

Ministry of Transport
and Communications

Consultation paper on globalisation and increased competition in civil aviation

Challenges and possible consequences for norwegian aviation



Photo: Labunskiy Konstantin



Ministry of Transport
and Communications

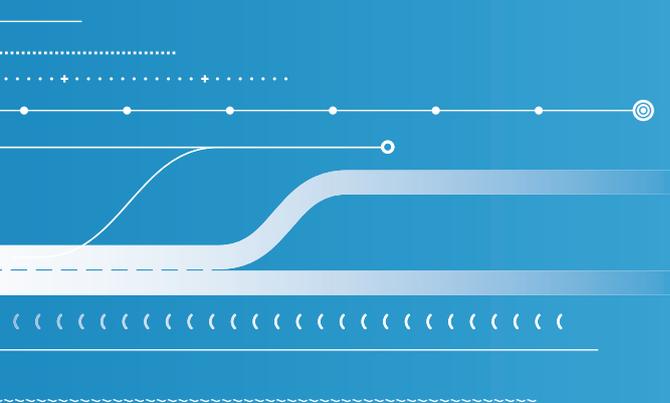
March 2016

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SUMMARY

1. Background – terms of reference – work methodology

The Government has pointed out in its political platform that high quality 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.

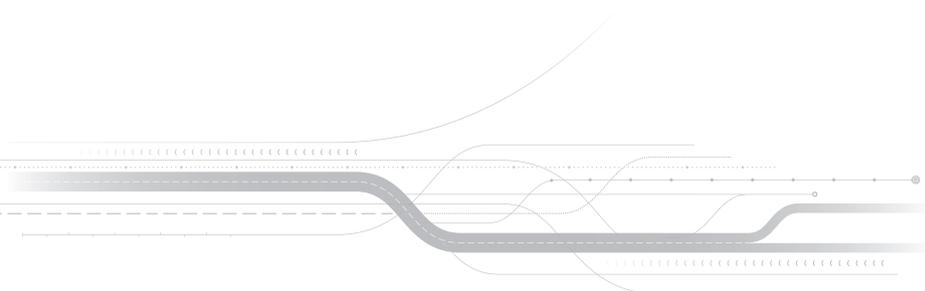
As a result of increased competition and globalisation, the Stoltenberg II Government decided to conduct a study to illustrate the problematic issues for Norwegian aviation. The Ministry of Transport and Communications has been tasked with conducting and coordinating the study that has involved several 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 carriers (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 carriers are structurally under pressure between major networks on the one side and low-cost carriers 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 carrier that has been successful (Norwegian).

Roughly speaking, there are currently four trendsetting European low-cost carriers: Ryanair, easyJet, Norwegian and Wizz. There are signs that the growth potential for low-cost carriers in Europe is about to disappear. The business models for the network and low-cost carriers are approaching each other. Norwegian has moved into the long-haul 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 carrier 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 haul. 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, of which around 55 are pilots. Cabin personnel come from several European countries. Some of the cabin 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 the largest airports outside of Avinor.

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

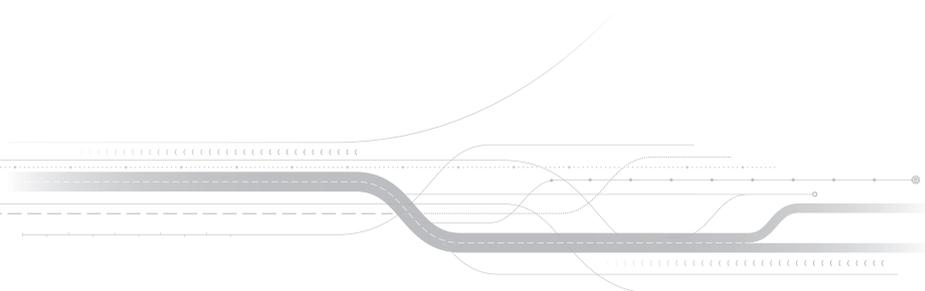
4. Pay and working conditions in national and international aviation

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 carriers 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 the 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 costs 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 rather 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 vary: 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 closely monitor the airlines' restructuring processes to ensure that aviation safety is safeguarded, especially due to the increasing use of crewing companies and hired personnel.

Employment conditions and the working environment

The Working Environment Act essentially also applies to civil aviation. For flight crews, the Norwegian Civil Aviation Authority is responsible for supervision pursuant to public law. For all other personnel, the Norwegian Labour Inspection Authority is responsible for supervision. 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 currently 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.

Social security rights

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 but 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 in the Immigration Regulations that we are following our international obligations. 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.

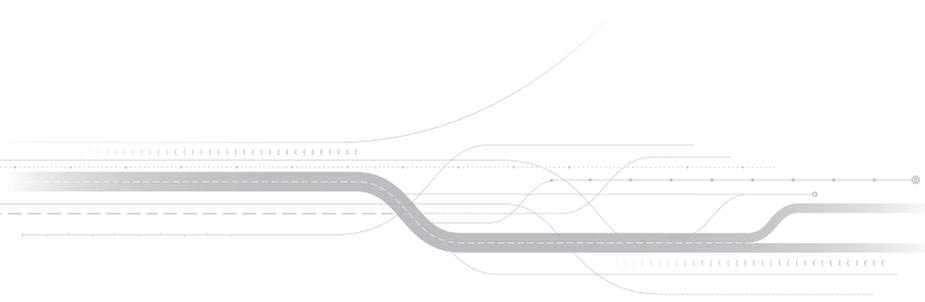
Income tax and employers' social insurance contributions

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, 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 an Irish company is regarded as residing in Norway, the tax 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 hired 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.

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



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 Sundvollen 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 most 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 of increasing the level of activity. For Rygge, however, the traffic volume limitation 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 (NOx, 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 incorporated into Norwegian law. Norway also has certain special Norwegian rules for passenger rights. For example, the rights of the physically disabled have been strengthened relative 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 began 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 a 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, evaluate 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, the 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, social security 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 leased 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 the American authorities 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.*



Photo: Olav Hegge

1 BACKGROUND – TERMS OF REFERENCE – WORK METHODOLOGY

The Government has pointed out in its political platform that high quality 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.

Globalisation, earnings growth and rapid population growth make it necessary to increase the capacity and quality of the transport system. This also applies to aviation, which is perhaps the mode of transport where globalisation has been the most prominent in recent years, cf. Report no. 26 (2012–2013) to the Storting on the National Transport Plan 2014–2023 and Recommendation no. 450 (2012–2013) to the Storting.

Effective competition contributes to efficient use of society's resources, keeps costs down and provides lower prices and better quality. While it is important to facilitate a competitive aviation industry that satisfies society's needs for air transport, as a result of globalisation, it is also important to focus on the working environment, health, and pay and working conditions.

In the autumn of 2012, the Stoltenberg II Government decided to entrust the Ministry of Transport and Communications with conducting an internal study together with other affected ministries, which was to illustrate relevant problems and challenges for Norwegian aviation due to increased competition and globalisation.

As a follow-up to this, a joint meeting was held in June 2013 with actors from the aviation industry and trade unions. In addition, separate meetings were held with individual actors to collect factual information and views on the competitive situation, challenges, etc. The individual actors have received their presentations of the factual information that they provided during our work to read through.

In addition to the Ministry of Transport and Communications, the interministerial portion of the study has in particular involved the Ministry of Labour and Social Affairs, which has assisted with studies related to working environment legislation, social security legislation and the immigration regulations. Moreover, the Ministry of Children, Equality and Inclusion, Ministry of Finance, Ministry of Local Government and Modernisation and the Ministry of



Trade, Industry and Fisheries have contributed to the work in their own areas.

The Ministry of Transport and Communications has continued to work on the study after the change of government, and the Ministry of Transport and Communications hereby publishes the consultation paper on the work associated with the study.

The purpose of this consultation paper is to be *part of the basis for determining how aviation in Norway should be developed*, primarily with reference to the various factors, such as globalisation and increased competition entail with respect to the development of the aviation market, and the pay and working conditions for employees.

Sections 2-3 of the consultation paper provide accordingly a description of certain historical development trends in aviation internationally and in Norway, and a brief description of the present status of the aviation industry here in Norway. Section 4 of the consultation paper provides a more detailed review of the pay and working conditions in civil aviation, internationally and here in Norway.

The opportunities for influencing the development of aviation in Norway are dependent, for example, on the framework conditions under which this industry operates. Therefore, an overview of the framework conditions for aviation imposed by the authorities in some areas is provided in Section 5. To conclude, Section 6 provides some preliminary conclusions, while also outlining certain other problematic issues and potential development paths that the Ministry finds useful to point out.

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



Photo: Olav Hegge

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

For the Ministry of Transport and Communications, it is a main point to obtain a broad range of input and comments before any final conclusions are drawn on what development should be sought for aviation in Norway and what measures would be appropriate for promoting the desired development. 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 of Norwegian transport policy.

Stavanger	Norwegian	C	1915 SK4047	Stavanger	Air Berlin	H
Bergen	SAS	E/F	1920 SK3192	Goteborg	SAS	E/F
Helsinki	SAS	E/F	1920 WF336	Goteborg	SAS	E/F
Helsinki	Blue1	E	1925 DK825	Palma	Widerøe	E
Tromsø	Norwegian	C	1925 SK370	Trondheim	Thomas Cook	G
Oslo	Primera Air	B	1930 SK287	Bergen	SAS	E/F
Oslo/Narvik	Norwegian	C	1930 DY1354	Edinburgh	Norwegian	C
Oslo	DOT LT	D	1930 SK320	Haugesund	SAS	E/F
Oslo	Norwegian	C	1930 SK223	Kristiansand	SAS	E/F
Oslo	SAS	E/F	1940 DY1020	Warszawa	Norwegian	C
Oslo	Air Norway	H	1945 DY426	Molde	Norwegian	C
Oslo	SAS	E/F	1945 SK3519	Zurich	SAS	H
Oslo/Gatwick	Norwegian	C	1945 LX1217	Zurich	Swiss International Air	H
Oslo	Widerøe	E	1950 SK8416	Tallinn	SAS	E/F
Oslo	Turkish Airlines	H	1950 OV138	Tallinn	Estonian Air	E
Oslo	Lufthansa	E/F	1950 DY326	Tromsø Alta	Norwegian	C
Oslo	SAS	E/F	1955 SK4098	Harstad/Narvik	SAS	E/F
Oslo	Norwegian	C	1955 WF155	Sogndal Sandane	Widerøe	E
Oslo	SAS	E/F	2000 DY998	Billund	Norwegian	C
Oslo	Norwegian	C	2000 DY546	Stavanger	Norwegian	C
Oslo	Norwegian	C	2010 SU2233	Moskva/Sherem	Aeroflot	G
Oslo	SAS	E/F	2010 SK896	Stockholm	SAS	E/F
Oslo	SAS	E/F	2015 SK4055	Stavanger	SAS	E/F
Oslo	SAS	E/F	2020 BE5666	Bromma	Flybe	H
Oslo	Lufthansa	E/F	2030 BT154	Riga	Air Baltic	D
Oslo	Norwegian	C	2030 SK9624	Riga	SAS	D
Oslo	TUSfly Nordic	G	2045 SK1475	København	SAS	E/F
Oslo	Norwegian	C	2050 DY338	Bardufoss	Norwegian	C
Oslo	Norwegian	C	2100 ZY546	Antalya	Sky Airlines	H
Oslo	Norwegian	C	2100 DY632	Bergen	Norwegian	C
Oslo	Norwegian	C	2100 DY192	Haugesund	Norwegian	C
Oslo	Norwegian	C	2100 DY1198	Helsinki	Norwegian	C
Oslo	Norwegian	C	2105 BA769	London/Heathrow	British Airways	H



Photo: Olav Hegge

2 AVIATION MARKET – NATIONAL AND INTERNATIONAL

2.1. Market – competition

Air transport is most relevant over long distances. For shorter distances, air transport competes to a greater degree with other forms of transport.

The air transport market consists of many *submarkets*. These submarkets can be categorised based on various criteria (geography / travel origins and destinations, time of travel, who is travelling, etc.).

An empty seat does not give the airlines any revenue. The airlines endeavour therefore to fill up their aircraft right up to departure. Pricing strategies (“yield management”) are an important instrument for the airlines in this connection. The prices vary, for example, according to the geographic market, ticket flexibility, period of time between reservation/purchase of ticket and departure, etc.

Aviation has long been regarded as an interesting industry for investors. Many have wanted to invest. With many suppliers and a large capacity, the cabin factor can be low and the revenue per passenger can be low. With strong competition in a growing number of route markets, all the companies would have to operate efficiently over time. As a rule, the costs must gradually become proportionate to the revenue from the individual routes. Competition in aviation today only allows “overpricing” on certain routes to a limited degree.

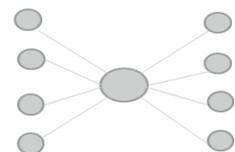
The aviation industry is sensitive to economic fluctuations. The market fluctuations are far greater than the underlying economic fluctuations. This is even more clearly reflected in the financial results of the airlines. In economic downturns, we often see the elimination of actors who have not managed to earn money in good times.

The airlines can in principle choose between two different route strategies: Point-to-point routes or network systems.

Point-to-point



Network



Lower costs	More expensive to produce
Provides fewer combination possibilities for routes and frequencies, but is preferred by passengers if the connection is suitable	Market coverage is good, provides many combinations of routes and frequencies, but the passenger has to change planes
Increased market volume provides a basis for an increasing number of direct routes	Well-suited for the US (east to west coast) and for intercontinental flights

The network carriers have an extensive production system in which the routes feed into the company's hub, and then off in multiple directions in waves. A typical example is KLM, which stations its aircraft in seven Norwegian cities overnight so that they can fly to Amsterdam early in the morning. One can then connect with the second wave of departures from Amsterdam a little after 9:00 a.m.

The market's "direction balance" is decisive for where the company places its aircraft over night. There are a majority of Norwegians on routes to/from Norway.

Lufthansa uses Frankfurt and to some extent Munich as a hub, while British Airways has Heathrow. SAS has Copenhagen as its main hub. SAS also uses Oslo as a hub for domestic traffic in Norway, and for transfers between domestic and international to some extent.

Even if the network carriers place their aircraft away from their home base at night, their personnel are employed as a rule at the hub (base). Thus the company incurs accommodation costs for its personnel.

The network carriers are primarily oriented towards the business market, which has traditionally had a high willingness to pay. Business traffic encompasses very many destinations, and the frequency and flexibility requirements are high. After that, the network carriers use the price mechanism to fill up the available capacity with leisure traffic. Connection traffic to the companies' hubs is often marginally priced.

Point-to-point companies have a strong focus on low costs, and the service they offer is often simple. They are therefore called low-cost carriers (LCC). They may have several bases, but they concentrate on offering direct

routes from these bases. When choosing bases, the low-cost carriers will consider the cost level (for labour and the terms at the airports in question) and the market (volume and direction balance). In markets with a high pay level, the ability to pay will often be greater.

In practice, the boundaries between the business models of the low-cost carriers and network carriers can be somewhat blurred. A few examples:

- Air Berlin: It was a low-cost carrier from the early 2000s. Now it is a member of Oneworld. They are serving food, offer through tickets and have hub operations.
- Vueling Airlines: Barcelona-based airline. Was a typical low-cost carrier for a long time, and it is now flying increasingly for Iberia.
- More low-cost carriers are focusing on main airports (not secondary airports).
- Established network carriers are cutting costs and service (outsourcing and internet sales).

Economic theory² indicates that if market actors can freely enter and exit markets ("hit and run"), even the *threat* of competition will contribute to price effects in the market. This assumes that there are no economies of scale, and that there are no barriers to enter or exit the market. In the aviation market, however, access to attractive slots is limited, and there are set-up costs that cannot be recouped if one exits the market. In addition, airlines can quickly change their pricing in response to competition. Several studies have therefore shown that in aviation *genuine* (not just potential) *competition* is necessary in order to have an effect on prices. There should preferably be at least three actors in order to achieve any significant price effects, and at least one of the actors should be a low-cost carrier.

On the other hand, the threshold for entering a market has gradually become lower due to the fact that both aircraft and pilots are available today. In addition, it is possible to lease an aircraft with crew for specific operations ("wet lease"). The competition between the two main actors SAS and Norwegian in the domestic Norwegian market has thus resulted in clear price effects (Institute of Transport Economics (TØI) Reports 1209/2012 and 828/2006).

One problem for the network carriers is the fact that short connection flights (in Europe) have become

² Cf. *Theory of contestable markets*, Baumol 1982.

disproportionately expensive for these companies. There is now a trend for the network carriers to farm out short flights to subcontractors. This reduces the costs, and better agreement is achieved between the size of the aircraft and the market potential for the short-haul route. For example, SAS has established agreements with three smaller airlines (Jet Time, Braathens regional and Cimber) for flights within the Nordic region.

2.2. Regulation of aviation competition

2.1.2 Introduction

Scheduled air service has developed from being dependent to a very great extent on government permits (licences) to having more liberal framework conditions with increased competition. The US was the first country to allow free competition (1978). Europe came later. From 1997 on, any EU/EEA airline with a licence in one of the member countries could fly anywhere in the EU/EEA area. This applies both between the member states and domestically within these states.

Otherwise, aviation is regulated by *agreements* between the countries. These agreements may be bilateral (between two countries), or multilateral (involving several countries). The aviation agreements have also become more liberal and open to more competition. For example, competition between the US and Europe has been allowed. For travel to Asia, however, the limitation of flights over Russia is a problem that is impeding the opening of new routes.

2.2.2 Market access – traffic rights

In order for an airline to operate scheduled service from country A to country B, the company must have traffic rights. The traffic rights (rights to fly to or over the country in question) are “owned” by the individual states. It is the civil aviation authorities in the individual state that designate the airline(s) that can use the individual traffic rights that are controlled by the state in question, in accordance with the aviation agreement entered into.

Towards the end of the Second World War, the US convened an international conference in Chicago for the purpose of regulating international civil aviation after the war. One of the aims of the conference was to secure overflight rights, in other words an airline domiciled in one state should be entitled to fly through the airspace of another state. This was achieved to a great extent through to so-called IASTA Agreement (*International Air*

Services Transit Agreement). A majority of the countries in the world have signed and ratified the IASTA Agreement. A few countries with a large geographic scope – including Russia – are not among these countries. Another aim of the Chicago Conference was to establish by convention that the principle of “the freedom of the ports” should also apply to aviation. This agreement (IATA – *International Air Transport Agreement*) did, however, not receive the necessary support and never entered into force.

The Chicago Conference otherwise resulted in several agreements that were signed on 7 December 1944. Among these are the Chicago Convention, which established the basis for the International Civil Aviation Organisation (ICAO). The ICAO currently has 191 member countries, and Norway has been a member since the organisation was established. The ICAO has been an agency under the United Nations since 1947. In other words, the principle of “the freedom of the air” in line with “the freedom of the ports” was not introduced. In international aviation, the principle is rather that “everything is forbidden” unless it has been authorised by a bilateral or multilateral agreement. As a result of this, certain countries have sought to secure traffic rights for their own airlines by entering into aviation agreements with as many countries as possible.

The content of these traffic rights varies over a broad range, and the agreements the rights are based on may be quite complex in some cases. To illustrate: Rights are required to fly from one country to another, and rights are required for any intermediate landing in a third country en route, or to be able to fly onwards to a fourth country. The first country must then enter into aviation agreements with all the other three countries. For intermediate landings and onward flights, it must be specified in all three agreements whether this gives entitlement to transport passengers who have not started their journey in the first country, or are to conclude their journey in that country (so-called fifth freedom – see below). In addition, overflight rights must be arranged if the route goes over countries that have not signed the IASTA Agreement.

The capacity that can be used on the route is specified in each individual case in the aviation agreements, i.e. the number of route frequencies within a given time period (week etc.). In many cases, the size of the aircraft used, number of seats etc. is also regulated.

Initially, most of the countries were very restrictive about granting traffic rights. No rights were granted unless one was sure that corresponding or greater advantages were acquired in return. In recent decades, however, there has been a general and strong tendency for most countries to demonstrate a more liberal attitude. So-called *open skies* agreements are one outcome of this tendency. Such agreements are characterised by a free route list, free capacity and free pricing.

In the following, reference will be made to several relevant types of “rights” or so-called “freedoms” that have gradually emerged in the wake of the Chicago agreements. Even if several of these rights lack a formal basis in an international agreement, there is quite broad agreement on the following classification/definition of the so-called *nine freedoms*:

1. The right to fly over a foreign country without landing there.
2. The right to refuel or perform maintenance in a foreign country on route to a third country.
3. The right to fly from one’s own country to another country.
4. The right to fly from another country to one’s own country.
5. The right to fly between two foreign countries as part of a flight when the flight starts or ends in one’s own country.
6. The right to fly from a foreign country to another country when there is an intermediate landing in one’s own country.
7. The right to fly between two foreign countries when no part of the flight is inside one’s own country.
8. The right to fly between two or more airports in a foreign country as part of a flight that starts or ends in one’s own country.
9. The right to fly between two or more airports in a foreign country without the flight having any association with one’s own country (cabotage).

2.2.3 Liberalisation of the European aviation market in general

During the first decades of the life of the EEC Treaty, there was some doubt about how the principles of the free movement of goods, services, capital and persons should be handled in the aviation sector. During the years 1986, 1990 and 1992, however, the EEC adopted three so-called “aviation packages”. The third aviation package (1992) entails that the market for the commercial transport of passengers, goods and freight is

now fully liberalised within the EU/EEA. Implementation concluded in 1997 when the free cabotage rules (cf. the ninth freedom) entered into force. Full liberalisation means that all the EU/EEA airlines that have a so-called licence to operate commercial air transport are entitled to establish new air routes within the EU/EEA. The issuance of a licence requires that the airline in question has a valid AOC (*Air Operators Certificate*), and that the company satisfies certain financial solidity requirements that are stipulated in the liberalisation regulations.³

One exception from the main provisions of this liberal rule regime is that the member states have some leeway for ensuring service on unprofitable air routes through public compensation, and that the company that enters into an agreement to operate the route is given exclusive rights to serve it. Awarding such licences can only take place as the result of a tender competition. Tender contracts cannot normally be awarded for more than four years, but Norway has negotiated the right to enter into five-year contracts for routes north of Trondheim.

2.2.4 Scandinavian aviation policy – SAS MOU

As a result of the SAS cooperation, the Scandinavian countries have long conducted joint aviation negotiations and had a joint Scandinavian delegation. In these instances, three bilateral aviation agreements are entered into with the third country in question. These three agreements are identical in principle. In addition to the aviation agreements, a *Memorandum of Understanding (MOU)* this also sign concerning the SAS cooperation. In this MOU, the third country in question accepts SAS as an airline domiciled in all three Scandinavian countries. Each of the Scandinavian countries undertake to observe the provisions of the aviation agreement, even if the aircraft that is used on the route is registered in one of the other two Scandinavian countries, and the crew’s certificates and licences are issued in one of these other two countries.

2.2.5 Aviation agreements with countries outside of the EU

Norway’s bilateral aviation agreements – the Ownership and Control clause Norway currently has hundreds of

³ The original third aviation packages consisted of three regulations – nos. 2407, 2408 and 2409/92. In 2008, this was replaced by Regulation (EC) No 1008/2008 on common rules for the operation of air transport services in the European Community, which was implemented in Norwegian law by Regulations No. 833 of 12 August 2011 on air transport services in the EEA.



Photo: Olav Hegge

bilateral aviation agreements with third countries (i.e. outside of the EU/EEA). Denmark and Sweden have a corresponding number of agreements. Most of the aviation agreements contain the so-called nationality clause / "Ownership and Control clause". The clause is to prevent airlines other than those that belong to the two parties to a bilateral agreement being able to acquire the rights in the agreement.

More specifically: In an agreement between Norway and a third country, the clause would entail that the third country in question would deny to approve Norway's designation of a company to operate a route encompassed by the agreement, if the third country is not convinced that the company is primarily owned and in reality controlled by Norwegian interests ("*...in any case where it is not satisfied that substantial ownership and effective control are vested in the Contracting Party designating the airline or in nationals of such Contracting Party...*").

Almost all of the bilateral aviation agreements that Norway has entered into contain this nationality clause. Internationally, we now see that there is a tendency and willingness to make this clause somewhat less rigid. *The EU and the horizontal agreements (HA agreements)* As mentioned, several countries (or groups of countries) are working on replacing the current nationality clause with a more flexible variant. The EU has made the most

progress in this connection, with free market access for any air route within the EU for all EU airlines. As an extension of this, it is required that all the traffic rights in all the aviation agreements between an EU member country and a third country must be available to any EU airline. This conflicts with the traditional nationality clause in agreements the member countries may have previously entered into with a third country. The European Commission has therefore been given a general mandate by the Council of Europe to negotiate with third countries concerning necessary changes on this point in the aviation agreements of the member countries. The European Commission has been very active in this area, and the EU now has a so-called horizontal agreement with a number of states.

The horizontal agreements are primarily based on amending the aviation agreements of the EU countries so that they are in accordance with EU legislation in the area. This means, for example, that the nationality clause will be replaced by a so-called "EU designation clause". This means that the third country in question has accepted – on conditions associated with aviation safety – to accept, for example, that a Danish airline can fly from the UK to a country outside of the EU on the terms stipulated in the aviation agreement between the UK and the third country in question.

Some third countries have not wanted to sign a horizontal agreement with the EU. They have nevertheless accepted the principle of EU designation, and accordingly accepted the amendment of their aviation agreements with all of the EU member countries on this point.

Norway and the EEA Agreement

By virtue of the EEA Agreement, Norway is an integral part of the EU's internal aviation market. Norwegian airlines compete on equal terms with their European competitors in the EU/EEA area. This also entails that there are equal competitive conditions within the Scandinavian market, and that SAS no longer has the special advantages that the company benefited from so well previously.

The EEA Agreement, however, does *not* apply to third-country relationships. Norway and Norwegian airlines are therefore *not* encompassed by the horizontal agreements, nor are they encompassed by the aviation agreements that the EU has entered into with third countries. On routes to third countries, SAS therefore still has an advantage that other new airlines do not have, since SAS can also operate as a Danish or Swedish company.

Scandinavian aviation agreements with the EEA designation clause

As mentioned above, Danish and Swedish airlines have certain advantages that Norwegian airlines do not have. This is a result of the fact that Denmark and Sweden – like the other EU member countries – are required to have a form of EU designation in their aviation agreements with third countries.

To promote competitive conditions that are as equal as possible within the Scandinavian aviation market, the Scandinavian aviation authorities have introduced a so-called EEA designation article in the standard aviation agreement that the Scandinavian countries are using as a basis now for their aviation negotiations with third countries. This EEA designation article is a copy of the standard EU designation article, with the addition of a reference to the EEA Agreement. As long as the EEA designation article is included in all the three Scandinavian countries' aviation agreement with a third country, airlines from all three of the Scandinavian countries will be able to fly to the third country in question from anywhere in Scandinavia.

A side effect of this is that any EU airline will also be able to fly from Norway to the third country in question,

while Norwegian airlines in principle will not have access to air routes from other EU member countries to the third country in question. This is an imbalance that the Norwegian aviation authorities have consciously accepted in order to promote the aviation cooperation with the EU that Norway is dependent on. The solution that we have ended up with is also acknowledged to be the only model that is relevant in order to maintain Scandinavian aviation policy cooperation, in a situation in which two of the countries are EU members and the third is linked to the EU through the EEA Agreement.

ECAA Agreement and the EU aviation agreements with third countries

The EU has had an ambition to link the countries in the Western Balkans closer to the European aviation market. In addition to opening the Western Balkans as a market, the EU has sought to contribute to the necessary improvement of aviation safety, and to prevent attacks against the security of aviation in these countries. This will be an overall advantage to the population of all of Europe.

A multilateral agreement was therefore negotiated under the name of the *European Common Aviation Agreement* (ECAA). In accordance with the agreement, the countries in the Western Balkans will gradually obtain access to the EU/EEA market as they satisfy the EU requirements for aircraft and aviation safety and security. The EU has also contributed funds for education and training. Norway is fully integrated in this agreement through the EEA.

The EU has also entered into aviation agreements with some third countries⁴, so-called *Comprehensive Agreements with Global Partners*. Norway is not encompassed by these agreements either, but Norway has an understanding with the EU that it can accede to these agreements. In accordance with this, Norway (and Iceland) have acceded to the aviation agreement between the EU and the US. Norwegian airlines can therefore now compete on an equal footing with their EU competitors on routes between Europe and the US. However, it requires time and resources to negotiate such accession agreements, and it requires the participation and prioritisation of the EU and the third country in question. Therefore, it can take quite some time before the next accession agreement is in place.

⁴ At present, the EU has entered into such agreements with the US, Canada, Morocco, Jordan, Moldova and Georgia.

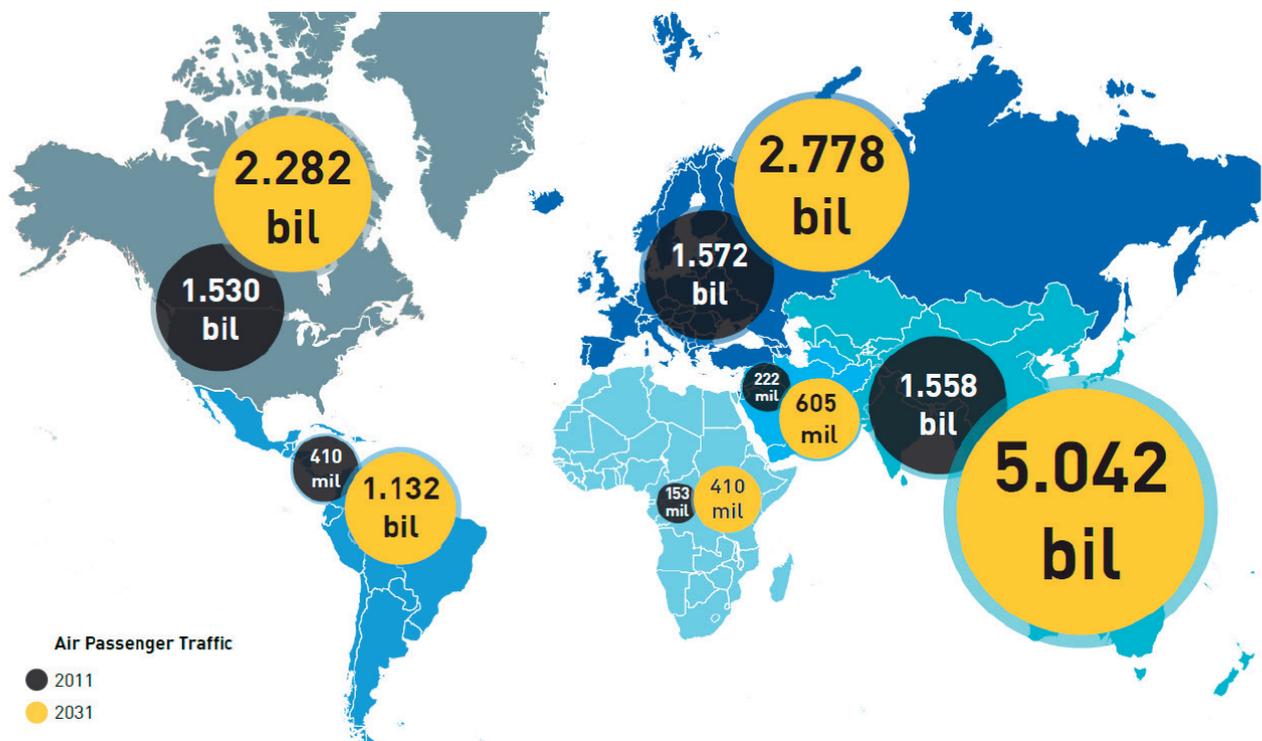


Figure 2.1 Number of passengers in 2011 and 2031 by world region. Source ACI

2.2.6 Opportunities for Norwegian airlines

Through the EEA Agreement and ECAA, Norwegian airlines compete primarily on equal terms with their European competitors in large parts of Europe. The same applies to the transatlantic market. There is free market access in these markets.

