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Varieties of Industrial Relations in Aviation Lockdown

Working Package 3: Industrial Relations pre-Covid

The European Framework

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Industrial Relations at European level: the European Social Dialogue pre-Covid

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Industrial Relations at European level: the European Social Dialogue

Introduction

The rationale for deepening the European framework of industrial relations is to be found in the fact that the regulation of air transport is predominantly European. Firstly, the three phases of liberalisation of the sector in the mid-1980s, which progressively eliminated barriers to access to a sector that was hitherto protected; then the state aid discipline, which enables "one time only" financial intervention by the state to support the national airlines in order to make them competitive in the medium term; then the launch of the Single European Sky plan and the need to reorganize airport services in a more efficient manner; and finally the EU regulation that submit the aviation sector, which is one of the most polluting in terms of CO_2 emissions into the atmosphere, to constraints on emission quotas, have been fundamental steps in the creation of a single European air transport market subject to uniform Community rules. This framework has profoundly affected, not to say disrupted, national industrial relations systems in a sector that was already highly protectionist, with the monopoly of the flag carriers, then exposed to global competition and, in particular, to the downward competition brought about by low-cost airlines, which have profoundly affected the organisational models of airlines (use of peripheral airports, no-frills flights, reduced ticket costs, exclusively online bookings, etc.). A sort of democratization of the consumption of low-cost flights made at the expense of employees in the sector, which has become the most easily squeezed cost to compete globally.

These major upheavals have been widely echoed both in the national and European industrial relations field. It should be recalled that European industrial relations can only be referred to as an umbrella dimension of industrial relations that are still predominantly national, despite the more than 30-year development of European policies of market integration. Nevertheless, the genuinely European industrial relations framework cannot be ignored, given the specific way in which relations between capital and labour are conducted at this level. Strongly institutionalised since the 1990s in the form of social dialogue, supported by the EU Commission, relations at European level have accompanied the major changes in European policies aiming at liberalizing the air transport sector, seeking to find common understanding on the social consequences of opening up the sector. Its results, often joint texts with no-binding effects, record the concrete power relations on a national scale, as well as the weak structuring of supranational actors, whose legitimacy remains firmly anchored to the traditional national level. Hence the paradox of the enduring national dimension of industrial relations in a highly internationalised sector. So, what is the added value of the European dimension? What role does sectoral social dialogue actually play in supporting national industrial relations systems: lobbying the EU institutions, strategic liaison, coordination of contractual strategies, cooperation, mobilisation? And what is the link with international sector organisations?

This report on the European dimension of industrial relations in civil aviation seeks to answer these questions by investigating the multiple connections between the “soft” dimension of industrial relations at European level, the so-called sectoral social dialogue, and bargaining and collective action at national/company level.

The European Social dialogue: the institutional framework

At supranational level, the framework of collective labour relations between trade unions and employers' organisations is much less developed than at national level, where industrial relations were traditionally born and developed. However, since the 1970s, in the context of increasing globalisation, a

framework of collective employment relations has progressively emerged both in the transnational corporate dimension and at the international and European level.

In particular, the establishment of the European single market has prompted existing lobbies of capital and labour to turn into genuine second-level trade union and employers' organisations, action not yet fully realized on the side of the employers' organisations. The need for a framework for developing industrial relations in the European dimension was seized upon with the adoption of the Single European Act (1986), which introduced the concept of social dialogue into the EC's founding treaties (Article 118b) as an essential element of the European social dimension.

The European social dialogue is a hybrid that borrows from national systems both elements of institutional consultation/concertation practices and others typical of bilateral collective bargaining. Through the so-called Val duchesse social dialogue, since 1985 the European Commission under the Presidency of Jacques Delors has begun a practice of regular consultation with social partners on the macroeconomic and microeconomic objectives, aimed to include representatives of management and labour in the Community decision-making process in a systematic way. A further objective of the consultation procedure was to facilitate discussion and exchange of views between the social partners themselves with a view to possible outcomes of negotiations.

A stronger institutionalization of the European social dialogue came with the Maastricht Social Protocol (1992), which was the result of an agreement between social partners. This agreement enshrines the twofold function/objective of the social dialogue: a) a consultative function, through the obligation for the Commission to consult the social partners on the possible direction of Community action and then again on the contents of the planned proposal; b) a direct negotiating function between the social partners if, during the consultative phase, they joint ask the Commission to negotiate an agreement directly between them, suspending the Commission's institutional initiative for nine months. In that case, if the agreement between social partners is reached, they may implement it autonomously through national legislation and practices, or they may jointly ask the Commission to transpose it in a proposal for a decision (actually: directive) to be submitted to the Council. If no agreement is reached, the Commission resumes the institutional path.

The meaning of pre-emption refers to the European paradigm that gives priority to the directly negotiated agreement between social partners instead of the classic legislative procedure. This new procedure introduced in Maastricht protocol, incorporated into the Amsterdam Treaty 1997 after the withdrawal of the British opting out, gives the social partners an important institutional role in the law-making process, as an alternative to the European Parliament in the ordinary procedure, as stated by the Court of First Instance in *UEAPME v. Council* case-law 17/06/1998. The directives on parental leave n. 1996/34, revised in 2010, on part-time work n. 1997/80 and on fixed-term contracts n. 1999/70 are the result of the incorporation of European framework agreements into EU law giving them the *erga omnes* effects.

The question raised by the organization of small enterprises and craft industries UEAPME before the European Court of First Instance concerned the representativeness of the social partners who negotiated and signed the framework agreement on parental leave, enacted into Directive n. 1996/34/EC. Since 1993, the Commission has adopted criteria for verifying the representativeness of cross-industry trade union and employers' organizations at European level, given the quasi-legislative role of the social partners under the Social Protocol. The criteria of representativeness, which are periodically revised -1993, 1996, 1998, 2002, 2004, 2010- are laid down in Commission communications, i.e., non-regulatory acts (see below).

The actors of cross-sectoral social dialogue

The ambiguity of the notion of social dialogue, which refers both to forms of consultation of the social partners by the Commission and to direct bilateral relations between social actors, highlights the fact that European industrial relations take place mainly in the shadow of the law (Bercusson, 1992), i.e., with the support of the Commission, which organizes and stimulates social dialogue. The Commission is the

institutional actor of the social dialogue under the Treaty: its function is to support the social partners in a balanced way and to respect their autonomy according to the different industrial relations systems. The Commission has filled this role in different ways over time: after the heroic start-up phase under the Delors presidency, the Commission's role settled down under the subsequent presidencies (business as usual) until the Barroso presidency, which proved to be very hostile to enhancing the role of the social partners. Not surprisingly, the following Juncker presidency formally relaunched social dialogue as a method of good governance referring to it in the European Social Pillar (2017).

The representative organisations of the European social partners at cross-industry level are ETUC and CEC on the labour side, EuroBusiness, CEEP, UEAPME on the employer side. The ETUC, set up in 1973, comprises 92 national trade union confederations in 39 countries, plus 10 European trade union federations, a total of approximately 45 million affiliates. The CEC (European Confederation of Manager) represents nearly one million professional and managerial staff in Europe through its national and sectoral federations. EuroBusiness (former Union of Industrial and Employers Confederations of Europe: UNICE) represents 41 national industrial confederations coming from 35 countries. The Center of Employers and Enterprises providing public services (CEEP), now renamed SGI Europe (Services of General Interest Europe) represents associations and individual undertakings, public or private, providing public services. The European Association of Craft, Small and Medium-Sized Enterprises or SMEunited (formerly UEAPME) is an umbrella group for associations of SMEs: it represents 67 member organizations of crafts, trades and SMEs from 34 European countries, which combined represent 12 million enterprises and employ around 50 million people.

