

## **WORK PACKAGE 5**

### **CASE STUDY ON INDUSTRIAL RELATIONS DURING COVID-19**

#### **AIR CONTROL: AIR**

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## Introduction

ENAIRE is the 100% public company, which manages 80% of the landing and takeoff air traffic control and 100% of the route and approach control service, key for its activity not only on domestic flights, but also on connections. European, as well as in connection with America and Africa. It is a typical example of the air traffic value chain and one of the key cost elements of airlines. It presents notable coincidences with the airlines in terms of their specialties in the field of labor relations (specific union organizations, private collective bargaining, etc.). Likewise, its study is of interest due to the effects that the processes of privatization and internationalization of air traffic experience on it, with the aim of establishing a subsidiary company to compete in the transnational market.

## Section I: Context

Air control activity in Spain began under the aegis of the Air Force until, in 1977, Spanish air traffic controllers ceased to be attached to the Ministry of Defense and became dependent on the Ministry of Transport and Communications. The presence of the public power, guarantor of the security and continuity conditions linked to the air traffic and control service, has notably conditioned the working conditions and the industrial relations system of the sector. The pandemic has been a major challenge when it comes to balancing and reconciling the maintenance needs of the service with the indisputable demand to protect the health of controllers.

From another perspective, the emerging and still quite limited process of privatization of air traffic services, which was fully publicly owned until 2010, has also represented a new framework and context for the development of industrial relations.

In Spain twelve years ago there was a partial liberalization of air traffic services, allowing the participation of private companies<sup>1</sup>. Specifically, the tower control service has been privatized (hereinafter TWR), with all the control centers remaining in the public realm. The air control service in the approach and en route phases has so far not been affected at all by liberalization<sup>2</sup>. At the end of September 2011, the manager of airports in Spain (AENA) awarded the tender for the air traffic control service (ATS) for landing and takeoff, in its control modality (ATC) at 12 airports in its network. to the company owned by various private companies: Ferrovial and NATS ( FerroNATS Air Traffic Services ), and to the company Saerco . Rail NATS Air Traffic Services would provide the service at the 10 airports ( Alicante, Valencia, Ibiza, Sabadell, Seville, Jerez, Vigo, A Coruña, Melilla and Cuatro Vientos). Saerco, for its part, would do so at 3 airports ( Lanzarote, Fuerteventura and La Palma) . The award price was 18.1 million euros per year, which, according to the public entity, represented a saving of almost 50% compared to current costs, which amounted to 33.9 million euros<sup>3</sup>.

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<sup>1</sup>DA 2 of Law 9/2010, of April 14, which regulates the provision of air traffic services, establishes the obligations of civil providers of said services and establishes certain working conditions for civil traffic controllers aerial.

<sup>2</sup>The tower control air traffic service orders aircraft traffic at airports and authorizes takeoffs and landings. This service, which is carried out from the airport control tower, deals with the final descent phase and the initial takeoff phase of the aircraft and, in some cases, with ground movements at the airport itself.

<sup>3</sup> Order FOM 3352/2010 of December 22, which determines the airports managed by the public business entity Spanish Airports and Air Navigation for the selection of new civil providers of aerodrome air traffic

The liberalization meant the opening to the market of the air traffic control service (ATS) for landing and takeoff, introducing competition in the sector. Currently, of the 46 airports that make up the AENA network in Spain (41 of them with traffic control services), ENAIRE provides air control services in 21 of them compared to 14 that are managed by private companies, according to data of the Association of Civil Air Traffic Providers (APCTA), of which FerroNATS and Saerco are part . The Air Force directly manages another six <sup>4</sup>. Although in absolute terms the number of control towers managed by ENAIRE and private companies is similar, in reality the turnover of the liberalized towers accounts for barely 20% of the total air traffic in Spain, according to estimates by APCTA, since ENAIRE provides the TWR control service in five of the busiest in Spain.

However, the liberalization process seems to be continuing, as the government is currently studying the possibility of extending the liberalization of airport control towers <sup>5</sup>.

This is a service that may represent a small activity in the general framework of air transport (15%). However, it is essential to maintain a minimum of the service, which cannot be dispensed with, for it to develop. Air traffic has to function at all times regardless of the circumstances, without the ability to substitute one airline for another in the event of bankruptcy or disappearance that can occur in other aviation subsectors.

Since its inception, workers in the sector have formed professional trade union organizations that until recently have been the exclusive interlocutors in negotiating their working conditions.

## **Section II: Relevant actors**

### **1. Business**

#### **1.1 AIR**

ENAIRE <sup>6</sup>is the main provider of air navigation services and aeronautical information in Spain, the fourth in Europe by volume of traffic and one of the most important worldwide.

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control services. Later the contract would be renewed. Currently, the privatized towers in Spain are those of the airports of A Coruña, Alicante, Castellón, Madrid-Cuatro Vientos, El Hierro, Fuerteventura, Ibiza, Jerez, Lanzarote, La Palma, Lleida, Murcia, Sabadell, Seville, Valencia and Vigo. In the rest of the AENA network, the public entity ENAIRE manages the control towers. According to USCA, the percentage of flights managed by these towers with respect to the total is 28.5%.

<sup>4</sup>currently provides services in 21 towers and two private providers, Saerco and FerroNats , in the remaining 22 civil towers. Of the 22, 12 control towers correspond to those liberalized from Order FOM 3352/2010 and the rest are AFIs and civil towers outside the competence of the General State Administration, such as the one in Lleida, Region of Murcia or the from Castellon.

<sup>5</sup>The Ministry of Transport, Mobility and Urban Agency has submitted to the participation of citizens, organizations and other social agents the Ministerial Order that will allow the airport manager to tender the management of the air control service of seven new towers. OM's proposal responds to AENA's request to start a second phase of opening air traffic services from certified aerodromes to new providers. The airports considered are Bilbao, Gran Canaria, Málaga-Costa del Sol, Palma de Mallorca, Santiago-Rosalía de Castro, Tenerife North-City of La Laguna and Tenerife South. The Airlines Association (ALA) and the International Air Transport Association (IATA) have been in favor of continuing the liberalization process started in 2010 and which has led to significant improvements.

<sup>6</sup><https://www.enaire.es/>

It manages the Spanish airspace over a territory of 2,190,000 square kilometres. The air traffic served by ENAIRE, 2 million flights, transports more than 250 million people each year. It has five control centers, 21 towers and a complete network of aeronautical infrastructures and equipment. It provides air traffic control services for the area, approach and aerodrome (landing and takeoff), as well as flight information, warning and advisory services. It is the provider of communications, navigation and surveillance services throughout the Spanish airspace and at the airports of the AENA network.

## Main features of interest

### 1.1.1. Creation

ENAIRE finds its origin in the process of evolution and development of the current commercial company Aeropuertos Españoles y Navegación Aérea, (AENA SME, SA). The Public Business Entity Spanish Airports and Air Navigation (AENA EPE) was created in 1990<sup>7</sup>. From that moment, it has its own legal personality and full public and private capacity for its management. This symbiosis means that AENA, for its public functions, is governed by public legislation and by the private legal system in everything related to its patrimonial and contracting relations .

A 2010 regulation established a series of measures that would make it possible to undertake an important modernization process, aimed at separating airport management and air navigation functions, with the aim of improving the efficiency and effectiveness of the airport system<sup>8</sup>. In Spain, until then, these functions had been carried out by the same Public Business Entity, AENA.

In 2011, the commercial company AENA Aeropuertos was created, which was assigned the set of functions and obligations that the public business entity AENA exercised in terms of management and operation of airport services<sup>9</sup>.

In 2014, the name of the commercial company AENA Aeropuertos, SA was changed , which became AENA, SA<sup>10</sup>. At the same time, and by means of that same regulation, ENAIRE was established. From that moment on, ENAIRE began to exclusively manage the powers in matters of navigation and airspace, in addition to the national and international operational coordination of the national air traffic management network<sup>11</sup>.

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<sup>7</sup>Art. 82 of Law 4/1990 of June 29, on General State Budgets , effectively constituting itself on June 19, 1991

<sup>8</sup> Royal Decree Law 13/2010, of December 3, on actions in the fiscal, labor and liberalizing fields to encourage investment and job creation.

<sup>9</sup>By agreement of the Council of Ministers of February 25.