Access to the other markets is limited, and dependent on Norway entering into aviation agreements with the country in question. Norway has aviation agreements with most of the countries that are of interest to Norwegian airlines. Almost all of these agreements have an EEA *designation* clause (cf. above). Since Denmark and Sweden have corresponding agreements, this means in practice that Norwegian airlines can also fly to the third countries in question from Denmark and Sweden. Norway – and Denmark and Sweden – continuously seek to improve the existing agreements, and to enter into agreements with countries that we do not have agreements with.

A Norwegian airline has an opportunity to establish itself (directly or via a subsidiary) in any EU/EEA country. The company must then be registered as domiciled in the EU/EEA country in question, obtain a licence and AOC from the aviation authorities in the country in question, and be subject to the supervisory authorities in that country. The Norwegian-owned⁵ company will then be able to fly routes in accordance with the aviation agreements that apply to the country in which the company is domiciled.

⁵ For horizontal agreements, Norwegian ownership of at least 51 per cent is required.

As long as the destination is covered by a horizontal agreement or an EU designation, the company will also be able to operate routes to this destination from EU/EEA member countries other than the EU/EEA country in which the company is domiciled. The company will also be able to fly from Norway, provided that Norway has an aviation agreement with an EEA designation clause with the country in question.

Flying over Russia

As already mentioned, Russia is not part of the IASTA Agreement. Therefore, flying over Russian territory requires the regulation of this in an aviation agreement. In addition, special traffic rights are required to fly over Siberia. Scandinavia has obtained a certain number of overflight rights over Siberia. These rights are allocated to groups of destinations. Today SAS uses the majority of Scandinavia’s overall quota for Japan and China, but there are a few frequencies that are available. In any case, it will be necessary to secure additional overflight rights for the future. This must then be negotiated with Russia. Norwegian has expressed that the current situation is not satisfactory. Flying over the European part of Russian airspace is not frequency restricted.

2.3. International aviation market

2.3.1 Development trends

Measured in the number of passengers, North America, Europe and Asia/Oceania are three nearly equally large markets with over 1.5 billion passengers each according to ACI (Airports Council International). ACI is expecting annual growth of 2 per cent in North America, 3 per cent in Europe and 6 per cent in Asia/Oceania. It is expected



that Asia will eventually become clearly the largest market.

Airbus also points out in its forecasts that the global aviation market will grow due to:

- Increasing population, more cities and higher standards of living
- New markets and strong growth of a new middle class, especially in Asia
- Increased international tourism
- Increased liberalisation, especially in Asia, Africa and Latin America
- Additional low-cost carriers, especially in Asia and the Pacific region and Africa

Table 2.1 Airports in Europe by the number of passengers (millions) in 2015 (Source: ACI)

Airport	Mill pax 2015	Change 2015 percentage
London Heathrow	74,9	2,1
Paris Charles de Gaulle	65,7	3,1
Istanbul	61,3	7,7
Frankfurt	61,0	2,5
Amsterdam	58,3	6,0
Madrid	46,8	11,9
Munich	40,9	3,2
Rome	40,4	5,1
London Gatwick	40,2	5,7
Barcelona	39,7	5,7
Moscow Sheremetyevo	31,2	0,1
Moscow Domedovo	30,5	-7,7
Paris Orly	29,6	2,8
Istanbul Sabiha Gökçen	28,1	19,0
Antalya	27,7	-2,2
Copenhagen	26,6	3,8
Zurich	26,2	3,2
Dublin	25,0	15,4
Oslo	24,6	1,7

Long-haul traffic is increasing more than other traffic, but there are far fewer passengers to begin with than for other flights. The largest airports measured in the number of passengers (in 2012) were Atlanta (95 million passengers), Beijing (82 million), Heathrow (70 million) and Tokyo (67 million). In Europe, Paris, Frankfurt and Amsterdam come after Heathrow. According to ACI's list, Oslo Airport Gardermoen ranks 19th in Europe in 2015, with 24.6 million passengers per year. These airports will be important in the future as well, but the greatest growth is expected in Asia and Eastern Europe.

Among airlines, the American airlines dominate. After several mergers in recent years, there are now three nearly equally large constellations according to the research and analysis firm CAPA: American / US Airways, Delta / Northwest and United / Continental.

Measured by the available seat capacity, the US companies are still dominant. Emirates has grown rapidly and is now number two with regard to available seat kilometres. In addition, Turkish and Chinese companies have also grown rapidly. Lufthansa and British Airways are the largest European companies measured by seat kilometres, while Ryanair offers the greatest number of seats (and has the greatest number of passengers). KLM and Air France, which are in an alliance, offer a total of 5 billion seat kilometres and 1.5 million seats per week as of April 2016.

Table 2.2. Weekly capacity offered in April 2016
Source: SRS Analyser.

Company	Billion seat kms	Million seats
American Airlines	7,5	3,4
Emirates	7,0	1,5
Delta Air Lines	7,0	3,3
United Airlines	6,8	2,2
Southwest Airlines	4,6	3,7
Lufthansa	3,5	1,4
British Airways	3,4	1,1
Qatar Airways	3,3	0,8
China Southern Airlines	3,2	2,0
China Eastern Airlines	3,1	2,2
Turkish Airlines	3,1	1,4
Ryanair	3,1	2,5
Air France	3,1	1,0

CAPA is of the opinion that consolidation is taking place within large parts of the aviation industry. Several large companies have merged in the US. Delta and Northwest in 2008, United and Continental in 2010 and American and US Airways in 2013.

There has also been a marked consolidation in Europe in recent years: Air France has merged with KLM, British Airways with Iberia and easyJet with Go. Lufthansa has taken over Swiss, Austrian, Brussels Airlines and Germanwings. The company bmi British Midland was also owned by Lufthansa for a period of time, but it has been taken over now by (the parent company of) British Airways.



Figure 2.2 Wound-up and existing low-cost carriers in Europe.
Source: Lobbenberg, lecture at the GAD Conference in 2013.

The consolidation trend is reflected, for example, by IAG's⁶ vision, which was stated in their annual report for 2012: "To be the leading international airlines group in future industry consolidation on a regional and a global scale".

Medium-sized network carriers are under a type of structural pressure between major networks on the one side and low-cost carriers on the other side. Medium-sized companies are often perceived as having poor intercontinental traffic offerings. Their short-haul traffic in Europe is increasingly taking place in a point-to-point market, with strong pressure on prices where the low-cost carriers are working their way in.

KLM has become an actor in Norway to an increasing extent. Today KLM has more transfer passengers to/from Norway in Amsterdam than SAS has in Copenhagen.

There has also been strong consolidation among the low-cost carriers, according to CAPA. Vueling has been acquired by IAG, Germanwings has been taken over by Lufthansa, and Air Berlin has been partially acquired by Ethiad⁷ and become a member of the Oneworld Alliance. Thus there are four European low-cost carriers of some size left. Ryanair, easyJet, Norwegian and Wizz. They have all grown relatively rapidly.

For the time being, the Nordic region distinguishes from this consolidation trend, since we have maintained two smaller networks (SAS and Finnair). In addition, we have a successful point-to-point carrier (Norwegian).

Tight capacity control is one element of consolidation. Lufthansa maintains for its part that this contributed to increased profitability in 2012 (source: Lufthansa's annual report). The disadvantage of tight capacity control is it allows others to expand more. Norwegian has exploited this, and is now entering the Germany-Spain market. A prerequisite for such aggressive growth is the ability to compete on cost.

Lufthansa has a strategic advantage with its location in the middle of Europe, and being closest to the rapidly growing economies in Eastern Europe. In its annual report for 2012, the company describes the competition in Europe as illustrated in Figure 2.3. The figure illustrates the east-west distribution of the alliances in Europe. Lufthansa covers the central and eastern parts. The strength of the two other major airline groups lies further west in Europe. There is in other words a type of north-south orientation of the major aviation groups in Europe. The Nordic region has not been taken into account, but Scandinavian belongs to the LH sphere (Star Alliance), while Finnair belongs to BA (Oneworld).

6 IAG: International Airlines Group encompasses / has taken over British Airways, Iberia and bmi British Midland.

7 Ethiad Airways: Domiciled in the United Arab Emirates, main base in Abu Dhabi.

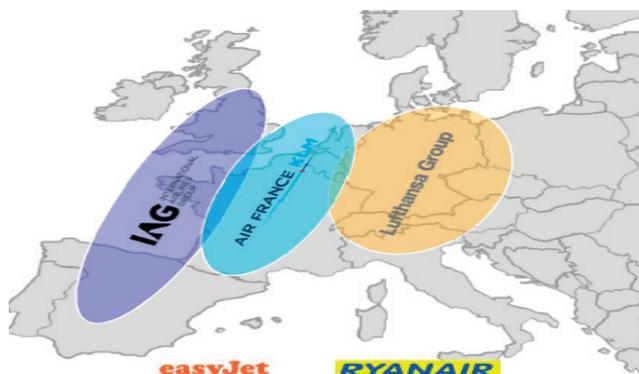


Figure 2.3 Three major networks share Europe. From Lufthansa's 2012 Annual Report.

De Witt and Zuidberg, *Journal of Air Transport Management* 2012, pp. 17-23) maintains that the growth potential for low-cost carriers (LCC) in Europe is about to disappear. In recent years, low-cost carriers have developed increasingly thinner niche routes with longer flying distances and lower frequencies. They draw the conclusion that soon there will be no more such routes to develop. This explains why some low-cost carriers are now looking towards primary airports, and that they are also allowing through-going traffic (combination of more than one flight). In addition, faster ground transport (motorways, high-speed trains) increases the range/scope of the airports, so that new destinations will often compete with the existing destinations.

Berster, Gelhausen and Wilken (see Table 2.3 below) maintain that the share for low-cost carriers will flatten out in Europe. In the US, this share flattened out already in 2007. Europe has the highest share of traffic with low-cost carriers, and growth in market share is declining. On the other hand, Ryanair and Norwegian both have strong plans for expansion. Both companies have ordered 150-200 new aircraft.

Table 2.3 (Low-cost carriers) by region.

Region	Number of low-cost carriers	Million passengers	Market share
Europe	42	240	35
North America	8	200	25
South America	5	48	25
Asia	21	109	14
Southwest Pacific	3	33	38
Middle East	6	12	9
Africa	8	10	12

Source: Berster, Gelhausen and Wilken, 2012.

There are further signs that the business models of the low-cost and network carriers are approaching each other: The network carriers are lowering their prices and level of service and selling increasingly more via the internet and outsourcing work tasks, while the low-cost carriers are offering through tickets and offering intercontinental flights. Further expansion will primarily take place in competition with existing routes/companies.⁸ From the autumn of 2013, for example, Norwegian opened new routes from Spain to several German cities. On 10 of the 11 routes, Norwegian is competing with Air Berlin.

Norwegian has moved into the long-haul market, and they have expressed that they envision the Asian low-cost carriers to be a major challenge in the years to come. Companies such as Scoot (Singapore), Air Asia (Malaysia), Jet Star (Australia), Cebu Pacific (Philippines) and various Chinese companies, all of which are relatively small today, are planning expansion in order to be able to fly the rapidly growing middle class on holidays to/from Europe. Norwegian will participate in this competition, but as of now they are competing with the established network carriers on these routes.

Airlines from the Persian Gulf States have grown rapidly in recent times (Emirates, Ethiad and Qatar Airways). These companies are now increasingly competing with the European network carriers, especially on long-haul traffic between Europe and Asia/Africa. The hubs of the Persian Gulf carriers are strategically located for such traffic. The Persian Gulf carriers are also competing in the transatlantic market, for example, Qatar Airways flies to Athens and from there to New York.

In Oslo, Qatar Airways has one daily direct flight to Doha. Emirates opened a route between Oslo and Dubai in September 2014. The Persian Gulf States have restrictions on how many cities their companies can fly to (in Germany, for example), but they are in a position to deploy more capacity.

2.3.2 Cost level and structure of the airlines

CAPA has conducted a financial statement analysis for the 13 largest European airlines for the year 2012. The analysis provides a good picture of volume and profitability, but there are some improvement points with regard to the

⁸ Source: De Wit and Zuidberg 2012: The growth limits of the low cost carrier model. *Journal of Air Transport Management* 21, 17-23

comparison of costs or production per employee. This is attributed to the fact that many network carriers have a broad range of handling and technical services (and also sell these services to others). The low-cost carriers prefer buying such services to a greater degree.

The analysis shows that the network carriers account for 89 per cent of revenues and 69 per cent of the passengers. The low-cost carriers account for 11 per cent of revenues and 31 per cent of the passengers. SAS, Alitalia and Air Berlin, all of which reported losses, find themselves in what CAPA refers to as the “dangerous” category, with an average “jump length” of less than 1500 km. This brings this category very close to the low-cost carriers, without having their lower cost level. The low-cost carriers had good operating margins, but over half of the network carriers had a negative operating margin.⁹ On average for all 13 companies, fuel accounted for 28.3 per cent of the costs.

Table 2.4: Key figures for the 13 largest European airlines in 2012. Source: CAPA

Airline	Revenue in EUR million	Operating margin %	ASK (billions)	Cabin factor	Pax (millions)	Revenue EUR/pax
LH	30135	1,7	260,0	0,788	103,0	293
AFKLM	25633	-1,2	269,0	0,831	77,4	331
IAG	18117	-0,1	219,0	0,803	54,6	332
Turkish	6445	7,0	96,0	0,774	39,0	165
Air Berlin	4312	-2,6	60,4	0,807	33,3	129
SAS	4128	-1,1	36,2	0,766	25,0	165
Alitalia	3594	-3,3	47,2	0,745	24,3	148
Finnair	2449	1,8	30,4	0,776	8,8	278
Air Lingus	1393	5,0	18,7	0,778	9,7	144
Total/average	96206	0,5	1036,9	0,799	375,1	256
Ryanair	4843	14,1	121,0	0,812	79,6	61
easyJet	4682	8,6	72,0	0,904	58,4	80
Norwegian	1719	3,1	25,9	0,785	17,7	97
Vueling	1102	3,0	17,6	0,777	14,8	74
Total/average	12346	9,5	236,5	0,834	170,5	72

ASK: Available Seat Kilometres.

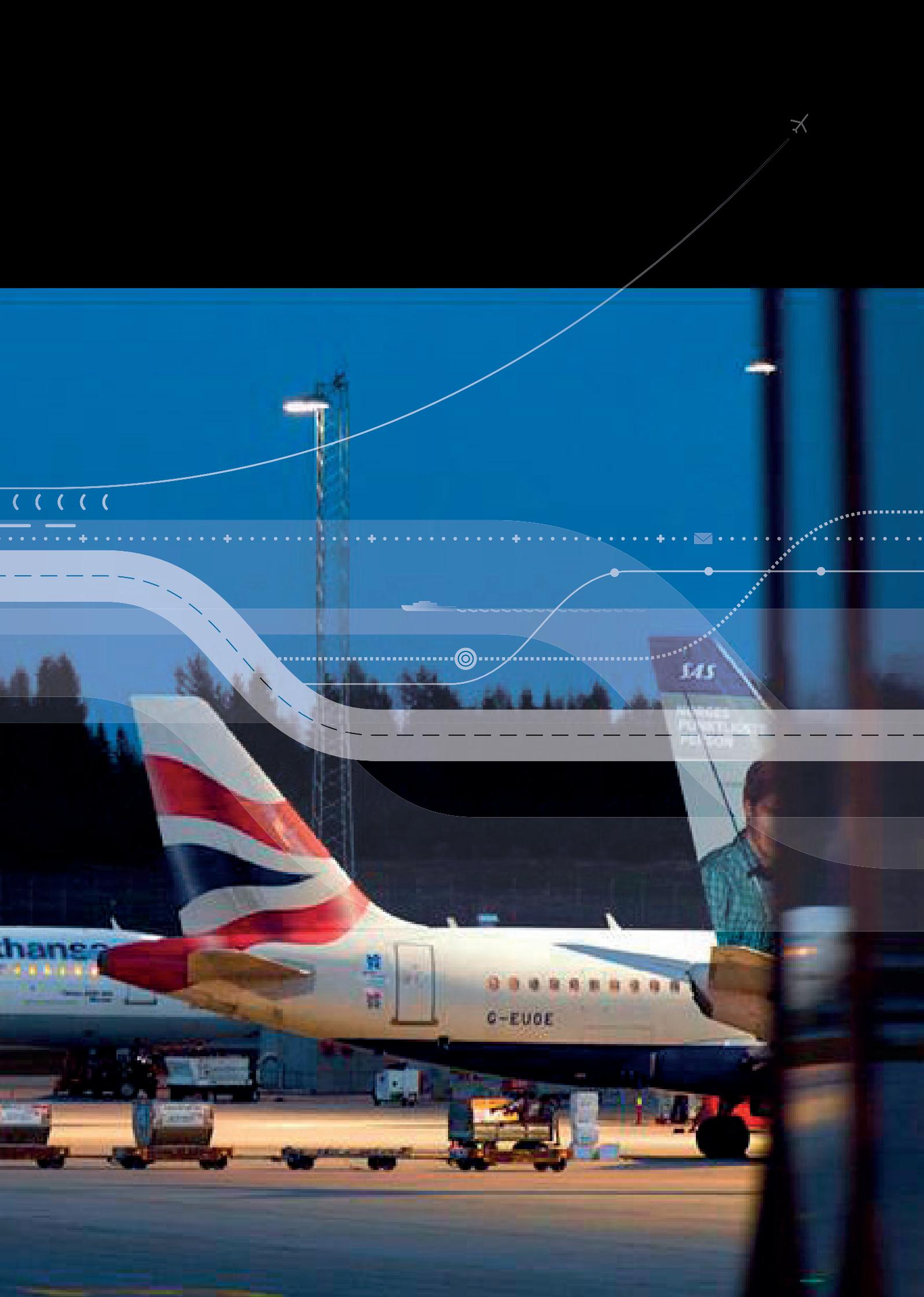
In 2012, the low-cost carriers reported earnings growth of 15 per cent and passenger growth of 8 per cent. The network carriers had earnings growth of 7 per cent and passenger growth of 3 per cent. The year 2012 was in other words a good year for European aviation. Several network carriers reported losses nevertheless.

⁹ CAPA has regarded Air Berlin as a network carrier.

The greatest earnings growth was reported by Vueling (28 per cent), Turkish (26 per cent) and Norwegian (22 per cent). Norwegian was the company that increased its production (available seat kilometres) the most in 2012, and it has increased its production by an additional 20 per cent since 2012.

When the costs are compared for companies with approximately the same distance per flight (1100-1200 km)¹⁰, SAS had (according to CAPA) EUR 0.11 per available seat kilometre. Norwegian, easyJet and Vueling had around EUR 0.06 and Ryanair just over EUR 0.03. Since the costs are distance-degressive, SAS's costs are approximately in line with the other network carriers with a longer average flying distance (Figure 2.4). SAS has reduced its personnel costs through the settlement that was reached with the trade unions in November 2012. The settlement entailed a reduction in wages and a change in the shift work system resulting in more flying hours per employee. Personnel costs during the period from November 2012 to October 2013 were 16 per cent lower than the previous twelve-month period. This is in spite of a six per cent increase in production (available seat kilometres). SAS has estimated that their costs per seat kilometre as at the 3rd quarter of 2013 is 48 per cent higher than Norwegian for short flights, but SAS is of the opinion that they have a product with a greater ability to bring in revenue.

¹⁰ The costs in aviation are distance-degressive, because time on the ground is associated with additional costs and lost revenue. A comparison of the airlines' cost level must therefore take into account the average flying distance.



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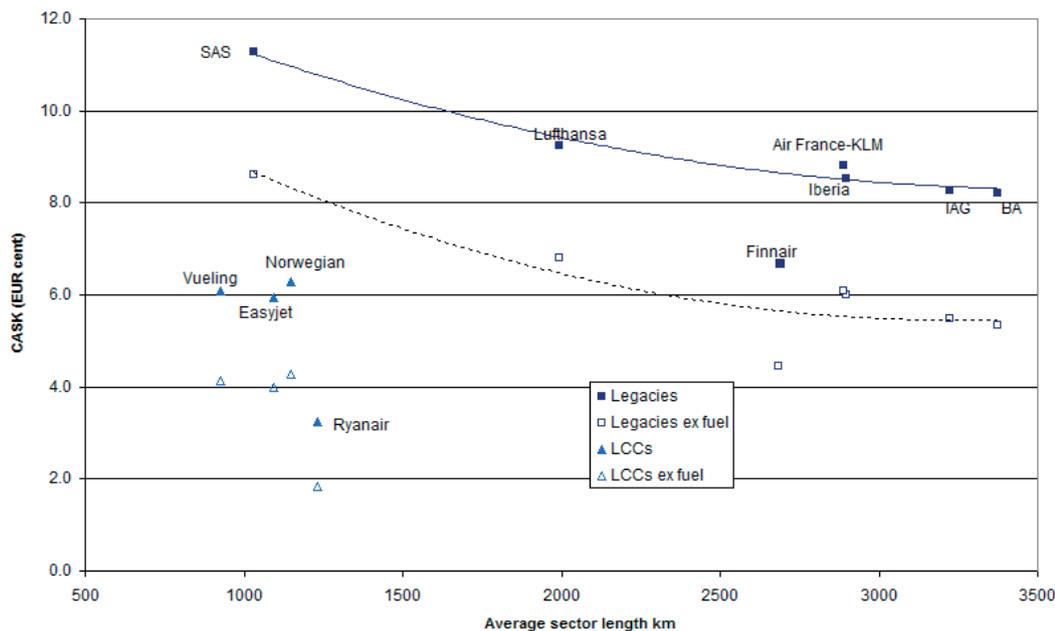


Figure 2.4. Costs per seat kilometre for European airlines in 2012 (2011), euro cents Source: CAPA

The costs per seat kilometre decline with increasing flight distance. On long-haul flights, the low-cost carriers have less advantage because:

- Airport charges and turnaround times do not mean much
- Fuel expenses mean a lot and are the same for everyone and thus reduce the importance of the salary and wage costs
- Often there is connecting traffic at both ends

According to the consulting firm McKinsey, the low-cost carriers have a cost advantage of 25-50 per cent for short flights compared with the network carriers. The fuel cost percentage increases, however, from 30 per cent in Europe to 50 per cent on long-haul routes. Thus the importance of the traditional advantages for the low-cost carriers, such as salary and wage costs and short turnaround times, is reduced.

In addition, the revenue structure for long-haul routes is of importance: The 10-20 per cent of the passengers that travel first class account for 50 per cent of the revenues. According to McKinsey, this is part of the background for why the low-cost carriers have been reluctant to enter the long-haul market.

It has long been a trend that “flying” is no longer an exclusive experience for business travellers, but has become an “ordinary bus trip” for the general public.

This shift means that the prices and thus the costs must be reduced. Several of the established network carriers have undergone extensive restructuring processes. This trend will continue in the future, since the holiday and leisure market is increasing, while business travel is standing still. Nonetheless, there will still be some room for extra service or a better product in the business segment, especially for long-haul flights. In addition, the market is spread across many destinations, which means that there will still be a need for network systems.

A comparison of the costs or production per employee is difficult as mentioned, because many of the network carriers are generally taking care of handling and technical services, while low-cost carriers buy these services. Comparison of the pay level gives a more correct picture, even if this is also affected by the fact that the network carriers have a large percentage of low-paid ground personnel. For SAS in Norway, the ground services represent around half of the personnel. A large ground personnel percentage brings the average pay level down, because flight crews have better pay.

The annual labour costs (including the employer’s social insurance contributions, pensions, etc.) per employee is the highest in Norwegian companies according to CAPA. SAS was at EUR 106,458, while Norwegian had EUR 96,663 in 2012. From that level, there is a large gap down to Air France/KLM at EUR 75,400 and the Lufthansa

Airline Group and easyJet at EUR 70,500. TAP, Ryanair and Air Berlin were at approximately EUR 50,000.

High salary and wage costs in Norway reflect a generally higher income level in Norway. High salary and wage costs can to some extent be compensated for by high labour productivity. However, it is difficult to obtain reliable comparison figures for the number of flying hours per flight crew member.

2.4. Aviation market in Norway

Norwegian aviation has seen strong growth for decades, both domestically and internationally. There are indications that domestic growth is flattening out, while it appears that international traffic continues to grow. The number of domestic trips including transfers account for close to 15 million in 2015, while international accounts for 22.6 million trips. In 2015, there was a decline in domestic traffic and weak growth in international traffic.

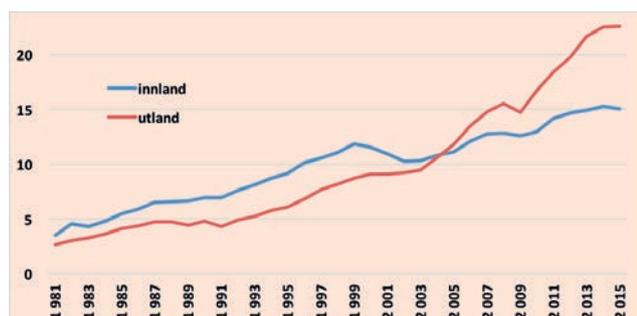


Figure 2.5 Development in the number of trips in and to/from Norway from 1981 to 2013.

Table 2.5 Annual growth in air traffic (passengers) in and to/from (Source: Avinor)

Market	1990-2000	2000-2012	2013	2014	2015
Domestic	5,2	2,0	1,3	1,6	-1,5
International	6,6	6,7	9,2	3,2	0,3

The large airports naturally dominate the traffic figures. Oslo Airport Gardermoen (OSL) has 45 per cent of all passengers and nearly 60 per cent of the international traffic. As much as 70 per cent of all Norwegian domestic air travel starts or ends at OSL.

In the Avinor Group, Oslo Airport contributed an operating profit of NOK 2.3 billion in 2014. Bergen Airport and Stavanger Airport each reported an operating profit of more than NOK 500 million, and Trondheim Airport reported an operating profit of approximately NOK 250 million.

Among the airports outside of Avinor, Sandefjord Airport Torp and Moss Airport Rygge each reported over 1.5 million passengers in 2015. This is primarily international traffic, largely operated by Ryanair. The establishment of new direct routes abroad from locations outside of Oslo (not just from Moss and Sandefjord, but also from the “three majors”) has entailed that the international traffic percentage at Oslo Airport has declined over time (Figure 2.6). Even though Oslo Airport’s percentage has declined, the volume has gone up. At the same time, parts of Norway use Oslo Airport as a hub. From Møre and Romsdal and Northern Norway, over 90 per cent travel abroad via Oslo Airport. Also from the “three majors” there is a certain percentage that travel via Oslo Airport on international trips (20 per cent from Bergen and Stavanger and 50 per cent from Trondheim). According to Avinor, 22 per cent of the terminal passengers at OSLO are transfer passengers.

2.6 million passengers at Norwegian airports in 2014 (excluding offshore and transit). Source: Avinor

Airport	Domestic	International	Total
Oslo	10,90	13,32	24,22
Stavanger	2,50	1,93	4,43
Bergen	3,67	2,16	5,83
Trondheim	3,42	0,98	4,40
Bodø	1,54	0,05	1,59
Tromsø	1,79	0,11	1,90
Kristiansand	0,72	0,35	1,07
Ålesund	0,79	0,31	1,10
Haugesund	0,46	0,24	0,70
Molde	0,44	0,04	0,48
Kristiansund	0,30	0,01	0,31
Harstad/Narvik	0,64	0,05	0,69
Bardufoss	0,22	0,00	0,22
Alta	0,36	0,00	0,36
Lakselv	0,06	0,00	0,06
Kirkenes	0,30	0,00	0,30
Svalbard	0,15	0,00	0,15
Local airports, Avinor	1,54	0,00	1,54
Airports outside of Avinor	0,78	3,04	3,82
Totalt	30,58	22,59	53,17

private travel have declined by six per cent. The prices have declined the most for business travel between Southern and Northern Norway. However, the prices increased significantly in 2014. According to a survey by Via Egencia, 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 in 2014. 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 purchases regional air services for approximately NOK 811 in 2016. Tenders are advertised with a time frame of four years (five years in Northern Norway). The regional tendered routes are primarily dominated by Widerøes flyveselskap. Danish Air Transport (DAT) has participated in the tendered routes during several periods, but they are now completely out of these routes. Previously DAT flew commercial routes from Rygge to Stavanger and Bergen (discontinued on 22 December 2013), and it now has the Oslo-Stord-Oslo and Molde-Stord-Stavanger routes. At present, there is no other competition from foreign operators on the domestic commercial route network. This is in spite of the fact that the three largest routes are quite large in a European domestic context, with 1.5-2 million passengers annually. On the international routes, there are several competitors. The market shares at Avinor's airports are illustrated in Figure 2.7. Norwegian has grown rapidly and has become the largest company for international traffic. Norwegian airlines have strengthened their relative position during this period thanks to Norwegian. In addition, SAS has increasingly offered more direct routes from Oslo instead of flying via Copenhagen.

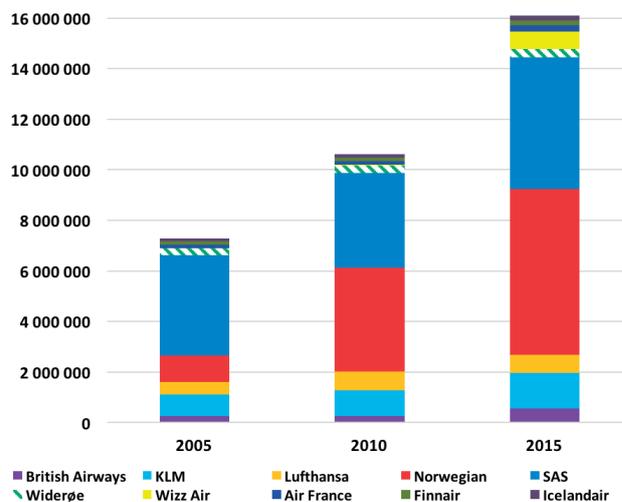


Figure 2.7. International traffic (million passengers) to/from Avinor's airports, 2005 to 2015. Source: Avinor

Avinor's airports had 20 million international passengers in 2015. Rygge and Torp combined had 2.6 million international passengers. Ryanair is primarily responsible for this traffic, and also has more than 200,000 passengers at Haugesund. During the period from 2003 to 2015, Ryanair increased from approximately 8 per cent to 12 per cent of the overall air traffic to/from Norway.

