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Malta Maritime Authority (MMA) Act (Chapter 352)
Ports Security (Amendment) Regulations, 2005

A Legislation Drafting Project Submitted in Partial Fulfilment of the Requirements for the Award of
the Degree of Master of Laws (LLM)

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International Instruments

International Conventions

- International Convention for the Safety of Life at Sea (adopted 1 November 1974, entry into force 1980) London U.K.T.S No.19 (1977) (SOLAS).

International Security Codes

- International Ship and Port Facility Security Code (ISPS) (adopted 12 December 2002, entry into force 1 July 2004).

Codes of Practice

- ILO/IMO Code of Practice on Security in Ports (adopted in Geneva, 2003, approved at MSC 78th Session [12-21 May 2004]).

Table of Statutes

European Community Legislation

- Council Regulation (EC) 725/2004 of 31 March 2004 on Enhancing Ship and Port Facility Security [2004] OJ L129 (29 April 2004) P0006-0091 (entry into force 19 May 2004).

Maltese Legislation

- Malta Maritime Authority (Cap 352) Ports Security Regulations, 2004 (LN 484 2004).

Statutes in Development

- *Amended Proposal for a Directive of the European Parliament and of the Council on enhancing port security* [COM /2004/0393 final – COD 2004/0031] (adopted 28.05.2004).

EXPLANATORY NOTE

A. Background and Context:

At the Diplomatic Conference on Maritime Security in December 2002,¹ the International Maritime Organisation (IMO) agreed on a new comprehensive security regime for international shipping by adopting a number of amendments to the **1974 Safety of Life at Sea Convention (SOLAS)**.² Chapters V and XI of the Annex to SOLAS were amended, the latter Chapter being renumbered as Chapter XI-1.³ Moreover, a new **Chapter XI-2** on “Special measures to enhance maritime security” was added.⁴ That chapter also sets out the new **International Ship and Port Facility Security Code (ISPS Code)**, which details the requirements in Chapter XI-2.⁵

The unprecedented extension of SOLAS to cover port facilities was agreed on the basis that SOLAS offered the speediest means of ensuring the necessary measures entered into force and given effect quickly. However, it was further agreed that the provisions relating to port facilities should relate **solely** to the ship/port interface. This relates to ‘the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons, goods or the provisions of port services to or from the ship.’⁶

Within the sphere of international developments in the field of security, the wider issue of the security of port areas was the subject of further joint work between the International Maritime Organization and the International Labour Organization (ILO). The resulting revised draft **ILO/IMO Code of Practice on security in ports**, which complements the provisions of the

¹ Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974, London (9-13 December 2002).

² International Convention for the Safety of Life at Sea 1974 (adopted 1 November 1974, entered into force 25 May 1980) (SOLAS).

³ Conference Resolution 1: Adoption of amendments to the Annex to the International Convention for the Safety of Life at Sea, 1974 (12 December 2002).

⁴ *ibid.*

⁵ Conference Resolution 2: Adoption of the International Code for the Security of Ships and of Port Facilities (12 December 2002).

⁶ SOLAS Chapter XI-2 Art 1.1.

International Ship and Port Facility Security (ISPS) Code with respect to the wider port area, was approved by the Governing Body of the ILO at its 289th Session in March 2004, and it was subsequently presented to the MSC at its 78th Session for approval for publication as a joint IMO/ILO document.⁷

This Code of Practice is intended to complement the provisions of the ISPS Code on port facilities by extending considerations of security to the wider port area. It thus extends the requirements within the ISPS Code relating to the immediate ship/port interface to the overall security of port areas. The Code of Practice is not a legally binding instrument, and is not intended to replace national laws and regulations. Rather, it is designed to provide guidance to all those responsible for addressing the issue of security in ports, and assists in the identification of the roles and responsibilities of governments, employers and workers. The Code follows the principles identified in SOLAS Chapter XI-2 and the ISPS Code and extends the consideration of port security beyond the area of the port facility into the whole port with the main objective of reducing the risk to ports from the threat posed by unlawful acts.⁸

In the face of the 11th September 2001 attacks, the European Commission considered it preferable to await the outcome of the discussions within the IMO rather than develop regional unilateral initiatives, in order to avoid possible inconsistencies between international and prospective Community rules. As a result, **Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on Enhancing Ship and Port Facility Security**, is the legislation which transposes SOLAS Chapter XI-2 and the ISPS Code within Community Law.⁹

⁷ MSC 78/7/2.

⁸ *ILO/IMO Code of Practice on Security in Ports: Tripartite Meeting of Experts on Security, Safety and Health in Ports*, Geneva 2003. Art 1.1.

⁹ Council Regulation (EC) 725/2004 (31 March 2004); Official Journal L129 (29 April 2004) P.0006-0091. This regulation entered into force on 19 May 2004.

<http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32004R0725&model=guichett> (17 October 2004).

The main objective of the 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 international unlawful acts.’¹⁰ The Regulation is also intended to ‘provide a basis for the harmonized interpretation and implementation and Community monitoring of the special measures to enhance maritime security adopted by the Diplomatic Conference of the IMO on December 2002, which amended the 1974 SOLAS Convention and established the International Ship and Port Facility (ISPS) Code.’¹¹

Although undoubtedly a significant breakthrough, the scope of the IMO rules limiting the field of application to international shipping and the ship/port interface left an unwanted void in security since the areas beyond the ship/port interface fall outside the coverage. Hence a Community directive on port security was considered a necessary second step to secure both the port and the interface between the port and the hinterland.

As noted, the IMO/ILO Code of Practice on Port Security is not legally binding, and in the light of this the Commission concluded that the EU should go ahead with an own port security scheme, which would complement the work of the IMO/ILO. Furthermore, although it is theoretically possible for Member States to interpret ‘port facility’ extensively so as to include the entire port, thus extending application of the ISPS Code to the entire port, it is understood that such interpretation is unlikely to be given.¹² In fact, this has been the approach adopted in Malta since the Port Security Regulations currently limit themselves to transposing the SOLAS amendments and EC Regulation No 725/2004, and are thus applicable only to the ship/port interface and port facilities therein.

¹⁰ Regulation No 725/2004 art 1.1.

¹¹ *ibid* art 1.2.

¹² COM(2004)76 (explanatory memorandum).

The *Directive of the European Parliament and of the Council on enhancing port security*¹³ COM (2004)76, 2004/0031 (COD) therefore addresses security measures which need to be observed by or affect people, infrastructure and equipment, including means of transport, in ports as well as in adjacent areas where these have a direct or indirect impact on security in the port.¹⁴ For the purposes of the directive, a “port” ‘means an area of land and water made up of such works and equipment as to permit principally, the reception of ships, their loading and unloading, the storage of goods, the receipt and delivery of these goods and the embarkation and disembarkation of passengers.’¹⁵

The purpose of the **Ports Security Regulations, 2004**,¹⁶ is to enable Malta to meet its obligations under the International Convention for the Safety of Life at Sea (SOLAS) arising from amendments to the Annex to the Convention, while enhancing ship and port security within the islands.¹⁷ These regulations are to be read and construed together with EC Regulation No 725/2004 and in the case of conflict between these regulations, the Annex to the SOLAS Convention and the EC regulations *it is the provisions of the latter instrument which shall prevail*.¹⁸ (emphasis added).

The object of this project is therefore to incorporate the Directive of the European Parliament and of the Council on Enhancing Port Security [COM (2004) 76] by drafting amendments to the Ports Security Regulations within the ambit of the Malta Maritime Authority Act (Chapter 352) that would extend the provisions of the MMA Port Security Regulations relating to the ship/port interface as incorporated from the SOLAS amendments and Regulation No 725/2004, to the entire port area,

¹³ *Amended Proposal for a Directive of the European Parliament and of the Council on enhancing port security* [COM /2004/0393 final – COD 2004/0031] (adopted 28.05.2004). Source: Decision making procedure at <http://europa.eu.int/prelex/detail_dossier_real.cfm?CL=en&DosId=188950> (15 January 2005).

¹⁴ *ibid* art 2.1.

¹⁵ *ibid* art 3.1.

¹⁶ Malta Maritime Authority (Cap 352) Ports Security Regulations, 2004 (LN 484 2004).

¹⁷ *ibid* art 2(1).

¹⁸ *ibid* art 2(2).

taking into account the particular circumstances which are required to be addressed when dealing with security measures affecting the wider port area., and hence using the IMO/ILO Code of Practice on Port Security as a guide.

B. The Proposed EC Directive on Port Security

i. The Risks to Which Ports May Be Subject

Ports are an essential link within the total transport chain, linking up maritime with landside trade and passenger flows. Ports are often the focal point for shipments of dangerous cargo, for major chemical and petrochemical production centres, and/or situated near situated near cities. It is clear that terrorist attacks in ports can easily result in serious disruptions to transport systems and trigger knock-on effects on the surrounding industry as well as directly harming people in the port and the neighboring population.¹⁹ It is within this context that the Commission proposal to develop a comprehensive port security policy was envisaged.

ii. Objectives

Against the background of the significant variety of Community ports (large, small, privately-owned, etc), as well as in view of the diverse activities co-existing within Community ports (cargo-handling, industry, warehousing, transport, environmental areas, conurbations, and many more) a directive is the most appropriate legal instrument to introduce the required flexibility while establishing the necessary common port security level throughout the community.²⁰

The main objective of this directive is to introduce and implement Community measures aimed at enhancing port security in the face of threat of intentional unlawful acts.²¹ It therefore aims at:

¹⁹ COM(2004)76 (explanatory memorandum).

²⁰ *ibid.*

²¹ *ibid* art 1.1.

- (a) enhancing security in those areas of ports not covered by Regulation (EC) No 725/2004;
and
- (b) ensuring that security measures implemented in application of Regulation (EC) No 725/2004 benefit from enhanced security in adjacent port areas.²²

To this end, Member States shall ensure that port security measures introduced by this directive are closely coordinated with measures taken in application of Regulation (EC) Nr.275/2004.²³

The main aims as derived from the original commission proposal²⁴ can thus be summarised as follows:

- (a) to **complement** and **support** the **security measures** applying to the **ship/port interface**;
- (b) to ensure that necessary security measures covering the entire port can be implemented as far as possible by **relying on already existing tools** introduced by Regulation (EC) 725/2004, thereby achieving maximum security results through minimum additional burden for the ports;
- (c) the directive allows existing security measures and structures to be maintained **provided** they comply with the rules of the directive;
- (d) the Directive **complements** the security measures introduced by Regulation (EC) 725/2004 by ensuring that as a result the **entire port** is covered by a security regime.

iii. Content of the Port Security Directive

The measures required for enhancing port security follow these principles:²⁵

- Port Security complements maritime and ship/port interface security and ensures that these security measures are reinforced by security measures in the entire port area;
- A port security assessment decides what measures are required, where and when;

²² COM(2004)76 (explanatory memorandum).

²³ COM(2004)76 art 4.

²⁴ COM(2004)76 (explanatory memorandum).

²⁵ *ibid.*

- Security levels distinguish between normal, heightened or imminent threats;
- A port security plan outlines all measures and details for enhancing port security;
- A port security authority is responsible for the identification and implementation of appropriate port security measures by means of the above mentioned assessment and plan;
- A port security officer coordinated development and implementation of the port security plan;
- A port security committee provides advice to the responsible authority;
- Training and control will support implementation of the required measures.

The directive therefore addresses security measures which need to be observed by or affect people, infrastructure and equipment, including means of transport, in ports as well as in adjacent areas where these have a direct or indirect impact on security in the port.²⁶ For the purposes of the directive, a “port” ‘means an area of land and water made up of such works and equipment as to permit principally, the reception of ships, their loading and unloading, the storage of goods, the receipt and delivery of these goods and the embarkation and disembarkation of passengers.’²⁷

iv. General Principles of the Directive

The Directive relies on the same security structures and bodies (security assessments, officers, etc) as Regulation (EC) 725/2004 so as to ensure a comprehensive security regime for the entire maritime logistics chain from the vessel to the ship/port interface to the entire port to the port/hinterland interface. This approach allows a simplification of procedures as well as synergies in security.

In particular the Directive:²⁸

- calls upon Member States to define the boundaries of their ports for the purpose of this directive (Articles 2.3);

²⁶ COM(2004)76 art 2.1.

²⁷ *ibid* art 3.1.

²⁸ COM(2004)76 (explanatory memorandum).

- calls upon Member States to ensure that proper security assessments and port security plans are developed (Articles 6 and 7);
- calls upon Member States to determine and communicate the security levels in use and changes thereto (Article 8);
- calls upon Member States to designate a port security authority for every port or for groups of ports. This is the public authority that will be responsible for the appropriate identification and implementation of port security measures (Article 5);
- establishes the need to appoint a port security officer for each individual port to ensure proper coordination when port security assessments and plans are established, updated and followed up (Article 9);
- establishes the general requirement of an advisory security committee, bringing together representatives of all relevant operational and government functions in a port (Article 10);
- for the purposes of reaching a desired common level of implementation the directive includes priority issues in its Annex for the port security assessment and the port security plan (Annex 1 and 2);
- calls for the appointment of focal points in the Member States to provide the necessary communication both to other Member States and to the Commission (Article 13);
- provides for inspection procedures to monitor the implementation of port security measures (Article 14);
- lays down a procedure for the adaptation of its provisions (Articles 15 and 16).

C. Purpose

The SOLAS amendments, ISPS Code and the EC Regulation 725/2004 enhance maritime security by developing security measures on ships and in port facilities.²⁹ The EC Regulation 725/2004 stops at that part of the port which represents the ship/port interface i.e. the terminal.

As explained above, the maritime security measures imposed by Council Regulation (EC) 725/2004 (31 March 2004) constitute only part of the measures necessary to achieve an adequate level of security throughout maritime linked transport chains. This regulation is limited in scope to security measures onboard vessels and the immediate ship/port interface. The MMA Port Security Regulations, which transpose Council Regulation 725/2004 within Maltese Law hence necessarily carry the same limitation. In order to achieve the fullest protection possible for maritime and port industries, port security measures should be introduced. They should extend beyond the ship/port interface and cover the entire port thus both protecting the port areas and ensuring that security measures taken in application of Regulation (EC) 725/2004 benefit from enhanced security in adjacent areas. These measures should apply to all those ports in which one or more port facilities are situated which are covered by Regulation (EC) 725/2004.

D. Methodology Adopted

When analysing the nature of the project i.e. the incorporation of a European Directive on Port Security, which as explained above, has the objective of relying on the existing security measures introduced by Regulation (EC) 725/2004 in relation to the ship/port interface while extending the

²⁹ In this context ‘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. ‘Ship/port interface’ means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of person or goods or the provision of port services to or from the ship.

same to the entire port area,³⁰ it was considered that the best approach was that drafting amending regulations to the existing instrument i.e. The Ports Security Regulations 2004. Such instrument, taking the form of amending regulations enacted within the ambit of the Malta Maritime Authority Act (Cap. 352) would thus extend the scope of the existing Ports Security Regulations (dealing limitedly with the ship/port interface) to make it applicable to port security issues introduced by the proposed EC Directive on Port Security where such regulations adequately provide for the setting up of the appropriate systems to address the directive e.g. in relation to the Maritime Security Committee. The second facet to the newly enacted amending regulations is that of the drafting of new provisions to cater for the specific requirements introduced by the proposed EC Directive on Port Security which are unique to port security and which require additional specific provisions e.g. the introduction of requirements for port security assessments and plans, and the duties of port security officers.

Annexed to this project are the Port Security Regulations, 2004, as they subsist prior to the proposed amendments (Annex 1) , and the *Amended Proposal for a Directive of the European Parliament and of the Council on enhancing port security* [COM /2004/0393 final – COD 2004/0031] (adopted 28.05.2004) (Annex 2). With regard to the latter, it must be clarified that this work has been based on the latest available draft proposal of the European Council and of the European Parliament as at 28.05.2004. Considering that the proposed Directive is at present undergoing the final stages of the legislative process, this work would take into account any minor changes which may arise subsequent to the present submittal.

³⁰ In this regard, **Article 4** of the proposed EC Directive on Port Security titled '*Coordination with measures taken in application of Regulation (EC) Nr.725/2004*' provides that: 'Member States shall ensure that port security measures introduced by this directive are closely coordinated with measures taken in application of Regulation (EC) Nr.725/2004.

E. Section Analysis

The following provides a break down of the proposed Ports Security (Amendment) Regulations incorporating the proposed EC Directive on Port Security within Maltese Law. The articles reflect how the requirements imposed by each article of the Directive have been drafted and modelled in order to transpose their respective obligations within the present Ports Security Regulations, 2004.

Regulation 1:

Citation and Commencement

Regulation 2: Amendment of Regulation 2 of the principal regulations: Purpose

This article establishes that the purpose of these amendments is to incorporate the proposed EC Directive on Port Security within domestic law.

Regulation 3: Amendment of regulation 3 of the principal regulations: Application

Regulation 3 incorporates the requirements laid out under Article 2 of the Directive with relation to the applicability of its provisions to ports in which one or more port facilities are situated which are covered by Regulation (EC) 725/2004.

Regulation 4: Amendments to regulation 4 of the principal regulations: Interpretation

With respect to interpretation, the purpose of this regulation is three-fold. Firstly, existing terms found in the interpretation provision of the present regulations are construed as encompassing the bodies that are required to be established under the directive, thereby following the spirit of the directive of relying on existing structures in the application of the directive. In particular one may refer to the designated authority, the focal point of maritime security, the maritime security committee and recognised security organisations. Secondly, this regulation extends terms such as

maritime security and security incident to clearly refer also to their relation with port security as required under the directive. Finally, this regulation introduces terms which are specifically required under the proposed EC Directive, in particular port security assessments and plans, and the creation of the new role of a port security officer. It is to be mentioned that where the directive provides no specific definition of the foregoing, the ILO/IMO Code of Practice on Security in Ports has been used as a guide.

