

## Work Package 3: Industrial Relations pre-Covid19

### Introduction

The objective of work package 3 is to describe industrial relations within the aviation industry in the seven countries before the COVID-19 epidemic, with a specific focus mainly on the respective legacy airlines/flagship carriers of your country and Ryanair. The report should furthermore focus mainly on pilots, cabin crew and ground staff. Other actors/airline companies can be included in the report if deemed relevant to understand industrial relations in the country in question.

The report has two interlocking functions:

- 1) A description of the general features of the industrial relations in your country
- 2) A description of the industrial relations in aviation pre-COVID-19

This template has to be followed for three reasons: Firstly, the reporting has to enable us to compare general features of Industrial Relations (IR) across countries. Second, variations in IR in aviation compared with each countries specific IR system enables us to point out specificities of aviation IR (like the volatility of labour within aviation, the power of unions in national IR system vis-à-vis employers in aviation etc.)<sup>1</sup> Third, the WP3 is an important background information for WP4 and WP5 in order to understand the changes in IR in aviation during and after COVID-19. In other words, most of the issues described in WP3 about the pre-COVID-19 IR has to be revisited when we do WP4 and WP5.

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<sup>1</sup> For example, in Germany the notion of *Einheitsgewerkschaft* has been the dominant form of organizing employees since the 1940s. Central to this idea, is the notion that employees should be collectively organized across sectors, each sector designated a union. In recent years, though, this principle has been challenged by the emergence of professional unions, which has led to the existence of more than one union within a company and so inter-union competition. This is a new development within German IR, one that breaks with tradition, and one that is being pioneered within aviation.

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

### 1) Who are the main actors?

The Irish Congress of Trade Unions (ICTU) is the single union confederation in Ireland, with 43 individual affiliated trade unions. Although the ICTU plays an important role in relationships with government, it is a grouping of independent and autonomous unions, and does not direct its affiliates. By far the largest union affiliated to the ICTU is the Service, Industrial, Professional and Technical Union (SIPTU), a general union, which makes up approximately one-third of ICTU's membership. SIPTU has members in many industrial sectors, and in both the private and public sectors. The main public service union is Fórsa, formed in 2018 after the merger of three unions (IMPACT, the Civil, Public and Services Union (CPSU), and the Public Service Executive Union (PSEU)). The Irish Air Line Pilots' Association (IALPA) is a branch of Fórsa.

Ibec (Irish Business and Employers Confederation) is the peak employer representative body in Ireland. Ibec members employ approximately 70% of the private sector workforce in Ireland, and it has a significant policy advocacy role. Ibec also lobbies on behalf of small firms through its Small Firms Association (SFA). The Construction Industry Federation (CIF) represents employers in the construction industry, acting as both a policy advocate as well as representing members in industrial relations fora. Irish Small and Medium Enterprises (ISME) represents companies with less than 250 employees. It is a lobby group, and does not engage in collective bargaining. The American Chambers of Commerce in Ireland (AmCham) articulates members' interest in the formulation stage of EU and Irish employment law and policy. It does not engage in collective bargaining, but is a powerful actor given the importance of US foreign direct investment (FDI) to the Irish economy.

### 2) Is your system highly regulated by the state?

The Irish system of employment relations, derived as it is from that of the United Kingdom (UK), has traditionally been classified as 'adversarial' and 'voluntarist'. 'Adversarialism' refers to a situation where there is a strong 'them and us' relationship between capital and labour and each side sees its interests as clearly divergent. 'Voluntarism' refers to a system where the preference is for joint trade union and employer regulation of employment relations and the relative absence of legal intervention.<sup>2</sup> Voluntarism is premised on freedom of contract and freedom of association, whereby the employment relationship is essentially regulated by free collective bargaining between worker and employer representative groups. In such a model, there is no rejection of public intervention or labour law, but the role of the State is seen to be primarily to provide a supportive framework for collective bargaining. The implications of this were that Irish employers and unions were traditionally sceptical of the need for employment legislation, so that voluntary collective bargaining was the key element in the functioning of the employment relations system. Although the traditional pillars of adversarialism and voluntarism have come under stress in the Irish model in recent years (due to, *inter alia*, the decline in trade union density, and the legislative obligations of European Union membership),<sup>3</sup> the foundations of the Irish system loom large when discussing the fundamental scope of industrial relations in the country. Its common law roots have been an important driving force in the development of many IR principles and policies; in particular, the employment relationship has traditionally been founded on the individual contract of employment.