The length of international travel is increasing. In recent years, the scope of intercontinental traffic in particular, including travel to/from Asia, has increased (Figure 2.8). In 2011, 2.2 million air passengers travelled between Norway and destinations outside of Europe. Of these, 0.6 million were on direct routes from OSL, and 1.2 million via Oslo Airport to another hub abroad with continued travel from there.

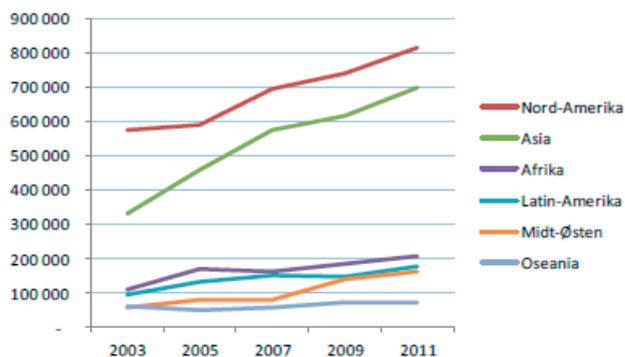


Figure 2.8. Intercontinental trips by destination in 2011. Source: Institute of Transport Economics (TØI) Report 1209/2012

3 SURVEY OF THE AVIATION INDUSTRY IN NORWAY

3.1. Introduction

This section provides an overview of airlines, airports and organisations in Norwegian aviation. The review does not encompass air navigation services (i.e. direction of air traffic performed by control centres, control towers, etc.). Due to the background of this consultation paper, the helicopter industry has also been omitted.

The last known survey of the aviation industry in Norway is from 2005 (Lian et al.). At that time, there were an estimated 20,000 persons directly connected to the aviation industry. This encompassed all employment linked to airports and airlines – including security, catering, cleaning, customs, police, retail trade, parking, car rental, travel agencies and ground transport. In addition, there was indirect (deliveries to the aviation industry) and induced employment (consumption related to the income from direct and indirect employment) of an estimated 12-16,000 persons.

Table 3.1 Number of employees and traffic figures for various airports / airport groups. 2014

Airport	Number of persons employed				Total	Pas- sen- gers (mil- lion)	Empl- ees per million pas- sen- gers
	Air- port	Aircraft opera- tions	Commer- cial	Other			
Oslo	1540	6931	3011	841	12323	23,0	537
Bergen	481	779	277	302	1839	6,2	296
Stavanger	390	1668	607	592	3257	4,7	697
Trondheim	325	581	304	517	1727	4,3	400
National ¹	734	994	315	626	2669	5,8	464
Regional ²	677	564	150	287	1678	3,3	511
Local ³	800	395	28	225	1448	2,0	728
Avinor other ⁴	633				633		
Total Avinor	5580	11912	4692	3390	25574	49,2	520
Other airports	254	671	180	570	1675	3,8	438
Other ⁵	0	400	0	0	400		
Total ⁶	5834	12983	4872	3960	27649	53,0	520

1: Bodø, Kristiansand, Tromsø, Ålesund

2: Alta, Bardufoss, Harstad/Narvik, Haugesund, Kirkenes, Kristiansund, Lakselv, Molde, Svalbard

3: Smaller airports with runway lengths from 800 to 1,200 metres (with a few exceptions)

4: Central Administration and Control Centre in Røyken.

5: Norwegian Civil Aviation Authority, employees in administration and sales, etc.

6: Appendix 1 shows the figures for the individual airports.

In recent decades, Norwegian aviation has undergone major changes in several areas. Keywords in this connection are relocation of functions abroad, rationalisation and passenger growth.



Photo: David Peacock

The relocation of functions has in particular been seen in the area of administration and engineering and maintenance services. Overall employment in the industry remained unchanged during the period from 2007 to 2011 at 7,300 employees (source: Statistics Norway structural statistics). The category “other services related to aviation” increased from 7,000 to 8,000 employees during the same period. Total employment in aviation-related activities was in other words approximately 15,300 employed persons.¹¹ During the period from 2005 to 2013, the number of passengers (domestic and international combined) increased by 51 per cent.

Aviation also has other effects on the economy and society, for example, localisation effects, effects on travel and tourism, and trade, investment and productivity effects etc. It is difficult to measure such effects. A disputed question in this context concerns the “causal direction” between air services and economic development: “what comes first”? It is probably more fruitful to view this as two phenomena that mutually affect each other (a spiral in which both the economy and the mobility change alternately/simultaneously).

¹¹ Statistics Norway has a narrower definition for support services for aviation than the Institute of Transport Economics (TØI), since TØI’s definition encompassed all activity at/near the airports.

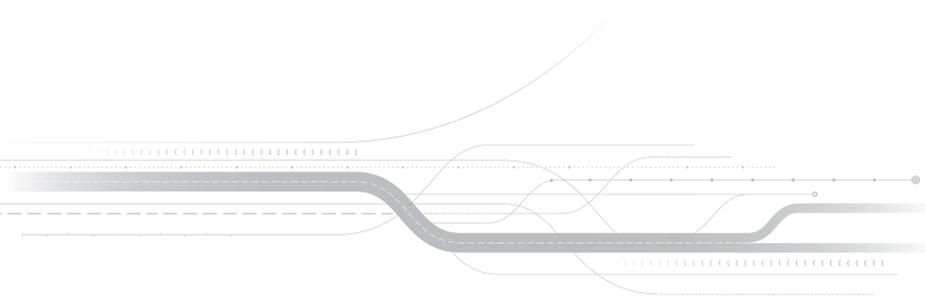
To measure the overall effects of aviation, it is also problematic to compare the situations of “with and without aviation”. It is changes in the services offered that are the relevant basis for comparison.

3.2. Airlines

3.2.1 SAS

SAS is the largest company in Scandinavian aviation. In the middle of 2013, the company had 142 aircraft in operation, and 14,000 employees, converted to full-time equivalents. SAS owns Blue 1, while the majority shareholding in Widerøe has been sold. In 2014, SAS had over 28 million passengers and revenues of approximately NOK 35 billion. The head office of SAS is located in Stockholm, but Copenhagen and Oslo are also important hubs. Of the total traffic revenues, 38 per cent are from Norway, 22 per cent from Sweden, 12 per cent from Denmark and 28 per cent from other countries. After the sale of Widerøe and the restructuring in 2013/2014, 31 per cent of the employees in SAS will come from Norway, 31 per cent from Denmark and 38 per cent from Sweden. A small percentage of these employees are employed in other countries, primarily in the sales organisation.

SAS has had major economic problems for several years. During the last ten years, the company has offered two new issues, in which the owners contributed a total of



approximately NOK 800 million. In the autumn of 2012, the company was close to bankruptcy. The company managed to arrange an agreement with seven private banks and the Swedish, Danish and Norwegian states, among others, for the establishment of a credit facility of up to SEK 3.5 billion. This ended in 2014 without being used. SAS has carried out a number of measures to reduce its costs and risk, including the sale of Widerøe and SAS Ground Service, as well as significant cost reductions through new agreements with the employees, among other things. During the period from 2010 to 2014, SAS has increased the number of flying hours for pilots from 550 hours per year to 685 hours. Flying hours for cabin personnel have increased by 24 per cent during the same period. In addition, pension agreements have been renegotiated, and the pension costs have been significantly reduced.

In Norway, SAS has approximately 5,600 employees. Of these employees, more than 1,800 are flight personnel (Table 3.2). The technical department has been reduced significantly, and new reductions are expected. In addition, the handling services are to be sold and hired back. As a result of this, there will be far fewer SAS employees in Norway in the coming years. The jobs associated with the ground and handling services will nevertheless remain (outside of the SAS system).

According to SAS, the company used a total of 65 aircraft for operations in and to/from Norway. These 65 aircraft produce approximately 290 domestic flights daily, and 170 flights to/from Norway. More than 50 of the aircraft are based in Oslo, eight in Copenhagen and four in Stockholm. Due to the direction balance in the domestic market, a total of 36 aircraft have night stops at line stations in Norway, even if they are based in Oslo. Aircraft that have night stops create the need for two crews, because they arrive too late in the evening to be able to fly out the next morning with the same crew.

Table 3.2 SAS employees in Norway (2013 – there have been significant reductions in sales and staffs, and in the technical operations after this)

Pilots	530
Cabin crew	1320
Ground/handling	2790
Sales and staffs	540
Technical	400
Cargo	30
Total	5610

The largest cost items related to operations in and to/from Norway are fuel at 23 per cent, aircraft crews at 15 per cent, technical at 13 per cent, air traffic charges for aircraft (passenger and security charges not included) at 12 per cent and handling 11 at per cent.

In spite of the rationalisation and savings measures that SAS has carried out, the company is still vulnerable. The costs were lower in 2013 than in the autumn of 2012. In the autumn of 2013, however, there were new signs of declining yield (revenue per passenger kilometre). This probably reflects overcapacity in a weak market. In the autumn of 2014, the market stabilised, and SAS's revenues increased.

During this restructuring phase, SAS has also focused on regular replacement of the aircraft fleet. All the older "classic" aircraft have been removed from the fleet, and SAS now has only NG aircraft¹² for its short-haul operations. The current long-haul fleet will be replaced in part starting in 2015, and the new Airbus A350 will enter the fleet starting in 2018

The concept of using Copenhagen as a hub for Scandinavian aviation was good and necessary in 1946 when SAS was established. After the traffic volume increased, however, there was a basis for an increasing number of direct routes. The importance of Copenhagen for European traffic to/from Norway and Sweden has therefore been significantly reduced. Europe – due to its short distances – is a hub market to a far lesser extent than the US, which has population centres on the East and West Coasts. For intercontinental flights, SAS is a small actor compared with other networks. As a small network carrier, SAS is pressed between larger and more attractive networks on the one side, and companies with lower costs for short-haul European flights on the other side.

12 NG: Next Generation.

SAS has a total of 8 million passengers per year in the Norwegian market. SAS brings in 850,000 foreign passengers, which corresponds to 60 per cent of the number of foreigners that arrive in Norway by air. Norwegian is the largest competitor to SAS. More than 75 per cent of the services offered by SAS in and to/from Norway are in competition with Norwegian.

SAS reports that of the direct traffic from the Nordic region to Asia, Finnair has 54 per cent, Asian companies 30 per cent (of which Thai has 19 per cent), SAS 12 per cent and other companies 4 per cent¹³. For direct traffic to North America, SAS accounts for 58 per cent, while US companies account for 24 per cent.

A large percentage of passengers travel to/from the Nordic region to Asia and other regions via the major hubs in Europe. KLM/Amsterdam accounts for a substantial portion of this traffic. British Airways, Lufthansa and airlines from the Middle East are also major actors for traffic to/from Scandinavia via their hubs.

According to SAS, the Arabic Persian Gulf carriers are the primary challengers to the established networks. Up until now, Asian low-cost carriers have concentrated on markets close to them.

To keep costs down, SAS has entered into agreement with three subcontractors (Jet Time, Braathens regional and Cimber) to fly short haul for SAS (source: Check-in.dk). Lufthansa employs a corresponding strategy by allowing Germanwings to fly short-haul routes on its behalf. Cimber is now a wholly-owned company in the SAS Group.

In connection with work on this report, SAS has pointed out to the Ministry of Transport and Communications that the company is concerned about fair competition and that employees who have their main employment in Norway, must have Norwegian terms and conditions. The company would like to see restrictions on the use of crewing agencies and the contracting of crew members as independent contractors. The company would like to see a revision of the regulations for tax and social security. According to SAS, one important aspect of the contracting of personnel is the consequences this may have on the culture of safety in aviation.

SAS argues that Avinor's charges are far too high, that the rental price Avinor demands from the airlines for use of Avinor's facilities is too high, and that the structure of the charges (with introductory discounts, weak volume incentives, etc.) favour foreign companies.

SAS envisions that if foreign companies start to serve the domestic traffic routes in Norway, SAS will be forced to reduce its domestic production. If Norwegian companies drop out of the domestic market, foreign companies will benefit from the cost advantage that lies in using foreign personnel with a level of pay lower than the Norwegian level, according to SAS. The production and base structure of the foreign companies may make it difficult to maintain the current domestic routes. Even if Norwegian continues domestically, there will nevertheless be reduced domestic competition according to SAS. In the opinion of SAS, this will in turn result in poorer schedules and higher prices.

3.2.2 Norwegian

Norwegian started up as a Norwegian low-cost carrier in August 2002, and the company was listed on the stock exchange in 2003. Norwegian has grown very rapidly after this: The company has developed from being a Scandinavian company to becoming an international airline with substantial expansion plans, and it had over 400 undelivered aircraft on order or as options as at June 2014. In recent years, Norwegian has phased in 12 to 15 new aircraft annually, and the company now has one of the newest aircraft fleets in Europe with an average age of approximately four years. Norwegian has approximately 5,400 employees.

Norwegian carried 24 million passengers in 2014 and had an average cabin factor of 81 per cent. Total revenues were NOK 19.5 billion in 2014, 76 per cent of which were revenues from international flights. In 2014, the company reported a loss after tax of NOK 1.07 billion. Fuel accounts for the greatest share of the operating costs (32 per cent), then come the personnel costs (17 per cent) and charges (15 per cent).

¹³ This information was disclosed prior to Norwegian's entry to the Asian market.

Table 3.3 Norwegian's costs in 2014.

Cost factor	Per cent	NOK million
Personnel	17,3	3209
Sales, distribution	2,6	469
Fuel	34,0	6321
Leasing of aircraft	9,9	1846
Charges	14,7	2724
Handling	10,0	1855
Technical	6,9	1290
Other costs	4,6	855
Total	100	18569

Source: Directors' Report 2014.

The Norwegian Group had (as at the middle of 2014) approximately 1,200 pilots, of which 60 per cent were employed by Norwegian-owned companies and 40 per cent were permanent employees of crewing companies with which Norwegian cooperates. The corresponding figures for cabin personnel are 2,700, of which approximately 50 per cent are employed in wholly-owned cabin companies, and 50 per cent of permanent employees of cooperating companies. Norwegian would like to strengthen its competitiveness internationally. The company is of the opinion that too few people live in Scandinavia to ensure the necessary customer base for the future. The market in Scandinavia is approaching saturation. The company has increasingly expanded by flying between European cities outside of Scandinavia, and by starting up intercontinental routes.

Growth outside of Scandinavia is ensured by establishing bases where there is regarded to be a market strategically and commercially, based both on the current traffic pattern and future potential. The company regards this growth abroad to be completely necessary in order to secure the company's future and competitiveness, and thus also workplaces for the employees in Scandinavia.

For the ventures outside of Scandinavia, Norwegian uses international crewing companies to a great extent, who employ pilots and cabin personnel locally (this as opposed to contracting personnel who act in international law). According to Norwegian, the pay level and terms are competitive in all the markets based on the local conditions that prevail at each location. Several of the pilots who have applied to these bases are nevertheless Scandinavian.

Norwegian has stated that the company has plans to use permanent employment by wholly owned Norwegian companies at the individual bases as the bases gradually prove to be competitive, as the company has done, for example, in Finland and Spain. The crewing companies follow up local regulations, including the correct handling of taxes and charges in the country where the personnel are working. The advantages of such an arrangement are first and foremost lower fixed costs for administration and greater flexibility, as well as the fact that the local crewing companies are familiar with local legislation and other conditions, which entail better and closer follow-up of employees.

Norwegian reduces its flying programme in the winter season. This is due in part to lower demand at that time of year, and at the same time the winter season can then be used for heavier maintenance on the aircraft. For a four-month period during the winter of 2012/2013, 10 aircraft were removed from service.

Norwegian has its main contract for the procurement of handling services in Norway with the company Menzies Aviation. Norwegian operated around 100 aircraft in the summer of 2015, divided between Norwegian and foreign bases.

Figure 3.1 shows Norwegian's fleet plan.

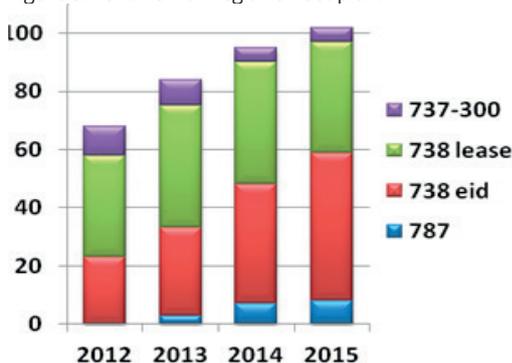


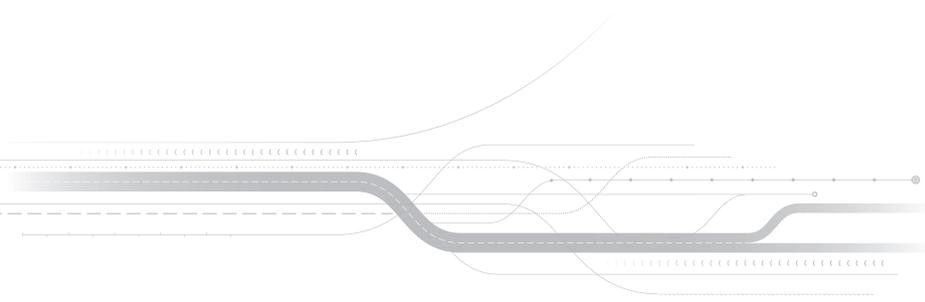
Figure 3.1 Norwegian's fleet plan.

Domestic and international production is integrated on both the aircraft and pilot sides. Norwegian based aircraft rarely have a night stop abroad, but the crews may spend the night abroad at times.

Aircraft must visit a base every third day for maintenance. Heavier maintenance is performed in the UK and by Lufthansa Technik, which have workshops in several locations. For the new Dreamliner aircraft, Norwegian has entered into a "gold care" agreement



norwegian.com



with Boeing, who in turn enters into agreements with various licensed workshops. Norwegian's technical departments at Gardermoen and Arlanda, for example, perform maintenance on the 787 Dreamliner through the Boeing agreement.

Norwegian bases its operations on flying the customers themselves, instead of making provisions for the use of alliance partners. In connection with Norwegian's international growth, the company has therefore established an increasing number of bases abroad (Helsinki, Stockholm, Copenhagen, Alicante, Malaga, Las Palmas, Madrid, London Gatwick, New York and Fort Lauderdale). Additional bases will be established as the competitive situation permits. Local proximity to the market is important, while bases at the largest traffic hubs make operations more efficient. Many of Norwegian's flights today do not pass through the Nordic region.

As part of the long-haul venture, bases have been established in Bangkok, New York and Florida, and Norwegian has plans to establish additional bases at the traffic hubs for long-haul routes.

To a great degree, Norwegian offers through tickets with a discount in its own network (especially in connection with long-haul flights). The company is also looking at the opportunities for ticket cooperation with other companies in connection with the long-haul routes.

Norwegian has two Norwegian AOCs and licences (for Norwegian Air Shuttle and for Norwegian Air Norway), as well as an Irish AOC for Norwegian Air International Limited. Norwegian also has a company in the UK, with a UK AOC.

Norwegian discloses that the reason for the company's establishments in Ireland and the UK was in part to obtain access to EU traffic rights that can form the basis for the company's intercontinental routes (Scandinavian authorities have refused to give Norwegian a common Scandinavian AOC, such as SAS has).

Norwegian is of the opinion that there will not necessarily automatically be poorer air services on the main air route system in Norway if the Norwegian actors disappear. All experience has shown that routes operated by companies that have gone bankrupt are quickly replaced by other, more efficient operators.

Norwegian's entry into the market in Denmark is an example of this, according to the company. Norwegian is now a significant actor in the Danish market, and the second largest airline at Kastrup.

Norwegian points out that the company focuses on cost-effective operations in order to meet international competition. Norwegian's cost level is currently at the same level as easyJet. This means heightened competition also here in Norway, and Norwegian must meet this development. Norwegian is of the opinion that the Norwegian domestic market is close to saturation, but that this will not prevent foreign companies from entering the most attractive domestic markets in Norway, which will then entail heightened competition for the companies already established in these markets. Some time ago, Norwegian discussed the possibility with the Norwegian authorities that the US establish a preclearance location 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. Preclearance could increase interest in direct routes between Oslo and the US. The Ministry of Transport and Communications will study this possibility in greater detail in consultation with other relevant ministries.

3.2.3 Widerøe

Widerøes Flyveselskap AS is Norway's oldest airline. The company started in 1934 with seaplanes that carried mail and engaged in ambulance and aerial photography services, etc. In 1968, Widerøe entered the new regional network, which the company operated originally with Twin Otters¹⁴.

Widerøe is currently the largest regional airline in the Nordic region, with 1,400 employees (of which around half are flight personnel), and annual revenues of approximately NOK 3.5 billion. Widerøe carries over 2.5 million passengers annually, serves 47 airports in Norway and abroad (including summer routes), and has 450 daily departures. The company's aircraft fleet consists of 23 Dash 8-100/200 with 39 seats, 8 Dash

¹⁴ DHC-6 Twin Otter: Two-engine turboprop aircraft, fixed landing gear, 20 passenger seats, no pressurised cabin.

8-300 with 50 seats and 11 Dash 8-Q400 with 78 seats. SAS has sold 80 per cent of Widerøe to Widerøe Holding, which has Torghatten ASA and Fjord 1 as shareholders, after Torghatten acquired the stake of the Nordland County Authority. Fjord 1 is owned 59 per cent by the Sogn and Fjordane County Authority.

Widerøe's head office and main technical basis is in Bodø, where heavy technical maintenance is also carried out. In addition, there are smaller technical bases at Torp, Gardermoen and Tromsø. For a number of years, Widerøe has focused on the training and development of technical personnel. The company has regularly had a significant number of apprentices in technical maintenance, aviation mechanic disciplines and avionics. The company is itself licensed to train engineers for all of its aircraft types, and to perform maintenance jobs for other airlines.

The Dash 8-100s that are used on the short runway network have a remaining life of 15-20 years. Widerøe has commenced work on the renewal of its fleet.

According to Widerøe, the commercial routes represent 60 per cent of the company's activities, while the tendered routes on the short runway network, where the state procures the transport services, account for 40 per cent. The company has international routes to Gothenburg, Copenhagen, Newcastle and Aberdeen. The routes to Copenhagen are flown from Sandefjord, Kristiansand and Haugesund, and Widerøe uses the Q400¹⁵ on international routes and on some domestic routes.

The transfer percentage is high on the tendered routes (approximately 40 per cent in total). Widerøe has a cabin factor of approximately 60 per cent. The direction balance on the short runway routes (many passengers outbound in the morning and back home in the evening) makes it difficult to increase the cabin factor. The company has empty flights in the morning (some mail) from Tromsø and Bodø.

The flying pattern is landing-intensive with many short distances on the short runway routes (20-25 landings per day in the north for every aircraft). Widerøe's long experience on the short runway routes, with the knowledge that this provides with regard to the local wind and weather conditions etc. is a competitive

advantage for the company. In addition, the aircraft fleet (with a pressurised cabin and 39 seats for the ordinary Dash 8 series) is well-adapted to the airports with short runways. The characteristics of the aircraft fleet also harmonise well with the normal requirements for most of the tender advertisements for routes where the state procures transport services. Several of the tender advertisements have stipulated SCAT 1 as a requirement. This is a satellite-based approach system developed in cooperation with Avinor, which no other airlines have currently implemented. In the future, it is not improbable that some of these competitive advantages may no longer apply.

Widerøe has in connection with work on this report pointed out to the Ministry of Transport and Communications that they are concerned about the cost level in Avinor, and they question the actual organisation of Avinor's activities (*"don't build large new airports, but find the right investment level"*). All airlines focus on cutting costs, Avinor must also give greater priority to this according to Widerøe. According to Widerøe, a lower cost level for Avinor will provide a basis for lower charges, which can in turn contribute to better air services.

3.2.4 Ryanair

Ryanair has established a base at Moss Airport Rygge, and also has flights to/from Sandefjord Airport Torp and Haugesund. The flights are all to/from Norway (no domestic traffic here in Norway).

The pilots at the base are primarily Norwegian and Swedish, while the cabin personnel come from all over Europe. The personnel find themselves a place to live in the region within an hour's travel time to the airport. Some of the cabin crew are mobile "base hoppers", often young people, who move around to other bases in Europe after a few months in Norway.

3.2.5 Danish Air Transport (DAT)

Danish Air Transport (DAT) has commercial routes in Norway, with, for example, Stord, Oslo and Stavanger as destinations. The company's earlier operations to/from Moss Airport Rygge were discontinued in December 2013.

DAT previously operated tendered routes at Florø, and the subsidiary DOT served Oslo-Røros-Oslo for a period of time. DAT also won the tender for routes between Bodø and Lofoten, but lost the tender after a complaint

¹⁵ Dash 8 Q 400: Extended and modified version of the original Dash 8 series. Designed primarily for commuter traffic (Q indicates "Quiet").

from Widerøe¹⁶. Widerøe currently serves all of these tendered routes.

3.2.6 Others

Several of the major network carriers have routes between Norway and their respective home countries. KLM is the foreign network carrier that has the most traffic to/from Norway. KLM has international traffic to/from seven Norwegian airports. On an annual basis around 1 million passengers to/from Norway transfer in Amsterdam.

3.3. Airports etc.

3.3.1 Avinor

Avinor operates 46 airports, three control centres and the tower services at airports in Norway. At the end of 2014, the group had 3,300 employees. Avinor has approximately 540 air traffic controllers in operative positions (approximately 220 at control centres and 320 in control towers), in addition to 35 air traffic controllers at the head office. In addition, there are approximately 135 AFIS employees and 1050 employees in the apron, fire and rescue services.

Avinor handles approximately 830,000 aircraft movements and approximately 50 million passengers annually.

Avinor is self-financing. Investments are financed from operations and by taking out loans. The equity ratio should be over 40 per cent. In April 2014, a decision was made to spin off the air navigation division (control centres, control towers, etc.) to a newly established subsidiary wholly owned by Avinor (Avinor Flysikring AS). On 11 January 2016, a merger was completed between Oslo Lufthavn AS and Avinor AS.

Avinor's revenues consist of traffic revenues (charges) and so-called commercial revenues (revenues from parking facilities, tax-free sales, airport hotels, etc.). The commercial revenues have increased in recent years. Avinor's revenues consist of traffic revenues (charges) and so-called commercial revenues (revenues from parking facilities, tax-free, airport hotels, etc.). The commercial revenues have increased in recent years. In 2014, the Avinor Group had revenues of NOK 10.6 billion. Half of the revenues were traffic revenues

and half were sales and rental revenues. The group's combined operating profit was approximately NOK 1,400 million (annual report). OSLO had an operating profit of approximately NOK 1.7 billion, while the three major airports (Stavanger, Bergen and Trondheim) had a combined operating profit of approximately NOK 1.46 billion. The other airports had a combined operating loss of NOK 1.1 billion.^{17[1]}

As is evident above, several airlines have expressed concern over Avinor's cost level. In a situation in which the airlines have had to cut costs and perform dramatic reorganisations in some cases, it is the opinion of the airlines that Avinor has a limited capacity to reduce its costs.

As at August 2013, total airport charges for a B737-800 with 150 passengers on board were NOK 24,788 at OSL, NOK 23,450 at Arlanda, NOK 28,195 at Kastrup and NOK 20,824 in Helsinki. Approximately 70 per cent of the charges are passenger-dependent in Norway, while this percentage is around 80 per cent at the other main Nordic airports. These calculations have been performed by Avinor, based on the airports' published tariff.

Table 3.4: Charges for a B737-800 with 150 passengers on board, no transfers

	Oslo	Helsinki	Copenhagen	Stockholm
Take-off charge*	4 958	2 839	4 003	1 899
Passenger charge	9 150	11 423	15 062	12 289
TNC	2 429	1 466	1 982	2 074
Security charge	8 250	5 085	6 647	5 189
Emission & noise charge	N/A	N/A	215	701
Administrative charges	0	0	0	1 229
Total	24 788	20 824	28 195	23 450

Norway's air navigation charges are relatively low. The unit price for calculation of the air navigation charges¹⁸ is EUR 61 in Norway, while Denmark, Sweden and Germany are at approximately the same level. EUR 75-77. During the last two years, cost cuts in air navigation operations have contributed to a decline in the air navigation charges in Norway. The costs for tower services (terminal navigation charge) have increased,

16 The complaint from Widerøe was based on the fact that DAT did not have the navigational system (Scat-1) that was stipulated as a requirement in the call for tenders.

17 [1] The remaining NOK 0.2 billion is for intercompany services.

18 Unit price: The price for every 100 km flown is

however. The number of employees in the National, Regional and Local Airports Division has been constant in recent years, even if the traffic has increased.

An external analysis of Avinor's cost-effectiveness¹⁹ showed that the major airports were effective, but that they were showing a negative trend. The smaller airports were less effective, which was attributed primarily to weak capacity utilisation. It must also be taken into account in this picture that the smaller airports are part of a large system, in which they receive a large share of internal subsidies, and they consequently have weak incentives to improve their productivity. The loss of efficiency at the small airports due to being part of a group is estimated to be 8-11 per cent.

In 2014, Avinor established a modernisation programme to improve the efficiency of the company's operations. The target of NOK 150 million in cost savings in 2015 was achieved by a good margin. The targeted cost savings overall is NOK 600 million per year from 2018. Outside of the Avinor system, there are primarily two airports of importance – Moss Airport Rygge and Sandefjord Airport Torp. (see further details of Rygge and Torp below). In addition, Ørland, Notodden and Stord airports are outside of the Avinor system. As of 1 January 2016, a new subsidy scheme was introduced for non-government airports, which replaces the current systems. The scope of the subsidies will be approximately the same as today, but the criteria for receiving subsidies will be changed. In 2015, Ørland, Stord and Notodden were invited to apply for a five-year subsidy from the new scheme.

3.3.2 Moss Airport Rygge

Moss Airport Rygge is located approximately 60 kms south of Oslo on the eastern side of the Oslo Fjord near European route E6. Civil operations at Rygge take place under the management of Rygge Sivile lufthavn AS (RSL). According to information that the Ministry of Transport and Communications has obtained from RSL, the company is owned by Orkla (40 per cent), Thon Group (40 per cent), Østfold Energi (15 per cent) and the Østfold County Authority (5 per cent).

The Norwegian Armed Forces have long been the holder of the licence and have held other public permits at

Rygge. RSL has taken over the licence and operational responsibility for the runway etc. In the years to come, the Norwegian Armed Forces will only retain the helicopter base at Rygge.

In 2014, the total number of passengers was approximately 1.8 million. Ryanair is the dominant airline at Rygge. In 2015, there was a decline to over 1.5 million passengers. In the summer of 2015, the company had six aircraft based at Rygge and routes to over 30 destinations in Europe. In the summer of 2016, Ryanair is planning to have four aircraft based here and 24 destinations.

According to RSL, Rygge has become the largest employer in the Moss region, with 400 direct employees, and with the addition of indirect and induced effects, a total of 800 to 1,000 employees.

