

# **Analysis of EU Membership in the Northwest Atlantic Fisheries Organization (NAFO) as a Specific Model for EU Relations with International Intergovernmental Organizations**

## **Abstract**

The article falls into the complicated and only partially analysed issues related to the essence of relations between international intergovernmental organizations. Against a background of the typology taking into account the scope and nature of EU representation in international intergovernmental organizations, it addresses the most important issues related to the essence of relations between the EC/EU and NAFO. Therefore, it discusses such matters as: the evolution of NAFO in the years 1979–2017, the nature of EU membership in NAFO, matters related to the representation and implementation of EC/EU interests on NAFO forum, as well as the system of internal coordination of EU activities in connection with its membership in this organization.

**Keywords:** European Union, Northwest Atlantic Fisheries Organization NAFO, EU Membership in NAFO, International Intergovernmental Organizations

## **Introduction**

In the existing typology of the European Union participation in international organizations, different methods of categorization may be identified. The most common are divisions taking into account: a) the nature of links between the European Union and the organization concerned, b) the nature of the EU competences involved and c) the

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extent of the EU participation in relation to participation of its member states.<sup>1</sup>

Taking into account the first of these criteria, i.e. the criterion of the nature of participation, the division of the EU relations with other international organizations into vertical and horizontal relations is applied. The former implies a formal relationship that gives certain rights with respect to participation in the works of an organization, e.g. based on the observer or membership status in a given organization. The latter implies less formal relations, based generally on the operational cooperation between two autonomous organizations.<sup>2</sup>

Other typologies applied in relation to the type of participation and relations between the EC/EU and other international organizations are based on the division of competences within the EU.<sup>3</sup> In this respect, it is indicated in accordance with the existing division of competences within the EU, that in the case where the EU exercises exclusive competences within given organization, these were the Communities – before the entry into force of the Lisbon Treaty, and the EU – after the entry into force of that treaty – that are usually the member of an organization. In the above mentioned context, EU member states are usually members of the organization as well. However, this is not a prerequisite. In such case, however, states do not play the role which is independent from the European Union and the Commission is the main representative of the EU interest.<sup>4</sup> It should be noted, though, that also in this dimension, i.e. when the EU exercises exclusive competences within given organization, the Union may have a different status than the status of membership. Quite often it may have an observer or a strengthened observer status. In the case of shared competences, usually both the EC and member states, and (after the Lisbon Treaty reform) in relation to shared competences and the EU CFSP – the Union and its Member States are represented in a given international organization. However, the form of this representation and the EU status in such cases depends on the competences of the international organization concerned, as well as the

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<sup>1</sup> More on this subject: M. Emerson, R. Balfour, T. Corthaut, J. Wouters, P.M. Kaczyński, T. Renard, *Upgrading The EU's Role as Global Actor. Institutions, Law and the Restructuring of European Diplomacy*, Centre for European Studies, Egmont – The Royal Institute for International Relations European Policy Centre (EPC), Leuven Centre for Global Governance Studies, University of Leuven, Brussels 2011, pp. 37–46.

<sup>2</sup> More on this subject, *ibidem*, pp. 37–39.

<sup>3</sup> Cf., *ibidem*, pp. 39–40.

<sup>4</sup> Cf.: F. Hoffmaister, 'Outsider or frontrunner? Recent developments under international and European law on the status of the European Union in international organizations and treaty bodies', "Common Market Law Review", no. 44/2007, pp. 41–68.

nature of the obligations imposed on members of the organization. In the situation where given international organization operates in areas regarded in the EU as those, where the EU is authorized to support, coordinate or supplement the actions of member states, then the Union generally has an observer status and sometimes the strengthened observer status, or a more flexible formula of operational cooperation without defining the formal status of mutual relations is applied. There are, however, no cases when the EU has a membership status.<sup>5</sup>

A common division constitutes also the categorization taking into account the scope and nature of the EU and member states' representation in specific types of organizations. Given this criterion, three types of relationship should be identified: the presence of the EU member states in the absence of the EU; the presence of both the EU and its member states; and the presence of the EU in the absence or a marginal role of the EU member states.<sup>6</sup>

Taking into account existing models of relations between the EU and other international organizations, it should be noted that an extremely interesting case of the EU participation in the works of other international organizations is its participation in regional fisheries management organizations, the example of which is NAFO, being the organization in which the EU exercises its exclusive competences within the common fisheries policy with regard to the conservation of biological resources. It also represents a very rare variant of relations between the EU and international organizations in the form of the EU presence in the absence of active participation of its member states and entrusting the representation of the EU interests only to its authorized institutions. Finally, the EU has a membership status in it, being the only entity from the EU area represented in this organization through the functionaries of the European Commission. NAFO constitutes also an example of one of the oldest and, at the same time, the most institutionalized regional fisheries management organizations to which the EC belonged since its establishment, i.e. since 1979. The main scientific purpose of the article corresponds with the thesis based on the assumption that EU membership in NAFO constitutes an example of extremely rare and specific status of this organization in another international intergovernmental organization and represents one of the

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<sup>5</sup> Ibidem.

<sup>6</sup> See also: J. Starzyk-Sulejewska, *Stosunki Unii Europejskiej z Organizacją Narodów Zjednoczonych. Podstawy prawne i instytucjonalne oraz wybrane dziedziny współpracy (The European Union Relations with the United Nations. Legal and Institutional Foundations and Selected Areas of Cooperation)*, Wydawnictwo Naukowe Scholar, Warszawa 2015, pp. 58–67.

least frequently occurring types of the EU relations with other international intergovernmental organizations. Taking into account the purpose of the article and the thesis mentioned above, it discusses issues such as: the basic principles of NAFO functioning, the essence of the EU membership in the organization, the system of representation and implementation of the EC/EU interests on this forum, as well as the system of internal coordination of the EU activities in connection with its membership in NAFO. The article is based on the perspective of new (liberal) institutionalism as a paradigm allowing for explanation of the evolution and nature of the relations between two international organizations. The analysis of primary sources in the form of numerous documents specifying mutual relations between the two organizations, as well as the analysis of the selected secondary sources occurred to be the most useful method for the implementation of the indicated objective and hypothesis of the article.

### **The Evolution of NAFO in Years 1979–2017**

The Northwest Atlantic Fisheries Organization (NAFO) was founded as the successor of the International Commission of the Northwest Atlantic Fisheries operating in years 1949–1979. It was established as an international intergovernmental organization on the basis of the ‘Convention on the Future of International Multilateral Cooperation in the Field of Northwest Atlantic Fisheries’<sup>7</sup> signed in Ottawa on October 24, 1978, which entered into force on January 1, 1979. Initially, it had seven members: Iceland, Canada, Cuba, Norway, East Germany, USSR and EEC as the only non-state member. In the following years, composition of the organization evolved as a result of the process of joining new members and withdrawal from cooperation of other members. New members included, among others: Bulgaria, Denmark (in relation to the Faroe Islands and Greenland), France (in relation to St. Pierre and Miquelon), Japan, Poland, Portugal, Romania. Currently, NAFO has 12 members. These are: Canada, Cuba, Denmark (in relation to the Faroe Islands and Greenland), France (in relation to St. Pierre and Miquelon), Iceland, Japan, Norway, Republic of Korea, Russian Federation, Ukraine, United States and the European Union.<sup>8</sup>

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<sup>7</sup> Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, OJ of the EC, No L 378, 30.12.78, pp. 16–29.

