

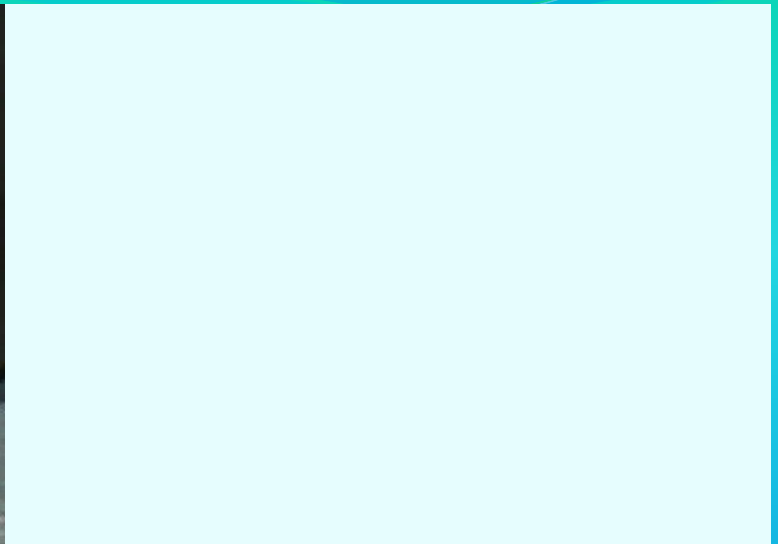
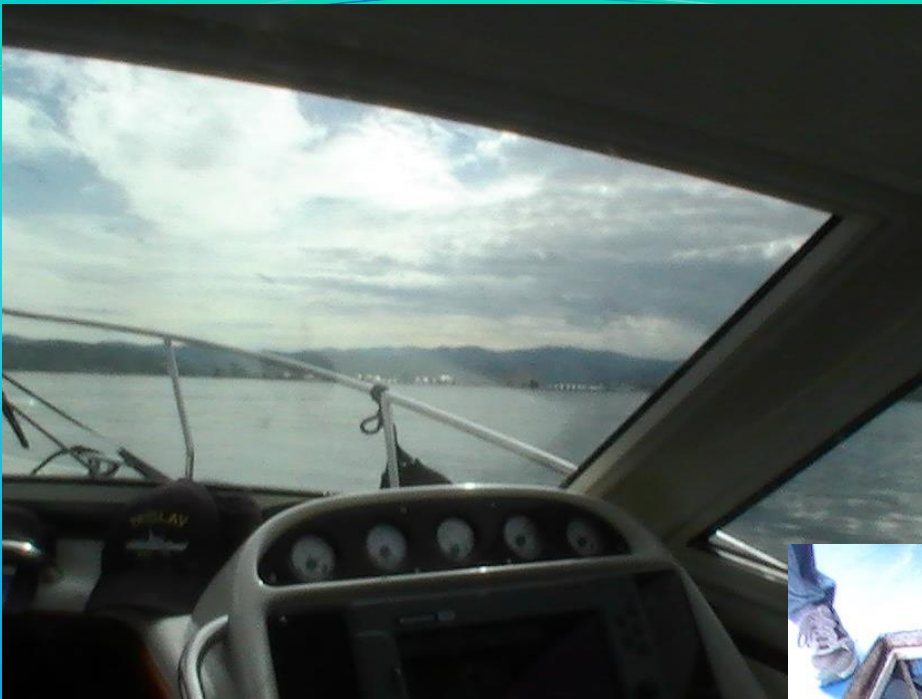
Environmental principles in EU Fisheries Policy: a Member State perspective

