

SUMMARY

1. Background – terms of reference – work methodology

The Government has pointed out in its political platform that good infrastructure is a fundamental pillar of a modern society, and that the Government will make this a competitive advantage for the nation. The Government will continue to pursue a competitive aviation policy based on the understanding that air traffic is a central element of the Norwegian transport network. Effective competition contributes to efficient use of society's resources, keeps costs down and provides lower prices and better quality.

At the same time, increased globalisation represents new challenges for the transport system, including aviation. The airlines have an increasingly global perspective, and we are seeing increased use of personnel from so-called low-cost countries, among other things.

As a result of increased competition and globalisation, the Stoltenberg II Government decided to conduct a study to illustrate the problematic issues for Norwegian aviation. The Ministry of Transport and Communications has been tasked with conducting and coordinating the study that has involved several ministries and external resources.

The Ministry of Transport and Communications is now publishing a consultation paper on the study. This consultation paper will be part of the basis for determining how aviation in Norway should be developed, with special emphasis on the problems that arise due to globalisation and increased competition with respect to the development of the aviation market, and the pay and working conditions for employees.

The presentation of the facts in the consultation paper is based to a large extent on information collected from industry actors. This applies in particular to the information in chapters 3 and 4. Aviation is developing rapidly, and this may entail that some of the factual information is not completely up-to-date at present.

Norway will undertake a contingent obligation to reduce greenhouse gas emissions by at least 40 per cent by 2030, compared with the 1990 level, cf. Report no. 13 (2014-2015) to the Storting. Norway will negotiate joint fulfilment of this obligation together with the EU. If the negotiations with the EU are successful, Norway will be given a quantified emission target for the non-quota sector in 2030 through negotiations. If the negotiations are not successful, the Government will subsequently consult the Storting for stipulation of a national target for the non-quota sector. Reduced emissions in the transport sector, which also encompasses domestic aviation, has been designated as one of the Government's five priority focus areas for climate policy. While road transport is the largest source of emissions in the non-quota sector, most of the emissions from domestic aviation and aviation between EEA countries is subject to quotas. The regulation of emissions from international aviation is a topic discussed in the international climate negotiations and the International Civil Aviation Organisation (ICAO).

The Ministry of Transport and Communications would like to have a broad range of input material before any final conclusions are drawn. The consultative comments will form the basis for the Ministry's continued efforts to facilitate a development of civil aviation that promotes the primary objectives that apply to Norwegian transport policy.

2. Aviation market – national and international

For short distances, there are many forms of transport that compete. Air transport is the most relevant for long distances. Aviation is sensitive to economic fluctuations. Traditionally, there have been two route strategies: “Point-to-point” (directly from A to B), and “network system” (from A via hub B and continuing on to C). The network companies (such as, Lufthansa, KLM and British Airways, with Frankfurt, Amsterdam and London, respectively, as their hubs) are essentially oriented towards the business market, which has a relatively high willingness to pay. “Point-to-point companies” have a strong focus on low costs and generally concentrate on flying directly from/to their bases. In practice, the boundaries between the two route strategies can be somewhat blurred.

Scheduled air service has developed from being dependent on public permits (licences) to becoming liberalised (in the US from 1978 and in Europe from 1986 and beyond). In order to operate a scheduled service from one country to another, airlines must have traffic rights that are based on an aviation agreement. States are the parties to such agreements, and it is the states who designate which of its airlines are to serve the negotiated routes.

An airline domiciled in an EU/EEA country can operate routes within the EU/EEA area without being dependent on a special public permit. This also applies to Norwegian airlines. The EEA Agreement, however, does not apply to third-country relationships. The aviation agreements that the EU has entered into with third countries do therefore not apply to Norwegian airlines. SAS nevertheless benefits greatly from the EU agreements with third countries, since SAS can also operate as a Swedish or Danish company.

A Norwegian airline can establish itself (directly or via a subsidiary) in any EU/EEA country. The migrated operations are then subject to the supervisory authorities in the EU/EEA country in question, and they can fly according to the aviation agreements this country has acceded to.

