the new Commission on how its approach to better regulation could be strengthened. Timmermans is also asked to discuss with the Council and Parliament, within the first three months of the Juncker Commission, all pending legislative proposals to determine whether to scrap them or not, in accordance with the principle of 'political discontinuity'. Juncker refers to this in his political guidelines as a mandate to identify red tape to "be swiftly removed".

Juncker has therefore laid down plans for a wholesale review of all legislative proposals incomplete at the end of the Barroso II Commission, based on a principle not previously accepted as applying to the Commission. Political discontinuity – the idea that legislative proposals not yet adopted lapse at the end of a legislature, unless explicitly re-endorsed – usually applies to elected governments, not administrative bodies.[95] This has been seen by some as a sign of Juncker's clear intention to pursue – and extend – the REFIT agenda. The Juncker Commission plans to take its scissors to ever greater proportions of EU 'red tape'. Timmermans is Juncker's instrument to do this. The press has also widely understood Timmermans' role as being designed (in part) to placate David Cameron, in the context of his party's euro-scepticism, his promise to deliver an in-out referendum on the UK's EU membership, and his attempts to urge "Brussels to cut back on EU regulation to help him persuade Britons not to vote to quit the EU."

At his European Parliamentary hearing on 7 October, Timmermans laid out what the *Financial Times* described as "a buffet of policies to please British eurosceptics"[96] including less red tape for small businesses, the removal of outdated legislation and more authority for national governments. Despite telling MEPs that "Better regulation is not deregulation, it is not ideologically driven. It is about reducing unnecessary 'red tape', especially for SMEs", the EPP – the political grouping that nominated Juncker – has praised the creation of Timmermans' role as a "portfolio for better regulation and deregulation". Deregulation is clearly part of the agenda.

As well as the mandate and power of the First Vice President role, the choice of Frans Timmermans is also indicative of the Juncker Commission's deregulatory agenda. As Foreign Minister, Timmermans was a key player in the Dutch Government's 2013 'subsidiarity review'. Whilst taking the principle of subsidiarity (that decisions should be taken as closely to citizens as possible, and the EU acts only where there is clear EU-added value in doing so) seriously is a legitimate concern, this review's approach was distinctly about cutting "regulatory burdens" on business. Identifying 54 areas of EU law it wanted scaled back or frozen,[97] it also proposed that the Commission explicitly details implementation costs of EU legislation and uses impact assessments more.[98] Even more signif-

93 Euractiv, Timmermans to wield veto right over 'excessive bureaucracy' (UPDATED), 10 September 2014 http://www.euractiv.com/sections/eu-priorities-2020/dutch-eu-nominee-wield-veto-right-over-excessive-bureaucracy-308344

94 Jean-Claude Juncker, President-elect of the European Commission, Mission Letter to Frans Timmermans, First Vice-President, in charge of Better Regulation, Inter-Institutional Relations, the Rule of Law and the Charter of Fundamental Rights, 10 September 2014, http://ec.europa.eu/about/juncker-commission/docs/timmermans_en.pdf

95 European Voice, 'Juncker ready to drop Barroso's work: President-elect plans review of unapproved legislative proposals', Toby Vogel 2 October 2014, http://www.europeanvoice.com/article/juncker-ready-to-drop-barrosos-work/

96 'Frans Timmermans promises to slash EU red tape', *Financial Times*, 7 October 2014, http://www.ft.com/cms/s/0/694d527e-4e35-11e4-bfda-00144feab7de.htmlv

97 Open Europe, Dutch government: 'Time of 'ever closer union' in every possible area is behind us', 21 June 2013, http://openeurope-blog.blogspot.co.uk/2013/06/dutch-government-time-of-ever-closer.html

98 Dutch government, 'European where necessary, national where possible', 21 June 2013, http://www.government.nl/news/2013/06/21/european-where-necessary-national-where-possible.html and The Economist, Where Brussels mustn't go, June 25th 2013, www.economist.com/blogs/charlemagne/2013/06/netherlands-and-eu and Dutch government, Testing European legislation for subsidiarity and proportionality – Dutch

icantly, it recommended that the Soil Framework Directive be scrapped, the maternity leave directive permanently binned, mandatory proposals on energy efficiency avoided, and that safety, health and welfare legislation be replaced with greater self-regulation. These proposals fit neatly into the REFIT agenda, and match many Stoiber group recommendations. And, like the Commission's red tape reduction agenda, they were formed hand in glove with big business, based in part on consultation with the likes of Shell, ING group, and Dow Chemical Company.[99]

3. Conclusions: cause for concern

A deregulatory agenda favourable to big business interests has, over the last decade, entirely permeated the European Commission. With the entrenchment of REFIT, the goal of "cutting red tape" has morphed into slashing regulations that raise costs for business – and protect the environment, workers and consumers. Worryingly, an agenda started by Barroso – from 'better' and 'smarter' regulation to REFIT and the Stoiber group – looks set to continue and expand under Juncker. The structure of Juncker's Commission, and its origins, plus the appointment of a Vice-President for Better Regulation – a new god of red tape, that can smite down any proposed law that burdens business – are cause for serious concern. In face of this threat to public-interest laws and regulations that protect our health, employment and planet, civil society must begin to counter-balance the deregulatory push by big business – and its friends in the Commission.

Author: Rachel Tansey

Editor: Katharine Ainger

Cover picture: mattjeacock
Design: yichalal.be

list of points for action, Policy Note, 21 June 2013, http://www.government.nl/documents-and-publications/notes/2013/06/21/testing-european-legislation-for-subsidiarity-and-proportionality-dutch-list-of-points-for-action.html

99 *ibid.*

CEO

Friends of the Earth Europe

Published by Corporate Europe Observatory, Friends of the Earth Europe, October 2014.