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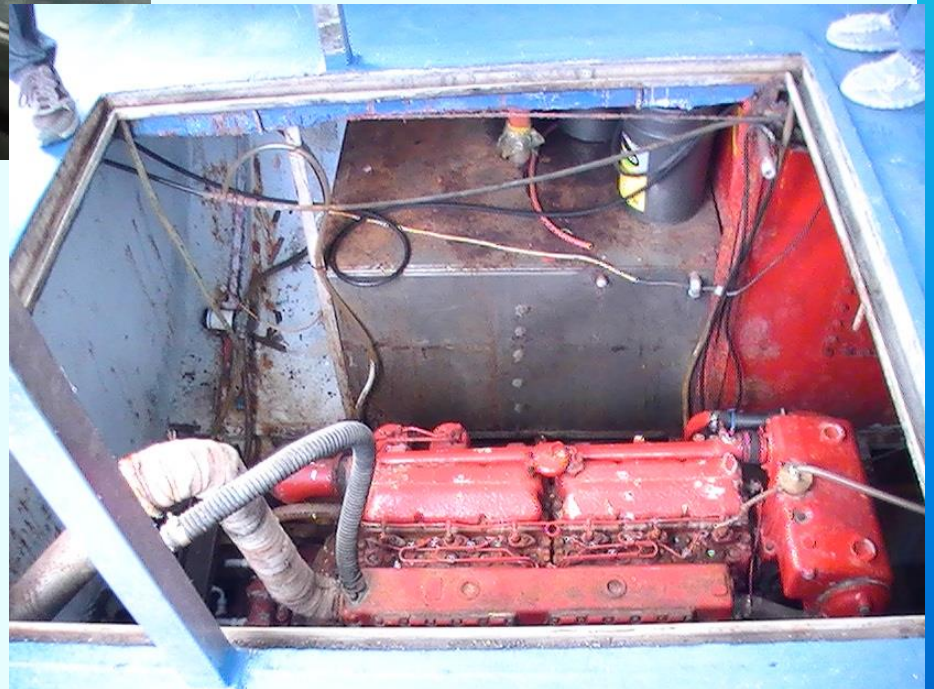
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Question:

What do you see in the picture(s)?

(Clue: it's got to do with environmental principles in EU Common Fisheries Policy...)



To explain:

=> Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy – Article 40:

„Member States shall be responsible for certifying **engine power** and issuing engine certificates for Community fishing vessels whose propulsion engine power exceeds 120 kilowatts (kW), except vessels using exclusively static gear or dredge gear, auxiliary vessels and vessels used exclusively in aquaculture.“

Preamble:

„instruments should be introduced for the control of the **fleet capacity** which should include the **monitoring of the engine power** and of the use of fishing gear. For that reason Member States should take measures to ensure that the total capacity of the fishing licences does not exceed the maximum capacity levels and ensure that the propulsion engine power of fishing vessels does not exceed the certified engine power of those vessels.“

(*Fishing capacity = vessel tonnage in GT and engine power in kW)

=> This is in accordance with provisions of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy („the basic Regulation“):

PART IV: MANAGEMENT OF FISHING CAPACITY - Article 22:

„Member States shall put in place measures to adjust the **fishing capacity** of their fleet to their fishing opportunities over time /.../.“

„Member States shall ensure that from 1 January 2014 the fishing capacity of their fleets does not exceed at any time the fishing **capacity ceilings** set out in Annex II.“ => Which environment-related provision? => **Maximum Sustainable Yield (MSY) of fish stocks (Art. 2).**

=> The importance of taking into account the level of implementation and providing for appropriate implementing provisions.

General on EU Common Fisheries Policy:

- ⇒ Beginnings in 1970s when EEC member states declared Exclusive Economic Zones (EEZs) on the basis of UN Convention on the Law of the Sea (UNCLOS); formally began in 1983 with agreement (written in the Council Regulation) between EEC members to allow each other access to waters (~ Union waters) (but special regime for territorial waters).
- ⇒ Reformed ca. every 10 years (e.g. Regulation 2371/2002; Regulation 1380/2013).

SCOPE:

- ⇒ Treaty on the Functioning of the EU (TFEU), Article 3: “The Union shall have exclusive competence in the following areas: /.../ (d) the conservation of marine biological resources under the common fisheries policy /.../.”

Currently in force: Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy

Scope: Article 1:

„The Common Fisheries Policy (CFP) shall cover:

- (a) the conservation of marine biological resources and the management of fisheries and fleets exploiting such resources;
- (b) in relation to measures on markets and financial measures in support of the implementation of the CFP: fresh water biological resources, aquaculture, and the processing and marketing of fisheries and aquaculture products.“

Key environmental principles in the basic Regulation on the Common Fisheries Policy (1380/2013):

Article 2 (Objectives):