Regulation 5: Substitution of regulation 5 of the principal regulations: Appointment of Designated Authority

This provision substitutes the existing regulation 5 which designates the Malta Maritime Authority as presently being responsible for the implementation and supervision of the relevant ship and port facility security requirements under the Port Security Regulations, in order to cast it as the responsible authority also with respect to port security as required under the proposed EC Directive.

Regulation 6: Addition of new regulation 5A to the principal regulations: Functions and Duties of Designated Authority with respect to ports.

Regulation 5A, besides expanding on the preceding regulation with respect to the extension of duties and competences of the Maritime Authority to cover port security issues, groups under one article to various duties imposed on the designated authority by the Directive.

This provision therefore adds to the existing duties of the MMA under Article 6 of the Port Security Regulations by incorporating the following functions as they arise from the proposed EC Directive within a new regulation 5A as follows:

- (1) The identification and implementation of appropriate port security measures by means of port security assessments and plans (Article 5.2 and Article 7.1 of the proposed EC Directive);

- (2) Determine in relation to ports the appropriate security level as defined under Article 4 of the Port Security Regulations (Article 8.3 proposed EC Directive);
- (3) Communicate the security level in force for each port as well as any changes thereto (Article 8.4 proposed EC Directive);
- (4) specify and communicate the measures that must be addressed in a port security plan;
- (5) approve:-
 - a. any port security assessment carried out by a recognized security organisation authorised in terms of article 4 of the Port Security Regulations (Article 6.1 proposed EC Directive);
 - b. any port security plan (Article 7.1 proposed EC Directive); and
 - c. any amendment to an approved port security plan that is specified in these regulations as requiring the approval of the Designated Authority (Article 11.1 proposed EC Directive);
- (6) ensure that the implementation of port security plans is coordinated with other control activities carried out in the port (Article 7.5 proposed EC Directive).

An important proviso is added to this regulation, covering situations where the boundaries of a port facility have been defined as effectively covering the port under the existing regulations prior to amendment. In such a case, in order to avoid the drawing up of an additional port security plan, and in line with Article 2.4 of the EC Directive, the provisions relating to port facilities will continue to prevail in their application to such port facility, and hence the drawing up of a port security plan under the amendments is not required.

Regulation 7: Amendment to regulation 6 of the principal regulations.

As a result of the introduction of the previous regulation 5A dealing with the duties of the designated authority with respect to ports, it was necessary to amend the citation of regulation 6 to clearly make

the existing provisions relating to the duties of the designated authority with respect to port facilities refer explicitly to such facilities.

Regulation 8: Amendment of regulation 16 of the principal regulations: The specification of security levels for ports and port facilities.

This regulation introduces two important amendments. Firstly, it incorporates Article 8.1 and 8.2 of the proposed EC Directive relating to ‘Security Levels’ and elaborates on the duties of the designated authority as already provided under article 6 of the new regulations.³¹ Secondly, this provision introduces the possibility of determining that different security measures are to be implemented in different parts of the port as required by article 8.3 of the proposed EC Directive.

Regulation 9: Addition of new regulation 26A to the principal regulations: Port Security Officers

Regulation 26A introduces the designation of the post of port security officer as required under article 9 of the proposed EC Directive.

Regulation 10: Amendment of regulation 27 of the principal regulations: co-operation between port security facility officer(s) and port security officer(s).

The existing regulation 27 of the Ports Security Regulations was amended with the introduction of sub paragraph 5 which incorporates the requirement laid down by article 9.3 of the proposed EC Directive of close co-operation between the port security officer(s) and the port facility security officer(s).

³¹ vide Regulation 5A (1)(b)(c) transposing articles 8.3 and 8.4 of the proposed EC Directive.

Regulation 11: Addition of new regulations 27A and 27B to the principal regulations: Port Security Assessments and Port Security Plans

Regulation 27A:

This provision elaborates on the basic duty of the Designated Authority to ensure that port security assessments are performed for the ports covered by the Regulations which is laid out in the new Regulation 5A(1)(a) as explained above. The importance of taking into account the port facility assessments carried out under the Port Security Regulations when developing the Port Security Assessments as required under Article 6.1 of the proposed EC Directive on Port Security is accounted for. Furthermore, this provision establishes that, as required under the proposed EC Directive, port security plans are carried out in accordance with Annex I of the Directive. The reference to the Annex of the directive is particularly important since this allows for the possibility of incorporating any subsequent adaptations and amendments to the annexes which may be adopted under the Committee Procedure established by Article 15 and 16 of the proposed EC Directive. Lastly, Port Security Assessments may be made by a recognized port security organization authorised in terms of article 4 of the Port Security Regulations, which assessments must nevertheless in all cases be approved by the Designated Authority as required by virtue of the new Regulation 5A(1)(e)(iii).

Regulation 27B:

This provision reiterates what has been said above with respect to Regulation 27A when dealing with port security assessments, in relation to Port Security Plans. Subparagraph (1)(c) highlights the importance given in the amended directive proposal to the vulnerability of roll-on roll-off vessels to unlawful acts, leading to the requirement of adequate measures with respect to ensuring that cars and goods vehicles destined for transport on such measures are given particular attention.³² Furthermore, this provision specifies the basic characteristics required of the port security plan with respect to each

³² Vide Article 7(7) of the amended proposal for a Directive of the European Parliament and of the Council on enhancing port security (COM/2004/0393 final – COD 2004/0031).

security level, which characteristics are amplified in Annex II of the proposed EC Directive containing the detailed requirements for the establishment of Port Security Plans.

Again, Port Security plans may be developed by a recognized security organisation authorised in terms of article 4 of the Port Security Regulations, subject to approval by the Designated Authority.

Regulation 12: Addition of new regulation 29A to the principal regulations: Reviews of port security assessments and port security plans

The new regulation 29A incorporates the requirements of article 11 of the proposed EC Directive with regard to the review of port security assessments and plans.

Regulation 13: Substitution of regulation 30(a) of the principal regulations: Port security plan and port facility plan approval

The amended provision elaborates on the basic duty of the designated authority to approve port facility plans as established under 5A(1)(e), and in laying out the instances where the designated authority is bound to approve such plans, it was considered necessary for the purposes of consistency to amend the existing subparagraph (a) of regulation 30 applying to the approval of port facility security plans in order to extend such instances to the approval of port security plans.

Regulation 14: Substitution of regulation 31 of the principal regulations: Amendments to approved port security plans and port facility security plans

This provision is closely related to the above in that it established the criteria for the approval of amendments to port security plans. The existing regulation 31 was substituted in order to include the approval of port security plans, while specifying the requirement that the provisions laid down under Council Directive 2004/31, as it applies in its up to date version by virtue of regulation 2(2) , is taken into account when considering the effectiveness of such measures. Subparagraphs (2) and (3)

subsequently extend the existing provisions relating to the approval of port facility security plans to apply to that of port security plans.

Regulation 15: Substitution of regulation 35 of the principal regulations: Consultation with the Maritime Security Committee

The substituting regulation 35 allows the designated authority the possibility of consulting with the Maritime Security Committee in the approval of port security assessments, plans and any amendments thereto, which possibility is at present limited to the approval of port facility security plans, assessments and their amendments.

Final Considerations

On a final note, it is considered necessary to comment on the manner in which the remaining articles of the directive are envisaged to be encompassed within the existing regulations:

- Article 13 of the proposed EC Directive relating to Focal point for port security.

As explained above, by virtue of and in line with article 13 of the directive, the focal point for port security is the body established by virtue of the existing regulation 7 of the regulations.³³ The requirements under article 13 for the communication to the Commission of the list of ports covered by the directive hence falls within the ambit of the present role of the focal point, which was established in pursuance of Regulation (EC) No 724/2004 'to serve as a contact point for the Commission and other Member States'.

³³ To this end, Article 13 of the proposed EC Directive states that '*Member States shall appoint for port security aspects the focal point appointed under Regulation 725/2004 for maritime and port facility security*'.

- Article 14 of the proposed EC Directive relating to implementation and conformity checking

Article 14 provides that *Member States shall set up a system ensuring adequate and regular supervision of the port security plans and their implementation*. Article 36 of the present Port Security Regulations provides that the designated Authority may designate any area within a port facility, or any other area in a port as a port security area. Regulations 37 – 39 follow with a series of restrictions with respect to such areas, together with the powers of both the Minister and the Designated Authority to require screening and searches within such areas. It is therefore considered that the provisions relating to the designation of areas within the port, which potentially may cover the whole port area, as a port security area, and hence the applicability of Regulations 37-39 to such areas, adequately establish the framework for ensuring the effective implementation and conformity checking of the relevant port security requirements.

- Article 18 of the proposed EC Directive relating to Sanctions

Article 18 lays down that *The Member States shall ensure that effective, proportionate and dissuasive sanctions are introduced for infringements of the national provisions adopted pursuant to this directive*. Regulations 41 – 46 of the existing Ports Security Regulations establish a series of sanctions with respect to offences such as the carrying of fire arms into port security areas, together with a number of measures, such as searches and detentions that may be taken by authorised persons in situations of refusal to be screened. The application of such sanctions to the entire port area is made possible through the designation of port security areas within the port by the designated authority.

PORTS SECURITY (AMENDMENT) REGULATIONS, 2005

<p>-----</p> <p>-----</p> <p>Chairman,</p> <p>Malta Maritime Authority</p>	<p>-----</p> <p>-----</p> <p>Minister for Competitiveness and Communications</p>
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L.N. of 2005

**MALTA MARITIME AUTHORITY ACT
(CAP. 352)**

Ports Security (Amendment) Regulations, 2005

IN exercise of the powers conferred by article 28 of the Malta Maritime Authority Act, the Minister for Transport and Communications, in consultation with the Malta Maritime Authority, has made the following regulations:

1. (1) These regulations may be cited as the Ports Security (Amendment) Regulations 2005 and shall be read and construed as one with the Ports Security Regulations, 2004, hereinafter referred to as “the principal regulations”.

Citation and Commencement.

(2) These regulations shall come into force on such date as the Minister responsible for shipping may, by notice in the Gazette, establish.

2. Immediately after paragraph (1) of regulation 2 of the principal regulations there shall be added the following paragraph (2), and the present paragraph (2) of the principal regulations shall be renumbered paragraph (3):

Amendment of regulation 2 of the principal regulations.

“(2) These regulations adopt the measures contained in Council Directive 2004/0031 (COD) of 10 February, 2004 as may from time to time be in force, hereinafter referred to in these regulations as Council Directive 2004/0031 EC.”.

Amendment of regulation 3 of the principal regulations.

3. Immediately after sub-paragraph (a) paragraph (1) of regulation 3 of the principal regulations there shall be added the following sub-paragraph (b), the present sub-paragraph (b) being renumbered (c):

“(b) ports located in the territory of Malta, in which one or more port facilities are situated;”.

Amendment of regulation 4 of the principal regulations.

4. Regulation 4 of the principal regulations shall be amended as follows:

Substitution of the definition of “designated authority”.

(1) The definition of “designated authority” shall be substituted with the following:

““designated authority” means the authority appointed under regulation 5 of these regulations, and the terms “competent authority for maritime security” that appears in the EC regulation and “port security authority” that appears in the EC Directive 2004/0031 shall be construed accordingly;”.

Amendment of definition of “focal point for maritime security”.

(2) To the definition of “focal point for maritime security” there shall be added the words “and the term “focal point for port security” that appears in the Council Directive 2004/0031 shall be construed accordingly;”.

Substitution of definition of maritime security.

(3) The definition of “maritime security” that appears in the principal regulations shall be substituted with the following:

““maritime security” means the combination of preventive measures intended to protect shipping, ports and port facilities against threats of intentional unlawful acts;”.

Addition of definition of “maritime security committee”.

(4) Immediately after the definition of “maritime security” in the principal regulations there shall be added the following:

““maritime security committee” means the body established under regulation 8 of these regulations and the term “Port Security Committee” that appears in Council Directive 2004/0031 shall be construed accordingly;”.

Amendment of definition of “recognised security organisation”.

(5) To the definition of “recognised security organisation” there shall be added the words “and by Council Directive 2004/0031;”.

(6) The definition of “security incident” shall be substituted with the following:

Substitution of definition of “security incident”.

“security incident” means any suspicious act or circumstance threatening the security of any:

- (a) ship, including a mobile offshore drilling unit or high-speed craft; or
- (b) port; or
- (c) port facility; or

- (d) mobile offshore drilling unity; or
- (e) ship-port interface; or
- (f) ship-to-ship activity;”.

(2) Immediately after the definition of “port” in regulation 4 of the principal regulations there shall be added the following:

Addition of new definitions to regulation 4 of the principal regulations.

““port security assessment” means an evaluation by the designated authority or an approved recognized security organisation, in accordance with Annex 1 *Port Security Assessment* to Council Directive 2004/0031 EC, of threats, vulnerabilities, capabilities, preparedness and existing security measures related to a port, forming an essential and integral part of the process of developing a port security plan;

“port security plan” means a plan developed to ensure the application of measures designed to protect the port and people, infrastructure and equipment, including means of transport, in ports as well as in adjacent areas where these have a direct or indirect impact on security in the port, in accordance with Annex II *Port Security Plans* to Council Directive 2004/0031 EC;

“port security officer” means the person desingated by the designated authority to fulfil the role of point of contact for port security related issued and for liaison with the port facility security officers.”.

5. Regulation 5 of the principal regulations shall be substituted with the following:

Substitution of regulation 5 of the principal regulations.

“Appointment of designated authority.

5. The Designated Authority responsible for ensuring the implementation of the provisions of these regulations in respect of ports, port facility security and ship-port interface from the point of view of the port and port facility shall be the Malta Maritime Authority.”.

6. Immediately after regulation 5 of the principal regulations there shall be added the following new regulation:

Addition of new article 5A to the principal regulations.

“Functions and duties of the Designated Authority with respect to ports.

5A. (1) The Designated Authority shall:

(a) ensure that with respect to each port within the territorial limits of Malta:

(i) port security assessments are carried out, reviewed, and approved; and

(ii) port security plans are developed, implemented,

maintained and approved;

Provided that where the boundaries of a port facility within the meaning of regulation 4 have been defined as effectively covering the port, the provisions relating to port facilities shall apply.

- (b) determine in relation to ports the appropriate security level as defined under article 4 of these regulations;
- (c) communicate the security level in force for each port as well as any changes thereto;
- (d) specify and communicate the measures that must be addressed in a port security plan;
- (e) approve:
 - (i) any port security assessment carried out by a recognized security organisation authorised in terms of article 4 of these regulations;
 - (ii) any port security plan; and
 - (iii) any amendment to an approved port security plan that is specified in these regulations as requiring the approval of the Designated Authority;
- (f) ensure that the implementation of port security plans is coordinated with other control activities carried out in the port.”.

7. Immediately after the words “Functions and Duties of Designated Authority” in the marginal note of Regulation 6 there shall be added the words “with respect to port facilities.”.

Amendment of regulation 6 of the principal regulations.

8. Regulation 16 of the principal regulations shall be amended as follows:

Amendment of regulation 16 of the principal regulations.

(i) For sub-paragraph (1) of regulation 16 of the principal regulations there shall be substituted the following:

16. (1) The Designated Authority shall:

- (a) specify, as security level 1, security level 2, or security level 3, the security level of every port and port facility within the territorial waters of Malta;
- (b) change the security level specification if the Designated Authority considers it necessary to reduce or

“The Authority shall specify security levels of ports and port facilities.

increase the risk of a security incident; and
(c) periodically review and update as necessary, any security level that the Designated Authority specifies.”.

(ii) Immediately after subparagraph (1) of regulation 16 there shall be added the following new subparagraph (2), and the present subparagraph (2), (3) and (4) shall be renumbered (3), (4) and (5) respectively.

“(2) The Designated Authority may determine that different security measures are to be implemented in different parts of the port depending on the outcome of the port security assessment.”.

9. Immediately after regulation 26 of the principal regulations there shall be added the following new regulation:

“Port Security Officers.

26A. (1) The Designated Authority shall ensure that a port security officer shall be designed for each port. Each port shall have a different port security officer.

Addition of new regulation 26A to the principal regulations.

(2) The port security officers shall fulfil the role of point of contact for port security related issues and should have sufficient authority and local knowledge to adequately ensure and coordinate the establishment, update and follow-up of port security assessments and port security plans.”.

10. Immediately after sub paragraph (4) of paragraph (1) of regulation 27 there shall be added the following sub paragraph (5):

Amendment of regulation 27 of the principal regulations.

“(5) In all cases, port facility security officer(s) are required to closely co-operate with the port security officer of the port within which such port facility is situated.”.

11. Immediately after regulation 27 of the principal regulations there shall be added the following new regulations:

Addition of new regulations 27A and 27B to the principal regulations.

“Port Security Assessments.

27A.(1) In approving port security assessments, the Designated Authority shall ensure that:

(a) due account is given to the specificities of different sections of a port; and

(b) the assessments for port facilities within the boundaries of each port as carried out in the application of these Regulations are

taken into account.

- (2) Each port security assessment shall be performed according to the requirements specified in Annex 1 *Port Security Assessment* to Council Directive 2004/0031 EC.
- (3) Port Security Assessments may be made by a recognized port security organization authorised in terms of regulation 4 of these regulations.

Port Security Plans.