<sup>8</sup> List of Contracting Parties to the Convention and Former Contracting Parties, in: Convention on Cooperation in the Northwest Atlantic Fisheries, Northwest Atlantic Fisheries Organization, pp. vii, viii, <https://www.nafo.int/Portals/0/PDFs/key-publications/NAFOConvention-2017.pdf> (access 1.03.2020).

The Convention, which constitutes the basis for the functioning of the organization, has been amended four times. The first three amendments, which entered into force on January 1, 1980, October 9, 1987 and September 13, 1996, changed primarily the rules of division of areas covered by the Convention. However, it was the fourth and last amendment that had the most comprehensive character. It was negotiated in the years 2005–2007, and entered into force only on May 18, 2017, introducing significant changes both to the scope of the organization's objectives and to its organizational structure, as well as methods of functioning of its main bodies and the decision-making mechanism.

Based on the original NAFO Convention, which entered into force in 1979, the main objectives of the organization included: contributing through consultation and cooperation to the rational use, management and conservation of fisheries resources within the Convention area.<sup>9</sup> In the version of the Convention after its amendments that entered into force in 2017, these objectives were clarified taking into account, among others, changes in the international reality in the field of fisheries and, in consequence, different needs in this respect. Therefore, in art. 2 of the Convention in its 2017 version, these objectives were defined as: ensuring long-term conservation and sustainable use of fisheries resources within the Convention area, as well as ensuring protection of the marine ecosystems in which they are found,<sup>10</sup> Thus, the implementation of NAFO objectives was clearly inscribed in the pursuance of the concept of sustainable development promoted within the UN and implemented with great commitment by some regional organizations, including the EU. In addition, the objectives included new provisions regarding the need to ensure the protection of marine ecosystems in the process of achieving other objectives of the organization and its members. This means that the above provisions go far beyond the need for just a sustainable use of marine resources in achieving commercial objectives and take into account current needs and challenges related to environment protection in the Northwest Atlantic region<sup>11</sup>.

NAFO in its original form, i.e. until the entry into force of the fourth amendment on May 18, 2017, pursued its objectives through four main bodies. These were: the General Council, the Scientific Council, the

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<sup>9</sup> Art. 1, Convention on Future..., op. cit., p. 16.

<sup>10</sup> Art. II, Convention on Cooperation..., op. cit., p. 4.

<sup>11</sup> NAFO Perspectives Booklet, North Atlantic Fisheries Organization, NAFO Secretariat with Damon Loomer, April 2009, pp. 1–2, 16–18, <https://www.nafo.int/Portals/0/PDFs/GeneralInfo/NAFO-Perspectives-booklet.pdf?ver=2016-07-29-101054-407> (access 28.02.2020).

Fisheries Commission (the NAFO Commission) and the Secretariat located in Dartmouth, Nova Scotia, Canada, with the option of changing the seat of the organization based on relevant decision of the General Council in this regard.

Pursuant to the provisions of the Convention, the competences of the General Council included: supervision and coordination of organizational, administrative and financial issues related to the functioning of the organization as well as other internal organizational issues, including regulation of relations between the organization's bodies, coordination of the external relations of the organization together with review and determination of membership in the Fisheries Commission. The General Council also approved NAFO budget.<sup>12</sup> Each member of the organization has its representative in the General Council and has one vote. With few exceptions, the Council's decisions were based on the majority of votes cast by representatives present at a voting, while the quorum requirement was applied of not less than two-thirds of all contracting parties.<sup>13</sup> The Chairman of the General Council was also the President of the organization.

The Scientific Council was a forum for consultation and cooperation on issues of scientific research and statistics, and exchange of information in this field. In addition, it dealt with giving advice on fisheries management for both the member states and the Fisheries Commission, acting at their request or on its own initiative.<sup>14</sup> The Council could also perform these functions through cooperation with other public or private organizations with similar objectives, and member states were required to provide the Council with all information necessary to achieve these objectives.<sup>15</sup> Within the Council, all members are represented, and all decisions of advisory character at its level required consensus. On the other hand, decisions regarding the internal functioning of this body were taken by a majority of the present and voting members of the organization while maintaining a quorum of two-thirds of all members.<sup>16</sup>

The Fisheries Commission was responsible for the management and conservation of fishery resources in waters subject to the provisions of the Convention. In carrying out this task, it could, among others, adopt proposals for joint actions aimed at achieving the most optimal use of the fisheries resources within the area covered by the Convention, taking into

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<sup>12</sup> Art. III, Convention on Future..., op. cit., p. 17.

<sup>13</sup> Ibidem, Art. V, item 1–2.

<sup>14</sup> Ibidem, Art. VI, item 1.

<sup>15</sup> Ibidem, Art. VI, item 2–3.

<sup>16</sup> Ibidem, Art. X, item 1–2, p. 18.

account in this process all proposals and information submitted by the Scientific Council.<sup>17</sup> In addition to accepting proposals for joint actions within its competences, it was also entrusted with the role of adopting proposals for the application of specific international control measures within the regulated area, as well as proposals for management and enforcement measures with regard to the provisions of the Convention and the measures adopted under it.<sup>18</sup> The adopted measures were binding on the parties, as long as the requirements envisaged for the decision-making procedure were met in individual cases. All members had one vote within the Commission. Pursuant to the instructions of its statutory text, the Commission could include countries that performed fishing activity within the Convention area off the 200-mile exclusive fisheries zone, as well as those which expressed their readiness to perform it in the near future, i.e. by the end of the current or next calendar year.<sup>19</sup> At the same time, it was assumed that any member state that is not at a time a member of the Fisheries Commission may participate in its deliberations as an observer.

In order to implement administrative and technical tasks, the Secretariat was established within the structure of NAFO, whose activities were to contribute to the implementation of the objectives of the organization. It was headed by the Executive Secretary elected by the General Council, responsible for the recruitment and nomination of the Secretariat personnel, as well as performing all tasks entrusted to this body by the General Council. The General Council exercised control over the activities of the Executive Secretary and the Secretariat.<sup>20</sup>

After 25 years of NAFO's operation, i.e. in 2005, a broad debate on the reform of the organization began among its member states. Changes regarding, inter alia, the scope of its tasks, functioning and implementation of competences by the main bodies were approved in 2007, but their implementation was effected only after ten years. From the substantive point of view, these reforms prepared NAFO primarily to playing the role of organization with expanded powers (compared to the previous period) in controlling and supervising the implementation of the provisions of the Convention not only in the field of the conservation and management of biological species, but also the conservation of all

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<sup>17</sup> Ibidem, Art. XI, item 2.

<sup>18</sup> Ibidem, Art. XI, item 5, p. 19.

<sup>19</sup> Ibidem, Art. XIII, item 1, pp. 19–20.

