

Safety and Insurance Aspects of Conducting Search and Rescue Operations at (the Mediterranean) Sea from a Public Health Perspective

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The aim of analysing legal regulations in the context of this scientific research topic is to highlight the provisions currently in force that impose the obligation on the shipmaster to comply with the obligations arising from international and European maritime search and rescue legislation - UNCLOS , SAR , and SOLAS conventions and Regulation (EU) No 656/2014 - (regardless of the nationality of the persons in distress at sea) and to point out concerns that third-country nationals as rescued persons at sea, could pose a risk to public health. An analysis of the international and European *de lege lata* provisions and the new European provisions contained in Regulation (EU) 2024/1356 (applicable from 12 June 2026), which establishes uniform rules for the screening (preliminary health examination) of third-country nationals who have crossed the external border of EU Member States illegally without fulfilling the conditions of entry (irregular migrants) or who have disembarked following a search and rescue operation. Mandatory pre-entry screening would show whether they pose a potential risk to public health in order to determine whether medical care or isolation is required for public health reasons. The research results point to the conclusion that these individuals do not pose a serious risk to public health. However, the conduct of rescue operations at sea by commercial vessels may pose safety and health risks that could jeopardise the seaworthiness of the vessel. The results of the scientific-research analysis of this topic indicate that rescued persons on commercial ships can pose a health risk to the ship's crew, as well as to the proper conduct of shipping, which is why shipowners' liability insurance via P&I clubs is one of the most important types of insurance for shipowners. This paper places special emphasis on the specifics of risks. insurance via P&I clubs is one of the most important types of insurance for shipowners. This paper places special emphasis on the specifics of risks under P&I insurance (with reference to health hazards – infectious diseases) and on covering the financial costs of the rescue operation (compensation for costs - loss of fuel, diversion, delay, quarantine, etc.) as well as costs that cannot be covered under the rules of P&I clubs.

KEYWORDS

~ Public health
~ Search and rescue at sea
~ Safety
~ Insurance

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doi: 10.7225/toms.v14.n02.s12

Received: 27 Feb 2025 / Revised: 22 Mar 2025 / Accepted: 22 Mar 2025 / Published: 20 Jul 2025

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1. INTRODUCTION

Sea routes are frequently used to cross the EU's external borders. In 2023, more than 280,000 people travelled from North Africa to Europe by dangerous and irregular sea routes, 58% more than in 2022 (UNHCR, 2023). The data indicate that “between January and September, the number of arrivals by sea via the Central Mediterranean route from Algeria, Egypt, Libya and Tunisia to Italy and Malta increased significantly (from 87,503 in 2022 to 128,529 in 2023), as did the number of deaths and missing persons (from 1,368 in 2022 to 2,235 in 2023).” The Central Mediterranean route is being increasingly used, as the shortest route between Africa and Europe (Iussich and Maglić, 2018), but remains one of the deadliest migration routes in the world (UNHCR, 2021).

Due to various factors, including inadequate ships that are almost always over capacitated, incompetent crews (if any) and unfavourable weather conditions, the frequency of accidents at sea has increased significantly, with people falling overboard, drowning or dying due to hypothermia, lack of water, food and hygiene (Iussich and Maglić, 2018). The alarming figures on the number of dead and missing migrants in the Mediterranean contrast with the large number of migrants rescued at sea. The global system of measures for dealing with persons rescued at sea has been in place for years, but the protection of these persons necessarily involves the introduction of new and the improvement of existing procedures for conducting search and rescue operations at sea in accordance with the specifics of conducting such operations in a given area. Due to concerns that refugees, migrants and other non-EU nationals could pose a risk to public health, the question has been raised at European level as to whether third-country nationals should be checked at the external borders after disembarking following a search and rescue operation at sea.

2. LEGAL FRAMEWORK FOR CONDUCTING SEARCH AND RESCUE OPERATIONS AT SEA WITH PARTICULAR REGARD TO THE HEALTH RISKS POSED BY RESCUED PERSONS

International legislation regulating the legal responsibility of all ship masters at sea to carry out search and rescue operations at sea (for “persons in distress at sea” – regardless of nationality) is envisaged by conventions ratified by all EU Member States: UNCLOS, SOLAS and SAR conventions. Pursuant to Art. 86 and Art. 98(b) of the UNCLOS, “in High Seas (all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State), every State shall require the master of a ship flying its flag to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him.”