The participants in cross-sectoral dialogue -the ETUC, BusinessEurope, UEAPME and CEEP have signed four framework agreements incorporated in as many directives, as well as number of autonomous agreements, which they themselves are responsible for implementing at national, sectoral and company level: on telework (2002), work-related stress (2004), harassment and violence at work (2007), inclusive labour markets (2010), active ageing and inter-generational approach (2017), digitization (2020), together with frameworks of action, such as those on lifelong learning (2002), gender equality (2005) and youth employment (2013).

Sectoral social dialogue

In relation to matters falling within the competence of the European Community, consultation processes with the social partners at sectoral level already took place before the social dialogue procedure provided for in the Treaty was established (e.g., in agriculture, sea fisheries, road transport sector). However, the formalisation of social dialogue gave new impetus to the creation of many sectoral social dialogue committees in the 1990s (Commission decision 98/500/EC) as an institutional forum for discussion and consultation between the Commission and European sectoral organisations on European sectoral policies aiming at improve the involvement of social partners in EU policy making; and as a forum for reciprocal understandings and joint initiatives between social partners that could evolve as an arena for a European industrial relations system, with possible negotiating outcomes (Etui 2015). Bilateral agreements are here easier to reach than at interprofessional level, where still persists the legal obstacle for umbrella confederations to receive a mandate to negotiate, whereas national sectoral federations have negotiating power and can give a mandate to their European sectoral organisations. The increase in the number of sectoral social dialogue committees is due on the one hand to the increase of areas of Community competence, on the other hand to the idea that it is easier to reach bilateral agreements in the sectoral dimension, given the presence in all European countries of sectoral trade union and employers' organisations, which are entitled to conclude national or regional multi-employer collective agreements.

The sectoral social dialogue committees are established with due regard for the autonomy of the social partners. The social partner organisations must apply jointly to the European Commission in order to take part in a social dialogue at European level. The European organisations representing employers and

workers must, when submitting this application, meet the following criteria (article 1, Commission decision 98/500/EC):

- relate to specific sectors or categories, and be organised at European level
- consist of organisations which are themselves an integral and recognised part of Member State's social partner structures, and have the capacity to negotiate agreements, and which are representative of several Member States
- have adequate structures to ensure their effective participation in the work of the committees

In 2006, the European Commission mandated Eurofound to carry out studies on the representativeness of European social partner organisations, with the aim of identifying the relevant national and supranational interest associations in the field of industrial relations in selected sectors. Since that date, Eurofound has carried out studies for a number of sectors, including Civil Aviation in 2010. The first step in each representativeness study is a discussion with the relevant sectoral actors at European level, to agree on the definition of the sector: each study provides details of the given sector definition, in terms of the 'Statistical classification of economic activities in the European Community' (*Nomenclature statistique des activités économiques dans la Communauté européenne*, NACE) to ensure that the findings can be compared cross-nationally. However, the domains in which the trade unions and employer organisations work, and areas covered by the collective agreements, often do not correspond exactly to the NACE demarcation.

The representativeness of European-level sectoral associations is assessed against the number and characteristics of their members at national level. At national level, a national association is included in the studies if: it relates to the sector (according to the four criteria of congruence, sectionalism, overlap and sectional overlap)[1]; it is either regularly involved in collective bargaining at national/sectoral level and/or it is affiliated to any relevant European social-partner organization.

The organization of the sectoral social dialogue committees provides for a maximum of 66 representatives of the social partners, comprising an equal number of employers' and workers' representatives. They are chaired either by a representative of the social partners or, at their request, by the representative of the Commission, who provides the secretariat for the committees. Each Committee adopts its own rules of procedure, and holds at least one plenary meeting per year, dealing with more specific questions at meetings of enlarged secretariats or restricted working parties. The task of preparing meetings, the agenda and following-up work is most frequently delegated to the respective secretariats of the social partners, together with the Commission.

Between 1978 and 2013 the number of sectoral social dialogue committees increased from 8 to 43 (which represent 185 million workers, or more than 80% of the EU workforce: Eurofound, 2019) and the number of texts adopted in the same period reached 734 according to the ETUI classification, which does not include studies and reports. In fact, sectoral social dialogue has rarely resulted in framework agreements of a binding nature, converted into directives (as in the case of framework agreements on working time of mobile workers in some transport sectors: civil aviation 2000, railways 2004, inland waterways 2012; on specific injury risks in the hospital sector (2009), on working conditions in the fisheries (2013) and maritime transport sector (1998, 2008, 2016) or implemented in accordance with specific national social partner or member state practices (framework agreements cover 2% of the texts adopted). More often, the outcomes of sectoral social dialogue involve joint positions, declarations, recommendations, tools, rules of procedure. Anyway, the sectoral social dialogue has proved to be very dynamic, diversified, and subject to rapid development since the

[1] Eurofound's representativeness studies analyse all national trade unions, employer organisations and multiemployer collective agreements that are sector-related. The extent to which, and the manner in which, the bodies and agreements relate to the sector may however differ, in terms of the following four patterns: 1) Congruence, i.e. the domain of the organisation or scope of the collective agreement is identical to that of the NACE demarcation; 2) Sectionalism, i.e. the domain of the organisation or scope of the agreement covers only part of the sector, as defined by the NACE demarcation; 3) Overlap, i.e. the domain of the organisation or scope of the agreement covers the entire sector, along with parts of one or more other sectors, not covering however general associations that do not deal with sector-specific matters; 4) Sectional overlap, i.e. the domain of the organisation or scope of the agreement covers part of the given sector, as well as parts of one or more other sectors.

1990s (Kollewe et al. 2003). Some sectors are more active than others, depending on the context or specific circumstances that prompt the social partners to use the sectoral social dialogue in the effort to solve a problem or remove a difficulty (Etui 2015).

Unfortunately, over the last decade, some genuine framework agreements resulting from sectoral social dialogue have been subject to the Commission's restrictive interpretation of their implementation by directives, notably the framework agreement 26 April 2012 on the protection of occupational health and safety in the hairdressing sector (Dorssemont, Larcher, Schmitt 2019; Tricart 2019) and the framework agreement 21 December 2015 on the information and consultation rights for civil servants and employees of central government administrations in the public sector services (Guarriello et al. 2020; Borelli, Dorssemont et al. 2020; Rainone 2020).

The dispute was finally resolved by the Court's decision *EPSU v. Commission* 21 September 2021, ruling that the Commission has discretionary power to present or not at the joint request of social partners a proposal of directive to the Council, assessing the "appropriatness" of the initiative. This interpretation of article 155 TfEU could discourage social partners to embark in collective bargaining if the Commission can reject their joint request for *erga omnes* implementation of their agreement, in spite of collective autonomy as fundamental value of the industrial relations system (article 152 TfEU).

Social dialogue at company level

Social dialogue at company level is settled by European legislation in the case of specific events, or generally in national or transnational companies of a given size. European directives on collective redundancies (n. 98/59/EC) and transfers of undertakings or parts of undertakings (n. 2001/23/EC) oblige undertakings or establishments to inform workers' representatives in advance of the number of workers affected, the accompanying measures and the social and employment consequences of the planned redundancy/transfer; while a general obligation to timely inform and consult workers' representatives about economic situation, structure and probable development of employment, substantial changes in work organization or in contractual relations is laid down in Framework Directive n. 2002/14/EC, whose scope covers undertakings employing at least 50 employees in each member state, or establishments employing at least 20 employees.

