

Work Package 3: Industrial Relations pre-Covid19

France

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Part I: General overview of Industrial Relations in France pre-COVID-19

1) Who are the main actors?

France is characterised by trade union pluralism and belongs to the family of industrial relations systems with a strong heritage of Communist-dominated unionism.

On the trade union side five main confederations organise workers across all industrial sectors. These are the *Conf  d  ration G  n  rale du Travail (CGT)*, the *Conf  d  ration Fran  aise D  mocratique du Travail (CFDT)*, *Force Ouvri  re (CGT-FO)*, the *Conf  d  ration Fran  aise des Travailleurs Chr  tiens (CFTC)*, and the *Conf  d  ration Fran  aise de l'Encadrement - Conf  d  ration G  n  rale des Cadres (CFE-CGC)*. French trade unions are broadly divided along ideological lines, owing to traditions belonging to communist, reformist, and Christian social movements.

Since 2008 French law requires trade unions to obtain at least 10% of the votes in the elections for employee representatives at company level to be considered representative at company level, while the threshold to be deemed representative at sectoral or national level is set at 8% of the votes calculated by aggregating the results of the elections for employee representatives at the respective levels. All the five abovementioned confederations managed to meet this condition at national level, while other smaller and autonomous trade unions, such as UNSA or Solidaires, did not.

A certain level of fragmentation can also be found on the employers' side, although, as it will be discussed later (see below, Section I.4) the level of membership is relatively high. Three main confederations can be identified. The *Mouvement des Entreprises de France (MEDEF)* is the biggest organisation, representing companies of all sizes; the *Conf  d  ration des petites et moyennes entreprises (CPME)* focused on small and medium enterprises; the *Union des Entreprises de Proximit   (U2P)* represents small enterprises in the craft sector, but also, following a merger, enterprises providing professional services (such as health professionals or lawyers).

Two recent laws (2014 and 2016) have defined, for the first time, a legal framework for employer representativeness for collective bargaining. They set out a common set of cumulative criteria, identical to those defined for trade union representativeness, measured on the basis of the number of companies belonging to the professional organisations and their employees. This was assessed in 2017, when the MEDEF was found to represent 29% of the organised companies (employing 71% of the workforce), the CPME 35% of companies (with 25% of the workforce), and the U2P 36% of companies (and 4% of the workforce).

2) Is your system highly regulated by the state? Here, it would be good to know something about the character of your IR regime, i.e. regulated or voluntarist in character.

Beyond the pluralist and polarised nature of its trade union movement, the French industrial relations system has historically been described as “**state-centric**”. In general, the system is highly institutionalised and regulated, the Government playing a fundamental role in setting the minimum wage (SMIC) and in granting, via the Ministry of Labour, the extension of the binding force of collective agreements. The law also establishes compulsory negotiations for a list of issues, such as remuneration, working time organisation, and gender equality, either at sectoral or at company level.

The important role of the state also means that the system can be profoundly impacted by reforms enacted by the legislator. In recent years this was particularly visible in the context of collective bargaining and employees’ representation at company level, which will be presented below. At the same time, this also entails a focus of collective action and industrial relations on (the opposition to) broader legislative reforms.

Finally, the state plays a central role in the control and enforcement of labour law through the system of labour inspections and of judicial remedies through labour courts.

3) What kind of employee representation is prevalent in your country?

- a. Union representation
- b. Works councils
- c. Both? If yes, how do these two levels interact? Do they work together or compete with each other.

At company level the representative trade unions play a very important role in organising elections and in the first round of elections for works councils and employee delegates, and they appoint a representative to the works council. They can set up trade union sections and appoint trade union delegates. As such, while both the union representation channel and the works council channel coexist, trade unions have a quasi-monopoly also over the latter form of representation. As such, the coexistence of both channels does not, in general, lead to tensions or conflicts.

Representative trade unions at company level can each set up a **trade union section (SS)**, without limitation when it comes to the size of the company. Also, trade unions who do not meet the threshold to be deemed representative in a given company but who do have affiliated workers in such a company can set up a trade union section under certain conditions. The trade union section enjoys the prerogatives concerning trade union freedom and freedom of expression.

On the other hand, in companies with more than 50 employees, representative trade unions can nominate a **trade union delegate (DS)** with a number of important rights related to the representation of the trade union vis-à-vis the employer. These delegates, however, must themselves receive the support of at least 10% of the workforce. The number of trade union delegates for each representative trade union varies in function of the size of the company, going from a minimum of 1 to a maximum of 5. Importantly, trade union delegates have a monopoly of the power to negotiate and conclude collective agreements with the employer.

Since 2017¹, the elected representation of all employees has been unified under the **Social and Economic Committee** (CSE). This new body has inherited the functions previously spread across personnel delegates, works council, and the Health, safety and working conditions committee. Setting up the CSE is mandatory for all private sector companies with at least 11 employees. However, prerogatives and functions vary on the basis of the size of the company, notably in light of two additional thresholds, respectively at 50 and 300 employees. The labour code provides sanctions for employers who hinder the creation or the functioning of the CSE. The employer is the president of the CSE and the number of workers' representatives varies (between 1 and 35) on the basis of the size of the company and, potentially, can also be modified via pre-electoral agreements. Trade union delegates are also members of the CSE with a consultative role. The CSE centralizes information and consultation prerogatives but has also other prerogatives concerning the possibility of alerting the labour inspectorate, as well as health and safety (although these are limited in companies below the threshold of 50 employees).

