

EXPLANATORY NOTES

GENERAL

1. Introduction

These Regulations serve to implement the delegation and sub-delegation bases from the Merchant Shipping Protection Act and the Merchant Shipping Protection Decree. According to Instruction 2.24 of the Legislative Drafting Instructions, these Regulations elaborate the rules set out in the Act and the Decree, including provisions of an administrative and a technical nature.

The content of the Regulations is therefore of importance to maritime security organisations, ship managers, masters, maritime security personnel as well as the executive government bodies, such as the Coastguard and the Human Environment and Transport Inspectorate. The Regulations also contain a number of annexes with standard forms. These standard forms not only streamline the work processes of the Coastguard and the Human Environment and Transport Inspectorate but are particularly appropriate for the situation in which shipowners, masters and maritime security organisations operate. Due to the international nature of Dutch merchant shipping, the standard forms are also adopted in English.

Following on from this, it is noted that a number of forms are already in use in the existing practice, for example for the purpose of reporting incidents. The purpose of adopting the standard forms is to tie in with existing practices whenever possible.

It should be noted in this respect that it is not the purpose of the Regulations to codify the existing practical methods applied in the case of piracy incidents. Existing procedures and methods in the event of piracy incidents remain unchanged in principle. The applications for military protection are not regulated here either, as this concerns an already existing work process which is not changed by the Merchant Shipping Protection Act and the underlying regulations. The introduction of the possibility of protection of merchant vessels sailing under Dutch flag by private armed security personnel provides the reason for the legislation and regulations, including the Regulations under consideration here. Supplementary to the Act and the Decree, these Regulations provide the rules necessary for that purpose. For a further explanation of the Act and the Decree, please refer to the relevant explanatory notes.

2. Legal framework

As was stated above, the Merchant Shipping Protection Act and the Merchant Shipping Protection Decree contain a number of bases for regulating the issues in these Regulations.

It follows directly from the Act that rules are laid down by ministerial regulation about all reasonably possible protective measures to be applied by the ship manager and master (Section 6 of the Act), about the master and the team leader reporting to the Human Environment and Transport Inspectorate (Section 12 of the Act), the fees charged for a licence (Section 13 (5) of the Act) and about the amount of the administrative fines that may be imposed under the Act for violations of the legislation and regulations (Section 17 of the Act).

The other issues included in the Regulations follow indirectly from the Act, via the Merchant Shipping Protection Decree.

A number of specific issues can be provided for by ministerial regulation. This concerns more specific rules about:

- the data and documents collected by the master and team leader before the security team goes on board (Article 2.4 (5), Merchant Shipping Protection Decree);
- the continuity, guaranteed to a reasonable extent, of the maritime security company (Article 5.4 (3), Merchant Shipping Protection Decree);
- the secure storage, management and transport of firearms and ammunition (Article 5.10 (3), Merchant Shipping Protection Decree).

3. Granting permission

The Coastguard Centre handles applications for permission from ship managers for private armed security or the applications for security provided by the Ministry of Defence by means of a Vessel Protection Detachment (hereafter: VPD). In the case of an application for private security, it is also assessed whether the transport should qualify for VPD security. In such case, it is checked whether a merchant vessel is concerned which is entitled to sail under the flag of the Kingdom according to Dutch legislation, whether this concerns a transport through the designated risk area, whether a risk assessment has been added and if the reasonable protective measures to be arranged by the ship manager and master will be met. If the relevant application provides insufficient clarity about this, the Coastguard will request additional information. In extreme cases, the Coastguard may refuse permission for the use of private armed security if no risk assessment has been carried out or there are reasonable grounds to expect that not all reasonably possible protective measures will be taken.

It will then be considered whether, given the size of the vessel, sufficient space can be offered to a VPD and whether a VPD can be mobilised in time. If the answer to those questions is negative, permission may be granted for private armed security provided by a maritime security company with a Dutch licence. If the answer to the last two questions is affirmative, and military protection is possible in principle, it will be assessed whether in that case a disproportionate detour would be involved (more than 100 nautical miles), or if the use of VPD would involve disproportionate additional costs. If this is not the case, military protection will be offered. If, however, this is the case, the transport will qualify for private armed security provided by a maritime security company in possession of a Dutch licence. Article 2 of the Regulations contains a reference to the permission application form to be used. Annex 1 contains a standard form for permission applications. The permission application form is partly based on the original form for the application for VPD protection. Interested parties (usually the applicant) may submit an objection to the Coastguard about the decision regarding granting (or refusing) permission.

A legal condition for qualifying for private security is that the ship manager and master must also take protective measures - included in Article 3 - themselves to prevent the ship from being attacked by pirates. Private armed security on board is not an alternative for the measures to be taken, but supplements these measures where such is imperative on the basis of the risk analysis. For a more detailed explanation, see the explanatory notes by article.

4. Granting of licences

The Regulations also lay down further rules about the application for a licence for offering and performing maritime security activities as well as a number of specific licence conditions. On the basis of Article 4.2 of the Merchant Shipping Protection Decree, the licence applications are submitted to the Human Environment and Transport Inspectorate. The Merchant Shipping Protection Decree offers the basis for laying down further rules (licence conditions) about the trustworthiness of the maritime security company, the company's continuity, the business procedures and internal supervision. On the basis of Section 13 (4) of the Act, the Regulations also set out the rates for handling licence applications (fees). The different requirements are discussed in more detail in the explanatory notes by article under Article 9 ff.

5. Supervision and enforcement

According to Section 16 of the Act, the minister appoints the officials responsible for supervising compliance with the provisions of the Act by means of a separate decision. The minister will appoint officials from the Human Environment and Transport Inspectorate for that purpose. The supervisory officials have the usual powers on the basis of the General Administrative Law Act. Section 17 of the Act determines that administrative fines may be imposed within the context of supervision and enforcement. The Regulations contain a more detailed framework for the possibility of imposing administrative fines. In practice, these fines will be imposed by the supervisory officials of the Human Environment and Transport Inspectorate. The Inspectorate will apply a schedule of fines with the exact amount of the administrative fines for each violation.

For the sake of completeness, it is noted that the Act also provides for the criminal enforcement of a number of provisions. This concerns in particular the application of the powers to use force by the maritime security personnel. Reports on the use of weapons (legitimate or otherwise) are submitted by the master to the Public Prosecution Service. Article 6 (3) of the Regulations contains a reference to the standard form for reporting the use of weapons, to be submitted by the master. The Public Prosecution Service, in cooperation with the police, will investigate whether that use of weapons was legitimate or if criminal offences have been committed.

6. Data protection impact assessment

As was stated in Article 5 of the explanatory notes to the Merchant Shipping Protection Decree, the implementation of the Act involves the processing of personal data by the applicants of a licence, the licence holders (maritime security companies) and by the different government organisations responsible for implementing the legislation and regulations. The data protection impact assessment performed at the time led to the inclusion of the additional legal grounds for the processing (and protection) of personal data. These were also considered during the drafting stage of the Merchant Shipping Protection Decree.