North America, Europe and Asia Oceania currently represent three practically equivalent markets with approximately 1.5 billion passengers each. The passenger volume is expected to increase significantly (2-3 per cent annual growth in North America and Europe, and six per cent annual growth in Asia Oceania). Substantial consolidation is taking place in several parts of the aviation industry. Among the five largest airline groups, there are four American and one Asian. Lufthansa, British Airways and Air France come directly after these airlines.

Medium-sized network companies are under pressure structurally between major networks on the one side and low-cost companies on the other side. KLM has become a major actor to and from Norway with more transfers to and from Amsterdam than SAS has in Copenhagen. The Nordic region distinguishes itself somewhat from the general consolidation trend, with two smaller networks (SAS and Finnair) and the growth of a new low-cost company that has been successful (Norwegian).

Roughly speaking, there are currently four trendsetting European low-cost companies: Ryanair, EasyJet, Norwegian and Wizz. There are signs that the growth potential for low-cost companies in Europe is about to disappear. The business models for the network and low-cost companies are approaching each other. Norwegian has moved into the long distance market.

Norwegian aviation has seen strong domestic and international growth for decades. There are now signs of domestic traffic growth flattening out, but continued growth is expected for international traffic. Avinor operates 46 airports with scheduled service. OSL is clearly the largest airport in Norway with 24.6 million passengers out of a total of just over 53 million for airports within and outside of Avinor in 2015 (for example, offshore and transit). There is now competition between SAS and Norwegian on most of the main routes. Ticket prices have declined 17 per cent nominally on average during the period from 2003 to 2011. According to a survey conducted by Via Egencia, however, the prices that business travellers pay increased 9.9 per cent to Norwegian destinations during the first quarter of 2015, compared with the same period last year. Statistics Norway's price statistics for transport show that passenger air transport increased 12.7 per cent in the fourth quarter of 2014, compared with the same quarter in the previous year. The state will procure regional air services for approximately NOK 811 million in 2016, with Widerøe as the clearly dominant actor on the tendered routes.

3. Survey of the aviation industry in Norway

In 2005 (most recent figures available), there were approximately 20,000 persons directly linked to the aviation industry. In addition, there is indirect and induced employment of an estimated 12,000 to 16,000 persons. The subsequent years have been marked by rationalisation, relocation of functions abroad and passenger growth.

SAS is the largest company in Scandinavian aviation (middle of 2012: 142 aircraft, approximately 13,000 employees, of which approximately 5,600 are in Norway). *SAS* has had significant financial problems for several years, and it has undergone several rationalisation programmes. More than 75 per cent of the services offered by *SAS* in and to/from Norway are in competition with Norwegian.

Norwegian started up as a low-cost company in 2002 and was listed on the stock exchange in 2003. Since then, the company has shown strong growth domestically and in Europe, and eventually for long distance. Growth outside of Scandinavia is based on the establishment of its own bases, among other things. Norwegian has approximately 5,400 employees. For operations outside of Scandinavia, Norwegian generally uses crewing companies that recruit pilots and cabin crew locally. Norwegian has established a company in Ireland and a company in the UK, with the approval of the Irish and UK authorities, respectively. This provides access to EU traffic rights that can form the basis for the company's intercontinental routes. Norwegian maintains that the Norwegian authorities' practice of the Immigration Regulations prevents the use of Asian crew members on Norwegian-registered aircraft.

Widerøe is currently the largest regional company in the Nordic region with approximately 1,400 employees and a fleet of 42 aircraft (Dash 8 variants). The tendered routes represent approximately 40 per cent of the company's operations.

Ryanair has a base at Moss Airport Rygge, as well as flights to Sandefjord Airport Torp, and Haugesund. Around 200 persons are affiliated with the base at Rygge, around 55 of which are pilots. Cabin crew personnel come from several European countries. Some of the cabin crew personnel are mobile "base hoppers" that move to other bases in Europe after a few months in Norway.

