

TNA HANDBOOK 2018



Safety

Respect

Unity

Professionalism

We are Transnational Pilot Groups.

Transnational Pilot Groups in Europe are here to unite all pilots who work for an airline which has bases in different countries. On issues that affect all pilots throughout the airline's network, Transnational Pilot Groups seek to speak with one collective voice.

Together, our mission is to ensure fair working conditions for all in an industry that continues to maintain the highest safety standards.

About ECA

The European Cockpit Association (ECA) represents the collective interests of professional pilots at European level, striving for the highest levels of aviation safety and fostering social rights and quality employment.

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This publication has been produced with the financial support of the European Commission, under the project for Strengthening organisation of Trans-national airline pilots in the EU. The contents of this publication are the responsibility of the European Cockpit Association and the guest authors and are in no way be taken to reflect the views of the European Commission.

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Foreword

By Dirk Polloczek

Dear Readers,

Here it is – more than ten years after the first publication from the European Cockpit Association (ECA) on Transnational Airlines (TNAs), we are now publishing the new TNA-Handbook. No development has brought more changes to our professional environment than liberalisation of the aviation industry from national borders. No other issue has kept us busier, has taken more resources than this. For years now, many of our discussions are about how to deal with this trend and how to find the right solutions for our members, the individual pilots flying for transnational airlines. And it is hard to find any that do not work in a transnational setup. Not only the many new business models that have flooded the market, since the European Union made the liberal

aviation industry reality. Also the trend of forming large airline groups (IAG, Air France/KLM & Lufthansa Group) has made an extensive use of the new possibilities & opportunities.

As you are reading this handbook you show an interest in the trends in the industry. Most probably you are working for one of these companies that has expanded its business across the borders of its “motherland”, sometimes generating questions and concerns for those flying for them. With this handbook, we will give you an extensive summary of the state of the industry in this context. We will answer many of the questions that pilots from the many new airlines have brought forward over the years.

Some of these questions seem very logical and evident but some others will require a little more background & explanation:

- Which labour law is applicable to my contract?
- What is the definition of my home base?
- How can pilots organise transnationally?

These questions – just to name a few – should be easy to answer for any individual working in the industry – but they are not! In a study from the Ghent University on “Atypical Employment in Aviation” a third of all pilots working under atypical employment answered that they did not know what labour law their employment was based on! These are shocking numbers and they should serve the industry as a warning signal that a worrisome trend has been established, which in the not too distant future could also impact safety.

It is a shame for the European Union & its members that we have developed forms of employment (not only in aviation) that leave workers in uncertainty about their basic rights and obligations linked to the home base of their employment.

Flying for a TNA also brings the challenge of different terms and conditions across borders between colleagues wearing the same uniform and flying according to the same OM-A. Pilots, their national unions and ECA have developed many different ideas on Transnational Airline Pilot Groups in

the past to assure that the borders of labour laws are not the borders of our representation. The missing counterpart to the vast transnational opportunities for airlines has to be replaced by these smart & creative ideas, but also by the support & engagement of all pilots!

We have it in our hands; all we need to do is work together! How? This will be explored in the next pages. Thank you for reading!

DIRK POLLOCZEK

has been involved in transnational pilot organisation and representation since 2006 and is a true advocate of transnational pilot groups. After being active for his national airline pilots' association (Vereinigung Cockpit, Germany) for many years, Dirk held different positions within the ECA Board as Professional Affairs Director and ECA President until 2018.

Executive

An ECA project formally named “Strengthening organisation of Trans-national airline pilots in the EU” was accepted for financing by the EU Commission. The project aims at strengthening the organisation and representation of transnational airline (TNA) pilots and supporting ECA Member Associations (MAs) in this task by offering them effective and handy tools, deepening the knowledge of transnational negotiation and cross-border bargaining tools in the EU (including their limits), and investigating the impact of atypical work on TNAs.

Within the framework of this project, ECA organised two TNA seminars on solutions that fit TNA pilot groups in optimizing the way they work together on their common challenges and coordinate across borders and jurisdictions.

The conclusion of the project is this TNA handbook which provides an overview of the current legal and social framework in Europe, describes the current experience of transnational collective bargaining and cross-border negotiation in the EU (in aviation and other sectors) and a toolkit of templates, coordination tools and reference documents.

summary

In the first part of the Handbook, we will set the scene looking at the trends that were identified with the questionnaire filled out by TNA company councils and how they compare with the previous findings from the Ghent University study of 2015. Part 1 also describes different contractual set ups and legal framework challenges in the European Union.

Part 2 of the handbook is dedicated to the sharing of experiences, gains and challenges from different transnational pilot groups. We hope these will provide valuable insight for future TNA pilot groups to come that hurdles will be inevitable but can be overcome.

Finally, we hope that part 3 will provide useful tools and ideas to support TNA pilot groups along the different stages of their set-up, as well as some experiences on transnational representation in other sectors which can be used as avenues to be explored in aviation.

INTRODUCTION

by Ghent University (UGent)

(MIS)USING NEW FORMS OF EMPLOYMENT RELATIONS

Atypical employment – part-time work, temporary work, fixed-time work, temporary agency work or self-employment – has been on the rise for the past two decades. The crisis of 2008 exposed a need for more flexible labour market. Atypical employment became the key tool in the new organisation of work, needed in the strive for economic growth and competitiveness¹.

Where the use of atypical work was seen as a very positive in the upcoming period, it was even encouraged by governments, now the new forms of work organisation are used by companies for bypassing collective agreements, to discipline workers, works councils and unions.

Employers no longer only use atypical employment as an answer to the fluctuation of the market but to cut costs². This by pitting permanent workers against temporary ones³, and subjugate collective bargaining to drive wages down. Research of Wilkinson et al. shows that the combination of atypical employment with the more traditional forms of employment is used as a strategy of employers to deliberately weaken organized labour (unions).

The case study of Norwegian air shuttle shows that employers can succeed in weakening organized labour except when there are strong trade unions. Whereas unions have had the name of creating a dualisation in the market place by only representing workers in 'good jobs' and neglecting those in precarious employment positions, research in 14 European countries (in a variation of sectors like retail, local administration, music, metalworking, etc.)

shows that the presence of strong trade unions is a sign of solidarity among workers. The latter especially when accompanied by robust collective bargain institutions⁴.

The virtuous circle that plays a role in preventing precarious work makes a big mention of the role of solidarity. Prof. Puglignano illustrates this by the good practice in the Belgian and German chemical and metal sectors where the union could maintain a solidarity between different categories of works within a single industrial group.

The power of the unions is completely linked to the individual aspirations of certain groups of workers and the nature of the divides within the labour movements⁵, hence the realization of solidarity is a lot more difficult to achieve in more individualistic sectors like the music industry, young workers in the digital sector, etc. They have often internalized the assumed advantages of working on oneself, while forgetting the disadvantages of standing alone⁶. Even though the realization that merging of economic interests would help raise standards of living was already existing since the Schuman Declaration in 1950⁷.

We want to note that the presumption that nonstandard jobs equal to ‘bad jobs’ is often incorrect for the remuneration but still stands correct when we are talking about health insurance, pensions and other fringe benefits⁸; core points of the union debate. The answer to the use of atypical employment to weaken trade unions, in significant part, seems to be: solidarity among workers.

The term ‘workers’ implies here the self-employed and freelancers, gig and on-demand workers. Awareness is rising that they also should be able to enjoy the advantages of representation.

