



European Economic and Social Committee

TEN/565
Social dumping in civil
aviation

Brussels, 16 September 2015

OPINION

of the

European Economic and Social Committee

on

Social dumping in the European civil aviation sector
(own-initiative opinion)

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On 11 December 2014, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

Social dumping in the European civil aviation sector.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 31 August 2015.

At its 510th plenary session, held on 16 and 17 September 2015 (meeting of 16 September), the European Economic and Social Committee adopted the following opinion by 200 votes to 3 with 7 abstentions.

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1. **Recommendations**

- 1.1 The EESC endorses the intention of the President of the European Commission who said in his opening statement in the European Parliament in Strasbourg on 15 July 2014 that "[w]e have to fight social dumping and we will fight it". His statement was echoed by the Transport Commissioner, Violeta Bulc, who during the Commissioners-designate hearing in October 2014 added "I am strongly opposed to social dumping. [...] Social legislation also needs to be part of the 'refit'". Social dumping creates unfair competition. However, it is difficult to define because the factors underpinning it are complex and there are many actors involved. In civil aviation, the role of political decision-makers at different levels, airlines, employees and passengers, as well as the political, legal, economic and social environments both inside and outside the European Union should be considered. The CJEU has acknowledged the fight against social dumping to be a legitimate goal, enabling Member States to justify certain barriers to freedom of movement¹. As the EESC is concerned by recent developments in civil aviation, it urges the Commission to monitor the situation closely and to take steps if required. All aspects set out in this document will have to be taken into account when preparing the aviation package that has been announced as part of the Commission's work programme for 2015. In addition, the EESC considers that DG MOVE and DG EMPL need to cooperate closely.
- 1.2 Based on the outcome of its work on new business models, the European Aviation Safety Agency (EASA) must scrutinise the developments to ensure the optimal safety of passengers and staff regardless of the business model, with a particular focus on these new models in order to stabilise the industry. Particular attention must be given to monitoring by the relevant

¹ CJEU judgment of 18 December 2007, C-341/05, Laval, p.I.11767, item 103.

administrations of the increased use of false self-employed workers and temporary employment agencies.

1.3 The EESC expects that current legislation will be enforced correctly and that the judgement of the Court of Justice of the European Union (CJEU) will also be taken into account. This concerns mainly:

- a) social security and labour law:
 - the Rome I Convention (1980) and Regulation (EC) No 593/2008²;
 - Regulations (EU) No 465/2012³ and (EU) No 83/2014⁴, which define the concept of "home base".
- b) the relation with self-employment status:
 - Directive 2014/67/EU (For the first time, the concept of a subordinate relationship has been included in the directive to allow for the monitoring of self-employment status.)⁵;
 - Judgment C-413/13 FNV Kunsten Informatie en Media v. Staat der Nederlanden of 4 December 2014: "... on a proper construction of EU law, it is only when self-employed service providers who are members of one of the contracting employees' organisations and perform for an employer, under a works or service contract, the same activity as that employer's employed workers, are 'false self-employed', in other words, service providers in a situation comparable to that of those workers, that a provision of a collective labour agreement, such as that at issue in the main proceedings, which sets minimum fees for those self-employed service providers, does not fall within the scope of Article 101(1) TFEU. It is for the national court to ascertain whether that is so."

1.4 The EESC acknowledges the position taken by the Social Partners of the Air Crew Working Group (see point 5.1) and stresses that the following loopholes should be addressed in order to prevent any unintended negative social impact in this sector. With this goal in mind, the following steps should be taken:

- Revise the common rules for the operation of air services to ensure notably proper enforcement of national social legislation and collective agreements with regard to staff in this sector (Regulation (EC) No 1008/2008); in the same regulation, pin down the concept of "principal place of business" so that the operating licence is granted by a state if the volume of air transport therein is substantial;

2 [OJ L 177, 4.7.2008, p. 13.](#)

3 [OJ L 149, 8.6.2012, pp. 4–10.](#)

4 [OJ L 28, 31.1.2014, pp. 17–29.](#)

5 [OJ L 159, 28.5.2014, pp. 11–31.](#)

- Prevent any unfair competition to Community air carriers from countries which are not members of the EC through subsidies, state aid and unfair pricing practices (Regulation (EC) No 868/2004);
- In the context of the coordination of social security systems, pin down multiple home bases in the civil aviation sector (including temporary bases) and shorten the transitional period which is set at 10 years (Regulation (EU) No 83/2014);
- Extend the single permit to aircrew to ensure equal treatment of all workers in the industry (Directive 2011/98/EU).