After several years of large losses, RSL turned a profit in 2012 for the first time. However, unforeseen increases in air navigation costs (Avinor charges) are creating challenges for the future. The management of RSL perceives these air navigation costs to be unreasonably high, and is of the opinion that, with its monopoly position, Avinor has assumed too large a cost base for calculation of the relevant charges. RSL expects traffic growth to flatten out in the future.

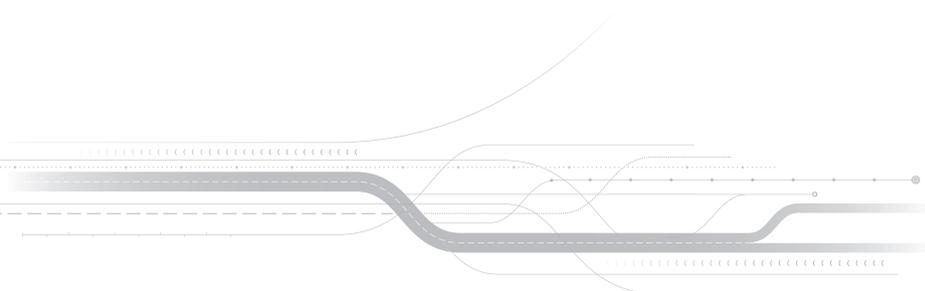
3.3.3 Sandefjord Airport Torp

Sandefjord Airport Torp is located approximately 120 kms south of Oslo on the western side of the Oslo Fjord. Sandefjord lufthavn AS (SLH), which operates the airport, is according to information from the company, owned by Vestfold County Authority (43.26 per cent), Sandefjord Municipality (35.7 per cent), Stokke Municipality (7.56 per cent) and Vestfold flyplassinvest (13.48 per cent).

The airport operates at a profit, and made investments during the period from 2013 to 2014 of approximately NOK 200 million. This encompasses the development and remodelling of the terminal, and an upgrade of the taxiway, among other things. The airport must complete the renovation of the runway in 2015-2016, at a cost of approximately NOK 220 million.

Torp employees a total of approximately 700 persons. Of this number, Widerøe accounts for 340 persons, which encompasses the company base with

¹⁹ German Airport Performance (GAP) – Comparative study of the efficiency of Avinor's airport operations.



flight personnel, its own handling, workshop and administration. Other employees at Torp are 100 persons in handling and security, 65 persons in airport operations and tower services, 90 persons in tax-free shopping and food and beverage service, 70 persons in cleaning and transport and 30 persons in police and customs. The aviation schools for helicopters and aircraft at Torp have 30 and 90 students, respectively, and a few instructors on staff.

Torp has a good distribution of airlines: Norwegian accounts for 11 per cent of the passengers, Widerøe accounts for 33 per cent, Wizz Air accounts for 33 per cent, Ryanair accounts for 10 per cent, KLM accounts for 6 per cent, and others account for 7 per cent. Ryanair reduced its operations at Torp after it established operations at Rygge. Norwegian has started domestic services. Wizz Air is increasing international services.

In connection with work on the consultation paper, the management of Torp has stated that it is expecting underlying general growth, and that they will seek to expand its surrounding market area. There were 1,540 million passengers at Torp in 2015, which is a decline of 12.6 per cent relative to the previous year. The decline is attributed, for example, to Ryanair's general production decline, especially at airports like Torp, which is not a base. In addition, Norwegian has had to reallocate one aircraft that produced five international routes from Torp.

Torp is now (like Rygge) encountering new unforeseen charges demanded by Avinor, which the management at Torp have contested. Avinor has terminated the agreement with SLH for local tower services. The tower services and other relevant services will be opened to competition as quickly as possible.

3.4. Aircraft maintenance

Aircraft maintenance is performed by aircraft mechanics and aircraft engineers. The training of aircraft mechanics (and avionics mechanics) starts at one of the four upper secondary schools that offer such vocational training (Bodø, Skedsmo, Sola and Bardufoss). Altogether, these four schools have a total of 248 student places. The training programme consists of three years of school and a two-year apprenticeship, which ends with a qualifying examination. The Norwegian Armed Forces' School Centre at Kjevik also has civil approval.

Aeronautical training in Europe is subject to supervision by a public authority, and in Norway this is the Civil Aviation Authority. At the end of the vocational training programme, both a trade certificate and an approval certificate from the Norwegian Civil Aviation Authority are received. After passing the qualifying examination as an aircraft mechanic, further training as an aircraft engineer can be pursued. There are currently around 1,100 valid aircraft engineer licences in Norway.

The Norwegian Aircraft Engineers Association has a total of 520 members. Of these members, 230 are employed by SAS, 130 by Norwegian, 140 by Widerøe and the rest in other companies. SAS and Norwegian have maintenance stations at the largest airports. Widerøe has 70 engineers and 50 mechanics in Bodø, 40 persons at Torp and 12 persons in Tromsø.

For economic reasons, a great deal of heavy maintenance has been moved out of Norway in recent years. The former SAS workshop at Gardermoen and the Braathens workshop at Sola are no longer operating. SAS has moved their maintenance to Sweden, Ireland and Israel. Norwegian has a lot of maintenance in the UK and Hungary. In Norway, primarily light maintenance remains, in part overnight checks, and in part weekend checks.

Some of the elements of heavy maintenance are performed in connection with minor checks. The need for aircraft maintenance in Norway has been reduced, both because much of the maintenance volume has moved out, and because new aircraft require less maintenance.

After the loss of heavy maintenance of aircraft in Norway, helicopter maintenance has become a more important area for aircraft engineers and mechanics. Aircraft mechanics and engineers have also found work in other sectors, such as the oil industry. Due to reasons of capacity, the airlines/workshops contract foreign technical personnel from time to time.

3.5. Handling, catering and air freight

3.5.1 Handling and catering

The handling services market (station services, baggage handling etc.) is increasing because air traffic is growing. In addition, an increasing number of airlines are discontinuing their own handling services and contracting handling services instead. The Institute of Transport Economics (TØI) survey from 2005 found that 3,200 persons were involved in handling services and air freight at Norwegian airports. In Norway, SAS Ground Services has been quite large (2,800 employees). The company is in the process of being taken over by Swissport, which is also taking over Servisair. Worldwide Swissport will have a total of 60,000 employees.

The Nordic market for ground services is valued at approximately NOK 6 billion annually. Røros Flyservice and Norport (both companies that were established in connection with the start-up of Norwegian) have joined forces with the Swedish company Nordic Aero, and now comprise Aviator Airport Alliance. This new amalgamation expects revenues of close to NOK 1 billion, and currently has operations at some 20 airports in Norway, Sweden, Denmark and Finland. At Gardermoen, there is also another handling services actor – Menzies Aviation – which handles some airlines with a smaller traffic volume.

At the major airports, there is strong competition in handling services. This puts pressure on the pay level and working conditions. Widerøe has some of its own handling services, but also uses some small handling companies in the regional network.

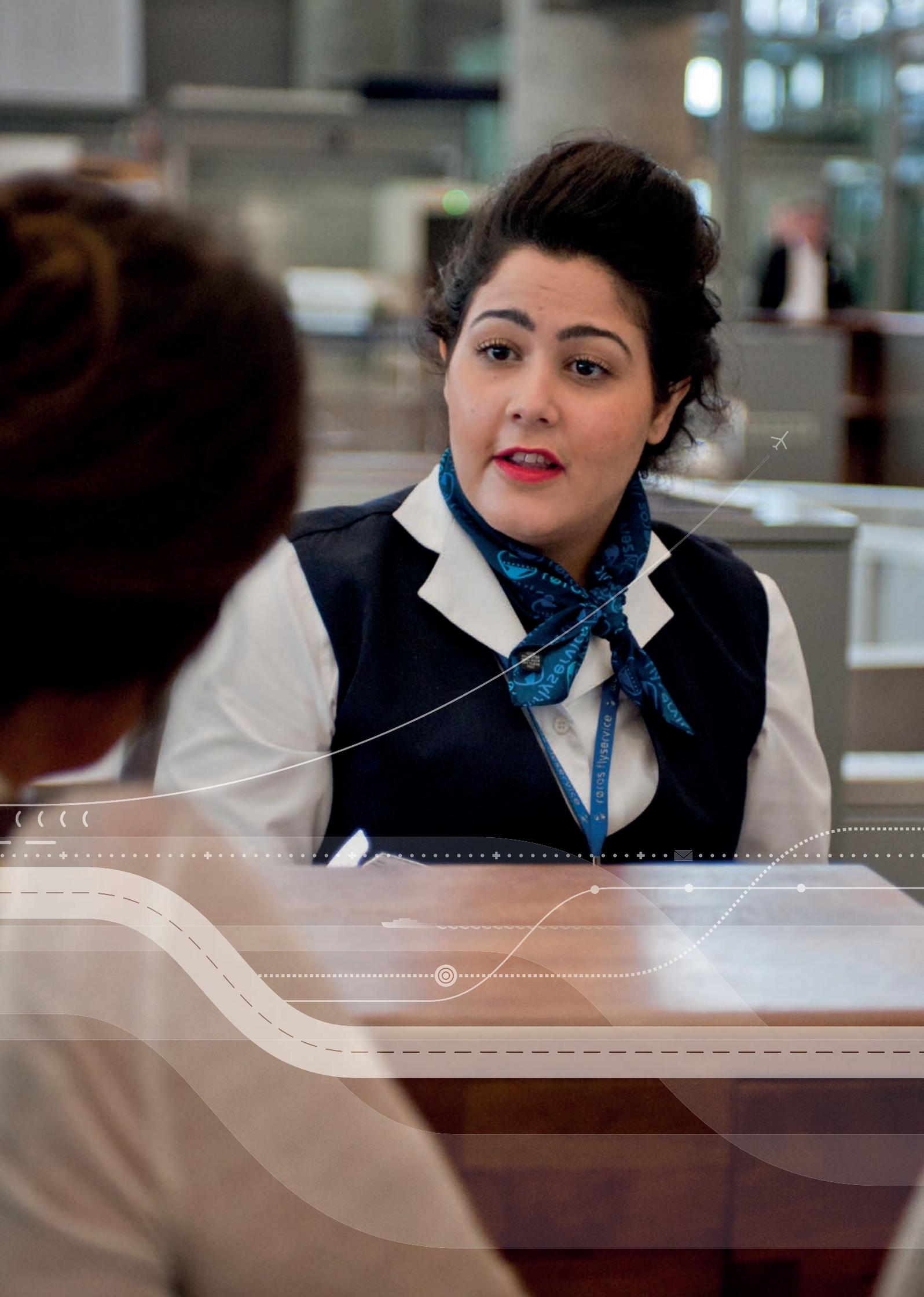
The company Gate Gourmet delivers food, beverage and tax-free goods to both Norwegian and SAS.

3.5.2 Air freight

Around 55,000 tonnes of air freight is transported into and out of Norway annually. In addition, around 110,000 tonnes are transported over the border by road – either on the way *to* a foreign airport to be flown out from there, or *from* such a foreign airport and then into Norway.

Around 90 per cent of the *exports* by air freight is fish. *Imports* by air freight are more complex: electronics, fashion and produce account for a large share. Air freight is particularly relevant for goods with a high time value, and when it is important that the goods are delivered quickly (such as spare parts). The willingness to pay for air freight is high – air freight entails approximately NOK 2.5 billion in added transport costs compared with alternative forms of transport. This illustrates the importance of air freight. Several industries, especially along the coast (maritime, oil, gas, fish farming) would not be able to serve a global market without good air and air freight services.²⁰

²⁰ Source: Avinor Report 2012 – Importance of air freight in Norway.



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4 PAY AND WORKING CONDITIONS IN NATIONAL AND INTERNATIONAL AVIATION

4.1. Introduction

This section provides a rough overview – on a national and international basis – of the *pay levels* and *working conditions* in the aviation industry. A brief overview of the unionisation of employees is also provided. The overview is marked by the fact that aviation is an international industry with very mobile resources. There is therefore a global pay level for pilots, in spite of the fact that the pilots' base may be located in a low-cost country. Cabin personnel in a low-cost country have historically also had wages above average for the country in question. It is also pointed out that the overview is based to a great extent on information that the Ministry of Transport and Communications has obtained from airlines and employee organisations in connection with work on the study.

4.2. Salary, wages and other remuneration

4.2.1 General

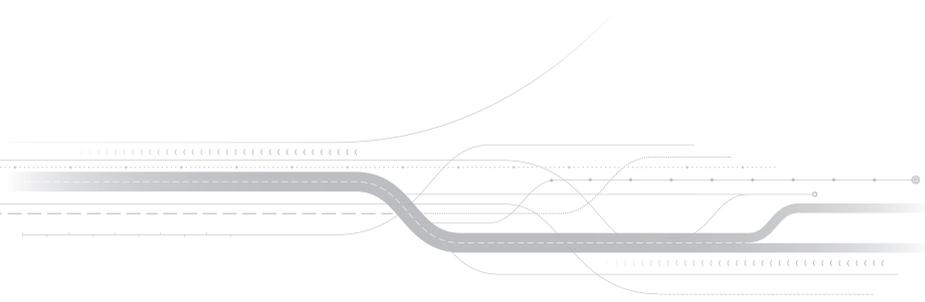
There are great differences between average pay in Europe and globally. The pay level in Norway is among the highest.

4.2.2. Pilots

Pilot salaries in SAS and Norwegian appear to be quite similar. According to *Norwegian*, captains have an annual salary of around NOK 1.1 million + supplements, while co-pilots have an annual salary ranging from NOK 620,000 to NOK 750,000. (as of January 2015) The figures do not include various supplements. The salaries vary somewhat depending on whether the pilots have a base in Norway, Spain or the UK. According to *Parat* (information the Ministry of Transport and Communications obtained as of November 2013) co-pilots at Norwegian start at NOK 320,000. Flying on scheduled days off is compensated by two day's wages, regardless of the nature or length of the work.

According to *SAS*, co-pilots have a pay ladder from NOK 360,000 to NOK 971,000. For captains, the top pay has been reduced from NOK 99,000 per month to NOK 96,000 per month (corresponding to NOK 1.15 million per year). These figures do not include various supplements.

Promotion to captain now takes place after 18-19 years at SAS, and after eight-nine years at Norwegian. SAS has a workforce with long seniority, and thus relatively high average pay.



It has also been reported that the pay level for pilots at Widerøe is higher than at SAS, and that pay level for helicopter pilots in the North Sea is higher than at Widerøe.

The various supplements are as a rule calculated as a percentage of the salary, and they have over time become very prevalent in aviation. The supplements account for a major part of the overall remuneration of flight personnel. According to Norwegian, flight personnel have 35 different supplements, and these now account for 23 per cent of the ordinary wages.

In Norway, pilots in general have contractual pension schemes. Changes in the rules for the accounting of pension costs etc. have created major challenges for several companies.

For pilots, the pay level is global to a great extent. In several places, there is a lack of pilots, particularly experienced pilots. This is attributed, for example, to the rapid growth in aviation that is taking place in Asia and in the Persian Gulf States. In the US, on the other hand, there is a surplus of pilots. Various sources seem to indicate a pay level in various Asian countries (China, India, Taiwan) in the range of USD 100-200,000 per year, plus various supplements. The pay level varies according to the airline, type of aircraft and whether it concerns a captain or a copilot. The pay level is in other words generally comparable with European and Norwegian conditions.

The above primarily applies to larger aircraft and large airlines. In Europe, there is also an undergrowth of airlines that operate with smaller aircraft, and often typically fly regional routes, as well as mail and freight flights. The pay level here can be much lower, but reliable information on this is not readily available.

For Ryanair the information that is available is uncertain to some extent. The Norwegian Airline Pilots Association states that those of Ryanair's co-pilots that start right from flying school receive starting pay of EUR 3,100 or approximately NOK 300,000 per year. The pay for a senior captain is up to NOK 1 million per year.

4.2.3 Cabin personnel

For cabin personnel, there is no global pay level, the pay level varies from country to country. Long vocational training is not required for cabin personnel. On the other hand, language skills and a certain "educational background" are important (they are the "public face" of the airlines).

For cabin personnel, language skills and a certain educational level are required. Based on the information available, the pay level in India is NOK 7,000 per month in India (source: Air India and Kingfisher). In the UK, the monthly pay for cabin personnel is NOK 9-15,000, plus approximately NOK 2,000 in various supplements. Singapore Airlines pays up to NOK 14,000 (including all supplements), but the company is now recruiting less expensive cabin personnel from several countries in Southeast Asia. The same practice is followed by several of the companies from the Persian Gulf States. Source: (http://www.prospects.ac.uk/air_cabin_crew_salary.htm). Sources within Qantas report that the base salary for cabin personnel in Bangkok is USD 600 per month, but with all the supplements (flying time and per diem supplements) the remuneration totals USD 1,500-1,700 (i.e. approximately NOK 10,000 per month).

Norwegian states that the company has hired many cabin crew members in Bangkok who previously worked for British Airways, Thai or Qantas. Language skills and an education are required (many have a bachelor's degree). Norwegian has stated that as of January 2015, the remuneration (for junior and senior cabin crew, respectively) is approximately NOK 450,000-490,000 in Norway, approximately NOK 170,000-200,000 in Spain, approximately NOK 280,000-320,000 in the UK, approximately NOK 270,000-290,000 in the US and approximately 240 000-285 000 in Thailand. The figures do not include various supplements.

With reference to the low base pay (without flying time supplements and other supplements), Parat characterises the terms at several of the foreign bases as social dumping. Norwegian maintains for its part that the pay level is good in relation to the average pay in the base countries.

According to SAS, the starting pay for the company's cabin personnel is NOK 23,000 per month, and the maximum pay is NOK 34,000 per month, i.e. pursers are paid NOK 29,000 to NOK 40,000 per month (before supplements such as per diem compensation, sales, etc.).

According to SAS, flight personnel often have good per diem rates, even if the personnel can eat on board. Correspondingly, per diem compensation is paid even if the personnel are not stationed abroad. The rates have historically been very high and above the government travel allowance scale.

Since various supplements (flying time supplements, per diem compensation, etc.) account for a relatively large portion of the total remuneration, it has been pointed out to the Ministry of Transport and Communications that some supplements are not paid in the event of absence due to illness or leaves. Several of the supplements are not included either in the calculation basis for pension-earning income, holiday pay or the employer's social insurance contributions.

Ryanair states that the company often uses cabin personnel from "low-cost countries", even if the personnel's base is not necessarily located in a low-cost country. Rygge is, for example, a base for cabin personnel from Italy, Spain, Portugal and Slovakia.

The cabin personnel that are affiliated with Ryanair's base at Rygge earn according to Parat around NOK 15,000 per month before Irish tax is deducted / NOK 13,000 per month after tax. According to Ryanair, the employees at Rygge earn, including sales revenues and a special non-EU supplement, a total of approximately EUR 23,000 divided over 11 months. This corresponds to NOK 16,700 per month before tax. Holiday pay of 7.6 per cent is also deducted. Irish tax and social security contributions are also deducted.

During the first six months, there are deductions for training for new cabin personnel. The personnel are only paid for flying hours and deductions are made for any absence, including due to illness.

4.2.4 Summary – pay conditions for flight crews

In many countries, the pay for flight personnel is relatively high. At the same time, aviation is characterised by inconvenient working hours, weekend work and staying overnight away from home. The pay level is particularly high in countries in which aviation is under development, and to a lesser extent in mature markets such as the US and parts of Europe. In many countries, there is a high degree of unionisation. The pay level can also be seen in the light of the lack of qualified personnel at times, and that there are major consequences associated with interruptions for both airlines and society.

For *pilots*, it is primarily a global market. Cabin personnel abroad have approximately 35-40 per cent of Norwegian pay. With a crew of two pilots and five in the cabin, a Norwegian airline – somewhat variable based on the

assumptions that are made – would be able to save an estimated NOK 1.5 million per crew per year in direct wage costs by using personnel from a low-cost country. The ongoing operation of a single aircraft requires at least five crews. For the airlines, however, the savings potential is great with regard to the personnel costs of flight personnel. This potential is even more interesting as long as several other major cost components such as capital and fuel are to great extent a given.

4.2.5 Other occupational categories

Mechanic pay etc. Based on information that the Ministry of Transport and Communications has received from NFO²¹, the pay level for technical personnel in Norway is higher than abroad. For example, mechanic pay in Sweden is approximately 70-75 per cent of the Norwegian pay level, in Southern Europe approximately 50 per cent and in Budapest approximately 20-25 per cent. The annual pay for aircraft engineers in Norway is approximately NOK 500,000 for daytime work and NOK 600,000 for shift work according to NFO. Norwegian reports somewhat higher numbers for aircraft engineers. Mechanics at Widerøe have annual pay of NOK 350-400,000.

With regard to ground handling services, SGS has had a pay freeze for several years. Their highest monthly pay is NOK 28,500 plus a shift supplement of around NOK 3,500, for a total of NOK 32,000.

For other groups in the aviation agreement, the minimum rates as of 1 April 2013 are from NOK 22,600 (upper secondary school) to NOK 27,900 per month (three years of education beyond the upper secondary school, dependent on the type of education). According to the Norwegian Union of Commerce and Office Employees, large groups in the handling companies lie NOK 1,500 to NOK 3,500 above the minimum pay.

The *airport officers* at Avinor earn NOK 401,000 per year (without a trade certificate) and NOK 408,500 with a trade certificate. The average pay including overtime was NOK 522,000 and NOK 576,000, respectively, in 2012.

Air traffic controllers at Avinor have a starting pay of NOK 619,000 to 648,000, with maximum pay of NOK 1,078,000. Average pay including overtime totalled NOK 1.08 million in 2012.

²¹ Norwegian Aircraft Engineers Association.

4.3. Working conditions and employment contracts

4.3.1 Shift work systems

With the relatively high pay level for flight personnel, it is important that the airlines “get as many flying hours as possible out of their personnel”. To ensure that utilisation of the personnel will not have a negative impact on aviation safety, joint European rules have been established for *working hour rules* for aviation. These regulations set limits for how much a person can work per day, per week and per year. These rules are described in greater detail in Section 5.2.

Historically, trade unions at airlines have negotiated working hour systems that have been less strenuous for employees than what the relevant legislation allowed. Competition, however, has resulted in pressure on these initially favourable systems. Therefore, the agreed systems of the individual companies have gradually approached the statutory maximum working hour limits. These statutory maximum limits are consequently of much greater relevance and importance today than previously. For the airlines, it is entirely decisive that operations be planned so that aircraft and personnel can be optimally utilised within the scope of the prevailing agreements and regulations.

At Norwegian (according to information from the company and its employees) flight personnel in Scandinavia are on duty for five consecutive days and then have four days off (5-4 schedule). The company has disclosed that *pilots* work 176 days a year on a normal schedule, and that they can work a maximum of 180 days per year. Norwegian's *cabin personnel* in Norway and Denmark have 181 working days on a 5-4 schedule.

At SAS (according to information from the company and its employees) *pilots* have 5-4 and 5-3 schedules. In recent times, the working conditions of the company's *cabin personnel* have become much more demanding. They now work on a 5-3 schedule, and some of the employees are also in so-called variable groups, where their schedule for the next month is announced on the 16th of the previous month. Absence due to illness among the cabin personnel has been at around 8-12 per cent during the last ten years. In the autumn of 2013, absence due to illness was 16 per cent. This is twice as high as for other occupational categories at SAS. Nonetheless, a good collegial atmosphere (“the job is a lifestyle”) and strong loyalty to SAS is reported.

At Widerøe, the pilots have a 7-7 schedule. Part of the reason for this is the fact that many Widerøe pilots live in Southern Norway and work in Northern Norway. The system is in principle in violation of the prevailing rules in this area. Widerøe has, however, been granted dispensation by the Norwegian Civil Aviation Authority to practice the 7-7 schedule.

At Ryanair, it appears that the *cabin personnel* work on a 5-2/5-3 schedule alternately. For the *ground staff*, shorter turnaround times and outsourcing / increased competition result in increased work pressure. Part-time work is prevalent, and “split shifts” are used to some extent.

4.3.2 Employment / type of association

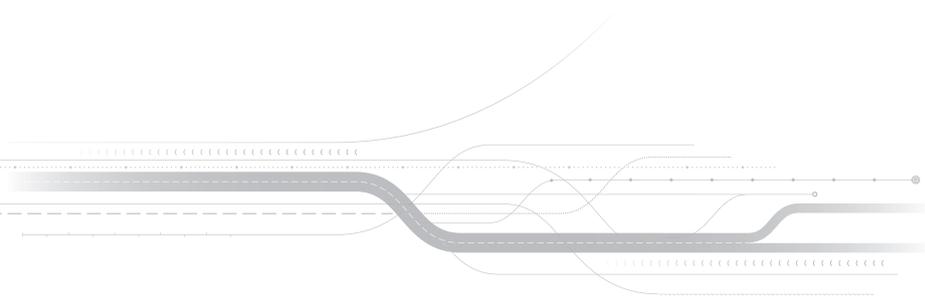
The SAS personnel in Norway and the Norwegian personnel in Norway have, as far as the Ministry of Transport and Communications is aware, ordinary employment contracts.

Norwegian has, with reservations for certain local adaptations, identical pilot contracts for Norway, Sweden and Denmark. This applies correspondingly to the cabin personnel. Other Norwegian personnel have been employed by the local crewing companies in the country where the personnel are stationed. These companies have good knowledge of the local legislation and other conditions, and ensure correct handling of taxes and charges in relation to the rules in the country in question. For the clients (for example, Norwegian), the use of such local companies entails lower administrative expenses and greater flexibility in relation to seasonal fluctuations and holidays. Norwegian provides work-related insurance for everyone who flies for the company – the terms and conditions vary somewhat depending on the country where the insurance is taken out.

Under the parent company Norwegian Air Shuttle ASA (NAS), which has an AOC and licence, there are, for example, two wholly owned subsidiaries with their own AOCs. One of these two companies – Norwegian Air Norway AS (“NAN”) – is domiciled in Norway and will fly essentially in Scandinavia. The other company – Norwegian Air International Ltd. – is domiciled in Ireland. Norwegian also has a company in the UK, with a UK AOC.

All of the pilots employed in Scandinavia have been transferred to the Norwegian operating company with their current pay and working conditions. Correspondingly,





the cabin personnel operations have been transferred to two wholly owned subsidiaries (CSN and CSD).

Wholly owned resource companies that are anchored in the base countries have been established under the Irish company. Norwegian has plans to have permanent employment in these resource companies as the bases gradually prove to be competitive. Norwegian and Danish cabin personnel are employed by the respective cabin companies (CSN and CSD). Other cabin personnel are employed by the local crewing companies.

Norwegian has issued a position guarantee to ensure that expansion abroad will not be at the expense of the pilots employed in Scandinavia. A corresponding position guarantee has been issued for cabin personnel with bases in Norway and Denmark. The company has pointed out that global growth will safeguard the company's competitiveness and everyone's jobs.

After the strike at Norwegian in the winter of 2015, the Ministry of Transport and Communications has understood from stories in the media that an agreement was entered into in which the company guaranteed legally, factually and financially that the parent company Norwegian Air Shuttle will maintain a pilot workforce of at least 687 positions.

According to information received by the Ministry from the Norwegian trade unions, Ryanair uses crewing companies to a great extent. The personnel have contracts with the crewing agencies WorkForce or CrewLink (in Ireland). The employment contracts are for three years, with a probation period of 12 months and a termination notice period of 1-2 weeks. The employees can be ordered to move to other bases and have a duty to keep their own employment contracts confidential. Many Ryanair pilots are registered as independent contractors who sell their services to a crewing agency.

4.4. Organisation of employers and employees in norwegian aviation

The Federation of Norwegian Aviation Industries represents airlines and some other aviation-related activities in Norway. The Federation of Norwegian Aviation Industries is in part a special interest business policy organisation, but the organisation also fills the role of an employer organisation.

In connection with work on this report, the Federation

of Norwegian Aviation Industries has pointed out *infrastructure* and *framework conditions* as important areas.

The *infrastructure* must function as intended, and at lower prices than today. The charges and Avinor's prices for allowing the airlines to use Avinor's facilities are too high, according to the Federation of Norwegian Aviation Industries. The discounts in practice favour foreign airlines – discounts should shift *from* start-up discounts to volume discounts.

The Federation of Norwegian Aviation Industries argues that Avinor's activities clearly have monopolistic characteristics, and that there is therefore a need for measures to ensure more market-oriented and cost-effective activities. Such measures can be implemented as a combination of financial regulation, more exposure to competition and financially binding service agreements.

In addition, the Federation of Norwegian Aviation Industries is of the opinion that the various types of airports should have a more autonomous organisation that enables the necessary internal incentives for better cost-effectiveness. The Federation of Norwegian Aviation Industries makes reference to report 2010/8 from Vista Analyse AS, which recommends that Avinor's airports be divided into three categories based on profitability: Profitable airports, airports that can break even, and airports that operate at a loss. In addition, Vista Analyse AS points out that incentives and charges should be restructured so that the airports are given greater autonomy. The Federation of Norwegian Aviation Industries is concerned about Avinor's ability to implement the necessary investments in profitable and capacity-increasing measures in Norwegian aviation.

Recently, the regulations for the use of manpower have gained increased importance. This applies to the forms of employment, nationality, basic working conditions, pensions, tax liabilities and social security rights for the workforce. The Federation of Norwegian Aviation Industries points out that personnel who work in Norway must be subject to the Norwegian rules. If the personnel in an airline that flies between Norway and other countries are based in Norway (which means where they report when they start their working period), then they shall as a rule observe the Norwegian rules and pay tax and social security contributions here in Norway. This principle is important in order to prevent unfair competition, among

other things, in relation to Norwegian companies. According to the Federation of Norwegian Aviation Industries, it is also of great importance to Norwegian airlines that the prevailing customs regulations are changed, so that the passengers can check baggage through from their place of departure to their final destination (simplified transfers). This is as opposed to the current system, in which passengers on arrival here in Norway have to collect their baggage and clear it through customs when transferring to a domestic flight. The Government has decided to carry out a trial project for simplified transfers through the “one stop security” scheme at Oslo Airport, which began on 1 September 2015. The scheme applies to travellers from abroad to domestic destinations, initially for passengers who travel via Oslo Airport with SAS, Norwegian or Widerøe. For example, if one is travelling from abroad via Oslo Airport and continuing on to Trondheim, the scheme will entail that travellers will avoid having to recheck their baggage at Oslo Airport. The passenger will thus avoid a new security check. The trial period will be for three years. Towards the end of the trial period, the Government will evaluate whether the scheme should become permanent.

The Norwegian Confederation of Trade Unions (LO) organises nearly 7,000 workers in aviation. The four largest unions are the Norwegian Union of Aviation Workers (1,750 members, many of whom are in handling companies), Norwegian Union of Aviation and Tourism Employees (under the Norwegian Union of Commerce and Office Employees (HK), 1,100 salaried aviation employees), Norwegian Civil Service Union (1,250 persons, Avinor’s apron services) and Security Personnel in the Norwegian Union of General Workers (1160). Recently, the Norwegian SAS pilot union (NSF) became an independent union affiliated with LO.

Parat, which is part of the Confederation of Vocational Unions (YS), has more than 4,300 members in the aviation industry. Of these, there are close to 3,000 flight personnel (pilots and cabin crew, including at Norwegian). In addition, Parat organises baggage handlers, engineers, traffic assistants, salaried employees, cleaning workers, security workers and catering personnel. Members are spread across more than 20 companies; and almost all are under a collective wage agreement.

