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

COMMISSION IMPLEMENTING REGULATION (EU) No 404/2011

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006[(1)], and in particular Articles 6(5), 7(5), 8(1), 9(5), 14(10), 15(9), 16(2), 21(7), 22(7), 23(5), 24(8) and 25(2), Article 32, Articles 37(4), 40(6), 55(5), 58(9), 60(7), Article 61, and Articles 64(2), 72(5), 73(9), 74(6), 75(2), 76(4), 78(2), 79(7), 92(5), 103(8), 105(6), 106(4), 107(4), 111(3), 116(6), 117(4) and 118(5) thereof,

Whereas:

(1) Regulation (EC) No 1224/2009 (hereafter referred to as 'the Control Regulation') provides for the adoption of detailed rules and measures to implement certain provisions it sets out.

(2) With a view to ensuring a coherent application of these detailed rules the establishment of certain definitions is necessary.

(3) Article 6(1) of the Control Regulation provides that a **[**[F1]Union fishing vessel may only be used for the commercial exploitation of living aquatic resources if it has a valid fishing licence. Article 7(1) of the Control Regulation provides that **[**[F1]a**]**Union fishing vessel**]** shall only be authorised to carry out specific fishing activities in so far as they are indicated in a valid fishing authorisation. It is appropriate to establish common rules for the issuance and management of such fishing licences and fishing authorisations to ensure a common standard of information contained therein.

(4) Article 8(1) of the Control Regulation provides that a master of a fishing vessel has to respect conditions and restrictions relating to the marking and identification of fishing vessels and their gear. As such conditions and restrictions apply to **[**[F1]Union waters**]** it is necessary to establish them at the level of the European Union.

Changes to legislation: *There are outstanding changes not yet made to Commission Implementing Regulation (EU) No 404/2011. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) According to Article 9(1) of the Control Regulation, Member States shall operate a satellite-based Vessel Monitoring System for the effective monitoring of fishing activities of their fishing vessels wherever they may be and of fishing activities in their waters. It is appropriate to establish common specifications at the level of the European Union for such a system. Such specifications should set out in particular the characteristics of satellite tracking devices, details on the transmission of position data and rules in the case of a technical failure or non-functioning of satellite tracking devices.

(6) Article 14(1) of the Control Regulation provides that masters of **[**[F1]Union fishing vessels**]** of 10 metres length overall or more have to keep a fishing logbook of their operations. It is necessary to determine the information that has to be recorded in the fishing logbooks and their format.

(7) Article 14(7) of the Control Regulation provides that masters of **[**[F1]Union fishing vessels**]** have to use conversion factors established at EU level for converting stored or processed fish weight into live fish weight. It is therefore necessary to establish such conversion factors.

(8) Article 15(1) of the Control Regulation provides that masters of **[**[F1]Union fishing vessels**]** of 12 metres length overall or more have to record logbook information by electronic means. It is appropriate to establish the requirements for the electronic completion and transmission of this information and to specify their format.

(9) Articles 21(1) and 23(1) of the Control Regulation provide that masters of **[**[F1]Union fishing vessels**]** of 10 metres length overall and more have to complete and submit transhipment and landing declarations. It is appropriate to determine the information that has to be contained in these declarations and to specify the details of their submission.

(10) Articles 22(1) and 24(1) of the Control Regulation provides for the electronic completion and transmission of transhipment and landing declarations by electronic means. It is appropriate to establish the requirements for the electronic completion and transmission of these data and to specify their format.

(11) Articles 16(1) and 25(1) of the Control Regulation provide that every Member State has to monitor on the basis of sampling the activities of fishing vessels which are not subject to logbook requirements and landing declarations. With a view to ensure common standards of such samplings detailed rules, should be established at the level of the European Union.

(12) Article 37 of the Control Regulation provides that necessary corrective actions are to be taken by the Commission in case the Commission has prohibited fishing because of the alleged exhaustion of the fishing opportunities available to a Member State or group of Member States, or to the European Union and it transpires that a Member State has not in fact exhausted its fishing opportunities. It is necessary to adopt adequate rules for the reallocation of such fishing opportunities, which take into account situations where a total allowable catch (TAC) for the EU is available or not, or where due to the annual setting of fishing opportunities circumstances do not permit such reallocation.

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(13) Articles 39 to 41 of the Control Regulation foresee rules to ensure that the engine power of fishing vessels is not exceeded. It is necessary to establish the technical rules of the relevant certifications and verifications to be done in this field.

(14) Article 55 of the Control Regulation provides that Member States should ensure that recreational fisheries are conducted in a manner compatible with the objectives of the Common Fisheries Policy. For stocks under a recovery plan Member States should collect catch data of recreational fisheries. Where such fisheries have a significant impact on the resources, specific management measures may be decided by the Council. It is appropriate to lay down detailed rules for the establishment of sampling plans in order to allow Member States to monitor the catches of stocks subject to recovery plans by recreational fisheries practised from their vessels, in waters subject to their sovereignty or jurisdiction.

(15) In order to establish a comprehensive control regime the whole chain of production and marketing should be covered by such a regime. Article 58 of the Control Regulation provides for a coherent traceability system to ensure that all lots of fisheries and aquaculture products are traceable at all stages of production, processing and distribution, from catching or harvesting to the retail stage. It is necessary to lay down common rules for identification procedures of the product concerned.

(16) Article 60 of the Control Regulation provides that all fishery products are to be weighed on systems approved by the competent authorities unless they have adopted a sampling plan approved by the Commission. It is necessary to establish common rules in all Member States for the weighing of fresh and frozen fisheries products, as well as for the weighing of transhipped fisheries products, and for the weighing of fisheries products after transport from the place of landing.

