**Fish and Ships: The Development of the EU as a Sea-Policy Actor**

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*Abstract*

*This paper will offer an overview of the development of EU competences and policies in respects to the seas, which made the EU a sea-policy actor, what we may refer to as the Blue Europe. It started modestly with the Treaty of Rome establishing the European Economic Community (EEC) in 1958 mentioning fisheries products under the treaty chapter on the Common Agricultural Policy (CAP) and sea transport under the chapter on a Common Transport Policy. With different speeds the EEC and later the European Union (EU) have developed full-fledged policies on fisheries, maritime transport, and marine environment. There are now two naval operations, one off Somalia’s coast and one in the Mediterranean, dealing with pirates and smugglers of illegal immigrants. The latter activities, however, will not be covered in this paper.*

*The obvious analytical question is, can some of the dominating political science theories of integration and policy-making help us explain the development of the EU as a sea-policy actor? The paper will try to give some tentative answers.*

*The paper will focus on the marine and maritime policies that fall under the so-called Community method, i.e. a policy-making method which includes Commission initiative, possibilities of qualified majority voting (QMV) in the Council, jurisdiction of the Court of Justice (CJEU), and gradual increasing of influence of the European Parliament (EP), which has become a co-legislator under the Ordinary Legislative Procedure (OLP) introduced by the Lisbon Treaty in 2009. These policies include fisheries, maritime transport and marine environment and safety policies.*

**Introduction**

Establishing the “Blue Europe”, i.e. European Union (EU) policies covering sea-related activities, has been a gradual process, first based on the original Treaty of Rome establishing the European Economic Community (EEC) in 1957 (in force in 1958). Later reform treaties added additional treaty-bases, allowing for an expansion of the functional scope of this Blue Europe. The treaties have also outlined the policy-making procedures for the different policies. In this connection, the trend has been towards more efficient decision-making procedures, e.g. by moving from unanimous decision-making to qualified majority votes (QMV) in the Council (of Ministers). In addition to original treaty provisions and changes in these the European Court of Justice (ECJ) - now Court of Justice of the European Union (CJEU) - has also contributed to the making of the Blue Europe by important judgements interpreting the treaties and secondary legislation.

To trace the development of the Blue Europe we need to start with the treaty bases, which were included for fish and ships from the beginning but further developed over time. The beginning of specific policies will be situated in time and context and successive reforms will be studied in subsequent sections of this paper.

**Theory and Approaches**

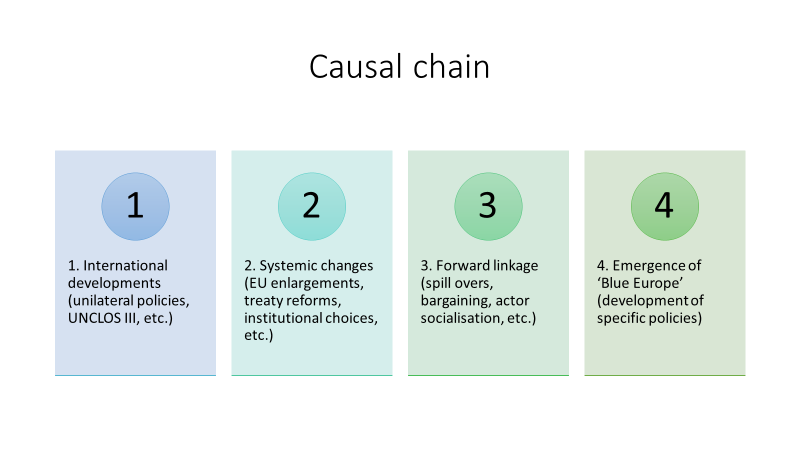
The paper will endeavour to use political science conceptual frameworks, including integration theories, especially neo-functionalism and liberal intergovernmentalism. The expectation is that liberal intergovernmentalism’s focus on the three phases of national preference formation, interstate bargaining, and institutional choice, may give an applicable framework for studying the relevant provisions in the founding treaties and later amendments of these (Moravcsik 1998, Laursen 2017). Moravcsik, who developed liberal intergovernmentalism, concluded that economic interests were decisive in the process of preference formation, the preference intensity affected the bargaining process greatly (Nash bargaining), and the ‘pooling and delegation’ of sovereignty, which characterised European integration institutions, could be seen as an effort to create ‘credible commitments.’

When it comes to explaining the development of the various policies, the question is asked whether neo-functionalism (especially Lindberg and Scheingold 1970) and various institutionalist theories can contribute with useful concepts and propositions about the role of the institutions in the observed developments. Historical institutionalism, because of the stress put on the role of supranational institutions as well as path dependency may possibly be relevant (Pierson 1996).

Lindberg and Scheingold studied the then existing European Community as a political system. Demands and leadership were singled out as particularly important variables. The specific mechanisms that could be used to explain European integration included functional spill-over, log-rolling and side-payments, actor socialisation and feedbacks. If plans to develop new policies were successfully executed Lindberg and Scheingold talked about ‘forward linkage.’ If they failed, they talked about ‘output failure’. They also included the category of ‘systems transformation’, which was a more fundamental change than forward linkage. While forward linkage was incremental, systems transformation was step-functional change, usually requiring a new interstate bargain.

Both liberal intergovernmentalism and neo-functionalism focused very much on internal processes in the EC/EU. However, as we shall see, external factors have been important drivers for the EU’s marine and maritime policies, so we need a framework that includes these external factors. Some of the factors are summarized in a simplified causal chain (fig. 1).

**Figure 1: Causal chain of the development of the Blue Europe**



Source: Compiled by the author.

The first component in the chain can be considered independent variables, the second and third components as intervening variables, and the fourth component as the dependent variable. The different theories that may be applied will put emphasis on different structures, agents and processes. This in turn will lead to different hypotheses. Without giving a detailed account of these, a summary is suggested in table 1.