The comments from the Dutch Data Protection Authority and the Advisory Division of the Council of State led to a more detailed specification of the relevant provisions or the explanatory notes to those provisions. A further explanation can be found in the detailed report¹ and the relevant explanatory notes to the Act² and the Draft Decree.³

Following the reaction of the Advisory Division of the Council of State, Article 24 has been included in these Regulations, which not only provides for retention periods but also provides further guarantees for processing personal data. It stipulates that the supervisors of the Human Environment and Transport Inspectorate must state in their own privacy statement how they deal with a number of guarantees in terms of processing personal data. The privacy statement is published on the Inspectorate's website.

7. Regulatory impacts and financial consequences of the Merchant Shipping Protection Regulations (private-sector parties)

As part of the preparations for the Merchant Shipping Protection Decree and the Merchant Shipping Protection Remedial Act, the consequences of the Act and the Decree on the regulatory burden and the financial consequences of this were analysed.⁴ The Merchant Shipping Protection Regulations contain an elaboration or specification of what has been set out in the Act and the Decree. The Advisory Board on Regulatory Burden was asked to give advice on the Draft Merchant Shipping Protection Regulations. The Advisory Board issued its advice in a letter dated 11 November 2021.⁵ The advice has also been published on www.internetconsultatie.nl/rbk.

In summary, the Advisory Board advised as follows:

- a. to state in more detail in the explanatory notes in which situation and on the basis of which motives ship managers or masters may derogate from the required protective measures;
- b. to add in the explanatory notes how the proposal relates to other relevant regulations that apply to maritime security companies;
- c. To assess, in consultation with the sector of private maritime security companies and merchant shipping, the practicability of the requirements imposed on the licence application and to clarify this in the explanatory notes if necessary;
- d. To calculate the regulatory impacts of the Regulations in accordance with the nationwide method, and to include this calculation in the explanatory notes to the Regulations. The

¹ Parliamentary Papers II, 35 811, No. 4.

² Parliamentary Papers II, 35 811, No. 3, p. 9-10.

³ Explanatory notes to the Draft Merchant Shipping Protection Decree, p. 19-20.

⁴ For a detailed explanation, see Section 6 of the Explanatory Memorandum to the (Draft) Merchant Shipping Protection Decree.

⁵ Advice of 11 November 2021, reference MvH/RvZ/WS/cd/ATR2017/2021-U090, <https://www.atr-regeldruk.nl/regeling-bescherming-koopvaardij>.

Advisory Board recommends clarifying the points where this calculation deviates from the calculation of the regulatory impacts of the Merchant Shipping Protection Decree.

In response to the advice of the Advisory Board, I will comment here on the individual issues the Advisory Board has highlighted.

Re a. Reasonable protective measures to be taken by the ship manager and master themselves (Article 3 (4) of the Regulations)

The Advisory Board notes that the obligation to take reasonable security measures may be deviated from if this is supported by reasons. According to the Advisory Board, the explanatory notes do not clarify when this is the case and when the reasons stated are sufficient.

In the explanatory notes to Article 3 (4), it is stated that special circumstances may occur where it is not possible to take one or more of the measures described in Article 3 (1) to (3). As an example, it is said this may be due to the size of the vessel or exceptional situations on board the vessel. In such cases, the ship manager states on the permission application form that the relevant measure(s) on the intended transport cannot be taken, giving the reasons. The ship manager can also indicate to what extent alternative measures are being taken. It is not possible to give a comprehensive list of such special circumstances in advance. Article 3 (4) has been formulated in general terms on purpose, to make sure it will not be unnecessarily restrictive in maritime practice. It is up to the ship manager (and the master) to decide on each occasion which security measures will and can be actually taken. Bearing in mind the underlying principle that private armed security constitutes an addition to the reasonable security measures to be taken (and that it is not an alternative for this), the permission application will, however, need to set out in detail which security measures will be taken. This is emphasised again in the explanatory notes by article under Article 3 (4).

Re b. Relationship to other relevant regulations

The Advisory Board advises in the explanatory notes to add in the explanatory notes how the Draft Regulations relate to other relevant regulations that apply to maritime security companies. The Advisory Board asks for a clarification with regard to the overlap with or derogations from requirements arising from other regulations.

Although the Advisory Board requests a further clarification in the explanatory notes to these Regulations, this item to be addressed also extends beyond the level of the ministerial regulation. It concerns the whole structure of the Dutch Merchant Shipping Protection Act and underlying regulations. From that perspective, the Merchant Shipping Protection Regulations and the explanatory notes are not the most appropriate place to discuss this in detail; see Section 2 of the explanatory notes to the Merchant Shipping Protection Decree. In addition to this, the following should also be noted.

First of all, it is possible that a number of specific rules in the legislation and regulations are in keeping with or overlap with regulations on shipping on the basis of international treaties or special legislation. The European Commission has referred in this respect to alignment with Regulation (EC) No 725/2004 on enhancing ship and port facility security. Elements of this Regulation have led to additional explanatory notes to the Merchant Shipping Protection Decree and to these Regulations. I also refer to Section 9 of these explanatory notes in that respect. This is also relevant to the rules about the protective measures to be taken by the ship manager and master. However, these rules, unlike more generic regulations, were drawn up for the specific purpose to offer protection against piracy in cases where private armed security is used.

Secondly, several rules have been derived from the practice of ISO certification. Where maritime security companies are subject to ISO28007 certification, the relevant rules apply. It should be noted that these rules relate to the management processes and have a certain abstraction level. The application for such a certificate and the periodical audits must specify how the rules are made operational in practice. Many rules included in the Regulations are a way of making the ISO28007 requirements operational and concrete and offer the maritime security companies and the Human Environment and Transport Inspectorate a concrete starting point for the application for and assessment of a licence. In that sense, these are not new rules leading to a new regulatory

burden, but a concrete interpretation of general ISO requirements, which is common practice in the sector.

Re c. Assessment of the practicability of the requirements in consultation with the sector

The Advisory Board advises to assess, in consultation with the sector of private maritime security companies and merchant shipping, the practicability of the requirements imposed on the licence application and to clarify this in the explanatory notes if necessary. In response to this, I observe that there was contact with the maritime sector constantly during the entire preparation of the legislation and regulations. In terms of the sector of maritime security companies specifically, it should be noted there is no umbrella organisation of maritime security companies in the Netherlands. An organisation such as the Security Sector Association of the Netherlands looks after the interests of private security companies, but it does not focus on maritime security companies. Moreover, the number of active Dutch maritime security companies is very limited. To prevent giving the impression that one or some maritime security companies could be given an advantage, knowledge and expertise from certifying institutions and umbrella organisations of shipping companies (Royal Association of Netherlands Shipowners), master of merchant vessels (Dutch Shipmasters' Association) and the maritime trade union Nautilus was used in particular in the preparation of the legislation and regulations. These organisations have provided valuable input, which has been incorporated in several places in these Regulations, the explanatory notes and the annexes.

