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Brussels, 4th June 2014

SOCIAL DUMPING IN CIVIL AVIATION

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INTRODUCTION

Definitions of social dumping

a) There are different definitions of social dumping and there is an extensive literature on this subject.

- The excellent work of Magdalena Bernaciak for ETUI called: "Social dumping: political catchphrase or threat to labour standards? »

<http://www.etui.org/fr/Publications2/Working-Papers/Social-dumping-political-catchphrase-or-threat-to-labour-standards>

- Eurofound:

<http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/socialdumping.htm>

- Wikipedia:

"Social dumping" is a term that is used to describe a practice of employers to use cheaper labour, than what is usually available at their site of (1) production and/or (2) selling. In the first case, migrant workers are employed; in the second, production is moved to a low-wage country or area. The entrepreneur will thus save money and potentially increase their profit. Systemic criticism suggests that, as a result, governments are tempted to enter a so-called *social policy regime competition* whereby they would reduce their labour and social standards in order to ease labour costs on enterprises and, eventually, to retain business activity within their jurisdiction.

b) Attempt for an ETF CAS definition (based on a definition developed by Belgian union CNE (only in French): <http://www.cne-gnc.be/index.php?c=1182>

Social dumping is a practice designed to take advantage of competition between workers from different regions or sectors.

Social dumping is practiced by some employers to hire the least protected workers with the cheapest salary, inferior working conditions, to increase profit margins and prevent or reduce the collective representation of workers.

Geographically, this practice is perfectly illustrated by the phenomenon of



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delocalization/offshoring (the company will look elsewhere for the cheapest labor, and less organized).

At the sectoral level, the use of (agency) temporary workers, subcontracting, bogus self-employment, non-organized workers, precarious contracts or cheapest salaries also allows the employer to reduce its personnel costs.

There is then, in the name of "competitiveness" a downgrading of working conditions, training, health and safety and wages: each company sights unfair competition organized by another company to justify tougher working conditions and impose more flexibility, wage cuts or a weakening of the welfare of its workers, such as the use of unsafe working practices, which increase the risks of industrial accidents.

I. SOCIAL DUMPING IN THE AIRLINE INDUSTRY

I.1. Legislation

1) EU level

A) Choice of law

a) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community

- Recital (9): *"With respect to employees of a Community air carrier operating air services from an operational base outside the territory of the Member State where that Community air carrier has its principal place of business, Member States should ensure the proper application of Community and national social legislation."*

b) Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (= Rome I)

- governing the choice of law for contractual obligations
- Article 8 (Individual employment contracts)
 1. *An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of this Article.*
 2. *To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The country where the work is habitually*



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carried out shall not be deemed to have changed if he is temporarily employed in another country.

3. *Where the law applicable cannot be determined pursuant to paragraph 2, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated.*
4. *Where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in paragraphs 2 or 3, the law of that other country shall apply.*

B) Social security

a) Regulation (EC) No 884/2003 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (as amended)

b) Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (as amended)

General rules¹

- basic rule = you are subject to the legislation of the country where you actually work as an employed or a self-employed person; It doesn't matter where you live or where your employer is based
- specific rules for frontier workers, posted workers and workers working in more than 1 country

Specific rules for aircrew

- social security is governed by the law of country where the crewmember has his/her homebase as per Regulation 3922/91 (= location nominated by the operator to the crew member from where the crew member normally starts and ends a duty period or a series of duty periods and where, under normal conditions, the operator is not responsible for the accommodation of the crew member concerned)

c) Practical guide: The legislation that applies to workers in the European Union (EU), the European Economic Area (EEA) and in Switzerland²

- as the name suggests, this document "is intended to provide, at the various practical and administrative levels involved in implementing specific Community provisions, a valid working instrument to assist institutions, employers and citizens in the area of determining which Member State's legislation should apply in given circumstances"
- however, the guidelines are not yet very helpful to aircrew (cf. joint letter of social partners of 29 August 2013)