- ⇒ „The CFP shall ensure that fishing and aquaculture activities are **environmentally sustainable** in the long-term and are managed in a way that is consistent with the objectives of achieving **economic, social and employment benefits**, and of contributing to the **availability of food supplies**.“
- ⇒ „The CFP shall apply the **precautionary approach** to fisheries management, and shall aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the **maximum sustainable yield**.“
- ⇒ „The CFP shall implement the **ecosystem-based approach** to fisheries management so as to ensure that negative impacts of fishing activities on the marine ecosystem are minimised, and shall endeavour to ensure that aquaculture and fisheries activities avoid the degradation of the marine environment.“
- ⇒ „The CFP shall, in particular: /.../ be coherent with the **Union environmental legislation**, in particular with the objective of achieving a good environmental status by 2020 as set out in Article 1(1) of Directive 2008/56/EC, as well as with other Union policies.“

Three key environmental Directives to whose objectives this Regulation contributes (Article 11):

- ⇒ Directive 2008/56/EC of the European Parliament and of the Council establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive)
- ⇒ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the „habitats Directive“)
- ⇒ Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds (the „birds Directive“) ~ **key Directives in the area of marine environment**

PROVISIONS ON COMPLIANCE:

Regulation on the Common Fisheries Policy (1380/2013):

A system of control and enforcement: Article 36: „Compliance with the CFP rules shall be ensured through an effective Union fisheries control system, including the fight against IUU fishing.“

+ Conditions for EU financial assistance:

Art. 41: for Member States: „/.../ Union financial assistance to Member States shall be conditional upon compliance with the CFP rules by Member States.“

„Non-compliance by Member States with the CFP rules may result in the interruption or suspension of payments or in the application of a financial correction /.../.“

Art. 42: for operators: „/.../ Union financial assistance to operators shall be conditional upon compliance with the CFP rules by operators.

„/.../ serious infringements by operators of the CFP rules shall result in temporary or permanent bans on access to the Union financial assistance and/or the application of financial reductions.“

In the fields of Environment and Fisheries: Article 258 of TFEU: Procedure before the Court of Justice of the EU:

„If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.“

This starts with the Commission adopting a *reasoned opinion* in the matter and sending it for MS response.

* In practice: another procedure before that: Informal EU Pilot (and before that, optionally, Commission letters).

= in the fields of its exclusive (and shared) competence, the Commission has a number of concrete means at its disposal to ensure implementation of EU legislation in force.

Ensuring implementation on the international level: the external dimension of EU Common Fisheries Policy

The basic Regulation – 1380/2013: Articles 28-32 (External policy)

In order to ensure sustainable exploitation, management and conservation of marine biological resources and the marine environment, the EU conducts external fisheries relations in accordance with its international obligations and policy objectives.

This includes:

- support to development of scientific knowledge and advice;
- consistency of actions taken in the context of development cooperation and scientific, technical and economic cooperation;
- ensuring that EU fishing activities outside EU waters are based on the same principles and standards as those applicable in the area of CFP (=> EU activities within UN and other international fora);
- supporting action against illegal, unreported and unregulated (IUU) fishing;
- promoting establishment and strengthening of regional fisheries management organisations - RFMOs.

The EU actively supports and contributes to the activities of international organisations dealing with fisheries, including the creation and functioning of RFMOs.

Sustainable fisheries partnership agreements with third countries establishing governance framework for fishing activities carried out by EU fishing vessels and sustainable cooperation with third countries in the field of fisheries development.

Since EU CFP is a „*common*“ EU policy, a number of Regulations contain further, more specific provisions to guarantee appropriate implementation by the Member States, e.g.:

- ⇒ „EMFF Regulation“: Regulation 508/2014 on the European Maritime and Fisheries Fund: funds to support CFP implementation, including climate change mitigation and adaptation (e.g. improving energy efficiency); certain operations ineligible, such as: operations increasing the fishing capacity of a vessel or equipment increasing the ability of a vessel to find fish, or construction of new fishing vessels or importation of fishing vessels.
- ⇒ „Mediterranean Regulation“ = fisheries management on regional level: Council Regulation 1967/2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea.
- ⇒ „Control Regulation“: Council Regulation 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.
- ⇒ „IUU Regulation“: Council Regulation 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.
- ⇒ „Data collection Regulation“: Regulation 2017/1004 on the establishment of a Union framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy.

+ A number of other Council Regulations, Regulations by the European Parliament and the Council, and Commission Implementing and Delegated Regulations and Decisions.