Re d. Calculation of the regulatory impacts

The Advisory Board advises to calculate the regulatory impacts of the Regulations in accordance with the nationwide method, and to include this calculation in the explanatory notes to the Regulations. The Advisory Board recommends clarifying the points where this calculation deviates from the calculation of the regulatory impacts of the Merchant Shipping Protection Decree.

Supplementary to what is stated in the explanatory notes to the Merchant Shipping Protection Decree, maritime security companies are affected, as the fee to be charged on the basis of Article 8 of these Regulations increases the regulatory impacts. The fee that covers the costs is € 17,220 for an initial licence application. If there are five licence applications per year (which is the number used as a basis in the explanatory notes to the Merchant Shipping Protection Decree), this means an additional burden of € 86,100 on an annual basis. On the basis of the estimates of the Human Environment and Transport Inspectorate, which anticipates six licence applications in the first three years, this would constitute an additional burden of € 34,440 on an annual basis. In both cases, it should be noted that the maritime security companies will normally charge those costs on to their clients, the ship managers. It cannot be ruled out that the ship managers may in turn pass on those costs to their clients / the awarders of the contract.

Contrary to what applied within the context of the Merchant Shipping Protection Decree, all reasonably possible protective measures must be taken by the ship manager and master themselves according to Section 6 (1) of the Act in conjunction with Article 3 of the Regulations. The nationwide method not only offers insufficient reference points for the calculation of these fees; what is even more important is that these fees are partly due anyway as a consequence of generic shipping regulations and may vary considerably depending on the vessel's specifications, the availability and costs of materials, etc. Insurers also tend to set requirements for the protective measures for transport. The proposed reasonable protective measures to be taken are therefore not new. For the sake of completeness, it should be noted that alternative protective measures may also be taken where possible.

As regards the licence requirements as included in these Regulations, it should be noted that these are a concrete interpretation of what has already been regulated by order in council. The calculation of the regulatory impacts mentioned there is still up to date. In addition to this, it is emphasised for the sake of completeness that the legal requirements for ISO certification may lead to costs for companies that are not yet certificated and wish to qualify for a Dutch licence. Depending on the organisation and methods of such a company, adjustments and investments will be needed to obtain the required ISO certificates. Initial ISO28007 certification as such costs approximately € 7,000. The costs of renewing this ISO certificate, charged by the certification body, are lower. This therefore concerns costs arising indirectly from the Act rather than from

these Regulations. For maritime security companies that already have the required ISO certificates and also wish to qualify for a Dutch licence, these are not new costs.

8. Workload impacts and financial consequences of Merchant Shipping Protection legislation (government)

What has been stated above about regulatory impacts and financial consequences for private-sector parties largely also applies to the workload impacts and the financial consequences for the government organisations involved.

The Coastguard has been asked to produce an impact analysis, and the Human Environment and Transport Inspectorate has been asked to carry out an additional assessment of the enforceability, the feasibility and the financial consequences. On the basis of the Coastguard's impact analysis, a one-off additional sum of € 31,000 has been allocated to the Coastguard for the costs in connection with the preparation of the activities, including the recruitment of a coordinator. The Coastguard will be compensated for at least 0.5 FTE (scale 10) for the estimated 100 permission applications per year. It will be discussed with the Coastguard to what extent this compensation adequately reflects the additional workload as a consequence of the entry into force of the Act and also offers sufficient scope for fleshing out the Coastguard's responsibility for handling the permission requests appropriately in practice. Meanwhile, a training exercise has taken place with a number of fictional permission applications from a few ship managers, which enabled the Coastguard to trial the envisaged work process.

The original Enforceability, Feasibility and Fraud Resistance (EFF) test of the Human Environment and Transport Inspectorate was still based on superseded principles from the Act with regard to the role and responsibilities of the ISO-certified institutions. The Inspectorate was therefore asked to carry out an additional EFF test. This test gave further insight into the financial compensation required for supervision and enforcement. This test was also important for establishing the fee that will be associated with applying for a licence. The idea is that the fee will cover the Inspectorate's costs involved in granting a licence. For a more detailed explanation, see the explanatory notes by article under Article 8.

In terms of the criminal enforcement of the legislation and regulations, the Public Prosecution Service (and, by extension, the police), wants to gain practical experience with the Act first, before it can specify the staffing, organisational and financial consequences. It is expected that the capacity currently available will be sufficient for investigating reports on the use of weapons by private maritime security personnel for the time being. The rules set out in the Regulations in that respect, concerning the standard forms to be used, will not have any consequences as such for the workload impacts of the Public Prosecution Service and the police.

9. Notification procedure

As was the case with the Draft Merchant Shipping Decree, the Draft Merchant Shipping Regulations have also been presented to the European Commission for notification purposes, in accordance with Directive (EU) 2015/1535. Following the notification on 12 July 2021, the Commission responded on 11 October. For both draft regulations, the Commission has asked to consider Regulation (EC) No 725/2004 on enhancing ship and port facility security from the point of view of security aspects. In response to the comments by the European Commission, the explanatory notes to these Regulations have been supplemented, in particular in the explanatory notes by article under Article 17. For the sake of completeness, it should be noted that notification under Directive 2006/123/EC was not necessary in the end, as private security companies are exempted from the scope of this Directive (Article 2 (2) (k)).

10. Internet consultation

Reactions to the Draft Regulations could be publicised on the internet consultation website (www.internetconsultatie.nl/rbk) from 19 October 2021 to 16 November 2021. Not counting the separately requested advice of the Advisory Board on Regulation Burden, this led to five public reactions, from the Royal Association of Netherlands Shipowners (KVNR), the Dutch Shipmasters' Association (NVKK), the maritime trade union Nautilus International, Antaeus Risk Management and a resident of Katwijk. The ministry also received a reaction from a representative of a maritime security company. The reactions broadly concern the provisions concerning the reasonable security measures to be taken by the ship manager and master (Article 3), the

provision concerning the weapons safe and the transport case (Article 4), the amount of the fees for licence applications (Article 8), the licence requirements for maritime security companies (Articles 9 to 16), the administrative fine provisions and the relevant explanatory notes (Articles 18 and 19) and the annexes with standard forms. The comments were valuable and have led to several amendments in the relevant provisions or the explanatory notes to the provisions. A number of comments concerned a lack of clarity or incorrect wording. The provisions and explanatory notes were amended in that respect where necessary.

The following can be observed about the main points of the reactions and how they have been dealt with in these Regulations.

Security measures (Article 3)

As regards the reasonable security measures to be taken by the ship manager and master themselves, the Royal Association of Netherlands Shipowners and Nautilus observe that paragraph 4 of the proposed Article 3 offers sufficient scope to deviate from the minimum security measures to be taken in occurring cases. The Dutch Shipmasters' Association advocates leaving the process of taking security measures entirely to the master's judgement and to act in keeping with BMP5. Both Associations propose replacing the term 'fixed search light'. The latter has been responded to by using the term 'floodlights' instead. In practice, this could also concern signal lamps. The proposal to leave taking security measures entirely to the judgement of the master cannot, however, be followed through, as Section 6 of the Act determines that all reasonably possible security measures to be applied are designated by ministerial regulation. The proposed method is in keeping with this. Paragraph 4 does, however, offer the flexibility to deviate from the minimum requirements in occurring cases.