4) What is

- a. Union density in your country
- b. Employers' organisations rates in your country
- c. Collective bargaining rate in your country

Trade union density in France is among the lowest in the European Union. The latest figures point to a 11% unionisation rate in 2016, with an important difference between the public (19%) and the private (8.4%) sector. This apparent weakness must be somewhat nuanced on the basis of the results of elections for employees' representatives, which still show a very broad support for trade unions, as well as in light of the participation to strike and collective actions called by trade unions. The fact that virtually all collective agreements at sectoral level see their binding force extended *erga omnes* by the Government, also leads to a lack of incentives when it comes to the affiliation to trade unions.

If one turns to the rate of affiliation to an **employers' organisation**, the latest numbers (2019) indicate that around 25% of French companies are affiliated to one of the employers' organisations presented above (Section I.1). However, this 25% of companies employs around 79% of the French workforce in the private sector.

Notwithstanding the low trade union density, and because of the pivotal role played by the extension mechanism for collective agreements, France is characterised by an extremely high rate **of collective bargaining coverage**, with more than 90% of the workforce covered by a collective agreement.

5) How important is legislation vs. collective agreements in regulation of labour market?

While collective agreements have a very important role in determining working conditions, the **state-centric** nature of the French system of industrial relations means the legislation remains the foundation of the whole system. On the one hand this leads to strong institutionalisation, allowing trade unions to mobilise power resources (labour inspections, judicial proceedings) against recalcitrant companies without having recourse to collective action. On the other, this leaves the system exposed to reforms enacted by ruling majorities and governments.

An important area where the role of the state, as opposed to collective bargaining, is particularly visible is the setting of the **minimum wage**. This is one of the main driving forces of wage dynamics in

¹ Ordonnance n° 2017-1386 of 22 September 2017.

France, since a large share (43%, source: ETUI) of sectoral collective agreements have their lowest wage bracket set within 1% of the national minimum wage.

6) How is the bargaining primarily organized - sector, industry/branch and/or company level – and what does that mean for the power balance?

Collective bargaining takes place at three levels: at national level covering all private sector employees, at industry level (either with national or local coverage); and at company or plant level. Both at national and sectoral level, agreements can only be signed by the representative trade unions. They also require the signature of confederations with at least 30% of support at the appropriate level, and not to be opposed by confederations with 50% or more of support. Similar thresholds used to apply for company-level agreements. However, since the ordonnances of 2017, the signature of trade unions with at least 50% of support at the company level is required for all company-level agreements. Alternatively, this threshold can be lowered to 30% provided that at least 50% of the employees themselves agree.

Historically, sectoral level collective agreements have represented the main level of negotiation for working conditions. However, this has been profoundly changed by a series of reforms enacted since the years 2000s, and even more so in recent years, with major legislation being introduced in August 2016 and, September 2017. The goal of these reforms was to bring about an organised **decentralisation** of the French system of collective bargaining, by increasing the importance of company-level agreements at the expense of branch level negotiations. That being said, the sectoral level remains the most important ones in terms of ensuring the very large coverage (above 90%) of collective agreements in France. The *loi travail* adopted in 2016 aimed at restructuring sectoral level agreements, in order to reduce the number of sectors, which had exploded to more than a thousand, to a maximum of 200. Most sectoral level agreements cover the whole national territory. However, of the agreements concerning remuneration, only about a half are adopted at national level, the rest being negotiated at regional or local level.

Collective agreements at sectoral level are binding on the employers belonging to the employers' associations which sign the deal. However, the Government can **extend the binding force** of such agreements to cover all the employers (and employees) in the sector concerned. The extension can be requested by any of the parties to the agreement in question, and the decision is taken by the Minister of Labour. Other than formal requirements concerning the agreement there are no specific thresholds which need to be met for the extension to be granted.

The abovementioned trend towards decentralisation culminated with the ordonnances of 2017, which reversed the hierarchy of collective agreement, with the effect that **company level agreements** now legally take precedence over sectoral ones, unless otherwise specified by the law. In this regard, the law establishes a list of topics where the sectoral level still takes precedence, such as in the case of minimum wages and job classifications. Due to this decentralisation trend, the French collective bargaining system features very limited coordination of wage bargaining.

The law establishes certain duties to negotiate, for instance mandating periodic negotiations concerning pay. However, the obligation to negotiate does not imply an obligation to reach an agreement, so that employers remain free to implement unilateral decision after the said process of negotiation.

7) Are certain branches leading in negotiations? (e.g. in Germany and Denmark the metal sectors collective agreements can set the standard for wages and working condition across most sectors, including the public sector)

No such “leading sectors” can be identified in the French practice of collective bargaining, nor the clustering of negotiations around specific moments since sectoral collective agreement do not in general have a fixed duration. However, practical reasons entail that main negotiations happen around the end of the year and right before the Summer holidays.

That being said, the metalworking branch has historically acted as a "compass" or "guide" for smaller branches, although this was less marked than in other national contexts (such as the German one). For example, the negotiations on classifications and pay scales that have just been recently concluded in the metalworking branch will no doubt have an effect on similar negotiations happening in smaller branches. Indeed, after 6 years of negotiations, social partners, with the notable exclusion of the CGT, have recently (7 February 2022) concluded a single national agreement covering the whole metalworking industry, which replaced 78 pre-existing territorial collective agreements. Given the historical inflation in France, sitting at around 4.8% at the time of writing, wage negotiations are presently in the spotlight. Industrial sectors, such as the abovementioned metalworking sector, have obtained comparatively high pay raises (around 2.5% on average), which might have an impact on negotiations in other sectors.

