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► **B** 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, 30.4.2004, p. 1)

Amended by:

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► <u>M1</u>	Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008	L 311	1	21.11.2008
► <u>M2</u>	Commission Regulation (EU) No 285/2010 of 6 April 2010	L 87	19	7.4.2010
► <u>M3</u>	Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019	L 198	241	25.7.2019



**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

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.

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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;
- (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;

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- (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
- national law of the Member States.

*Article 5***Compliance**

1. Air carriers and, when so required, aircraft operators, as referred to in Article 2, 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.

2. For the purpose of this Article ‘Member State concerned’ shall mean the Member State which has granted the operating licence to the Community air carrier or the Member State where the aircraft of the aircraft operator is registered. For non-Community air carriers and aircraft operators using aircraft registered outside the Community, ‘Member State concerned’ shall mean the Member State to or from which the flights are operated.

3. By way of exception from paragraph 1, Member States overflown may require that air carriers and aircraft operators referred to in Article 2 produce evidence of valid insurance in accordance with this Regulation.

4. With regard to Community air carriers and aircraft operators using aircraft registered in the Community, the deposit of evidence of insurance in the Member State referred to in paragraph 2 is sufficient for all Member States, without prejudice to the application of Article 8(6).

5. In exceptional cases of insurance-market failure, the Commission may determine, in accordance with the procedure referred to in Article 9(2), the appropriate measures for the application of paragraph 1.

▼ B*Article 6***Insurance in respect of liability for passengers, baggage and cargo**

1. For liability in respect of passengers, the minimum insurance cover shall be 250 000 SDRs per passenger. However, in respect of non-commercial operations by aircraft with a MTOM of 2 700 kg or less, Member States may set a lower level of minimum insurance cover, provided that such cover is at least 100 000 SDRs per passenger.

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2. For liability in respect of baggage, the minimum insurance cover shall be 1 131 SDRs per passenger in commercial operations.

3. For liability in respect of cargo, the minimum insurance cover shall be 19 SDRs per kilogram in commercial operations.

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4. Paragraphs 1, 2 and 3 shall not apply with respect to flights over the territory of the Member States carried out by non-Community air carriers and by aircraft operators using aircraft registered outside the Community which do not involve a landing on, or take-off from, such territory.

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5. The Commission is empowered to adopt delegated acts in accordance with Article 8a amending the values referred to in paragraphs 1, 2 and 3 of this Article where amendments to the relevant international agreements make this necessary.

▼ B*Article 7***Insurance in respect of liability for third parties**

1. In respect of liability for third parties, the minimum insurance cover per accident, for each and every aircraft, shall be:

Category	MTOM (kg)	Minimum insurance (million SDRs)
1	< 500	0,75
2	< 1000	1,5
3	< 2700	3
4	< 6000	7
5	< 12000	18
6	< 25000	80
7	< 50000	150
8	< 200000	300
9	< 500000	500
10	≥ 500000	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

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Commission shall closely monitor the application of this provision in order to ensure that such aggregate is at least equivalent to the relevant amount set out in the table.

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2. The Commission is empowered to adopt delegated acts in accordance with Article 8a amending the values referred to in paragraph 1 of this Article where amendments to the relevant international agreements make this necessary.

▼B*Article 8***Enforcement and sanctions**

1. Member States shall ensure that air carriers and aircraft operators referred to in Article 2 comply with this Regulation.

2. For the purposes of paragraph 1 and without prejudice to paragraph 7, with respect to overflights 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, as well as with respect to stops in Member States by such aircraft for non-traffic purposes, the Member State concerned may request evidence of compliance with the insurance requirements laid down in this Regulation.

3. Where necessary, Member States may request additional evidence from the air carrier, the aircraft operator or the insurer concerned.

4. Sanctions for infringement of this Regulation shall be effective, proportional and dissuasive.

5. With regard to Community air carriers, these sanctions may include the withdrawal of the operating licence, subject to and in accordance with the relevant provisions of Community law.

6. With regard to non-Community air carriers and to 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.

7. Where Member States are not satisfied that the conditions of this 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 this Regulation.

▼M3*Article 8a***Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 6(5) and Article 7(2) shall be conferred on the Commission for a period of five years from 26 July 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

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3. The delegation of power referred to in Article 6(5) and Article 7(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽¹⁾.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 6(5) and Article 7(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

▼ B*Article 9***Committee procedure**

1. The Commission shall be assisted by the Committee set up by Article 11 of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes ⁽²⁾.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

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4. The Committee may furthermore be consulted by the Commission on any other matter concerning the application of this Regulation.

*Article 10***Report and cooperation**

1. The Commission shall submit a report to the European Parliament and the Council on the operation of this Regulation by 30 April 2008.

⁽¹⁾ OJ L 123, 12.5.2016, p. 1.

⁽²⁾ OJ L 240, 24.8.1992, p. 8. Regulation as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

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2. Upon request, Member States shall submit information on the application of this Regulation to the Commission.

Article 11

Entry into force

This Regulation shall enter into force twelve months following the date of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.