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Direct dial:  
Our date: 29.10.2024  
Our reference: 22/06649-66

Your date

Your reference:

## **DAT A/S - UAB DAT LT - Nordic Crew Supply (NCS) - Administrative Decision imposing coercive fines**

The Norwegian Civil Aviation Authority (CAA Norway) refers to our administrative decisions of March 11<sup>th</sup>, July 19<sup>th</sup>, and September 13<sup>th</sup> 2024.

In the administrative decision of July 19<sup>th</sup> DAT A/S, UAB DAT LT and Nordic Crew Supply Ltd. (NCS) were ordered to implement several specific measures to ensure compliance with Norwegian working environment legislation. The deadline for submitting further documentation and required confirmation on the implemented measures was initially set to August 31<sup>st</sup> 2024.

The deadline for submitting documentation was extended until October 4<sup>th</sup> 2024. DAT A/S, UAB DAT LT and NCS were also notified in accordance with the Public Administration Act, Section 16, that CAA Norway considered the imposition of coercive fines, if we did not receive the requested documentation and confirmations by this date, or if the documentation was not satisfactory to comply with the applicable requirements.

### **1. Background**

The investigations conducted by CAA Norway regarding DAT operations in Norway led up to an administrative decision and orders to comply with Norwegian law. The administrative orders were initially directed towards DAT A/S and UAB DAT LT March 11<sup>th</sup> 2024, and was also directed towards NCS by the administrative decision of July 19<sup>th</sup> 2024.

We would like to point out that the companies have had an extensive time to comply with Norwegian working environment legislation in accordance with our administrative decisions of March 11<sup>th</sup> 2024 and to meet the specific orders given in our administrative decision of July 19<sup>th</sup> 2024.

The companies were given a short extension of the deadline to complete the work that presumably was in the final phase. The CAA received further documentation on October 4<sup>th</sup>. We have now reviewed the submitted documentation and made an assessment towards mandated requirements in the working environment legislation.

## 2. Legal basis

Regarding the legal basis for the administrative decisions and our orders, reference is made to our decisions of March 11<sup>th</sup> and July 19<sup>th</sup>.

We would also like to point out that CAA Norway has the opportunity to set further conditions in connection with orders that are presented. The need to set specific conditions is considered as part of the proceedings in each case.

To ensure compliance with Norwegian working environment legislation, CAA Norway can use various means in accordance with the Working Environment Act (WEA). Coercive fines under WEA, Section 18-7 and administrative fines in accordance with WEA, Section 18-10, are parts of these measures.

In accordance with WEA Section 18-7, a continuous coercive fine may be imposed for each day, week or month that passes after the expiry of the time limit set for implementation of the order. A coercive fine may also be imposed as a single payment fine. The Labour Inspection Authority/CAA Norway may waive accrued coercive fines.

## 3. Assessment of implemented measures and submitted documentation

The following administrative orders was given by CAA Norway July 19<sup>th</sup> 2024:

### Ensure compliance with the Norwegian Working Environment Act

- a. *The administrative order issued towards DAT A/S and UAB DAT LT March 11<sup>th</sup> is still valid. The decision was not appealed. The Norwegian Civil Aviation Authority hereby issue the equivalent administrative order for Nordic Crew Supply Ltd. to comply with the Working Environment Act (WEA), 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 stipulated for crew, cf. our clarification above.*
- b. *The administrative order issued towards DAT A/S and UAB DAT LT to comply with the rules for posted workers in Norway is still valid. The decision was not appealed. The Norwegian Civil Aviation Authority hereby issue the equivalent administrative order for Nordic Crew Supply Ltd. The companies must 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*

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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 written contracts of employment and minimum requirements regarding the content

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

- c. 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 11<sup>th</sup> 2024.
- d. 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.
- e. 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.

The Norwegian Civil Aviation Authority will carry out further checks of employment contracts (randomly selected) at a later stage.

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 are 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.

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CAA Norway has made a new assessment regarding the compliance with the administrative orders and applicable requirements, based on the documents and information provided October 4<sup>th</sup> 2024.

• ***Regarding our administrative decision - point a and b.***

It has been communicated by the companies in previous correspondence and in parts of the submitted documentation that you intend to comply with the Norwegian legislation.

CAA Norway has carried out investigations into whether the companies are in accordance with the applicable regulations. This examination is at the time being based on the specific elements covered by our administrative decision and your feedback and submitted documentation. Our assessment follows.

• ***Regarding written contracts of employment and minimum requirements regarding the content – point c, d, and e.***

Pursuant to the Working Environment Act (WEA) Section 14-5 and 14-6, DAT A/S, UAB DAT LT and Nordic Crew Supply Ltd. was required to ensure that all crewmembers working in Norway have a *written employment contract with the employer company*. This included 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 11<sup>th</sup> 2024.