IMPORTANT: INSTITUTIONAL DIFFERENCES between EU fisheries and environment policies:

Treaty on the Functioning of the European Union (TFEU):

Fisheries <= **EXCLUSIVE EU competence** (to propose legal acts) (Art. 3 TFEU – „conservation of marine biological resources under the common fisheries policy“)

Environment <= **SHARED competence between the EU and Member States** (Art. 4 TFEU)

Types of legal acts:

Fisheries: Art. 43 TFEU: „2. The **European Parliament and the Council**, acting in accordance with the **ordinary legislative procedure** and after consulting the Economic and Social Committee, shall establish the common organisation of agricultural markets provided for in Article 40(1) and the other provisions necessary for the pursuit of the objectives of the common agricultural policy and the common fisheries policy.“

„3. The **Council**, on a proposal from the Commission, shall adopt measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.“

Environment: Art. 192 TFEU: „The **European Parliament and the Council**, acting in accordance with the **ordinary legislative procedure** and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191 /= EU policy on the environment/.“

Regulations (= fisheries) vs. Directives (= environment): Art. 288 TFEU: „To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.“

„A **regulation** shall have general application. It shall be binding in its entirety and directly applicable in all Member States.“

„A **directive** shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.“

Example of the process of preparation and adoption of EU legislation (Regulation by the European Parliament and the Council, EU exclusive competence): (1)

* Initial (and IMPORTANT) phase – before the start of formal procedures: the Commission and the Member States (usually within the Council of the EU) start to discuss that something needs to be changed/ better regulated (ALSO: there may be a report by an EU institution such as European Court of Auditors to the effect that a policy is not functioning well).

- ⇒ „Formal start“: The Commission launches a public debate (informing the Council as well as the public) – e.g. with a Communication, Green Paper, or a questionnaire.
- ⇒ A few months after the public debate, the Commission publishes its proposal: in exclusive policy area such as fisheries usually a proposal for a Regulation (other areas: e.g. White Paper).
- ⇒ This is then discussed by the competent bodies of the Council and the European Parliament:
 - ⇒ Council: competent Working Party, Coreper (Committee of Permanent Representatives), and the Council of Ministers.
 - ⇒ European Parliament: the competent Parliament Committee (PECH).
- ⇒ The first phase of discussions within the competent EU bodies ends with:
 - ⇒ The adoption of a **general position** by the Council of the EU;
 - ⇒ **amendments** prepared by the competent Committee of the European Parliament and adopted by the plenary.

Followed by a process of negotiations between the European Parliament and the Council =>

Key to remember: the earlier a Member State starts to influence this process, the more likely it is to achieve (in the final end) a policy in accordance with its needs i.e. positions.

Example of the process of preparation and adoption of EU legislation (Regulation by the European Parliament and the Council, EU exclusive competence): (2)

- ⇒ Treaty on the Functioning of the EU (TFEU) defines an elaborate process of coordination between the Council and the European Parliament as regards the *ordinary legislative procedure* (co-decision) – Article 294 (*three readings*).
- ⇒ In practice, however, views are harmonized via *informal trilogues* (involving the Commission, Council Presidency and the European Parliament) on the legislative proposal.
- ⇒ Within the Council, Council General Secretariat prepares a *4-column document* containing, side by side: Commission proposal, Council general position, EP position and Presidency compromise proposal – which is discussed on the level of the competent Working Party.
- ⇒ Most often, the Council and the EP manage to agree via informal trilogues => this is followed by an *exchange of letters* between the European Parliament and the Council confirming that each other is going to adopt the agreed compromise text (which is then adopted by each).
- ⇒ The proposal as adopted by the Council and the European Parliament is then sent to be reviewed by the *Working Party of Jurists-Linguists* (important: the translation into the national language needs to be *checked* by experts in the field).
- ⇒ In a few weeks, the adopted proposal is *published* in the Official Journal of the EU (accessible on *Eur-Lex*).

Characteristics of voting in the Council:

Qualified majority: defined in detail in Article 238 TFEU (now: at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States, for legislative proposals by the Commission). + Council Rules of Procedure for population figures.

Voting calculator: Council web page + app (can be downloaded).