27B. (1) Port security plans shall:

(a) adequately address the specificities of different sections of a port, and

(b) integrate the security plans for port facilities within the boundaries of each port established in application of these regulations.

(c) ensure that, on the basis of risk assessments, adequate security controls are carried out by competent national authorities on cars and goods vehicles set for embarkation which also carry passengers on both domestic and international traffic.

(2) Port security plans shall identify, for each of the different security levels as defined under article 4 of these regulations:

(a) the procedures to be followed;

(b) the measures to be put in place;

(c) the actions to be undertaken.

(3) Each port security plan shall be established in accordance with the requirements specified under Annex II *Port Security Plans* to Council Directive 2004/0031 EC.

(4) Port security plans may be developed by a recognized security organisation authorised in terms of regulation 4 of these regulations.”.

12. Immediately after regulation 29 of the principal regulations there shall be added the following new regulation:

Addition of new regulation 29A to the principal regulations.

“Reviews of port security assessments and port security plans.

29A. (1) The Designated Authority shall ensure that port security assessments and port security plans:

(a) are periodically reviewed and updated, taking into account changing threats or minor changes in the port; and

(b) where major changes take place to the port facility, must be reviewed and updated as soon as practicable:

Provided that the periodic review of the port security assessments and port security plans shall be carried out at the latest five years after the assessments and plans were carried out or last reviewed.

(2) Upon such review the port security assessments and port security plans must be approved by the Designated Authority.

(3) A reviewed plan can only be implemented once that approval has been given.

(4) The review of port security assessments and port security plans may be developed by a recognized security organization authorised in terms of article 4 of these regulations.”.

13. Subparagraph (a) of regulation 30 of the principal regulations shall be substituted with the following:

Substitution of regulation 30(a) of the principal regulations.

“Port security plan and port facility security plan approval.

30. The Designated Authority must approve a port security plan or a port facility security plan, or its amendments, if it:

(a) is consistent with:

(i) the purposes of these regulations; and

(ii) the security assessment for that port or port facility; and”.

14. Regulation 31 of the principal regulations shall be substituted with the following:

Substitution of regulation 31 of the principal regulations.

“Amendments to approved port security plans and port facility security plans.

31. (1) Any amendment to an approved port security plan or port facility security plan, or a change to any security equipment specified in an approved plan:

(a) must be at least as effective as those measures prescribed in the relative sections of Chapter XI-2 of the Annex to the Convention, in Council Directive 2004/0031 and the provisions of these regulations; and

(b) may not be implemented unless the amendment or change is given written approval by the Designated Authority.

(2) The written approval must be:

(a) kept at the port or port facility; and

(b) presented when required by the Designated Authority.

(3) If written approval is given for a temporary amendment to an approved port security plan or port facility security plan or for a temporary change to any security equipment specified in an approved plan, once the original approved measures or equipment are reinstated, retention of the written approval for the temporary amendment or temporary change is no longer required.”.

15. Regulation 35 of the principal regulations shall be substituted with the following:

Substitution of regulation 35 of the principal regulations.

“Consultation with the Maritime Security Committee.

35. Before approving any port or port facility security assessment or plan and any amendments thereto, the Designated Authority may consult with the Maritime Security Committee.”.

ANNEX 1

PORTS SECURITY REGULATIONS 2004

<p>-----</p> <p>Chairman,</p> <p>Malta Maritime Authority</p>	<p>-----</p> <p>Minister for</p> <p>Competitiveness and</p> <p>Communications</p>
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L.N. of 2004

MALTA MARITIME AUTHORITY ACT
(CAP. 352)

Ports Security Regulations, 2004

IN exercise of the powers conferred by article 28 of the Malta Maritime Authority Act, the Minister for Transport and Communications, in consultation with the Malta Maritime Authority, has made the following regulations:-

Citation and commencement.

1. (1) The title of these regulations is the Ports Security Regulations, 2004.
- (2) These regulations shall come into force on the 1st November, 2004.

Purpose

2. (1) The purpose of these regulations is to enable Malta to enhance ship and port security by meeting its obligations arising from the International Convention for the Safety of Life at Sea (SOLAS); and
- (2) These regulations shall be read and construed together with the Regulation (EC) No. 725/2004 of the European Union and of the Council on enhancing ship and port facility security and in case of conflict between these regulations, the Annex to the Convention and the EC Regulation, the provisions of the latter instrument shall prevail.

Application

3. (1) These regulations apply to:-
 - (a) the following types of ships:-
 - (i) passenger ships, including high-speed passenger craft, engaged on international voyages;
 - (ii) cargo ships, including high-speed craft, of 500 gross tonnage or more engaged on international voyages;
 - (iii) mobile offshore drilling units; and

- (iv) any ship as described in paragraphs (i) to (iii) above engaged in domestic shipping to which the extent of

these regulations would apply following a mandatory security risk assessment; and

- (b) port facilities within the internal and territorial waters of Malta that serve a ship, or a mobile offshore drilling unit, of a type specified in paragraph (a).

(2) These regulations do not apply to:-

- (a) warships and troopships; or
- (b) naval auxiliaries; or
- (c) other ships that are used on Government non-commercial service; or
- (d) pleasure craft; or
- (e) ships not propelled by mechanical means; or
- (f) wooden ships of primitive built; or
- (g) fishing vessels; or
- (h) ships not engaged in commercial activities.

Interpretation

4. In these regulations unless the context otherwise requires:-

Cap. 234

“appropriate inspector” means an inspector appointed in terms of the Merchant Shipping Act;

Cap. 352

“Authority” means the Malta Maritime Authority established in terms of the Malta Maritime Authority Act;

“authorised person” means:-

- (a) an officer acting on a direction of the Authority; or
- (b) a member of the police; or
- (c) a Customs officer; or
- (d) a member of the Armed Forces of Malta;

“certificate” means a valid International Ship Security Certificate issued in terms of the Code or a valid Interim International Ship Security Certificate issued in terms 19.4 of the Code;

“clear grounds” are those grounds as defined in Part B of the Code;

the “Code” means the International Code for the Security of Ships

and of Port Facilities, as adopted, on the 12th December, 2002 by resolution 2 of the Conference of Contracting Governments to the Convention, and as may be amended by the International Maritime Organisation;

“company” means the owner of the ship or any other organisation or person, such as the manager or the bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code;

Cap. 314

the “Convention” means the International Convention for the Safety of Life at Sea (SOLAS), as amended;

Cap. 37

“customs officer” has the same meaning as is given in the Customs Ordinance;

“declaration of security” means an agreement between a ship and a port facility, or another ship, with which it interfaces that specifies the security measures each must implement;

“designated authority” means the authority appointed under regulation 5 of these regulations, and the term “competent authority for maritime security” that appears in the EC regulation shall be construed accordingly;

“focal point for maritime security” means the body designated under regulation 7 of these regulations;

“high-speed craft” has the same meaning as defined in the regulation XII.2 of the Convention;

“in writing” means printed, typewritten, or otherwise visibly represented, copied, or reproduced, including by fax or email or other electronic means;

“International Safety Management Code” means the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organisation by Resolution A.741 (18), as amended from time to time by the International Maritime Organisation;

“maritime security” means the combination of preventive measures intended to protect shipping and port facilities against threats of intentional unlawful acts;

Cap. 234

“master” has the same meaning as in the Merchant Shipping Act;

the “Minister” means the Minister responsible for ports;

“mobile offshore drilling unit” means a mechanically propelled unit or vessel that is capable of engaging in drilling operations for the exploration for, or exploitation of, resources beneath the seabed such as liquid or gaseous hydrocarbons, sulphur, or salt;

“passenger ship” means a ship that carries more than 12 passengers;

Cap. 352

“port” has the same meaning as in the Malta Maritime Authority Act;

“port facility” means a location, as determined by the Authority, where the ship-port interface takes place, including areas such as anchorages, waiting berths and approaches from seaward as appropriate;

“port facility operator” means:-

- (a) the owner of the port facility; or
 - (i) if the owner is not responsible for the management of the port facility – the manager of the port facility; or
 - (ii) any other person, who is, for the time being, responsible for the management of the port facility;

“port facility security officer” means the person designated by the port facility operator as responsible for the development, implementation, revision and maintenance of the port facility security plan and for liaison with the ship security officer and the company security officer;

“port facility security plan” means a plan developed to ensure the application of measures designed to protect the port facility and ships, persons, cargo, cargo transport units and ship’s stores within the port facility from the risks of a security incident;

“port security area” means an area designated under regulation 36 of these regulations as a port security area;

“port service provider” means any operator who is involved in a ship-port interface but who is not a port facility operator and shall include the following:-

- (a) commercial vessel operators;
- (b) cargo handling operators;
- (c) mooring operators;
- (d) pilotage service operators; and
- (e) towage operators;

“port service provider security officer” means the person designated by the port service provider as responsible for the development, implementation, revision and maintenance of the port service provider security plan and for liaison with the ship security officer, port facility security officer and the company security office, as applicable;

“recognised security organisation” means an organisation with appropriate expertise in security matters and with appropriate knowledge of ship and port operations that is authorised by the Authority to carry out an assessment, a verification, or an approval or certification activity required by Chapter XI-2 of the Annex to the Convention or by part A of the Code;

“scheduled service” means a series of sailing organized in such a way as to provide a service linking two or more port facilities:-

- (a) either on the basis of a published timetable; or
- (b) with a regularity or frequency such as to constitute a recognizable systematic service;

“security incident” means any suspicious act or circumstance threatening the security of any:-

- (a) ship, including a mobile offshore drilling unit and high-speed craft; or
- (b) port facility; or
- (c) mobile offshore drilling unit; or
- (d) ship-port interface; or
- (e) ship-to-ship activity;

“security level” means the quantification of the degree of risk that a security incident will be attempted or will occur;

“security level 1” means the level for which minimum appropriate protective security measures must be maintained at all times;

”security level 2” means the level for which appropriate additional protective security measures must be maintained for a period of

time as a result of heightened risk of a security incident;

“security level 3” means the level for which further specific protective security measures must be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target;

“ship” means every description of boat or craft used in navigation, and includes:-

- (a) a barge, lighter, or other like vessel;
- (b) a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;
- (c) a submarine or other submersible;
- (d) a high-speed craft; and
- (e) a mobile offshore drilling unit that is not on location;

“ship-port interface” means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons, goods, or the provisions of port services to or from the ship;

“ship security officer” means the person on board the ship who is accountable to the master and designated by the company as responsible for the security of the ship, including the implementation and maintenance of the ship security plan, and for liaison with the port facility security officer;

“ship security plan” means a plan developed to ensure the application of measures on board the ship designed to protect persons on board, cargo, cargo transport units, ship’s stores, or the ship from the risks of a security incident;

“ship-to-ship activity” means any activity not related to a port facility that involves the transfer of goods or persons from one ship to another;

“ship’s administration” means the government of the State in which the ship is registered.

Appointment of
Designated
Authority

5. The Designated Authority responsible for ensuring the implementation of the provisions of these regulations in respect of port facility security and ship-port interface from the point of view of the port facility shall be the Malta Maritime Authority.

Functions and duties of Designated Authority

6. The Designated Authority shall:-

- (a) ensure that with respect to each port facility within the ports and territorial limits of Malta that:-
 - (i) port facility security assessments are carried out, reviewed, and approved; and
 - (ii) port facility security plans are developed, implemented, maintained and approved;
- (b) specify, the appropriate security level for port facilities within the internal and territorial limits of Malta;
- (c) specify and communicate the measures that must be addressed in a port facility security plan;
- (d) determine:-
 - (i) whether a declaration of security is required; and
 - (ii) the requirements for any declaration of security;
- (e) approve:-
 - (i) any port facility security assessment carried out by a recognized security organisation;
 - (ii) any port facility security plan; and
 - (iii) any amendment to an approved port facility security plan that is specified in these regulations as requiring the approval of the Designated Authority;
- (f) exercise control measures; and
- (g) for the purpose of providing further information, publish standards and codes of practice;
- (h) authorise recognised security organisations; and
- (i) undertake any other functions or duties specified in these regulations.

Focal point

7. (1) The Ministry responsible for shipping and ports shall be the focal point for maritime security.

(2) The duties and functions of this focal point shall be to serve as a contact point for Malta and other states and to facilitate, follow up and inform on the application of the maritime security measures laid down in these regulations.

Establishment of the Maritime Security Committee

8. There shall be established an inter-ministerial Committee to be designated the Maritime Security Committee (hereinafter referred to as “the Committee”).

Duties of the Maritime Security Committee

9. Subject to the provisions of these regulations, it shall be the duty of the Committee to:-

- (a) advise the Designated Authority and competent authorities on the development, maintenance and

promotion of an effective system of maritime security (seaports, ships and related matters pertaining all relevant security regulations and directives);

- (b) develop the necessary strategies and policies to reach all international and national obligations and relevant objectives related to maritime security in general;
- (c) develop the necessary directives for the effective response and support to any potential level three threat;
- (d) develop contingency plans and procedures relevant to national maritime incidents;
- (e) establish policies and schedules for drills, exercises and testing of all contingency plans and procedures, as well as all relevant coordination, training and support for such measures;
- (f) coordinate and activate all the necessary resources to implement all the above mentioned measures related to the deliberations that fall within the competencies of this Committee; and
- (g) undertake any other issue prescribed in these regulations.

Composition and
Procedure of the
Maritime Security
Committee

10. (1) The following members of the Committee shall, on an *ex officio* basis, be appointed by the Minister and shall be:-

- (a) the Permanent Secretary responsible for ports;
- (b) three senior officials of the Malta Maritime Authority, being one from the Corporate Office, one from the Ports Directorate and one from Merchant Shipping Directorate;
- (c) the Commander of the Armed Forces of Malta;
- (d) the Commissioner of Police; and
- (e) the Comptroller of Customs;
- (f) the Director of Civil Protection;

Provided that the Minister may appoint other persons as members of the Committee who appear to him to have the experience and to have shown the capacity, in matters relating to maritime security.

(2) The Minister shall be the Chairman of the Committee.

(3) The Permanent Secretary responsible for ports shall be the deputy Chairman of the Committee who shall act instead of the Chairman whenever the Chairman is absent from a meeting of the Committee or is unable for any reason to act as Chairman.

(4) Except for the *ex officio* members, the appointed members

shall hold office for such term, not being more than three years, as may be specified in their letter of appointment.

(5) If any vacancy in the Committee occurs during the period of appointment, on account of death, resignation or for any other cause, the Minister shall, as soon as practicable, appoint another person to fill the vacancy:

Provided that the Committee and the members thereof may act notwithstanding any such vacancy.

(6) Notwithstanding any other provision of this regulation, the Minister may at any time terminate the appointment of an appointed member, if, in his opinion, such appointed member is unfit to continue in office or has become incapable of properly performing his functions.

(7) The Minister shall, from time to time, appoint a secretary to the Committee.

(8) The Committee shall meet as often as necessary, but in no case less frequently than once in every three calendar months.

(9) The Committee shall decide on the composition and terms of reference of sub-committees or expert groups to which it can give special and specific tasks.

(10) All the decisions of this Committee must be taken by at least five of all the members forming this Committee.

(11) The Committee shall regulate its own procedures.

(12) At the end of each calendar year, the Committee shall prepare an annual report, to be submitted to the Minister and copied to all the members of the Committee within the first quarter of the following year.

The Authority to
give information

11. The Designated Authority must give to each port facility operator and port service provider conducting operations within the port security area:-

- (a) the name or position of the person who is responsible to co-ordinate the security of port facilities;
- (b) the contact details of such person; and
- (c) the measures to confirm the identity of persons who are authorised to have access to a port security area.

When a declaration of security is required

12. The Designated Authority may require a declaration of security if:-

- (a) it is satisfied that the ship-port interface or ship-to-ship activity poses a risk to persons, property, or the environment; or
- (b) it has received a request under these regulations, and is satisfied that the ship-port interface or ship-to-ship activity poses a risk to persons, property, or the environment.

Declarations of security

13. (1) A declaration of security must be completed, signed and dated by the master of, or ship security officer for, the ship and:-

- (a) if the other party to the agreement is also a ship - the master of, or ship security officer for, that other ship; or
- (b) if the other party to the agreement is a port facility operator - the port facility security officer; or
- (c) if the other party to the agreement is a port service provider - the port service provider security officer.

(2) A declaration of security must specify:-

- (a) the contact details for the parties and signatories to the agreement;
- (b) the period for which the declaration is valid; and
- (c) the security level in force for each party.

(3) The Designated Authority may establish the form of the declaration of security.

(4) A copy of the declaration of security must be kept by the port facility operator and the port service provider for a period of one year, which year begins to run from the day after the declaration ceases to be valid.

Alternative security agreements

14. (1) If the Designated Authority has entered into an alternative security agreement in accordance with the provisions of these regulations, the Designated Authority shall supervise the alternative security arrangements for a port facility covered by that agreement.

(2) Any such agreement shall not compromise the level of security of other ships or of port facilities within Malta.

(3) A master of a ship covered by an alternative security

agreement may not conduct any ship-to-ship activity with a ship not covered by that agreement.

(4) The Designated Authority must review each alternative security agreement:-

- (a) at an interval specified by the alternative security agreement under review; or
- (b) in the absence of a specification by the alternative security agreement under review, every five years.

(5) The review must take into account:-

- (a) the experience gained from the agreement;
- (b) any changes in the particular circumstances of the ships, port facilities, or routes covered by the agreement; and
- (c) any changes in the assessed threats to the security of the ships, port facilities, or routes covered by the agreement.

Equivalent security arrangements

15. (1) The Designated Authority may authorise a port facility or a group of port facilities to implement other security measures equivalent to those prescribed in Chapter XI-2 of the Annex to the Convention or the Code if those security measures are at least as effective as the specified measures.