**Table 1: Theories and Hypotheses**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Model/theory** | **Structure** | **Agency** | **Process** | **Hypothesis** |
| IR theories:   * Realism * Liberalism | National sovereignty  International anarchy  Complex interdependence  Sensitivity and vulnerability of states | National governments  Third countries  International organisations | Governmental leadership  Agenda setting  Learning processes  Linkage strategies | Primacy of national security  Importance of access to resources  Importance of international regimes/institutions |
| Classical integration theories:   * Liberal inter-governmentalism * Neo-functionalism | International interdependence  Power depends on saliency of issues  Pluralistic societies  Transnational communities | Member states  European Commission  European Parliament  ECJ | Inter-state bargaining  Supranational leadership  Coalition making  Actor socialisation | The Member States are the main actors  Power in bargaining depends on salience of issue for actor  Pooling and delegation to get ‘credible commitments’  Functional spill-over  Bargaining exchanges  Feed-back |
| Neo-Institutionalist theories:   * Historical institutionalism * Sociological institutionalism | Interdependence  Ideational structures | European Commission  European Parliament  ECJ  Community institutions  NGOs  Civil society | Inter-institutional negotiations  Framing of issues  Rhetoric | The Member States cannot control integration  Unintended consequences  Path dependency  Major change rare  Importance of ideational factors  Framing and shaming (rhetorical action) can produce change |
| Domestic politics | Segmented societies with corporatist traits  Fragmented societies with interest conflicts | Voters  Interest organisations  National parliaments  Bureaucrats | Electoral battles  Lobbying  Party tactics  Bureaucratic politics | Great influence of sub-national interests |

Source: Compiled by the author, see also Laursen 1983; Laursen 1986, and Laursen 1993.

**Treaty Bases of the Blue Europe**

The EU is based on the principle of conferral. The ‘constitutive’ treaties give a framework for what the EU can do and not do, with some flexibility. Without going into detail, the most important treaty bases for the Blue Europe are given in table 2.

**Table 2: Summary of Treaty Bases of the Blue Europe**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **1958 Treaty of Rome establishing EEC** | **1987 Single European Act (SEA) - 1987** | **1993 Treaty of Maastricht establishing EU** | **1999 Treaty of Amsterdam** | **2003 Treaty of Nice** | **2009 Treaty of Lisbon** |
| Fisheries and transport | Environmental policy gets treaty basis | QMV for environment policy with exceptions  Explicit mentioning of transport safety | Communitarization of some JHA policies started – including asylum and immigration - | Autonomous EU defence policy confirmed indirectly by establishment of Political and Security Committee, to exercise “political control and strategic direction of crisis management operations” | Ordinary legislative procedure (OLP) extended to most marine policies, empowering the European Parliament n(EP)  The Common Security and Defence Policy (CSDP) remained intergovernmental |
| Article 38  Article 84 | Article 130r | Article 130s  Article 75 | Articles 61-66 (ex. 73i-73q) | Article 25 | Fisheries: Article 43 TFEU  Transport: Article 91 TFEU  Environment, with exception: Article 192 TFEU |

Source: Compiled by the author

The Treaty of Rome, which established the European Economic Community (EEC) in 1958, had important provisions that would eventually allow the EEC to start developing policies relating to various marine and maritime activities, especially fishing and shipping.

Part Two, Title II of the Treaty of Rome dealt with agriculture and Title IV dealt with transport. These were the main bases at the outset for marine related policies. Article 38 stipulated:

The Common Market shall extend to agriculture and trade in agricultural products. Agricultural products shall mean the products of the soil, of stock-breeding and of *fisheries* as well as products after the first processing stage which are directly connected with such products (emphasis added).

So, fisheries products were included under the Common Agricultural Policy (CAP) products.

Article 43 outlined the decision method:

The Council, acting during the first two stages by means of a unanimous vote and subsequently by means of a *qualified majority vote* on a proposal of the Commission and after the Assembly has been consulted, shall issue regulations or directives or take decisions, without prejudice to any recommendations which it may make (emphasis added).

Since the transition period was 12 years, divided into three stages of four years (art. 8), qualified majority voting (QMV) was to be introduced after 8 years, i.e. in 1966. Proposals from the Commission and QMV in the Council were important aspects of the so-called Community method, applied to the CFP after the transition period. Notice, the Assembly, which later became the European Parliament (EP), was to be consulted only. Since the Lisbon Treaty entered into force in 2009 the EP has become a co-legislator with the Council of Ministers in fisheries policy as well as the other sea-related policies.

Concerning transport, the treaty stated in Article 74 that the objectives of the treaty regarding transport “shall … be pursued by the Member States within the framework of a common transport policy.” Article 75, referred to the “special aspects of transport”, and outlined decision making: Commission proposal, after consultation of the Economic and Social Committee and consultation of the Assembly. Initially, during the transition period (of 12 years) unanimity would be required in the Council of Minister, afterwards a QMV would become a possibility. According to the same article the common transport policy would include:

(a) common rules applicable to international transport effected from or to the territory of a Member State or crossing the territory of one or more Member States;

(b) conditions for the admission of non-resident carriers to national transport services within a Member State; and

(c) any other appropriate provisions.

Later Article 84 specified:

1. The provisions of this Title shall apply to transport by rail, road and inland waterway.

2. The Council, acting by means of a unanimous vote, may decide whether, to what extent, and by what procedure appropriate provisions might be adopted for *sea* and air *transport* (emphasis added).

So, although not included at the outset, sea transport could be added later by a unanimous Council decision. Such procedure has later become known as a *passerelle* clause.

Environmental policy was not included in the Treaty of Rome, but when the EEC started to develop an environmental policy, especially from 1972, there were general principles in the treaty that could be used. Most importantly, the famous article 235 specified:

If any action by the Community appears necessary to achieve, in the functioning of the Common Market, one of the aims of the Community in cases where this Treaty has not provided for the requisite powers of action, the Council, acting by means of a unanimous vote on a proposal of the Commission and after the Assembly has been consulted, shall enact the appropriate provisions.

This article survived later treaty changes. Since the entry into force of the Lisbon Treaty in 2009 such measures now also require the consent of the European Parliament (Art. 352 TFEU). It is nowadays sometimes referred to as a flexibility clause.

The Treaty of Rome also had a chapter on Rules Governing Competition. Article 85 prohibited “any agreements between undertakings, decisions by associations of undertakings and any concerted practices which may affect trade between the Member States and which have as their object or effect of prevention, restriction or distortion of competition within the Common Market.” Article 86 prohibited enterprises from taking “improper advantage of a dominant position” within the Common Market. There were further rules about state aid (Article 92). Such aid, “which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.” As we shall see, competition policy has mainly affected maritime transport, which is now largely covered by the EU’s competition policy.