We give an overview of a few recent positive evolutions at EU level in this aspect:

ILO 2017: “The Committee welcomes these latest developments aimed at the protection of vulnerable self-employed workers through trade

union representation for the purposes of collective bargaining, including as regards prices, and requests the Government to provide information on developments in the Parliament and a copy of the amended Bill.⁹ – EHvJ, 4 dec. 2014, FNV Kunsten, C-413/13

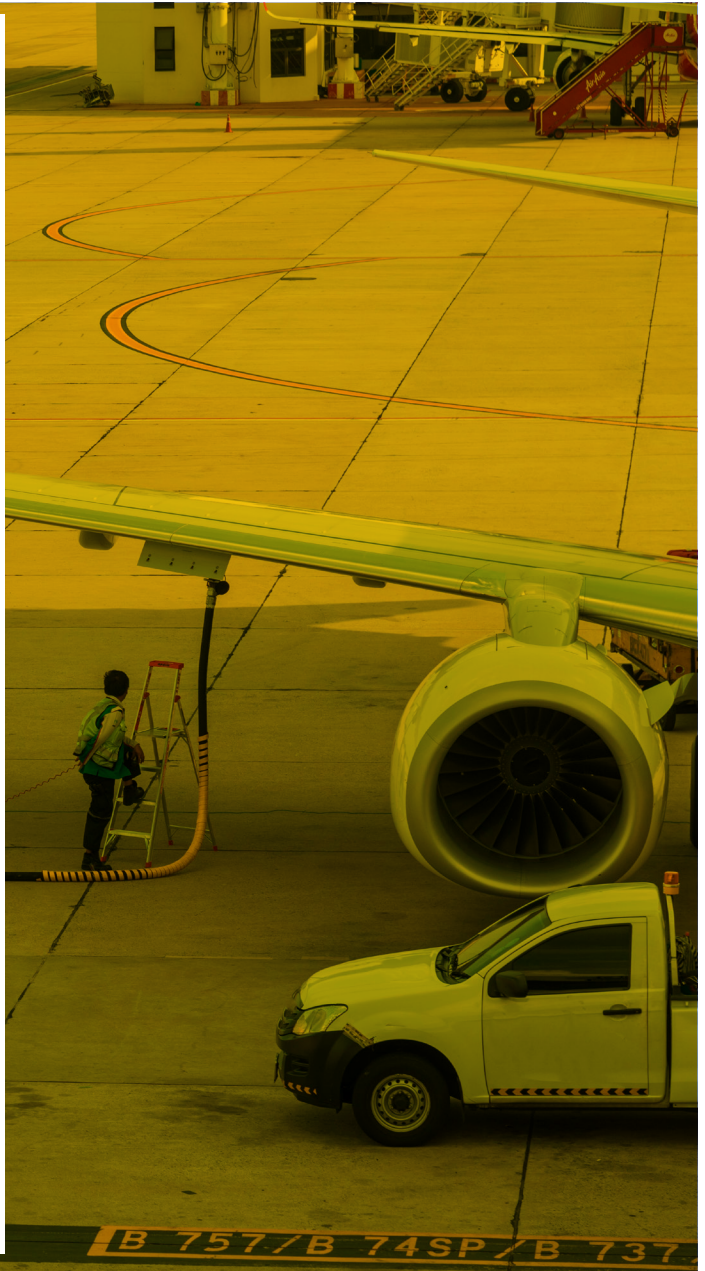
Eurofound 2017: “There are examples in some Member States where organizations represent self-employed workers in collective negotiations. Beyond some concerns that acting together could falsify competition and amount to the formation of a cartel, collective bargaining is an appropriate way for some groups of self-employed workers to defend their interests and improve their working conditions.”

The European Parliament resolution on the European Pillar of Social Rights 2017: “Calls on the social partners and the Commission to work together to present a proposal for a framework directive on decent working conditions in all forms of employment, extending existing minimum standards to new kinds of employment relationships, based on a thorough impact assessment; considers that this framework directive should improve enforcement of EU law, increase legal certainty across the single market and prevent discrimination by complementing existing EU law and ensuring for every worker a core set of enforceable rights, regardless of the type of contract or employment relationship.”

“

Employers no longer only use atypical employment as an answer to the fluctuation of the market but to cut costs. This by pitting permanent workers against temporary ones, and subjugate collective bargaining to drive wages down.

UGent



Part 1

Today's landscape & common issues

by Lien Valcke, UGent

STATUS QUO OF THE TRANSNATIONAL SOCIAL DIALOGUE BASED UPON THE QUESTIONNAIRE

In the evaluation and construction towards more successful social dialogue, a good perception of the status quo concerning employment and social dialogue (in national and transnational context) in aviation is crucial. Upon ECA's request IRIS conducted a research, which included a questionnaire for the representatives of the (transnational) pilot groups and a qualitative research component. We will give an overview of the results of this questionnaire with references to the research done in 2015 when relevant.

The questionnaire was completed by 38 respondents, more than 50 respondents started the questionnaire but ended before completion. We can conclude that the questionnaire was found too long by respondents, this was also mentioned in the informal feedback. To assess the representativeness of the respondents per airline in our research we relied on data provided by the client (ECA) and an online study, going for an average of 1 TNA representative per base per country per Airline company. We cannot deem the data representative for the whole sector since the response rate does not allow that.

Taking this into consideration we have included the most eye-catching findings regarding the part of the questionnaire on aspects relating to employment relationships, remuneration, instructions and satisfaction. The full results on these aspects are distributed via handouts and available from the ECA Office.

In the person of the pilots and their employment status we can, fascinatingly because of the small sample, see very similar tendencies and trends with the survey of 2015. This could be perceived as bad news but can also be seen as a positive sign since the situation does not seem worse than 3 years ago. The status quo on the other hand shows that further actions towards a fair working environment seems more crucial than ever, with further internationalization in mind.

Representatives indicate that 63 % of the pilots have an employment contract directly with the airline company, in contrast with 79% of the pilots in 2015. The representatives themselves are for 74% related to the company with a direct employment contract. The reflection regarding the pilots seems to be a worrisome tendency if indeed it would be transposable to the generalized pilot population. Atypical employment forms embody opportunity for the management of companies to create weakness for these employees, it encourages distance away from employees in traditional employment statutes and creates difficulties for representation within trade unions (see “Good practices from other sectors” for a complete analysis of dangers within this shift).

The impression seems to be that the streamlining and calibration in the organization of a pilot’s career are to the advantage of the airline and are not necessarily based on the wishes and needs of the pilots themselves (home base bidding process and seniority system). The only positively evaluated tool constructed by the company is the plan to help to reimburse the debts made by pilots for the initial training and type rating training.

Sadly, the decision to amend the instructions from the registered office of the airline based on objections regarding flight safety, liability, or regarding health & safety to take is still not an open-and-shut issue: 65% of respondents believe that pilots are sometimes reluctant to take such decisions due to fear

of possible negative consequences for their professional career (two thirds in the low-cost sector), 46% know the cases when a pilot was sanctioned by the airline for independently taking safety decisions (evenly distributed in network and low-cost airlines). 72% mean that the employment status of the pilots is a determining factor in this restraint, this is highly correlated with low-cost airlines (almost 75% – this is consistent with the finding that the atypical forms of employment are 400% more reported by the respondents from low-fare airlines). These results are more extreme than the data from 2015.

The most vulnerable group continues to be the younger pilots in their financial as well as employment situation. The costs of both training and type rating are the crucial factors, but some proxies mention a low salary as contributing factor to financial difficulties. When in 2015 14% of pilots reported to work beyond the current interviewed job, now proxies believed that 20% of pilots have an extra job. It is worth researching if there is a rise in this number since it is strongly related to safety (hours worked, etc.).

Still, representatives are very convinced of the satisfaction of the pilots with their employment within their current company. Negative input is not dominated by low-fare airlines. Interestingly, negative input concerning general working conditions is coming more from network airlines, weighted, in comparison with low-cost airlines. This trend is continued when talking about health and safety provisions, we see a more neutral stand from low-cost airlines. The positive input is evenly distributed. The frequency of 'strongly disagree' and 'disagree' concerning the terms & conditions is relatively higher in the network airlines. Talking about wages the most positive response is coming from easyJet and Transavia, but again, low-cost airlines are favourably reviewed. In respect to flexibility, low-cost airlines in general are seen as less interesting.

REPRESENTATION

Next, we give an overview of the new data – there are no parallels with the survey of 2015 – going into the actors within trade unions, forms of, their organization, challenges, etc.

Most representatives indicate that the airline company they represent has at least a national union. In 13% of reactions we see a combination of a national, a transnational and an airline specific union. The national union is a specific transport sector union in 67% of given answers.

The response rate for this question was very low so the value of this conclusion is limited. In most cases the union only represents pilots, in a few unions it is a combination of pilots and cabin crew. 85% of respondents say that there is a transnational pilot group within the airline of whose company council they are the members.

The national union is in 50% of cases recognised as a social partner by the airline, in 17% of cases none of the existing unions

– at any level – are recognized as a social partner. The lowest 9% recognition rate is for the group of the transnational unions. In low-cost airlines 55% of the representatives indicate that the national union is recognized, whereas the number of confirmed representatives of the other options (network, charter, etc.) lies at 72%. As regards the recognition of the transnational unions, 20% of low-cost representatives says that it is recognised (11% other).

Chart 1: Is a union represented in the airline you work for?

