

Position Paper

20 November 2007

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

The Association of European Airlines (AEA) welcomes this opportunity to comment on the impact Regulation 785/2004 had on air carriers and aircraft operators. The economic impact varied depending on the size of the air carrier. Discrepancies can also be noted across Member States. As a general principle, airlines should not be deemed in default if they cannot comply with Regulation 785/2004 because of the insurance market providing no coverage or proposing premium at an unreasonable price. AEA would also like to draw the attention of the Commission to the fact that EU insurance requirements are still putting European carriers at a disadvantage compared to other third country carriers, and more specifically US carriers, who are protected by their government from liabilities they cannot buy on the insurance market. Additional AEA comments on the discussion paper are detailed below.

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?

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

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?

The level of liability insurance bought by air carriers mostly depends on their size. With regard to the “normal” liability coverage, the major airlines are typically purchasing liability insurance coverage between USD 1 billion and USD 2.25 billion. Some of the low cost airlines are purchasing USD 750 million which is right above the EC785/2004 minimum requirements applicable to the aircraft types they operate. Smaller carriers are more likely to purchase around the EC785/2004 minimum requirements taking consideration of their corporate governance policy. With regard to the third party war and allied perils liability, some carriers also have a policy of buying as much coverage as they feel is appropriate whereas others buy the EC785/2004 minimum requirement limit due to the high cost of this type of coverage.

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The economic impact of the Regulation therefore varied. Major airlines already had high levels of coverage before the Regulation came out whereas smaller carriers had to buy additional coverage. In addition, the impact varied across Member States. In some Member States the minimum national requirements for operators of smaller aircraft were similar or close to the EC785/2004 minimum requirements. In this case, increases of minimum levels were minor and have not affected most of insurance premiums. But, in other countries, EC785/2004 did affect the General Aviation operators as they traditionally carried very low levels of liability limit. They also did not normally insure War and Allied Perils Liability insurance with AVN52E for very high limits. It is therefore difficult to precisely evaluate the economic costs in this area. However, it should be noted at this point that all carriers have been affected by the minimum insurance levels for third party war and allied perils liability coverage as some are buying higher limits than they may wish to or feel relevant in accordance with their own risk assessment and corporate governance policy.

As regards historic aircraft, the cost of insurance has been a significant burden for the operators as many of them are flying clubs or amateur associations without much finance. The increase in liability insurance limits due to EC785/2004 has in our view been the main reason for the increased costs. AEA would suggest that a different mechanism should be formulated to take consideration of their usage. For instance, their aircraft could be allowed to carry lower limits when they are not carrying passengers or displaying at air shows. Depending on the revised mechanism, it could allow them to negotiate a better price with their insurers.

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 threat of war or terrorism is certainly less for non-commercial operators but AEA would like to note that the degree of threat also significantly varies amongst commercial carriers. Terrorism risk insurance has put a substantial and disproportionate cost burden on both non-commercial aircraft operators and commercial operators. Non-commercial operators can also include privately owned Airbus aircraft as well as large executive jets. Some form of regulation is therefore needed as these types of aircraft will be operating into major airports and over major cities. If parts of the aviation industry are exempted, the Commission should also bear in mind that this will reduce Insurers' pot of terrorism premium which would increase the commercial operators' pricing.

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?

Insurers will not want to provide coverage for this liability unless this is capped in some way. Governments therefore need to take liability for this exposure and not the aviation industry. AEA is also concerned that depending on how the new war liability

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exclusions and write-back clauses will be applied by Insurers, airlines could be in default under EC785/2004. Article 4 paragraph 2 of the Regulation requires a coverage for a flight, ie, the period of transport of the passengers including boarding and disembarkation. The term 'at the airport' is therefore too wide and might be in contradiction with the scope of the regulation.

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?

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

To our knowledge, brokers or insurers are issuing a certificate of insurance to the relevant body of a Member State to confirm that an airline has the required level of coverage under EC785/2004. AEA is not aware of any other procedure in place. The LMBC already produced a standard form of Certificate that could be used to confirm EC785/2004 liability limits. This is generally accepted by all EU countries apart from Germany and Italy who have developed their own standard certificates. AEA would be in favour of an EU standard certificate. This should be developed in close consultation with the relevant insurance market players. Consultation would indeed avoid the introduction of unworkable measures, like this is the case in Italy where the certificate could only be issued by the Insurers, or in Germany, where a certificate requires coverage the insurance market does not give (eg, coverage for delay).

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?

Not applicable to AEA carriers.

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

AEA is not aware of any specific insurance related problems with the application of Regulation 889/2002. Air Carriers liability insurance policies recognise that the carriers' liability is governed by EC2027/97 as amended by EC889/2002 and insurers do not have a problem with this provision.

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

The liability of Community air carriers as regards war and terrorist acts should be limited to the insurance levels available on the insurance markets. War and terrorist

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acts targeting aircraft are linked to government diplomatic decisions and not to the commercial airlines themselves. Within this global political context, Governments should accept their responsibility in protecting airlines from liabilities for which they cannot buy insurance. In this respect, European Airlines are put at a significant competitive disadvantage compared to US and other carriers, who are protected by their governments.

AEA favours the harmonisation of the third party liability rules for risks linked to war and terrorist risks as long as it does not impose additional liability or cost on airlines. Ideally, one Convention or Regulation should cover war and terrorist risks liabilities for third party, passenger, cargo, etc rather than having different provisions spread over various international instruments (eg, Montreal, Rome, etc).

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?

From a cost perspective, the US airlines are benefiting from the FAA scheme which gives them better coverage than pre 9/11 at a very low price. As the US airlines are not purchasing their hull or liability war and allied perils coverage in the conventional insurance markets, this affects directly the pricing insurers can give to the airlines that do purchase their coverage in this market. A level playing field in this respect can only be achieved by a similar commitment of the European Member States.

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?

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

AEA is not aware of any specific insurance covering refunds to passengers or costs of repatriation due to insolvency or revocation of an operating licence. Furthermore, we do not see a need to for additional insurance requirements in this respect. The financial solvency requirements for licensing and continuous oversight by the national authorities already reinforce protection against bankruptcy.

Q14: Is there scope for simplification of the Regulation?

In the current Regulation, the minimum limits need to be in SDR's whereas most airlines take out their insurance policies in USD. Recent movement in the SDR has required some airlines limits to be increased for war and terrorism third party liability coverage. As many airlines are insuring at the minimum levels for cost purposes, the SDR fluctuation can have an effect on pricing during a policy annual period. AEA

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would therefore propose that the limits should be in USD and reviewed on an annual basis so that rate of exchange differences would be dealt with on an annual rather than daily basis. The Regulation also does not take into consideration the fact that some liability coverage is deductible.

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?

As stated for question 4 above, AEA would propose that if non-commercial operators are exempted from this Regulation, they still need some form of regulation to ensure that they have a reasonable level of liability insurance for consumer protection. Exempting non-commercial operators would probably lead them to go back to their previous practices of buying lower levels of liability coverage thereby reducing their insurance costs.

AEA is keen to further contribute to a constructive dialogue on the impact of Regulation 785/2004 and we look forward to your comments on the issues we have raised above.

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The Association of European Airlines (AEA) brings together 31 European established service and scheduled network carriers. These collectively carry 343 million passengers and 6 million tons of cargo each year, operating 2,540 aircraft serving 605 destinations in 161 countries with 11,030 flights a day. They provide around 375,000 jobs directly, and generate a total turnover of €75 billion.