

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 VI

INSPECTION

CHAPTER I

Conduct of inspections

Section 1

General provisions

Article 97

Officials authorised to conduct inspections at sea or on land

1 Officials responsible for carrying out inspections, as referred to in Article 74 of the Control Regulation shall be authorised by the competent authorities of the Member States. To this end, Member States shall provide their officials with a service card stating their identity and the capacity under which they operate. Each official on duty shall carry that service card and present it during an inspection at the earliest opportunity.

2 Member States shall confer adequate powers on their officials as necessary for the fulfilment of control, inspection and enforcement in accordance with this Regulation, and to ensure compliance with the rules of the Common Fisheries Policy.

Article 98

General principles

1 Without prejudice to provisions contained in multi-annual plans, competent authorities of Member States shall adopt a risk based approach for the selection of targets for inspection, using all available information. In accordance with this approach, officials shall carry out inspections in accordance with rules laid down in this Chapter.

2 Without prejudice to provisions contained in multi-annual plans, Member States shall coordinate their control, inspection and enforcement activities. To this end, they shall adopt and execute national control action programmes as referred to in Article 46 of the Control Regulation and common control programmes as referred to in Article 94 of the Control Regulation covering both activities at sea and on land as necessary to ensure compliance with the rules of the Common Fisheries Policy.

3 Subject to a risk based control and enforcement strategy each Member State shall carry out the necessary inspection activities in an objective way in order to prevent the retention on board, transshipment, landing, transfer to cages and farms, processing, transport, storage, marketing and stocking of fishery products originating from activities that are not in compliance with the rules of the Common Fisheries Policy.

4 Inspections shall be carried out in a manner as to prevent to the extent possible any negative impact on the hygiene and quality of the fisheries products inspected.

5 Member States shall ensure that national fisheries related information systems allow for the direct electronic exchange of information on port state inspections between themselves, other Member States, the Commission and the body designated by it as appropriate, in accordance with Article 111 of the Control Regulation.

Article 99

Duties of officials during the pre-inspection phase

During the pre-inspection phase officials shall, where possible, collect all appropriate information, including:

- (a) fishing licences and fishing authorisations;
- (b) VMS information corresponding to the current fishing trip;
- (c) aerial surveillance, and other sightings;
- (d) previous inspection records and available information on the secure part of the website of the flag Member State on the EU fishing vessel concerned.

Article 100

Duties of officials authorised to conduct inspections

1 Officials authorised to conduct inspections shall verify and note the relevant items defined in the appropriate inspection module of the inspection report in Annex XXVII. For this purpose they may take pictures, video and audio recordings in accordance with national law, and, where appropriate, samples.

2 Officials shall not interfere with the right of any operator to communicate with the competent flag state authorities during inspection operations.

3 Officials shall take into account any information provided in accordance with Article 95(2) of this Regulation by a control observer on board the fishing vessel to be inspected.

4 On completion of an inspection officials shall debrief operators as appropriate on fisheries regulations relevant to the prevailing circumstances.

5 Officials shall leave as soon as possible the fishing vessel or the inspected premise following the completion of the inspection if no evidence of an apparent infringement is detected.

Article 101

Obligations of Member States, the Commission and European Fisheries Control Agency

- 1 The competent authorities of Member States, and, where appropriate, the Commission and the European Fisheries Control Agency, shall ensure that their officials, whilst being courteous and sensitive, conduct inspections professionally and to a high standard.
- 2 The competent authorities of each Member State shall establish procedures to ensure that any complaint made by operators regarding the conduct of inspections carried out by their officials is investigated in a fair and thorough manner in accordance with national law.
- 3 Coastal Member States may, subject to appropriate arrangements with the flag Member State of a fishing vessel, invite officials of the competent authorities of that Member State to participate in inspections of fishing vessels of that Member State, whilst those vessels are operating in waters of the coastal Member State or landing in its ports.

Section 2

Inspections at sea

Article 102

General provisions on inspections at sea

- 1 Any vessel used for control purposes including surveillance shall display so as to be clearly visible, a pennant or a symbol as shown in Annex XXVIII.
- 2 A boarding craft used to facilitate the transfer of officials carrying out inspections shall fly a similar flag or pennant of a size appropriate to that of the boarding craft to indicate that it is engaged in fishery inspection duties.
- 3 Persons in charge of inspection vessels shall have due regard to the rules of seamanship and manoeuvre at a safe distance from the fishing vessel in accordance with the international rules for the prevention of collisions at sea.