In addition, there are two trade unions outside of the central umbrella organisations, both of which originated within SAS: The Cabin Crew Union Norway (800 members) and the

Norwegian Aviation Staff Association (1,500 members). In addition, there is the Norwegian Airline Pilots Association with 1,700 members, 300 of which are direct members, i.e. members from Ryanair, Norwegian, various small companies without a separate agreement, as well as students. The members of the Norwegian Airline Pilots Association fly for Widerøe (490 pilots), for SAS (365 pilots), for CHC and for Norsk lufttransport, among others. Approximately 100 members are contract pilots for Ryanair and Norwegian.

And finally, the Norwegian Air Traffic Controllers Association has approximately 550 members.

This gives a total of approximately 16,000 organised workers in aviation. The industry has a very high degree of unionisation.

Table 4.1 Trade unions in Norwegian aviation (information from the unions)

Norwegian United Federation of Trade Unions (Fellesforbundet)	Aviation workers, SSP, ISS	2450
Norwegian Union of Commerce and Office Employees (HK)	Stations etc.	1100
Norwegian Union of General Workers (NAF)	Security, parking, cleaning	1500
Norwegian Transport Workers' Union (NTL)	Avinor apron services	1250
Various engineering, energy, IT		300
Norwegian Transport Workers' Union (NTF)		100
Total Norwegian Confederation of Trade Unions (LO)		6700
PARAT	Pilots	1000
	Cabin crew	1900
	Security personnel	700
	Salaried employees, others	700
Total Parat		4300
Cabin Crew Union Norway		800
Norwegian Airline Pilots Association		1700
Norwegian Aviation Staff Association	SAS et al.	1500
Norwegian Aircraft Engineers Association		500
Norwegian Air Traffic Controller Association		550
Managers, others		300
Total others		5350
Union members in Norwegian aviation in total		16350

* Some estimates are uncertain.

In addition, there is the Norwegian Helicopter Employees Union, which organises 650 mechanics and engineers in the Norwegian helicopter industry.

The contract structure in the industry is complex. Contracts are often entered into for each company and for each employee category. In other words, pilots, cabin personnel, salaried employees, baggage handlers, security personnel, etc. have separate negotiations.

The significant number of specialised occupational categories that are unionised in many different unions means that there is a relatively high risk of a dispute. The major negative consequences of a potential dispute – whether they are for the passengers, the companies or society in general – have contributed over time to a relatively high pay level for certain key groups. This also explains some of the reason for the high degree of unionisation. On the other hand, the fierce competition in the aviation sector in recent years has contributed to pressure in the direction of lower pay and longer working hours.

With regard to the question of what country's rules are to apply for taxation, social security, the working environment, etc., the trade unions point out that it is the legislation in the country where the operational base for the personnel in question is located that is decisive. According to the Norwegian Confederation of Trade Unions (LO) and Parat, the regulations are in general satisfactory. However, it is decisive that the existing regulations are also enforced in practice. In the opinion of LO and Parat, developments in the industry are getting away from the authorities that do not follow up well enough: According to LO and Parat, the authorities must conduct more unannounced inspections, and generally ensure better follow-up of the industry. The various governmental bodies should be better informed of each other's activities, and be better coordinated in exercising their respective tasks, it is maintained.

The unions are all concerned about competition from foreign manpower, including the part of the competition resulting from moving production out of Norway. The unions want to closely monitor the ongoing globalisation of the airline industry. The unions are cooperating on this through the Nordic, European and International Transport Workers' Unions (NTF, ETF, ITF). Parat has signed a cooperation agreement with CCOO (the Spanish trade union), which organises cabin staff in Spain, for example. Parat aims to enter into corresponding cooperation agreements with trade unions in several EU countries, such as Finland, the UK and Germany. The aim of the unions' cooperation in this area is to join pilots and cabin personnel in order to secure fundamental rights across national borders: No employers should be able to move production to other countries in order to avoid permanent employment or entering into collective wage agreements.

Parat and the Norwegian Airline Pilots Association have expressed great concern for the contract pilots at Ryanair who have insecure working conditions (registered as independent contractors and leased from the crewing agency in Ireland). The unions are also concerned about the safety culture in the company, including the fact that the pilots' desire to get their contracts renewed may result in the underreporting of incidents. The unions point out that pilots employed by airlines have insurance cover for absence due to illness and the loss of their licence, while contract pilots must pay for such insurance themselves.

The unions are also concerned about corresponding problems for the leased pilots at Norwegian.

In general, the unions are concerned that an increasingly greater work burden can represent a safety risk. This applies not only to pilots, but also to cabin personnel, mechanics and ground personnel.



Photo: Olav Hegge

5 FRAMEWORK CONDITIONS MANDATED BY THE AUTHORITIES IN CERTAIN SELECTED AREAS

5.1. General

The scope of action for influencing the development of civil aviation in Norway will be dependent, for example, on the framework conditions under which this industry operates. A description of the framework conditions mandated by the authorities in some areas is thus provided below.

The term “framework conditions mandated by the authorities” may give the impression that the “authorities” have a lot of latitude with regard to change the framework conditions that the “authorities themselves” have mandated. The “authorities” are, however, a non-homogeneous group: International cooperative bodies, international governmental bodies, national authorities, etc. In addition, the formal status of the individual “framework conditions” may differ:

From legally binding international agreements / legally binding regulations to pure recommendations. In several areas, the opportunities to make any desired changes are therefore limited – at least in the short term.

The areas that are reviewed below are as follows:

- aviation safety
- employment conditions and the working environment
- social security rights
- immigration regulations and the Schengen Border Code Regulation
- employees’ tax liabilities and the duty of the employers to pay the employer’s social insurance contributions

- competition and market regulation
- procurement of air services
- airport investments
- aviation charges
- consumer rights

5.2. Aviation safety

5.2.1 Norwegian Civil Aviation Authority

The Norwegian Civil Aviation Authority has the primary responsibility for the supervision of Norwegian aviation, and should be the driving force for safe and socially beneficial aviation in line with the principal objectives of the Government in their transport policy. The tasks assigned to the Civil Aviation Authority are only to a limited extent aimed at influencing the competitiveness of Norwegian aviation. The activities (technical and operative supervision, etc.) are to a great degree based on harmonised, joint European rules. These rules provide little room for national adaptations that could potentially have served as instruments to influence the competitiveness of Norwegian aviation. The Norwegian Civil Aviation Authority should, however, closely monitor the development and restructuring processes of the airlines, particularly with a view to the increasing use of crewing companies and leased personnel and the possible effects on the willingness to report incidents.

The opportunities for the Norwegian Civil Aviation Authority to optimise the framework conditions for Norwegian aviation are therefore based more on measures such as improving the efficiency of its own activities, lowest possible charges, high professional and administrative quality of the work, good and expeditious service, as well as an interpretation and enforcement of the joint European regulations that are in line with the rest of the EU/EEA. The Norwegian Civil Aviation Authority can also make a positive contribution through focused and planned participation at the EU's/EASA's various rule development processes.

5.2.2 Potential effects of increased competition on aviation safety

Elvik (2006), in a meta-analysis, has reviewed studies of deregulation and traffic safety within all the areas of transport²². The conclusion is that there is no evidence that deregulation has a negative impact on safety. This applies to road, rail and aviation.

Within aviation, Elvik found 10 studies with quantified

effects, all of which were from the US, where deregulation took place as early as 1978. The results from these studies varied, but weighted based on the studies' statistical declarative power, no effect on safety could be identified. Aviation has in principle a very high level of safety, and strict rules to maintain this level. This may be some of the reason why no negative effects were found.

Thus there is very little basis for stating that deregulation and increased competition in aviation has had a negative effect on aviation safety. The authorities must nevertheless closely monitor the airlines' restructuring processes to ensure that aviation safety is safeguarded. The use of leased personnel can affect both the safety culture as well as the formulation of and compliance with critical safety routines. There may be a risk that leased personnel focus too greatly on their opportunities for continued engagement, and that they thus have a higher threshold for reporting their own safety-relevant errors, or other safety risks in operations. It could result in a weakened willingness to report such incidents – either internally within the company or to the public authorities. As far as the Ministry knows, however, no such connection has been documented.

Certain accident reports from abroad appear to indicate that fatigue has been a significant causal factor in some major accidents. The number of reports, however, is limited, and the statistical basis for drawing conclusions is therefore uncertain.

Data from the Norwegian reporting system²³ shows that in recent years there has been a certain increase in the number of reports in which fatigue has been a factor. However, it is difficult to ascertain whether the increase is attributed to a genuinely increased incidence of fatigue, or if other circumstances, such as increased awareness of fatigue as a risk factor, can explain the increased reporting in this area.

The possibility that fatigue increases the risk of human error has been central to the EU's work with new EU rules on flight time limitations (FTL), for example. See below under Section 5.2.2 for a more detailed discussion.

²³ Reporting to the Norwegian Civil Aviation Authority pursuant to Chapter XII of the Aviation Act and Regulations No. 1393 of 8 December 2006 on the notification and reporting of aviation accidents and aviation incidents, etc.

²² Analysis of several studies.

5.2.3 Work and rest regulations (Flight Time Limitations – FTL)

All airlines that operate commercial air transport must have an AOC. One of the conditions to acquire (and retain) an AOC is that the airline's internal rules for the flight time of personnel satisfies the requirements in the relevant joint European rules. This applies regardless of whether the flight personnel are employed by or leased by the company. Based on the connection between the AOC and observance of the flight time and rest regulations, it is the civil aviation authorities (the Civil Aviation Authority here in Norway) in the country where the airline is domiciled that is in practice responsible for supervising that flight personnel are not ordered to work in violation of the FTL regulations.

On 1 January 2014, the European Commission adopted Regulation No. 83/2014 on flight time limitations (FTL) for crew members in airlines that engage in commercial air transport. The new rules will become an annex to Regulation No. 965/2012 on air operations. Regulation No. 83/2014 is encompassed by the scope of the EEA Agreement, and it was implemented in Norwegian law on 3 July 2014. The Regulation will enter into force on 8 February 2016.

The new regulations require that the airlines have systems to ensure that the flight crews *“remain sufficiently free from fatigue so that they can operate to a satisfactory level of safety under all circumstances”*.

In certain contexts – especially if an airline desires approval for an approved alternative flight time system in relation to what follows from the regulations – the company must (also) have a system for fatigue risk management.

The regulations contain detailed rules on the maximum working hours per day (many combination possibilities), per week (60 hours), per 14 days (100 hours), per 28 days (190 hours), per calendar year (900 hours) and per 12 consecutive months (1000 hours). The permitted daily workload is dependent, for example, on the number of landings and departures, how so-called “standby” and “reserve” hours are combined with duty hours in the strictest sense (flight duty time), and on what degree of acclimatisation is necessary due to the crossing of time zones.

The flight time rules linked to the AOC regime have been

established with regard to *aviation safety*. Regulation (EU) No. 965/2012 is a total harmonisation regulation. This means that the member states cannot stipulate safety rules that require shorter or permit longer working hours than what follows from the provisions of the Regulation. On the other hand, it is permitted for the member states to issue rules that are more advantageous for the personnel if the rules have socio-political justification. In addition, the trade unions and employer federations are still entitled to enter into collective wage agreements that limit working hours more than what follows from the safety regulations. Finally, it is (in principle) possible to agree on shorter working hours in individual employment contracts.

The new totally harmonised FTL rules entail that several of the larger European countries will get stricter rules (i.e. more in favour of the personnel) concerning working hours. At the same time, there is a tendency towards increasingly stiff competition and changed business models resulting in working hours at the companies being pressed towards the statutory maximum limits. The contractual working hours are thus of increasingly less independent importance.

In the opinion of Norway, the new EU rules are justifiable with regard to safety. If one is in agreement with this point of departure, there is no objective reason for requesting adaptations for safety reasons when the regulation is now to be incorporated into the EEA Agreement.

In assessing this point of view, it is important to bear in mind the special working hour system that Widerøe practices for many of its employees. This entails a schedule of seven days on / seven days off. This is in principle in violation of the ban on working more than 60 hours per week. There is, however, reason to believe that the exception Widerøe has obtained approval for by the ESA can continue under the new EU rules.²⁴

Based on the purpose of this report, it is relevant to question whether it is desirable for Norwegian aviation to adopt special Norwegian working hour rules based on *socio-political* grounds. There is a high probability that such special Norwegian regulations would inflict higher working hour related costs on airlines with a Norwegian AOC than most of the competitors have. In

²⁴ The grounds will be Article 14 No. 6 in Regulation (EC) No. 216/2008, which replaces Article 8 No. 3 in Regulation (EEC) No. 3922/91.



Photo: Olav Hegge

our work with the new FTL rules, we have not found any information this far indicating that other countries will adopt supplemental, socio-politically justified working hour rules. *Based on the prevailing stiff competition in European aviation – and the opportunity that the companies have to move their AOC to another EU/EEA country – the Ministry of Transport and Communications would not recommend that such additional cost-driving obligations be imposed on Norwegian aviation.*

Instead, the Norwegian authorities should work actively to ensure that the new FTL rules are actually *interpreted and enforced* the same in all of the EEA countries. The European Aviation Safety Agency (EASA) will play a key role here in connection with monitoring and ensuring that all the national supervisory authorities follow the same practice. Important instruments in such a context include the use of so-called Certification Specifications (CS) and Guidance Material (GM). It is equally important that the EASA, during its standardisation inspections of the individual national authorities, ensure that the understanding and practice of the regulations are correct. It is important in this connection to focus on the national supervisory authorities ensuring that each individual airline has a specially adapted working hour and rest system that correctly builds a bridge between the company's operative needs and the joint European rules. Finally, it is important to ensure that the

exemption provisions in the regulations are practised the same in the various countries.

5.2.4 Other relevant safety regulations

a) Safety Management Systems (SMS), States Safety Program (SSP) and reporting systems.

The new EU rules on aircraft operations require that all airlines engaging in commercial operations “....shall establish, implement and maintain a management system that includes the identification of aviation safety hazards entailed by the activities of the operator, their evaluation and the management of associated risks, including taking action to mitigate the risk and verify their effectiveness”.²⁵

This regulation on operative aircraft operations should be seen in the context of Regulation No. 376/2014 on the reporting of aviation incidents. This regulation stipulates that all aviation enterprises that are encompassed by the regulation (including ordinary airlines) “... shall develop a process to analyse the details of occurrence collected in accordance with²⁶ in order to identify the safety hazards associated with identified

²⁵ Regulation (EU) No. 965/2012 – typically Part ORO.GEN.200 (a) (3).

²⁶ Reference is made here to provisions in the Regulation that require employees to report incidents – reports that both the employer and aviation authorities often are given access to.



Photo: Olav Hegge

occurrences. Based on this analysis it shall determine any appropriate corrective or preventive action required for the enhancement of safety."

The weakness of the former reporting directive was in part its weak requirements regarding the content and format of the reporting, and the resulting differences in how it was practised in various countries and thus a somewhat limited beneficial value. The EU's new Reporting Regulation will be more concrete and stringent here.

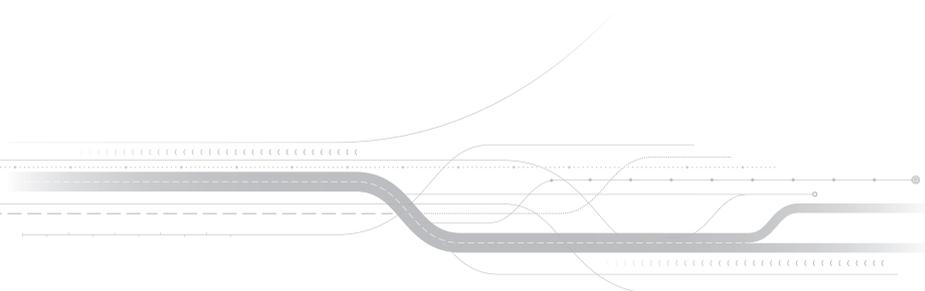
Any regulations on the reporting of undesired incidents/situations are, however, completely dependent on the flight personnel *actually reporting*. If the personnel experience that reporting undesired incidents may have negative consequences for themselves, the entire reporting system may be undermined. Provisions concerning a so-called "just culture", which are meant to protect those who report against such consequences, have therefore been incorporated into the new rules.

"... Employees who report incidents shall not be subject to any prejudice by their employer on the basis of the information they have reported, except in case of gross negligence."

Legally, it is unclear whether personnel that an airline

leases from a crewing agency are to be regarded as "employees" in relation to the rule quoted above. Based on considerations of objectives, it can be maintained that "employees" must have an expansive interpretation to also include leased personnel. It makes little sense that reporting should be dependent on what form of association is selected for the airline's personnel. However, even if ordinary employees and leased personnel are subject to the same reporting regulations, it is not given that the two personnel categories will in practice observe the regulations in the same manner. Different degrees of association and identification with the airline can affect the willingness to report. This applies correspondingly if employment protection is perceived as being different for the two categories of personnel.

If the "leased object" in the lease agreement between the airline and the leasing agency is specified as a certain number of persons (a type of "volume or capacity contract" without individual specification of which named persons are to be leased), it can be problematic for the individual leased person to prove a right to work for precisely the airline in question. The airline would then be able to be in a more convenient position in relation to the objectivity requirement that normally applies to the termination of ordinary employed personnel.



It is difficult to see how a potential protection rule for these personnel can in practice be formulated and enforced in an effective manner. Employment protection pursuant to labour law has not been harmonised internationally. It appears to be unrealistic to establish a separate regulation for employment protection internationally in the aviation sector alone.

In principle, we can establish national employment protection rules here in Norway for employment contracts that are subject to Norwegian law. In practice, however, such measures will hardly be of any significant importance: The reporting of incidents that take place outside of Norway (almost all of the reports in other words) must be submitted to the authorities in the country of domicile for the airline in question. The choice of law and enforcement situation would be so fragmented between the various jurisdictions that it is difficult to see that unilateral Norwegian measures could be effective.

B) Not-fit-for-flight rules.

A person who is subjected to high work pressure may be (too) fatigued even if the working hour rules (FTL) have been observed. Purely private matters / situations of stress may also often have a negative effect on a person's performance. It is therefore worth mentioning that the individual employee/person has an obligation and right to refrain from performing duties on board an aircraft if *"... he/she is in any doubt of being able to accomplish his/her assigned duties"* (cf. the new EU regulation on operative requirements for commercial aircraft operations²⁷).

This principle is also laid down in the new EU Regulation on the licensing of flight crews²⁸. It is stated therein that a licence holder *"...shall not exercise the privileges of their licence ... when they are aware of any decrease in their medical fitness which might render them unable to safely exercise those privileges."*

To the extent that these provisions are observed, they will limit the importance of the medically dependent risk factors that may follow from increased competition. Nevertheless: In practice, it will often be problematic for the individual in question to determine whether one should report to work, or take the potential negative

consequences of a financial or other nature of reporting as "not fit for flight". It is difficult to see how one could possibly "regulate away" this problem.

Problems related to working conditions, employment association and safety have also been discussed in the report "Atypical Employment in Aviation", which was prepared in 2015 by the University of Gent with financial support from the European Commission, and in the report "Developing Business Models in Aviation", prepared in 2015 by a working group appointed by the EASA.

5.3. Employment conditions and the working environment

5.3.1 Application of the Working Environment Act to aviation

The scope of the Working Environment Act is stated in Section 1-2 (1) of the Act:

"The Act shall apply to undertakings that engage employees, unless otherwise explicitly provided by the Act".

The Ministry of Labour and Social Affairs is the Ministry responsible for the Working Environment Act.

In the area of aviation, the Act distinguishes between military and civil aviation. Military aviation is completely exempt from the scope of the Act, cf. Section 1-2 (2) b). Civil aviation has been encompassed by the Act since 1986, but exceptions can be stipulated, cf. Section 1-2 (2) b), second sentence:

"The Ministry may issue regulations concerning exceptions from the Act for civil aviation and state aviation other than military aviation and concerning special provisions for such aviation."

Such exceptions and special rules have been adopted in Regulations No 540 of 21 February 1986 on worker protection and the working environment etc. for civil aviation (hereinafter referred to as the 1986 Regulations).

The 1986 Regulations state that the provisions of the Working Environment Act also apply to civil aviation, with certain explicit exceptions, CF Section 1 of the Regulations. For example, crew members are exempt from Chapter 10 of the Working Environment Act concerning working hours. Instead, special working hour rules apply to crew members, cf. Regulations No.

²⁷ See Regulation (EU) No. 965, Annex IV Section CAT.GEN.MPA.100 (c) (4).

²⁸ See Regulation (EU) No. 1178/2011, Section MED.A.020 (a) (1).

1817 of 30 December 2014 on working hours for crew members etc. on board civil aircraft. It follows from the 1986 Regulations that the Ministry of Transport and Communications can in special cases determine that the Working Environment Act is not to apply, cf. Section 1 of the Regulations, second paragraph. In order for regulations issued pursuant to the Working Environment Act to apply to aviation, this must be adopted specifically, cf. the 1986 Regulations, Section 10.

The Norwegian Labour Inspection Authority has submitted for public consultation a proposal to amend the wording of Section 1-2 of the Act concerning civil aviation in order to make it clear that the general rule of the Act is that civil aviation is encompassed by the Act, as well as a proposal to amend the 1986 Regulations. The Ministry of Labour and Social Affairs has stated that the goal is to issue new regulations as soon as possible.

5.3.2 Supervision pursuant to the Working Environment Act **SUPERVISORY AUTHORITY**

The Norwegian Civil Aviation Authority supervises the implementation of the provisions of the Working Environment Act for flight personnel, cf. Section 9 of the 1986 Regulations. For ground personnel, air traffic controllers and other non-flight personnel, it is the Norwegian Labour Inspection Authority that supervises the implementation of the regulations pursuant to the rules in Section 18-1 of the Working Environment Act.

During the period from 1986 to 2010, the Norwegian Labour Inspection Authority was responsible for supervision of the provisions of the Working Environment Act concerning safety representatives and working environment committees for flight personnel, and also had a duty to provide guidance for the employment protection provisions of the Act. The Norwegian Civil Aviation Authority was responsible for all supervision of the substantive working environment rules. In 2010, the supervision that the Norwegian Labour Inspection Authority was responsible for was transferred to the Norwegian Civil Aviation Authority. The purpose of this was to increase the importance of HSE for pilots and cabin personnel, and also to eliminate any ambiguity in the distribution of roles between the two supervisory authorities. The Norwegian Labour Inspection Authority and the Norwegian Civil Aviation Authority entered into a cooperation agreement in

2010 to ensure the necessary cooperation, transfer of knowledge and exchange of experience in the HSE area. The Norwegian Civil Aviation Authority has intensified its cooperation with the Norwegian Labour Inspection Authority in this area.

SCOPE OF THE SUPERVISORY JURISDICTION ***Substantive jurisdiction***

The part of the working environment legislation that the Norwegian Civil Aviation Authority can supervise (subject-matter supervisory jurisdiction) follows from the rules of Chapter 18 of the Working Environment Act, viewed in conjunction with the 1986 Regulations. The supervisory jurisdiction is, roughly speaking, limited to the rules that have traditionally been regarded as rules of public administration law. This means rules that regulate the relationship between the authorities and citizens, which have been issued on the basis on societal considerations and are enforced by public authorities on their own initiative. The public administration law rules in the Working Environment Act are provisions concerning the working environment, registration and reporting obligations, courts of venue, working environment committees, control measures in enterprises, etc.

The opposite of public administration law rules are civil law rules, in other words rules that regulate the relationship between private parties. In the Working Environment Act, there are many such rules related to the contractual employment relationship between employers and employees, such as provisions concerning hiring, employment protection, business transfers, etc. These private law rules cannot be enforced by the supervisory authorities, and must be enforced instead by the individual private parties, if necessary with the help of the courts.

In addition, the Norwegian Civil Aviation Authority has, like the Norwegian Labour Inspection Authority, a duty to provide guidance and information about the entire Working Environment Act, and it can thus also provide information about how the private law rules of the Act are to be understood.

Geographic jurisdiction

The territorial principle entails that a supervisory authority can only exercise authority in the state's own territory. Exceptions from this point of departure require specific legal grounds, either through bilateral agreements between two states, or international law

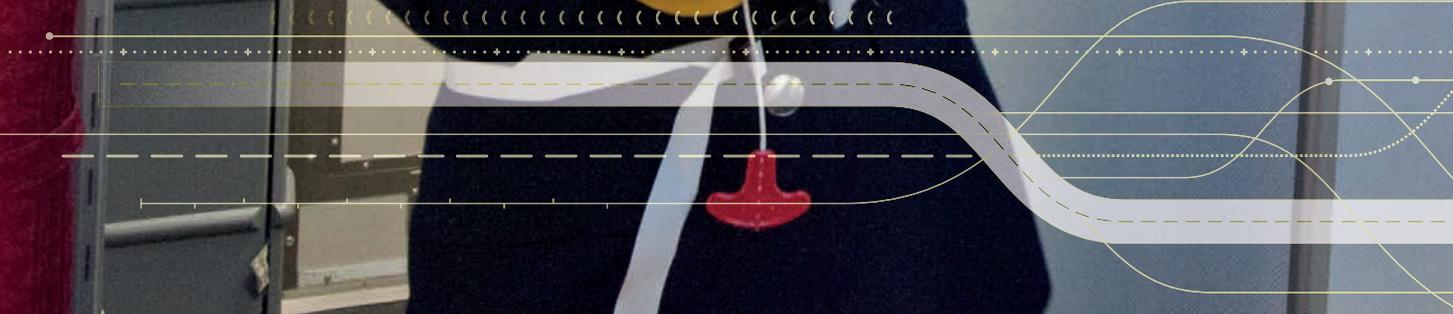


← EXIT

Crew Only

737

NON-FUNCTIONAL
DEMONSTRATION
PASSENGER
MASK ASSEMBLY



agreements between several states. The clear point of departure is thus that Norwegian (public administration law) legislation applies on Norwegian territory.

In order to clarify in greater detail how far the jurisdiction of the public bodies extends with regard to being able to supervise, one must use the provisions concerning supervision in the various acts as a point of departure. Contrary to the Aviation Act, the Working Environment Act does not have any express rules on the geographic scope of the Act, with the exception of the rules concerning offshore petroleum activities in Section 1-3 of the Working Environment Act. The territorial principle nevertheless entails that as a clear point of departure, the Norwegian Working Environment Act and the Norwegian supervisory authority apply to work that is performed on Norwegian territory. There are no international law bilateral agreements or multilateral international law conventions that entitle the supervisory authorities pursuant to the provisions of the Working Environment Act to supervise Norwegian enterprises, for example, outside of Norwegian territory.

Without any specific international legal basis, the Norwegian Civil Aviation Authority does in other words not have jurisdiction pursuant to the Working Environment Act to supervise Norwegian registered aircraft's operations abroad, such as Norwegian's base at Malaga in Spain. The Norwegian Civil Aviation Authority, on the other hand, has jurisdiction to supervise foreign airlines with a base in Norway, provided that the crew members have an affiliation with the base beyond rest, in accordance with the working hour rules²⁹.

EXAMPLES OF HSE SUPERVISION

The Norwegian Civil Aviation Authority conducts several HSE inspections annually. For example, an HSE inspection was carried out at Ryanair's base at Rygge on 6 June 2013. The Norwegian Civil Aviation Authority did not find much to comment on during this inspection. The company works systematically with HSE and has also arranged anonymous channels for reporting with regard to the working environment and safety. The Norwegian Civil Aviation Authority did not find any physical or psychosocial factors that were particularly unfavourable

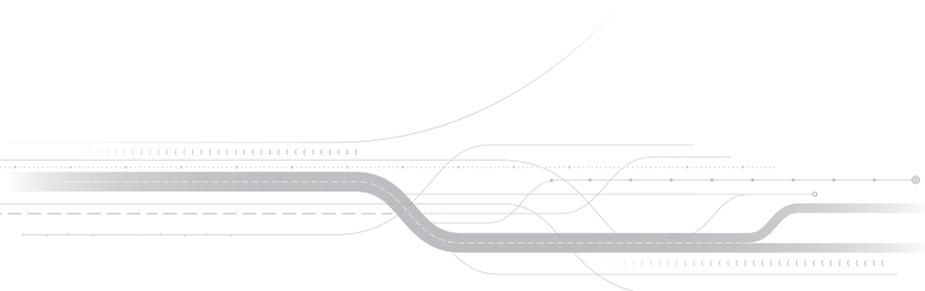
for the employees either. The Norwegian Civil Aviation Authority did, however, have comments, for example, on the formulation of the employment contracts. Since Ryanair is an Irish company with Irish approvals, it is the responsibility of the Irish civil aviation authorities to supervise the company's aviation safety (AOC etc.). Ryanair contests the right of the Norwegian authorities to issue formal requirements for the employment contracts with reference to the Norwegian Working Environment Act, since the contracts are Irish and the employees work on Irish aircraft in international service. Ryanair has nevertheless complied with instructions, according to the Norwegian Civil Aviation Authority.

The Norwegian Civil Aviation Authority also conducted an HSE inspection at Norwegian in the autumn of 2013. The findings here showed that there were, for example, deficiencies with regard to surveying the physical and psychological working environment, as well as the follow-up of systematic health, safety and environmental work in the enterprise. According to the Norwegian Civil Aviation Authority, after the inspection, Norwegian ensured that managers would be given HSE training, and specified an improved method for surveying the working environment. The Norwegian Civil Aviation Authority has closed all the nonconformities, and the matter has been concluded.

COOPERATION WITH OTHER AGENCIES AND PARTIES

The Norwegian Civil Aviation Authority and the Norwegian Labour Inspection Authority exchange information, and cooperate with other supervisory authorities. For example, the Norwegian Labour Inspection Authority has entered into cooperation agreements at the regional level at several locations in Norway, with the police, tax authorities, etc. With such agreements, joint inspections and major operations are conducted in which the various authorities follow up matters within their own areas of responsibility, for example, issues connected to undeclared work, illegal residency pursuant to the Norwegian Immigration Act and other violations of the law. The Norwegian Civil Aviation Authority and the Norwegian Labour Inspection Authority also cooperate with regard to the development of regulations and surveys of "grey areas" within the working environment in aviation. The Norwegian Civil Aviation Authority's inspectors have completed the formal inspector training that inspectors at the Norwegian Labour Inspection Authority have also completed.

²⁹ Cf. the regulations on this in subpart q in EU OPS, which has been implemented in Norwegian law by Regulations No. 189 of 21 February 2008 on the implementation of Regulation 3922/91 on the harmonisation of technical requirements and administrative procedures in civil aviation, with additional provisions on working hours for crew members.



The Norwegian Labour Inspection Authority has established formal tripartite cooperation with the trade unions and employer federations at the central level through representation on the Council of the Labour Inspection Authority. The Norwegian Civil Aviation Authority has also established tripartite cooperation between the Norwegian Civil Aviation Authority (authority side) and the central organisations in Norwegian aviation on the employer and employee sides. This cooperation is to ensure dialogue between the Norwegian Civil Aviation Authority, as the exerciser of authority, and the trade unions and employer federations. This will contribute to the mutual sharing of knowledge and exchange of experience. It is not the intention that individual matters are to be discussed in the tripartite cooperation, but that the committee will look at challenges to the industry in general. The first meeting of the tripartite committee took place in February 2014.