According to the preamble of the Directive: "Timely information and consultation is a prerequisite for the success of the restructuring and adaptation of undertakings to the new conditions created by globalisation of the economy, particularly through the development of new forms of organisation of work" (point 9). So, the framework directive aims to correct the predominantly a posteriori approach to the process of change, that neglect the social aspects of decisions taken and do not contribute either to genuine anticipation of employment developments within the undertaking or to risk prevention (point 13). Article 5 of the Framework directive allows Member States to entrust management and labour at the appropriate level, including at undertaking or establishment level, with defining freely and at any time through negotiated agreement the practical arrangements for informing and consulting employees.

Transnational companies with more than 1000 employees in the EU and at least 150 in two different Member States are required to negotiate with a special negotiating body on the establishment of a European works council or an information and consultation procedure (dir. n. 1994/45/EC, replaced by directive n. 2009/38/EC). Likewise, companies adopting the legal form of a European Company (SE) must provide for information, consultation, and participation rights for employees in accordance with the national model transposing directive n. 2001/86/EC. Based on this European legislation, more than 1900 agreements establishing EWCs have been negotiated. Often the dialogue with the central management of the transnational company has led to voluntary agreements covering regulatory or procedural aspects (such as mobility, training, equal opportunities, health and safety, restructuring) or turning the EWC into a Global Works Council (GWC) in order to include non-EU employee representatives.

This further development of social dialogue is purely voluntary in nature and has led, since the 2000s, to the signing of transnational company agreements (TCAs) with a European (EFAs) or international scope (IFAs). In April 2018 there were about 330 TCAs, most of them signed by multinational companies headquartered in Europe (Rehfeld 2018) as a result of the positive climate of social dialogue established in parent company as well as the role given by national industrial relations systems and the European institutional framework to the social dialogue at the company level.

PART II: Social dialogue in the Civil Aviation sector

The joint Civil Aviation committee was created in 1990 as an effect of the liberalization policies started since the late 1980s at European level. Like other sectors subject to liberalization (railways, telecommunications, electricity, postal services, road transport), the European airline sector has experienced a significant level of upheaval and change over the past decades, mainly due to liberalisation and the subsequent emergence of new low-cost airlines. This has had a considerable impact on employment and industrial relations in the industry: that's why the Civil Aviation is among the sectors that have signed the highest number of joint texts in the framework of sectoral social dialogue: 54 from 1990 to 2019. According to the ETUI database, two distinct periods of SSD activism can be highlighted: the period between 1990 and 1996, during which social partners adopted joint positions on matters specific to air transport (drawing up airport timetables, flying time, rest periods for crews, employment, training, ground staff); the post-2000 period, starting with a framework agreement on working time arrangements (incorporated in directive n. 2000/79/EC)[2] followed by number of joint positions on the introduction of the "Single European Sky" (Introduction of common rules on air traffic flow management). A new peak of joint texts will be signed during 2020 in relation to the effects of Covid-19 on the paralysis of the sector (5 joint opinions). So, under the quantitative point of view, the SSD in the Civil Aviation sector is very active.

A qualitative analysis reveals the heterogeneity of the joint texts signed by the social partners: apart from the framework agreement on working time, grounded on exclusion of the sector from the general working time directive and its regulatory function, most of them represent mutual undertakings or forms of joint lobbying with regard to sectoral policies. In particular, after the decade of liberalization, the issues discussed in the SSD were the restructuring processes in the air transport industry, employment protection, mergers and acquisitions, quality safety and training in the ground handling sector. The complexity of the issues addressed, the diversity of national structures, approaches and strategies, as well as the extremely wide-ranging nature of the employer interests may explain a degree of ambiguity in sectoral social dialogue with regard to the objectives of coordinating national negotiation policies at this level.

In terms of sectoral classification, the airline industry corresponds to NACE[3] code 62 (air transport) and 63.1 (cargo handling and storage). The employees covered are those employed by airlines as cabin crew, ground staff (including check-in staff and baggage handlers) and pilots (Broughton 2005).

Key Industrial Relations players at EU level

To be admitted to the European social dialogue, European organizations must meet the precondition of representativeness. Regarding Civil Aviation, the representativeness of the actors involved in the European sectoral social dialogue committee implies their right to be consulted, their role and effective participation in the European sectoral social dialogue and their capacity to negotiate on behalf of their members and to conclude binding agreements. The admission of social partner organizations to the European sectoral social

[2] The agreement applies to mobile staff in civil aviation and regulates annual leave, maximum annual working time, maximum annual 'block flight time', minimum monthly rest and minimum annual rest days.
[3] The statistical classification of economic activities in the EU.

dialogue is defined by the three criteria listed by European Commission Decision 1998 on the establishment of sectoral social dialogue (see above).

In the Civil Aviation sector, according to the study "*Representativeness of European social partner organisations: Civil Aviation*" 4, the social partners entitled to participate to the SSD on the union's side are the European Transport Workers' Federation (ETF) and the European Cockpit Association (ECA). On the employer's side, there are respectively, the ACI Europe-Airports Council International (ACI Europe), the Association of European Airlines (AEA), the Civil Air Navigation Services Organization (CANSO), the European Regions Airline Association (ERA), the International Association of Charter Airlines (IACA), and the International Handlers' Association (IAHA).

In Table 1 and 2 general information about each social partner are reported.

Table 1, worker's organizations

European Transport Workers' Federation (ETF)[5]	The European Transport Workers' Federation (ETF) is a pan-European trade union organization embracing transport trade unions from the European Union, the European Economic Area and Central and Eastern European countries. The ETF was created at a founding congress in Brussels on 14-15 June 1999 and has its roots in pan-European transport trade union organizations that stretch back 60 years. Today, the ETF represents more than 5 million transport workers from more than 200 transport unions and 40 European countries. These workers are found in all parts of the transport industry, on land, sea and in the air. They cover workers in the following sectors: - Civil aviation - Fisheries - Inland waterways - Logistics - Maritime transport - Ports and docks - Railways - Road transport - Tourism - Urban public transport
European Cockpit Association (ECA)[6]	The European Cockpit Association (ECA) was created in 1991 and it is the representative body of European pilots at European Union (EU) level. It represents over 40,000 European pilots from the National pilot Associations in 33 European states. In addition, ECA has 3 Associate

2. Representativeness of the European social partner organisations: Civil aviation, European Foundation for the Improvement of Living and Working Conditions, 2010, available in https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef09105en.pdf

