

**Comments on the Discussion Paper on the operation of Regulation (EC) 785/2004 on insurance requirements for air carriers and aircraft operators.**

***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?***

A1. Majority of air carriers carry insurance above the minimum insurance requirements.

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

A2: Most private business and pleasure operators have had to buy higher limits and generally this initially increased insurance cost by 50% or more but this has reduced by 15% since then.

***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?***

A3: Based on our involvement with historic aircraft we believe the market provides reasonable cover and takes into account the limited usage. The main problem for operators of historic aircraft, many of whom are reliant on donations to keep flying, has been the increased cost to buy the higher limit required by the Regulation. The main exposure for these aircraft is, obviously, when they are actually taking part in air-shows flying over large crowds and in proximity to other aircraft. Consideration could be given to reducing the limit for non air-show flying as this may reduce insurance costs.

***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?***

A4: Historically, terrorists have targeted commercial aviation rather than general aviation and the insurance market prices the two sectors accordingly. Deletion of the war and terrorism requirement for general aviation would give rise to the following issue. The standard policy endorsement that provides war and terrorism insurance cover for damages to third parties (and passengers) also includes, inter alia, cover for hijacking, acts of sabotage, unlawful seizure of aircraft and civil commotion, which are also requirements under the Regulation. On this basis, all criminal acts (other than involving nuclear or committed by the policyholder) are covered without exception. If war and terrorism are not a requirement then there is scope, for example, to dispute whether or not

an act of sabotage was also an act of terrorism and therefore excluded. However, unless insurers are able to prove conclusively that it was an act of terrorism then they could end up paying the loss in any event. The scope for dispute could impact the amount of premium reduction, if any, that would be offered by underwriters.

***Q5: Is there a need to introduce specific rules for the insurance requirements for damage caused by unlawful interference while the aircraft is still at the airport in order to allow insurers better control over possible liability exposure?***

A5: Insurers are able to limit their exposure by use of policy clauses, aggregate policy limits and risk selection. There is an urgent need to limit air carriers and aircraft operator's liability in these circumstances as they face unlimited liability.

***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 carriers and aircraft operators and accepted as evidence of compliance by Member States?***

A6: They usually provide an insurance certificate issued by their Insurance Company or Insurance Broker.

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

A7: The Certificate produced and recommended by the London Market Insurance Broker Committee (LMBC) at the implementation of the Regulation has been accepted by all Member States except Italy and Germany, who produced their own version. It would be beneficial if Italy and Germany adopted the LMBC version.

***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 2.700kg? Do different insurance requirements in these cases cause problems for operators?***

A8: Will leave to Member States to advise what limit they apply and if they have encountered problems with operators under insuring.

***Q9: Have there been any problems with the application of Regulation 889/2002?***

A9: There have been no problems with obtaining insurers agreement to incorporate the requirements of Montreal Convention under air carrier policies subject to policy, terms, conditions, limitations, exclusions and deductibles.

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

A10: Most definitely in view of the limited insurance available for these acts. There is an urgent need for Member States to pass legislation to limit the liability of Community air carriers, aircraft operators and their service providers in these circumstances to the levels of available insurance with the Solidarity Fund applying thereafter. This will help cushion the European aviation industry and other victims from these state targeted acts and reduce the current advantage that US carriers have enjoyed since December 2002 with their on-going Government provided Hull, Passenger and Third Party War Risk As there is no guarantee that the Unlawful Interference Convention being proposed at ICAO will ever come into force Member States should act now to safeguard their carriers as the US and other Governments continue to do.

***Q11: Is the Regulation still necessary to ensure a level playing field with third-country air carriers or would there be more effective alternatives, for example, in the context of Community aviation agreement with third countries?***

A11: The regulation is an effective way of ensuring a level playing field.

***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?***

A12: Even though the amounts involved would be relatively small compare to the policy limits they provide, Aviation insurers would not want to provide this cover as it is more like credit risk insurance not aviation insurance. Travel Insurances also exclude this type of risk.

***Q13: Would additional insurance requirements be an appropriate instrument to protect passengers in such cases or are there other more effective and efficient means?***

A13: Rather than mandate all carriers to buy an insurance policy every year, which the vast majority would not need, surely a more cost effective way would be for each Member State to pick up the cost of any failure of one of its carriers and then obtain treasury reimbursement by way of a special ticket tax. With over 800m passengers transported annually in the EU27 even a Euro 0.10 cents levy can create a multi million fund in many states.

***Q14: Is there scope for simplification of the Regulation?***

A14: By and large the Regulation is clear and concise but for the sake of accuracy it should recognise that insurance policies are issued with terms, conditions limitations, exclusions and deductibles to reassure underwriters concerns.

***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?***

A15: Believe it is still necessary as it better protects the operator, passengers and third parties and ultimately the tax payer.