8) What has changed over the 10 years leading up to COVID-19?

- a. centralized vs. decentralized negotiations
- b. strengthening or weakening of social partners
- c. strengthening or weakening of one of the parties (unions or employers)

From the point of view of social dialogue, the decade preceding the COVID-19 crisis has been characterised by a continued tendency towards **decentralisation** of collective bargaining, fostered by legislative intervention and explicit political will from the subsequent French governments and parliamentary majorities. Indeed, the evolution of the minimum wage and collective bargaining at company level are now the main elements driving wage dynamics.

In terms of balance of power, the trade union movement at national level has shown strong divisions during the recent years, leading to their **weakening**. The inability to stop the reforms enacted by the Macron government, for instance concerning the said decentralisation of collective bargaining, has shown the impact of this trend.

The role of trade unions is evolving in an ambivalent way over the last decade. Labour law reforms have simultaneously enhanced the strength and influence of unions leadership (at company as well as national level) and weakened the direct influence of union membership. As an illustration of this trend one can refer to the merging of all representative bodies at company level under the **Social and Economic Committee (CSE)** in 2017. Because of this, the number of representatives has considerably been reduced (by around 40%) while the number of “hours” (or “mandates”) has been concentrated, by effect of the law, in the hand of the few remaining workers’ representatives. The practical effect of this reform is to create workers’ representatives who are pulled away from the workplace and their colleagues and pushed to spend most of the time in meetings with company management or leadership. To sum up, the legislator has made sure that the head of workers unions are strengthened while at the same time weakening the link with their “base”. It is common to draw a parallel with

Germany on this matter and point out that France seems to be headed towards a model based on “codirection”, but without any of the guarantees of such a system would entail, leading to what might be understood as a more “managerial” role for trade unions.

The ambiguity can also be identified if one turns to the question of the influence of social actors and of collective autonomy. After a period, starting in 2001, during which legislators and governments have built a system where the consultation of social partners was required before any major legislation concerning labour laws was passed, the opposite trend can now be identified. These consultations, appearing more and more futile for all the actors in play, have been mostly side-lined in recent years. This has led to calls from trade union leadership to reinforce these consultations, a call which has, however, not been shared by employers’ associations.

Part II. Industrial Relations in aviation pre-COVID-19 in France

1) Who are the main actors in aviation?

On the **employers' side**, the **FNAM** (National Federation of Aviation and its Professions) is the main actor, covering:

- Aviation companies with a French operating license, constituting the main group of companies represented by the FNAM and covering around 50000 employees
- Airports
- Ground operations, constituting the second main group represented by the FNAM, covering around 20000 employees
- Helicopter companies
- Maintenance and smaller aircraft companies.

Companies represented by the FNAM cover around 95% of employees in the civil aviation sector. The Federation is the only representative organization on the employers' side when it comes to social dialogue. The group AirFrance is the largest company represented inside the FNAM, and the one with the largest "weight" inside the Federation, followed by other smaller companies such as Air Caraïbes or CorsAir. A second smaller employers' association, SCARA (Association of Autonomous Aviation Companies) represents employers covering around 5% of employees in the sector. This association is not deemed to be representative in terms of the participation to the social dialogue.

On the **pilots' side**, the main trade union is the **SNPL** (National Pilot Trade Union), who only represents pilots. This constitutes the main feature distinguishing the aviation sector from the general landscape of trade unionism in France, as the SNPL only represents pilots and their interests and is not affiliated to one of the main trade union confederations. The SNPL represents pilots of around 40 French companies. It is the only representative pilots' trade union. It participates to the representative bodies at company level and engages in collective bargaining with the employers' side. At European level, the SNPL is member of ECA (European Cockpit Association) and E4FC (European for Fair Competition). The trade union is organized in sections, one for each company, apart from the smallest ones or those with a limited number of affiliated pilots.

Employees from **cabin crews** are represented by trade unions affiliated to the main French confederations CGT, CFDT, CGT-FO and so on. The same applies to **ground crews**.

2) How has the financial situation and employment situation in aviation in your country developed prior to COVID-19?

The aviation sector in France has known a period of crisis already around 2008. This has slowly recovered, and all our interviewees were concordant in affirming that the situation was markedly improving in 2018-2019. Due to the age composition of the workforce, the sector was expected to create new employment opportunities due to retirement of a previous generation. However, this was stopped by the arrival of the COVID-19 crisis.

Looking at the period between the 2008 crisis and the present one, the main relevant element concerning companies with a French operating license is the slow but constant erosion of their market share compared to companies with non-French license. At the beginning of the 2010s the former had

a 60% market share of flights in France. Just before the COVID-19 crisis this had fallen to 43% (Interview 1). The impact of this reduction on employment levels is less pronounced, due to the fact that while the *market share* of companies with a French license was shrinking, the overall size of the same market was growing, leading to, broadly speaking, stable, or slowly decreasing, levels of employment.

The sector has, globally, and particularly when it comes to its main group (AirFrance), a tradition of social dialogue. As such, the reduction in employment has generally come through voluntary redundancies and the non-replacement of retired personnel. That being said, voluntary redundancies have been relatively frequent in the period preceding the COVID-19 crisis. For instance, AirFrance, has gone through four voluntary redundancies plans in the last decade.