Article 103

Boarding fishing vessels at sea

- 1 Officials responsible for the conduct of the inspection shall ensure that no action is taken that may compromise the safety of the fishing vessel and its crew.
- 2 Officials shall not require the master of a fishing vessel that is being boarded or disembarked to stop or manoeuvre during fishing, or to stop the shooting or hauling of fishing gear. Officials may, however, require the interruption or delay of the shooting of gear to permit safe boarding or disembarkation until they have boarded or disembarked the fishing vessel. In the case of boarding this delay shall not exceed 30 minutes after officials have boarded the fishing vessel unless an infringement has been detected. This provision does not affect the possibility of officials to require the gear to be hauled for inspection.

Article 104

On board activities

1 When carrying out their inspection, officials shall verify and note all appropriate items provided for in the appropriate inspection report module set out in Annex XXVII to this Regulation.

2 Officials may require the master to haul a fishing gear for inspection.

3 Inspection teams shall normally be comprised of two officials. Additional officials may supplement inspections teams when necessary.

4 The duration of an inspection shall not exceed 4 hours, or until the net is hauled in, and the net and catches are inspected, whichever is longer. It shall not apply in the case that an apparent infringement is detected or where the officials need further information.

5 In the case of an apparent infringement being detected, identification marks and seals may be affixed securely to any part of the fishing gear or the fishing vessel, including containers of fisheries products and the compartment(s) in which they may be stowed, and the official(s) may remain on board for the time necessary for the completion of appropriate measures to ensure security and continuity of all the evidence of the apparent infringement.

Section 3

Inspections in port

Article 105

Preparation of inspection

1 Without prejudice to benchmarks defined in specific control and inspection programmes and in Article 9 of Regulation (EC) No 1005/2008, an inspection of a fishing vessel shall take place in port or on landing, on the following occasions:

- a routinely subject to a sampling methodology based on a risk-based management; or
- b where it is suspected of failing to comply with the rules of the Common Fisheries Policy.

2 In cases referred to in paragraph 1(b) and without prejudice to the last sentence of Article 106(2) of this Regulation the competent authorities of the Member States shall ensure that the fishing vessel to be inspected in port is met by their officials on arrival.

3 Paragraph 1 does not exclude the possibility for Member States to undertake random inspections.

Article 106

Inspections in port

1 When carrying out inspections officials shall verify and note all appropriate items listed in the corresponding inspection report module set out in Annex XXVII to this Regulation.

Officials shall have due regard to any specific requirements which apply to the inspected fishing vessel, in particular to relevant provisions in multi-annual plans.

2 When carrying out an inspection of a landing officials shall monitor the whole landing process from the beginning to the end of the respective operation. A cross-check shall be carried out between the quantities by species recorded in the prior notification of arrival to land fishery products, the quantities by species recorded in the fishing logbook and the quantities by species landed or transhipped whichever is applicable. This provision shall not exclude the possibility of an inspection taking place after the start of the landing.

3 Member States shall ensure the effective inspection and control of premises used in connection with fishing activities and subsequent processing of fisheries products.

Article 107

Inspection of certain pelagic landings

For landings of herring, mackerel and horse mackerel as referred to in Title IV, Chapter II, Section 2 of this Regulation the competent authorities of a Member State shall ensure that at least 15 % of the quantities of this fish landed and at least 10 % of the landings of this fish are inspected.

Section 4

Transport inspections

Article 108

General principles

1 Without prejudice to provisions contained in multi-annual plans, transport inspections may take place anywhere and at anytime from the point of landing to the arrival of the fisheries products at the place of sale or processing. In carrying out inspections, the necessary measures shall be taken as to ensure the maintenance of the cold chain of the fisheries products inspected.

2 Without prejudice to provisions contained in multi-annual plans and national control programmes or specific control and inspection programmes, transport inspections shall include, wherever possible, a physical examination of the products transported.

3 The physical examination of the transported fishery products shall involve the taking of a sample representative of the different sections of the lot or lots transported.

4 When carrying out a transport, inspection officials shall verify and note all items referred to in Article 68(5) of the Control Regulation and all appropriate items in the report module set out in Annex XXVII to this Regulation. This shall include verification that the quantities of fisheries products transported correspond to the details entered on the transport document.

Article 109

Transport vehicles sealed

1 When a vehicle or a container has been sealed to avoid manipulation of the cargo, competent authorities of Member States shall ensure that serial numbers of seals are noted on the transport document. Officials shall inspect that the seals are intact and that the serial numbers correspond with the details on the transport document.

2 Where seals are removed to facilitate inspection of the cargo before the cargo arrives at the final destination, officials shall replace the original seal with a fresh seal, recording the seal details in the transport document and the reasons for the removal of the original seal.

Section 5

Market inspections

Article 110

General principles

Officials shall verify and note all appropriate items listed in the corresponding inspection module in Annex XXVII to this Regulation when visiting cold stores, gross and retail markets, restaurants or any other premises where fish is stored and/or sold after landing has taken place.

