ROYAL NORWEGIAN MINISTRY
OF TRANSPORT AND COMMUNICATIONS

European Commission - DG Mobility and Transport
BE-1049, Brussels
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Contribution from the Norwegian Ministry of Transport and Communications to the Commission's work with an "Aviation Package"

1. Introduction

DG Mobility and Transport has recently conducted a consultation as part of its preparation of an "Aviation package for improving the competitiveness of the EU Aviation sector". Since the format of the consultation is rather detailed, the Norwegian Ministry of Transport and Communications believes it is more appropriate if we contribute in the form of this letter containing an essence of what we think should be the central features of the announced "Aviation Package".

2. Continue negotiating Open Skies Agreements, but being conscious of what our purpose is

The Norwegian Ministry of Transport and Communications favours further opening of global air transport markets through agreements with third countries. Most of this letter is related to such negotiations. At the same time, we believe experiences from later years show that opening of markets on only two typical conditions – safety and ownership – may not be sufficiently balanced.

We will revert to this below, but first we want to ask: Do we always know *why* we enter into market-opening agreements?

1. Is it in order to improve the quality of the services or to reduce the prices for European travellers and freighters?

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2. Is it in order to stimulate growth in the European aviation industry in general – not only airlines but airports, ground handling and all kinds of related economical activities?

3. Is it in order to stimulate growth among European airlines and freighters, and to uphold a sufficient route network intra-EU/EEA and domestically in the EU/EEA states?

4. Is it in order to increase tax incomes from persons or enterprises situated in the EU/EEA states, or to increase the national production in general?

These reasons are of course not mutually exclusive. Our rationale for entering into liberalisation agreements may rest on one or more of these reasons. If the primary focus is on points 1 and 2 in the list above, the need e.g. to control possible state aid provided to airlines from third countries we enter into agreements with is not the same as is the case when the primary focus is on point 3. For European enterprises wanting to transport their goods to Asia, and for European airports, it may be irrelevant, from their point of view, whether the transport is provided by European or Asian transporters.

Our basic point is threefold:

a) Substantive rights in exchange for opening of new markets must in practice be negotiated as packages. When the agreement is signed, it is too late to introduce new conditions (competition, state aid, social rights) from the European side.

b) Our substantive negotiating position should be based on a conscious evaluation and weighting of points 1 – 4 above. Which interests are most important and what do we regard as a level playing field in global competition? What do we regard as acceptable trade-offs between the EU/EEA-block and the other party, and inside the EU/EEA?

c) Clarity and openness is itself desirable to avoid non-application and practices jeopardizing the balanced package negotiated.

In points 3 - 12 below we have given some brief observations on what we regard as important substantive topics to be dealt with in future agreements between EU/EEA States and third countries, and in the work with the Aviation Package in general. Some of them may also overlap with the Commission's follow-up on Opinion 1/2015 recently received from EASA.

3. State aid and competition

In a global perspective, the European rules on state aid are well developed and strict. A weakening of this system should not be regarded as an option. So what is necessary to secure a level playing field between European and third country operators with this starting point, and what do we regard as a level playing field at all?

Some say that "fair competition clauses" only make sense in a fully liberalized open skies environment. There is obviously something true in this. At the same time, liberalization also creates a need for regulation – for mutual principles on what is acceptable behaviour on behalf of both states (parties to the agreement) and undertakings doing business from those states.

More specifically, European authorities should reserve the right to reciprocal openness on competition and state aid as a condition for opening of new air transport markets whenever it is possible. Based on the questions in point 2, it should be seriously evaluated whether opening of new markets is really the best option if sufficient openness or reciprocity is difficult or not possible to obtain.

4. Penetration of third country operators into the internal European market

The result of globalisation is that operators from markets with widely varying cost bases find themselves competing in the same market, and this may have painful and swift consequences for European operators we have not seen before. Competition certainly has positive consequences, so the argument here is not that it should be avoided. The point is – if we are not willing to, or able to, regulate the "level playing field" for the competition between the parties in air transport agreements, then we should be particularly aware of third country operators' penetration of the intra-European market – typically through the use of fifth freedom rights. There must be a conscious balancing between market opening and ability to secure equal terms for transport from both parties to the agreement.

5. Route structures and the survival of European transporters

European authorities should be aware that transporters from third countries will not be able to serve or be interested in serving all the intra-EU/EEA and domestic routes provided by European transporters today. In other words – the survival of European transporters is probably a precondition for operation of a sufficient network of intra-EU/EEA transport services without a considerable increase in public service obligation tenders and use of public resources.

6. The EEA-aspect of international negotiations

As a party to the Agreement on a European Economic Area (the EEA Agreement), and thereby fully integrated into the internal aviation market, Norway has a strong interest in entering into air transport agreements identical to the ones that the European Union concludes with states in the rest of the world. The accession to the EU – USA Open Skies Agreement is the most important example so far.

Norway has formally approached the Commission and requested that Norway and Iceland as a principle may accede to all (i.e. new and existing) comprehensive air transport agreements negotiated and entered into by the EU with third countries. Both the Commission and the EU Member States have expressed support for this, and the Commission is assessing how it may be done in a systematic manner. We have a positive and continuous dialogue with the Commission on the matter and hope that a systematic approach may be implemented as soon as possible. We also hope that Norway and Iceland will be included in the negotiation phase to the greatest extent possible.