There are of course exceptions to this, notably when it comes to **bankruptcy** events. Indeed, right *before* the start of the COVID-19 crisis (autumn 2019), two French aviation companies, Aigle Azur and XL Airways, declared bankruptcy, leading to around 1700 redundancies.² Trade unions were involved in negotiations, notably with AirFrance to try to absorb these redundancies. These negotiations were initially successful, with the opening of vacancies which were to be filled by the workers which were made redundant in the context of these bankruptcies. However, this process was stopped abruptly by the arrival of the COVID-19 crisis, so that these workers have not been hired yet by AirFrance (Interview 3).

One of our interviewees identified the pressure, though unfair competition and social dumping, from companies established abroad as the main driver for the economic woes of the sector in France. Notably, the practices of certain companies to use self-employed workers in roles otherwise covered by employees raises concerns (Interview 2).

3) What kind of employee representation is prevalent in the aviation industry in your country?³

- a. Union representation
- b. Works councils
- c. Both? If yes, how do these two levels interact? Do they work together or compete with each other

The functioning of the sector is not different from the general organization of employees' representation under the French system of industrial relations. Both union representatives and elected representatives are present, depending on the size of the company in question. In chronological terms, the presence of union representatives generally precedes the organisation of elections and constitutes the first step towards the start of social dialogue inside a given company.

At the same time, it is possible to identify an "**Air France model**". Under this system, specific electoral colleges for pilots and for cabin crews are put in place, ensuring their representation even though they constitute a smaller portion of the workforce compared to ground staff. One of our interviews sketched such a ratio, when it comes to AirFrance, as 1/3 cabin crews and 2/3 ground staff. This model

² AirJournal, Faillites Aigle Azur, XL Airways : un manque de stratégie nationale dans le secteur aérien, 28 September 2019, <https://www.air-journal.fr/2019-09-28-faillites-aigle-azur-xl-airways-la-fnam-denonce-le-manque-de-strategie-nationale-dans-le-secteur-5215262.html>

³ You might need to consider that there will be differences between the legacy and low cost airlines, i.e. between your designated legacy airline and Ryanair, the former recognizing trade unions whilst Ryanair refuses to work with any form of employee representation.

does not necessarily exist in other companies, notably with regard to the specific electoral college for cabin crew members. The existence of a specific electoral college is even more relevant when it comes to pilots, as it basically ensures that this category can elect their own representatives, something that would otherwise be impossible in light of their very low number compared to the overall workforce, which can be situated at around 9% of the workforce of a given company (interview 2).

The **French legislation** mandates the creation of representative bodies once a given company meets certain thresholds in terms of number of employees. This can be enforced by trade unions. This was the case in certain judicial procedures initiated by trade unions against Ryanair (see below Section 5). That being said, the effective functioning of these bodies is heavily dependent on the management strategy and culture of social dialogue. On this point, one of our interviewees stressed how having elected representatives was not enough to ensure a smooth process of information and consultation, with the representative bodies in certain companies described as “empty shells” due to the company policies of not allowing enough time for discussions and not disclosing sufficiently detailed information (Interview 3).

One of our interviewees also highlighted a potential difficulty looming over the functioning of workers’ representation, notably the difficulty in finding workers willing to run as representatives, coupled with the age structure of present representatives. This was linked to the perceived risk of reprisal of employers once the mandate as worker’s representative ends (now after a maximum of 12 years and three terms), and with it the application of employment protection legislation associated with the position (Interview 4).

4) What is

- a. Union density in aviation
- b. Employers’ organizations rates in aviation
- c. Collective bargaining rate in aviation

Due to the organisation of the workforce in categories with their own strong specificities, it is better to consider unionisation rates separately than that being said, compared to the overall unionisation rate in France, the Civil Aviation industry shows very high rates of unionisation across all categories. This is due to historical trends among these categories and two enduring traditions when it comes to the practice of unionisation.

The unionisation rate for **pilots** stands on average at 74% (Interview 2). Indeed, there are companies where this rate can be as high as 95% or even 100%. In the largest company, Air France, this rate stands around 70% to 75%. In one of our interviews, this was strongly linked to historical trends of unionisation in the category and in the transmission of those trends across generations of pilots. Interestingly, EasyJet is the second company for number of members of the SNPL (pilots’ trade union). Through the use of the institutional machinery set up by the French legislation, the trade union has been able to “force” foreign companies to sit at the negotiating table. This is particularly visible in the court cases initiated by the trade union against Ryanair (see below Section 5). To the same end, the trade union worked closely with other actors, such as labour inspections.

The unionisation rate for **cabin crews** is situated between 60% and 70% (Interview 3). Going beyond the historical trends in the sector, such a high rate of unionisation, especially if compared to the general French rate, also stems from the fact that cabin crews in many cases do not have a floor of rights upon which to fall back in the absence of a collective agreement. This magnifies the importance

of trade union presence and social dialogue at company level. In one of our interviews we were told that in many cases the unionisation momentum develops bottom-up, with workers in low cost companies contacting trade union officers in order to join the given trade union and obtain information and support concerning their working conditions (Interview 3). Trade unions in the sector have accompanied these tendencies by adapting certain practices to the important differences in working conditions between legacy, low-cost, and ultra low-cost companies, by proposing different trade union fees and even waiving them altogether in the case of workers facing the worst working conditions.

Ground crews in their turn have unionisation levels comparable to those observed in the broader French private sector, hence situated between 8% and 10% and remaining relatively stable (Interview 4).

