



ECA
Piloting Safety

AOC Shopping, Social Dumping & Atypical Aircrew Employment

Primera Air

Introduction

In the shade of the media and political attention on certain large airlines' business and employment practices, numerous small operators are engaging in similar practices, based on 'AOC shopping', social dumping, atypical contractual staff relationships, making it difficult for national authorities to oversee their operations, both in terms of social security obligations and in terms of flight safety.

Primera Air is one such company. Initially established in Iceland, in 2003, with an Icelandic AOC, it obtained an AOC in Denmark in 2009, and in late 2014 decided to move all its aircraft to a new AOC in Latvia, where it set up a new subsidiary 'Primera Air Nordic' and its new Network Control Center (in Riga). However, the operations (points of departure and destinations currently flown), which take place outside of Latvia, are not expected to change due to this move to Latvia. It is from Latvia that these operations will now be managed remotely.

While currently many of Primera Air's aircrew are still on direct open-ended employment contracts, the number of pilots and cabin crew engaged as self-employed contractors through the Guernsey-based agency „*Flight Crew Solutions*“ (at terms and conditions significantly below the industry standard) is increasing. Whenever aircrew started to organize and tried to obtain a Collective Labour Agreement (CLA) the company reacted by terminating the contracts shortly after, moving crew and/or aircraft to another jurisdiction, and/or moving the AOC to another country.

The [reasons for moving the operations](#) to a new AOC were explained by its Chief Executive, Hrafn Thorgeirsson: *'The Latvian AOC will allow Primera Air to pursue its business "a little differently" and accelerate its growth, says Thorgeirsson. The carrier needs to have an AOC outside the Nordic countries to have "more flexibility" especially in regard to labour regulations and unionisation, he says.'* And: *"There are a lot of complications... especially regarding staff and crew, unions etc.," says Thorgeirsson. "Even though we are a small airline, we were facing the complications of much bigger airlines. We were definitely looking for place where we would have more flexibility to operate," he says.'*

With the move of all aircraft to its new Latvian subsidiary, the responsibility for the operator's safety oversight will be with the Latvian CAA. Currently, the Latvian CAA's

oversight is mainly focused on AirBaltic which operates flights that are usually linked to Riga, is owned largely by the state, and is said to employ its air crew directly on regular contracts. For Primera Air, which is a private charter company with atypical air crew employment practices through an agency in Guernsey, and which aims to grow from 8 to 12-15 aircraft, the CAA will have to oversee the operations remotely. The specific challenges inherent to such 'remote oversight', especially for a relatively small Authority, are known at the latest since the 2014 accident investigation report into the [Cork accident](#).

Apart from several smaller safety incidents, the company is known for 2 incidents in particular: one in July 2009 in Italy (diversion and emergency landing due to a technical problem) and a [serious incident](#) in Iceland/Keflavik, in Oct. 2007, when a Boeing 737-800 with 188 passengers on board (after a flight duty period of 17:20) had a runway excursion, with pilot fatigue having been a contributing factor. At that time the company was still called JetX.

General company information:

The operator Primera Air was originally established in 2003 in Iceland and operated under an Icelandic AOC. At first the operator was called JetX. In 2009 Primera Air established a subsidiary called 'Primera Air Scandinavia' under a Danish AOC. Shortly thereafter, all aircraft were transferred to the Danish AOC and the Operating License in Iceland was cancelled. Company headquarters still remained in Iceland.

As of now, the company has transferred once again and has been moving all operations and headquarters from Denmark to Latvia. Now its aircraft have YL-registration.

The company headquarters were in Iceland until the autumn of 2014, when top management announced it would be [moved to Latvia](#). All office staff were given notice of termination of employment and offered a similar position with the company in Latvia with much worse terms and conditions. Very few, if any, decided to accept the move.

Fleet:

The Primera Air fleet consists of six Boeing 737-800s and two 737-700 according to their [webpage](#).

Operations & Air Crew:

Primera Air operates on B737 from/to Keflavik airport Iceland. It is currently operating in Keflavik Iceland, Billund, Arhus and Copenhagen Denmark, Arlanda-Stockholm in Sweden, Oslo in Norway, Helsinki in Finland and recently adding flights from Paris, Nantes and Lyon in France and flying to over 80 destinations.

Primera Air is a member of the [Primera Travel Group](#). The company has grown steadily in recent years.

Hrafn Thorgeirsson is the CEO of Primera Air and the ownership is reported to be (mostly) Icelandic.

