



INTERNATIONAL CIVIL AVIATION ORGANIZATION

A35-WP/87
EC/15, LE/7
16/08/04
English only

ASSEMBLY — 35TH SESSION

ECONOMIC COMMISSION AND LEGAL COMMISSION

Agenda Item 27: Regulation of international air transport services, and outcome of the fifth Worldwide Air Transport Conference

Agenda Item 35: Assistance in the field of aviation war risk insurance

AVIATION INSURANCE

(Presented by the European Commission)

INFORMATION PAPER

SUMMARY

Following the tragic events of 11 September 2001, and in particular their repercussions on the aviation insurance market, the European Community decided to take various measures of legislative and economic nature to ensure that air transport operations into, within or out of the Community would not be disrupted and that air carriers and aircraft operators whatever their nationality would be subject to the same transparent, neutral and non-discriminatory minimum insurance requirements and enforcement procedures.

The European Commission prepared legislation which was adopted on 21 April 2004 by the European Parliament and the Council. The new rules will apply as from 30 April 2005 and will affect the insurance that member States of the European Community will henceforth require from air carriers and aircraft operators to observe when they fly into, within, out of or over their territory.

1. BACKGROUND

1.1 Since September 2001, the attention of the European Community institutions was drawn at various instances to the issue of aviation insurance¹. The European Commission accepted the development of national systems of state guarantees providing the necessary insurance cover to air transport undertakings for risks of war and terrorism and approved their temporary prolongation until 31 October 2002; it has also closely monitored the work undertaken by the International Civil Aviation Organisation (ICAO) and by the European industry on initiatives to set up mutual fund schemes in the aviation sector.

2. THE NEW COMMUNITY RULES

2.1 The Regulation on minimum insurance requirements, adopted on 21 April 2004², is a legal instrument completely independent from the introduction of temporary government guarantees providing cover to air transport undertakings in Europe. It is also independent from the initiatives of the European industry and by ICAO to set up a mutual fund scheme to provide cover for third-party liability for risks of war and terrorism. Nevertheless, it is evident that the possible creation of a mutual fund scheme at worldwide level would enable air carriers and aircraft operators, including those from third countries, to find affordable insurance cover and help them to meet the proposed minimum insurance requirements. The preparatory work leading to the adoption of these rules received strong support from all European Community institutions.

2.2 The Regulation on minimum insurance requirements is the necessary step towards a more complete set of requirements that air carriers and aircraft operators have to observe in order to be able to fly within, into, out or over the territory of a Member State of the European Community. The basis for introducing these rules exists already in the context of the aviation legislation on air carrier licensing³. The rules adopted clarify the general requirement for air carriers and aircraft operators irrespective from their nationality to be insured and introduce a harmonized enforcement setting a level playing field. They set up minimum requirements following international practice at European (ECAC) and international level following the lines of international law in the field of the Montreal Convention as far as passengers, baggage and cargo are concerned, and the structure of the Rome Convention as far as third-party liability is concerned.

¹ COM(2001) 574 final of 10.10.2001 Communication from the Commission to the European Parliament and the Council on the repercussions of the terrorist attacks in the United States on the air transport sector and COM(2002) 320 final of 2.7.2002 Communication from the Commission on insurance in the air transport sector following the terrorist attacks of 11 September 2001 in the United States.

² 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, OJ L 138 , 30.04.2004, p.1.

³ Council Regulation (EEC) No. 2407/92 of 23 July 1992 on licensing of air carriers.

2.3 The minimum insurance requirements introduced at Community level are without any prejudice to the various liability regimes which exist throughout the world and which are governed by rules set out in international Conventions, such as the Warsaw and the Montreal Convention regarding liability in respect to passengers, baggage and cargo and the Rome Convention in respect to third parties, European Community law⁴, as well as national law.

