

Merchant Shipping Protection Regulation

Regulation of the Minister of Justice and Security of [...], establishing further rules in implementation of the Merchant Shipping Protection Act and the Merchant Shipping Protection Decree (Merchant Shipping Protection Regulation)

The Minister of Justice and Security,

Having regard to Section 4 (4), Section 6 (1), (3) and (4), Section 8, Section 11 (5), Section 12 (1) and (3), Section 13 (5) and (6) and Section 17 (1) and (2) of the Merchant Shipping Protection Act and Article 2.2 (6), Article 2.4 (5), Article 3.2 (2), Article 5.4 (3), Article 5.5 (3) (c) and (4), Article 5.6 (2), Article 5.7 (4), Article 5.8 (3), Article 5.9 (3), Article 5.10 (3), Article 5.13 (2), Article 6.1 (2) of the Merchant Shipping Protection Decree,

Decides as follows:

Chapter 1 General provisions

Article 1 (Definitions)

The following definitions apply to the terms used in this regulation:

- a. Decree: Merchant Shipping Protection Decree;
- b. medical certificate: medical certificate of fitness to perform maritime security activities;
- c. Inspectorate: the Human Environment and Transport Inspectorate;
- d. minister: the Minister of Justice and Security;
- e. supervisory officials: officials of the Inspectorate who, by virtue of Section 16 (1) of the Act, are responsible for supervising compliance with the provisions under the Act;
- f. transport case: storage space for the permitted weapons, to be sealed with a lock;
- g. weapons safe: repository for the transport cases with designated weapons on the ship, to be sealed with a lock, as provided for in Article 3.2 of the Decree.

Chapter 2. Permission for the deployment of private maritime security personnel

Article 2 (Permission application)

For the purpose of the application for permission as provided for in Section 4 of the Act, the standard form as included in Annex 1 is used to provide information and the relevant documents to be submitted.

Article 3 (Protective measures)

1. The ship manager guarantees in any case the availability of the following protective measures, provided for in Section 6 (1) of the Act:
 - a. binoculars for the team on the bridge;
 - b. floodlights;
 - c. concertina razor wire;
 - d. materials that can be used to bolt doors and hatches that provide access to the bridge, the quarters of crew and passengers and the engine room, and
 - e. materials that can be used to reinforce windows and portholes.
2. Prior to the passage through the risk area, the master will in any case take the following protective measures, provided for in Section 6 (1) of the Act:
 - a. the designation of a safe muster point or safe room for the seafarers and passengers on board the ship;
 - b. fitting the concertina razor wire in places designated for that purpose;
 - c. fitting water or foam jets at possible access points on board;

- d. preparing the crew by means of drills focusing on protection against piracy;
 - e. bolting doors and hatches that provide access to the bridge, the quarters of seafarers and passengers as well as the engine room;
 - f. the reinforcement of large windows and portholes that need such reinforcement, and
 - g. the protection of equipment and devices of the ship against use by third parties.
3. During the passage through the risk area, the master will in any case take the following protective measures, provided for in Section 6 (1) of the Act:
- A. the use of one or more lookout posts with trained crew;
 - b. the use of binoculars by the team on the bridge, and
 - c. having floodlights available for immediate use.
4. If, due to special circumstances, it is not possible to take one or more of the measures specified in paragraphs 1 to 3, the ship manager must report this, explaining the reasons, on the form specified in Article 2, stating any alternative measures that are being taken where possible.

Chapter 3. Deployment of private maritime security personnel

Article 4 (Weapons safe and transport cases)

1. The weapons safe may only be accessed by the master or, with express permission from the master, by the team leader or another official designated by the master.
2. The master keeps a record of persons who have access to the weapons safe.
3. Opening a transport case and distributing weapons require express permission from the master.
4. On board the ship, a transport case will be opened only by the team leader or their replacement.
5. Firearms stored in a transport case are not loaded with ammunition. The ammunition is stored separately in a transport case.
6. The team leader daily registers the make, type, serial number and quantity of weapons present in each transport case. The master ensures that the registration takes place and signs the registration for that purpose, together with the team leader.
7. Two hours prior to reaching the risk area, the team leader, in consultation with the master, will take the transport cases to the bridge.
8. The weapons that are not used during the passage through the risk area are stored in a 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.
9. No later than two hours after leaving the risk area, the team leader puts the transport cases with weapons back into the weapons safe.
10. The team leader ensures that the firearms are regularly maintained and work adequately, in accordance with the instructions of the licence holder.