The Treaty of Rome did not include foreign, security or defence policy, nor any Justice and Home Affairs (internal security, including border control and immigration) policies. The Treaty of Maastricht added these areas as two separate pillars from 1993, but as intergovernmental cooperation, not applying the Community method, which was used for fisheries, transport and later environmental policies.

A specific chapter on environmental policy was added by the Single European Act (SEA) in 1987. Article 130r stipulated that action by the Community relating to the environment shall have the following objectives:

— to preserve, protect and improve the quality of the environment,

— to contribute towards protecting human health,

— to ensure a prudent and rational utilization of natural resources

The SEA also introduced the subsidiarity principle for environmental policy:

The Community shall take action relating to the environment to the extent to which the objectives referred to in paragraph 1 can be attained better at Community level than at the level of the individual Member States (art. 133(4)).

The SEA allowed Member States to maintain or introduce “more stringent protective measures compatible with” the Treaty (Article 130t).

Concerning decision-making, the SEA stipulated unanimity and consultation of the EP as the procedure to be followed for environmental legislation:

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall decide what action is to be taken by the Community.

The SEA, however, introduced QMV for much internal market legislation in Article 100a. This could include some environmental legislation.

The Treaty of Maastricht took the next step by introducing QMV for some of the remaining parts of environmental policy, those not trade-related, where QMV could already be used. The EP was only to be consulted (according to the Article 187c procedure). However, it left a few exceptions where unanimity would still be required.

The Maastricht Treaty did not include changes of importance for fisheries. It did include an addition with importance for maritime transport policy by mentioning “measures to improve transport safety” in Article 75 (now Art. 91 TFEU).

The Maastricht Treaty added two intergovernmental pillars to the Community pillar, the Common Foreign and Security Policy (CFSP), including defence, and Justice and Home Affairs (JHA) cooperation.

The developments in the Amsterdam and Nice treaties mentioned in Table 2 are less important for this paper, which will not deal with defence and immigration policies.

The Treaty of Lisbon, the latest major treaty reform, extended the use of co-decision, now called the Ordinary Legislative Procedure (OLP) in the Treaty, to several policy areas, including the three original Blue Europe policies: fisheries, maritime transport, and the marine environment and safety. This means an important empowerment of the European Parliament (EP) in these policy areas. Since the EP is often seen as the more environmentally friendly institutional actor, this leads to the question: Will the EP contribute to making the Blue Europe greener?

**The Common Fisheries Policy (CFP)**

The Common Fisheries Policy (CFP) was the first Blue-Europe policy to start being developed in 1970 prior to the first enlargement in 1973, which extended membership to the UK, Ireland and Denmark, all three countries with important fisheries.

On the eve of the start of the accession negotiations in 1970 the then six Member States adopted Council Regulation 2141/70,[[1]](#footnote-1) which included the principle of equal access to the fishing waters of the member states: “…Community fishermen must have “equal conditions of access to and use of the fishing grounds situated in the waters” coming under the sovereignty or jurisdiction of a member state (Art. 2.1, Regulation (EEC) No 2141/70). This made that principle part of the so-called *acquis communautaire*, which future members were expected to accept. The 1960 Regulation foresaw a derogation within three nautical miles from the base line for five years, where those waters could be reserved for local fishermen in regions primarily depending on inshore fishing (Art. 4).

**Table 2: Important decision points in development of the Common Fisheries Policy (CFP)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **1970** | **1976** | **1983** | **1992** | **2002** | **2013** |
| Policy measure | Equal access to Community waters | Introduction of 200-nautical mile fishing zone | Conservation and management policy | Policy reform to improve management | Policy reform, including Regional Advisory Councils (2004) and Fisheries Control Agency (2005) | Policy reform introducing ecosystem approach, catch based on maximum sustainable yield set on scientific advice |
| Main legislation | Council Regulation 2141/70 | Council Resolution of 3 November 1976 | Council Regulation 170/83. | Council Regulation 3769/92 | Council Regulation 2371/2002 | Council and European Parliament Regulation 1380/2013 |
| Main reason | Accession negotiations with the UK, Denmark, Ireland and Norway starting | Iceland, Norway, Canada and USA introducing 200-mile zones in the North Atlantic | UN Law of the Sea Convention adopted 1982.  Derogation period in accession treaties expiring; Anticipation of Spanish and Portuguese membership | Need to deal with overfishing.  Maastricht Treaty introduced precautionary principle for the environment (Art. 130R) and referred to sustainable development in Art. 2. | Declining fish stocks and degradation of marine environment, partly because of new fishing technology | Need to deal with overfishing, fleet overcapacity and heavy subsidies |

Source: Compiled by the author

Another 1970 Regulation dealt with the common market organisation: “A common organisation of the market in fishery products shall be established comprising a price and trading system and common rules on competition” (art. 1, Regulation (EEC) No 2142/70).

The 1960 Regulations became one of the most difficult issues in the accession negotiations, since all four applicants (including also Norway) had important fishing waters. In the end, the applicants had to accept this legislation with a temporary derogation. The Accession Treaties included a 10-year derogation for the inner six miles of the 12-mile fishing zones now claimed by the Member States, which was extended to 12 miles in certain regions, where the local population was heavily dependent of fisheries. This concession would be re-examined after 10 years (Churchill and Owen 2019, p. 5). This was not enough for the Norwegian people, who voted No to membership in the referendum in 1972, and it contributed to the Faroe Islands’ decision not to join with Denmark in 1973 and to Greenland’s decision to leave the EEC once it got autonomy and could make such a decision by a separate referendum in 1982. After negotiations, which focused on fisheries issues, Greenland left the EEC in 1985 (Laursen 1993).

The next important factor explaining the development of the CFP were developments in the international law of the sea (LOS) in the 1970s. Various states started introducing wider fishing zones, Iceland 50 nautical miles in 1972, and then 200 miles in 1975. The fact that Norway, the United States, and Canada decided in 1976 to introduce 200-mile fishing zones determined the future outcome of the United Nations Conference on the Law of the (UNCLOS), which eventually included the 200-mile Exclusive Economic Zone (EEZ) in the Convention signed in 1982.