Avinor is clearly the dominant airport operator (46 airports, of which Oslo Airport is clearly the largest). In addition, Avinor operates three control centres and provides tower services for airports throughout the entire country. The air navigation service (control centres and tower services) has recently been spun off as a wholly owned subsidiary. *Moss Airport Rygge* and *Sandefjord Airport Torp* are clearly the largest airports outside of Avinor.

Other important airport-related functions include aircraft maintenance, handling, catering and air freight.

4. Pay and working conditions in national and international aviation

There are great differences between the average pay in Europe and globally. The pay level in Norway is among the highest. For *pilots*, there is essentially a global pay level, with certain regional characteristics, and with variations between the various companies and types of pilots (captains, co-pilots, seniority).

According to information known to the Ministry of Transport and Communications, cabin crew from low-cost countries have pay that is approximately 35-40 per cent of the Norwegian pay level. With a crew of two pilots and five in the cabin, a Norwegian airline would save an estimated NOK 1.5 million per crew per year by using personnel from a low-cost country. Several dominant cost categories (capital, fuel) are a given to a greater degree. The costs per flight are also affected by the efficiency of the airline, including efficient flight management and adaptation of the route network to contribute to efficient utilisation of the aircraft fleet.

To ensure that utilisation of the personnel will not have a negative impact on aviation safety, joint European rules have been established for the *working hour rules* for flight crews. Traditionally, working hour rules have been agreed on in the network companies that were significantly more favourable for the employees than what followed from the legislation. Presumably due to heightened competition, the distance between the agreed and statutory schemes has shrunk, and the importance of the statutory rules has increased.

The SAS personnel and the Norwegian personnel in Norway currently have ordinary employment in the respective companies in this country. Norwegian has essentially identical agreements for pilots and cabin crew for Norway, Sweden and Denmark. Other Norwegian personnel have been employed by the local crewing companies in the country where the personnel are stationed. For the airlines, such schemes entail lower administrative expenses and greater flexibility with regard to seasonal variations. To the knowledge of the Ministry of Transport and Communications, Ryanair uses Irish crewing agencies with which the personnel have entered into a contract. The contracts often have a term of three years, and very short termination notice periods. Several of the Ryanair pilots operate as independent contractors who sell their services to a crewing agency.

Aviation in Norway has a high *degree of unionisation*. The LO-affiliated Federation of Norwegian Aviation Industries represents airlines and other aviation enterprises. It is both a business policy organisation and an employer organisation. LO organises approximately 7,000 aviation employees, and Parat, which is part of the Confederation of Vocational Unions (YS), organises over 4,300. Recently, the Norwegian SAS pilot union (NSF) became an independent union affiliated with LO. Of the labour organisations outside of the main trade unions, we can mention (approximate number of members in parentheses) Cabin Crew Union

Norway (800), Norwegian Aviation Staff Association (1,500), Norwegian Airline Pilots Association (1,700), Norwegian Air Traffic Controllers Association (550).

5. Framework conditions mandated by the authorities in certain selected areas

General

The scope of action for whoever is to influence the development of aviation in Norway will, for example, be dependent on the industry's framework conditions mandated by the authorities. There are many different types of "authorities" that have created the framework conditions: International cooperative bodies, international governmental bodies, national authorities, etc. The formal status of the individual "framework conditions" may differ: from formal regulations / legally binding agreements to recommendations and more or less concrete guidelines. In the short term at least, several of these framework conditions may be more or less a given. Some of the framework conditions for aviation mandated by the authorities are outlined below.

Aviation safety

Aviation essentially has a high level of safety, and there is very little basis for stating that deregulation and increased competition in aviation has had a negative effect on aviation safety. The Norwegian Civil Aviation Authority also confirms this picture with regard to Norwegian aviation. The Norwegian Civil Aviation Authority must nevertheless monitor the airlines' restructuring processes to ensure that aviation safety is safeguarded, especially due to the increasing use of crewing companies and contract personnel.