Weapons safe and transport case (Article 4)

The Dutch Shipmasters' Association observes that the proposed provision is too detailed and unclear. In its opinion, a provision stating that the master is in charge of the weapons and ammunition on board would suffice. Article 4 (6) raises questions from the Dutch Shipmasters' Association and the Royal Association of Netherlands Shipowners about the master signing the weapons register. This provision has been streamlined and clarified in this document. The master's signature in the register confirms that the weapons have been registered. The team leader guarantees the correctness of what has been registered. The level of detail in Article 4 in fact provides the necessary clarity about the weapons safe and transport cases. Considering that Article 3.2 of the Merchant Shipping Protection Decree determines that further rules on the weapons or ammunition safe are decided by ministerial regulation and Article 3.3 of the Decree determines that the master is responsible for the supervision and safe storage of the firearms and ammunition, stating merely that the master is in charge of the weapons and ammunition on board would not suffice.

Amount of the fees (Article 8)

It is stated in a number of reactions received that the proposed fees are too high. Nautilus suggests issuing the licences for a year, in order that the fees can be reduced. The latter is a misconception. The proposed fees cover the costs, which means they cover the costs incurred by the Human Environment and Transport Inspectorate for handling the licence applications. The fees are based on the anticipated number of hours involved, compared with the wage costs of the relevant official. If a licence was valid for one year, the costs incurred by the Inspectorate would still be broadly the same, albeit that the costs would then be due annually (as the fee for renewal of the licence would be due after one year). Leaving aside the fact that a change in the period of validity of a licence would also require an amendment of the Act, I do not believe that such fees are desirable for the maritime security sector. I would also like to point out that the proposed fees for a three-year licence are the equivalent of the rates of countries that charge, for example, about USD 5,000 for a licence which is valid for one year. Furthermore, there is no reason to deviate from the principle of the fees covering the costs on the basis of the current opinions and expectations.

However, on the basis of the comments it was decided to adjust the fee calculation in such a way that there is now a split between the different phases in which the Inspectorate deals with a

licence application. If a maritime security company has submitted a licence application but subsequently withdraws that application or fails to qualify for the final phase, that company will not be due the full fee but the fee for the initial phase only (€ 7,220). For a more detailed explanation, see the explanatory notes by article under Article 8.

Licence requirements (Articles 9 to 16)

The Dutch Shipmasters' Association stated that the licence requirements are too elaborate and detailed. Nautilus proposed checking whether the requirements for the average ISO-certified maritime security company are feasible and do not deviate too much from the requirements imposed by other European countries. As regards Article 16, Nautilus places great store by the fact that handling semi-automatic firearms in situations where shooting takes place from the top of a ship down towards a pirate vessel forms part of the firing drill. On the part of maritime security companies, comments were made about the proposed requirements for relevant documents, the requirements in terms of medical examinations and certificates, the language requirements and the training requirements for professional competence and skill. Antaeus Risk Management also drew attention to the training requirements.

These comments gave rise to a number of amendments in the licence requirements. These amendments were made bearing in mind the existing practices and the international context of the maritime security sector. The amendments were also focused on safeguarding the guarantees necessary in order to arrive at a responsible use of private armed security personnel on merchant vessels sailing under Dutch flag. For example, it is already customary in the international security sector to work with documents in English. Strict translation requirements are not necessary. The original Article 15, about the required medical certificate, has been toned down to make sure it reflects international differences. The explanatory notes by article give more details about this. Article 16, about the language, educational and training requirements the members of the security team must meet, has been amended accordingly.

Protection of personal data and processing data (Article 23)

The Royal Association of Netherlands shipowners suggested that the shipowner, like the master, should be able to view the video recordings and listen to the audio recordings. Article 23 has been amended to reflect this. The opportunity has been used to stipulate that the maritime security company must be able to view the video recordings and listen to the audio recordings as well. The periods after which they must be deleted also apply to them, as does the option to store the video and audio recordings longer if such is necessary for raising, exercising or substantiating a legal claim.

Annexes, standard forms

General: A number of comments concern the length of the forms or the volume of the information requested. A number of forms request data that has already been recorded elsewhere. The Dutch Shipmasters' Association advocates using straightforward checklists based on information obligations that are already in place.

In response to this, reference is made to the explanatory notes to Article 6, where it is indicated that, where relevant, such other documents and reports with annexes can also be included with the relevant form. A degree of structuring the requested information is necessary to ensure efficient supervision of the execution of a transport protected by private armed security personnel. In consultation with the parties involved, the standard forms have been amended and simplified where necessary without compromising the information required by the Human Environment and Transport Inspectorate (and, where relevant, the Public Prosecution Office) to form an adequate opinion about the secured transport. Annex 1, for example, which is partly based on the existing VPD application form, was amended and simplified following consultation with the Ministry of Defence, the Coastguard, the Royal Association of Netherlands Shipowners and shipping companies. It must be emphasised that the supervisory authorities must be able to form an adequate judgement of the whole process - from the time when a licence and permission is granted until the security and arms leave the vessel - at all times, and in particular in the event of incidents. On the other hand, it is also in the interest of all parties involved that they are always able to account for their actions adequately. For the sake of clarity, it has been decided not to

produce bilingual standard forms but to use standard forms in English, as this is in keeping with international maritime practice.

Annexes 2 and 3, embarkation form: the Dutch Shipmasters' Association is of the opinion that this is a rather pointless form, as this is an official declaration by the master, which is not sent off. The Association observes that the requested information must also be recorded elsewhere, for example in the ship's journal, which can be easily checked by the supervisory authority. It suggests to either do away with the embarkation form altogether, or to replace it with a simple checklist.

In response to this, it is noted that the embarkation forms of the master and the team leader are important evidence of the performance of the duty to verify by the master and the team leader. As is also indicated in the note on the report on the remedial bill, the further regulations on the duty to verify guarantee a strict embarkation procedure, in which the master has an important degree of ultimate responsibility. The master's obligation not to leave in particular forms the 'lock on the front door' of the legislation on the monopoly on the use of force. These forms must therefore not be left out. For efficiency purposes, it has been laid down that the embarkation forms are part of the end report on the transport with private armed security, which means that the relevant data does not need to be registered twice. Contrary to the Association's view, the embarkation form is therefore definitely sent off. For the sake of clarity, but also to strengthen the Dutch government's access to information, it has been specified that the embarkation form must be sent to the Coastguard and the Human Environment and Transport Inspectorate, which means that the government too knows in advance how many and which armed security personnel are responsible for protecting the relevant merchant vessel.

Annexes 4 and 5, report forms: The maritime security company and the Dutch Shipmasters' Association state that the forms are very detailed. The maritime security company comments that the completed forms may exceed the maximum size of the files to be sent from the floating armoury. The video and audio recordings may be too large to send from the locations. The suggestion is made to offer an alternative solution for this. This has been provided for by applying a different deadline for sending the files. Practice will show whether that is sufficient.

