



European Economic and Social Committee

TEN/697

The social dimension of aviation (report)

OPINION

European Economic and Social Committee

**Report from the Commission to the European Parliament, the Council,
the European Economic and Social Committee and the Committee of the Regions
Aviation Strategy for Europe: Maintaining and promoting high social standards
[COM(2019) 120 final]**

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Section responsible	Transport, Energy, Infrastructure and the Information Society
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Outcome of vote (for/against/abstentions)	174/0/1

1. **Conclusions and recommendations**

- 1.1 The Committee endorses the Commission report on the employment conditions of highly mobile aircrew (pilots and cabin crew) whose situation may be particularly challenging due to the cross-border nature of their jobs and who enjoy differing rights and degrees of protection depending on the national law which applies to them.
- 1.2 The Committee considers it unfortunate that this report has been produced at the end of the current Commission's term of office, with the resulting uncertainty regarding follow-up. It hopes that the new Commission will recognise that, given the gravity of the situation, dealing with the problems identified in the report is a key priority, and that it will act swiftly to propose specific remedies.
- 1.3 The Committee endorses the fact that the above-mentioned report highlights the continued existence of numerous problems and considerable legal uncertainty, and that better application of EU and national rules in all forms of employment of aircrew is crucial in order to avoid practices which amount to infringing or getting around applicable law such as undeclared work and bogus self-employment, and to guarantee a lawful level playing field for aircrew, making the safety of crew and passengers an absolute priority. The Committee endorses the steps planned by the Commission and calls on the Member States to ensure that the social and labour legislation governing aircrew is interpreted and applied uniformly.
- 1.4 The Committee considers that the lack of reliable statistics on the number of aircrew jobs and the number of outsourced jobs and agency staff is a significant problem. This dearth of statistics, which in the Committee's view should be remedied as soon as possible, exacerbates the legal uncertainty regarding employment conditions and the varying levels of protection of aircrew, encourages an unequal or unfair playing field for EU air carriers which are subject to very strong competition and undermines the Member States which are deprived of some tax revenue and social security contributions.
- 1.5 Given the plethora of types of employment contracts and the uncertainty which sometimes results, the Committee reiterates its call¹ to promote direct employment which should remain the usual form of employment in aviation, and considers that it is crucial to oppose any atypical contracts which could undermine the safety of aircrew and passengers, while conceding that the use of temporary contracts or temporary agency work is not automatically illicit, nor does it equate to social dumping.
- 1.6 As the aircrew sector is not free of illicit working arrangements such as undeclared work, bogus self-employment and the failure to apply the Posting of Workers Directive, the Committee supports the Commission, which urges the Member States:
- to ensure, by the appropriate means, the enforcement of existing labour law rules at national level and also to ensure compliance with EU law, as interpreted by the Court of Justice of the EU;

¹ [OJ C 13, 15.1.2016, p. 110.](#)

- to ensure that EU air safety rules are applied properly and in the same way to aviation staff, regardless of their contractual relationship with the airline;
 - to transpose properly the Directive on Transparent and Predictable Working Conditions in the European Union, which will apply to any form of contract, now or in the future, including the work of bogus self-employed workers.
- 1.7 The Committee hopes that the future European Labour Authority will ensure that the recent changes to the Posting of Workers Directive, which establishes the principle of equal pay for equal work in the same place, will be properly transposed and applied by the Member States by 30 July 2020. Moreover, the Committee considers that this authority should also ensure that all the rights of civil aviation aircrew are upheld.
- 1.8 The Committee would point out that the right to set up or join a trade union, to negotiate collective agreements and to go on strike, among others, are human rights guaranteed at international, European and national level, and must be complied with absolutely. Unfortunately, in practice, there are cases where the right to organise trade unions and to collective bargaining is limited and workers have to defend their rights in court. The right to information and consultation should be guaranteed as well.
- 1.9 The lack of global labour standards for civil aviation undermines the effectiveness of EU and Member State labour legislation for both intra EU and extra EU routes. The Committee regrets that there is apparently no consensus in the International Labour Organization on drawing up a convention on the rights of workers in the civil aviation sector, despite the fact that a similar convention has been drawn up for seafarers. The Committee strongly encourages the EU to include labour-related social clauses and standards which are both ambitious and binding in all aviation agreements with third countries and endorses the Commission's intention to do so.
- 1.10 As regards the quality of training, it is very worrying to read in this Commission report that:
- the skills gained by the cadets may not always match the skills required by airlines; and
 - a large proportion of pilots who hold an airline transport pilot licence do not meet the airlines' basic entry requirements.
- 1.11 The Committee points out that according to the new Directive on Transparent and Predictable Working Conditions in the European Union, "Member States shall ensure that where an employer is required by Union or national law or by collective agreements to provide training to a worker to carry out the work for which he or she is employed, such training shall be provided to the worker free of cost, shall count as working time and, where possible, shall take place during working hours".
- 1.12 The Committee calls on the Commission to be proactive and invite all the organisations that meet the criteria for membership of the European sectorial dialogue committee on civil aviation to take an active part in the work of this committee, and to make the best possible use of this tool to find mutually satisfactory solutions, by means of negotiation, to the problems facing these organisations.

