Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators

REGULATION (EC) No 785/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 April 2004

on insurance requirements for air carriers and aircraft operators

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)],

Whereas:

(1) In the framework of the common transport policy, and in order to foster consumer protection, it is important to ensure a proper minimum level of insurance to cover liability of air carriers in respect of passengers, baggage, cargo and third parties.

(2) In the Community aviation market, the distinction between national and international air transport has been eliminated and it is, therefore, appropriate to establish minimum insurance requirements for Community air carriers.

(3) Common action is necessary to ensure that these requirements also apply to air carriers from third countries in order to ensure a level playing field with Community air carriers.

(4) In its Communication of 10 October 2001 regarding the repercussions of the terrorist attacks in the United States on the air transport industry, the Commission stated its intention to examine the amounts and conditions of insurance required for the grant of operating licences by Member States in order to ensure a harmonised approach. Moreover, in its Communication of 2 July 2002 regarding insurance in the air transport sector following the terrorist attacks of 11 September 2001 in the United States, the Commission stated that it would continue to monitor the developments on the aviation insurance market with regard to the revision of the amounts and conditions of insurance required for the grant of operating licences by Member States.

(5) By Council Decision 2001/539/EC[(4)] the Community concluded the Convention for the Unification of Certain Rules Relating to International Carriage by Air, agreed at Montreal on 28 May 1999 (Montreal Convention), which lays down new rules on liability in respect of the international carriage by air of persons, baggage and cargo.

Changes to legislation: *There are outstanding changes not yet made to Regulation (EC) No 785/2004 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

These rules are expected to replace those of the Warsaw Convention of 1929 and its subsequent amendments.

(6) Article 50 of the Montreal Convention requires parties to ensure that air carriers are adequately insured to cover liability under that Convention. Warsaw Convention of 1929 and its subsequent amendments will continue to exist alongside the Montreal Convention for an indefinite period. Both Conventions provide for the possibility of unlimited liability.

(7) Article 7 of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers[(5)], requires air carriers to be insured to cover liability in case of accidents, in particular in respect of passengers, baggage, cargo, mail and third parties, albeit without specifying minimum amounts and conditions of insurance.

(8) It is appropriate to take into account the fact that the European Civil Aviation Conference adopted on 13 December 2000 Resolution ECAC/25-1 on minimum levels of insurance cover for passenger and third party liability, which was modified on 27 November 2002.

(9) It is necessary to define minimum insurance requirements to cover passengers, baggage, cargo and third parties for air carriers and aircraft operators flying within, into, out of, or over the territory of a Member State, including its territorial waters.

(10) Insurance obligations should remain with air carriers with a valid operating licence, and, in the case of Community air carriers, with a valid operating licence granted in accordance with Regulation (EEC) No 2407/92. The absence or expiry of such licence does not relieve the undertaking from such obligation.

(11) While the Montreal Convention specifically regulates liability in respect of passengers, baggage and cargo, the liability for mail is, according to Article 2 of that Convention, to be subject to 'the rules applicable to the relationship between the carriers and the postal administrations'. In the Community, insurance for such liability is sufficiently regulated by Article 7 of Regulation (EEC) No 2407/92.

(12) Mandatory insurance should not be required for State aircraft and for certain other types of aircraft.

(13) Minimum insurance cover should be provided in situations where an air carrier or aircraft operator is liable in respect of passengers, baggage, cargo and third parties in accordance with rules of international Conventions, Community or national law, without interfering with such rules.

(14) The insurance should cover aviation-specific liability in respect of passengers, baggage, cargo and third parties. Regarding passengers, baggage and cargo, insurance should include cover for death and personal injury caused by accidents and for loss or destruction of or damage to baggage and cargo. Regarding third parties, insurance should include cover for death, personal injury and damage to property caused by accidents.

(15) This Regulation should not be interpreted as requiring double insurance. As far as the contracting carrier and the actual carrier within the meaning of Article 39 of the

Montreal Convention can be held liable for the same damage, Member States may establish specific measures to avoid double insurance.

(16) While the market practice of offering insurance on an aggregate basis may be conducive to insurability, in particular for risks of war and terrorism, by allowing insurers better control over their liabilities, this practice does not release an air carrier or aircraft operator from the obligation to respect minimum insurance requirements when the aggregate fixed by its insurance contract is reached.

(17) It is necessary to require air carriers to provide evidence that they respect at all times the minimum insurance requirements to cover liability, as provided for in this Regulation. With regard to Community air carriers and with regard to aircraft operators using aircraft registered in the Community, depositing evidence of insurance in one Member State should be sufficient for all Member States, such insurance being effected by an undertaking authorised to do so under the applicable law.