The UK and Ireland requested a wider national zone within the future EEC 200-mile zone, when the EEC prepared to introduce such zone in response to the North Atlantic developments. This led to tough negotiations among the then nine EEC Member States in 1976. Eventually a compromise was reached in The Hague in October 1976. It included the following points:

1. Joint introduction of 200-mile fishing zones in the North Sea and the North Atlantic from 1 January 1977.
2. A mandate to the Commission to negotiate fishing agreements with third countries.
3. A decision that the EEC as such should take the place of the individual member countries in international fisheries commissions.
4. A special commitment to support the development of Irish fisheries.
5. An agreement to take into consideration the vital needs of the local populations of especially dependent areas.[[2]](#footnote-2)

The main points were subsequently adopted by the Council on 3 November 1976, which emphasized relations with third countries.[[3]](#footnote-3) With other major fishing nations in the North Atlantic introducing 200-mile fishing zones, the EEC did not have much choice. An inundation of foreign distant water fishing fleets could be feared in potential EEC waters, and introduction of an EEC 200-mile zone could increase the EEC’s bargaining power vis-à-vis third counties.[[4]](#footnote-4)

We get into 1983 before the EEC develops a more detailed management and structural policy for the extended EEC fishing waters. The 10-year derogation period of the 1972 Accession Treaties expired in 1982. The expected third enlargement with Spain and Portugal was an added factor. They both had important fisheries and distant water fishing fleets.

The 1983 fisheries management system was contained in several Regulations, the basic one being Regulation 170/83.

Each year the Council was to adopt total allowable catches (TACs) and divide them into quotas for the Member States. An important principle was relative stability, which would be based on three elements:

1. Past catches,
2. Preferential treatment for regions particularly dependent on fisheries, and
3. Losses of catch in third state waters following the introduction of 200-mile fishing zones (Churchill and Owen 2010, pp. 9-10).

The derogation from equal access of the Accession Treaties was now extended for another 10-year period and extended to all 12-mile zones of the Member States, not just for regions heavily dependent on fisheries. By this time UNCLOS had sanctioned the idea of a 12-mile territorial sea.

Since 1983 there have been various reforms of the 1983 policy, including in 1992, 2002 and 2013.

The 1992 reform tried to deal with persistent problems of overcapacity of fishing fleets and overfishing. It came at a time where there was increasing concern internationally about sustainable development. Applying that principle to fisheries policy there was a need to deal with continued overfishing that threatened to deplete stocks. The Maastricht Treaty only reflected this concern indirectly by mentioning sustainability in Article 2 and the precautionary principle in Art 130R on the environment. Fisheries remained part of agricultural policy, despite the differences between the two activities (Wakefield 2016, 56-57).

The 1992 reform did not solve the problems of overfishing. The next reform of the basic CFP regulation in 2002 therefore tried to improve matters by introducing institutional reforms in view of taking a long-term approach. Effective control, inspection and enforcement was called for. Therefore, part of the reform was the establishment of a Fisheries Control Agency to assist the Member States in enforcement actions. To include stake-holders the reform also established Regional Advisory Councils, which could make recommendations and suggestions (Wakefield 2016, 58-59).

Another decade, another reform. Again, an incremental reform.[[5]](#footnote-5)

As mentioned previously, the Treaty of Lisbon empowered the European Parliament, by moving CFP under OLP. Essential management decisions, however, remained the prerogative on the Member States in the Council.

So far, the management policy had not been able to face up to the common pool problem that exists in fisheries – apart from aquaculture, where it makes sense to talk about property rights. In sea fisheries the individual fisherman has no incentive to limit his catch. It is therefore necessary to set catch limits and make sure they are enforced. The temptation to cheat remains great.

By 2011 there was a feeling in the Commission that a major reform was necessary to restore threatened fish stocks. Total allowable catches (TACs) should be based on scientific advice about maximum sustainable yield (MSY) of the different stocks. Incentives to overinvest should be removed. It was suggested that the issue of property rights could be solved through individual transferable property rights, an idea supported by many economists and the Food and Agricultural Organization (FAO). The Commission wanted to make such system mandatory in the form of transferable fishing concessions (TFC). Although the EP supported the proposal the Council rejected it. So, alternatives had to be found. In this process the EP’s Fisheries Committee asserted itself but did not get everything it wanted.

The new policy should be environmentally sustainable. The precautionary principle should lead to MSY. Stocks should be subject to restauration plans. An ecosystem approach called for comprehensive coverage. The 2013 policy therefore set out to eliminate discards, gradually. So, all regulated catches should be landed and counted against existing quotas. Multiannual plans or regional management plans were to be used. The discard ban received overwhelming support in the EP, which added environmental concerns to the policy making process. However, the final regulation on the Council’s insistence, included *de minimis* exemptions, eventually reduced to five percent where selectivity of species is very difficult. Unwanted catch cannot be used for human consumption, but possibly in fish meal plants.

Concerning overcapacity, the Member States must address the issue. These must establish registries of fishing vessels and the information must be passed on to the Commission.

Control and enforcement, including the discard ban, must be reinforced by “effective, proportionate and dissuasive’ administrative or criminal sanctions. A culture of compliance must to be developed.

It remains to be seen to what extent the 2013 reform will contribute to stopping the over-exploitations of the living resources of the EU waters.

**The Common Maritime Transport Policy**

The Common Transport Policy was slow in developing. In 1970 Lindberg and Scheingold analysed it as “output failure” (Lindberg and Scheingold 1970), and it took some external challenges as well as the Single European Act in 1987 and the associated plan to complete the Internal Market by 1992 before a more detailed transport policy was developed.

After the first enlargement in 1973, the UK and Denmark, and later Greece from 1981, were the strongest advocates of the traditional freedom of navigation, while France, Germany and Italy sought to support their own national fleets in various ways, known as ‘cargo generating countries’ (Erdmenger 1981, 7).

The Court of Justice of the European Community (ECJ) played an important role in getting it all started for maritime transport, first by deciding in 1974 that the treaty’s general principles, in this case free movement of labour, applied to the maritime transport sector (ECJ Case 167/73). The Court stated, that ’the object of the common transport policy is to implement and complement [the fundamental rules] by means of common action” (quoted by Stevens, 2004, 126).