As mentioned in Section 1, on the **employers' side** the affiliation rate is close to 100% when it comes to companies having a French license, with the main employers' association (FNAM) covering most companies in the sector, representing around 95% of the workforce. A smaller association (SCARA) is also present, which represents the companies employing the remaining 5% of the workforce (Interview 1).

Due to the lack of sectoral agreement covering pilots and cabin crews (see below, Section 8), it is hard to assess the precise **coverage of collective agreements**. However, all our interviewees were concordant in affirming that most aviation companies are covered by a company agreement. This is the case, for instance, for all the companies which are part of the AirFrance-KLM group, including not only the main company, but also the low-cost subsidiary Transavia. That being said, some ultra low-cost companies, such as Ryanair, do not negotiate agreements at company level and are, as such, not covered by any collective agreement. This remains limited to a small number of companies (Interview 3).

5) What is the role of the state in aviation in your country?

The French state is a shareholder in the main company with a French licence, notably Air France. However, AirFrance remains a private company and the French state does not hold a controlling majority. As such is the role played through this presence is not always straight forward to gauge.

The presence of the **state as a shareholder** in Air France, where the French state has 15% share, or the capital, represents specificities. Of the French situation in the whole European. Context. The impact of these specific situation is, however, hard to coach. Going beyond the debates concerning whether these is. Ah, positive or negative element for the French aviation industry. One can look at situations where the state could have leveraged its role. As shareholder, in order to exert a certain pressure.

That being said, one former CEO of AirFrance, who left in the context of an industrial conflict (see below Section 9) declared that he had never felt the "activism" of the State shareholder in his activities. However, he continued, the presence of the public shareholder has an impact on the attitudes of its employees, who feel "protected" by this presence and, as such, are more likely to engage in industrial conflict of protracted nature. Finally, he also made a connection between this presence and the difficulties in reaching a compromise regarding working conditions in the context of collective bargaining, because, in his opinion, AirFrance employees feel like there are "untouchable" and, as such, would not accept the idea that the company could suffer from competition (Interview

1). However, other interviewees highlighted how, during the last decade, the presence of the public shareholder had had a relatively minor impact apart from specific interventions in case of protracted industrial conflict (Interview 2). These specific interventions range from a role of informal mediation to one of moral suasion addressed to the management of AirFrance.

On the other hand, the presence of the public shareholder does not seem to have a visible role in the context of social dialogue. One of our interviews highlighted a potential role of “moral suasion” of the government on AirFrance in opening up vacancies to reabsorb some of the personnel who had been laid off in the context of recent bankruptcies of two aviation companies (see above, Section 2), notably in light of the fact that AirFrance would take over the flying slots of these companies (Interview 3). The main impact on social dialogue can be identified in the (important) role played in choosing the CEO of AirFrance, so that the choice of one manager or the other can modify the whole approach of the company to collective bargaining and the broader relationship with trade unions.

Other than these specific situations the state as a role through the institutional machinery aimed at **guaranteeing the functioning of the French model of social dialogue**. These has been sometimes used by trade unions in order to “force” low-cost companies to recognise their presence and to establish consultation and representation bodies. One such example is the fight between the trade unions and RyanAir before the French courts. This dispute concerned a broader set of topics, including a large amount of money to be paid to French social security institutions and other violations of French labour laws. However, for what matters in the context of the present Report, the action also concerned collective labour rights. Notably, it concerned the failure of Ryanair to set up several bodies, though some of these have since been merged by the reforms of the French legislation, such as the employee delegates, trade union delegates, works council, and health and safety committee. Ryanair was found in breach of the French legislation both in first instance⁴ (2011) and in the appeal decision (2014).⁵ However this was overturned by the French Supreme Court⁶ (2018) and sent back to the Paris Court of appeal for a new procedure, with a decision expected for 2022. That being said, and at least for what it concerns the bodies of representation, information and consultation, the procedures were successful inasmuch as Ryanair did establish the said bodies and organised the first personnel elections in December 2019.⁷

While this machinery seems to be effective when it comes to the ability of trade unions to mobilise it and activate its resources, one of our interviews pointed out the insufficient number of **labour inspectors**, with certain airports only having a single labour inspector for the whole airport area (Interview 4). Furthermore, the strong presence of aerospace industry in France (AirBus), has sometimes led to policy choices which certain actors have read as favouring certain carriers for flight slots in order to influence their buying policies in terms of aircrafts (Interview 4).

6) Has legislation been passed that specifically affects IR in the aviation industry in your country?

An important legislative evolution for the sector is situated outside the time frame explored by the present report. However, because of its importance, it is worth mentioning the 2006 reform of the

⁴ Criminal Court of Aix-en-Provence, 8 November 2011.

⁵ Court of Appeal of Aix-en-Provence, 28 October 2014.

⁶ Cour de Cassation, 18 September 2018, 11-88.040 15-80.735.

⁷ AirJournal, Des élus SNPNC chez Ryanair France, 13 January 2020, <https://www.air-journal.fr/2020-01-13-des-elus-snpnc-chez-ryanair-france-5217556.html>

concept of **operational base**.⁸ These had an important impact on the possibility of bringing an action against foreign carriers, and in particular low-cost companies, from the moment they established an operational base (premises, facilities and workers staying overnight) in the French territory, as well as to include their workers and the scope of French labour law. The importance of such a tool is highlighted by the dispute between the French trade unions and Ryanair which we have briefly analysed at the end of the previous section. Indeed, one of our interviewees described these reforms as a tool to ensure fair competition in the Civil Aviation industry (Interview 2).