Chapter V of the SOLAS refers to the “safety of navigation for all vessels at sea.” According to Regulation 33 “Distress messages: Obligations and procedures” of the SOLAS, “master of a ship at sea which is in a position to be able to provide assistance on receiving a signal from any source that persons are in distress at sea - is bound to proceed with all speed to their assistance (Regulation 33(1) of the SOLAS).” According to Regulation 33(2) of the SOLAS, “if the ship receiving the distress alert is unable or, in the special circumstances of the case, considers it unreasonable or unnecessary to proceed to their assistance, the master must enter in the log-book the reason for failing to proceed to the assistance of the persons in distress.” According to Regulation 33(3) of the SOLAS, “masters of ships shall be released from the obligation imposed in Regulation 33(1) of the SOLAS on learning that their ships have not been requisitioned and that one or more other ships have been requisitioned and are complying with the requisition.”

The organisational and financial obligations of states parties to the SAR Convention include conducting search and rescue operations at sea. According to paragraph 2.1.10., Chapter 2 of the SAR, “parties to the SAR shall ensure that assistance be provided to any person in distress at sea, regardless of the nationality or status of such a person or the circumstances in which that person is found.”

2.1. Threat to public health as the basis for screening third country nationals after search and rescue operations at sea

It is important to note that according to Article 5(1) of the Schengen Borders Code, “the external borders may only be crossed at the notified border crossing points.” In the event of an unsuccessful attempt to illegally cross the EU's external maritime borders, resulting in the need to conduct a search and rescue operation at sea for people in distress, – there are many stages in the implementation of precisely prescribed procedures for search and rescue operations at sea under various legal regimes. The European provisions of Regulation (EU) No 656/2014 regulate conducting search and rescue operations at sea within the framework of border surveillance operations carried out by EU Member States at their external maritime borders. When carrying out the aforementioned operations, EU Member States are required to ensure the application of the above-mentioned international conventions and the main principles for the protection of fundamental rights. Based on the principles of the protection of the EU's external borders against illegal crossings, Regulation (EU) No 656/2014 aims to

prevent the illegal crossing of the EU's external maritime borders by irregular (illegal) migrants and to ensure the safety of rescued persons. "During the assessment of the need to render assistance to a vessel or person in distress at sea and to start with search and rescue operations, it is necessary to assess: a) the presence of persons on board in urgent need of medical assistance; b) the presence of deceased persons on board; c) the presence of pregnant women or of children on board; d) the weather and sea conditions, including weather and marine forecasts" (Art. 9(2)f) of Regulation (EU) No 656/2014).

With regard to "third country nationals who do not fulfil entry conditions according to Art. 6 of the Schengen Borders Code, but: a) crossed the external border in an unauthorised manner; or b) have been disembarked in the territory of a EU Member State after search and rescue operation - screening will be carried out which includes preliminary health check to identify any needs for health care or isolation on public health grounds." This solution is part of the new European provisions laid down in Art. 5(1)a and b) and Art. 12(1) of Regulation (EU) 2024/1356, the implementation of which allows the screening of third-country nationals both at the external borders and on the territory of EU Member States (Balza, 2024). Although Regulation (EU) 2024/1356 entered into force on 11 June 2024, its implementation has not yet begun, as it is not due to apply until 12 June 2026. However, it is important to note that the aforementioned Proposal from September 2020 already emphasised that "third-country nationals who are present at the external border without fulfilling entry conditions or after disembarkation following a search and rescue operation might have been exposed to health threats (e.g. when coming from war zones, or as a result of being exposed to communicable diseases)." In some cases, 42% of rescued migrants had infectious diseases (most of them scabies – 8.2%), while 15.8% had a suspected communicable disease (Theodosopoulou et al., 2021). With a significant number of third-country nationals crossing the external maritime borders to reach Europe, there are serious concerns that this group of non-EU nationals could pose a public health risk. There is little evidence to support the theories that migrants would expose the host population to a significant risk of infection (Vignier and Bouchaud, 2018). The general risk of exposure to known epidemics, such as Ebola, plague or cholera is low, as they are not widespread in the refugees' countries of origin and these diseases can lead to such severe illnesses that would prevent the transportation of infected persons (Dittmann et al., 2015). The transmission of classic tropical diseases, such as malaria, yellow fever or dengue fever is also not to be expected, as they are transmitted by vectors, for example by mosquitoes, and cannot be transmitted from person to person (Dittmann et al., 2015). The concern about communicable diseases seems impractical both due to their low prevalence in the refugees' home countries and due to the lack of vectors that transmit tropical diseases during the journey and the fact that a previous long journey through the Sahara exceeds the incubation period of several viral or bacterial infections (Theodosopoulou et al., 2021).