1.5 In addition, the EESC suggests that as part of coordinated work by DG MOVE and DG EMPL, the Commission should scrutinise the application of the Directive on temporary agency work in the aviation sector. The EESC considers that the promotion of direct employment shall remain the usual form of employment in aviation and that the limitation of such temporary contracts which could potentially harm safety levels (2008/104/EC) must be possible. Furthermore, a common definition of "employed person" and "self-employed person" is needed at EU level.

1.6 The EESC supports a possible initiative by EU social partners in aviation to negotiate an agreement on the working conditions and social rights of employees in this industry. The social partners may also have joint positions on some legislation which they may submit to the Commission. Lastly, the Commission should consult the social partners on any EU legislative instrument and/or initiative which has social impact⁶.

1.7 Given that the proposal for a regulation on ground handling services has been dropped from the Commission work programme and there are no EU-wide social standards in this field, the issue of transfer of staff in the event of a call for tender and/or partial loss of activities needs to be addressed. To address this issue, the Commission is in the process of consulting European social partners on the potential usefulness of submitting a consolidated proposal on the revision of Council Directive 2001/23/EC of 12 March 2001 (safeguarding of employees' rights in the event of transfers of undertakings) for the end of 2015.

1.8 The EESC will launch a separate internal work to complete the social issues raised in this opinion.

1.9 The EESC recommends that the Commission continuously monitors the working conditions in civil aviation on a permanent basis.

2. **Introduction**

2.1 Given its contribution to the European economy in terms of jobs and growth, aviation is a strategic industry for the European Union. It is estimated that aviation is responsible for

⁶ [OJ L 225, 12.8.1998, pp. 27–28.](#)

2.6 million direct and indirect jobs and contributes one billion euro to European GDP every day, driving trade and tourism⁷.

- 2.2 The liberalisation of air transport in the early 1990s has undoubtedly brought benefits to the travelling public in terms of democratisation, lower air fares and a diversified offer. But what are the effects on employment, wages and working conditions in the sector? Eurostat data show that despite an average yearly growth of approximately 5% in the period between 1998 and 2010, both direct and indirect employment in airlines has been stagnating⁸. Together with other developments, this has resulted in a substantial increase in productivity. In addition, airline jobs for cabin crew and pilots have been outsourced or replaced by more flexible forms of employment (In a recent study by European social partners in civil aviation, only 52.6% of respondents working for low-cost airlines stated that they have a direct employment contract.). There is no complete data available on salaries, however, the example of the UK shows a visible decrease in remuneration for cabin crew⁹ there. In a nutshell, jobs that used to be prestigious and high-quality some years ago are disappearing and being outsourced or replaced by higher productivity and less expensive labour.
- 2.3 Given the fact that airlines are facing fierce competition, the profit margins are lower than in other industries (according to IATA, the net post-tax profit of the airline industry worldwide has been 0.1% of revenues on average over the past 40 years)¹⁰ and employers are looking for ways to cut costs in order to remain competitive. While some costs (such as fuel or aircraft ownership) are to a certain degree fixed, some airlines believe that labour costs can be pushed down continuously. Some of them have also discovered that using the freedom of establishment inside EU is one way to pursue further cost cutting and social dumping.
- 2.4 Faced with increasingly intense competition from Low Fares Airlines (LFAs), several legacy airlines have developed a low-cost version of the main brand to fly short haul or have developed a low-cost workforce within main line operations. Some LFAs are now targeting major airports and business passengers, which puts them in more direct competition with legacy airlines. This results in a loss of decent jobs (fair income, security in the workplace, social protection, freedom to express, organise and participate and equality)¹¹ in legacy

⁷ ATAG report on *Powering global economic growth, employment, trade links, tourism and support for sustainable development through air transport*, 2014.

⁸ Final Report on *Study on the effects of the implementation of the EU aviation common market on employment and working conditions in the Air Transport Sector over the period 1997/2010*, Steer Davies Gleave, London, 2012, p. 74.

⁹ Final Report on *Study on the effects of the implementation of the EU aviation common market on employment and working conditions in the Air Transport Sector over the period 1997/2010*, Steer Davies Gleave, London, 2012, p. vii.

¹⁰ [IATA Report on Vision 2050](#), Singapore, 12.02.2011, p. 2.

