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European Commission  
Directorate-General for Energy and Transport  
Internal Market  
Aviation Agreements & Multilateral Relations  
DM 24 5/118  
B-1049 Brussels  
BELGIUM

Dear Sirs,

**Discussion Paper on the Operation of the Regulation (EC) 785/2004 on  
Insurance Requirements for Air Carriers and Operators**

We refer to the Commission's discussion document recently issued under the above title and reference. We are attaching our responses only to those sections of the Commission's paper where we believe our views may be helpful to the Commission's further deliberations.

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

In our judgment with respect to commercial air carriers the minimum insurance requirements have had no notable impact upon them because prior to the implementation of EC/785 the majority of airlines were already carrying higher liability limits than those required by the regulations. For carriers domiciled in eastern European (non EC) territories there may have been some consequences as this grouping generally operated with lower liability limits than their counterparts in the rest of Europe. However, it is our view that this would not have been a fundamental issue for those affected airlines as the requisite limits were (and are) readily available to them in the commercial insurance markets. In this regard, the Commission has itself already commented on consistently softening airline insurance premium.

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

For General Aviation and/or leisure operators there may have been some increase in their insurance obligations due to the regulations but we do not have authoritative figures to be able to estimate or quantify this. Although perhaps notable for those individually affected, we nevertheless doubt that any revised insurance requirement would have been especially significant or onerous upon them when set in the wider context of owning, maintaining or flying a private aircraft. We believe the link to MTOW adopted in the regulations is sensible and clear for all aircraft operators to understand.



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*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?*

Historic aircraft suffer a disproportionately high accident rate due to a number of factors including the incidence of structural and mechanical failures and pilot issues (most pilots will have only very limited experience of flying the aircraft in question).

An accident at an airshow or other event attended en masse by the public could potentially give rise to considerable third party loss of life.

These facts, together with the small “risk population”, make historic aircraft a difficult sector for the insurance market. Problems may therefore be faced by the operators if they attempt to arrange cover at the last minute, particularly if they have not made adequate provision in their budgets for the cost of insurance.

There is no good technical argument to support exempting historic aircraft from the insurance requirements, however.

*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?*

Our view would be yes – again linked to MTOW. The Commission will be well aware that commercial insurance markets are not designed to cover absolutely every conceivable risk or peril that an operator might face and this is particularly relevant in the context of WMD considerations. Today, the commercial insurance sector does provide very full levels of capacity for these risks (excluding nuclear) and it is our judgment that this position will continue for the indefinite future. We accept the view expressed via the Commission that the terrorist threat to private aircraft may be much lower than that applicable to commercial airlines but it is nevertheless apparent that private aircraft in hostile hands can be readily used to create significant damage/destruction to property and personnel on the ground. It is also clear that, whilst acknowledging the argument of a lower risk profile for private aircraft, such operators usually do not have access to the much more intensive security screening resources regularly utilised by the commercial carriers. This comparative lack of a high security infrastructure arguably makes private aircraft an easier target for a committed terrorist with hostile intent.

*Q5: Is there a need to introduce specific rules for the insurance requirements for damage cause by unlawful interference while the aircraft is still at the airport in order to allow insurers better control over possible liability exposure?*

This topic has been widely discussed by the insurance sector with the Commission over the last two years. Recognising the profound issues that are raised by this matter, revised insurance War & Allied Perils Exclusion Clauses and corresponding write back provisions have been produced by the London based Aviation Insurance Clauses Group (AICG) for example, AV48D and AV52K. On an illustrative basis, the Commission has already indicated that the application of these particular clauses into insurance contracts would be compatible with aircraft operators observing the provisions of EC785. The issue of potentially uncontained accumulations of risk, for example at airport locations, remains of serious concern to the insurance industry and may act

to constrain capital allocation to this type of peril should further terrorist activity be experienced within the global airport systems. A formal ceiling on possible maximum liability exposures would therefore be an aid to stability over the longer term.

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

A standard format for certification, universally accepted by EU Members, is highly desirable. It is an unnecessary complication that under a regulation designed to introduce uniformity within the EU, a third country air carrier or aircraft operator must be able to produce certificates in different formats depending on which EU countries are to be visited.

This is not simply a matter of making the process simpler and more efficient. On more than one occasion an individual regulator has sought to introduce requirements in respect of certification which are either impractical (such as a requirement to have the certificates issued and signed by all the subscribing co-insurers on a policy) or unacceptable to insurers (in particular where the requirements imply coverage beyond the scope of the insurance policy).

In these circumstances there has been actual disruption to air travel, and considerable time and cost expended by brokers and insurers in negotiating with the regulator in question to find a solution acceptable to all parties.

There is already a standard form of certificate used by the majority of brokers and accepted in the majority of member states, and this should form the basis for a universal certificate.

*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?*

Some insurers are able to offer cover of this sort, which is largely a form of financial guarantee or bond. This is not a coverage generally offered by aviation insurers per se, and many insurers (notably the Lloyds' syndicates) are precluded from offering it.

Many airlines have relatively weak balance sheets and are therefore seen as being a poor credit risk, particularly given the sensitivity of demand for air travel to economic downturns, terrorist events and pandemic illness. For this reason, the costs associated with such insurance may be high, and those airlines with the poorest credit risk may find that cover is difficult or impossible to obtain, which could lead to their being grounded because they cannot comply with the insurance regulation – in other words the medicine could actually kill the patient!

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

Passengers in the UK on inclusive tour packages have long had the protection of a mandatory quasi-insurance bonding scheme. This scheme reflects a time in history when a holiday-maker whose charter carrier had ceased trading could face real difficulties in finding alternative means to return home. However, passengers on UK scheduled airlines have had no such protection.

Under UK Consumer Credit law, any passenger who has purchased their ticket using a credit card can recover from the credit card company in the event of the non-performance by the air carrier. This is a potential alternative solution that could be adopted community-wide.

Passengers stranded within Europe today by a defaulting air carrier are unlikely to face significant hardship given the ready availability of inexpensive travel options, whether by air, rail or road, which now exist within the Community. Consideration could be given to some form of emergency repatriation scheme for EU citizens stranded in longhaul locations only. This would require considerably less funding than an all-encompassing scheme, but one would have to ask whether it is strictly necessary given the availability of Consular assistance. In any event the modern consumer of air carrier services in Europe is more than likely capable of making his or her own informed choices when booking travel, and therefore the principle of "caveat emptor" can be more equitably applied than in the past.

*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?*

The benefits of minimum levels of Third Party bodily/property damage insurance to protect EU citizens will be clearly apparent to the Commission. It will always be open to aircraft owners/operators to purchase variable insurance limits as they deem desirable to protect their own assets and exposure to risk.

We hope these thoughts are helpful to the Commission and remain at your disposal if the Commission would like to discuss any aspect in greater detail.

Yours truly,



A J Medniuk