

Decree laying down rules for the implementation of the Merchant Shipping Protection Act (Merchant Shipping Protection Decree)

We, Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Orange-Nassau, etc.

On the recommendation of the Minister of Justice and Security of [...];

Having regard to Sections 2, 4(2), 4(4), 8, 9(8), 11(5), 13(2) and 13(6) of the Merchant Shipping Protection Act;

Having heard the Advisory Division of the Council of State (advice of [...], no. [...]);

In view of the detailed report from the Minister of Justice and Security of [...], no. [...];

Have approved and decreed:

Chapter 1. General provisions

Section 1.1

The terms below shall have the following meanings in this Decree and in the provisions based thereon:

- Storage location: location on land or on a ship that serves as a storage place for firearms and ammunition;
- Private maritime security guard: armed member of the private maritime security team deployed by the maritime security company to protect a transport;
- Private maritime security team: group of private maritime security personnel deployed on a transport, including the team leader;
- Permission: permission as referred to in Section 3(2) of the Act;
- Licence: licence as referred to in Section 3(1), of the Act;
- Act: Merchant Shipping Protection Act (*Wet ter Bescherming Koopvaardij*).

Section 1.2 (Designation of risk area)

1. The sea area, as referred to in Section 2 of the Act, is the area bounded by the following coordinates according to the World Geodetic System (WGS1986):

a. In the Southern Red Sea, a northern boundary at 15°00'N

b. In the Indian Ocean, a line that connects the following points:

1°. From the territorial waters off the coast of East Africa at 05° 00'S 050° 00'E and subsequently to the points:

(a) 00° 00'N 055° 00'E

(b) 10° 00'N 060° 00'E

(c) 14° 00'N 060° 00'E

2°. Subsequently, 310° to the territorial waters of the Arabian Peninsula

2. The sea area referred to in the Subsection 1 is indicated, by way of illustration, on the map appended to this Decree as Annex 1.

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

Section 2.1 (Basis of the Dutch law)

The armed protection of merchant ships flying the Dutch flag is considered a task of the government, unless the Act and the rules based thereon allow for private armed protection on board a ship.

Section 2.2 (Application and permission procedure)

1. The shipowner shall submit an application to the Coastguard Centre requesting permission for the deployment of armed private security guards on board a ship.

2. After the Minister of Defence has determined that the transport is eligible for military protection but that such protection cannot be provided or cannot be provided within a reasonable period of time, the Minister of Justice and Security shall take a decision in compliance with Section 2.2.
3. A decision regarding the application shall be taken within forty-eight hours.
4. The application must be accompanied by information or documents regarding the following:
 - a. Type of ship, market segment and accommodation plan;
 - b. Load and insurance;
 - c. Risk analysis and protection measures applied;
 - d. Price quotation of the maritime security company with a view to concluding an agreement for the performance of armed security activities;
 - e. Size of the team, staff composition and nationality of the members;
 - f. Make, type and registration number of the firearms to be brought on board as referred to in Section 3.1(1) and the associated ammunition.
5. Any changes to the information provided must be notified to the Coastguard Centre without delay, but no later than before the ship enters an area designated in Section 1.2.
6. Permission may be refused if a suspension or revocation of the licence under Section 14 of the Act is being considered and an immediate refusal is required in anticipation thereof.
7. By regulation of the Minister, a form shall be prepared for providing the abovementioned information and documents to be submitted therewith.

Section 2.3 (Criteria)

1. The number of nautical miles, as referred to in Section 4(2)(a) of the Act, is one hundred.
2. The percentage of additional costs, as referred to in Section 4(2)(b) of the Act, is forty percent.

Chapter 3. Weapons and further rules governing the use of force

Section 3.1 (Firearms and ammunition)

1. The weapon used by private maritime security guards shall be a semi-automatic shoulder firearm with a maximum calibre of .50 (12.7 mm), with the associated ammunition.
2. A team member may have at most two weapons, as referred to in the Subsection 1, with the associated ammunition.

Section 3.2 (Weapons safe)

1. The semi-automatic shoulder firearms and the associated ammunition shall be safely stored on the ship during a transport in a separate, properly locked weapons safe.
2. By regulation of the Minister, further rules shall be laid down regarding the weapons safe.

