DISCUSSION PAPER

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

Responses by the German Insurance Association (Gesamtverband der Deutschen Versicherungswirtschaft e.V.)

Q 1: 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?

The Regulation's impact on air carriers has been limited, as air carriers, especially major commercial airlines, have tended to maintain insurance cover exceeding the Regulation's minimum insurance requirements before it came into force and continue to do so now.

Q 2: What has been the economic impact of the Regulation on general aviation operators?

The Regulation has mainly impacted the general aviation sector. In Germany, minimum insurance requirements had already been in force for general aviation operators, but private aircraft operators were exempted from maintaining passenger liability insur-

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ance. These operators' insurance costs increased due to the obligation of the Regulation to carry such passenger liability insurance. In respect of third party liability, in comparison to the requirements of the EU-Regulation the minimum insurance limits under the former German law were significantly higher for aircraft with an MTOM of up to 12,000 kg (most appreciably so for the smallest aircraft categories), the reverse being the case for aircraft with an MTOM of over 12,000 kg.

Q 3: 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?

The German aviation insurance market provides adequate insurance cover for historic aircraft at premiums that are generally lower than for comparable modern aircraft. From an insurance perspective, the risk exposure of historic aircraft is not materially different from that of any other aircraft: A loss may occur on any flight undertaken, how frequent or infrequent flight activity may be. Historic aircraft may be involved in severe accidents, e.g. on landing, with the potential to cause substantial third party damage. German insurers feel that any risk considerations peculiarly attaching to historic aircraft may be properly and fully addressed at the underwriting level. An aircraft's particular kind of use is not, in our opinion, an adequate criterion for differentiating the legal rules on compulsory insurance. It should more properly be considered within the underwriting process. Therefore we would argue against creating any special regulations for historic aircraft.

Q 4: 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?

The risks of war or terrorism are not confined to commercial aviation, the non commercial sector being similarly exposed to these risks. Terrorists have in the past focussed on commercial opera-

tions, the rationale being the potential impact on a significant number of passengers along with the potentially higher third party damage inflicted by a large aircraft. However, given the tight security procedures now in place at commercial airports and commercial air carriers, there is an obvious risk of a terrorist attack being carried out by misusing aircraft that are not operated commercially. It seems particularly difficult to justify a different treatment for non commercial operators as they remain legally liable for third party damage caused by war or terrorism.

More significantly, there is an urgent need to determine who should ultimately be liable for the risks of terrorism. It is not justified to assign this risk solely and exclusively to aviation operators and their insurers. Acts of terrorism and war are targeted at states and societies as a whole, not at a particular industry. Specifically, aircraft are clearly being used by terrorists as a "tool", a means to achieve their ultimate goals. Aviation operators are therefore themselves victims like any other injured party. From this it follows that the consequences of such acts should properly be borne by the states as the embodiment of the population as a whole, which in this case forms the true community at risk. This is generally recognised for acts of terror not involving aviation, and it is solely the aviation industry (and their insurers) that are exclusively held liable for the consequences of such acts involving aviation.

Q 5: 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?

It is a fundamental principle of insurance that risks can only be underwritten if the underwriter's exposure remains calculable. Insurers need to be able to restrict cover to protect themselves from potentially ruinous accumulations of losses. The loss scenario presented in this question clearly falls into this category, but it is not the only one imaginable, especially in the context of Weapons of Mass Destruction (WMD). In respect of the rules for insurance requirements, acts of unlawful interference should on principle be treated equally irrespective of where they occur. Re-

stricting insurance requirements for a particular loss location will only serve to create new difficulties regarding other scenarios with a similar loss accumulation potential. Necessary restrictions on cover can best be achieved on the basis of the Exclusion Clauses and Extended Coverage Endorsements published by the AICG in August 2006, enabling markets, as they do, to flexibly negotiate the appropriate level of cover for any given risk scenario. While it is true that full cover for war and terrorism risks is being provided at present, insurers may well be compelled to restrict cover if another catastrophic disaster reaching or even exceeding the scale of "9/11" occurs. In that case, air carriers and operators as well as insurers would benefit from a flexible underwriting approach as provided for by the AICG clauses. Rather than restricting insurance requirements for any given particular loss location, it would be preferable to ensure that insurance contract clauses which are necessary to maintain the insurability of terrorism risks are in compliance with the Regulation.

On the fundamental question of who should be the ultimate risk bearer of acts of terrorism, see Q 4.

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?

Not for insurers to answer.

Q 7: Would there be benefits of creating a universal EU insurance certificate for air carriers and aircraft operators?

German insurers feel that a universal EU insurance certificate would be beneficial and we would welcome the opportunity to discuss this subject with the European Commission.

Q 8: Which insurance requirements apply in Member States for the passenger liability in respect of non-commercial operations by aircraft with an MTOM of less than 2,700 kg? Do different insurance requirements in these cases cause problems for aircraft operators?

Germany has not implemented the option to reduce minimum insurance limits for these kinds of operations.

Apart from Article 6(1), Member States retain authority to legislate on certain other aspects of aviation liability insurance. It would be desirable for insurers to be provided with a EU-wide overview of Member States' rules concerning these aspects.

Q 9: Have there been any problems with the application of regulation 889/2002?

Not for insurers to answer.

Q 10 Is there a need to harmonise third-party liability rules for Community air carriers for risks linked to war and terrorist acts?

A harmonisation of third party liability rules is highly desirable on principle. This is the purpose of the revision of the Rome Convention of 1952 currently undertaken at ICAO. Insurers would welcome the opportunity to review the final draft before expressing their position on this instrument.

Q 11: 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 agreements with third countries?

Not to be answered by insurers.

Q 12: 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?

Q 13: Would additional insurance requirements be an appropriate instrument to protect passengers in such cases or are there other more effective and efficient means?

Any insurance-based solution might only be provided by credit insurance markets, not the aviation insurers. Under the Regulation, compulsory aviation liability insurance deals exclusively with compensating victims for bodily injury or property damage sustained as a result of aviation accidents. Extending the scope of the Regulation to apply to other types of financial loss that may occur in connection with flight operations would be foreign to the established and efficient system of aviation liability and aviation liability insurance and therefore highly inappropriate.

Q 14: Is there scope for simplification of the Regulation?

Not to be answered by insurers.

Q 15: 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?

German insurers see no need for changes in respect of non commercial operators at this time. Any exemptions for these operators at the level of the Regulation would not impact Germany, as national insurance requirements already exceed those imposed by the Regulation in its present form.

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