



Future Aviation on Fair Terms

SAMAK Working Group on Aviation Policy
Report



January 2017

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Preface

Aviation has grown dramatically during the past few decades. Extensive deregulation has led to increased mobility, reduced air fares and a greater range of offers - all to the benefit of the consumers. In this growth-Mecca, however, air transport workers have been forgotten. Atypical employment is growing and this creates a lot of uncertainty among the employees and, at the same time, it has created a basis for zero-hours and pay-to-fly schemes which have contributed to greater uncertainty among the employees and which, in the long term, could also have consequences for the passengers.

The creative employment forms create uncertainty as to whether the employees are covered by social security schemes and labour law provisions.

At the same time, we are seeing a rise in competition from third countries which greatly challenges the competitive conditions in the EU. This is a development which is brought on by the Gulf States whose illegal state aid and subsidies create artificially low air fares - which again forces European companies to compromise European standards. The EU is currently negotiating with these dictatorships - states that do not observe human rights.

Current EU-legislation on aviation dates back to a time when aviation was very different from what it is today. There is therefore a need to adapt the international and national sets of rules so that they meet the requirements of today.

It is on the basis of these developments that SAMAK set up a working group with a mandate to develop a proposal for a joint Nordic policy which aims to provide a political platform for tackling the following priority policy areas; atypical employment, home bases and unfair competition from third countries.

I would like to thank the members of the working group for a good and constructive cooperation.

Magnus Heunicke
Chairman of the working group

SAMAK working group

The members of the working group have contributed to a joint SAMAK-policy on aviation and have developed a number of high-priority areas that have formed the basis for the contents of the report.

The working group has consisted of the following members:

Chairman: *Magnus Heunicke – Member of the Danish Parliament for the Social Democrats*

Anders Mark Jensen - Vice President of the Flight Personnel Union (FPU), LO-Denmark

Ole Christensen – MEP for the Social Democrats, Denmark

Johan Danielsson – LO-Sweden

Lise Christoffersen - member of Parliament for the Labour Party, Norway

Rikard Larsson – member of Parliament for the Social Democrats, Sweden

Yngve Carlsen – Leader of the Cockpit Association of Norway, LO-Norway

Secretariat

Silje Rygland – the Norwegian Labour Party

Casper Poulsen – LO-Denmark

Peter Waldorff – LO-Denmark



Executive summary and policy proposals

The purpose of this SAMAK-report is to uncover a number of issues that we have witnessed in connection with the exponential growth in aviation during the past decades. These are issues that have fundamentally influenced workers' rights, competitiveness and security in aviation negatively.

The report has described and analysed how atypical employment forms have increased insecurity for employees and contributed to increased social dumping via regulatory forum shopping, primarily in a number of low-cost airlines. Young pilots in particular are affected by the pay-to-fly schemes of the low-cost airlines. Here, 39% have some sort of atypical form of employment. The proposal of the working group includes, among others, the development of legislation that puts a stop to regulatory forum shopping by allowing the companies to establish themselves with more than one Air Operator's Certificate (AOC) as well as to dismantle schemes like pay-to-fly through European regulation.

Exploitation of the home base concept has greatly challenged employees whose regulatory oversight will be absent in cases of uncertainty as to which country's legislation is to apply. There is a risk that commercial aviation will experience the same situation as shipping in terms of reflagging. In order to avoid this, it is crucial to create equal terms and conditions for fair competition and respect for workers' rights. On this basis, the working group proposes that the rules on home bases are updated so as to provide clarity as to how the employees are covered by labour market legislation, social security schemes and tax regulation. Furthermore, it is important to ensure that preparations and check-in are universally categorised as work activities and are paid. Studies have shown that only a third of low-cost airline employees are paid to perform these activities.

The working group welcomes a fair price competition. There are low-cost airlines that manage to offer low prices and decent conditions for their employees at the same time. The problem arises when price competition takes place in unfair ways, where prices are pressed fully down through illegal subsidies and regulatory forum shopping, which is a standard approach in the Gulf States. In this connection, the working group suggest control of whether third country airlines live up to the ILO's core conventions. If they don't, EU-legislation must be applied to limit their access to the European market in order to ensure sustainable competitiveness and to prevent a race to the bottom.

Below, we have listed thirty proposals for a new Nordic aviation policy. A few of the proposals are national-level while a number of proposals should be implemented at EU-level. The working group has chosen to emphasize some proposals that we recommend giving immediate priority.

Conditions of employment and workers' rights

- 1. The rules on home bases should be updated to provide clarity as to how the employees are covered by labour market legislation, social security schemes and tax regulation.**
2. The home base rules must cover all personnel performing work for the airline; without regard to whether or not they are self-employed, employed via a temporary employment agency, employed on temporary conditions or temporary workers.

3. Updating of the home base rules is to prevent companies from moving crew from one airport to another in order to circumvent the employers' liability, which is prompted by the home base principle.
4. **Limitation on the use of atypical forms of employment for flight crew by establishing a principle of direct employment so that at least 75% of the crew must be directly affiliated to the company. Use of temporary workers must only take place during peak times. This should also apply to ground handling employees.**
5. At least half of the staff with responsibilities within areas such as security, who work for the airline and ask for a certificate¹, should be directly employed in order to ensure organisational stability and thereby ensure the necessary level of passenger security. Employment and working conditions are directly linked to the maintenance of passenger- and staff safety. Similar rules already apply to aircraft maintenance technicians.
6. Active prevention of false employment situations, including a prohibition against employment of pilots and cabin crew as “self-employed”.
7. Establish principles according to which crew must earn the same pay for the same work on board the same aircraft.
8. The airport companies should be met with specific requirements and provisions for whistleblowers. In addition to this, it should be possible to submit information anonymously and, in that condition, the security of the informant should be established by national as well as European legislation.
9. Future issues within the field of aviation should always include an analysis of the consequences for workers and, through social dialogue, prevent further weakening of working conditions. A mainstreaming approach would also be relevant from a climate perspective.
10. It is important to ensure that preparations and check-in are universally considered as work activities and are paid activities since the home base is also defined by the location of the performance of these activities.

Initiatives at the EU-level

11. **The EU must provide legal provisions to ensure that workers can be certain that they are covered by a social security regime regardless of whether or not their work is transnational.**
12. During its negotiations on air transport agreements with third countries, the EU Commission must set requirements on transparency in the financial structures and taxation just as it is necessary to set requirements on openness when it comes to state aid and subsidies.
13. The European Commission must set requirements that social clauses are a part of any future global air transport agreements (ATRP) as well as agreements with third countries, which, as a minimum, contain requirements to observe ILO core-conventions, the OECD-guidelines for multinational companies, and the UN's guiding principles on business and human rights.

¹ In this context, a certificate is a paper documenting to the authorities within the EU or the EEA that the holder is covered by, for instance, Danish social security when working abroad.

14. The European Commission must guarantee that airlines in the Gulf States do not get the opportunity to undercut European airlines with artificially low fare prices which are a result of massive state aid and subsidies from the Gulf State governments.
15. The Open Skies agreement between the EU and the US *does not* prevent pay-to-fly schemes or wet-leasing, and it is therefore necessary to regulate this area. Article 17 & 18 *do not* contribute to promote solutions to the problems involving home bases. On the contrary, the Open Skies agreement has fundamentally opened the floodgates when it comes to wet-leasing, according to the authors of the Gent-report (Y.Jorens, 2015).
16. The pay-to-fly scheme must be phased out by means of EU-legislation.
17. Pressure must be exerted on the employers so that they give priority to the social dialogue.
18. The establishment of a European supervisory authority which covers labour market, social security and safety.
19. The EU must commit to working with the identification of new problems which risk affecting mobile workers in this sector or other sectors as a consequence of “creative practices” among employers motivated by a desire to maintain flexibility among the workforce.