While there has not been a specific legislative intervention impacting the sector as such, **broader reforms** adopted in the time frame covered by the present report did have an echo in the sector. On the one hand, the reforms of social dialogue, touching for instance the hierarchy of collective agreements, had a limited impact on the sector because of its specificity which we will explore in the next paragraph. On the other, the reform of retirement ignited industrial conflict in the sector in particular because it touched the pilots' and cabin crews' specific retirement fund system (Interview 2, Interview 3).⁹ We will come back to this later (Section 9). Also, the reform of representative bodies of workers at company level¹⁰ had an impact on the sector, although this does not appear to be different from the broader economy.

One of our interviewees pointed out that the *absence* of certain legislative interventions has had the most impact on the industrial relations climate in the French aviation industry. This was notably the absence of harmonization of working conditions in the sector at EU level, which has led to the increase of competition based on lower labour and social costs. This was particularly relevant due to the high mobility of employees in this sector, which, much beyond the usual situation of the freedom of establishment or freedom to provide services, leads to people working side by side, in the same airport or base, with important differences in working conditions (Interview 1).

7) How is bargaining primarily organized in the aviation industry, that is, sector, industry/branch and/or company level, and does Ryanair comply with the traditional mode of bargaining?

There is a **sectoral collective agreement** for the aviation sector, but this only covers ground staff. This part of the sector is therefore covered in the same way as the “standard” French model. On the other hand, pilots and cabin crews are not covered by a sectoral collective agreement. This represents the main specificity of the sector *vis-à-vis* the French model, which is generally underpinned by sectoral collective agreements. Negotiations at sectoral level do happen, however these only cover limited

⁸ Article R330-2-1 of the Civil Aviation Code, inserted by decree n° 2006-1425 of 21 November 2006: “An operational base is a set of premises or infrastructures from which an undertaking carries out a stable, usual and continuous air transport activity with employees who have the effective centre of their professional activity there. For the purposes of the above provisions, the centre of an employee's professional activity is the place where he/she usually works or where he/she takes up duty and returns after completing his/her assignment” (our translation). This has been slightly modified by decree n°2021-1483 of 12 November 2021: “An operational base is defined by the exercise of a regular, stable and continuous air transport activity using technical, material and human resources, including the use of employees whose actual centre of professional activity is at the aerodrome concerned. For the purposes of the above provisions, the centre of an employee's professional activity is the place where he/she usually works or where he/she starts and ends his/her service”.

⁹ It is worth noting that the scheme is autonomous, meaning it is 100% financed by the flight crews' and the employers' contribution. Therefore, the conflict revolved around the argument the this scheme should not be used to finance the “general” pension scheme (Interview 2).

¹⁰ Ordonnance No. 2017-1386 of 22 September 2017.

aspects with a strong cross-cutting element, such as lifelong learning or training (Interview 3). Attempts to negotiate a collective agreement covering pilots and cabin crews have so far failed. Several factors can be identified to explain this failure. On the one hand, there is a political will by the French government to reduce the overall number of sectoral collective agreements, therefore favouring broader collective agreements covering a large industrial sector. In the context of the aviation industry this entails a pressure to negotiate a single collective agreement covering all the different categories of personnel: pilots, cabin crews and ground staff. This pressure is relevant and effective because of the role of the government in ensuring the universal application of an (hypothetical) collective agreement.

Negotiation concerning such a broader collective agreement are ongoing since around 2018. This coincides with the above-mentioned political will of limitation of the proliferation of sectoral collective agreements, a situation which has made it hard to achieve an agreement concerning the very architecture of such a collective agreement. Notably, the pilots' trade unions have a specific representativeness recognized by the law. Therefore, these unions are concerned about the possibility that working conditions of pilots would be negotiated by representatives of other categories, thus, in a way, diluting their specificity, and potentially their representativeness in the sector. One of our interviewees explained that the ratio of pilots in the overall workforce of an aviation company is as low as 9% (Interview 2). This entails that even with an extremely high rate of unionisation, the pilots trade union would struggle to be deemed representative in the context of negotiations covering the whole workforce. Although this is less pronounced for cabin crews, the risk is still present for their category as in certain companies, such as AirFrance, the number of ground staff is around the double of cabin crews (Interview 3).

A further difficulty of these negotiation concerns the very content of a hypothetical collective agreement. This is because of pre-existing company agreements, notably in the context of AirFrance, which have comparatively good working conditions. Because of this, the pilots' trade union considers that these would be better preserved by a national collective agreement only covering pilots (Interview 2). This clashes with the vision of the employers' side, who considers that a sectoral collective agreement covering all aviation employees should constitute a floor of rights upon which company agreements would be able to improve. In one of our interviews, doubts were also cast as to the cohesiveness of the employers' position, as the competition from low-cost companies can be used as a threat in the context of negotiations happening in legacy companies and, as such, put pressure on the demands from the trade unions' side (Interview 3).

On the other hand. The increased presence of foreign companies in the French market, such as the ultra low-cost companies Ryanair, Volotea, who do not negotiate company-level agreements, creates a pressure to establish sectoral standards which would apply to these companies for their operations based in France. This might constitute an incentive on the trade union side, and particularly on the pilot side, to agree to a sectoral agreement in order to create this floor of rights capable of applying to these companies.

Ultimately, the negotiations under way before the COVID-19 crisis have essentially stopped due to the impact of the crisis itself. As such, these negotiations are still technically ongoing, but at the moment no breakthrough is in sight.

