

22 November 2007

European Commission
Directorate-General for Energy and Transport
Internal Market, Aviation Agreements & Multilateral Relations
DM 24 5/118
B-1049 Brussels

Dear Sir / Madam,

EC Discussion Paper on the Regulation (EC) 785/2004 on insurance requirements for air carriers and aircraft operators

Thank you for inviting comments on the Discussion Paper on Regulation 785/2004.

The International Underwriting Association (IUA) represents insurance and reinsurance companies in the international insurance and reinsurance market working in and through London; the total premium income written by our members in 2004 was approximately £12bn. For further information about our organisation and its membership please visit our website, www.iua.co.uk under the section 'About the IUA'.

Whilst Regulation 785/2004 has had a clear impact on all parties to the insurance contract, from our reading of the Discussion Paper, the focus of the questions in it are primarily slanted towards commercial and non-commercial aircraft operators and their experiences of the new requirements. To our mind this is entirely appropriate, as an inherent function of the insurance market is to provide coverage in accordance with aircraft operator's legal requirements, whatever they may be or however they are amended. As such, on the actual levels of the limits, we feel that this is not within our remit to respond. The operator's experience of new requirements (or perhaps broker's) will be indicative, and we assume that these entities will more suitably outline any concerns in this regard.

We do, however, feel there are some key items that our association can provide a useful perspective upon, and these are noted below.

Discussion Paper Questions

Q1: Has the Regulation had any impact on the insurance policy of air carriers? Do air carriers just comply with the minimum insurance requirements or do air carriers carry insurance above the minimum insurance requirements?

Whilst this question is more relevant for air carriers and their own practical experiences, in general we would comment that many air carriers purchase limits in excess of the Regulation minimum insurance requirements. However, it is apparent that some non-EU air carriers and aircraft operators, particularly from developing countries, have had to increase the amount of cover that they buy.

Q2: What has been the economic impact of the Regulation on general aviation operators?

Again this is more pertinent for general aviation operators. Obviously, the economic impact has varied greatly according to the requirements in each Member State prior to the implementation of

Regulation 785/2004. It is logical to assume that in those markets where the Regulation minimum insurance requirements were above the national minimum (and in some cases it was significantly so) there has been an impact on the policy premium. However, it should be stressed that this would very much depend upon the commercial negotiations in each case and it is not possible for IUA, as a market association, to highlight specific trends or provide authoritative statistics.

Q3: Does the insurance market provide reasonable cover for historic aircraft, taking into account the limited usage and relative low risk of third-party damage caused by such aircraft? What could be a more appropriate and proportional insurance requirement for historic aircraft?

Insurance for these aircraft is available in the market in line with aircraft operator's legal obligations. If the Commission feel it is necessary to provide revised minimum insurance allowances in respect of historic aircraft it is crucial that a clear definition of historic aircraft and rules on their usage is provided. This would help to minimise different interpretations between Member States.

Q4: Is there still a need for the requirement for aircraft operators to have insurance cover for damage to third parties due to risks of war or terrorism in respect of non-commercial operations?

Yes, given that there is still a clear risk attached to non-commercial aircraft in respect of war and terrorism, albeit likely a lesser risk than a commercial aircraft. We would stress that coverage for third party liability due to risks of war and terrorism in respect of non-commercial operations is available in the market subject to specific coverage limitations.

Q6: Do air carriers licensed in third countries and aircraft operators using aircraft registered outside the EU usually deposit an insurance certificate or do they provide other documentation? What kind of documentation other than a deposit of an insurance certificate is provided by air carrier and aircraft operators and accepted as evidence of compliance by Member States?

This question would be more suitably addressed by the local aviation authorities responsible for the control of non-EU aircraft carriers and operators landing in a Member State. The number of documents to be produced by non-EU air carriers depends upon the differing requirements of the national aviation authorities of each Member State.

Further, insurance certificates are requested in different formats by Member States. Also, in some instances, due to local legislation, it is not clear if insurance brokers are authorised to produce the certificate on behalf of the insurers. This is very important for risks written on a subscription market basis, where it would be impractical and administratively costly for each insurer to produce a certificate for their proportion of the risk. It is clear that the existence of different national procedures is exacerbating the administrative strain to non-EU air carriers and aircraft operators who are landing in a Member State. Therefore increased uniformity in certificate requirements is to be encouraged.

Q7: Would there be benefits of creating a universal EU insurance certificate for air carriers and aircraft operators?

See our previous answer. There are significant advantages in working towards the creation of an EU insurance certificate for air carrier and aircraft operators. The certificate should also clarify that

the insurance minimums are provided in accordance with the policy terms, conditions and exclusion. Insurance policies necessarily contain terms, conditions and exclusions and the terms of the insurance certificate should not override these, provided that they do not constrain the required minimum insurance limits.

As stated above it is also important that the Commission considers whether brokers or agents should be explicitly authorised to issue insurance certificate for air carriers or aircraft operator on behalf of the Insurer.

Q8: Which insurance requirements apply in Member States for the passenger liability in respect of non-commercial operations by aircraft with a MTOM of less than 2,700 kg? Do different insurance requirements in these cases cause problems for aircraft operators?

Different insurance requirements implemented by individual Member States produce administrative difficulties for aircraft operators of other Member States and non-EU countries and also on multi-State operations where one State implements one limit and the other a higher limit and the operator is essentially required to purchase the higher limits. Removal of the discretion to set a lower limit (i.e. a set EU minimum for non-commercial operations) would help address this issue and we would urge consideration in this regard.

Q10: Is there a need to harmonise third-party liability rules for Community air carriers for risks linked to war and terrorist acts?

Prima facie, harmonisation of third-party liability rules would be beneficial for a number of reasons, including the promotion of a level-playing field for all parties in competition terms as well as a reduction in the administrative burden. ICAO has, of course, been engaged in long-term negotiations and a solution at the global level is also to be supported, probably over and above a regional approach. As such, the likely success of the global approach needs to be carefully considered.

In line with our comments above, any assessment of this issue should consider the availability of insurance coverage in the market for particular risks.

Q12: Would the insurance market be able to provide insurance coverage to air carriers in order to refund passengers for the sums paid and to cover the costs of repatriating passengers if the carrier is not able to operate the flight because of insolvency or revocation of its operating licence?

Aviation liability policies respond to accidents and occurrences and are not intended to meet any issues relating to the insolvency of the aircraft operators. In any event the coverage considered in the question can be purchased in other, more suitable classes of business.

Q14: Is there scope for simplification of the Regulation?

Whilst the Regulation is relatively simple already, as stated previously, the recognition that insurance policies are subject to terms, conditions and exclusions would also help reduce the margin for misinterpretation at the national level.

***Q15: Is it still seen necessary to have harmonised insurance requirements for non-commercial aircraft operators?
What would be the impact of exempting non-commercial aircraft operators from the scope of the Regulation?***

Harmonised insurance requirements within EU countries for non-commercial aircraft operators remain necessary. The exemption of non-commercial aircraft operators from the scope of the Regulation would constitute a step back to the situation where each Member State would impose their own requirements, creating unnecessary difficulties for operators.

We hope you find our comments useful. We are, of course, available to discuss any of the issues should you wish further information on our position.



**Mark Hiller
Chairman
IUA Aviation Technical Committee**