Article 111

Additional methodologies and technologies

In addition to the items listed in Annex XXVII, Member States may make use of available methodologies and technologies for the identification and validation of fisheries products, their source or origin and the suppliers and catching vessels or production units.

Article 112

Control of fisheries products withdrawn from the market

Officials shall verify that fisheries products withdrawn from sale in accordance with Article 17 of Council Regulation (EC) No 104/2000⁽¹⁾ are disposed of in accordance with the provisions of Commission Regulation (EC) No 2493/2001⁽²⁾.

CHAPTER II

Duties of operators

Article 113

General obligations of operators

- 1 All operators acting under the jurisdiction of a Member State may be subject to an inspection regarding their obligations under rules of the Common Fishery Policy.
- 2 All operators subject to an inspection shall:
 - a facilitate and provide officials on request with the necessary information and documents, including, where possible, copies thereof, or access to relevant databases, regarding fishing activities as required to be completed and held in electronic or paper format in accordance with the rules of the Common Fisheries Policy;
 - b facilitate access to all parts of vessels, premises and any transport means, including aircraft and hovercraft used in connection or associated with fishing and processing activities;
 - c ensure at any moment the safety of officials, and actively assist and cooperate with the officials in the performance of their inspection duties;
 - d not obstruct, intimidate or interfere, not cause any other person to obstruct, intimidate or interfere, and prevent any other person to obstruct, intimidate or interfere with officials carrying out the inspection;
 - e provide, where possible, a meeting facility in isolation for a briefing of officials by a control observer as referred to in Article 95(2) of this Regulation.

Article 114

Obligations of the master during inspections

- 1 The master of a fishing vessel which is being inspected or his representative shall:
 - a facilitate safe and effective boarding of officials in accordance with good seamanship when the appropriate signal of the International Code of Signals is given or when the intention to board is established through radio communication by a vessel or helicopter carrying an official;
 - b provide a boarding ladder meeting the requirements of Annex XXIX to facilitate safe and convenient access to any vessel which requires a climb of 1,5 metres or more;
 - c facilitate the officials to perform their inspection duties, providing such assistance as is requested and is reasonable;
 - d permit the official(s) to communicate with the authorities of the flag State, the coastal State and the inspecting State;
 - e alert officials to particular safety hazards on board fishing vessels;
 - f provide access by officials to all areas of the vessel, all processed or unprocessed catches, all fishing gears and all relevant information and documents;
 - g facilitate safe disembarkation by officials on completion of the inspection.
- 2 Masters shall not be required to reveal commercially sensitive information over open radio channels.

CHAPTER III

Inspection report

Article 115

Common rules concerning inspection reports

1 Without prejudice to special rules in the framework of Regional Fisheries Management Organisations, inspection reports as referred to in Article 76 of the Control Regulation shall include the relevant information contained in the appropriate module established in Annex XXVII. The reports shall be completed by officials during the inspection or as soon as possible after the completion of the inspection.

2 When an apparent infringement is detected in the course of an inspection, the legal and material elements together with any other information relevant to the infringement shall be included in the inspection report. When several infringements are detected in the course of an inspection, relevant elements of each infringement shall be noted in the inspection report.

3 Officials shall communicate their findings to the natural person in charge of the fishing vessel, vehicle, aircraft, hovercraft or premises being inspected (operator) at the end of the inspection. The operator shall have the possibility to comment on the inspection and its findings. Comments by the operator shall be noted in the inspection report. In case where officials do not speak the same language as the inspected operator, they shall take appropriate measures to make understandable their findings.

4 If required, the operator shall have the right to contact his representative or the competent authorities of his flag State, if serious difficulties arise regarding comprehension of the outcomes of the inspection and of the ensuing report.

5 The format for electronic transmission referred to in Article 76(1) of the Control Regulation shall be decided after consultation between the Member States and the Commission.

Article 116

Completion of inspection reports

1 When the inspection report is established manually on a paper format, it shall be legible, indelible and clearly recorded. No entry in the report shall be erased or altered. If a mistake is made in a manually established report, the incorrect entry shall be struck out neatly and shall be initialled by the official concerned.

2 The official responsible for the inspection shall sign the report. The operator shall be invited to sign the report. Without prejudice to national law his/her signature shall constitute an acknowledgement of the report and shall not be regarded as an acceptance of the contents therein.

3 Officials may establish inspection reports referred to in Article 115 of this Regulation by electronic means.

Article 117

Copy of the inspection report

A copy of the inspection report referred to in Article 116 of this Regulation shall be sent to the operator no later than 15 working days after the completion of the inspection and in accordance with the national law of the Member State having sovereignty or jurisdiction at the place of inspection. If an infringement is detected, disclosure of the report shall be subject to the laws on disclosure of information in the Member State concerned.

