

# European Platform Tackling undeclared Work

Collaboration between competent authorities to tackle undeclared work in the air transport sector, with a special focus on bogus self-employment of aircrews

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The Platform seminar provided participants with an opportunity to reflect on undeclared work in the air transport sector. It focused in particular on bogus self-employment of aircrew, and considered the effectiveness of national approaches designed to tackle undeclared work in what is a highly regulated sector. Discussions highlighted the challenges facing labour inspectorates and other agencies tasked with enforcement and compliance, and the need for cross-border cooperation and European support.

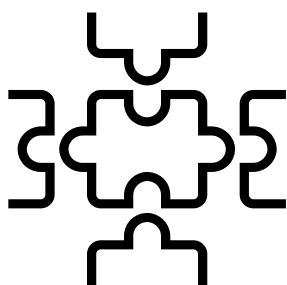
## Key findings:



- ▶ **Self-employment is a relatively new phenomenon in air transport.** On the basis of existing (limited) data, it appears to be confined to a small number of commercial airlines and a proportion of their flight crew. However, it can lead to concerns for Member States to ensure the applicable tax, social insurance and job protections.
- ▶ **There were diverging views among social partners organisation** on whether pilots could be genuinely self-employed, in particular when working for the same airline over an extended period.
- ▶ **Only few cases of labour inspection in air transport** were reported, partly due to airport security restrictions, the difficulty securing access to aircrafts and considerations that airlines might not have access to all the relevant information (e.g. when self-employed pilots are hired via an agency).
- ▶ **The different definitions, language and criteria to determine (bogus) self-employment adopted by Member States** may result in legal uncertainties and contribute as well to difficulties in informing about how to be compliant.
- ▶ **Other key challenges to tackle undeclared work in the air transport sector** include determining the prevalence of undeclared work in the sector and the low number of actions started by the aircrew to bring cases before the relevant authorities. Several hypothesis have been advanced as a reason including the fear of job loss or other sanctions (e.g. fewer flights and lower earnings); the length and cost of the processes as cases are settled in courts; the lack of “class action” (i.e. self-employment of aircrew is determined on a case-by-case basis by the competent national authorities).
- ▶ It is important to **continue the social dialogue and to involve social partners** in tackling undeclared work in air transport. There is a need to continue efforts to find ‘common ground’ between airlines and representative trade unions, both at national and European levels, and the Sectoral Social Dialogue Committee for Civil Aviation can address these issues.



## Policy approaches and recommendations



- ▶ **National cooperation** between all the relevant actors (i.e. social security institutions, labour inspectorates, prosecution services, social partners, tax departments etc) is crucial in order to collect evidence and effectively determine the correct employment relationship. This also needs political will.
- ▶ There is a need for more **European cooperation**, at least with respect to how to interpret and enforce existing European legislation in the air transport industry and how to issue, use and withdraw A1 certificates. The recently established working group to look at social matters in air transport, set up by the European Commission, the recent Directive on Transparent and Predictable Working Conditions (2019/1152), as well as the work of the new European Labour Authority on joint and concerted inspections will contribute to this.
- ▶ **The use of direct controls** contributes to improve detection (e.g. a 'checklist' of criteria for labour inspectors to determine self/employment status) and facilitate compliance (e.g. clarification of the law on self-employment or the introduction of a national 'code of practice'). The scale of financial penalties for bogus self-employment varies markedly across Member States and the effectiveness of fines as a deterrent is not clear. While fines are targeted at employers, self-employed pilots may find themselves with an unpaid tax bill.
- ▶ **Awareness-raising activities** involving both labour inspectorates and social security/tax agencies have proven effective measures to provide greater clarity and certainty for workers and to enable them to reach a more informed decision regarding the contractual terms and conditions of self/employment and the impact on their rights and benefits.

**Further information:** A Learning Resource Paper from the seminar, which discusses these issues in greater detail, will be published.