¹ <http://ec.europa.eu/social/main.jsp?langId=en&catId=851>

² <http://ec.europa.eu/social/BlobServlet?docId=4944&langId=en>



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- according to the Guidelines, the “home base” principle applies only when the home base is stable; in other cases the authority in the Member State of residence should determine the social security regime applicable in accordance with Article 13(1) of the Regulation => “home base” principle should always apply
- there is a 10-year transitional period for employment contracts signed before the implementation date of this regulation (provided that there is no change in the relevant situation that defined the social security regime applicable) => there is no awareness about this period and there is no common understanding of “change in the relevant situation”. But, at the request of the worker, the Regulation is directly applicable and for the workers employed after the entry into force of the Regulation (16 December 2009), the Regulation is directly applicable as well.

C) Working time

Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA)

- as the name suggests, the directive is implementing social partners' agreement on working time of mobile staff in civil aviation from 2000

D) Flight time limitations

Commission Regulation (EU) No 83/2014 of 29 January 2014 amending Regulation (EU) No 965/2012 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

- together with the accompanying CS, AMC and GM, it creates first EU-wide flight time limitations

2) Some examples from national level

- Décret n° 2006-1425 du 21 novembre 2006 relatif aux bases d'exploitation des entreprises de transport aérien et modifiant le code de l'aviation civile
 - this decree modifying the *Code de l'aviation civile* states that the labour code is applicable to airline companies having operational bases on French territory
 - Ryanair, EasyJet and Cityjet have lost courtcases based on this decree
- Belgian "Loi du 25/08/2012 sur faux-independants"³ (... as an inspiration)

³ <http://www.emploi.belgique.be/defaultTab.aspx?id=6696>



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- following a study of European social partners in the construction sector, Belgium has introduced a law on bogus self-employment, covering 4 sectors: construction, transport of persons and goods, surveillance/guarding activities and cleaning
- the law establishes 9 criteria to be assessed:
 - the person executing the work does not take any financial or economic risk
 - the person executing the work does not have the power to take financial decisions
 - he/she does not take part in purchasing policy of the enterprise
 - he/she does not have the power to set prices, except that they are set by law
 - he/she does not have any obligation of result of the work
 - he/she has a guaranteed of a fix income whatever the results of the enterprise or volume of services are
 - he/she does not have his/her own personnel nor a possibility to hire personnel or be replaced for the execution of the agreed work
 - he/she does not act as an enterprise vis-à-vis 3rd parties or he/she works usually for one client
 - he/she works in the premises that he does not own nor rent and/or with material given to his disposal, financed or guaranteed by his/her client

I.2. Reality in the airline sector = ON-GOING LIBERALISATION & SOCIAL DUMPING

1) New employment models

- "creative" employment models are being used to avoid or circumvent labour legislation and social security legislation
- main issues of concerns are for the aircrew:
 - bogus self-employment/contractor
 - based in a foreign country (non-EU)
 - based in a foreign country (EU)
 - move aircraft to another country
 - "pay to fly" (junior pilots without experience paying to get flight hours to be able to apply for a job overseas, e. g. in the Gulf)
 - so-called 'acting up' aircrew or pilots in training used for other tasks without any protection
 - agency work (ex: Crewlink – Ryanair; Adecco - Finnair)
 - seasonal work (often repeated seasonal contracts with no prospect for an indefinite contract) and in some cases, part time during low seasons and therefore "not a full job"
 - short-term contracts

2) 2 specific examples

A) Specific case of Ryanair

Bogus self-employment



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- at least 220 self-employed pilots working for Ryanair in Ireland
- construction as follows:
 - candidate pilots successfully passing selection tests for Ryanair
 - he/she becomes director of an Irish micro-enterprise (such as e. g. Fancy Flight Aviation or Fusion Aviation Ltd.); this enterprise is a client of interim agency (Brookfield aviation) that supplies pilots to Ryanair
 - his/her micro-enterprise has to be handled by accountant firm agreed by Ryanair
 - the pilot is flying for Ryanair according to its instructions
 - Ryanair is paying to Brookfield, who then compensates the pilot via its micro-enterprise