Section 3.3 (Responsibility of the team leader and master)

1. On board the ship, the team leader is responsible for the management and necessary maintenance of the firearms and the associated ammunition.
2. With the consent of the team leader and the master, the firearms and associated ammunition may be removed from the weapons safe by the private maritime security team on the high seas for the purpose of maintenance or for use in firing exercises.

Section 3.4 (Further rules governing the use of force)

1. In addition to and with due regard for Section 9 of the Act, a private maritime security guard shall first fire one or more warning shots into the air to avert the imminent risk of piracy, before aiming and shooting.
2. If the risk is not averted through the above action, the private maritime security guard shall fire at the bow of the ship from which the threat of piracy originates and thereafter, if the danger has not yet been averted, at the engine of the ship with the aim of preventing the ship from sailing.

3. If, in the most extreme case, the danger cannot be averted and there is an immediate threat to the life or safety of the persons on board of the ship to be protected, the private maritime security guard is authorised to fire at the non-vital parts of the body of persons on the ship from which the threat of piracy originates.

4. Subsection 3 shall also apply if the persons on the ship, from which imminent risk of piracy originates, attempt to gain or have gained access to the ship to be protected.

Chapter 4. Licence

Section 4.1 (Scope of the licence)

The licence shall be granted for the offer or performance of armed maritime security activities by maritime security companies on board ships that are entitled to fly the Dutch flag under Dutch rule of law within the sea areas designated in Section 1.2 of this Decree.

Section 4.2 (Duration and conditions per licence)

1. The licence shall be granted with a period of validity of maximum three years.

2. The licence may be renewed for a maximum period of three years.

3. Conditions may be attached to the licence with regard to the following:

- a. Government supervision of compliance with the rules laid down by and pursuant to the Act; and
- b. Cooperation with other states in the context of maritime security legislation.

Section 4.3 (Decision-making period)

1. The decision regarding the licence application shall be issued within eight weeks after the application has been received.

2. The Minister may extend the period referred to in the Subsection 1 by a maximum of twelve weeks if, in his opinion, there is need for advice from or investigation by a third party.

3. If the period referred to in Subsection 1 is extended, the Minister shall inform the applicant accordingly and indicate the period within which the decision regarding the application shall be issued

Section 4.4 (Transfer of the licence to a third party)

The licence may only be transferred to a third party with the written permission of the Minister. The provisions laid down by and pursuant to Section 14 of the Act shall apply mutatis mutandis to the transfer of a licence.

Section 4.5 (Suspension of the licence)

1. The suspension of the licence based on Section 14 of the Act shall end on the day after the decision to revoke the licence is announced or on the day on which eight weeks have elapsed since the suspension.

2. The Minister may extend the period referred to in Subsection 1 by a maximum of eight weeks if, in his opinion, there is need for advice from or investigation by a third party.

3. If the period referred to in Subsection 1 is extended, the Minister shall inform the maritime security company thereof accordingly.

4. The suspension of the licence based on Section 14 of the Act shall have no consequences for transports for which permission has been granted and which are already present in the sea area designated in Section 2.1 or where this can no longer be avoided.

Chapter 5 Legal requirements for the granting of certificates and licences

Part 5.1 Set of standards and rules

Section 5.1 (Granting of certificates)

1. At the request of a maritime security company, an accredited certification body shall grant a certificate, in accordance with Section 13(2) of the Act, if the maritime security company complies with the standards documents 28000:2007, 28007:2015 or 9001:2012 of the International Organization for Standardization and with the rules laid down by and pursuant to the sections in Part 5.2.
2. The certificate shall also include a statement to the effect that the rules laid down by and pursuant to the sections in Part 5.2 have been complied with.

Section 5.2 (Special provision, granting of a licence)¹

Insofar as the certificates have not been issued with due observance of the rules laid down for maritime security companies by and pursuant to the sections in Part 5.2, the Minister shall assess, in the context of the licence application, whether the maritime security company complies with the rules.

Part 5.2 Requirements for the maritime security company

§ 5.2.1. General requirements

Section 5.3 (Transparency and registered office of the company)

1. When applying for a certificate or licence, the maritime security company shall provide insight into the ownership and control structure of its company, the group to which it belongs and the identity of the ultimate beneficial owner.
2. A maritime security company that does not have its registered office, headquarters or principal place of business in a state that is a party to the Treaty on the Functioning of the European Union or the Agreement on the European Economic Area, shall organise all or part of the maritime security activities from a branch office in the Netherlands that is registered in the Trade Register referred to in Section 2 of the Trade Register Act 2007 (*Handelsregisterwet*).

