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Regulation (EC) No 725/2004 of the European Parliament and of the Council

of 31 March 2004

on enhancing ship and port facility security

(Text with EEA relevance)

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on enhancing ship and port facility security

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) Intentional unlawful acts and especially terrorism are among the greatest threats to the ideals of democracy and freedom and to the values of peace, which are the very essence of the European Union.

(2) The security of European Community shipping and of citizens using it and of the environment in the face of threats of intentional unlawful acts such as acts of terrorism, acts of piracy or similar, should be ensured at all times.

(3) In connection with the transport of goods containing especially dangerous substances, such as chemical and radioactive substances, the potential consequences of the threats posed by intentional unlawful acts for Union citizens and the environment are very serious.

(4) On 12 December 2002 the Diplomatic Conference of the International Maritime Organisation (IMO) adopted amendments to the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention) and an International Ship and Port Facility Security Code (ISPS Code). These instruments are intended to enhance the security of ships used in international trade and associated port facilities; they comprise mandatory provisions, the scope of some of which in the Community should be clarified, and recommendations, some of which should be made mandatory within the Community.

(5) Without prejudice to the rules of the Member States in the field of national security and measures which might be taken on the basis of Title VI of the Treaty on European Union, the security objective described in recital 2 should be achieved by adopting appropriate measures in the field of maritime transport policy establishing joint standards for the interpretation, implementation and monitoring within the Community of the provisions adopted by the Diplomatic Conference of the IMO on 12 December 2002. Implementing powers should be conferred on the Commission to adopt detailed implementing provisions.

(6) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(7) Security should be enhanced not only for ships used in international shipping and the port facilities which serve them, but also for ships operating domestic services within the Community and their port facilities, in particular passenger ships, on account of the number of human lives which such trade puts at risk.

(8) Part B of the ISPS Code comprises a number of recommendations which should be made mandatory within the Community in order to make uniform progress towards achievement of the security objective described in recital 2.

(9) In order to contribute to the recognised and necessary objective of promoting intra-Community short-sea traffic, the Member States should be asked to conclude, in the light of regulation 11 of the special measures to enhance maritime security of the SOLAS Convention, the agreements on security arrangements for scheduled maritime traffic within the Community on fixed routes using dedicated port facilities, without this compromising the general standard of security sought.

(10) Permanently applying all the security rules provided for in this Regulation to port facilities situated in ports which only occasionally serve international shipping might be disproportionate. The Member States should determine, on the basis of the security assessments which they are to conduct, which ports are concerned and which alternative measures provide an adequate level of protection.

(11) Member States should vigorously monitor compliance with the security rules by ships intending to enter a Community port, whatever their origin. The Member State concerned should appoint a ‘competent authority for maritime security’ responsible for coordinating, implementing and monitoring the application of the security measures laid down in this Regulation as they apply to ships and port facilities. This authority should require each ship intending to enter the port to provide in advance information concerning its international ship security certificate and the levels of safety at which it operates and has previously operated, and any other practical information concerning security.

(12) Member States should be permitted to grant exemptions from the systematic requirement to provide the information referred to in recital (11) in the case of intra-Community or domestic scheduled shipping services, provided the companies operating such services are able to provide such information at any time on request by the competent authorities of the Member States.

(13) Security checks in the port may be carried out by the competent authorities for maritime security of the Member States, but also, as regards the international ship security certificate, by inspectors acting in the framework of port State control, as provided for in Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control). Where different authorities are concerned, provision must therefore be made for them to complement each other.

(14) In view of the number of parties involved in the implementation of security measures, each Member State should appoint a single competent authority responsible for coordinating and monitoring the application of shipping security measures at national level. Member States should put in place the necessary resources and draw up a national plan for the implementation of this Regulation in order to achieve the security objective described in recital 2, in particular by establishing a timetable for the early implementation of certain measures in accordance with the terms of Resolution 6 adopted by the Diplomatic Conference of the IMO on 12 December 2002. The effectiveness of the checks on the implementation of each national system should be the subject of inspections supervised by the Commission.