1.13 Lastly, the Committee considers that the working environment of aircrew is not only shaped by their working conditions but also by external factors such as passenger satisfaction with the standard of service both in the airport and on board. It is therefore important to ensure that the rights of passengers, including passengers with specific needs (disabled or elderly people, infants, pregnant women), are upheld.

2. Introduction

2.1 In air transport, other than the minimum standards laid down by EU law, the Member States largely have competence and responsibility for social protection and labour law, and the rules in these areas are, to varying extents, applied differently.

2.2 There is no longer a uniform employment model in civil aviation: while some airlines offer good-quality jobs and open-ended contracts, according to a recent survey (*Study on employment and working conditions of aircrews in the EU internal aviation market* – Ricardo study), between 9 and 19% of cabin crew and around 8% of pilots said that they are employed through some form of intermediary organisation.

2.3 This Commission report focuses only on aircrew (pilots and cabin crew) whose situation may be particularly challenging due to the cross-border nature of their jobs and who enjoy differing rights and degrees of protection depending on the national law which applies to them.

2.4 Furthermore, pressure on operating costs in a highly competitive market leads some airlines to make use of indirect employment arrangements as an alternative to open-ended contracts which, according to the Ricardo study, are still the main form of employment. Nonetheless, in order to reduce operating costs, many air carriers:

- outsource part of their activities;
 - employ aircrew via intermediary agencies, including temporary employment agencies, sometimes using a number of arrangements in a complex chain of employment relationships which make it difficult to identify the actual employer;
 - recruit self-employed workers;
 - assign staff to an operational base outside the area in which the air carrier was authorised to operate;
 - practice “pay to fly” schemes;
- all of which gives rise to legal uncertainty and sometimes makes it difficult to distinguish between illegal situations and highly complex but legal ones.

2.5 In 2015, as part of its aviation strategy for Europe, the Commission announced that it would be making the social agenda in the aviation sector a priority. Nonetheless, in 2017 the European Parliament, the European Economic and Social Committee and the Committee of the Regions continued to have concerns about a situation which had scarcely evolved and called on the Member States and the Commission to respond to the unresolved social problems in aviation, particularly with regard to highly mobile aircrew.

2.6 In October 2018, given the lack of tangible measures regarding the social dimension of air transport and alerted by repeated strikes among some aircrew, the European transport ministers

from six Member States issued a joint declaration calling on the Commission to draw up tangible measures by the end of 2018, in particular an ambitious social agenda guaranteeing fair working conditions and establishing a level playing field for all actors in the sector, whether from the EU or third countries.

3. General comments

- 3.1 In its 2015 aviation strategy for Europe, the EU undertook to bolster the social agenda and create good quality jobs in aviation, as well as to explore the need to further clarify the applicable law and jurisdiction with regard to the employment contracts of mobile workers in the aviation sector.
- 3.2 To gain further insights into the current situation in the aviation market, the Commission commissioned a study on the employment and working conditions of aircrews (the Ricardo study) which was published in January 2019.
- 3.3 The Committee is pleased that the Commission has drawn up a report on the situation and the employment conditions of aircrew although it has been produced at the end of the current Commission's term of office, with the resulting uncertainty regarding follow-up. The Committee hopes that the new Commission will recognise that, given the gravity of the situation, dealing with the problems identified in the report is a key priority and that it will act swiftly to propose appropriate remedies.
- 3.4 The above-mentioned report in fact confirms the continued existence of numerous problems and considerable legal uncertainty, and that better application of EU and national rules in all forms of employment of aircrew is crucial in order to prevent practices which amount to infringing or getting around applicable law such as bogus self-employment, as well as to guarantee a lawful level playing field.
- 3.5 The Committee regrets the fact that the only measure implemented by the Commission since the European social agenda incorporated into the 2015 aviation strategy has been the publication of a practice guide on applicable labour law and competent courts. The Commission report does not provide any answers as to whether it plans to adopt interpretative guidelines or to amend the rules on civil aviation. The Commission will instruct an ad hoc group of Member State experts on aviation and labour law matters to take stock of the actions listed in this report and to advise the Commission and the Member States on how labour law may be appropriately enforced in aviation. The Committee calls for the social partners to be given a role in this group, in addition to the institutions' experts.

