

Illegal immigrants and European Food Law – new challenges for the carrier



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The recent increase in illegal immigration via sea voyage across the Mediterranean and multimodal carriage through Europe is having a wide impact. This article looks specifically at the impact of the spike in illegal immigration on food carriers and their particular issues.

Introduction

Ships operating in the Mediterranean are exposed to the risks of illegal immigrants coming on board. Often, they are called upon by the coast guards to effect salvage operations or provide support to the navy to save the lives of illegal immigrants stranded at sea. Most charterparty forms provide for liberty to deviate for the purpose of saving life and property (e.g. NYPE 1946, NYPE 1993, Shelltime, BP Time 3) and the costs incurred for the deviation to save lives are usually covered by the club (with the exception of any 'lost' charter hire). However, the continuous support sought from merchant ships to rescue immigrants at sea has a negative impact.

Food carriers are often specifically targeted by stowaways, as the goods on board can aid their survival. This article considers the consequences and the impact on carriers' operations and obligations when they take on board illegal immigrants either voluntarily, when they are ordered by the coastal authorities, or involuntarily, as in the case of stowaways.

The controls

Within the framework of food safety law, EU regulations impose a strict and continuous control on food intended for human consumption during all stages of the food supply chain,

namely: the production, distribution and marketing of food, including the transportation of food.

There are three key regulations to note:

- Regulation (EC) No 178/2002, which lays down the general principles and requirements of food law, establishing the European Food Safety Authority.
- Regulation (EC) No 882/2004, which concerns official controls to ensure compliance with feed and food law.
- Regulation (EC) 852/2004 on the hygiene of foodstuffs, dated 29 April 2004, which entered into force on 1 January 2006. This regulation imposes responsibility for food safety upon food business operators throughout the food chain. In particular, Chapter IX provides that: *'At all stages of production, processing and distribution, food is to be protected against any contamination likely to render the food unfit for human consumption, injurious to health or contaminated in such a way that it would be unreasonable to expect it to be consumed in that state.'*

In addition to the above, international legislation on basic standards of hygiene such as *Codex Alimentarius – Recommended International Code of Practice, General Principle of Food*

Hygiene (CAC/RCP 1-1969) binds all members of the World Trade Organization (WTO), including the EU.

In most cases, the living conditions brought about by illegal immigrants seeking temporary shelter in the confined space of a container or a truck, would breach the conditions of food carriage and standards of hygiene prescribed in the European food safety legislation referred to above.

Cargo interests dealing with food are often certified by ISO 2200:2005, which is an internationally recognised standard of safety management system for organisations in the food supply chain and which aims to ensure that food supplied is safe at the time of human consumption. These obligations of the cargo interests are invariably imposed upon the carrier up the contracting chain by their incorporation into the contracts of carriage.

Pursuant to the above legislation, when food is considered unsafe, *business operators are obliged to withdraw or recall it*, to avoid any risk of unsafe food.

The effect of immigration

Although, at this stage, we do not have decided cases from which guidance can be sought, there are reasonable grounds to assert that the entry of illegal immigrants into trailers or containers represents in itself a breach in the control of the food supply chain. As such, it compromises the safety of all the cargo, and under these circumstances, the entire cargo is at risk of becoming a total loss. This is a substantial issue for the carrier. Members trading in the Mediterranean or performing multimodal transport services in and around Europe should be aware that in such circumstances, cargo interests will have no alternative other than to withdraw or recall the contaminated food and, in turn, claim appropriate damages against the carrier. Successfully defending such cargo claims may prove to be difficult in the majority of circumstances.

