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)

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)

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[(1)],

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(2)],

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

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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

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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)[(3)]. 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[(4)]. 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:

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Article 1

Objectives

1 The main objective of this Regulation is to introduce and implement Community measures aimed at enhancing 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 harmonised interpretation and implementation and Community monitoring 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. ‘special measures to enhance maritime security of the SOLAS Convention’ means the amendments, as attached as Annex I to this Regulation, inserting the new Chapter XI-2 into the Annex to the SOLAS Convention of the IMO, in its up-to-date version,

2. ‘ISPS Code’ means the International Ship and Port Facility Security Code of the IMO, in its up-to-date version,

3. ‘Part A of the ISPS Code’ means the Preamble and the mandatory requirements forming Part A of the ISPS Code, as attached as Annex II to this Regulation, concerning the provisions of Chapter XI-2 of the Annex to the SOLAS Convention in its up-to-date version,

4. ‘Part B of the ISPS Code’ means the guidelines forming Part B of the ISPS Code, as attached as Annex III to this Regulation, regarding the provisions of chapter XI-2 of the Annex to the SOLAS Convention, as amended, and of Part A of the ISPS Code, in its up-to-date version,

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

6. ‘focal point for maritime security’ means the body designated by each Member State to serve as a contact point for the Commission and other Member States and to facilitate, follow up and inform on the application of the maritime security measures laid down in this Regulation,

7. ‘competent authority for maritime security’ means an authority designated by a Member State to coordinate, implement and monitor the application of the security measures laid down in this Regulation in respect of ships and/or one or more port facilities. The competences of this authority may differ depending on the tasks assigned to it,

8. ‘international shipping’ means any maritime transport service by ship from a port facility of a Member State to a port facility outside that Member State, or conversely,

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

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

Joint measures and scope

1 In respect of international shipping, Member States shall apply in full, by 1 July 2004, the special measures to enhance maritime security of the SOLAS Convention and Part A of the ISPS Code, in accordance with the conditions and with respect to the ships, companies and port facilities referred to therein.

2 In respect of domestic shipping, Member States shall apply, by 1 July 2005, the special measures to enhance maritime security of the SOLAS Convention and Part A of the ISPS Code to Class A passenger ships within the meaning of Article 4 of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships[(5)] operating domestic services and to their companies, as defined in regulation IX-1 of the SOLAS Convention, and to the port facilities serving them.

3 Member States shall, after a mandatory security risk assessment, decide the extent to which they will apply, by 1 July 2007, the provisions of this Regulation to different categories of ships operating domestic services other than those referred to in paragraph 2, their companies and the port facilities serving them. The overall level of security should not be compromised by such a decision.

Member States shall notify the Commission of such decisions when they are adopted, as well as of the periodic review, which must take place at intervals of no more than five years.

4 When implementing the provisions required pursuant to paragraphs 1, 2 and 3, Member States shall take fully into account the guidelines contained in Part B of the ISPS Code.

5 Member States shall conform to the following paragraphs of Part B of the ISPS Code as if they were mandatory:

— 1.12 (revision of ship security plans),

— 1.16 (port facility security assessment),