[5] https://www.etf-europe.org/about-us/

[6] https://www.eurocockpit.be/about-us

	Members. **Membership List (update Nov 2018)** **Country Member Association** - Austria: Austrian Cockpit Association (ACA - Belgium: Belgian Cockpit Association (BeCA) - Bosnia and Herzegovina (limited): Association of Airline Pilots in Bosnia and Herzegovina (ALPAB) - Bulgaria: Bulgarian Airline Pilots Association (BUL-ALPA) - Croatia: Croatian Airline Pilots Association (CRO-ALPA) - Cyprus Pancyprian Airline Pilots Union (PALPU) - Czech Republic: Ceské sdružení dopravních pilot CSA (CZALPA) - Denmark Danish Airline Pilots Association (DALPA) - Estonia (limited): Estonian Airline Pilots Association (Estonian ALPA) - Finland: Finnish Pilots Association (FPA) - France: Syndicat national des Pilotes de Ligne (SNPL) - Germany: Vereinigung Cockpit - Greece (limited): Hellenic Airline Pilots Association (HALPA) - Hungary: Hungarian Airline Pilots' Association (HUNALPA) - Iceland: Félag Íslenskra Atvinnuflugmanna (FIA) - Ireland: Irish Airline Pilots Association (IALPA) - Italy: Associazione Nazionale Professionale Aviazione Civile (ANPAC) - Latvia: Latvian Aviation Union - Lithuania (limited): Lithuanian Airline Pilots' Association (LIT-ALPA) - Luxembourg: Association Luxembourgeoise des Pilotes de Ligne (ALPL) - FYR Macedonia (limited): Air Line Pilot Association of The Former Yugoslav Republic of Macedonia (ALPA-FYROM) - Malta: ALPA-M - Montenegro (limited): Montenegrin Airline Pilots' Association (MonALPA) - Netherlands: VVereniging van Nederlandse Verkeervliegers (VNV) - Norway: Norsk Flygeerforbund (NF)

	- Portugal: Associação dos Pilotos Portugueses de Linha Aérea (APPLA) - Serbia: Serbian Cockpit Association (SCA) - Slovenia: Air Line Pilots' Association of Slovenia (ALPA-SL) - Spain: Sindicato Español de Pilotos de Líneas Aéreas (SEPLA) - Sweden: Svensk Pilotförening (SPF) - Switzerland AEROPERS - Turkey: Turkey Airline Pilots' Association (TALPA) - United: Kingdom British Airline Pilots Association (BALPA) - Israel: Israel Air Line Pilots Association (ISRALPA) (Associate Member) - Marocco: Moroccan ALPA (AMPL) (Associate Member) - Ukraine: UALPA (Associate Member)

Table 2, Employer's organization

Airport Council International – ACI Europe[7]	ACI EUROPE (Airports Council International Europe) is a non-profit organization, whose main purpose is to represent and lead the European airport industry as well as to promote professional excellence in airport management and operations. They are also the European region of Airports Council International, the only worldwide professional association of airport operators.
Association of European Airlines (AEA)[8]	The Association of European Airlines (AEA) was founded in 1952 as a trade body that eventually brought together 32 major airlines. It shut down at the end of 2016. The same year some of the member airlines formed a new association - Airlines for Europe (A4E). AEA worked in partnership with the institutions of the European Union and other stakeholders in the value chain, to ensure the sustainable growth of the European airline industry in a global context. The association's goals were to: - Promote aviation's role in Europe's future - Innovate for the benefit of customers - Contribute to better, smarter and more cost-effective regulation - Accelerate progress towards a Single European Sky - Decarbonise aviation - Ensure conditions for fair competition: a level playing field - Champion a global security framework
Civil Air Navigation Services Organisation (CANSO)[9]	As the industry association, they bring the world's air navigation service providers, leading industry innovators and air traffic management specialists together to share knowledge, develop best practices and shape the future for secure and seamless airspace. European Regional Office Membership include: - ALBCONTROL – Air Navigation Services of Albania - ANS Czech Republic - Avinor ANS - AZANS - BHANSA

[7]https://www.acieurope.org/downloads/members/2022%2003%2016%20ACI%20EUROPE%20LIST%20OF%20MEMBERS.pdf
[8]https://skybrary.aero/articles/association-european-airlines-aea#:~:text=The%20Association%20of%20European%20Airlines,in%20the%20end%20of%202016.
[9] https://canso.org/about-us/

	- BULATSA - Croatia Control Ltd - DFS - DSNA - ENAIRE - ENAV S.p.A - Estonian Air Navigation Services (EANS) - Fintraffic - General Directorate of State Airports Authority (DHMI) - HungaroControl Pte.Ltd.Co - Irish Aviation Authority (IAA) - Latvijas Gaisa Satiksme (LGS) - Letové prevádzkové služby (LPS SR, š. p.) - LFV Sweden - Luxembourg ANA - LVNL - M-NAV, Air Navigation Service Provider of the Republic of North Macedonia, GOJSC - Malta Air Traffic Services (MATS - NATS - NAV Portugal - Naviair - Polish Air Navigation Services Agency (PANSA) - ROMATSA - S.E. Oro Navigacija - Saudi Air Navigation Services (SANS) - Serbia and Montenegro Air Traffic Services SMATSA llc - Skeyes - Skyguide - Slovenia Control
European Regions Airline Association (ERA)[10]	ERA (European Regions Airline Association) is the trade association representing more than 55 airlines and over 130 associate members, including manufacturers, airports, suppliers and aviation service providers, across the entire spectrum of the aviation industry. ERA works on behalf of its members to represent their interests before Europe's major regulatory bodies, governments and legislators to encourage and develop long-term and sustainable growth for the sector and industry. A major part of ERA's role is to raise the profile and importance of its

[10] https://www.eraa.org/about/overview

	members, to enhance green and sustainable air connectivity and European air transport.
International Association of Charter Airlines (IACA)	
IAHA International Aviation Handlers Association (IAHA)[11]	IAHA represent the ground handling industry worldwide, to provide a forum for consultation on non-competitive issues between companies, to develop common standards, to communicate concerns with all parties, to establish common positions on legal and regulatory issues and to work with common effort for the progress of civil aviation worldwide. IAHA has a Board of up to 11 members representing the membership in respect of company size, geographical location, etc.

In addition, this study covers two additional European associations, namely the Air Traffic Controllers European Union's Coordination (ATCEUC) on the employee side, and the European Low Fares Airline Association (ELFAA) on the employers' side. The ATCEUC[12] is an organization founded in 1989 and directed by an Executive Board elected by the Member Unions. Each EB Officer speaks on behalf of the Members and has a specific mandate to do so; EB Officers are elected on a two-year basis and their actions are reviewed twice a year by a plenary meeting. During these meetings, the policies of ATCEUC are decided, and actions and targets are set. The Executive Board of ATCEUC usually meets 4 times a year to decide on how to implement the policies of ATCEUC. In doing so, ATCEUC is able to react adequately to changing circumstances and latest developments. This regular surveillance and discipline ensures that the decisions taken by the board are fully supported by all Members. The types of workers represented are air traffic controllers (ATCOs), air traffic safety electronics personnel (ATSEPs). Currently, ATCEUC is composed of 32 professional and autonomous Trade Unions representing more than 14000 Air Traffic Controllers (ATCOs) and Air Traffic Safety Electronic Personnel (ATSEPs) throughout Europe. ELFAA[13] was an organization formed in 2004 to represent low-cost carriers and lobby European institutions on their behalf. It ceased operations and disbanded in 2016, as major members joined the newly formed trade group Airlines for Europe.

