

(To be filled out in the EDPS' office)

REGISTER NUMBER: 1300

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 01/04/2015

CASE NUMBER: 2015-0326

INSTITUTION: EFCA

LEGAL BASIS: ARTICLE 27-5 OF THE REGULATION CE N° 45/2001⁽¹⁾

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

European Fisheries Control Agency, Avda. Garcia Barbon, 4, E-36201 Vigo

2/ ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA

For questions related to the FIS system:
Unit B – Capacity Building
Data Monitoring and Networks
Contact person: Patrick Allen, Senior Project Manager

For questions related to operational coordination:
Unit C – Operational Coordination
Contact person: Miguel Nuevo, Desk Officer for Training and Assistance

3/ NAME OF THE PROCESSING

Joint Deployments Plans (EFCA FIS-system)

4/ PURPOSE OR PURPOSES OF THE PROCESSING

Following article 5 of Regulation (EC) No 1224/2009, MS have to ensure control, inspection and enforcement of activities carried out within the scope of the Common Fisheries Policy. The control

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

and inspection activities are organised jointly in determined cases by Joint Deployment Plans (JDPs), adopted by the EFCA following the rules established in Chapter III of Regulation (EC) No 768/2005. JDPs are a tool to ensure cooperation and coordination of control activities between the Member States to ensure compliance with this objective.

To facilitate the implementation of the JDPs, there is a permanent exchange of information between the Member States and EFCA. This information may contain in certain cases personal information.

In particular, Union inspectors shall submit to EFCA a copy of the full inspection report which contains an alleged infringement as provided for by Article 123(3) of Commission Implementing Regulation (EU) No 404/2011.

The purpose of the processing is to ensure proper monitoring of compliance with the applicable EU legislation, sharing information to facilitate investigations and proceedings in cases of infringement, and facilitating the risk analysis for the inspection activities to be developed by the Member States authorities.

In the context of operational coordination, information on the positioning of fishing vessels, (VMS), catches and landing data, (ERS), concerning fishing activities carried out under JDPs are provided by Member States' authorities to EFCA and shared within the EFCA-FIS. Also inspection report information is exchanged and shared, through the EIR data system or through a paper document exchanged to view, search, analyse and produce statistics and reports.

In the case of the JDPs covering waters under the competence of Regional Fisheries Management Organisations (RFMOs) such as NAFO, NEAFC and ICCAT, EFCA has the mandate to send the inspection reports to the Flag State Authorities, to the European Commission and to the Executive Secretary of NAFO and NEAFC.

EFCA's Fishery Information System (FIS) consists of the full suite of operational applications which will be integrated within the new EFCA Enterprise Architecture (EFCA-EA). Currently, it includes the EFCA Vessel Monitoring System (EFCA-VMS), the EFCA Electronic Reporting and Recording System (EFCA-ERS), the EFCA Electronic Inspection Report System (EFCA-EIR), and the EFCA FISHNET digital, communication, collaboration and coordination platform (EFCA-FISHNET). The EFCA-FISHNET is that part of the EFCA FIS, where the access to the various applications will be managed.

EFCA will also make available some components applications within the EFCA FIS as SaaS (Software as a Service) products for use by Member State's. As part of this service, EFCA may permit a particular Member State to create and manage a dedicated space within a particular application(s) for its own specific purposes. The Member State would be able to avail of all of the application functionality and services to capture, store, analyse, and exchange data from within this dedicated space, whilst at the same time controlling who accesses the space. In essence, it becomes the Member State's system within the EFCA system. Currently it is planned to offer this service within the EFCA EIR and it may in the future extend to other applications. SaaS products will be subject to SLAs between EFCA and the relevant Member State.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Data Subject list as per Data Elements contained within Annex XII, Annex XXIII and Annex XXVII of Commission Implementing Regulation (EU) No 404/2011:

Vessel Master
Vessel Crew member(s)
Vessel Owner(s)
Vessel Beneficial Owner(s)
Vessel Owners Representative(s)
Vessel Charterer(s)
Vessel Agent(s)
Observer(s)
Transporter(s)
Driver(s)
Registered Buyer(s)
Inspector in charge
Inspector(s) other
Reporting Official(s)

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA (*including, if applicable, special categories of data (Article 10) and/or origin of data*).