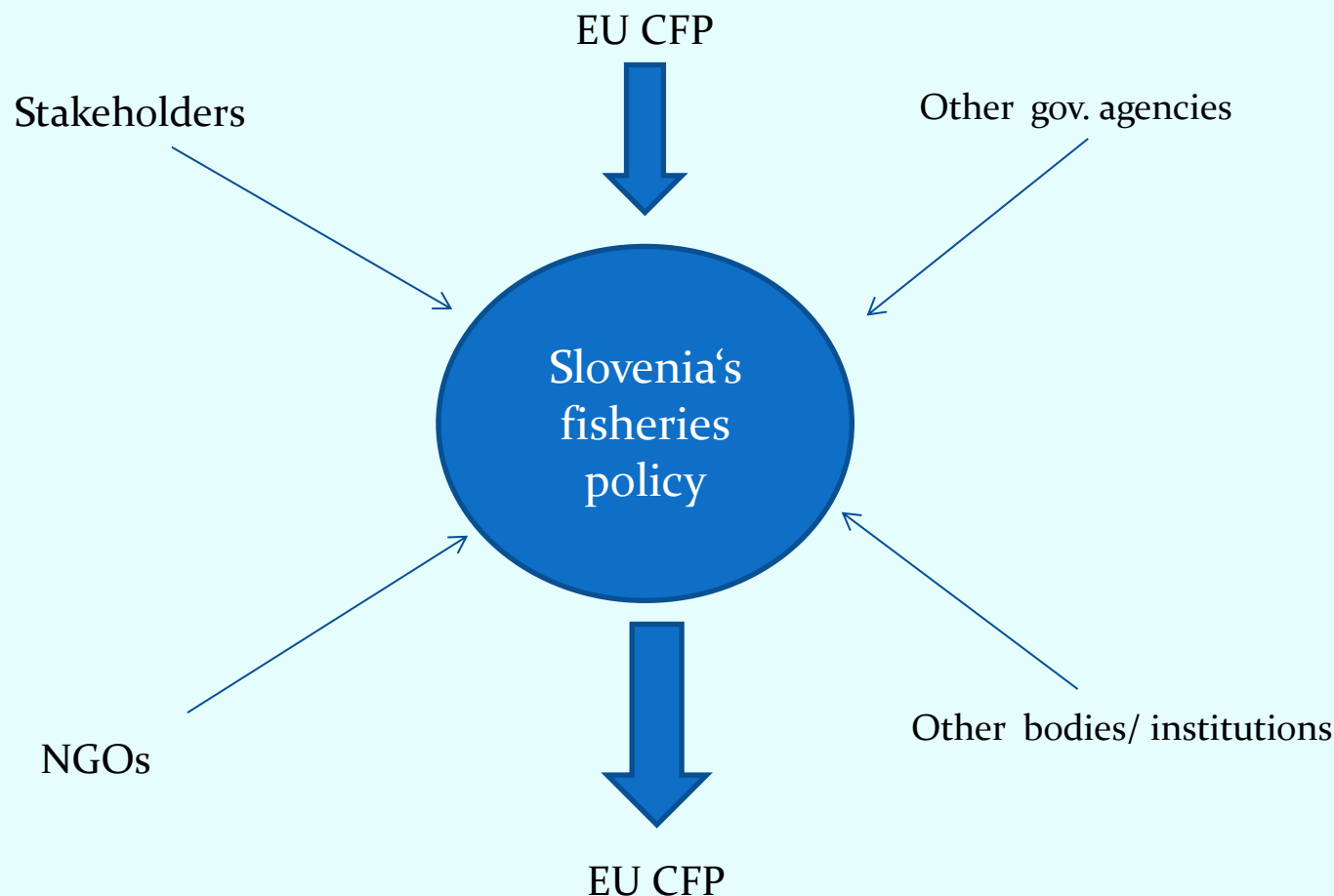
Important: the „groupings“ by Member States (in fisheries, which is a somewhat technical area) may vary from one proposal to another, and even more from one area/ Council formation to another.

E.g. fisheries: different groupings can be discerned in relation to proposals on the management of fisheries, or proposals that relate to administration, such as EU funds (proposal on the European Maritime and Fisheries Fund).

* Useful to keep an eye on the positions of other Member States, the Presidency and the Commission, as regards a particular proposal.

