


DMA Circular no. 08/2011

Subject:	Measures for preventing piracy and armed robbery against Danish ships
Category:	Safety and security
DMA reference:	201114321
Date:	21 December 2011
Approved by:	Per Sønderstrup 
Rule reference:	Order on technical regulation on measures for preventing piracy and armed robbery against Danish ships (order no. 1084 of 30 November 2011)

From 1 January 2012, the order on technical regulation on measures for preventing piracy and armed robbery against Danish ships will enter into force.

Merchant ships which must have a safety management system in accordance with the ISM Code (the Code on International Safety Management) or a ship security plan in accordance with the ISPS Code (the Code for International Ship and Port Facility Security) must, either in the safety management system or in the ship security plan, have procedures for navigation or calls in ports in areas presenting a risk of piracy and armed robbery against ships. If the procedures are included in the ship's security plan, the procedures must be made available to the ship's crew.

Shipowners whose ships are covered by the above must, furthermore, have procedures in their ISM systems for assessing whether an area presents a risk of piracy or armed robbery against ships.

All merchant ships for which an ISM system is not mandatory in accordance with the ISM Code as well as shipping companies operating such ships must have procedures equivalent to those mentioned above.

The RO is hereby *authorised* to conduct an *initial verification of compliance* with the the Danish Maritime Authority's order no. 1084 of 30 November 2011 on measures for preventing piracy and armed robbery against Danish ships and to issue a statement of compliance.

The RO is hereby *authorised* to conduct a *periodical verification of compliance* with the the Danish Maritime Authority's order no. 1084 of 30 November 2011 on measures for preventing piracy and armed robbery against Danish ships and to issue or endorse a statement of compliance.

The technical regulation on measures for preventing piracy and armed robbery against Danish ships (order no. 1084 of 30 November 2011) is attached to this circular in both the Danish and the English language.

Action required: The RO is required to do the following:

With regard to the ISM Document of Compliance (DOC):

The ISM auditor must verify that a written “anti-piracy” procedure exists, includes the required contents and is accessible to all employees. The Danish Maritime Authority’s order on technical regulation no. 1084 of 30 November 2011 on measures for preventing piracy and armed robbery against Danish ships applies.

With regard to the Safety Management Certificate (SMC):

The ISM auditor must verify that a written “anti-piracy” procedure exists, includes the required contents and is accessible to all employees. The Danish Maritime Authority’s order on technical regulation no. 1084 of 30 November 2011 on measures for preventing piracy and armed robbery against Danish ships applies.

With regard to the International Ship Security Certificate (ISSC):

The ISPS auditor must verify that a written “anti-piracy” procedure exists, includes the required contents and is accessible to all employees. The Danish Maritime Authority’s order on technical regulation no. 1084 of 30 November 2011 on measures for preventing piracy and armed robbery against Danish ships applies.

With regard to non-ISM/non-ISPS ships:

The RO is *authorised* to conduct an *initial verification of compliance* with the the Danish Maritime Authority’s technical regulation no. 1084 of 30 November 2011 on measures for preventing piracy and armed robbery against Danish ships and to issue a statement of compliance.

The RO is authorised to conduct a *periodical verification of compliance* with the the Danish Maritime Authority’s technical regulation no. 1084 of 30 November 2011 on measures for preventing piracy and armed robbery against Danish ships and to issue or endorse a statement of compliance.

In case of questions about the above, please contact: cfs@dma.dk

Translation: Only the Danish text has legal validity

Order no. 1084 of 30 November 2011 issued by the Danish Maritime Authority

Order on technical regulation on measures for preventing piracy and armed robbery against Danish ships

Pursuant to section 6, section 17(6), section 22 and section 32 of the act on safety at sea (*lov om sikkerhed til søs*), cf. consolidated act no. 654 of 15 June 2010, and by authority, the following provisions are laid down:

Application of the regulation to Danish and foreign ships

Section 1. This regulation shall apply to merchant vessels flying the Danish or Greenland flag, cf. however subsection 2.

Subsection 2. This regulation shall not apply to ships exclusively engaged in voyages to Greenland, Faroese, Icelandic or European ports and to shipping companies exclusively operating such ships.

