

EFTA SURVEILLANCE AUTHORITY DECISION**No 139/16/COL****of 28 June 2016****authorising Norway to derogate from Regulation (EC) No 216/2008 of the European Parliament and of the Council with respect to flight time limitation provisions for the air operator Widerøes Flyselskap AS [2016/2014]**

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Act referred to at point 66n of Annex XIII to the EEA Agreement,

Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC ⁽¹⁾, as amended ('the Act'),

as adapted to the EEA Agreement by Protocol 1 thereto, and in particular Article 14(7) of the Act,

Having regard to the opinion of the EFTA Transport Committee delivered on 10 June 2016,

Having regard to Decision 103/13/COL of the EFTA Surveillance Authority ('the Authority') of 13 March 2013 empowering the College Member with special responsibility for transport to take certain decisions and measures (Doc No 578349),

Whereas:

Norway notified the EFTA Surveillance Authority and the European Aviation Safety Agency ('the Agency') of its intention to grant the air operator 'Widerøes Flyselskap AS' a derogation from the provisions of ORO.FTL.210(a) of Annex III to Commission Regulation (EU) No 965/2012 ⁽²⁾ as regards the maximum total duty hours to which a crew member may be assigned in any 7, 14 and 28 consecutive days by approving an individual flight specification scheme for the air operator.

The air operator's proposed scheme is described as follows:

The total duty periods to which a crew member may be assigned shall not exceed:

- (1) A limit of 70 duty hours which may be distributed in any seven consecutive days within any 14 consecutive day period (instead of 60 duty hours);
- (2) A limit of 90 duty hours in any 14 consecutive days (instead of 110 duty hours);
- (3) A maximum of 180 duty hours in any 28 consecutive days (instead of 190 duty hours), spread as evenly as practicable throughout that period.

The operator's proposed rostering system (7 days on/7 days off) for pilots and cabin crew stem from its operations on air routes to and from regional airports in Norway and the fact that its crew members commute from their domicile to crew bases.

The Authority concludes, based on the European Aviation Safety Agency's assessment, that the variation could provide a level of safety equivalent to the one attained by application of ORO.FTL.210(a) of Annex III to Regulation (EU) No 965/2012, provided that the conditions described in the Annex are fulfilled in addition to the mitigation measures proposed by the operator and listed in Norway's letter of 9 December 2015.

The measures provided for in this Decision are in accordance with the opinion of the EFTA Transport Committee,

⁽¹⁾ OJ L 79, 19.3.2008, p. 1.

⁽²⁾ The act mentioned at point 66nf of Annex XIII to the EEA Agreement (Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1), as amended) as adapted to the EEA Agreement by Protocol 1 thereto.

HAS ADOPTED THIS DECISION:

Article 1

Norway may grant an approval derogating from ORO.FTL.210(a) of Annex III to Regulation (EU) No 965/2012, authorising the operator 'Widerøes Flyselskap AS' to apply the following individual flight time specification scheme:

The total duty periods to which a crew member may be assigned shall not exceed:

- (i) A limit of 70 duty hours which may be distributed in any 7 consecutive days within any 14 consecutive day period;
- (ii) A limit of 90 duty hours in any 14 consecutive days; and
- (iii) A maximum of 180 duty hours in any 28 consecutive days, spread out as evenly as practicable throughout that period;

provided that the conditions laid down in the Annex and the mitigation measures described by Norway in its notification of 9 December 2015 are fulfilled.

Article 2

All EFTA States shall be entitled to apply the same measures referred to in Article 1, specified in the Annex to this Decision, and subject to the notification obligation set out Article 14(6) of the Act.

Article 3

The Decision is addressed to Norway. It is authentic in the English language.

Article 4

This Decision shall be notified to Norway, Iceland and Liechtenstein.

Done at Brussels, 28 June 2016.

For the EFTA Surveillance Authority

Helga JÓNSDÓTTIR
College Member

Carsten ZATSCHLER
Director

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ANNEX

CONDITIONS ATTACHED TO THE APPLICATION OF THE DEROGATION

- (i) The operator shall operate under Fatigue Risk Management ('FRM') in accordance with ORO.FTL.120 of Annex III to Regulation (EU) No 965/2012, and monitor the effectiveness of the proposed mitigating measures continually. The FRM shall be approved by the Norwegian Civil Aviation Authority, no later than by 1 January 2017.
 - (ii) The operator shall achieve the milestones of its implementation plan of the FRM, as presented to the Norwegian Civil Aviation Authority in its derogation request.
 - (iii) The operator shall provide the Norwegian Civil Aviation Authority with data based verification of the customised elements of its flight time specification scheme (e.g. reporting time and post flight duty), in particular when these have an impact on the time available for rest.
 - (iv) The operator shall include flight data monitoring ('FDM') event trend monitoring as a trigger for further investigation in its reactive FRM processes.
 - (v) The operator shall demonstrate that its fatigue reporting system is evolving towards a more proactive stage within the first 24 months after the derogation approval. Milestones on the evaluation of the operator's fatigue reporting system are included in the comprehensive oversight programme for the operator.
 - (vi) The Norwegian Civil Aviation Authority shall closely and continuously monitor how the operator's FRM safety assurance process recognises and mitigates potential fatigue risks arising during the initial 24 months of the derogation. Thereafter the effectiveness of the operator's FRM shall be monitored by the Norwegian Civil Aviation Authority as part of their continuous oversight activities.
 - (vii) The Norwegian Civil Aviation Authority shall ensure that an independent proportionate scientific evaluation of the effects of the derogation granted is performed within the first 24 months after the approval of the derogation. It shall analyse data on cabin and flight crew fatigue, including at least two sources of objective data (e.g. psychomotor vigilance test (PVT), actigraphy) to verify the effectiveness of the proposed mitigating measures, to include at least:
 - The effects of cumulative fatigue of high workload originating from a high number of sectors, and
 - The impact of the use of overtime on cumulative fatigue with a view of providing evidence to define an effective prescriptive limit for the use of overtime.This evaluation shall assess the effects of not less than four consecutive blocks of duty and rest cycles during peak operational periods, operating under the derogation and shall take into account the findings of the operator's FRM, as well as all scientific data and regulatory framework available at that time.
 - (viii) A report of the effects of the derogation granted, accompanied by the evaluation referred to in paragraph (vii), shall be presented to the Authority and the Agency no later than 2 years after the application of the derogation.
 - (ix) The EFTA Surveillance Authority assisted by the European Aviation Safety Agency shall review the derogation granted in light of the above mentioned report and evaluation and reserves the right to amend, suspend or revoke the derogation if it considers it appropriate to do so in light of the available evidence at that stage.
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