Use of Irish labour law/social security

- several court cases by former employees against Ryanair
- Ryanair repeatedly condemned in France for non-respecting labour legislation

B) Specific case of Norwegian

- Norwegian Air Shuttle (NAS) is the third largest low-cost carrier in Europe offering a high-frequency domestic flight schedule within Scandinavia and to business destinations such as London, as well as to holiday destinations in the Mediterranean and the Canary Islands
- long-haul operations launched in May 2013, operated by Norwegian Long Haul (NLH) - separate business entity and does not share the same AOC as Norwegian Air Shuttle
- In February 2014, Norwegian Air Shuttles Irish subsidiary, Norwegian Air International (NAI), received an operating licence and an air operator's certificate issued in Ireland so it can access future traffic rights to and from the European Union
- reasons for NAI to be established in Ireland:
 - low taxes in Ireland
 - Ireland will allow NAI to employ flight/cabin crew on foreign contacts => social dumping
 - NAS is unionized x NAI is not (and it would be hard to organize foreign-based crew)
- European pilots hired through an agency in Singapore, they are formally based in Thailand (but living in Europe)
- cabin crew are hired in Thailand (Adecco) and USA locally

I.3. Ryanair case law from some European countries

1) BELGIUM

A) Case of 5 ex-cabin crew vs. Ryanair (2 September 2013)



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- suing Crewlink 20,000 EUR each for unpaid salaries, night supplements, overtime supplements, transportations costs, uniform costs, meal vouchers, guaranteed salary and dismissal payments
- court explicitly referring to Rome I and Belgium as the country governing the labour law applicable
- Crewlink condemned to pay 20,000 EUR to each applicant (this amount has been provisionally lowered to 1 EUR)

B) Case of a Spanish national vs. Ryanair (4 November 2013)

- suing Crewlink for unpaid salaries, night supplements, overtime supplements, transportations costs, uniform costs, meal vouchers, guaranteed salary and dismissal payments
- his work contract has been signed in 2008 (before the Rome I convention entered into force)
- the court declared itself incompetent, because there is no sufficient link between Ryanair and Belgium
- CNE announced to appeal

2) FRANCE

A) Ruling of Court of appeal Aix-en-Provence

- 4 individuals supported by French unions suing Ryanair for non-respect of French labour laws and not paying social security contributions in France
- Ryanair condemned to pay 75,000 EUR both to SNPL and UNAC, 35,000 EUR to FO-FEETS, 35,00 to CGT, 3,025,000 EUR to Caisse de retraite du personnel navigant professionnel aeronautique (CRPNPAC), 4,523,876.75 to URSSAF des Bouches du Rhone, 35,000 to Syndicat des Compagnies Aeriennes autonomes, 455,000 to Pole Emploi, 75,000 EUR to SNPNC and different amounts to the individuals (Morgan Fischer, Erik Besancon, Patrick Guy, Martin Jezierski)
- Ryanair publicly announced that it will appeal (cf. press release)

3) ITALY

A) Case of Alessandro Iaccarino vs. Ryanair

- ex-cabin crew member working at Ciampino airport suing Ryanair for unfair dismissal
- 1st instance – court declared itself to be incompetent, as Irish law should apply
- appeal – court referred the case back

4) NORWAY

A) Case of Alessandra Cocca



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- Italian citizen, employed by Ryanair (Crewlink) in Norway from 28 March 2013, obligation to live no further than a one-hour journey from the airport; dismissed by letter of 30 January 2013
- decision of Moss District Court of 21 June 2013: the dispute does not sufficiently link to Norway; Cocca appeals
- decision of Borgarting Court of Appeal of 16 August 2013: the case shall be referred, Ryanair to pay legal costs for District and Appeal Court (30,000 NOK); Ryanair Appeals
- decision of Appeals Selection Committee of the Supreme Court of Norway of 5 December 2013: ruling is overturned, legal costs are not awarded (due to procedural issues)
- decision of Borgarting Court of Appeal of 5 March 2014: case to proceed, Ryanair to pay 38,500 NOK to Alessandra Cocca, 11,000 NOK each to HK and LO and 6,800 to YS (unions) => Norwegian court is competent, but the question of choice of law has not been addressed yet