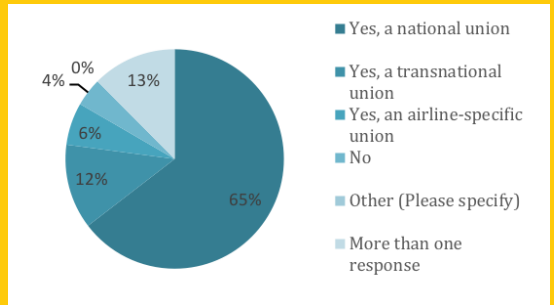
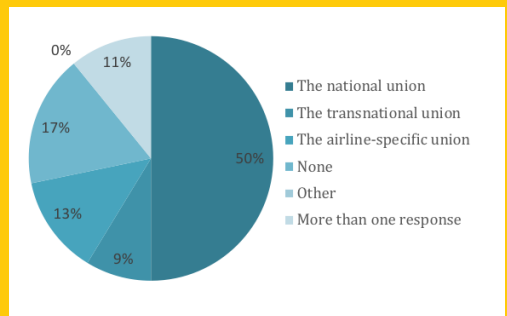


Chart 2: Which of the unions represented in the airline is recognised as a social partner by that airline?



The generalized perception is that the airline is open to social dialogue. 67% says that they do not agree/ strongly disagree or take a neutral standpoint. 33% is convinced that the airline is not willing to conduct constructive social dialogue. (Chart 3)

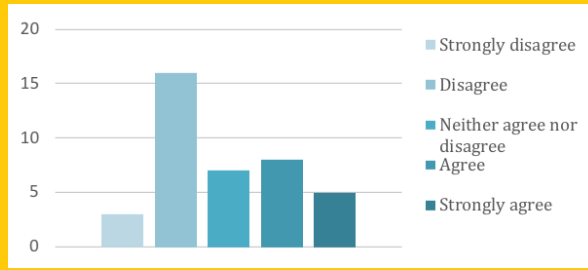
67% of proxies say that they are informed by the airline about decisions taken but that this communication is not sufficient. On the other hand, 14% claim that there is still no communication or information from the airline. There is a strong negative voice about the existing social dialogue: almost 80% is negative or neutral, 59% is announced negative in their assessment. (Chart 4)

This is the most outspoken in low-cost airlines (70% strongly disagree or disagree). It is in comparison with 44% of the representatives of the more traditional airlines (network, regional, etc.) Despite this hurdle we see that the union representatives are of the opinion that the union is able to represent the pilot's interests well. 87% 'agree' or 'strongly agree' with this statement.

A tool in their toolbox to represent the interests of pilots are the industrial actions: 72% of representatives indicate that there is no problem with taking industrial action in their airline company. 28% are noting that this action is impossible or would have unwanted consequences. 20% would participate in industrial action themselves but they are aware of the fact that it would have consequences. 8% would not participate because of these consequences. (Chart 5)

We see the same tendencies when the participation of pilots is the subject of the question. 31% think there would be consequences for the pilots participating in the industrial actions. 63% hold the opinion that there are no existing barriers for pilots, no circumstances that would threaten their employment status. 45% of the representatives working for low-cost airlines quoted that there would be consequences for their pilots, whereas 22 % of the representatives of the alternative airlines gave this answer. The same ratio can be seen for the proxies and participation in action themselves.

Chart 3: The airline is not open to social dialogue



The general statements concerning the possibility of industrial action is more evenly negatively perceived.

Chart 4: I am satisfied with the social dialogue

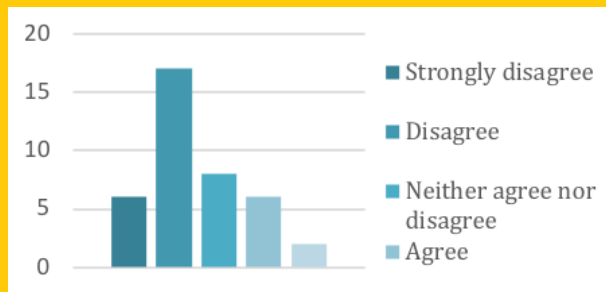


Chart 5: Are industrial actions possible in the airline on whose company council you are?

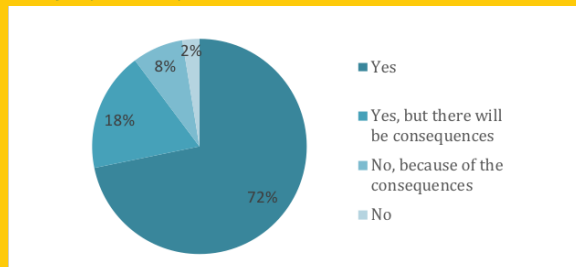
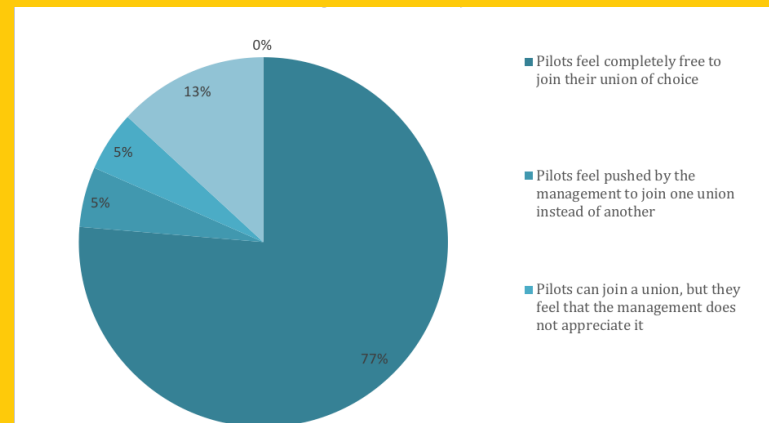


Chart 6: Do pilots feel free to join?



REPRESENTATION FROM THE POINT OF VIEW OF THE REPRESENTED

None of the respondents answered that union membership is actively discouraged by the management and pilots who do this could lose their job or suffer other serious consequences what is a positive evolution. However, 13% indicate that pilots can join a union at their own risk knowing that they could face repercussions in terms of career/opportunities/work organisation. Upon this number 5% of them says that pilots can join a union but that they feel that the company management does not appreciate this and 5% feel pushed to join the union chosen by management. All these negative responses but one come from representatives from the low-fare airlines. (Chart 7)

The motivation of pilots lies primarily on: the representation of their interests through the channel of the trade union hoping that this union has a good relationship with the airline company. We have seen data that puts a pause to this presumption but this does not interfere with the perceived (by proxies) value of the union for the pilots. Ideological motives do not play a role when it comes to the motivation for joining a union, according to the responses. Representatives point out in 46% of their reactions that the union has a diverse job package, the most common combination are: Informs + Consults + Negotiates with airline + Organizes industrial actions + Represents the pilots on a higher level (83% of those 46%). Standing alone they also give the most attention to negotiating with the airline on behalf of the pilots (36%). In this case they seem to meet the motives of the pilots.

38% of proxies hold the opinion that the pilots are satisfied with the current social dialogue since the union represents their interests well (Chart 8). However, 52% indicate that the pilots are not, or not always, satisfied with the representation due to the fact that the airline is not open to conduct constructive social dialogue. In a seldom case the pilots do not agree with the union's strategy. The most extreme statements – “No, the union represents their interests well, but the airline is not open to social dialogue” – were almost exclusively made by representatives of low-cost airlines (90%). This

is the same for the other options where the problem lies on the unwillingness of the company to conduct social dialogue (70%). On the other hand, when spoken about the degradation of the satisfaction with the union's strategies/effectiveness, that is more mentioned by the network airlines.

The proxies are easily contacted, usually directly without a specific to follow procedure. 8% of respondents indicated that a procedure was adopted to contact them. In 2/3 of answers they worked for Ryanair. The pathway in the event of issues should be clear and form a concrete answer to the needs of the pilot. (Chart 9)

This brings us to the input in case of issues experienced by the pilots: most respondents believe that the pilots can appeal to the union representative (48%) in case of issues, next low threshold organ would be the company council, etc.

Chart 7: Why do pilots join a union?