EXPLANATORY NOTES BY ARTICLE

Article 1

In Article 1, definitions are given for several terms used in the Regulations. These terms supplement the terms used in the Act and the Decree.

Article 2

Article 2 stipulates that a special form must be used for applications for private armed security on board ships. This standard form, included in Annex 1, simplifies both the submission of applications by ship managers and the handling of the permission request by the Coastguard.

Article 3

Section 6 (1) of the Act stipulates that the master and ship manager must apply all reasonably possible security measures before and during a transport on which maritime security personnel is used. These reasonable protective measures to be taken are designated by ministerial regulation. This article provides further details on these reasonably possible protective measures. The use of private armed security personnel is a supplement to rather than a substitute for measures to be taken by the master and the ship manager themselves. In the permission application, the Coastguard checks whether the required measures will be in place on the basis of the submitted form. If the relevant application provides insufficient clarity about this, the Coastguard will request additional information. In extreme cases, the Coastguard may refuse permission for the use of private maritime security if it is anticipated that not all reasonably possible protective measures will be taken (Article 2.2 (5), Merchant Shipping Protection Decree).

The measures have been derived from the most recent version of the internationally used Best Management Practices 5 (BMP5). The prescribed reasonable measures to be taken do not replace

the recommendations from BMP5, but guarantee a minimum level of protective measures to be taken. The measures as such are therefore not new within the sector. The listed measures are in principle all reasonably possible protective measures that apply irrespective of type and size of ship. Nevertheless, there are ships where not all the basic measures mentioned can be taken. It can be stated in the permission application why certain measures cannot be taken.

In paragraphs 1, 2 and 3, a distinction is made according to the measures to be taken by either the ship manager or the master and the time when the measures are applied.

The ship manager is responsible for creating the enabling conditions for practical protective measures that are put into place under the master's authority. The measures taken by the master are elaborated in practice in the Ship Security Plan (SSP).

It is obviously up to the ship manager and master to take measures in addition to the prescribed measures.

Paragraph 1 (b); paragraph 3 (c)

Depending on the situation, the use of 'search lights' may be appropriate once it is dark. These may be fixed lights on the ship, but that is not absolutely necessary. The purpose of such lights may be twofold. On the one hand, they can help to detect suspect movements in the vicinity of the ship. On the other, they can be used to dazzle approaching suspect persons.

Paragraph 1 (e); paragraph 2 (f)

The materials that can be used to reinforce windows and portholes include bars and cover panels. This can offer protection against missiles, but also prevent third parties from penetrating the ship.

Paragraph 2 (a)

Paragraph 2 (a) concerns the availability of a safe muster point or safe room for seafarers and any passengers on board. On the basis of the risk assessment and planning procedure of the ship manager, a safe muster point or safe room must be designated on the ship. A safe muster point is a designated zone on a ship that offers the crew maximum physical protection and which is designated during the planning procedure. If, during the threat assessment, risks are established that may result in damage to the ship's hull or below the waterline, a muster point must be designated above the waterline. On many ships, the central staircase is a safe area because it is protected by the crew quarters and is above the waterline. A safe room is a place where all those present can seek protection when pirates are threatening to board the ship. A safe room is designed and built to prevent violent access. Preference is given to a citadel, where people can get themselves to safety in occurring cases and can continue to communicate with the outside world, for example via VHF or INMARSAT, and control of the ship can also be maintained. Control of the ship engines and steering gear can offer effective protection during an attack. A simple VHF connection or a telephone that can be used to connect with INMARSAT via the telecommunications system may suffice in occurring cases to issue the initial or an extra distress call. No possibility to communicate with the shore or surrounding ships also means no rescue campaign can be initiated by, for example, military vessels. The use of a safe room is in addition to - not instead of - all other measures to protect the ship. A drill for the use of the safe room must take place, and the conditions and supporting logistics for its use must be described in the SSP.

Paragraph 2 (c)

The use of the already mandatory water and/or foam jets is effective in preventing or delaying attempts to board the ship unlawfully. The use of water can make it difficult for an attacking vessel to remain alongside the ship and will make it more difficult to climb on board. It is important to attach water hoses and jets at possible access points and it should preferably be possible to operate them remotely, as manual activation can put the operator at risk. Water cannons can be used to jet water in a vertical curve; this can protect a larger section of the ship's hull. Water spray rails with spray heads produce a water curtain over larger areas. With regard to the use of foam jets, it is noted that they can be used as protection against piracy while also being part of the standard fire-extinguishing equipment of the ship. Foam has a disorienting effect and makes

the deck slippery. Making sure that the equipment can be used effectively at vulnerable points of the ship requires training, observation and drills.

Paragraph 2 (g)

Clearly, the priority is preventing attackers from coming on board the ship. In the exceptional situation where pirates do manage to come on board, it is important that unauthorised persons are not able to take hold of equipment or materials on deck. Such equipment or materials could be misappropriated or perhaps used to penetrate further. Such items must be stored in the inner decks in accordance with the BMP5 measures, before a risk area is entered.

Paragraph 3 (a)

Effective lookout posts are the best way to protect the ship. The lookout posts can spot suspect approaching vessels and attacks early, so that defence materials can be deployed. It is important to consider which points on the ship are most suitable to serve as lookout posts. This obviously does not mean that structural adjustments need to be made to set up the lookout posts.

Paragraph 4

Special circumstances may occur where it is not possible to take one or more of the measures described in paragraphs 1 to 3. This may be due to, for example, the specific size of the vessel or exceptional situations on board the vessel. In such cases, the ship manager states on the permission application form that the relevant measure(s) on the intended transport cannot be taken, giving the reasons. Where applicable, the ship manager can also indicate to what extent alternative measures are being taken. Article 3 (4) has been formulated in general terms on purpose, to make sure it will not be unnecessarily restrictive in maritime practice. It is up to the ship manager (and the master) to decide on each occasion which security measures will actually be taken. Bearing in mind the underlying principle that private armed security constitutes an addition to the reasonable security measures to be taken (and that it is not an alternative for this), the permission application for private armed security will, however, need to set out in detail which security measures will be taken. Article 3 (4) provides a certain degree of room for manoeuvre in the actual process of taking the security measures in practice.

For the sake of completeness, it is noted that the obligation to have a weapons safe is an obligation in its own right in the legal system (rather than a preventive security measure), which may not be deviated from and may not be regarded as an alternative measure to be taken by the ship manager or master themselves. Clearly, considering the security measures taken and to be taken, using the weapons safe does not come into the picture until private armed personnel are on board.

Article 4

This article sets out further rules in respect of the weapons safe on board the ship. The weapons safe is the storage space on board the ship, to be padlocked, where the weapons and ammunition are stored in their transport cases. For the sake of clarity, a distinction is made between the weapons safe and the transport case.