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<sup>2</sup> Hyman, *European Journal of Industrial Relations* 1995, 17 (19).

<sup>3</sup> From 1990 to 2020, 43 major labour law Acts were passed; a huge volume for an area of law unused to statutory regulation. Approximately half of these were required, or heavily influenced, by EU law.

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

In terms of collective employment rights, Ireland provides notably weak *legal* protection for collective bargaining, and for collective worker representation in general. The Irish Constitution protects the right of freedom of association, but trade unions in Ireland enjoy no legal rights (Constitutional, legislative, or common law) to be *recognised* for bargaining purposes by an employer. Thus, while employees are free to join a trade union, they cannot insist that their employer negotiate with any union regarding their pay and conditions. Collective bargaining in Ireland, therefore, is seen as normative; collective agreements are usually not legally enforceable, as they do not generally intend to create legal relations.

The voluntarist model sees little place for legally mandating worker participation in any form. The emphasis on worker representation remains very much on the ‘single-channel of representation’, in which trade unions, where they exist, continue to play the dominant role of representing worker interests. Outside of some (very) limited examples in State-owned enterprises, there are no requirements in terms of board-level employee representation (BLER), and no domestic system of works councils. Ireland, of course, is subject to EU Law measures on European Works Councils (EWCs), health and safety, and information and consultation rights (e.g. on collective redundancies and transfer of undertakings). However, as there is little tradition of legally grounded employee rights to information and consultation or to input into organisational decision-making in Ireland, the model tends to be that worker rights are ‘triggered’ by a specific employer-initiated event (e.g. redundancy) and therefore information and consultation rights tend to be temporary and *ad hoc*. The transposition of Directive 2002/14 on Information and Consultation rights has had little impact. The UK’s withdrawal from the EU has resulted in the potential for change, when it comes to EWCs. A very concrete impact of ‘Brexit’ is that a large number of organisations that had based their European Works Councils (EWCs) in the UK have switched their legal base to Ireland. The Irish legislation transposing the EWC Directive (the *Transnational Information and Consultation of Employees Act 1996*) is widely seen as poorly drafted, and has been the subject of an official complaint, by the trade union SIPTU, to the EU Commission.

#### 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 Ireland hit a peak of approximately 62% in 1980 (although membership levels hit a peak in 2009 of approximately 612,000). The recession of the 1980s, coupled with the rise of Thatcher and Reagan in the UK and US, led to a strategy of tripartite social dialogue from 1987-2010, with the main actors being the State, ICTU and Ibec. Current trade union density in Ireland is estimated at approximately 26% of the workforce, but only approximately 15% in the private sector. Collective bargaining coverage is estimated at approximately 35%.<sup>4</sup> As noted above, employer organisations tend to be policy advocates, and do not generally engage in collective bargaining (which in the private sector occurs typically at enterprise level).

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<sup>4</sup> According to the OECD, trade union density sits at 26.2% in 2020 (<https://stats.oecd.org/Index.aspx?DataSetCode=TUD>). Collective bargaining coverage is 35% in 2017 (last year for figures available), down from 44.2% in 2000.

### **5) How strong are unions/ employers' organisations vis-à-vis the state?**

The trade union movement in Ireland has been quite central to political developments over the past decades. Between 1987 and 2010, a series of social pacts was concluded between the unions, employers and the State (the 'social partnership' process). The social pacts each ran for three years, focusing on issues of pay (for the public, and unionised private, sector), tax reform and a range of other socio-economic issues. Although the pacts were not legally binding, the Irish trade union movement had a strongly institutionalised, and State-sanctioned, role in national socio-economic governance, during a period of unprecedented economic success, and historically low levels of industrial conflict.

After the economic crisis hit in 2008, attempts to negotiate a new social partnership agreement collapsed. In March 2010, the public sector unions and employers concluded a new four-year Public Service Agreement. This was the first in a series of public service agreements, all of which sought to stabilise the public finances (through public service pay cuts and voluntary redundancies), and, in more recent times, to restore pay cuts imposed during the austerity years. The latest agreement, *Building Momentum*, runs until the end of 2022. It provides for modest annual pay increases for public servants (1%), and a 'sectoral bargaining fund' (equivalent to 1% of basic salaries), to deal with grade or sector-based claims within the public service.