(15) The effective and standard application of measures under this policy raises important questions in relation to its funding. Funding certain additional security measures ought not to give rise to distortions of competition. To this end, the Commission should immediately undertake a study (intended to address in particular the way financing is shared between the public authorities and the operators, without prejudice to the distribution of competences between the Member States and the European Community) and to submit the results and, if appropriate, any proposals to the European Parliament and the Council.

(16) The measures needed to implement this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission. A procedure should be defined for the adaptation of this Regulation in the light of experience, to make mandatory further provisions of Part B of the ISPS Code not initially made mandatory by this Regulation.

(17) Since the objectives of this Regulation, namely the introduction and implementation of appropriate measures in the field of maritime transport policy, cannot be sufficiently achieved by the Member States and can therefore, by reason of the European scale of this Regulation, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

Article 1

Objectives

1.The main objective of this Regulation is to enhance the security of ships used in international trade and domestic shipping and associated port facilities in the face of threats of intentional unlawful acts.

2.The Regulation is also intended to provide a basis for the interpretation and implementation of the special measures to enhance maritime security adopted by the Diplomatic Conference of the IMO on 12 December 2002, which amended the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention) and established the International Ship and Port Facility Security Code (ISPS Code).

Article 2

Definitions

For the purposes of this Regulation:

1.‘the special maritime security measures’ means Chapter XI-2 of the Annex to the SOLAS Convention, as amended from time to time (but this is subject to the provision made by Article 10 about the application of those measures by virtue of Article 3).

2. *Deleted*

3.‘Part A of the ISPS Code’ means the Preamble and the mandatory requirements forming Part A of the International Code for the Security of Ships and of Port Facilities, as amended from time to time (but this is subject to the provision made by Article 10 about the application of Part A of the Code by virtue of Article 3).

4.‘Part B of the ISPS Code’ means the guidelines forming Part B of the International Code for the Security of Ships and of Port Facilities, as amended from time to time.

5.‘maritime security’ means the combination of preventive measures intended to protect shipping and port facilities against threats of intentional unlawful acts,

6. *Deleted*

7. *Deleted*

8.‘international shipping’ means any maritime transport service by ship from a port facility in Gibraltar to a port facility outside Gibraltar, or conversely,

9.‘domestic shipping’ means any transport service by ship in sea areas from a port facility of Gibraltar to the same port facility or another port facility Gibraltar,

10.‘scheduled service’ means a series of sailings organised in such a way as to provide a service linking two or more port facilities:

(a) either on the basis of a published timetable;

(b) or with a regularity or frequency such as to constitute a recognisable systematic service,

11.‘port facility’ means a location where the ship/port interface takes place; this includes areas such as anchorages, waiting berths and approaches from seaward, as appropriate,

12.‘ship/port interface’ means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons or goods or the provision of port services to or from the ship,

13.‘intentional unlawful act’ means a deliberate act, which, by its nature or context, could harm the vessels used for international or national maritime traffic, their passengers or their cargoes, or the port facilities connected therewith.

Article 3

Scope

1.In respect of international shipping, the special maritime security measures and Part A of the ISPS Code are to have the force of law in Gibraltar.

2.(1) In respect of domestic shipping, the special maritime security measures and Part A of the ISPS Code are to have effect in relation to-

(a) Class A passenger ships;

(b) their companies; and

(c) the port facilities serving them,

as they have effect (in accordance with paragraph 1 and Article 10(1) and (5)) in relation to the corresponding international shipping matters.

(2) In subparagraph (1) 'the corresponding international shipping matters' means-

(a) the ships mentioned in paragraph 1.1 of regulation 2 of the special maritime security measures,

(b) their companies, and

(c) the port facilities mentioned in paragraph 1.2 of that regulation.

3.(1) In respect of domestic shipping, the special maritime security measures and Part A of the ISPS Code are to have effect in relation to-

(a) Class B passenger ships which are certified to carry more than 250 passengers,

(b) tankers operating domestic services, and

(c) the companies of ships within point (a) or (b),

as they have effect (in accordance with paragraph 1 and Article 10(1) and (5)) in relation to the ships mentioned in paragraph 1.1 of regulation 2 of the special maritime security measures and their companies.