Measures for preventing piracy and armed robbery on Danish ships

Section 2. Merchant ships shall have procedures for navigation or port calls in areas representing a risk of piracy and armed robbery against ships.

Section 3. As regards merchant ships obliged to have a safety management system according to the ISM Code (International Safety Management Code) or a security plan pursuant to the ISPS Code (International Ship and Port Facility Security Code), the procedures mentioned in section 2 shall either be contained in the safety management system or in the security plan. If the procedures are contained in the ship security plan, they shall be made available to the ship's crew in the same way as the procedures in the safety management system.

Section 4. Shipping companies whose ships are covered by sections 2-3 shall, furthermore, in their safety management systems have established procedures for assessing whether an area represents a risk of piracy or armed robbery against ships.

Section 5. Merchant ships not obliged to have a safety management system pursuant to the ISM Code or a security plan pursuant to the ISPS Code as well as shipping companies operating such ships shall have procedures corresponding to those mentioned in sections 3-4.

Section 6. The procedures mentioned in sections 2-5 shall contain provisions on the prevention of armed robbery, including:

- 1) an assessment whether an area represents a risk of piracy or armed robbery against ships;

- 2) updating of the situation on relevant websites, such as MSCHOA,¹ NATO Shipping Center, ReCAAP ISC² and through NAVWARNS;
- 3) relevant measures for protecting the ship and its crew;
- 4) radar monitoring of the entire horizon and continuous watchkeeping to assist the navigating officer of the watch 24 hours a day when navigating areas that the master assesses represent a considerable risk of the ship being exposed to piracy or armed robbery;
- 5) how the crew shall act in case of armed robbery, capture or attempts hereof and on instruction of the crew each time the ship is about to enter an area representing a considerable risk of the ship being exposed to piracy or armed robbery;
- 6) reporting to the shipping company, the authorities and other ships in the area in case of armed robbery, capture or attempts hereof.

Subsection 2. The procedures shall be developed in consideration of the recommendations and guidelines issued by the International Maritime Organization (IMO) on navigation in areas representing a risk of piracy and armed robbery. When assessing what measures to take on each individual ship, consideration shall be paid to the current threat in the relevant area, the ship's size, its speed and equipment as well as any other measures taken outside the ship, such as watchkeeping on the quay.

Subsection 3. The recommendations and guidelines mentioned in subsection 2 are available from the webpage of the Danish Maritime Authority, www.dma.dk.

Section 7. If a master turns off the ship's AIS transmission due to a risk of piracy and armed robbery, it shall be recorded in the ship's log stating the time and position, just as the shipping company shall be informed. Subsequently, the shipping company shall regularly be notified about the ship's position until the AIS transmission is resumed unless the master assesses that such notification could endanger the ship's crew. Similarly, it shall be recorded in the ship's log when the AIS transmission is resumed again.

Special measures in the high risk area

Section 8. As regards ships engaged on voyages in the area defined as the high risk area in the "Best Management Practices for Protection against Somalia Based Piracy" (BMP), the procedures mentioned in sections 2-6 shall, furthermore, to the extent relevant be made in consideration of the industry's recommendations in "Best Management Practices for Protection against Somalia Based Piracy" (BMP), which is available from the webpage of the Danish Maritime Authority, www.dma.dk.

Section 9. In the high risk area the reports mentioned in section 6(1)(vi) shall also be made to UKMTO³ and MSCHOA.

Section 10. Shipping companies shall monitor their ships when they navigate the high risk area.

¹ Maritime Security Center Horn of Africa (MSCHOA).

² Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia Information Sharing Center (ReCAAP ISC).

³ UK Maritime Trade Operations (UKMTO).

Subsection 2. When a ship enters or leaves the high risk area, the master shall notify the shipping company. As long as the ship is in the high risk area, the master shall at least every fourth hour notify the shipping company of the ship's position unless the master assesses that such notification would endanger the crew.

Subsection 3. The shipping company shall designate a contact person to receive the notifications mentioned in subsection 2.

Subsection 4. The ongoing notification of the shipping company mentioned in subsection 2 may be replaced by the shipping company's monitoring of the ship by means of an automatic electronic tracking system at minimum the same frequency.