Future qualifications

20. **Launch traineeship-solutions with a view to strengthening the labour market situation for young pilots (preventive effects on pay-to-fly).**
21. More public investments into pilot training.
22. The establishment of vocational training for cabin crew.
23. Certification of the training providers that train pilots and cabin crew.

Airports

24. **A policy should be set in place, which provides greater operational predictability, such as multiannual agreements with the airlines.**
25. The establishment of airports and destinations should be based on both national and international strategies that take into account the need for infrastructure and local development.

Groundhandling

26. **Council Directive 96/67/EC on groundhandling should be revised in order to make it possible for member states to allow bigger airports with a centralised infrastructure to run in-house groundhandling services.**
27. The health and safety of the persons working with baggage handling in airports is too poor, especially when it comes to loading and unloading of the aircraft. In order to avoid various industrial injuries, early retirement and poor health, a maximum weight for checked-in baggage should be introduced.

Negative consequences of new corporate strategies

28. **Legislation, which limits regulatory forum shopping due to the possibility for the airlines to register with more than one AOC (Air Operating Certificate) in one or more countries - this aims to stop the use of convenience flags in aviation.**
29. Wet-leasing should only be used in extraordinary situations and should be regulated so as to avoid abuse. Wet-leasing must not become the norm since this could damage “virtual airlines” which blurs the lines setting out which company has responsibility in a given field.
30. We would like to see a set of rules that prevent unchecked replacements of Nordic and European employees with staff from other continents.



Proposal for SAMAK's aviation policy

Introduction and basis for SAMAK's decision to develop a joint Nordic aviation policy

Civil aviation plays an important role for the corporate sector and for consumers in the Nordic countries. Not least, the changes to international aviation make it necessary to look at the competitive conditions in an industry that is, indeed, a cross-border industry.

Aviation has seen dramatic changes during the past few decades. Extensive liberalizations have led to increased mobility, reduced air fares and a greater range of offers - all to the benefit of the consumers. However, for the employees, the development has had more negative consequences.

Meanwhile, most of the existing legislation on aviation dates back 70 years. It is therefore up to the politicians' to establish a more fine-meshed regulation of air transport that provides a secure, competitive and predictable industry.

Increasing competition puts European aviation under pressure and this has a direct impact on the conditions of the employees. The EU-Commission estimates that 4.7 million jobs in the EU are directly or indirectly created by aviation.

Aggressive marketing - especially from companies in the Gulf that receive extensive state aid and other subsidies - helps draw jobs away from Europe because the overseas traffic increasingly goes through hubs in countries such as the United Arab Emirates and Qatar.

The outlook for the coming years' growth in civil aviation shows that the countries in Asia and the Pacific will drive the most growth globally. This means that European airlines will be facing even greater competition from companies in Asia. Even now, we see how a lack of regulation promotes "creative thinking" in areas such as state aid, circumvention of social protection, social dumping and tax evasion. In a climate where competition is fierce and companies struggle for survival, the threshold becomes lower and lower for applying methods that don't belong in a decent working life. When competitors use employees and a buffer and remove the association of the employees with the company, it can be tempting for other companies to use the same methods. As long as these companies find loopholes in national, European and international sets of rules, this atomization of the working life will continue. We cannot take it for granted that the companies follow the principles of the Nordic model. We must therefore, at the political level, be proactive and ensure the setting of rules to secure workers' rights as well as the competitiveness of the industry.

The global growth forecast has been estimated to an average of 5 % a year depending on the region (Boeing Outlook, 2016). Therefore, the number of passengers per year will rise from 3.7bn to 8.5bn². This entails a need for 595,000 new pilots globally, and 95,000 in Europe alone. In spite of this, there is no overall plan for training and education that would ensure recruitment for seeing to this important supranational infrastructure. A lack of recruitment- and training strategies, with a view to tackling the problem of the debt-ridden pilots, could have serious consequences for the industry's possibilities for ensuring the recruitment of pilots. This would ultimately have a negative influence on competition and prosperity.

² In 2015, more than 928 million passengers travelled by air in the EU28. This figure is expected to rise by a minimum of 5 percent - source, Eurostat 2016.

SAMAK's Nordic aviation policy aims to create a joint Nordic proposal that can be used during the coming years. It aims to, partly, form the basis for influencing the national level legislation in the five Nordic countries and, partly, for influencing the European Commission and the European Parliament.

Delimitation

The task consists of proposing political initiatives that can contribute to safeguarding working conditions in aviation. This must be in keeping with ensuring equal competitive conditions internationally and coordinating national level regulatory frameworks that may lead to reduced costs and CO2 reductions. The aim is to obtain changes that have an actual effect on regulation and practices.

Aviation plays an important role in relation to CO2 emissions. Even though the aviation industry is the fastest growing greenhouse gas emitter, it was made exempt from the Paris-agreement. The EU should therefore launch further initiatives with the aim of reducing CO2 emissions. The working group acknowledges the major responsibility when it comes to finding climate friendly solutions in aviation. This issue, however, is a very extensive policy area that falls outside our mandate, and it is therefore not a part of this report.

What is at stake?

We are facing an entire sector that organises itself so as to avoid meeting its social responsibilities. In this way, it creates a working life that is outside the rest of society. We witness a development by which each employee is responsible for him- or herself, and faces an undefined counterpart alone. The agency, which pays out wages, is not the same as the one the employee works for. Workers are no longer employees but see to individual tasks or act as self-employed persons working on fixed-term contracts. It is getting more and more common for a worker to have a contract with a recruitment agency rather than with the company the worker actually works for. In this new assignment-based working life, it is difficult to have a dialogue regarding challenges and problems pertaining to the work relationship. This alienation of the worker creates insecurity, not only among the individual workers, but also within the industry. High staff turnover and a more remote connection with the employees will lead to a loss of skills and a poorer dialogue regarding the company's needs and development.



What is the problem with this development?

It is not just about poorer working conditions such as lower pay and more unpaid work, longer working days and higher costs for the workers concerned. It is also a question of the power relationship between the person carrying out the work and the employer.

In the entire aviation industry, we are now witnessing a clear consequence of the internationalization of the national economy according to which companies adapt through optimization, specialization and the division of services. In a cross-border industry like aviation, it has become possible to use cheaper labour and more favourable conditions in different countries in Europe. It is not nationality that should decide which pay level or working conditions someone should accept. We live in a vulnerable era with high unemployment rates. Competition between workers often lead to a willingness to ease requirements and standards in order to survive, because they do not have an alternative.

Furthermore, atypical working conditions could have consequences to the safety culture. A major study of employment and working conditions in EU aviation has documented that atypical employment forms may have an effect on flight safety (Jorens, 2015). In an industry where safety is paramount, it is essential to focus on the relationship between working conditions and safety culture in the airlines.