Nevertheless: some similarities between different groups of Member States may be discerned (in fisheries the most important are usually between sea basins – small-scale and artisanal fisheries, closely connected to tourism, are characteristic for Mediterranean Member States, while in the Atlantic and North Sea Member States, industrial fisheries prevail which entails different approaches to fisheries management).

A Member States' policy is situated at an intersection of a number of interests/ positions
(in areas of exclusive competence, such as fisheries):



=> **Importance of appropriate organisation and coordination** (in Slovenia regulated by legislation on cooperation btw. the Parliament and the Government on preparation of positions in the EU, and directed by orientations adopted by the Parliament).

Example of provisions on implementation that are needed on the national level (e.g. fisheries):

All legislation must be in accordance with EU CFP provisions, however acts needed to implement these provisions/ take care of national specificities (e.g. provisions on sanctions/ fines).

But not for: aquaculture, recreational fisheries, inland fishing (= not covered by EU CFP, only touched by the EU to a certain degree; remember - TFEU: CFP only covers „the conservation of marine biological resources under the common fisheries policy“).

Key provisions on Slovenian national level:

=> The governing legislative Act: Marine Fisheries Act (adopted by the Parliament – defines rights and obligations).

=> A number of governmental decrees needed to specify implementation: e.g. Decree on the monitoring of catches and sales of fisheries products; Decrees for implementation of the European Maritime and Fisheries Fund in Slovenia...

=> And a number of Rules adopted by the Minister: e.g. Rules on licences and special licences for commercial fishing ...

Besides EU CFP: a number of multilateral processes taking place at international level, and also affecting the EU:

*Three cases showing how/ why a traditional „low policy“ area (such as **fisheries**, or **environment**) may become a key subject of negotiations at highest political level:*

Multilateral trade negotiations: WTO:

In December 2017, 11th Ministerial conference of multilateral trade negotiations ended with agreement to continue with **fisheries** subsidies negotiations as a main achievement: „commitment from members to secure a deal on fisheries subsidies which delivers on Sustainable Development Goal 14.6 by the end of 2019“ (source: WTO).

(Lack of commitment to negotiations by key states such as the US and China.)

Brexit – exit of the United Kingdom from the EU:

Only 1 issue linked to environment => namely **fisheries features explicitly** in the Draft Withdrawal Agreement: Article 125: Specific arrangements relating to fishing opportunities (between the UK and the EU). (Importance of fishing traditions and commercial interests.)

UN: BBNJ process: multilateral negotiations to develop international legally binding instrument under United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ):

Further steps expected to be decided by UNGA during its 2017/2018 session.

(Growing importance of taking care and conserving biodiversity areas beyond national jurisdiction due to, among others, a growing ability of humankind to exploit resources located there.)

To conclude:

The key question in any area related to the ENVIRONMENT (including fisheries) is: *how to achieve a viable balance between the three key aspects of sustainable development:*

ENVIRONMENTAL
(= the environment,
but also long-term
consequences for
humankind)

SOCIAL
(= people
directly
affected, other
stakeholders)

ECONOMIC
(= the commercial
aspect; are the
policies economically
viable)

= what policy-makers are faced with when formulating policies related to the environment => importance of adequate *data* and *scientific bases*.

=> *Declaratory vs. operational level of policies: while declaratory level of policies is important (expressing political commitment), it needs to **connect** to the operational level of implementation and **draw from** it for the policies to be successful.*

The final perspective: What can an individual/ consumer do for the sustainability of fisheries?

- * Importance of traceability: all fisheries products have to be properly labelled for consumers in the EU (Regulation 1379/2013), from „net to plate“...
 - * Voluntary labels related to sustainability of fisheries (e.g. MSC – Marine Stewardship Council) ...
 - * Be aware of where your food comes from, contact local producers ...
 - * E.g. small-scale fisheries, traditional fishing gears, fish farms ...
 - * Price of fish not necessarily connected to quality or health benefits ...
- = try to be aware of where your food comes from ...



Some resources:

Eur-Lex (<https://eur-lex.europa.eu/homepage.html?locale=en>)

European Parliament (<http://www.europarl.europa.eu/portal/en> => Committees)

Council of the EU (<http://www.consilium.europa.eu>)

European Commission:

- Fisheries (<https://ec.europa.eu/fisheries>)

- Maritime Affairs (<https://ec.europa.eu/maritimeaffairs>)

- Environment (http://ec.europa.eu/environment/index_en.htm)