Employment conditions and the working environment

The Working Environment Act also essentially applies to civil aviation. For flight crews, the Norwegian Civil Aviation Authority is responsible for supervision pursuant to public law. The Norwegian Labour Inspection Authority is responsible for the supervision of all other personnel. The Working Environment Act applies to Norwegian territory: The Norwegian authorities can supervise the operations of Norwegian and foreign companies in Norway, but not the operations and bases of Norwegian airlines abroad. An agreement has been entered into between the Norwegian Civil Aviation Authority and the Norwegian Labour Inspection Authority to ensure the necessary cooperation, transfer of knowledge etc. The Norwegian Labour Inspection Authority also cooperates with other authorities (police, tax authorities, etc.). In order to avoid social dumping, Norway has had an Act making collective wage agreements universally applicable since 1993. Such universal applicability is not relevant for aviation, since there is no national collective wage agreement that can be made universally applicable.

When employment is connected to multiple countries, it must be clarified what country's laws apply and what country's courts cases belong under. There are EU rules concerning choice of law etc. (which Norway is not bound by), as well as Norwegian choice of law rules etc., which give instructions for specific discretion with regard to what country the case in question is most closely linked to.

National Insurance benefits

As a rule, all persons who live or work in Norway are members of the National Insurance Scheme. Membership in the National Insurance Scheme is also maintained in some cases for

persons who work outside of Norway, for example, for Norwegian citizens employed by a Norwegian airline who reside outside of Norway. However, it may be the case that these rules must be departed from as a result of social security agreements that Norway has entered into with other countries. The purpose of the social security agreements is to solve problems of a social security nature that may arise due to the fact that a person has lived and/or worked in more than one country. The agreements shall ensure that Norwegian citizens are equated with citizens in the agreement country in which the individual lives/works. To promote free movement of employees between the EU and EFTA countries, the EEA Agreement has rules that coordinate (but do not harmonise) the social security schemes of the countries. The ordinary social security agreements also contain such provisions, but the scope is generally limited to sending employees and pensions abroad. The social security section of the EEA Agreement, however, encompasses most of the benefit areas in the National Insurance Scheme.

The general rule in the EEA is that flight crews are to have a social security connection to the country where they have their home base.

Immigration Regulations and the Schengen Border Code Regulation

Employees from countries outside of the EU/EEA as a rule require a residence permit in order to work in Norway. An exception has been made from the requirement for foreign personnel (in the sense of personnel from countries outside of the EU/EEA) on *foreign* aircraft in international service, but not for foreign personnel on Norwegian-registered aircraft in international service.

At the same time, the Schengen Border Code Regulation entitles flight crews in international service to simplified border crossing procedures. The regulation is binding on Norway pursuant to international law.

There is therefore a need to clarify that we are following our international obligations in the Immigration Regulations. We make reference in this connection to the consultation paper on the changes in the Immigration Regulations for employees in international aviation that the Ministry of Labour and Social Affairs is distributing at the same time as this consultation paper. The point of departure for the assessments in the consultative document from the Ministry of Labour and Social Affairs is the Legislation Department's report on the relationship between the Immigration Regulations and the Schengen Border Code Regulation, cf. letter of 6 July 2015 from the Ministry of Justice and Public Security to the Ministry of Labour and Social Affairs.

Income tax and employers' National Insurance contributions

All taxpayers who reside in Norway¹ for tax purposes pursuant to internal Norwegian law are in principle subject to taxation in Norway for all their income and assets, regardless of where the income has been earned and where the assets are located. The citizenship of the taxpayer is irrelevant. If the person is also resident for tax purposes in another country (pursuant to the laws of that country), the tax treaty with the country in question may determine where the individual in question should be regarded as residing. If such a tax treaty does not exist, then the Norwegian rules will apply. If a taxpayer genuinely resides abroad, the individual in question will not be subject to taxation in Norway for work performed abroad. If, for example, a taxpayer employed by a Irish company is regarded as residing in Norway, the tax

¹ More than 183 days in any 12-month period or 270 days in any 36-month period.

treaty between Norway and Ireland may entail that income earned on board an Irish aircraft in international service will be taxed both in the country in which the individual in question resides, and in the country where the company is domiciled. As the country of residence, Norway is then required to make adjustments for any double taxation by allowing a deduction in Norwegian tax for tax paid in Ireland.