CAA Norway received October 4<sup>th</sup> 2024 an amendment to the crew contracts detailing the applicability of the Working Environment Act (WEA) – *“Provision of services agreement amendment agreement”*. The amendment presents a new schedule titled Schedule IV, that is added to the original Agreement on Provision of Services between NCS and the Service Provider.

The schedule describes the application of the Norwegian legislation where the Service Providers are home based in Norway:

*“In cases where the Service Providers home base is in Norway, the terms set out in the Norwegian Working Environment Act shall be applicable, except exemptions applicable to crew. In a case of discrepancies between this Agreement and the Norwegian Working Environment Act, the Norwegian Working Environment Act shall prevail, to the extent it does not contradict EASA requirements.*

*In case where the Service Provider is posted in Norway, during the time of the posting only, the following terms of the Norwegian Working Environment Act shall be applicable: (i) Section 1-7; (ii) the requirements specified in Regulations relation to posted employees Section 3 subsection 1 a; the following from the Norwegian Working Environment Act (iii) Section 3-1, (iv) Section 3-2; (v) Section 3-5, (vi) Section 4-1 to Section 4-5, (vii) Section 5-1, (viii) Section 5-2, (ix) Section 6-1 to Section 6-3, (x) Section 6-5, (xi) Section 14-5, (xii) Section 14-6, (xiii) Section 14-8, (xiv) Section 14-12 (with the exception of subsection 4 and 5) to Section 14-14, and (xv) Section 14-15 subsection 6. In a case of discrepancies between this Agreement and the Norwegian Working Environment Act,*

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*the Norwegian Working Environment Act shall prevail, to the extent it does not contradict EASA requirements.”*

The companies were ordered to submit confirmation regarding establishment of employment contracts for all crew working in Norway, as well as new examples for CC and FD contracts. Furthermore, CAA Norway explicitly requested a clarification on which of the units/companies manages the obligations which is incumbent on the employer.

CAA Norway has not received documentation showing which company is defined as the employer and which is obliged to take care of the employer's obligations resulting from the WEA, towards the crew members who work in Norway.

Furthermore, we have not received the necessary documentation showing that *employment contracts* have been entered or established for all crew members working in Norway. Based on the submitted Provision of Services Agreement Amendment Agreement, an integral part of the standard Provision of Services Agreement shows that these still are regarded as Service Provider contracts and not employment contracts.

DAT A/S, UAB DAT LT and Nordic Crew Supply Ltd. was further required to ensure that the employment contracts meet the minimum requirements for written employment contracts/agreements set out in WEA, Section 14-6. For employment relationships (and employment agreements) that existed before July 1<sup>st</sup> 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.

The lack of information and confirmation, as well as the establishment of the “*Provision of Services Agreement Amendment Agreement*” and the information within, show that the Companies has not carried out the required measures ordered in the administrative decision. The requirement for establishment of an employment contract in accordance with WEA, Section 14-5 and requirements for the minimum content of the employment agreement in accordance with WEA, Section 14-6 have not been met.

Nor have we received updated contracts for personnel who are employed by DAT A/S who work in Norway, which show that the minimum requirements in WEA Section 14-6 have been met.

• ***Regarding HSE requirements in accordance with Norwegian legislation – point f and g***

In your reply to the administrative order given July 19<sup>th</sup> and October 4<sup>th</sup> 2024 you present an updated Ch.9 of your DAT Team Member Manual (DTTM). You explain that:

*“This chapter now contains details of the Norwegian WEA and has been made available to all staff.*

*...*

*As we already have the Danish Working Environment Group requirements in place, and because many aspects of it are common to Norwegian WEA, we have not duplicated the text.”*

The DTMM Ch.9.13 states that:

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*“In addition to the protections offered under the Danish Working Environment Group (DK-WEG), all crews, whether based or stationed, at any Norwegian base, are further covered by the Norwegian Working Environment Act (NO-WEA). Many of the protections offered are common to both schemes but there are some elements that differ. Primarily, the DK-WEG provides protection, irrespective of the base, so long as the aircraft is carrying a Danish registration. By contrast, the NO-WEA is only applicable within the territory of Norway.”*

Furthermore, it appears from the transmitted chapter in the DTMM that:

- There has been established company HSE-goals (9.13.1)
- The Working Environment Committee (WEC) and the Health and Safety Organisation are the main aspect of the company’s HSE-organisation structure (9.13.2)
- DAT has implemented IQSMS to provide a digital platform for the systematic management of the Company’s safety, security and quality/compliance requirements and it has been configured to support compliance with NOWEA (9.13.3)

CAA Norway pointed out in our letter of 19<sup>th</sup> July 2024 that DAT A/S - UAB DAT LT - Nordic Crew Supply (NCS) should ensure compliance by reviewing the companies HSE documentation in collaboration with specialist expertise (company health service and/or legal assistance). Furthermore, that employee (safety representatives) participation is legally required.

The documentation you have provided does not show evidence that such expertise has been acquired. There is also no documentation on how the safety representatives have participated in this work.