Currently, in Sectoral social dialogue - Civil aviation[14], Employers' organizations entitled to participate in the social dialogue are: Civil Air Navigation Services Organisation (CANSO), Airlines 4 dialogue (A4D), Airline Coordination Platform (ACP), Airlines International Representation in Europe (AIRE), European Regions Airline Association (ERA), Airport Council International – ACI Europe, Airport Services Association (ASA).

a) Rate of unionism

[11] https://www.aviationpros.com/home/article/10384120/representing-the-independent-handlers
[12] http://www.atceuc.org/presentation/
[13] https://dbpedia.org/page/European_Low_Fares_Airline_Association
[14] https://ec.europa.eu/social/main.jsp?catId=480&langId=en&intPageId=1829

The data regarding the trade unions' domains and membership strength are reported in Table 3 in the 'Representativeness of the European social partner organizations: Civil aviation'[15]. It can be observed that the majority of the unions (more than 100) is sectionalist. In particular company trade unions and or occupational trade unions are the two sectionalism profiles. Furthermore, the occupational trade unions outnumber the company unions by far. Apart from Ireland, Latvia and Slovakia, occupational trade unions are established in all EU Member States. In several countries, namely France, Hungary and Slovenia, a generally fragmented national trade union system (as many as 10 trade unions) exists. As a result, pilots, flight attendants, cabin crew in general, air traffic controllers and specialists in maintenance are the professions most frequently organized in occupational trade union organizations. Furthermore, sectionalistically overlapping trade unions are also evident. In this case, total membership is higher than membership within the sector. This tendency can be attributed to the fact that employee groups of cross-sectoral nature are also organized by the respective trade unions across sectors (e.g., white-collar, blue-collar or public-sector employees). On the other hand, trade unions whose domain coincides with the sector are unusual, witnessing the difference between the statistical definitions of business activities and the identification of common interests and grouping together in trade unions.

Apart from Slovakia, the trade union system in all countries is characterized by pluralism and a multi-union situation. This leads to interunion competition due to the co-existence of pronounced occupational trade unionism alongside more comprehensive trade union organizations. It can also be observed that, due to the gender-specific differences between the distinct professions, the share of female members as a proportion of the total membership ranges from 1% to 80% or over. Given the differences in the size of the economy and the comprehensiveness of the membership domain, a remarkable difference can also be noticed in the number of trade union members (from hundred thousands to less than a hundred members). To prevent a misinterpretation of comparison data of membership strength, due to the differences in country sizes, density data are employed. Being the domain of the majority of trade union sectionalist, domain density coincides with sectoral domain density. For sectionalist unions, sectoral density is generally low and below 10 %. On the other hand, sectoral domain density is higher than 70%, given the narrow domain of sectionalist trade unions, which usually comprehend only a small group within the total number of employees working in civil aviation. However, high levels of membership are achieved, given the recruiting of highly qualified staff. Regarding sectoral membership strength of overlapping and sectionalistically overlapping trade unions, only few data are reported. Within this group, sectoral domain density ranges from 80 to 20 %. Because of the broader domaining trade unions, showing high sectoral density and low sectoral domain of these trade unions, sectoral density is higher than that of sectionalist unions. From the data, two general profiles of unionization can be identified: overlapping and sectionalistically overlap density and sectionalist trade unions, which show the opposite tendency. In conclusion, trade union density is remarkably high in the civil aviation industry.

b) Trade union density

According to the Report released by Eurofound in 2005[16], trade union density in the airline sector is higher than the national average. In particular, it is above 90 % for pilots and cabin crew. As mentioned before, the airline industry is characterized by a high level of unionization apart from Slovakia (about 36 %). Traditionally, density wss generally high in domestic carriers, which have gone through various phases of privatization. Regarding low-cost airlines, different tendencies were reported in many European countries. A lasting example of an 'anti-union' company is Ireland-based Ryanair, which was described as 'vehemently anti-union' and refused to grant formal recognition of basic rights to unions on several occasions (see below some relevant Court rulings). Similar cases were reported for the Greek carrier, Aegean Airlines and, for Poland, employees of the fledgling low-cost carrier, LOT, Centralwings. This tendency was attributed not only to a hostile company attitude, but also to a scarce union membership and a lack of collective agreement, such as the case of Dutch Bird company. In Denmark, despite the high union density in the airline sector, there was an

[15] https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef09105en.pdf
[16] https://www.eurofound.europa.eu/publications/report/2005/industrial-relations-in-the-airline-sector

increasing number of small companies, not covered by collective agreements because the employers didn't belong to any organizations. On the other hand, in Belgium, union recognition in low-cost carriers did not seem to represent an obstacle for employees. BMI, in the UK, despite the tendency of recognizing unions, was accused of anti-union activity when restructuring its cabin crew, while in countries such as Norway, unions and collective agreements were fully recognized. The Eurofound report 2005 concluded that although the airline industry had traditionally had relatively high rates of union density, the emergence of Ryanair would lead to a dent in union density in this industry across Europe. The numerous lawsuits for anti-union behaviour by Ryanair and other low-cost airlines, such as Wizz Air, show that the prognosis was far from unfounded, despite the lack of current data on overall unionization in the sector.

c)Collective bargaining coverage

In Table 6 of 'Representativeness of the European social partner organizations: Civil aviation' data on the collective bargaining in civil aviation[17] it can be observed that collective bargaining coverage in the civil aviation industry is high, with about 70 % of the countries surveyed having a coverage rate of 80 % or higher. In the remaining countries, 50% or more of the employees are covered, apart from Estonia and Latvia, where only single-employer bargaining exists. For each country, several factors participate in the high coverage rates, such as multi-employer bargaining coinciding with pervasive extension practices for total coverage (Cyprus), or 33 % rates under single-employer bargaining (Estonia). The effect of total coverage in single employer bargaining systems also reflects on trade union density. The increase of unionization with company size and the relatively high employment economic concentration of the civil aviation industry favor both unionization and favorable collective bargaining coverage. Therefore, coverage is also relatively high even in predominantly single-employer bargaining, even if the distinction between multi-employer and single-employer bargaining does not allow an exhaustive description of the bargaining system. Apart from Germany, Greece, Ireland, Italy and Spain, at least a rough estimate can be made about the relevance of multi-employer bargaining. In 8 countries, multi-employer bargaining prevails, while 14 countries are characterized by the predominance of single-employer bargaining. In countries like Belgium, Bulgaria and Slovenia, a multi-level bargaining system exists, combining multi-employer bargaining and single-employer settlements. In addition, the scope of multi-employer agreements varies considerably according to the country. In countries like Bulgaria and Slovenia, the sector is covered by a specific agreement or, like Romania, by a multi-industry agreement embracing the whole transport sector. In many other countries, the scope of the multi-employer agreements is limited to certain parts of the sector. In these cases, their scope is usually adapted to the sectionalist domain of most employer organizations.

Joint texts: topics addressed at European level and results: which functions?

Over the decade 2009-2019 the sectoral social dialogue (SSD) in Civil Aviation produced 22 joint texts, confirming that this is an active sector. The topics addressed by the SSD range from continuous improvement in aviation safety to training and qualification in the ground-handling sector, from the implementing rules of the performance schemes to opinions on the implementation of Single European Sky II, from the mobility of workers in the Air Traffic Management to the fight against EU-base flags of convenience in aviation, from working group on atypical air crew employment to market access and working conditions in the aviation ground-handling industry, from change management in the air traffic industry to civil aviation social dialogue rules of procedure.