Section 11. When a ship navigates the areas defined in the BMP as the high risk area and the "UKMTO Voluntary Reporting Area", respectively, the recommendations in the BMP to register with MSCHOA and to report to UKMTO shall be observed.

Verification

Section 12. The procedures required pursuant to this technical regulation shall form part of the verification of ISM and ISPS made by the Danish Maritime Authority or an organisation recognized by the Danish Maritime Authority.

Penalty provisions

Section 13. Contraventions of this regulation shall be liable to punishment by fine or imprisonment for a term not exceeding 1 year.

Subsection 2. The penalty may be increased to imprisonment for a term not exceeding 2 years if:

- 1) the contravention has caused injury to life or health or a risk hereof;
- 2) a prohibition notice or injunction has previously been issued for the same or similar actions;
- 3) the contravention has resulted in or aimed at a financial benefit for the contravener or others.

Subsection 2. It shall be considered especially aggravating circumstances if the contravention has caused injury to the life or health of young people below the age of 18 or a risk hereof, cf. subsection 2(i).

Subsection 3. If the benefit obtained through the contravention is not confiscated, the size of such financial benefit obtained or sought obtained shall be taken into account when determining the fine, including additional fines.

Subsection 4. Companies, etc. (legal persons) may incur criminal liability according to the regulations in chapter 5 of the penal code (*straffeloven*).

Section 14. If the condition is covered by the decree on the entry into force for Greenland of the act on safety at sea (*lov om sikkerhed til søs*), measures may be laid down in accordance with the penal code for Greenland.

Subsection 2. The conditions referred to in section 9(2) and (3) shall be considered aggravating circumstances.

Subsection 3. If the benefit obtained through the contravention is not confiscated, cf. section 166(1) of the penal code (*straffeloven*), the size of such financial benefit obtained or sought obtained shall be taken into account when determining the fine, including additional fines.

Subsection 4. If the contravention is committed by companies etc. (legal persons), liability to pay a fine may be incurred by the legal person as such. If the contravention is committed by the State, the Greenland Government, a municipality, a municipal cooperative covered under section 64 of the Landsting act on municipal councils and local authorities, etc. or a local authority, liability to pay a fine may be incurred by the relevant public authority as such.

Subsection 5. If the relevant party is not resident in Greenland, or if his connection to Greenland society is otherwise so remote that the prerequisites for measures to be taken do not exist, legal proceedings may be instigated or the case may be referred for trial in Denmark.

Entry into force, etc.

Section 15. This order shall enter into force on 1 January 2012.

Subsection 2. Order no. 9721 of 20 February 2008 on technical regulation on measures for preventing piracy and armed robbery against Danish ships shall be repealed.

Danish Maritime Authority, 23 November 2011
Frank Bjerg Mortensen / Ditte Helene Bang



Lovtidende A

2011

Udgivet den 30. november 2011

23. november 2011.

Nr. 1084.

Bekendtgørelse om teknisk forskrift om forholdsregler til forebyggelse af pirateri og væbnede overfald på danske skibe

I medfør af § 6, § 17, stk. 6, § 22 og § 32, i lov om sikkerhed til søs, jf. lovbekendtgørelse nr. 654 af 15. juni 2010, og efter bemyndigelse fastsættes:

Bekendtgørelsens anvendelse på danske og udenlandske skibe

§ 1. Denne bekendtgørelse finder anvendelse på handelsskibe, der fører dansk eller grønlandsk flag, jf. dog stk. 2.

Stk. 2. Bekendtgørelsen finder ikke anvendelse på skibe, som udelukkende sejler på grønlandske, færøske, islandske eller europæiske havne samt for rederier, som udelukkende driver sådanne skibe.

Forebyggelse af pirateri og væbnede overfald på danske skibe

§ 2. Handelsskibe skal have procedurer for sejlads eller havneanløb i områder, hvor der er risiko for pirateri og væbnede overfald mod skibe.

§ 3. For handelsskibe, der er forpligtede til at have et sikkerhedsstyringssystem efter ISM-koden (Koden for sikker skibsdrift) eller en sikringsplan efter ISPS-koden (Koden for højnelse af den maritime sikkerhed), skal de i § 2 nævnte procedurer enten være indeholdt i sikkerhedsstyringssystemet eller i sikringsplanen. Såfremt procedurerne er indeholdt i skibets sikringsplan, skal de gøres tilgængelige for skibets besætning på samme måde som procedurene i sikkerhedsstyringssystemet.