The first marine transport legislation was a decision in 1977 to set up a consultation procedure (Decision 77/587/EEC, dated 13 September 1977). It dealt with shipping matters of the Member States with third countries and international organisations (Stevens 2004, 123).

Further impetus was added by the ECJ judgement in 1985, in a case brought by the European Parliament against the Council, the EP claiming that the latter had failed in its duty to realise the objective of free provision of services in the transport field as foreseen in the Treaty (Case 13/83). This happened at a time where there were increasing pressures from industry and other stakeholders to complete the internal market, including for transport services.

An additional important factor was external pressure in the maritime transport sector from non-European operators. Developing countries spearheaded a Code of Conduct within the United Nations Conference on Trade and Development (UNCTAD) which aimed to divide cargo among the different providers of cargo services, thus limiting competition. It was a kind of flag discrimination, which was opposed by the EC. UNCTAD adopted the code in 1974 in view of assisting developing countries develop their shipping industries. The EC Member States eventually decided, after three years of debate, to accede to the Code, but without including liner traffic between OECD countries (Regulation 954/79).

The various pressures building up, internally and externally, finally led to a big step in 1986, when the Council adopted four regulations dealing with access to maritime transport services and applicability of the EC competition policy. The liberalisation efforts did still not include coastal traffic within the EC (cabotage), nor liner traffic, which got a bloc exemption from competition policy. Externally the package included a kind of anti-dumping policy in this service area against unfair pricing practices as well as possibility of ‘concerted action’ to safeguard free access to cargoes internationally.

**Table 4: Important Decision Points in the Development the EU Maritime Transport Policy**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | 1974 | 1979 | 1985 | 1986 | 1992 | 2006 |
| Policy measure | ECJ confirms general applicability of general principles of EC law to maritime transport | EC joins UNCTAD Liner Code of Conduct with reservations  (no application among industrialised countries) | ECJ concluded that the Council had failed to ensure freedom to provide transport services, including cabotage, within the Community | EC adopts four regulations:  -freedom to provide services  - rules for the application of Articles 85 and 86 of the Treaty (including block exemption for liner conferences)  - unfair pricing practices  - and coordinated action to safeguard free access to cargoes in ocean trades | Agreement to a phased liberalisation of cabotage | Repeal of block exemption for liner conferences from EU’s competition policy  (general enforcement regime from 2008, also including the trump market and cabotage) |
| Main legislation | Case 167/73 | Regulation 954/79 | Case 13/83 | Regulation 4055/86  Regulation 4056/86  Regulation 4057/86  Regulation 5058/86 | Regulation 3577/92 | Regulation 1419/2006 |
| Main reason | ECJ activism | Response to international developments | ECJ activism | Spill-over from internal market and efforts to deal with external unfair competition | Step to finalise internal market for shipping services | Step to extend competition policy to whole sea transport sector |

Source: Compiled by the author

Liberalisation of cabotage finally started in 1992 and the block exemption from competition policy for liner conferences was abolished in 2006. From that moment there was freedom to provide services in maritime transport and competition rules applied, the latter after a transition period lasting till 2008 for liner conferences. However, there is still a block exemption for liner consortia, which are not authorised to fix rate jointly, but to co-operate in the joint operation of freight liner transport. This exemption was updated in 2014, now lasting till 2020 (Coleman and Jessen 2016b, pp. 283-284).

Since about 80% of the EU’s external trade and about 40% of internal trade is transported by sea, this component of the Blue Europe is obviously important (Coleman and Jessen 2016a).

Articles 85 and 86 of the Treaty of Rome (now articles 101 and 102 TFEU), prohibit agreements and dominant positions with negative effect on competition. Article 92 in the Treaty of Rome (now article 107 TFEU), prohibits state aid. Extending these articles to maritime transport turned out to be very difficult.

Arguably, it was external challenges, which were the most decisive for the start of a common maritime transport policy within the EEC. The UNCTAD Code, adopted 6 April 1974, proposed a 40-40-20 formula, whereby 40% of cargo would be reserved for the importing country, 40% for the exporting country and 20% to vessels from third countries, so-called cross-traders. Some EEC Member States had problems with such formula, and it took four years of difficult negotiations before the Member States reached a compromise to ratify the Code with several reservations (Regulation 954/79 of 15 May 1979). The Code would be valid between the EEC and developing countries, but not between the EEC and industrialized (OECD) third countries (Stevens 2004, 124). The part of international shipping that would go to the EEC would be divided based on commercial criteria. This had the effect of eliminating the cargo sharing for most EEC liner traffic. The UNCTAD Code entered into force in October 1983 (*Agence Europe*, 8 June 1983, p. 13) when it had received enough ratifications (at least 24 states, representing at least 25 per cent of the world’s shipping tonnage).

But there were also important internal factors. After the ECJ’s decision in the French Seamen’s case in 1974 the Commission made many proposals in view of developing an EC maritime transport policy. The Council, however, ignored or rejected most proposals. After 10 years there was a substantial log-jam of proposals. It was at this stage that the European Parliament took the Council to the ECJ, which concluded in May 1985 that the Council had failed to ensure freedom to provide services for this sector.

In 1986 the Council gave in to the pressure and adopted a package of regulations. Two Community institutions, the ECJ and the EP, joined the third Community institution, the Commission, and forced the Council to act.

Regulation 4055/86 dealt with freedom to provide services. It liberalised shipping between EC

Member States and between these and third countries. The less liberal Mediterranean states secured a 6-year transition period for the removal of cargo reservation, and the regulation did not include cabotage (Stevens 2004, 129).

Regulation (Regulation 4056/86), laid down rules for application of the EEC’s competition policy to maritime transport. This was based on Article 85 EEC on agreements between undertakings – prohibition of cartels - and Article 86 EEC on dominant positions. It gave a block exemption from prohibition of certain categories of agreements by liner conferences. The exemption meant that carriers could fix prices and regulate capacity jointly.

The next two regulations adopted in 1986 dealt with external competition in the form of unfair pricing practices.

Regulation 2056/86 made it possible to impose a countervailing charge against unfair prices offered by ship owners. So, faced with third country shipowners charging lower than normal rates the EC could impose duties. Lower rates could be due to non-commercial advantages provided by home governments.

Finally, Regulation 4058/86 introduced the possibility of unilateral or coordinated measures by the Member States against protectionist trade measures by third country operators. This could be due to restricted access to cargo, other than what was still not prohibited for liner conferences (Stevens 2004, 129).

