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Atypical Employment in Aviation: Potential **Safety** Impacts

A summary of statements contained in
'Atypical Forms of Employment in the Aviation Sector'
by Y. Jorens, D. Gillis, L. Valcke & J. De Coninck,
European Social Dialogue, European Commission, 2015.

„[F]or the purpose of this study, ‘atypical work’ constitutes all forms of employment or cooperation between a member of the cockpit or cabin crew and an airline other than an open-ended employment contract concluded between said crew member and said airline directly.“

(Jorens, Gillis, Valcke, & De Coninck, 2015, S. 152)

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List of Abbreviations

AEA	Association Of European Airlines
CJEU	Court of Justice of the European Union
CLA	Collective labour agreement
EASA	European Aviation Safety Agency
ECA	European Cockpit Association
ETF	European Transport Workers’ Federation
Eurofund	European Foundation for the Improvement of Living and Working Conditions
FTL	Flight and duty time limitations
LCC	Low-cost carrier
LFA	Low-fare airline
PPPRuNe	Professional Pilots Rumour Network
TFEU	Treaty on the Functioning of the European Union

1. „Executive Summary“

*„With regard to amending the instructions of the airline based on e.g. objections regarding flight **safety**, liability, or regarding health and **safety**, 20% of the respondents stating to be self-employed strongly disagreed with the statement ‘I can amend the instructions of the airline based on e.g. objections regarding flight **safety**, liability, or regarding health & **safety**’. Of these 20%, 83% indicated that they fly for an LFA. Furthermore, another 26.6% ‘generally’ disagrees with said statement, of which 90% (!) indicated they fly for a LFA.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. XIII)*

*„[...] civil aviation legislation does not take into account the prevalence of different forms of atypical employment and outsourcing in the rapidly changing civil aviation industry. Moreover, social legislation is not able to tackle the new phenomena, leaving room for elaborate subcontracting chains and elaborate social as well as fiscal engineering. As a result, the competition nowadays is a true race to the bottom, which affects fair competition and workers’ rights as well as raises important issues in the field of **safety** and liability.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. XIV)*

*„It is our strong opinion that whistleblowers should be more protected, both legally and economically, since building cases to tackle bogus self-employment, **safety** reporting, acting upon pilot authority as well as the enforcement of efficient management **safety** systems and of a just culture¹ highly depend on proper reporting mechanisms.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. XV)*

*„[T]he research has revealed that there is neither a global nor a European oversight of the total amount of flight hours a pilot clocks up. [...] this means that the effective monitoring and enforcement of FTL regulations by the competent authorities is quasi-impossible. Taken into account the problems with the home base rule for the determination of the applicable social security legislation combined with the **safety issues** that ensue this quasi-impossibility of the effective monitoring and enforcement of FTL regulations by the competent authorities, this issue urgently needs to be addressed.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. XVI)*

¹ According to the International Civil Aviation Organisation (ICAO) a just or safety culture „encompasses the commonly held perceptions and beliefs of an organization’s members pertaining to the public’s safety [...] A healthy safety culture relies on a high degree of trust and respect between personnel and management and must therefore be created and supported at the senior management level.“ (ICAO, 2013, S. 2-10)

„[...] it has been pointed out by several sources that some airlines' management styles (e.g. blame culture, non-renewal of contracts with staff legitimately applying **safety** procedures and according authority etc) are in total contradiction with provisions and regulations on Crew Resource Management and **Safety** Management Systems.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. XVI)

„The problem of bogus situations and **safety issues** [...] is also linked to labour market issues. [...] In short, captains hold a much stronger position and get significantly higher wages and conditions in general, whereas pilots at the start of their career are in such a weak position, the conditions for positions of first officers are often deplorable.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. XVI)

„[A] European system for the financing of training is called for, taking into account that the amount of debts young pilots face often put them in a position so weak that, combined with a mala fide management style, it touches upon **safety** measures installed.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. XVI)

„[T]he similarities between practices such as Flights of Convenience and Crews of Convenience resulting in a race to the bottom and subsequent social dumping in both the maritime and aviation sectors should raise an intense sense of urgency, more specifically with regard to **flight safety**, fair competition and workers' rights.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. XVII)

„We therefore call upon all stakeholders to act upon this clear warning and to not let the detrimental experiences of the maritime sector – resulting in **hazardous safety issues**, tax issues and sheer social dumping – be repeated in the civil aviation industry. In this respect, it's minutes passed midnight.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. XVII)