<sup>20</sup> Ibidem, Art. XV, p. 20. See also: L.S. Parsons, J.S. Beckett, *The NAFO Model of International Collaborative Research, Management and Cooperation*, "Journal of Northwest Atlantic Fisheries Science", vol. 23, issue 1/June 1998, pp. 1–18.

elements of marine ecosystems in the Convention area. The fact that amendments could be implemented as late as after ten years was caused, among others, by the procedure of making amendments to the statutory text stipulated in the Convention. In accordance with the procedure, the introduction of amendments required the majority of three-quarters of votes of all members of the General Council, and their entry into force was conditional upon the ratification of the amendments or their adoption in line with relevant constitutional requirements by three-quarters of all members.<sup>21</sup> The European Union adopted the decision on November 8, 2010.<sup>22</sup>

Finally, from May 18, 2017, NAFO began operating on the basis of the amended Convention, and within the above framework also based on the reformed organizational structure, which consists of three main bodies: the Commission (NAFO Commission), the Scientific Council and the Secretariat. Additional bodies in the NAFO structure may be created by the Commission and the Council and, in the period preceding the introduction of the abovementioned changes, were also created by the General Council.

From the point of view of the scope of competences and the nature of functioning, the most serious changes were introduced with regard to the principles of functioning of the NAFO Commission, which in the new system of inter-institutional relations not only performs its functions developed in the past institutional context, but also took over the competences of the General Council which was abolished.

As regards the functioning of the Commission, an important change was made compared to previous regulations, namely it includes a representative of each contracting party<sup>23</sup> and not, as before, those parties which actively performed fishery activity in the Convention area or intended to participate in such activities in the near future. Each representative of an organization member appoints his/her alternate as well as experts and advisers. The Commission elects its Chairman and deputy chairman for a period of two years with the right of re-election for another two-year term. The period of performing the above functions may not exceed 4 years.<sup>24</sup> NAFO meetings are held once a year, but the Chairman may convene special meetings at the request of any member

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<sup>21</sup> Art. XXI, Convention on Future..., *op. cit.*, pp. 21–22.

<sup>22</sup> Council Decision of November 8, 2010 approving on behalf of the European Union, amendments to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (2010/717 / EU), OJ of the UE, No. L 321, pp. 1–19.

<sup>23</sup> Art. VI, item 1, Convention on Cooperation in the Northwest..., *op. cit.*, p. 6.

<sup>24</sup> *Ibidem*, Art. VI, item 2.

of the organization.<sup>25</sup> The President of the Commission is also the highest representative of the organization and holds the function of its President.

Currently, the NAFO Commission is responsible for the implementation of the four most important competence groups including: NAFO internal and external organizational issues, protection and management, control and enforcement of fisheries decisions within the area subject to the Convention, as well as major financial decisions.

When it comes to organizational issues, the Commission makes all necessary decisions of this kind which are material for its functioning, such as adopting regulations and deciding on financial matters. It manages administrative, organizational and financial affairs of the entire organization, including regulating relations between individual bodies, and appoints the Executive Secretary of the organization, as well as determines the directions of the Scientific Council's activities. In relation to external organizational issues, it conducts the external relations of the organization, including above all defining the principles of cooperation with intergovernmental and non-governmental organizations and with third countries.<sup>26</sup>

In implementing the functions assigned under the Convention in the field of fisheries, the Commission, in cooperation with the Scientific Council: regularly reviews the state of fishery resources and identifies activities required for their conservation and management; collects, analyzes and disseminates relevant information; evaluates the impact of fishing and other human activities on living resources and their ecosystems; develops guidelines for conducting fishing activities for scientific purposes and develops guidelines for collection, transmission, verification, access and use of relevant data. The Commission may also make inquiries to the Scientific Council related to the scientific basis of decisions that may be necessary regarding fishery resources and the impact of fishing activities on the life of the resources and the conservation of the ecosystem in which they were found.<sup>27</sup>

Applying general principles set out in the Convention, the Commission may, in relation to its regulatory area, adopt decisions embodying three types of measures. These are: management and conservation measures; control, inspection and supervision measures; as well as measures enforcing management and conservation measures. As far as conservation and management measures are concerned, they may include: (a) measures

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<sup>25</sup> Ibidem, Art. VI, item 3.

<sup>26</sup> Ibidem, Art. VI, item 5, pp. 6–7.

<sup>27</sup> Ibidem, Art. VI, item 6–7, pp. 7.

aimed at achieving the objectives of the Convention; (b) measures aimed at minimizing the impact of fishing activities on the functioning of living resources and their ecosystems; (c) determination of the total permissible catches and/or levels of fishing effort and determination of the nature and scope of participation of individual participants in the catches; (d) measures concerning fishing for scientific purposes; (e) measures regarding collection, analysis, verification, access and use of data, and (f) measures aimed at ensuring proper performance of the flag state duties.<sup>28</sup> As regards monitoring, supervision, control and enforcement measures, the Commission may establish, inter alia, reciprocal rights of boarding the ship and inspecting it by the contracting parties within the Convention area; make decisions on sanctions based on the evidence gathered during such boarding and inspections; set minimum standards for the inspection of fishing vessels in ports where fishery resources from the convention Area are landed; and, without prejudice to any measures that the contracting party may itself take in this regard, measures preventing, disabling and eliminating illegal fishing.<sup>29</sup> The Commission may also adopt the abovementioned measures in respect to the area under the jurisdiction of the contracting parties, provided that the coastal state so requests and votes in favour of the measure.<sup>30</sup> In its activities, the Commission should also seek to ensure consistency between its own activities and those of the contracting parties in the overlapping areas.<sup>31</sup> Among material financial matters not related directly to the application of the abovementioned measures, the Commission also adopts the organization's budget.

The Scientific Council constitutes the second most important body within the new structure of NAFO institutions. Like in the previous period, it consists of representatives of the parties to the Convention.<sup>32</sup> The Council, similarly as the NAFO Commission, elects its Chairman and deputy chairman for the period of two years. Both of them may be re-elected, provided that their term of office does not exceed four years in total.<sup>33</sup> The Council provides a forum for consultation and cooperation among member states in the field of research and exchange of scientific information on fishery resources and the condition of ecosystems within the Convention area; promotes cooperation in the field of scientific research among the parties to the Convention; is responsible for keeping

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<sup>28</sup> *Ibidem*, Art. VI, item 8, pp. 7–8.

<sup>29</sup> *Ibidem*, Art. VI, item 9, p. 8.

<sup>30</sup> *Ibidem*, Art. VI, item 10.

<sup>31</sup> *Ibidem*, Art. VI, item 11.

<sup>32</sup> *Ibidem*, Art. VII, item 1, p. 9.

