

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 IV

CONTROL OF MARKETING

CHAPTER I

Traceability

Article 66

Definition

For the purpose of this Chapter, the following definition shall apply:

‘Fisheries and aquaculture products’ mean any products which fall under Chapter 03 and Tariff headings 1604 and 1605 of the Combined Nomenclature established by Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹⁾.

Article 67

Information on lots

1 Operators shall provide the information on fisheries and aquaculture products referred to in Article 58(5) of the Control Regulation at the moment when the fisheries and aquaculture products are put into lots and no later than the first sale.

2 In addition to paragraph 1, operators shall update the relevant information referred to in Article 58(5) of the Control Regulation which ensues from the merging or splitting of the lots of fisheries and aquaculture products after first sale, at the stage when it becomes available.

3 In case where, as a result of the merging or splitting of the lots after first sale, fisheries and aquaculture products from several fishing vessels or aquaculture production units are mixed, operators shall be able to identify each lot of origin at least by means of their identification number referred to in Article 58(5)(a) of the Control Regulation and make possible to trace them back to catching or harvesting stage, in accordance with Article 58(3) of the Control Regulation.

4 Systems and procedures referred to in Article 58(4) of the Control Regulation shall allow operators to identify the immediate supplier(s) and, except when they are final consumers, the immediate buyer(s) of the fisheries and aquaculture products.

5 The information on fisheries and aquaculture products referred to in Article 58(5) of the Control Regulation shall be provided by means of the labelling or packaging of the lot, or by means of a commercial document physically accompanying the lot. It may be affixed to the lot by way of an identification tool such as a code, barcode, electronic chip or a similar device

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or marking system. The information on the lot shall remain available at all stages of production, processing and distribution in such a way that the competent authorities of Member States have access to it at any time.

6 Operators shall affix the information on fisheries and aquaculture products referred to in Article 58(5) of the Control Regulation by way of an identification tool such as a code, barcode, electronic chip or a similar device or marking system:

- a as from 1 January 2013, to fisheries subject to a multiannual plan;
- b as from 1 January 2015, to other fisheries and aquaculture products.

7 Where the information referred to in Article 58(5) of the Control Regulation is provided by means of a commercial document physically accompanying the lot, at least the identification number shall be affixed to the corresponding lot.

8 Member States shall cooperate with each other to ensure that the information affixed to the lot and/or accompanying physically the lot can be accessed by the competent authorities of another Member State than the one where the fisheries or aquaculture products have been put into the lot, in particular when the information is affixed to the lot by way of an identification tool such as a code, barcode, an electronic chip or a similar device. Operators using such tools shall ensure that they are developed on the basis of internationally recognised standards and specifications.

9 The information on the date of catches referred to in Article 58(5) point (d) of the Control Regulation may include several calendar days or one period of time corresponding to several dates of catches.

10 The information on the suppliers referred to in Article 58(5) point (f) of the Control Regulation shall be the immediate supplier(s) of the operator referred in paragraph 4 of this Article. This information may be provided, where applicable, by way of the identification mark referred to in Annex II, Section I, of Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin⁽²⁾.

11 The information listed in points (a) to (f) of Article 58(5) of the Control Regulation shall not apply to:

- a imported fisheries and aquaculture products which are excluded from the scope of implementation of the catch certificate in accordance with Article 12(5) of Council Regulation (EC) No 1005/2008⁽³⁾;
- b fisheries and aquaculture products caught or farmed in freshwater; and
- c ornamental fish, crustaceans and molluscs.

12 The information listed in points (a) to (h) of Article 58(5) of the Control Regulation shall not apply to fisheries and aquaculture products falling under Tariff headings 1604 and 1605 of the Combined Nomenclature.

13 For the purposes of Article 58 of the Control Regulation, the information on the relevant geographical area shall be:

- a the relevant geographical area, as defined in Article 4(30) of the Control Regulation, for catches of stocks or group of stocks subject to a quota and/or a minimum size in EU legislation; or
- b the catch area in accordance with Article 5 of Commission Regulation (EC) No 2065/2001⁽⁴⁾, for other stocks or group of stocks.

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14 The value of small quantities of fisheries and aquaculture products referred to in Article 58(8) of the Control Regulation shall be applicable to direct sales by a fishing vessel, per calendar day and per final consumer.

Article 68

Information to the consumer

1 Member States shall ensure that the information referred to in Article 58(6) of the Control Regulation concerning the commercial designation, the scientific name of the species, the catch area referred to in Article 5 of Regulation (EC) No 2065/2001 and the production method is indicated on the label or appropriate mark of the fisheries and aquaculture products offered for retail sale, including imported products.