Low-wage competition eats away at other accrued work life rights. Creativity in aviation is not just a matter of conditions of the employees. The creative manoeuvres of the airlines contribute to dismantling the welfare state. They use loopholes to maximise profits at the expense of society such as tax evasion, blurred- or no responsibility for employers' access to social security schemes and ignoring pension schemes. This is not fair to responsible companies. Responsible players come under pressure to follow suit.

If European aviation is to face increased competition from the outside, it is crucial to establish conditions that safeguard companies' ability to compete on equal conditions - something that they cannot to today. European-based companies compete with companies that do not live up to the ILO's core conventions. The slave-like conditions seen in Qatar Airways³ where a curfew for employees contribute to prison-like conditions and where female employees are fired if, for example, they become pregnant, are only a few examples of human rights violations (ILO, 2015).

This turns into a race to the bottom that no airlines or states can win. As long as there is free competition and the demand is high, cost reduction is the simplest and fastest way to being competitive. It is not just a question of tough competition, but also a wish for a quick profit. This can be seen from Ryanair's EUR 1.13bn profit figure in 2015 (Ryanair, 2016).

The problem is, that in the long term, this creates an economic redistribution in society that will have negative consequences to this sector in the form of poorer purchasing power and lower demand.

The airlines and the companies that tie people together are important. We want the continued existence of the companies, but on the right terms and conditions. We therefore need to address the root of these problems. It is about work life safety. Finally, it is not just about changes to an industry, but about the kind of society that we want for the future - in that regard, aviation is a very visible industry, the behaviour of which can easily affect other industries and trades.

In the following sections, we will describe the characteristics of this industry and its relation to the working life. We will also be going over a number of issues and, in conclusion, we will present proposals for political initiatives as well as an operational strategy.

Aviation as an industry

Aviation is highly sensitive to cyclical fluctuations. The level of demand for air transport is strongly linked to economic growth or decline. Fluctuations in the global economy will have consequences to aviation quicker than in other industries. The industry is therefore a vulnerable sector.

Since this sector does not produce a product that can be stored and sold at a later time, the companies cannot make up for lost earnings such as cancelled flights. This makes them particularly vulnerable to financial loss.

Although planes are capital-intensive, payroll costs constitute a major share of the operating costs of the airlines and they are one of the few variable costs that are controlled directly by the

³ Qatar Airways employs more than 9,500 persons of which more than 80 % are women.



management. In European and American airlines, payroll costs constitute approximately one third of the total operating costs, while they only constitute a fifth of operating costs in Asian airlines.⁴

In addition to this, jobs in aviation are closely connected to ground handling, such as maintenance, airport services, cleaning and catering. If a position in an airline is discontinued, this will have direct implications for between 4-10 jobs linked to ground handling. This has major implications to employment, but also potential vulnerability since employment is only dependant on one player.

It is the preconditions of the industry that define the preconditions for the companies' competitiveness and therefore also the limitations to the relation with the workers.

Aviation has been through economic downturn many a time. However, the aftermath of 9/11 led to a major crisis for the entire industry. The combination of a crisis-stricken industry and extensive deregulation of aviation made competition fiercer. The airlines either drastically cut costs or chose to establish low-cost carriers in order not to lose market shares. These strategies are based on using manpower as a possible cost-cutting parameter for companies. Manpower became the flexible factor and thereby a competitive factor. Furthermore, it is a paradox that aviation in Europe is one of the most highly regulated industries when it comes to safety and concession, and all the while, working conditions are only regulated to a lesser extent.

⁴ http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_161566.pdf

Nordic aviation in numbers

The aim of this section is to illustrate the significance of Nordic aviation to employment and to substantiate the importance of current European legislation in aviation in relation to the welfare policy situation regarding jobs, growth and sustainability.

See next page for tables

Explanation of tables

Table 1 illustrates the key figures in Nordic aviation. Share of GDP underlines the importance of the industry seen from a growth perspective.

The total GDP contributes to an understanding of the bigger picture, including jobs in tourism etc.

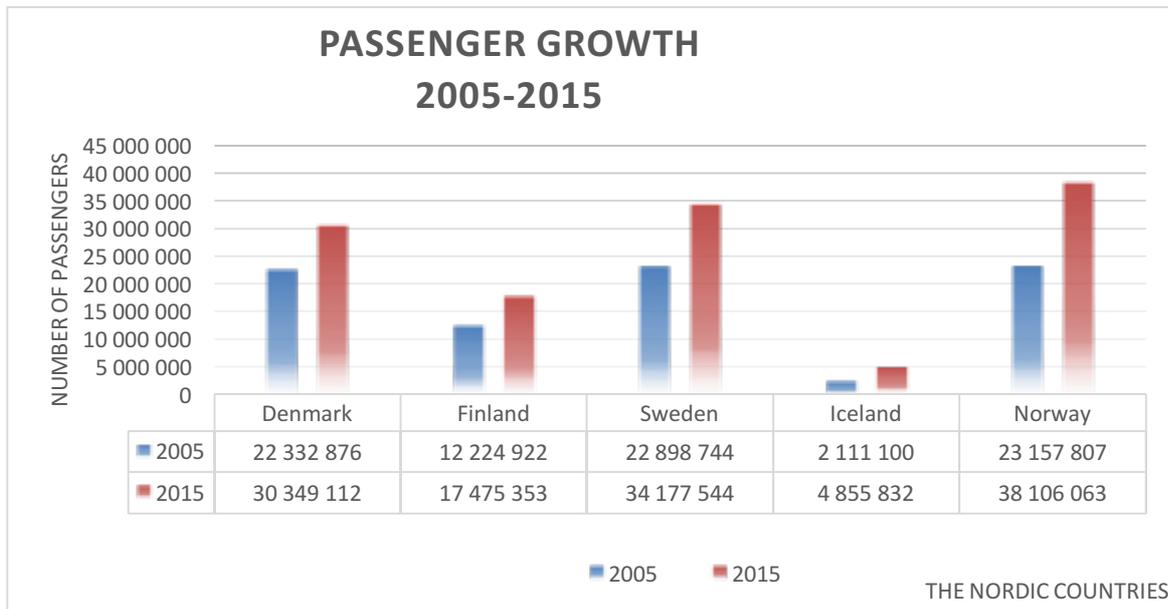
The EU, IATA and ICAO used indirect jobs when calculating employment.

This means that the figures are much higher than if only the direct jobs were displayed.

