

**RESPONSE BY EUROPEAN REGIONS AIRLINE ASSOCIATION (ERA)
TO EUROPEAN COMMISSION (DGTREN) DISCUSSION PAPER
ON THE OPERATION OF REGULATION (EC) 785/2004
ON INSURANCE REQUIREMENTS FOR AIR CARRIERS AND AIRCRAFT OPERATORS**

The ERA Directorate thanks the European Commission for the opportunity to submit comments on behalf of ERA members on the operation of Regulation (EC) 785/2004 on insurance requirements for air carriers and aircraft operators.

Few ERA members have submitted comments to the ERA Directorate for inclusion in this response to the discussion paper. Following the initial impact of the Regulation, which some members believe added unnecessary and unjustified costs, the insurance market has continued to function. The ERA Directorate remains concerned about the potential withdrawal, particularly in the event of a terrorist attack, of cover that is mandatory under the Regulation.

The remaining comments will follow the structure of the questions posed in the discussion paper.

Questions 2, 3, 8 and 15 are not answered as they have little or no relevance to operations by ERA members.

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?

Many insurance policies have needed to be changed to comply with the mandatory minimum insurance limits. Some ERA member airlines insure at levels higher than the mandatory limits for some categories of risk.

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

Not relevant to ERA members.

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?

Not relevant to ERA members.

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?

ERA members believe that states should treat aviation in the same way as they treat terrorist risks for other modes of transport. In general, states would then bear the risk of terrorist attacks without charge to aircraft operators.

In the absence of this approach by states, ERA members believe that 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 should be maintained.

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?

ERA members have no firm view on this concept. Further consultation would be required to obtain a firm position.

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?

ERA has no comment on this question.

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

ERA members believe that this would be beneficial. However, more consultation would be required to ensure that the benefits outweigh the costs.

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

Not relevant to ERA members.

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

No problems have been reported to the ERA Directorate.

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

ERA members have no firm view on this concept. Further consultation would be required to obtain a firm position.

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 agreements with third countries?

ERA has no comment on this question.

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?

This question is addressed to providers of insurance. The ERA Directorate believes that cover for at least some of the effects of bankruptcy is included in travel insurance available from some airlines.



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

It is essential to consider the two risks separately.

Firstly, refunds for sums paid are generally addressed by bankruptcy law that covers all providers of goods and services. The ERA Directorate is not aware of any justification for making special provisions for air transport.

Secondly, with regard to repatriation, the Commission conducted a study into the effect of airline failures. The ERA Directorate is not aware that this demonstrated any requirement for new legislation covering repatriation. Previous work in this area by the ERA Directorate has indicated that the costs would outweigh the benefits. All commercial passenger transport operators, across all modes of transport, can be closed at short notice through bankruptcy or by regulatory authorities. While ERA has seen no evidence that legislation is justified, any proposed legislation should cover all modes of public transport.

The ERA Directorate believes that the availability of voluntary insurance for purchase by passengers is a viable option. This voluntary insurance concept is well understood by car owners through the optional availability of cover that offers a “return-to home” service in the event of breakdown or accident.

Q14: Is there scope for simplification of the Regulation?

Some ERA members have indicated that they believe there may be scope for simplifying the regulation. The ERA Directorate has no firm proposals at present.

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?

Not relevant to ERA members. However, as stated in response to Question 4, if member states accept that they will cover third-party damage due to terrorism for this sector of aviation, they should do so for all air transport operations.

November 2007