5) SPAIN

A) Case of Ana Herrera Tores

- Ryanair cabin crew employed through Crewlink, based at Girona airport (near Barcelona)
- employed from 01/09/2010 till 23/09/2011, then dismissed
- short-term illness from 23/08 – 23/09/2011, the NISS (National Institute for Social Security) refused to pay compensation for the period of illness
- Ana Herrera Tores suing the NISS and Crewlink for not paying social security
- in 1st instance (04/09/2012), she lost – court declared itself incompetent, as she was working under Irish contract
- 2nd instance (14/01/2014), she won the appeal, because the court used Regulation 8/2008 (Article 1(7)) and Regulation 3922/91 (definition of home base)
- court decided that she was working in Spain and Spanish court must hear the case

6) UNITED KINGDOM

A) Case of Brookfield Aviation vs. Robertus Johannes Willhelmus Van Boekel

- Brookfield aviation (English company acting as employment agency for Ryanair) suing ex-Ryanair pilot Robertus Johannes Willhelmus Van Boekel for 5,000 EUR because he has stopped flying for Ryanair before the end of the notice period
- the court found that the respective clause is unenforceable, because the 5,000 EUR are a penalty rather than an amount to cover the extra cost for Brookfield aviation



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- more importantly, the judgement illustrates the employment practices of Ryanair vis-à-vis their pilots (use of employment agencies, "accountant" firms and self-employed pilots and it's worth reading!

B) Case of Russell Fryett (Cathay Pacific)

- Mr Fryett (UK citizen working for Cathay Pacific, Hong Kong) has appealed against the fact that he is subject to UK tax
- he lost in the 1st instance, because the court found that he is living in the UK
- he claims that he works outside of the UK (according to Chicago Convention, the aircraft is Hong Kong territory), is subject to Hong Kong taxes and that there is an agreement between Hong Kong and the UK to avoid double taxation
- the case was dismissed and Mr Fryett had to pay UK income tax

I.4. Complaint to ILO

IRELAND

A) Complaint to the ILO Committee on Freedom of Association by ICTU, IMPACT and ALPA

- against the Republic of Ireland for breach of ILO Convention 98 (21 March 2011)
- support of the ITF
- the complaint states that Irish law fails to sufficiently guarantee the minimum standards in terms of protection of workers from acts of anti/union discrimination, protection of workers' organizations from acts of interference by employers and promotion of the principle of voluntary collective bargaining



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II. SOCIAL DUMPING IN THE GROUND HANDLING INDUSTRY

The situation of groundhandling services is characterised throughout Europe by unsatisfactory social conditions. Examples of job losses, low earnings, and a lack of any career prospects are on the increase in many states. Social dumping is usual and grows. Any future legal framework for groundhandling services must aim to counter the negative social impact of current policies. Practical steps must be taken to achieve the aim of the European Union, as laid down in the Treaty, of working towards full employment and social progress.

The current Directive 96/67 EC has failed to bring about any improvement in the difficult social situation of employees in those EU Member States that do not have any market regulation. And in those EU states that do have regulations on market access, the Directive has, in fact, led to a massive deterioration in the situation of employees. For example, the real incomes of employees working in groundhandling services in Germany have fallen by more than 20%. Some 40% of employees in these services in Germany are now unable to make a living on the wages they earn. Precarious employment is on the increase.

A regulation of the kind proposed by the EU Commission in the form of COM (2011) 824 would merely exacerbate this trend. And it is not just working conditions that are at stake: a continuation of the current policy of opening the market without any social regulation would mean that those affected would be unable to participate in social life, suffer increasing health problems, have fewer opportunities for career development and face the prospect of poverty in old age.

