

Dutch Act of 15 May 2019, laying down rules for the deployment of armed private maritime security guards on board Dutch merchant ships (Merchant Shipping Protection Act)

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

To all who shall see or hear these presents, greetings! Be it known: We have thus considered it desirable to make a legal provision on the basis of which Dutch merchant ships may deploy armed private maritime security guards when passing through dangerous sea areas, if military protection cannot be provided;

We, therefore, having heard the Council of State's Advisory Division, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

CHAPTER 1 GENERAL PROVISIONS

Section 1

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

- a. *Use of force*: the use of force and the threat of force, including the drawing of a firearm;
- b. *Accreditation body*: a recognised body as referred to in Article 14 of Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93 (OJEU 2008, L 218);
- c. *Protection measures*: planning and operational measures designated by ministerial regulation to be taken by shipowners and masters for protection against piracy;
- d. *Certificate*: statement in which a certification body indicates that there is a legitimate expectation for a certain period of time that the maritime security company referred to herein shall comply with the standards and rules applicable to the performance of maritime security activities as referred to in Section 13(2);
- e. *Accredited certification body*: a body designated by the Minister of Justice and Security and accredited by a recognised accreditation body for issuing certificates to maritime security companies based on standards and rules applicable hereto as referred to in Section 13(2);
- f. *Force*: any more-than-minor compulsive force exercised on persons or property;
- g. *Weapons*: the equipment and weapons designated under Section 8 of this Act for the use of force;
- h. *Master*: the captain of a ship;
- i. *Merchant shipping*: commercial maritime operations;
- j. *Maritime security company*: an enterprise or part thereof which, during the exercise of its profession or business, offers and performs security activities on board a ship and mainly uses the services of persons for this;
- k. *Maritime security activities*: monitoring of the safety of the persons and goods on board a ship by private maritime security personnel;
- l. *The Minister*: the Minister of Justice and Security;
- m. *Private maritime security personnel*: staff employed by a maritime security company;
- n. *Piracy*: any unlawful act of violence or detention as well as any act of looting by the crew or passengers of a private ship for personal purposes committed against another ship outside the territorial sea of a state, or an attempt hereto;
- o. *Shipowner*: the ship manager as referred to in Section 1(1)(1) of the Seafarers Act (*Wet Zeevarenden*);
- p. *Ship*: a seagoing vessel, as referred to in Section 8:2 of the Dutch Civil Code, used for merchant shipping;
- q. *Team leader*: the private maritime security officer who is designated by the maritime security company as supervisor for the other private maritime security personnel and who is operationally in charge of the private maritime security personnel during the transport;
- r. *Territorial sea*: the territorial sea as referred to in the United Nations Convention on the Law of the Sea (OJEC 1998 L 179/4);
- s. *Transport*: movement of a ship between two or more seaports;
- t. *Seafarer*: a natural person working on board a ship in any capacity.

Section 2

This Act applies to armed maritime security activities performed outside the territorial sea of a state on board ships that are entitled to fly the Dutch flag under Dutch rule of law, insofar as they sail in or through the sea areas designated by the Minister by an order in council.

Section 3

1. It is forbidden to offer or perform armed maritime security activities without a licence from the Minister.

2. It is prohibited to perform, allow or make it possible to perform armed maritime security activities on board a ship without the permission of the Minister.
3. A licence, as referred to in Subsection 1, is considered equivalent to a permit or similar decision issued by a authority competent hereto in another state that offers a level of guarantee that is at least equivalent to the level intended in the provisions laid down by or pursuant to this Act. The Minister may establish further policy rules regarding the equivalence of foreign licences.

CHAPTER 2 PERMISSION FOR THE DEPLOYMENT OF PRIVATE MARITIME SECURITY PERSONNEL

Section 4

1. The Minister shall take a decision regarding the shipowner's request for permission as referred to in Section 3(2).
2. Such permission shall only be granted if a transport is eligible for military protection but this cannot be provided or cannot be provided within a reasonable period by the Minister of Defence or if in the opinion of the Minister of Justice and Security:
 - a. Acceptance of military protection would require a modification of the intended sailing route by more than a certain number of nautical miles to be determined by an order in council; or
 - b. Acceptance of military protection would lead to a certain percentage of additional costs to be determined by an order in council compared to the costs for private maritime security personnel.
3. The permission shall be granted to the shipowner per transport.
4. Rules concerning the request for permission as referred to in Subsection 1 may be laid down by or pursuant to an order in council.
5. The recommendation for an order in council to be adopted pursuant to this Section shall not be put forward until four weeks after the draft has been submitted to both Houses of the States General.

