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DIRECTORATE GENERAL ENERGY AND TRANSPORT

Directorate F - Air Transport  
Internal market, Air Transport Agreements and Multilateral relations

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**Summary of the contributions received by the Commission following the open consultation on the operation of Regulation 785/2004 on insurance requirements for air carriers and aircraft operators**

*This document does not express the position of the European Commission. It does not commit the European Commission, nor should it be assumed that it will be the position taken by the Commission following this consultation process.*

On 21 September 2007, the European Commission launched an open consultation to obtain interested parties' comments on the operation of Regulation 785/2004 on insurance requirements for air carriers and aircraft operators. To this effect, the Commission services published a discussion paper. The deadline for the consultation was on 22 November 2007. Contributions received afterwards are included in this summary document as far as they were received before 12 December 2007.

The Commission received 66 contributions from interested parties, breaking down into the following groups:

- National authorities: 19
- Air carriers and representative bodies: 4
- Aircraft operators and representative bodies: 16
- Insurers and representative bodies: 12
- Insurance brokers: 1
- Travel agents and representative bodies: 12
- Consumer bodies and consumer organisations: 3

A complete list of contributors is given in the annex. All non-confidential contributions can be consulted on the Commission's website:

[http://ec.europa.eu/transport/air\\_portal/consultation/2007\\_17\\_11\\_en.htm](http://ec.europa.eu/transport/air_portal/consultation/2007_17_11_en.htm)

The following summary gives a general overview of the contributions.

**1. Economic impact of the Regulation for air carriers and aircraft operators (questions 1, 2 and 3 of the discussion paper)**

**a) Air carriers**

The general view of stakeholders and national authorities is that the economic impact on air carriers was very limited. Major air carriers purchase insurance coverage exceeding the minimum requirements for reasons of corporate risk management. Aircraft lessors usually request higher insurance limits than required by Regulation 785/2004. Some smaller air carriers purchase insurance usually only at the minimum requirements; some regional air

carriers needed to increase their insurance coverage as a result of the Regulation. Some national authorities reported that a number of third-country carriers (mainly cargo carriers from Eastern Europe and Central Asia) only carry insurance for short periods and some third-country charter carriers had to cease operations to the EU due to the insurance requirements.

#### b) Non-commercial aircraft operators

Concerning the economic impact on general aviation, replies vary widely by Member State and by sub-sectors. In several Member States, costs increased by less than 15%. In other Member States, particularly in accession countries, the insurance costs increased substantially, up to 600%. Several stakeholders mentioned that initial cost increases after the entry into force of the Regulation were higher, but soft market conditions led to cost reductions since.

Stakeholders and national authorities indicated that the higher insurance requirements led in some Member States to the grounding of aircraft or to the reduction of hours flown. Some aircraft operators drew our attention to the safety implications of general aviation pilots flying less due to the insurance costs. One national authority reported that the large insurance expenses led to an increase in illegal aircraft operations in that Member State. A few aircraft operators consider the economic impact of the minimum insurance requirements as inappropriately high, disproportionate to the risks and counterproductive to sports and recreational aviation. In this view, the potential third-party damage caused by light aircraft would be far below the minimum insurance requirements. Stakeholders identified the following categories as particularly affected by the insurance requirements: gliders, hot air balloons, ultra-light float planes and large historic aircraft.

#### c) Historic aircraft operators

Concerning historic aircraft, insurance companies and some national authorities are of the view that the insurance market provides reasonable cover taking into account the specific risk exposure. However, several stakeholders see a problem for heavier aircraft. One of the main arguments is that the original certified maximum take-off mass (MTOM) for heavier historic aircraft does not necessarily bear relation to operational weights. Lower power and lower speed compared to modern aircraft of the same weight category as well as low utilisation and specific operational restrictions would reduce the potential damage to third parties. In this view, the third-party insurance requirements for the respective weight category are considered disproportionate to the specific risk exposure.

Stakeholders reported that insurance premiums have increased more than tenfold for certain heavy historic aircraft. Several aircraft operators and some national authorities expressed concerns that historic aircraft has been or might need to be grounded due to the high insurance costs. Stakeholders consider these problems mainly to be caused by the regulatory requirements of Regulation 785/2004 which would preclude aircraft operators to fully benefit from market forces. Some stakeholders consider a modification of the minimum insurance requirements necessary to keep large heritage aircraft flying at air displays.