In late 2016, the government established the Labour Employer Economic Forum (LEEF), envisaged as a space where the main trade union and employer representative bodies (led by ICTU and Ibec) can meet to discuss areas of shared concern affecting the economy, employment, and labour relations.

The lobbying role of powerful non-State actors, particularly the American Chamber of Commerce Ireland (the representative body for US companies based in Ireland at both government and industry level), has become ever more pronounced.

### **6) What is the balance between social partners and the state?**

There has never been a 'Thatcherite' attack on union rights, as in the UK, and, to date, there has never been a major anti-union public policy in Ireland. The unions' legitimacy has not been challenged by any political party. The trade union movement continues to play an important political role at national level (in the public service, and in the LEEF), and at sectoral level (through participation in Joint Labour Committees- JLCs- for example).

The union movement and main employers' groups (notably Ibec) have representation rights on all of the key State employment relations bodies (e.g. the Workplace Relations Commission (WRC); the Labour Court; and the Health and Safety Authority). Furthermore, legislation in 2015 set up a Low Pay Commission, made up of representatives of unions, employers, and independent academics, whose main role is to make recommendations on increasing the level of the national minimum wage. The current government has pledged to overhaul this body so that it becomes a 'Living Wage Commission'.

### **7) How important is legislation vs. collective agreements in regulation of labour market?**

### **8) How is the bargaining primarily organized and what does that mean for the power balance?**

### **9) Are certain branches leading in negotiations?**

Collective agreements are generally voluntary, and non-legally binding. Outside of the public sector, collective bargaining generally occurs at enterprise level. Multi-employer bargaining in Ireland is rare,

so there are no leading branches or sectors. There is evidence, in some sectors like pharmaceuticals, of ‘pattern bargaining’.<sup>5</sup>

Collective agreements can be given legal effect if such agreements are registered with the Labour Court (known as ‘Registered Employment Agreements’; REAs). Until 2013, these were sometimes made at sectoral level between the main employer body representing employers in the sector and the trade unions representing workers in the industry (and were especially important in the construction sector). This situation changed following a court challenge (see below) and now REAs bind only the parties to them. The *Industrial Relations (Amendment) Act 2015* provides for a new form of universally applicable sectoral terms and conditions in the form of Sectoral Employment Orders (SEOs). Applications to establish such an Order may be made by a trade union (alone or jointly with an employer organisation) where the union is ‘substantially representative’ of the workers of the particular class, type or group in the economic sector concerned. These have replaced the REAs in the construction and construction-related sectors.

Joint Labour Committees (JLCs) provide for the fixing of minimum rates of pay and the regulation of employment in certain sectors where there is little or no collective bargaining, and where significant numbers of vulnerable workers are employed (e.g. retail, cleaning, catering and hotels). JLCs, which comprise of an independent chairperson, appointed by the Minister, and representative members of workers and employers, propose ‘Employment Regulation Orders’ (EROs), which, when confirmed by the Labour Court, set legally binding minimum wages and conditions of employment for workers in the sectors covered. Again, following a court challenge in 2011 (see below) the system was reformed. The number of JLCs was reduced to seven sectors: hotels; catering; retail grocery; hairdressing; agricultural workers; security; and contract cleaning. Two further, new JLCs (in the English Language Schools sector, and the Childcare sector) have only recently been established. At the time of writing, JLCs have re-established sectoral terms and conditions of employment (EROs) in the security, and contract cleaning sectors only; employers in the other sectors (leaving aside the new JLCs, which are in the process of negotiating EROs), have been unwilling to participate in the new system.

Therefore, legal regulation of employment relations has (largely) been left to legislation. Irish legislation in terms of individual labour rights has very much been based on a ‘floor of rights’ model. Ireland almost never takes the option, for example, of ‘gold-plating’ EU labour law directives, and generally places highly in rankings of countries by organisations such as the World Bank, IMF and Organisation for Economic Co-operation and Development (OECD) when ‘Employment Protection Legislation (EPL) scores are allocated (where countries fare worse if their labour law systems guarantee more rights or greater protections to workers). As noted, above there has been a significant increase in labour law legislative activity in recent years; more legislation is due in 2022, including the introduction of a right to statutory sick pay, and a right to request remote working.