<sup>10</sup>Article 18.1 of Royal Decree-Law 8/2014, of July 4, approving urgent measures for growth, competitiveness and efficiency, under the label "Change of name", establishes: "The state-owned commercial company " *AENA Aeropuertos, SA* ", created by virtue of the provisions of article 7 of Royal Decree-Law 13/2010, of December 3, on actions in the fiscal, labor and liberalizing fields to encourage investment and job creation, is renamed *AENA, SA* ". In April 2017, and in compliance with the provisions of Law 40/2015 on the Legal Regime of the Public Sector, which establishes that state-owned commercial companies must include the abbreviation SME, the name of the Company was adapted to AENA SME, SA. Previously, in 2015 , the partial privatization of AENA had taken place , with the IPO of 49% of the capital, and its listing on the Ibex 35 . anonymously, as provided for in article 166 of Law 33/2003, of November 3, on Public Administration Assets, under the name "AENA, SME, SA".

<sup>11</sup>Article 18.2 RDL 8/2014 states: " *The public business entity Spanish Airports and Air Navigation (AENA), created by article 82 of Law 4/1990, of June 29, on General State Budgets for 1990, becomes called ENAIRE.*

In other words, airport management was separated, including aerodrome air traffic services (landing and takeoff), which correspond to AENA SME, SA (airport manager), from the management of approach and route services, which continue to be responsibility of the public business entity that is currently called ENAIRE,

At this time, and as a consequence of this common origin, AENA, SME, SA and ENAIRE form a group of companies, with their own legal personality and differentiated regime, although for certain purposes, including labor, they maintain a policy of joint action. , as will be detailed later.

### **1.1.2. Legal nature. Public business entity.**

ENAIRE is a public state business entity, dependent on the Ministry of Transport, Mobility and Urban Agenda, which is responsible for strategic management, evaluation of the results of its activity and effectiveness control. Public business entities are a type of public body that are financed through market revenues, that exercise administrative powers, produce goods, carry out benefit activities, and manage public services <sup>12</sup>.

From the point of view of its legal regime, it is interesting to highlight that, as a public business entity, ENAIRE is governed by private law, except in the formation of the will of its bodies, in the exercise of the administrative powers attributed to them and in the aspects specifically provided for and regulated by general and special administrative law regulations that apply to it <sup>13</sup>.

In particular, with regard to its personnel, ENAIRE is governed by general private labor legislation, with some specificities.<sup>14</sup> The aforementioned specificities refer fundamentally to the need to select its personnel through a public call based on the principles of equality, merit and capacity <sup>15</sup>.

### **Affiliated companies**

ENAIRE has a shareholding in national and international companies related to the aeronautical sector <sup>16</sup>, owning 51% of the shareholding of AENA SME, SA.

### **1.1.3. Functions and activity.**

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*ENAIRE will continue to exist with the same nature and legal regime provided for in article 82 of Law 4/1990, of June 29, and exclusively exercising the powers that it currently holds in matters of air navigation and airspace and, in addition, operational coordination national and international of the national air traffic management network and others related to uses for the efficient management of airspace, taking into account the needs of users, and the functions derived from its condition as its own instrumental means and technical service of the General Administration of the State and of the adjudicating authorities in the matter of airports ”.*

<sup>12</sup>In accordance with article 103.1 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector (LRJSP), public business entities “are public law entities, with their own legal personality, their own assets and autonomy in their management, which are financed with market income, with the exception of those that have the condition or meet the requirements to be declared own personified medium in accordance with the Public Sector Contracts Law, and that together with the exercise of administrative powers carry out activities benefits, service management or production of goods of public interest, subject to consideration ”.

<sup>13</sup>Article 104 Legal Regime of the Public Sector .

<sup>14</sup> Art. 106 Law on the Legal Regime of the Public Sector and other regulations governing public officials.

<sup>15</sup>Article 106.2 Law on the Legal Regime of the Public Sector .

<sup>16</sup>[https://www.enaire.es/sobre\\_enaire/conoce\\_enaire/quienes\\_somos/empresas\\_participadas](https://www.enaire.es/sobre_enaire/conoce_enaire/quienes_somos/empresas_participadas) award

ENAIRE's responsibilities and functions were included in a 1991 standard <sup>17</sup>, currently replaced by the recent Royal Decree 160/2023, of March 7 <sup>18</sup>. In particular, and after the creation of ENAIRE, this entity assumes the functions that AENA had been performing in terms of air navigation and airspace management, which today are the following <sup>19</sup>:

a) The safe, efficient, continuous and sustainable provision of air navigation and airspace services entrusted by the State.

b) National and international operational coordination of the national air traffic management network and others related to uses for efficient airspace management, taking into account the needs of airspace users <sup>20</sup>.

ENAIRE is the largest provider of air traffic control (ATC) services in Spain, and the only one that provides the three ATC services: area, approach and aerodrome:

- Area control service : our controllers manage controlled flights in a terminal control area, in control areas or on airways. ENAIRE has five control centers (ACC) from which this service is provided: Madrid, Barcelona, Seville, Palma de Mallorca and Gran Canaria.

- Approach control service (APP): our controllers manage the entry and exit of controlled flights in a control area and in the areas determined in the terminal control areas. They order and manage traffic quickly in the holding, approach, takeoff and landing phases.

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<sup>17</sup> Royal Decree 905/1991, of June 14, which approved the Statute of the Public Entity Spanish Airports and Air Navigation.

<sup>18</sup> Royal Decree 160/2023, of March 7, which approves the Statute of the public business entity ENAIRE, and modifies the Statute of the State Aviation Safety Agency, approved by Royal Decree 184/2008, of February 8 (BOE of March 8, 2023).

<sup>19</sup> Article 5.1 of RD 160/2023, of March 7.

<sup>20</sup> Article 5.2 of RD 160/2023 details the provision of services that, in particular, correspond to ENAIRE, EPE: a) The provision of area control and approach control air traffic services, as well as information on flight, warning and advice associated with the volumes of airspace subject to Spanish sovereignty in which such services are provided or in which the Spanish State is responsible for their provision, without prejudice to International Treaties and agreements on provision of cross-border services. b) The provision of the Aeronautical Information Service (AIS) and the Aeronautical Information Publication (AIP) on behalf of the State. c) The provision of communications, navigation and surveillance (CNS) services that correspond to it. d) The provision of aerodrome air traffic services and apron management services that correspond to it. e) The definition, development and implementation of air navigation systems that correspond to it, without prejudice to its functions to ensure compatibility with the national network. f) The preparation and processing of proposals for the modification or creation of new airspace structures and their classification, associated with the airspace blocks for which they have been designated or their preparation for third parties in accordance with the contracts entered into for this purpose. g) The preparation of design proposals for new visual or instrument flight procedures associated with the specific airspace blocks for which it has been designated, and their modification. These services will be provided in accordance with the provisions of the European Union regulations on the Single European Sky, the international regulations adopted by the International Civil Aviation Organization incorporated into our legal system, and the rest of the internal regulations.

Likewise, article 5.3 of the aforementioned RD, lists the functions of Enaire , EPE, exercises in the fields of air navigation and airspace structuring, the national and international operational coordination of the national air traffic management network, as well as in relation to the uses for the efficient management of the airspace taking into account the needs of the users.



- Aerodrome control service (TWR): our controllers manage the aircraft that are at the airport and its surroundings. They provide this service in 21 towers, including the five busiest in Spain.

In quantitative terms, ENAIRE manages between 4,000 and 4,500 flights per day in Spain (7,000 flights in high season), for which it has some 300 control positions (which are the ones operated by air traffic controllers) and some 500 support facilities. in national territory.

#### **1.1.4. Financing**

Regarding its economic-financial regime, as a public business entity, ENAIRE has, for the fulfillment of its purposes, its own assets, different from that of the Public Administration, made up of a set of assets and rights of which it is the owner. That is, your income comes from fees charged as consideration for your business activities. The regulations allow, exceptionally, public business entities to be financed with specific appropriations assigned in the General State Budget <sup>21</sup>. However, ENAIRE is financed entirely with the income obtained from the market as a provider of air navigation services and aeronautical information in Spain ; the air taxes paid by the companies that use their services.

The largest proportion of the income received from the use of air navigation facilities and services is obtained by ENAIRE through route and approach charges. The national regulations governing the route tax, in development and execution of provisions of the European Union <sup>22</sup>, are updated annually in the first months of the year to which they refer <sup>23</sup>. With regard to approximation rates, their regime is contained in article 22 of Law 24/2001, of December 27, on Fiscal, Administrative and Social Order Measures for the year 2002, which has been the subject of successive modifications <sup>24</sup>.