In the decade under consideration, the intensity of SSD results concerns an average of 2.2 texts per year (see data on the intensity of the number of joint texts in the Civil Aviation sector):

[17] https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef09105en.pdf

5											
4	X									X	
3	X		X							X	
2	X	X	X		X		X			X	
1	X	X	X	X	X	X	X	X	X	X	X
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019

Regarding the kind of joint texts, as defined by the social partners:

2 are guidelines (Charter and company guidelines on just culture for continuous improvement in aviation safety, 31/03/2009; Guidelines for consultation arrangements for functional airspace blocks 22/06/2012)

1 is a cooperation agreement (between ATCEUC and ETF, 18/06/2009)

1 is a joint analysis (CANSO-ETF of the ATM social dialogue 30/06/2009)

4 are joint declarations (on training and qualifications in the ground-handling sector 05/05/2009; against EU-base flags of convenience in aviation 05/06/2014; on aviation ground handling 19/01/2018; on change management in the ATM industry: principles and process 03/10/2018)

2 are joint positions (on the implementing rules of the performance scheme 18/03/2010; on the social security regime applicable to air crews 08/06/2011)

1 is a joint opinion (on market access, social conditions and standards in the aviation ground-handling industry 17/04/2017)

6 are joint statements (on the revision of the ground-handling directive 07/04/2011; on the role of European social dialogue in the implementation of the Single European Sky 17/11/2011; on the Commission proposal on the SES II + package 22/10/2013, on atypical employment in the air crew working group 13/02/2015; on the air traffic management 09/09/2016; of the ATM social partners 03/10/2018)

1 is a result of consultation (of ATM social partners on Single European Sky II implementation 30/04/2010)

1 is a recommendation (ATM European social partners on mobility of workers within the ATM sector 29/11/2013)

2 are toolboxes (for successful social dialogue in the Air Traffic Management Industry 05/11/2015; ATM just culture toolbox 03/10/2018)

1 relates to the Civil Aviation rules of procedures 21/06/2019.

Regardless of the different types of texts adopted, the overall picture reveals a lively social dialogue, which over the years has formulated common positions on economic and sectoral policies, adopted declarations of principle, developed partnership instruments and regulated the social dialogue procedure.

The function of the SSD seems to be to facilitate dialogue and the search for common understandings at European level, the exploration of issues of common interest, the assessment of the functioning of social dialogue and its maintenance also in specific sub-sectors, the definition of manuals and tools to facilitate such dialogue at different levels. There are also declarations of commitments on topics with a strong regulatory impact, such as training and qualifications, safety, social security regimes, labour mobility and atypical employment, with a view to defining guidelines or coordinating collective bargaining or revising legislation on these issues.

The changes observed since the liberalization of air transport services have deepened and have had a major impact on European industrial relations. The number of airlines operating in European countries has steadily increased; the number of flights and passengers carried in the pre-Covid period has risen sharply,

thanks to particularly low fares; competition between national carriers, partially or fully privatized, and low-cost airlines has become more intense, with a negative impact on staff working conditions; restructuring processes have never stopped; organizational models based on the subcontracting of non-core activities and services aimed at reducing costs have become widespread; new forms of work, aimed at increasing flexibility, have spread around the sector. New challenges have been added to these, such as the environmental sustainability of the sector and its inclusion in the 2030 decarbonization targets following the signing of the Paris agreements 2015 and the approval of the Green New Deal by the EU institutions in 2019. The European social dialogue, in its twofold sense of being a forum for consultation with European political institutions and for guiding national players, is increasingly proving to be a necessary component of proactive industrial relations systems, given the supranational nature of the challenges to be faced.

At this regard, it is worth mentioning the recent declaration jointly signed by ETF, ETUC, EFFAT, UNI Europa, IndustriAll Europe and ECA during the aviation summit held in Toulouse. The Declaration on Aviation Sustainability and Decarbonization - or the Toulouse Declaration - was signed on February 4, 2022, by most of the major trade unions in the aviation, aerospace, and tourism industries, and by employer organizations. The commitment taken is to arrive at the triennial assembly of the International Civil Aviation Organization (ICAO) scheduled for fall 2022, pushing for the achievement of the ambitious environmental goals set at Cop 26. In this context, the European Transport Federation (ETF) stressed that trade unions recognize the need for systematic change in the aviation sector and that the transition of transport to neutrality must be done fairly, ensuring meaningful and inclusive social dialogue at all stages. The agreement is only four pages long, does not provide details in terms of procedures and do not have a set number of meeting per year.

Social dialogue at company level

a) Transnational collective bargaining aiming at the establishment of European Works Councils

The transport sector, in particular air transport and tourism, is a globalized and liberalized sector driven by ever-increasing flows of movement of people. The air transport is a sector studded with international players and is one of the most affected by the economic crises and uncertainties about the future and consider how to make the supply chain more resilient to face economic shocks should be a priority to be faced with. Considering the high internationalization of companies in the sector, decisions affecting workers are frequently taken in a different country respect to where they are employed. This “centralized” decision making process implies that the corporate policies of the subsidiaries are a result of what has been decided by the parent company. So, trade union strategies must also have a transnational dimension.

In this regard, under the transnational collective bargaining, the joint initiatives (among trade unions and multinationals) aimed at setting up European Works Councils should be noted, within which social dialogue produces the development – through negotiations – of agreements for the implementation of information and consultation workers’ rights in multinationals. The European Works Council (EWC) is an instrument of social dialogue in multinational companies being a European body for the collective representation of workers, which has the right to be informed and consulted, at appropriate times, in appropriate ways and with appropriate content, on transnational issues. Transnational issues are defined as: issues affecting the entire community-sized group or at least two establishments located in two different member states or where decisions affecting employees will need to be made in a member state other than the one in which they are employed; issues that, regardless of the number of countries involved, could have potential effects in more than one country. Through the EWC, workers’ representatives have the right to be informed about company’s strategies and, by initiating consultation and discussion procedures with the central management, it allows them to influence the decisions concerned (directive n. 2009/38/EC).

According to the directive 2001/86/EC on the establishment of works councils in the Societas Europea (SE), the employees’ involvement scheme within the SE includes information and consultation rights essentially identical to those provided for EWCs, supplemented in the case by participation rights, which allow employees’ representatives to sit on the management or supervisory board of the SE. One of the most important differences between EWC and EWC-SE legislation lies in the fact that while the establishment of an EWC is

voluntary, by the initiative of one of the parties (workers or management), a SE cannot (under certain circumstances) be legally registered without an agreement on employees' participation. However, no SEs are set in the civil aviation sector[18].

As a result of mergers, acquisitions, purchase, and other significant changes affecting various airlines companies during years, the number of the existing EWCs is significantly lower than that which would (potentially) exist in the air transport sector, while other airlines companies which meet the geographical and dimensional requirements of the directive, have not yet established a EWC (as Scandinavian Airlines or Air Berlin). For example, following the merger of Aer Lingus, the Irish airline privatized in 2015, with the International Airlines Group (IAG), the original EWC agreement signed in 1996 under article 13 of the directive 94/45/EC, no longer applies. The International Airlines Group is an Anglo-Spanish multinational company set up in 2011 from the merger of the flag carriers of the United Kingdom (British Airways) and Spain (Iberia and Vueling). Likewise, it no longer also applies the British Airways EWC agreement, signed in 1996 and renewed in 2012; while Iberia and Vueling had not signed previous agreements. The IAG group has an EWC established by agreement in 2017, under the directive 2009/38, after the acquisition of Aer Lingus. It provides, in the preamble, that in the event of future mergers and acquisitions, the parties agree that it is desirable that there is only one EWC across the group. The usual topics of information and consultation are: the economic and financial situation of the group, the development of the business, the situation and trend of employment, investments, the structure of the group and any substantial changes concerning organization, the introduction of new working methods, transfer or centralization of roles or activities, cutbacks or closures, collective redundancies. It also includes consultation on equal opportunity. At the agreement is also attached a protocol with the internal rules and procedures for the functioning of the IAG EWC. IAG has its headquarters in Spain even though the UK has the largest number of employees.

