

## Statement from the Norwegian Better Regulation Council

**Un-official translation.** Statement issued in May 2019.

**Concerning:** Consultation – various changes to the Norwegian Aviation Act – drones – implementation of a new basic regulation on aviation safety

**Supervised by:** The Norwegian Ministry of Transport and Communications

**Conclusion:** The RIA is not adequate

### The Norwegian Better Regulation Council's overall assessment of the proposal

The Norwegian Better Regulation Council (NBRC) is of the opinion that the proposal has not been adequately studied, see the Norwegian Instructions for Official Studies and Reports, 2–1 and 2–2.

The increasing use of drones provides new and exciting opportunities for the business sector, and it is important that clear rules are provided for their use to enable the technology to be further developed. NBRC is of the opinion that there is an important potential for the use of drones in the business sector. The regulation should therefore be designed to stimulate business development as well as R&D, and ensure that society does not lose out on the hitherto undiscovered benefits of drone use. Making sure drones are used safely is naturally also an important issue, in NBRC Council's opinion. NBRC wonders whether the inclusion of other government agencies/stakeholders in the regulatory work would have led to a comprehensive set of regulations for drone use.

NBRC would have liked to see a full description of the applicable drone legislation, the type of commercial and useful activities that drones are used for today, and how current drone use will be impacted by the rules in the new Basic Regulation, etc. These deficiencies make the financial impacts on, as well as beneficial effects for, the business sector difficult to assess.

NBRC cannot see from the consultation note that the Civil Aviation Authority of Norway has studied alternative solutions where purely national rules are proposed, and where the regulation provides space for national adaptation of EU-rules. This is a weakness in the assessment. NBRC would also have liked to see an assessment of how corresponding problems are solved and how corresponding rules are formed in other countries. This is particularly important for the regulation of technology that may be cross-border in nature.

NBRC assumes that users need a great deal of information in connection with the regulation of relatively new, publicly accessible technologies. In the NBRC's opinion, the Civil Aviation Authority and the Ministry of Transport and Communications should, in connection with further work on the regulation of drones, collaborate with businesses that have adopted the technology. Furthermore, it's important to facilitate clear and easily understandable rules for those concerned.

Following its consideration of this matter, the NBRC has received further information from the Norwegian Ministry of Transport and Communications that could have been relevant for the consultation. However, the NBRC's assessment is based on the consultation note as it is available at the main government website.

You can read more about the NBRC's assessments on the following pages. If you have any questions, please do not hesitate to get in touch.

Yours faithfully,  
Joar Grimsbu  
Deputy Chair of the Norwegian Better Regulation Council

*This document has been created electronically and therefore bears no handwritten signatures.*

## **1. Concerning the proposal that has been sent out for consultation**

The Norwegian Ministry of Transport and Communications has submitted proposals for various changes to the Norwegian Aviation Act for consultation. The consultation note, and the proposals for changes, have been prepared by the Civil Aviation Authority of Norway.

The consultation note includes the legal basis provided by the European Parliament and Council Directive (EU) 2018/1139 of 4 July 2018 on common rules in the field of civil aviation and in particular, the new rules for unmanned aerial vehicles (drones). The consultation note also includes changes to the rules on leases, on penalty charges for certain breaches of the law, on the court-ordered loss of piloting rights, and on the follow-up of Article 83 bis of the Chicago Convention.

## **2. The Norwegian Better Regulation Council's prioritisation**

The Norwegian Better Regulation Council (NBRC) will contribute to not unnecessarily burdening the business sector with new or changed regulations, see section 1 of its articles of association.

NBRC will assess the formulation of the proposals for new or changed regulatory frameworks, both statutes and regulations, that impact the business sector's working conditions and other relevant matters, see section 2(1) of its articles of association. NBRC is fully entitled to prioritise which cases it issues statements on. For this reason, the NBRC prioritises commenting on a selection of the cases.