Article 5 (Helmet camera and microphone)

1. Anyone who is a member of the private maritime security personnel uses a helmet camera with microphone in order to make video and audio recordings as provided for in Section 11 (2) of the Act.
2. The following applies to the helmet cameras:
 - a. they produce video recordings of at least HD quality (1,280 x 720);
 - b. they produce video recordings of at least 30 frames per second;
 - c. they have video stabilisation software;
 - d. they add the time and date to the video images;
 - e. they have a built-in microphone;
 - f. they produce synchronised video and audio recordings;
 - g. they have a battery life of at least six hours.

Article 6 (Embarkation, reporting, recording the use of force)

1. The ship manager provides the master with the information specified in Article 2.4 (1) and (2) of the Decree at least four hours before the embarkation of the security team, the weapons and the equipment.
2. In order to comply with the duty to verify, provided for in Section 6 (2) of the Act and Article 2.4 (1) and (2) of the Decree, the master and the team leader will use the standard forms

included in Annex 2 and Annex 3 respectively. The master will send the forms completed by the master and the team leader to the Coastguard and the Inspectorate for information immediately upon embarkation.

3. For the reports, specified in Section 12 (1) of the Act, the master and the team leader of the private maritime security personnel will use the standard form, included in Annex 4 and Annex 5 respectively. The forms, specified in paragraph 1, form part of these reports. The master and the team leader send the reports, specified in Section 12 (1) of the Act, to the Inspectorate within 48 hours of the debarkation of the security team.
4. When reporting to the Public Prosecution Service, as provided for in Section 12 (3) of the Act, the master will use the report form included in Annex 6.

Chapter 4. Licence

Article 7 (Licence application)

1. The Inspectorate uses a model form for providing information for the licence application. The applicant adds the documents and evidence listed on the application form as annexes to the application.
2. After receipt of the application, the presence of documents and evidence will be checked against the requirements included in Articles 9 to 15.
3. After receipt of the documents and evidence, the Inspectorate may perform an audit at the applicant's business location before making a decision about the licence application.
4. A licence may be subject to conditions as regards guarantees with regard to the following:
 - a. good interaction and communication with government bodies;
 - b. compliance with the provisions laid down by or pursuant to the Act;
 - c. the quality of the licence holder's business operations;
 - d. the quality of the maritime security to be provided.

Article 8 (Fee)

1. The fee for handling an application for a licence is € 17,220 in total. The initial handling of an application for a licence incurs a fee of € 7,220. The final phase of handling an application for a licence incurs a fee of € 10,000.
2. The fee for handling an application for the renewal of a licence is € 14,190.
3. The fee for handling the transfer of a licence to a third party, specified in Article 4.5 of the Decree, is € 17,220.

Chapter 5. Legal requirements for the licence

Paragraph 5.1 Requirements imposed on the company

Article 9 (Continuity of the company)

1. The continuity of the maritime security company is deemed to be guaranteed to a reasonable level if the company has:
 - a. an extract from the Commercial Register of the Chamber of Commerce issued within the last six months or an equivalent document from another Member State of the European Union;
 - b. liability insurance for the maritime security company to cover the risks that may arise from the licensed activities;
 - c. an audit certificate issued within the last six months, from which it is clear that the company is not in liquidation, no suspension of payments has been granted and no seizure has taken place of a considerable part of the assets of the maritime security company or part of its machinery and equipment, which constitutes a considerable part of its assets;
 - d. a list of important suppliers.
2. The insurance, specified in paragraph 1 (b), includes in any case insurance for professional liability, general liability and employer's liability. The insurance covers the company's liability for at least € 2,500,000 for each claim for personal injury and at least € 750,000 for each claim for any damage to property that may occur as a consequence of the licensed activities.

Article 10 (Trustworthiness)

1. The trustworthiness of the company and the persons who determine or partly determine its policy is deemed to be guaranteed if:
 - a. on the basis of their intentions and background, it is reasonable to expect that the rules imposed by or pursuant to the Act will be observed;
 - b. they are in possession of a Certificate of Conduct at the time of the licence application or, if the person concerned is not a resident in the Netherlands, an extract from judicial records in English or an equivalent certificate in English from the authorities of the country where that person lives, issued within the last six months;
 - c. these persons are not under guardianship;
 - d. they are not affiliated to national government bodies;
 - e. the company can demonstrate that it subscribes to the principles of the International Code of Conduct Association;
 - f. it is reasonable to assume that the persons concerned will act in accordance with what may be expected from a good security organisation in social and economic life.
2. Without prejudice to the provision in Article 5.3 (2) of the Decree, 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.
3. The minister will consider the Certificate of Conduct or the extract from judicial records in the assessment specified in Article 5.5 (3) (c) of the Decree.
4. The trustworthiness of the maritime security company is deemed not to be guaranteed if the company or the persons who determine or partly determine its policy have been irrevocably convicted for crimes mentioned in Title XVIII, Title XIX, Title XX, XXIII to XXVI and Title XXIX of the Criminal Code.