<sup>33</sup> *Ibidem*, Art. VII, item 2.

and sharing statistical data and publishes or provides reports, information and other materials on fisheries and ecosystems within the regulated area. Moreover, it provides consultancy on all matters upon the NAFO Commission's request and may also advise it on its own initiative. It also consults the NAFO Commission and coastal states on all matters related to the conservation and management of fishery resources and ecosystems in the regulated area. The Council may also cooperate with any public or private organizations operating in a similar area and request NAFO members to provide all information necessary to achieve its goals.<sup>34</sup>

The Secretariat, like under the previous regulations, carries out administrative, technical and service functions for the main NAFO bodies and member states.<sup>35</sup>

### **Membership of the Communities/ European Union in NAFO**

From the very beginning of the EEC fisheries policy functioning, the issue of representation and implementation of the Communities' interests within regional fisheries organizations was entrusted to the Community on the basis of the provisions of Article 43 of the Treaty establishing the EEC and the judicature of the European Court of Justice interpreting them. On the basis of the Court's judicature, it was assumed that all negotiations regarding the EEC participation in newly created fisheries organizations, as well as negotiations regarding amendments to the statutory texts of such organizations to which the EEC had previously acceded, belong exclusively to the competences of the Community. The Commission was also exclusively entrusted with the exercise of membership rights.<sup>36</sup> The member states of the Communities were thus excluded from membership in such organizations, retaining only the right of representing the interests of their overseas territories. Therefore, in the situation where the statutory texts of regional fisheries organizations did not contain provisions stipulating that non-state actors could not be their members, the Community, and over time the European Union, gained the opportunity to become members of this type of organizations after meeting relevant requirements resulting from the statutory documents. The EU membership in NAFO should be considered as a classic example of the exercise of this kind of rights.

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<sup>34</sup> Ibidem, Art. VII, item 8–9, pp. 10–11.

<sup>35</sup> Ibidem, Art. VIII, pp. 12.

<sup>36</sup> R. Frid, *The Relations between the EC and International Organizations. Legal Theory and Practice*, Kluwer Law International, The Hague, London, Boston 1995, p. 321.

Pursuant to the provisions of the Convention underlying NAFO functioning, all parties participating in the diplomatic conference held in Ottawa from October 11 to October 21, 1977, which signed the Convention until December 31, 1978 and subsequently ratified or accepted it, as well as deposited the documents of ratification or acceptance with the depositary of the Convention (which in this case was Canada), could become the original members of the organization. The Convention could enter into force with the minimal threshold of support by six members.<sup>37</sup> It was also open to other parties that did not attend the diplomatic conference, provided that they notified in writing the Government of Canada of ratification or acceptance of the Convention.<sup>38</sup>

Importantly, from the point of view of relations between the EC/EU and its member states, the NAFO statutory text in its Art. XXIV also provided for the possibility of termination of the Convention by way of a written notification to the depositary of the Convention by June 30 each year. Such termination would then become effective on December 31 of the given year.<sup>39</sup>

The Convention was concluded on October 24, 1978 and entered into force on January 1, 1979. On behalf of the EEC, it was negotiated by the European Commission, acting on the basis of the guidelines of the EEC Council of Ministers and advised by the committee competent in this respect, and was by the EEC Council decision of December 28, 1978.<sup>40</sup> The Convention entered into force in relation to the Community on January 1, 1979. In the same year, that is on May 30, 1979, Denmark, representing the interests of the Faroe Islands and Greenland, also submitted relevant acceptance documents. It should be noted that on August 14, 1996 France joined NAFO, representing from then on the interests of St. Pierre and Miquelon.<sup>41</sup>

From the point of view of the EEC, then the European Community and now the EU membership in NAFO, an extremely interesting issue constitutes the problem of evolution of participation in the organization of individual European states, which in the course of time became members of the Communities/Union. In the history of the organization so far, this problem concerned such countries as: Spain, Portugal, East

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<sup>37</sup> Art. XXII, item 1–3, Convention on Future..., op. cit., p. 22.

<sup>38</sup> Ibidem, Art. XXII, item 4.

<sup>39</sup> Ibidem, Art. XXIV, p. 12.

<sup>40</sup> Council Regulation (EEC) No. 3179/78 of 28 December 1978 concerning the conclusion by the European Economic Community of the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, OJ of the EC, No. L378, 30.12.78, p. 1.

<sup>41</sup> Convention on Cooperation, op. cit., p. vii.

Germany, Lithuania, Latvia, Estonia, Poland, Bulgaria and Romania. All the countries mentioned above were members of NAFO at some time, and when deciding to join the Communities or the EU, they accepted the need to adapt to the principles of development of the common fisheries policy belonging to the area of NAFO activity, which within the scope of protection of biological species and their ecosystems belongs exclusively to EC/EU competences. Therefore, although in primary and secondary EC/EU law there were no specific provisions regarding the necessity of withdrawal by countries joining the EEC/EC/EU from regional fisheries organizations at the time of their accession to the EC/EU, the logical consequence of the solution consisting in the transfer of competences to the EC/EU in the above mentioned field, was and continues to be taking actions preventing the exercise of competences of individual member states in the area reserved for the exclusive powers of the Communities/ Union.<sup>42</sup>

The first countries that had to solve the problem of their membership in NAFO in connection with the accession to the European Communities were Portugal and Spain. Portugal joined NAFO on May 27, 1979 and withdrew from this organization on December 31, 1986, while Spain became a member of the organization on August 31, 1983, and left it just as Portugal did on December 31, 1986. The principles set out in the Accession Treaties of both countries included provisions regarding the EEC's exclusive right to conclude international agreements in the field of fisheries policy and the need to adapt agreements in this regard concluded previously by both countries to the requirements of that policy.<sup>43</sup> The possibility of maintaining by both countries separate agreements in this area was subject to potential additional consent of the EC Council of Ministers given in each case separately. However, cases of this type concerned primarily countries with which the EC/EU did not cooperate in the field of fisheries based on existing international agreements.

When it comes to other states formerly belonging to NAFO joining the EC/EU in the course of time, they were faced with similar conditions. The GDR submitted the act of accession to NAFO on December 28, 1978

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<sup>42</sup> Cf. Art. 29 and 30 of the Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) (EC) No. 639/2004 and Council Decision 2004/585/EC, OJ of the EU, No. L 354, 28/12/2013, p. 42.

<sup>43</sup> Art. 155, item 2 b) and Art. 167, item 1-4 of the Act Concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties, OJ of the EU, L 302, Vol. 28, November 15, 1985, p. 74.

and ceased to be a member of the organization on December 31, 1990 due to the reunification of Germany. Along with the incorporation of its territory into Germany, the GDR was automatically included in the implementation of the EC common fisheries policy.

Poland submitted the document of ratification of the NAFO Convention on November 6, 1979, becoming a member of the organization until its accession to the EU, which took place on May 1, 2004. On the same day Lithuania, Latvia and Estonia joined the EU, which had belonged to NAFO since August 1992, following the collapse of the USSR, which was one of the founding members of NAFO. These countries, i.e. Poland and the Baltic States, when joining the EU, made commitments in their accession acts towards the EU, among others, to recognize the principles of development of the common fisheries policy, and therefore automatically accept the fact that the Community has exclusive competences to pursue and represent relevant interests within regional fisheries organizations.<sup>44</sup> A similar situation occurred in the case of Bulgaria and Romania. Bulgaria was a member of NAFO from June 6, 1979 till December 31, 2006, while Romania deposited its ratification documents on December 27, 1978 and officially left the organization on December 31, 2002. The main reason for the official withdrawal from NAFO by both countries were, as in the case of Poland, Lithuania, Latvia and Estonia, preparations for the EU accession. In fact, however, both Bulgaria and Romania since at least the early 1990s, in spite of the lack of an official decision to withdraw from NAFO, did not factually participate actively in its works. The reason for that constituted primarily successively decreasing resources within the fishing zones of both countries and unprofitability of maintaining their fishing activities in the Northwest Atlantic, as well as financial problems resulting in their inability to pay the membership fee.