(17) Article 61 of the Control Regulation provides for the possibility for fisheries products to be weighed after transport under the condition that the Member State has adopted a control plan or, when the fisheries products are transported to another Member State, that the Member States concerned have adopted a common control programme that are approved by the Commission and based on a risk-based methodology adopted by the Commission. This risk-based methodology needs to be defined.

(18) The fishery on herring, mackerel and horse mackerel has some specific features. For this reason it is appropriate to establish special rules on weighing and related elements to take account of these specific features.

(19) Article 64 of the Control Regulation foresees that the detailed rules on the content of sales notes are to be adopted. It is pertinent to include such rules in this Regulation.

(20) Articles 71 and 72 of the Control Regulation provide that Member States shall carry out surveillance in **[**[F1]Union waters**]** and take the necessary measures if a sighting does not correspond to the information available to them. It is necessary to lay down common rules regarding the content of a surveillance report, and its means of transmission.

(21) Article 73 of the Control Regulation provides the possibility for the Council to establish control observer schemes and establishes in general lines the profile and tasks of control

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observers on board fishing vessels. Therefore detailed rules on the deployment and duties of control observers should be drawn up.

(22) According to Chapter I of Title VII of the Control Regulation, rules are to be established for the conduct of inspections in order to enhance a standardised approach to control activities carried out by Member States. Rules should be laid down for the conduct of officials in charge of inspections, and the obligations of Member States regarding the behaviour of their officials authorised to conduct such inspections. At the same time, the duties of operators during inspection should be clarified. It is also necessary to lay down common principles for inspection procedures at sea, in port, during transport, at market places, and regarding inspection reports and their transmission.

(23) Article 79 of the Control Regulation provides that Union inspectors may carry out inspections in **[**F1Union waters and on **[**F1Union fishing vessels**]** outside Union waters**]**. It is appropriate to draw up rules regarding the nomination of Union inspectors, their tasks and obligations, as well as the type of follow up to be given to their report.

(24) Article 92 of the Control Regulation provides for the establishment of a point system for serious infringements with the aim to ensure compliance with the rules of the Common Fisheries Policy and a level playing field in all **[**F1Union waters**]**. For this to be achieved, it is necessary to establish common rules at the level of the European Union for the application of such a point system, including a list of points to be attributed for each serious infringement.

(25) In accordance with Article 5(6) and Article 103 of the Control Regulation, the financial assistance in the framework of Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund[(2)] and Council Regulation (EC) No 861/2006 of 22 May 2006 establishing Community financial measures for the implementation of the Common Fisheries Policy and in the area of the Law of the Sea[(3)] is made conditional upon compliance by Member States with their obligations in the fields of fisheries conservation and control, the Commission having the possibility under certain conditions to suspend and cancel such financial assistance. It is necessary to lay down detailed rules for the application of these measures.

(26) Article 107 of the Control Regulation provides for deduction of quotas by the Commission in cases of failure by Member States to comply with the rules on stocks subject to multiannual plans which leads to a serious threat to the conservation of such stocks. Rules should therefore be drawn up regarding the extent of the deduction, taking into account the nature of the non-compliance, the extent of its impact, as well as the gravity of the threat to the resource.

(27) Chapter I of Title XII of the Control Regulation establishes rules on the handling of data recorded for the purpose of that Regulation, including the obligation for the Member States to set up a computerised database and a validation system and the provisions on accessing and exchanging such data. It is necessary to lay down common rules establishing procedures to process such data and to ensure access to it by the Commission and specifying the requirements for the exchange of data.

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(28) Article 110 of the Control Regulation deals with the remote access of the Commission or the body designated by it to computer files containing the data recorded by fisheries monitoring centres of Member States. In order to ensure such an access it is pertinent to establish clear rules on the conditions and the procedures that should be respected.

(29) Articles 114 to 116 of the Control Regulation provide that the Member States have to establish official websites. With a view to ensure their equal accessibility in all Member States it is pertinent to establish rules at EU level on these websites.

(30) According to Article 117 of the Control Regulation a system of mutual assistance shall be established for ensuring the administrative cooperation among Member States and the Commission. Such administrative cooperation is essential to ensure that a level playing field in the EU is established and that illegal activities are properly investigated and sanctioned. Rules should therefore be drawn up for a systematic exchange of information either on request or spontaneously, and for the possibility to request enforcement measures and administrative notification by another Member State.

(31) The protection of individuals with regard to the processing of personal data by the Member States is governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[(4)]. The protection of individuals with regard to the processing of personal data by the Commission is governed by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[(5)], in particular as regards the requirements of confidentiality and security of processing, the transfer of personal data from the national systems of Member States to the Commission, the lawfulness of processing, and the rights of data subjects to information, access to and rectification of their personal data.

(32) To facilitate the implementation of the fisheries control system, detailed rules should be concentrated in one single Regulation. The following Commission Regulations should therefore be repealed:

— Regulation (EEC) No 2807/83[(6)] laying down detailed rules for recording information on Member States' catches of fish,

— Regulation (EEC) No 3561/85[(7)] concerning information about inspections of fishing activities carried out by national control authorities,

— Regulation (EEC) No 493/87[(8)] establishing detailed rules for remedying the prejudice caused on the halting of certain fisheries,

— Regulation (EEC) No 1381/87[(9)] establishing detailed rules concerning the marking and documentation of fishing vessels,

— Regulation (EEC) No 1382/87[(10)] establishing detailed rules concerning the inspection of fishing vessels,