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DIRECTION DE L'AVIATION CIVILE

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EUROPEAN COMMISSION
DG TREN
Mr Mark NICKLAS
Internal market, Aviation
Agreements & Multilateral relations
Office DM 24 5/118

B - 1049 BRUXELLES

Subject: Consultation paper on the operation of Regulation 785/2004/EC on insurance requirements

Dear Sir,

Referring to the letter from Mr Calleja (y/r : *TREN F1/MN7lg D(2007)321545*) from 17 September 2007 asking for information on the application of Regulation 785/2004/EC on insurance requirements for air carriers and aircraft operators, I'm pleased to provide you the required information from the Luxembourg Civil Aviation Directorate (DAC). You will find the above-mentioned reply in annex which does not contain any confidential elements.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Claude Waltzing'.

Claude WALTZING
Director of Civil Aviation

Annex : DAC response to the EU Commission study

DAC RESPONSE TO THE EU COMMISSION STUDY

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

In general air carriers do not only meet the minima (except for the cover for damage to third parties due to risks of war or terrorism) but the cover amounts are sometimes on a higher level revealing a beneficial impact of the insurance regulation.

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

General aviation did not draw the DAC's attention on particular difficulties in relation with an substantial increase on insurance premiums.

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 ?

This item is only of marginal importance as Luxembourg does not have a significant percentage of historic aircraft on its register. First a common definition for historic aircraft should be determined. Furthermore a proportional requirement based on a risk assessment could be taken into account.

Q4 : Is there still a need for 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 ?

As non-commercial operations can be performed by aircraft of the same size, I don't see any valid argument to terminate requirements for non-commercial operations in particular to third-party damages. Only a complete risk assessment system could present an added value to adapt the cover amounts.

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 ?

Luxembourg supports the modernization of the Rome Convention under the auspices of ICAO and welcomes all initiative to find a balanced compromise between protection of the third parties and a sustainable development of the air industry. Luxembourg supports any global solution bringing up a harmonised view of liability rules.

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 insurance certificate is provided by air carriers and aircraft operators and accepted as evidence of compliance by Member States.

Each aircraft registered outside of the EU, as well as each non-Community air carrier, when applying for traffic rights is requested to deposit a valid insurance certificate.

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

A harmonised EU insurance certificate standard could certainly facilitate the supervision mission of the competent authority, especially in a smaller Member State. The authorities are confronted to analyse the validity of certificates in a huge variation of formats and languages. A common insurance certificate makes only sense if the non-Community air carriers are required to comply with a common standard and format to define.

Q8 : Have there been any infringements of the Regulation by Community air carriers and aircraft operators using aircraft registered in the Community ? Have there been any infringements of the Regulation by non-Community air carriers and aircraft operators using aircraft registered outside the Community ? &

Q9 : Which sanctions have Member States effectively applied in such cases of non-compliance with the Regulation and how often ?

The DAC did not register any specific case of a non-compliant Community air carrier. At the beginning of the application of Regulation 785/2004/EC Luxembourg was confronted with some isolated cases (a handful) of non-Community carriers which did not adapt the cover amounts requested by Community law. The concerned aircraft were not granted any traffic rights or landing permits. Since mid-2005 the DAC did not register any non-compliance.

Q10 : To which extent do Member States request evidence of valid insurance from air carriers and aircraft operators flying over their territory ?

As the request is only optional and represents a heavy administrative burden for the Luxembourg authorities, the DAC does not verify the application of Regulation 785/2004/EC in relation to overflights. By the way this request makes no sense as each aircraft flying over Luxembourg territory has always flown over other Member States territories making checks redundant. As for the case of the above-mentioned common EU insurance certificate, a (centralised) common monitoring system for overflights could be an added value for each Member State.

Q11 : 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 2700 kg ? Do different insurance requirements in these cases cause problems for aircraft operators ?

The Luxembourg authorities apply the two-level option foreseen in Regulation 785/2004/EC which did not lead to any specific problem.

Q12 : Have there been any problems with the application of Regulation 889/2002/CE ?

No.

Q13 : What are the existing national rules in Member States in respect of aircraft operator's liability for third parties ? To which extent are aircraft operators liable in case of unlawful interference ?

The present legal system does not make any difference between liability based on general cases and acts of unlawful interference.

Q14 : Is there a need to harmonise third-party liability rules for Community air carriers for risks linked to war and terrorist acts ?

Referring to Q5 and Q13, a harmonisation of third-party liability rules only for war risks and terrorist acts is unconceivable without harmonisation of the general liability rules.

Q15 : 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 ?

The extension of insurance clauses to the Community aviation agreements with third countries seems unrealistic.

Q16 : 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 cost of repatriating passengers if the carrier is not able to operate the flight because of insolvency or revocation of its operating licence ?

Q16 should rather be addressed to the stakeholders.

Q17 : Would additional insurance requirements be an appropriate instrument to protect passengers in such cases or are there other more effective and efficient means ?

In the eyes of the DAC, acting only on the insurance regulation is not the appropriate approach to protect passengers against insolvency and its consequences (repatriating). Insolvency presupposes severe problems in terms of financial viability of an undertaking. The concerned air carriers are probably in a financial situation that does not allow the payment of the premiums. Only a tuff financial monitoring system performed by the authorities on the air

carriers (licensing system) can avoid or prevent passengers against insolvency or similar proceedings. The DAC supports the initiative taken by the Commission to strengthen the financial obligations of the air carriers (recast of the Regulation 2407/92/EEC). As additional measures insurance requirements could be considered or the set up of a specific insolvency fund backed by the stakeholders (air carriers, travel agents...).

Q18 : Is there scope for simplification of the Regulation ?

No. The Regulation has proved its efficiency even during the troubled period following the Madrid and London terrorist attacks.

Q19 : 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 ?

Yes.