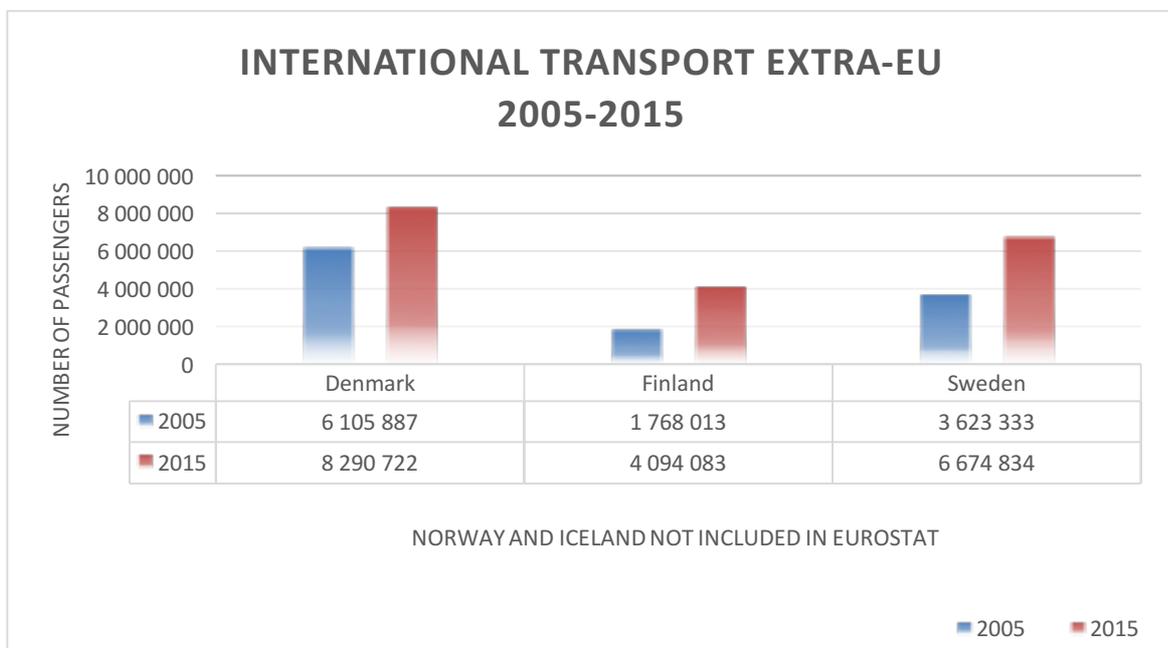
Tourism is typically the primary catalyst in this elevated figure, but investments also play a significant role.

International departures describe the development in aviation in relation to rising globalisation.

	Norway	Denmark	Sweden	Iceland	Finland
Share of total GDP, 2009	2.0 %	1.2 %	1.7 %	6.6 %	3.2 %
Share of total GDP, 2013	1.8 %	2.4 %	1.9 %	3.7 %	1.8 %
Total GDP (EUR) associated with aviation (2013)	4.0 % 15.29bn	5.4 % 13.48bn	4.3 % 18.21bn	9.5 % 1.05bn	4.2 % 8.13bn
Total jobs (catalytic, direct, indirect, induced) 2013	122,600	153,700	208,000	19,700	108,000
Planned international departures (2009)	>87,000	>112,000	>89,000	>14,400	>59,500
Domestic flights 2009 + number of seats	>231,000 >19,000,000	>36,000 >2,800,000	>57,000 >4,700,000	>11,100 >547,000	>32,600 >2,500,000



Source: Eurostat AVIA_PAOC (2016)



Source: Eurostat AVIA_PAOC

Key figures

ACI Europe Report 2015 / Oxford Economics, 2011

In 2015, Airports Council International (ACI) presented a report on indirect jobs in aviation in 2014. In addition to this, please find a number of figures, which support the statements of the Nordic players in connection with the preparation of the joint Nordic aviation policy.

- Airports with < **1 mppa**⁵ generate approximately 1,000 additional passengers 1.2 direct jobs
- Airports with **1-10 mppa** generate approximately 1,000 additional passengers 0.95 direct jobs
- Airports with >**10 mppa** generate approximately 1,000 additional passengers 0.85 direct jobs (CPH, OSL, ARN, HEL)
- Low-cost carriers generate 20 % fewer jobs than non-low cost carriers (Y, Jorens 2015)
- The costs of aviation services in Denmark has dropped by 1 % every year during the past 40 years (Swan, 2007)
- The relative costs of aviation have dropped by 2.5 % every year since the 90s (Hummels, 2007)
- The price of airline tickets in Denmark has dropped by 30 % from 2008-2013. (IATA, 2015)
- During the first six months of 2016, the number of passengers rose by 11 % - CPH will, as early as in 2016, reach 30m passengers per year
- During the same period, 21 new flight routes have been added. After the first six months of 2015, 40 new routes have been opened
- 30 % of the pilots interviewed who fly for low-cost carriers say that they don't live in the area of their home airbase. In network- and regional airlines, this figure is below 10%
- 49 % of the low-cost carriers say that they do not fly from the same air base compared to the 12 % of the network airlines
- The overall analysis of European aviation shows a marked decline in the number of cabin crew, pilots, flight mechanics and engineers in Denmark

(Some of these negative figures are underpinned by a more efficient ground handling, such as online check-in and self-check-in machines in airports. Meanwhile, there are no comparable figures for aviation training and education and staff (CPH Economics, 2015).

Aviation from a welfare policy perspective

In spite of the massive economic growth in the airline industry, the employment level has not followed suit. According to an EU-study, there are now considerably fewer employees in the airlines. Especially when it comes to the “movable” part of the value chain, the decline in

⁵ Million passengers per annum.

employees has been higher in Denmark and in Sweden whereas the development in Germany has been negative (SDG, 2013⁶). This has had consequences for Nordic workplaces and welfare. The welfare policy agenda is under threat from a lack of efficient regulation in aviation. As earlier mentioned, the low-cost carriers produce 20 % fewer workplaces than other airlines. It is therefore important to discuss this issue in terms of welfare policy. The high economic growth in aviation ought to reflect greater welfare for citizens. It is correct that accessibility has been increased markedly in the past 10 years and that this benefits everyone. Meanwhile, when workplaces are relocated abroad and social security for workers is deteriorated, it is necessary for the aviation industry to provide decent working conditions and to contribute to a sustainable climate change policy.

Today's European airspace - regulation, processes and loopholes

Aviation is regulated in many areas and it can be difficult to get an overview of the different sets of rules and processes. Nevertheless, we find that players in the industry are still using areas that are not subject to regulation as a means to turn a good profit. This is particularly the case when it comes to working conditions in aviation.

The EU's regulation of aviation covers more than international minimum rules and encompasses harmonization of national provisions. EU member states are not allowed to conclude independent aviation agreements with third countries, and existing bilateral agreements must, eventually, be replaced by joint European agreements. Norway and Iceland are not a part of the EU's third country policy via the EEA-agreement. Meanwhile, Norway was still given the opportunity of joining the EU's first major air transport agreement, the EU-US Open Skies-agreement. The agreement entered into force in 2008 and it removes a number of restrictions when it comes to the establishment of transatlantic flight routes, pricing and airline ownership. The EU has now also concluded an extensive air transport agreement with Canada and a number of new agreements between the EU and third countries are expected in the future⁷.

The borderless sector - a global approach to aviation policy

Aviation is a sector that, due to its characteristics, calls for internationalization and is a tool for globalisation. Aviation is an important part of the global infrastructure, but is also a necessary sector to other trades, such as tourism, for example. It facilitates the international economy since the international distribution of goods and services require a connection between players on different continents. The globalized economy also dictates that the demand for air transport will increase in both frequency and magnitude.

This gives rise to new issues - both positive and negative. Since aviation is so closely linked to the international economy, it is also vulnerable to up- and downturns in the economy. In light of the financial crisis in 2009, the aviation sector was hit hard and many in the industry lost their jobs or had to work fewer hours. Cabin crew were hit hardest. They constitute a group with relatively short

⁶ In 2013, the Danish Transport Authority published a report on employment in aviation - source: CPH-Economics

⁷ <https://www.regjeringen.no/contentassets/5d3982d042a2472eb1b20639cd8b2341/no/pdfs/nou201220120002000dddpdfs.pdf>

training and are therefore easier to replace. Since women mainly constitute the cabin crew, the crisis also had a gender aspect. In the wake of the crisis, temporary deteriorations to the working conditions were put in place, such as unpaid holidays, early retirement, unpaid disbanding or unpaid work. In a number of airlines, these changes were implemented without prior negotiations and in a fast pace in the airlines that were severely affected by the crisis. In spite of the fact that a number of the measures that involved the conditions of the employees were considered unacceptable, the management nevertheless implemented them⁸. Even though the union organisations were involved in the process in many of the companies, this shows that the employees - and particularly those with little training mainly carry the burden in a global crisis. The pressure on the workers to take on a joint responsibility is immense.

