VULCAN TO THE SKY TRUST
RETURNING AVRO VULCAN XH558 TO FLIGHT
CHAIRMAN: AIR MARSHAL SIR MICHAEL KNIGHT KCB AFC FRAeS

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21st November 2007

To: TREN-CONSULTATION-INSURANCE@ec.europa.eu

Dear Sir,

Letter of response to the Discussion Paper on EU Regulation 785/2004 on Insurance Requirements

These are the comments and representations put forward to you in response to the Discussion Paper on the operation of Regulation (EC) 785/2004 relating to insurance requirements.

The writer of these submissions is Dr Robert Pleming, the Chief Executive of the Vulcan to the Sky Trust, a Company Limited by Guarantee and Registered Charity incorporated in the United Kingdom. The Vulcan to the Sky Trust is the owner and operator of the only flying Avro Vulcan aircraft in the world, Avro Vulcan XH558, registered on the UK Civil Aviation Authority Civil Register as G-VLCN.

The aircraft is an Annex II historical aircraft, which first flew in 1960, and was previously owned and operated by the Royal Air Force until 1993, when it was sold into private ownership.

Having completed its first test flight following restoration on 18th October 2007, the aircraft will be used for the purpose of air displays and demonstrations, having unique heritage value to the military history of the United Kingdom, with an average annual utilization of 40 hours. In recognition of its heritage importance, the UK Heritage Lottery Fund provided £2,734,000 towards the restoration of the aircraft.

The aircraft has an MTOW of 79,379 kgs. Since the introduction of Regulation 785 the aircraft has been insured for Third Party Liability in the sum of £250,000,000 in compliance with the Regulation as implemented in the United Kingdom.

There are 15 questions which have been raised in the Discussion Paper, which relates not only to operations such as ours, but also to Commercial Air Transport. Since we do not operate as an Air Transport undertaking, we have not considered it appropriate to respond to a number of the questions raised. We do not carry passengers for hire and reward nor valuable consideration, so although we have made some distinctions between those operations and our own, in the context of insurance requirements and impact, we leave certain of the questions to be responded to by those more qualified and affected than we are.

By way of general observations, which provide a background to our responses, I wish to emphasize the following matters, many of which are set out in the Discussion Paper.

- The Aviation Insurance market is going through one of the "softest" periods it has ever known. As the Paper recites, this has resulted in a continued downward trend in premium levels for commercial aviation, which have fallen by up to 20% year on year, due to a combination of safer skies and increased competitiveness in the market. In sharp contrast, the premium levels for General Aviation (including the sector in which we operate) have, as a result of the Regulation's minimum requirements, been substantially increased.

- We consider that the General Aviation sector generally, and especially certain sub-sectors (such as Historic Aircraft) are seriously threatened by the impact of current insurance premium levels, and as the Paper suggests, is likely to result in the grounding of historic aircraft which are a vital part of the aviation heritage of States. The sharp contrast between commercial aviation and general aviation insurance premiums demonstrates and unfairness in the market, especially when accident and loss statistics in General Aviation have remained fairly constant.

- The principal reason for the extraordinarily high premium levels for general aviation is the requirement of the Regulation that operators should have cover for levels of third party risks far higher than before the Regulation was introduced. The establishment of those new levels of cover, while ending up much lower than those originally proposed, are still far higher than either statistics or experience indicate.

- There is similarly disproportionality between the relative third party risks of, on the one hand, a large commercial air transport aircraft and, on the other hand, an historic or non-passenger carrying aircraft of equivalent weight. The factors giving rise to that differential relate (as the Paper states) to matters, such as comparative hours of utilisation, direct or special rules of operation and/or location of operation. In effect, the "broad brush" weight based approach to the assessment of third party risks, is having an extremely damaging impact on the viability of General Aviation operations, and indirectly on safety.

I now address some of the questions raised in the Paper and provide our answers:

Question 1: Since we are not "air carriers" I make no response to this question.

Question 2: The economic impact of the Regulation on general aviation operators such as ourselves, has been considerable. Whereas we have always considered ourselves to be responsible and reasonable operators, who complied with the guidelines and industry standards of third party cover, as well as taking professional advice from our Insurance Brokers, our total aviation insurance policy premium is £170,000, of which third party liability premium is £76,250, in the current year as a result of the Regulation. We strongly contend that the risks to which we are exposed in our operation are far, far less than is suggested by the minimum level of third party cover, which we are now required to have. The Regulation has in a way made nonsense of the competitiveness in the Aviation Insurance market, from which commercial air transport has benefited. One is bound to ask why should general aviation not be able to benefit from that as well?

Question 3: The insurance market does provide reasonable cover for historic aircraft, but the minimum weight based limits required by the Regulation does appear to limit historic aircraft operators such as ourselves from being able to benefit from discounts in premium arising from limited usage of our aircraft and operational constraints contributing to a relatively low risk of third party damage being caused by our aircraft. In other words we appear to be unable, due to the high level of cover required, to benefit from "market forces".

Question 4: For all the reasons set out in the Paper, we do not consider that non-commercial aircraft operators still need war and terrorism risks to be covered, save in a few limited cases. In any event, where appropriate, financiers, and breach of warranty holders, will often stipulate, according to market and social conditions whether these risks should be included or not. The "market" therefore becomes self-regulating on this issue.

Question 5: The cover for unlawful interference at an airport should be a matter for airport operators and their insurers to decide.

Question 6: Since we are not "air carriers" I make no response to this question.

Question 7: As far as air carriers are concerned we do not deal with this question. However as aircraft operators, we can envisage administrative and financial implications in trying to introduce a universal EU insurance certificate. There is a wide diversity of operations in the general aviation area. It is considered that those operators who have a need to produce evidence of insurance in a particular country are better off dealing with that country in conjunction with their brokers. For example, there has long been a practice whereby UK brokers supply insurance certificates in Spanish for those wishing to travel to that State. That concept can be applied similarly in the case of other States where the aircraft is to be operated. This issue is better dealt with on an individual and specific basis than to attempt universality throughout Europe – with the inevitable consequences that there will still be States (such as France) who individualise their requirements, out of step with every other State.

Question 8: As stated before, those operators intending to operate in different States should ascertain the requisite levels required for passenger liability as well as documentary evidence of compliance. In default, adoption of the minimum level of SDR 250,000 would appear to be a safe option. Unlike the concept of a universal Insurance Certificate, there is merit is harmonisation throughout Europe of levels of minimum passenger cover even for non commercial operations. Apart from anything else, this would facilitate a more standard cover in insurance policies, rather than having different levels for different States.

Questions 9 – 13: I do not respond to these questions which relate to air carriers.

Questions 14 & 15: The Regulation itself is not complicated. The levels required, and the impact of general aviation, are however capable of improvement. Making exceptions and provisos will inevitably give rise to more complexity and less simplification – viz: special rules for historic aircraft, possibly specifically limited to Annex II aircraft. . What in my view is required is a more realistic method of assessing the third party risk of damage by reference to statistics, experience, and advice from appropriate quarters. We strongly consider that the exclusion from the Regulation of both non-commercial aircraft under 2,700 kg, and historic, heritage, and other "special category" aircraft is essential, leaving those to be regulated by the National Aviation bodies, as they were before the Regulation. Of course those same National bodies are the ones who presently regulate aviation-based activities such as Air Displays, and who are best equipped to strike the balance between the amount of regulation necessary and the impact and cost of accidents giving rise to third party claims.

We trust that these representations will be of assistance to the Commission's deliberations. Should there be any need to contact us, the details are as follows:

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