2 By derogation from paragraph 1, the scientific name of the species may be provided to the consumers at retail level by means of commercial information such as bill boards or posters.

3 Where a fisheries or aquaculture product has been previously frozen, the word 'defrosted' shall also be indicated on the label or appropriate mark referred to in paragraph 1. The absence of this wording at retail level shall be considered as meaning that the fisheries and aquaculture products have not been frozen beforehand and later defrosted.

4 By derogation from paragraph 3, the word 'defrosted' shall not have to appear on:

- a fisheries and aquaculture products previously frozen for health safety purposes, in accordance with Annex III, Section VIII, of Regulation (EC) No 853/2004; and
- b fisheries and aquaculture products which have been defrosted before the process of smoking, salting, cooking, pickling, drying or a combination of those processes.

5 This Article shall not apply to fisheries and aquaculture products falling under Tariff headings 1604 and 1605 of the Combined Nomenclature.

6 Fisheries and aquaculture products and packages labelled or marked prior to the date of entry into force of this Article which do not comply with Article 58(5) point (g) on the scientific name and point (h) of the Control Regulation and with paragraphs (1), (2) and (3) of this Article may be marketed until such stocks have been used up.

CHAPTER II

Weighing of fisheries products

Section 1

General rules on weighing

Article 69

Scope

Without prejudice to Articles 78 - 89 of this Regulation the provisions contained in this chapter shall apply to landings from EU fishing vessels taking place in a Member State and transshipments involving EU fishing vessels taking place in ports or places close to

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the shore of a Member State as well as to the weighing of fisheries products on board EU fishing vessels in EU waters.

Article 70

Weighing records

1 Registered buyers, registered auctions or other bodies or persons that are responsible for the first marketing or storage before first marketing of fisheries products, or where appropriate the master of the EU fishing vessel, shall record weighing carried out in accordance Articles 60 and 61 of the Control Regulation by indicating the following information:

- a the FAO alpha-3 codes of the species weighed;
- b result of weighing for each quantity of each species in kilograms product weight;
- c the external identification number and the name of the fishing vessel from which the weighed quantity originates;
- d presentation of the fisheries products weighed;
- e date of weighing (YYYY-MM-DD).

2 Registered buyers, registered auctions or other bodies or persons that are responsible for the first marketing, or storage before first marketing of fisheries products or where appropriate the master of an EU fishing vessel, shall keep the records referred to in paragraph 1 for a period of 3 years.

Article 71

Timing of weighing

1 Where fisheries products are transhipped between EU fishing vessels and the first landing of the transhipped fisheries products is to take place in a port outside of the European Union, the fisheries products shall be weighed before being transported away from the port or place of transhipment.

2 When the fisheries products are weighed on board an EU fishing vessel in accordance with Article 60(3) of the Control Regulation and they are weighed again on land after landing the figure resulting from the weighing on land shall be used for the purpose of Article 60(5) of the Control Regulation.

3 Without prejudice to special provisions for EU fishing vessels not subject to the electronic completion and transmission of fishing logbook data as referred to in Article 15 of the Control Regulation the Member State may require the master to hand over a copy of the log sheet to the competent authorities of the Member State of landing prior to weighing.

Article 72

Weighing systems

1 All weighing systems shall be calibrated and sealed in accordance with national systems by the competent authorities of the Member State.

2 The natural or legal person responsible for the weighing system shall maintain a record of calibration.

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3 Where the weighing is carried out on a conveyor belt system a visible counter shall be fitted that records the cumulative total of the weight. The reading of the counter at the start of the weighing operation as well as the cumulative total shall be recorded. All use of the system shall be recorded by the natural or legal person responsible for the weighing in the weighing logbook.

Article 73

Weighing of frozen fisheries products

1 Without prejudice to special provisions and in particular Articles 70 and 74 of this Regulation when landed quantities of frozen fisheries products are weighed, the weight of frozen fisheries products landed in boxes or blocks may be determined per species and, where appropriate, presentation by multiplying the total number of boxes or blocks by a net average weight for a box or block calculated according to the methodology set down in Annex XVIII.

2 The natural or legal persons weighing the fisheries products shall keep a record per landing, indicating:

- a the name and external registration letters and numbers of the vessel from which the fishery products have been landed;
- b the species and, where appropriate, presentation of fish landed;
- c the size of the lot and sample of pallets per species and, where appropriate, presentation in accordance with the provisions of point 1 of Annex XVIII;
- d the weight of each pallet in the sample and the average weight of the pallets;
- e the number of boxes or blocks on each pallet in the sample;
- f the tare weight per box, if different from the tare weight specified in point 4 of Annex XVIII;
- g the average weight of an empty pallet in accordance with the provisions of point 3(b) of Annex XVIII;
- h the average weight per box or block of fisheries per species and, where appropriate, presentation.