2. „The European aviation industry“

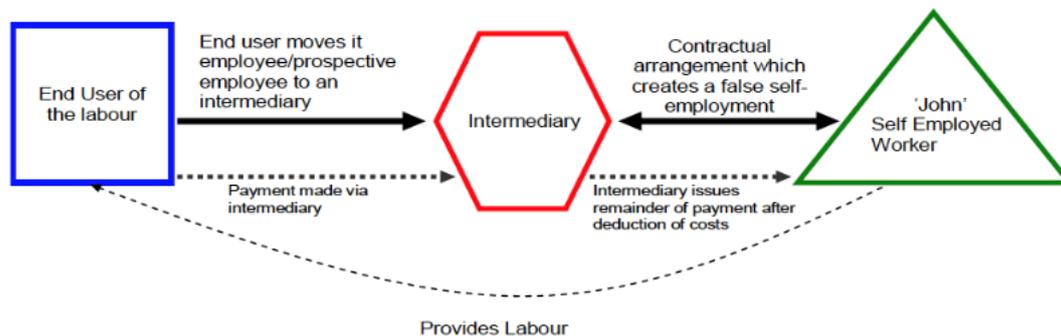


Figure 1- From direct employment to bogus self-employment, (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 40)

„The entirety of [...] atypical relations [see figure above] furthermore endanger not only the health and safety of those employed, but equally so the **safety of air operations**. This is in stark contradiction to the European legislative provisions in this regard.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 40)

„[E]xperienced pilots are increasingly being replaced by trainee pilots who engage in these ‘pay-to-fly’ schemes. This potentially affects not only the labour market, but equally so gives rise to certain safety concerns. Within this context it has been explicitly noted that issues have arisen and may continue to arise with respect to **safety reporting**, level of fuel filling, as well as de-icing.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 59)

„[I]t appears that the increase in atypical employment in the aviation sector has caused fixed wages to decrease and wages to become more variable. The latter subsequently entails that individuals are pushing themselves to work, irrespective of health and **safety concerns**, in order to nevertheless maintain adequate remuneration.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 68)

„[In Belgium] [f]or numerous reasons pilots engage in additional second jobs, whereby resting periods are not respected, potentially affecting **flight safety**.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 77)

[In Estonia] „Health and **safety** standards may be affected as a result of atypical work [and] [c]ommercial interests may be prioritised over **safety concerns**.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 78)

„[In Ireland] [t]he prevalence of a ‘blame culture’ at certain LCCs as **opposed to a ‘safety culture’**“ is seen as an „Area Of Concern“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 79).

„[In Spain] [c]ommercial interests are prioritised at the expense of health and **safety concerns**.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 79)

Pilot Quote:

„Fair contracts are important not only for the pilot himself, but also for flight safety. Special employment contracts like "pay to fly" **endanger flight safety** and should be prohibited[.]“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 83)

„Whilst pilots, and the pilot-in-command in particular, are deemed responsible for the **safety of the aircraft** and those on board during an air operation, [...] due to the bogus self-employment relations, adherence to **safety** regulations is becoming increasingly precarious. Specifically, it has been noted that the independence of pilots-in-command may be jeopardised as a result of job insecurity inherent to atypical forms of employment. Adhering to the economic objective sought by the employer is thereby gaining importance as opposed to maintaining a high safety threshold. This is furthermore corroborated by the fact that atypical forms of employment, which do not provide job security, additionally result in pilots [...] performing duties despite potentially feeling ill, as opposed to taking required sick leave. Needless to say, given the particular nature of air operations, such practices may also **negatively influence safety** whilst being on board during an air operation.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 84)

„[E]merging atypical forms of employment such as zero-hour contracts and pay-to-fly employment schemes may serve only to aggravate existing **safety concerns**. There may be reason for concern particularly when such contracts are offered to younger pilots, who are indebted as a result of their training, and often underemployed. [...] Without appropriate guidance and/or experience such scenarios could have a detrimental affect on flight **safety**, overshadowing the competitive edge this may give employers.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 84)