Primera Air is hiring their crew via a small Guernsey based agency called „Flight Crew Solutions“ (FCS) which has a rather intransparent company set-up¹. The precarious contracts used – which e.g. provide for no social security and health insurance and are subject to a 14-day notice period – severely undermine terms and conditions from what is standard in Europe, even in the low fares sector. The crew are forced to be self-employed and their agency contract states as follows: *„The contractor confirms they are fully aware of their status as a contractor and that they have full rights as contractor. The contractor does not purport to be an employee and acknowledge they have no rights as employee.“* (for the latest contract used by FCS for the Latvia-based Primera Air Nordic, see annex).

Swedish Operation

In 2009, the cabin crew based in Stockholm were self-employed with no Collective Labour Agreement (CLA). The cabin crew union in Sweden bargained for a CLA but were not successful until the very end 2009 when they had industrial action with sympathy action from handling personnel, fuelling etc. According to the cabin crew union, Primera Air’s actions during the labour dispute were not even close to acceptable on the Swedish labour market. Before the New Year of 2014, all cabin crew contracts were terminated and the flying in and out of Stockholm will from 2015 onwards take place with self-employed Cabin Crew from Latvia.

For the pilots, the base in Stockholm has been operational for 7-8 years. At first, crewed with self-employed pilots via *Flight Crew Solutions*, but as the base became more permanent, pilots employed in Denmark and falling under the Danish social security, were based in Stockholm. After the EU Regulation on social security coordination for flight crew in 2012, a few of the pilots in Stockholm decided to opt for social security in Sweden. They were all working under the Danish CLA held by PAPA and FPU (see below). When they changed over to Swedish social insurance, the cost for the company increased by approximately 22%.

At first, Primera Air just withdrew this amount from their salaries. After negotiations with PAPA/FPU, the pilots got their salary back. But shortly after, they had their contracts in Denmark terminated. New contracts were signed for the ARN-based pilots starting February 1 2014. Primera Air refused to follow the CLA in Denmark and argued the pilots were not covered by a CLA at all. They introduced new pay scales for Swedish based pilots which were some 22% lower than the Danish salaries, and reduced their pensions.

The pilots then became members of the Swedish pilot union SPF and asked SPF to bargain an agreement for them. At first, Primera Air refused to meet with SPF and at the first meeting Primera Air stated that they would not sign an agreement with SPF, regardless of the content. SPF then initiated industrial action and a strike started in

¹ [Flight Crew Solutions](#)’ company set-up seems rather opaque. The address of FCS’s registered office (2 Cranwell House, La Route du Picquerel, L’Islet, Guernsey, GY2 4SD; no telephone number available on its website, nor on the crew contracts; address not identified on Google Maps) is different from the address to which crews are supposed to give notice (Suite, 1st floor, the Energy Center Admiral Park, St. Peters port, Guernsey, GY12BB, which is the address of a large [Gas Company](#)). The new FCS contract used for Primera Air Nordic displays yet another address (Polygon Hall, PO Box 225, Le Marchant Street, St. Peters Port, Guernsey GY1 4HY) which is the address of an [Insurance company](#), covering among others aviation. – It cannot be excluded that FCS is a letter box company. There are, however, no sufficient elements available to assess whether FCS is linked to Primera Air itself (which is the only client company mentioned on the FCS website).

May 2014. After three weeks of strike among the ARN-based pilots, Primera Air finally signed an agreement with SPF.

Subsequently, however, Primera announced that they were starting a subsidiary in Latvia and in July, they gave notice of contract termination for all pilots based in Stockholm. In November 2014, some pilots that were directly employed were transferred to self-employment via *Flight Crew Solutions*, while some left the company. According to the information available, all flying in and out of Stockholm is now conducted with pilots formally based in Riga with self-employed status.

Danish operations

In 2009, Primera started their Danish operation with one aircraft in Billund on the Icelandic AOC. All crews were hired through *Flight Crew Solutions* in Guernsey. When they started the operations in Copenhagen they obtained the Danish AOC which led to a demand from the Danish union FPU to enter into collective bargaining.

The development for the two groups, pilots and cabin crew, was different. The cabin crew gave the mandate to do the bargaining to FPU and organized a local union to support the negotiations and keep the members informed. In December 2011, after several failed negotiations FPU announced industrial actions, supported by legal sympathy actions from ground crew. As a result, and before the strike took place, a collective labour agreement was signed. The downside of this agreement was that the company was allowed to use foreign contractors for two two-week periods each year, provided they adjust their terms and conditions to the Danish CLA.