Section 5.4 (Continuity of the company)

1. The continuity of the maritime security company must be reasonably guaranteed.
2. The continuity shall not be considered guaranteed if case of the following:
 - a. The company is in a state of bankruptcy or liquidation;
 - b. The company has been granted a suspension of payment;
 - c. A substantial part of the assets of the maritime security company or one or more of its operating resources that constitute a substantial part of its assets has or have been seized.
3. By regulation of the Minister, further rules may be laid down with regard to Subsections 1 and 2.

Section 5.5 (Reliability of the company)

1. The reliability of the maritime security company must be beyond doubt.
2. The accredited certification body shall assess the reliability of the company, the persons who determine or help determine its policy and its ultimate beneficial owners based on their intentions, actions and antecedents.
3. The accredited certification body or – if Section 5.2 applies – the Minister shall in all cases take the following into account when carrying out the assessment referred to in the Subsection 1:
 - a. Violations of the rules and regulations laid down by or pursuant to the Act and the maritime security legislation of other states;
 - b. Extent to which the maritime security company has complied with its financial obligations under administrative sanctions imposed for violations of rules and regulations laid down by or pursuant to

¹ A technical adjustment needs to be made with respect to the definitions of the terms 'certificate' and 'accredited certification' body (Sections 1(d) and 1(e)) and Section 13(2) of the Act.

the Act;

- c. Criminal antecedents referred to in the regulation of the Minister; and
- d. Supervisory antecedents, financial antecedents, tax administrative antecedents and other antecedents.

Section 5.6 (Organisation of the company)

The maritime security company shall set up its operations so 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 law and the enforcement thereof can be supervised.

Section 5.7 (Internal supervision)

1. The maritime security company shall ensure that there is a system of internal supervision in place, where this supervision is carried out by one or more officers who possess the necessary expertise, knowledge and powers to perform their work properly and fully and to advise the management.
2. The internal supervision system must in all cases provide guarantees for the following:
 - a. Separation of the functions of management and internal supervision in a functional or organic sense; and
 - b. Independence of the performance of the officials referred to in Subsection 1.
3. The maritime security company shall ensure that it can at all times render account to the officials charged with supervision regarding the way in which the internal supervision has been organised and implemented.

§.5.2.2 Requirements for the performance of armed security activities

Section 5.8 (Requirements for the security team)

1. The maritime security company shall ensure that each member of the private maritime security team:
 - a. Meets the requirements relating to reliability, medical fitness, professional competence and skill for performing armed maritime security activities;
 - b. Is familiar with the provisions laid down by and pursuant to the Act and the policy pursued by the maritime security company with respect to the performance of the armed security activities, and is able to properly and fully implement these regulations, this policy and the resulting instructions; and
 - c. Is at least 18 years old at the time of deployment.
2. The size of the private maritime security team to be deployed on a transport shall consist of at least three people.
3. By regulation of the Minister, further rules shall be laid down regarding Subsection 1. This shall include rules regarding:
 - a. Dutch and foreign proof of reliability and medical fitness;
 - b. Dutch and foreign proof of professional competence and skill;
 - c. Joint performance of the armed security activities at periodic intervals; and
 - d. Manner in which the team leader carries out operational management.

Section 5.9 (Safe storage of firearms and ammunition)

1. The maritime security company shall ensure the safe storage of the firearms and associated ammunition:
 - a. At the storage location used by it;
 - b. On board the ship on which the private maritime security team performs its activities (weapons safe); and
 - c. During transport between the storage location and the ship.

2. The maritime security company shall make its policy and instructions, pursuant to the Subsection 1, sufficiently known to the private maritime security team to be deployed on a transport.
3. By regulation of the Minister, further rules may be laid down with regard to the safe storage, management and transport of firearms and ammunition.

Section 5.10 (Use of storage locations)

1. The maritime security company may only use storage locations with which contractual agreements have been made, under which these storage locations must allow periodic inspections by the coastal state, flag state, officials charged with supervision and, if necessary, a third party to be designated by the Minister.
2. The maritime security company is obliged to cooperate with the inspections referred to in Subsection 1.

Section 5.11 (Handcuffs)

The maritime security company shall ensure that an adequate number of reliable handcuffs are available during the performance of maritime security activities. Section 3.3(1) shall apply mutatis mutandis.