(2) If the Designated Authority authorises an equivalent security arrangement, the Designated Authority shall notify and provide sufficient details of the measures to the focal point and shall subsequently report that arrangement to the International Maritime Organisation as soon as practicable.

(3) Sub-regulation (2) of this regulation does not apply if the port facility or the group of port facilities is covered by an alternative security agreement in terms of regulation 14 of these regulations.

The Authority must specify security levels for port facilities

16. (1) The Designated Authority must:-

- (a) specify, as security level 1, security level 2, or security level 3, the security level of every port facility within the ports and territorial waters of Malta;
- (b) change the security level specification if the Designated Authority considers it necessary to reduce or increase the risk of a security incident; and
- (c) periodically review and update as necessary, any security level that the Designated Authority specifies.

(2) In establishing a security level, the Authority has to consult

with the members of the Maritime Security Committee.

(3) The members of the Maritime Security Committee shall inform the Designated Authority of any information in respect of a threat to ship or port facility security or of a security incident.

(4) Whenever the Designated Authority does not comply with the advice of the Committee, it shall justify its reasons for not so doing to the Committee.

The Designated Authority must ensure provision of security level information

17. (1) The Designated Authority must ensure the provision of:-

(a) security level information to:-

(i) any ship intending to operate, or operating, within the ports and territorial waters of Malta; and

(ii) every port facility operator and port service provider; and

(b) updated security level information to any:-

(i) other ship intending to operate, or operating, within the territorial limits of Malta; and

(ii) port facility operator and port service provider if the security level has been changed.

(2) For the purpose of this regulation, the Designated Authority must notify the master of the ship, as the Authority deems necessary, by any means of communication, whether or not of a permanent nature.

Masters and companies must comply with ship security levels

18. The master of a ship calling in Malta and the company must comply with any requirements specified in these regulations for the security level specified for that ship or class of ship:-

(a) before carrying out a ship-port interface in Malta;

(b) before entering a port facility within the ports and territorial waters of Malta; and

(c) while in a port in Malta.

Certificate must be held on board

19. (1) The master of a ship calling in Malta and the company must ensure that a Certificate is held on board the company's ship.

(2) The Designated Authority may verify that a Certificate is on board a ship if that ship is at a port facility within a port or the territorial limits of Malta.

(3) The master of a ship in a port facility within a port or the territorial limits of Malta must:-

Information
required of ships
intending to enter a
port facility

- (a) on the request of the Designated Authority, produce the Certificate; and
- (b) co-operate with the Designated Authority in any other respect.

20. (1) A master of a ship intending to enter a port facility in Malta shall, prior to entry into that port facility, be required to provide the following information to the Designated Authority to ensure compliance with these regulations:-

- (a) evidence that the ship possesses a Certificate;
- (b) evidence of the security level at which the ship is currently operating;
- (c) evidence of the security level at which the ship operated in any previous port where is conducted a ship-port interface during the period of its last 10 calls at port;
- (d) evidence of any special or additional security measures that were taken by the ship in any previous port where it conducted a ship-port interface during the period of its last 10 calls at port;
- (e) evidence that the appropriate ship security procedures were maintained during any ship-to-ship activity during the period of its last 10 calls at port; and
- (f) any other practical security-related information, excluding details of the ship security plan, taking into account the guidance given in the Code.

(2) The master of a ship must keep a record of the information specified in sub-regulation (1) of this regulation for the last 10 calls at port facilities.

(3) The information referred to in sub-regulation (1) of this regulation shall be provided to the Designated Authority in a prescribed form and within the following time frames:-

- (a) at least twenty-four hours in advance; or
- (b) at the latest, at the time the ship leaves the previous port, if the voyage time is less than twenty-four 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:

Provided that the Designated Authority may exempt scheduled services performed between port facilities located on their territory or performed with other Member States, if:-

- (a) the company operating the scheduled services referred to above keeps and updates a list of the ships concerned and sends it to the Designated Authority; and
- (b) for each voyage performed, the information referred to in sub-regulation (1) of this regulation is kept available for the Designated Authority 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 Designated Authority.

(4) If a master or company declines to provide the information or confirmation specified in sub-regulation (1) or sub-regulation (3) of this regulation, the Designated Authority may:-

- (a) attempt to establish communication with the master and the ship's administration to rectify the non-compliance; and
- (b) if the communication does not result in rectification, take one or more of the following steps:-
 - (i) require rectification of the non-compliance;
 - (ii) require the ship to proceed to a specified location within Maltese territorial waters or port;
 - (iii) request an appropriate inspector to inspect the ship for the purpose of ascertaining compliance with the certification requirements of these regulations, if the ship is within the territorial waters or port of Malta;
 - (iv) deny the ship entry, if:-
 - (A) the Designated Authority has reasonable grounds to believe that the ship poses an immediate threat to the security or safety of persons, ships, or other property; or
 - (B) there are no other appropriate means for removing that threat.

(5) Before taking a step specified in sub-regulation (4)(b) of this regulation, the Designated Authority must inform the master of the ship of the Authority's intention to take the step by giving notice to the master of the ship as the Designated Authority considers necessary by the means of communications, whether or not of a permanent nature, as the Authority considers appropriate in the circumstances.

(6) A step that is taken under sub-regulation(4)(b) of this regulation:-

- (a) must be proportionate, taking into account the guidance given in part B of the Code, and
- (b) may additionally or alternatively include other lesser administrative or corrective measure.

(7) A ship may be denied entry under sub-regulation (4)(b)(iv) of this regulation despite the provisions of any other enactment.

(8) If a ship is denied entry under sub-regulation (4)(b)(iv) of this regulation:-

- (a) all possible efforts must be made to avoid a ship being unduly detained or delayed; and
- (b) a person may be allowed to leave the ship, or access to the ship must be allowed, for:-
 - (i) humanitarian reasons; or
 - (ii) emergency reasons; or
 - (iii) security purposes.

(9) On receiving the information under sub-regulation (4) of this regulation, the master of the ship may withdraw the intention to enter the port.

(10) If a ship is denied entry to the port under sub-regulation (4)(b)(iv) of this regulation, a port facility operator or port service provider must cease providing services to that ship if the Designated Authority so directs.

(11) A step taken under sub-regulation (4) of this regulation may be imposed until the non-compliance that gave rise to the step is corrected to the satisfaction of the Designated Authority, taking into account any actions proposed by the ship or the Designated Authority.

Control of ships in ports

21. (1) If a certificate is not produced to an appropriate inspector when required under regulation 20 of these regulations without a lawful or justifiable excuse, or if the Designated Authority has clear grounds to believe that a ship is not in compliance with the requirements of these regulations, the Designated Authority must, for the purpose of ensuring compliance with these regulations, impose one or more of the following control measures:-

- (a) inspection of that ship for the purpose of ascertaining compliance with the certification requirements of these regulations and other legislation enforceable in Malta,

including, but not limited to, requiring the master to:-

- (i) provide the information that the Designated Authority considers relevant to the inspection; and
 - (ii) demonstrate to the Designated Authority that the master or the relevant crew are familiar with essential ship board security procedures, and any shipboard security procedure is capable of being carried out in a competent manner;
- (b) delay of that ship;
 - (c) detention of that ship;
 - (d) restriction of the operations of that ship, including movement within the port;
 - (e) expulsion of that ship from the port if:-
 - (i) the Designated Authority has reasonable grounds to believe that the ship poses an immediate threat to the security or safety of persons, ships, or other property; and
 - (ii) there are no other appropriate means for removing that threat.

(2) A ship may be expelled under sub-regulation (1)(e) of this regulation despite the provisions of any other enactment.

(3) A control measure that is imposed under sub-regulation (1) of this regulation:-

- (a) must be proportionate, taking into account the guidance given in the Code; and
- (b) may additionally or alternatively include other lesser administrative or corrective measures.

(4) A control measure imposed under sub-regulation (1) of this regulation may continue until the non-compliance that gave rise to the control measure is corrected to the satisfaction of the Designated Authority, taking into account actions proposed, if any, by the ship or the Designated Authority.

(5) If a ship is expelled from a port under sub-regulation (1)(e) of this regulation:-

- (a) the Designated Authority may require the ship to proceed to a specified location within Maltese territorial waters or port;
- (b) the port facility operator must cease providing services to

- that ship if the Designated Authority directs the port facility operator to cease providing services to that ship;
- (c) all possible efforts must be made to avoid a ship being unduly detained or delayed; and
- (d) a person may be allowed to leave the ship, or access to the ship must be allowed, for:-
 - (i) emergency reasons; or
 - (ii) humanitarian reasons; or
 - (iii) security purposes.

Inspection of ship security plans

22. (1) The Designated Authority may request an appropriate inspector to inspect ship security plans and to carry out control measures if:-

- (a) it has reasonable grounds to believe that the ship is not in compliance with the requirements of Chapter XI-2 of the Annex to the Convention or the Code;
- (b) the only means to verify or to rectify the non-compliance is to review the relevant requirements of the ship security plan; and
- (c) consent for the inspection to review the relevant requirements of the ship security plan is obtained from:
 - (i) the master; or
 - (ii) the ship's administration, if the State is a party to the Convention.

(2) The Designated Authority may only have access to the specific sections of the plan that relate to the suspected non-compliance.

(3) Despite sub-regulations (1) and (2) of this regulation, the provisions of a ship security plan that are confidential may not be subject to inspection unless agreed to between the Designated Authority and the ship's administration, if the State is a party to the Convention.

(4) Despite sub-regulation (3) of this regulation, if the ship is registered in Malta or if the ship is registered in a State that is not a party to the Convention, the Designated Authority may authorise the inspection.

Costs of detention

23. If a ship is detained under these regulations:-

- (a) the company is liable to pay to the Designated Authority the costs of, and incidental to, the detention and any inspection and audit under these regulations; and
- (b) those costs that are, without prejudice to any other remedy,

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recoverable as a debt due to the Designated Authority in a Court of competent jurisdiction as provided in title VI of the Malta Maritime Authority Act.

Certain provisions do not apply if master withdraws intention to enter port

24. If the master withdraws the intention to enter the port, regulations 21(1) and (3) and 22(1) of these regulations do not apply.

Additional requirements

25. (1) If a control measure is imposed under regulation 20 of these regulations, or if a step is taken under regulation 22(1)(b) of these regulations, the Designated Authority shall:-

- (a) advise, in writing, the ship's administration of:-
 - (i) the control measure imposed or step taken; and
 - (ii) the reasons for imposing the control measure or taking the step, and
- (b) provide written notice, specifying when the control measure was imposed or the step taken, to:-
 - (i) the International Maritime Organisation; and
 - (ii) either the recognized security organization that issued a certificate to the ship concerned or if a recognized security organisation did not issue a certificate, the ship's administration.

(2) If a ship is either expelled from a port, or entry into a port is denied in terms of these regulations, the Designated Authority must communicate the appropriate facts to the relevant authorities of:-

- (a) the State of the next appropriate port of call, if known; and
- (b) any other appropriate coastal State.

(3) The communication must:-

- (a) take into account any relevant guidelines promulgated by the International Maritime Organisation; and
- (b) be secure and confidential.

Duties of port facility operators

26 (1) A port facility operator must:-

- (a) act on the security level specified by the Designated Authority;
- (b) apply security measures and procedures in a manner that minimises interference with, or delay to, passengers, ships, the personnel of ships, visitors, goods, and services;

- (c) appoint port facility security officers in accordance with the provisions of these regulations; and
- (d) comply with any requirements specified in these regulations for the security level specified for that port facility or class of port facility.

(2) A port facility operator required to have a port facility security plan must give to the Designated Authority, and each port service provider conducting operations within the port facility:-

- (a) name of the port facility operator;
- (b) contact details for the port facility operator;
- (c) name of location of the port facility;
- (d) name of the port in which the facility is located;
- (e) name or position of the person who is to be the port facility security officer for the facility;
- (f) a single 24-hour fixed-line or mobile telephone number for the port facility security officer;
- (g) the measures to be used by the port facility operator to inform persons of the location of any port security areas established within the boundaries of the port facility; and
- (h) the measures to confirm the identity of persons who are authorised to have access to the port facility, to ships moored at the facility and to any port security areas established within the boundaries of the port facility.

(3) A port facility operator required to have a port facility security plan must also give to the Designated Authority details of the boundaries of the facility.

(4) The port facility security officer and the ship security officers must liaise and co-ordinate appropriate actions particularly when the:-

- (a) port facility security officer is advised that a ship is encountering difficulties in:-
 - (i) complying with the requirements to these regulations; or
 - (ii) implementing the appropriate security measures and procedures specified in the ship security plan; or
 - (iii) in the case of security level 3, following any security measures; and
- (b) ship has a higher security level than that of the port facility.

(5) If a ship has a higher security level than that of the port

facility, the port facility security officer must report the matter to the Designated Authority.

Port facility
security officers

27. (1) Before requesting the Designated Authority to approve a port facility security plan, a port facility operator must designate, in writing, a person as the port facility security officer for the port facility.

(2) A port facility security officer may be designated by name or by reference to a position.

(3) The duties and responsibilities of a port facility security officer include:-

- (a) facilitating the development, implementation, revision and maintenance of the port facility security plan for the port facility operator;
- (b) liaising with ship, company, port, port service provider and other port facility security officers; and
- (c) performing:-
 - (i) the duties and responsibilities in terms of Part A of the Code; and
 - (ii) any additional duties and responsibilities set out in the port facility security plan or by the Designated Authority.

(4) A port facility operator must ensure that a port facility security officer assigned:-

- (a) has the knowledge and ability to perform the security duties;
- (b) is given the training set out in the port facility security plan;
- (c) is a suitable person to access and handle security information; and
- (d) has the authority to act on instructions received from the Designated Authority.

Port facility
security
assessments

28. (1) The port facility operator must carry out a port facility security assessment of each port facility within its control.

(2) The Designated Authority may authorize a recognised security organisation to carry out a port facility security assessment.

(3) If a port facility security assessment is carried out by a recognised security organisation, the Designated Authority:-

- (a) must review it for compliance with sub-regulation (5) of this regulation; and
- (b) if satisfied that it complies with sub-regulation (5) of this regulation, may approve the assessment.

(4) A port facility security assessment must:-

- (a) be periodically reviewed and updated, taking into account changing threats or minor changes in the port facility; and
- (b) if major changes take place to the port facility, be reviewed and updated as soon as practicable:

Provided that the periodic review of the port facility security assessment shall be carried out at the latest five years after the assessments were carried out or last reviewed.

(5) A security assessment for a port facility security plan must include the following matters:-

- (a) the date when the assessment was completed or reviewed;
- (b) the scope of the assessment, including assets, infrastructure and operations assessed;
- (c) a summary of how the assessment was conducted, including details of the risk management process adopted;
- (d) the skills and experience of the key persons who completed or participated in the assessment;
- (e) a statement outlining the risk context or threat situation for the port facility;
- (f) identification and evaluation of important assets, infrastructure and operations that need to be protected;
- (g) identification of possible risks or threats to assets, infrastructure and operations, and the likelihood and consequences of their occurrence;
- (h) identification of existing security measures, procedures and operations;
- (i) identification of weaknesses, including human factors, in the infrastructure, policies and procedures;
- (j) identification, selection and prioritization of possible risk treatments (for example, counter-measures and procedural changes that need to be implemented) and their effectiveness in reducing risk levels and vulnerabilities.

(6) A security assessment for a port facility operator's operation must consider:-

- (a) the types of ships, and the types of cargoes transported by ships, served by the port facility;
- (b) any special risks or threats associated with such ships and cargoes; and
- (c) the elements identified in paragraphs 15.3 and 15.4 in Part B of the Code.

(7) A port facility security assessment may cover more than one port facility if:-

- (a) the operator, location, operation, equipment, and design of those port facilities are similar; and
- (b) the Designated Authority agrees.

(8) When a port facility security assessment is completed, the person carrying out the port facility security assessment must prepare a report for the Designated Authority that consists of:-

- (a) a summary of how the assessment was conducted;
- (b) a description of each vulnerability found during the assessment; and
- (c) a description of counter measures that could be used to address each vulnerability.

(9) The report and the security assessment must be protected from unauthorised access or disclosure.

Port facility
security plans

29. (1) A port facility operator must:-

- (a) develop, implement, and maintain a port facility security plan based on the port facility security assessment of that port facility; and
- (b) update that port facility security plan as required by a review of that plan.

(2) A recognized security organisation may prepare the port facility security plan for a port facility.

(3) A port facility security plan or amendments to a previously approved port facility security plan must be approved by the Authority before effect may be given to that plan or amendments to that plan.