Section 5

The Minister of Defence shall provide the Minister of Justice and Security with all the information provided by the shipowner in connection with a request for security for a transport, insofar as this is necessary for granting the permission referred to in Section 3(2).

Section 6

1. The master and the shipowner shall apply all the reasonably possible protective measures prior to and during a transport on which private maritime security personnel are deployed.
2. Prior to the deployment of private maritime security personnel, the master and the team leader must ensure that the permission referred to in Section 3(2) has been granted.

CHAPTER 3 DEPLOYMENT OF PRIVATE MARITIME SECURITY PERSONNEL

Section 7

Private maritime security personnel deployed on a transport are not considered as seafarers.

Section 8

Private maritime security personnel shall not use any weapons other than those designated by the Minister by an order in council for performing maritime security activities. Rules shall also be laid down by or pursuant to an order in council regarding the method of storage of the designated weapons on the ship.

Section 9

1. In case of an imminent risk of piracy, private maritime security personnel are authorised to draw, deploy or otherwise threateningly display the designated weapons.
2. Private maritime security personnel are authorised to use force and thereby make use of the designated weapons, to the extent that this is necessary for averting the imminent risk of piracy and this purpose cannot be achieved in any other way.
3. Private maritime security personnel shall abstain from the use of force aimed at inflicting fatal injuries.
4. The use of force must be reasonable and moderate in proportion to the intended purpose.
5. The use of force shall be preceded by a warning, unless the circumstances do not allow for such a warning.
6. Private maritime security personnel shall not use force until they have been ordered to do so by the team leader, unless such an order cannot reasonably be expected.
7. The team leader shall not issue an order for the use of force until after he has determined, in consultation with the master, that the protection measures referred to in Section 6(1) have not resulted in averting the risk of piracy, unless this consultation or the result thereof cannot reasonably be expected.
8. The rules governing the use of force by private maritime security personnel shall be established by an order in council.
9. The recommendation for an order in council to be adopted pursuant to Subsection 8 shall not be put forward until four weeks after the draft has been submitted to both Houses of the States General.

Section 10

1. Private maritime security personnel are authorised to carry handcuffs.
2. Private maritime security personnel are authorised to place handcuffs on persons, who are not among the persons on board the ship and who have been arrested after being caught in the commission of an offence, if the arrested persons attempt to evade their arrest or if they pose a danger to their own life or safety or to the life or safety of others and if such evasion or danger cannot otherwise be prevented.
3. The arrested persons shall be immediately handed over to the master by the private maritime security personnel. The provisions of Title VIA of Book 4 of the Dutch Code of Criminal Procedure shall apply *mutatis mutandis*.

Section 11

1. Private maritime security personnel shall make use of cameras and microphones to perform maritime security activities.
2. Video or audio recordings shall be made from the time the imminent risk of piracy arises until the threat has been avoided or averted. These recordings shall be stored in files.
3. The team leader shall instruct his team members about when to switch on the cameras or microphones for making video or audio recordings.
4. The team leader shall provide the master with the files containing the video or audio recordings to facilitate the master's reporting or notification obligation, as referred to in Section 12.
5. Rules may be laid down by an order in council regarding the following:
 - a. Type of cameras or microphones and who is responsible for their functioning;
 - b. Making video and audio recordings during the transport through the designated sea area;
 - c. Functional or technical requirements for the processing of video and audio recordings; and
 - d. Time limits for the retention and erasure of the files containing video and audio recordings.
6. The recommendation of an order in council to be adopted pursuant to Subsection 5 shall not be put forward until four weeks after the draft has been submitted to both Houses of the States General.

Section 12

1. For each transport on which private maritime security personnel are deployed, a report shall be drawn up, in accordance with rules to be issued by the Minister, in the Dutch or English, separately by the master and team leader of the private maritime security personnel.
2. These reports shall in all cases state whether and how the powers referred to in Sections 9 and 10 have been exercised. If these powers have been exercised, the files with video or audio recordings as referred to in Section 11(2) or 11(5) shall be attached to the reports. The reports shall be sent to the Minister.
3. Any use of force and any use of handcuffs by private maritime security personnel shall be reported immediately by the master to the public prosecutor once the risk of piracy has ended. The files with video or audio recordings, as referred to in Section 11(2) or 11(5), shall be attached to this report.