The EC/EU as a member of regional fisheries organizations is obliged to comply with specific obligations within the organizations, which result both from implementation of the EC/EU common fisheries policy and commitments made on the basis of international conventions underlying the functioning of individual organizations of this type. Generally speaking, these are obligations to: represent and protect the interests of the Communities/the Union in a given organization, actively participate

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<sup>44</sup> Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the EU, OJ of the EU, No. L 236, Vol. 46, September 23, 2003, pp. 444–447.

Art. III, Convention on Cooperation, op. cit., pp. 4–5.

in the works on its forum, participate in the budget of a given organization, transpose into the EC/EU law and implement decisions adopted in given organization's regulatory framework, in particular in the scope of protection and management of resources subject to the regulations of a given organization. It was fulfilling these obligations since the beginning of its membership in the NAFO (membership of the EEC, the European Community and now the EU). However, while in the first version of the NAFO Convention these obligations resulted from the general provisions of the document, in the revised Convention, which entered into force in May 2017, the obligations of the parties were included in a much more precise way in a separate part of the document.

Pursuant to relevant provisions, all members of NAFO on its forum undertake to comply with the principle of cooperation indicated in the Convention,<sup>45</sup> as well as to comply with specified obligations. It is the responsibility of all parties to: implement the Convention and all conservation and management measures, as well as regularly submit to the Commission the description of the steps taken to implement and comply with these measures, including the description of the results of the activities in this field; cooperate in order to promote the implementation of the Convention; take all necessary steps to ensure the effective implementation and enforcement of conservation and management measures adopted by the Commission; collect scientific, technical and statistical data and knowledge about living resources and their ecosystems in the Convention Area; take biological samples from industrial fisheries; prepare information needed by the NAFO Commission and the Scientific Council; take actions or cooperate with other parties to the Convention to ensure implementation of the NAFO Commission decisions by their citizens, fishing vessels owned or operated by their citizens who are conducting fishing activities, as well as in justified cases, conduct investigations and promptly inform about actions taken in response to suspected serious violation of the provisions of the Convention or the decisions of the NAFO Commission regarding conservation and management.<sup>46</sup>

At the same time, it should be emphasized that the possibility of the simultaneous functioning of the EC/EU and their member states has been excluded on the NAFO forum. Therefore, in this case and in the case of other regional fisheries management organizations, also the presence of the EU member states as observers is excluded. The main goal in this case is avoiding calling into question the exclusive mandate

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<sup>45</sup> Ibidem, pp. 4–5.

<sup>46</sup> Ibidem, Art. X, pp. 13–14.

of the European Commission to implement its external competences in the area of the common fisheries policy with regard to the conservation of biological species. The only exception here constitutes the consent for the situation referred to above for member states to represent the interests of their overseas territories within the are limited strictly to the territories' affairs. Within NAFO, this situation is reflected by the membership of Denmark and France which is limited to the exercise of solely the above rights.

### **Representation and Implementation of EC/ EU Interests on the NAFO Forum**

Within the framework of regional fisheries organizations, the issue of representation and implementation of the EC and later the EU interests on the forums of main and subsidiary bodies and in other issues related to the functioning of this type of organization, was arranged in a characteristic way. At the same time, it is one of few groups of organizations in which exclusively the EU has the right to represent and pursue the Union's interests, and member states are formally excluded from such system. Since the commencement of operation by regional fisheries organizations and since the Community/Union became their member, there has existed a system in which the European Commission has been the only representative on that forum of interests in the field of the common fisheries policy implemented both on its own behalf and on behalf of its member states. In this case, the European Commission not only represents and pursues the interests of the EU within a specific fisheries organization, but also bears the main responsibility towards this type of organizations and their members for all activities of the Union related to achieving their objectives. At the same time, the task of the Commission is not only to represent the EU interests in the field of the common fisheries policy implemented in a given organization, but also to ensure consistency in the implementation of other Union policies.<sup>47</sup>

In the period preceding entry into force of the IV Amendment to the NAFO Convention in May 2017, the EU was represented in four main bodies, i.e. in the General Council, the Fisheries Council, the Scientific Council and the Secretariat, as well as in their subsidiary bodies, having the same rights as other members of the organization and participating on

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<sup>47</sup> Cf. Communication from the Commission to the Council and the European Parliament Community – participation in Regional Fisheries Organizations (RFOs), COM/99/0613 final, pp. 1–11, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:51999DC0613> (access 1.03.2020).

the same terms as NAFO member states in making decisions based on the rules applicable in each of the bodies.

Within the NAFO structure operating based on the new rules in force since May 18, 2017, the main decision-making body is the NAFO Commission, which carries out its tasks in cooperation with the Scientific Council, the latter having mainly research and advisory competences, and in cooperation with the members of the organization, the role of the Secretariat and the Executive Secretary being of subsidiary character.

Currently, each member of NAFO is a member of the Commission and appoints one representative in it, who may be accompanied by alternate representatives, experts and advisers. The EU delegation is composed of the representative of the European Commission and accompanying Commission officials from DG Environment, Oceans and Fisheries acting as alternates, experts or advisers. The European Commission is also responsible for ensuring the continuity of its representation during such meetings, taking into account the need to ensure its representation not only in the NAFO Commission, but also in its subsidiary bodies. The responsibility of the European Commission for maintaining the continuity of the EU representation also implies the need to ensure the participation of the Union through the Commission in the decision-making process and to protect its position on the NAFO forum. In the NAFO Commission, the European Union, and on its behalf the European Commission, have the exclusive right to speak, negotiate final decisions, participate in the decision-making process, together with the exclusive right to vote. Such powers may not be delegated by the Commission to the EU member states.

Until entry into force of the amended NAFO Convention in May 2017, basic substantive decisions on its forum were taken by the majority of members present and voting, with the quorum of at least two-thirds of members of the Commission. The EEC, and from 1 November 1993 the European Community represented by the Commission, had, like other members of the organization, one voice throughout the procedure. The European Commission had also the right to raise objection on behalf of the EC/EU within the time limit provided for in the Convention, thanks to whom the EC/EU, as a member of the NAFO Commission, would not be bound by a decision. Like other members of the NAFO Commission, it also had the right to withdraw the objection at any time, which resulted in it being bound by the decision, as well as the right to submit one year after entry into force of a decision to the NAFO Executive Secretary its intention to opt out of binding participation in a specific measure.<sup>48</sup>

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<sup>48</sup> Cf. Art. XII, Convention on Future..., *op. cit.*, p. 19 and R. Frid, *op. cit.*, pp. 334–336.

After May 18, 2017, the European Commission, like before, is the only official representative of the interests of the European Union on the forum of this body, participating in it in an even more complicated decision-making procedure than in the previous period.