In DTMM chapter 9.13.2 you present the individuals representing both cabin and pilots in WEC. There are 3 representatives from cabin crew, one of which is Chief of Cabin, and 2 from the pilot crew. It appears that this composition is due to the individuals experience on different aircraft types.

It does not appear from the submitted documentation who represents the employer in WEC. Nor does it describe how the Norwegian rules on composition and case management in this forum is taken care of.

CAA Norway understand that DTMM chapter 9.13.3 is meant to explain how the companies map and assesses HSE-risks relevant to the workplace. This concerns mainly how to report, register and process reports about unwanted events, incidents and accidents.

The Norwegian Working Environment Act (WEA) sets requirements for the working environment in organizational, psychosocial, ergonomic, physical, chemical, and biological areas. The Act specifies which topics must be assessed and taken care of within each of these areas. The working environment in a company also includes the performance of the company's working environment efforts. That is, the way the company operates to ensure proper working conditions. WEA with associated regulations sets requirements for how this work is to be organized and being able to demonstrate how you work to prevent unwanted incidents before they occur is essential to comply with legal requirements.

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Through the submitted documentation, it is not evident how DAT A/S, UAB DAT LT and NCS in fact meet the applicable requirements for monitoring the working environment, cf. the mentioned working environment factors.

CAA Norway still does not see how the companies ensure that the laws and regulations in the health-, safety- and environmental legislation which apply are accessible, nor how you have an overview of the requirements that are of particular importance. We believe however, based on the correspondence throughout this inquiry, that you underestimate how Danish and Norwegian legislation differ from each other. In any case, it is your responsibility to provide visible compliance with both countries' regulatory requirements.

Furthermore, it is unclear how the HSE-requirements are met for crew working in Norway (including crew who currently still have a Service Provider Contract). CAA Norway has not received information or documentation about which of the companies will take care of the employer's obligations.

CAA Norway also question which changes has been made in DAT Corporate Manual (CM) due to the adaptations done recently in the DTMM. The DAT CM Ch.10 concerns "Health and Safety at Work" including the HSE-organization and with references to the Companies regulatory commitment to both CAA-DK and Danish Working Environment Authority.

By the submitted documentation it is still not possible to spot clear references to applicable law, regulations and guidelines which should form the basis for the Companies continual HSE-activities.

CAA Norway finds it unclear which personnel the DTMM or other manuals are meant to cover. It is not specified whether the manuals and thus the HSE work as such, is intended to include crew from DAT A/S, UAB DAT LT and NCS. As mentioned earlier, it is also not clearly described who possesses- or how the *employer obligations under Norwegian law are complied with by the companies*.

Based on the assessment above, CAA Norway finds that the companies have not carried out the necessary measures to comply with our orders on the basis of Norwegian requirements.

Because CAA Norway has not received further clarification on which of the companies that in fact will fulfill the obligations imposed on the employers, the further administrative decisions will be directed at all companies.

Again, we underline the importance of required employee participation, and we highly recommend acquiring assistance from experts on Norwegian working environment legislation and HSE-work, to ensure adequate measures to comply with the applicable requirements.

#### **4. Administrative Decision imposing coercive fines**

CAA Norway hereby issue separate coercive fines against all three companies, respectively DAT A/S, UAB DAT LT and Nordic Crew Supply, in accordance with the Working Environment Act, Section 18-7.

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The continuous coercive fines will amount to NOK 25 000,- each day, until the companies comply with the orders given in the administrative decision of July 19<sup>th</sup> 2024, and have been sufficiently documented. The decision on coercive fines takes effect immediately.

When assessing the use of coercive fines and the size of the fines, we look to the preparatory work prior to the adoption the Section 18-7 as the legal basis for imposing such fines. In relation to the size of the coercive fine, it is noted that the fine must be experienced as real coercion. Based on the extent of the findings, and the measures necessary to comply with the applicable rules, we find that a coercive fine in the order of magnitude specified above are reasonable.

In order to stop the coercive fines, the companies must conduct the necessary measures and submit the requested documentation and information to demonstrate adequate compliance with the Norwegian legislation as required in the administrative decision of July 19<sup>th</sup> 2024.

## 5. Communication

This administrative decision is sent by mail to DAT A/S, which has been the primary point of contact. Electronic copies are sent by e-mail to the contact persons for DAT A/S, UAB DAT LT and NCS Ltd., Patrick Fennell, Robert Rungholm and Kristian Anders Hvass.

We point out that this letter must be forwarded/distributed to the safety representatives, cf. Working Environment Act Section 18-6, subsection 8.

## 6. Right to appeal

You have the right to appeal the administrative decision on coercive fines to the Ministry. An appeal must be sent to CAA Norway within three weeks from receipt of this decision. You can read more here: <https://luftfartstilsynet.no/en/about-us/case-processing/>. You may also contact CAA Norway for further information.

Yours sincerely

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