### **10) 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)**

If we look at the Irish ‘Anglophone’ IR model, as it stood in 2007 (as we will see, a year in which there was a very significant court decision involving Ryanair), we see a ‘floor of rights’ model in terms of

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<sup>5</sup> W.K Roche and Tom Gormley, ‘The Advent of Pattern Bargaining in Irish Industrial Relations’ (2017) 48 *Industrial Relations Journal* 442.

individual labour law; a model of weak protection for collective labour rights; and a model of job creation heavily dependent on FDI (particularly from US-based multinationals). We also see, however, a tripartite model of national socio-economic governance (particularly important in the context of the public sector), and regulation of employment relations in key sectors of the economy by social partner engagement. The economic crash of 2007-2008, and resulting austerity measures were significant as they impacted on individual and collective labour rights, including mechanisms demanded as a result of Ireland's 'bail-out' programme with the 'Troika' of the European Commission, European Central Bank (ECB), and the International Monetary Fund (IMF). As the 'poster child' for 'successful austerity', Ireland moved into a period of rapid economic growth from around 2015 until the onset of the pandemic. We can focus on four main developments.

First, in 2011, 2013, and 2021 there have been major constitutional challenges to the State's (legally binding) mechanisms for sectoral standard-setting. In the first two challenges (the 'John Grace' case, and the 'McGowan' case) the Irish Courts found the JLC and REA systems to be unconstitutional (essentially, because they devolved law-making power to bodies other than Parliament- notably, the tri-partite Labour Court- without adequate Parliamentary oversight). This led to a major review of legislation in the *Industrial Relations (Amendment) Acts* of 2012 and 2015. The new process established in 2015 was itself challenged in 2021, but this time the Supreme Court upheld the validity of the SEO system (and, by implication, the JLC system also). However, what is clear from all the judgments is that the Irish courts find it difficult to reconcile the traditional common law focus on *laissez-faire* and individual rights, with the field of IR; as one judge notes in a recent case ('Zalewski') '[t]he individual, contractual, focus of what was at one time called the Law of Master and Servant was not easily reconciled with the collectivist approach of the developing trade union movement'. This is an attitude very clearly evident in the 'Ryanair' case (discussed below). The nature of the parties bringing the challenges is also hugely significant. In each case, challenges to the *erga omnes* sectoral mechanisms have been brought by loose groupings of small employers (not affiliated to the main employer representative bodies in the sectors in question); we can see, therefore, a fragmentation of actors on the employer side.

Secondly, collective bargaining in the public sector has continued throughout the period of austerity and beyond; agreements between public sector unions and employers have generally been made and observed; however, this affects the aviation industry less and less (as a result of (partial and full) privatisation).

Thirdly, the tripartite social partnership process of 1987-2010 has not been renewed. However, through the Labour Employer Economic Forum (LEEF), tri-partite social dialogue has been maintained to a degree, and the social partners are consulted systematically on employment relations law and policy matters. Importantly, after discussions at the LEEF, a *Return to Work Safely Protocol* was agreed between the social partners in 2020, to support employers and workers to put measures in place to prevent the spread of Covid-19 in the workplace. Trade unions in Ireland, therefore, continue to play an important role at the national political level, and continue to be important stakeholders in socio-economic governance. Importantly, the pandemic appears to have reinvigorated the desire for deeper social dialogue amongst (some) employers. Ibec has called for a more extensive social dialogue model which, it argues, is vital in a time of crisis and recovery. This is undoubtedly also influenced by the proposed EU Directive on Minimum Wages, and its support for measures to facilitate greater collective bargaining coverage in the Member States. The Irish government has convened a tri-partite High-Level Working Group to review collective bargaining and the industrial relations landscape in Ireland, including the issue of trade union recognition and collective bargaining processes. The Group is due to report in 2022.

## Part II: Industrial Relations in aviation pre-COVID-19

### 1) Who are the main actors in aviation?

Ireland has three State Airports - Dublin, Cork and Shannon Airports which are commercial Semi State Companies (owned by the State, but technically commercially run). Public Service Pay Agreements (see above) do not apply to these companies *a priori*. Daa (Dublin Airport Authority) owns and manages Dublin and Cork airports, and has international airport operations and investment, and a travel retail subsidiary with outlets across the world.

Aer Lingus was established as Ireland's national flag carrier in 1936. The State maintained almost total control of the airline until 2006 when it was floated on the stock exchange, and the State's stake was reduced to 25%. In 2015 Aer Lingus became a wholly owned subsidiary of International Airlines Group (IAG). Aer Lingus was one of the few (state-owned) companies in Ireland with worker directors; this no longer pertains after privatisation.