(2) But in the application of the special maritime security measures and Part A of the ISPS Code by virtue of subparagraph (1)-

(a) regulation 6 of the special maritime security measures (ship security alert system) does not have effect in relation to the ships and companies mentioned in subparagraph (1)(a) to (c);

(b) nothing in those measures and that Part requires a declaration of security to be completed or signed on behalf of the ships mentioned in subparagraph (1)(a) and (b),

and the special maritime security measures and Parts A and B of the ISPS Code are to be read with any modifications that are appropriate in accordance with points (a) and (b) of this subparagraph.(3)In this paragraph 'tanker' means a cargo ship constructed or adapted for the carriage in bulk of liquid cargoes of a flammable nature.

3A.(1) In this Article 'Class A passenger ship' and 'Class B passenger ship' mean, respectively, a Class A passenger ship and a Class B passenger ship within the meaning of Article 4 of Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships (as that Directive had effect as last amended by Commission Directive 2010/36/EU).

(2) For the purposes of subparagraph (1), Article 4 of that Directive is to be interpreted as requiring the Administration to-

(a) establish, and update when necessary, a list of sea areas under Gibraltar jurisdiction delimiting the zones for all year round operation and, where appropriate, restricted periodical operation of the classes of ships, using the criteria set out in paragraph 1 of that Article;

(b) publish that list in its updated version in accordance with regulation 5 of the Gibraltar Merchant Shipping (Safety Rules and Standards for Passenger Ships on Domestic Voyages) Regulations 2011; and

(c) ensure that public database of such list is available on the internet site of the Administration.

4.In exercising any functions under, or in connection with the implementation of, the special maritime security measures or Part A of the ISPS Code (as they have effect in accordance with paragraphs 1 to 3) the Maritime Administrator must take fully into account the guidelines contained in Part B of the ISPS Code.

5.The following paragraphs of Part B of the ISPS Code must be complied with as if they were mandatory as if they were mandatory:

- 1.12 (revision of ship security plans),
- 1.16 (port facility security assessment),
- 4.1 (protection of the confidentiality of security plans and assessments),
- 4.4 (recognised security organisations),
- 4.5 (minimum competencies of recognised security organisations),
- 4.8 (setting the security level),
- 4.14, 4.15, 4.16 (contact points and information on port facility security plans),
- 4.18 (identification documents),
- 4.24 (ships' application of the security measures recommended by the State in whose territorial waters they are sailing),
- 4.28 (manning level),
- 4.41 (communication of information when entry into port is denied or the ship is expelled from port),
- 4.45 (ships from a State which is not party to the Convention),
- 6.1 (company's obligation to provide the master with information on the ship's operators),
- 8.3 to 8.10 (minimum standards for the ship security assessment),
- 9.2 (minimum standards for the ship security plan),
- 9.4 (independence of recognised security organisations),
- 13.6 and 13.7 (frequency of security drills and exercises for ships' crews and for company and ship security officers),
- 15.3 to 15.4 (minimum standards for the port facility security assessment),
- 16.3 and 16.8 (minimum standards for the port facility security plan),
- 18.5 and 18.6 (frequency of security drills and exercises in port facilities and for port facility security officers).

6.Notwithstanding the provisions of paragraph 15.4 of Part A of the ISPS Code, the periodic review of the port facility security assessments provided for in paragraph 1.16 of Part B of the ISPS Code shall be carried out at the latest five years after the assessments were carried out or last reviewed.

7.This Regulation shall not apply to ships of war and troopships, cargo ships of less than 500 gross tonnage, ships not propelled by mechanical means, wooden ships of primitive build, fishing vessels or vessels not engaged in commercial activities.

8.Notwithstanding the provisions of paragraphs 2 and 3, the Administration shall ensure, when ship security plans and port facility security plans are approved, that such plans contain appropriate provisions to ensure that the security of ships to which this Regulation applies is not compromised by any ship or port interface or ship-to-ship activity with any ships not subject to this Regulation.