(4) A port facility security plan must set out the requirements of Part A and Part B of the Code in respect of port facility security plans, which among other include:-

- (a) the security organization of the port facility;
- (b) a schedule of security plan audits by internal and external auditors;
- (c) the circumstances, in addition to the occurrence of a security incident, following which a security plan review must be conducted;
- (d) the procedures for conducting a security plan audit, including a process for selecting auditors who are independent of the matters being audited;
- (e) the procedures for conducting a security plan review, including a process for consultation during the review;
- (f) the knowledge, skills and other requirements for the port facility security officer;
- (g) the training or qualifications that satisfy the requirements referred to in paragraph (a) above;
- (h) the training that must be given to the port facility security officer;
- (i) measures to prevent unauthorised carriage or possession of weapons or prohibited items in the facility or on board ships being loaded or unloaded at the facility;
- (j) measures to prevent unauthorised access to the port facility, to ships moored at the facility and to any port security areas established within the boundaries of the port facility;
- (k) procedures for responding to security threats or breaches of security, including procedures for maintaining critical operations in the port facility or ship/port interface;
- (l) procedures for responding to any security directions given by the Designated Authority;
- (m) procedures for evacuation of the port facility in case of security threats or breaches of security;
- (n) procedures for drills and exercises associated with the plan;
- (o) procedures for interfacing with ship security activities;
- (p) procedures for modifying the plan to correct deficiencies or to update the plan to take into account changes to the port facility;
- (q) procedures for reporting occurrences which threaten the security of the port facility;
- (r) measures to ensure the security of the information contained in the plan;
- (s) measures to ensure security of cargo and of cargo handling equipment at the facility;
- (t) procedures in case the ship security alert system of a ship is activated while in the security regulated port;
- (u) procedures for facilitating:-

- (i) shore leave or relief of crew; and
- (ii) access by visitors, including representatives of seafarers' welfare and of labour organisations
- (v) a map clearly showing:-
 - (i) the boundaries of the port facility; and
 - (ii) the location of any port security area established, or that the operator wishes to be established or changed, within the area covered by the plan; and
- (w) the intervals at which drills shall be carried out to ensure the effective implementation of the port security plan.

(5) A port facility security plan must identify, by reference to their positions, port facility personnel with, or who have been assigned, security duties and responsibilities in addition to those of the port facility security officer.

(6) The security duties and responsibilities of personnel so identified must be set out in the plan, together with:-

- (a) the knowledge, skills and other requirements for the security-related aspects of their positions;
- (b) the training or qualifications that satisfy the requirements referred to in paragraph (a); and
- (c) the training that must be given to such personnel.

(7) In determining appropriate measures under this regulation, the port facility operator must have regard to the special risks of threats associated with the types of ships, and the types of cargoes transported by ships, regularly served by the port facility.

(8) A port facility security plan must set out, for the purpose of coordinating security-related activities, a mechanism for consultation:-

- (a) between the port facility operator and the Designated Authority;
- (b) between the port facility operator and each port service provider conducting operations within the port facility, and any other stakeholder, who may be affected by the implementation of the plan; and
- (c) between the port facility operator and its employees, or their representatives, as regards security measures and procedures to be implemented.

(9) A port facility security plan must set out, in relation to maritime security level 1:-

- (a) the security measures, identified in the security assessment for the operation, for implementation at that level;
 - (b) the measures that have been implemented;
 - (c) a schedule for implementing the measures that have not been implemented; and
 - (d) any interim measures that will be implemented until the measures referred to in paragraph (c) are fully implemented.
- (10) A port facility security plan must set out, in relation to maritime security levels 2 and 3, the additional security measures that the operator will implement if the Designated Authority declares that maritime security level 2 or 3 is in force for the port.
- (11) A port facility security plan must provide for:-
- (a) the circumstances in which the operator will request a declaration of security with a ship;
 - (b) the procedures for negotiating the security measures and responsibilities of the operator and of the ship in those circumstances; and
 - (c) how security measures identified in a declaration will be implemented to ensure compliance by the operator and the ship with their security plans and with the declaration.
- (12) If a port facility operator wishes the Designated Authority to establish a port security area, the port facility security plan must set out:-
- (a) the purpose for the proposed establishment of the port security area;
 - (b) the boundaries of the port security area;
 - (c) if applicable, the period when, or the circumstances in which, the port security area is in force;
 - (d) the security measures and procedures to be taken to control access into the port security area by people, vehicles or things, including measures relating to the entry, parking, loading and unloading of vehicles, and the movement and storage of cargo, stores and baggage;
 - (e) steps to be taken to inform people that a port security area is in force and that entry into that area without authority is an offence; and
 - (f) the name or position of the person or persons responsible

for the security measures, procedures or steps referred to in paragraphs (d) and (e).

(13) The port facility security plan may be combined with, or be part of, the port security plan or any other port emergency plan.

(14) The port facility security plan may be kept in electronic format. In such case, it shall be protected by procedures aimed at preventing its unauthorised deletion, destruction or amendments.

(15) A port facility operator must ensure that the security plan is protected against unauthorised access, amendment and disclosure.

Port facility
security plan
approval

30. The Designated Authority must approve a port facility security plan, or its amendments, if it:-

- (a) is consistent with:
 - (i) the purposes of these regulations; and
 - (ii) the security assessment for that port facility; and
- (b) complies with the:
 - (i) requirements of these regulations; and
 - (ii) requirements prescribed by the Designated Authority from time to time.

Amendments to
approved port
facility security
plans

31. (1) An amendment to an approved port facility security plan, or a change to any security equipment specified in an approved plan-

- (a) must be at least as effective as those measures prescribed in the relative sections of Chapter XI-2 of the Annex to the Convention and the provisions of these regulations; and
- (b) may not be implemented unless the amendment or change is given written approval by the Designated Authority.

(2) The written approval must be:-

- (a) kept at the port facility; and
- (b) presented when required by the Designated Authority.

(3) If written approval is given for a temporary amendment to an approved port facility security plan or for a temporary change to any security equipment specified in an approved plan, once the original approved measures or equipment are reinstated, retention of the written approval for the temporary amendment or temporary change is not longer required.

Review of decision
not to approve port
facility security
plans

32. (1) If the Designated Authority decides not to approve a port facility security plan, or an amendment to a previously approved port facility security plan, the company may request the Designated Authority to review its decision.

(2) If the Designated Authority receives a request to review its decision, the Designated Authority must carry out the review and report the results of the review to the requesting company within 15 working days of the date on which the Designated Authority received the request.

Port service
provider security
officers

33. (1) Before requesting the Designated Authority to approve a security plan, a port service provider must designate, in writing, a person as the Port Service Provider Security Officer.

(2) A Port Service Provider Security Officer may be designated by name or by reference to a position.

(3) The duties and responsibilities of a Port Service Provider Security Officer include:-

- (a) conducting an initial security survey of the activities of the port service provider and facilitating the completion of the security assessment for the provider's security plan;
- (b) ensuring the development and maintenance of the security plan for the port service provider;
- (c) implementing the security plan;
- (d) undertaking regular security inspections of the area or ship under the control of the port service provider to ensure the effectiveness and adequacy of security measures;
- (e) recommending and incorporating modifications to the security plan in order to:
 - (i) correct deficiencies in the plan;
 - (ii) or update the plan to take into account changes to the port service provider;
- (f) enhancing security awareness and vigilance of the port service provider's personnel;
- (g) ensuring that standards for personnel with, or who have been assigned, with security duties and responsibilities are met and that adequate training is provided to such personnel;
- (h) reporting to the relevant authorities, and maintaining records of, occurrences which threaten the security of the port service provider;
- (i) liaising with ship, port, port facility and other port service

- provider security officers;
- (j) coordinating with security, police, fire, ambulance, medical, search and rescue services, as appropriate;
- (k) ensuring that security equipment is properly operated, inspected, tested, calibrated and maintained; and
- (l) when requested by a ship security officer, assisting in confirming the identity of persons intending to board a ship.

(4) A port service provider must ensure that a Port Service Provider Security Officer:-

- (e) has the knowledge and ability to perform the duties of a Port Service Provider Security Officer;
- (f) is given the training set out in the security plan for the port service provider;
- (g) is a suitable person to access and handle security information; and
- (h) has the authority to act on instructions received from the Designated Authority.

Port service provider to give information

34. A port service provider required to have a security plan must give to the Designated Authority and to each relevant port facility operator conducting operations within the port:-

- (a) contact details for the port service provider security officer;
- (b) the boundaries of the area under the control of the port service provider;
- (c) details of the vessels operated by the provider including the name, identification number, type, date, port of registry, and construction year of each vessel;
- (d) the measures to be used by the port service provider to inform persons of the location of any port security zones established within the boundaries of the land under the control of the port service provider; and
- (e) the measures to confirm the identity of persons who are authorised to have access to the land under the control of the port service provider, to any port security area established within the boundaries of that land and to vessels operated by the provider.

Consultation with
Maritime Security
Committee

35. Before approving any port facility security assessment or plan and any amendments thereto, the Designated Authority may consult with the Maritime Security Committee.

Designation of port
security areas

36. (1) The Designated Authority may designate any area within a port facility, or any other area in a port as a port security area.

(2) Any designation under sub-regulation (1) of this regulation may be revoked, in whole or in part, or amended by the Designated Authority as the case may be, by a notice in the Gazette.

Restrictions with
respect to port
security areas

37. (1) No person, other than an authorised person or a person on official duties acting in accordance with sub-regulation (7) of this regulation, may enter or remain in a port security area unless authorised by the Designated Authority or the port facility operator.

(2) Every person in a port security area must, on the request of an authorised person:

- (a) state his or her name and address;
- (b) the purpose of his or her presence in the port security area, and his or her authority to enter it; and
- (c) must produce satisfactory evidence of the correctness of his or her stated name.

(3) If a person fails or refuses to provide an authorised person with satisfactory evidence of his or her name when requested by the authorised person, or if a person fails to satisfy the authorised person that he or she is authorised to be there, the authorised person may order that person to leave the port security area.

(4) An authorised person, and any person whom he or she calls to his or her assistance, may use any force that is reasonably necessary to remove from any port security area any person who fails or refuses immediately to leave the port security area after having been ordered by an authorised person to do so under sub-regulation (3) of this regulation.

(5) A person who refuses to comply with sub-regulation (2) or sub-regulation (3) of this regulation, and, after having been warned that he or she commits an offence, persists in its commission may be forcibly detained by an authorised person, and in that case he or she must, as soon as may be practicable, be delivered to a member of the police:

Provided that these powers shall be exercised solely if in the opinion of the authorised person they are absolutely necessary for the authorised person to take the detained person to the nearest Police Station.

(6) A passenger or crew member embarking or disembarking directly through gateways or thoroughfares in a port facility approved for that purpose by the port facility operator is deemed to be authorised by the Designated Authority to pass through any port security area forming part of those gateways or thoroughfares.

(7) A person on official duties acting under a statutory power to enter an area to carry out his or her statutory functions or duties:-

- (a) may enter a port security area; and
- (b) if requested by an authorised person, must present his or her warrant or certificate or proof of employment to the authorised person.

Powers and duties of Minister to require screening and searching

38. (1) The Minister may, if necessary to improve or enhance maritime security to enable Malta to be part of a concerted international response to a threat to maritime security or if it is in the national interest, direct in writing:-

- (a) to screen:-
 - (i) any person boarding a ship;
 - (ii) any thing to be carried by a ship;
 - (iv) any thing in a port security area; and
 - (v) any person including that person's personal effects or vehicle entering, or within, a port security area; and
- (b) if necessary, to undertake reasonable searches of any:-
 - (i) person boarding a ship; or
 - (ii) thing to be carried by a ship; or
 - (iii) thing in a port security area; or
 - (iv) person including that person's personal effects or vehicle entering, or within, a port security area; and
 - (v) ship or class of ship; or
 - (vi) port facility or class of port facility.

(2) The written notice must specify:-

- (a) which of the screenings under sub-regulation (1)(a) of this regulation and which of the searches under sub-regulation (1)(b) of this regulation are part of the Minister's

- directive;
- (b) the permitted extent of those screenings and searches; and
- (c) the duration of the direction.

(3) Before giving a direction under sub-regulation (1) of this regulation, the Minister must, to determine whether the direction is necessary to improve or enhance maritime security to enable Malta to be part of a concerted international response to a threat to maritime security or whether it is in the national interest, consult:-

- (a) the Designated Authority;
- (b) the Maritime Security Committee; and
- (c) as the Minister in each case considers appropriate, representative groups in the maritime industry, government departments and entities.

Powers and duties of the Authority to require screening and searching

39. (1) The Designated Authority may, if it believes on reasonable grounds that there is a risk of a security incident occurring, direct:-

- (a) to screen:-
 - (i) any person boarding a ship;
 - (ii) any thing to be carried by a ship;
 - (iii) any thing in a port security area; and
 - (iv) any person including that person's personal effects or vehicle entering, or within, a port security area; and
- (b) if necessary, to undertake reasonable searches of any:-
 - (i) person boarding a ship; or
 - (ii) thing to be carried by a ship; or
 - (iii) thing in a port security area; or
 - (iv) person including that person's personal effects or vehicle entering, or within, a port security area;
 - (v) ship or class of ship; or
 - (vi) port facility or class of port facility.

(2) The written notice must specify:-

- (a) which of the screenings under sub-regulation (1)(a) of this regulation and which of the searches under sub-regulation (1)(b) of this regulation are part of the Authority's directive;
- (b) the permitted extent of those screenings and searches; and
- (c) the duration of the direction.

(3) Before giving a directive under sub-regulation (1) of this regulation, the Designated Authority must, to determine whether

the directive is necessary to meet the maritime security risk, consult, as the Designated Authority in each case considers appropriate:

- (i) the Maritime Security Committee; and
- (ii) representative groups in the maritime industry, government departments, and entities.

Revocation or extension of a direction

40. The Minister and the Designated Authority may by a written notice revoke or extend a directive at any time.

Taking weapons on to ships or into port security areas

41. (1) A person commits an offence, and is liable on conviction on indictment to imprisonment for a term not less than eighteen months but not more than nine years, who, without lawful authority or reasonable excuse, or without the written permission of the ship security officer (with respect to boarding a ship) or the port facility security officer (with respect to entering a port security area), intentionally takes, or attempts to take, on board a ship or into a port security area:-

- (a) firearm, or any other dangerous or offensive weapon or instrument of any kind: or
- (b) any ammunition; or
- (c) an explosive, incendiary, biological, or chemical substance or device, or any other injurious substance or device of any kind, that could be used to endanger the safety of:-
 - (i) the ship; or
 - (ii) persons on board the ship, or
 - (iii) the port security area; or
 - (iv) persons in the port security area.

(2) A person who has obtained the written permission of a ship security officer or a port facility security officer must, upon the request of an authorised person, present the written permission to that authorised person.

(3) To avoid doubt, a passenger or crew member may take an item covered by sub-regulation (1) on board a ship without the written permission of the port facility security officer if that passenger or crew member has obtained the written permission of that ship's ship security officer.

(4) For the purposes of this section, firearm means any gun, rifle, or pistol, whether acting by force of explosives or not; and includes any gun, rifle, or pistol that:-

- (a) is not capable of discharging any shot, bullet, or other missile, but that by its completion or by the replacement of any component part or parts or by the correction or repair of any defect or defects, would be so capable; or
- (b) is dismantled; or
- (c) is an imitation or replica:

Provided that, a flare or other incendiary safety device is not a weapon if it is carried on board a ship as part of the ship's safety or signaling equipment.

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(5) This regulation is without prejudice to the powers and obligations laid down in Articles 237 and 238 of the Code of Police Laws.

Screening and
searching powers

42. (1) An authorised person and any person identified in a port facility security plan may, if he believes on reasonable grounds that there is a risk of a security incident occurring, direct:-

- (a) to screen, using a detector, a dog, or a mechanical or electronic device or similar mechanism:-
 - (i) any person boarding a ship;
 - (ii) any thing to be carried by a ship;
 - (iii) any thing in a port security area; and
 - (iv) any person (including that person's personal effects) or vehicle entering, or within, a port security area.
- (b) if necessary, to undertake reasonable searches of any:-
 - (i) any person boarding a ship;
 - (ii) any thing to be carried by a ship;
 - (iii) any thing in a port security area;
 - (iv) any person (including that person's personal effects) or vehicle entering, or within, a port security area;
 - (v) any ship or class of ship; and
 - (vi) any port facility or class of port facility specified under these regulations.

(2) If a search is conducted under a directive, issued according to Regulation 39 of these regulations, by an authorised person who is not a member of the police, that authorised person must be accompanied by a member of the police.

(3) A person exercising the power to screen or search under sub-regulation (1) of this regulation, must, before the screening or search is conducted, and on any subsequent request:-

- (a) provide evidence of his or her identity to the person to be screened or searched; and
- (b) inform the person to be screened or searched that the screening or search is authorised under this regulation.

(4) To avoid doubt, things, personal effects, and vehicles may be screened or searched without consent if they are unattended.

(5) Notwithstanding sub-regulations (1)(a)(ii) and (b)(ii) of this regulation, goods subject to the control of Customs may not be screened or searched without the authorisation of the Comptroller of Customs.

(6) Sub-regulation (5) of this regulation does not apply if the Designated Authority has specified that security level 3 applies to the port security area where the screening or searching is to be done.

Power to seize and
detain items

43. (1) If a person authorised to screen or search detects an item and has reasonable grounds to believe that the item may not lawfully be taken on board a ship or into a port security area, that person may seize the item for the purpose of determining whether the item may lawfully be taken on board a ship or into a port security area.

(2) If an item is seized under sub-regulation (1) of this regulation, that person must:-

- (a) make an inventory of the item; and
- (b) make available to the owner or the person from whom the item was seized a copy of the inventory.

(3) If it is determined that the item may lawfully be taken on board a ship or into a port security area, as far as practicable, the item shall be returned to the person from whom the item was seized.

(4) If it is determined that the item may not lawfully be taken on board a ship or into a port security area, the person from whom the item was seized shall arrange for the item to be:-

- (a) taken off the ship; or
- (b) taken out of the port security area; or
- (c) taken off the ship and taken out of the port security area.

(5) Notwithstanding sub-regulation (4) of this regulation:-

- (a) if there is reasonable grounds to believe that the seized item poses an imminent risk to safety, the authorised person shall:-
 - (i) destroy or otherwise dispose of the item; or
 - (ii) deliver the item to the police.
- (b) if the authorised person has reasonable grounds to believe that the seized item may not be lawfully possessed, the authorised person shall deliver the item to the police.