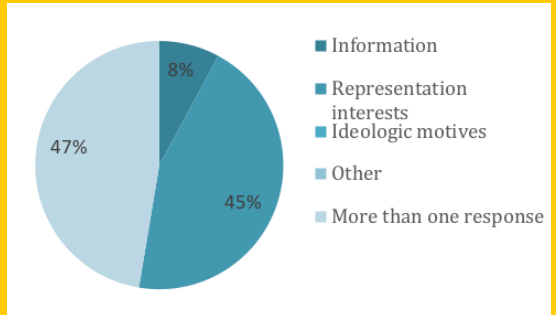


Chart 8: The union represents pilots' interests well

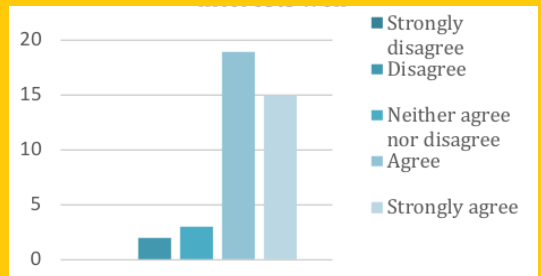


Chart 9: Pilots can contact you as a member of the Company Council

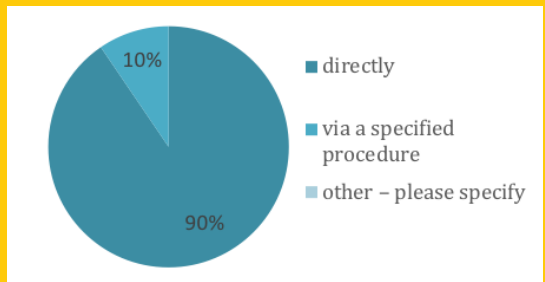
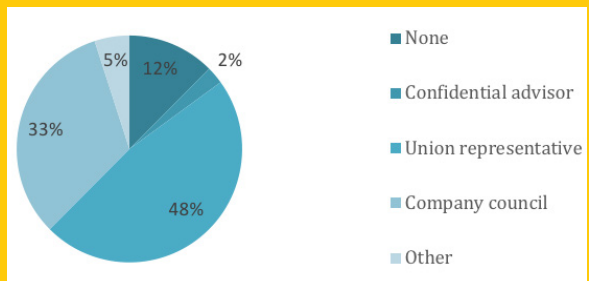


Chart 10: Which structures are provided for in the event of issues ?



Still, 12% indicates that there are no structures provided to support pilots in the event of issues. We can see in the next figure that this in itself may not be so alarming, but when there are organs to appeal to, in general, the pilots do not feel supported or free to make remarks or voice concerns. More than 77% take a negative or neutral position. Only one person said that he 'strongly agreed' with this statement. The low-cost sectors perceive this much more negatively: 75% of the 'strongly disagree' and 'disagree' responses come from their representatives. In the other direction we see that more than 71% of positive responses come from the network airlines. (Chart 10)

TNA GROUPS AND INTERNAL COMMUNICATION

85% of respondents point out that there is a transnational pilot group within the airline of whose company council they are the members. Within the TNA group there are clear agreements concerning the aim of the TNA group, what the TNA group members agree to do together and what the TNA group members want to keep as exclusively national competences. Depending on the TNA group these agreements can go further (Chart 12).

The feedback about internal communication between the company council they are a member of with other company councils in the airline is minimal but given input it is all pointing to almost un-existing. 2/3 of respondents do indicate that one or more of the TNA representatives regularly attend the different national company councils, and 88% says that these TNA representatives regularly exchange information with the members of the national company councils. All the participants of questionnaire are in favor of a regular TNA group meeting.

Communication with management seems an even bigger issue; 70% point out that the management of the airline does not talk with the TNA group representatives at all. In 18% of cases the communication is more formalized: 12% regular meetings and 6% on at least a meeting per year. (Chart 14)

76% think that the existence of the TNA group brought benefits to their company councils. These benefits are mostly described as: knowledge and awareness, in some cases also bargaining power. In 35% of cases the TNA group was consulted in national CLA negotiations.(Chart 15)

Moreover, the coordination of national industrial action has been successfully attempted in 12% of the answers. The representatives that refer to unsuccessful action are all but one from low-cost airlines. To illustrate with some quotes from our respondents on the issue of coordinating national industrial actions:

Chart 11: Pilots feel supported by their airline in case of any remarks or concerns

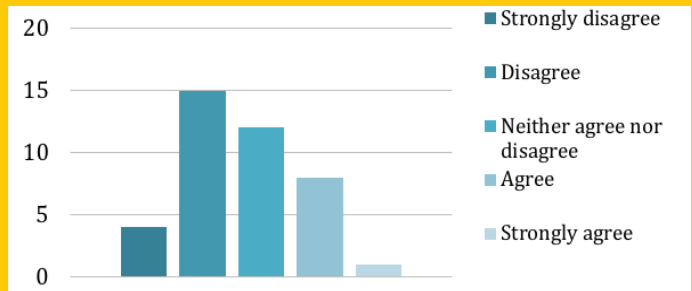


Chart 12: Do you have a transnational pilot group within the airline whose company council you are a member of?

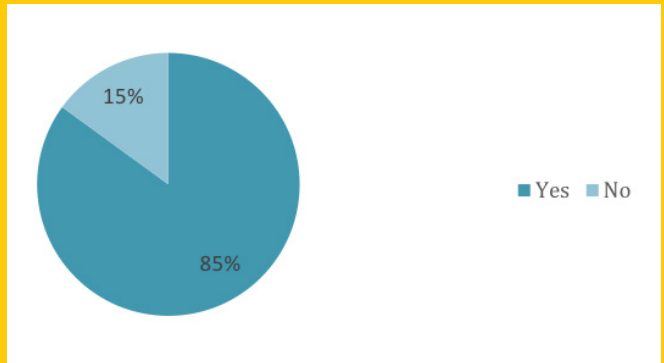


Chart 13: There is a clear agreement between different TNA group members on ...

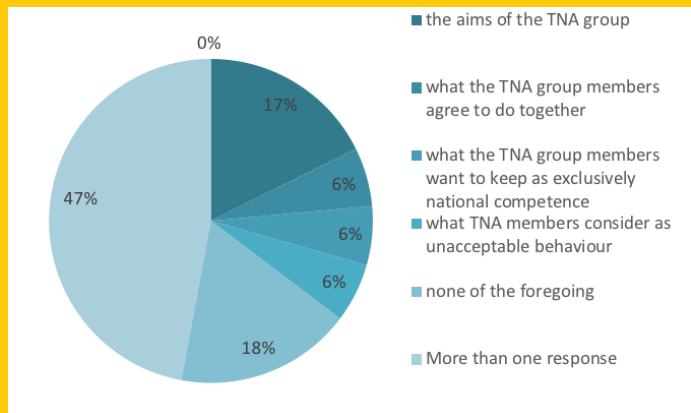
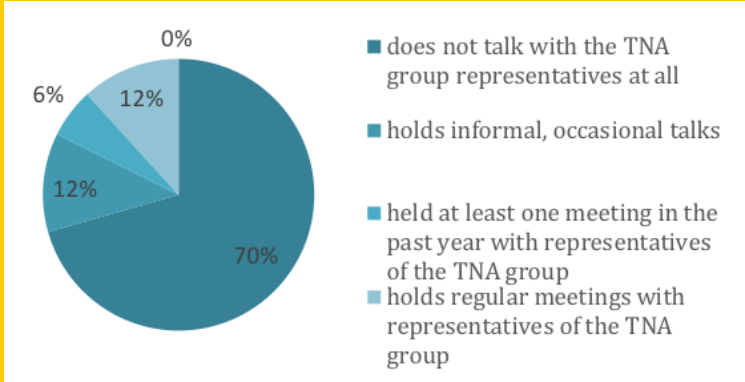


Chart 14: The management of the airline whose company council you are a member of ...



Chapter 15: Has coordination of national industrial actions ever been attempted?