¹¹ Global topic on *Decent Work*, International Labour Organization.

airlines¹². Nevertheless, the social practices of low-cost companies do not automatically create social dumping.

- 2.5 The development of competition at global and EU level raises concerns about the sustainability and competitiveness of European aviation, both in economic and social terms. In order to guarantee fair competition, a more level playing field must be established. Airline companies should compete on the basis of innovative products, quality and price, not on use of legislative loopholes and/or low-cost jobs. Steps must be taken to ensure the competitiveness and sustainable development of the European industry and the preservation of quality jobs in Europe.
- 2.6 Social dumping, when it exists, obstructs fair competition. Safety must remain the number one priority and social dumping must not have any negative impact on it. A genuine common EU external aviation policy should replace the uncoordinated bilateral approach of individual countries and should cover the issue of foreign investment in European airlines as well as ownership and control, state aid, market access and fair competition.
- 2.7 Safety is paramount for aviation. As stated in the white paper, "European aviation safety is high but not the best in the world. Our aim should be to become the safest region for aviation"¹³. Despite the lack of statistical data, EASA has already indicated that fragmentation and outsourcing of core safety-related jobs, including air and maintenance crew, may have adverse effects on safety. The so-called new business models optimise fiscal, operational and social processes. The EASA must scrutinise these models and take all necessary measures to ensure that safety is not compromised. EESC supports the work of the newly established special working group in EASA with such tasks. No risks should be taken if people's safety¹⁴ would be affected.

3. **Deterioration of working conditions in some sub-sectors of aviation**

- 3.1 Social dumping in the airline industry can be divided into two separate areas: internal market and external aviation.

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See studies by European social partners:

- 2012: *The development of the low cost model in the European civil aviation industry*, Professor Peter Turnbull (Cardiff University), Dr Geraint Harvey (Swansea University), commissioned by the European Transport Workers' Federation.

- 2014: *Evolution of the Labour Market in the Airline Industry due to the Development of the Low Fares Airlines*, Professor Peter Turnbull (Cardiff University), Dr Geraint Harvey (University of Birmingham), commissioned by the European Transport Workers' Federation.

- 2015: *Atypical Employment in Aviation*, University of Ghent, team led by Professor Yves Jorens, commissioned by the European Cockpit Association, the Association of European Airlines and the European Transport Workers' Federation.

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White Paper *Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system*, COM/2011/0144 final, p. 22.

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Report on *New Business Models*, EASA's Rulemaking Advisory Group, 17.04.2015, p. 1, point 2; p. 5, point 9.3; p. 6, point 9.5.1; p. 7, point 9.5.2 and p. 7, point 9.6.

- 3.2 In the area of the internal market, the main drivers of social dumping are airlines with multiple bases – with labour hired in country X, working in country Y, but with an employment contract under the laws of country Z. This has the effect of dis-embedding the workers from their "home country" (i.e. the country of nationality and/or residence). The main challenge is to reconcile the freedom of establishment/freedom to provide services with the objectives of quality employment and social progress. While changes introduced under the Rome I Regulation¹⁵ and under the coordination of social security¹⁶ will mitigate some of the problems faced by mobile workers, there are still issues to be resolved.
- 3.3 The EU's external aviation policy does not adequately protect the interests of EU airlines and their workers in this fast changing global environment. While there are a number of requirements that EU airlines have to comply with in terms of ensuring fair competition (transparency, state aids, pricing, etc.), requirements on third-country airlines operating to/from EU airports are non-enforceable or non-existent. These airlines then compete head-to-head on the same routes with EU carriers while benefiting from unfair advantages.
- 3.4 There is also the separate issue of using non-EU crew members on board EU-registered airplanes. Traditionally, foreign cabin crew have been used on board European aircraft for language and/or cultural reasons. Lately, some airlines have resorted to the use of foreign nationals to operate flights into/from and even within (!) the EU with inferior working conditions/salaries. However, these airlines do have to apply national rules of the Member State issuing the AOC.

4. **New business models and the labour market in the airline industry**

- 4.1 The studies carried out by the social partners¹⁷ show that the deterioration of working conditions is ubiquitous in the aviation industry in Europe and goes beyond the changes of the market due to competition, both in legacy and low-cost airlines.
- 4.2 There is no uniform model for a low-cost airline: their strategies range from ultra low-cost (no frills whatsoever) to a hybrid company combining elements of a low-cost and traditional company, by way of practices of "conventional" low-cost companies which promise little but always deliver. Consequently, there is no uniform model of employment; some airlines provide quality jobs on open-ended contracts, while others rely primarily on outsourcing, agency work and, even in some cases, false self-employment. The same is valid for union representation: some companies deliberately try to avoid trade unions, while other companies recognise them and sign collective agreements. The evolution of LFAs has also had a significant impact on ground handling services, mainly in terms of baggage handling (stricter hand baggage policy), short turnaround times and cuts in training.