Regulation 4055/86, applying the principle of freedom to provide services to maritime transport between the member states and with third countries excluded coastal shipping (maritime cabotage) (Greaves 2011).

It was only just before the 1992 deadline for the completion of the internal market that the EEC adopted a regulation (3577/92) applying the principle of freedom to provide services to maritime transport within member states (maritime cabotage).[[6]](#footnote-6) The regulation liberalised maritime cabotage within the EU from 1 January 1993. It applied to Community shipowners, that is shipowners having their ships registered in and flying the flag of a Member State. Offshore registers of Member States were not beneficiaries (Paschke 2016).

There were time derogations for Spain, Portugal and France, some until 1999. Special rules for island cabotage, where there may be public service considerations, were included. In this area, Greece got an extended derogation until 2004 (Articles 4 and 6 of the Regulation).

The block exemption from competition of liner conferences was repealed by Council Regulation 1419/2006. It was concluded that there was no evidence that the industry needed protection from competition. At the same time, it was established that the Commission can enforce competition rules in the cabotage and tramp shipping sectors (i.e. shipping with no fixed schedules and routes, mostly bulk carriers) in addition to national competition authorities, already included by Council Regulation No 1 2003. The new regulation took effect in October 2008.

All this legislation adopted between 1986 and 2006 means that maritime transport is now fully covered – except liner consortia not authorised to fix rates jointly - by the EU’s competition policy, and freedom to provide maritime services has been established.[[7]](#footnote-7)

Over time various factors intervened to explain the developments. The treaty base was there. The ECJ intervened to get the process started, including by its decision to judge against the Council for non-action in the field of transport policy.

Again, we see external developments, especially UNCTAD’s involvement on behalf of developing countries in liner shipping, were an important factor in the development of one of the components of the Blue Europe. However, in the end the Treaty’s strong positioning of competition policy – to provide a level playing field – and reasonable prices for the consumers – had a decisive influence together with the freedoms on the internal market.

Concerning timing of the following liberalisation regulations, it is worth mentioning that by 1986 the Commission had published the White Paper on the Completion of the Internal Market and the Member States had adopted the Single European Act, which facilitated the adoption of Internal Market legislation. The liberalisation philosophy behind the 1992 Internal Market programme and its deadline also affected maritime transport policy.

**Common Marine Environmental Policy**

The fact that pollution does not respect national borders, be it on land, in the air or in the rivers and seas, was an important reason for international efforts to protect the environment got started. In the EEC case, it was also gradually becoming clear that national environmental regulations could become non-tariff barriers to trade (NTBs), so the completion of the internal market called for some common environmental standards. For this reason, early environmental legislation in the EC was often related to trade within the internal market.

As stated previously, the environment was not mentioned in the Treaty of Rome. However, using other article in the treaty the development of an environmental policy started slowly, and from 1972 an EU summit meeting decided more actively to develop an environmental policy, and the EC’s first Environmental Programme (EAP) was developed. It was also that same year that a big UN Conference on the environment took place in Stockholm.

Starting in 1975 the EC gradually adopted several directives of relevance for the protection of the marine environment. In parallel the EC started joining several international conventions dealing with various aspects of marine pollution, such as:

* The Paris Convention for the Prevention of Marine Pollution from Land-­based Sources (1975)
* The Barcelona Convention for the Protection of the Mediterranean Sea against Pollution (1977)
* The Bonn Agreement on cooperation in dealing with pollution of the North Sea (1983).

Various accidents, like the Norwegian Ekofisk field blow-out in 1977 in the North Sea, and the Amoco Cadiz disaster in 1978, which produced a major oil spill off and on the coasts of Brittany, led to pressures for accelerated ratification of various conventions, including the 1973 Convention for the Prevention of Pollution from Ships (MARPOL).

MARPOL is one of many conventions under the umbrella of the International Maritime Organisation (IMO) in London, which deals with ship-based sea pollution. The EU has become closely involved in this work. The European Commission has obtained observer status and takes part in the meetings. Most EU legislation on maritime safety is based on IMO conventions and their protocols (European Parliamentary Research Service 2016). Efforts to become a member of the IMO, however, has been resisted by some Member States (Coleman and Jessen 2016c).

Accidents at sea have been an important reason why the EC started joining international conventions as well as adopting regulations to promote safety at sea. The *Amoco Cadiz* in March 1978 led to quick adaptation of various measures, including checks on tankers entering EC ports and employment of deep-sea pilots in the North Sea (Erdmenger 1983, 95)

Some of the more recent multilateral environmental agreements to which the EU is a contracting party or a signatory include:

* Convention on the protection of the Rhine (New Rhine Convention), Bern 1999.
* Convention for the Marine Environment of the North-East Atlantic (OSPAR Convention) as amended, Paris 1992.
* Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention), Helsinki 1992.
* Cooperation agreement for the Protection of the Coasts and Waters of the North-East Atlantic against Pollution (Lisbon Agreement), Lisbon 1990.
* Protocol concerning co-operation in preventing pollution from ships and in cases of emergency, combatting pollution of the Mediterranean Sea (Prevention and Emergency Protocol), Malta 2002.[[8]](#footnote-8)

In 1984 when the EC signed UNCLOS it listed eight legal acts of relevance for UNCLOS and five international conventions to which it had adhered of relevance.

By 1998 when the EU formally confirmed its participation in UNCLOS it listed 42 legal acts of relevance, and 10 international conventions to which it was a party.

Space does not allow for a detailed coverage of all these legal acts. Instead the following will focus on maritime safety, which could have been included above under maritime transport policy, but which has important environmental aspects.

The *Amoco Cadiz* accident in 1978 was mentioned. It helped speed up ratification of some of the IMO conventions, including MARPOL. But it also led to a special initiative that produced a Memorandum of Understanding (MoU) in Paris, which set a 25 % target for inspections by the port state, and which allowed sub-standard vessels to be detained (Stevens 2004, 134-135). The Paris MoU was an intergovernmental agreement, not Community legislation, suggesting that the Member States hesitated about moving to real ‘credible commitments’ in this area.

