

Commission Payments In Norwegian Tourism

– *Information brochure*



Norwegian Ministry of Trade,
Industry and Fisheries

What are commission payment agreements?

Commission payments in the tourism industry occur when tourist guides enter into agreements with retail stores, restaurants or food and beverage establishments to send groups of tourists to these establishments, and in return, receive a share of the amount that the tourists spend in these shops/establishments.

The target group for the brochure

This brochure is relevant for tourism businesses within trade and companies serving food and beverage, guides and tourist groups visiting Norway.

Why has this brochure been made?

Norwegian business law is based on the principle of freedom of contract. This means, generally speaking, that you are allowed to enter into a commission payment agreement, provided that you do not violate Norwegian laws and regulations.

It is the responsibility of the company and the guide to ensure that the agreement is legal.

This brochure gives an overview of some of the main laws and regulations that need to be taken into consideration when setting up this kind of agreement.

We would like tourists visiting Norway to have a pleasant stay. We want them to experience a broad spectrum of what Norway has to offer in terms of goods and services. And, not least, that Norway's reputation as a well-organised and reliable society is maintained.



TO THE SHOP OWNER

As a business owner you must be aware that you are operating your business in a competitive market. This means that you cannot make decisions or enter into agreements that will harm or limit the competition between the companies in your sector. All marketing shall be presented in such a way that it is clear that this marketing is directed to your costumers. You should conduct your business in an ethical and transparent way.



TO THE GUIDE

As a guide you have an obligation to inform your tourist group about your commission payment agreements when recommending a specific retail store, restaurant or food and beverage establishment.

You should not exercise pressure that causes the group to feel compelled to buy goods or services from companies with whom you have a commission payment agreement. It is your responsibility to check whether you need to pay taxes on your earnings from your commission payment agreement.



TO THE VISITOR

As a tourist in Norway you are free to choose which retail stores, restaurants and food and beverage establishments you would like to visit, and which goods and services you would like to buy. You should not feel pressured to buy anything you do not want to. If your guide receives commission payments, in the way of a share of what you and other members of your group spend in the shop you are visiting, you should be informed in advance.

Important Norwegian rules that are relevant for commission payment agreements

Anyone who conducts business in Norway is obligated to comply with the relevant rules that apply to the business he/she is operating.

Violation of the provisions of the various laws may result in sanctions and penalties, such as violation charges, fines or imprisonment.

An agreement that violates good business practice may be invalid.

Act relating to conclusions of agreements § 36:

“An agreement may be wholly or partially set aside or amended if it would be unreasonable or conflict with generally accepted business practice to invoke it. The same applies to unilaterally binding dispositions.

When making a decision, account will be taken not only of the contents of the agreement, the position of the parties and the circumstances prevailing at the time of conclusion of the agreement, but also of subsequent events and circumstances in general.

The rules in the first and second paragraphs apply correspondingly if it would be unreasonable to uphold the usage of trade or other custom of contract law.”

A commission payment agreement may be in conflict with the Competition Act if it has a harmful effect on competition.

The Norwegian Competition Act section 10:

“The following shall be prohibited: all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition, and in particular those which:

- a) *directly or indirectly fix purchase or selling prices or any trading conditions;*
- b) *limit or control production, markets, technical development, or investment;*
- c) *share markets or sources of supply;*
- d) *apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*
- e) *make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts."*

The Norwegian Competition Act section 11:

"Any abuse by one or more undertakings of a dominant position is prohibited.

Such abuse may, in particular, consist in:

- f) *directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;*
- g) *limiting production, markets or technical development to the prejudice of consumers;*
- h) *applying dissimilar conditions to equivalent transactions with other trading parties; thereby placing them at a competitive disadvantage;*
- i) *making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts."*

A commission payment agreement must not be in conflict with the prohibition of unfair business practice in the Marketing Act.

The Norwegian Marketing Act § 3 specifies that *“All marketing shall be designed and presented in such a way that it is clear that it is marketing”*. This implies that hidden advertisement is not allowed. If information about a commission payment agreement is not given, this may be a violation of the prohibition against hidden marketing/advertisement.

The Norwegian Marketing Act § 6 specifies that unfair commercial practices is prohibited. The relevant section of the Act explains when a commercial practice may be considered to be unfair in the following way:

“A commercial practice shall be unfair if it conflicts with good business practice towards consumers and is likely materially to distort the economic behaviour of consumers, causing them to make decisions they would not otherwise have made.”

The Norwegian Marketing Act § 6 specifies that a commercial practice always is considered unfair if it is misleading according to § 7 or § 8, or aggressive according to § 9.

The Norwegian Marketing Act § 9 specifies that:

“A commercial practice shall be considered aggressive if it, in its specific context and pursuant to an overall evaluation, by harassment, coercion, including the use of physical force, or undue influence, is likely significantly to impair the freedom of choice or conduct of consumers with regard to a product. ‘Undue influence’ shall mean exploiting a position of power in relation to consumers so as to apply pressure, even without using or threatening to use physical force, in a way which significantly reduces the ability of consumers to make an informed decision.”

This means, for example, that a tourist guide cannot act in a way that makes the tourist feel that she cannot freely choose a food and beverage establishment herself.

The Norwegian Marketing Act 48 specifies that:

"A person who materially infringes section 6, fourth paragraph, see also first paragraph, regulations issued pursuant to section 6, fifth paragraph, section 11, section 12, section 13, section 15, section 16 a, first paragraph a), see also section 12 and section 13, section 20, second paragraph, section 26, section 27, section 28, section 29, or section 30, shall be subject to fines, imprisonment of up to six months, or both, unless a stricter penal provision applies."

A commission payment agreement, may in a worst-case scenario, be considered to be covered by the corruption clause in the penal code.

The Penal Code section 387:

"A penalty of a fine or imprisonment for a term not exceeding three years shall be applied to any person who

- a) for himself/herself or others demands, receives or accepts an offer of an improper advantage in connection with the conduct of a position, an office or performance of an assignment, or*
- b) gives or offers any person an improper advantage in connection with the conduct of a position, an office or performance of an assignment."*

When interpreting what is inappropriate, a number of factors may be relevant, such as the purpose of the act, the nature and value of the act, the apparent degree of openness, the set of rules that exist in the company or the sector and the role that both the payer and the beneficiary played in the act.

If you are in any doubt, we recommend that you seek legal advice.

A commission payment agreement may, in certain cases, imply that the guide must pay commission taxes to Norway.

For more information see www.skatteetaten.no

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