When contract labour is used from a sole proprietorship (instead of ordinary employment), the genuine conditions will be relied on for an assessment of taxation. If the only activities carried out by the sole proprietorship are to hire out their own manpower, the worker may be regarded as being employed by the hirer, with the consequences that this entails for the hirer (the airline, for example) with regard to wage statements and withholding tax.

Through the OECD, there is international cooperation for the purpose of uncovering and analysing tax planning methods that aim to circumvent tax rules and evade taxation.

Other

Slots: Slot coordination takes place based on the EU regulations, which have also been introduced in Norway. Slot allocations are made here in Norway by an industry-owned independent body. Today there is slot regulation in Oslo, Bergen, Stavanger and Kirkenes; Trondheim will follow. It is primarily the terminal functions (baggage handling, space, security checkpoints, etc.) that have a limiting effect. It is not possible for new companies to operate during the peak periods in Bergen or Oslo until the new terminals have been completed. Today's lack of slots thus limits competition. This may change somewhat as of 2017.

Procurement of air services (PSO routes): Public procurement of air services on routes where the market alone does not support such operations is pursuant to Regulation (EC) No 1008/2008. The Ministry of Transport and Communications is spending approximately NOK 811 million on such procurement in 2016. Several airlines have been used, but in general and at present Widerøe is the dominant actor with regard to the PSO routes. This is due to the requirements for the type of aircraft, type of navigational equipment, etc., among other things. According to Institute of Transport Economics (TØI) report 1116/2010, satisfactory competition for the PSO routes has not been established over time. In order to remedy this, the Institute of Transport Economics proposes changes to the airport structure, use of smaller aircraft, avoiding the requirement for a specific navigational system, etc. In the current route tenders, loyalty programmes are banned. The Ministry of Transport and Communications has assessed whether a specific pay level for employees should be required in connection with the procurement of air services. However, there are no universally applicable or national collective wage agreements in aviation, and such a condition would thus not be of any practical consequence.

Investments in airports: The national scope of action is considerable here. The Government's Sundvoll Declaration supports increased competition between airports and more liberal framework conditions for Rygge and Torp. The Oslo Airport's hub function ensures good service to all parts of the country. Avinor mentions a third runway as a possible capacity-increasing initiative for Oslo Airport Gardermoen. Ryanair currently dominates at Rygge and Torp with 20 per cent of the international traffic to/from Eastern Norway. For Rygge and Torp, relaxation of the capacity limitations mandated by the authorities and better transport

services may be relevant means for increasing the level of activity. For Rygge, however, the traffic ceiling has been increased in a new licence that entered into force in the autumn of 2014. Torp has no such restrictions in its licence.

Air traffic charges: Airlines pay in part environmental charges (NO_x, CO₂ fees, etc.), in part fees related to Avinor's airport services (take-off charges, passenger charges, and security charges) and in part for Avinor's air navigation services (terminal charges and air navigation charges). Avinor's management of the 46 (out of a total of 51) airports with scheduled air service is financed by Avinor's combined revenues covering the combined expenses for Avinor's operations. This entails internal cross-subsidisation. Revenues from the major, profitable airports help pay for the small, unprofitable airports. This cross-subsidisation is regarded as being in compliance with relevant international rules. The charges for air navigation services (terminal charges and air navigation charges) are based on finely meshed EU regulations, which do, however, provide some leeway for so-called peak pricing. The airport charges are based on somewhat less rigid EU rules.