Section 5.12 (Cameras and microphones)

1. The maritime security company shall ensure that an adequate number of reliable cameras and microphones are available during the performance of maritime security activities.
2. By regulation of the Minister, rules shall be laid down with regard to the following:
 - a. Type of cameras and microphones and the persons responsible for their functioning;
 - b. Functional or technical requirements for the video and audio recordings;
 - c. Time limits for the retention and erasure of the video and audio recordings.

Section 5.13 (Policy and instructions for the security team)

1. The maritime security company shall develop and maintain a policy with respect to the performance of the armed maritime security activities as well as the instructions for the private maritime security team resulting from this policy.
2. The maritime security company shall ensure that it can at all times provide insight into the current policy and instructions, as referred to in the Subsection 1, to the officials charged with supervision.

§.5.2.2 Retention obligation and protection of personal data

Section 5.14 (Data retention obligation)

1. The maritime security company shall at all times at least retain data regarding the following:
 - a. Identity and antecedents of its managers, persons who determine or help determine its policy and persons in key positions;
 - b. Identity and antecedents of the ultimate beneficial owner; and
 - c. Official and actual organisational, financing, ownership and control structure of the group to which it belongs;
 - d. Identity and antecedents of the private maritime security personnel to be deployed by it on a transport;
 - e. Proof of professional competence and skills of the private maritime security personnel to be deployed by it on a transport;
 - f. Firearms and associated ammunition owned and managed by it with which the private maritime security personnel to be deployed on a transport are equipped;
 - g. Handcuffs owned and managed by it with which the private maritime security personnel to be deployed on a transport are equipped;

- h. Cameras and microphones owned and managed by it with which the private maritime security personnel to be deployed on a transport are equipped; and
 - i. Reports sent to the Minister as referred to in Section 12 of the Act, along with the underlying data, for a period of three years.
2. The maritime security company shall ensure that it can at all times provide insight into the current and complete data, as referred to in Subsection 1, to the officials charged with supervision.

Section 5.15 (Data security, privacy policy)

1. The maritime security company is the controller of the data within the meaning of Article 4(7) of the General Data Protection Regulation.
2. The maritime security company shall take the appropriate technical and organisational measures to protect the personal data against loss or unlawful processing.
3. The maritime security company shall draw up a privacy policy in which any consequences for data protection are identified in a structured and transparent manner and which lays down rules with regard to the following:
- a. Type of personal data to be processed;
 - b. Type of processing of personal data;
 - c. Purpose of processing the personal data;
 - d. Bodies involved in the processing of personal data;
 - e. Systems used for the processing of personal data;
 - f. Retention and erasure of personal data;
 - g. Rights of the person whose personal data are being processed.
4. The maritime security company shall act in accordance with the regulations referred to in Subsection 3.
5. By regulation of the Minister, further rules may be laid down with regard to Subsections 2 and 3.

Chapter 6. Amendment of other decrees

Section 6.1 (Amendment of the Judicial Data and Criminal Records Decree (*Besluit justitiële en strafvorderlijke gegevens, Bjsjg*) in connection with the provision of judicial and criminal data)

The Judicial Data and Criminal Records Decree shall be amended as follows:

1. A letter shall be added to Section 4(2):
- w. Violations of the Merchant Shipping Protection Act, insofar as it concerns:
 - 1° Violation of Sections 3(1), 3(2) and 12(3);
 - 2° Violation of Section 12(3).
2. A letter shall be added to Section 13(3): g. the Merchant Shipping Protection Act.
3. A letter shall be added to Section 16:
- g. An accredited certification body as referred to in Section 1(e) of the Merchant Shipping Protection Act insofar as this is necessary for the granting of a certificate, as referred to in Section 1(d) of the Act, which states that the rules, as laid down by and pursuant to the sections in Part 5.2 of the Merchant Shipping Protection Decree, have been complied with.

Chapter 7. Final provisions

Section 7.1

If the Act enters into force, this Decree shall enter into effect at the same time.

Section 7.2

This Decree shall be cited as follows: Merchant Shipping Protection Decree (in Dutch: *Besluit bescherming koopvaardij*).

We hereby order and command that this Decree and the accompanying Explanatory Memorandum be published in the Bulletin of Acts and Decrees.

The Minister of Justice and Security,

Ferd Grapperhaus

[Annex to Section 1.2 of the Merchant Shipping Protection Decree]