Ryanair was founded in 1985, and is headquartered in Dublin. It has become one of the largest carriers in Europe, and has transformed the European civil aviation industry with its 'low cost model'. Ryanair tried, unsuccessfully, to buy Aer Lingus on a number of occasions between 2006-2015 (when Aer Lingus was sold to IAG in 2015, Ryanair had a stake of over 29% in the former flag-carrier). Ryanair's offer to the State to build, and operate, a new terminal at Dublin Airport in 2006 was rejected, and the Irish airports remain under State control.

Pre-pandemic, there were four airlines operating with bases in Ireland (Aer Lingus, Ryanair, Stobart, and Cityjet); only the first two continue to operate bases here). A new airline has commenced operations (Emerald Airlines), which is a franchise for Aer Lingus (to run domestic routes in Ireland and Regional UK).

There is no specific overall representative body for employers in the aviation industry in Ireland. However, Ibec has two representative groups in the sector; Aircraft Leasing Ireland, and Federation of Aerospace Engineering Industries (FAEI). Aer Lingus is a member of Ibec (Ryanair is not). Ibec is the nominating employer body for the LEEF aviation sub-group (which comprises two Ibec executives and two industry representatives on the employer side; this was a sub-group set up, largely, in response to the Covid crisis). The National Civil Aviation Development Forum (NCADF) was established in 2016 to 'act as an informal reference point for the development and implementation of government policy impacting on the aviation sector generally', and includes Aer Lingus, Daa, Ibec and Ryanair amongst its members.

There is no compulsory membership in the trade unions in the aviation sector. There has always been a strong tradition of trade union membership in the state-owned Daa, and in Aer Lingus. Strong resistance towards trade union membership was traditionally evident in Ryanair, until the company decided to recognise trade unions for the first time in late-2017. The Fórsa trade union was established in 2018 following the amalgamation of three unions. The Irish Airline Pilots' Association (IALPA) is a branch of Fórsa and represents pilots in Aer Lingus and Ryanair. The services and enterprises division of Fórsa, also represents most unionised cabin crew at Aer Lingus and Ryanair. Ireland's largest union, SIPTU represents a broad range of employee categories, including most unionised ground staff in Aer Lingus. Based on 2020 pre-pandemic figures, most of Ryanair's ground staff are employees (and it seems a small number are SIPTU members), but up to 40% of its baggage handlers are contractors. There is no collective agreement in place at Ryanair for ground staff at present. Functions like fuelling of planes are outsourced by Ryanair. Roughly half of Daa's ground

staff are covered by collective bargaining (mostly via SIPTU), and the DAA use short-term contracts for some of its baggage handlers.

Both Fórsa and SIPTU are members of the ICTU; however, the pilots (through IALPA) traditionally conduct negotiations separately to the other ICTU unions.

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

As an Island nation, civil aviation is vital to Ireland. Ireland is also home to Ryanair, Europe's largest airline, which has its headquarters in Dublin. In 2019, before COVID-19, Ireland was the 16th largest in the aviation market in Europe by total seat capacity (source: CAPA, OAG), significantly above its ranking as Europe's number 26 nation by population (source: CAPA; worldometers.info). Ryanair, with its low-cost model, has transformed civil aviation in Ireland (and Europe). Aer Lingus was privatised in 2006, underwent significant restructuring, and became part of the IAG group in 2015.

Dublin Airport hosted a total of 32.9 million passengers during 2019, setting a new record for traffic at the airport. In 2019, it was the tenth largest airport in Europe, and the fifth largest transatlantic connectivity (dublinairport.com). A significant factor is the availability at Dublin (and Shannon) Airport of 'immigration pre-clearance' for flights to the US. A second terminal at Dublin Airport (T2) was completed in 2010.

It is estimated (by IATA) that airlines, airport operators, airport on-site enterprises (restaurants and retail), aircraft manufacturers, and air navigation service providers employ 39,000 people in Ireland. Daa has 3,000 employees working in airport management and operation, domestic and international airport retail management, and aviation consultancy service. It is estimated that about 21,500 jobs are directly related to Dublin airport operation in areas such as airport security, airline operations, ground handling firms, immigration, customs and air traffic control.

