Warsaw, November 2007

REPUBLIC OF POLAND
PRESIDENT
CIVIL AVIATION OFFICE

Grzegorz Kruszyński

ULC-LEP1/MP/802/07

Mr. Daniel Calleja,
The Director
Directorate F- Air Transport
European Commission
Directorate General Energy and Transport
Brussels, Belgium

Dear Sir,

With reference to your letter No. TREN F1/MN/IgD(2007)321545 concerning the Regulation 785/2004 on the insurance requirements for air carriers and aircraft operators, I would like to enclose the following answers to your questionnaire.

According to your request, this paper was also sent to Mr Mark Nicklas by e-mail (mark.nicklas@ec.europa.eu) in the unit Internal Market, Aviation Agreements and Multilateral Relations.

Yours sincerely,

Enc: Discussion Paper- answers

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DICSUSSION PAPER - ANSWERS:

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?

The Regulation forced most of the air carriers to adjust their insurance coverage, especially this related to third party legal liability and to some extent war and terror risks, meaning, in most cases, even considerable extra payments (surcharges).
Many air carriers, especially big airlines, insure third party liability as well as passengers risks at a level higher than that required by the Regulation. However, still most of the air carriers satisfy the requirement of insurance by purchasing minimum coverage. Especially smaller air carriers (operating aircraft of MTOW below 10 tons, performing non-scheduled flights) usually purchase insurance covering their liability only up to the minimum level required by the Regulation. Usually aircraft operators tend to limit their expenses related to insurance premiums and cover only liabilities and amounts required by law. In light of the fact that air carriers strongly compete on the common market and need to cut costs in every field possible, and also taking into account high standards of safety incorporated by Community carriers and operators and the fact that there have been very few serious accident in the past few years, it is understood they are unwilling to invest too much in this area.
Non-Community carriers sometimes tend to purchase the required insurance cover only for the period during which they operate on the Community's territory.

Q2: What has been the economic impact of the Regulation on general aviation operators?
The minimum insurance requirements established by Regulation 785/2004 seem to have imposed a substantial cost burden for general aviation in Poland. Before the Regulation entered into force insurance requirements for general aviation in Poland were significantly lower than those imposed by the Regulation. The number of general aviation operators decreased considerably in the year after the Regulation entered into force. Having in mind the above, Poland made use of the possibility set forth in article 6.1 of the Regulation and decided to establish lower level of minimum insurance cover in respect to passengers in non-commercial operations by aircraft with MTOW of less than 2 700 kg (minimum level 100 000 SDR per passenger).

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?
There is no information from our aviation market that this cover for historic aircraft is unreasonable.

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?
The coverage of war and terror risks usually is, as aircraft operators rightly point out, a significant burden to their budget. As they do not make income on operating flights (not involving themselves in the air carriage) and also because of the series of other reasons brought up by operators (limited number of potential passengers on board, lower MTOW etc.) reasoning of the operators may be well understood – they should not fall under the same requirements as the commercial aviation.
However, GA operators' liability resulting from war and terror risks is not excluded. And the danger of being used as a tool in a terrorist act may not be totally overlooked in the case of non-

commercial aircraft operators – they still could find themselves in the situation of high-jacking with all resulting consequences. In such a case, to guarantee payments to potential victims - and protection of citizens should be a priority for the MS - unless the liability rules are changed (see Q14), it seems reasonable to require that GA operators are still insured against war and terror risks.

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?

The solution could be to combine in the war and terror risks clause all situations relating to not only the after take off events but also the possible occurrences which might take place at the airport. This would, however, require prior consultation with insurers. It could be considered to insert this new package in the present war and terror clause where, because of the fact that no indemnity has been paid yet, the prices and premiums have significantly dropped over the past few years. The new prices would probably rise but this should not necessarily be a factor actually influencing the aviation insurance market and increasing expenses incurred by air carriers and operators in this field.

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?

Non-Community air carriers provide copies of insurance certificates in order to prove their insurance coverage is in conformity with the requirements of the Regulation. It has never happened in Poland that third country carriers tried to present any other type of evidence as a proof of compliance. It is sometimes quite difficult for the authority, though, to assess whether certain certificate is issued in line with all the requirements set forth in the Regulation – it demands thorough examination of the coverage sums, clauses etc. Still more and more third country carriers and operators have their certificates issued stating explicitly they have been issued in accordance with the Regulation 785/2004. However, there are still cases in which such operators need to extend their coverage and are asked to change their insurance so as to be able to operate to Community. There have also been cases in which they abandoned plans to operate carriage to MS because the cost of additional insurance would have been too high to make the flight profitable.