CHAPTER 4 LICENCE

Section 13

1. The licence, referred to in Section 3(1), shall be granted based on the application of a maritime security company, if the company can present a certificate issued by an accredited certification body.
2. A set of standards and rules shall be established by an order in council, which the applicant must meet in order to obtain a certificate. These shall in all cases include the standards contained in the most recent version of the standards documents for maritime security companies as defined by the International Organization for Standardization.
3. The licence is not transferable.
4. Certain conditions may be attached to the licence.
5. In accordance with rules defined by the Minister, fees shall be due from the applicant for the handling of an application as referred to in Subsection 1.
6. In any case, rules shall be laid down by or pursuant to an order in council as regards the application, term, transfer and renewal of a licence and the conditions referred to in Subsection 4.

Section 14

The Minister may revoke or suspend the licence if:

- a. The certificate referred to in Section 13(1) is suspended, revoked or no longer valid;
- b. The licence holder fails to meet the conditions attached to the licence;
- c. The licence holder fails to comply with the obligations arising from the rules laid down by or pursuant to this Act;
- d. The information provided for obtaining the accreditation appears to be incorrect or incomplete to such an extent that a different decision would have been taken regarding the application if the correct information had been available for the assessment thereof;
- e. Certain circumstances arise or facts become known based on which the licence would have been refused if these circumstances had occurred or would have been known at the time when the licence was granted;

- f. The licence holder acts in a manner that is contrary to what may be expected from a proper maritime security company according to generally accepted standards.

Section 15

1. The certificate referred to in Section 13(1) shall be issued by a certification body designated for this purpose by the Minister.
2. The Minister shall only designate a certification body if this body holds an accreditation from an accreditation body, by which the accreditation body has indicated that there is a legitimate expectation for a certain period of time that the certification body is competent to issue certificates in accordance with Section 13(2) and that the requirements relating to independence, impartiality, continuity or other such requirements that may improve the quality of the issuance have been met.
3. Here, accreditation is considered equivalent to that issued by a body authorised hereto in a state, not being a Member State of the European Union, which is party to a treaty concluded wholly or partly for this purpose that is binding on the Netherlands, where this accreditation is issued based on investigations or documents that offer a level of protection that is at least equivalent to the level of protection offered by the assessment based on the requirements referred to in Subsection 2.
4. The accredited certification body shall immediately notify the Minister of the suspension or revocation of a certificate or accreditation.

CHAPTER 5 SUPERVISION AND ENFORCEMENT

Section 16

1. Compliance with the provisions laid down by or pursuant to this Act shall be supervised by officials designated by decision of the Minister. The Minister may issue general and special instructions to these officials regarding the performance of the supervisory activities.
2. A decision as referred to in Subsection 1 shall be notified via publication in the Government Gazette.

Section 17

1. The Minister may impose an administrative fine on the holder of the licence referred to in Section 3(1) 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 related to the licence.
2. The Minister may impose an administrative fine on the team leader and the master for an amount to be determined by ministerial regulation in respect of violation of the rules laid down by or pursuant to Sections 6(2), 12(1) and 12(2).
3. The administrative fine to be determined based on Subsection 1 or 2 shall be, at most, the amount determined for the fourth category referred to in Section 23(4) of the Dutch Criminal Code.

Section 18

In Section 1(4^o) of the Economic Offences Act (*Wet op de economische delicten*), the following shall be inserted in alphabetical order: the Merchant Shipping Protection Act, Sections 3(1), 3(2) and 12(3).

Section 19

The following Subsection 5 shall be added to Section 3a of the Weapons and Ammunition Act (*Wet wapens en munitie*):

5. Sections 26(1) and 27(1) shall not apply to private maritime security personnel who are acting pursuant to the provisions of the Merchant Shipping Protection Act.

Section 20

The Minister shall submit a report on the effectiveness and effects of this Act to the States General within three years of the date on which this Act enters into force.

CHAPTER 6 TRANSITIONAL AND FINAL PROVISIONS

Section 21

This Act shall enter into force at a time to be determined by Royal Decree, where the time of entry into force may be different for the various sections or parts of the Act, and the Act shall expire at the time of the entry into force of a Kingdom Act laying down rules for the deployment of armed private maritime security guards on board ships flying the flag of the Kingdom.

Section 22

This Act shall be cited as follows: Merchant Shipping Protection Act (in Dutch: *Wet ter Bescherming Koopvaardij*).

We order and command that this Act be published in the Bulletin of Acts and Decrees and that all ministries, authorities, bodies and officials concerned with this Act shall diligently implement it. Done at The Hague, 15 May 2019

Willem-Alexander

The Minister of Justice and Security,
F.B.J. Grapperhaus

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The Minister of Justice and Security,
F.B.J. Grapperhaus

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Old	New
Sections 1 to 10	Sections 1 to 10
Section 10a	Section 11
Sections 11 to 18	Sections 12 to 19
Section 18a	Section 20
Sections 19 and 20	Sections 21 and 22