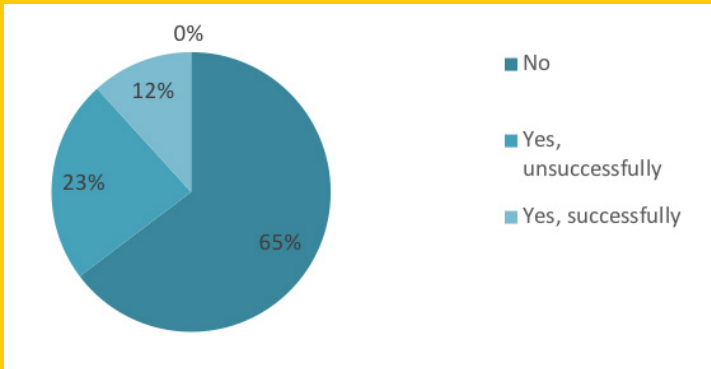
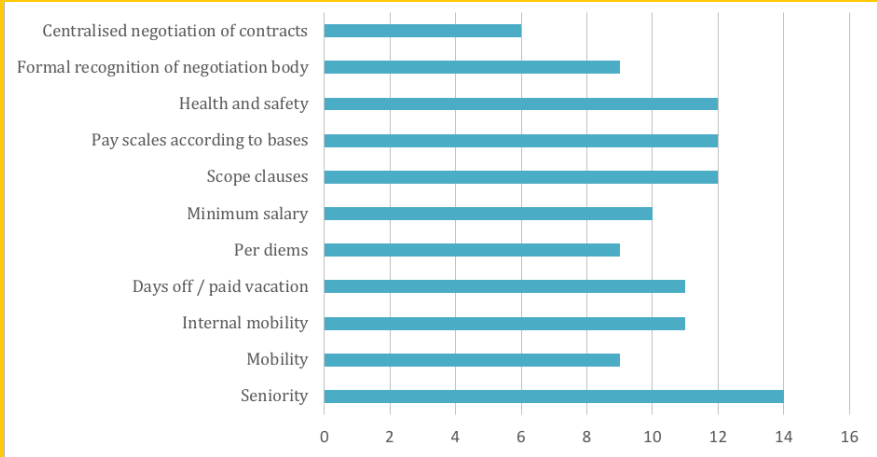


Chart 16: Issues addressed/discussed in the TNA group



“This practice is impossible due to the different national laws regarding industrial action (i.e. in the UK industrial action is pretty much impossible)”

“It is attempted that if there is a national industrial conflict, other TNA member councils try to join through sympathy actions or work to rule. Legally this is difficult to achieve as well as local pilot groups are hard to unite under the TNA umbrella.”

“The XXX (anonymized) Pilot Group is ineffective. No proper structure is in place to coordinate action, TNA topics are not defined. Everything is discussed (“moaned about”) during a day and subsequently nothing is achieved. Local unions are afraid to give away power on TNA subjects to the XXX and won’t commit”.

Representatives of EasyJet, Norwegian and TUI fly Netherlands indicate that all the given topics are addressed to TNA group meetings. Mobility within this context is seen as: working time, FTL and base transfers.

“National & EU law for unions is very challenging. Airlines have way more freedom as businesses and the national unions are way behind as they have to stick to national laws. Airlines can easily start companies in different countries, lease personnel and planes (wet-lease) across borders. Also, National unions are still stuck in their traditional, national mind-sets. If unions want to succeed they need to invest heavily in hiring international experts on labour law and change local structures to be ready for the TNA airlines”.

WELL-BEING OF THE REPRESENTATIVES

In the first round of the questionnaire, we integrated a cluster of questions that inform about the emotional well-being of the trade union representatives. Since we got the input that the survey was too long, we did not include this segment in the second round. The following graphs are based on the limited data but are still informative. We will point out the most significant results. In general, we can say that there are not that many alarming signals that the responding representatives are on their way to a burn-out.

Representatives indicate to be working hard for their job, but it seems to be within the boundaries of feasibility. Direct contact with pilots can make it harder and more emotionally draining, but the biggest group believes that is not to a point that this forms a problem. A few respondents present unnerving results for the first 7 questions what implies that they score high on 'emotional exhaustion'. Burn-out is a condition emerging as the result of the interaction between 3 clusters: 1. Emotional exhaustion – 2. Mental distance – 3. Competence. Only when scoring high on 1 and 2 and low on 3 we can speak of a burn-out. Luckily, in this case we see that the respondents have low scores on 2 and high on 1. This means that they do not feel emotionally detached as a result of the job and that they still believe in their competences to do the job correctly and successfully.

Chart 17: As a member of the company council (1)

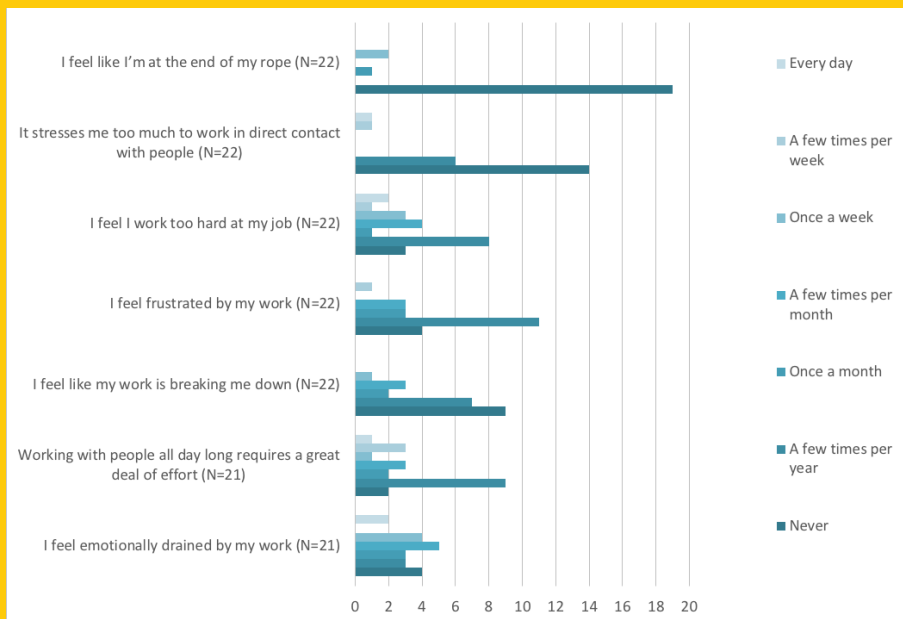


Chart 18: As a member of the company council (2)

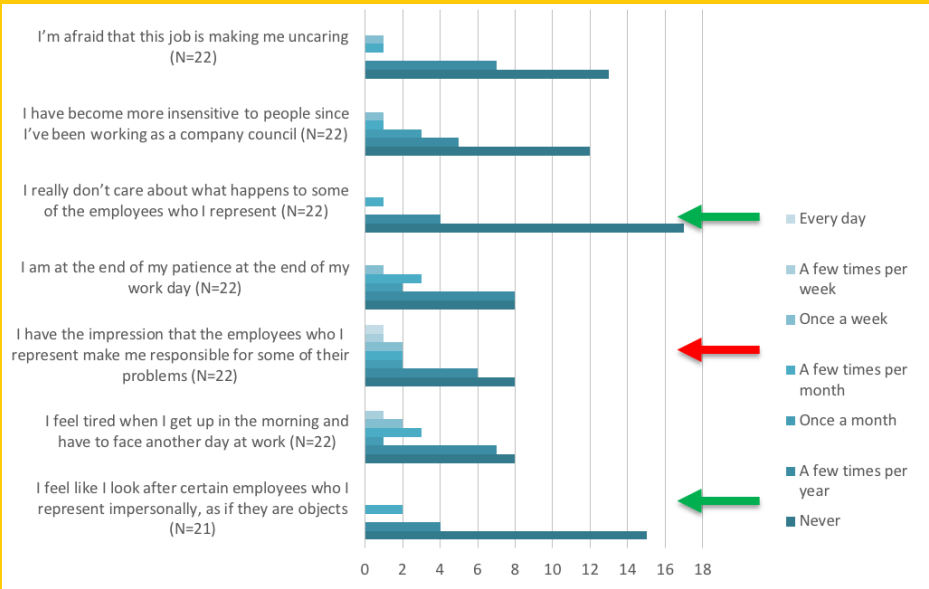
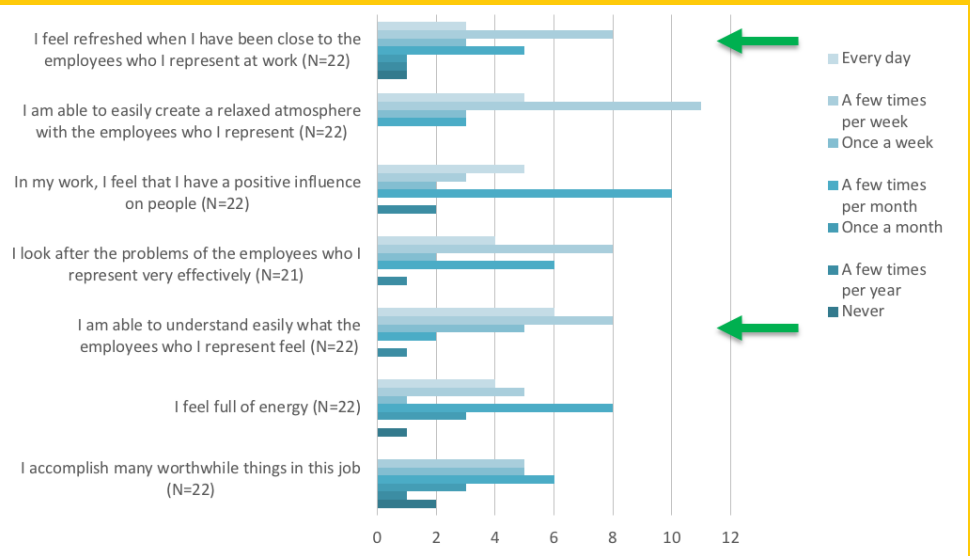


Chart 19: As a member of the company council (3)



Working Conditions

Description of contractual setups, examples of forum shopping linked to TNAs, applicable law, Home Base and ECJ ruling – by ECA

HOW OPERATORS ORGANISE FORUM SHOPPING

“Forum shopping” is a concept from international private law which refers to the practice of choosing the court in which to bring an action from among those courts that could properly exercise jurisdiction based on a determination of which court is likely to provide the most favourable outcome¹⁰. By analogy, the term is used to refer to the practice of choosing an establishment considering the laws that would be applicable to contracts that are likely to be more favourable in terms of taxation and/or environmental and labour costs.