5.3.3 General applicability of pay and working conditions

Norway has a long tradition of entrusting wage determination to the trade unions and employer federations, which regulate wages through collective wage agreements and/or individual agreements. One exception from this principle is the general application of collective agreement scheme. The Act relating to the general application of agreements etc. (Act no. 58 of 4 June 1993) was implemented at the same time as Norway acceded to the EEA Agreement in 1993.

The purpose of the General Application Act is twofold. Firstly, the Act is to ensure that foreign employees have pay and working conditions equal to those Norwegian employees have. Secondly, the Act is to prevent the distortion of competition to the disadvantage of the Norwegian labour market, cf. Section 1 of the Act.

The General Application Act and regulations pursuant to the Act apply to work that is performed in Norway. This applies regardless of the nationality of the employee or employer, and regardless of whether they are unionised or not. It follows directly from the Norwegian Regulation concerning posted workers (Regulations No. 1566 of 16 December 2005) that the general application regulations apply to posted workers.

Decisions on general applications are adopted by a special board – the Tariff Board. It is composed of two members that are appointed by the Norwegian

Confederation of Trade Unions (LO) and Confederation of Norwegian Enterprise (NHO), respectively, and three members without any direct association with trade unions or employer federations. General applicability can be decided at the request of an employee or an employer organisation that is a party to the agreement in question and has the right of nomination. The Tariff Board can also adopt decisions on its own initiative if it is in the public interest. Decisions are issued in the form of regulations. It is a prerequisite for general applicability that it can be documented that there are foreign workers working in Norway with pay and working conditions that are not equal to the conditions that Norwegian workers have.

A general applicability decision entails that specified terms and conditions in a nationwide collective agreement are to apply as the absolute minimum terms and conditions for all workers who perform work of the type that is the subject of the collective wage agreement in a particular industry or part of an industry. In practice, it will be the minimum terms and conditions in the national collective agreement that are made applicable, and as a rule, a minimum hourly wage will be stipulated for various categories of workers, for example, skilled workers and unskilled workers.

In addition, general applicability regulations may contain rules on working hours and overtime rates, shift supplements, reimbursement of travel expenses, board and lodging, work clothes, etc. The terms and conditions that are regulated vary somewhat from regulation to regulation. A general applicability decision will remain enforced until the Tariff Board adopts a new decision. The decision nevertheless ceases to apply if the parties in the nationwide collective agreement have not requested a new decision within one month after the nationwide collective agreement has been replaced by a new agreement.

The Norwegian Labour Inspection Authority and the Petroleum Safety Authority Norway are responsible for ensuring that the general applicability regulations are complied with. The supervisory authorities have the authority to issue orders, shut down operations or issue coercive fines in the event of a violation of the general applicability regulations.

Currently there are general applicability regulations in eight areas: Construction industry, shipping and shipbuilding industry, agricultural and gardening

industry, cleaning industry, fisheries industry, electrical industry, freight transport and tour buses. In areas where there is general applicability, the contractors in Norway are required to ensure that subcontractors comply with the requirements in the general applicability regulations. Contractors can also be jointly and severally liable for wages and holiday pay if the employer does not pay.

*General applicability of one or more collective wage agreements is not a relevant instrument in aviation today, since there is no nationwide collective wage agreement that can be made generally applicable.*³⁰ If it is desirable to regulate wages within aviation, one possibility in principle could be amending the General Application Act so that collective wage agreements that are not national can also be made generally applicable. There are most likely no legal EEA obstacles to do this.

5.3.4 Pay level requirements for the procurement of air services (tendered routes)

At present, the Ministry of Transport and Communications does not stipulate any requirement for the companies participating in competitions for the procurement of air transport services to have a specific pay level for their employees³¹. The Regulations relating to pay and working conditions in public contracts stipulate that the government must ensure that employees in companies that perform certain specific jobs for the public sector have pay and working conditions in accordance with the generally applicable collective agreement or the nationwide collective wage agreement. The Regulations relating to pay and working conditions in public contracts, however, do not apply to service concession contracts. *The Ministry of Transport and Communications thus does not have any obligation pursuant to the regulations to stipulate pay and working condition requirements in connection with the procurement of air services.*

The question then is whether the Ministry of Transport and Communications has any opportunity to stipulate pay and working condition requirements for the procurement of air services. The point of departure must

be that the Ministry is free to stipulate such requirements when entering into contracts for the procurement of air services. The EFTA Surveillance Authority (ESA) has accepted that such requirements are stipulated for entering into ordinary contracts, and it must be assumed that it will also be legal to stipulate such requirements for entering into service concession contracts. In other words the Ministry of Transport and Communications has the legal authority to stipulate pay and working condition requirements for the procurement of air services. The practical problem, however, is the fact mentioned under Section 5.3.3 that there are no generally applicable or nationwide collective agreements in aviation. *This means that if the Ministry stipulated such conditions, they would not be of any practical consequence.*

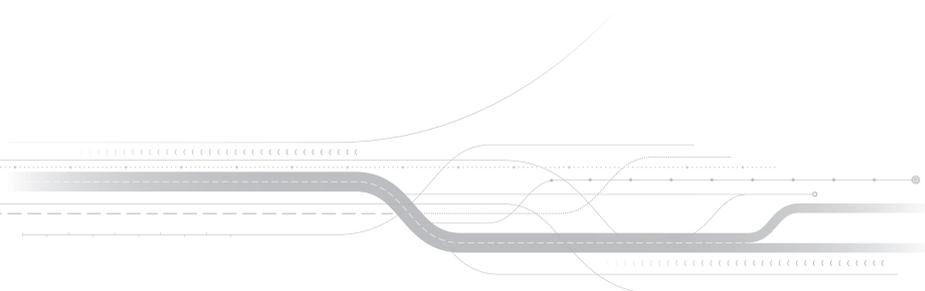
The now concluded process between ESA and Norway regarding how to formulate the regulations relating to pay and working conditions in public contracts indicates that in order to satisfy the requirements pursuant to the EEA Agreement, it would not be sufficient to, by virtue of new legislation, require the pay and working conditions which are “commonplace” in the industry in question or similar. Such a requirement is not sufficiently clear. On the contrary, the Ministry of Transport and Communications assumes that it would be sufficient if, by virtue of new legislation, requirements for specific pay and working conditions are stipulated. This can be carried out either by referring to the pay and working conditions that are specified in one or more specific collective wage agreement, or by the state itself formulating very clear requirements in the regulations. These solutions will in reality be sector-specific minimum pay / minimum terms and conditions regulated by law. This is a type of solution that the parties in aviation thus far have seen more disadvantages than advantages with. *The Ministry assumes therefore that these solution models will not be very relevant, even if they are allowed legally.*

5.3.5 Choice of law and court of venue rules for employment contract disputes

An employment relationship may have a connection to several countries. If a dispute arises between the parties, it must be determined which country's courts have jurisdiction to hear the dispute (court of venue or the *question of the jurisdiction*), and which country's material rules of law are to apply to the employment relationship (*question of the choice of law*). These questions must be considered separately. Even if the courts of a country

³⁰ Attorney Marco Lilli, Kluge Advokatfirma “Conditions for Specific Pay and Working Conditions in the Aviation Sector”. Study on behalf of the Ministry of Transport and Communications, September 2013.

³¹ The Ministry of Transport and Communications has obtained an assessment of this question from Attorney Marco Lilli, Kluge Advokatfirma.



have jurisdiction in a case, it is not a given that the case is to be settled by the law of the same country.

Court of venue

The question of the court of venue (jurisdiction) is a question of which country's courts have jurisdiction to hear the disputes. In Norway, this is regulated in Section 4-8 of the Dispute Act, which implements the Lugano Convention of 30 October 2007. The Lugano Convention is a convention between the EU and the EFTA states of Norway, Iceland and Switzerland concerning judicial authority and recognition and execution of judgments in civil and commercial cases. The object of the convention is to implement joint EU rules concerning courts of venue and the recognition and execution of judgments in civil and commercial cases, as they have been adopted in the Brussels I Regulation (Regulation (EC) No. 44/2001 of the Council).

The general rule follows from Article 19 (1) of the Lugano Convention, which states that an action can be brought against an employer in the country of residence of the employee. Pursuant to Article 19 (2) an action can also be brought against an employer in the country where the employee habitually performs his work, or possibly the last place he did perform his work. If the employee does not habitually perform or has performed work in a specific country, it follows from Article 19 (2) b that in such situations, an action can be brought against the employer where the enterprise that hired the employee is located, or has been located.

As accounted for above, the Lugano Convention corresponds to the EU rules in the Brussels I Regulation. In interpreting the Lugano Convention, Norwegian courts are to place emphasis on the interpretation of corresponding provisions in the Brussels I Regulation by the European Court of Justice, cf., inter alia, *Rt. 2001. p. 1532* (Section 21).

In several cases, Norwegian courts have taken a stand on the question of whether Norwegian courts can settle disputes in employment relationships in International aviation. Reference is made in this connection to *Rt. 2011, p. 1034*, and *RG 2011, p. 1150*. The cases concerned the question of whether affiliation with a Norwegian airport entailed that Norwegian courts had jurisdiction in the case, cf. Article 19 (2) (a) of the Lugano Convention. In both cases, the conclusion was that Norwegian courts had jurisdiction to hear to dispute. In the decisions, emphasis

was placed for example on the fact that the employees were affiliated with a base in Norway, where the person in question signed in and out and had duties on the ground. Decisive importance was not attached to the fact that the aircraft was not registered in Norway, that most of the working hours were spent outside of Norway and that the wages were paid in foreign currency.

This was also the outcome in case LB-2013-202882 (Ryanair).³² The case concerned the question of the proper court of venue in a dispute concerning employment protection. An Italian employee had entered into a permanent employment contract with an Irish crewing company. The person concerned, in accordance with the agreement, was at the same time hired out to Ryanair for a period of three years. Before one year had passed, the employee was terminated on grounds that the probationary period had not been satisfactory. From when the person started until being terminated, she was stationed at Rygge Airport.

The question before the Court of Appeal was whether Rygge Airport was the place where the employee had habitually performed her work, cf. Article 19 (2) (a) of the Lugano Convention. The Court of Appeal answered this affirmatively, and placed, inter alia, emphasis on the fact that the place where the employee signed in was at Rygge, and that she was obligated to live a maximum of one hour from the airport, and it was there that the individual in question received instructions.³³

CHOICE OF LAW

Norway does not have any general written rules concerning the choice of law, but such rules follow from non-statutory law. Older court decisions make reference to the so-called Irma Mignon formula, which entails that legal questions connected to multiple states shall be decided according to the law of the country to which the case has the strongest connection.

In more recent decisions from both the Norwegian Supreme Court and the courts of appeal, however, there are several examples of Norwegian courts having relied on the same principles that follow from the EU rules concerning the choice of law in contractual relationships,

³² The case had previously been considered in the Court of Appeal decision (LB-2013-123040), but this was overturned by the Appeal Committee of the Supreme Court due to a procedural error (Rt-2013-1589).

³³ The Appeal Committee of the Supreme Court has "not allowed the appeal in the order (HR-2014-01273).

including Rt. 2009, p. 1537 and LB-2015-51137. In the EU, choice of law questions in contractual relationships are expressly regulated by the so-called Roma I Regulation³⁴. Even though Norway is not bound by the Regulation, case law shows that it is a relevant source in Norwegian law.

The legal point of departure pursuant to Article 8 (1) of the Regulation is that the parties to an employment contract are free to agree on the law of which country is to apply (i.e. the principle of party autonomy). Such an agreement can nevertheless not deny employees the protection that he or she has pursuant to the mandatory (binding) rules of the law of a country that would have applied if the parties had not entered into an agreement on the choice of law, cf. Article 8 (1).

The rules of Norwegian public administration law cannot, as a clear general rule, be derogated from by agreement. The Working Environment Act's public administration law rules concerning health, safety and the environment or working hours will therefore as a point of departure apply to all work that is performed in Norway. In reality, this means that parties can only agree on the choice of law with regard to the rules of private law. However, also the private law rules of the Working Environment Act are essentially mandatory, cf. Section 1-9 of the Working Environment Act.

If the parties do *not* have a valid choice of law agreement, the Regulation contains rules that are to determine the question of the choice of law.

First and foremost, the legislation of the country *where* or *from where* the employee habitually works is to be used, cf. Article 8 (2). If there is *no* affiliation as mentioned in Article 8 (2) or it *cannot* be determined, it follows from Article 8 (3) of the Regulation that it is the law of the country where the place of business, through which the employee was engaged, is situated that is to apply.

The decision in LB-2015-51137 (Ryanair) moreover concerns the question of the choice of law in the same case as mentioned above in LB-2013-202882 (Ryanair), more specifically whether the labour law dispute between the parties is to be settled by Irish or Norwegian law. The Court of Appeal concluded that Norwegian law was to apply. The case has not yet been legally settled.

5.3.6 Rules concerning hiring and equal treatment

Permanent employment is the general rule in Norwegian law. However, Section 14-9 of the Working Environment Act contains several exceptions to the general rule. Pursuant to Section 14-12, first paragraph, the hiring out of workers from temporary work agencies can be carried out to the same extent that temporary employment can be agreed on pursuant to Section 14-9, first paragraph, letters a to e. This means that it is generally permitted to hire an employee from crewing companies when there is a genuine temporary need for manpower. For undertakings bound by a collective agreement, employers can, on certain conditions, enter into an agreement with the union representatives for hiring beyond these conditions, cf. Section 14-12, second paragraph. The Ministry of Labour and Social Affairs may by regulation ban the hiring of certain employee categories, or in certain areas when indicated by important social considerations, cf. Section 14-12, fifth paragraph.

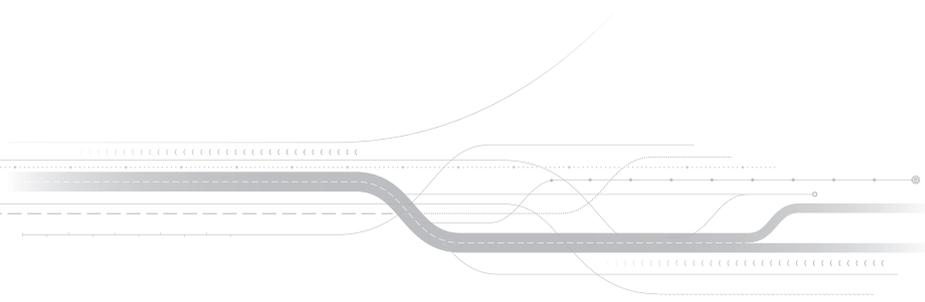
It is the user company that is the obligated party, who must thus ensure that the conditions are satisfied. The rules in the Working Environment Act concerning the conditions for hiring also apply to the hiring of posted workers from other countries, cf. Section 2, first paragraph (a) of Regulations No. 1566 of 16 December 2005 relating to posted workers.

Section 14-14 of the Act states that if there is a violation of the hiring provisions in Section 14-12, the Court must, following a plea from a hired employee, pronounce judgment that the individual has permanent employment with the user company, unless upon consideration of the parties' interests, the Court find that this would be clearly unreasonable.

When employees are hired from a temporary-work agency, a principle of equal treatment applies, cf. Working Environment Act, Section 14-12 a. The principle of equal treatment applies both to wages or expense reimbursement, working/rest hours and holidays and days off.

There are several rules that apply, which are to contribute to fulfilment of the equal treatment rules, cf. Section 14-12 b of the Working Environment Act. This includes rules such as the user company's duty of disclosure to the temporary-work agency concerning the conditions that must apply to employment relationships.

³⁴ Regulation No. 593/2008 of the European Parliament and the Council



The crewing company has a duty of disclosure to the hired employee regarding the basis for the pay and working conditions. In addition, the crewing company has a duty of disclosure – when so requested – to the user company concerning the conditions that apply to the hired employee. There is also a right of access to the actual terms and conditions that apply to the hired employee for the union representatives at the user company. New rules also entered into force as of 1 July 2013, concerning the joint and several liability of the user company for the hired employee's wages and holiday pay, cf. Section 14-12 c of the Working Environment Act.

Since the rules in the Working Environment Act concerning hiring of workers are of a private law nature, the individuals themselves must pursue their rights if they find that there has been a violation of the rules. The supervisory authorities do not play any role in connection with enforcement, with the exception of the requirement in Section 14-12, third paragraph concerning discussions on the use of hiring and the practice of the principle of equal treatment at least once a year. The employee is thus himself required to bring action before the courts.

Section 27 of the Labour Market Act contains rules concerning the hiring of employees that stipulate certain restrictions. It is evident from the first paragraph of the section that the hiring out-company cannot restrict the employee's opportunity to accept employment by the user company when the employment contract with the hiring out-company expires. The second paragraph of the section has rules concerning a disqualification period of six months for hiring an employee to one of the employee's former employers. The third paragraph contains a ban on demanding payment from the employee for hiring services.

5.4. Social security rights for flights crews in international service

5.4.1 Point of departure pursuant to the National Insurance Act

The general rule and point of departure for the National Insurance Act is that all persons who live or work in Norway are members of the National Insurance Scheme. The relevant provisions, Sections 2-1 and 2-2 of the National Insurance Act also contain further details on who are to be regarded as residents and employees in Norway. In addition, there are provisions concerning exceptions from the general rules, and the cessation of membership. For example, membership ceases immediately when

the member is employed abroad, cf. Section 2-14, fourth paragraph of the National Insurance Act.

Compulsory membership in the National Insurance Scheme is nevertheless maintained to a certain extent for certain groups of people who reside and/or work outside of Norway. For example, a Norwegian citizen who is an employee of a Norwegian civil aviation company, is a mandatory member of the National Insurance Scheme even if the individual resides outside of Norway, cf. Section 2-5, first paragraph, letter h of the National Insurance Act. Even if a person is to be a member of the National Insurance Scheme in principle, it may be that the national provisions must be departed from due to social security agreements that Norway has entered into with other countries.

5.4.2 Reciprocal social security agreements (social security agreements between countries)

The purpose of 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 ensure that Norwegian citizens are equated with citizens in the agreement country in which the individual lives or works. Below is a description of some practical situations (a – f), followed by an account of how they can be solved by means of the social security agreements.

a) When Norwegian companies with assignments abroad desire to use their employees in Norway to perform the assignments, the employees may be required to pay social security contributions, and the companies may be ordered to pay employers' contributions in the assignment country if the legislation there has provisions concerning compulsory insurance for all employees. If, at the same time, many years of pensionable service are required in order to be entitled to a pension, it may be that the employee in question nevertheless does not fulfil the conditions. Contributions paid that were to guarantee the individual a pension for the employment periods in the assignment country may be lost.

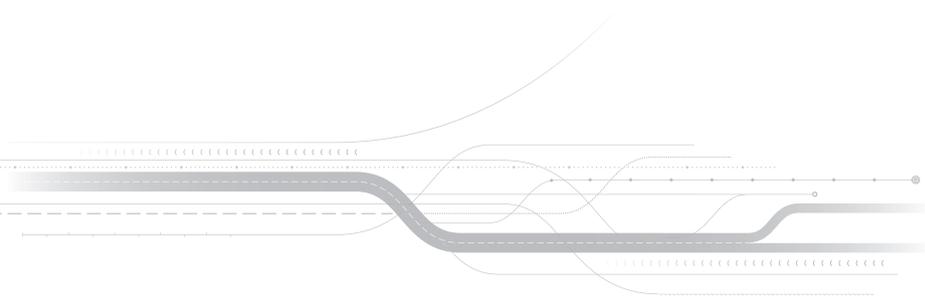
b) Even if the employee fulfils the conditions for entitlement to a pension, the legislation of the assignment country may contain provisions that pension benefits are not exported. As a result, the employee will not be paid the pension benefits that the

listed below

ALTITUDE	ELEC ELEC	ELEC/STDY
Sea level	50 feet	50 feet
5,000 feet	50 feet	80 feet
10,000 feet	60 feet	120 feet
15,000 feet	70 feet	see note
20,000 feet	80 feet	see note
25,000 feet	100 feet	see note
30,000 feet	120 feet	see note
35,000 feet	140 feet	see note
40,000 feet	160 feet	see note

Note: Above 10,000 feet and .4 Mach, position error causes the tolerance to diverge rapidly and direct crosscheck becomes inconclusive. Differences greater than 400 feet should be suspect and verified by ground maintenance checks.





individual has earned in the assignment country, unless he/she resides there when the pension can be collected. This is complicated further if the individual has many short periods in many countries, all of which have provisions that pension benefits cannot be exported.

c) In the instances mentioned above, the employer can in practice be forced to ensure that the loss of pension entitlement is compensated by other means, either by voluntary membership in the Norwegian National Insurance Scheme or private pension insurance for the employees in question. This entails increased costs for the employer. To the extent that the pensions from the social security scheme in the assignment country are lower than the pension from the National Insurance Scheme, the employer may be required to provide supplemental compensation.

d) A person who resides in one country and works in another country may risk becoming a member of the social security schemes in both countries, if one of the countries has compulsory membership in the social security scheme due to the place of residence, while membership in the other country's social security scheme follows from the employment relationship. Conversely, the individual may risk being outside of the social security schemes in both countries. The first case entails paying contributions to two countries, while the second case entails that the individual does not earn pension entitlements or have other social security rights.

e) If a person works in multiple countries, the individual may also risk becoming encompassed by two social security schemes. In such a case, both the employee and employer may be ordered to pay contributions in both countries.

f) For a person who works for an employer in the country of residence, but is sent on short work assignments to many countries with lower old-age pensions than the country of residence, it may be an advantage to earn pension entitlement for all the periods abroad in the country of residence.

Social security agreements' solutions for situations a - f:

Case a) can be prevented by provisions in the social security agreement stating that the employee's work periods in Norway are to be included when it is to be calculated how many years of pensionable service the individual has, so-called accumulation provisions.

If the individual fulfils the qualification criteria in the assignment country, regardless of whether this takes place through accumulation or not, the pension from the assignment country is to only be calculated based on the individual's pensionable service there. Accumulation thus does not entail that the pension rights from one country are transferred to the other country.

Case b) can be prevented by provisions stating that pension benefits, earned in one country, are to be paid to the pension beneficiary, regardless of what agreement country the individual resides in.

Cases c) and f) can be remedied by posting provisions, i.e. that a person who works for an employer in one agreement country and is posted to an assignment in another country can on certain conditions continue to be encompassed by the social security scheme in the country from which the individual in question was posted. *Case a)* can also be solved by the employees remaining in the social security scheme in the country from which the individual in question has been posted. Normally, such posting provisions impose a maximum limit of five years for the posting period. This means that an employee in a Norwegian company may continue to be a member of the National Insurance Scheme for a period of five years, even if the individual lives and works in another country. Conversely, workers posted to Norway from an agreement country may be excluded from membership in the National Insurance Scheme, even if they live and work in Norway for a period of up to five years. The social security agreements also open up the possibility that an extension of the posting periods for individuals or groups of persons beyond five years can be agreed.

Cases d) and e) can be solved by so-called choice of law provisions, i.e. provisions concerning which legislation is to apply to individuals in given situations. One general principle is that the legislation of only one country should apply.

Norway has entered into social security agreements with a number of countries. Most of the social security agreements contain provisions concerning the choice of law, equal treatment, exportability and accumulation. The agreements entail, for example, that Norwegians who take up residency in another agreement country, can rest assured that they do not lose the rights they have acquired under the National Insurance Scheme,

and that they can receive payment of the pension benefits they have earned abroad, even if they have moved back to Norway after completion of their mission.

5.4.3 EEA Agreement and the social security regulations

The EEA Agreement specifies, for example, free movement of workers between the EU countries and EFTA countries (Iceland, Liechtenstein and Norway). In order to implement the free movement of workers, migrant workers and their families must be guaranteed that all the periods to which the individual national legislations attach importance with respect to entitlement to benefits and the calculation of them are accumulated (accumulation principle). In addition, the fact that benefits due to persons residing in the territories of the member states will be paid (exportability principle), cf. Article 29 of the EEA Agreement.

The free movement of workers, self-employed persons and their family members would lose much of its effect if the persons who availed themselves of this freedom risk losing social security rights that had already acquired in their country of origin. The EEA Agreement has rules concerning coordination, but no harmonisation of the legislation of the individual member states. This means that the EEA countries are in principle free to determine

- who is to be a member of the social security schemes
- what benefits are to be provided and on what conditions
- how much social security contributions must be paid
- how the benefits are to be calculated and how long they are to be paid.

Therefore, there will still be significant differences between the legislations of the individual countries. The EEA countries must, however, respect the principles that have been stipulated in the Regulation, on which social security coordination is based. Below is an explanation of what the coordination entails.

WHAT SOCIAL SECURITY COORDINATION ENTAILS

In the area of social security, *Regulation (EC) No. 883/2004* on the coordination of social security schemes applies (Regulation No. 883/2004) and the Implementing Regulation (EC) No. 987/2009 (Regulation No. 987/2009).

The coordination regulations have been implemented in Norwegian law.

The social security coordination in the regulations is based on five fundamental principles. The most important principle – the equal treatment of nationalities – has been stipulated in Article 4 of the EEA Agreement. Two of the other principles have as mentioned been included in the provisions of the EEA Agreement concerning the free movement of workers.

1) The principle of *equal treatment of nationalities* entails that the persons who are encompassed by the Regulation shall benefit from the same benefits and be subject to the same obligations in accordance with the legislation in an EEA country, as this country's own citizens are.

2) A person shall only be subject to the legislation of a single country for one and the same period. This means, for example, that an employee who works both in Norway and in Ireland cannot be a member of the social security schemes in both countries at the same time.

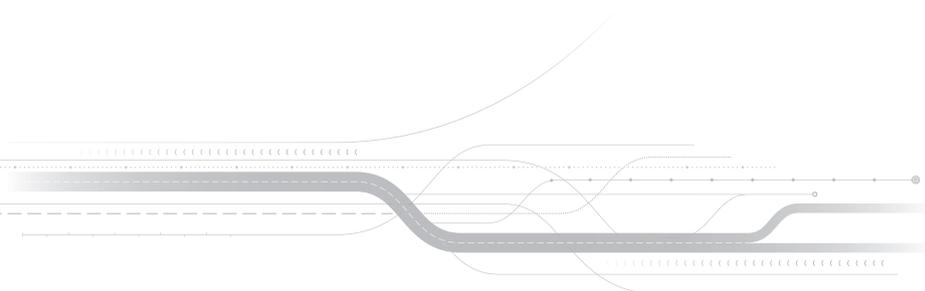
3) The *accumulation principle* entails that if the legislation in a country attaches importance to benefit periods, working periods, periods of self-employment or residence periods to qualify for or maintain entitlement to a benefit, the social security institution in question shall, provided it is necessary, take into consideration the periods spent in any other EEA country.

4) The *exportability principle* entails that cash benefits that can otherwise be paid in accordance with the legislation in an EEA country or according to the Regulation, shall not be subjected to any reduction, supplement, suspension, withdrawal or confiscation because the beneficiary or his/her family members live in an EEA country other than where the paying institution is located.

5) The *proportionality principle* or the partial pension principle, entails that the pension is calculated based on the duration of the period entitlement the individual has completed in each individual country.

SCOPE OF THE SOCIAL SECURITY REGULATION

Regulation No. 883/2004 applies to all citizens of an EEA country, including stateless persons and refugees residing in an EEA country, who are or have been encompassed by the legislation of one or more EEA



countries. This applies correspondingly to their family members and surviving relatives, regardless of the citizenship of the latter two groups. There must, however, be some form of cross-border situation in order for the Regulation to apply.

The substantive scope of Norway's bilateral social security agreements is primarily limited to pension benefits. The Regulation applies, however, to all national legislation concerning benefits related to illness, pregnancy/birth, disability, old-age, occupational injuries and diseases, death/funerals, unemployment and early retirement, as well as family and survivor benefits.

The choice of law provisions stipulate what legislation a person should be subject to in cross-border situations. A person can only be subject to the legislation of one country.

The expression "subject to the legislation" is not synonymous with being a member of the social security scheme in the country in question. It may be that the country does not have any schemes that encompass the person in question, or that the person in question falls under exemption provisions in the legislation in question. This can entail that the person in question nevertheless remains without any social security scheme. However, it will as a rule be such that the employee in question becomes a member of the social security scheme in the EEA country the legislation of which he/she is to be subject to. This is assumed in the following.

When the employee becomes a member of the social security scheme in a country, the individual in question will be entitled to all of the different benefits of the social security scheme, provided that the conditions for the individual benefits have been fulfilled. The employee and employer are obligated at the same time to pay the social security contributions and employer's social insurance contributions, respectively, to the country in which the employee is a member of the social security scheme. The coordination provisions only regulate social security, not taxes.

The general rule is that persons who perform work as an employee or a self-employed person in one country shall be subject to the legislation of this country (i.e. the country of work).

THE CHOICE OF LAW RULES IN THE SOCIAL SECURITY AREA FOR PILOTS AND CABIN PERSONNEL

The choice of law rules have changed several times during the period from 2012 to 2013, and there are transitional rules that apply in connection with the changes. Prior to 1 June 2012, Regulation (EC) No. 1408/71 of the Council on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (Regulation 1408/71) was in effect. The general rule here was that *pilots and cabin personnel* employed by a company that was engaged in international transport activities was encompassed by the legislation in the country where the enterprise or the employer had its registered business office.

Regulation No. 1408/71 was replaced on 1 June 2012 by Regulation No. 883/2004 in the EEA (in the EU as of 1 May 2010). Regulation No. 883/2004 was issued as the result of a simplification process, and it no longer contained any special choice of law rules for pilots and cabin personnel. If it is assumed that pilots and cabin personnel perform work in two or more EEA countries, which is quite common for international flights, then the individual in question should be a member of the social security scheme in his/her country of residence pursuant to Regulation No. 883/2004, provided a substantial part of the work (at least 25 per cent) was performed there.

If the employee did not perform a significant portion of his work in the country of residence, then the individual should be a member of the social security scheme in the country in which the employer was registered or had his registered business office. Reference is made to Article 13 of Regulation No. 883/2004 (1), as well as the detailed description below under "Work in multiple countries".

Example: A member of the cabin crew was employed by an airline with a registered business office in Belgium. The individual in question started and ended all his flights in Norway, but spent less than 25 per cent of his working hours in Norway. Even if the cabin crew member resided in Norway, the individual in question should be a member of the social security scheme in Belgium pursuant to the rules in Regulation No. 883/2004.

These rules remained unchanged for pilots and cabin personnel up to and including 1 February 2013.

There has been an increasing tendency in the direction of new forms of mobility, and one has seen new structures with regard to access to manpower. This also applies within air transport, in which the enterprises deliver their services from so-called “home bases” in various member countries. Accordingly, the Commission found that it was appropriate to expand on the term “registered business office” for pilots and cabin personnel. This was in order to help the social security institutions determine where the “registered business office” was located, and make it easier to apply Regulation No. 883/2004 in aviation. In this connection, it was particularly relevant that the concept of “home base” was already defined and in use in the aviation sector. The term “home base” was therefore introduced, and the choice of law rules in Regulation No. 883/2004 were changed. This was carried out by Regulation (EU) No. 465/2012 (Regulation No. 465/2012), which entered into force in the EU on 28 June 2012 and in the EEA on 2 February 2013.