Another related issue of great importance to Norway is that a reference to the EEA Agreement be included in the designation clause in bilateral air services agreements entered into by EU Member States with third countries. Such a reference is as a rule included in all recent and future air services agreements entered into by Norway, Sweden and Denmark and has been approved by the Commission. Norway, Sweden and Denmark normally negotiate air services agreements with third countries jointly and enter into separate, but in principle identical, agreements. We are in dialogue with several EU Member States in order to accomplish this. Hopefully, the EU Member States in general will adapt their agreements, and we also hope that the Commission will be able to facilitate this.

7. The "Social Dimension"

Norwegian authorities are critical towards the US authorities' failure to take a decision regarding Norwegian Air International's transatlantic flights. Although the case is pleaded on procedural grounds by the European side in the Joint Committee, this case in practice illustrates that lack of clarity regarding the "Social Dimension" of air transport agreements may create problems for the application of air transport agreements.

The Norwegian Minister of Transport and Communications has already sent letters to Commissioners Kallas and Bulc regarding (among other things) social aspects of the new business models that are a result of increased global competition in aviation. We will also actively contribute to the work of the working group of national experts recently established under Regulation (EC) No 1008/2008. In this group we will also address the relation between social regulation and possible negative consequences for safety. Finally, we hope that a coming national report on "globalization" may contribute.

At this point we would like to emphasize the following:

a) The basic question is to decide whether EU/EEA States should define absolute social standards for workers in civil aviation that we are not willing to compromise on. Examples here are arrangements like "no fly no pay", "pay to fly" and use of contracted personnel in order to cover permanent manning needs.

b) The next question is whether possible standards set under letter a) should be set under European law, or as part of national law in the Member States.

c) If European standards are set in accordance with a) and b) – should they be included in possible air transport agreements to be negotiated with the rest of the world in the future, or should they apply only to European airlines?

d) The EU/EEA must decide whether possible negative consequences for safety stemming from low social standards is the primary basis for European legislation or if the personnel's need for social protection in itself is sufficient reason to legislate. In the latter case, insufficient recruitment following from deteriorating social standards in the industry may be a weighty supplementary argument.

e) If regulation of social standards in air transport agreements with the rest of the world is to have any practical effect, enforcement mechanisms must be a part of the agreements.

8. Ownership and control

Question 8a of the consultation questionnaire asks whether the current limit on 49 % foreign ownership should be relaxed. Article 4 (1)(f) of Regulation (EC) No 1008/2008 already makes it possible to agree on more relaxed limitations in agreements with third countries. As follows from this clause, the need or desirability of more relaxed ownership clauses must be decided in each individual case. In our opinion, this is sufficiently flexible. How often it should be the negotiation position of the EU/EEA side to accept relaxed ownership clauses of this kind, is of course another thing. But the need for regulative relaxation is not obvious.

9. Passenger rights

It is probably not necessary or desirable to negotiate the standard of passenger rights in air transport agreements. The EU/EEA side must be conscious of global competition when deciding on its internal passenger rights regulation and its extraterritorial application. Apart from that, it should be left to each airline to decide on the level of passenger rights it finds appropriate to offer.

10. Measures to allow airlines in financial difficulties to continue operations under special conditions

This is mentioned in point 10 of the consultation questionnaire.

The Norwegian policy is so far that passenger rights following from airline defaults should be dealt with at European level – not nationally. Burdensome national regulation will often be a disadvantage for transporters in such states.

As far as regulation directed towards airlines in economic difficulties themselves, we see three relevant types of regulation:

a) Licence regulation like Regulation (EC) No 1008/2008.
b) State aid regulation – typically the existing EU guidelines on restructuring and aid to airlines.
c) Legislation on postponement and waiver of payment from airline to (typically private) creditors as part of a "restructuring".

We believe that the questionnaire primarily refers to legislation mentioned in letter c). This is typically regulated in national legislation today. We believe that European legislation of the kind mentioned in letter c) is not necessary. On the other hand, it is important to secure an effective enforcement of the European state aid legislation. What could be useful is a clarification of the relation between national legislation of the kind mentioned in letter c) and the rules on suspension or loss of licence in Regulation (EC) No 1008/2008. To what extent is

it possible to maintain the licence when an airline faces serious economic difficulties qualifying for some kind of debt settlement scheme?

11. Reporting regarding mental health of pilots and crew members

The lessons to be learned from the Germanwings accident in March this year are currently discussed between EASA and the Member States. One of the key issues in that discussion is the weighting of privacy for personal health information against the possibility to prevent accident with the help of rules securing openness or information sharing within a limited circle of "inside persons".

We acknowledge the delicacy of the matter, but believe it may be fruitful to inform you of a principle contained in Section 34 of the Norwegian Act on Health Personnel. According to this provision doctors, psychologist and opticians, finding that a person holding a driving licence for motor vehicle or aircraft no longer satisfies the health conditions to maintain the license, are obliged to report this to public authorities if the condition is not likely to last only for a brief period.

We understand that legislation in itself is not sufficient to secure openness in such matters. But in our opinion, some of the provisions affording protection to reporters in Regulation (EU) No 376/2014, and the desire to work for openness underpinning this provisions, may serve as inspiration.

12. Common AOC from more than one Member State

On behalf of the authorities of the Scandinavian Countries, the Swedish Transport Agency has (letter of 14 October 2014) informed the Commission of our common desire to work together with the Commission in order to make Regulation (EC) No 216/2008 sufficiently flexible to allow for a common AOC, and shared responsibility for oversight, from more than one state. So far this has been particularly relevant for the Scandinavian Airline System Consortium, but this kind of flexibility should be open to all airlines on the condition that the undertaking and the responsible authorities, can document a proper level of safety.

Yours sincerely,

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Director General

This document has been electronically signed.