Article 74

Ice and water

1 Before weighing the registered buyer, registered auction or other bodies or persons responsible for the first marketing of fisheries products shall ensure that the fisheries products be cleaned of ice as is reasonable without causing spoilage and reducing quality.

2 Without prejudice to special rules for pelagic species referred to in Articles 78 – 89 of this Regulation which are landed in bulk for transfer to the point of first marketing, storage or processing, the deduction of water and ice from the total weight shall not exceed 2%. In all cases the percentage for deduction of water and ice shall be recorded on the weighing slip with the entry for weight. For non-pelagic species there shall be no deduction of water or ice.

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Article 75

Access by competent authorities

The competent authorities shall have full access at all times to the weighing systems, the weighing records, written declarations and all premises where the fisheries products are stored or processed.

Article 76

Sampling plans

1 The sampling plan referred to in Article 60(1) of the Control Regulation and any substantial modification thereof shall be adopted by Member States in accordance with the risk-based methodology described in Annex XIX.

2 The sampling plan referred to in Article 60(3) of the Control Regulation and any substantial modification thereof shall be adopted by Member States in accordance with the risk-based methodology described in Annex XX. If catches are weighed on board, the margin of tolerance as referred to in Articles 14(3) and 21(3) of the Control Regulation shall not apply when the figure resulting from weighing after landing is greater than the corresponding figure resulting from weighing on board.

3 When Member States are intending to adopt sampling plans as referred to in Article 60(1) and (3) of the Control Regulation, they shall preferably submit a single sampling plan covering all weighing procedures concerned for a period of 3 years within 6 months after the entry into force of this Regulation. This sampling plan may consist of different parts for different fisheries.

4 Any new sampling plans to be adopted after the date referred to in paragraph 3 or any modifications to such plans shall be submitted for approval 3 months before the end of the year concerned.

Article 77

Control plans and programmes for the weighing of fisheries products after transport from the place of landing

1 The control plan referred to in Article 61(1) of the Control Regulation and any substantial modification thereof shall be adopted by Member States in accordance with the risk-based methodology described in Annex XXI.

2 When Member States are intending to adopt control plans referred to in Article 61(1) of the Control Regulation they shall submit a single control plan per Member State covering all transports of fisheries products to be weighed after transport. Such a control plan shall be submitted within 6 months after the entry into force of this Regulation. This single control plan may consist of different parts for different fisheries.

3 The common control programme referred to in Article 61(2) of the Control Regulation and any substantial modification thereof shall be adopted by Member States in accordance with the risk-based methodology described in Annex XXII.

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4 When Member States are intending to adopt common control programmes referred to in Article 61(2) of the Control Regulation, they shall submit them within 6 months after the entry into force of this Regulation.

5 Any new control plan as referred to in paragraph 2 or common control programmes as referred to in paragraph 4 to be adopted after the date referred to in paragraphs 2 and 4 or any modifications to such plans or programmes shall be submitted 3 months before the end of the year preceding the date of entry into force of that plan or programme.

Section 2

Special rules for weighing of certain pelagic species

Article 78

Scope of weighing procedures for catches of herring, mackerel and horse mackerel

The rules set out in this Section shall apply to the weighing of catches landed in the European Union or by EU fishing vessels in third countries, of herring (*Clupea harengus*), mackerel (*Scomber scombrus*) and horse mackerel (*Trachurus* spp.) or a combination thereof, taken in:

- (a) for herring in ICES zones: I, II, IIIa, IV, Vb, VI and VII;
- (b) for mackerel in ICES zones: IIa, IIIa, IV, Vb, VI, VII, VIII, IX, XII, XIV and EU waters of CECAF;
- (c) for horse mackerel: ICES zones IIa, IV, Vb, VI, VII, VIII, IX, X, XII, XIV and EU waters of CECAF,

when the quantities per landing exceed 10 tonnes.