Aer Lingus has approximately 4,000 employees. The number of direct employees Ryanair has based in Ireland is difficult to estimate with certainty but seems approximately 2,500 (it employs approximately 17,000 in total).

Thus, the story of aviation in Ireland pre-Covid is one of rapid, and intensive, growth (most obviously in Ryanair, and Daa, but also, to a lesser extent, in Aer Lingus, after a difficult restructuring process). This growth is somewhat lopsided in geographical terms; while Dublin Airport has grown significantly, there has been less growth in the other airports (in terms of direct employment, and routes).

## **3) What kind of employee representation is prevalent in the aviation industry 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.

As noted above, employers in Ireland have no legal obligation to recognise or collectively bargain with trade unions. As noted, employees in Aer Lingus and Daa have traditionally been represented by trade unions, which have engaged in collective bargaining.

Ryanair was traditionally a non-union company, until late-2017, when it announced it would recognise pilot trade unions (i.e. IALPA), and enter into collective agreements. Previously, Ryanair had insisted



it negotiated only with its Employee Representative Committees (ERCs); these are non-union bodies comprised of employee representatives, selected by the employees. Since this decision, Ryanair has also begun negotiating collective agreements with cabin crew (represented by Fórsa).

An interesting innovation in Aer Lingus was the establishment of an Internal Dispute Resolution Board (IDRB) in 2016 (such a board was also established in Daa on a number of occasions; to deal with the Cost Recovery Agreement in 2009, the T2 transfer issue in 2011 (see below), and a more general forum in 2017). The Board, made up of nominees of the employer and unions, aimed to avoid the historically high use by the airline and its unions of the State's third-party dispute resolution bodies (the WRC and the Labour Court). Collective employment issues could still be referred to those bodies, but only after having gone through the IDRB process. Aer Lingus management announced it would unilaterally withdraw from the process in 2018, a decision strongly criticised by the unions. It does not appear the process has been used since 2018, and the IDRB is effectively defunct.

#### **4) What is**

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

Precise figures on union density in aviation are difficult to ascertain. There is a tradition of trade union membership in Aer Lingus and Daa (given their State-owned history). In very recent times, trade unions have been recognised by Ryanair.

As noted above, there is no overall sectoral employer representative body, although Aer Lingus is an Ibec member.

As a result, it is difficult to ascertain collective bargaining coverage in aviation in Ireland. This was traditionally relatively high in Aer Lingus and Daa, and non-existent in Ryanair until very recently. Estimates as of early 2020, pre-pandemic, seemed to suggest that roughly 60% of ground staff (including air traffic management) in the sector were covered by collective agreements. For pilots and cabin crew, the coverage was estimated at about 80%. Therefore, of course, we can infer density levels are lower than these coverage figures (these figures would exclude Ryanair, of course). Prior to Covid, bargaining in the Daa and Aer Lingus was largely conducted via the 'Group of Unions' (all the unions recognised by the employers) under the auspices of ICTU.

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

In response to the EU's liberalization of aviation, the State oversaw the full privatisation of Aer Lingus. The State retains control of the key airports (at Dublin, Cork, and Shannon) although these are managed by the semi-state company, the Daa (in the case of the first two), and by the Shannon Airport Authority.

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

There is no specific legislation applying to industrial relations in aviation.

**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?**

As is the usual case in Ireland, collective bargaining takes place at company/ enterprise level.

**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.**

Aer Lingus underwent a period of significant restructuring during the early 2000s, which resulted in a survival plan (the 'Greenfield Plan') being agreed by management and unions in 2010. The plan included voluntary redundancies, pay cuts, a pay freeze, new rosters and new work practices. Fortunes improved at the company over subsequent years, although cost-cutting measures continued to be a recurring point of contention, and IR remained poor (resulting in an attempt to improve the situation via the establishment of an IDR; see above). There was strong initial resistance from unions (and some politicians) to the IAG takeover plan, and, although it has now 'bedded down' to some extent, concerns linger about outsourcing plans. In 2017, Aer Lingus unions voted to accept a Labour Court recommendation for a pay rise of 8.5%; this was the first pay rise in the company since 2010.

A 'Cost Recovery Programme' was agreed by SIPTU and the Daa in 2009.

A bitter dispute over a huge deficit in the pension fund of employees of Daa and Aer Lingus was a point of some controversy for many years (with a court ruling on one aspect of the dispute delivered in 2020, despite legislation to address the issue being introduced in 2014).