Coming back to ground crews, who are, as mentioned above, covered by a sectoral collective agreement, one of our interviewees pointed out that this situation was not a watertight guarantee when it comes to the application of the standards included in said collective agreement. This is due to

the fact that certain companies might try to “evade” the application of the agreement by withholding information concerning their affiliation to the main employers’ organisation (Interview 4).

The abovementioned situation makes it so that, in the aviation industry, collective agreements are only negotiated and signed at **company level** when it comes to the working conditions of pilots and cabin crews. That being said, most companies operating in France are covered by a collective agreement. Concerning the exceptions, one of our interviews distinguished legacy companies and low-cost companies (such as Easyjet) on the one hand, from *ultra* low-cost (such as Ryanair or Volotea) companies, on the other. The former group respects the French tradition of social dialogue, negotiating with trade unions and concluding collective agreements, while the latter has a policy of not negotiating at all. Still, some companies situated in this segment (Vueling) have been brought to the negotiating table through the pressure exerted by collective action during the Summer of 2017¹¹ (Interview 3). The only low-cost company with a French operating license, Transavia, is part of the AirFrance group. This company has a company level collective agreement, although this is different from the one of AirFrance, as it for instance, doesn’t include the same provisions on the specific representation for cabin crews. Companies which do not negotiate a collective agreement, fall back to an extremely limited floor of rights when it comes to, for instance, working time, and notably the one established by the Flight Time Limitations Regulation.¹² Some ultra low-cost companies, such as Ryanair, adopt practices which go even further, by proposing a “remuneration package” which leads to the practice of unpaid overtime (Interview 3).

8) What is the balance of power between employee representatives and employers? Here you should focus on agreements, specifically whether they involve employees having to agree to concessions. Naturally, there will be quite huge differences between the legacy airlines and Ryanair.

The balance of power seems to have remained **essentially stable** during the decade preceding the COVID-19 crisis. Our interviews distinguish between “balance in peace” and “balance in conflict”, highlighting that the fact that the balance of power has remained stable, this doesn’t imply that the social climate has remained so (Interview 2). The high unionisation rate ensures a relatively equal power, notably when it comes to pilot, whose threat of collective action is generally considered as believable and, hence, remains a very powerful tool in the hands of the unions in times of more confrontational negotiations.

In one of our interviews, we were also told of a growing practice which has a potential impact on the balance of power, notably in the context of industrial conflict. This refers to the strategy, put in place by companies facing collective actions, to **replace the personnel on strike** with workers, notably pilots and cabin crews, from other bases situated in a different Member State¹³ (Interview 3). It is worth

¹¹ AirJournal, Fin de grève chez Vueling France, 7 August 2017 <https://www.air-journal.fr/2017-08-07-fin-de-greve-chez-vueling-france-5185829.html> .

¹² Commission Regulation (EU) No 83/2014 of 29 January 2014 amending Regulation (EU) No 965/2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council.

¹³ See for instance Ouest France, Vueling. La grève des hôtesse et stewards à Orly sans effet sur les vols, <https://www.ouest-france.fr/economie/transports/avion/vueling-la-greve-des-hotesses-et-stewards-orly-sans-effet-sur-les-vols-5163798>: “in order to operate its ‘thirty or so daily flights’ to the south of France, Spain and Portugal, Vueling has ‘called on flight crews from its bases in Barcelona, Rome and Ibiza’” (our translation).

noting that such a practice is likely to be in breach of French legislation concerning strikes. The effectiveness of this strategy is directly proportional to the amount of personnel available to the company and, as such, might be less effective in times where companies are downsizing.

9) What tensions and conflicts (e.g. strikes, lock-outs or other labour conflicts) can be identified in the decade before 2020?

One notable moment of conflict can be identified in 2014 and was linked to the creation and development of Transavia as a **low-cost subsidiary** of AirFrance. Notably, one of the main points of contention in this dispute was the planned opening of bases of Transavia in other EU Member States (such as Portugal). This was seen as a potential threat to the working conditions of pilots and cabin crews who would be hired by this new subsidiary under an entirely different labour law system than the one applicable to AirFrance (Interview 1, 2). One can see how such a risk stems to a certain extent from the organisation of collective bargaining for these categories, based on company level agreements in the absence of a sectoral one (see above Section 7).

Another moment of conflict is related to the overall **pension reform** announced by the French government in 2019. While this reform entailed a generalised overhauling of the retirement system, it had a specific impact on several of the categories of workers in the aviation industry. In particular, both pilots and flight crews would lose their own specific retirement schemes with an important impact on their career length and benefit level during retirement. As such the pilots trade union threatened a strike which led to complaints from Air France management since they would suffer the important economic losses due to the industrial action without being responsible for the reform itself. These led to the instauration of specific social dialogue between the company and the pilots in order to try and find negotiated solutions so as to maintain the specific regime for pilots even after the eventual adoption of the reform. Similarly, industrial action was threatened by cabin crews trade unions. These led to some of the demands from the actors of the civil aviation sector to be included in the legislative negotiations surrounding the reform.

Finally, the **organisation of collective bargaining**, based on company-level agreements, has an impact on the emergence of industrial conflicts. Notably, these company-level agreements are signed for a fixed term duration, generally between 3 and 5 years (Interview 3). This means that industrial conflicts are “clustered” around the expiration date of these agreements, as this is the time where both employers and trade unions try to obtain concession and leverage their power resources.