3. „Survey findings“

3.1. Decision Making: Safety Objections

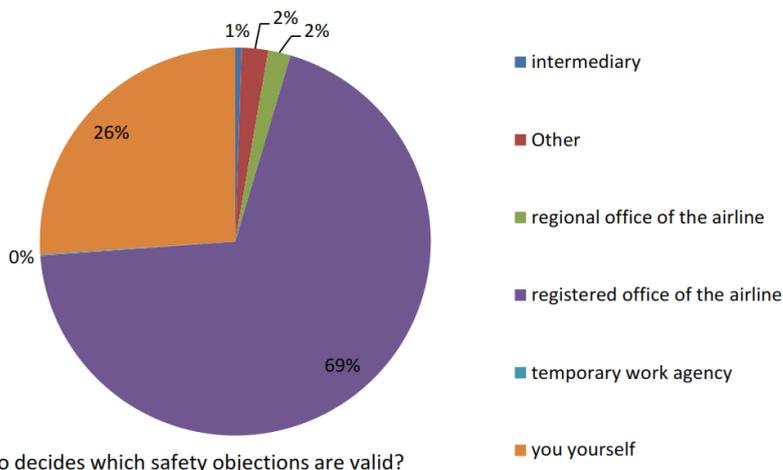


Figure 2 - Who decides which safety objections are valid? (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 143)

„When respondents were asked about the decision-making process with regard to the possibility to amend the instructions of the airline based on e.g. objections regarding **flight safety**, liability, or regarding health & **safety**, 30% stated being reluctant to take such decisions themselves, whereas more (47%) respondents stated they think colleagues are reluctant to take such decisions.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 143)

„When [...] asked [...] if they are sometimes reluctant to take such [**flight safety related**] decisions for fear of possible negative consequences for their professional career, 30% answered yes. When [...] asked [...] if they think their colleagues are sometimes reluctant to take such decisions for fear of possible negative consequences for their professional career, 47% answered yes.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 144)

„When asked if their employment status may affect their ability to take such decisions, again, 37% of the respondents stated this is the case. When asked if they think their colleagues' employment status may affect their ability to take such decisions 46% of the respondents answered yes.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 144)

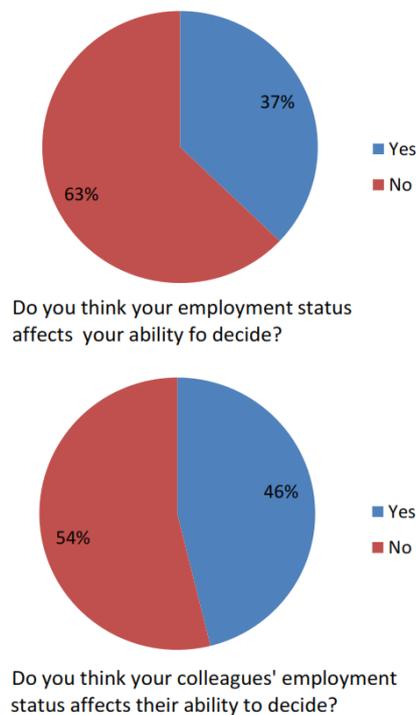


Figure 3 (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 144)

3.2. Decision Making: Illness

„93% of respondents provided [...] an answer to the question if they ,can decide not to fly for legitimate reasons of illness etc‘ [...] 28% states being reluctant sometimes to take such decisions out of fear of possible negative consequences for their professional career. 43% states they think their colleagues are sometimes reluctant to take such decisions for fear of possible negative consequences for their professional career.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 145 f.)

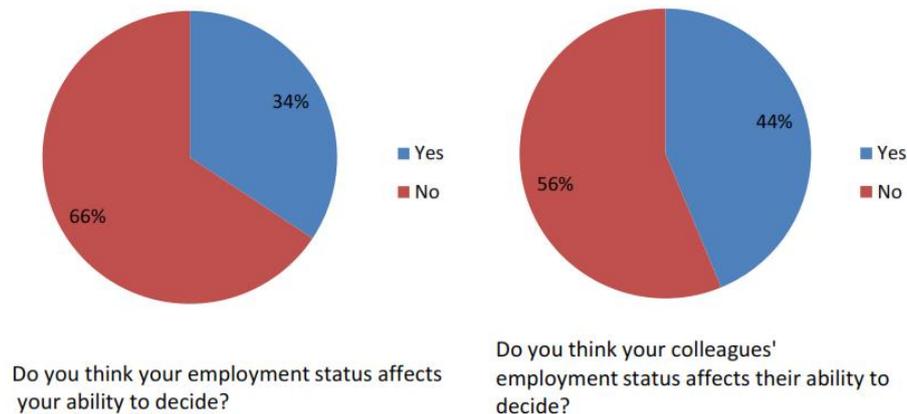


Figure 4 (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 144)