In terms of ground staff, relationships between the main union, SIPTU, and the employers (Daa and Aer Lingus) have often been adversarial (as is typical of the Irish model). With the opening of Terminal 2 at Dublin Airport in 2010, there was controversy about the transfer of staff from the existing Terminal 1 to T2 (the latter being operated by a wholly-owned subsidiary of Daa). The agreement reached allowed staff to transfer from T1 to T2 with severance pay. Pay rates at T2 were set at a lower rate than T1.

A huge change, of course, has been the decision by Ryanair to enter into collective bargaining negotiations with trade unions in late-2017.

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

Levels of industrial action in Ireland are relatively low by European standards. There have been few large-scale disputes, but the threat of strike action by unionised Ryanair pilots in December 2017 is widely seen as influential in the airline's decision to recognise trade unions in Ireland.

At Aer Lingus the IAG takeover in 2015 prompted fears of outsourcing, but, by and large, recent disputes have been resolved (often with the aid of the State's third-party dispute resolution bodies, the WRC and the Labour Court).

The issue of 'bogus self-employment' has been the focus of considerable attention in recent years. Some of this has focused on Ryanair's model of employment, whereby only (approximately) 30% of

its Irish pilots are directly employed. Some are engaged via personal service companies or employment agencies; the former issue, in particular, has come under some scrutiny (in the Irish Parliament, as well as from unions and academics).

It is important here to linger on the role of Ryanair, which has been extremely significant in Irish IR in general (not just in the aviation sector).

Ryanair was (seemingly) implacably opposed to collective bargaining in Ireland. Indeed, a seminal Supreme Court decision regarding collective bargaining (in 2007) was taken by Ryanair (against the Irish Labour Court).<sup>6</sup> The case centred on the *Industrial Relations (Amendment) Acts 2001-2004*. These provided a route for workers, whose employer did not engage in collective bargaining, to have their union refer disputes on pay and conditions to the Labour Court.<sup>7</sup> The Labour Court ultimately had the power to issue a legally binding determination on pay and terms of employment. Under the Acts, therefore, an employer could be compelled to grant union representatives the right to represent unionised employees on specified workplace issues relating to pay and terms and conditions of employment, but could not be forced to make arrangements for collective bargaining.

The Ryanair case centred on a dispute between a number of pilots, members of IALPA, who sought to have the union negotiate with Ryanair about various issues on their behalf. Ryanair refused to negotiate and, as a result, the union invoked the procedures under the Acts. When both the Labour Court and the High Court found against it, Ryanair appealed to the Supreme Court. Ryanair contended that it did engage in 'collective bargaining' as employees, including pilots, elected employee representatives to Employee Representative Committees (ERCs), which negotiated directly with the company on an on-going basis in relation to all terms and conditions of employment. The Supreme Court (without deciding the issue) felt that this *could* amount to collective bargaining; if machinery existed in Ryanair whereby the pilots had their own independent representatives who sat around the table with representatives of Ryanair with a view to reaching agreement if possible, the Court found that this would seem to be collective bargaining within an ordinary dictionary meaning. In an *obiter dictum*, which has proven to be hugely influential in Irish IR for the last 15 years, one judge noted that it was 'not in dispute that as a matter of law Ryanair is perfectly entitled not to deal with trade unions nor can a law be passed compelling it to do so'.<sup>8</sup>

The case was sent back to the Labour Court for final decision, but was never re-heard. The Supreme Court decision, though, seemed to emasculate the legislation; almost no cases were taken until the legislation was revised in 2015 (and very few cases have been taken under the revised legislation). Symbolically, the decision was seen as a significant defeat for the union movement in terms of attempting to organize in a high-profile 'non-union' company, and for hopes of strengthening Irish law on collective bargaining rights. In terms of Ryanair itself, the company was adamant, for the next decade, that its ERCs were the only mechanism by which it would negotiate with its employees. This was certainly the public reaction of the company to industrial unrest in 2017, when some groups of pilots (based throughout Europe) called on Ryanair to recognise an 'European ERC (EERC)'. As a result

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<sup>6</sup> *Ryanair v The Labour Court* [2007] IESC 6.

<sup>7</sup> Note that, despite its moniker, the Irish Labour Court is not part of the regular court system, but is a statutory industrial tribunal, comprised of representatives of unions and employers, and chaired by a government nominee. The Labour Court, depending on the nature of the dispute before it, may grant legally binding 'determinations', or 'recommendations', which are *not* legally binding.