10) What has changed over the 10 years leading up to COVID-19 in the aviation industry and are these developments in line with the overall way the industrial relations system has changed?

- a. centralized vs. decentralized negotiations
- b. strengthening or weakening of social partners
- c. strengthening or weakening of one of the parties (unions or employers)

The main trends of evolution during the decade leading up to the COVID-19 crisis have been influenced by **changes in broader social policies**. During this time, AirFrance CEOs had tried to maintain a certain “balance”, broadly speaking, in the managing of working conditions of different categories. One of our interviews pointed out that this has changed in the period immediately preceding the pandemic, with more attention being paid to the respective power of different categories, notably in terms of ability

to mobilise and to hurt the company through collective action (Interview 1). In turn, this can reflect on relationships between these different categories, which sometimes can lead to lack of trust and perceptions of a “social hierarchy” in the sector.

Furthermore, the presence of an important actor such as AirFrance, entails that changes in the management of this one company have a direct repercussion on social dialogue, as different managerial teams bring in a different “culture” of negotiations. This has been stressed in our interviews, particularly when it comes to the present CEO, who seems to have brought in an approach more open to dialogue and negotiation (Interview 2, 3, 4).

The main evolution is related to the **increased presence of foreign operators** with personnel based in France. This has raised awareness of the weakening of the “French” model of social dialogue in the sector, due to the presence of other companies with different cultures of industrial relations. Inevitably, this has led to more awareness of the potential dilution of trade union power and of the importance of creating a floor of working conditions for the whole sector. This is particularly relevant when it comes to the said personnel of foreign company who lives and works in France but might face (much) worse working conditions due to the absence of a sectoral collective agreements when it comes to pilots and cabin crews.

A further, if more limited, evolution is the increased use of the practice known as “**wet lease**”. This indicates the situation where a French (*in casu*) company leases from a foreign company an aircraft together with its crew and pilots. One of our interviewees mentioned an example of such practice in the case of ASL Airlines France who leases aircrafts with pilots from the Polish company Enter Air, as well as a similar example between Volotea and the Latvian company SmartLynx (Interview 2). During the lease, the personnel is considered by the user company to still be based in the country of origin of the leasing company and assumed to be escaping the application of rules concerning the posting of workers,¹⁴ therefore avoiding the application of the whole French legislation and working conditions. The supposed legal basis for this is found in the grey areas created by the application of Regulation 1008/2008.¹⁵ This is once again perceived as a threat to fair competition and a potential source of pressure on working conditions.

¹⁴ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

¹⁵ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast), Article 13. It is worth noting that, while this has not yet been tested in Court, such a legal construction is likely to be in breach of EU rules on posting of workers and, therefore, of French labour and social regulations.

Conclusion

Two main topics emerge from the analysis of the decade preceding the COVID-19 crisis in the context of the civil aviation industry in France.

The first topic is in itself twofold, as it concerns the double anomaly of this sector when compared with the broader French industrial relations system. First, looking at the actors, both the pilots' trade unions and the trade unions of flight crews have a comparatively high rate of unionisation, by far surpassing the average rate for France. This comes both from historical trends, but also to a clear perception of the need for trade union action for those categories (such as flight crews) where working conditions can be extremely precarious, when not outright degraded, notably in the context of ultra low-cost carriers. This situation has contributed to the preservation of a relative balance of power in the sector, due to the presence of a credible threat of, potentially very disruptive, collective actions from pilots and/or flight crews. Such a balance of power is also underpinned by the institutional machinery guaranteeing collective labour rights, notably in terms of the creation of representative bodies. At the same time, the strength of the "French model" of social dialogue in the aviation industry also entails, as a reaction, the strong emphasis on its defence vis-à-vis elements which try to escape from it. I will come back to this in a moment.

The other face of the "anomaly" represented by the civil aviation sector can be identified in the absence of a sectoral collective agreement covering pilots and flight crews. This strongly deviates from the broader situation in France, where sectoral level agreements represent the most important level for the setting of working conditions, even though recent reforms have somewhat shifted the focus to company-level bargaining. The absence of a sectoral collective agreement has important repercussions on the working conditions in the sector, which can vary wildly between companies. This further exacerbates the tensions with foreign companies wanting to "import" a different management style, notably the ones opposed to collective bargaining and social dialogue. It also places a strong emphasis to the specific situation of air carriers and relative strength of trade unions in a given company. However, the high unionisation rate and the presence of strong trade unions organising workers across companies represents a unifying force when it comes to the identification of a common strategy for collective bargaining and industrial conflicts.

Finally, the second topic emerging from the analysis of the decade prior to the COVID-19 crisis is the growing struggle to ensure the application of national standards of social dialogue, working conditions and, even though this is not covered by the present report, social rights to foreign companies operating in France. This is visible both in the context of industrial conflict and in judicial actions initiated by trade unions or French institutions. The upsetting role of transnational employment situations emerged in all our interviews, with our interviewees mentioning the threat posed to fair competition by the application of working conditions going below the national standards. This takes multiple forms, from the refusal to negotiate company-level agreements (coupled with the absence of a sectoral one, as it was just highlighted), to the use of posting of workers, to the strategy of "wet lease", to, finally, the (illegal) replacement of workers on strike with workers brought in from bases situated in a different Member State. Faced with these challenges, the French social actors, and more specifically trade unions, have often relied on the strength of the institutional framework set up by the French legislation, in order to put pressure on recalcitrant companies and at least achieve the established of a minimum set of representative bodies.