4. Specific comments

- 4.1 This report points out that there are no figures available that specifically set out the number of jobs available for aircrew; the Committee wonders therefore how it is possible to state how many pilots and cabin crew will need to be trained and recruited in the medium and long term. This applies particularly to the training of pilots, which is a lengthy and costly process.

- 4.2 It is also plain from this dearth of statistics that we have no idea how many aircrew jobs have been outsourced. The only documentation available is the 2015 survey by the European social partners in civil aviation, which stated that only 52.6% of respondents working for low-cost airlines said that they had a direct employment contract. The Committee feels that improving statistics is paramount. This dearth of statistics exacerbates the legal uncertainty regarding employment conditions and the varying levels of protection of aircrew, and makes it difficult to distinguish between legal and illegal practices, abuse and regulatory shortcomings. It encourages an unequal playing field for EU air carriers, which are subject to very strong competition, and undermines the Member States, which are deprived of some tax revenue and social security contributions.
- 4.3 The European Union Aviation Safety Agency (EASA) pointed out in its practical guide, published in August 2017, that the fragmentation and outsourcing of safety-related jobs, including for aircrew, could have a deleterious effect on safety; EASA also put forward practical measures regarding the outsourcing of critical safety services and wet-lease contracts.
- 4.4 As regards temporary agency work, once again the EU does not have reliable data. The Ricardo study indicates however that between 9 and 19% of cabin crew and around 8% of pilots said that they are employed through some form of intermediary organisation, and that the vast majority of those hired through such an intermediary would be working for low-cost carriers.
- 4.5 The Committee reiterates its call² to promote direct employment, which should remain the usual form of employment in aviation, and considers that it is crucial to oppose any atypical contracts which could undermine the safety of aircrew and passengers.
- 4.6 Directive No 2008/104 on Temporary Agency Work can only be applied on a temporary basis and cannot be turned into a permanent measure, although it is clear that making use of temporary contracts or temporary agency work can be unavoidable and is not automatically illicit nor does it equate to social dumping.
- 4.7 As regards undeclared work which is partly carried out by bogus self-employed workers, the seminar to be organised at the end of the year by the European platform on undeclared work, focusing on bogus self-employed work by aircrew, is a major step towards making this problem visible and ensuring that it is discussed by labour inspectors and the social partners. The Member States must step up their labour inspection services so as to be able to enforce compliance with EU and national provisions on working conditions in civil aviation.
- 4.8 The EU's aviation safety rules include the concept of a home base. Due to the high mobility of aircrews, identifying which social security legislation and which labour law they are entitled to, and in which court they can claim their rights can be challenging. The home base also serves as a reference to calculate flight and duty times limitations. The Committee urges the Member States to ensure that EU and national social legislation is applied properly with regard to staff employed by an EU air carrier operating air services from an operational base located outside

² [OJ C 13, 15.1.2016, p. 110.](#)

the territory of the Member State in which that carrier has its principal place of business, in line with the regulation on air services.

- 4.9 The Commission report states that the number of operational bases has grown steadily, and aircraft and aircrew of the same airline are increasingly based outside the airline's principal place of business, in the territory of other Member States or sometimes even in third countries. In such cases, the applicable law is that of the country of the home base, although certain companies apply the law of the country of the principal place of business instead of that of the country of the home base. The Committee asks the Commission to publish guidelines on home and operational bases and applicable law.
- 4.10 There are several forms of self-employed working arrangements: a self-employed pilot employed directly or via an intermediary organisation, or a limited liability firm set up by self-employed pilots. The Committee supports the Commission, which urges the Member States:
- to ensure that EU air safety rules are applied properly and in the same way to aviation staff, regardless of their contractual relationship with the airline;
 - to ensure, by the appropriate means, the enforcement of existing labour law rules at national level and also to ensure compliance with EU law, as interpreted by the Court of Justice of the EU;
 - to transpose properly the Directive on Transparent and Predictable Working Conditions in the European Union, which will apply to all workers, particularly those with new and atypical jobs.
- 4.11 As regards the posting of workers by using crew on a temporary basis outside their home base, the relevant directive is generally not applied, according to the Ricardo study, in the case of aircrew, even though it is in principle applicable to the transnational provision of services by temporary employment agencies or placement agencies.
- 4.12 The Posting of Workers Directive also applies in the context of a wet-lease contract, should there be an employment relationship between the aircrew and the lessor during the whole period of the lease. Aircrew staff who are assigned to a new home base would not be considered as being posted.
- 4.13 The Committee supports the Commission which proposes to assist the Member States when applying the revised Posting of Workers Directive, partly with a view to improving equal treatment and preventing cross-border fraud.
- 4.14 The Committee further hopes that the future European Labour Authority will also ensure that the recent changes to the Posting of Workers Directive, which establishes the principle of equal pay for equal work in the same place, will be properly transposed and applied by the Member States by 30 July 2020, and that this authority will ensure that social legislation is applied properly at both European and national level in order to uphold all the rights of civil aviation aircrew, including the freedom to join a trade union.
- 4.15 The Committee is aware that certain airlines forbid membership of a trade union that they do not approve of, and sometimes even dismiss employees on the grounds of trade union membership,

