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To:

- Norbert Hofer, Austrian Minister for Transport, Innovation and Technology, President of the EU Transport Council Ministers
- Violeta Bulc, EU Commissioner for Mobility & Transport
- Marianne Thyssen, EU Commissioner for Employment & Social Affairs
- Karima Delli, Chair of the European Parliament Transport and Tourism Committee

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OPEN LETTER: STOP SOCIAL DUMPING IN THE AIR INDUSTRY!

Dear Minister,
Dear Commissioners,
Dear Chair,

Following significant operational difficulties that resulted in massive flight cancellations by Ryanair last year, Commissioner Bulc announced to the European Parliament on 3 October 2017 that she was very committed to moving forward on the social dimension of aviation and it would be the focus of her portfolio and an aviation strategy in 2018.

This announcement followed a meeting the ETF had with Commissioners Bulc and Thyssen in July 2017 during which this strategy called 'Social package in aviation' was to be launched in early 2018. To date, there is still no strategy and we have been informed that there will be no Political Communication as originally planned.

It is precisely because of this legal vacuum that strikes such as this summer at Ryanair are occurring.

Indeed, the current legislation does not specify that employment contracts of crewmembers fall under the national law and jurisdiction of the home base country. Unlike the European Commission suggests,



this legitimate demand from Ryanair workers cannot be negotiated merely in the context of social dialogue unless explicitly specified by the European legislation. On the contrary, it is the primary responsibility of the Commission and then of the other EU Institutions to support this request which aims to avoid social dumping between the airlines and develop a fair aviation policy.

Considering the Court of Justice Ruling in Joined Cases C-168/16 and C-169/16 (Osacar v Ryanair and Nogueira et al v Crewlink) in which the Court agreed that for the purposes of determining the *habitual place of work* of mobile air crews, the place *from which* that employee discharges their obligations towards their employer is the appropriate parameter (para. 60) and the Court of Justice Ruling in Heiko Koelzsch v Grand-Duché de Luxembourg (C-29/10) in which basically, the ECJ indicates that, in what concerns professional drivers, the state in which the worker habitually carries out his work is that where he performs the greater part of his obligations towards the employer, it is time that Commission proposes a legislation that closes the current loophole. If such a legislation is adopted at EU level, it is obvious that automatically the labour laws applicable to the mobile workers will be the ones from the country of their habitual place of work.

Moreover, companies such as Ryanair use temporary agencies to recruit a maximum of their workers. We also think that the current EU directive on the use of temporary agency work must be adapted or guidance should be given in order to clarify what constitutes a reasonable definition of a temporary assignment for aircrew in civil aviation, to precise what constitutes a reasonable cause of temporality for aircrew in civil aviation and to ensure the effective application of the principle of equal treatment of temporary agency work in aviation.

Finally, being a recognized social partner at EU level, the ETF deplores the threats of Ryanair to dismiss hundreds of staff or relocate them to another country as a punishment for exercising their legal right to strike as has been done recently in Ireland. The EU Institutions must send a clear signal to this company to respect the EU social model of concertation and negotiation and specially to respect the right to strike. In addition, given the transnational dimension of industrial conflicts at Ryanair, we believe that the Commission should call on the concerned national governments to facilitate everywhere dialogue with the trade unions with a view to finding collective agreements meeting the demands of the workers. If not, there are risks of new traffic disruptions in the weeks and months to come.

The Charter of Fundamental Rights of the EU states that '*Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests*'. It follows from this reality that the right to collective action is a means of balancing power between the employer and the workers. The ETF and the ITF make it very clear that social dialogue and collective bargaining can only achieve social peace and stability because the right to collective action gives the trade unions the needed tool to advance in negotiations. The one cannot exist without the other.

It is also the responsibility of the Commission to uphold the spirit and the letter of the European Pillar of Social rights which states in his chapter 8 that the social partners shall be encouraged to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action. It is a shame that Ryanair punishes workers not only by moving or dismissing them but also with intimidation, punishments and retaliation measures because of striking.

This irresponsible and immature response to its workforce suggests that Ryanair has a long way to go before it can be considered a fair employer. Calls for industrial action will continue until the company makes good collective bargaining agreements with unions. To do so, Ryanair needs a management

team that understands the importance of the social dimension of the company and the legitimate requests of its workers. In fact, it raises the question of whether the current management is capable of transitioning to a sustainable, unionised business model.

It is time that the EU finds solutions on all these issues!

Yours sincerely,



Stephen Cotton
ITF General Secretary



Eduardo Chagas
ETF General Secretary

1. The International Transport Workers' Federation (ITF) creates borderless solidarity among transport workers in every corner of the globe. It supports 670 affiliate trade unions in 140 countries, representing 19.7 million workers.
2. The European Transport Workers' Federation (ETF) embraces transport trade unions from the European Union, the European Economic Area and Central and Eastern European countries. The ETF represents more than five million transport workers from more than 230 transport unions and 41 European countries.