§ 4. Rederier, hvis skibe er omfattet af §§ 2-3, skal endvidere i deres sikkerhedsstyringssystem have procedurer for vurderingen af, om der i et område er risiko for pirateri eller væbnede overfald mod skibe.

§ 5. Handelsskibe, der ikke er pligtige til at have et sikkerhedsstyringssystem efter ISM-koden eller en sikringsplan efter ISPS-koden, samt rederier, som driver sådanne skibe, skal have procedurer, der svarer til de i §§ 3-4 nævnte.

§ 6. De i §§ 2-5 nævnte procedurer skal indeholde bestemmelser om forebyggelse af overfald, herunder om

1) vurdering af, hvorvidt der i et område er risiko for pirateri eller væbnede overfald mod skibe,

- 2) opdatering om situationen på relevante websites fx MSCHOA¹⁾, NATO Shipping Center, ReCAAP ISC²⁾ og gennem NAVWARNS,
- 3) relevante foranstaltninger til beskyttelse af skibet og dets besætning,
- 4) radarovervågning hele horisonten rundt og vedvarende udkig til assistance for den vagthavende navigatør døgnet rundt ved sejlads i områder, hvor skibsføreren vurderer, at der er væsentlig risiko for, at skibet kan blive udsat for pirateri eller væbnede overfald,
- 5) hvorledes besætningen skal forholde sig ved overfald, kapring eller forsøg herpå, og om instruktion af besætningen, hver gang der skal sejles ind et område, hvor der er væsentlig risiko for, at skibet kan blive udsat for pirateri eller væbnede overfald,
- 6) rapportering til rederi, myndigheder og andre skibe i området ved overfald, kapring eller forsøg herpå.

Stk. 2. Procedurene skal udarbejdes under hensyntagen til de af den Internationale Maritime Organisation (IMO) udsendte anbefalinger og vejledninger for sejlads i områder med risiko for sørøveri og væbnede overfald. Ved vurderingen af, hvilke forholdsregler der skal tages på det enkelte skib, skal der tages hensyn til trusselsbilledet i det pågældende område, skibets størrelse, sejlads hastighed og udstyr samt eventuelle andre foranstaltninger, som træffes uden for skibet som fx vagthold på kajen.

Stk. 3. De i stk. 2 nævnte anbefalinger og vejledninger er tilgængelige på Søfartsstyrelsens hjemmeside www.soe-fartsstyrelsen.dk.

§ 7. Såfremt en skibsfører af hensyn til risikoen for pirateri og væbnede overfald slukker for skibets AIS transmission, skal det indføres i skibsdagbogen med klokkeslæt og position, ligesom rederiet skal underrettes. Rederiet skal herefter regelmæssigt underrettes om skibets position, indtil AIS transmissionen på ny genoptages, medmindre skibsføreren skønner, at en sådan underretning vil kunne udsætte skibets besætning for fare. Tilsvarende skal det indføres i skibsdagbogen, når AIS transmissionen på ny påbegyndes.

Særlige foranstaltninger i højrisikoområdet

§ 8. For skibe, der sejler i det område, der i "Best Management Practices for Protection against Somalia Based Pi-

racy" (BMP) er defineret som højrisikoområdet, skal de i §§ 2-6 nævnte procedurer endvidere i relevant omfang udarbejdes under hensyntagen til industriens anbefalinger i "Best Management Practices for Protection against Somalia Based Piracy" (BMP), der er tilgængelig på Søfartsstyrelsens hjemmeside www.soefartsstyrelsen.dk.

§ 9. De i § 6, stk. 1, nr. 6, nævnte rapporter skal i højrisikoområdet endvidere ske til UKMTO³⁾ og MSCHOA.

§ 10. Rederier skal monitorere deres skibe, når de sejler i højrisikoområdet.

Stk. 2. Når et skib sejler ind i eller ud af højrisikoområdet, skal skibsføreren underrette rederiet. Så længe skibet er i højrisikoområdet, skal skibsføreren mindst hver fjerde time underrette rederiet om skibets position, medmindre skibsføreren skønner, at en sådan underretning vil bringe besætningen i fare.