9. In this Article ‘company’ means a Company as defined in Regulation IX-1 of the SOLAS Convention.

Article 4

Deleted

Article 5

Deleted

Article 6

Provision of security information prior to entry into a port

1.When a ship which is subject to the requirements of the special maritime security measures (by virtue of Article 3 of this Regulation or otherwise) announces its intention to enter the port of Gibraltar, the Administration must require that the information referred to in paragraph 2.1 of regulation 9 (ships intending to enter a port of another Contracting Government) of the special maritime security measures is provided. The Administration shall analyse, as far as necessary, the information provided and, where necessary, apply the procedure provided for in paragraph 2 of regulation 9 of those special measures.

2.The information referred to in paragraph 1 shall be provided:

(a) at least 24 hours in advance; or

(b) at the latest, at the time the ship leaves the previous port, if the voyage time is less than 24 hours; or

(c) if the port of call is not known or if it is changed during the voyage, as soon as the port of call becomes known.

3.A report shall be kept of the procedure followed in respect of each ship subject to a security incident, as defined in paragraph 1.13 of regulation 1 (definitions) of the special maritime security measures.

Article 7

Exemptions from the provision of security information prior to entry into a port

1.The Administration may exempt scheduled services performed between port facilities located in Gibraltar from the requirement laid down in Article 6 where the following conditions are met:

(a) the company operating the scheduled services referred to above keeps and updates a list of the ships concerned and sends it to the Administration,

(b) for each voyage performed, the information referred to in paragraph 2.1 of regulation 9 of the special maritime security measures is kept available for the Administration upon request. The company must establish an internal system to ensure that, upon request 24 hours a day and without delay, the said information can be sent to the Administration.

2.When an international scheduled service is operated between Gibraltar and one or more EEA States, the Administration may, on the request of the company operating the service, grant an exemption to the service in accordance with the conditions laid down in paragraph 1.

3.The Administration must periodically check that the conditions laid down in paragraphs 1 and 2 are being met. Where at least one of these conditions is no longer being met, the Administration must immediately withdraw the privilege of the exemption from the company concerned.

4. *Deleted*

5.Notwithstanding the provisions of paragraphs 1 and 2, the Administration may, on security grounds and on a case-by-case basis, request the provision of the information referred to in paragraph 2.1 of regulation 9 of the special maritime security measures prior to entry into a port.

Article 8

Security checks in the port of Gibraltar

1.Certificate verification, as defined in paragraph 1.1 of regulation 9 (Control of ships in port) of the special maritime security measures, shall be carried out in the port of Gibraltar by the Administration.

2. *Deleted*

Article 9

Deleted

Article 10

Power to exclude amendments to international instruments

1.(1) Subparagraph (2) applies if the Minister determines by Regulations made under paragraph 5 that an amendment made to the special maritime security measures or to Part A of the ISPS Code is to be excluded in relation to international shipping.

(2) For the purposes of the application of the special maritime security measures and Part A of the ISPS Code by virtue of Article 3(1) of this Regulation (application in respect of international shipping), the amendment is to be treated as not having been made.

2.(1) Subparagraph (2) applies if the Minister determines by Regulations made under this subparagraph that an amendment made to the special maritime security measures or to Part A of the ISPS Code (which would not otherwise be excluded, by virtue of being excluded in relation to international shipping: see paragraphs 2(1) and 3(1) of Article 3) is to be excluded in relation to domestic services.

(2) For the purposes of the application of the special maritime security measures and Part A of the ISPS code by virtue of Article 3(2) and (3) of this Regulation (application in respect of domestic services), the amendment is to be treated as not having been made.

3. *Deleted*

4. *Deleted*

5.If it appears to the Minister that there is a manifest risk that an amendment to the special maritime security measures or to Part A of the ISPS Code will lower the standard of maritime security, the Minister may by Regulations determine that the amendment is to be excluded in relation to international shipping.

Articles 11 to 15

Deleted