#### **1.1.5. staff template**

ENAIRE's workforce is made up of 4,000 workers, distributed in the following groups:

1. Controllers: 2,000 workers
2. Maintenance and operations control technicians: 1,000 workers
3. Management personnel (directors and intermediate positions): 1,000 workers.

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<sup>21</sup> Article 107.2 LRJSP.

<sup>22</sup>Instrument of Ratification of the Multilateral Agreement on tariffs for air navigation aids, made in Brussels on February 12, 1981 and ratified by Spain by means of an Instrument of April 14, 1987. Implementing Regulation (EU) 2020/1627 of the Commission, of November 3, 2020, on exceptional measures for the third reference period (2020-2024) of the performance evaluation and pricing system in the single European sky due to the COVID-19 pandemic.

Execution Regulation (EU) 2019/317 of the Commission of February 11, 2019 establishing a system of performance evaluation and pricing in the single European sky and repealing Execution Regulations (EU) 390/2013 and (EU) no 391/2013.

<sup>23</sup> Decree 1675/1972, of June 26, which approves the rates to be applied for the use of the Air Navigation Aid Network (EUROCONTROL, with successive and periodic modifications. The last one, with effect from January 1 of 2023, by Order TMA/36/2023, of January 16 (Ref. BOE-A-2023-1399), annex I.5. Route fares. Law 25/1998 of July 13, of modification of the Regime Legal of the State and Local Rates and of Reorganization of the Patrimonial Benefits of Public Character.

<sup>24</sup>In addition, it must be taken into account: Order FOM/405/2003, of February 25, which modifies the classification of airports for the purposes of the approach rate.

The group of controllers therefore represents 50% of the entity's workforce, and although in relation to all the workers who provide services in the aviation sector they may represent a small percentage (approximately 15% of the total). ), however, they provide a service that must maintain a minimum activity in any case, since air traffic management has to function at all times, regardless of the circumstances and whether one flight or thousands is carried out.

An interesting piece of information is that 100% of ENAIRE controllers have an indefinite employment contract.

## **1.2 Business organizations in privatized activity**

The Association of Civilian Air Traffic Providers of the Liberalized Market (APCTA) was established as a business association representing the interests of air navigation service companies in 2011 under the law that currently regulates business associations<sup>25</sup>. It has a national character, but its statutes indicate that it can also carry out its activities in the international arena.

## **2. Union organizations**

### **2.1. USCA**

The main union organization for air traffic controllers is the Air Traffic Controllers Union (USCA). It is a professional union, which brings together more than 90% of the collective of air traffic controllers in Spain. According to its Statutes, it is an assembly union.

At the beginning of the eighties of the last century, the first local unions of controllers were born, which would be grouped under the umbrella, first, of AFECA (Spanish Federal Association of Air Traffic Controllers) and, later, of ACECA, when it became a confederation. In addition, another union called ASCETA (Association of Spanish Air Traffic Controllers Union) was created, which was left out of the federation. In the mid-eighties of the last century, the collective had various confrontations and conflicts with the administration, which caused the local union ASCAC (Air Traffic Controllers Union Association of Catalonia) to declare a strike in 1987, bypassing the confederation. The strike was a success, the demands were met and this caused ACECA to dissolve a few years later. Many controllers from other agencies formally requested to join ASCAC, which was not possible, and this was used to create a union at the national level that would bring together regional assemblies or associations. That was the origin of the birth of USCA. From that moment on, there would be a single voice representing the group, which facilitated its work, and although obstacles and labor problems arose over the years, since the creation of AENA in the early 1990s, it was enjoyed of a remarkable social peace in the sector for more than twenty years, until the explosion of the conflict in 2010, as we will detail later.

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<sup>25</sup> Law 19/1977 of April 1, on Regulation of the Right of Union Association.



USCA negotiated the I Collective Agreement, agreed to the agreements of 2000, 2002 and 2010<sup>26</sup>, and signed the arbitration agreement that gave rise to the Arbitration Award<sup>27</sup> that incorporated the II Collective Agreement and the extension of the agreement<sup>28</sup>.

## 2.2. Other union organizations

The union representation unit of the controllers under USCA has undergone a process of splitting since the crisis in the sector occurred in 2010. From that moment other unions have emerged, although still with minority representation. Among them, mention should be made of the Independent Professional Union of Air Traffic Controllers ( SPICA ), the National Union of Air Traffic Controllers ( SNCA ) and the Organization of Air Traffic Controllers ( OCCA).

The 2010 crisis represented a turning point in the labor relations system of the air traffic control sector in Spain. From a process of development of labor relations marked by a certain normality, where, although problems and conflicts were not absent, the instruments of the industrial relations system of the time were responding and covering their solutions. Thus, air traffic control went from being an activity for the provision of services carried out by the military and civil servants to another of a professional nature and detached from the condition of public official, the first unions of the profession emerging and from very early on with a hegemonic union and practically exclusively in the representation and defense of the interests of air traffic controllers: USCA.

The 2010 conflict meant, among other things, the beginning of a process of representative division, with the emergence of trade union organizations that, to a large extent, are defined by the position they hold in relation to the solution given to some of the problems subrogated in the conflict of 2010 and, especially, with the rejection of what was agreed by the majority union (and almost the only one at that time) to solve the problem that originated the controversy. To this end, the words of the president of the Spanish air traffic controllers union, SNCA, on the occasion of the elections to represent this group at the negotiating table of the III collective agreement for ENAIRE controllers, are significant, in the sense that the SNCA's fundamental objective is to disappear; since its birth is due to the rejection of what for them constitutes a red line of defense of the profession (the differentiation between groups derived from the award that put an end to the 2010 conflict) and which, however, was accepted by the majority union organization.

### 2.2.1. SPICA ( Independent Professional Union of Air Traffic Controllers)

In October 2007, the SPICA union was born, after the first congress held in Madrid. It is from 2005 when the idea of a group of controllers to achieve greater equality of working conditions among the entire group begins to take hold, so they decide to do something about it and end up creating the union that today is known as SPICA and that, little by little, is having more affiliates.

### 2.2.2 SNCA ( National Union of Air Traffic Controllers)

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<sup>26</sup>Agreements of February 24, 2000, March 12, 2002, and August 13, 2010.

<sup>27</sup>Resolution of March 7, 2011, of the General Directorate of Labor, registering and publishing the arbitration award establishing the II Professional Collective Agreement for air traffic controllers in the Public Business Entity Spanish Airports and Navigation aerial.

Public Business Spanish Airports and Air Navigation.

<sup>28</sup> Legal basis 4th SAN of January 12, 2018, no. 4/2028

As progress has been made, SNCA was born as a split from USCA in 2017. In principle, it emerged as a judicial strategy to unite the claims of young controllers before the National Court. To be able to appear in the causes they had to constitute themselves as a union organization. The controllers who promoted the union belonged to USCA from 2011 to 2015, but when the USCA board of directors endorsed the arbitration award that, according to them, contained manifest injustices and illegalities, the rupture occurred. For SNCA, USCA's option has been to contribute in the short term and preserve a series of important conditions for older controllers (those hired prior to February 5, 2010) at the cost of not solving the underlying problem. They are looking for a distribution of the salary mass towards more stable supplements, a salary homogeneity and an attempt to unite action regarding the remuneration system beyond the existence of a union unit.

SNCA's judicial activity has been relevant, serving as an example the collective conflict lawsuit filed in September 2021 against ENAIRE, for violation of fundamental rights and public liberties regarding the recognition of conventional rights of an economic nature. USCA, SPICA and OCCA joined the lawsuit. In keeping with the objectives for which it was created, the lawsuit requested the immediate cessation of business conduct that did not recognize the CTAs hired after February 5, 2010, the right to receive the personal supplements regulated in article 141 bis of the II professional collective agreement of air traffic controllers, in its three components of personal complement of fixed, variable and general adaptation (social action), as well as that the affected workers be recognized the right to receive compensation in repair of the violated fundamental right. A judgment of the National Court of 2022 will partially uphold the claim, declaring the immediate cessation of business conduct that violates the fundamental right to equal treatment and prohibition of discrimination of workers, as well as the right to receive the corresponding compensation <sup>29</sup>.