<sup>8</sup> This interpretation would seem to suggest that a *legislative* right to trade union recognition, such as exists, for example, in the UK, would be constitutionally prohibited.

of the company's refusal to engage with either an EERC, or locally with IALPA, some directly-employed Dublin based pilots served notice of strike action in December 2017.

Ryanair performed a dramatic about-turn after this notice, and announced it would engage in collective bargaining with trade unions. This was initially in respect of directly-employed pilots, but the company has entered into collective bargaining with the Fórsa trade union in respect of cabin crew also. In 2018, Fórsa signed a recognition agreement with two cabin crew *agencies* which provide cabin crew to Ryanair. In early 2018, Ryanair signed a formal trade union recognition agreement with the British Airline Pilots' Association (BALPA), making the union the sole representative body for the company's employed pilots in the UK, and signed a recognition agreement with Unite, in respect of cabin crew, in mid-2018.

The initial negotiations between Fórsa and Ryanair were not smooth, with the sides struggling to even conclude a formal recognition agreement, but throughout 2018, both sides continued to engage in collective bargaining negotiations. Nonetheless, the first ever pilots' strike at Ryanair took place in July 2018 (it is estimated that approximately 100 out of the 350 pilots employed in Ireland took part in the action) and a further four days of strike action followed over the summer months. A recognition agreement was finally reached, for cabin crew, at the end of August 2018. At the same time, with the aid of an independent mediator, an historic collective agreement was reached in relation to other matters (including the freight issue of pilot seniority).

The relationship has remained rocky. In summer 2019, strike notice was served by pilots in respect of a dispute over pay and conditions. Ryanair sought, and was granted, an injunction restraining the strike (the Irish High Court concluded it could not be certain that legislative provisions relating to strike ballots had been fully observed). As the pandemic broke out, Ryanair was engaged in court proceedings for damages against Fórsa and several named pilots, arguing that it lost €13.7m as a result of the proposed 2019 strikes.

We have lingered in significant detail on IR at Ryanair during the period pre-pandemic. This is not to underplay other issues in the aviation sector in this period. However, the situation at Ryanair is of huge significance, not only to the parties themselves, and the sector, but it is a 'paradigmatic dispute' in Irish IR as a whole. It has also significant implications for IR at the company in other European countries.

**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)**

There has not been a significant change in the relationship between employers and employees over the past decade, where unions were traditionally engaged in collective bargaining. This has largely continued (in a traditional, rather adversarial fashion). However, at both Aer Lingus and DAA, unions have, especially earlier in the decade, been fighting a rear-guard action, with a number of restructuring and recovery plans required. At Aer Lingus, an Internal Dispute Resolution Board (IDRB) was established in 2016. This private dispute resolution mechanism, comprised a three-person panel

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to mediate, and issue non-binding findings on collective disputes. However, relations do not seem to have markedly improved.

In Ryanair, there has been a seismic and fundamental shift from the airline refusing to negotiate with trade unions, to it entering into collective agreements with Fórsa. It is not yet clear, however, given the intervention of the pandemic, how successful the engagement will be.

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## Conclusion

The Irish industrial relations system suggests a certain level of dialogue has been established. We anticipate, though, that the extent of this dialogue is being/will be tested by the reconfiguration of business operations stemming from the Covid-19 pandemic. With that in mind, Ryanair has already been identified as a party for particular consideration (though it is not the only actor to observe as the Dublin Airport Authority and Aer Lingus may also be parties for further investigation with regards to grounds crew). While this company seemed to back down from its stance regarding collective bargaining, it cannot be anticipated that this initial attempt will be an isolated effort. A further factor that is likely to have an impact is that recent decisions of the Irish Supreme Court have indicated its current openness to different approaches to business operations, without necessarily establishing a commensurate level of employment protections. Together, these considerations provide for an opportunity for impactful decision-making by airlines and airport authorities with regards to Irish industrial relations.

The specific issue of the transient nature of the sector is also well-illustrated by the example of Ryanair. The airline insists that its employees throughout Europe and employed on contracts governed by Irish law (which, as noted above, is relatively weak in terms of EPL, and collective labour law protection). This issue has been the subject of many court challenges throughout Europe; however, it illustrates the crucial issue of 'regime-shopping' in the sector, which is one that will undoubtedly emerge upon further investigation.