At present, the principle of consensus is used in the decision-making of the NAFO Commission. The Union, along with other NAFO members, participates in the decision-making based on this principle unless it intends to oppose a decision by way of formal reservation when it is being discussed.<sup>49</sup> However, if the President of the NAFO Commission considers that all possibilities had been exhausted to reach consensus on a given matter and, unless otherwise provided, voting in the NAFO Commission held based on the two-thirds majority of all present and voting members with the quorum of two-thirds of all contracting parties. In such case, the European Commission votes through its representative having one vote.<sup>50</sup>

Any measure adopted in this way by the NAFO Commission becomes binding on the members of the organization, including the European Union, 60 days after the date on which the measure was officially communicated by the Executive Secretary of the organization.<sup>51</sup> In this procedure, however, the European Union, like other NAFO members, has the right to object to a given measure to the Executive Secretary within 60 days from the official communication of that measure. This automatically extends the procedure in relation to other parties which may also wish to submit their objections. The above means that if the representative of the European Commission raises an objection against a measure adopted by the NAFO Commission on behalf of the EU within the prescribed period, the measure will not be binding on it.<sup>52</sup>

The European Union, via the representative of the European Commission, may also, like the other members of NAFO, withdraw its objection at any time and then the measure becomes binding on it.<sup>53</sup> It also has the right, at any time after one year from the date of entry into force of a given measure, to notify the Executive Secretary of NAFO about its will to withdraw from participation in a given measure and, if it does not withdraw this notification, the measure ceases to be binding on it after one year from the notification.<sup>54</sup>

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<sup>49</sup> Cf. Art. XIII, item 1, Convention on Cooperation, op. cit., p. 16.

<sup>50</sup> Cf. *ibidem*, Art. XIII, item 2.

<sup>51</sup> Cf. *ibidem*, Art. XIV, item 1, letter a) and b).

<sup>52</sup> Cf. *ibidem*, item 2.

<sup>53</sup> Cf. *ibidem*, item 3.

<sup>54</sup> Cf. *ibidem*, item 4, letter a, p. 17.

If the European Union is the party which raised the objection to a given measure or made notification of its intention to give up binding participation in a given measure, it should, like other members of the organization, provide reasons for its conduct. This is to determine whether the Union or any other party contesting the legitimacy of adopting the measure considers it incompatible with the provisions of the Convention or whether the measure, through its content or effects, leads to unjustified discrimination against a party – in this case – the EU. It should also provide information about the planned steps it intends to take in connection with the objection and other alternative measures it adopted or intends to adopt to protect and manage specific fishery resources in accordance with the provisions of the NAFO Convention.<sup>55</sup> At this stage, it may also refer to the so-called ‘special committee’ appointed in accordance with the provisions of the Convention.<sup>56</sup> After exhausting the additional stages of the procedure, raising objections to a given measure adopted by the NAFO Commission together with its justification may lead to making the decision on its final modification, repealing or upholding. If the substantiation by the party making the objection is not accepted on the forum of the NAFO Commission, then the party may participate in the dispute resolution procedure provided for under the provisions of the Convention.<sup>57</sup> It should be noted that the Communities, and later the EU, many times participated in this procedure, including in numerous disputes with Canada, especially before the entry into force of the amended NAFO Convention in 2017.<sup>58</sup>

As for the second most important body of NAFO, i.e. the Scientific Council, the European Union, as in the period preceding the entry into force of the fourth amendment to the Convention, is represented on its forum by the representative of the European Commission. When making decisions, it has, depending on the nature of the cases, either the right to make objection under the current consensus procedure applicable to all advisory decisions of the Council<sup>59</sup> or one vote under the decision-making procedure by a majority of the members present and voting, if the issues discussed include the election of the Council officials, adoption

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<sup>55</sup> Ibidem, item 5, p. 17

<sup>56</sup> Ibidem, item 7.

<sup>57</sup> Ibidem, item 8–11.

<sup>58</sup> See: B. Howe, M. Kerby *The Canada – EU Turbot War of 1995 and the Cybernetic Model of Decision-Making*, “Round Table”, vol. 98, issue 401, April 2009, pp. 161–179; A.R. Aneiros, *Spain, the European Union, and Canada: A New Phase in the Unstable Balance in the Northwest Atlantic Fisheries*, “Ocean Development & International Law”, vol. 42, issue 1/2, Jan.–Jun. 2011, pp. 155–172.

<sup>59</sup> Ibidem, Art. VII, item 12, p. 11.

or amendment of its internal regulations, or other matters related to the organization of its works.<sup>60</sup> It should be emphasized that the Union plays an important role in the Council due to its capacity and importance as an organization with global potential and experience in the field of fisheries.

Both in the NAFO Commission and within the organization's Scientific Council, the European Union is represented by the European Commission officials, accompanied by advisers and experts. This group includes also, as a rule, European Commission officials, currently coming from the Environment, Oceans and Fisheries Directorate, however, as experts and advisers of the European Commission are also often being employed experts and advisers from the EU member states. They come usually from countries with special interests in the development of fisheries in the Northwest Atlantic, such as Great Britain, France, West Germany and Spain. However, although they play a significant role in the process of preparing the EU decisions on the forum of NAFO main bodies, their official status remains unchanged. In such cases, they act solely as experts supporting the activities of the representative of the European Commission, and do not represent the interest of a specific member state.

Both the NAFO Fisheries Commission and the NAFO Scientific Council have been setting up multiple additional bodies in the period of their functioning. At the level of these bodies, a transformation in the representation of the EU interests takes place, as on the forum of fisheries organizations, including NAFO, it often happens that the EU does not have enough experts who could participate in all, sometimes parallel, meetings of such bodies. It is therefore quite common practice that in these cases the Commission delegates its powers to experts from member states, who act on the basis of guidelines given by the Council of the EU and the European Commission, representing the Union as a whole.

The EU's role on the NAFO forum is additionally evidenced by the fact that, like other members of this organization, its representatives may candidate for major functions within it. Given the period of 2009–2020, i.e. the time from the entry into force of the Lisbon Treaty until today, the EU representatives have held, among others, such functions as: from September 2009 till September 2011 – Deputy Chairman of the NAFO General Council, from September 2009 till September 2011 – the Chairman of the NAFO Scientific Council, from September 2011 till September 2015 Ms. Veronica Veits held the function of the President of NAFO

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<sup>60</sup> Ibidem, item 6, p. 10.

and at the same time the Chairwoman of the NAFO General Council. Currently, in the term of office September 2018 – September 2020, the EU representative is also the Deputy Chairman of the NAFO Scientific Council and at the same time the President of STACREC operating at the Council.<sup>61</sup> Representatives of the European Commission also often act as chairmen or deputy chairmen of the auxiliary bodies of the Scientific Council and the NAFO Commission.<sup>62</sup>

It should be noted that the European Union also participates in the same way as other NAFO members in covering the costs of the organization functioning. In this context, it is required to finance the activity of its own delegations for all meetings convened within NAFO. It also pays its annual contribution to the organization's budget, which is officially set by the NAFO Commission.<sup>63</sup> Payments for both purposes are covered from the common EU budget, and the European Commission is also obliged to supervise the proper spending of such funds, especially when it comes to financing or co-financing programs implemented under the auspices of NAFO. The budgets of regional fisheries management organizations are increasing every year. For example, in 2018, NAFO's operating budget was USD 1.897 million, and the total budget amounted to USD 2.297 million, of which the EU contribution was the fourth largest (USD 157.038) after the contributions of Canada (first largest), Denmark (second largest) and the United States (third largest).<sup>64</sup>

What is important against the background of the EU participation in the works of other intergovernmental organizations, the European Union, along with other NAFO members also has the right to propose amendments to the NAFO Convention.<sup>65</sup>

## **The European Union Coordination System on the NAFO Forum**

Similarly as in the case of the EU cooperation with other international organizations, the European Union has developed an internal system of coordination of activities related to its presence in NAFO, as well as in the implementation of decisions taken on the forum of this organization.

