



Ms Ursula Von der Leyen,
President of the European Commission,

In 2019, the Commission presented a report on “Aviation Strategy for Europe: Maintaining and promoting high social standards”. The report expressed several concerns on social abuses in aviation and the negative impact that some practices by certain airlines have had on the employment and working conditions of aircrews and other workers, namely the increase of precarious atypical forms of air crew employment, such as through agencies, self-employment or pay-to-fly schemes, and the multiplication of operational bases, which leads to legal uncertainty regarding applicable law and competent jurisdiction. The report also notes that in 2016, it was estimated that the aviation sector in the Union had directly generated 2 million jobs, out of which 18.8% were jobs in airlines, and has overall supported 9.4 million jobs.

Meanwhile, the COVID-19 crisis affected many different aspects of the world of work and had a strong impact on the aviation sector and its workers.

The International Labour Organization points out the deterioration of both the quantity of jobs (resulting in surging unemployment and underemployment) and the quality of jobs (plummeting wages and limited access to social protection).

The crisis has deepened the problem of aviation workers, not only because of the direct consequences it has had on air traffic, but also because of the legal uncertainty regarding these workers and abusive practices by airline companies.

One of the problems identified in the Commissions' report was the applicable law and competent jurisdiction for the purpose of individual employment contracts of airline workers. In the event of litigation, workers are deprived of justice for national courts often declare to have no jurisdiction on the matter.

In this regard, European Law is very clear: on one hand, a choice of jurisdiction is valid only under the strict conditions set out in the Brussels I Regulation dealing with cross-border situations, and on the other, as far as the applicable law is concerned, the rules of the Rome I Regulation guarantee that irrespective of any choice made, employees are entitled to protection under the mandatory rules of the law of the country that would apply in the absence of such choice (the law of the place where, or from where, the employees habitually carry out their work).

In addition, the Court of Justice of the EU ruled that the "home base" of aircrew is the relevant criteria to determine the competent jurisdiction and that the habitual place of work cannot be equated with the 'nationality' of the aircraft. The case concerned the application of the Brussels I Regulation but the same considerations equally apply to the determination of the applicable law which cannot be derogated from under the Rome I Regulation. In this respect, Rome I refers to the same concept of habitual place of work. The Court specifically stated that the two instruments should be interpreted and applied consistently.

However, the truth is that Member States have not ensured the enforcement of these rules at national level and many companies operating in the EU's internal aviation market do not comply with European and national laws.

It has been reported in several Member States that some airlines are trying to take advantage of the pandemic by cutting thousands of jobs and downgrading terms and conditions and at the same time investing in new airplanes. All together, these practices are leading to social dumping and to unfair competition in the Internal Market.

Workers and Unions who are trying to react to abusive pay and job cuts, are facing endless conflicts of jurisdiction in national courts, thus breaching European law.

Surely this is not the way to achieve socially responsible air connectivity in Europe, one of the stated goals of the Commission.

In this regard, the undersigning Members of the European Parliament consider that legal certainty and effective enforcement of European and national rules must be a priority, especially in times of crisis, and that Member States who do not comply should be held accountable.

Thus, in this respect, we urge you to guarantee that Member States ensure, by the appropriate means, the enforcement of existing rules at national level and also to ensure continued compliance with EU law, as interpreted by the Court of Justice of the EU.

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