

Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy

TITLE III

CONTROL OF FISHERIES

CHAPTER II

Fishing logbook, landing declaration and transshipment declaration in electronic format

Section 1

Completion and transmission of a fishing logbook, landing declaration and transshipment declaration data in electronic format

Article 36

Requirement of electronic recording and reporting system on EU fishing vessels

1 Without prejudice to Article 39(4) of this Regulation an EU fishing vessel subject to electronic completion and transmission of fishing logbook, transshipment declaration and landing declaration in accordance with Articles 15, 21 and 24 of the Control Regulation shall not be allowed to leave port without a fully operational electronic recording and reporting system installed on board.

2 This Chapter shall not apply to EU fishing vessels used exclusively for the exploitation of aquaculture.

Article 37

Format for transmission of data from an EU fishing vessel to the competent authority of its flag State

Member States shall determine the format to be used between EU fishing vessels flying their flags and their competent authorities for the completion and transmission of fishing logbook, transshipment declaration and landing declaration data as referred to in Articles 15, 21 and 24 of the Control Regulation.

Article 38

Return messages

1 Return messages shall be issued to the EU fishing vessels for each transmission of fishing logbook, transshipment, prior notification and landing data. The return message shall contain an acknowledgement of receipt.

2 The master of an EU fishing vessel shall retain the return message until the end of the fishing trip.

Article 39

Provisions in the event of technical failure or non-functioning of electronic recording and reporting systems

1 In the event of a technical failure or non-functioning of the electronic recording and reporting system fitted on board a EU fishing vessel, the master of the fishing vessel or his representative shall, starting from the time that the event was detected or from the time that he was informed in accordance with Article 40(1) of this Regulation, communicate fishing logbook, transshipment declaration and landing declaration data to the competent authorities of the flag Member State by appropriate telecommunications means on a daily basis and no later than 24.00 even when there are no catches. Member States shall decide on the telecommunication means to be used and indicate them on the website referred to in Article 115 of the Control Regulation.

2 In the event of a technical failure or non-functioning of the electronic recording and reporting system fishing logbook and transshipment declaration data shall also be sent:

- a at the request of the competent authority of the flag State;
- b immediately after the last fishing operation or after the transshipment has been completed;
- c before entering into port;
- d at the time of any inspection at sea;
- e at the time of events defined in Community legislation or by the flag State.

Prior notification and landing declaration data shall also be sent in the cases referred to in (a) and (e).

3 The competent authorities of the flag Member State shall enter the data referred to in paragraph 1 into the electronic data base without delay on their receipt.

4 Following a technical failure or non-functioning of its electronic recording and reporting system, a EU fishing vessel may only leave port once the recording and reporting system fitted on board is fully functioning to the satisfaction of the competent authorities of the flag Member State or is otherwise authorised to leave by the competent authorities of the flag Member State. The flag Member State shall immediately notify the coastal Member State when it has authorised one of its fishing vessels to leave a port in the coastal Member State with a non-functioning electronic recording and reporting system.

5 The removal of the electronic recording and reporting system for repair or replacement shall be subject to the approval of the competent authorities of the flag Member State.

Article 40

Non-receipt of data

1 When the competent authorities of a flag Member State have not received data transmissions in accordance with Articles 15, 22 and 24 of the Control Regulation they shall notify the master or the operator of the EU fishing vessel or their representative(s) thereof as soon as possible. If, in respect of a particular EU fishing vessel, that situation occurs more than three times within a period of calendar year, the flag Member State shall ensure that the electronic recording and reporting system of the fishing vessel is thoroughly checked. The flag Member State shall investigate the matter in order to establish why data have not been received and shall take appropriate measures.

2 When the competent authorities of a flag Member State have not received data transmissions in accordance with Articles 15, 22 and 24 of the Control Regulation and the last position received through the Vessel Monitoring System was from within the waters of a coastal Member State they shall notify the competent authorities of that coastal Member State thereof as soon as possible.

3 The master or the operator of the EU fishing vessel or their representative shall send all data which have not yet been transmitted and for which a notification was received in accordance with paragraph 1 to the competent authorities of the flag Member State immediately on receipt of the notification.

Article 41

Data access failure

1 When the competent authorities of a coastal Member State observe an EU fishing vessel of another Member State in their waters and cannot access fishing logbook or transshipment data in accordance with Article 44 of this Regulation they shall request the competent authorities of the flag Member State to ensure access to those data.

2 If the access referred to in paragraph 1 is not ensured within 4 hours of the request, the coastal Member State shall notify the flag Member State. On receipt of the notification the flag Member State shall immediately send the data to the coastal Member State by any available electronic means.

3 If the coastal Member State does not receive the data referred to in paragraph 2, the master or operator of the EU fishing vessel or their representative shall send the data and a copy of the return message referred to in Article 38 of this Regulation to the competent authorities of the coastal Member State on request and by any available, if possible electronic, means. Member States shall decide on the means to be used and shall indicate them on the website referred to in Article 115 of the Control Regulation.