Passenger rights: For the airlines, passenger rights can be regarded as both an advantage and a disadvantage: Better rights than the competitors may be a competitive advantage, but rights can also represent substantial costs. To ensure passengers of protection in practice, the authorities (national and international) have found it necessary to establish the rights by rules. For a long time, passenger rights were based on various international conventions. The EU has not found these global rights stipulated in conventions to be adequate (for the passengers). The EU has therefore stipulated supplementary rules that have been implemented in Norwegian law. Norway also has certain special Norwegian rules for passenger rights. For example, the rights of the physically disabled have been strengthened in relation to the EU regulations. The varying content of the regulations (global – European – national) may result in unfair competition. In practice, it has been a challenge to get the various countries to interpret and enforce the same regulations in the same way. At present it does not appear that there will be any special Norwegian initiatives in this area.

Simplified transfers: The Government has decided to carry out a trial project for simplified transfers through the “one stop security” scheme at Oslo Airport. The scheme applies to travellers from abroad to domestic destinations, and it will be evaluated after a trial period of three years. The scheme started up on 1 September 2015, initially for passengers who travel via Oslo Airport with SAS, Norwegian or Widerøe.

Preclearance for air travel to the US

The Ministry of Transport and Communications has reported a non-binding interest to the US Customs and Border Protection (CBP) with regard to the possible establishment of a preclearance operations location for passengers to the US at Oslo Airport. The point of departure for travellers to the US is that they must go through US immigration, customs and agricultural inspections before they are allowed into the US. The preclearance scheme makes it possible to complete this process at the departure location, so that one can be handled as a “domestic” passenger upon arrival at the destination in the US and thus avoid long queues. The US authorities announced in May 2015 that the Oslo Airport was one of ten new airports that they would like to start negotiations with for the establishment of preclearance. The Ministry of Transport and Communications will, in consultation with the relevant ministries, assess whether to conduct the aforementioned negotiations.

6. Assessments and recommendations

- 1. The Ministry of Transport and Communications will intensify its efforts to persuade additional EU countries to allow the EEA designation, so that Norwegian, for example, can fly to Bangkok from its bases in London and Spain.*
- 2. The Ministry of Transport and Communications will assess more closely how a process to better secure overflight rights over Siberia for companies other than SAS may be facilitated in the most appropriate manner.*
- 3. In the opinion of the Ministry of Transport and Communications, the provisions for leasing aircraft of foreign registry should, inter alia, reflect development within the joint European aviation safety rules, and it will assess whether there is a need to change the existing regulations.*
- 4. The Government will strengthen cooperation among the Norwegian Civil Aviation Authority, Norwegian Labour Inspection Authority, the tax authorities, the Norwegian Labour and Welfare Organisation and the Norwegian Police in order to promote adequate enforcement of the regulations for taxation, benefits and the working environment. The Government will strengthen the further development of such international cooperation with emphasis on the base problems for flight crews. A further development of three-party cooperation among the Norwegian Civil Aviation Authority (authority side) and the central organisations in Norwegian aviation on both the employer and employee sides must be given priority.*
- 5. The Ministry of Transport and Communications will take a closer look at the opportunities for cooperation between Norway and Denmark, and possibly other countries, with regard to the execution of supervision of HSE for flight crews.*
- 6. The Government supports the European Commission's efforts to promote an equivalent interpretation of the existing regulations for passenger rights. Currently, it is not very relevant for the Ministry of Transport and Communications to take the initiative to establish new rules for passenger rights that only apply to Norway.*
- 7. The Norwegian Civil Aviation Authority will closely monitor the restructuring processes of the airlines, particularly with a view to the increasing use of crewing companies and contract personnel and the possible effects on the willingness to report.*
- 8. The Government will assess whether the simplified transfer trial at Oslo Airport should become permanent after the three-year trial period.*
- 9. The Ministry of Transport and Communications will, in consultation with the relevant ministries, assess whether negotiations should be conducted with a view to the possible establishment of preclearance at Oslo Airport.*
- 10. The Ministry of Labour and Social Affairs proposes clarifications to the Immigration Regulations in a separate consultative document, which will clarify that Norway is in compliance with its international obligations that give flight crews entitlement to simplified border crossing procedures.*