The weapons safe can only be accessed by the master or an official who has been given instructions to that effect by the master. Obviously, the weapon case or transport case with the weapons and ammunition may only be opened by the leader of the security personnel team (and not by the master). However, the master will register the number, make and type of the weapons and mention them on the embarkation form as part of the duty to verify. A daily registration of the weapons present also takes place. The inventory for this purpose is done by the team leader. The master verifies whether that check has taken place and signs this registration for that purpose.

Two hours before the risk area is reached, the control of the keys of the weapons safe is transferred from the master to the team leader. In accordance with standard methods in the maritime security sector, the transport cases are then taken to the bridge. The weapons that are not used during the passage through the risk area are stored in the transport case on the bridge. The transport cases are not locked during this passage and are supervised by the armed member of the security team on duty on the bridge. The security personnel member on duty on the bridge

will carry their own weapon at all times. This is in keeping with the regular methods and instructions of the maritime security sector.

No later than two hours after leaving the risk area, the transport cases with weapons are put back into the weapons safe.

The licence holder will draw up instructions with regard to the functioning and maintenance of firearms. The team leader will monitor the implementation of those instructions, in accordance with paragraph 10.

Article 5

Video and audio recordings are made from the time the imminent risk of piracy arises until the threat has been avoided or averted (Section 11 (2), Merchant Shipping Protection Act). Article 5 of the Regulations contains a number of requirements regarding the cameras to be used. The article is based on Section 11 (5) of the Act and Article 5.13 (2) of the Decree.

Paragraph 1 establishes beyond doubt that each individual member of the security team must wear a camera. The camera is worn on the helmet. Given that the security personnel is deemed to use semi-automatic firearms in special cases, the use of a helmet camera is the most obvious choice. When wearing a bodycam, taking video images will be hampered if a semi-automatic firearm is used at the same time.

Paragraph 2 contains the other functional and technical requirements in terms of the cameras and microphone. In Article 16 (1) of these regulations, it is emphasised that the team leader must monitor the correct use and functioning of the camera.

Article 6

Article 6 is based on Section 12 (1) and (3) of the Act and Article 2.4 (5) of the Decree and refers to Annexes 2 to 6 to the Regulations.

Paragraph 1 determines that the master must receive the required information about the security team, the weapons and the cameras and microphones from the ship manager at least four hours before embarkation. This period of time is intended to give the master adequate opportunity to absorb the information and to get prepared for the embarkation of the security team.

Paragraph 2 refers to the standard embarkation form in Annexes 2 and 3 for the registration of the information regarding, among other things, the security measures taken or to be taken on board, the size and composition of the security team, the weapons and copies of relevant documents. If the security team goes on board first and the weapons arrive on board at a later time, the embarkation forms will be completed in two stages. In practice, a copy of the crew list, with the required information about the members of the security team, can be added. The master will send the embarkation forms of the master and the team leader (with any annexes) to the Coastguard and the Human Environment and Transport Inspectorate.

After the transport, the completed embarkation form is sent to the Inspectorate as part of the final report. If other forms of the master or the team leader already contain the necessary information, they can of course be added to the required embarkation form, in which case the relevant parts of the required embarkation form do not need to be completed individually. In practice, an important part of the required information will also have been included in, for example, the crew list or the master's log.

Paragraph 3 contains a reference to the report forms of the master and the team leader in Annexes 4 and 5.

The master will use the standard forms as included in Annex 6 for reporting the use of weapons.

Article 7

Article 7 is based on Section 13 (6) of the Act. This provision stipulates that by or pursuant to an order in council, rules must be laid down in any case about the term, transfer and renewal of a licence and the possible conditions associated with a licence.

Paragraph 2 states that the Human Environment and Transport Inspectorate checks the presence of the documents and evidence as specified in Articles 9 to 15 within the context of the licence application procedure. Paragraph 2 offers the Inspectorate the scope to carry out an initial assessment of the most essential aspects for reasons of efficiency and to request or inspect additional documents and evidence once that phase has been completed.

Paragraph 3 establishes without any doubt that the Inspectorate may perform an audit at the company's business location within the context of handling a licence application and before a decision is made about the licence application. During such an audit, the maritime security company may give the Inspectorate access to the evidence showing that the maritime security personnel meet the requirements in terms of trustworthiness, medical fitness, professional competence and skill for performing maritime security activities (see also Article 13 of these Regulations).

Paragraph 4 indicates that the Inspectorate may formulate specific licence conditions that must be met by the licence holder. These may concern, for example, conditions about good interaction and communication with the government bodies, such as the Coastguard or the Inspectorate.

Article 8

Section 13 (5) of the Dutch Merchant Shipping Protection Act determines that, in accordance with the rules to be specified by the minister, the applicant must pay a fee for the handling of an application for a licence to offer and provide maritime security services. Article 8 of the Regulations sets the amount of the fee for a licence that is valid for three years.

The underlying principle of the legislation is that the fee must cover the costs, which means it covers the costs incurred by the Human Environment and Transport Inspectorate for handling a licence application. The fee is therefore also due if a licence application is ultimately turned down. A fee is due again in cases where a licence application is turned down and after some time a new application is submitted. An objection may, of course, be submitted when a licence application is turned down.

The level of the fee is based on the costs incurred by the Inspectorate for the process of granting a licence. The Inspectorate has produced a calculation for this within the context of checking enforceability, feasibility and fraud resistance.

In the fees charged, a distinction is made on the basis of the phases in which the Inspectorate handles a licence application. In the practical situation of handling a licence application, the Inspectorate will carry out an initial assessment on the basis of the licence application and included annexes first. Depending on the outcome of that assessment, a final assessment will follow, which includes an on-site audit. Where, after a licence application, a maritime security company does not qualify (or does not wish to be considered) for the final assessment, the amount associated with the initial assessment rather than the full fee will be due. The amount due will then be € 7,220. The final phase incurs a fee of € 10,000. This method is applied by the Inspectorate in several areas. The total fee for the first licence with a period of validity of three years is therefore € 17,220.

Article 9

Article 9 is based on Section 13 (6) of the Act and on Article 5.4 (1) and (2) of the Merchant Shipping Protection Decree. This provision contains more specifics on the required continuity of the business. The continuity of the maritime security company is deemed to be reasonably guaranteed if the business has a number of relevant documents. These are: an extract from the Commercial Register, adequate liability insurance, a current audit certificate stating that the business is not in liquidation, no suspension of payments has been granted and no seizure has taken place of a considerable part of the assets and a list of important suppliers. That list provides insight into the business's dependence on specific suppliers and its vulnerability in case a supplier permanently or temporarily halts its deliveries.

Paragraph 2 imposes further requirements on liability insurance.

Article 10

Article 10 gives more specifics on the requirement of the trustworthiness of the business. This article is based on Section 13 (6) of the Act and on Article 5.5 of the Decree. The business's trustworthiness is deemed to be guaranteed if, on the basis of the intentions and background of the company and the persons determining its policy, it can be reasonably expected that the rules imposed by or pursuant to the Act will be observed, the persons who determine or partly determine the policy are in possession of a Certificate of Conduct or an extract from judicial records that is not older than three months at the time of the licence application and are not under guardianship, the company and the persons determining its policy are not affiliated to national government bodies, the company can demonstrate that it subscribes to the principles of the International Code of Conduct Association and in other respects also acts in accordance with what may be expected from a good security organisation in social and economic life. The International Code of Conduct Association (ICoCA) was founded in 2013 to ensure that suppliers of private security services respect human rights and humanitarian law. It serves as the governance and oversight mechanism of the International Code of Conduct for Private Security Service Providers. The fact that a maritime security company subscribes to its principles may be evident from its membership, but also, for example, from its policy documents.