NBRC has decided to comment on the consultation primarily due to the proposed regulations for unmanned aerial vehicles (drones). In the NBRC's opinion, the increasing use of drones could provide new and important opportunities for the business sector. For this reason, the NBRC considers it vital to adopt clear rules on drone that also make it possible to adopt and develop drone technology in business activities. NBRC is of the opinion that it is important that regulators see the regulation of new technology in context and across authority areas, so that the sum of the framework that the business sector must comply with is understandable, cohesive and stimulates development and innovation.

## **3. The Norwegian Better Regulation Council's assessment of the review of consequences for the business sector**

Pursuant to section 2(1) of the NBRC's Articles of Association, NBRC must decide whether impact assessments have been carried out according to the requirements set by the Norwegian Instructions for Official Studies and Reports, and whether the impacts on the business sector have been sufficiently mapped out. The Council can assess how far new or changed regulations are formulated so that the objectives are achieved at a relatively low cost for the business sector.

As a basis for the assessment below, NBRC has taken as its starting point the requirements set out in Chapter 2 of the Norwegian Instructions for Official Studies and Reports as the basis for decision making. That is to say, point 2-1 Minimum requirements for investigation, and point 2-2 Scope and depth.

### **3.1. The financial impacts and benefits for the business sector**

NBRC cannot see from the consultation note that the proposals' financial impacts on and benefits for the business sector have been studied and assessed. First of all, the NBRC wishes to note that the impacts of both the regulation such as it is, and the proposed amendments to the Norwegian Aviation Act with regulations, must be examined and described in the consultation note. The changes and impacts must be assessed on the basis of a "zero alternative" (no change) perspective.

The Civil Aviation Authority of Norway writes: "The proposed provisions have limited financial and administrative costs, since these are only provisions at an overall level." The consultation note reviews a number of proposed amendments to the Norwegian Aviation Act, some as a result of the new Basic Regulation and some as a result of purely national proposals. In the NBRC's opinion, there is reason

to believe that several of the proposals in the consultation note, and the regulation, will impact the businesses concerned.

NBRC notes that there were almost 4,000 registered or approved drone operators piloting unmanned aerial vehicles for business or otherwise useful purposes in 2018, according to the consultation note. NBRC would have liked to see a description of the type of business or otherwise useful purposes for which drones are currently being used, and which businesses have adopted drones and for what purposes. Furthermore, the Civil Aviation Authority should have described in more detail which drones and drone tasks will be covered by the “open category”, “specific category” and “certified category”. This would have provided a better basis for assessing the impacts of the proposals.

Furthermore, it is stated that drones today are regulated by the Drone Regulations, without stating what these regulations are in the consultation note. NBRC notes that multiple areas reference the Norwegian Aircraft Act’s rules. However, an incomplete description of the applicable law makes it difficult to assess the impacts of the proposed changes. In NBRC’s opinion, the way that the consultation note is built up makes it difficult to gain an overview of the changes for the different types of drones.

In the NBRC’s opinion, the Civil Aviation Authority of Norway should have, among other things, studied the effects of introducing requirements for airworthiness and environmental certificates for drones in the certified category, as well as certificates for drone operations in the certified category. Furthermore, the registration requirements and subsequent impacts are unclear.

For these reasons, the NBRC is of the opinion that the impacts on the business sector have not been adequately addressed in the consultation note.

### 3.2. The impacts on competition in the business sector

It appears from the consultation note that a pan-European framework will facilitate the development of the European drone industry, as well as the Norwegian drone industry, by making it easier to operate drones across borders. NBRC refers to the fact that the regulation also allows for the establishment of national rules, for example, on penalties and sanctions, drone-flying areas, a national register, compensation, and insurance regulations. In NBRC’s opinion, it is also important to be aware of how this national latitude is used. In this connection, it could be beneficial to explain how drones are regulated in other countries. For example, the Civil Aviation Authority could have assessed whether some countries have set conditions in relation to commercial development or use of drones.

### 3.3. Simplification for the business sector

The proposals in the consultation note and the regulation do not include an explicit simplification for the business sector. However, the NBRC is of the opinion that clear and explicit rules are important for drone use. NBRC Council assumes that these rules will have a far greater area of impact than other aviation rules. Furthermore, private individuals and small companies will also need to navigate and understand the rules. In the NBRC’s opinion, this places great demands on the formation and structure of the regulations.

