EU Insurance Consultation regarding Regulation (EC) 785/2004

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?

In general air carriers have purchased such limits as they have deemed necessary or that have been required of them e.g. under aircraft lease contracts. They have not sought reduced limits where that may have been allowed by the Regulation and in general we believe they are at or above the limits set by the Regulation.
Major carriers have continued to purchase the limits they carried prior to the Regulation as in most cases they were in excess of that required. Ex-CIS, Eastern European carriers, regional operators have, however, been materially affected especially those operating aircraft which have fallen into the higher weight brackets, where smaller limits were generally purchased.
As far as corporate operators of the larger business jets (BBJ's, CL-604s, Global Express, Falcon 900, G-IV & above) are concerned they too have been affected but such operators are generally simply complying with the limits.

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

There has been additional cost to operators, but this has been reducing. Previously uninsured operators now have to insure and it was surprising just how many didn't insure, especially in the microlight arena, or did not bother to insure the passenger seats. Higher limits required in the 1,000kg – 2,700kg bracket have caused a one-off increase in premiums post 9/11 but the impact of this now receding with competition in the market place. In the UK, many operators purchased just £500,000 limits (including the passengers) thus the Combined Single limits they now need to carry are considerably higher, but once you sit down and explain just how far £500,000 goes in today's litigious climate, they now realise that that which the EU has implemented, is not so bad. Within greater Europe we are sure the problems were the same and especially in the Eastern European countries where limits were even lower.

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 Regulation has had a considerable impact on the historic aircraft operators, especially on the heavier aircraft (e.g. Catalina, DC-3, B-17 and Constellation). The MTOM breaks have really hit this sector hard. In addition the inability of national authorities to issue exemptions under the legislation was a mistake. It should be remembered that many of these historically significant aircraft reply upon income generated at a limited number of airshows or charitable donations to keep them in the air but are treated as commercial air carriers under the legislation. One of the main arguments emanating from these operators, with considerable justification, is that the original certificated MTOM for the aircraft bears no relation to the current operational weights the aircraft are presently flown at – the need to carry a full bomb

load with maximum endurance is somewhat in the past, and thus should reflect current operational MTOM. In reassessing this sector care should be taken not to relieve operators from the requirement to insure, as many of these aircraft (especially in mainland Europe) are allowed to carry passengers under a thinly veiled hire and reward basis. There is no doubt the Third Party limits are unrealistically high for some of these aircraft and need to be reconsidered. It should be noted that most of the flying conducted by these aircraft is outside controlled/congested airspace and away from major airports, and their transit altitudes are generally low. In fact many of the aircraft are flown under experimental certificates of airworthiness (especially the ex-military jets) and in many EU states this means they are precluded from flying over built-up areas. This relates to relatively few aircraft. We believe there are around 150 aircraft actively flying with maybe up to another 100 that are registered but not flying.

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?

There was a perceived need for war cover. So far nothing has happened but it could. Prices are very low (and reducing) and we don't see it as an onerous expense although operators see all expense as onerous. We do not believe the reason for the requirement has gone away.

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

Any rule that helps insurers "cap" their airport terrorism insurance accumulation would be useful. At airports there are various parties who could be seen as exposed. For example, the airport operator, concessionaires etc. Airlines are also at risk for passengers (depending on contractual positions). Any "cap" could therefore interfere with Montreal Convention etc. The workability of such a "cap" would be highly complicated and would require careful consideration.

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?

To the best of our knowledge the answer is yes, so a universal certificate would be best. Usually insurance evidence is supplied in a format determined by the relevant national authority. One should mention that anyone can falsify such a document. We are unaware of what controls are in place around the EU to deal with this.

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

Yes. CAA brought together the main UK Brokers after announcement of the regulation, to agree a standard Certificate format (causes problems with Lloyd's terminology for a Certificate). This standard format was achieved, but UK CAA's attempt to roll this out across Europe failed. Such a standardised document would be of benefit to operators, owners and lawyers.

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 aircraft operators?

Simpler to settle on SDR250,000. Local sub-limit (SDR100,000) causes problems for Underwriters and owners when travelling cross-border. UK and a few other countries allow this but difference in premium charges would expect to be negligible, and is £75,000 per passenger really sufficient in this day and age?

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

In general the problems have been certification and paperwork acceptable to National Authorities (see answer to question 7) and originally Non-EU operators needing to comply, although these have generally been solved.

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

Since the Regulation applied to both war and non-war third party risks, it did cover both. To waive or reduce any war requirement would disharmonise.

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?

Yes still necessary

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 license?

This is called Repatriation costs insurance. This is really an aircraft operators commercial risk and is not related to an unexpected aircraft accident. We have tried in the past to find ways of covering but past history would indicate, that most airlines

are unwilling to pay for such coverage, so inadequate premium funds, from a small number of potentially exposed carriers, make such insurance impractical.

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

From the answer to the above question it will be evident that a simple insurance product is unlikely. A product that required all air carriers to buy might work, but would be difficult to justify.

Q14: Is there scope for simplification of the Regulation?

Yes, delete lower passenger legal liability limit of SDR100,000, standardise Certificates, different and better/revised minimum limits for private and historic aircraft operators compared to AOC operators to more correctly reflect exposures, change currency of limits to EUR as the prominent currency in Europe and so that owners/operators better understand limits of coverage they are buying Europe-wide – SDR means nothing to most.

Q15: Is it still seen necessary to have harmonised insurance requirements for non-commercial aircraft operators from the scope of the Regulation?

Yes it is still necessary. Were the requirement to be removed the impact will be adverse ultimately as we would go back to the situation where aircraft are flying around uninsured or underinsured from a Liability perspective. Majority of operators/owners now accept regulation has been beneficial, in providing a level playing field overall, but considerable effort needs to be put in, to fine tune the regulation, so as not to be seen to adversely affect certain sectors of the industry, but still establishing robust and sensible levels of insurance.