In 2012, ATRP⁹ was tasked with assessing issues relating to market access, fair competition, ownership structures and control, flight safety and tax and duties regimes. The task is mainly about assessing whether a further liberalization of the aviation industry can be implemented at the global level. I.e. moving from bilateral agreements to bigger, global agreements such as “Open Skies” among others.



⁸ http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_161566.pdf

⁹ Air Transport Regulation Panel is an expert panel in ICAO (International Civil Aviation Organization) which aims to advise its respective member organisations in different matters.

Depending on the panel’s conclusions, they would qualify as a “game changer” to how we see the aviation industry in the future. If the outcome should be increased liberalization of market access and ownership control, this would remove the influence and control of the member states on their own aviation industry. A weakened control with the different players though deregulation could result in a reduction of national players and in poorer offers to both business- and leisure passengers.

Since liberalization within an international framework allows global players to take the lion's share of the market, this is bound to have a negative effect on marginal routes that the international companies do not assume responsibility for servicing. Reduced requirements for ownership control would have the same effect or a bigger effect.

Market access can be ensured by buying up or investing in companies, and thereby, it is less significant how agreements on market access are drafted. This will not necessarily weaken a state’s connectivity, but will likely relocate the national air traffic control to another country.

If such a liberalization is realized, it will play a central role in market sharing and to fair competition. The Nordic countries are part of a European system that includes costs linked to security systems, both operationally and socially. A similar system is not found in other parts of the world, including the Gulf States. Our social system is based on equality, opportunities and certainty that all employees have certain rights. This is not the case at the global level.

Use of third country nationals

If SAMAK is to succeed in implementing an aviation policy that is in line with the Nordic model at the EU-level, it is necessary to see to it that the Nordic rules are harmonized. In Denmark it is, to a certain extent, not permissible to employ third country nationals on a Danish registered aircraft. However, in Sweden, this is permitted (the Danish Transport Authority, 2014¹⁰). Norway’s government amended the Foreigner’s Act on 1 July 2016 so that it is no longer possible to require residence permits from third country nationals working on board Norwegian planes. LO-Norway has filed a lawsuit against the Norwegian state because they believe that according to the Schengen agreement, there is still a national room for manoeuvre - i.e. that it is possible to require that third country nationals have a residence permit. The case will be reviewed in February 2017.

Simply allowing third country nationals to enter the labour market freely would not just constitute a threat to Nordic workplaces but also to workers all over Europe. The big airlines that are based in Europe have employed workers with a residence and work permit in EU-countries. This is the case for currently 71 active, intercontinental aircrafts in the Nordic countries. In addition to this, Norwegian Airlines is planning an expansion with 21 planes. This means that approximately 10,000 Nordic workplaces will be directly jeopardized as a result of full liberalization of the labour market if whole crews on flights to/from Europe to a third country are from third countries¹¹.

¹⁰ Report from the working group on Social Dumping in Aviation.

¹¹ Our estimates based on figures from fleet plans in SAS, Finnair, Norwegian and Icelandair. SAS has 16 long range arliners, Finnair has 16 and Icelandair has 28. A total of 71 individual airliners. It is estimated that there are 10 crew per aircraft consisting of 10-12 crew members. If you calculate with 11, which is a conservative estimate, this adds up to 7,810 workplaces.

Intercontinental production is the cornerstone of a number of larger European network airlines.

Estimates show that 135,000 European workplaces are potentially threatened by this development. SAMAK does not find that this development will benefit either staff, passengers or the member states.

October 3, 2016 saw an article in the newspaper “Dagens Næringsliv” in Norway on the use of third country nationals¹². The message from Arbeiderpartiet's Vice President, Hadia Tajik was:

“We would like to see a set of rules which prevent unchecked replacements of Nordic and European employees with staff from other continents.”

The outcome is a development from “flags of convenience” to “crews of convenience” which is a development seen in the maritime sector (Y.Jorens, 2015). SAMAK wishes to continue to see a strong and competitive aviation industry which creates workplaces - but not at the expense of lower health and safety standards and poorer social security. It is important to have a national room for manoeuvre under Schengen and the possibility to regulate in order to avoid social dumping via “crews of convenience”.

Aviation is infrastructure

Aviation is part of a supranational transportation system and it is a precondition for efficient transportation, industrial development and global settlement. The geography in the Nordic countries requires bringing people closer to each other by means of aviation, since many local communities would be relatively isolated if they were not connected with the major cities and especially by means of air routes. Aviation is therefore a necessity to a number of societies in the Nordic countries. Furthermore, it brings the North and Europe closer together, as well as closer to other continents. Aviation therefore forms a web of infrastructure in the world and increases the possibilities for tourism, transportation of goods, etc.

The foundation of this transport system primarily consists of the network airlines who see to it that there are active air routes between A and B the entire day. Companies like SAS are run like a network and have the possibility to operate with domestic routes that are not profitable because they are able to sell tickets to destinations with more sub-distances. This means that passengers travelling on non-profitable distances are transported to hubs with more profitable distances.

The deregulation of aviation in Europe initially led to increased competition and, hence, falling ticket prices. This was positive since far more Europeans got access to air transport. Meanwhile, unhealthy competition from a number of low-cost airlines, including Ryanair, has had the effect that the network airlines are struggling for survival today. In the face of tougher, unregulated competition, routes with a low volume of travellers will not be profitable. This is an issue which may have serious consequences to infrastructure, employment in aviation, and for the dispersed population in the North.

¹² Dagens Naeringsliv, 03/10-2016: pages 8-9

Prioritized policy areas

In the following chapter, we have identified some issues to which we propose political solutions.

Atypical forms of employment

A central problem is the use of atypical forms of employment via aviation crew leasing companies, “false self-employed” or casual employment without guaranteed hours or pay. The University of Gent, Belgium, has examined the extent and concludes that it is particularly the low-cost airlines that use these practices. Only 53% of pilots flying for low-cost airlines are directly employed by the airline that they are flying for. In the other airlines, almost 98% are employed directly with the airlines they are flying for (Y. Jorens, 2015).

It is typically young pilots who are working on atypical contracts. There are cases of young pilots who are offered the so-called pay-to-fly schemes where the pilots pay the airline to fly its planes. The Gent-report shows a trend in the development in employment conditions according to which more than 50% of the persons who state that they are self-employed are between the ages of 20-30 years (Y. Jorens, p. 216, 2015). Furthermore, 84% of these employees work for low-cost carriers (ibid). Companies such as Ryanair have had an interest in recruiting young pilots (ibid).

A closer study of the segment 20-30 year old pilots shows that 39 % have some sort of atypical contract. This group is most prevalent in the low-cost carriers where atypical employment constitutes 70% (Y. Jorens, 2015).