The change entails that pilots or cabin personnel that perform services in connection with the transport of air passengers or freight, shall be regarded as performing such activities in the country where their “home base” is located. This applies even if the employee resides in a country other than where the home base is located, and/or is employed by an enterprise outside of the EU/EEA.

The home base³⁵ is normally at a location where the operator has decided that the employee will start and end his/her flights, and where the operator is not normally responsible for overnight accommodation. This home base principle essentially corresponds with the principle that is assumed when Norwegian working environment legislation applies.

In 2014, the European Commission adopted new working hour and rest provisions for crew members in aviation companies that perform commercial air transport, with a view, inter alia, to avoiding misuse of the rules. In addition, it is pointed out that a home base of the longest possible duration shall be designated. This will be of importance to the current regulations with regard to social security coordination.

35 The definition of home base can be found now in Regulation (EU) No. 965/2012, ORO.FTL.200 pursuant to Amendment Regulation (EU) No. 83/2014 (EEA Agreement Annex XIII on transport, point 66nf).

In the opinion of the Commission, the changes entail that an aircraft operator no longer can make reference to the fact that a member of the cabin crew allegedly has “changing home bases”, and thus request that the choice of law rules with regard to social security for persons that ordinarily perform work activity in two or more countries (see below under the heading “Special rules for the choice of law for work in two or more countries”) shall apply to the individual in question, without specifying in greater detail where the individual in question allegedly has his/her base.

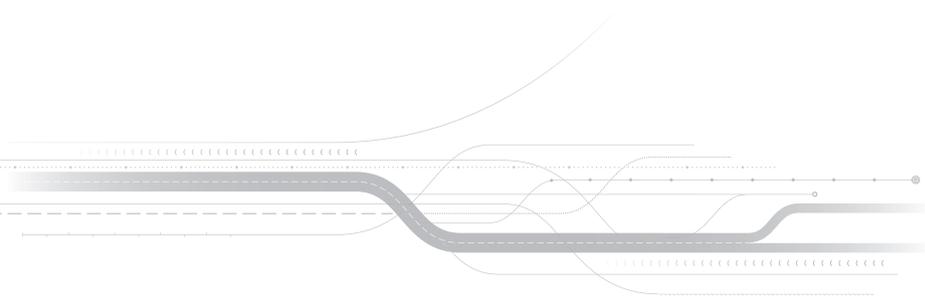
The Commission states further that a pilot or member of the cabin crew can in theory have more than one home base, for example, in cases where the individual in question works for more than one aircraft operator or airline at the same time. However, this is difficult, if not impossible, in practice because one has to stay within the limits for flight periods on duty, minimum rest periods and the time that is required to move between bases. The changes enter into force on 18 February 2016 in the EU and in the EEA.

Example 1: A pilot or a member of the cabin crew with a home base in Norway is employed by an airline with a registered business office in Estonia and resides in Sweden. The individual should then be a member of the social security scheme in Norway.

Example 2: A person with a home base in Spain reports and ends his working period there, but flies to Norway and stays overnight in Norway 3-4 nights at the expense of his employer during his working period before returning to base. The individual should then be a member of the social security scheme in Spain.

It is assumed that the choice of law for pilots and cabin personnel should be stable, and that application of the home base principle should not entail frequent changes in legislation due to work patterns or seasonal variations. It has therefore been stipulated that in an assessment of the choice of law, one should take into account the situation as it is assumed to be during the 12 following calendar months. Accordingly, the choice of law shall not be changed until 12 calendar months after the choice of law was last determined. This is under the assumption that there have been no significant changes in the situation, but just changes in the work pattern.

The Regulation also contains special choice of law



provisions that can make exceptions to the general rule. One of the most important special provisions is the choice of law rules for posted workers. The reasoning for this provision is that a person should be able to maintain earning of entitlement to pension benefits in the social security scheme in the country from which the individual in question was posted during working periods in another EEA country. These provisions are often used.

Example: Pilots and cabin personnel with a home base in Spain and employment by an airline with a registered business office in Ireland is posted to Norway and has home base there for up to 24 months. If the individual in question is a member of the Spanish social security scheme prior to the posting and otherwise fulfils the conditions for posting, the individual in question will remain covered by the Spanish social security scheme during the period he is posted in Norway.

The posting provisions may contribute to ensuring that the social security affiliation for pilots and cabin personnel remains stable.

SPECIAL RULES FOR THE CHOICE OF LAW FOR WORK IN TWO OR MORE COUNTRIES

Article 13 of the Regulation contains choice of law provisions for persons who work in two or more countries. The provisions apply both to employees and self-employed persons, and for various combinations of these. One person who performs work in two or more countries should be subject to the legislation of his country of residence if a substantial part (at least 25 per cent) of his work is performed there, cf. Article 13 (1) (a) of Regulation No. 883/2004. This applies regardless of whether the employee works for one or more employers.

In other cases, where an employee does not perform a substantial part of his work in the country of residence, the employee shall be subject to the legislation in the country where the registered business office of the employer is located, or where the registered business offices of the employers are located, when they are in one and the same EEA country, cf. Article 13 (1) (b) (i) and (ii) of Regulation No. 883/2004.

These provisions also apply as a point of departure to pilots and cabin personnel who have two home bases in two different countries. As mentioned above, however, the new rules entail that it is almost impossible in practice to have two home bases.

Persons who perform work in two or more EEA countries have a duty to disclose this to the relevant social security institution in the country of residence, cf. Article 16 of Regulation No. 987/2009. Due to the provisions in the social security regulations, this institution determines which legislation will apply to the person in question, and advises the social security institutions in the other two countries in which work activity is taking place.

EXEMPTION PROVISIONS CONCERNING CHOICE OF LAW

Two or more EEA countries can agree to make exemptions from all of the choice of law provisions mentioned above, provided that this is in the interest of the individual person, or in the interest of certain persons, or in the interest of certain categories of persons, cf. Article 16 of the Regulation No. 883/2004. This is one of the most important provisions in the Regulation, and the access to exemptions is used to a great extent. An exemption is particularly relevant when importance is attached to consideration of an uninterrupted social security career, and the individual in question is to be a posted worker for a period of time longer than the 24 months stipulated in the general posting provisions.

TRANSITIONAL PROVISIONS ON CHOICE OF LAW

The transitional provisions apply when changes to the choice of law rules have been made that entail a change in the social security affiliation country. During a transitional period of up to ten years, there shall not be any change in the social security affiliation as long as the relevant work situation remains unchanged, cf. Articles 87 (8) and 87a of Regulation No. 883/2004.

This means that the social security membership for the employee in question can be maintained as it was stipulated when the choice of law rules in Regulation No. 1408/71 applied (i.e. prior to 1 June 2012), or when the general choice of law rules for work in two countries in Regulation No. 883/2004 (prior to the change in Regulation No. 465/2012) applied (i.e. during the period from 1 June 2012 to 1 February 2013). The reason for the transitional period is the consideration of continuity in the social security membership.

Example:

Pilots and cabin personnel who have a home base in Norway, but who were already members of the

social security scheme in Ireland prior to 1 June 2012, pursuant to the choice of law rules in Regulation No. 1408/71 on social security affiliation with the country in which the employer's registered business office is located, will remain members of the Irish social security scheme for a period of up to 10 years from 1 June 2012. This is under the assumption that the relevant situation remains unchanged, and that the individual in question desires this himself. If a person does not want the transition rules to apply, he/she must report this to the social security institution in question.

SUMMARY OF THE CHOICE OF LAW RULES IN THE SOCIAL SECURITY AREA:

- The choice of law rules and the other coordination provisions in the Social Security Regulations are applicable for social security matters between all the EU countries, EEA countries, EFTA countries³⁶ and between Switzerland and the EU countries.³⁷
- The general rule is that pilots and cabin personnel are to be members of the social security scheme in the country where they have their *home base*. This applies regardless of where the employer has his registered business office or where the employee resides.
- If pilots and cabin personnel have a home base in several countries, their social security affiliation country will be determined in accordance with the provisions on work in two or more countries.
- It is assumed that the choice of law for pilots and cabin personnel should be stable, and that application of the home base principle should not entail frequent changes in legislation due to work patterns or seasonal variations.
- The posting provisions and the general exemption provision, as well as the transitional rules for a period of up to 10 years, may lead to an outcome other than the general rule.
- The rules are complex, and it is necessary to have access to all of the facts in the case in order to make a concrete assessment.
- A gainfully employed person who performs work in two or more countries shall disclose this to the social security institution at his/her place of residence.
- The social security institution at the place of residence will make a preliminary decision on the social security affiliation country and advise the institutions affected in the other countries in which the individual in question performs work.
- If the social security authorities in two countries disagree, the individual in question who performs work as a pilot or cabin personnel can be temporarily affiliated with a country's social security scheme, so that the individual in question can receive benefits during the period until the final clarification has been made.
- When it has been determined what country's social security scheme the individual in question is to be a member of, this country will issue a document confirming membership. Other countries cannot demand that the individual in question is to be a member or pay contributions to their social security scheme.
- The same rules and assessments that have been reviewed above will apply when pilots and cabin personnel have short, successive working periods of just a few months in different EEA countries, such as when they are employed by crewing agencies, for example.

5.5. Application of working environment and social security regulations in some practical cases

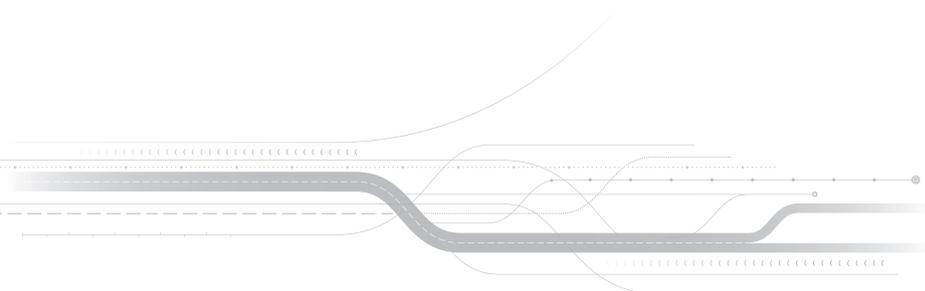
5.5.1. Domestic flights in Norway

What is required so that flight personnel flying domestically in Norway are encompassed by the Norwegian working environment legislation and are affiliated with the Norwegian social security scheme?

All EU/EEA airlines that have a licence can carry out flights between points within the EEA area, including internally within Norway. For foreign companies that fly domestically in Norway, the operations will in principle be encompassed by the Norwegian working environment legislation based on public administration law. The Norwegian working environment legislation applies as a rule on Norwegian territory. This applies independently of the sector, industry, whether it concerns private or public ownership, or whether one is a temporary or permanent resident here. This means that the public administration law rules in the Working Environment Act related to health, safety and the environment will apply.

³⁶ Since Appendix 2 of Annex K to the EFTA Convention has been updated as of 1 January 2016, the rules also apply between Switzerland and the EEA/EFTA countries, Norway, Iceland and Liechtenstein.

³⁷ On grounds of the Nordic Convention on Social Security, the rules also apply to the Faroe Islands and Greenland, which have acceded to this as of 1 May 2015.



If the flights take place starting from a home base outside of Norway – for example, by the personnel having 2-4 overnight stays in Norway before returning to their own base – then this may result in the Norway Working Environment Act applying. Each case must nevertheless be assessed specifically. As a rule, the social security affiliation follows the base affiliation.

5.5.2 Flights between Norway and other parts of the EU/EEA

What are the consequences of Norwegian airlines establishing bases in another EEA country with a view to the working environment and social security legislation in Norway?

Norwegian working environment legislation applies as mentioned on Norwegian territory. When Norwegian airlines, such as Norwegian, establish bases in another EEA country, the public administration law rules in the Working Environment Act or the supervisory authority will not extend beyond Norwegian territory.

With regard to the private law rules, it is the choice of law rules that determine which country's private law rules apply to the employees. Pay is something that the parties agree on themselves, unless there are mandatory minimum pay rules in the base country, either individually or collectively by collective wage agreement. Even if the choice of law rules entail that Norwegian private law rules do not apply to the employment relationship, a Norwegian collective wage agreement can nevertheless stipulate that it is to apply for employees abroad and for work abroad. Norwegian, for example, has a pilot agreement with Parat that applies to Norway, Sweden and Denmark; i.e. also for pilots based in Sweden or Denmark.

In the *social security regulations*, the general rule is that employees shall be members of the social security scheme in the country where the home base is located (i.e. where the employees will start and end their flights, and where the operator/airline is not normally responsible for overnight accommodation. If the home base for the employee is not to be in Norway, the individual in question will as a rule not be a member of the National Insurance Scheme.

Does the Norwegian working environment legislation apply to Ryanair employees with a base and place of residence at Rygge, and will the employees have social security rights in Norway?

The Norwegian working environment legislation based on public administration law (HSE) applies on Norwegian territory for work that is performed in Norway. This applies as a point of departure for the area of aviation when foreign companies have bases in Norway.

Whether the employment relationship between the Ryanair employees who reside at Rygge and Ryanair are to be regulated by the Norwegian working environment legislation must be determined upon further assessment based on the choice of law rules that have been accounted for above. As a point of departure, the employee and employer are free to agree on what country's law is to apply. Nevertheless, this right does not apply without restrictions. Pursuant to the aforementioned rules, the parties do not have the opportunity to contract out of mandatory Norwegian rules in the Working Environment Act. Of such mandatory rules, we can mention the rules associated with employment protection (requirement of objective grounds for termination), use of temporary employment, etc.

What is decisive for social security rights is whether the employees have their home base at Rygge, that there is only one home base and that no other special, exemption or transitional provisions apply. A short time has passed since the application of the home base rule, and therefore there is reason to believe that many persons are still members of the social security scheme in the country where the employer has his registered business office in accordance with the transitional rules. Personnel hired after 2 February 2013 are not encompassed by the transitional rules.

5.5.3 Flights between the EU/EEA and third countries

Will Norwegian working environment and social security regulations apply to Norwegian's long-haul flights that are based in Bangkok?

Norwegian working environment rules based on public administration law will in principle apply just as little to Norwegian's operations in Bangkok as Norwegian's base in Spain. The choice of law rules apply to private law matters. The social security affiliation may be where the employees live and have their employment contract, but also depend as mentioned on other circumstances. For example, a Norwegian citizen who is an employee in a Norwegian civil aviation company will be a compulsory

member of the National Insurance Scheme even if the individual in question does not reside in Norway. A foreign citizen in the same situation will as a rule only have limited membership in the National Insurance Scheme. Such membership does provide benefits in the event of occupational injury or death, but it does not provide any earning of entitlement to pension benefits. There are special rules for citizens from the EU/EFTA countries.

5.5.4 Legal lacuna?

What the Norwegian authorities can do to prevent that Norwegian crew members or crew members on board Norwegian aircraft find themselves in a legal lacuna.

The question of a legal lacuna has been brought up in the media on several occasions. The angle has often been that globalisation can result in situations where the flight personnel are not encompassed by the legislation or rights of any country. That Norwegian legislation does not apply is, however, not synonymous with the implicated parties being without protection. Countries other than Norway also as a rule have legislation that has been adopted to protect employees and ensure safe working conditions.

5.6. Immigration regulations – residence permit requirement etc.

5.6.1 Residence permit requirement

As a rule employees from countries outside of the EU/EEA area require a residence permit in order to work in Norway. There are exceptions to the general rule. For aviation, Section 1.1 (h) of the Norwegian Immigration Regulations make an exception for citizens of third countries who work on foreign aircraft in international service, i.e. traffic directly to/from Norway. The exceptions apply only to foreign nationals who do not have an employer in Norway, and for employment relationships with a duration of up to three months. On the basis of long-term practice, the Norwegian Directorate of Immigration (UDI) interprets Section 1-1 in conjunction with Section 3-3 concerning total residence in the Schengen territory for foreign nationals with or without a visa requirement, so that the exception applies for up to 90 days during a period of 180 days. It is the period of time (days) that the employee actually stays in Norway that is counted. If the employment relationship lasts longer than this, then the exemption provision will not apply.

The exception does not apply to employees from third countries that work on Norwegian aircraft in international service.

5.6.2 Schengen Border Code Regulation

Regulation (EC) No. 562/2006 of the European Parliament and of the Council on the movement of persons across borders (the Border Regulation) has been implemented in Norwegian law through the Immigration Regulations, cf. Section 4-1 of the Regulations. Article 5 of the Border Regulation stipulates conditions for allowing citizens of third countries to pass borders, including what documents/permits they must have. Annex VII (2) to the Regulation makes exceptions to parts of this article for aircraft pilots and other crew members who have a pilot licence or flight crew certificate. With these documents, while performing work they can:

- go on board or leave an aircraft at an airport during an intermediate landing or at the arrival airport on the territory of a member state
- travel into the municipality in which the intermediate landing airport or arrival airport is located on the territory of a member state
- travel with any means of transport to an airport on the territory of a member state in order to board an aircraft departing from the same airport.

The Border Regulation does not distinguish between foreign and domestic aircraft. It only regulates the actual border crossing for which pilots or aircraft personnel on duty are entitled to travel into the country for a stopover (intermediate landing) in connection with the arrival/departure of the aircraft. Making provisions so that flight personnel who satisfy the conditions can use the right to enter for a stopover is therefore a part of Norway's Schengen obligation.

5.6.3 Relationship between the Border Regulation and the Immigration Regulations

The current rules for residence permits for third-country employees in international aviation were established when it was common for the flag state to establish airlines. The pilots and cabin personnel were then from the same country as the company as a result, and also resided in that country. When the Schengen Border Code Regulation was implemented in Norwegian law in 2006, it was not then foreseen that other current regulations would create obstacles for



proper compliance with the Schengen regulations. This means that it is necessary to clarify in the Norwegian Immigration Regulations that we are complying with the requirements stipulated in the Border Regulation, cf. the consultative document 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. In the consultative document, the Ministry of Labour and Social Affairs proposes that it be clarified that the exception to the residence permit requirement also encompasses foreign personnel who work on Norwegian aircraft in international service.

The point of departure for the assessments in this consultation paper and the proposals 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. In addition to the study by the Legislation Department, the Ministry of Labour and Social Affairs has also obtained an overview of the legal position in other Schengen countries related to practice of the right that flight personnel have to entry pursuant to the conditions that follow from Section 2.1 of Annex VII to the Schengen Border Code

Regulation. The Ministry of Labour and Social Affairs has given a more detailed account of this in its consultative document.

5.7. Income tax and employer's social insurance contributions

Another relevant topic is to what extent it can be prevented that airlines with bases in Norway – instead of using ordinary employment – circumvent Norwegian taxation rules through hiring independent contractors registered abroad. Such a hiring model can also give the airline an unfair competitive advantage compared with airlines that practice ordinary employment. These problems are relevant now due, for example, to the practice that is allegedly followed by the Irish airline Ryanair.

It can be generally pointed out that the tax treatment of a hiring model as outlined will have to be determined based on a specific assessment of the individual taxpayer's situation, and this situation may vary depending on the actual circumstances. The Norwegian Tax Administration has itself stated that it will take a closer look at these problems, and that they will follow up the individual cases that are relevant. The Norwegian Tax Administration has received some information from trade unions that it will investigate further.



Photo: Olav Hegge

If it is identified, for example, that the employer has not reported wages, then this may have the consequence of the case being reported to the police for investigation.

There is international cooperation through the OECD concerning tax-related issues. The “Aggressive Tax Planning” subgroup is tasked, for example, with identifying and analysing tax planning methods that aim to circumvent taxation rules and evade taxation. There is cooperation on countermeasures among the OECD member countries.

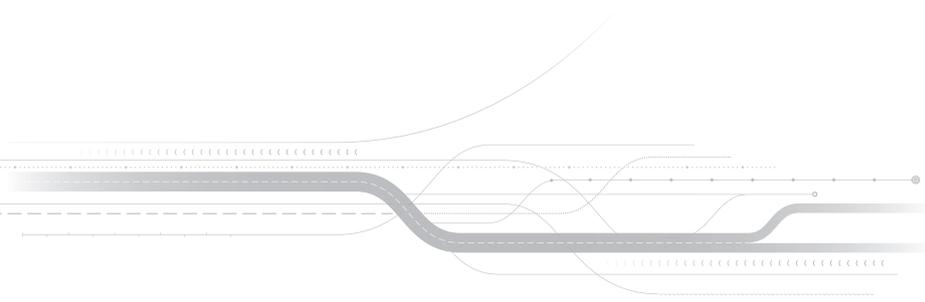
On a general basis, it is emphasised that all of the taxpayers who are resident for tax purposes in Norway based on internal Norwegian law, are in principle liable to pay tax here on all of their income and assets, regardless of where the income is earned or where the assets are located, cf. Section 2-1, ninth paragraph of the Norwegian Tax Act. The taxpayer’s citizenship is of no importance to the tax liability. A person who is a resident of Norway for one or more periods lasting for a total of more than 183 days during any 12-month period or more than 270 days in any 36-month period resides in Norway pursuant to Section 2-1 of the Norwegian Tax Act.

If the person is also resident for tax purposes in another country, the tax treaty with the country in question may determine where the individual in question should

be regarded as residing. If there is no tax treaty (for example, because the country is considered a tax haven), the Norwegian rules will apply regardless. If a taxpayer genuinely resides abroad, the individual in question will not be subject to taxation in Norway for work performed abroad.

With regard to adaptation through the use of hired labour from sole proprietorships instead of employment by means of ordinary employment contracts, it is pointed out that it is a fundamental principle in tax law that the genuine circumstances are to be relied on for taxation. Concrete assessment must therefore be made as to who is the genuine employer in the situation at hand. In some cases, in which the activity of an independent contractor consists exclusively of hiring one’s own manpower to perform duties for another enterprise, the employee may be regarded as genuinely being employed by the enterprise he is hired to (for example an airline) and thus be equated with other employees of the company. In these cases, it will be of no importance for the part of Norway whether the taxpayer is regarded as hired labour or formally employed by means of an ordinary employment contract.

If the taxpayer residing in Norway is regarded as being employed, for example, by an Irish company on the basis of a concrete assessment, the tax treaty between Norway and Ireland will apply. Pursuant to the provisions



in Article 15, Section 4 of this agreement, income from paid labour performed on board an aircraft operating in international service can be taxed both in the country where the taxpayer resides and in the country where the company is domiciled. As the country of residence, Norway shall then make adjustments for any double taxation that may arise by allowing a deduction (credit) for tax paid in Ireland, cf. Article 24, Section 2.

In general, it is the case that foreign employers also have an obligation to report wages for any remuneration etc. that is paid or given to persons who reside in Norway when the work is associated with Norway, cf. Section 5.2 of the Norwegian Tax Administration Act. This means that there will also be an obligation in such cases to deduct withholding tax in accordance with the rules of the Norwegian Tax Payment Act, cf. Section 4-1 of the Norwegian Tax Payment Act. In the event of hired labour these obligations will lie with both the client and contractor, cf. Section 4-1, second paragraph of the Norwegian Tax Payment Act and Section 5-10 (2) second sentence of the Norwegian Tax Administration Act.

The questions concerning social security and the employer's social insurance contributions are dependent in the same manner as for taxation on the actual, genuine circumstances, and any social security agreements etc. Below we will therefore limit ourselves to saying something about the fundamental features of the rules that are currently the most relevant to these matters.

Everyone who is a member of the Norwegian National Insurance Scheme shall pay social security contributions from their personal income. Persons who are not members of the Norwegian National Insurance Scheme, on the other hand, shall not be required to pay social security contributions in Norway.

For the employer's social insurance contributions, it is not the employee's membership in the National Insurance Scheme that is decisive, but whether the employer is obligated to report wages etc. paid to the employee to the Norwegian tax authorities. For work performed in Norway, the duty to pay the employer's social insurance contributions applies regardless of the employer's association with Norway. Employers who reside or are domiciled in Norway also have a duty to pay contributions for work performed abroad. This applies in principle regardless of whether the

employee is subject to taxation in Norway, or whether the employee is a member of the Norwegian National Insurance Scheme.

PRACTICAL EXAMPLE

As far as the Ministry of Transport and Communications knows, the Ryanair cabin personnel at the Rygge base are required to reside within a distance of one hour from Rygge. This then means that the cabin personnel are presumably for tax purposes resident in Norway, and that they are to pay tax to Norway, with the possibility of a deduction for tax paid to Ireland according to the tax treaty. In addition, the pilots are employed in a "pilot pool". Pilots who are regarded as being resident for tax purposes in Norway must pay tax to Norway, even if they have organised themselves as sole proprietorships and are hired from the aforementioned pool.

5.8. Competition and market regulation

The liberalisation of aviation – including free(r) opportunities to start new routes – has been described in Section 2.2. In this section, one factor of importance to competition between the airlines is discussed: Slots (departure and landing rights for certain time slots).

Slots: Slot coordination is carried out based on EU regulations (Regulation No. 95/93 and subsequent additions), which have been implemented in Norwegian law. It is a requirement that the agency that undertakes slot coordination is independent of both the airlines and the airport. In Norway, this has been solved by the establishment of Airport Coordination Norway AS. This company is owned 50 per cent by the airlines and 50 per cent by Avinor.

There is currently slot regulation at Oslo, Bergen, Stavanger and Kirkenes. In practice, it is only at Oslo and Bergen that there are restrictions during the peak hours. For Oslo this applies during the periods of 07:00-10:00 15:00-18:00 and 19:00-20:00, while for Bergen it applies to 07:00-09:00. It is the terminal functions (i.e. baggage, area and security inspection) that are the reason for the limitations. Trondheim is in the process of introducing slot regulation.

So-called "grandfather rights" apply to slots. Those companies who have slots in a period are allowed to retain them during the next period (under certain conditions concerning use). Based on the EU Regulation,

half of the new slots are reserved for new companies. The other half are distributed according to the IATA rules, in which importance is attached to the length of the routes, frequency, etc.

It is not possible today for new companies to operate during the peak periods in Bergen or Oslo until the new terminals have been completed. The lack of slots is in other words an obstacle for the entry of foreign companies to the main domestic routes in Norway. This may change after 2017, but not dramatically. Experience indicates that the peak load will then increase further, so that the capacity at the absolute peak will fill up quickly. This also means that if foreign companies are to enter the Norwegian market, the year 2017 would be a good point in time.

5.9. Procurement of air services (ps0)

The Ministry of Transport and Communications is responsible for facilitating good transport services in Norway – including good air services. Government procurement of domestic air services is to ensure good, nationwide air services. The procurement is to reduce the disadvantages associated with distance, and contribute to well-functioning regions and stable employment and settlement throughout Norway. The scheme is authorised pursuant to Regulation (EC) No 1008/2008. In 2016, the Ministry of Transport and Communications spent approximately NOK 811 million on such procurements.

The Public Service Obligation (PSO) route scheme was assessed in 2010 (Institute of Transport Economics (TØI) Report 1116/2010). The conclusion was that one had not managed to create satisfactory competition over time. Widerøe has become completely dominant on the regional routes. This is attributed, for example, to the requirements for the type of aircraft (over 30 seats and a pressurised cabin) that can land on short runways, as well as the requirement for specific satellite navigation equipment (Scat-1).

Widerøe's competitive advantage will be reduced when the current aircraft fleet must be phased out in approximately 15 years. In its report, the Institute of Transport Economics (TØI) proposes the following measures for increased competition:

- A change in the airport structure, fewer locations but with longer runways that can accept more types of aircraft

- Permit the use of smaller aircraft and divide up some of the individual route areas somewhat more
- Avoid stipulating requirements for specific navigation systems or participation in a global distribution system.

The Institute of Transport Economics points out that clear criteria have not been defined for the inclusion of routes in the PSO scheme. Such criteria could be the size of the market and the distance to a main airport, according to the Institute of Transport Economics. In light of the risk of an increased need for PSO routes, it is important to keep the cost of the existing PSO route network down through effective competition. Measures to improve competition have also been assessed in the Institute of Transport Economics (TØI) Report 1331/2014: "Proposed tender scheme for regional air routes in southern Norway". The measures recommended in the report include extending runways where possible, discontinuing the routes with the least traffic, more flexible requirements regarding aircraft size and navigation systems, as well as a longer period of time from awarding the routes to the start-up in order to attract tenders from operators who require more time to adapt their production. The report was circulated for consultation in the autumn of 2014.

See under Section 5.3.4 with regard to whether a specific pay level for employees should be required in connection with the procurement of air services.

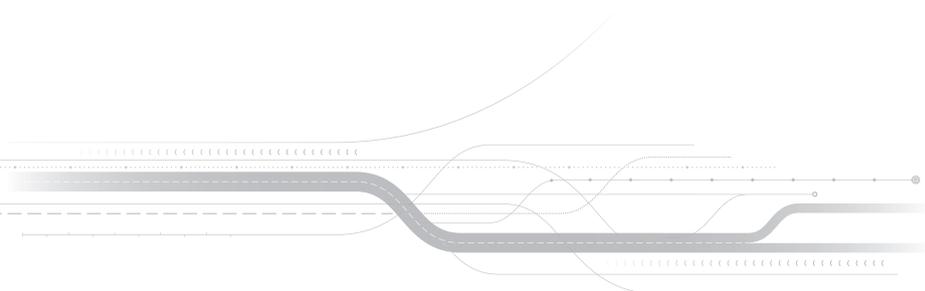
5.10. Investments in airports

The Government's Sundvollen Declaration supports fewer, larger and more competitive airports where appropriate, and amended licensing conditions for Moss Airport Rygge.

The hub function of Oslo Airport Gardermoen ensures good air service to large parts of Norway, and it gives the Oslo region a better air traffic network than it would have otherwise had. Ryanair dominates the airports south of Oslo (Rygge and Torp).

The relevant problems are how one can facilitate efficient air traffic to/from large parts of Norway and how the future traffic growth in the Eastern Norway region should be handled.

According to the Oslo Airport Master Plan for 2012-2050, there is a need for a third runway for more than 90 scheduled and charter aircraft movements during the peak hours. According to the forecast, this will occur



at approximately 35 million passengers / around the year 2030. Avinor is of the opinion that a third runway must be in place by that point in time.

With continued traffic growth and an unchanged capacity, traffic will be forced out to the airports south of Oslo, and the prices for flying to/from and via Oslo Airport will increase. The hub function will increasingly be fulfilled by foreign hubs (Amsterdam, Frankfurt). For traffic to/from North-western Norway and Northern Norway, the transfer opportunities will be poorer and more inconvenient (Institute of Transport Economics (TØI) Report 1025/2009).

Domestic traffic to/from Oslo Airport is to a great extent incoming business traffic, for which Torp and Rygge will be an alternative to a very limited extent. For international traffic to/from the Eastern Norway region, those who live relatively close to Torp or Rygge will experience it as an advantage that their "local airport" will have better air service. Also those who are near Torp/Rygge will, however, "suffer" like others in the Oslo region due to the fact that Oslo Airport will not have as many direct routes as it would have had based on a natural development. (Institute of Transport Economics (TØI) Report 1025/2009).

