

Questionnaire re 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?

Maltese air carriers and non EU air carriers operating into Malta carry an insurance that is at least equal to the minimum insurance requirements. The major air carriers had an insurance level in excess of the minimum legal requirements both before and after the entry into force of Reg 785. From the date of entry into force of EC Reg. 785/2004 all non-EU operators and Maltese operators showed compliance without any adverse comments. The only impact resulting indirectly from the Regulation was the increased in premia in the aftermath of 9/11.

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

Maltese general aviation operators as expected aired comments to the effect that their insurance premiums were going to significantly be increased as indeed happened.

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?

At present we have no historic aircraft in Malta and we are therefore not in a position to reply to this question. However we are aware that the cost of buying insurance for historic aircraft can be prohibitive and the insurance cover for such aircraft could be perhaps relaxed.

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?

Yes even though it is a low risk event.

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?

Yes there is such a need especially since this will help at the point in time when the market will be successful in the introduction of limited coverage regarding unlawful interference.

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?

Third country air carriers and aircraft operators using aircraft registered outside of the EU flying into Malta are still required to submit an insurance certificate or policy. These are the documents that are accepted to confirm compliance with Reg. 785/2004.

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

It is considered that for easier and more efficient control of insurance status, a universal or standard EU insurance certificate certifying that the operator's insurance policy meets the EC Reg 785/2004 requirements for third party and passenger liability offers the best solution. Normally such documentary controls are carried out by DCA staff who are not technically knowledgeable enough to correctly interpret an insurance policy. Hence insurance certificates issued by the Insurer or Insurance Broker confirming that insurance coverage provided to that carrier satisfies Reg 785 requirements would alleviate the control task.

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?

Under national regulations operators of aircraft with an MTOM less than 2700 kg are required to have a minimum passenger liability cover for 100,000 SDRs as per Reg 785/2004 Art 6(1) provisions. No problems are known to have turned up as a consequence of this requirement although increased insurance premiums would have resulted.

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

Although we are aware of certain conflicts regarding the application/interpretation of the Regulation no problems are known to have arisen as a result of its application.

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

Yes. Harmonisation is required to ensure a level playing field.

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?

It is considered that the Regulation 785/2004 is absolutely necessary to ensure a level playing field with third country carriers. Additionally it ensures harmonisation in the Community. Any relaxation of the obligation of third country carried under Reg 785 would place unnecessary burdens on Member States.

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?

Passengers ought to be covered for costs incurred in their repatriation in case of carrier insolvency or an AOC revocation. Therefore airlines could be made to take up insurance in such eventuality to refund passenger repatriation costs. The conventional insurance market does not commercially provide this cover but this is not to say that it should not be able to provide such insurance at a cost acceptable to the industry and which would be passed on eventually to passengers.

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

There are other effective and efficient methods of protecting passengers but additional insurance appears to be the most effective and most transparent.

Q18: Is there scope for simplification of the Regulation?

Regulation 785/2004 is simple and clear enough but there is room for improvement by including the specification of insurance cover in terms of Capital Sum Insured as is usually the case for large carriers.

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 considered highly desirable to have harmonised insurance requirements for non commercial aircraft operators throughout the Community and for operators within the Community. The Regulation 785/2004 should continue to govern insurance requirements for non commercial aircraft operators.