Persons who
refuses to consent
to be screened or
searched

44. (1) If a person refuses to consent to the screening or searching of his or her person or baggage, that person may be required to leave the ship or port security area or both.

(2) If a person required to leave refuses to leave, an authorised person, and any one asked to assist him, may use any force that is reasonably necessary to remove that person.

(3) A person who refuses to leave as required under sub-regulation (1) of this regulation and, after being warned that he or she commits an offence by not leaving, persists in its commission:-

- (a) may be forcibly detained by an authorised person; and
- (b) if detained, must be delivered to a member of the police as soon as practicable:

Provided that these powers shall be exercised solely if in the opinion of the authorised person they are absolutely necessary for the authorised person to take the detained person to the nearest Police Station.

(4) If the person who refuses to consent is a passenger or a crew member, a company or master may refuse to allow that passenger or crew member to board that company's ship.

(5) A company or master who refuses to carry a passenger who refuses consent is not liable to any civil proceedings, other than a proceeding in respect of any right that the passenger may have for the recovery of the fare or part of the fare.

Search of persons
refusing consent to
be searched

45. A member of the police may, without a warrant, search a person and that person's baggage, and may detain that person for the purposes of that search, and may take possession of any item which may not be lawfully taken on-board a vessel or into a port

security area found in the course of that search, if:-

- (a) a company or master refuses to carry a person who has refused to consent to the searching of his or her person or baggage; and
- (b) the member of the police has reasonable grounds to suspect that an offence against these regulations has been, is being, or is likely to be, committed, whether by that person or by any other person.

Powers to detain

46. (1) An authorised person may, without a warrant, detain any person in, or in the vicinity of, a port security area or on board a ship if that authorised person has reasonable grounds to believe that the person has committed, is committing, or about to commit an offence against any of the provisions of these regulations.

(2) A person may, in good faith, assist an authorised person in detaining any person if called upon to do so by that authorised person.

(3) An authorised person who is not a member of the Police and who detains any person under these regulations shall, without delay, inform the Police of the fact of the arrest and shall exercise such power only until it is strictly necessary for the Police to take over custody of the person arrested.

(4) An authorised person exercising the power to detain under sub-regulation (1) of this regulation shall:-

- (a) provide evidence of his or her identity to the person to be detained;
- (b) inform the person to be detained that the such detain is authorised under this section; and
- (c) if not in uniform, provide evidence that he or she is an authorised person to the person to be detained if that person asks for it.

(5) An authorised person who detains a person and delivers him or her to a member of the police, and any person who at his or her request and in good faith assists an authorised person in doing so, is justified in so detaining and delivering that person and in using any force that may be reasonably necessary in doing so.

(6) Any police officer who exercises his powers to detain a person without a warrant shall only exercise such powers until it is strictly necessary for the police officer to convey the person

arrested to a police station and deliver him to a superior officer not below the rank of sergeant.

Right of access to port security areas and ships

47. (1) An authorised person while on duty may, at any time, enter a port security area, or any building, vehicle, or place in any part of a port security area, or any ship, for the purpose of exercising and carrying out his or her powers, functions, and duties under these regulations.

(2) If the police have taken command of any situation at a port security area, the right of authorised persons to enter any part of the port facility or any ship, building, or place is subject to the limitations that the senior member of the police, not below the rank of inspector, present at the port facility specifies.

(3) If a ship, building, vehicle, or place is not being used for commercial purposes, sub-regulation (1) of this regulation does not apply unless the authorised person believes on reasonable grounds that a person is likely to endanger the port security area or any of its facilities or any person who is in that ship, building, vehicle, or place.

(4) Unless otherwise allowed by law, an authorised person may not enter a private building quarters, or a passenger cabin without:-

- (a) a search warrant; or
- (b) the consent of the occupier of that dwellinghouse, crew quarters, or passenger cabin.

(5) An authorised person exercising the power of entry under sub-regulation (4) of this regulation must, before the entry takes place, and on any subsequent request:-

- (a) provide evidence of his or her identity to the occupier;
- (b) inform the occupier that the entry is authorised under this regulation; and
- (c) if not in uniform, provide evidence that he or she is an authorised person to the occupier if the occupier asks for it.

Offences by masters

48. Unless otherwise provided in these regulations, every master who fails to comply with any of the provisions of these regulations commits an offence and is liable, upon conviction, to:-

- (i) imprisonment for a term not exceeding one year; or
- (ii) a fine not exceeding Lm 20, 000; or
- (iii) both imprisonment and a fine.

Offences by Port Facility Operators

49. Unless otherwise provided in these regulations, every port facility operator who fails to comply with these regulations commits an offence, and is liable upon conviction to a fine not exceeding Lm 100,000.

Other Offences

50. Unless otherwise provided in these regulations, every person who, not being a person punishable under regulations 48 and 49, fails to comply with any of the provisions of these regulations commits an offence, and shall be liable upon conviction to:-

- (i) a term of imprisonment not exceeding one year; or
- (ii) a fine not exceeding Lm 20,000; or
- (iii) both imprisonment and a fine:

Provided that where an offence is committed by a body or other association of persons, the fine may be over Lm 20,000 though not exceeding Lm 100,000.

Provisions with respect to offences

51. (1) The provisions of these regulations establishing offences and punishments in respect thereof shall be without prejudice to any liability arising under any other law, and shall not barr the infliction of further punishments contemplated by such other law.

(2) In particular, such provisions referred to in sub-regulation (1) of this regulation shall not affect the application of any higher punishment under any other law.

Exemptions form regulations

52. (1) The Designated Authority may, if it considers it appropriate and on the conditions that it deems appropriate, exempt any person, ship, or port facility from any requirement specified in these regulations.

(2) The Designated Authority may not grant an exemption under sub-regulation (1) of this regulation unless it is satisfied in the circumstances that:-

- (a) the exemption will not breach Malta's international obligations under any maritime convention;
- (b) one or more of the following applies:-
 - (i) the prescribed requirements have been substantially complied with and that further compliance is unnecessary; or
 - (ii) the action taken or provision made in respect of the matter to which the prescribed requirements relate is

as effective or more effective than actual compliance with the prescribed requirements; or

- (i) the prescribed requirements are clearly unreasonably or inappropriate in the particular case; or
- (ii) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case; and
- (c) the risk to safety will not be significantly increased by the granting of the exemption.

Extend application of these regulations

53. If the Designated Authority has reasonable cause to believe that a security risk exists that may warrant the extension of these regulations to a ship or port facility, to which these regulations do not apply, to enhance ship or port security, the Authority may:-

- (a) conduct a security assessment of the port facility; or
- (b) require a security assessment of the port facility to be carried out.

ANNEX 2

Proposed Council Directive 2004/0031 EC

Amended proposal for a Directive of the European Parliament and of the Council on enhancing port security
/* COM/2004/0393 final - COD 2004/0031 */

Amended proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on enhancing port security

(presented by the Commission)

EXPLANATORY MEMORANDUM GENERAL INTRODUCTION

The communication on Maritime Security (COM(2003) 229 final) which incorporated a proposal for ship and ship/port interface security, currently going through the legislative process and referred to in this document as Regulation (EC) Nr. .../..., identified port security as a necessary second step which should secure both the port and the interface between the port and the hinterland. The need for protection extends to people working in or passing through ports, infrastructure and equipment, including means of transport. This proposal builds on to that earlier communication.

WHY ARE PORTS AT RISK?

Ports are an essential link within the total transport chain, linking up maritime with landside trade and passenger flows. Ports are often the focal point for shipments of dangerous cargo, for major chemical and petrochemical production centres, and/or situated near cities. It is clear that terrorist attacks in ports can easily result in serious disruptions to transport systems and trigger knock-on effects on the surrounding industry as well as directly harming people in the port and the neighbouring population. It is within this context that the Commission is proposing to develop a comprehensive port security policy.

INTERNATIONAL FOCUS

Work in the IMO [1] has led to the development of amendments to SOLAS [2] and the ISPS [3] Code. The Commission has proposed a regulation aimed at incorporating these measures into binding community law (COM(2003) 229 final). The legislative process is currently on-going.

[1] IMO: International Maritime Organisation.

[2] SOLAS: Safety Of Life At Sea.

[3] ISPS: International Ship and Port Facility Security.

Although an IMO-ILO [4] Working Group is currently working on a Code of Practice on Port Security, it appears unrealistic to expect results soon. It is to be noted that such a code would not be legally binding. In the light of this the Commission believes that the EU should go ahead with an own port security scheme. This proposal complements the work of the IMO-ILO.

[4] ILO: International Labour Organisation.

NEED FOR A PORT SECURITY DIRECTIVE

The SOLAS amendments, ISPS Code and the proposed regulation, will enhance maritime security by developing security measures on ships and in port facilities [5]. Regulation (EC) Nr. .../... stops at that part of the port which represents the ship/port interface, i.e. the terminal. [6] There is a dual purpose to this proposal: to enhance security in those areas of ports not covered by Regulation (EC) Nr. .../... and to ensure that security measures implemented in application of Regulation (EC) Nr. .../... benefit from enhanced security in adjacent port areas. This proposal does not create new obligations in areas already covered by Regulation (EC) Nr. .../....

[5] In this context "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". "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.

[6] Although it would theoretically be possible for Member States to interpret 'port facility' extensively so as to include the entire port, thus extending application of the ISPS Code to the entire port, it is understood that such interpretation is unlikely to be given.

The Commission therefore considers that this directive achieves the following:

- Guaranteeing and monitoring at Community level the achievement of a sufficient level of port security, by complementing and supporting the security measures applying to the ship/port interface.
- Ensuring harmonised implementation and equal conditions throughout the European Union so as not to create differences for the commercial port users.
- Ensuring that necessary security measures covering the entire port can be implemented as far as possible by relying on already existing tools introduced by Regulation (EC) Nr. .../..., thereby achieving maximum security results through minimum additional burden for the ports.

Against the background of the significant variety of Community ports (large-small, privately-publicly owned, etc.), as well as in view of the diverse activities co-existing within Community-ports (cargo handling, industry, warehousing, transport, environmental areas, conurbations, and many more) a directive is the most appropriate legal instrument to introduce the required flexibility while establishing the necessary common port security level throughout the Community.

It is recognised that a number of port security regimes are already being applied in Member States. This directive allows existing security measures and structures to be maintained provided they comply with the rules of the directive.

Accordingly, the Commission:

- Proposes that the European Parliament and the Council should adopt as soon as possible this directive on enhancing Port Security. The proposal complements the security measures introduced by the regulation on enhancing ship and port facility security (Regulation (EC) Nr. .../...) by ensuring that, as a result, the entire port is covered by a security regime. This new proposal covers any port housing one or more of the port facilities which are covered by Regulation (EC) Nr. .../....

CONTENT OF THE PORT SECURITY DIRECTIVE

The measures required for enhancing port security would follow these principles:

- Port security complements maritime and ship/port interface security and ensures that these security measures are reinforced by security measures in the entire port area;
- A port security assessment decides what measures are required, where and when;
- Security levels distinguish between normal, heightened or imminent threats;
- A port security plan outlines all measures and details for enhancing port security;
- A port security authority is responsible for the identifying and implementing appropriate port security measures by means of the above mentioned assessment and plan;
- A port security officer coordinates development and implementation of the port security plan;
- A port security committee provides advice to the responsible authority;
- Training and control will support implementation of the required measures.

GENERAL PRINCIPLES OF THE PROPOSAL

- The proposal relies on the same security structures and bodies (security assessments, officers, etc.) as Regulation (EC) Nr. .../... so as to ensure a comprehensive security regime for the entire maritime logistics chain from the vessel to the ship/port interface to the entire port to the port/hinterland interface. This approach allows a simplification of procedures as well as synergies in security. In particular, the proposed directive:

- calls upon Member States to define the boundaries of their ports for the purpose of this directive;

- calls upon Member States to ensure that proper port security assessments and port security plans are developed;
- calls upon Member States to determine and communicate the security levels in use and changes thereto;
- calls upon Member States to designate a port security authority for every port or for groups of ports. This is this public authority that will be responsible for the appropriate identification and implementation of port security measures;
- establishes the need to appoint a port security officer for each individual port to ensure proper coordination when port security assessments and plans are established, updated and followed up;
- establishes the general requirement of an advisory security committee, bringing together representatives of all relevant operational and government functions in a port;
- puts forward minimum requirements for security assessments and plans;
- calls for the appointment of focal points in the Member States to provide the necessary communication both to other member states and to the Commission;
- provide for inspection procedures to monitor the implementation of port security measures;
- lays down a procedure for the adaptation of its provisions.

Legal considerations

The Commission proposes to base the directive on Article 80(2) of the EC Treaty, without prejudice to member states' national security legislation and any measures that might be taken on the basis of Title VI of the Treaty on European Union.

Special Considerations

Article 1:

This article sets out the subject-matter of the directive.

Article 2:

This article sets out the scope of the directive.

Article 3:

This article contains the definitions of the main terms used in the directive.

Article 4:

This article imposes upon Member States the obligation to closely coordinate the port security measures with those taken in application of the Regulation on maritime and port facility security.

Article 5:

This article imposes upon Member States the obligation to designate a port security authority. This port security authority will be responsible for the identification and implementation of appropriate port security measures.

Article 6:

This article contains the obligation for Member States to ensure that port security assessments are performed for all their ports covered by this directive. Such assessments will take into account the specificities of different sections of the port, as well as the security assessments developed

for port facilities within the port boundaries as a result of the provisions of the regulation on maritime security. The detailed requirements of a port security assessment are contained in Annex I.

Article 7:

This article contains the obligation for Member States to ensure that port security plans are established for all their ports covered by this directive. Such plans will take into account the specificities of different sections of the port, as well as the security plans in place for the port facilities within the port boundaries as a result of the provisions of the regulation on maritime security. The detailed requirements of a port security plan are contained in Annex II. This Article also encompasses the need for adequate training and exercises. For this purpose it refers to Annex III, containing basic training requirements.

Article 8:

The directive imposes the use of three distinct security levels. Member States are required to introduce such system of levels to their relevant ports, determine and communicate the security levels in use in the different parts of their ports and any changes thereto. Communication will be based on a 'need-to-know' basis.

Article 9:

Article 9 contains the obligation to designate a port security officer for each port covered by this directive, who should have sufficient local knowledge and authority to adequately ensure and coordinate the establishment, update and follow up of port security assessments and plans in their respective ports.

Article 10:

Recognising the need for optimal cooperation between the operational and public authority functions in a port, this article provides for the establishment of an advisory port security committee regrouping these port security stakeholders.

Article 11:

This article contains the requirement to review regularly port security assessments.

Article 12:

Article 12 provides for the possibility for Member States to appoint recognised port security organisations, provided these organisations comply with the conditions set out in Annex IV.

Article 13:

This article provides for the setting up of a focal point for port security, which will be the Commission's contact point for implementation of this directive.

Article 14:

This article encompasses the obligation of Member States to establish an adequate and regular control system concerning port security plans and their implementation. This article also contains the process whereby inspections supervised by the Commission are put in place to check the effectiveness of port security implementation monitoring and measures.

Article 15:

This article indicates that provisions may be adopted in order to define harmonised procedures for the application of the details related to the Annexes to this directive. Such adaptations will be guided by the Committee procedure, as defined in Article 14.

Article 16:

The Commission is assisted by the same committee set up by Regulation (EC) Nr. .../.... This committee acts in accordance with the regulatory procedure (Articles 5 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [7]).

[7] OJ L 184, 17.7.1999, p. 23.

Article 17:

These articles are concerned with the confidentiality of security related information, in particular of inspection reports and answers of Member States.

Article 18:

This article calls upon Member States to institute effective, proportionate and dissuasive penalties for infringement of this directive.

Article 19:

This article contains the obligation upon Member States to bring into force the laws, regulations and administrative provisions necessary to comply with this directive and this not later than one year from the date of its entrance into force.

Article 20:

Contains the entry into force details.

Article 21:

Deals with the addressees of this directive.

Annex I:

Contains the detailed requirements for establishing a port security assessment.

Annex II:

Contains the detailed requirements for establishing a port security plan.

Annex III:

Contains the basic training requirements.

Annex IV:

Contains the detailed conditions to be fulfilled by a recognised port security organisation.

2004/0031 (COD)

Amended proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on enhancing port 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 [8],

[8] OJ C ..., ..., p. ...

Having regard to the opinion of the European Economic and Social Committee [9],

[9] OJ C ..., ..., p. ...

Having regard to the opinion of the Committee of the Regions [10],

[10] OJ C ..., ..., p. ...

Acting in accordance with the procedure laid down in Article 251 of the Treaty [11],

[11] OJ C ..., ..., p. ...

Whereas:

(1) Unlawful acts and 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 people, infrastructure and equipment, including means of transport, in ports as well as in relevant adjacent areas should be protected against unlawful acts and their devastating effects. Such protection would benefit transport users, the economy and society as a whole.

(3) On Day/Month/2003 the European Parliament and the Council of the European Union adopted Regulation (EC) Nr. .../... on maritime security. The maritime security measures imposed by this regulation constitute only part of the measures necessary to achieve an adequate level of security throughout maritime linked transport chains. This regulation is limited in scope to security measures onboard vessels and the immediate ship/port interface.

(4) In order to achieve the fullest protection possible for maritime and port industries, port security measures should be introduced. They should extend beyond the ship/port interface and cover the entire port thus both protecting the port areas and ensuring that security measures taken in application of Regulation (EC) Nr. .../... benefit from enhanced security in adjacent areas. These measures should apply to all those ports in which one or more port facilities are situated which are covered by Regulation (EC) Nr. .../... .