When forum shopping is a deliberate choice geared towards the lowering of social standards for the sake of enhanced competitiveness¹¹ thus having negative consequences for the employees, it should be considered “social dumping.”

Forum shopping and social dumping might be perfectly legal. However, both practices should be countered as well as abuses should be prosecuted and prevented. Governments and public institutions have the duty to protect their workers and they should stop situations of social dumping.

Outplacement/posting:

A “posted worker” is an employee who is sent by his/her employer to carry out a service in another EU Member State on a temporary basis¹². Posted workers are still employed by the sending company, therefore a subject to the law of the Member State of origin (the Member State in which they habitually work), and not integrated into the labour market of the host Member State.

“

Forum shopping and social dumping might be perfectly legal. However, both practices should be countered as well as abuses should be prosecuted and prevented.



Posting is not illegal. However, for posting to be genuine, it must be temporary. Therefore, consecutive/indefinite posting assignments for the same position should not be considered genuine posting. When posting is not used for temporary purposes it could be considered abusive.

Posting/outplacements that are not done for expanding the market or providing temporary flexibility but for reducing costs or transferring activity to another base (for example by using lower social costs to undercut the service providers of the country of origin or of the host country) have a negative impact on the workforce and should be considered as social dumping. (see examples on p. 34-35)

Interoperability

In aviation, 'interoperability' can be considered as the capability of two or more networks, systems, components or applications to exchange information and to be able to use this information for technical or operational purposes, so enabling them to operate effectively together. Airlines and training schools aimed to translate this concept to people and invented the concept of "Crew Interoperability."

Crew Interoperability would refer to the possibility for a flight crew member to fly for two or more AOCs through crediting of training already performed.

When the AOCs are held by different employers this is called hiring out workers. Hiring out workers is only allowed through temporary agencies and subject to the rules of national law. Working for another employer outside the framework of temporary agency work could lead to potential labour law problems:



- Contract issues: if contracts are different in the different airlines, which contract will the pilot follow at each time, who will decide about vacation, leave, sickness?
- Can the pilot reject an assignment?
- When pilots are seconded to other airline having lower condition, is not this giving the employer the possibility to unilaterally change the pilot's working conditions?
- Which collective agreements will apply? Are pilots of other units considered for the recognition of company councils? Can a union represent a pilot working in company who is not an employee of that company? Are those pilots recognised for the calculation of information and consultation rights? Could a pilot in a subsidiary be asked or forced to replace a striking pilot in another company (thereby de facto depriving workers from their ability to exercise – in a meaningful manner – their basic right to strike)? Can this pilot refuse the assignment? Can the pilot take part in an industrial action within a company where he or she regularly works but is not a formal employee?

The negative effect on labour is considered as a positive result from airlines promoting the concept.

Floaters

Floaters are the pilots who for part or the totality of their duties do not have an assigned home base but are positioned to fill gaps in the network. Floaters could be considered as a form of standby for TNAs where the operator cannot have sufficient standby crews at every base all the time.

However, floaters can be used for social dumping purposes if they are not employed to fill gaps but to fly at a lower price as a part of the production in higher cost bases. They can also be used to man a base where the operator does not wish to use permanent staff due to social or labour constraints. An example of this is Ryanair's base in Marseille that is functioning with the pilots detached there, applying this for a period of less than 7 days to avoid falling under the French labour and social security legislation.

Examples of outplacement used to reduce labour costs

EX. 1

AIR MÉDITERRANÉE ET HERMES

Founded in 1997, in 2011 Air Méditerranée creates a subsidiary “Hermes” based in Greece. An important proportion of the crews, aircraft and flights that were operated by the mother company are transferred to the subsidiary company thus lowering the labour cost of the group.

EX. 2

PRIMERA

“The airline was founded in 2003 as JetX in Iceland, and operated under an Icelandic AOC. In 2008 Primera Travel Group took ownership of the airline and rebranded it as Primera Air. In 2009 Primera Air established the subsidiary Primera Air Scandinavia under a Danish Air operator’s certificate (AOC), then in 2014 added a Latvian operating license under the name “Primera Air Nordic”¹³ and transferred the headquarters of the company to Riga.

In spring 2018 Primera announced that they will start flights from Riga. However, pilots based in Malmo (Sweden) were actually based in Riga since 2015 while continuing operating from Malmo.

EX. 3

NORWEGIAN

The decision to open an Irish AOC to circumvent expensive Norwegian labour legislation was publicly stated by its CEO: “If Norwegian Air doesn’t get the regulatory allowance it needs to have lower-paid foreign crews on board for its long-haul flights, - CEO Kjos has said - the airline can re-register its aircraft in countries that would allow it. He can “flag out” his fleet just like Norwegian shipowners did decades ago.”¹⁴

An analysis of the way Norwegian used delocalisation to lower workers conditions can be found in a master thesis from the Norwegian University of Life Sciences¹⁵:

“Norwegian Air Shuttle ASA (NAS) is a low-fare airline based in Oslo, Norway. It founded in 1993 and began as an airline that wet leased aircraft to the now departed regional airline, Braathens. Since then, it has grown into one of the largest low-fare airlines in the world, carrying nearly 24 million passengers in 2014 (NAS ASA, 2014b).

NAS’s growth story and the success of its business model are impressive.

However, the airline’s success has also brought with it controversy, particularly regarding its labor policies. Unlike Southwest, NAS has not chosen a model of cooperation and friendship with its employee’s unions. While its relationships have not been as negative as those between Ryanair and its employees, NAS’s leadership does not see the Norwegian model of business and employment as a viable model for a successful international airline (The Guardian and Topham, 2014). As such, the airline has done its best, like all airlines, to reduce its labor costs in order to increase profits (Doganis, 2005).

However, the airline has chosen to follow an atypical labor strategy, such as hiring cabin crews from Asia to service flights that do not depart or arrive in Thailand, and to do its utmost to create a fragmented employee base throughout Europe, the US and Asia.”

EX. 4

SAS IRELAND

SAS Ireland is a direct consequence of the opening of an Irish AOC by Norwegian to circumvent the Norwegian/Scandinavian labour rules and the permissiveness/tolerance of EU and Norwegian institutions with social dumping as well as social busting in the airline Norwegian and in the low-cost sector in general.

“Scandinavian airline SAS is creating an Irish subsidiary - also called SAS - to fly some shorter routes because that’s the only way it can compete on costs with discounters like Norwegian Air, Ryanair and EasyJet on certain competitive routes” its CEO told Skift in a recent interview.

“Among its competitors in London, SAS is the only airline that must pay its employees according to Scandinavian laws” Gustafson said. British Airways employs its crews in the UK, while the other airlines can hire from anywhere in Europe, giving them a major cost advantage.

The new SAS, like its competitors, will hire employees from outside Scandinavia. “The alternative might be taking drastic action, like leaving London,” Gustafson said.¹⁶

Whipsawing

Whipsawing is a technique for managers to extract labor concessions using between-plant competition¹⁸. In other words, the managers ask: who wants to get investment or the larger part of the production in a group? The answer is: entity that can most reduce its costs.

This is a common practice in groups; SAS used it in the past and succeeded in braking (temporarily) the first trans-national pilot group, the one formed by the SAS pilots in Sweden, Denmark and Norway.