### **2.2.3. OCCA (Organization of Air Traffic Controllers)**

The Organization of Air Traffic Controllers (OCCA) is a union of air traffic controllers established in 2012. It currently has more than 100 members distributed in offices in all regions, as well as in central ENAIRE services. It is a minority union, with a presence among the controllers dedicated to management and administrative tasks and with little bureaucratized operation, with the use of new technologies.

Membership is free and union membership is allowed to those who already belong to other union organizations <sup>30</sup>.

One of the main objectives of the union is to try to solve a series of problems that particularly affect controllers hired after February 5, 2010 and that, in their opinion, are not being properly addressed by other unions.

## **3. Professional associations**

### **3.1 APCAIE (Professional Association of Air Traffic Controllers of Spain)**

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<sup>29</sup> SAN of January 13, 2022, no. 5/2022.

<sup>30</sup> <https://occa-es1.webnode.es/sobre-nosotros/> According to information on its website, if at any time it were necessary to charge a fee, it would be up to the General Assembly to make that decision and set its amount. They rule out the establishment of a fixed fee, although they contemplate the possibility that at some specific moment it might be necessary to collect a small extraordinary fee for reasons of general interest or to support a colleague who needs it.

It is also important to highlight the existence of the Professional Association of Air Traffic Controllers of Spain (APCAE), created in November 2008 by a group of route and TMA air traffic controllers from the Madrid control center. According to its statutes, APCAЕ, constituted as a professional association, under the general right of association<sup>31</sup>. It was created under the umbrella of the Independent Professional Union of Air Traffic Controllers (SPICA), to facilitate and expedite the professional affairs of the Collective of Air Circulation Controllers. However, at present, and although its promoters were affiliated with the Independent Professional Union of Air Traffic Controllers, they emphatically proclaim their independence and rejection of any type of interference by third parties. Any controller, whether USCA or SPICA, or neither, can be a member of our association without having to renounce their union membership, since what APCAЕ is concerned with is the present and the future of the controller profession. air, not union policy in its relationship with AENA (or ENAIRE)<sup>32</sup>.

### **3.2 APROCTA (Professional Association of Air Traffic Controllers)**

The professional association of air traffic controllers (APROCTA) is constituted under the general law of associations<sup>33</sup>. It is constituted as a professional association, without lucrative purpose, with its own legal personality and full capacity to fulfill its purposes. Its Statutes were approved in 2016 and it has more than 1,000 associates present in 30 control units.

## **Section III: Industrial Relations**

### **1. Evolution of collective bargaining**

The labor relations system of the air traffic control sector has always shown very unique characteristics in relation to the rest of the productive sectors in general, and the air transport sector, in particular. The singularity of the work provided, its economic importance, the need to guarantee the safety of air traffic and the very birth of air control under the dependence, first of the air force and, later, of the Ministry of Transport and Communications (in 1977). largely explain these particularities.

The collective bargaining process has been strongly conditioned by the public nature of the employer, at first with the nature of Public Administration in the strict sense and, later, under the cover of a public company. This has meant the existence of important constraints on the freedom to set working conditions by negotiators, especially in relation to salary amounts, limited by the provisions established in the successive annual budget laws.

A first collective agreement was signed between AENA and the air traffic controllers in 1999<sup>34</sup>. From that moment on, the problems derived from its renewal once its validity

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<sup>31</sup>Art . \_ 22 of the Constitution and Organic Law 1/2002, of March 22, regulating the right of association and other complementary provisions.

<sup>32</sup><http://www.apcae.es/>

<sup>33</sup> Organic Law 1/2002, of March 22, regulating the Right of Association, and complementary regulations.

<sup>34</sup> Resolution of March 4, 1999, of the General Directorate of Labor, which provides for the registration in the Registry and publication of the I Collective Agreement between the public entity Spanish Airports and Air Navigation (AENA) and the group of Controllers of the Air Circulation (BOE of March 18, 1999).

ended in 2004, ended with a regulatory intervention by the Government in 2010<sup>35</sup>. Among other reasons, the explanatory statement of the regulation justifies its necessity in the unsuccessful results derived from the negotiation process held between AENA and the representation of the controllers (the USCA union), arguing that, in the sixty-five meetings of the negotiator for the II collective agreement, “*against the ten proposals presented by AENA, all of them based on the objectives derived from the Single European Sky regulations, USCA has only formulated six proposals, the last of which, presented on 28 of January 2010, is a proposal for a complete Collective Agreement that, in summary, sets out conditions that do not imply a reduction in the current cost, includes measures that increase productivity but that are accompanied by the simultaneous proposal of new remuneration concepts, does not incorporate relative modifications to the organizational and management aspects that the I collective agreement conferred on the controllers, and proposes the increase of other benefits and the improvement of the conditions of access to retirement*”<sup>36</sup>.

In this context, and considering that the negotiating path was not sufficient by itself to promptly address the change demanded by the reality of the international air market and air navigation services in the European context, justified, according to the government, the intervention normative. The unilateral imposition of certain working conditions than the previous norm, was notably corrected after a few months.<sup>37</sup> Specifically, it incorporated innovative calls for collective bargaining. However, it was a call for collective bargaining protected by legal or temporary criteria, depending on the case<sup>38</sup>.

It is important to highlight that, after the first collective agreement, and within the framework of the qualifications contained in the 2010 Law, successive agreements had been signed by AENA and USCA on voluntary extension of the working day, compensation for overtime and other subjects<sup>39</sup>. Thus, a situation had been reached in which in 2009 the real average salary of a controller was 330,000 euros per year on a

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<sup>35</sup> Royal Decree-Law 1/2010, of February 5, which regulates the provision of air traffic services, establishes the obligations of civil service providers and establishes certain working conditions for civil air traffic controllers ( BOE of February 5, 2010 ).

<sup>36</sup> Qualified by the doctrine as an "overacting" of the statement of reasons to reinforce its justification" (García Quiñones, JC: "Labor aspects of Royal Decree-Law 1/2020, of February 5, and of the subsequent Law 9/2010 , of April 14, on civil air traffic controllers", Diario La Ley nº 7408, of May 24, 2010; in digital La Ley 2318/2010, p.15). For others, with the exercise of authority implied by RD-L 1/2010, what the Ministry of Public Works wanted was "to bring order to the remuneration of air traffic controllers as public employees, and above all to lay the foundations for the exercise of the profession without the privileges indicated" (Pulido Quecedo, M., Business Law, No. 234, Public Law Section, March 2010, Wolters Kluwer Publishing LAW 848/2010 LEGISLATION Airport Controllers).

<sup>37</sup> Law 9/2010, of April 14, which regulates the provision of air traffic services, establishes the obligations of civil providers of said services and establishes certain working conditions for civil air traffic controllers (BOE de April 15, 2010).

<sup>38</sup> Fourth additional provision.2 regarding remuneration corresponding to the active reserve situation. This provision would be subsequently modified by LAW 36/2010, of October 22 and by Law 26/2022, of December 19, under which collective bargaining will establish the remuneration of the active reserve and special active reserve. Transitional provision one.1 a) on the regime applicable to the special paid leave during the period of its suspension. First transitory provision.2 on remuneration of the day, prior favorable report from the Ministry of Economy and Finance. García Quiñones, JC: Labor aspects of Royal Decree-Law 1/2020..., op . cit. pá'g.17.

<sup>39</sup> Base agreements of August 13, 2010, in which point 1 established that the basic remuneration for all active controllers as of February 5, 2010 would be made up of the SOF (ordinary and fixed salary) and the temporary personal supplement not absorbable adaptation to the new day, which would be variable.

theoretical base salary of 140,000 euros. The different positions of AENA and the controllers were, therefore, the working day and the remuneration.

From that moment on, the differences between controllers and the administration or AENA were constant during 2010. The controllers' associations appealed the new rules, reaching the National Court, although none of the legal actions prospered. During the period from May to June and with the air traffic peaks, AENA could not cover the needs of the service with the operational workers, which led in August 2010 to the approval of a regulation that established a maximum duration of the aeronautical activity . of 1,670 hours, without prejudice to the possibility of being increased with overtime up to a maximum of 80 hours per year, in accordance with the provisions of the Workers' Statute<sup>40</sup>.

In order to guarantee the needs of the service in urgent cases, the Ministry of Public Works undertook to train military controllers so that, when the time came, they could take charge of civil air traffic. In August 2010, an agreement was reached between AENA and the air traffic controllers whereby the latter accept a significant salary reduction in exchange for a shorter working day.

