Air transport: insurance for air carriers and aircraft operators

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Regulation (EC) No 785/2004 entered into force in April 2005, imposing minimum insurance obligations on air carriers and non-commercial aircraft operators in respect of passengers, baggage, cargo, and third parties liability. The Regulation applies to all air carriers and aircraft operators flying within, into, out of or - to a certain extent – over EU territory. The purpose of this Communication is to report on the Regulation's application and operation.

In the three years since the Regulation entered into force, it has been effective in ensuring insurance coverage of all aircraft operators flying within, to or from the Community. There have been very few cases of aircraft operators not complying with the insurance requirements. Civil aviation authorities from the Member States reported that some third-country carriers – usually charter carriers from Central Asia – suspended their operations after the entry into force of the Regulation. In response to a consultation launched by the Commission, stakeholders reported that the Regulation is both clear and straightforward. With very few exceptions, air carriers and aircraft operators demonstrate their compliance with the insurance requirements laid down by depositing an insurance certificate. In cases where third-country carriers fail to provide evidence of insurance, the Member States have the right to refuse landing permission. This sanction alone has proven to be both effective and dissuasive. Indeed, it has deterred some third-country carriers, without proper insurance, from flying into the Community. As far as Community air carriers and aircraft operators are concerned, there have been extremely few cases where Member States have needed to apply sanctions – indicating that the minimum insurance requirements are both clear and proportionate.

In spite of the above some concern has been raised with regard to certain issues. they are:

The insurance certificate: Stakeholders have expressed support for a standard insurance certificate. The Commission is of the view, however, that a legally binding certificate would reduce flexibility. The Commission will encourage further discussions between industry and the Member States to further improve model certificates in order to ensure acceptance in all 27 Member States.

The provision of insurance certificates: Some Member States have asked for insurance certificates to be issued by insurance brokers. The report suggests, however, that for the purposes of the Regulation, it is not relevant whether such an insurance certificate is issued by the insurers themselves or by an insurance broker/agent on behalf of the insurer.

The relationship between the insurance certificate and the terms and conditions of the insurance policy: The Regulation does not intervene in the contractual arrangements between aircraft operators and insurance underwriters. However, and in so far as insurance certificates are often subject to the terms, conditions, limitations and exclusions agreed in the insurance policy, the aviation authorities may need evidence that those terms and conditions do not affect the aircraft compliance. Beyond this, an examination of the terms and conditions by the aviation authorities is not necessary in order to ensure compliance with the Regulation.

To conclude, the report notes that in some Member States, certain categories of aircraft operators have been facing a substantial increase in insurance costs since the entry into force of the Regulation. However, it is does not see evidence of a general problem. It was the Council's and Parliament's intention to provide a level playing field and to establish harmonised insurance requirements for all aircraft operators, commercial and non-commercial, European and foreign, in order to guarantee adequate compensation for passengers and third-party victims. Responses have confirmed that this objective continues to be valid and that re-introducing the possibility of national rules would be counter productive.

Harmonisation affects some Member States more than others. However, in the majority of Member States the minimum requirements of the Regulation have not caused any substantial problems. Therefore, the insurance requirements established by the Regulation cannot be considered as inappropriately high for certain categories – such as light aircraft.

In the three years since its entry into force, the Regulation has effectively fulfilled its stated objective of ensuring appropriate insurance coverage for passenger, baggage, cargo and third-country liabilities of all aircraft operators flying in the Community.