

Government initiative to propose Norwegian wages and working conditions for all seafarers on all international ships in Norwegian waters

Introduction

Cruise Lines International Association (CLIA) is highly concerned about the impact of the Governmental proposal from 30. May 2022 regarding the implementation of Norwegian wages and working conditions for all seafarers on all ships in Norwegian territorial waters would have on the shipping industry activities in Norway. If the proposal is adopted as such, the consequences for the international cruising industry will result in a dramatic reduction in port calls in Norway with subsequently reduced value creation for the entire value chain based on international tourism along the Norwegian coastline.

Our main points of concern are as follows:

- The proposed measure could dramatically increase costs for cruise lines, resulting in a substantial reduction in port calls. Our members estimate a removal of 60%-80% of port calls in Norway.
- The proposal directly violates the flag of state principle, the right to free movement and services stipulated by the EEA agreement, and the ILO Maritime Conventions regulations on seafarers' wages. Norway is an active participant in the relevant forums to address issues regarding both wages and working conditions. We suggest to use those forums instead of through national requirements.
- CLIA questions whether the proposal will serve its purpose, as cruise ships are international voyages and carry international flags. How the enforcement of the regulation will be executed is hard to see.
- The risk of proposing to overrule international regulations can be high, as this might open the door to differing regulations regarding international voyages and seafarers in different countries.

Background

The Cruise Lines International Association (CLIA) is the world's largest cruise industry trade association, providing a unified voice and leading authority of the global cruise community. CLIA represents 95% of the world's ocean-going cruise capacity, as well as 54 000 travel agents, 15 000 of the largest travel agencies in the world, and industry stakeholders, including ports, destinations, ship developers, suppliers, and business services. CLIA supports policies and practices that foster a safe, secure, healthy, and sustainable cruise ship environment for our passengers and is dedicated to promoting the cruise travel experience.

Norway is the fourth most popular cruise destination in Europe. In 2019, more than 50 cruise ships made almost 2 800 calls in more than 40 ports. Approximately one-third of international tourists in Norway are cruise guests, with 800 000 people visiting an average of 4-5 ports on each cruise. These cruises bring approximately 3 billion NOK to the Norwegian economy and support 17 000 jobs. As such cruising is an integral part of the tourism economy in Norway and helps local coastal communities maintain and develop their economies.

Lack of proper impact assessment

CLIA notes that the proposal does not fully take into consideration the Holmefjord Committee report, published in April 2021. The report highlighted that *"the committee believes that ships in international cruise operations with activity at a Norwegian port should not be covered by such a requirement. A large land-based tourism industry is built around international cruise traffic, and this could have significant negative consequences if international cruise lines change their destinations."*

In addition, CLIA also regrets the lack of proper economic impact analysis in the proposal. The cruise industry in Norway counts more than 2000 local companies and public institutions that provide goods and services for approximately NOK 3 billion NOK¹ and from more than 50 ports. This includes shipyards, provisions from maritime suppliers and bunker industry, tourist attractions and services, cultural events and not least the government fees. It is in the districts of Norway, in particular, in the Northern regions, where the value creation is of greatest importance, and they will suffer the most from the proposed regulation. With reference to the “Oslo Economics Impact Assessment Aug 2022”, the current proposal will have a significant impact on foreign flag vessels which will discourage companies from including Norwegian ports in their itineraries², which will in turn reduce the economic opportunities for many Norwegian destinations and businesses vessels².

The proposed new legislation could indeed mean that calls are reduced dramatically to one or two per cruise if Norway is no longer attractive as a cruise destination in its own right. CLIA members have clearly expressed that there will be a loss of the majority of their cruises to Norway. The impact on the northern coastal communities will be particularly important, eliminating any prospect to position the northern ports as a homeport for cruise. As an illustration of the potential economic impact, one could refer to the demonstrated loss suffered by the coastal regions in 2020 due to the COVID crisis. The regions of Northern Norway estimated a loss of NOK 580 million, while 14 ports in the western part estimated a loss of NOK 1.4 billion, with Bergen alone having lost NOK 600 million.

The proposal is in breach of International Law

A decision by Norway to expand the requirement for Norwegian working conditions and wages to all seafarers on ships visiting Norway would be in breach of international and European law in general.

International maritime law, as transposed by all Member States of the International Maritime Organization (IMO) and International Labour Organization (ILO), is based on the flag state principle. All ships engaged in international voyages are subjected to these principles which also govern the wages and working conditions applying to ships sailing in Norwegian waters and on the Norwegian continental shelf. Furthermore, international voyages are not subject to the EU/EEA provisions on maritime cabotage (EU Regulation no. 3577/1992).

CLIA also highlights that the proposal may be inconsistent with the European Economic Area (EEA) law as it poses restrictions to the freedom for economic operators to provide services between Member States. Although the draft law apparently intends to “promote a fair and decent working life in Norwegian waters”, its actual aim seems to be to protect Norwegian domestic business. There is therefore a significant risk that the proposal does not satisfy the necessary criteria, as the measures which are intended to be implemented may not be justified by overriding reasons of public interest because they may not be appropriate, necessary nor consistent. These principles are well transposed and applicable in Norway. Consequently, CLIA deems that the proposed regulation should be consistent with this existing governance regime.

In addition, this proposal is in contradiction with the existing international framework regulating seafarers’ wages that Norway is supporting and participating in. The process establishing the global minimum wage is governed by the ILO Maritime Labour Convention, adopted in 2006. This Convention establishes the Joint Maritime Commission, a bipartite standing body of shipowners and seafarers. Under this Commission, the

¹ *Cruiseturisme – hvordan skape bærekraftig vekst og lønnsomhet*, Erik Jacobsen, partner MENON, 2012

² *Impact Assessment: Norwegian Salary and Working Condition Requirements for Cruise Ships*, Oslo Economics, August 2022

Sub-Committee on Wages of Seafarers is responsible for updating the minimum basic wage for able seamen in accordance with the Seafarers' Wages, Hours of Work and Manning of Ships Recommendation, 1996 (No. 187). This process allows for agreements to be reached almost every year between shipowners and seafarers. Norway is an active participant in these discussions and should use this forum to bring forward any changes.