Article 79

Ports of weighing catches of herring, mackerel and horse mackerel

1 Catches of species referred to in Article 78 of this Regulation shall be weighed immediately on landing. However, catches of these species may be weighed after transport where:

- for a destination within a Member State the Member State concerned has adopted a control plan as referred to in Article 61(1) of the Control Regulation in accordance with the risk-based methodology described in Annex XXI,
- for a destination in another Member State the Member States concerned have adopted a common control programme as referred to in Article 61(2) of the Control Regulation in accordance with the risk-based methodology described in Annex XXII,

and where this control plan or common control programme has been approved by the Commission

2 Each Member State concerned shall establish at which of its ports the weighing of species referred to in Article 78 of this Regulation shall be carried out and shall ensure that all landings of such species are carried out in those ports. Such ports shall have:

- a established landing and transshipment times;

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- b established landing and transshipment places;
- c established inspection and surveillance procedures.

3 The Member States concerned shall communicate to the Commission the list of such ports and the inspection and surveillance procedures applicable in those ports, including the terms and conditions for recording and transmitting the quantities of any such species within each landing.

4 Any changes to the lists of ports and to the inspection and surveillance procedures referred to in paragraph 3 shall be transmitted to the Commission, at least 15 days before they enter into force.

5 Member States shall ensure that all landings of species referred to in Article 78 of this Regulation by their vessels outside the European Union are carried out in ports expressly chosen for the purpose of weighing by third countries which have concluded agreements with the European Union concerning such species.

6 The Commission shall transmit the information referred to in paragraphs 3 and 4 as well as the list of ports chosen by third countries to all Member States concerned.

7 The Commission and the Member States concerned shall publish the list of ports and changes thereto on their official websites.

Article 80

Entry into a port of a Member State

1 For the purpose of weighing, the master of a fishing vessel or his representative shall inform the competent authorities of the Member State in which the landing is to be made, at least 4 hours in advance of entry to port of landing concerned of the following:

- a the port he intends to enter, the name of the vessel and its external registration letters and numbers;
- b the estimated time of arrival at that port;
- c the quantities in kilograms live weight of herring, mackerel and horse mackerel retained on board;
- d relevance geographical area(s) where the catch was taken; the zone shall refer to the sub-area and division or sub-division in which catch limits apply pursuant to Union law.

2 The master of an EU fishing vessel which is under the obligation to record fishing logbook data electronically shall send the information referred to in paragraph 1 electronically to his flag Member State. The Member States shall transmit this information without delay to the Member State where the landing is to be made. The electronic fishing logbook data referred to in Article 15 of the Control Regulation and the information referred to in paragraph 1 may be sent in a single electronic transmission.

3 Member States may provide for a shorter notification period than laid down in paragraph 1. In such a case the Member States concerned shall inform the Commission 15 days before the entry into force of the shorter notification period. The Commission and the Member States concerned shall put this information on their websites.

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Article 81

Discharge

The competent authorities of the Member State concerned shall require that the discharge of any catches referred to in Article 78 of this Regulation does not commence until it is expressly authorised. If the discharge is interrupted, permission shall be required before the discharge can recommence.

Article 82

Fishing logbook

1 Immediately upon arrival in port and before the discharge commences, the master of a fishing vessel which is not under the obligation to record fishing logbook data electronically shall present the completed relevant page or pages of the fishing logbook for inspection by the competent authority of the Member State at the port of landing.

2 The quantities of herring, mackerel and horse mackerel retained on board, notified prior to landing as referred to in Article 80(1)(c) of this Regulation, shall be equal to the quantities recorded in the fishing logbook after its completion.

Article 83

Publicly operated weighing facilities for fresh herring, mackerel and horse mackerel

Without prejudice to the provisions of Article 72 of this Regulation, where publicly operated weighing facilities are used, the natural or legal persons weighing catches referred to in Article 78 of this Regulation shall issue to the buyer a weighing slip indicating the date and time of the weighing and the identity number of the tanker. A copy of the weighing slip shall be attached to the sales note or takeover declaration.

Article 84

Privately operated weighing facilities for fresh fish

1 In addition to the provisions of Article 72 of this Regulation, the use of privately operated weighing facilities shall also be subject to the requirements of this Article.

2 The natural or legal persons weighing any catches referred to in Article 78 of this Regulation shall for each weighing system keep a bound, paginated record. This shall be completed immediately after the completion of weighing of an individual landing, and at the latest by 23.59 local time of the day of completion of weighing. This record shall indicate:

- a the name and external registration letters and numbers of the vessel from which any catches referred to in Article 78 of this Regulation have been landed;
- b the unique identity number of the tankers and its load in cases where any catches referred to in Article 78 of this Regulation have been transported from the port of landing before weighing in accordance with Article 79 of this Regulation. Each tanker load shall be weighed and recorded separately. However the total weight of all the tanker loads from

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the same vessel may be recorded as a whole in case these tanker loads are weighed consecutively and without interruption;

- c the species of fish;
- d the weight of each landing;
- e the date and time of the beginning and end of the weighing.