The memory of the COVID-19 pandemic, which was very dangerous not only for EU citizens but for people worldwide, has shown that the absence or inadequate application of measures to prevent the spread of viruses from person to person contributes significantly to the spread of viruses. The fear of the deadly consequences of COVID-19 did not result in the abandonment of sea routes by illegal migrants, even though they knew that no attention was being paid to the protection of their health during their illegal attempts to cross the external maritime borders. According to the data of the Council of the European Union on the "Central Mediterranean migration route" from October 2022, despite the outbreak of the COVID-19 pandemic and the subsequent introduction of travel and movement restrictions, the number of migrants arriving through the Central Mediterranean route more than doubled in 2020 (more than 36,000 arrivals), with the number of arrivals doubling again in 2021 with 62,315 arrivals." At the time, the conduct of search and rescue operations at sea was called into question. In fact, some authors state that it was discussed at the time whether a drowned person should be treated as potentially infectious if they appear to have COVID-related symptoms or if their close contacts have symptoms (Theodosopoulou et al., 2021). Similarly, it remains controversial whether resuscitation should be performed on people with unknown COVID-19 status if the chances of survival appear low or hopeless (Theodosopoulou et al., 2021). Fears of the spread of infectious diseases among people have long existed, but research has shown that third-country nationals do not pose a serious threat to public health. However, "third country nationals who crossed the external EU border in an unauthorised manner or have been disembarked in the territory of an EU Member State after search and rescue operation," are subject to screening. In particular, Regulation (EU) 2024/1356 was adopted at EU level, which is based on the principle of solidarity and the necessary uniform application of provisions and standards that ensure equal treatment in the same or identical cases where there is a threat to internal security. Its implementation implies the "application of uniform rules on preliminary health checks which would apply to all third-country nationals submitted to the screening" (Proposal, 2020).

2.2. Threat to public health – the role of P&I insurance

Commercial ships are required to comply with all international convention regulations and, in the EU, with European regulations as well. Essential aspects of commercial ships conducting search and rescue operations at sea are safety risks (when rescuing and transporting a large number of rescued persons to a safe harbour and the potential risks to the stability of the ship due to the increased number of persons onboard; insufficient accommodation capacity and sanitary conditions for the transport of a large number of rescued persons) or health risks (lack of a sufficient number of appropriate medical personnel to provide assistance to all rescued persons; unavailability of medications to alleviate illness or provide adequate

medical care depending on the specifics of all risks to which the rescued persons may be exposed; unavailability of appropriate protective equipment for handling infected persons - protective suits, shoes, masks, gloves, etc.).

There is no doubt that the specific functions performed by the ship's crew within the scope of their powers and duties during navigation require them to remain healthy, and the performance of search and rescue operations at sea may jeopardise the health of the ship's captain and the members of the ship's crew due to the potential transmission of infectious diseases. In the past, to prevent the spread of infectious diseases on ships coming from areas where infectious diseases were suspected, ships were required to remain in isolation for 40 days. Dubrovnik was the first city to establish a lazaretto in 1377 – a place where people and objects arriving from infected areas were to be kept during isolation (Jakaša, 1979). In terms of public health protection, it is important to note that P&I clubs (which provide insurance cover for “90% of the world's sea tonnage”) cover the shipowner's costs incurred as a result of a quarantine imposed due to an infectious disease, if the suspicion of an infectious disease on board is confirmed. These costs usually include the costs of the ship during quarantine and the costs of ship disinfection - fuel and towing costs to or from the place designated for quarantine; costs of entering the ship's port of call; costs of unloading and reloading cargo; costs of unloading and reloading passengers; salaries and crew maintenance costs, etc. (Pavić, 2006). An important item in the implementation of search and rescue operations is undoubtedly the financial costs incurred by commercial ships. The actions of the ship's captain (who, among other things, is also obliged to carry out the shipowner's instructions) may result in damage to the cargo or a delay in the delivery of the cargo.

The safety of maritime navigation, the development and growth of maritime transport and the sustainability of the maritime economy are directly linked to P&I insurance, which guarantees the protection of the material interests of those involved in shipping. Modern “Protecting & Indemnity Clubs” (P&I Clubs) are special “non-profit” maritime shipowner's mutual liability insurance organisations that provide liability insurance to shipowners, which provide insurance coverage for many forms of shipowners' liability for damage that may arise as a result of from maritime shipping and which are not insurable under the rules of premium insurance. The basic operating rule of P&I Clubs contained in the P&I Club Rules is the application of the “pay to be paid” or the “first paid rule,” under which the P&I Club is not obliged to pay its member (shipowner) any insurance indemnity until its member (shipowner) has first paid the amounts it is obliged to pay to a third party in connection with its liability. Therefore, P&I Club members have the right to protection and compensation from the Club for damages and expenses that they themselves have suffered due to liability to third parties, if they actually suffer (pay) such damage (Pospišil Miler, 2004). The analysis of this provision shows that P&I clubs assume the fulfilment of their obligation under the liability insurance policy only towards P&I club members – the insureds - and not towards any third party, the injured party.