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

Creating one common insurance certificate for the whole EU could bring benefits both to air carriers and national CAAs. The benefit of creating a universal EU insurance certificate for air carriers and aircraft operators may be establishing a level playing field in the area of insurance policy – the carriers and operators would gain useful tool to help them compare offers by different insurers, they would also be sure that all the required fields of responsibility are covered by the certificate they get and that the coverage is in accordance with legal requirements. This would also ensure that if an air carrier presents such a certificate to the CAA the certificate would be accepted.

From the point of view of the aviation authorities having one common certificate layout would facilitate examination of the documents and monitoring of the compliance of insurance with the requirements set forth in Regulation 785/2004.

Although insurance certificates are not a key problem that CAAs encounter, if air carriers believe that creating of such model certificate should be helpful, they should support this request if

possible, by creating additional group "exerting pressure" on the insurers to the best and well understood interest of air carriers and operators.

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 2,700 kg? Do different insurance requirements in these cases cause problems for aircraft operators?

Poland used the possibility set forth in article 6.1 of the Regulation and established lower level of minimum insurance cover in respect of non-commercial operations by aircraft with MTOW of less than 2 700 kg. The minimum insurance cover in this respect amounts in Poland to 100 000 SDR per passenger. So far, different requirements established in different MS in this respect have not created significant problems. One should consider establishing one single minimum level for all MS (eg. at the level of 100.000 SDR) without any possible modifications to this amount. If this proves not to be possible, for clarity's sake it should be stated that an aircraft operator with the minimum insurance coverage of eg. 100 000 SDR per passenger (which is a legal requirement in its country of registration) is allowed to perform flights in the airspace of other EU countries which established higher amounts (eg. 250 000 SDR) without having to purchase additional insurance with higher coverage. One should also consider creating a list of national requirements which are in place in each of EU MS and make them public.

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

So far, no major problems with the application of Regulation 889/2002 have been encountered in Poland. However Art. 2.1 g) of the Regulation (exemptions from the scope of this regulation concerning war and risk insurance) it is not clear and it makes a problem with proper interpretation and translation.

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

It seems reasonable to try to harmonize third-party liability requirements within EU. The same requirements should apply to all Community air carriers as well as other carriers flying to/from/over or within EU. This would create a level playing field for all carriers performing flights in the Community airspace. When creating the requirements one should take into account the fact that acts of terror or sabotage are usually directed not at an air carrier or aircraft operator but at a state (government) therefore it seems reasonable to limit or even exclude operator's liability for war and terror risks.

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?

There are many ways of ensuring level playing field with third country air carriers and setting minimum insurance requirements is one of them. However, it is extremely important to note that this obligation has not been primarily set forth in order to ensure level playing field but so as to ensure that in case of an accident possible casualties/their families would have the opportunity and assured resources to be duly compensated. This sole reason is enough to stress the importance of keeping discussed requirements also with reference to third country carriers.

Still, the "level playing field" factor is not to be underappreciated. Third countries' authorities apply different aviation policies, they may be creating internal rules favoring their own operators or apply other forms of help, forbidden in the Community. That is why it is important to try to level conditions and requirements applicable in relation to Community and non-Community carriers at least in the EU MS.

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

In the opinion of the Polish CAO it is desirable to oblige air carriers to be insured against insolvency/bankruptcy or any other similar event. Such obligation would protect interests of passengers in case of possible carriers' failure to meet their obligations resulting from carriage contract. In our opinion it is far more practical solution than revocation of the operating licence when an air carrier has financial problems.

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

Additional insurance should cover risks related to ticket refund or costs related to purchase of a different ticket at another air carrier in case a given air carrier is not able to perform the flight due to insolvency or fact of revocation of its operating licence. Any such new insurance obligation should be preceded by an appropriate consultation and market analysis showing i.a. financial impact of the new requirement on air carriers and should be equal for all Community and non-Community air carriers which operate to/from/within the Community.

The scope of the EU regulations concerning obligatory insurance of air carriers should be enlarged by the obligation of insurance of liability for delays, which comes from the art. 19 of the Montreal Convention of 1999. It should be underlined that Montreal Convention is binding all EU air carriers on the base of the EC Decision. According to art. 50 of the Montreal Convention 1999, state parties are obliged to provide the appropriate insurance for air carriers covering the air carrier liability (showed in the Convention); so liability for delays is also included.

According to the above, it seems to be reasonable to harmonize at the EU level the principle of insurance for air carriers and aircraft operators for delays, similarly to the civil liability insurance.

Q18. Is there scope for simplification of the Regulation?

The Regulation is well written and does not need simplification at this stage.

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?

It is still necessary to have harmonized insurance requirements for non-commercial aircraft operators, with some possible amendments to their liability system (see Q14). Although less likely to happen, possible damage caused by an accident involving non-commercial aircraft might have the same disastrous consequences as the one involving commercial one and would require the same sums of indemnification to be paid to possible casualties. Lack of appropriate insurance may also have dramatic consequences to aircraft owners/operators themselves, with bankruptcy and criminal sentences involved.

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