Atypical employment is used to circumvent the rules on the labour market in order to avoid paying as little as possible to social security contributions and to reduce taxation.

The surveys from Gent further shows that atypical employment in the entire aviation sector constitutes more than 16% in total. Furthermore, it is shown that the employees in the low-cost carriers work longer hours than in other companies, charter companies and network airlines. Approximately one in three of the respondents replied that tasks such as pre-flight duties and checking-in passengers were not included in the remunerated work hours compared to the 15 % of respondents from Business Aviation (Y. Jorens, p. 210, 2015).

It should be underlined that not all low-cost airlines use atypical employment forms. Among others, EasyJet has concluded collective agreements covering their employees.



Increased safety concerns in aviation

The study documented that atypical employment contracts can negatively affect safety on board. This is primarily due to the work culture arising from the atypical employment model, which is characterized by its temporary nature. The contract worker will always worry about not having his or her contract renewed. These types of contracts only remunerate flying hours, and therefore, there are no earnings during holidays, illness, etc. The consequence of this is that pilots go to work even though they are ill and thereby contribute to poorer safety in the cockpit.

At the same time, there is also a considerable risk that critical safety reports will not be written (Y. Jorens, 2015).

Nearly half of the pilots who are employed as self-employed reply negative to the following statements; “I can change the instructions from the airline if it comes down to flight safety, responsibilities or health and safety at work.” The survey also points to the fact that lack of influence over pilot flight hours, health and exercise have significance when comes to safety.

Protection of whistleblowers

Whistleblowers are defined as workers who speak up about sensitive conditions that may be in violation with the law or ethical norms in the company where the person in question is or has been employed. The development on the labour market with increased use of fixed-term workers gives cause to concern in many aspects when it comes to the right to disclose information about wrongdoings and when it comes to the protection of whistleblowers. The protection of whistleblowers should apply to permanent employees, temporary workers and fixed-term workers. Furthermore, anonymity should be an option.

SAMAK policy

- Limitation on the use of atypical forms of employment for flight crew by establishing a principle of direct employment so that at least 75% of the crew must be directly affiliated to the company. Use of temporary workers must only take place during peak times. This should also apply to ground handling employees
- At least half of the staff with areas of responsibilities within areas such as security, who work for the company, who seek a certificate¹³ should be directly employed in order to ensure organisational stability and thereby ensure the necessary level of passenger security. Employment and working conditions are directly linked to the maintenance of passenger- and staff security. Similar rules already apply to aircraft maintenance technicians
- Active prevention of false employment situations, including a prohibition against employment of pilots and cabin crew as “self-employed”
- The pay-to-fly scheme must be phased out by means of EU-legislation

¹³ In this context, a certificate is a paper documenting to the authorities within the EU or the EEA that the holder is covered by, for instance, Danish social security when working abroad.

- Launch traineeship-constructions with a view to strengthening the labour market situation for young pilots (preventive effects on pay-to-fly)
- More public investments into pilot training
- The establishment of vocational training for cabin crew
- Certification of the training providers that train pilots and cabin crew
- Legislation which limits regulatory forum shopping which can happen because the airlines are allowed to register with more than one AOC¹⁴ in one or more countries. This legislation aims to stop the use of convenience flags in aviation
- The airport companies should be met with specific requirements and provisions for whistleblowers. In addition to this, it should be possible to submit information anonymously and, in that connection, the security of the informant should be established by national as well as European legislation
- Establish principles according to which crew must earn the same pay for the same work on board the same aircraft

Home base

The so-called home base concept is under attack and this creates uncertainty as to whether the employees are covered by social security schemes and labour law provisions. Since aviation is a cross-border activity, the home base rules are phrased so that there can be no doubt as to which regime the employee belongs under. It is the location of the home base that determines which social security schemes the employee is covered by. If the home base is located in Norway, for example, the Norwegian rules apply.

Meanwhile, the development in the aviation industry has moved in a direction which means that this definition is no longer sufficient. Creative thinking in employment structures is used to bend the rules. In the face of new corporate structures, it is difficult to decide whether national law or EU-law applies to the employment relationship. EU-law opens up to the parties themselves deciding whether national or EU-law is to be applied. In many cases, disputes regarding the worker falls under civil law and it is therefore up to the individual to bring an action before the national courts. In this connection, it can be problematic, seen from a legal perspective, to determine where the employee habitually carries out his/her work.

The legal principles in this area are rather vague and the cases become even more problematic when it comes to employees from third countries.

The current EU-definition of a home base is as follows;

“The location nominated by the operator to the crew member from where the crew member normally starts and ends a duty period or a series of duty periods and where, under normal conditions, the operator is not responsible for the accommodation of the crew member concerned”¹⁵

¹⁴ Air Operating Certificate

¹⁵ EEC No 3922/91 Subpart Q

We have seen many examples of how employees have more than one of the so-called home bases or that they frequently change home base and that these changes create uncertainty as to where the employees are indeed covered. This particular issue also becomes a challenge for employees whose regulatory oversight will be absent in cases of uncertainty as to which country's legislation is to apply. There is a need for Regulation No 883/2004 on the coordination of social security systems to be amended so as to specify more clearly which social security provisions apply.

There is a risk that commercial aviation will experience the same situation as shipping in terms of reflagging. In order to avoid this, it is crucial to create equal terms and conditions for fair competition and respect for workers' rights.

When questioned about home bases, 49 % of the respondents that were employed in the low-cost airlines replied that they do not fly from the same home base every time. Meanwhile this figure was 62 % among the charter airlines.

A large part of the legislation, which regulates civil aviation, dates back to a time when the aviation industry was very different from what it is today and, therefore, there is a need to adjust the current set of rules so that it is up to speed with the present (Y. Jorens, 2015).

In "An aviation strategy for Europe", the European Commission proposes to publish an interpretative guidelines on the application of current labour law and jurisdiction within the framework of the European legal regime in the field of civil law and trade law.¹⁶

It is therefore expedient to examine whether this guide will become satisfactory compared to our joint, Nordic political goals regarding home bases.

SAMAK policy

- The rules on home bases should be updated so as to provide clarity as to how the employees are covered by labour market legislation, social security schemes and tax regulation
- The home base rules must cover all personnel performing work for the airline; without regard to whether or not they are self-employed, employed via a temporary employment agency, employed on temporary conditions or as temporary workers
- Updating of the home base rules is to prevent companies from moving crew from one airport to another in order to circumvent the employers' liability which is prompted by the home base principle
- It is important to ensure that preparations and check-in are universally considered as work activities and are paid activities since the home base is also defined by the location of the performance of these activities
- The EU must prepare legal provisions so that workers can be certain that they are covered by the social security regime regardless of whether or not their work is transnational

¹⁶ European Commission "An Aviation Strategy for Europe" - COM(2015) 598 final

- The EU must commit to working with the identification of new problems which risk affecting mobile workers in this sector or other sectors as a consequence of creativity among employers motivated by a desire to maintain flexibility among the workforce

Groundhandling

The European regulation of ground handling has had the effect that working conditions for the employees have come under further pressure. In major airports, the number of suppliers of ground handling services can never be fewer than two companies. At the same time, the airports have often developed a centralised infrastructure. The Swedish board of transportation writes, for example, that baggage handling is a good example of a centralised infrastructure where all groundhandling companies share the same facility. The de-icing of the aircraft also often take place by means of centralized equipment and the same is the case for fuel supply that is mainly carried out using centralized cables.

