



EUROPEAN COMMISSION
Employment, Social Affairs and Inclusion DG

Employment and Social Legislation, Social Dialogue
Social dialogue, Industrial Relations

**SECTORAL DIALOGUE
COMMITTEE
CIVIL AVIATION**

Minutes of the air crew working group meeting

05 November 2014

Chair of this working group meeting: Mr Schwarz (European Commission)

1. Adoption of the agenda

The agenda was adopted and participants introduced themselves.

2. Follow up of the Joint Declaration against EU-based Flags of convenience in Aviation

3. Possible revision of Regulation EC 1008/2008

Points 2 and 3 of the agenda were discussed together.

The Chair of the social dialogue committee referred to the "Joint Declaration against EU-based Flags of Convenience in Aviation as endorsed by the Air Crew Working Group of the Sectoral Social Dialogue Committee, 5 June 2014" and recalled how resolute they are in fighting against transatlantic operations by Norwegian Air International (NAI), aiming at fair competition in aviation, while "flags of convenience" should be avoided. Five AEA members out of 30, however, do not agree with the majority AEA position on the specific NAI case¹, but this is a very good opportunity to discuss how to shape future EU air transport policies in the coming decades. The current legislation was designed for the 1990s.

ETF insisted that NAI is a case of unfair competition, leading to detrimental developments for employment in Europe. We should ensure that at least social and labour law at national level are respected. While DG MOVE is defending the EU-US Air Transport Agreement

¹ AEA submitted its comment to the DOT Docket in February 2014 but further to that AEA refrains from any further comments on this issue, as there is no common AEA position.

(ATA) so scrupulously, we should do the same for the rights of the workers, to avoid the spiral of social dumping that is looming in aviation.

ECA focused on the interpretation of the EU-US ATA's social clause (Article 17bis): "Social clauses should be used to prevent certain practices, otherwise they are useless." ECA strongly disagrees with DG MOVE's position that Article 17bis cannot be used to deny NAI's application. "Flags of convenience" and social dumping touch on the broader question of emerging business models and their employment models in aviation (re: forum or rules shopping).

The Commission (MOVE.E4) recalled the importance of social dialogue, and confirmed the new Commission was determined to deal with social dumping, as also stressed by Commissioner for Transport, V. Bulc. The fact that social dialogue in civil aviation is really active and well-structured is very positive, along with a re-activated working group for aircrew. The latest and upcoming meetings of Market Access Committee (gathering national authorities) dedicate a major part of their agenda to employment and social issues in aviation, including on the social dumping issue. MOVE finds it particularly important to build bridges between social dialogue and national authorities: The Chair and Vice-Chair of the Sectoral Social Dialogue Committee for Civil Aviation are invited to the next meeting on 5 December to present their proposals. 2015 is going to be key with the publication of the study on atypical employment contracts in air crew, commissioned by ECA, AEA and ETF, while DG MOVE will continue to analyse developments in employment and working conditions in air transport.

In the framework of the EU-US "Open Skies" ATA the Commission has consistently fought for the recognition of European airlines and now also for preserving the letter and spirit of the ATA, in the industry's best interest. The US DoT decision on 2 September 2014 to dismiss NAI's right to a temporary permit was only procedural, while US authorities have remained silent on their (legal) concerns since NAI applied in December 2013. There is a clear breach of the ATA. NAI should not be seen as a letterbox company, as it is well established in Ireland, according to the definition of principal place of business enshrined in Regulation 1008/2008. The law as it is today must be applied. Article 17bis does not allow any party to deny an application unilaterally. Of course in parallel the Commission is ready to continue working on a longer-term reflection on social developments (outsourcing and its consequences in particular) with social partners (SP) and MS. In view of adapting EU legislation, the Commission could only act on the basis of well-defined problems, along with well-thought out solutions, taking into account their impacts.

The Chair of the social dialogue committee confirmed the WG would remain very active and agreed with ECA that Article 17bis should be used. The definition of principal place of business should be re-negotiated, making Regulation 1008/2008 fit for fair competition, while other issues will be addressed (non-EU airlines "buying an AOC" in the EU, bogus self-employment, etc.). This period requires the participation of all stakeholders. Analysing the impact of the liberalisation and opening of the market requires a working group. AEA

proposed to put NAI case aside, in a bid to restore trust, and to focus on the general picture. A reasonable limit should be put to those practices, to avoid circumvention of law.

ETF, as far as impact assessments are concerned, insisted on the need to analyse qualitative aspects, besides quantifying the problems. The NAI issue is strong enough to propose change. IT and FI cabin crew union representatives shared their experience and fears about certain recent developments in their working environment: deterioration of working conditions, no more nationals hired on a permanent basis. The situation at Finnair is unacceptable and calls for national and EU action. This highlights the fact that NAI should not be singled out from the general trend towards outsourcing of pilots and cabin crew.