The insurance cover provided by P&I Clubs is generally not limited in amount. The P&I Club covers almost all costs incurred by the shipowner for the search and rescue of persons at sea (e.g. the costs of food, medical treatment, changes to the ship's route made to bring such persons on board or off board, etc.). Participation in search and rescue operations for persons at sea frequently requires the ship to deviate from its course, i.e. to divert, which the ship's captain is obliged to do under the above convention provisions, which may lead to the loss of several hours or days, increasing the financial costs for the shipowner. Participation in search and rescue operations incurs additional costs for the shipowner, including the costs of diversion, search, rescue and accommodation, i.e. food and disembarkation in connection with the diversion, search, rescue, embarkation of the rescued persons, the stay and disembarkation of the rescued persons from the ship. Club insurance has been extended to cover compensation and certain aforementioned costs. Club cover includes the costs of diverting a boarded vessel if and to the extent that such costs (i) represent the owner's net loss in excess of the costs that would have been incurred for fuel, insurance, wages, provisions, food and harbour dues had there been no diversion, and (ii) are incurred solely for the purpose of securing treatment for an injured or sick person or while waiting for a replacement for such persons or in connection with landing stowaways or refugees or saving life at sea (Hazelwood and Semark, 2010).

Many types of consequential damages and diversion expenses may not be covered (Cohick, 2022). No P&I insurance covers all potential losses - especially when a vessel deviates from its route to carry out a rescue operation, potential damage to the vessel is not covered by P&I or, in general, P&I clubs do not provide cover for lost hire or freight that could arise from such deviation (Ogris, 2021).

3. CONCLUSION

Although the Central Mediterranean route is often used for the “unauthorised crossing of EU's external border” (to enter the Schengen area), many circumstances, including the favourable geographical location which represents the “shortest distance between Africa and Europe”, using unseaworthy boats to cross EU's external borders, navigation risks, etc., have made it the deadliest migration route to Europe for third-country nationals (non-EU citizens). The provisions of the new Regulation (EU) 2024/1356 stipulate that “third country nationals who do not fulfil entry conditions but: a) crossed the external border in an unauthorised manner; or b) have been disembarked in the territory of a EU Member State after search

and rescue operation” shall be subject to pre-entry checks. The main objective of this provision is to carry out their “obligatory preliminary health check to identify any needs for health care or isolation on public health grounds (disease with epidemic potential or other infectious diseases or contagious parasitic diseases).” Although these European provisions have entered into force, their implementation will only begin on 12 June 2026 and it will be some time before the implementation of the said provisions can be assessed to determine whether their implementation will be enough to realize the objectives set.

Given that search and rescue operations at sea frequently involve the rescue of third country nationals by commercial vessels, this paper also analysed the role of P&I clubs in covering the increased (financial) costs for shipowners of the implementation of a series of preliminary actions that precede such operations, i.e. procedures that have to be taken to ensure the safety of maritime navigation, protect the health of rescued persons, as well as the health of crew members after the implementation of search and rescue operations. Since the occurrence of infectious diseases on board poses a threat both to the health of the ship's crew, and to the orderly flow of maritime traffic as the engine of the global economy, the provisions regulating P&I insurance coverage in the event of ship quarantine due to the outbreak of an infectious disease, and the coverage of costs incurred by the shipowner in providing search and rescue services at sea were analysed. The specifics of P&I club activities, the application of the „pay to be paid” rule, and other P&I club rules, suggest that the shipowner is insured against almost all costs of search and rescue operations. However, it should be noted that P&I insurance coverage does not fully protect shipowners' financial interests, i.e. there is no full financial coverage of all losses that a shipowner may incur in connection with search and rescue operations that require the vessel to deviate from its planned route.

ACKNOWLEDGEMENTS:

This paper is a result of research under the scientific-research project entitled “Prevention of Public Health Threats from the Aspects of the European Transport Legal Solutions” of the Faculty of Law, University of Split.

CONFLICT OF INTEREST

Author declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this paper.

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