The consultation note mentions several types of registers, for example, the Norwegian national operator register, the Norwegian national drone register, the Norwegian Civil Aircraft Register, and the Norwegian national microlight aircraft register. However, it is not clear which registers the different categories of drones are to be registered in. NBRC calls on the Civil Aviation Authority and the Ministry of Transport and Communications to clarify the need and necessity of the registration going forward. Furthermore, the Civil Aviation Authority and the Ministry of Transport and Communications should consider reusing information and facilitating user-friendly solutions for the registration.

### 3.4. Special assessment of the interests of small businesses

NBRC cannot see that the interests of small businesses have been considered in the consultation note. NBRC Council refers to the discussion of simplification for the business sector in point 3.3 above, as well as the need for clear and understandable rules.

### 3.5. Alternative measures

As the NBRC understands it, the consultation note mainly deals with the implementation of the new Basic Regulation, and some other rules. In terms of regulations, the NBRC is aware that these should be implemented as they are, with the exception of the areas where the regulation provides national latitude.

NBRC cannot see from the consultation note that the Civil Aviation Authority of Norway has studied alternative solutions where purely national rules are proposed, and where the regulation provides national latitude. This is a weakness of the investigation that leads to an insufficient basis for decision-making. NBRC would also have liked to see an assessment of how corresponding problems are solved and corresponding rules are formed in other countries. Investigating how drones are regulated in, for example, Sweden and Denmark, could provide both knowledge and ideas in terms of regulation in Norway.

For this reason, the NBRC is of the opinion that alternative measures have not been adequately studied.

### 3.6. Conditions for successful implementation in the business sector

The consultation note states that the Civil Aviation Authority of Norway is devoting a great deal of resources to safety and awareness campaigns with respect to the flying of drones. NBRC assumes that users need a great deal of information in connection with the regulation of relatively new, publicly accessible technologies. In the NBRC's opinion, the Civil Aviation Authority and the Ministry of Transport and Communications should assess how to ensure a successful implementation of the rules in connection with their continued work on the regulations.

Furthermore, the authorities should have a strategy for evaluating the regulations. Predictability is important for affected businesses. At the same time, the technology is developing fast, and rule changes may be necessary after a short time in order to ensure that the rules fulfil their intended purpose.

### 3.7. Other comments for the investigation and the implementation of the consultation.

We draw attention to the fact that, pursuant to point 4–3 in the Norwegian Instructions for Official Studies and Reports, the NBRC must be informed when proposals regarding statutes and regulations that are particularly relevant for the business sector are sent out for consultation. We do not seem to have received information about this matter, and ask that in the future you also set NBRC as the recipient of consultation documents that affect the business sector.

NBRC is of the opinion that it is positive that the Civil Aviation Authority is familiar with the six minimum questions in the Norwegian Instructions for Official Studies and Reports. However, NBRC cannot see that the questions have been answered in compliance with the Instructions.

## **4. Is the proposal designed so that the objectives can be achieved at a relatively low cost for the business sector?**

In NBRC's opinion, it is positive that pan-European rules for drone use have been provided, especially with regard to equal competitive conditions and equal opportunities to use drones in business. Furthermore, the NBRC is of the opinion that it is important to adapt the regulations to different

categories of risk, so that what is required of the different actors is proportional to the potential harmful effects.

The presentation and investigation of the drone operation rules in the consultation note are difficult to understand. With reference to the Norwegian Instructions for Official Studies and Reports, it is the NBRC's opinion that the proposal has not adequately studied the impacts on the business sector. For this reason, NBRC cannot with certainty say that the objectives have been achieved at a relatively low cost for the business sector.

In conclusion, the NBRC also wants to emphasise that regulation can promote or inhibit innovation and technological development. How the rules are formulated and which rules are introduced is therefore important. It is particularly important to be aware of this in terms of the regulation of new technologies that are under continuous development and that are being adopted in increasingly new ways. NBRC encourages this perspective to be adopted in further work on the drone regulations.