Name, address and signature of the data subjects (point 5 above)

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

EFCA has published a Data Protection Clause (see Annex) on its website pursuant to Regulation (EC) No 45/2001, at the following link:

http://www.efca.europa.eu/pages/home/jdp_fis.htm

Note on the side: The official version of a vessels paper logbook is maintained on board the fishing vessel by the master of the fishing vessel. The official version of a vessels electronic logbook, transshipment declaration and landing declaration (ERS) is maintained in the databases of the flag state FMC. Therefore the provision of further information to the Data Subjects is the responsibility of the flag state concerned.

In the case of both the paper and electronic versions of the Inspection and Surveillance Reports, the maintenance of the official version is the responsibility of the flag state. Therefore the provision of further information to the Data Subjects is the responsibility of the flag state concerned.

The official version of a vessels VMS data is the responsibility of the vessels flag state. Therefore the provision of further information to the Data Subjects is the responsibility of the flag state concerned.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

(Rights of access, to rectify, to block, to erase, to object)

In relation to any requests, if the data subject requests the Controller orally, by email or by paper to exert his/her rights, the Controller will facilitate the applicant the exercise of the rights, subject to the restrictions mentioned below.

EFCA has no influence on the content of the Vessel Monitoring System (VMS) data, or the content of the electronic logbook data (ERS), or the content of the electronic inspection and surveillance reports (EIR) or the inspection reports which are compiled by the Member State and then provided to EFCA through the EFCA-FIS or on paper. EFCA merely provides the means to receive, process and provide shared access to and/or exchange the relevant data.

EFCA does not have the competence for any follow up of alleged infringements made and laid down in an inspection report. This is the responsibility of Coastal Member States and Flag Member States (Title VII, Chapters III and IV of Council Regulation (EC) No 1224/2009). The inspection report serves as evidence in court and can therefore not be modified (Articles 76 and 77 R. 1224/2009).

Thus the rights mentioned in Articles 13 to 18 of R. 45/2001 are restricted for the present data processing operation (Art. 20 (1)(a) and (e) and Art. 5(b) R. 45/2001) with regard to inspection reports containing alleged infringements.

Apart from that, EFCA does not “own” the inspection reports information, VMS and ERS data, which is third-party data (of the Member State), and therefore EFCA cannot give access to it without having consulted the third party and having received a positive answer in accordance with Art. 4(4) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

EFCA will ensure that any restrictions to the right of access to the information contained in the inspection report information and VMS and ERS data on the basis of Art. 20(1)(a) and (e) do not exceed what is necessary to achieve the respective objective. In particular, for inspection report information, when consulting the Member State who carried out the inspection as regards access to the relevant inspection report, EFCA will stress the importance of respecting the right of access to personal data of the data subject concerned, to give full effect to Art. 13 of R. 45/2001.

As regards inspection reports, in all cases, the right of access is already granted by providing the master of the fishing vessel and other operators who sign the report with a copy of the inspection report. The report is also signed by the inspectors.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

Information is used by EFCA staff with a need to know for operational coordination purposes. Also, parts of the information (excluding personal data) contained in the inspection reports may be extracted and used for regional risk analysis and/ or training purposes by EFCA staff with a need to know.

VMS, ERS and EIR data provided by Member States’ authorities related to fishing activities covered by JDPs are received and stored in the EFCA FIS system. EFCA provides access to this data to other Member States, via the access management component within the EFCA-FIS, in the context of a JDP. EFCA also provides access to this data for relevant EFCA staff members.

EFCA System Administrators will have unlimited access to all data contained within EFCA FIS, including personal data, in order to carry out their functions. However, this access will not involve the use of this data for any other purpose than to administer the EFCA FIS system.

Each FIS User, (whether from a MS or from within EFCA), will be associated with specific access rights and privileges for each of the applications within the system. For example, a particular user from Member State 'X' may be permitted to access all data within the EFCA VMS, but may be restricted to viewing data within the EFCA ERS for a specific JDP only, and may also be restricted to accessing Inspection and Surveillance reports for their own MS within the EFCA EIR. These rights and privileges will be determined and approved by the Operational Coordination Unit of EFCA (Unit C), and will then be managed and implemented by the System Administrators within the Capacity Building Unit of EFCA (Unit B).