In mid-November 2010, conflicts began to arise between the controllers of Santiago de Compostela and AENA. The former arguing that the public entity's lack of planning would lead controllers to reach the maximum number of hours they could work by law, and AENA stating that this, in their case, was due to worker absenteeism.

AENA carried out partial closures of the Galician airspace on several days in 2010. Given the possibility that this situation could spread to more airports, a regulation was approved that, among many other measures, includes some related to the working time of air traffic controllers<sup>41</sup>.

The regulation of the working hours of air traffic controllers on the eve of various holidays in December of that year was modified. The unilateral change contrary to the August 2010 agreements caused discomfort among air traffic controllers. The tension increased, with accusations of wrongdoing on both sides, leading to the total closure of airspace in Spanish territory for two days at the beginning of December 2010. According to press reports, the number of flights canceled on those days It reached the figure of 4,510 and between 650,000 and 676,000 passengers affected in Spain.

The state of alarm agreed on those same dates in order to deal with the situation of paralysis of the essential public service of air transport was declared for a space of fifteen

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<sup>40</sup>Royal Decree 1001/2010, of August 5, which establishes aeronautical safety standards in relation to activity times and rest requirements for civil air traffic controllers (BOE of August 6).

<sup>41</sup>DA 2nd Royal Decree-Law 13/2010, of December 3, on actions in the fiscal, labor and liberalizing fields to encourage investment and job creation (BOE of December 3) . This provision also modifies article 34.4 of Law 21/2003, on Aviation Safety and additional provision 2 of Law 9/2010, of April 14. This last provision is worded in the following terms: «2. The public business entity Spanish Airports and Air Navigation must facilitate the immediate application of the provisions of article 4.4.a) of Law 21/2003, of July 7, on Air Safety, subjecting air traffic controllers of the aforementioned entity under the direction of the Ministry of Defense who will assume its organization, planning, supervision and control. No worker, governing body or organization may hinder or impede the effectiveness of said measure. Failure to comply with said obligation will be penalized in accordance with the provisions of article 4 of this Law, without prejudice to other civil or criminal responsibilities that may arise.



days, the maximum contemplated by the Constitution, being the first time that this happened in Spain. since the restoration of democracy<sup>42</sup>. The declaration of a state of alarm affected, throughout the national territory, all the control towers of the airports in the network and the control centers managed by AENA. During the state of alarm, all air traffic controllers at the service of AENA would be considered military personnel<sup>43</sup>. In this way, they were subject to the direct orders of the authorities designated in this Royal Decree ( Chief of Staff of the Air Force and the military authorities designated by him), and to military criminal and disciplinary laws. The Ministry of Defense was temporarily entrusted with the air traffic control powers attributed to AENA and all air traffic controllers in the service of AENA will be considered military personnel.

The explanatory statement of the norm that declared the state of alarm was based on the injury to the right to free movement throughout the national territory (art. 19 of the Constitution), caused "as a consequence of the situation triggered by the abandonment of their obligations by civil air traffic controllers". However, some sentences handed down later as a result of the prosecution of certain controllers would indicate that the controllers did not abandon their posts and that it was not demonstrated that there was a concerted action to be absent simultaneously and massively from the control centers and towers<sup>44</sup>.

The position of the controllers was not only focused on salary and working hours demands but, above all, on the fact that their working conditions were not derived from collective bargaining, but rather were imposed through decree-laws approved by the government.

As of December 4, AENA reported that the controllers began to return to their jobs at the different airports, considering that services were fully restored on December 9. The state of alarm ended on January 16, 2011.

After the differences and conflicts exposed, in 2011 negotiations were resumed between the parties, who agreed that, if there was no agreement before January 31, they would resort to binding arbitration. After January ended without an agreement, the parties submitted to the planned arbitration, focusing the differences of the parties mainly on the working day and on the distribution of the wage bill. While AENA proposed maintaining 1,670 hours per year, with the possibility of establishing four levels of working hours (between 1,200 and 1,500 hours), depending on dependencies, but paying for the hour that was necessary to work and that did not exceed 1,670 hours as ordinary hours; For its part, the USCA union wanted to reduce the working day to 1,440 hours per year in a linear fashion, since they understood that they enjoyed a longer working day than the average European working day.

In February 2011, the award to which the parties had submitted was issued and that would regulate labor relations until 2013. The award would take into consideration the Bases Agreement that the parties had signed in August 2010 and that, to a greater or lesser degree of concretion, it contained a regulation of twelve points of agreement. Given that said Agreement closed the wage bill criteria until 2013, the arbitrator limited the validity

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<sup>42</sup> Royal Decree 1673/2010, of December 4, declaring the state of alarm for the normalization of the essential public air transport service (BOE of December 4). On December 14, it was agreed to extend the state of alarm until January 15, 2011.

<sup>43</sup>Art. 10. One of the Organic Law 4/1981, of June 1, of the States of Alarm, Exception and Siege and, consequently.

<sup>44</sup> Twenty of the twenty-two criminal cases have been closed.



of the II Professional Collective Agreement between ENAIRE and the group of air traffic controllers (II collective agreement) to the same period, therefore the award would bind the parties from the day after its entry into force until the end of 2013.

The parties were satisfied with the text of the award which, on the other hand, and according to the USCA union, laid the foundations for a future agreement. Subsequent reality has shown that satisfaction was not total, and that the conflicts, closed as far as the approval of the conventional norm was concerned, would now be transferred to the field of its application and interpretation, giving rise to various judicial pronouncements, which In addition to ruling on the substantive issues regarding the meaning of certain conventional precepts, they had to discern about the legitimacy and implementation of certain controller unions<sup>45</sup>. Among the most outstanding aspects, it is necessary to point out the considerations made in relation to the inadequate translation that the award establishing the II agreement made of the provisions contained in the 2010 standard, and of the subsequent bases agreement, by limiting the Perception of certain supplements to controllers hired before February 5, 2010 (pre5F)<sup>46</sup>.

, negotiations began for a new collective agreement for air traffic controllers, which would be the III, at a negotiating table that, in addition to ENAIRE , brought together a representation of the different tendencies of the professional group. The Commission was constituted as follows: 12 members representing the workers: 9 from the majority union USCA, 1 from SPICA, 1 from OCCA and 1 from SNCA.

The very composition of the negotiating commission clearly reflected the evolution that, since the initial exclusivity of the representation of air traffic controllers by the USCA union, had been taking place in favor of other union organizations. Unions that, as we have already indicated, had been born in the shadow of the majority union and, normally, as a reaction to a certain position or negotiating strategy adopted by the former, especially since the 2010 conflict and the support that USCA finally showed for the agreement of arbitration and the award itself.

COVID-19 meant the suspension of the negotiation process that resumed once the pandemic was over. The negotiation of the III Agreement has not been immune to the various conflicts that the practical application of the II collective agreement produced, taking place at the same time as meetings of the negotiating committee with hearings, conciliations and judicial processes. During the negotiation process, in November 2022,

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<sup>45</sup>Regarding articles 141 bis, 29, 124 and 123: SAN (Social Chamber, Section 1), of June 28, 2018, no. 114/2018, ECLI:ES:AN:2018:2606. Judgment confirmed by the STS (Social Chamber, Section 1), of November 29, 2022, no. 939/2022, ECLI:ES:TS:2022:4451; STS (Social Chamber, Section 1), of May 14, 2020, no. 349/2020, ECLI:ES:TS:2020:1458; SAN (Social Chamber, Section 1), of January 12, 2018, no. 4/2018, ECLI:ES:AN:2018:19; SAN (Social Chamber, Section 1), of January 13, 2022, no. 5/2022, ECLI:ES:AN:2022:24. Regarding article 33.3 and the break between days, STS (Social Chamber, Section 1), of September 20, 2016, no. 752/2016, ECLI:ES:TS:2016:4361

<sup>46</sup> Law 9/2010, The SAN (Social Chamber, Section 1) of January 13, 2022, no. 5/2022, ECLI:ES:AN:2022:24 will declare the existence of a violation of the fundamental right to equal treatment and prohibition of discrimination by excluding controllers hired after February 5, 2010 from the perception of certain supplements retributive. Previously, the SAN (Social Chamber, Section 1) of October 19, 2020, no. 87/2020, ECLI:ES:AN:2020:2765 declared the illegal non-application of article 141 bis, of the II CCP, specifically, in what recognized the payment of the social action (CPAG) only to the group of CTA with contract in force prior to February 5, 2010, excluding the rest of controllers with a contract in force at the time of publication of the agreement. This sentence is pending resolution by the Supreme Court, having filed an appeal against it by SPICA and SNCA.

the "Pre-agreement on the salary review for the year 2022" of the aforementioned professional collective agreement for air traffic controllers of 2011 was signed within the negotiating committee. The salary review agreement contemplates an increase in remuneration concepts by 3.5% with effect from January 1, 2022.