“The people at IAG want to see all of our brands succeed. And that’s the difference. It’s a completely different approach for us. We don’t mind if it’s BA that gets the aircraft or Level gets the aircraft. The one that makes the most sense, the strongest argument about who should get the capital, who should get the aircraft, who should get the focus will get it. And they compete internally to get that access to capital to get that access to aircraft. We’re happy if it’s BA, we’re happy if it’s Vueling, we’re happy if it’s Level. But it means there’s good healthy competition internally and the parent doesn’t get the opportunity to smother the child. That’s the history as you know.”¹⁹ Source: Crankyflier

Whipsawing can take different forms²⁰:

Informal
whipsawing

the staging of competition using labor's understanding that concessions are necessary for investment but without using explicit or specific threats.

Coercive
whipsawing

managers use explicit or specific threats with a narrow focus on extracting concessions and little attempt to secure the cooperation of worker representatives.

Hegemonic
whipsawing

managers organize competition but try to maintain a partnership with workers by influencing labor's interests and ideas.

Rule-based
whipsawing

managers organize competition but try to maintain a partnership with workers using standardized formal bidding.

Q:
Why does
applicable
law
matter?



APPLICABLE LAW, HOME BASE, THE RYANAIR CASE AT THE COURT OF JUSTICE OF THE EU

Speaking about transnational companies implies considering multiple legislative frameworks.

A pilot working in a transnational airline could be subject to multiple legislative frameworks regarding issues like jurisdiction and applicable, e.g. which judge is competent to resolve issues and which law applies in the different fields related to the work of the pilot:

- Collective rights (information, consultation and collective bargaining rights including right to strike)
- Social security (pension, family benefits, health coverage, unemployment, etc.)
- Taxes
- Private pensions
- Safety, etc.

Yet, on each of those issues the legal framework could be different depending on the country where pilots habitually work, where they have the residence, where the airline has its principal place of business and where specific events could happen.

The complexity of evolving in a transnational environment has created loopholes that have been used by some airlines to reduce costs by choosing each time the most convenient legal framework and have had negative consequences for pilots whose pay and working conditions are being constantly threatened.

The clarification of the legal framework applicable in all circumstances is a necessity for a proper enforcement of the law.

The Mons case at the European Court of Justice:

A step in the right direction

On 14 September 2017, the Court of Justice of the European Union (the Court of Justice) delivered a judgment on ‘the question whether the concept of ‘place where the employee habitually works’ as provided for in Article 19(2)(a) of the Brussels I Regulation²¹ can be equated with that of ‘home base,’ as provided for in Regulation 3922/91²².

The Court concluded that both concepts cannot be equated but that the ‘home base’ constitutes a significant indicium for the purposes of determining ‘the place where the employee habitually carries out his work.’ This link is so significant that proof of closer connections to another place would be necessary to refute this presumption.

In conclusion, the Court established a presumption that the judges of the place where the home base is situated are competent but only if the home bases are genuine, that is, if the home base is the place from where the crews start and end duties and where the tools of the company are situated.

The Mons case and the law applicable to

individual labour contracts

There is a fundamental difference between the area of jurisdiction and applicable law. According to the law on jurisdiction, the employer cannot choose where to be sued. The employee, as the “weakest part” of the contractual relation, has the choice of suing the employer at the place where he or she habitually works or at the place where the employer is registered while in the area of applicable law to individual contracts the parties can choose the applicable law to be applied to the contract all in respecting the mandatory provisions of the law of the place where, or from where; the employee habitually work.

“

The complexity of evolving in a transnational environment has created loopholes that have been used by some airlines to reduce costs by choosing each time the most convenient legal framework and have had negative consequences for pilots whose pay and working conditions are being constantly threatened.



Some key issues concerning the Mons case:

>> This case is about the determination of:

- the competent judge to decide on;
- the interpretation of an individual labour contract;

>> This case is about the interpretation of the concept of habitual place of work;

>> The judge says that the home base cannot be automatically considered as the habitual place of work;

>> The judge says that the home base constitutes a significant indicium that is likely to “determine the place from which employees habitually carry out their work”;

>> The judge says that only closer connections displayed in other applications, can undermine the relevance of the home base to determine the ‘place from which the employees habitually carry out their work’;

>> The judge says that the concept that the place where, or from which, the employee habitually carries out his work, is not to be equated with the ‘nationality’ of aircraft;

The parties can therefore only choose the parts of the law that will be more protective than the mandatory laws of the country the place where or from where the worker habitually works.

It is in the determination of the place where or from where the pilot habitually works that the Mons case has an influence. Here again we could say that there is no an automatic application of the law of the home base but a presumption that the law of the home base applies unless other closer links are demonstrated. This should protect the pilots against bogus bases chosen by the employer on paper to circumvent the applicable law.

Social Security

The concept of 'home base' is also key in the area of Social Security. Regulation 883/2004 of 29 April 2004 on the coordination of social security systems²³ establishes in its article 11 that a person pursuing "an activity as an employed or self-employed person in a Member State shall be subject to the legislation of that Member State" and that "An activity as a flight crew or cabin crew member performing air passenger or freight services shall be deemed to be an activity pursued in the Member State where the home base, as defined in Annex III to Regulation (EEC) No 3922/91, is located."

The Commission has issued a "Practical Guide"²⁴ to address issues that are unclear. This is the case, for example if a crew member works for different employers in two bases simultaneously. The Guide also states that: If they [aircrew] have changed home bases regularly within a period of 12 calendar months preceding the last determination of the applicable legislation, or it is likely that they will regularly change home bases within the next 12 calendar months, their situation must be assessed in accordance with Article 13(1) of Regulation 883/2004.²⁵

The procedure of Article 16 of Regulation 987/2009 applies to these situations, which means that the designated institution in the Member State of residence shall determine the applicable legislation for the person concerned.

To summarise: In principle aircrews are subject to the social security of the home base. If there are two home bases or successive changes of home bases, aircrew should contact the social security of their place of residence so that authority can determine the applicable social security regime.

If an employee has claims concerning breaches of social security obligations from his/her employer, the provisions in the EU legislation on jurisdiction shall apply. The certificates of social security can only be annulled or derogated by the issuing authorities (except in cases of manifest fraud).

Taxes: not under EU law at all

There are no rules on taxation in the EU. The issue of transnational taxation depends on the bilateral treaties that countries negotiate amongst themselves. The general rule is that taxes are paid in the country of residence. It is considered that someone is resident in a country if there are at least 183 days of residence. However, there are often specific provisions for international transport workers and for managerial workers.

It is therefore imperative that each crew member in a transnational airline consult with its revenue tax administration the specific situation that would be applicable to his/her case. In case of conflict, the person should ask the authorities concerned a ruling allowing a solution for his case. The absence of compliance with national taxation systems could have serious and onerous consequences for the concerned persons.

Supplementary pensions

Supplementary pensions are somewhere in between social security rules and taxation. One can say that supplementary pension plans are strictly national. Each country is free to organize the pension system in its country and this has led to a diversity of ways to regulate this subject.

However, it was soon considered that the lack of portability of supplementary pensions was an obstacle to free movement of workers and therefore the EU has issued legislation on this issue to ensure that workers can access supplementary pension rights without being discriminated, that supplementary pension rights are maintained even if workers move to work in another country and that workers are informed about the consequences of moving for the preservation of rights.

The EU has also issued legislation about the minimum solvability ratios of pension fund. This was done to prevent funds from going in bankruptcy and leaving workers without their pensions. These solvability requirements have created unrest because many funds, including those concerning pilot's pensions did not meet the new solvability requirements and had to be restructured. Airlines have in some cases taken advantage of this reform to cut down pension benefits.

To simplify: a company-funded pension scheme is subject to the laws of the place of work. The worker moving to another country keeps the rights that have been acquired until the departure and must be informed about the consequences of his moving related to the fund. This last point is important because some countries tax supplementary pensions at the moment of the contribution while other do not tax them until the moment when the beneficiary receives the funds at the age of the pension. Not being aware of this and not taken the appropriate measures can lead to significant loss of revenue.

The Commission published in 2017 a recommendation to promote the development of "Pan-European Personal Pension Product". This would be an additional tool for individuals to save for their pensions that will be fully portable across the EU thanks to the combination of multinational-compartmented financial structures. As a savings' instrument, this will be subject to personal revenue taxation according to the national rules or the bilateral treaties among Member States.

RIGHT OF ASSOCIATION AND COLLECTIVE BARGAINING

Applicable law

The situation related to collective social rights is the following: rights related to the establishment of unions and the collective negotiation at company level are essentially national. Enforceable collective labour agreements are only those concluded by unions established according to the national laws and, in general, such agreements are not valid outside the country where they were concluded unless the legal requirements for the recognition of trade unions and for the negotiation of agreements of the countries involved are respected.