**Table 5: Important decisions in developing the EU’s maritime safety policy**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **1978** | **1992** | **1994** | **1999** |
| Policy measure | Ratification of IMO conventions and reinforcement of port state control | Beginning EC legislation to deal with ship standards and control of these | Further measures to improve ship standards and control of these | Further measures to improve ship standards and control of these |
| Decisions or legislation | Paris Memorandum of Understanding (MoU) on Port State Control | Dir 94/57, standards for ship inspections and survey organizations  Dir 94/58, standards for approval of training certificates  Dir 95/21 on higher standards of port state control | Dir 98/18, international standards for passenger vessels  Dir 98/25, raising standards of port state control  Dir 98/41, registration of passengers  Dir 99/35, mandatory surveys for ro-ro ferries | Dir 2001/106, raising standards of port state control  Dir 2001/105, raising standards for ship inspections and survey organisations  Reg 417/2002, phasing out use of single-hull tankers  Reg1406/2002, establishing European Maritime Safety Agency (EMSA) |
| Main reason | Grounding of *Amoco Cadiz* | Grounding of *Braer* and *Aegean Sea* | Sinking of *Estonia* | Breaking up of *Erika* |

Source: Compiled by the author based on Stevens 2004, p. 136.

In 1992 with a short interval the ship *Aegean Sea* grounded near La Coruña in north-west Spain and the ship *Braer* grounded in Shetland Islands. These accidents led to further tightening of port state controls. A joint meeting of the Environment and Transport Councils endorsed a programme of action, which also included improved traffic regulation in congested EC waters such as the English Channel. After the intergovernmental Paris MoU the EU now started to adopt legislation in the form of directives, including for ship inspections, approval of training certificates and standards of port state control.

The sinking of the ferry, the *Estonia*, in the Baltic Sea in September 1994, also had a profound effect. More than 850 people drowned. With some delay the EU adopted directives concerning safety standards for passenger vessels, registration of passengers and mandatory surveys for ro-ro ferries (Stevens 2004, 136-138).

In 1999 the oil tanker *Erika* ran into a heavy storm in the Bay of Biscay. It broke up and sank. In the process it spilled thousands of tons of oil, much of which reached the coast of Brittany, France. Marine life was killed, and shores were polluted. The ship was 25 years old. The Italian *Registro Italiano Navale* (RINA) had regularly reported the tanker in good condition. It was registered in Malta and largely owned by an Italian living in London. Eventually a French court fined the French oil company *Total* €375,000 and awarded compensation €200 million to several civil plaintiffs affected by the oils spill (Myles 2012).

In November 2002 the oil tanker *Prestige*, Bahamas-flagged and owned by a Liberian-based company, sank outside the coast of Galicia in Spain, spilling 50,000 tons of oil, polluting coasts in Portugal, Spain and France. A court in Spain failed to find anyone guilty of the disaster, the worst ever to hit Spain (BBC 2013). *Prestige* was 26 years old.

In response to the tanker disasters further measures were taken to tighten port state control and control of classification societies. A ‘blacklist’ system was introduced to bar structurally deficient ships from EU ports. Traffic monitoring and information exchange was improved through a system called *SafeSeaNet*. Further, steps were taken to phase out single-hull tankers, first in the EU, and subsequently world-wide through the IMO. The IMO’s deadline for withdrawing single-hull tankers by 2026 was moved forward to 2015 (Coleman and Jessen 2016c). The EU now also started using Regulations, not just Directives, in its legislative measures.

The Erika accident in 1999 also contributed to speeding up the establishment of the European Maritime Safety Agency (EMSA) in 2002. The disasters and early experience contributed to subsequent regulations adopted to strengthen EMSA. Originally it was set up to provide technical and scientific advice. To carry out its functions its officials can visit the Member States and make reports to the Commission and the other member states. In 2003 it was given additional responsibilities for:

* Oil pollution response,
* Maritime security, and
* Ensuring proper standards for seafarers’ training in third countries (Coleman and Jessen 2016 c, 573).

From 2007 EMSA has been supplemented by a satellite imaging system, *CleanSeaNet*, which tracks illegal discharges.

In 2013 EMSA’s responsibility was extended to include offshore oil and gas operations as well as the use of its surveillance system to prevent and repress piracy and armed robbery at sea.

What we see in respect to maritime safety is a move away from near-complete reliance on flag state control of vessels to an increased role for coastal and port states. We also see the EU becoming a more autonomous actor vis-à-vis the IMO.

**Tentative Explanatory Conclusions**

The main theory that has been used by political scientists to explain the competences and institutional choices of the founding treaties and later reform treaties is liberal intergovernmentalism. This theory – or conceptual framework - has been developed to explain what has been called super-systemic decisions (Peterson and Bomberg 1999). Andrew Moravcsik, the main theoretician of liberal intergovernmentalism, talks about history-making decisions, and his analysis includes the Treaty of Rome, the Single European Act (SEA), and the Maastricht Treaty, which all contributed to the ‘institutional choices’ which gave bases for the development of the Blue Europe (Moravcsik 1998; Laursen 2017).

In these history-making decisions the Member States of the EC - and later EU - were clearly the main actors. So, in our efforts to explain these fundamental decisions we need to look at the interests – or preferences - of the Member States. Secondly, we need to look at the negotiations between these states – called inter-state bargaining by Moravcsik. Who has power in these negotiations? The answer to this second question was, to simplify a little, that the more an actor depends on a specific outcome, the weaker it is. It may have to compromise more to get what it seeks to get.

The issues dealt with in this paper were relatively marginal seen from a larger integration perspective. Agriculture, the common market, monetary cooperation, and later foreign policy, were all more important. So Moravcsik does not discuss the Blue Europe decisions in his monumental book, the *Choice for Europe*. But his approach can be used to study why the treaties included competences that allowed to develop common fisheries, common shipping and common marine environmental and safety policies, and eventually start naval missions against pirates and smugglers of illegal immigrants on the high seas. Many of the historical accounts of European integration, however, do not mention marine and maritime policies. So, there is still some research waiting to be done on these questions.

When looking at preferences of Member States Moravcsik emphasized economic interests over geopolitics and ideology. The economic interests of the founding Six depended on their access to offshore resources, continental shelf and living resources, and the relative importance of sea transport for the national economy. Only Luxembourg among the original Six was a land-locked country. Italy bordered on the Mediterranean Sea, a semi-enclosed sea. France, Belgium, The Netherlands and West Germany had access to the Atlantic Ocean and North Sea, with relatively important fisheries possibilities.

