

Danish Air Transport A/S
Lufthavnsvej 7A/4
6580 Vamdrup
Danmark

Case handler: Anne Helene Hunstad Fodnes
Direct dial:
Our date: 29.11.2024
Our reference: 22/06649-98

Your date

Your reference:

Regarding administrative decisions and orders to comply with the Norwegian Working Environment Act – Conclusion of control activity

The Norwegian Civil Aviation Authority (CAA Norway) refers to our administrative decisions of March 11th, July 19th, September 13th and October 29th 2024. We also refer to the following correspondence and dialogue regarding the measures that were necessary to comply with the orders.

Background

In the administrative decision of July 19th, DAT A/S, UAB DAT LT and Nordic Crew Supply Ltd. (NCS) were given an administrative order which required several specific actions to ensure compliance with Norwegian working environment legislation. The deadline for submitting documentation and required confirmation on the implemented measures was initially set to August 31st 2024. The deadline was extended until October 4th 2024, and CAA Norway notified at this stage that we were considering imposing coercive fines to enforce compliance with our orders. We then received some documentation from the companies October 4th.

CAA Norway considered that the documentation and measures that was implemented were insufficient and based on this made an administrative decision to impose coercive fines October 29th 2024. Following this decision the companies submitted further documentation and necessary clarification as requested.

We have now reviewed the updated documentation in detail and have assessed whether necessary measures have been carried out in a sufficient manner to comply with the applicable requirements.

CAA Norway received on November 1st a clarification on which of the companies that holds the responsibilities as employer in accordance with the Working Environment Act. DAT A/S is identified as the responsible party, as employer.

The coercive fines for UAB DAT LT and NCS Ltd. was put on hold based on the confirmation that DAT A/S are considered as the employer. Furthermore, the coercive fine towards DAT A/S was put on hold when we received updated documentation for further assessment.

Assessment of implemented measures and submitted documentation

Ensure compliance with the Norwegian Working Environment Act

The companies were required:

- a. *to ensure crew members that have a nominated Norwegian home base, and who work from and to this home base, a safe working environment in accordance with the provisions listed in WEA, Section 18-6 (1), with the exceptions stated in “forskrift om unntak fra arbeidsmiljøloven med tilhørende forskrifter for sivil luftfart mv. 20. desember 2018”, and to*
- b. *comply with the rules that apply to posted workers in Norway, which are laid down in Working Environment Act (WEA), Section 1-7 and the requirements specified in Regulations relation to posted employees, Section 3 subsection 1 a, which CAA Norway has authority to enforce: WEA Section 3-1, Section 3-2, Section 3-5, Section 4-1 to Section 4-5, Section 5-1, Section 5-2, Section 6-1 to Section 6-3, Section 6-5, Section 14-5, Section 14-6, Section 14-8, Section 14-12 (with the exception of subsection 4 and 5) to Section 14-14, and Section 14-15 subsection 6.*

Regarding employment contracts etc.

Pursuant to the Working Environment Act (WEA) Section 14-5 and 14-6, DAT A/S, UAB DAT LT and Nordic Crew Supply Ltd. were required to:

- a. *Ensure that all crewmembers that are working in Norway have a written employment contracts with the employer company. This includes crew with homebase in Norway as well as crew that are posted to Norway, and the crew that have entered into a service provider agreement with Nordic Crew Supply, cf. crew lists submitted April 11th 2024.*
- b. *Ensure that the employment agreements meet the minimum requirements for written employment agreements set out in WEA Section 14-6. For employment relationships (and employment agreements) that existed before 1 July 2024, the written employment agreement must be supplemented in line with the changes in WEA Section 14-6 first paragraph if the employee requests it. Such a request must be complied with as soon as possible and no later than two months after it has been received.*
- c. *Submit a confirmation regarding establishment of employment contracts for all crew working in Norway, as well as new examples for CC and FD contracts. This must be submitted to CAA Norway within the deadline specified underneath. We also ask that a clarification is provided as to which of the units/companies that will take care of the obligations which is incumbent on the employer.*

CAA Norway has received draft employment contracts as requested, collective agreements for CC and FD, as well as the necessary information and confirmations regarding issued employment contracts for crewmembers.

We have reviewed the measures taken by the company and employment contracts issued for crew working in Norway. Permanent employment contracts have been issued from DAT A/S to the crewmembers that have a nominated homebase in Norway, in accordance with WEA Section 14-9. Employment contracts with fixed term (temporary) have been issued to crewmembers that are posted to Norway.