(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 the European Union, the security objective described in recital 2 should be achieved by adopting appropriate measures in the field of port policy establishing joint standards for establishing a sufficient port security level throughout Community ports.

(6) Member States should rely upon detailed security assessments to identify

the exact boundaries of the security-relevant port area, as well as the different measures required to ensure appropriate port security. Such measures shall be different according to the security level in place and will reflect differences in the risk profile of different subareas in the port.

(7) Member States should establish port security plans which thoroughly transpose the findings of the port security assessment. The efficient working of security measures also requires clear task divisions between all parties involved as well as regular exercise of measures. The retention of task divisions and exercise procedures in the format of the port security plan is considered to contribute strongly to the effectiveness of both preventive and remedial port security measures.

(8) Roll-on roll-off vessels are particularly vulnerable to unlawful acts, in particular if they carry passengers as well as cargo. Adequate measures should be taken on the basis of risk assessments which ensure that cars and goods vehicles destined for transport on a roll-on roll-off vessel on domestic and international routes do not cause a risk to the vessel, its passengers and crew as well as the cargo. The measures should be taken in the port or at the port's confines before the cars and goods vehicles enter the vessel and in a way which impedes as little as possible the fluidity of the operations.

(9) Member States should ensure that responsibilities in port security are clearly recognised by all parties involved. Member States shall monitor the compliance with security rules and establish a clear responsible authority for all its ports, approve all security assessments and plans for its ports, set and communicate security levels, ensure that measures are well communicated, implemented and coordinated, and provide for enhancing the effectiveness of security measures and alertness by means of a platform for advice within the port community.

(10) Member States should approve assessments and plans and monitor the implementation in their ports. The effectiveness of the implementation monitoring should be the subject of inspections supervised by the Commission.

(11) Member States should ensure that a focal point takes up the role of contact point between the Commission and Member States.

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

(13) The measures needed to implement this directive 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 [12]. A procedure should be defined for the adaptation of this directive to take account of developments in international instruments and, in the light of experience, to adapt or complement the detailed provisions of the Annexes to this directive, without widening the scope of this directive.

[12] OJ L 184, 17.7.1999, p. 23.

(14) Since the objectives of the proposed action, namely the balanced introduction and application of appropriate measures in the field of maritime transport and port policy, cannot be sufficiently achieved by the Member States and can therefore, by reason of the European scale of this directive, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity set out in Article 5 of the Treaty. In accordance with the principle of proportionality set out in that Article, this directive is limited to the basic joint standards required to achieve the objectives of port security and does not go beyond what is necessary for that purpose,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject-matter

1. The main objective of this directive is to introduce and implement Community measures aimed at enhancing port security in the face of threats of intentional unlawful acts.

It shall also ensure that security measures taken in application of Regulation (EC) Nr. .../.... benefit from enhanced security in adjacent port areas.

2. The measures referred to in paragraph 1 shall consist of:

- a) The setting of common basic rules on port security measures;
- b) The setting up of an implementation mechanism for these rules;
- c) The setting up of appropriate compliance monitoring mechanisms.

Article 2

Scope

1. This directive addresses security measures which need to be observed by or affect people, infrastructure and equipment, including means of transport, in ports as well as in adjacent areas where these have a direct or indirect impact on security in the port.

2. The measures laid down in this directive shall apply to any port located in the territory of a Member State in which one or more port facilities are situated which are covered by Regulation (EC) Nr. .../.... .

3. Member States shall identify for each port the boundaries for the purposes of this directive, appropriately taking into account the information from the port security assessment.

4. Where the boundaries of a port facility within the meaning of Regulation (EC) Nr. .../.... have been defined by the Member State as effectively covering the port, the relevant provisions of Regulation (EC) Nr. .../.... take precedence over those of this directive.

Article 3

Definitions

For the purpose of this directive:

1. "port" or "seaport" means an area of land and water made up of such works and equipment as to permit principally, the reception of ships, their loading and unloading, the storage of goods, the receipt and delivery of these goods, and the embarkation and disembarkation of passengers.
2. "ship/port interface" means the interactions that occur when a ship is

directly and immediately affected by actions involving the movement of persons, goods or the provisions of port services to or from the ship.

3. "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.

4. "focal point for maritime security" means the body designated by each Member State to serve as contact point for the Commission and other Member States and to facilitate, follow and inform on the application of the maritime security measures laid down in this directive, as well as of those laid down in Regulation (EC) Nr. .../.... .

5. "port security authority" means the authority responsible for security matters in a given port.

Article 4

Coordination with measures taken in application of Regulation (EC) Nr. .../....

Member States shall ensure that port security measures introduced by this directive are closely coordinated with measures taken in application of Regulation (EC) Nr. .../.....

Article 5

Port security authority

1. Member States shall designate a port security authority for each port covered by this directive. A port security authority may be appointed for more than one port.

2. The port security authority shall be responsible for the identification and implementation of appropriate port security measures by means of port security assessments and plans.

3. Member States may appoint a 'competent authority for maritime security' under Regulation (EC) Nr. .../.... as port security authority.

Article 6

Port security assessment

1. Member States shall ensure that port security assessments are made for the ports covered by this directive. These assessments should take due account of the specificities of different sections of a port and shall take into account the assessments for port facilities within their boundaries as carried out in application of Regulation (EC) Nr. .../.... . Port security assessments have to be approved by the Member State.

2. Each port security assessment shall be performed according to the detailed requirements provided in Annex I to this directive.

3. Port security assessments may be made by a recognised port security organisation, as referred to in Article 12.

Article 7

Port security plan

1. Member States shall ensure that, as a result of port security assessments, port security plans are developed, maintained and updated. Port security plans should adequately address the specificities of different sections of a port and shall integrate the security plans for port facilities within their boundaries established in application of Regulation (EC) Nr. .../.... . Port

security plans must to be approved by the Member State. They can only be implemented once that approval has been given.

2. Port security plans shall identify, for each of the different security levels referred to in Article 8:

- a) the procedures to be followed;
- b) the measures to be put in place;
- c) the actions to be undertaken.

3. Each port security plan shall be established in accordance with the detailed requirements provided in Annex II to this directive.

4. Port security plans may be developed by a recognised port security organisation as referred to in Article 12.

5. Member States shall ensure that the implementation of port security plans is coordinated with other control activities carried out in the port.

6. Member States shall ensure that adequate training and exercises are performed, taking into account the basic training requirements listed in Annex III.

7. In particular, the port security plan shall ensure that, on the basis of risk assessments, adequate security controls are carried out by competent national authorities on cars and goods vehicles set for embarkation on vessels which also carry passengers.

This particular requirement applies to domestic and international traffic; in the case of international traffic the Member States concerned shall co-operate in the risk assessment.

Article 8

Security levels

1. Member States shall introduce a system of port security levels.

2. There shall be 3 security levels, as defined in Regulation (EC) Nr. .../.....:

- Security level 1 means the level for which minimum appropriate protective security measures shall be maintained at all times;
- Security level 2 means the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of security incident;
- Security level 3 means the level for which further specific protective security measures shall be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target.

3. Member States shall determine the security levels in use. At each security level, a Member State may determine that different security measures are to be implemented in different parts of the port depending on the outcome of the port security assessment.

4. Member States shall communicate the security level in force for each port as well as any changes thereto. Security levels should be made known on a 'need-to-know' basis in accordance with the port security plan.

Article 9

Port security officer

1. A port security officer shall be designated for each port. Each port shall

have a different port security officer. Small adjacent ports may have a shared security officer.

2. The port security officers shall fulfil the role of point of contact for port security related issues and should have sufficient authority and local knowledge to adequately ensure and coordinate the establishment, update and follow-up of port security assessments and port security plans.

3. Where the port security officer is not the same as the port facility(ies) security officer(s) under Regulation (EC) Nr. .../.... , close cooperation between them must be ensured.

Article 10

Port security committee

1. Member States shall ensure that port security committees are established to provide practical advice in the ports covered by this directive, unless the specificity of a port renders such committees superfluous.

2. The membership of the port security committee may vary between ports, but should always reflect the operational and public authority functions in a port. It shall function on a 'need to know basis'.

Article 11

Reviews

1. Member States shall ensure that port security assessments and port security plans are reviewed every time security-relevant changes occur. They must be reviewed at least every five years. Upon review the port security assessments and port security plans must be approved by the Member State. A reviewed plan can only be implemented once that approval has been given.

2. Reviews of port security assessments and port security plans may be developed by a recognised port security organisation, as referred to in Article 12.

Article 12

Recognised port security organisation

Member States may appoint recognised port security organisations for the purposes specified in this directive. Recognised port security organisations must fulfil the conditions set out in Annex IV.

Article 13

Focal point for port security

Member States shall appoint for port security aspects the focal point appointed under Regulation (EC) Nr. .../.... for maritime and port facility security.

The focal point for port security shall communicate to the Commission the list of ports concerned by this directive.

The focal point for port security shall establish and maintain a list of the contact details of the authorities for port security, as well as the port security officers. This list shall be communicated to the Commission and updated upon changes.

Article 14

Implementation and conformity checking

1. Member States shall set up a system ensuring adequate and regular

supervision of the port security plans and their implementation.

2. Six months after the date referred to in Article 19, the Commission, in co-operation with the focal points referred to in Article 13, shall start a series of inspections, including inspections of a suitable sample of ports, to monitor the application by Member States of this directive. These inspections shall take account of the data supplied by the focal points, including monitoring reports. The procedures for conducting such inspections shall be adopted in accordance with the procedure referred to in Article 16 (2).

3. The officials mandated by the Commission to conduct such inspections in accordance with paragraph 2 shall exercise their powers upon production of an authorisation in writing issued by the Commission and specifying the subject-matter, the purpose of the inspection and the date on which it is to begin. The Commission shall in good time before inspections inform the Member States concerned of the inspections.

The Member State concerned shall submit to such inspections and shall ensure that bodies or persons concerned also submit to those inspections.

4. The Commission shall communicate the inspection reports to the Member State concerned, which within three months of receipt of the report shall indicate sufficient details of the measures taken to remedy any shortcomings. The report and the answers shall be communicated to the Committee referred to in Article 16.

Article 15

Adaptations

The provisions of Annexes I to IV may be amended in accordance with the procedure referred to in Article 16 (2), without broadening the scope of this directive.

Article 16

Committee procedure

1. The Commission shall be assisted by the committee set up by Regulation (EC) Nr. .../.... and comprising representatives of the Member States, chaired by a Commission representative.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC [13] shall apply, having regard to the provisions of Article 8 thereof.

[13] OJ L 184, 17.7.1999, p. 23.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.

Article 17

Confidentiality and dissemination of information

1. In applying this directive, the Commission shall take, in accordance with the provisions of Commission Decision 2001/844/EC, ECSC, Euratom [14], appropriate measures to protect information subject to the requirement of confidentiality to which it has access or which is communicated to it by Member States.

[14] OJ L 317, 3.12.2001, p. 1.

The Member States shall take equivalent measures in accordance with relevant national legislation.

2. Any personnel carrying out security inspections, or handling confidential information related to this directive, must have an appropriate level of security vetting by the Member State of which the personnel concerned has the nationality.

3. Without prejudice to the public right of access to documents as laid down in Regulation (EC) Nr. 1049/2001 of the European Parliament and of the Council [15], the inspection reports and the answers of the Member States referred to in Article 14 (4) shall be secret and not be published. They shall only be available to the relevant authorities, which shall communicate them only to interested parties on a need-to-know basis, in accordance with applicable national rules for dissemination of sensitive information.

[15] OJ L 145, 31.5.2001, p. 43.

4. Member States shall as far as possible and in accordance with applicable national law treat as confidential information arising from inspection reports and answers of Member States when it relates to other Member States.

5. Unless it is clear that the inspection reports and answers shall or shall not be disclosed, Member States or the Commission shall consult with the Member State concerned.

Article 18

Sanctions

The Member States shall ensure that effective, proportionate and dissuasive sanctions are introduced for infringements of the national provisions adopted pursuant to this directive.

Article 19

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this directive not later than [...] [one year from the date of its entry into force]. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this directive.

Article 20

Entry into force

This directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 21

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament For the Council

The President The President

ANNEX I

Port security assessment

The port security assessment is the basis for the work on the port security plan and its eventual implementation. The port security assessment shall at least look into the following elements:

- Identification and evaluation of important assets and infrastructure it is important to protect;
 - Identification of possible threats to the assets and infrastructure and the likelihood of their occurrence, in order to establish and prioritise security measures;
 - Identification, selection and prioritisation of counter-measures and procedural changes and their level of effectiveness in reducing vulnerability;
- and
- Identification of weaknesses, including human factors in the infrastructure, policies and procedures.

For this purpose the assessment shall at least cover the following aspects:

- identify all areas which are relevant for port security, thus also identifying the port boundaries. This includes port facilities which are already covered by Regulation (EC) Nr. .../.... and whose risk assessment will serve as a basis;
- identify security issues deriving from the interface between port facility and other port security measures;
- identify risk groups among personnel working in a port;
- subdivide, if useful, the port according to the likelihood of becoming a target of intentional unlawful acts. Areas will not only be judged upon their direct profile as a potential target, but also upon their potential role of passage when neighbouring areas are targeted;
- identify risk variations, e.g. those based on seasonality;
- identify the specific characteristics of each sub-area, such as location, accesses, power supply, communication system, ownership and users and other elements considered security-relevant;
- identify potential threat scenarios for each identified sub-area. A sub-area, infrastructure, cargo, baggage, people or transport equipment within this area can be a direct target of an identified threat, or it can be part of a wider area developed in the threat scenario;
- identify the specific consequences of a threat scenario. Consequences can impact on one or more sub-areas. Both direct and indirect consequences should be identified. Special attention should be given to the risk of human casualties;
- identify the possibility of cluster effects of acts of unlawful interference;
- identify the vulnerabilities of each sub-area;

- identify all organisational aspects relevant to overall port security, including the division of all security-related authorities, existing rules and procedures;
- identify vulnerabilities of the overarching port security related to organisational, legislative and procedural aspects;
- identify measures, procedures and actions aimed at reducing critical vulnerabilities. Specific attention should be paid to the need for, and the means of, access control or restrictions to the entire port or to specific parts of a port, including identification of passengers, port employees or other workers, visitors and ship crews, area or activity monitoring requirements, cargo and luggage control. Measures, procedures and actions should be in line with the perceived risk, which may vary between port areas;
- identify an organisational structure supporting the enhancement of port security;
- identify how measures, procedures and actions should be reinforced in the event of an increase of security level;
- identify specific requirements for dealing with established security concerns, such as 'suspect' cargo, luggage, bunker, provisions or persons, unknown parcels, known dangers (e.g. bomb). These requirements should analyse desirability conditions for either clearing it on site or clearing it upon transport towards a secure area;
- identify measures, procedures and actions aimed at limiting and mitigating consequences;
- identify task divisions allowing for the appropriate and correct implementation of the measures, procedures and actions identified;
- pay specific attention, where appropriate, to the relationship with other security plans (e.g. port facility security plans) and other already existing security measures. Attention should also be paid to the relationship with other response plans (e.g. oil spill response plan, port contingency plan, medical intervention plan, nuclear disaster plan, etc.);
- identify communication requirements for the implementation of the measures and procedures;
- pay specific attention to measures to protect security-sensitive information from disclosure. Identify the need-to-know requirements of all those directly involved as well as, where appropriate, the general public.

ANNEX II

Port security plan

The port security plan sets out the port's security arrangements. It will be based on the findings of the port security assessment. It will clearly set out detailed measures. It will contain a control mechanism allowing, where necessary, for appropriate corrective measures to be taken.

The port security plan will be based on the following general aspects:

- Define all areas relevant for port security. Depending on the port security assessment, measures, procedures and actions may vary from sub-area to sub-area. Indeed, some sub-areas may require stronger preventive measures than others. Special attention should be paid to the interfaces between sub-areas, as identified in the port security assessment;

- Ensure coordination between security measures for areas with different security characteristics;
- Provide, where necessary, for varying measures both with regard to different parts of the port, changing security levels, and specific intelligence. Based on these general aspects the port security plan shall attribute tasks and specify work plans in the following fields:
 - access requirements. For some areas, requirements will only enter into force when security levels exceed minimal thresholds. All requirements and thresholds should be comprehensively included in the port security plan;
 - ID, luggage and cargo control requirements. Requirements may or may not apply to sub-areas; requirements may or may not apply in full to different sub-areas. Persons entering or within a sub-area may be liable to control. The port security plan will appropriately respond to the findings of the port security assessment, which is the tool by which the security requirements of each sub-area and at each security level will be identified. When dedicated identification cards are developed for port security purposes, clear procedures should be established for the issue, the use-control and the return of such documents. Such procedures should take into account the specificities of certain groups of port users allowing for dedicated measures in order to limit the negative impact of access control requirements. Categories should at least include seafarers, authority officials, people permanently working in the port, people regularly working or visiting the port, residents living in the port and people occasionally working or visiting the port;
 - liaison with cargo control, baggage and passenger control authorities. Where necessary, the plan is to provide for the linking up of the information and clearance systems of these authorities, including possible pre-arrival clearance systems.
 - procedures and measures for dealing with suspect cargo, luggage, bunker, provisions or persons, including identification of a secure area; as well as for other security concerns and breaches of port security;
 - monitoring requirements for sub-areas or activities within sub-areas. Both the need for and possible technical solutions will be derived from the port security assessment;
 - signposting. Areas with any requirements (access and/or control), should be properly signposted. Control and access requirements shall appropriately take into account all relevant existing law and practices. Monitoring of activities should be appropriately indicated if national legislation so requires;
 - communication and security clearance. All relevant security information must be properly communicated according to security clearance standards included in the plan. In view of the sensitivity of some information, communication will be based on a need-to-know basis, but it will include where necessary procedures for communications addressed to the general public. Security clearance standards will form part of the plan and are aimed at protecting security sensitive information against unauthorised disclosure.
 - reporting of security incidents. With a view to ensure a rapid response the port security plan should set out clear reporting requirements to the port

security officer of all security incidents and/or to the competent authority for port security.