(18) With respect to overflights of the territory of a Member State by non-Community air carriers or aircraft registered outside the Community which do not involve a landing on or take-off from any Member State, any overflown Member State may, in accordance with international law, request evidence of compliance with the insurance requirements of this Regulation, for example by carrying out random checks.

(19) The minimum insurance requirements should be reviewed after a period of time.

(20) Procedures for monitoring the application of the minimum insurance requirements should be transparent and non-discriminatory and should not impede the free movement of goods, persons, services and capital.

(21) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(6)].

(22) Where further rules are required to establish adequate insurance covering aviation-specific liability on points which are not covered by this Regulation, the Member States should have the possibility to introduce such rules.

(23) Arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries. Such arrangements have yet to enter into operation.

(24) Since the objective of this Regulation, namely the introduction of minimum insurance requirements which can contribute to the objectives of the internal aviation market by reducing distortions of competition, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Changes to legislation: *There are outstanding changes not yet made to Regulation (EC) No 785/2004 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Article 1

Objective

1 The objective of this Regulation is to establish minimum insurance requirements for air carriers and aircraft operators in respect of passengers, baggage, cargo and third parties.

2 In respect of the carriage of mail, the insurance requirements are those set out in Regulation (EEC) No 2407/92 and in the national laws of the Member States.

Article 2

Scope

1 This Regulation shall apply to all air carriers and to all aircraft operators flying within, into, out of, or over the territory of a Member State to which the Treaty applies.

2 This Regulation shall not apply to:

a State aircraft as referred to in Article 3(b) of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944;

b model aircraft with an MTOM of less than 20 kg;

c foot-launched flying machines (including powered paragliders and hang gliders);

d captive balloons;

e kites;

f parachutes (including parascending parachutes);

g aircraft, including gliders, with a MTOM of less than 500 kg, and microlights, which:

— are used for non-commercial purposes, or

— are used for local flight instruction which does not entail the crossing of international borders,

in so far as the insurance obligations under this Regulation relating to the risks of war and terrorism are concerned.

3 The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

4 Application of this Regulation to Gibraltar airport shall be suspended until the arrangements included in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation.

Article 3

Definitions

For the purposes of this Regulation:

(a) ‘air carrier’ means an air transport undertaking with a valid operating licence;

***Changes to legislation:** There are outstanding changes not yet made to Regulation (EC) No 785/2004 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(b) 'Community air carrier'	means an air carrier with a valid operating licence granted by a Member State in accordance with Regulation (EEC) No 2407/92;
(c) 'aircraft operator'	means the person or entity, not being an air carrier, who has continual effective disposal of the use or operation of the aircraft; the natural or legal person in whose name the aircraft is registered shall be presumed to be the operator, unless that person can prove that another person is the operator;
(d) 'flight' means:	— with regard to passengers and unchecked baggage, the period of transport of the passengers by aircraft including their boarding and disembarkation, — with regard to cargo and checked baggage, the period of transport of baggage and cargo from the moment the baggage or cargo is handed to the air carrier until the moment of delivery to the entitled recipient, — with regard to third parties, the use of an aircraft from the moment when power is applied to its engines for the purpose of taxiing or actual take-off until the moment when it is on the surface and its engines have come to a complete stop; additionally, it shall mean the moving of an aircraft by towing and push-back vehicles or by powers which are typical for the drive and the lift of aircraft, particularly air streams;
(e) 'SDR'	means a Special Drawing Right as defined by the International Monetary Fund;
(f) 'MTOM'	means the Maximum Take Off Mass, which corresponds to a certified amount specific to all aircraft types, as stated in the certificate of airworthiness of the aircraft;
(g) 'passenger'	means any person who is on a flight with the consent of the air carrier or the aircraft operator, excluding on-duty members of both the flight crew and the cabin crew;
(h) 'third party'	means any legal or natural person, excluding passengers and on-duty members of both the flight crew and the cabin crew;
(i) 'commercial operation'	means an operation for remuneration and/or hire.

Article 4

Principles of insurance

1 Air carriers and aircraft operators referred to in Article 2 shall be insured in accordance with this Regulation as regards their aviation-specific liability in respect of passengers, baggage, cargo and third parties. The insured risks shall include acts of war, terrorism, hijacking, acts of sabotage, unlawful seizure of aircraft and civil commotion.

2 Air carriers and aircraft operators shall ensure that insurance cover exists for each and every flight, regardless of whether the aircraft operated is at their disposal through ownership or any form of lease agreement, or through joint or franchise operations, code-sharing or any other agreement of the same nature.

3 This Regulation is without prejudice to the rules on liability as arising from:

— international Conventions to which the Member States and/or the Community are parties,

— Community law, and