CAA Norway find that the minimum requirements according to WEA, Section 14-6, are fulfilled in both drafts as well as the issued contracts that we have reviewed. DAT A/S is accordingly considered to comply with the requirements to establish employment contracts in employment relationships.

Regarding requirements for Health-, Safety- and Environment work and documentation

Pursuant to the Working Environment Act (WEA) Section 3-1 and Internal Control Regulation (ICR) Section 5, DAT A/S, UAB DAT LT and Nordic Crew Supply were required to:

f. Ensure that the employers for crewmembers implement appropriate measures to ensure compliance with referred requirements in the Internal Control Regulations (ICR) Section 5, subsection 2, points 1-3. This can be accommodated by preparing an HSE handbook with clear references to applicable law, regulations and guidelines for how the companies HSE activities should be carried out. In cases where flight safety work - and manuals fulfil requirements in the Working Environment Act with underlying regulations, cross-referencing can be accepted.

g. Submit the following documentation within the given deadline:

- Documentation of systematic HSE work in accordance with the requirements referred to in Internal Control Regulations (ICR) Section 5, subsection 2, points 5-8.*
- Documentation on how the safety representatives has participated in this work.*

CAA Norway refer to our assessment in the administrative decision of October 29th 2024. Following our decision, we have received an updated DTMM that describes how DAT A/S plan to implement systematic HSE- management in accordance with the applicable requirements in the Norwegian regulations.

The updates include:

- applicable law and regulations (with link to lovdata.no)
- description on how you will make sure to catch up on changes and updates in applicable law and regulations
- long-term and short-term goals for HSE

- changes in the WEC composition
- description on how the safety-representatives is elected, their duties and responsibilities with reference to rules (exceptions) of special importance for crew-representatives in Norway
- routines for mapping, risk assessment and work with action plans
- how to report and manage HSE problems/deviations
- assistance from the occupational health service
- internal control review

CAA Norway finds that the documentation recently provided, still have some minor deficiencies. For example, WEC is still not equally composed with employee and employer representatives. It appears to be a misunderstanding in terms of voting in this forum. The WEC consists of three employer representatives, including the Chairman and two representatives from the employees. CAA Norway wish to clarify in this context, that the chair of the committee shall alternate between the employer and employee and that the chair has a casting vote (dual vote) in the event of a tie, cf. WEA Section 7-1 (4) and Regulations concerning Organisation, Management and Employee Participation, Section 3-7 (regulations issued under WEA).

Another example where the documentation deviates from the applicable requirements is that substitute members in WEC only are provided for the employee-members, and not for the members representing the management, cf. Regulations concerning Organisation, Management and Employee Participation, Section 3-11.

CAA Norway points out that the requirements and administrative order regarding the HSE-documentation by its nature is a comprehensive and a continuous task. With this in mind we note that the company should have initiated the necessary work and updates at an earlier stage.

Nevertheless, CAA Norway considers that the recent update on DTMM chapter 9 cover the minimum requirements at headline level. The deficiencies we address must be taken care of, but through correspondence with the representatives of the management we have been made aware that this is a work in progress. You have also provided information that you have assistance from Norwegian occupational health service now and going forward.

Through a signed statement and submitted minutes from the latest WEC, the participation of the safety representatives is documented. And as previously mentioned, DAT A/S is identified as the employer, hence responsible for carrying out the obligations that follow from NWEA.

Despite the minor deviations noted above we find DAT A/S HSE-manual to be acceptable at a minimum level. The implemented measures are also considered to be sufficient regarding the administrative orders on HSE-work and internal control.

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However, we point out that the HSE-manual and the company's health-, safety and environment management will be part of the scope in our future oversight activity.

Conclusion

Based on the measures that have been implemented, CAA Norway consider that our orders have been fulfilled in a sufficient manner. There are no remaining orders, and the control activity is concluded.

Further proceedings

CAA Norway refers to the appeal dated November 19th 2024 on our administrative decision imposing coercive fines towards DAT A/S, UAB DAT LT and NCS.

The appeal will be assessed in separate proceedings. During these proceedings we will comment on the statements the companies have made relating the imposition of coercive fines.

For the sake of clarity, please note that no coercive fines were incurred from the date we received new documentation for further assessment, and they were put on hold.

Upcoming oversight activity will be notified in a separate letter, which will also provide necessary information about practical details, the scope and other matters that may be relevant to the audit.

A copy of this letter is sent by e-mail to DAT A/S Att: Robert Rungholm.

Yours sincerely

Nina Beate Vindvik
Legal Director
Legal and Regulatory Affairs

Anne Helene Hunstad Fodnes
Senior Legal Adviser

This document has been electronically validated, thus eliminating the need for a physical signature.