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<sup>61</sup> Standing Committee on Research Coordination (Scientific Council of NAFO).

<sup>62</sup> Cf. NAFO Annual Reports from years 2009–2018, <https://www.nafo.int/Library/General-Information/Annual-Report> (access 3.03.2020).

<sup>63</sup> Cf. Art. IX, item 1 and 2, Convention on Cooperation, op. cit., pp. 12–13.

<sup>64</sup> NAFO Annual Report 2018, Northwest Atlantic Fisheries Organization, April 2019, p. 7, <https://www.nafo.int/Portals/0/PDFs/ar/ar2018/AR-2018.pdf> (access 3.03.2020).

<sup>65</sup> Cf. Art. XXII, Convention on Cooperation, op. cit., pp. 22–23.

Regarding the foundations of the EU coordination system for NAFO, it is broadly consistent with other coordination models existing within regional fisheries management organizations and adapted to the specificities of NAFO. It is applied both in Brussels and during meetings of the NAFO bodies in Canada.

The European Commission is the institution that bears the main responsibility for the functioning of the system of internal coordination of the EU activities related to its membership in NAFO at the level of individual institutions of the Union, as well as at the level of the Union itself and the level of its Member States. Within its tasks lies also ensuring consistency of decisions and actions taken within NAFO with the guidelines of the Union's common fisheries policy and its other policies. In carrying out this function, the European Commission cooperates closely with the EU Council, which adopts the EU framework common positions which should be taken by the EU in connection with its activity on the forum of this organization.<sup>66</sup> Such positions set out the principles and directions of the Union's activity within NAFO which, according to the EU Council decision, should be subject to review by the Council at the Commission's request. The EU framework position currently in force covers the period from May 2019 and should be subject to the review not later than by the date of the annual meeting of the NAFO Commission in 2024.<sup>67</sup> In addition, the position indicates that on the annual basis, before each meeting of the NAFO Commission when this body is expected to take decisions having legal consequences for the Union, the necessary steps should be taken to ensure that the position of the representative of the European Commission within that body takes into account the latest scientific information and other relevant information provided to the EC. To this end and on the basis of this information, the Commission shall provide the Council in reasonable advance before each meeting of the NAFO Commission with a written document containing the proposed elements defining the EU position for discussion and in order to approve the details of the position to be presented on behalf of the Union. If, during the NAFO Commission meeting, it is not possible – also on the spot – to reach agreement on the inclusion of new elements in the EU position, these matters shall be referred back to the Council or its preparatory

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<sup>66</sup> Annex I, Council Decision (EU) 2019/863 of 14 May 2019 on the position to be taken on behalf of the European Union in the Northwest Atlantic Fisheries Organization (NAFO) and repealing the Decision of 26 May 2014 on the position to be adopted on behalf of the Union in the NAFO, OJ of the EU, No. L 140, 28/05/2019, pp. 51–52.

<sup>67</sup> *Ibidem*, Art. 3, p. 49.

bodies.<sup>68</sup> In such case, they are submitted to the EU Agriculture and Fisheries Council and the EU Council preparatory bodies in Brussels – currently – the EU Council Working Group on External Fisheries Policy. The main task of the activities undertaken within the group is to reach agreement between the member states and the Union as to the general nature of the Union's common positions in various NAFO bodies. The opinions of the working group are then directed to the Permanent Representatives Committee of the Council of the EU – COREPER. As in the previous coordination mechanism, if the parties are unable to reach agreement within the working group, the matter is discussed on the COREPER forum, and if agreement cannot be reached at this level, it can be discussed and formally voted, and not just adopted following the findings of the working group or the COREPER, by the EU Agriculture and Fisheries Council.

As before the implementation of the Lisbon reform, local coordination meetings are also held in Canada at NAFO bodies' meetings, including in particular the Commission. The purpose of these local coordination meetings is to analyze current issues related to the decision-making process on the NAFO bodies forum, as well as other issues that in a given case may be of interest to representatives of individual EU member states, who usually come from representations of the EU member states accredited in Canada. In such cases, interest is generally shown by countries conducting fishing activity in the area subject the NAFO Convention, including most often Spain, France, Great Britain or Germany, as well as representatives of other EU member states, in particular those which were NAFO members before joining the EU. This kind of coordination also results from the desire to ensure the harmonious implementation of decisions elaborated by the EU on the NAFO forum at a later stage also at the EU level.

In connection with its membership in NAFO, the European Union also internally transposes NAFO decisions into its legal system. The decisions of the NAFO Fisheries Commission, in accordance with the developed mechanism, are binding on the members of the organization if, within the deadline stipulated by the Convention, they do not raise objection (such objection, when becoming effective, results in the countries not being bound by a decision). From the beginning of the EEC, the EC and now the EU membership in NAFO, there was a system in force according to which these decisions were transposed into the EC/EU legal order in the form of regulations. Currently, they are adopted by the EU Council and

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<sup>68</sup> Ibidem, Annex II, p. 53. See also: T. Belschner, *Not so green after all? The EU's role in international fisheries management: the cases of NAFO and ICCAT*, "Journal of European Public Policy", vol. 22, no. 7/2015, pp. 989–993.

the European Parliament under the ordinary legislative procedure and are published in the Official Journal of the European Union. The purpose of these activities is to adapt the decisions made to the assumptions and principles of the EU common fisheries policy, which includes determination of clear and precise obligations arising from NAFO decisions for fishing fleets from the EU area and the responsibility of the EU and its member states in individual fields of implementation of these decisions. Currently, the newest regulation in this area constitutes Regulation (EU) 2019/833 of the European Parliament and of the Council of 20 May 2019 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organization, amending Regulation (EU) 2016/1627 and repealing Council Regulations (EC) 2115/2005 and (EC) No 1386/2007.<sup>69</sup> The regulation stresses, *inter alia*, that NAFO is authorized to adopt legally binding decisions regarding the conservation of fishery resources under its jurisdiction. These decisions are primarily addressed to the NAFO members, but also impose obligations on operators, e.g. ship captains. With their entry into force, NAFO measures on conservation and enforcement (CEM) become binding on all NAFO members and, in the case of the EU, should be incorporated into the EU law to the extent they are not yet included therein.<sup>70</sup> Consequently, the purpose of the Regulation is to establish uniform rules for the use of CEM by the Union for their uniform and effective implementation in its jurisdiction.<sup>71</sup> The Regulation contains a number of specific provisions in this field.