4 If the master or the operator of the EU fishing vessel or their representative can not provide the competent authorities of the coastal Member State with a copy of the return message referred to in Article 38 of this Regulation, fishing activities in the waters of the coastal Member State by the fishing vessel concerned shall be prohibited until the master, the operator of the fishing vessel or his representative can provide a copy of the return message or information referred to in Article 14(1) of the Control Regulation to the said authorities.

Article 42

Data on the functioning of the electronic recording and reporting system

1 Member States shall maintain databases on the functioning of their electronic recording and reporting system. Those databases shall contain at least and be capable to generate automatically the following information:

- a the list of their fishing vessels whose electronic recording and reporting systems have experienced technical failure or have failed to function;
- b the number of vessels that have not made daily electronic fishing logbook transmissions and the average number of electronic fishing logbook transmissions received per fishing vessel, broken down by flag Member State;
- c the number of transshipment declaration, landing declaration, takeover declaration and sales note transmissions received, broken down by flag Member State.

2 Summaries of information generated according to paragraph 1 shall be sent to the Commission at its request. Alternatively this information may also be made available on the secure website in a format and at time intervals to be decided by the Commission after consultation with Member States.

Article 43

Format for exchange of information between Member States

1 Information referred to in this Section shall be exchanged between Member States using the format defined in Annex XII from which extensible mark-up language (XML) shall be derived. The XML standard to be used for all electronic data exchanges between Member States, and between Member States, the Commission and the body designated by it, shall be decided by the Commission after consultation with Member States.

2 Amendments to the format referred to in paragraph 1 shall be clearly identified and marked with the date it was updated. Such amendments shall not come into effect earlier than 6 months after they have been decided.

3 When a Member State receives electronic information from another Member State it shall ensure that a return message is issued to the competent authorities of that Member State. The return message shall contain an acknowledgement of receipt.

4 Data elements in Annex XII that are mandatory for masters to record in their fishing logbook according to EU rules shall also be mandatory in exchanges between Member States.

Article 44

Access to data

1 A flag Member State shall ensure in real time the electronic exchange of information referred to in Article 111(1) of the Control Regulation to a coastal Member State on fishing logbook, transshipment declaration, prior notifications and landing declaration data of its fishing vessels when conducting fishing operations in the waters under the sovereignty or jurisdiction or entering a port of the coastal Member State.

Status: This is the original version (as it was originally adopted).

2 Without prejudice to paragraph 1 a flag Member State may on request ensure in real time the electronic exchange of information referred to in Article 111(1) of the Control Regulation on fishing logbook and transshipment declaration data of its fishing vessels to a Member State carrying out, in accordance with Article 80 of the Control Regulation, inspections of fishing vessels of another Member State in EU waters outside of the waters of the requesting Member State, in international waters or in waters of third countries.

3 Data referred to in paragraphs 1 and 2 for the previous 12 months shall be made available by the flag Member State on request.

4 The data referred to in paragraph 1 shall at least include the data from the last departure from port to the time when the landing is completed. The data referred to in paragraph 2 shall at least include the data from the last departure from port to the time of the request. Data as referred to in paragraphs 1 and 2 from fishing trips for the previous 12 months shall be made available on request.

5 The master of an EU fishing vessel shall have secure access to his own electronic fishing logbook information, transshipment declaration data and landing declaration data stored in the database of the flag Member State at any time.

6 A coastal Member State shall grant online access to its database of fishing logbook, transshipment declaration, prior notification and landing declaration data to a fishery patrol vessel of another Member State via the FMC of that Member State in the context of a joint deployment plan or other agreed joint inspection activities.

Article 45

Exchange of data between Member States

1 Access to the data referred to in Article 44 of this Regulation shall be by secure Internet connection on a permanent basis.

2 Member States shall exchange the relevant technical information to ensure mutual access to and exchange of electronic fishing logbook data, transshipment declaration data and landing declaration data.

3 Member States shall:

- a ensure that data received according to this Chapter are recorded in computer-readable form and safely stored in computerised databases for at least 3 years;
- b take all necessary measures to ensure that they are only used for official purposes; and
- c take all necessary technical measures to protect such data against any accidental or illicit destruction, accidental loss, deterioration, distribution or unauthorised consultation.

Article 46

Single authority

1 In each Member State, the single authority referred to in Article 5(5) of the Control Regulation shall be responsible for transmitting, receiving, managing and processing all data covered by this Chapter.

2 Member States shall exchange contact details of the authorities referred to in paragraph 1 and shall inform the Commission and the body designated by it thereof within 3 months after the entry into force of this Regulation.

Status: This is the original version (as it was originally adopted).

3 Any changes in the information referred to in paragraphs 1 and 2 shall be communicated to the Commission, the body designated by it and other Member States before they become effective.