Several stakeholders and some national authorities would favour a specific regime for historic aircraft, e.g. applying the requirements of a lower weight category, introducing intermediate weight categories, removing the requirement to carry war- and terrorism-risk insurance, reducing the requirements for operations others than the participation in air shows, or giving national authorities the possibility to issue exemptions. Many stakeholders underlined the need of a clear definition of "historic aircraft" in case of an exemption from

the general insurance requirements. However, some stakeholders and national authorities do not see any justification for an exemption of historic aircraft. In this view, the potential third-party impact of historic aircraft is equivalent to any other aircraft.

## 2. Specific issue of war-risk insurance (questions 4 and 5)

Most national authorities and many stakeholders consider it necessary that aircraft operators are required to have insurance cover for damage to third parties due to risks of war or terrorism in respect of non-commercial operations. Some of these stakeholders and authorities consider the terrorism risk for non-commercial operations lower but still existent, while other stakeholders see an even higher risk due to the lack of security infrastructure in general aviation. Some stakeholders underline that the insurance for risks of terrorism is also important for the case of illicit use of private aircraft (sabotage, hijacking etc.) and that there is a higher risk of illicit use for non-commercially operated aircraft. Several stakeholders point out that the terrorism risk insurance is available to non-commercial aircraft operators at little additional cost.

However, some national authorities and many aircraft operators expressed doubts about the appropriateness of this requirement for non-commercial aircraft operations, particularly with regard to light aircraft (e.g. below 2700 kg MTOM). In this view, there is no or little terrorism risk related to light non-commercial aircraft operations, taken into account the limited potential to cause major damage and obtain publicity for terrorist attacks (e.g. in case of gliders, sailplanes or balloons). Some stakeholders point out that the special piloting skills required and operational conditions of historic aircraft make such aircraft a low risk for third-party damage due to war or terrorism.

Some stakeholders and national authorities pointed out that a cap of insurance coverage for a terrorist attack against an aircraft which is still on the ground would be helpful to calculate risks and give long-term stability for the insurance coverage. These stakeholders expressed concerns about potentially uncontained accumulations of risk at airport locations. However, some stakeholders underline that limitations of insurance coverage in such cases would be complicated due to air carriers' passenger liability under the Montreal Convention from boarding to disembarkation. Some stakeholders and national authorities expressed the view that this problem should be dealt with in insurance clauses rather than by the regulator. They see no need to introduce specific rules for damage at airport locations. Some stakeholders would consider insurance requirements for airport operators an alternative tool.

Some stakeholders expressed the view that the costs of terrorist attacks against aircraft should be borne by states and not by the air carriers. While some stakeholders consider terrorism risks as not insurable, others expect the insurance market to continue providing full coverage for such risks for an indefinite future. Some air carriers have expressed concerns about a potential withdrawal of insurance cover in the event of a terrorist attack.

Some air carriers requested a more flexible approach in case of insurance market failure. In this view, an immediate response, e.g. stop-gap measures, should be possible to avoid grounding of aircraft if the insurance market stopped providing the necessary coverage after a major disaster. It is also argued that airlines should not be deemed in default if the insurance market does not provide the necessary coverage or does not provide it at a reasonable price.

### 3. Requirements for insurance certificate (questions 6 and 7)

National authorities and stakeholders confirm that, with very few exceptions, evidence of compliance is provided with an insurance certificate, issued by brokers or insurers. Two Member States require a standard insurance certificate. One insurance company cautioned that an insurance certificate can be easily falsified; a national authority also reported a case of a fake certificate.

There is wide support from stakeholders and national authorities for a universal EU insurance certificate in order to simplify procedures, facilitate oversight, create clarity and reduce the regulatory burden. The format developed by the London Market Insurance Brokers Committee is already generally accepted by national authorities with the exception of two Member States. Some stakeholders complain about impractical requirements in the domestic legislation of these two Member States. Some leisure aircraft operators expressed concerns about the potential financial and administrative implications of a universal EU certificate. In their view, it is better to deal with the evidence of insurance on a country-specific basis than to attempt universality. A few national authorities expressed concern about the lower flexibility of a universal standard to adapt to new circumstances.

Some stakeholders requested a clarification as to who is authorised to issue insurance certificates and that the certificate does not override terms and conditions of the insurance policy.