so workers have to defend their rights in court. The Committee would remind the Member States concerned that the right to set up or join a trade union, to negotiate collective agreements and to go on strike, among others, are human rights guaranteed at international, European and national level, and must be complied with absolutely. The right to information and consultation should be guaranteed.

To address issues related to the application of social standards at national level, a mediation body could be set up at the EU level, to help resolve disputes which are related to the application of the Regulation.

- 4.16 As regards crews from non-EU countries, the Committee reiterates its request (see [OJ C 13, 15.01.2016, p. 110](#)) to extend the single permit to aircrew to ensure equal treatment of all workers in the industry according to Directive 2011/98/EU. The Ricardo study confirms that it is not possible to tell, on the basis of the data collected, how common this practice is or whether the home base of the aircrew used is located in a third country or in the EU.
- 4.17 The lack of global labour standards for civil aviation undermines the effectiveness of EU and Member State labour legislation for both intra EU and extra EU routes. The Committee regrets that there is no consensus in the International Labour Organization on drawing up a convention on the rights of workers in the civil aviation sector, despite the fact that a similar convention has been drawn up for seafarers. Failing an ILO convention, the Committee strongly encourages the EU to include labour-related social causes which are both ambitious and binding, and trigger penalties in the event of non-compliance, in all aviation agreements with third countries, beginning with the agreement currently pending between the EU and Qatar.
- 4.18 Pilot training is a lengthy and costly process made up of three stages (basic training, type rating to pilot a specific type of aircraft and line training to gain flight experience). According to the Ricardo study, between 2.2 and 6% of surveyed pilots had to contribute financially in order to gain flight experience under "pay to fly" schemes. The Directive on Transparent and Predictable Working Conditions in the European Union [COM(2017) 797 – 2017/0355 (COD)], provides that "Member States shall ensure that where an employer is required by Union or national law or by collective agreements to provide training to a worker to carry out the work for which he or she is employed, such training shall be provided to the worker free of cost, shall count as working time and, where possible, shall take place during working hours". The EESC hopes that its application will be properly enforced, while taking care to avoid creating more red tape.
- 4.19 As regards the quality of training, it is very worrying to read in this Commission report that:
- the skills gained by the cadets may not always match the skills required by airlines;
 - a large proportion of pilots who hold an airline transport pilot licence do not meet the airlines' basic entry requirements.
- 4.20 The Committee deplores the fact that since 2017, European social dialogue, and particularly the sectorial social dialogue committee on civil aviation, have been unable to hold a constructive dialogue, as the airlines are not represented. This is all the more unfortunate because constructive social dialogue and collective agreements could find solutions to problems identified in the Commission report.

- 4.21 The Committee encourages the Commission to be more proactive and to persuade the social partners to guarantee appropriate representation of the airlines and aircrew and to make the best possible use of this tool to identify mutually satisfactory solutions, by means of negotiation, to the difficulties they are encountering.
- 4.22 As regards the working environment of aircrew, this is not only shaped by their working conditions but also by external factors such as passenger satisfaction with the standard of service both in the airport and on board. The Committee also considers that cabin crew must be trained and have the time to meet the specific needs of vulnerable passengers (such as disabled or elderly people, infants and pregnant women). It is important to ensure that the rights of passengers are upheld and that they have access to all the appropriate information, phrased in a clear and understandable way. The Committee supports the Commission, which urges the Council to adopt with all speed the revisions proposed by the draft regulation amending Regulation (EC) No 261/2004 on the rights of air passengers in the event of denied boarding and of cancellation or long delay of flights.

Brussels, 25 September 2019

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The president of the European Economic and Social Committee