The EU Directive 2009/13/EC, amended in 2018 and transposed in 2020, is a result of an agreement between the social partners, shipowners, and seafarers, on the application of the ILO MLC 2006 in the EU and has EEA relevance. The Directive sets rules on seafarers' wages, while leaving the definition of a minimum wage to each flag state, in line with UNCLOS.

The distinction of flag States and port States is central to the MLC and enforced on all the States party, including Norway. The flag State has the obligation to enforce the MLC standards via their national legislation and the issuance of MLC certificates, whereas the port States responsibility is limited to verifying the MLC compliance by recognising MLC certificates issued by flag States. Norway would be in breach with this fundamental principle should they mandate the application of stricter local conditions on foreign flagged vessels.

Introducing such legal uncertainty for international operators flagged in foreign countries would have a dramatic impact on cruise tourism in Norway, leading to cancellations of calls at Norwegian ports. Such legislation could also ultimately lead to a domino effect whereby Norwegian merchant ships and offshore fleet could be met with similar countermeasures elsewhere in the world, constituting an entirely new regime for operations on the high seas. As such, Norwegian seafarers on Norwegian-flagged vessels could see their Norwegian salaries substituted by Greek, Malaysian, Indian, Brazilian etc. salaries when sailing in those waters.

As well as breaching international agreements, such measures would be completely contradictory to the common interpretation of the application of maritime regulations. It is our view that Norway, as a world leading maritime nation, should rather come forward with initiatives around wages and working conditions for seafarers in the international fleet in the ILO, and not in the form of a specific national requirement.

Applicability to international cruise operation

Based on International Convention for the Safety of Life at Sea (SOLAS) I/2, the cruise activities of CLIA's members fall under the definition of international voyages (meaning a voyage from a country to which the present Convention applies to a port outside such country, or conversely), including ports in several countries in each itinerary. The same ship with its crew will also be deployed in different regions of the world throughout the year. In that regard international cruises do not compete with coastal passenger ships. As highlighted in the definition provided by the IMO Facilitation Convention, cruise ships are defined as international operations.³

CLIA is also questioning the actual possibility to enforce the measures proposed on foreign companies and vessels with a foreign Flag. This goes also for the paragraph concerning the Representatives from trade

³ "Cruise ship. A ship on an international voyage carrying passengers participating in a group program and accommodated aboard, for the purpose of making scheduled temporary tourist visits at one or more different ports, and which during the voyage does not normally:

(a) embark or disembark any other passengers;
(b) load or discharge any cargo.

unions, that have entered into a collective agreement, will have the right to board a ship in port, examine whether the conditions satisfy the requirements of the law, and report to the supervisory authority. CLIA would welcome clarifications on why the Government is proposing to disregard existing collective agreements agreed between Norwegian and foreign trade unions which are regulating wages when the vessels sail in Norwegian waters.

It is highly questionable whether the specific proposal will actually achieve its purpose to increase the number of Norwegian seafarers. Currently, Norwegian seafarers do not compete with foreign seafarers on international cruise ships, as again, the scope of activities of international cruise is worldwide and not limited to Norway or even Northern Europe.

It should be noted that while the cruise industry represents less than 1% of the maritime sector, we employ one third of all seafarers globally. The cruise industry strives to provide a high-quality work environment offering ongoing training and career advancement opportunities. CLIA cruise lines employ a truly global workforce and are proud to employ seafarers with high job satisfaction; employee retention rates across all the categories of employees onboard and on land, are upwards of 80%.

The cruise industry is already today taking concrete actions to encourage more recruitment of Norwegian seafarers through their participation in the Norwegian cadet program and by having apprentices on board to increase the maritime competence for incoming Norwegian seafarers. CLIA believes that such initiative has more significant and positive impact on the recruitment of Norwegian seafarers.

CLIA recommendations

International shipping should be regulated by international regulations and not by specific local regulations that are non-enforceable to international operators. International shipping stands for 85-90% of transportation between continents and a patchwork of country specific regulations would complicate, slow down and make a service we all depend on far more expensive. This contradicts directly the principles promoted by the International Maritime Organization, to which Norway contributes actively.

Based on the above observations, CLIA should like to put forward the following recommendations:

- To exclude international cruise voyages from the scope of the new requirement in line with international and European law.
- Norway to address any initiatives for revised wage and working conditions for seafarers via the ILO MPC process and the Sub-Committee on Wages of Seafarers

CLIA and our members are committed to provide any additional information and to cooperate with Norwegian authorities on this important issue.

Sincerely,



Marie-Caroline Laurent
Director General CLIA Europe

About the Cruise Lines International Association (CLIA) – One Industry, One Voice

The Cruise Lines International Association (CLIA) is the world's largest cruise industry trade association, providing a unified voice and leading authority of the global cruise community. The association has 15 offices globally with representation in North and South America, Europe, Asia, and Australasia. CLIA supports policies and practices that foster a safe, secure, healthy, and sustainable cruise ship environment for our passengers and is dedicated to promoting the cruise travel experience. The CLIA Community is comprised of the world's most prestigious ocean, river, and specialty cruise lines; a highly trained and certified travel agent community; and cruise line suppliers and partners, including ports and destinations, ship development, suppliers, and business services. The organization's mission is to be the unified global organization that helps its members succeed by advocating, educating, and promoting for the common interests of the cruise community.