After reaching the wage review agreement and continuing negotiations, the parties finally reached a pre-agreement on the 3rd collective agreement, pending the mandatory report from the Ministry of Finance and Public Administrations. Once the aforementioned authorisation was obtained, the III Air Traffic Controllers Collective Agreement was signed in June 2023, with 10 votes in favour from the USCA and OCCA unions, which represent more than 80% of ENAIRE's air traffic controllers, and only 2 votes against from the SPICA and SNCA unions. This is a very important milestone, as the company had not been able to renew the agreement since the end of the 2011 agreement.

The negotiation process has been highly conditioned by the judicial litigation that derived from the provisions of the II agreement regarding the problem of the double salary scale contained therein. Despite everything and keeping in mind the substance of the problem, as we will explain immediately, the parties managed to reach a preliminary agreement.

In the air traffic control sector, it is traditional for union organizations to submit the signed agreements to a referendum among their affiliates before giving their final approval to the text. The Independent Professional Union of Air Traffic Controllers (SPICA) recommended that a "no" be voted on the aforementioned pre-agreement. The SPICA union regretted that USCA had not considered "*the concern and uncertainty*" that part of the group of controllers had expressed regarding the consequences that could arise from, in their opinion, haste in signing the pre-agreement of the III collective agreement. For their part, the *members of the* Union of Air Traffic Controllers (USCA) *voted "yes" overwhelmingly to the* Pre-agreement with ENAIRE of the III collective agreement, although with the particularity that among the controllers of the towers of Barcelona, Palma and Menorca the majority vote was "no".

Since the publication of the text of the II collective agreement in March 2011, the negotiation dynamics within air traffic control has been constant. Since the denunciation of the agreement and the promotion of the negotiation of the new conventional text, eleven agreements relating to the sector have been published in the BOE (one agreement to expand ultra-activity, two salary reviews and eight partial agreements of diverse scope).

On the other hand, it cannot be forgotten that the particular business configuration of ENAIRE, as well as the very different functional composition of its workforce, means that, in practice, its workers are covered by different collective agreements. Thus, the 2,000 controllers on the staff are subject to the agreement exclusively applicable to ENAIRE air traffic controllers (currently with a third agreement in advance), while the rest of the entity's workers (another 2,000) are included in the scope of application of the collective agreement of the company AENA <sup>47</sup>.

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<sup>47</sup> Resolution of November 29, 2011, of the Directorate General of Labor, registering and publishing the I Collective Agreement of the AENA Group of companies (Public Business Entity AENA and AENA Aeropuertos, SA), signed by those designated by the Management of the Group, on behalf of its companies, and by the CCOO, UGT and USO unions, on behalf of the affected labor group.

## 2. The crisis caused by COVID-19 and its successful management

The COVID-19 crisis had to be faced by ENAIRE with some additional elements of difficulty to those already derived from the pandemic itself. The air control service is an essential public service, both nationally and internationally, for which the Spanish State is obliged not only to guarantee the freedom of movement of its citizens but also to fulfill its commitments to ensure orderly transit by our airspace for aircraft from third countries. The exceptional circumstances caused by COVID-19 could not ignore this reality. From another point of view, the protection of the safety and health of workers was a fundamental objective that had to be achieved, not only for the health of the controllers themselves but also as an imperative need to maintain the minimum necessary service required by the situation and for whose development a certain staff of face-to-face workers was essential.

ENAIRE's prompt reaction to the first indications of the problem made it possible to articulate highly appropriate measures that, as would later become clear, very effective. Before the declaration of the state of alarm in 2020 due to COVID, ENAIRE had already established work organization measures for controllers that would allow a minimum continuity of service, while protecting the safety of workers and avoiding, as far as possible, of infections. The 2,000 controllers were divided into two groups, one that continued to work and the other that remained at home, according to 15-day intervals, which was the period that the medical authorities indicated as the necessary quarantine in case of contagion. This measure was in force from February 2020 to June 2020. A certain flexibility on the part of the State Aviation Safety Agency in terms of controllers' work and rest time was also an important element in the success of the measures adopted. .

On the part of the union representatives of the workers, the collaboration of the majority union, USCA, facilitated the achievement of agreements and the implementation of work reorganization measures that allowed the continuity of the service, also ensuring the health and safety of the workers. workers.

In general, the main measure used by companies in all productive sectors during COVID, including those in the air transport sector, to adapt to the situation of almost no activity as a result of the pandemic and confinement, was the reduction of working hours or suspension of the contract, through the ERTE (mainly due to force majeure) that the emergency legislation of COVID-19 had promoted with various measures.

However, ENAIRE did not resort to such an instrument, perhaps to avoid problems derived from an interpretation of the legal provisions that would mean its exclusion from the subjects that can resort to said measures. The reason was the specific provision of the Workers' Statute regarding the application in the Public Administrations of the suspension of the employment contract and the reduction of working hours, which, in general, prevents it for such public administrations and for legal entities. public of which they are dependent or related. Specifically, it establishes that " The provisions of article 47 [precept that regulates the reduction of working hours or suspension of the contract for economic, technical, organizational or production reasons or derived from force majeure] will not apply to Public Administrations and public law entities linked or dependent on one or more of them and other public bodies, except those that are financed mainly with income obtained as a counterpart of operations carried out in the market " (additional provision 17th ET).

In our opinion, however, the ENAIRE entity, financed by the rates it charges for the provision of its services, would be included in the exception that the transcribed provision includes and that, consequently, would make it possible for ENAIRE to have resorted to ERTE by force majeure during the pandemic. This is clear from some judicial pronouncements handed down in relation to access to ERTE due to force majeure during the pandemic by various public entities. They contain the operational criteria of the Labor and Social Security Inspectorate and the state legal profession in the matter and according to which, the guidelines used by Eurostat must be followed for the purpose of preparing the national accounting by all States. members, in the sense that when an entity is financed mainly with market income, it is not included in the Public Administrations sector for national accounting purposes and, conversely, when it is not financed mainly with market income, it is computed in the public administrations sector for national accounting purposes.

“Therefore, once the inventory of entities dependent on both the AGE and the regional and local Administration is drawn up, they are classified for national accounting purposes in accordance with the criteria described above . This criterion coincides with the one established for this purpose by the ET and makes it possible to verify in an accessible, clear and objective way whether or not a certain body or entity is financed mainly by market income, since the inventory information in terms of accounting national is public (...)”<sup>48</sup>.

ENAIRE does not appear in this inventory of entities belonging to the Public Administration sector, therefore, in accordance with the aforementioned criteria, it could resort to the instruments for reducing working hours and suspending contracts (art 47 ET and DA 17<sup>a</sup> ET)<sup>49</sup>.

The measure adopted, therefore, was not the suspension of the contracts of the controllers but, as has been indicated, a reorganization of the work, with the collaboration in its implementation of the majority union representation, which produced the following results:

- All the controllers had indefinite contracts, so the termination of temporary contracts that occurred in the aviation sector among flight personnel as a reaction measure to deal with the absence of activity and the maintenance of costs, here could not be happen. It

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<sup>48</sup>Judgment of the Social Court no. 5 of Valladolid (Autonomous Community of Castilla y León), no. 96/2020 of November 16, ECLI: ES:JSO :2020:6416 , AS 2021\1067, confirmed by STSJ Castilla y León (Social Chamber, Section 1), of March 5, 2021, res. num. 90/2021, ECLI: ES:TSJCL :2021:783, AS 2021\901. In the same sense, Judgment of the Social Court no. 2 of Murcia, of June 10, 2020, no. 93/2020, ECLI: ES:JSO :2020:3039, AS 2020\2532; Judgment of the Social Court no. 2 of Vitoria-Gasteiz (Autonomous Community of the Basque Country), of May 27, 2020, no. 63/2020, ECLI:ES:JSO:2020:1542 of May 27. AS 2020\2110.