### 4. Application to non-commercial operations by aircraft with a MTOM of less than 2,700 kg (question 8)

Several Member States have made use of the possibility in Article 6 (1) to introduce lower passenger liability coverage levels in respect of non-commercial operations by aircraft with a MTOM of less than 2,700 kg. While many stakeholders do not see any problems by the variable adoption of a lower limit, some stakeholders and national authorities expressed concerns that different requirements affect cross-border flights. Some stakeholders would see a merit in introducing harmonised requirements of a minimum passenger liability insurance of 250,000 SDR in order to avoid problems for cross-border flights.

### 5. Insurance and liability (questions 9 and 10)

Neither stakeholders nor national authorities have identified any major problems with the application of Regulation 889/2002 on air carrier liability in the case of accidents.

Several national authorities and insurance companies see a need to harmonise third-party liability rules for war and terrorist acts in order to ensure a level playing field. Some stakeholders and one national authority are of the view that a harmonisation of third-party liability would require both war risks and general risks. Some stakeholders and national authorities expressed a preference for a global approach, such as the ongoing process on the modernisation of the Rome Convention. Some air carriers are in favour of harmonisation as long as it does not impose additional liabilities. Some stakeholders expressed the view that the third-party liability for war and terrorist acts should be limited to the levels of available insurance. Other air carriers and some national authorities do not see an added value of harmonisation in itself.

## 6. Competition between Community air carriers and third-country air carriers (question 11)

All national authorities and several stakeholders expressed the view that Regulation 785/2004 is necessary to ensure a level playing field with third-country air carriers. In the view of some stakeholders, European air carriers face a competitive disadvantage compared to certain third-country air carriers which are protected by their governments against war-risk liabilities. In this view, a level playing field could only be achieved by a commitment of EU governments to provide a comparable support. One national authority would see inclusion of insurance requirements in Community aviation agreements with third countries as an effective tool, albeit potentially difficult to negotiate.

## 7. Insurance requirements and passenger protection (questions 12 and 13)

Travel agents and consumer bodies underlined that passengers need to be protected against the case of air carrier insolvency or revocation of the operating licence in order to refund passengers and to cover the costs of repatriation. Stakeholders confirmed that insurance for financial failure is available on the market in some Member States. However, stakeholders underlined that such coverage would not be insured by an aviation insurance policy, but by specialised insurers for financial failure. Several stakeholders pointed out that such insurance can only be provided at high cost on the market due to the poor credit risk of airlines with weak balance sheets.

Some national authorities and stakeholders would see additional insurance requirements as an appropriate tool to protect passengers in case of airline failure. However, several respondents would consider it inappropriate to extend aviation liability insurance requirements to issues related to financial loss. Some stakeholders and national authorities expressed concerns that an insurance requirement for the case of airline failure would penalise airlines with sound finances which would bear the cost burden of protecting the passengers of insolvent airlines. Several authorities reserved their views on the benefits of additional insurance requirements to an impact assessment.

Many stakeholders and national authorities consider the close monitoring of financial fitness of licensed airlines more appropriate than additional insurance requirements. Some stakeholders and national authorities would prefer addressing the issue with consumer protection instruments, e.g. the extension of the scope of the Package Travel Directive or consumer credit protection. Some stakeholders consider it more appropriate to leave this kind of protection to voluntary schemes. One national authority and one stakeholder would consider it more effective for national governments to pick up the cost of failure of a carrier licensed in that Member State. It was also suggested that a surcharge could be added to the fares to contribute to a compensation funds for airline failure.

In the view of one national authority, the minimum insurance requirements should be extended to the liability for delays, an obligation for air carriers under Article 19 of the Montreal Convention.

## 8. Scope for simplification (questions 14 and 15)

In general, stakeholders and national authorities do not see any major scope for simplification. Regulation 785/2004 is considered to be clear and simple. It was underlined by one national authority that the Regulation has proved its effectiveness even in the period following

terrorist plots in London. Several stakeholders consider it necessary to clarify that aviation insurance policies are subject to terms, conditions, limitations, exclusions and deductibles in order to avoid misunderstandings. There were very few requests for clearer definitions, e.g. on "commercial operation", or for additional definitions, e.g. "insurance market failure".

In the view of some stakeholders and national authorities, the Regulation should be simplified by reducing the scope of application for general aviation. They do not see the need to maintain the harmonised minimum insurance requirements for all non-commercial operations. Examples given for possible exemptions are historic aircraft, aircraft below 2700 kg MTOM or domestic operations of light aircraft, which in the view of some stakeholders and authorities could be regulated at national level. However, other national authorities and stakeholders consider it important that harmonised third-party insurance requirements apply to general aviation. In this view, an exemption for certain non-commercial operations would bear the risk of under-insurance with negative implications for safety, passengers and third parties.