This applies not only to those working in groundhandling services but also to many employees working in clerical and technical sections of the companies concerned. And airline employees will also be disadvantaged by the boost given to competition without any accompaniment of employee protection regulations.

Working people increasingly perceive the European Union as an institution that constitutes a threat to their personal situation. The result is increasing rejection of EU policies and even of the EU itself.

Continuing the current policy of liberalisation and deregulation would be disadvantageous not only for employees but also for the state: domestic demand would be weakened, government revenues – especially from VAT and income tax – would be reduced and social security expenditure would increase.

A further opening of the market causes without effective measures against social dumping no advantages for the system of air transport but negative effects for employees and for the state.

Capacity restraints will not be abolished by enhanced competition but will be increased.



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Competition for the favourable priced services also exists if there is a market regulation. Airlines force airports and handling companies by their market power to make concessions.

Providers of ground handling services can amortize their investment in property and staff less and less. Therefore they cut costs when they invest in the qualification of employees and so cut down not only on the quality of services but also on safety.

ETF calls for competition in the market for groundhandling services to be based on delivering high-quality service rather than rock-bottom staff costs.

European regulations that guarantee employee protection and competition based on quality should be created both for those areas hitherto regulated in some EU states – baggage handling, freight and mail handling, ground administration and supervision, and fuel and oil handling – and also for all other groundhandling services.

European Transport Workers Federation calls for a new European regulation of groundhandling services:

- ➔ **The only companies permitted to provide services must be those that apply a representative collective agreement.**
- ➔ **When the service provider changes, employees' jobs must be safeguarded on conditions that are at least of the same level.**
- ➔ **There must be sufficiently high quality, binding standards for employee training and continuous staff development.**
- ➔ **Subcontracting and sub-sub-contracting must be forbidden. It merely serves to undermine collective agreements and encourages wage dumping and cut-throat competition.**

The European Parliament legislative resolution of 16 April 2013 on the proposal for a regulation of the European Parliament and of the Council on a groundhandling services at Union airports is a great example that EU could bring a positive development for European democracy and a much better situation for employees in Europe.

It is the view of the ETF that position by the European Parliament should be changed at a few items, but even if it not changed, the proposal will radically decrease the social dumping in the groundhandling industry.

The existing Directive 96/67/EC on Ground Handling Services meant a landmark for the opening up of the ground handling business in Europe. It also meant the implementation of a business model based on a continuous reduction of costs in a very competitive market, resulting in the biggest threat that ground handling workers have had to face.



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Job quality and stability, wages, working hours and pension schemes have been lowered to unacceptable minimums.

Taking into account that labour costs are fundamental to determine the prices that a service provider can offer to airlines, without a transfer of staff agreement, established handlers will always be in a competitive disadvantage. Staff's seniority and all privileges linked to it are rights never to give up and should as such be part of the framework to be accepted by anyone intending to enter the Ground Handling market.

At present, the last company to enter the market is the cheapest and with the least skilled workforce. Therefore a transfer of staff agreement should be a common target for workers, enterprises and even for National Aviation Authorities, as an experienced and skilled workforce is enormously linked to safety.

The ETF proposals when changes of GH services provider take place are:

- In case of take-over, call for tenders and, generally speaking, when a transfer of activity takes place among handlers, transfer of staff must be compulsory for employers (the transferor and the transferee) and voluntary for employees.
- Transfer must be applicable to all staff (freight, ramp side and passenger side).
- National Authorities must be involved by making compulsory the acceptance of the agreement for any undertaking in case of a call for tenders.
- Both, total and partial transfer must be covered even in and with self-handling cases:
 - Transfer due to a total loss of activity: in this case, the number of workers to be transferred must be the totality of workers dedicated to the handling services.
 - Transfer due to a partial loss of activity or in case of self-handling: once determined the average loss of activity, this average would be applied to the total amount of staff to the handling services, and then transferred to the employer capturing the market. Particular attention must be paid for the issue of staff dedicated to a certain handling contract.
- Workers must keep the following rights unless the ones in the new company are better: annual revenues, seniority, annual/monthly working hours, professional category and pension schemes, including a provision that obliges the application of a representative collective agreement.