ECA insisted that NAI is not simply a scapegoat. It is becoming a precedent, among other small-scaled cases -business models implying social dumping-, which may become big soon. Ireland is, in ECA's view, a "flag of convenience", where loopholes are being used. Trust between social partners and the Commission has been damaged by the role the Commission played in the NAI dossier, but ECA hopes trust can be restored. But ECA accepts the Commission may have another approach to theirs.

G. Schwarz (EMPL.B1) summarised these two sessions by highlighting the need to restore trust between social partners and the Commission, while the relation between different regulatory spaces (national, European, global) may be difficult.

4. Possible EU agreement on aircrew working conditions: opening talks

Philippe Alfonso (ETF) joined the group to reflect on transposing the ILO Maritime Labour Convention of 2006 (MLC 2006) to air transport. This Convention has a huge significance in terms of setting international standards / level-playing field, to fight against the worst working conditions that exist and to guarantee decent living and working conditions: minimum age, medical certificates, training and qualifications, repatriation, minimum rest, food and catering, etc. It certainly has a positive effect on lives of seafarers. Key achievements include: simultaneous and harmonised implementation of rules in order to establish a level-playing field, strong enforcement and compliance system, certification mechanism, compliance with flag State and control at port State. It can also be implemented through port State inspections on ships flying flags from non-ratifying States ("no more favourable treatment" for ships of non-ratifying countries). Only Title V on Enforcement has not yet been transposed into a social partner agreement in the EU. The Commission could come back soon with a proposal of enforcement directive.

EMPL.B2 referred to this exercise as a very long road. ILO's MLC 2006 already compiled 37 existing conventions. Analysing the compatibility of MLC 2006 with the EU acquis was a big task for the Commission (major role of the Legal Service). The Enforcement chapter could so far not be transposed but Commission is working on it. Careful that some aspects cannot fit into an EU directive, such as those elements falling outside our competence (e.g. we are not allowed to regulate self-employment). One must also bear in mind that a directive implementing a social partners' Agreement is proposed on a take-it-or-leave-it basis; neither

the Commission not the Council can alter the SP agreement. However, even for this kind of directives, in the context of the "smart regulation agenda", one must perform an impact assessment, but in this case a light one, only with two options (SP agreement vs. status quo). Therefore data are needed, enough information to convince the Council. The whole process (bipartite negotiations between the SP, then Commission proposal, then Council Directive) is very long but it took place for maritime and fisheries (in both cases on the basis of existing tripartite ILO conventions), could also happen in aviation. Requirements, enforcement mechanisms and framework are set at EU level, while MS are in charge of the enforcement itself.

AEA explained that the process at ILO is only at its very beginning, as far as a labour convention in air transport is concerned. 63 countries ratified MLC 2006. Discussion concerning aviation started in 2012. The process is very difficult at global level. But a coordinated action of the WG air crew can make a difference. Points of consensus reached in this WG were taken on board by the ILO Global Dialogue Forum on the Effects of the Global Economic Crisis on the Civil Aviation Industry. The key objective is to guarantee fair competition, relying on solid labour standards. This is a long process and discussions with ILO are moving forward. Successes that emerged from a common position by social partners in civil aviation were recalled. This requires first to put all data on the table, to see what is realistic and what is not.

Philippe Alfonso (ETF) stressed that there is no need to wait for a global agreement to go forward, as this would take ages.

IT cabin crew union representative responded that by aligning European aviation to global standards, defined on the basis of countries where standards are missing, may not be the right option. Instead, we should go for European standards in aviation. A solution to the very broad issue of air crew outsourcing should come first, before we can envisage setting minimum standards.

MOVE.E4 pleads for a joint approach. There is a need to link this discussion with the dialogue with the MS (Market Access Committee): they have a lot of interest to discuss these matters, as also witnessed in June at the meeting of DGCA's and at the TRAN Council where the NL asked to put the issue on the agenda. If there is agreement on the problems definition, supported at least by facts and figures and able to forecast impacts, then it is possible to find a way: (1) problem definition; (2) how to solve it; (3) expected impact. The EU context cannot be as separate from the global context. The Commission is willing to work together with the MS and SPs on this.

ECA then referred to their "discussion paper for the ACWG meeting of 5 November on possible ways forward to address flags of convenience and bogus self-employment", explaining there were three avenues: (1) revision of Regulation 1008/2008; (2) Agreement; (3) Specific instrument for mobile employees. The Market Access Committee could discuss this paper. Building consensus among social partners is the priority, before coming up with proposals. Starting with listing the problems and concerns, then outlining points of

consensus (level playing field, fair competition, no "flags of convenience" nor social dumping...) and finally, for each of these points, identifying potential solutions.