„34% of the respondents indicated that they think their employment status may affect their ability to take such decisions, and 44% indicated that they think their colleagues' employment status may affect their ability to take such decisions.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 147)

4. „Analysis of the findings“

Pilot Quote:

„Being a pilot with quite a lot of experience puts me in a very different situation than pilots with little/less experience [...]. [I]n Europe today the job market is much worse and many find themselves in situations where they ,have to‘ accept work conditions that are extremely bad and often outright **dangerous to flight safety**.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 179)

Pilot Quote:

„The big [...] low cost airlines [...] are part of the problem. Because they are able to lower the terms & conditions and exploit these young wannabe pilots. And that is **bad for safety**. ... Not to mention the airlines that require people to **PAY TO WORK!!!**“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 179)

„Triangular work relationships [between 'agency', 'client' and 'worker'] hold specific dangers that are or at least should be well known to all stakeholders, not only with regard to workers' rights concerning social security, but also with regard to workers' health and **safety**, not in the least because health and **safety** provisions represent a high cost to service providers [...]“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 179)

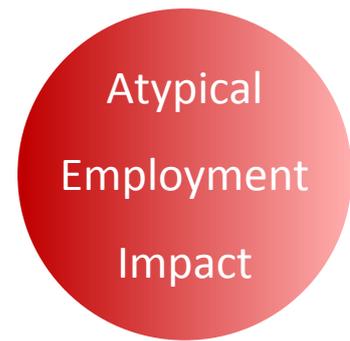
„New recruits fresh from flying school will typically arrive with a six-figure training debt (depending on the situation, between € 80,000 and € 150,000) and little or no flight experience or type-rating. On their first job, they are often assigned to a foreign base where they will work hard to pay off their debts, accumulate flight hours and try to secure a transfer to their (preferred) 'home base'. [...]This process may allow airlines to exploit different 'pressure points' in the pilot's career path at critical junctures. Needless to say, this kind of company behaviour is **detrimental to an effective safety culture**. “ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 203)

„An airline culture that heavily emphasizes punitive actions is not compatible with SMS [**safety** management system] because discipline deters people from voluntarily reporting **safety** events and concerns, makes them less forthcoming with information when they participate in event investigations, and alters their usual performance to model expected behavior when they are observed during normal operations“. (Ma & Rankin, 2014, S. 16) in (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 203)

„One of the most atypical forms of employment reported to be on the rise in civil aviation actually can no longer be easily considered employment. More and more accounts are reported of airlines making use of the service of pilots by means of so-called pay-to-fly schemes. Pay-to-fly is the situation where a pilot actually pays an airline to fly one of its aircraft, often in order to either keep enough flight hours required to remain licensed or to get more flight hours in order to get more flight hours, either to get a position as first officer or even to get enough flight hours to qualify as captain. It goes without saying that when a pilot pays an airline to fly one of its aircraft, questions regarding authority, **safety** and liability are even more pressing.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 207 f.)



„[R]espondents who indicated to fly for an airline with a direct employment contract (mostly) agree upon the statement ‘I can amend the instructions of the airline based on e.g. objections regarding **flight safety**, liability, or regarding health & **safety**’. And, although the largest amount of respondents who indicated to have another type of employment also stated that they agree, a larger group of respondents (in comparison to the directly contracted respondents) disagrees.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 211)



„When asked if their employment status affects their ability to take such decisions [...] especially the respondents indicating to be atypically employed more frequently answered that this is the case.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 211)