3. HOW THE RULES ARE DESIGNED TO WORK

3.1 As the legislation on minimum insurance requirements is designed to interact with both the Montreal and the future Rome Convention, the attention of the ICAO Assembly is drawn to the main principles and concepts of the new rules:

- All air carriers and aircraft operators irrespective of their nationality have the obligation without distinction when they fly into, within, out of or over the territory of a Member State to be insured for basic risks as well as for war and terrorism at all times for damage to passengers, baggage, cargo, and third parties in order to be allowed to fly into the Community.
- Air carriers and, when so required, aircraft operators, shall demonstrate compliance with the insurance requirements set out in this Regulation by providing the competent authorities of the Member State concerned with a deposit of an insurance certificate or other evidence of valid insurance.
- The Regulation requires Member States of the European Community to ensure that air carriers and aircraft operators comply with the Community rules. Where necessary, they may request additional evidence from the air carrier, the aircraft operator or the insurer concerned.
- Member States of the European Community have the obligation to sanction infringements of the new rules by taking effective, proportional and dissuasive measures. In respect of European Community air carriers, these sanctions may include the withdrawal of the operating licence, subject to and in accordance with the relevant provisions of air carrier licensing rules. In respect of third-country air carriers and aircraft operators using aircraft registered outside the Community, the sanctions may include refusal of the right to land on the territory of a Member State of the European Community.

⁴ Council Regulation (EEC) No. 2027/97 of 9 October 1997 on air carrier liability in the event of accidents, OJ L 285, 17.10.1997, p. 1 as amended by the European Parliament, and Council Regulation (EC) No. 889/2002 of 13 May 2002 applicable to Community air carriers, OJ L 140, 30.05.2002, p. 2.

- Where Member States of the European Community are not satisfied that the conditions of the new Regulation are met, they shall not allow an aircraft to take off, before the air carrier or aircraft operator concerned has produced evidence of adequate insurance cover in accordance with the new rules.
- In exceptional cases of insurance-market failure, a specific procedure is foreseen whereby the Commission may determine the appropriate measures for the application of the principles of the new rules.
- The minimum insurance requirements for liability in respect of passengers are as follows:

Aircraft category	Minimum insurance (SDRs per passenger)
Aircraft with MTOM # 2700 kg in non-commercial operations	100.000
Aircraft with MTOM # 2700 kg in commercial operations	250.000
Aircraft with a MTOM > 2700kg on all types of operations	250.000

- The minimum insurance requirement for liability in respect of baggage is set at 1.000 SDRs per passenger in commercial operations.
- The minimum insurance requirement for liability in respect of cargo is set at 17 SDRs per kilogramme in commercial operations.
- The minimum insurance requirements for liability in respect of third parties:

Category	MTOM (kg)	Minimum insurance (million SDRs on a per aircraft and per occurrence basis)
1	< 500	75
2	< 1000	15
3	< 2 700	3
4	< 6 000	7
5	< 12 000	18
6	< 25 000	80
7	< 50 000	150
8	< 200 000	300
9	< 500 000	500
10	\$ 500 000	700

- If at any time insurance cover for damage to third parties due to risks of war or terrorism is not available to any air carrier or aircraft operator on a per-accident basis, such air carrier or aircraft operator may satisfy its obligation to insure such risks by insuring on an aggregate basis. The Commission has the onus to closely monitor the application of these requirements in order to ensure that such aggregate is at least equivalent to the relevant amount set out in the table.

- The Regulation will apply directly to all Member States of the European Community as from 30 April 2005, one year after its publication in the Official Journal of the European Communities⁵. In the meantime, Member States have the general obligation enshrined in article 10 of the Treaty establishing the European Community. In particular this means that they have the obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community. They also have the obligation to facilitate the achievement of the Community's tasks and to abstain from any measure which could jeopardize the attainment of the objectives of the Treaty. In practice, Member States should refrain from enacting measures, which would impede the application of the Regulation as from 30 April 2005.

— END —

⁵ OJ L 138, 30.04.2004, article 11.