15 [OJ L 177, 4.7.2008, pp. 6–16.](#)

16 [OJ L 284, 30.10.2009, pp.1-42.](#)

17 Global topic on *Decent Work*, International Labour Organization.

- 4.3 Employers as well as aviation unions now acknowledge that the business strategies and associated HR/industrial relations policies of some LFAs are driving a "slow descent to the lowest common denominator"¹⁸. The dividing line between LFAs and legacy airlines is slowly disappearing as some LFAs have joined global alliances or been brought into (legacy) airline groups; at the same time, other airlines have decided to establish their own "in-house" LFA. Some of the legacy carriers have also recruited a low-cost workforce within their main line operations. This new organisation does not mean that the services are the same between legacy airlines and LFAs.
- 4.4 However, there are substantial differences between EU Member States in terms of working conditions, equal treatment, health and safety at work, social protection (which is only coordinated at EU level), etc. which creates an asymmetry between economic regulation (single market) and harmonisation and social cohesion. Nevertheless, some Member States have adopted national solutions to ensure that mobile staffs based on their territory enjoy conditions which comply with national labour and social laws and collective agreements. This issue should be considered at European level.
- 4.5 The core of aviation legislation related to employment stems from the pre-liberalisation era and is therefore no longer fit for purpose. Social security regulations with regard to aircrew have improved, but there is still a risk of loopholes. The concept of home base is problematic because it is defined by the operator and self-employed crew members are not properly checked. Another complicating factor is the lack of a single European text with a positive definition of employee and self-employed worker in EU legislation; definitions vary between CJEU case-law and directives, for instance on the "subordination" criteria. Specific rules for highly mobile workers are needed.
- 4.6 One of the three major Gulf carriers has been publicly challenged for practices that are in breach of EU legislation, such as dismissal for pregnancy, obligation to get permission to marry, etc. Nevertheless, this airline is still operating flights into the EU, and recently even with increased frequency to some airports. Due to the close ties between the Gulf airlines, airports and their civil aviation authorities, there is also a concern regarding possible unfair advantages granted to these companies. There is a need to replace bilateral relations between Member States and 3rd countries by a coordinated and genuine EU external aviation policy.

5. **Role of social partners**

- 5.1 The EESC supports the key role of the European social partners in civil aviation in advising EU institutions, as well as scrutinising and formulating their own proposals. On 5 June 2014, the social partners of the Air Crew Working Group (ACWG) adopted a Joint Declaration

¹⁸ Report on *Submission by Scandinavian Airlines (SAS) to US regulators on Norwegian Air International's (NAI's) application for a US Foreign Air Carrier permit*, Airline Business, April 2014.

against EU-based Flags of Convenience in Aviation denouncing recent developments that seriously threaten the European social model, employment and fair competition in the aviation market and proposing legislative changes¹⁹.

- 5.2 In terms of the future agenda of social dialogue, the social partners of the ACWG (AEA, ECA and ETF) adopted the following joint declaration on 13 February 2015: "The Social Partners [...] are ready to launch discussions about a framework for the aviation sector that aims for a global level playing field. Common actions should be envisaged to stop the trend towards deteriorating employment conditions and flags of convenience. The Social Partners agree to continue their work in this field. They will take the necessary steps to actively engage with the various EU Institutions and with the national authorities to define, as a matter of urgency, a European aviation strategy with clear global objectives, priorities and deadlines."
- 5.3 The European Commission also needs to step up consultation with the social partners. Commission Decision 98/500/EC establishing sectoral social dialogue committees stipulates that each sectoral social dialogue committee, for the sector of activity for which it is established, shall be consulted on developments at Community level which have social implications. This obligation is often neglected. It is also necessary to address social implications of safety-related rules developed by the European Aviation Safety Agency.

Brussels, 16 September 2015.

The President
of the
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Henri Malosse

¹⁹ Joint Declaration *against EU-based Flags of Convenience in Aviation*, Air Crew Working Group of the Sectoral Social Dialogue Committee, 5.06.2014.