- integration with other preventive plans or activities. The plan should specifically deal with integration with other preventive and control activities in force in the port.
- integration with other response plans and/or inclusion of specific response measures, procedures and actions. The plan should detail the interaction and coordination with other response and emergency plans. Where necessary conflicts and shortcomings should be resolved.
- training and exercise requirements.
- operational port security organisation and working procedures. The port security plan will detail the port security organisation, its task division and working procedures. It will also detail the coordination with port facility and ship security officers, where appropriate. It will delineate the tasks of the port security committee, if this exists.
- procedures for adapting and updating the port security plan.

ANNEX III

Basic training requirements

Various types of exercises which may include participation of port facility security officers, in conjunction with relevant authorities of Member States, company security officers, or ship security officers, if available, should be carried out at least once each calendar year with no more than 18 months between the exercises. Requests for the participation of company security officers or ships security officers in joint exercises should be made bearing in mind the security and work implications for the ship. These exercises should test communication, coordination, resource availability and response. These exercises may be:

- (1) full scale or live;
- (2) tabletop simulation or seminar; or
- (3) combined with other exercises held such as emergency response or other port State authority exercises.

ANNEX IV

Conditions to be fulfilled by a recognised port security organisation

A recognised port security organisation should be able to demonstrate:

- (1) expertise in relevant aspects of port security;
- (2) an appropriate knowledge of port operations, including knowledge of port design and construction;
- (3) an appropriate knowledge of other security relevant operations potentially affecting port security;
- (4) the capability to assess the likely port security risks;
- (5) the ability to maintain and improve the port security expertise of its personnel;
- (6) the ability to monitor the continuing trustworthiness of its personnel;
- (7) the ability to maintain appropriate measures to avoid unauthorised disclosure of, or access to, security-sensitive material;
- (8) the knowledge of relevant national and international legislation and

- security requirements;
- (9) the knowledge of current security threats and patterns;
- (10) the knowledge of recognition and detection of weapons, dangerous substances and devices;
- (11) the knowledge of recognition, on a non-discriminatory basis, of characteristics and behavioural patterns of persons who are likely to threaten port security;
- (12) the knowledge of techniques used to circumvent security measures;
- (13) the knowledge of security and surveillance equipment and systems and their operational limitations.

A recognised port security organisation which has made a port security assessment or review of such an assessment for a port is not allowed to establish or review the port security plan for the same port.

(3)

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): Inland, air and maritime transport policy

Activit(y/ies): Implementation of port security measures and the monitoring thereof

Title of action: Directive of the European Parliament and of the Council on enhancing port security

1. BUDGET LINE(S) + HEADING(S)

06 07 01 Transport security

06 01 04 13 Transport security administrative management

06 02 11 03 Committees

2. OVERALL FIGURES

2.1 Total allocation for action (Part B): See point 6.1

2.2 Period of application:

Indefinite, starting in 2006

2.3 Overall multi-annual estimate of expenditure

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) (see point 6.1.1)

EUR million (to three decimal places)

> TABLE POSITION>

b) Technical and administrative assistance and support expenditure (see point 6.1.2)

> TABLE POSITION>

> TABLE POSITION>

(c) Overall financial impact of human resources and other administrative expenditure (see points 7.2 and 7.3)

> TABLE POSITION>

> TABLE POSITION>

2.4 Compatibility with financial programming and financial perspective

New action

[X] Proposal is compatible with existing financial programming.
[...] Proposal will entail reprogramming of the relevant heading in the financial perspective.

[...] Proposal may require application of the provisions of the Interinstitutional Agreement.

2.5 Financial impact on revenue [16]

[16] For further information, see separate explanatory note.

[X] Proposal has no financial implications (involves technical aspects regarding implementation of a measure).

3. BUDGET CHARACTERISTICS

> TABLE POSITION >

4. LEGAL BASIS

Article 80(2) of the EC Treaty

5. DESCRIPTION AND GROUNDS

5.1 Need for Community intervention [17]

[17] For further information, see separate explanatory note.

5.1.1 Objectives pursued

After the events of September 11th 2001, the European Union reiterated its support to the global community in developing all necessary means of dealing with the terrorist threat. Consequently, the EU developed legislation on aviation security and turned to the problem of terrorist gateways through international maritime transport. A recent document of the OECD [18] summarises the terrorist threat to which maritime transport, including ports, is exposed.

[18] OECD, Directorate for Science, Technology and Industry, Maritime Transport Committee, Security in Maritime Transport: Risk Factors and Economic Impact, July 2003.

The IMO Diplomatic Conference on 12 December 2002 adopted amendments to the SOLAS Convention and the related ISPS-Code on a security regime for international maritime shipping and the ship/port interface.

The results of the IMO Diplomatic Conference are in the process of being incorporated into EU legislation in the form of a regulation to ensure a uniform application. Parts of the non-mandatory elements of the ISPS Code will be made mandatory and there will be fine-tuning of the IMO texts to address the specific conditions in the EU.

However, the scope of IMO rules limits the field of application to international shipping and the ship/port interface. Although already a significant breakthrough, this limited scope leaves an unwanted void in security since the areas beyond the ship/port interface fall outside the coverage. This is the inevitable consequence of the way these new security rules were adopted: they were tailored as amendments to an existing international convention. It was equally recognised that considerable additional work was required to address the issue of port security beyond the

ship/port interface. A joint IMO/ILO working group is working on detailed guidance on port security; it may take time to develop. Elsewhere this temporary void is already being addressed. This is done by applying all new IMO rules to the entire port (US approach), or by adopting additional security measures with a direct or indirect impact on ports (national port security measures in EU Member States, the US rules like the Container Security Initiative-CSI, Container Trade Partnership-CTPAT, 24 hour advance notification rule, etc.).

In view of the above, a community directive on port security is considered necessary to:

- provide the Member States with a uniform framework to enhance security in ports;
- establish a uniform approach to integrate key maritime and non-maritime port areas in an overarching port security framework;
- support Member States in developing secure ports both towards maritime transport and towards landside population, as well as vis-à-vis the marine and land environment;
- ensure uniform conditions throughout the European Union for access to and control of markets and activities associated with the port sector.

5.1.2 Measures taken in connection with ex ante evaluation

Between February and December 2002 the Member States and the Commission participated in three IMO technical sessions and a diplomatic conference devoted to urgent consideration of the security of international maritime transport. The community considers that this requires priority action.

During this lead period it became clear that security does not start or end in the vicinity of the ship (the ship/port interface). For optimal effectiveness, transport security should ultimately cover the entire supply chain from seller to purchaser. Within this supply chain port security has been repeatedly emphasised as being critical to overall transport security (Commission communication on enhancing maritime transport security, WCO, US Maritime Security Bill, CTPAT). Most notably:

- Without security in the port area adjacent to the ship/port interface, the risk of 'contamination' of the secured port facility is considered to be high. Therefore, one can consider that saving on costs for basic preventive port security measures would be strongly outweighed by the cost of having to add costly additional security checks at the ship/port interface.
- Industry has indicated on several occasions that it will have invested considerable amounts by July 2004 in the development of ship and port facility security measures. Consequently there is a wish to eliminate clear security voids (such as insufficient or non-existing port security measures) which could lessen the effectiveness of these investments. In view of the geographic mix of facilities and non ship/shore areas within ports, voids in general port security could indeed pose problems to the security of the ship/port interfaces.

In other parts of the world satisfactory port security is already considered to

be part of the requirements for securing maritime trade. Satisfactory levels of port security may, in addition to compliance with the ISPS Code, develop into preconditions for unrestricted trade flows from these ports.

Irrespective of the negative signal the EU would send out if it were to neglect its own ports' security beyond the ship/port interface, the costs of 'doing nothing' may well, in case of a successful terrorist attack, rise to alarming levels. Firstly, the preservation of human lives is an aim in itself. Secondly, the terrorist threat and the resulting fear directly impacts on the efficiency of the global economy. Thirdly, in case of a successful attack it is likely that, as a reaction, many ports could be closed temporarily to reassess their security level and the actual threat. The port in which an attack was carried out may obviously incur enormous damage to installations and trade image.

The economic costs strictu sensu can be illustrated by a few examples given by the OECD: [19]

[19] OECD, op.cit.

A labour dispute in US western coast ports resulted in a 10 day lock out in these ports. A moderate estimate calculated the resulting costs at US\$ 467 million. Shippers indicated their intent to change their entire logistic chains, with rocketing costs, had the lock out continued.

- US average stock levels have been reduced over the 1990s from 1.57 months to 1.36 months in 2001. In 2002 average stocks rose to 1.43 months. This evolution, due to uncertainty and fear for supply stability, has eliminated the progress of half a decade and represents for the US an extra capital cost of US\$ 50-80 bn. [20]

[20] The Friction Economy, in: Fortune, February 2003; Bowserbox, D and Closs, D., Supply Chain Sustainability and Cost in the New War Economy, in: Traffic World, April 2002.

- A full scale simulation of container bombs entering the US, partly caught in port, partly slipping through in the logistic chain, resulted in a total estimated cost of US\$ 58 bn. [21] It would also take up to 92 days before port backlogs were completely eliminated. This estimate takes only into account costs arising in the US, and therefore neglects the resulting costs elsewhere.

[21] Conference Board, Booz Allen Hamilton, October 2002.

A uniform port security framework in all EU ports will reduce security related inter-port competition within EU boundaries. As regards third countries, it will remove any incentive to compare EU ports with regard to their respective security. Hence a port security directive will minimise or eliminate undesirable competitive distortions.

Finally, it should be mentioned that additional labour can be expected. The bulk of this additional labour will be related to implementing the ISPS Code. However also in port security, new labour opportunities might arise.

5.1.3 Measures taken following ex post evaluation

None/Not applicable.

5.2 Actions envisaged and budget intervention arrangements

The directive requires each Member State to identify the boundaries of the ports subject to the directive. Member States should outline a security policy for these areas and ensure that security assessments and appropriate security plans are established and updated. The introduction and implementation of each national port's security policy must be monitored by a national central authority. For the purposes of reaching a desired common level of implementation, the directive includes priority issues in its Annex for the port security assessment and the port security plan.

As the overall scheme must be consistent to ensure its reliability at EU level the Commission is called on to carry out inspections to verify implementation of the national plans adopted pursuant to this directive.

5.3 Methods of implementation

Direct management by the Commission using regular or outside staff.

Since any compliance monitoring would begin only 18 months after the compliance monitoring carried out under the maritime security regulation, and given the inevitable link between the monitoring of maritime security and of port security, it is proposed to use the expertise gained by the compliance monitors to carry out the monitoring under this Directive.

However, in order to introduce into the monitoring process the necessary element of specific port security expertise, eight additional port security inspectors would be required (see 7.1 below).

6. FINANCIAL IMPACT

6.1 Total financial impact on Part B (over the entire programming period)

The cost of this scheme is calculated by adding up the individual costs on an annual basis, starting in 2006, when the proposed Community action is estimated to have fully become operational.

6.1.1 Financial intervention

The directive provides for a monitoring and inspection exercise to be carried out by the Commission. It is expected that, as from 2006, approximately 84 inspection visits will be carried out each year (5 days per port * EUR1500). The Commission also intends to commission a study to evaluate the impact and the effectiveness of the measures adopted. Such a study should be conducted in 2008, and then every three years. Such regular evaluation is necessary to enable the Commission to propose, via the committee procedure, any adjustments to the proposed system which might prove necessary. The unit cost of each study is estimated at EUR150 000.

Inspection visits: for the calculation of the number of inspection visits, see 7.1. In the first year an additional cost for on-site working equipment (laptop PCs) is expected.

> TABLE POSITION>

(If necessary, explain the method of calculation.)

6.1.2 Technical and administrative assistance, support expenditure and IT expenditure (commitment appropriations)

> TABLE POSITION>

(If necessary, explain the method of calculation.)

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

7.1 Impact on human resources

This directive requires compliance monitoring. It is proposed that this be based on the experience gained from similar monitoring carried out pursuant to the maritime security regulation.

In order to identify the required number of Inspectors six parameters are relevant:

- Inspections should be performed by two inspectors together;
- Compliance monitoring should include the inspection of national security monitoring systems at a rate of one third per annum. Since ports are operated in a maximum of 20 Member States , the present estimate is foreseen 7 inspections per year;
- A study on port security measures in EU ports identifies 769 ports in the EU based upon Lloyds Fairplay data. Compliance monitoring of the application of this directive should be performed by means of spot checks in ports at a rate of 10% p.a. of all identified ports;
- Compliance monitoring, preparation, travel and follow-up is expected to represent a workload of 1 working week per inspection;
- Inspectors will perform their inspections every second week

This results in about 20 inspections per year per inspector (assuming 40 working weeks a year). For inspections, teams of 2 inspectors are required thus resulting in 2 inspectors performing 20 inspections per annum. 10% of 769 ports is about 77 ports a year. 1/3rd of all national security systems represents 7 inspections a year; bringing the total to at least 84 inspections a year. As a consequence 8 inspectors are required for these inspections. As working equipment, 8 laptops are required, at a unit price of EUR 2000.

One administrator will be in charge of the entire process.

> TABLE POSITION>

7.2 Overall financial impact of human resources

> TABLE POSITION>

The amounts are total expenditure for twelve months.

7.3 Other administrative expenditure deriving from the action

Committee of experts: one-day meetings with experts from the sector concerned to enable the Commission to draw up the adaptations to the rules provided for in Article 15 of the proposal for a Directive. It is expected that in the first year three meetings would be required and afterwards one meeting a year should suffice.

> TABLE POSITION>

The amounts are total expenditure for twelve months.

(1) Specify the type of committee and the group to which it belongs.

I. Annual total (7.2 + 7.3)

II. Duration of action

III. Total cost of action (I x II) // EUR 1 028 250 (first year)

EUR 990 750

(subsequent years)

Indefinite

Indefinite

The needs in terms of human and administrative resources will be covered within the allocation granted to the managing DG in the framework of the annual allocation procedure.

8. FOLLOW-UP AND EVALUATION

8.1 Follow-up arrangements

Follow-up arrangements will be adopted involving inspections in the Member States and periodic impact studies.

Six months after the date of application of the proposed directive, the Commission, in cooperation with the national authorities, will start a series of inspections to verify the means of monitoring implementation of the national plans adopted pursuant to the directive. These inspections will take account of the data supplied by the national authorities, including the monitoring reports.

8.2 Arrangements and schedule for the planned evaluation

The Commission intends to launch a study to evaluate the impact and the effectiveness of the measures adopted. Such a study should be conducted in year N+2, and then every three years.

9. ANTI-FRAUD MEASURES

The activities of the commission's maritime security inspectors will be subject to the commission's normal audit procedures.

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES(SMEs)

Title of proposal

Directive of the European Parliament and of the Council on enhancing port security

Document reference number

COM (2004) XXXX

The proposal

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

Community legislation has already been developed for ship and port facility security, which is intended to be complemented by this Directive on port security. Hence, also the measures covered by this proposal must be applied consistently throughout the Community in order not to offset the EU wide consistency of the measures it intends to complement. Moreover, uniform application avoids security related distortions of competition.

The impact on business

2. Who will be affected by the proposal?

- Which business sectors?

Shippers, agents, port managers, companies set up within the port boundaries.

- What sizes of company (share of small and medium-sized businesses)?

All sizes of company active in these sectors.

- Are there particular geographical areas of the Community where these businesses are found?

No, 20 Member States are concerned as port states.

3. What will business have to do to comply with the proposal?

Where not already in place, introduce appropriate security procedures and, where appropriate, acquire the necessary equipment. Ensure that staff receive training on security requirements. Additional staff may be needed.

4. What economic effects is the proposal likely to have:

- on employment?

Jobs may be created to perform port related security tasks, and probably also at specialised security firms.

- on investment and the creation of new businesses?

Companies active in the port may have to acquire security equipment.

Specialised security firms may expand.

- on the competitiveness of businesses?

None, in that all will be subject to the same requirements.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized enterprises (reduced or different requirements, etc.)?

Not directly, but requirements are based upon a case by case assessment and will therefore have optimal adaptation to specific concern, within the limits of a minimal security threshold.

Consultation

6. List the organisations which have been consulted about the proposal and outline their main views.

- The Commission has consulted all Member States and all interested industry representatives. The replies clearly show that the sector recognises the need for port security measures. There is wide acknowledgement for a Community approach, provided that the measures sufficiently take into account the various structures of and in ports (on organisational level, in terms of risk level).

- All European organisations representing this sector participated as observers in the work of the IMO on maritime security. Employers, employees and government representatives are participating in the work of the joint IMO-ILO Working Group developing detailed guidance for port security.

The Commission has commissioned a study of the impact of these measures. The consultant associated the European Sea Ports Organisation (ESPO), the Federation of European Private Port Operators (FEPORT) and the European Community Shipowners' Association (ECSA) with its work.

While the industry has to invest in developing ship and port facility security measures, there is concern of eliminating clear security voids (such as minor or non-existing port security measures) which may render these investments idle. In view of the geographic mix of facilities and non ship/shore areas

security voids in general port security may indeed pose problems to the security of the ship/port interfaces.

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