It would be fair if the operation of ground handling services with a centralised infrastructure, which, in its nature, is standardised, could be operated in-house by the airport.

The only possibility the ground handling companies have of competing is by lowering staff costs. This entails a downward pressure on the lowest wages existing in legislation or agreements. Next step is more part time jobs, fixed-term jobs in order for companies to adjust their companies to demand.

SAMAK policy

- Council Directive 96/67/EC on groundhandling should be revised in order to make it possible for member states to allow bigger airports with a centralised infrastructure to run in-house groundhandling services
- The health and safety at work of the persons working with baggage handling in airports, and especially when it comes to loading and unloading of the aircrafts, is too poor. In order to avoid various industrial injuries, early retirement and poor health, a maximum weight for checked-in baggage should be introduced



Unfair competition from third countries

We must be able to handle the negative effects of globalisation if we are not all to end up with the losing hand. The European airlines are challenged by growing competition from Asian countries and countries in the Arabian Gulf. If European aviation is to face increased competition from the outside, it is crucial to establish conditions that safeguard companies' ability to compete on equal conditions - something that they cannot do to today.

International aviation must recognise that there is a correlation between a responsible regulation of employment conditions for airline staff and the flight safety that passengers are entitled to.

Third countries, not least, are unrivalled when it comes to using unfair competition. Large airlines from third countries have bought European airlines and have thereby created a basis for pulling away overseas travellers away from major European airports.

It has great significance to the total employment of the aviation industry that jobs are moved outside Europe. This is not least the case for the staff on the ground.

It is therefore very important to maintain the focus on the requirements that are defined in the aviation agreements that the EU concludes with third countries. This is not least the case in relation to the six countries in the "Gulf Cooperation Council"¹⁷ with which the EU is negotiating an aviation agreement. A number of these countries are known for their violations of ILO core conventions, i.e. the right to organise and the right to collective bargaining.

An aviation agreement between the EU and the Gulf States must include specific requirements that, as a minimum, ensure that the operators observe the ILO core-conventions, the OECD-guidelines for multinational companies and the UN's guiding principles on business and human rights.

It is also necessary that the EU Commission stipulates requirements on transparency in the financial structures in order to uncover illegal state aid and subsidies which often contribute to artificially low fare prices.

The Alliance "E4FC"¹⁸ estimates that the three companies; Qatar Airways, Etihad and Emirates have, during the past decade, have received a total of EUR 39.7bn in state aid and other subsidies from their governments. During the same period, these companies have expanded their activities enormously. In 2014-15 alone, Qatar Airways received more than 7bn USD in state aid and 3.7bn in subsidies. These figures were found in hidden accounting documents that have been uncovered by investigators.

European airlines and their employees are losing market shares of their routes and all the while, the Gulf States airlines are expanding their markets in regions that are dependent on market access. For example, European airlines have reduced the number of departures between Europe and Bangkok with eight flights a week while the Gulf States' companies have increased the number of departures by 66 a week. This unfair competition means that European companies are forced to cancel routes that means major losses of European workplaces.

¹⁷ The Gulf States consist of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

¹⁸ Europeans for Fair Competition – In Aviation

European aviation employs 4.7m persons. These workplaces are at stake when exposed to unfair and subsidised competition. Furthermore, it is also bad news for ordinary travellers in the long term since there will be fewer airlines that will offer travellers fewer options that will lead to higher prices.

It is apparent that the Gulf States and other third countries have a protection level that is much lower than the standards we know in Europe. It is therefore necessary that the EU's aviation agreements include specific requirements for third countries to observe ILO's core conventions so that they gradually lift their standards to meet the EU-level. If they fail to meet these standards, the Gulf States' companies must have limited access to the European market.

SAMAK welcomes a fair price competition. There are low-cost airlines that manage to offer low prices and decent conditions for their employees at the same time. The problem arises when price competition takes place on unfair terms where prices are pressed fully down by using illegal subsidies and/or when atypical employment forms are used with a view to deteriorating conditions for workers.

SAMAK policy

- During negotiations on air transport agreements with third countries, the EU Commission must set requirements on transparency in the financial structures and taxation just as it is necessary to set requirements on openness when it comes to state aid and subsidies
- The European Commission must require that social clauses are a part of any future global air transport agreements (ATRP) as well as agreements with third countries, which, as a minimum, should contain requirements to observe ILO core-conventions, the OECD-guidelines for multinational companies, and the UN's guiding principles on business and human rights
- The European Commission must guarantee that airlines in the Gulf States do not get the opportunity to undercut European airlines with artificially low fare prices which are a result of massive state aid and subsidies from the Gulf State governments
- We welcome a set of rules to prevent unchecked replacements of Nordic and European employees with staff from other continents

Competition between airports

Airports are an important part of the aviation industry and contribute to employment via different services linked to arrivals and departures. The use of secondary airports is most common among low-cost airlines while the network airlines typically use the major national hubs. Competition has become fiercer. This is particularly the case when it comes to the secondary airports. The secondary airports are facing structural challenges, seasonal dependence and they are vulnerable to the business model of the low-cost airlines. Consequently, there is a frequent change of airlines at the airports because companies that use the different secondary airports often switch bases between airports or cut their routes.

In a study among 406 airports, more than a third of the airports had experienced a 20% drop in demand. 72% of European airports that are located near other airports are experiencing even greater cuts in demand for services¹⁹. Between 15-20 % of the flight routes were opened and closed every year because the airlines' move their fleets to raise earnings.

Due to fierce competition between airports, we are seeing a trend according to which airports are offering incentive schemes in order to appeal to the airlines. Examples of these incentives can be lower landing- and terminal costs, income guarantee schemes and coordinated marketing agreements. This opens up to individual airlines exerting an aggressive pressure on airports to obtain a more favourable agreement. In places where airports are in very close proximity, it is possible for airlines to turn them against each other in order to drive down prices. In cases where low-cost carriers leave airports, it is unlikely that those airports will survive.

SAMAK policy

- A policy should be put in place to provide greater operational predictability, such as multiannual agreements with the airlines
- The establishment of airports and destinations should be based on both national and international strategies that take into account the need for infrastructure and local development



Virtual airlines (wet-leasing)

In situations where airlines need extra capacity, it is possible for them to rent aircraft and crew from another company. This is called wet-leasing. The airline that rents aircraft and crew operates the flights under its AOC. The lessee also pays for taxes and landing fees. A wet-lease is usually of a duration of 1-2 months and is in demand in peak season. It is common that the leased aircraft is equipped with the same logo and design as the rest of the lessee's aircraft for as long as they are leased. Ground handling services can be performed by the lessee. If wet-leasing becomes common,

¹⁹ Link to dokument here: [click here!](#)

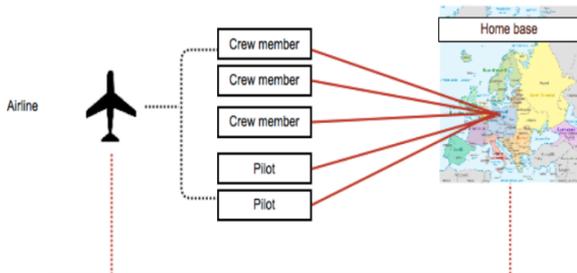
this can pose challenges related to safety. We could be facing a situation where passengers are buying tickets from one company which is only in charge of ticket sales and brand, but which has a marginal connection to the aircraft itself, the crew and the flight.