The same situation occurred for Air France and KLM EWC agreements. After the merger of the two companies (2004), the merged group Air France-KLM has established its EWC by agreement in 2006, last renegotiated under the directive 2009/38 in 2014. Regarding topics of information and consultation, the agreement mentions the group's structure and any changes to it, strategic decisions, economic and social prospects for the coming year, the economic and financial situation of the group, transfers of production, substantial changes concerning the organization of working practices and the introduction of new technologies, mergers, acquisitions or closures of establishments or undertakings, changes to any and all activities and their impact on employment levels within the group, the available social characteristics relative to the group as a whole. However, according with the preamble of the Air France-KLM's EWC agreement, "particular attention will be paid to issues related to employment, working conditions, health, safety, training, mobility, diversity, and equal opportunity", even though such themes are not included in the main body of the EWC agreement.

Despite the merger between Lufthansa and Austrian, Brussels, Dolomiti, Eurowings, Edelweiss, Swiss Air & Sun Express airlines, the original Lufthansa EWC agreement is still active and continues to apply. The EWC in the Deutsche Lufthansa was established by an agreement with indefinite duration in 1996, signed under article 13 of the directive 94/45/EC. It can be considered an innovative agreement in the sector because, in addition to providing for the information and consultation of the EWC on matters relating to economic and financial situation of the company, corporate strategy and investment, changes to working methods and organization, probable development of the business, production and sales, company structure, closures or cutbacks, mergers, take-overs or acquisitions, new technology policy, reorganization of production, employment situation and forecasts, vocational training, equal opportunities, health and safety, human resource management practices, it is the only EWC agreement in the civil aviation that include environmental protection as a subject of information and consultation. Such a forecast seems in line, or even pioneering, with the social partners' awareness about the importance of environmental and green transition issues of recent times.

Within low-cost airlines, Ryanair and EasyJet have an established EWC. While the Irish low-cost Ryanair established its EWC by an agreement according to the directive 2009/38 (the text is not available), Easyjet Airline Company Limited has an established EWC under the subsidiary requirements of the directive.

It could be worth mentioned the EWC agreement signed by Swissport International Ltd, as recent agreement, even if it is not an airline but a Swiss company operating in the air transport sector, providing ground and handling services (security, refueling, aircraft and baggage handling, maintenance, on-board cleaning, aircraft de-icing, etc.). The agreement was negotiated under the directive 2009/38 and the Irish law. The most original aspect of the agreement is that the company is not obliged to inform and consult the EWC

[18] The Airbus Group SE, operating in the aerospace and defense industry, took the legal form of an SE.

on planned projects before signing the agreement in order not to slow down the group's recovery efforts. The agreement includes a clause that excludes the UK from the scope of the European works council.

The changes that characterize the sector, in addition to restructuring, privatization of national companies and the advent and development of low-cost airlines, have led to a high number of conflicts and strikes due to low working and salary conditions and poor workers' representation. The Brexit was one of the main events affecting the existence and structure of the EWCs.

b) Main changes: impact of Brexit on EWCs

The United Kingdom's exit from the European Union (Brexit) has prompted many companies to relocate resources and central management to other member states in order to continue to operate within the EU perimeter and access to the common market and all the benefits of EU membership. According to the Ernst & Young's Report (March 2021), about the 40% of companies said they have moved or plan to move staff and operations from the UK to other EU states as a result of Brexit, while the 12% of companies said they have chosen multiple locations in Europe.

With respect to information and consultation rights in multinational companies, the Trade and Cooperation Agreement establishes a non-regression clause according to which the Brexit cannot have the effect of reducing workers' rights compared to the situation in force before January 2021. Mainly, two are the consequences of the impact of Brexit on EWCs or SE Works Councils/Boards: 1) ensuring the representation in EWCs (or works councils/SE boards) of employees from non-European Economic Area (EEA) countries, by an amendment of the EWC agreement aimed at ensuring the competence of the EWC/SE on transnational matters concerning the UK, and recognizing and maintaining the rights of EWC/SE members from all countries to be informed and consulted on transnational matters that also concern the UK; 2) identifying new national regulations for the EWC governed by UK legislation prior to Brexit. In the latter case, according to the EWC Directive, many multinationals with the central management in the UK have transferred their headquarters and appointed a representation - with specific competence for relations with the group EWC - to another EU member state by December 2020 (Brexit transition period). Until this date, in accordance with the provisions of the UK-EU Withdrawal Agreement, the European law continued to apply and, in the absence of specific provisions, as of January 2021, Directive 2009/38/EC will no longer apply to the UK. The automatic transfer, as a consequence of the lack of choice of applicable law post-Brexit, will have the effect of subjecting the EWC to a different regulation (even a much different one) than the regulation of the EWC under UK law.

Due to its business culture, language and legal framework, Ireland is the most attractive country for multinationals to choose the national law applicable to the EWC governed by UK law prior to Brexit, considering the limited recognition of the right to collective bargaining and the limited compliance of the Irish legislation with the standards set out in the EWC Directive, as well as the weakness of protection's instruments provided in this regard. The massive migration to Ireland of the central management of many EWCs of UK-based multinationals prior to the Brexit has raised trade union concerns about the available dispute resolution tools concerning the interpretation of EWC agreements and the violation of the provisions contained therein, or the interpretation and violation of subsidiary requirements, which are inadequate with respect to the dispute resolution involving EWCs based in the UK.

In the aviation industry, many airlines have been negatively affected by the impact of Brexit, economically but also in terms of traffic rights, jobs, and employment. For example, while Ryanair has stated that it will not invest in the UK in the future due to Brexit, but will focus on the rest of Europe, Lufthansa has decided to stay in the UK and not to change its already limited investment in the country. As to the information and consultation rights in multinational companies, the major changes are highlighted for the Spanish International Airlines group IAG, which owns British Airways, Iberia, Aer Lingus and Vueling, one of the first companies to deny British workers – that represent the largest number of employees – the full engagement with their rights and representation as it moves to kick its British employees from the representation within the EWC. Whether UK employees and their representatives can continue to participate in EWCs depends on what is stated in the EWC agreement. Existing EWC agreements should be reviewed to identify the impact on UK employees' right to participate in the EWC. For example, if the EWC agreement stipulates that the rights to participate in the EWC are tied to the UK's EU membership, then such participation rights could have fallen away at the end of the transition period. For ongoing and future negotiations on setting up EWCs, UK employees no longer require representation in (and are thus not entitled to be represented in) a EWC and do not count towards the relevant employee thresholds for setting up a EWC (unless otherwise agreed). In line with the abovementioned, the management of the Air France-KLM group and the EWC signed a protocol that

modifies the scope of the agreement so that it can be applied to the whole group, i.e. to all its subsidiaries and sub-subsidiaries in European countries (countries belonging to the European Union, the European Economic Area, Switzerland and Great Britain).