The principle to apply in the following:

“As long as a transfer of activity takes place among handlers out of the scope of the Council Directive 2001/23/EC of 12 March 2001, the employees of those undertakings will maintain all the rights and safeguards recognized for workers in the event of transfer of undertakings in that above-mentioned Directive.”

So far, the EU Directive 96/67 on Ground Handling is still in application in all EU Member states. The Commission proposal for a new Regulation is not yet adopted



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despite the adoption, on 16 April 2013, by the European Parliament of its position (first reading).

Currently there are some good examples of agreements at national level:

In Spain, on 31 May 2005, the association of airport handling service companies (ASEATA), representing the employers in the sector, and the trade unions CC.OO, UGT and USO, representing the workers signed the first collective bargaining agreement for the airport handling services sector.

This agreement fully protects the workers in case of a transfer due to a total or partial loss of activity or in case of self-handling.

There are further sectoral agreements in some countries covering the issue of transfer of staff (e. g. UK or Italy).

In other countries, such as Belgium, a sectoral collective labour agreement is currently being finalised.

III. **SOCIAL DUMPING IN THE AIR TRAFFIC MANAGEMENT INDUSTRY**

1. **The Co-op Model**

ETF wishes FABs to be multinational projects that secure and even create jobs in the ATM industry and open up a long-term perspective for the personnel in all concerned ANSPs. Through the “Co-op Model” FABs can increase the performance with positive social consequences.

Additional social aspects must be considered if the mobility of workers has to become a reality within the framework of FABs. ETF will only accept voluntary mobility and urges ANSPs involved not to use mobility as a tool for social dumping. In line with our policy regarding mobility aspects within the licensing scheme (particularly the Air Traffic Control Officer (ATCO) license), we call for equal social treatment between staff. Mobility must not lead to the circumventing of existing national provisions governing the rights and obligations applicable to employment relationship between employer and employees.

In FABs implementation where ANSPs with different cost structures and countries with different social and legal standards take part, ETF strongly recommends that ANSPs shall ensure the proper application of Community and of their national social legislation and collective agreements in order to avoid social dumping. Special efforts in social dialogue at national and at FAB levels



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shall be undertaken to find solutions to tackle this issue.

2. The EU legislation

The Recital 9 of the Regulation (EU) No 805/2011 on Community air traffic controller license only states: “Member States should ensure that implementation of the ATCO license must not lead to circumvention of existing national provisions governing the rights and obligations applicable to the employment relationship between an employer and applicant air traffic controllers”. Unfortunately it is not binding.

1. The ATM social partners recommendations

On 29 November 2013, ETF, ATCEUC and CANSO (the ATM European Social Partners) adopted recommendations on mobility of workers within the ATM sector.

The ATM Social Partners recommend notably the following:

- a) Foreseeing that forced mobility will lead to social tensions, the ATM SPs recommend that mobility issues should be agreed between management and trade unions within the Social Dialogue framework of the providers/countries involved and should continue to be on a voluntary basis.
- b) To promote the workers mobility clear provisions have to be included both in the ANSP procedures and in the collective agreements in order to provide guarantees on employment terms for expatriate workers but also for workers already based in the destination countries.
- c) If these provisions are not already included in existing agreements, an ad-hoc agreement between management and trade unions within the Social Dialogue framework of the providers/countries involved should be set-up in order to address the mobility issues.
- d) These provisions should cover all the challenges arising from workers mobility, setting clear employment and economic conditions including accommodation, considering possible consequences for the pension scheme, the social security, the tax rules (incl VAT), welfare and healthcare.
- e) The ATM SPs recommend that the spirit of the Commission Regulation (EU) No 805/2011 on ATCO licences which clearly specifies in its recital that “the implementation of the ATCO licence must not lead to circumvention of existing national provisions governing the rights and obligations applicable to the employment relationship between an employer and applicant air traffic controller”



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should be endorsed.