Some stakeholders see clear benefits of harmonised minimum insurance requirements for non-commercial aircraft operations. In their view, harmonisation facilitates cross-border operations; different national requirements for certain categories of aircraft could hinder the free operation of such aircraft across the Community. Some stakeholders would prefer harmonised requirements, but with reduced minimum requirements for light non-commercial aircraft operations.

## **Annex: List of contributors to the consultation**

### **Air carriers and representative bodies**

Association of European Airlines (AEA)  
European Regions Airline Association (ERA)  
International Air Transport Association (IATA)

easyJet

### **Aircraft operators and representative bodies**

Air Display Association Europe  
Europe Air Sports  
Finnish Aeronautical Association – Suomi Ilmailuliitto  
General Aviation Alliance  
Historic Aircraft Association  
Light Aircraft Association of the Czech Republic  
Nationale Federatie Historische Luchtvaart  
Popular Flying Association  
Réseau du Sport de l'Air  
Royal Belgian Aero Club  
Union des Fédérations Gestionnaires des Assurances

Armageddon Associates  
Dutch National Aviation Museum Aviodrome  
Mr Bill Fisher  
Mr Stephen Slater  
Vulcan to the Sky Trust

### **Insurers and representative bodies**

ANIA - Associazione Nazionale fra le Imprese Assicuratrici  
CEA – European Insurance and Reinsurance Federation  
Fédération Française des Sociétés d'Assurances (FFSA)  
Gesamtverband der Deutschen Versicherungswirtschaft – German Insurance Association (GDV)  
International Underwriting Association of London (IUA)  
The Japanese Aviation Insurance Pool

Global Aerospace Underwriting Managers  
International Passenger Protection  
Mapfre Empresas  
Mitsui Sumitomo Insurance Underwriting at Lloyd's  
QBE Nordic Aviation Insurance  
St. Paul Travelers

### **Insurance brokers**

Marsh Ltd., Aviation & Aerospace Practice

## **Travel agents and representative bodies**

ECTAA/GEFTA – Group of National Travel Agents' and Tour Operators' Associations within the EU and Guild of European Business Travel Agents  
ANAT Asociația Națională a Agenților de Turism din România – National Association of Travel Agencies in Romania  
Associazione G.E.B.T.A. Italia  
BTO Belgian Travel Organisation  
Danmarks Rejsebureau Forening (DRF) – Association of Danish Travel Agents and Tour Operators  
DRV Deutscher ReiseVerband – German Travel Association  
GTMC Guild of Travel Management Companies  
HATTA Hellenic Association of Travel & Tourist Agencies  
MUISZ Magyar Utazásszervezők és Utazásközvetítők Szövetsége – Association of Hungarian Travel Agents and Tour Operators  
ÖRV Österreichischer Reisebüroverband – Austrian Association of Travel Agents  
Schweizerischer Reisebüro-Verband – Swiss Federation of Travel Agencies  
SRF Svenska Resebyråföreningen – Association of Swedish Travel Agents

## **Consumer bodies and consumer organisations**

Air Transport Users Council  
Bundesarbeitskammer Österreich

BEUC – The European Consumers' Organisation

## **National authorities**

Denmark: Statens Luftfartsvæsen / Civil Aviation Administration  
Czech Republic: Ministry of Transport; Civil Aviation Department  
Finland: Finnish Civil Aviation Authority  
France: Direction Générale de l'Aviation Civile  
Germany: Bundesministerium der Justiz  
Hungary: National Transport Authority; Directorate for Air Transport  
Italy: Ente Nazionale per l'Aviazione Civile (ENAC)  
Latvia: Ministry of Transport; Aviation Department  
Lithuania: Civil Aviation Administration  
Luxembourg: Direction de l'Aviation Civile  
Malta: Directorate-General of Civil Aviation  
Poland: Civil Aviation Office  
Romania: Ministry of Transport, Constructions and Tourism; Directorate General of Civil Aviation  
Slovenia: Ministry of Transport, Directorate of Civil Aviation  
Spain: Ministerio de Fomento; Dirección General de Aviación Civil  
Sweden: Luftfartsstyrelsen / Swedish Civil Aviation Authority  
United Kingdom: Department for Transport; Civil Aviation Division  
  
Norway: Ministry of Transport and Communications