It looks as if the reference to fisheries in the agricultural policy part of the Treaty of Rome was kind of a coincidence. Knowledge about continental shelf resources was limited at the time, and the technology for exploration and exploitation of oil and natural gas in the continental shelves had not been developed. Sea transport was important for the original members, but politically less important than land and rail transport, which had already been part of the competence of the European Coal and Steel Community (ECSC), the first European Community, in 1951. Beyond relatively narrow territorial seas there was freedom of navigation. And the environment was not on the political agenda in 1957 when the EEC Treaty was signed.

All in all, the treaty basis of the Blue Europe in the founding treaties was relatively weak. But whatever provisions were included in these treaties, were based on the Community method, or, to use Moravcsik’s term, ‘pooling and delegation’ of sovereignty. Majority voting was foreseen in the Council after a transition period, and real supranational powers were delegated to the Commission and the ECJ, which turned out to be important for the development of the Blue Europe. The bases were there for developing the Blue Europe, but it required special circumstances and decisions to actually develop these policies.

Once the initial steps were taken, the development of the various Blue Europe policies, fisheries, sea transport, marine environment and safety, involved many decisions over the following years, sometimes small, sometimes relatively big. If the Member States had been the ‘masters of the treaties’ initially, other actors got involved when more specific policies were developed, including the institutions created by the treaties: The Commission, which had the right of initiative, the Council of Ministers, which adopted legislation, and the European Court of Justice (ECJ), which interpreted the treaty and dealt with disputes. And to that we must add the European Parliament, which gradually got more involved. It is therefore an obvious choice to look at institutionalist theories to find explanations. Since the developments have been traced over time, historical institutionalism could be the way to explain the observed developments. Once a trajectory was started there was a certain path dependency. It took crises, like break-up of tankers and collapse of fish stocks, to force reforms through the policy-making system.

The more concrete Blue Europe policies were also very much responses to various international developments, including three UN Conferences on the Law of the Sea, in 1958, 1960 and 1967-82, which legitimized extension of offshore zones whereby coastal states ‘enclosed’ important parts of ocean space, eventually including the international acceptance of 200 nautical mile Exclusive Economic Zone (EEZ) and coastal state jurisdiction over continental margin resources. ‘Complex interdependence’ (Keohane and Nye 1977) in the international system thus affected the EU in rather profound ways.

Another important factor in the development of the Blue Europe included the early enlargements, especially the first in 1973, which brought three new members with important fisheries and shipping interests into the Community as members, the UK, Denmark and Ireland. They had to accept the *acquis communautaire,* which included the principle of free access to Community waters, adopted on the eve of the start of accession negotiations. The Mediterranean enlargements, Greece in 1981 and Spain and Portugal in 1986, also contributing to making the EC a marine and maritime power. Spain had, and still has, the largest fishing fleet in the EU. Apart from fisheries, Greece also has an important shipping interest, together with Denmark.

Finally, it was the end of the Cold War in 1989 that led the new EU gradually – slowly – to develop a security and defence dimension, which has now led to the first naval missions, to defend the shipping interests of member states in the Indian Ocean and – it was/is hoped – to reduce illegal immigration across the Mediterranean Sea.

The above discussion is summarized in table 6.

**Table 6: Relative Explanatory Power of the Theories**

|  |  |  |
| --- | --- | --- |
| **Model/theory** | **Hypothesis** | **Explanatory power** |
| IR theories | Realism:  Primacy of national security  Importance of access to resources for national strength  Liberalism:  Complex International Interdependence  Sensitivity and vulnerability to policies of other states | Explains importance of navigational freedoms for the navies and transport vessels  Explains the limited defence cooperation in the EU  Explains EC decision to introduce 200-mile fishing zone 1976, and EC response to UNCTAD liner code |
| Integration theories | Liberal intergovernmentalism  The Member States are the main actors  Nash bargaining  Pooling and delegation to get ‘credible commitments’  Neofunctionalism  Functional spill-over  Bargaining exchanges  Leadership, especially supranational, important | The Member States are the ‘masters of the treaties’  Intensity of interests affect power in negotiations  Pooling and delegation are characteristic traits of most Blue Europe policies  The European Commission, the ECJ, and more recently the EP are important actors together with the Member States  Spill-over processes have been part of the process |
| Institutionalist theories | Historical institutionalism  The Member States cannot control integration  Unintended consequences  Path dependency  Major change rare  Sociological institutionalism  Importance of ideational factors  Framing and shaming (rhetorical action) | Most change is incremental  Major policy failure and environmental disasters can create windows of opportunity for change  ‘Punctured equilibrium’  New discourse from 1990s concerning environmental aspects of policies influenced the latest reforms of the CFP and initiation and strengthening of maritime safety policy (a greener Blue Europe) |
| Domestic politics | Electoral and Party Politics | Especially important for fisheries policy, where the winning of parliamentary seats in coastal districts can affect closely fought electoral battles  Also important in policy implementation and enforcement where we see ‘collusion’ between fishermen and politicians leading to lax enforcement  The shifting balance between economic interests and environmental interests due to concerns of the electorate |

Source: Compiled by the author, see also Laursen 1982; Laursen 1983; and Laursen 1993.

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1. <https://publications.europa.eu/en/publication-detail/-/publication/faf8bc88-b4f4-423a-969d-5edd69304bf7/language-en> [↑](#footnote-ref-1)
2. This is based on Laursen 1993, p. 122. (Based on press reports, including *Agence Europe*). [↑](#footnote-ref-2)
3. Only published in the Official Journal in 1981. See <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1981:105:FULL&from=EN> [↑](#footnote-ref-3)
4. See also Laursen 1986, Chapter 6. [↑](#footnote-ref-4)
5. On this reform, see especially Wakefield 2016, 58-83. [↑](#footnote-ref-5)
6. Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage). <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31992R3577> [↑](#footnote-ref-6)
7. On the consortia exemption now extended to 2020, see Werner 2016. [↑](#footnote-ref-7)
8. Listed at: <http://ec.europa.eu/environment/international_issues/pdf/agreements_en.pdf> [↑](#footnote-ref-8)