Paragraph 2 stipulates that if the maritime security company does not have its registered office, management board or headquarters in the Netherlands, the assessment of the trustworthiness of the company and the persons who determine or partly determine its policy will also be based on the licence or recognition from the competent authorities of the country where the company has its registered office, its management board or headquarters.

For the sake of completeness, it is noted that, in addition to the requirements in Article 10, the requirement for establishing a business also applies in connection with the requisite trustworthiness of the business. This requirement has not, however, been included in Article 10, as this has already been provided for in Article 5.3 (2) of the Decree. It entails, in brief, that a maritime security company which does not have its headquarters or registered seat in the EU or the EEA must organise the maritime security activities from a branch in the Netherlands which is registered in the Dutch Commercial Register. This also applies if such a company already has a branch in another country in the EU or the EEA.

Article 11 (Article 5.6, Merchant Shipping Protection Decree)

Article 5.6 of the Decree imposes requirements on the business operations of the maritime security company. The business operations must be structured in such a way as to guarantee that the armed maritime security activities can be organised in a responsible, reliable and verifiable manner and that compliance with the rules and regulations laid down by or pursuant to the Act and the enforcement thereof can be supervised. Article 11 gives a further specification of the requirements imposed on the structure of the business operations. These concern in any case a personnel administration, including a record of the private maritime security personnel to be deployed and the documents proving their trustworthiness, professional competence and skill, medical fitness and a command of English. The maritime security company must also have the relevant policy documents, working instructions and overviews to qualify for a licence under the Merchant Shipping Protection Act. It is not always necessary to produce separate documents; it is clearly also possible that the information mentioned is combined in one or more policy documents, working instructions and overviews.

Article 12

Article 5.7 of the Decree imposes requirements on the internal supervision of the maritime security company. Article 5.7 (2) states that the internal supervision must contain guarantees for the separation of management and internal supervision roles and the independent functioning of the internal supervisors. That requirement is elaborated further in Article 12 of the Regulations. Internal supervision entails in any case that it can be demonstrated that the following has been provided for: quality policy, policy focusing on the process of continuous improvement, management reviews, an auditing system, policy concerning reporting and handling incidents and document inspection. This can be evidenced by relevant policy documents, but also by, for

example, management reports. Again, the relevant information may in practice occur combined in one or more documents.

Article 13

Article 13 stipulates that, for the purpose of handling the licence application, the maritime security company must give the Human Environment and Transport Inspectorate access to the document proving that maritime security personnel to be deployed meet the requirements of trustworthiness, medical fitness, professional competence and skill. Copies of these documents do not need to be transferred to the Inspectorate; giving access will suffice.

Article 14

This article concerns the trustworthiness requirement of maritime security personnel. This trustworthiness requirement is another rule associated with obtaining a licence for offering and supplying maritime security services (Section 13 (4) and (6) of the Act in conjunction with Article 5.9 (1) and (3) of the Decree). To demonstrate the trustworthiness of the maritime security personnel to be deployed (those employed by the company as well as those who are engaged through an employment agency) a Certificate of Conduct issued within the past 12 months must be submitted with the licence application for each security personnel member.

Where a security personnel member is a resident of a country other than the Netherlands, an extract from judicial records (criminal records), issued by the country of residence within the past 12 months, must be submitted. Within the practice of maritime security, such documents already tend to be drawn up in English.

The term of 12 months takes into account the fact that the persons concerned are often out at sea for months at a time and are therefore not always able to apply to the relevant authorities for such documents at short notice.

Article 15

Article 15 gives more specifics on the requirement of medical fitness. The members of the security team must always be in possession of a medical certificate of fitness for carrying out maritime security activities. To be allowed to carry out maritime security activities, a medical certificate of fitness - as well as other documents - is required, stating that the person concerned is physically and psychologically able to carry out the relevant activities at sea. The ENG1 certificate is a certificate that is commonly used internationally. The examination requirements correspond to the usual examination requirements for seafarers. Under the SOLAS Convention and the Maritime Labour Convention (2006), seafarers must be in possession of a Medical Certificate for Services at Sea (ENG1). This maritime medical examination is compulsory for all those who work at sea or on inland waterways. This requirement therefore also applies to any maritime security personnel working on board a Dutch ship.

The persons concerned must also have signed a drugs and alcohol declaration. These statements are also already in common use in maritime security and are the result of the ISO28007 requirements.

Article 16

Article 16 is based on Article 5.9 (3) (b) of the Decree and sets out the requirements for the professional competence and skill of maritime security personnel. For example, the persons concerned must have gained at least four years of operational service experience in a military or police organisation and must have been granted an honourable discharge. The latter also implies a trustworthiness requirement. Furthermore, written documents are required that prove that the person concerned is competent and has the right skills to carry out maritime security activities and to handle semi-automatic firearms in maritime conditions. These documents or certificates should not be older than 12 months.

Shooting skills in the event that arms are fired require specific training, as this concerns situations of a large, relatively slowly moving ship in comparison with small, fast and manoeuvrable vessels, each of which are subject to swells caused by waves in different manners. If warning shots do not

have the required result, the aim is to damage the vessel and/or its propulsion. If, nevertheless, the approach is continued, it may be decided in exceptional cases to aim and shoot non-vital body parts of those on board the incoming vessel. All this requires specific shooting skills.

The persons concerned also need to have an adequate command of English. That will be the case if the relevant person has a certificate of proficiency in the English language at level Marlins TOSE or NATO STANAG 6001 intermediate III. These requirements are already a standard requirement in the sector. The required language proficiency can, of course, also be demonstrated with other documents.

Within the context of the specific Dutch legal requirements, the persons concerned must also have their own written declaration, in which they declare that they are familiar with the fundamental rights as they are guaranteed by the ECHR and the provisions under the Dutch Merchant Shipping Protection Act, in particular the rules governing the use of force. This declaration must also demonstrate that the person concerned has the required professional competence and skill in the use of cameras and microphones and the use of handcuffs. Within the framework of its supervisory tasks, the Inspectorate may check whether such a declaration is present and how the professional competence and skill in the use of cameras, microphones and handcuffs has been gained in practice.