5.11. Air traffic charges

A "charge" is defined in the following as compensation the airlines pay for use of airports, air navigation services or other aviation facilities.³⁸ This is as opposed to more environmentally justified charges that are imposed on aviation, such as NOx charges, CO2 charges, etc.

Today the Ministry of Transport and Communications determines what charges are to be paid for the services provided by Avinor. Today there are five air traffic charges that are paid for the services provided by Avinor: Take-off charges, passenger charges, security charges (for security services), terminal navigation charges and air navigation charges. The first three charges are paid for airport services in the traditional sense, and the last two are for air navigation services. The regulations issued by Ministry of Transport and Communications concerning charges at Moss Airport Rygge were repealed when the new licence for Rygge entered into force.

³⁸ To the extent that they are regulated by an Act or regulations, this will be pursuant to Section 7-26 of the Norwegian Aviation Act.

5.11.1 Cross subsidisation of Avinor's airports

Today, 46 out of 51 Norwegian airports with scheduled air service are operated by Avinor as an overall network. The network is financed as a whole by so-called cross subsidisation. Avinor's revenues consist of revenues from both air traffic charges and commercial revenues. Tax-free sales account for a significant portion of the commercial revenues. The opportunity to generate revenues from tax-free sales actually means that the airports are receiving a subsidy from the government.

Cross subsidisation entails that the sum total of Avinor's revenues from air traffic charges and commercial revenues are used to cover the overall costs of investments in and operation of the entire network as a whole. It is in other words not such that the costs associated with an individual airport are covered by the revenues attributed to the same airport. As a rule, the charges are the same for all the airports (even if there are significant exceptions to this principle).

If this scheme is compared with a theoretical system in which the charges at the individual airport reflect the unit costs (per flight or per passenger), the existing system represents internal cross subsidisation. This means in turn that airlines that use the large "profitable" airports subsidise airlines that use the small "unprofitable" airports. To a certain extent, there are also grounds for stating that the existing scheme is – based on averages – a benefit to the Norwegian airlines. There are, however, clear differences in how this impacts the individual Norwegian companies. It would in particular be at the small airports with short runways that the charges would be higher if they were to cover the costs per airport. This would then also have resulted in the procurement of regional air services being significantly more expensive.

There is nevertheless little reason to doubt that the cross subsidisation model is in compliance with the international rules that Norway is bound by in this area. There is no express ban on such a model in the Chicago Convention. In addition, there is positive support for the scheme in Article 4 of the EU Directive 2009/12/EC on airport charges, which states:

AIRPORT NETWORK

Member States may allow the airport managing body of an airport network to introduce a common and transparent airport charging system to cover the airport network.

Point 5 of the introduction states:

In order to promote territorial cohesion, Member States should have the possibility to apply a common charging system to cover an airport network. Economic transfers between airports in such networks should comply with Community law.

The last sentence of the introduction may be understood as a reference to the state aid rules, for example. These in themselves are not, however, regarded as an impediment to the cross subsidisation model.

5.11.2 Peak pricing

So-called peak pricing, with higher prices during peak load periods, is an alternative. This will be an advantage to the airlines that focus on the business market, which will more readily accept a cost increase.

The development of regulations for the air navigation services has essentially been taken over by the EU: A main pillar of this work is the new rules on a Single European Sky (SES). For the charges associated with the air navigation service, the air navigation charges and terminal navigation charges are currently regulated by Regulation (EC) No. 1794/2006. The EU has, however, already adopted Regulation (EU) No. 391/2013, which will replace Regulation (EC) No. 1794/2006 from 2015. Regulation (EC) No. 1794/2006 is currently implemented in Norwegian law, while Regulation (EU) No. 391/2013 will be implemented in Norwegian law.

Pursuant to the SES rules, the setting of charges is in principle strictly rule-governed. The overall cost for a given service is to be distributed among the individual flights according to specific formulas. Regulation (EC) No. 1794/2006 allows the use of incentive schemes. Regulation (EU) No. 391/2013 continues the fundamental features of this system.

Both of the regulations permit that the charges be adapted to some extent in order to optimise the use of air navigation services (increase efficiency, reduce the environmental impact, reduce costs, etc.).

There appears to be little doubt that the rules provide some leeway for differentiating the terminal navigation charges in order to prevent or limit negative "peak effects".

Capacity problems may also be based on the actual

airport infrastructure / access to airport services. The charges for airport services are also to a great extent based on international regulations. These regulations are, however, less rigid and detailed than those that apply to air navigation service charges. The EU has issued Directive 2009/12/EC on airport charges. In addition, there are more policy-oriented documents from the ICAO (including Doc. 9082) on the principles which should be the basis for the member states' national policy for charges. In addition, there is a ban in the Chicago Convention on discrimination against foreign aircraft through charges.

Doc. 9082 from the ICAO essentially allows "peak time pricing", provided that this takes place in accordance with some fundamental principles: Firstly, the cost of differentiating charges should not be charged to users who do not benefit from the differentiation of charges. In addition, Doc. 9082 allows the use of a unit price *per aircraft*; as an exception to the general rule that the charge should be based on weight.

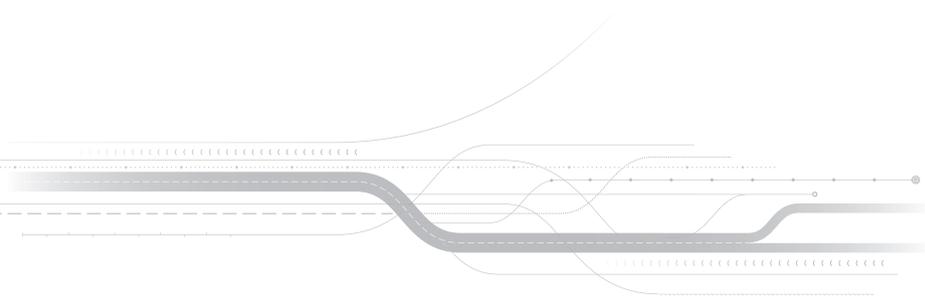
Directive 2009/12/EC bans unfair discrimination of airport users through charges. However, this does not prevent the differentiation of charges for the purpose of safeguarding so-called public and overarching aims. This exemption rule allows the differentiation of charges based on capacity challenges, for example.

It follows from the EU state aid rules (that apply here in Norway through the EEA Agreement) that airport operators who have public funding at their disposal (such as Avinor does) must not differentiate charges in the manner that would represent "aid" in relation to these rules. Provided that the charges at peak time emerge as a negative exception (mark-up) to the general rule, this does not entail any violation of the state aid rules.

5.12. Consumer rights

5.12.1 What passenger rights should be established by rules, and by whom?

In light of the purpose of the consultation paper, consumer rights are discussed in the following first and foremost based on their importance to the airlines. In this assessment, however, it is also necessary to emphasise the protection that travellers need. The word "consumer" encompasses both those who pay for travel themselves, and those who (typically) travel for business. This understanding is in accordance with the ordinary manner in which rights regulations are defined within aviation.



Today passengers have a number of rights that follow from both national and international regulations. Certain factors are pointed out below that will be relevant to assess if national or international regulations are to be changed.

For the airlines, passenger rights can be looked at as both an advantage and a disadvantage. It can be an advantage to the airlines if the passengers feel that they are well protected through good rights. If an airline offers better rights than its competitors, this may be a competitive advantage. Passenger rights can, however, also entail a significant cost to the airlines, which the airlines themselves are not willing to offer voluntarily. To the extent that passenger rights are actually an advantage, it can be maintained that it should be up to the airlines themselves to identify this advantage, and to offer such rights without the state or international organisations regulating them. With such a point of departure, the states and international organisations should only regulate the rights that the airlines do not themselves offer.

However, it must be taken into account that the average passenger will in practice not have such good insight into his rights when buying a ticket that he is able to make a fully informed choice. The traveller also has little opportunity to influence the conditions offered by the airlines. In addition, the authorities can impose sanctions for the violation of rights that are regulated by law in a manner other than contractual rights. To some extent, the legislator should therefore stipulate certain rights that a typical traveller would expect. Therefore, extensive regulations on passenger rights have been issued both nationally and internationally.

When new regulations are assessed, however, an assessment should always be made of what it is appropriate for the authorities to regulate, and in what areas the airlines should be free to do as they please.

Aviation is, both globally and in Europe, marked by strong competition and small profit margins. The desire to ensure equal competitive conditions for the airlines points in the direction of the fact that it should be possible to regulate the rights internationally – in the EU/EEA, or in global organisations such as the ICAO. At the same time, the individual states should be cautious about stipulating additional rights (added costs), for example, for flights with companies domiciled in their own country.

If we think in a longer-term perspective, a country that has in principle strong protection of passenger rights could be served by seeking to incorporate these rights into international regulations that bring airlines from other countries up to the same cost level.

5.12.2 Assessment of the existing passenger rights

The Scandinavian countries have traditionally placed strong emphasis on ensuring consumers of good statutory rights in connection with the purchase of goods and services. In the area of aviation, the rights were based primarily on the global rules in the Warsaw Convention of 1929 for many years, and subsequently in the Montreal Convention of 1999. These rules have been incorporated into Chapter 10 of the Norwegian Aviation Act. These are for example rules concerning compensation for damage or injury to persons or baggage, for the delay of persons or baggage and for the loss of baggage. The intention of these rules has been to harmonise passenger rights globally, both to ensure that passengers have a minimum of rights, and to agree on the maximum limits for financial liability. This is how equal competitive conditions and the necessary financial predictability have been ensured for companies that could have otherwise risked losses that would be impossible to cover within ordinary profit margins.

The EU countries have been of the opinion that these global regulations do not provide adequate protection of the passengers, and they have issued supplementary rules on rights – especially Regulation (EC) No. 261/2004 (the “Denied Boarding Regulation”) and Regulation (EC) No. 1107/2006 (on physically disabled passengers). These regulations are part of the EEA Agreement and have now been implemented in Norwegian law. The rules entitle the passengers to standardised compensation for denied boarding due to overbooking, cancellations and significant delays. There are exceptions for extraordinary circumstances that could not have been avoided. The physically disabled have rights in relation to the airlines and airport operators. Airlines cannot deny boarding to a physically disabled person unless it is necessary in order to satisfy the safety rules or if it is physically impossible. Airport operators are required to provide assistance to physically disabled persons from when they arrive at the airport to they leave the airport, whether they are departing or arriving by air.

Finally, there are certain special Norwegian rules that have originated in part from the EEA rules. The rights of physically disabled passengers in connection with boarding aircraft have been strengthened through universal design rules for the boarding solutions. In addition, all the passengers have an opportunity to submit an appeal free of charge to the Transport Appeal Board if they are not successful in appealing directly to the airlines. The Board functions as a low threshold offer for the passengers, and it likely contributes to increasing the actual compliance with the regulations. The airlines comply with almost all of the decisions by the Board, which is probably associated with the fact that they are themselves represented on the Board. If an airline does not comply with the decisions of the Appeal Board, the Norwegian Civil Aviation Authority has the authority to impose financial sanctions for violation of the regulations – typically for long-term violations that are commercially motivated. Thus far, there has not been any need to use these measures.

The varying content of passenger rights globally, in Europe and nationally – may result in cost-related competitive disadvantages. The same applies to different interpretations of rules with the same content. In principle, all the EEA companies are subject to the same regulations for passenger rights. In practice, Regulation (EC) No. 261/2004 in particular has proven to be so unclear that there has been a need to bring a number of interpretation issues before the European Court of Justice. In practice, there is a genuine risk that the enforcement authorities and the appeal body in the EEA countries use different interpretations. The Ministry of Transport and Communications has not had the resources to collect information confirming or disproving that enforcement – in the sense of control of compliance – varies within the EEA.

The European Commission has stressed that identical interpretation and enforcement of passenger rights is important. The interpretations are therefore discussed, among other things, in a separate body under the European Commission in which the member states meet to agree on the interpretation. KOM (2013) 130 proposed amendments to Regulation (EC) No. 261/2004 to strengthen international interpretation cooperation, among other things. Supporting this approach should be Norwegian policy.

5.12.3 Protection for passengers when airlines go bankrupt

It is evident from Figure 2.2 that a number of European airlines have gone bankrupt in recent years. The passengers' claims can be broken down into two main groups: Persons who have bought and paid for a ticket, but have not yet travelled (who typically have a claim for reimbursement of the purchase price), and passengers who have started travelling, but who cannot get home because flights have been cancelled (stranded passengers who have a claim for transport home). These claims have, however, the same (as a rule weak) status as claims from other ordinary creditors. In accordance with Norwegian rules, however, one can claim the money back from the credit card company if the travel has been paid for by credit card.

The biggest bankruptcy in Scandinavian aviation was the bankruptcy of Sterling in 2008. As a result of this, the Danish travel guarantee scheme for package tours was expanded to encompass air travel alone. The scheme is voluntary in the sense that the individual traveller himself chooses whether he or she wants to protect him/herself by paying the amount of DKK 20 per trip. The airline must in turn furnish a guarantee that covers individual passenger claims based on the sale of bankruptcy-protected travel. The scheme only encompasses airlines that are domiciled in Denmark. Norwegian, for example, is not a member of the Danish scheme, because the company does not have a place of business or other representation in Denmark, even if the company is the second largest company in the Danish travel market. As far as the Ministry understands, only three per cent of travellers purchase such protection.

It has been suggested that in order to strengthen the protection of Norwegian consumers from bankruptcy, the Norwegian travel guarantee scheme could be expanded to include air travel alone (and not just so-called package tours in which air travel represents only one of several components). In the travel guarantee scheme, the principal liability is covered by bank guarantees or other forms of security that the individual tour operators must furnish (total amount of cover is currently around NOK 3.5 billion). The actual Travel Guarantee Fund has a subsidiary liability and capital of "only" NOK 20 million, which is financed by membership fees from the tour operators that are encompassed by the scheme.

The European Commission has commissioned a study of the consequences for various forms of bankruptcy protection. The report³⁹ – on which the subsequent presentation is based – shows that even the largest European companies normally have such a limited financial buffer that they currently do not have the funds to furnish a bank guarantee that is large enough to cover the liability that should in principle be covered by a travel guarantee scheme.

If what follows from the EU report is representative, even airlines that are normally financially sound could have problems furnishing a guarantee that was large enough. There is therefore a risk that a mandatory guarantee obligation could result in bankruptcies in the aviation market. If it is desirable to have many actors in the market, it emerges as quite unrealistic that the legislator would make such a requirement.

In addition, it is also a challenge to allow such schemes to apply to airlines that are not domiciled in⁴⁰ the country in question, because they could quickly conflict with the totally harmonised requirements for licence holders in Regulation (EC) No 1008/2008. This can be solved nevertheless by amending the Regulation.

If a guarantee scheme cannot be financed by the airlines furnishing security, statutory fund schemes will be an alternative. Such a fund can, for example, be financed by a tax on all air tickets. The EU report points out that no EU agency has the authority to manage a supranational fund. In practice, it is therefore a matter of several national or multinational funds based on the new EU legislation. This requires in turn that the scope and financing of the individual funds must be linked either to the registration country of the aircraft, nationality of the passenger or where the travel starts. The report ends up recommending the last alternative.

The report contains calculations of how great the contribution probably must be per trip in order to finance such a fund. At the same time, it is stressed that the calculations may not be very relevant for small countries with one or few airlines that dominate the

traffic. In such cases, contributions to the fund could be so high that this in itself could contribute to bankruptcy.

A pure fund scheme will mean that there are two different schemes for closely related phenomena – air travel alone and air travel as part of a package tour. This is unfortunate. In addition, there are many indications that Norway is such a small country that the financing of the fund will clearly be costlier for Norwegian airlines than it would be for airlines in large countries in which the pulverisation effect would be greater.

After the report, which is referred to above was completed, the European Commission has considered what should be done. On 18 March 2013, the European Commission made an announcement (COM(2013) 129) concerning passenger protection in the event of an airline bankruptcy. The Commission does not propose new legislation, but encourages, for example, that the member states establish coordination to assess the financial situation of the airlines, and possibly suspend the operation of airlines to reduce the negative impact on consumers. The airlines' organisations are encouraged to formalise agreements to transport the passengers of other companies home at a reduced price in the event of bankruptcy. The establishment of several relevant insurance products that can protect consumers is also encouraged. Finally, reference is made to the fact that better information should be provided on the possibility of reimbursement if payment has been made by a credit card. The Commission will make an evaluation in two years to see whether further measures are necessary.

The Ministry of Transport and Communications will not recommend special Norwegian initiatives in this area.

The establishment of the travel guarantee scheme or fund solutions does not appear to be feasible, since this would probably impose large expenses on the airlines. Special Norwegian schemes will also result in a competitive disadvantage for Norwegian companies or companies on which obligations can be imposed, and thus lead to a problematic shift in the competition. The need of Norwegian consumers for protection in the event of bankruptcy must also be weighed against the advantages for consumers to have more actors in the market and a broad range of routes. Special Norwegian measures that increase the risk of companies that fly in Norway going bankrupt or reducing their operations in Norway do not appear to be desirable.

³⁹ See the report *Impact assessment of passenger protection in the event of airline insolvency* from March 2011 prepared by Steer Davies Gleave.

⁴⁰ Typically, the head office – *principle place of business* – is in the country in question.

6 ASSESSMENTS AND RECOMMENDATIONS

6.1. Introduction

Throughout recent decades and up to the present time, aviation internationally and in Norway has undergone a dramatic development. Some milestones for the development of aviation here in Norway:

- Up until 1994: The Ministry of Transport and Communications granted route concessions to SAS and Braathens
- 1994: Domestic competition between Norwegian companies
- 1997: Foreign companies were also allowed to compete domestically
- 1997: Tenders advertised for regional routes
- 1998: New main airport at Gardermoen (SAS expanded greatly and Color Air started up)
- 1999: Color Air bankrupt
- 2001: Braathens acquired by SAS
- 2002: Norwegian started up
- 1998/2010: International traffic at Torp/Rygge (Ryanair)

Both internationally and here in Norway, we have seen a tendency towards increased pressure on pay and working conditions for flight personnel, and to a greater degree of use of personnel from low-cost countries. Some of the reason for this is the fact that important cost items such as fuel and capital are largely given

quantities, and this is in contrast to personnel costs. For Norwegian airlines that want to compete internationally, the generally high pay level in Norway is a challenge, and the need for competitive adaptations correspondingly prominent. For Norwegian authorities, the challenge is to facilitate an efficient aviation market that at the same time safeguards the working environment, health and safety of those who work in aviation.

With this as our backdrop, the Ministry will in the following outline some *preliminary assessments and conclusions*.

We mention once again that the Ministry of Transport and Communications would like input and comments on the consultation paper before any final conclusions are drawn on the part of the Ministry concerning the desired development and relevant measures for aviation in Norway.

6.2. Assessments and recommendations

6.2.1 EEA designation

As long as the rights for flying are agreed on bilaterally (possibly with the EU as a party to the agreement), competitive conditions cannot be regulated beyond what is stated in the agreements (capacity and designated company). EU countries are required to



have a form of EU designation when entering into aviation agreements with third countries. This means that rights agreed on between an EU country and a third country must be available to any EU airline. Sweden and Denmark have, as the only EU countries in addition an expansion of the designation to the EEA area. This means, for example, that Norwegian airlines will also acquire these rights.

Recommendation no. 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.

6.2.2 Flying over Siberia

In order to fly over Russia, including Siberia, special traffic rights are required that are stipulated in aviation agreements. Scandinavia has obtained a certain number of overflight rights over Siberia. At present, SAS uses the majority of Scandinavia's overall quota. Norwegian has expressed that the current situation is not satisfactory.

Recommendation No. 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.

6.2.3 Leasing of aircraft

Section 8 of the regulations relating to air transport services in the EEA permits the leasing of aircraft (dry leases)⁴¹ registered in a foreign register. The aforementioned provision permits such leasing for a period of six months. Beyond this, dispensation may be granted for continued leasing for an additional six months, provided there are special grounds.

An airline may need to lease an aircraft registered in a foreign register for various reasons.

The Ministry of Transport and Communications is assessing whether changes should be made in the leasing provisions in the regulations relating to air transport services. In accordance with Article 12 of Regulation 1008/2008, it is up to the individual state to determine whether aircraft used by a national company can be registered in the register of another member country's register. The time limitations in the regulations for leasing aircraft in a foreign register were originally stipulated due to aviation safety considerations, among others. Because the level of aviation safety and its supervision have been harmonised in Europe, the Ministry finds, however, that these considerations are no longer applicable.

⁴¹ Dry lease: Leasing of aircraft without a crew, in which the lessee assumes the commercial, technical and operative responsibility during the term of the lease.



Photo: Olav Hegge

Recommendation No. 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.

6.2.4 Enforcement of regulations in the area of income tax, social security, working environment, etc.

a) European airlines are to a great extent free to establish bases for foreign personnel in Norway, and possibly to allow Norwegian routes to be served by personnel with a home base abroad. The rapid movement of employees and the airlines' use of bases in different countries represents a challenge to the work of the authorities to clarify whether persons who perform work in Norway have such an affiliation with Norway that rights and obligations pursuant to the working environment legislation, social security legislation, tax legislation, etc. are applicable. Enforcing the Norwegian rules, whenever possible, is important to ensure equal competitive conditions, as well as social rights and security for aviation personnel.

Recommendation No. 4:

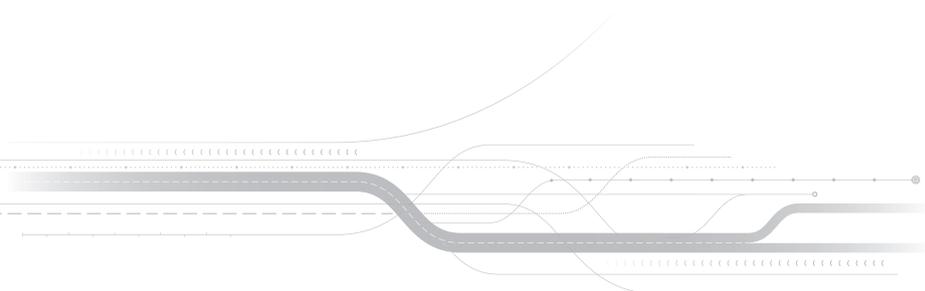
The Government will strengthen cooperation among the Norwegian Civil Aviation Authority, the Norwegian Labour

Inspection Authority, the tax authorities, the Norwegian Labour and Welfare Organization and the Norwegian Police in order to promote adequate enforcement of the regulations for taxation, social security 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.

b) The Norwegian Civil Aviation Authority has been advised through a dialogue with the Danish Transport Agency in Denmark that the Danish authorities do not carry out any HSE supervision of Norwegian's bases in Denmark, reportedly due to the fact that the crew does not work on board a Danish registered aircraft. Flight personnel affiliated with bases in Denmark will not be encompassed by the Norwegian working environment legislation, and thus they are not subject to Norwegian HSE supervision. They are not encompassed by the Danish HSE supervision either. The Ministry finds that this is unfortunate.

Recommendation No. 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.

6.2.5 Passenger rights

Passenger rights in the area of air transport in Europe are good, and are complied with to a great extent here in Norway. In addition, we have certain special Norwegian rules that strengthen the status of passengers in relation to the current EU regulations. The European Commission has acknowledged that it is important to have an identical interpretation and enforcement of the existing rules concerning passenger rights. The Commission is seeking to strengthen international interpretation cooperation.

Recommendation No. 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.

6.2.6 Aviation safety

The regulations that are to safeguard aviation safety are largely joint European regulations anchored in the EU/EEA. The airlines can to a great extent choose where in the EU/EEA area they would like to establish themselves and how they want the flight personnel to be affiliated with the company. There are no grounds for stating that increased competition has weakened aviation safety. It can nevertheless not be ruled out that insecure employment as a result of hiring contracts may have undesired consequences for the culture of safety and the reporting of incidents, and thus for aviation safety. It may be a special challenge to follow up safety work at airlines that are based on hired personnel.

Recommendation No. 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 agencies and hired personnel and the possible effects on the willingness to report.

6.2.7 Simplified transfers

It is of great importance to Norwegian airlines that the passengers can check their baggage through from their place of departure to their final destination.

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. The scheme began on 1 September 2015, initially for passengers who travel via Oslo Airport with SAS, Norwegian or Widerøe. For example, if a passenger travels from abroad via Gardermoen and is going to Trondheim, the scheme entails that the passenger will not be required to collect his baggage and check it in again at Oslo Airport. The passenger will thus avoid a new security check. The trial will last three years. Towards the end of the trial period, the Government will assess whether the scheme will become permanent.

Recommendation No. 8:

The Government will assess whether the simplified transfer trial at Oslo Airport should become permanent after the three-year trial period.

6.2.8 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 CBP has had a preclearance scheme in other countries since the 1950s. Today, there is a total of 16 locations in other countries. Six of these locations are in Canada, while the CBP has also established locations in Abu Dhabi, Bermuda, Aruba and Ireland, and among other places. The CBP would like to establish preclearance in additional countries, and they have now travelled around Europe, presenting the concept to Norway as well as to several other European countries. 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.

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Recommendation No. 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.

6.2.9 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, regardless of where the aircraft is registered.

There is a need to specify in the Immigration Regulations that we are following our international obligations. The point of departure for the assessments in this consultation paper and the proposals 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.

Recommendation No. 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.

APPENDICES

LETTER TO THE EUROPEAN COMMISSION ON THE NEED FOR SUPRANATIONAL REGULATION

On 15 January 2014, the Minister of Transport and Communications sent a letter to the former Commissioner for Transport Siim Kallas at the European Commission. Enclosed with the letter was a memorandum with examples of possible unfortunate effects of the development trends in international aviation – development trends of such a nature that they require a supranational approach. An identical letter was sent from the Minister of Transport and Communications to the current Commissioner for Transport Violeta Bulc on 19 February 2015.

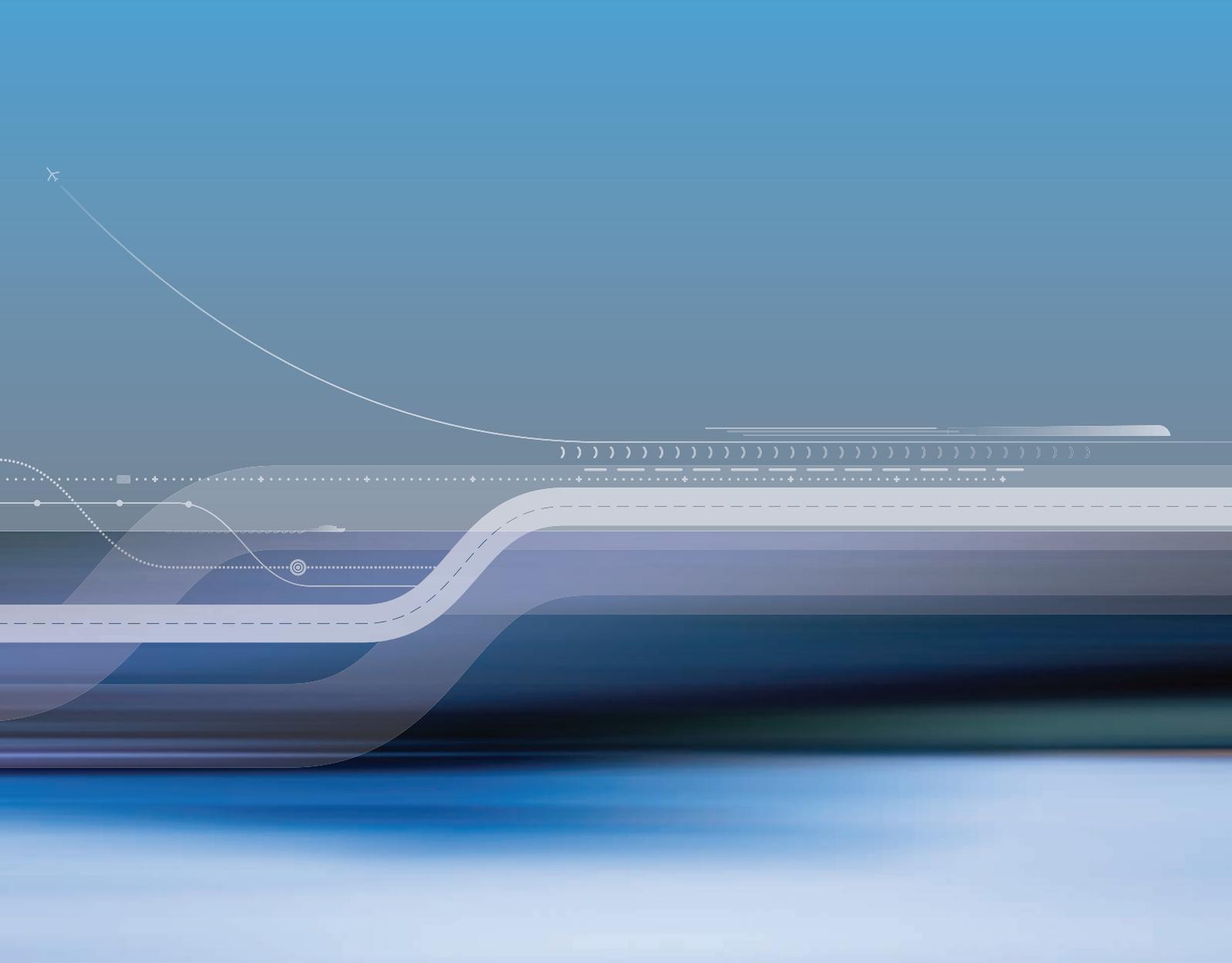
The problems that are pointed out in the inquiry from the Minister of Transport and Communications are essentially related to the circumstances that are discussed in this consultation paper. In as much as the inquiry was addressed to the European Commission, it primarily focuses on matters that fall naturally under the Commission's area of responsibility and interest.

Four possible legislative initiatives are outlined in the inquiry from the Minister of Transport and Communications:

1. The possibility of adding a new provision to Regulation (EC) No 1008/2008 that airlines that have a licence in an EU/EEA country shall prepare an overview of what country's law applies to the various aspects of the company's operations – regardless

of where in the world they take place. Such a requirement can encompass both typical public administration law rules, such as taxation rules and social security rules, and private law rules concerning employment protection, temporary employment and the leasing of personnel.

2. A proposal that the definition of "home base" in aviation be adjusted. The new definition must contribute to preventing organisational forms that result in the considerations on which the joint European choice of law rules are based being set aside. Of particular importance is the principle that the law of the country in which the work or provision of services has the closest physical connection should apply. It must at least be avoided that the rules of law in a country that the work or provision of services only has a weak association with are applied.
3. It has been pointed out that differences between the immigration legislation of the member countries allow airlines to choose to manage their operations from an EU/EEA country that does not stipulate any requirements for a work/residence permit and the associated requirements that the national rules for working conditions are to apply. The problem is complex and politically demanding, however, so the approach is relatively open.
4. The European Commission is encouraged to assess whether there should be limits for the extent to which it is permitted to split up the operations of airlines who have a licence in an EU/EEA country. Such splitting up leads to problems with the national enforcement of rules and unequal competitive conditions.



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