<sup>49</sup>It should be noted that, on the contrary, the situation would be different in relation to the ENAIRE Foundation, FSP<sup>49</sup>, which appears in section S.1311 Central Administration of the Inventory of entities belonging to the Public Administrations sector, of the National Accounts. Sector S.13 is made up of four subsectors, including the Central Administration Subsector (S.1311), which includes all non-market public units controlled by the State, including the General State Administration itself. . These units include 218 Fundación ENAIRE, FSP

was necessary to implement measures more linked to the reorganization of the workforce to deal with the decline in activity.

- The practical stoppage of flights caused an equivalent decrease in the company's income, which was partly offset by an amount cut in wages, especially those related to the productivity supplement. The measure was well assimilated and accepted by the workers who, de facto (although not formally via ERTE) had been affected by a notable reduction in the working day.

- The reorganization of work, with the combination of periods of activity and periods of stay at home made it possible to reconcile the essential protection of the safety and health of workers with the necessary maintenance of a minimum activity, since it was an essential service. It was achieved that a company, whose activity was essential and in which it was not possible to resort to other available mechanisms such as teleworking, the provision of services of 3000 workers in shifts, with a planned organization of work and a collaborative attitude on the part of all agents, including the State Aviation Safety Agency, to ensure that the activity did not cease to be provided at any time and that the priority objective of ensuring the health of workers was achieved. It is worth highlighting the different actions that could be carried out where the job position allowed remote working, since, in such cases, 100% teleworking was adopted.

- The priority of ensuring the safety and health of its workers resulted in the adoption of measures such as: development of disinfection protocols and other sanitary measures for workers at ENAIRE work centers, which are facilities closed to the public such as those towers and control centers; provision of information on preventive measures that protect against coronavirus both in each work center (air traffic control centers and towers and corporate headquarters), as well as specific ones by job (relays in control positions, in control rooms , for operations and maintenance technicians, during training, etc.); information on how to act in case of suffering symptoms of the disease and contact telephone numbers, available through internal channels (intranet and employee app). Since July 2020, the use of a mask in ENAIRE centers has been mandatory, excepting only those workers who carry out their tasks alone or workers exempted for medical reasons.

The ENAIRE Prevention service studied the different scenarios in relation to the spread of the virus by aerosols, establishing the necessary preventive measures based on the risk detected. Since June 2020, the ENAIRE Reincorporation Plan to the new normality was launched, which kept the mixed modality of remote work and face-to-face work active for all those positions that allow teleworking. In both 2020 and 2021, ENAIRE has facilitated the performance of serological tests on its workers, the results of which made it easier to determine the degree of immunity reached by the workforce.

Since the beginning of the pandemic, ENAIRE has continuously monitored the evolution of the pandemic through its Management Committee and coordination with the unions was continuous to adopt the appropriate measures at all times. As a result of the actions carried out, the pandemic ended without any employment contract having been terminated, or what is the same, with 100% employment being maintained.

### **3. Singularities in terms of staff representation**



In general, the Spanish labor law contemplates a double channel of representation of workers in the company, representation through company committees and personnel delegates, on the one hand, and union representation through sections and union delegates on the other. The first, although notably unionized, results from an electoral process within each workplace in which all workers participate. Union representation, for its part, is a manifestation of the union's presence in the company, made up of union affiliates in the company or work centers. The distribution of functions and tasks between each type of representation is predetermined by law, although, in practice, the real power of each one of them also depends, to a large extent, on the degree of unionization of the company committees.

In the field of air traffic controllers, the representative situation is singular, since the strategy of the unions has been to not encourage the existence of legal representation, assuming exclusively the function of representing the interests of air traffic controllers. The path of union sections and union delegates is, therefore, the only one that exists in the field of air traffic control. The circumstance that the negotiating legitimacy of the agreements only for the controllers (excluding the rest of the company's workers) is legally assigned to the union representation mainly elected by the workers through universal direct election, seems to have had an impact on the representative design, showing a clear preference of the group of workers for this more specific way of defending their interests than that constituted by the legal or statutory representation that, once elected, defends and represents all workers in the workplace where it has been developed the electoral procedure. In practice, this phenomenon has been carried out through the exclusion of controllers from the electoral census that is drawn up to start the procedure for elections to company committees. The direct consequence of such an option is that the rights and guarantees provided for worker representatives only have it to the extent that they are provided for union representatives. This representation formula is significant with respect to the hourly credit, that is, the paid monthly hours that are granted to the workers' representatives for the performance of their functions.

In the II collective agreement, an alternative system for attributing credit hours to the one legally established was established, which is maintained in the pre-agreement of the III agreement as long as no elections are called for company committees in which air traffic controllers actually participate. Specifically, the following is established: “ 1. AENA recognizes the Union of Air Traffic Controllers (USCA) as the union designated by the collective of air traffic controllers and the union section of the same in AENA, for the legal purposes provided for in the Organic Law on trade union freedom, in the Workers' Statute and in the concordant general provisions.

2. Likewise, AENA recognizes, as a valid interlocutor for the negotiation, application and development of the conventional norms that affect the group of air traffic controllers, to the union section of USCA in AENA, as long as said union gathers the representative majority of said group.

3. For the purposes of this agreement, the status of representatives of USCA will be the union delegates at the national level of their union section in AENA and those others at the local level that, in the terms provided for in the agreement, USCA duly notifies AENA, for the scope to be determined and communicated in its designation.

4. AENA recognizes a total of twenty-two national USCA union delegates , with the guarantees and rights established by Article 10 of the Organic Law on Freedom of Association and Article 68 of the ET, in addition to those others specifically determined in this Agreement. . These delegates will be designated by USCA, and may be removed or



*replaced when said Union considers it so, notifying AENA for its appropriate accreditation.*

*5. The USCA representatives who hold the status of union delegate at the national level, as well as the union representatives at the local level, will have the rights and duties provided for in this agreement, without prejudice to the provisions of the general applicable regulations on this matter”<sup>50</sup>.*

Said recognition, as indicated, was conditioned to the promotion or celebration of elections to representative bodies of the workers in the scope of application of the agreement (the one corresponding to the workers contracted by AENA as Air Traffic Controllers), in which case The conventional stipulations regarding trade union representation would automatically lose their validity<sup>51</sup>.

This reality, logically, has had an impact on the negotiation process of the III collective agreement, among other reasons, because the four unions that have a presence and representation in the company have been present on its negotiating committee representing the workers.

### **Equality Plans**

The singular representative situation of the controllers that we have just described has been tried to be projected in the field of the elaboration of equality plans<sup>52</sup>. The regulations establish that the scope for drawing up equality plans is the company as a whole, while the controllers have tried to negotiate two different equality plans, one for the group of air traffic control professionals and another for the rest of the workers. . In other words, as in relation to collective agreements, they intended to negotiate an equality plan exclusively for controllers with another for the rest of the staff. The practical result has been the rejection of the claim to register the two differentiated equality plans. From that moment on, a negotiating commission is set up in which union representatives of the controllers and the rest of the workers of the companies participate (and which as a whole add up to the majority of the members of the company committee, as required by the regulations). to carry out the negotiation process of the equality plan. Once concluded in this way, the equality plan has been able to be correctly registered with the Ministry of Labour.

## **4. Collective bargaining in the privatized sector**

As has been pointed out, the process of liberalization of the TWR control activity has led to the existence of a number of controllers of privatized towers who also seek to have a collective agreement that regulates their working conditions. In this case, the most

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<sup>50</sup>Art . \_ 177, the aforementioned Convention established the following

<sup>51</sup>Literally, article 179 bis of the II CTA Collective Agreement established: "In the event of promoting or holding elections to workers' representative bodies within the scope of this Agreement, as established in the Workers' Statute Law, the The stipulations contained in this Chapter in terms of USCA union representation will automatically lose their validity, being in accordance with the provisions of the current regulations on the matter.