The pilots, on the other hand, chose to negotiate their own agreement without the assistance of the FPU. They finished their negotiations and began working by the new CLA in early 2010. By 2011 the board in the local pilot union/PAPA changed and the cooperation between PAPA and FPU grew stronger. PAPA and FPU subsequently tried to claim the CLA invalid, but failed and had to accept the CLA, and try to work for improvements on that.

The extent of the pilot CLA was tested in 2013, as the company claimed the pilots employed in Denmark but working out of Sweden were not covered by the Danish CLA. After the union lost that case, SPF in Sweden took over the Swedish pilots (see chapter above).

On 1st of April 2014, Primera Air stationed one of the aircrafts from the Danish AOC to CDG Paris. They did not follow the Danish CLAs, as they followed the same logic as for the Danish pilots based in Sweden. The pilots of that aircraft were given contracts from the Malta-based company *first2resource* as self employed contractors with a daily fee of 90 euro and a monthly allowance of 900 euro to cover housing.

The renewal of the Danish Collective Labour Agreements were done in March 2014. But already in mid/late 2014, the news of the company moving to Latvia and the new Latvian AOC were announced. The company are now using this to put pressure on the Danish CLAs and are asking for severe cutbacks under the threat of moving the entire Danish operation to Latvia. How they will be able to keep up the Danish production remotely out of Riga is yet to be seen.

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Annex: - Basic flight crew contract (by Flight Crew Solutions) for Primera Air Nordic.

Basic flight crew contract (by Flight Crew Solutions) for Primera Air Nordic

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Flight Crew Solutions
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CONTRACTOR'S AGREEMENT

BETWEEN:

(1) **Flight Crew Solutions Limited**, whose registered office is: Polygon Hall, PO Box 225, Le Marchant Street, St Peter Port, Guernsey GY1 4HY. ("**Company**")

(2) ~~XXXXXXXXXXXXXXXXXXXX~~ ("**Contractor**")

Contractor's e-mail address: ~~XXXXXXXXXXXXXXXXXXXX~~

Contract Start: 31/10/2014 ongoing with 14 day's notice from either party

Fee: Full Average monthly fee €1725 (see addendum for full fees and conditions)

Base: Ad-Hoc and as agreed with the client airline

Note: Fee payments can be withheld on unsigned contracts.

Provision of Services: Shall mean those provided by the Contractor as *CCM*

By signing this Agreement, the contractor acknowledges the terms and conditions of the standard agreement and that this a contractor's agreement.

This Agreement (including the Standard Terms & Conditions) is governed by and shall be construed in accordance with the Guernsey law. The contractor confirms they are fully aware of their status as a contractor and as such they have full rights as contractor. The contractor does not purport to be an employee and acknowledge they have no rights as an employee.

AS WITNESS the parties or their duly authorised representative(s) on the date of this agreement.

THIS AGREEMENT is made on _____ / _____ / _____ (**Date**)

SIGNED and delivered as a deed by **EXECUTED** and delivered as a deed by:

THE AUTHORISED SIGNATORY

For and on behalf of

FLIGHTCREW SOLUTIONS Ltd

Jeey O'Sullivan _____

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info@flightcrewsolutions.com
Telephone 0044 (0) 208 144 5010
www.flightcrewsolutions.com

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ADDENDUM NO.1 - Effective and valid from 31/10/2014

Cabin crew CCM Primera Air Nordic

ATTACHING TO AND FORMING PART OF CONTRACTORS AGREEMENT:

The Company shall pay the contractor a basic monthly fee as shown on the contract agreement, payable in arrears on 3rd UK banking day of each month. All fees shown below are in € Euros unless otherwise stated.

Average Monthly Fee	CCM	BLH@	EUR
Basic			400
SCCM EX			-
BLH		65 15	975
			<u>1,375</u>
Commission PP 1% SB 5%			350
			<u>1,725</u>

Sales Commission	Pre-Ordered 1% & On-board 5% split between crew
Accommodation	Client airline will organise accommodation at the base of operation as instructed by the client airline.
Flights	Airline flights will be provided as required by the client Airline
ADDITIONAL TERMS	
Termination Notice	14 days
Duty Days Off	As per JAA Regulations applied by clients
Transport	Local transport will be provided at the client nominated flying base as required and instructed by the client airline

The following allowance are payable for extra duties if and only while the contractor is appointed by the client, to undertake such duties.

Registered Office:
Polygon Hall, PO Box 225, Le Marchant Street, St Peter Port, Guernsey GY1 4HY
 E-mail info@flightcrewsolutions.com

Note: the 12-page Standard terms and conditions, attached to this 2-page Contractor's Agreement can be provided upon request.

13/03/2015

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