

Airline Coordination Platform

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SAS



CROATIA AIRLINES

TAP AIR PORTUGAL



ECA Piloting
Safety
European Cockpit Association



**EUROPEAN TRANSPORT
WORKERS' FEDERATION**

A Social Agenda for European Aviation

Europe's Single Aviation Market has been instrumental for creating new market opportunities, stimulating growth and boosting connectivity. Airlines and their employees have been the driving forces behind this success story, allowing the traveling public wider choice, better prices and quality service.

At the same time, the Single Market focused on economic freedoms and opportunities, while social aspects and regulations remained mainly national – subject to significant differences between the legal systems of EU Member States and subject to uneven control and enforcement.

These differences continue to exist with respect to working conditions, social rights, labor law, and social security systems. Companies in the aviation sector – including a number of airlines – take advantage of such differences, through various forms of 'social engineering', leading to systematic use of 'atypical' and precarious forms of air crew employment (including broker agency engagement without recourse to Collective Labor Agreements – (CLA's), zero hour contracts, (bogus) self-employment, etc.), or when dispatching flight and cabin crew – who by definition are highly mobile workers – to operational bases across national borders and jurisdictions, without correctly applying local labour & social security law.

Such practices are gradually undermining social systems, social rights & protections and effective access to legal redress, especially where national and EU legislation has not been adapted to new industry developments and cross-border set-ups. Equally, such practices create an unlevel playing field within Europe's aviation market, as they allow certain players to achieve an undue competitive advantage vis-à-vis their competitor airlines that do abide by the rules, respect social standards, and engage in genuine social dialogue with their staff.

Furthermore, in some Member States, employers can refuse to engage in meaningful social dialogue and to conclude Collective Labor Agreements, which are standard in most of the aviation industry in Europe.

Given these developments, the airlines and European crew associations see an **urgent need to act in order to ensure appropriate social standards and a fair level-playing field** in the European Aviation market. This has to include:

- enforcement of existing EU & national legislation by all Member States,
- clarification of current rules, as well as
- legislative changes to certain provisions of the current EU legal framework.

Our airlines and employee organisations jointly **call upon decision-makers at EU and national level to urgently undertake a number of concrete measures** – as outlined more in detail in the Attachment.

For further information, please contact

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Attachment: Measures to be undertaken at EU & national level (2 pages).

Whom we represent:

Airline Coordination Platform (ACP) is a group of major European airlines, with the purpose of advocating for fair competition in the European aviation sector, with a specific focus on social affairs and external air political relations. The airlines of the group employ a total of around 150.000 people.

European Cockpit Association (ECA) is the representative body of European pilot associations, representing over 39.000 pilots from across Europe, striving for the highest levels of aviation safety and fostering social rights and quality employment in Europe.

European Transport Worker's Federation (ETF): is a pan-European trade union organisation embracing transport unions from across Europe and representing more than 5 million transport workers from more than 230 transport unions and 42 European countries.

A Social Agenda for European Aviation

ATTACHMENT

Measures to be urgently undertaken at EU & national level to ensure appropriate social standards and a level-playing field in European aviation:

1. **Ensure that the actual workplace of air crew is the real ‘home base’**, by applying & enforcing Regulation 593/2008/EC (applicable law for individual employment contracts) and Regulation 465/2012/EC (defining the applicable law for social security purposes, incl. the concept of ‘home base’ as the criterion for determining the applicable legislation for flight crew and cabin crew members). Fictitious home-bases, where air crew is dispatched from a fake home base in a Member State with lower social charges (away from his/her actual domicile) into another Member State should not be accepted.

In this context, the Commission should – without further delay – provide written **clarification and guidance on the definition of ‘home base’** for the purpose of applicable social law and standards and the terms of employment, making also use of the legal argumentation of the CJEU ruling (Joint Cases C-168/16, C-169/16). Such written clarification should still come before the end of 2018, and subsequently form part of the revision of Regulation 1008/2008.

2. **Prevent the misuse and fraudulent use of Social Security Certificates (A1 ‘portable certificates’ - for the purpose of posting of workers)**, by making best use of the current revision of Regulation 883/2004. In particular, the binding force attributed to these certificates should be reviewed, national courts of Member States must be recognized as judges of fraud, and the cooperation procedure between Member States must be revised to enhance efficiency and to meet the requirements of justice.
3. **Bogus self-employment**: Certain EU airlines have created systematic schemes allowing them to ‘employ’ their flight crew through agencies by requiring from the crew to establish a small (limited liability) company where they become directors and subsequently offer their flying services as ‘mini-entrepreneurs’ – via the agency – to the airline ‘client’.

These practices are highly likely to be already contrary to EU law. However, they should be explicitly prohibited by amending EU Regulation 465/2012, establishing a refutable assumption of employment and reflecting that an employer-employee relationship is defined by three criteria to be met simultaneously: Undertaking a genuine and effective work, under the direction of someone else, and for which he/she is paid. Any abuse and the respective airline must be sanctioned by Member States.

4. **Prevent the use of systematic quasi-permanent atypical employment forms for safety-critical personnel**, like pilots and cabin crew. Over recent years, certain airlines shifted from direct open-ended employment to a systematic use of precarious atypical forms of crew employment. This allows them to off-load social security related costs to the individual crew, eliminates costs when crews are not able to fly due to sickness or fatigue (e.g. on a zero-hour contracts: no flight = no pay), allows for quick 'disposal' of crew, and facilitates to avoid social dialogue and meaningful Collective Labor Agreements. While the targeted and temporary use of e.g. agencies can be well justified to allow airlines a certain level of flexibility, permanent atypical forms of crew employment without social dialogue and Collective Labor Agreements, designed to *de-facto* undermine the crew members' social standards and to gain competitive edge over other airlines, should be prevented.
5. **In case of a revision of EU Regulation 1008/2008, embed social protection in this economic market regulation**, including strengthening the definition of "Principal Place of Business" (PPB) and consider the concept of secondary place of business / 'establishment' (and related obligations for airlines that open such establishments outside the PPB).
6. Concrete action must be taken to **prohibit Pay-to-Fly schemes** for commercial carriers by providing that any EU carrier must pay their air crew a salary, incl. for training purposes, such as type-rating.
7. **Ensure minimal social standards for air crew working on board of foreign carriers** flying to and from the EU and having access to the EU internal market and flights. The EU should elaborate options to ensure that third country carriers flying to and from EU destinations are subject to certain minimum social standards.
8. Finally – to allow the Commission and Member States to strengthen the application of the current regulatory framework for social standards and rights in air transport – a **group of experts should be set up quickly**. This expert group would monitor the application and enforcement of the existing legislation on/related to social rights in air transport, consult relevant stakeholders, identify shortcomings and loopholes, and develop adequate solutions and tools, including enhanced cooperation between Member States' authorities, legal clarifications & guidelines, as well as concrete legislative changes.

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