Finally, due to the difficulties with the interpretation of the law applicable to the EWC as a result of Brexit, the European workers' representative body of EasyJet filed a complaint to the Central Arbitration Committee (CAC) for having the company failed to inform and consult the EWC due to the decision taken to reduce staff by up to 30%, by 2020. The airline, which appointed its German subsidiary as the EWC central management representative post-Brexit, argued that ended the transition period, German law was applicable and not British law (TICER); consequently, the CAC had no jurisdiction for the EWC's complaint. On the contrary, the CAC argued that it had jurisdiction to decide on the EWC issues, considering that British legislation was still applicable to EasyJet, in order to avoid leaving the information and consultation rights of employee representatives in multinational companies unprotected in a context that is still not well defined. This is one of the first favorable decisions made by the UK CAC for EWC rights following Brexit. But the EasyJet's appeal against the decision of the CAC is still pending to the Employment Appeal Tribunal (EAT).

c)Other transnational company agreements (TCAs) in the Civil Aviation

The establishment of EWCs was not the only subject of transnational company agreements. According to the ILO-European Commission database, updated to May 2019, in the Civil Aviation sector some TCAs have been signed by the Air France and Air France-KLM group, British Airways and CSA Airlines. These transnational agreements concern social rights and code of ethics (Air France 2008-2013) framework agreement on airport agencies in Europe (air France 2010), framework agreements regarding the outstations in Europe (Air France-KLM 2011, 2013) and the Air France-KLM and Martinair Cargo organization in Europe (2013), while British Airways has signed in 2008 a Declaration of Principles about consultation and information over national reorganization measures and CSA Airlines in 2004 a Code of conduct on CSR.

As mentioned above, such agreements are voluntary in nature and normally concern the commitment of the multinational to respect fundamental labour rights in all subsidiaries and supply chains. Such agreements are negotiated by the European or international trade union federation, depending on their scope, and/or the EWCs.

3. Relevant Court of Justice case-law in the Civil Aviation sector

The number and relevance of legal disputes brought to the attention of national and European labour courts proves to be a significant test of the problems shaking the field of labour and industrial relations in a given sector. Legal disputes in the civil aviation sector have focused on a number of topics of transnational relevance, in particular the question of the usual place of performance of work for mobile staff (cabin crew) for the purposes of identifying the court with jurisdiction to settle labour disputes; the transfer of undertakings or branches of undertakings in the context of corporate restructuring and its consequences for employment; the questions of the pilots' working hours and pilots' strikes; anti-union policies and discriminatory conduct of some low-cost airlines. Given the inherent transnational nature of the airlines' business and their presence in many EU countries, where they recruit either directly or through recruitment companies, their aggressive business style and personnel management practices are well-known all over Europe. Another relevant aspect is the impact of European Union law on the questions raised and the Court of Justice's role in uniform interpretation as a court of last resort on European Union law.

A rough survey of some relevant judgments concerning labour disputes in the aviation sector in recent years is quite enlightening:

Court of Justice 14/9/2017, joint cases C-168/2016 and C-169/2016, *Noguera et al. v./ Ryanair* for the interpretation of the Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, interpreting Article 21(b) of the regulation as conferring jurisdiction on the court

of the place where or from which the employee actually carries out his work and, in the absence of such a place of business, the place where it carries out most of its activities. The case concerned labour disputes brought by Spanish and Portuguese employees of Ryanair before the Belgian labour court, i.e. the court of the place where they habitually carried out their work (where they took up their duties and to which they returned at the end of their duties), and not, as Ryanair questioned, before the court of the state where the registered office of the employer is located

Court of Justice 15/09/2011, C-155/10, *Williams et al. v./ British Airways* concerning the remuneration of airline pilots in respect of paid annual leave, in accordance with Article 7 of Directive 2003/88/EC and the European framework agreement of 22 March 2000 on the organization of working time of air crew in civil aviation industry. The Court recalled that the right to paid annual leave must be regarded as a particularly important principle of Community social law, which is, moreover, expressly enshrined in Article 31(2) of the Charter of Fundamental Rights of the EU, and that the expression 'paid annual leave' means that, for the duration of the 'annual leave', the normal remuneration must be maintained, whereas an allowance fixed at a level barely sufficient to avoid a serious risk that the worker will not take his leave does not satisfy the requirements of EU law. Consequently, an airline pilot is entitled, during his annual leave, not only to the maintenance of his basic salary but also, first, to all the elements intrinsically linked to the performance of the tasks incumbent on him under his contract of employment and which are compensated for by a monetary amount included in the calculation of his total remuneration and, second, to all the elements linked to the airline pilot's personal and professional status.

Previously Court of Justice in the case 1/07/2010, C-471/08 *Parviainen* had ruled that an employee working as a cabin steward for an airline who, because of her pregnancy, is temporarily assigned to a ground seat, is entitled during the temporary assignment not only to the maintenance of her basic salary, but also to the elements of remuneration or supplements linked to her professional status. Consequently, the allowances linked to her status as a hierarchical superior, to her seniority and to her professional qualifications must be maintained. According to Court of Justice 1/07/2010, C-194/08, *Gassmayr* this principle also applies to a pregnant employee temporarily absent from work.

Court of Justice 6/10/2021, C-613/20 *Eurowings* concerning the airline's obligation to compensate passengers whose flights have been cancelled due to a staff strike, given that collective action is one of the possible expressions of social negotiation and must therefore be seen as an event inherent in the normal exercise of the activity of the employer concerned. In the same sense: Court of Justice 23/03/2021, C-28/20 *Airhelp* ruling that the SAS pilots' strike did not constitute an "extraordinary circumstance", that's events which, first, by their nature or origin, are not inherent in the normal exercise of the air carrier's activity and, second, are beyond its actual control. These two conditions are cumulative and must be assessed on a case-by-case basis and subject to strict interpretation (CJEU, 17 April 2018, Case C-195/17, *Krüsemann*) in the case of a wild strike declared by pilots. The Court goes on to note that 'the right to strike constitutes a fundamental right provided for in Article 28 of the Charter of Fundamental Rights of the European Union'. Although it represents a moment of conflict aimed at paralysing activity, the Court considers that it "nevertheless remains one of the possible expressions of social negotiation and must therefore be regarded as an event inherent in the normal exercise of the activity of the employer concerned". Therefore, 'a strike whose aim is merely to obtain from an air transport undertaking an increase in the remuneration of pilots, a change in their working hours and greater predictability in terms of working time constitutes an event inherent in the normal exercise of the activity of that undertaking, particularly where such a strike is organised in accordance with the law'.

The jurisprudence of national supreme courts has also dealt with airline litigation. Noteworthy is the judgment of the Italian Court of Cassation, united sections, of 21/07/2021, in the case *FILT-CGIL v. Ryanair* which affirmed the discriminatory nature of the clause included in the employment contract of cabin crew aimed at preventing work stoppages or any other industrial action, excluding recognition of any staff union and preventing any collective action under penalty of cancellation of the contract and loss of any salary increase or shift change. The Court affirms that the company's conduct and the company's practice of excluding any relationship with trade unions in Italy as well as in other EU countries by preventing staff from trade union

membership and collective demands is discriminatory in nature, in breach of European Directive 2000/78 on personal beliefs. As is usually the case, the respondent company contested the lack of jurisdiction of the Italian court and demanded the application of Irish law to employment relationships between the company and its employees: both claims were rejected by the Italian court on the basis of their interpretation in accordance with EU law on applicable law and jurisdiction.

Other national Courts have recently condemned *Wizzair* for the anti-union dismissal of pilots, who were reinstated by a Romanian judge (2014), as well as the Supreme Court of Ukraine in December 2021 condemned the same company for the dismissal in 2020 number of cabin crew because of their affiliation to a union.