Stk. 3. Rederiet skal udpege en kontaktperson til at modtage de i stk. 2 nævnte underretninger.

Stk. 4. Den løbende underretning af rederiet i stk. 2 kan erstattes af, at rederiet med minimum samme hyppighed monitorerer skibet gennem et automatisk elektronisk tracking-system.

§ 11. Når et skib sejler i de områder, der i BMP er defineret som hhv. højrisikoområdet og "UKMTO Voluntary Reporting Area", skal anbefalingerne i BMP om registrering hos MSCHOA og rapportering til UKMTO følges.

Verifikation

§ 12. De procedurer, der er krævet i henhold til denne tekniske forskrift, vil indgå i Søfartsstyrelsens eller i en af Søfartsstyrelsen anerkendt organisations verifikation af ISM og ISPS.

Straffebestemmelser

§ 13. Overtrædelse af denne forskrift straffes med bøde eller fængsel i indtil 1 år.

Stk. 2. Straffen kan stige til fængsel i indtil 2 år, hvis der

- 1) ved overtrædelsen er sket skade på liv eller helbred eller fremkaldt fare herfor,
- 2) tidligere er afgivet forbud eller påbud for samme eller tilsvarende forhold eller

3) ved overtrædelsen er opnået eller tilsigtet en økonomisk fordel for den pågældende selv eller andre.

Stk. 3. Det skal betragtes som en særlig skærpene omstændighed, at der for unge under 18 år er sket skade på liv eller helbred eller fremkaldt fare herfor, jf. stk. 2, nr. 1.

Stk. 4. Sker der ikke konfiskation af udbytte, som er opnået ved overtrædelsen, skal der ved udmåling af bøde, herunder tillægsbøde, tages særligt hensyn til størrelsen af en opnået eller tilsigtet økonomisk fordel.

Stk. 5. Der kan pålægges selskaber m.v. (juridiske personer) strafansvar efter reglerne i straffelovens 5. kapitel.

§ 14. Såfremt forholdet er omfattet af anordning om ikrafttræden for Grønland af lov om sikkerhed til søs, kan der fastsættes foranstaltninger i henhold til kriminalloven for Grønland.

Stk. 2. De i § 9, stk. 2 og 3, nævnte forhold skal anses som skærpene omstændigheder.

Stk. 3. Sker der ikke konfiskation af udbytte, jfr. kriminallovens § 166, stk. 1, som er opnået ved overtrædelsen, skal der ved udmåling af bøde, herunder tillægsbøde, tages særligt hensyn til størrelsen af en opnået eller tilsigtet økonomisk fordel.

Stk. 4. Er en overtrædelse begået af selskaber m.v. (juridiske personer), kan der pålægges den juridiske person som sådan bødeansvar. Er overtrædelsen begået af staten, Grønlands Selvstyre, en kommune, et kommunalt fællesskab, der er omfattet af § 64 i Landstingslov om kommunalbestyrelser og bygdebestyrelser m.v., eller en bygdebestyrelse, kan der pålægges vedkommende offentlige myndighed som sådan bødeansvar.

Stk. 5. Såfremt den pågældende ikke er bosat i Grønland, eller hans tilknytning til det grønlandske samfund i øvrigt har en sådan løsere karakter, at forudsætningerne for anvendelse af foranstaltninger ikke er til stede, kan sagen anlægges eller henvises til forfølgning i Danmark.

Ikrafttræden m.v.

§ 15. Bekendtgørelsen træder i kraft den 1. januar 2012.

Stk. 2. Bekendtgørelse nr. 9721 af 20. februar 2008 om teknisk forskrift om forholdsregler til forebyggelse af sørøveri og væbnede overfald på danske skibe ophæves.

Søfartsstyrelsen, den 23. november 2011

FRANK BJERG MORTENSEN

/ Ditte Helene Bang

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- 1) Maritime Security Center Horn of Africa (MSCHOA)
 - 2) Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia Information Sharing Center (ReCAAP ISC)
 - 3) UK Maritime Trade Operations (UKMTO)