The European Fisheries Control Agency (EFCA) plays an important role in the coordination of issues related to the EU membership and cooperation within NAFO. It was established in 2005 as an independent EU body composed of six representatives of the European Commission and one representative of each EU member states.<sup>72</sup> Its objective is to organize operational coordination of fishing control and inspection activities carried out by the member states and to support their cooperation in accordance

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<sup>69</sup> Regulation (EU) 2019/833 of the European Parliament and of the Council of 20 May 2019 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organization, amending Regulation (EU) 2016/1627 and repealing Council Regulations (EC) 2115/2005 and (EC) No 1386/2007, OJ of the UE L 141/1, 28.5.2019, pp. 1–41.

<sup>70</sup> *Ibidem*, Pt. 4 Introduction, p. 2.

<sup>71</sup> *Ibidem*, Art. 2, p. 3.

<sup>72</sup> Council Regulation (EC) No 768/2005 of 26 April 2005 establishing a Community Fisheries Control Agency and amending Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy, OJ of the EU, No. L 128, 28.4.2005.

with the rules of the common fisheries policy in order to ensure its effective and uniform application.<sup>73</sup> The Agency also performs important functions in the implementation of the Union's international obligations regarding control and inspections in the process of implementation of the common fisheries policy. In this respect, at the request of the Commission, the Agency supports the Union and the member states in their relations with third countries and regional fisheries organizations in which the Union participates, as well as cooperates with the competent bodies of international regional fisheries organizations in relation to the Union's obligations regarding control and inspections in the form of working arrangements made with their competent authorities.<sup>74</sup> In this regard, the Agency carries out tasks related to operational coordination in the field of inspection and supervision. For the purposes of the organizational coordination the Agency develops joint deployment plans, which is also the case with regard to NAFO.

EFCA coordinates the implementation of the EU commitments as the NAFO member defined in the NAFO Convention, as well as the implementation of NAFO Conservation and Enforcement Measures (NAFO CEM). In order to achieve the objective of uniform and effective application of NAFO conservation, inspection and supervision measures, as well as the European Union's conservation and control measures applicable to the EU fishing vessels in the NAFO regulatory area, EFCA is developing, on behalf of the EU and in cooperation with the EU member state concerned, so-called joint deployment plans (JDP). Joint EU-NAFO deployment plans have been implemented in practice since 2007 with the participation of Denmark, Estonia, France, Germany, Ireland, Latvia, Lithuania, the Netherlands, Poland, Portugal, Spain, Sweden and the United Kingdom, cooperating in the implementation of NAFO conservation and management measures through a system of joint maritime operations.<sup>75</sup> The EU Member States in cooperation with the European Commission and EFCA may also, by mutual agreement, direct EFCA inspectors and coordinators designated for this system by EFCA to inspection units of another NAFO member.

Joint maritime operations implementing inspection and supervision activities are planned, implemented and evaluated annually in close cooperation between the European Commission, relevant member states

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<sup>73</sup> Art. 1 of the Regulation (EU) 2019/473 of the European Parliament and of the Council of 19 March 2019 on the European Fisheries Control Agency (consolidated text), OJ of the EU, L83, 25.3.2019, p. 21.

<sup>74</sup> Ibidem, Art. 4, item 1, letter. a) and b), p. 22.

<sup>75</sup> <https://www.efca.europa.eu/en/content/nafo> (access 15.03.2020).

and EFCA. The principles of uniform and effective implementation of control and inspection activities are determined by way of consensus during the meetings of the NAFO Steering Group for Strategic Decisions and through the cooperation of the Technical Joint Deployment Group. Their result constitutes the work of the inspectors assigned to joint and mixed EU-NAFO inspection teams.<sup>76</sup>

EFCA also conducts in cooperation with the European Commission tasks related to the obligation to notify NAFO of the list of EU inspectors, inspection measures and observers to be deployed on EU vessels fishing within the NAFO Convention area. Moreover, EFCA sends all original reports on inspections carried out by EU member states inspectors within this area to the flag states of fishing vessels, and the copies of inspection reports are sent to the European Commission and the NAFO Secretariat.<sup>77</sup>

## **Conclusions**

EU membership in NAFO constitutes an example of extremely rare and specific status of this organization in another international intergovernmental organization. It is a model of membership which assumes lack of simultaneous representation of the member states through their own representatives on the forum of the organization, with the exceptions related to the membership of Denmark and France, which represent only the interests of their overseas territories. The European Union, and previously the European Communities have had exclusive powers to participate in the works of the main bodies of the organization both before and after the introduction of the NAFO organizational reform in 2017. The Union, along with NAFO member states, participates in the complicated NAFO decision-making procedure, and on the same terms as the member states of the organization, shapes its budget and participates in its expenditure. The EU representatives may candidate and be elected to prominent positions in NAFO. The EU may also propose amendments to the NAFO Convention. The foundations of the coordination system for the EU's internal decisions and activities in matters related to the functioning of NAFO are based on the cooperation of the European Commission with the Council of the EU and its preparatory bodies. Representatives of the EU member states only indirectly participate in this process. They are not granted any formal status in the internal coordination process, apart from the indirect control by the states through the EU Council of the

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<sup>76</sup> Ibidem.

<sup>77</sup> Ibidem.

positions and decisions of the EU adopted in connection with its activity in NAFO and informal consultations with representatives of the member states participating in fishing activities in the North-West Atlantic. This model of the EU membership in international organization exists only in few regional fisheries management organizations.

The above does not mean that the EU does not have a membership status in other international intergovernmental organizations. In other cases, however, it is usually connected with the parallel membership of EU member states and even in cases where the Union is the main representative of the EU members' interests, it involves much more complicated procedures for coordinating positions with the member states' representatives (WTO), and sometimes, as in the case of FAO, also with the need to delimit the areas and scopes of influence and representation of the Union and its member states in the organization, so as not to impede the coherence of its own activities in cases where both the Union and its member states have a membership status.<sup>78</sup>

A clear aspiration of the European Communities, and later – the European Union, resulting especially from its legal personality acquired under the Lisbon Treaty, has been strengthening their status in specific organizations depending on the type of competences vested in such organizations. A characteristic tendency here is that, if the activity of given organization is closely related to the exercise of the EU's exclusive competences, then the EU seeks to maximize its presence while at the same time having to take into account the procedures in force in the organization, provided that this is related to a significant area of the Union's functioning. The fact that most of the EU's competences belong to the competences shared by the Union and its member states, makes the model of relations between the EU and international organization based on the simultaneous presence of both the Union and its member states the most common model, but also the most complex one. It seems reasonable to suppose that, by taking advantage of the opportunities offered by the Lisbon Treaty in implementing the EU's external relations, the Union will also seek to strengthen the character of its participation (although most likely in these cases without applying for membership status) also in organizations which pursue their objectives in the fields of its multiple shared competences. Most likely, in such cases the EU will seek to strengthen its observer status already held by it in many organizations.

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<sup>78</sup> J. Starzyk-Sulejewska, *Stosunki Unii Europejskiej z Organizacją Narodów Zjednoczonych ds. Wyżywienia i Rolnictwa – FAO (Relations of the European Union with the United Nations Food and Agriculture Organization – FAO)*, "Stosunki Międzynarodowe", no. 4, vol. 52/2016, pp. 91–111.

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