<sup>52</sup>Art. 45 et seq. Organic Law 3/2007, of March 22, for the effective equality of women and men (BOE of March 23); to rts . 17.5 and 85.2 ET; Royal Decree 901/2020, of October 13, which regulates equality plans and their registration and modifies Royal Decree 713/2010, of May 28, on registration and deposit of collective labor agreements and agreements ( BOE of October 14).

important singularity derives from the level of negotiation that has been agreed, since it is intended to negotiate a sectoral agreement, but only for the controllers of the privatized towers and not for the rest of their personnel. This unit of negotiation, admissible in our legal system in attention to the freedom of determination of the scope of application of the agreement that the negotiating subjects have (art. 83.1 ET). It is expressly planned for professional athletes<sup>53</sup>. However, the experiences are very limited. The legal provision does not make it clear if it refers exclusively to company agreements or if, on the contrary, it could also subsume the negotiation of sector agreements. This second hypothesis seems the most correct, understanding that it is a singularity that takes the professional group of affected workers as its main reference and that, therefore, the specific provisions, beyond the strict literalness of the norm, are predicable and applicable. at all functional levels of negotiation. The reality is that, up to now, three collective agreements related to the labor relations of air traffic controllers have been signed with private civilian air traffic provider companies in the liberalized market and subject to a concessional regime<sup>54</sup>. The negotiators have been APCTA, representing the companies in the sector, and the UGT and CCOO unions, representing the workers in the first two agreements (2012 and 2016), while the 2018 agreement was negotiated by APCTA and the union CC.OO. exclusively on behalf of the workers.

for a new agreement is currently open between the USCA and CCOO unions, on the one hand, and the APCTA business association, on the other, which has led to conflicts and calls for strikes by the workers' unions. The latter have decided to extend the strike that began at the end of January during the month of March 2023 due to the lack of progress in the negotiations, and considering that the strike is the only possibility to denounce the salary cuts and the precariousness of the sector.

## **conclusions**

The air traffic and control subsector, although it represents a small part of air transport in percentage terms, nevertheless, its function is essential for it to be able to develop.

In Spain, most of the service is provided by a public business entity (ENAIRES), although there are also some medium and small towers that are in private hands and managed according to market criteria.

The pandemic has been a first-order challenge for the air traffic management (ATM) sector, highlighting the different business models that exist in aviation and how inappropriate it may be to try to extend the formulas of the airline model to other subsectors.

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<sup>53</sup>Disp. add. 17th Law 39/2022, of December 30 (BOE December 31), on sport.

<sup>54</sup> Resolution of September 10, 2012, of the General Directorate of Employment, which registers and publishes the I Collective Agreement that regulates the labor relations of private civil air traffic provider companies in the liberalized market and subject to a concessional regime; Resolution of July 6, 2016, of the General Directorate of Employment, registering and publishing the II Collective Agreement that regulates the labor relations of private civil air traffic provider companies in the liberalized market and subject to a concessional regime; Resolution of July 30, 2018, of the General Directorate of Labor, which registers and publishes the Collective Agreement of private civil air traffic provider companies in the liberalized market and subject to a concession regime, valid until 2020.

The decrease in activity derived from the pandemic, with the consequent loss of income for companies, the need to maintain a minimum of the service -which, in addition, will be provided with the appropriate security guarantees for workers-, as well as the appropriate balance in decision-making with an impact in the short and long term, were the great challenges that companies in the air traffic sector had to face.

In Spain, the commitment to collective bargaining between ENAIRE and the air traffic controllers unions (USCA) has made it possible to successfully manage the situation derived from COVID-19. Both the company and the union representatives have highlighted the good will of those involved, the mutual awareness of facing a problem for everyone, and the need to adapt to circumstances, guaranteeing the health and safety of workers and the safety of workers at all times. provision of an essential service for society (Protection and Prevention Plan and Service Continuity Plan).

The measures adopted essentially by consensus were, basically, the following:

- Salary reduction of the variable part of the remuneration in line with the loss of income of the company. The unions estimate that the savings have been around 50 million euros.
- Increased business flexibility in manpower management, especially with regard to working times and the period in advance with which workers must know their work day and shift.
- No measures to reduce working hours and wages or suspension of contracts (ERTE) were used. Groups of workers were organized that took turns between effective provision of work and staying at home, in periods of 15 days.
- Teleworking represented for the company an instrument that was somewhat difficult to use, since of its 4,000 workers, only 1,000 could provide services via teleworking. The return to normality meant an added problem, since those who had been teleworking out of necessity now wanted to continue doing so for reasons of conciliation. To this were added the own claims of the workers who, because they could not provide services remotely, demanded a compensatory consideration.
- No workers were laid off, which, in the long term, has meant no problems in hiring workers once aviation activity levels have started to pick up and are in the process of reaching pre-pandemic numbers . In the EU it is estimated that between 800 and 900 air traffic controllers are needed. It should be taken into account that the complete training process for an air traffic controller can last between two and a half to three and a half years.
- The permanent training needs of the workers to maintain their professional expertise were provisionally solved with the use of simulators.

ENAIRE's management of the pandemic has been so successful that the company has been congratulated by the Network Manager (-NM- responsible for air traffic management in Europe) for being the best air navigation service provider in 2022.

According to the agents involved, the pandemic forced everyone to be more flexible, which demonstrated the benefits of flexibility to the extent that it allows resources to be

adjusted to the needs of providing services. This has led to the fact that in the negotiation of the III collective agreement, ENAIRE has insisted on the advisability of incorporating flexibility measures, since, according to its representatives, the pandemic has shown that it can be very good.

### case- study review

criteria	Evaluation on a scale of 1-5 (1=minimum, 5=max)	1	2	3	4	5
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Innovation	<p><b>Explanation</b> : to what degree does the topic/subject analyzed in the case study deviate from existing practices and legal frameworks? why the case study is innovative?</p> <p>The case studied refers to a highly unique sector within aviation, characterized by the following elements: 1. Being made up of a relatively low number of workers. 2. Develop an essential service for air transport. 3. Enjoy working conditions that are somewhat privileged compared to other workers in general. 4. Be represented by their own professional unions, different from the majority class unions. Representation has been held by a single union organization, to which new unions have been added in recent times. 4. The business figure is constituted to a large extent by a public entity, although since 2010 a partial liberalization of certain air control services has been carried out. 5. Collective bargaining refers specifically to the professional group of controllers, and has been dominated in the past by strong conflicts between the workers and the public business entity, even imposing a change in working conditions through legislation . In addition, the II Collective Agreement for Controllers was the result of an arbitration award due to the difficulties of the negotiators to reach an agreement autonomously.6. COVID-19 has had a strong impact on the sector and has represented a challenge of the first order. However, the attitude of the parties and their commitment to social dialogue and the adoption of agreed measures to overcome the situation has led to a very successful management of the problem.</p>					

criteria	Evaluation on a scale of 1-5 (1=minimum, 5=max)	1	2	3	4	5
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Transferability	<p><b>Explanation</b> : to what degree can the results/lessons learned in the case-study be transferred along the air transport value chain? other sectors? other countries?</p> <p>The way in which the company and workers' representatives have dealt with the situation caused by the pandemic can be easily (and conveniently) transferred to other sectors of activity and other labor relations systems. This is due to the fact that the essential elements of managing the situation have been the following: 1. Full awareness of the importance of the assets at stake on the part of all those involved: safety and health of workers and continuity in the provision of a</p>					

	essential service. 2. Determination of the measures to adopt through dialogue and consensus, assuming each of the parties reasonable losses. 3. Adaptation and flexibility to the circumstances of the moment, making the needs of the service compatible with the rights of the workers.
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criteria	Evaluation on a scale of 1-5 (1=minimum, 5=max)	1	2	3	4	5
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
inclusiveness	<p><b>Explanation :</b> to what degree does the topic/subject analyzed in the case-study see the involvement of partners and public actors?</p> <p>The business part of the case studied is made up of ENAIRE, a public business entity with 100% State participation, which manages 80% of the landing and takeoff air traffic and 100% of the route and approach service, notwithstanding that in addition Briefly describes the situation of the minority management of 20% of certain towers that are exclusively in charge of landing and takeoff control by private sector companies.</p>					

criteria	Evaluation on a scale of 1-5 (1=minimum, 5=max)	1	2	3	4	5
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Covid-19 causation	<p><b>Explanation :</b> to what degree is the topic/subject analyzed in the case-study directly related to the Covid-19 outbreak?</p> <p>COVID-19 has had a notable impact on the air transport sector in general, which is why air traffic management activity has been equally affected. In addition, it is an activity that should have been provided, even in a minimal percentage, during the pandemic as it is related to essential services for society and, specifically, to deal with the situation generated by the virus. The management experience carried out by the parties is an example of good practice in the sector.</p>					