ETF evoked a communication to be sent to the Commission but then agreed with other associations that other steps were needed before. Social partners can start from the point that "the next decade is fundamental" (AEA), that "2015 is key" (DG MOVE) and that our problem is "social dumping" (ETF).

MOVE.E4 underlined that the normal process for the Commission to reflect on specific issues is the following: (1) problem definition > (2) cause of the problem > (3) possible solutions > (4) policy choices > (5) impact assessment. DG MOVE will continue to cooperate with social partners, through sharing information and data, when available. Listening to the social partners' proposals at the Market Access Committee on 5 December will certainly help improve mutual understanding. Then, next year, in addition to the ECA-AEA-ETF study on atypical employment contracts in air crew to be presented in February 2015, DG MOVE's study on employment and working conditions in air transport and airports should be available by the summer 2015. Through gathering that evidence, dealing with the process referred to above will be facilitated.

AEA was in favour of opening talks but this should not preclude any other outcome than a social partner agreement. A small working group between the social partners should first work on this topic and make proposals.

ETF proposed to forward AEA's questions to ETF members and agreed to set up a working group, engaging in informal discussions and addressing ECA's proposals.

5. Next steps on workplace health promotion

ETF discussed this point at the last plenary meeting. The proposal is to follow-up on the issue of stress to air crew, building on the October 2008 joint statement. AEA sent amendments to ETF.

There are two issues: (1) horizontal (need more specifications) and (2) identifying legal framework of workplace health legislation.

The next step: prepare a common draft with the financial support of the Commission (social dialogue budget line). The possibility to spread the project over two years was recalled.

AEA was one of the signatories of the joint statement in 2008, as addressing violence at work (harassment) and other governance issues is dear to their association, and should be kept on the document. This exercise would benefit from the input of experts.

6. Exchange of views on the protection of aircrew in case of security threats and epidemics

MOVE.E4 gave the position of the Commission on the sensitive Ebola dossier. It is the Member States' competence to address the issue and organise themselves, while the EU is competent for coordinating MS, NGO on needs and gaps, as well as medical evacuation information. Additionally, ICAO, IATA and ACI are ensuring consistency of message across the aviation field.

The WHO has recommended that international travel and trade should not be curtailed – it leads to economic and social isolation and makes the movement of key health care workers extremely difficult.

This being said, cabin crew union representatives expressed deep concern on the fact that, according to them, a number of EU airlines or countries would not respect WHO, ICAO and IATA rules on Ebola. They proposed to adopt a draft statement that they would forward (among others) to the Commission for dissemination.

AEA was not convinced of the added value of a social partner statement on this issue; however, AEA will consult its members on ETF's draft.

7. AOB

EMPL.B1 recalled the sectoral social dialogue committee for civil aviation would have its next plenary meeting on 28 May 2015 and two WG meetings under the regular framework. If the ATM project is funded, then this working group would organise its own meetings in the framework of the project, and there would be scope for at least one working group meeting organised by the Commission for each of the other two working groups (air crew and ground-handling). Things remain relatively flexible as to the organisation (place and date), since the working group meetings do not require interpretation.

List of participants 5 November 2014

<p><u>Employers (2 ♂, 1 ♀)</u></p> <p><i>AEA:</i> Mr Husain Khan Mr Jahan Ms Vajnai</p> <p><i>ERA:</i> Not represented</p> <p><i>IACA:</i> Not represented</p>	<p><u>Workers (8 ♂, 4 ♀)</u></p> <p><i>ETF:</i></p> <p>Ms Airaldi (IT) Mr Alfonso Mr Ballestero Ms Björk (SE) Ms Belenguer (ES) Mr Carmona (ES) Ms Chicca (IT) Mr Collins (SE) Ms Delage (FR) Ms Hietala (FI) Mr Maurer Mr Van Alphen (NL)</p> <p><i>ECA:</i> Mr Horne Mr Piri Mr Plaza Mr Polloczek Mr Von Schöppenthau</p>
<p style="text-align: center;"><u>European Commission</u></p> <p style="text-align: center;">Mr Bandasz (DG EMPL/B.1) Mr Schwarz (DG EMPL/B.1) Mr Strohbach (DG EMPL/B.1) Ms Widera (DG EMPL/B.2) Ms Maire (DG MOVE/E.4, Head of Unit) Mr Dussart (DG MOVE/E.4) Mr Lagneaux (DG MOVE/E.4)</p>	