The recommendations of the ATM SPs will avoid the introduction of social dumping and assist in the prevention of social tensions between TUs and management in addressing international mobility issues. Additionally they will assist in the integration of expatriate workers into the local community.



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IV. Conclusions

- a) There is a loss of decent (core) jobs in the airline industry because the employers excessively increase productivity instead of creating jobs;
- b) The jobs created are more precarious and the workers are less protected because the quality of the new jobs decreased
- c) The externalisation of the recruitment (Ryanair, Norwegian, Finnair, for instance) lead to new jobs that may disappear from the civil aviation statistics (Eurostat, national data) for 2 reasons:
 - 1. temporary agencies are not part of the civil aviation sector (because the statistics will only mention “employees”);
 - 2. it is also the case for the bogus self-employed (because the statistics will only mention “self-employed”)
 Temporary agencies and bogus self-employment potentially increase safety risks in aviation since non direct employment weakens the strong safety culture and accountability and procedures that currently exist.
- d) These airlines are trying to avoid labour law and social provisions as much as possible, often choosing for Irish jurisdiction (most relaxed labour law, one of the lowest social security standards/contributions)
- e) The liberalisation of the ground handling sector, a very labour-intensive, has led to a strong competition with dramatic social consequences: massive redundancies, reduction of labour related costs, increasing of precariousness, etc.
- f) There is a lack of social protection of the ground handling workers in case of call for tenders and/or partial loss of activities, together with the need to have a recognised collective agreement
- g) There is a lack of EU training and qualifications standards in the ground handling sector
- h) The ATCO licence may create social dumping, through mobility inside the EU if not appropriately regulated
- i) There is a single European market, but there is no uniform social legislation; there is a strong need for Social Europe
- j) social legislation (if existing) is not aligned with technical legislation (ex. link home base = social security and labour law); technical legislation is prevailing over social legislation
- k) different taxes and social security systems in EU member states
- l) EU-US open skies (and other open skies agreements) creating additional problems
- m) there is a positive evolution in rulings issued on cases where Rome I and Regulation 8/2008 (coordination of social security) apply
- n) It looks like not all the courts are aware of the scope of EU legislation



President Lars Lindgren

Vice Presidents Alexander Kirchner



Ekaterina Yordanova

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V. The 11 ETF proposals to fight against social dumping in civil aviation

1. Recognition of trade unions in all companies in all countries where they employ personnel and of their ability to negotiate collective agreements, including the transnational level
2. Improvement of the Regulation (EC) No 1008/2008 on common rules for the operation of air services to make the application of the national social legislation binding (in the meantime, the ETF will push for adoption of national "social decrees" as in France)
3. Improvement of the Regulation 987/2009 on social security coordination (shortening the 10 years transitional period and clarification in case of multiple bases)
4. Improvement of the Regulation (EU) No 805/2011 (ATCO licence) in order to make binding the Recital 9, which must prevent the circumvention of the existing national provisions governing the rights and obligations applicable to the employment contracts.
5. Improvement of the Directive on Temporary Agency Work (2008/104/EC) to promote direct employment
6. Improvement of the Council Directive 2000/79/EC on Working Time of Mobile Workers in Civil Aviation
7. Improvement of the Directive 2011/98 EU (single permit directive) to extend it to aircrew
8. Adoption of an EU legislation against bogus self-employment
9. Negotiation of an agreement between the EU civil aviation social partners on labor laws applicable and on the social rights of the civil aviation employees
10. Adoption of a new Ground Handling Regulation, which ensures the binding social protection (including pay) of workers in case of call for tenders and/or partial loss of activities; the application of a representative collective agreement for all companies must become obligatory
11. An EU observatory on jobs and working conditions is needed in civil aviation



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