The triangular employment relationship between the airline, the sub-contractor and the pilot creates a distance between the workers and the ones using their labour. The outcome of this fragmentation is that the workers, who typically have an atypical employment contract, have no voice in the organisation and are therefore forced to accept a “zero-hours-contract” which means that the employer is not obligated to offer them any work (Y. Jorens, 2015 p. 204).

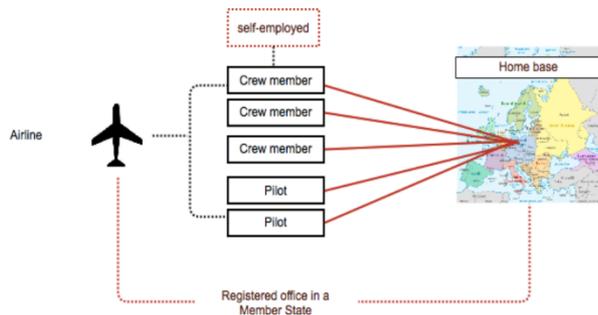
See next section for and illustration of wet-lease and outsourcing



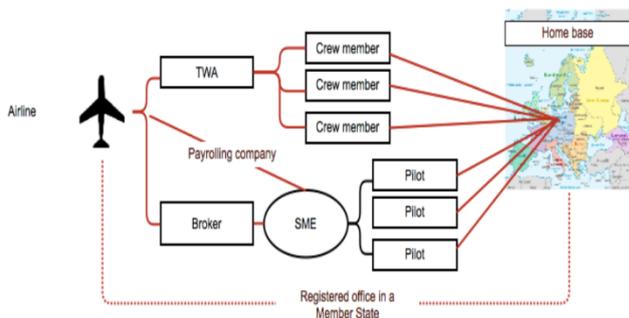
“Typical” employment relationship between a company and crew - figure 1



Worker as “self-employed” - figure 2

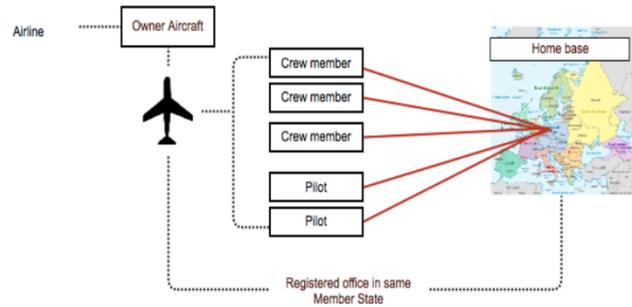


Introduction of a temporary employment agency and a recruitment agency, pilot “self-employed” - figure 3

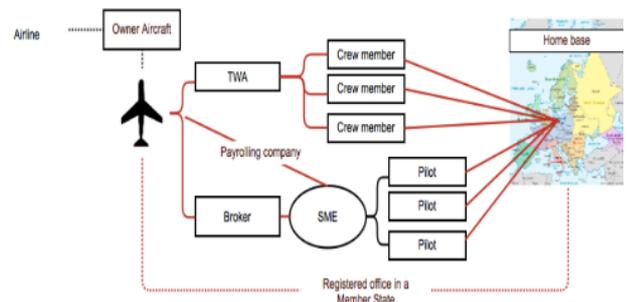


Source: (Y. Jorens, 2015 – *Wetlease & subcontracting*)²⁰²¹

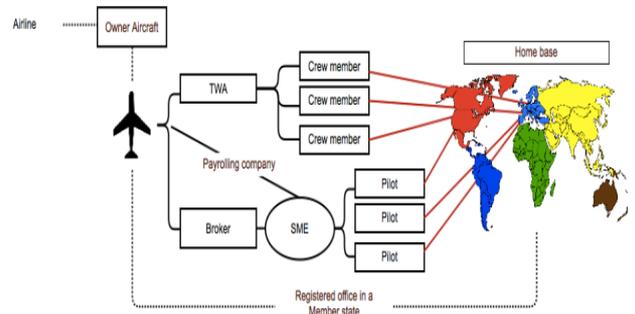
Normal wet-lease – figure 4



Wet-leasing and outsourcing of crew with the same home base - figure 5



Wet-lease with different home bases for crew, some outside the EU (use of third country nationals) - figure 6



²⁰ TWA is short for 'Temporary Work Agency' - e.g. recruitment agency or temporary work agency.

²¹ SME is short for 'Small & medium sized enterprises'

The structures illustrated above, to some extent, offer ways of avoiding the payment of social security contributions. The Operator, who - among others - decides on and changes the home base – will, in these situations, be hidden behind the many players at the expense of security and transparency. The question remains - whose responsibility is it? Once the home bases are, for example, moved to third countries, this has consequences to the provisions on social security. The rules on home bases in the EU are therefore not applicable and therefore cannot be enforced once the creative constructions of the low-cost airlines are unfolded - as seen in figure 6.

SAMAK policy

- Wet-leasing should only be used in extraordinary situations and should be regulated so as to avoid abuse. Wet-leasing must not become the norm since this could create “virtual airlines” which blurs the lines that define which company has responsibility in a given field
- The Open Skies agreement between the EU and the US do not prevent pay-to-fly schemes or wet-leasing, and it is therefore necessary to regulate this area. Article 17 & 18 do not contribute to promote solutions to the problems involving home bases. On the contrary, the Open Skies agreement has fundamentally opened the floodgates when it comes to wet-leasing, according to the authors of the Gent-report (Y. Jorens, 2015)

Social dialogue and collective bargaining

An effective safeguard against social dumping in aviation cannot only be meted out by means of tightened legislation, better enforcement and control. It is crucial to strengthen the social dialogue between the airlines and the trade union organisations of the employees.

The fight against social dumping should also be discussed during tripartite negotiations at the national, Nordic and European levels.

Nordic experiences show that a high level of unionisation among all staff groups in the industry is a precondition for combating social dumping. The European Commission has stated that it wants a strengthening of the social dialogue and has, on 27 June 2016, signed a statement on how to bring this about. The declaration, which is signed by both the ETUC, the three employers' organisation and the Dutch EU-Presidency, encourages all parties to commit to improving the social dialogue.

The statement should lead to the union organisations and the airlines agreeing on how the social dialogue can strengthen the fight against social dumping. This is a positive development. However, as representatives of SAMAK's member organisations, we acknowledge that the efforts to create a safe working life in aviation have not come as far as we would like. We are working on overtime when it comes to keeping up with the deteriorations in working conditions in this industry. We therefore need a specific set of rules quickly in order to close the gap which is a result of the flexible working life.

The current challenge is that a new employer organisation, the A4E²², has emerged. This new organisation does not work with social conditions. Therefore, the social dialogue has more or less come to a standstill because a number of employers have downgraded it and/or have failed to reach agreement. In this context, it is important to create an even stronger basis for the social dialogue since this could future-proof a sustainable European aviation policy.

SAMAK policy

- Future issues within the field of aviation should always include an analysis of the consequences for workers and, through social dialogue, prevent further weakening of working conditions. A mainstreaming approach would also be relevant from a climate perspective
- Pressure must be put on the employers to give priority to the social dialogue



²² A4E consists of the airlines: Air France KLM, EasyJet, International Airlines Group, Lufthansa Group, Ryanair.

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