Article 11 (Business operations)

1. The business operations of the maritime security company are structured in such a manner that the company has the following in any case:
 - a. a personnel administration, including a record of the private maritime security personnel and the documents proving their trustworthiness, professional competence and skill, medical fitness and command of English;
 - b. relevant policy documents, working instructions and overviews, as specified in paragraphs 2 to 4;
 - c. an official who is given responsibility for compliance with statutory provisions and the risk management related to this;
 - d. continuous access to and availability of maritime legal advice.
2. Policy documents as referred to in paragraph 1 (b) include in any case:
 - a. ethical policy;
 - b. general safety policy;
 - c. working conditions, in particular the health and safety policy;
 - d. policy concerning the recruitment, selection and training of maritime security personnel;
 - e. policy regarding weapons, including the storage, maintenance and destruction of weapons;
 - f. policy concerning internal and external communication;
 - g. policy concerning handling complaints;
 - h. whistleblower procedure;
 - i. risk assessment;
 - j. human rights;
 - k. crisis management;
 - l. the export of strategic goods, including export check of certificates.
3. Work instructions as referred to in paragraph 1 (b) concern in any case instructions about:
 - a. carrying out a transport to be secured, including communication and reporting during the passage;
 - b. the deployment of maritime security personnel during a transport;
 - c. lifesaving rules on board;
 - d. using the power to use force;
 - e. the procedure for preparing a personal weapon for use;
 - f. the use of floating armouries;

- g. the use of cameras and microphones;
 - h. the use of handcuffs.
4. Overviews as referred to in paragraph 1 (b) include in any case:
- a. drills, including repeat drills, for the private maritime security personnel;
 - b. firearms licences and
 - c. maintenance plans.

Article 12 (Internal supervision)

Internal supervision of the maritime security company demonstrably includes:

- a. quality policy;
- b. policy aimed at the process of continuous improvement;
- c. management reviews;
- d. internal auditing;
- e. policy for reporting and handling incidents;
- f. document checks.

Paragraph 5.2 Requirements imposed on security personnel

Article 13 (Allowing inspection)

The maritime security company allows the Inspectorate to inspect the documents proving that the maritime security personnel meet the requirements for trustworthiness, medical fitness, professional competence and skill with regard to performing maritime security activities for the purpose of handling the licence application and on request after the licence has been granted.

Article 14 (Trustworthiness)

1. The maritime security personnel are in possession of a Certificate of Conduct not older than 12 months at the time of the licence application.
2. If a maritime security personnel member is not a resident of the Netherlands, they must be in possession of at least an extract in English from judicial records or equivalent certificate in English issued by the authorities of the country of residence, which is not older than 12 months at the time of the licence application.

Article 15 (Medical certificate)

Each member of the security team must always be in possession of:

- a. medical certificate of fitness in Dutch or English for performing maritime security activities;
- b. a declaration in Dutch or English confirming that no drugs or alcohol will be used by the security team member while working.

Article 16 (Professional competence and skill)

1. Each member of the security team must have:
 - a. at least four years of operational service experience in a military or police organisation, followed by an honourable discharge;
 - b. a maritime security operator certificate or an equivalent certificate of professional competence or skill for performing maritime security activities, in Dutch or English and issued within the last 12 months;
 - c. a certificate of professional competence and skill for handling semi-automatic firearms in maritime conditions, in Dutch or English and issued within the past 12 months;
 - d. their own declaration, in Dutch or English and produced within the past 12 months, stating that the security team member is familiar with the fundamental rights guaranteed under the European Convention on Human Rights and the provisions laid down by or pursuant to the Act, in particular the rules governing the use of force, and has the professional competence and skill required to use cameras, microphones and handcuffs, and
 - e. a certificate of their proficiency in English, which is in Dutch or English.
2. The certificate as referred to in paragraph 1(b) must have been issued by an institution which is authorised to do so and which provides professional competence and skill in accordance with standard documents 9001:2015, 28000:2007 and 28007:2015 of the International Organisation for Standardisation.
3. The member of the security team who is appointed as team medic has at least successfully completed a First Person On Scene Intermediate course at an institution authorised to issue the relevant certificate.