The exchange of VMS data with MS and third parties is currently via individual connections with each of those parties. Security certificates are required for each machine accessing the system. This will be complemented with the use of the FLUX Transportation Layer (TL) for VMS exchange, which is expected to be implemented in the first semester of 2015, where each party will, on completion of their own FLUX implementation, migrate to FLUX TL exchange.

The exchange of ERS data is currently done via a central hub managed and controlled by the European Commission known as the Data Exchange Highway (DEH). However, like VMS, this exchange will also migrate to the FLUX TL during 2015/2016.

In the case of the EIR system, the exchange of data with MS and third parties will be done via the FLUX TL from early 2015. As MS implement their own EIR systems, this will be the means for automated data exchange. In addition, the EFCA-EIR will also be used as an online 'SaaS' (Software as a Service) product. This will facilitate those MS without an EIR system, to manually upload EIR XML files or to manually enter Inspection and Surveillance data into the EFCA-EIR system. This service will also allow each MS to create their own EIR database storage facility within the EFCA-EIR and enable them to exchange EIR data from within the system with other MS, EFCA and third parties.

Access to reports related to possible non compliances with applicable EU and RFMO legislation are facilitated within the EFCA-EIR to Flag Member States, Inspecting Member States and DG MARE.

Access to all inspection reports of non EU fishing vessels is provided to DG MARE.

EU waters JDPs

Inspection reports provided by Member States' authorities and Union inspectors concerning inspections of fishing vessels carried out in the North Sea, Baltic Sea, or Western Waters (pelagic) JDP Areas are received in a copy by EFCA for information purpose only.

Inspection reports and additional documents related to fishing activities are transmitted by the inspection teams to the Technical Joint Deployment Group by e-mail (pdf/jpg/tif files) or in paper form.

MED JDP

In the case of the MED JDP those reports related to possible non compliances with applicable EU and ICCAT legislation are submitted by the Technical Joint Deployment Group (in which EFCA officials are represented) to Flag Member States, Inspecting Member States and DG MARE.

NAFO/NEAFC JDP

Original inspection reports and additional documents related to fishing activities are taken to the EFCA by EFCA Coordinators on duty in the NAFO/NEAFC Regulatory Areas or transmitted by the Member States to the EFCA by regular mail.

All originals of inspection reports are being transmitted by the EFCA to flag states by regular mail.

Scanned copies of inspection reports with apparent infringements of applicable EU and NAFO or NEAFC legislation are transmitted to NAFO and NEAFC Secretariat by regular mail. Scanned copies of inspection reports without infringements are transmitted to NAFO and NEAFC Secretariat by e-mail.

Scanned copies of all inspection reports are being transmitted to DG MARE by e-mail.

Confidentiality

MS experts with a need to access the EFCA-FIS data for operational purposes are nominated by each Member State according to operational needs. These MS experts would have access to this data under the legal bases included in the JDP, which is also applicable to data received on paper or by e-mail:

Confidentiality

- 1. All data exchanged during the planning, implementation and assessment of the JDP shall be subject to strict confidentiality in accordance with the relevant Union provisions and national legislation, in particular in accordance with Title XII, Chapter II of Council Regulation (EC) No 1224/2009.*
- 2. Access to information shall be restricted to the relevant staff in the Member States and the EFCA requiring this information for the exercise of their function for the planning, implementation and assessment of the JDP.*
- 3. The personal data processed during the planning, implementation and assessment of the JDP shall benefit from the protection as is accorded 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 and 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.*

10/ STORAGE MEDIA OF DATA

The data is stored securely on the EFCA servers.

Paper copies of inspection reports are filed and kept in a locked cupboard to which only staff from the respective regional desk in Unit C has access.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Processing is necessary for compliance with the following legal obligation of EFCA: The reception of data from Member States regarding position of vessels, catches and landings and inspection reports and the provision of access to Member States to this information for the purpose of operational coordination in the context of joint deployment plans is provided for by Art. 5(2), 13 and 16 of Council Regulation (EC) No 768/2005 and Art. 118(2), second sentence of Commission Implementing Regulation (EU) No 404/2011.