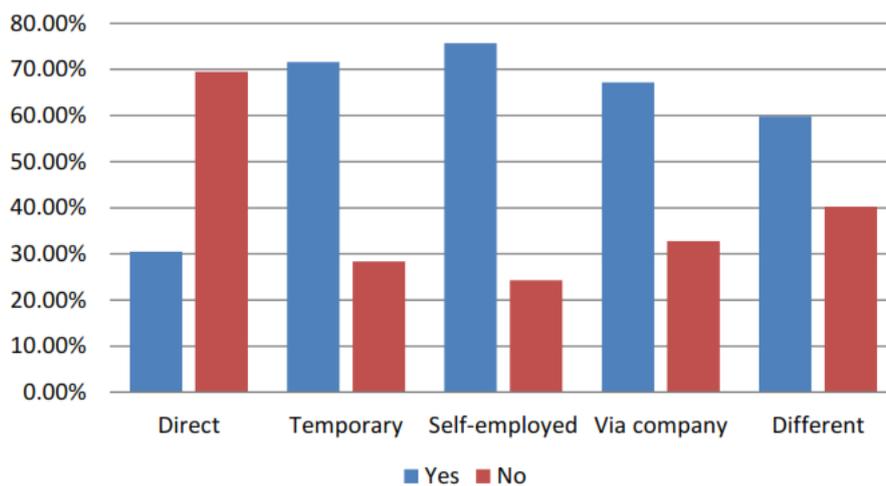


Figure 5 – Impact of employment status on flight safety decisions. (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 211)

Pilot Quote:

„Apart from social considerations, **safety** is impacted. ,Oh, so you want to keep working with us, but, see, you took 2 sick leaves last year, and you refused the dispatch with technical deviations once, and, you know, we have your personal fuel statistics ...‘.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 212)

Pilot Quote:

„When you are sick more than 4 times a year you get called in for a talk with the office to discuss the reason why.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 212)

5. „Final conclusions and recommendations“

Pilot Quote:

*„Social dumping forces all competing airlines that have an interest in remaining competitive on the market to follow the same path as the concerned airlines, resulting in an overall deterioration in working conditions, job security and most importantly flight safety. Political regulation within EU is crucial to be able to maintain fair competition between airlines maintain current **safety** standards within the business.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 261)*

*„Currently, civil aviation legislation does not take into account the prevalence of different forms of atypical employment and outsourcing in the rapidly changing civil aviation industry. Moreover, social legislation is not able to tackle the new phenomena, leaving room for elaborate subcontracting chains and elaborate social as well as fiscal engineering. As a result, the competition nowadays is a true race to the bottom, which affects fair competition and workers' rights as well as raises important issues in the field of **safety** and liability.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 261)*

*„It is our strong opinion that whistleblowers should be more protected, both legally and economically, since building cases to tackle bogus self-employment, **safety reporting**, acting upon pilot authority as well as the enforcement of efficient management **safety systems** and of a Just Culture highly depend on proper reporting mechanisms. There is a clear role here for both the competent legislatures as well as the social partners.“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 269)*

*„In fact, it can be observed that **safety** issues are reported for airlines which both typically and atypically employed crew members fly for. In most of those cases, pilot authority in the field of aviation **safety is impaired** due to the dependent relation the pilot experiences and the management style“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 270)*

*„[I]n view of **safety issues**, the biggest problem is the management style being too focussed on cost reduction, regardless of its consequences. Such management style is incompatible with rules and regulations on FTLs, Crew Resource Management, Safety Management Systems and a Just Culture“ (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 270)*

„'Business models' and management styles that involve a 'blame culture' and are aimed at or result in crew members not reporting or being afraid to report safety issues or pilots

not acting on pilot authority in situations where such action is called for, are incompatible with [...] safety provisions.” (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 270)

*„Effective means of ruling out the possibility of a management style overruling provisions and regulations on Crew Resource Management and **Safety Management Systems** are of paramount importance. In our view, the efficient and effective monitoring of the compliance with these provisions reinforced with systems of enhanced criminal liability for non-compliance as well as adequate protection for whistleblowers is a spearpoint measure in the prevention of and the **fight against bogus as well as potentially dangerous situations** and must further be looked into.” (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 271)*

*„While it is reasonable for any worker to work at his or her discretion, the fact remains that while at the same time FTLs are strictly regulated (although not always strictly enforced, see supra), at present there is no effective and comprehensive way of monitoring working hours performed in additional occupational activities. Therefore, solutions should be found to have information on additional occupational activities of pilots insofar as these would lead to **risks for safety** etc.” (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 272)*

Final Statements

*„It is our strong opinion that **pay-to-fly schemes should be prohibited**, not only in the European Union, but globally.” (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 276)*

*„A European system for the financing of training is called for, taking into account that the amount of debts young pilots face often put them in a position so weak that, combined with a mala fide management style, it touches upon **safety** measures installed. (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 276)*

*„We therefore call upon all stakeholders to act upon this clear warning and to not let the detrimental experiences of the maritime sector – resulting in **hazardous safety issues**, tax issues and sheer social dumping – be repeated in the civil aviation industry. In this respect, it’s minutes passed midnight.” (Jorens, Gillis, Valcke, & De Coninck, 2015, S. 277)*

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