Air transport: insurance for air carriers and aircraft operators

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PURPOSE : to present a proposal for a regulation on insurance requirements for air carriers and aircraft operators. CONTENT : in the aftermath of the 11 September 2001 terrorist attacks in the United States, airlines were suddenly left without insurance and governments have had to step in and assume the role of insurer. To facilitate the rapid return to market conditions and restore confidence both in the aviation and in the insurance sectors, the Commission puts forward this legislative proposal which introduces minimum insurance requirements for all air carriers and aircraft operators flying within, into, out or overflying the European Union. This proposal incorporates in EU law the main rules foreseen in various international conventions, harmonising the rules applicable in the EU territory and making them compulsory for any carrier operating in Europe. It also aims at improving the current rules on third party liability. In addition, commercial insurance has withdrawn its effective cover for aviation third-party risks to EUR 50 million. Above this amount, cover is commercially available, but from few companies and at considerably less favourable conditions to the aviation industry than prior to 11 September. This sudden and unexpected situation drove the European Commission to authorise national aid schemes through the article 87.2 b of the Treaty, applicable under exceptional circumstances. The crisis of the sector also showed the lack of harmonised application of the international conventions and the need to establish a legal framework setting out the conditions of insurance and minimum amounts that both Community and third country air carriers and aircraft operators have to observe at all times in respect to their liability vis-à-vis passengers, baggage, cargo, mail and third parties. With regard to insurance requirements for air carriers and aircraft operators, the proposed Regulation provides legal certainty for European Union and non-EU air carriers and aircraft operators flying into or within the Community and ensure the transparent, non-discriminatory and harmonised application of minimum insurance requirements. It introduces a harmonised approach and a level playing field for all air carriers and aircraft operators irrespective of nationality by setting clear minimum insurance requirements for all types of liability (passengers, baggage, cargo, mail and third parties). The rules put forward clarify the general requirement for community air carriers to be insured and set up minimum requirements following practice at European (European Civil Aviation Conference - ECAC) and international conventions. The main aspects of the proposal are the following : - passengers and baggage : all air carriers shall be insured to cover their liability for death, wounding or any other bodily injury sustained by a passenger for the minimum amount of 250 000 Special Drawing Rights (SDRs) per passenger. Such insurance will also cover damage sustained in the case of destruction or loss of, or damage to checked baggage of a passenger. - cargo : air carriers and aircraft operators shall be insured to cover their liability for damage sustained in the event of the destruction or loss of, or damage to cargo carried for the minimum amount of 17 SDRs per kilogram, under the condition that the damage took place during the flight. - mail : Member States shall set the minimum insurance requirements in value for the carriage of mail by air carriers or aircraft operators without discrimination on grounds of nationality or identity. - third party liability : until now there was no Community rules defining what such liability should be based on. The only international framework is the Rome Convention (1933, amended in 1952 and 1978), which follows the principle of strict liability for damage sustained on the ground, without considering acts of war or terrorism. Moreover, all Member States are not signatories to this Convention or have not ratified it. The proposed Regulation requires that all air carriers and air operators flying within, into, out or overflying the European Union shall be insured or shall produce evidence that they observe at all times the minimum insurance requirements for damages sustained by third parties in the event of accidents as well as acts of war and acts of terrorism. Moreover, Member States will have to perform regular inspections to verify the compliance with the proposed Regulation of air carriers using airports in their territory, or air carriers and air operators under their control (to which they have delivered an operating licence -air carriers- or an aircraft operator's certificate). If not satisfied, they shall deny the access to routes into or within the EU, refuse the right to overfly their territory or not allow the aircraft to take-off. Air carriers and aircraft operators registered in a third country shall provide alternatively to the insurance requirements some other securities like cash deposit in the country of origin or a guarantee issued by a bank authorised to do so by the country of registration of the aircraft, under strict conditions ensuring the effective payment if needed.