ERS and VMS exchange is also foreseen by the Specific Control and Inspection Programmes adopted by the Commission (Art. 11 of Commission Implementing Decisions 2014/156/EU, 2013/328/EU, 2013/305/EU) and the corresponding JDP adopted by EFCA.

In particular, the reception of inspection reports conducted by Union inspectors which contain an alleged infringement, is provided for by Article 123(3) of Commission Implementing Regulation (EU) No 404/2011.

The sending of inspection reports to the Executive secretary of NEAFC and to the flag states of the vessels is delegated by the European Commission in Article 7 of Commission Implementing Regulation (EU) No 433/2012.

Lawfulness of the processing:

A reference to compliance of the processing operations with the EU data protection laws (Directive 95/46/EC and Regulation (EC) No 45/2001) is included in all Joint Deployment Plans:

“The personal data processed during the planning, implementation and review of the Joint Deployment Plan shall benefit from the protection as is accorded 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 (Footnote: OJ L 281, 23.11.95, p. 31.) and 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 (Footnote: OJ L 8, 12.1.2001, p.1.)”

12/ THE RECIPIENTS OR CATEGORIES OF RECIPIENT TO WHOM THE DATA MIGHT BE DISCLOSED

Within EFCA, access to personal data is limited to the EFCA staff with a need to know: EFCA Data Administrators (FIS information), Coordinators of Control Operations and Desk Officers involved in the implementation of JDPs (FIS information and paper inspection reports).

EFCA provides access to the ERS and EIR data to designated persons as authorised by the competent authorities in the Member States, in the context of a JDP through the EFCA-FIS. Authorised persons are provided with access credentials which will determine the level of access and privileges they will have within each of the EFCA-FIS component applications. These credentials include a Single Sign-On (SSO) username and password. These authorised persons are the members of the Steering Group and the Technical Joint Deployment Group of the Joint Deployment Plan (Member States to which the JDP is addressed) and MS National Experts in the Fisheries Monitoring Centres.

In the case of the MED JDP also to the European Commission, DG MARE, UNIT D-2 and in the case of NAFO-NEAFC to the European Commission, DG MARE Unit B3 and Unit C2.

Regarding the inspection reports resulting of the JDP control activities in the respective area of competence, European Commission, Executive Secretary of NAFO and NEAFC and Flag State authorities.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

The data from the inspection reports shall be kept for 3 years (Art. 118(3) Regulation (EU) No 404/2011).

The personal data related to ERS is kept two years on the Member States' request (Art. 45(3)(a) of Regulation 404/2011).

The VMS data is retained in the system for a period of maximum three years (Art. 27(2)(b) Regulation (EU) No 404/2011).

13 A/ TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS
(Please, specify the time limits for every category, if applicable)

15 days from receipt of legitimate request

14/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification.

n/a

15/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

In accordance with Art. 8 of R. 45/2001, before transmitting any report or other documents, EFCA will assess and verify that the transfer is done in conformity with the obligation under the EU law and NAFO/NEAFC rules.

EFCA keeps a register of any transfer of data to recipients outside the EU (transfers of the inspection reports to NAFO and NEAFC Secretariats and to other Contracting Parties national authorities) responsible for fisheries, together with the legal justification for making the transfer. The register is managed and centralized by the EFCA desk officer in charge of NAFO-NEAFC JDP.

16/ THE PROCESSING OPERATION PRESENTS SPECIFIC RISK WHICH JUSTIFIES PRIOR CHECKING (Please describe):

Inspection reports received may contain alleged infringements by the fishing vessel (master/ owner) of applicable EU legislation. The inspection reports serve as evidence in the courts of the concerned state(s).

AS FORESEEN IN:

Article 27.2.(a)

(Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,)

Article 27.2.(b)

(Processing operations intended to evaluate personal aspects relating to the data subject,)

Article 27.2.(c)

(Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,)

Article 27.2.(d)

(Processing operations for the purpose of excluding individuals from a right, benefit or contract)

Other (general concept in Article 27.1)

17/ COMMENTS

PLACE AND DATE: Vigo, 20 March 2015

DATA PROTECTION OFFICER: Rieke Arndt

INSTITUTION OR BODY: European Fisheries Control Agency