Article 17

This provision is based on Article 5.9 (3) (c) and (d) of the Decree and describes a number of tasks of the team leader and the actions the team leader must take before going on board and while on board. This is in keeping with what is already common practice in the maritime security sector. Again the rule, explained in the explanatory memorandum to the Decree under Article 2.4., where it is stated that the ship security officer (SSO) or the security officer of the company (shipowner) can play a role in the contacts between the security team/company and the master or shipowner (paragraph 1 (b) and (c)), is applicable. Reference is made to the roles and division of competences laid down in Regulation (EC) No 725/2004 on enhancing ship and port facility security.⁶ For that purpose, it is also specified in paragraph 1 (i) that the team leader has the task to provide leadership in a joint drill of the security team and crew in the maritime security activities aimed at protection against piracy if the master gives an order for a joint drill. This specific part is based on Article 9 (3) (c) of the Merchant Shipping Protection Decree. Such a joint drill is not compulsory under the Merchant Shipping Protection Regulations. It does follow from Article 3 (2) (d) of these Regulations, however, that the master must prepare the crew by means of drills aimed at protection against piracy; this applies as a protective measure to be taken by the master.

This clearly has no effect on the mandatory security drills on the basis of international conventions, such as the life boat drill and fire drill. The master will hold these mandatory drills, in which private security personnel must also take part.

The drills are registered in the ship's log.

Chapter 7

Articles 18 to 22 are based on Section 17 of the Act and concern the amount of the administrative fines to be imposed for the different offences liable to a fine. The articles are differentiated according to the person who is liable to pay the fine. The articles provide a further framework for the fine options for the different persons to whom the liability applies. On the basis of this framework, the Inspectorate can draw up a schedule of fines, in which the concrete fine amounts are established for the different violations. In that case, this schedule of fines will also be published in the Government Gazette.

Article 18

Article 18 of the Regulations concerns the administrative fine that may be imposed on the maritime security company (the licence holder). Section 17 (1) of the Act states that Our Minister

⁶ Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (OJEC 2004, L 129/6).

may impose an administrative fine on the licence holder for an amount to be determined by ministerial regulation in respect of violation of the rules laid down by or pursuant to this Act and the conditions attached to the licence. In Article 18 of the Regulations, this has been translated into concrete provisions from the Act and the Decree. The amounts of the fines are tailored to the possible offender. The responsibilities of the relevant persons, the nature of the violations that may be involved and the relevant persons' ability to pay are considered for this purpose. Paragraph 1 sets out the provisions that may be fined with a maximum of a fourth-category fine (€ 21,750).

It follows from paragraph 2 that a violation of the obligation to provide information (towards the team leader) by the licence holder may be fined with a third-category fine (€ 4,350).

On the basis of paragraph 3, a third-category fine may be imposed in the event of a violation of the conditions associated with the licence.

Article 19

Article 19 determines that an administrative fine may be imposed on the ship manager. Such is possible in the event of a violation of Section 6 (1) of the Act or Section 6 (3) of the Act in conjunction with Article 2.4 of the Decree. This concerns, first of all, the application of all reasonably possible protective measures to be applied before and during the transport. These measures are set out in more detail in Article 3 of these Regulations. Secondly, this concerns compliance by the ship manager with the obligation to provide information to the master.

On the basis of Article 19 of these Regulations, a third-category administrative fine (€ 4350) may be imposed on the ship manager in the event of a violation of these provisions. The amount of the fine for a violation by the ship manager of the obligation to provide information corresponds to the amount of the fine that may be imposed on the licence holder for the same offence.

Article 20

On the basis of Section 17 (2) (a), (b), (d) and (e) of the Act, an administrative fine can also be imposed on the master. This concerns a violation of the provisions regarding the reasonable protective measures to be taken before and during the transport, the master's duty to verify before the transport and the reporting obligation once the transport has been completed. A fine may also be imposed on the master in the event of non-compliance with the rules about the master's responsibility for the safety of the ship and crew in connection with the maritime security activities. Section 17 (2) (d) of the Act makes it possible to impose an administrative fine with respect to the obligation to be imposed on the master to postpone departure or entry into a risk area in the event that, upon the embarkation of the private maritime security personnel equipped with weapons and cameras and microphones, the rules laid down by or pursuant to the Act have not been complied with. In the event of a violation of these provisions, a second-category fine may be imposed. The relevant person's ability to pay will be taken into account in this respect.

Article 21

On the basis of Section 17 (2) (b) and (e) of the Act, an administrative fine can also be imposed on the team leader. This concerns those cases where the team leader violates the obligation to verify before the transport, or cases where the team leader fails to comply with the reporting obligation once a transport has been completed. These violations may be sanctioned with a second-category fine. The relevant person's ability to pay will be taken into account in this respect.

Article 22

Article 22 offers the supervisory authority the option to take exceptional circumstances into account when establishing the amount of the fine. An exhaustive list of these circumstances is provided in paragraph 1. As regards paragraph 1 (c), it is emphasised that any previous violations of legislation and regulations other than the Dutch Merchant Shipping Protection Act are not included in this. Moreover, not only exactly the same violation but all violations of the Act and the Decree are included in these provisions. The extent to which the offender cooperates in establishing the violation is also taken into account. This is partly based on the fact that the ISO-

certifying institutions assume that maritime security companies will report any identified irregularities to the government in the audits of these institutions. Furthermore, the legal system assumes that the licence holders will report any suspension or withdrawal of the ISO certificate of their own accord.

Depending on the circumstances, the administrative fine may be set lower than the prescribed amount on a proportional basis. This follows from Article 22 (2).

Article 23

Article 5.13 (2) (c) of the Merchant Shipping Protection Decree determines that rules are also set by ministerial regulation about the period for storing video and audio recordings and when these must be deleted from the systems.

Article 23 (1) establishes without any doubt that the ship manager, the maritime security company, the master and the team leader are entitled to view the video recordings and listen to the audio recordings. According to the GDPR, crew members, private maritime security personnel and third parties have the right to view the images in which they appear.

Article 23 (2) imposes rules on the retention period for the camera images that must be produced by maritime security personnel on the basis of the statutory provisions. After the use of force, the camera images are normally sent to the Public Prosecution Service, together with the prescribed report (Section 12 (3) of the Act), and the recordings can be deleted from the systems. In some cases, it may be necessary or desirable to keep the images longer. The maximum retention period of 28 days is in keeping with the retention period of bodycam images for the police. However, the files with video and audio recordings may be stored longer if such is necessary for the establishment, exercise or defence of a legal claim. This may concern recovering damages.

For the sake of completeness, it is noted that it follows from Article 5.8 (1) of the Merchant Shipping Protection Decree that the reports, including the underlying data such as the camera images, are also sent to the maritime security company (the licence holder) by the maritime security personnel. According to Article 5.8 (1) (i), the maritime security company must store the camera images for three years.

Article 24

Article 24 is based on Article 6.1 (2) of the Merchant Shipping Protection Decree, which states that guarantees may be provided by ministerial regulation for the processing of the personal data referred to in paragraph 1 other than the guarantees specified in paragraph 1 of that provision (retention periods). Article 24 stipulates that the Human Environment and Transport Inspectorate must state in its own privacy statement how they deal with a number of guarantees in terms of processing personal data. The privacy statement is published on the Inspectorate's website.

Article 25

This article concerns the entry into force of the Regulations. The Regulations enter into force at the same time as the Act and the general administrative order.

The Minister of Justice and Security,