Chapter 6 Operational requirements

Article 17 (Team leader)

1. Without prejudice to what has been determined by or pursuant to Sections 6, 9, 11 and 12 of the Act, the team leader has the following tasks:
 - a. being in charge of the operational management of the other members of the security team during the performance of the maritime security activities;
 - b. supervising and overseeing the other members of the security team;
 - c. acting as an intermediary between the security team and the master;
 - d. acting as an intermediary between the licence holder and the master;
 - e. issuing a contract-specific procedure manual to the other members of the security team;
 - f. giving advice to the master about security measures to be taken on board the ship which do not involve the use of weapons;
 - g. the functional management of the weapons and equipment of the security team;
 - h. supervising the correct use and functioning of the camera and microphone by the private maritime security personnel;
 - i. leading the joint drills of the security team and the crew in the maritime security activities aimed at protecting against piracy if the master orders to do so;
 - j. monitoring the safety, welfare and conduct of the other members of the security team.
2. The team leader takes at least the following actions before embarkation:
 - a. informing the other members of the security team about the procedure manual and the rules governing the use of force;
 - b. getting the other members of the security team to sign a declaration stating that they are familiar with the content of the procedure manual and the rules governing the use of force;
 - c. inspecting the weapons and equipment of the members of the security team;
 - d. carrying out a drill with the security team in the use of weapons in particular, and
 - e. appointing a member of the security team as team medic.

Chapter 7. Enforcement under administrative law and fines

Article 18 (Administrative fine imposed on the licence holder)

1. The highest administrative fine that may be imposed on the licence holder for a violation of Section 15 of the Act or Articles 3.1, 3.3 (3), 4.5, 5.2 and 5.5 to 5.14 of the Decree is the same as the fourth-category fine provided for in Section 23 (4) of the Criminal Code.
2. The highest administrative fine that may be imposed on the licence holder for a violation of Section 6 (3) of the Act in conjunction with Articles 2.4 (1) and (2) of the Decree is the same as the third-category fine provided for in Section 23 (4) of the Criminal Code.
3. The highest administrative fine that may be imposed on the licence holder for a violation of the rules based on Section 13 (4) of the Act is the same as the third-category fine provided for in Section 23 (4) of the Criminal Code.

Article 19 (Administrative fine imposed on the ship manager)

The highest administrative fine that may be imposed on the ship manager for a violation of Section 6 (1) of the Act and Section 6 (3) of the Act in conjunction with Article 2.4 (1) and (2) of the Decree is the same as the third-category fine provided for in Section 23 (4) of the Criminal Code.

Article 20 (Administrative fine imposed on the master)

The highest administrative fine that may be imposed on the master for a violation of Section 6 (1) and (4) and Section 12 (1) and (2) of the Act and Article 6 (2) in conjunction with Article 2.4 of the Decree is the same as the second-category fine provided for in Section 23 (4) of the Criminal Code.

Article 21 (Administrative fine imposed on the team leader)

The highest administrative fine that may be imposed on the team leader for a violation of Section 6 (2) and Section 12 (1) and (2) of the Act is the same as the second-category fine provided for in Section 23 (4) of the Criminal Code.

Article 22 (Fine reduction)

1. Without prejudice to Sections 3.4, 5.41 and 5.46 of the General Administrative Law Act, the supervisory officials will consider the following circumstances, where applicable, in any case when establishing an administrative fine:
 - a. the severity and duration of the violation;
 - b. the extent to which the offender can be blamed for the violation;
 - c. the absence of previous violations by the offender of the rules laid down by or pursuant to the Act;
 - d. the extent to which the offender cooperates with establishing the violation;
 - e. the measures the offender has taken after the violation to prevent a repeat of the violation.
2. The supervisory officials will reduce the amount of the fine by a proportionate percentage if the circumstances, specified in paragraph 1, justify such a reduction.

Chapter 8. Protection of personal data and processing data

Article 23 (Retention period)

1. 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.
2. The files with video and audio recordings will be destroyed by the ship manager, the master and the private maritime security personnel once they have been sent, together with the reports referred to in Section 12 (2) and (3) of the Act, to the minister or the Public Prosecution Service respectively, but no later than within 28 days of leaving the risk area.
3. In derogation from paragraph 2, the files with video and audio recordings may be stored for a longer period by the ship manager, the master and the private maritime security personnel where such is necessary for the establishment, exercise or defence of a legal claim.

Article 24 (Privacy statement)

1. As regards personal data, as specified in Section 14a (1) and (2) of the Act, the supervisory official will state in a privacy statement:
 - a. how the rights of access to and rectification of personal data can be exercised;
 - b. with which parties and under which conditions personal data is shared;
 - c. which measures have been taken to prevent the misappropriation, loss, unauthorised access, unwanted disclosure and unauthorised alteration of personal data.
2. The privacy statement is published on the Inspectorate's website.

Chapter 9. Final provisions

Article 25 (Entry into force)

This Regulation shall enter into force on the date on which the Merchant Shipping Protection Act enters into force.

Article 26 (Short title)

This regulation is referred to as: Merchant Shipping Protection Regulation.

The Hague, January 19th 2022

The Minister of Justice and Security,

D. Yeşilgöz-Zegerius