CHAPTER IV

Electronic database

Article 118

Electronic database

1 Member States shall include in their national control programmes procedures on the recording by their officials of inspection reports in a paper or an electronic format. These reports shall be entered into the electronic database referred to in Article 78 of the Control Regulation and provide for the functionalities referred to in Annex XXIV No. 2 to this Regulation. The minimum information contained in the electronic database shall be those items noted in accordance with Article 115(1) of this Regulation and indicated as compulsory in Annex XXVII. Paper inspection reports shall also be scanned into the database.

2 The database shall be accessible for the Commission and the body designated by it, in accordance with the procedures described in Articles 114, 115 and 116 of the Control Regulation. The relevant data in the database shall also be accessible to other Member States in the context of a joint deployment plan.

3 The data from the inspection reports shall be kept available in the database for at least 3 years.

CHAPTER V

Union inspectors

Article 119

Notification of Union inspectors

1 Member States and the European Fisheries Control Agency shall notify the Commission electronically within 3 months after the entry into force of this Regulation of the names of their officials to be included in the list of Union inspectors referred to in Article 79 of the Control Regulation.

2 Officials to be included in the list shall:

- a have a thorough experience in the field of fisheries control and inspection;
- b have an in-depth knowledge of fisheries legislation of the European Union;
- c have a thorough knowledge of one of the official languages of the European Union and a satisfactory knowledge of a second;
- d be physically fit to perform their duties;
- e have, where appropriate, received the necessary training with regard the safety at sea.

Article 120

List of Union inspectors

1 On the basis of the notifications of Member States and the European Fisheries Control Agency the Commission shall adopt a list of Union inspectors 6 months after the entry into force of this Regulation.

2 After the establishment of the initial list, Member States and the European Fisheries Control Agency shall notify to the Commission by October each year any amendment to the list which they wish to introduce for the following calendar year. The Commission shall amend the list accordingly by 31 December each year.

3 The list and amendment thereto shall be published on the official website of the European Fisheries Control Agency.

Article 121

Communication of Union inspectors to Regional Fisheries Management Organisations

The body designated by the Commission shall communicate to the secretariat of a Regional Fisheries Management Organisation the list of Union inspectors who are to carry out inspections in the framework of that Organisation.

Article 122

Powers and duties of Union inspectors

1 In the accomplishment of their tasks Union inspectors shall comply with the law of the European Union and, as far as applicable, the national law of the Member State where the inspection takes place or, where the inspection is carried out outside EU waters, of the flag Member State of the inspected fishing vessel and relevant international rules.

2 Union inspectors shall present a service card stating their identity and the capacity under which they operate. For this purpose they shall be provided with an identification document issued by the Commission or the European Fisheries Control Agency stating their identity and capacity.

3 Member States shall facilitate the execution of duties by Union inspectors and shall afford them such assistance as they need to fulfil their tasks.

4 Competent authorities of Member States may permit Union inspectors to assist national inspectors in the execution of their duties.

5 Articles 113 and 114 of this Regulation shall apply in a corresponding manner.

Article 123

Reports

1 Union inspectors shall submit a daily summary on their inspection activities, including the name and identification number of each fishing vessel or craft inspected and the type of inspection carried out, to the competent authorities of the Member State in whose waters the inspection took place or, where the inspection was carried outside EU waters, to the flag Member State of the inspected EU fishing vessel, and the European Fisheries Control Agency.

2 If Union inspectors detect an infringement in the course of an inspection, they shall without delay submit a summarised inspection report to the competent authorities of the coastal Member State or, where the inspection was carried outside EU waters, to competent authorities of the flag State of the inspected fishing vessel and the European Fisheries Control Agency. Such summarised inspection report shall specify at least the date and place of the inspection, identification of the inspection platform, identification of the inspected target and type of infringement detected.

3 Union inspectors shall submit a copy of the full inspection report noting the relevant items in the appropriate inspection module of the inspection report in Annex XXVII to the competent authorities of the flag State of the inspected fishing vessel or craft and of the Member State in whose waters the inspection took place, within 7 days from the date of inspection. If the Union inspectors have detected an infringement, a copy of the full inspection report shall also be sent to the European Fisheries Control Agency.

4 Daily reports and inspection reports referred to in this Article shall be transmitted, upon request, to the Commission.

Article 124

Follow-up of reports

1 Member States shall act on reports submitted by the Union inspectors in accordance with Article 123 of this Regulation in the same way as they act on reports from their own officials.

2 The Member State that nominated the Union inspector or, where appropriate, the Commission or the European Fisheries Control Agency shall cooperate with the Member State acting on a report submitted by the Union inspector in order to facilitate judicial and administrative proceedings.

3 On request, a Union inspector shall assist and give evidence in infringement proceedings undertaken by any Member State.

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

- (1) OJ L 17, 21.1.2000, p. 22.
- (2) OJ L 337, 20.12.2001, p. 20.