3 Without prejudice to Article 72(3) of this Regulation, where the weighing is carried out on a conveyor belt system all use of the system shall be recorded in the bound, paginated record of weighing.

Article 85

Weighing of frozen fish

When landed quantities of frozen herring, mackerel and horse mackerel are weighed, the weight of frozen fish landed in boxes shall be determined per species in accordance with Article 73 of this Regulation.

Article 86

Keeping of weighing records

All records of weighing provided for in Article 84(3) and Article 85 of this Regulation and the copies of any transport documents as part of a control plan or a common control programme referred to in Article 79(1) of this Regulation shall be kept for 6 years.

Article 87

Sales note and takeover declaration

The natural or legal persons responsible for the submission of sales notes and takeover declarations shall submit such declarations in respect of species referred to in Article 78 of this Regulation to the competent authorities of the Member State concerned on demand.

Article 88

Cross-checks

Until the establishment of a computerised database in accordance with Article 109 of the Control Regulation the competent authorities shall carry out administrative cross-checks on all landings between the following:

- (a) quantities by species of herring, mackerel and horse mackerel indicated in the prior notification of landing, as referred to in Article 80(1)(c) of this Regulation, and the quantities recorded in the fishing logbook;
- (b) quantities by species of herring, mackerel and horse mackerel recorded in the fishing logbook and the quantities recorded in the landing declaration;
- (c) quantities by species of herring, mackerel and horse mackerel recorded on the landing declaration and the quantities recorded in the takeover declaration or the sales note;

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- (d) catch area recorded in the vessel's fishing logbook and the VMS data for the vessel concerned.

Article 89

Monitoring of weighing

1 The weighing of catches of herring, mackerel and horse mackerel from the vessel shall be monitored by species. In the case of vessels pumping catch ashore the weighing of the entire discharge shall be monitored. In the case of landings of frozen herring, mackerel and horse mackerel, all boxes shall be counted and the methodology for calculating the average net weight of boxes provided for in Annex XVIII shall be monitored.

2 The following data shall be cross-checked in addition to those referred to in Article 88 of this Regulation:

- a quantities by species of herring, mackerel and horse mackerel recorded in the records of weighing at public or private facilities and the quantities by species recorded in the takeover declaration or the sales note;
- b quantities by species of herring, mackerel and horse mackerel recorded in any transport documents as part of a control plan or a common control programme referred to in Article 79(1) of this Regulation;
- c unique identity numbers of tankers entered into the record in accordance with Article 84(2)(b) of this Regulation.

3 It shall be verified that the vessel is empty of all fish, once the discharge has been completed.

4 All monitoring activities covered by this Article and Article 107 of this Regulation shall be documented. Such documentation shall be kept for 6 years.

CHAPTER III

Sales notes

Article 90

General rules

1 In the sales note the number of individuals as referred to in Article 64(1)(f) of the Control Regulation shall be indicated if the relevant quota is managed on the basis of individuals.

2 The type of presentation referred to in Article 64(1)(g) of the Control Regulation shall include the state of presentation as set out in Annex I.

3 The price referred to in Article 64(1)(l) of the Control Regulation shall be indicated in the currency applicable in the Member State where the sale takes place.

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Article 91

Formats of sales notes

1 Member States shall determine the format to be used for the electronic completion and transmission of sales notes as referred in Article 63 of the Control Regulation.

2 Information referred to in this Chapter 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.

3 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.

4 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.

5 Data elements in Annex XII that are mandatory for registered buyers, registered auctions or other bodies or persons authorised by Member States to record in their sales notes according to EU rules shall also be mandatory in exchanges between Member States.

6 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.

7 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.

8 Member States shall exchange contact details of the authorities referred to in paragraph 7 and shall inform the Commission and the body designated by it thereof within 3 months after the entry into force of this Regulation.

9 Any changes in the information referred to in paragraphs 7 and 8 shall be communicated to the Commission, the body designated by it and other Member States before they become effective.

10 The format of sales notes not subject to electronic completion and transmission shall be decided by Member States. Those sales notes shall contain as a minimum the information set down in Article 64(1) of the Control Regulation.

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- (1) OJ L 256, 7.9.1987, p. 1.
- (2) OJ L 139, 30.4.2004, p. 55.
- (3) OJ L 286, 29.10.2008, p. 1.
- (4) OJ L 278, 23.10.2001, p. 6.

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