Collective rights under EU law

At European level, there are limited laws concerning information and consultation of workers and no rules on the freedom of association at EU level even though the Charter of Fundamental Rights of the EU recognises:

- the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests (article 12); and
- the right of collective bargaining and action workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

According to the charter, workers have the right to establish trade unions at all levels and this should include the right to establish unions at EU level. So far, the EU has only set up rules to recognise social partners. Workers have the right to negotiate collective agreements at the appropriate level, what means that for EU wide airlines workers should have the right to negotiate European-wide



agreements. The lack of rules to allow the establishment of trade unions and the organisation of meaningful negotiations at European level would be a breach of the EU charter and of the obligations of the Member States towards the ILO.

In addition, the Court of justice of the EU has indicated that the exercise of fundamental rights such as the right of strike is not exempted from the obligation to comply with the other rules in the Treaty and notably with the fundamental “economic” freedoms (the freedoms of movement for goods, services, capital and people)²⁶. The Court of Justice established that strikes cannot restrict the freedom of establishment or the freedom to provide services unless they are proportionate. This requires an evaluation of strikes case by case to assess if they are compliant with national law which constitutes for many an unjustified restriction of the fundamental rights of workers in breach of the ILO conventions.

Judicial competency in case of strikes

In 2013 IAG sued SEPLA for damages caused during a strike. IAG filed in the UK based on article 5.3 of Regulation 44/2000 on judicial competency²⁷ which says that in cases concerning “tort, delict or quasi-delict,” a person domiciled in a Member State may be sued in the courts for the place where the harmful event occurred; IAG claimed that the financial losses resulting from the strike occurred in the UK where the Headquarters of the IAG group are situated. In its Judgement,²⁸ the Court rejected IAG’s claim that the UK courts were competent and justified the decision on the fact that strikes are out of the scope of Regulation 44/2000.

According to the English judge, strikes are not matters of commercial or civil matters but of public law and therefore are not subject to the rules of the Regulation. The judge also indicated that, in any case, he would consider the UK as a *forum non conveniens*²⁹ because it would be wholly inappropriate for an English court to pronounce on the lawfulness under Spanish law of calls for strike action in Spain by a Spanish trade union and where compulsory arbitration had been lawfully ordered by the Spanish Government.

This decision has not been appealed and has not been subject to a prejudicial question of the Court of Justice of the EU. Therefore, its value as an incontestable precedent in law is not guaranteed. However, it can be argued that judgement is coherent with the current situation where collective rights are mostly a matter of national law.

Today's framework for transnational bargaining

by Lien Valcke, Ghent University

WHAT IS POSSIBLE IN THE EU TODAY AND WHAT IS NOT

In the current mainstream approach to labour and in the prevailing vision on collective bargaining, the latter is increasingly seen as a cost-generating mechanism and a hindering of decision-making and thus competitiveness³⁰. The European Commission has taken active steps to reduce collective bargaining and downgrade employment protection, this in the name of the free market. Mainly based upon the assumption that industrial relations prevent proper functioning of markets and obstruct economic growth³¹. Thus, the European Union is far from acting like “a force for harmonization of regulatory standards and a strengthening of the “social dimension” of employment regulation, is encouraging the erosion of nationally based employment protections and provoking a growing divergence of outcomes³²”. The actor favored in this approach is the employer and the capital side.

Good social dialogue (in every dimension) should lead to safer and more efficient aviation. It should in the first instance address issues common to both crew, management (capital side) and passengers: health and safety, flight safety, FTL, rostering, home base issues and precarious employment. Remuneration, benefits, etc. can of course be subject of the social dialogue but parties concerned (crew and management) should be very aware of the fact that labour should not be considered a cost or commodity as any other. The competition results in a very stringent situation: unrealistic demands of crew can undermine competitive position of the airline both in the short and long run. Which might eventually be to the disadvantage of the crew members.

Whereas too low pay, benefits, etc. will result in unhappy crew and strikes. These strikes, frequent in nature, will also lead to corroding of the competitive position of the airline. "It is pivotal to find ways to compete that do not only revolve around price competition alone to produce stability for companies and workers in all advanced industrial societies"³³. Internationalisation must be embedded in the daily operation and action of national unions, it must be built into routine discourse of labour movements.³⁴

One could argue that we need a new equivalent of the Clayton Act³⁵ that seeks to capture anticompetitive practices in their incipiency by prohibiting particular types of conduct, not deemed in the best interest of a competitive market³⁶. Not to prevent the leveling up of pricing but to try to prevent the race to the bottom and to protect employees.

(EUROPEAN) LEGISLATION

The sovereign debt crisis has had a profound impact on the industrial relations system on a European level. Specifically, the collective bargaining has become more fragmented and in accordance also weaker³⁷. The crisis highlighted the weaknesses of trade unions as institutions of economic and industrial democracy³⁸. There has been a reduction in higher level bargaining, in some countries it even led to a significant increase in the single-employer bargaining (local level³⁹). A move that goes in against the European ambition for more and better transnational social dialogue⁴⁰ and results in an associated negative development in wages and employment conditions.

The authors of 'Structural labour market reforms and the collective bargaining landscape in Europe (2016)⁴¹' are of the opinion that this is a direct result of the European promotion of 'regulated austerity'⁴². The perception that collective bargaining is an element that could steer the EU countries out of crisis instead of being a part of the problem should be promoted and integrated at EU as well as on the national level. Eichhorst et al.⁴³ believe that the European Parliament should contribute to better transnational social dialogue by creating a private international law solution or strive to a revised version of the Ales report of

2006 concerning transnational collective bargaining in the past, present and the future.⁴⁴

The system of industrial relations differs from Member State to Member State, these national differences only seem to affect the mode of local negotiation instead of promoting the trend towards decentralization⁴⁵. Even more extreme, Meuller and Purcell state that “industries characterized by comparable technological and cost constraints and product market pressures are likely to develop convergent patterns of employee relations at the plant level irrespective of national location”⁴⁶. A more positive note can be found in recent research that states that the emerging EU layer of industrial relations makes for an incomplete but perfect transnational reality separate from the national legislation of Member States. The authors state that it is crucial that “the EU industrial relations are not to supersede but to supplement national industrial relations”⁴⁷.

A case where the relation between the international and national level in transnational social dialogue and agreements was a clear issue was the one of the EMF – Daimler Chrysler transnational agreement⁴⁸. The agreement was negotiated by the company’s EWC and EWC coordinator but there was an issue with the Chrysler plant in France because of the decision of the EMF that the agreement was not binding for its affiliates.

One of the most significant, jubilant cases of transnational union bargaining co-ordination in existence is in the maritime shipping industry⁴⁹, where the transnational social dialogue has resulted in EU legislation that is enforceable. When speaking of sectors where parallels can be detected with the aviation sector the maritime sector is the first one on the list. That is paramount when we make an unlimited record of the problems and needs of the maritime sector⁵⁰.

The International Transport Workers’ Federation (ITF), and a global employers’ federation, the International Maritime Employers’ Committee (IMEC) worked together in their goal to achieve minimum pay scales and working conditions for seafarers on Flag of Convenience (FOC) ships. This result could be achieved

by a high-level coordination between the different actors in the Maritime sector: seafaring unions draw on the industrial leverage of port workers to negotiate minimum standard pay agreements, while dock unions leverage the growing influence of the ITF in fighting union busting in ports and a global transnational ship inspector network provides the power basis for imposing collective agreements on ship-owners. The initiative shows that unilateral union initiatives can drive transnational bargaining coordination, noted that the motivated cooperation of every actor was detrimental to the success. This internal consensus brought the employers to the negotiating table in an effort to contain labour cost.

Lillie believes the real problem does not really lie in the power of the employer but mainly in the “unions’ inability to coordinate bargaining objectives and industrial action among themselves”. ITF have enhanced the possibility of that consensus of its affiliates around a transnational agenda by constructing a campaign infrastructure where the seafarers and dock unions are depending on FOC campaign resources⁵⁴.

The result of the unwillingness of ITF to negotiate on a company level was a global inter-union consensus between developed and developing countries around a uniform wage rate, which affects a significant portion of the global seafaring work-force. Judgments of the Court of Justice (Viking⁵⁵ and Laval un Partneri⁵⁶) confirmed the right of such umbrella organisations to take collective action since it is part of the values and principles shared by the Member States of the European Community.

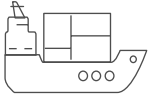
The balancing of free movement in relation to the right to take collective action is essential. Maritime Labour Convention ILO (MLC-2006) to ensure⁵⁷

- decent working conditions
- living conditions on board, for all seafarers regardless of their nationality and of the flag of the ships on which they sail
- fairer conditions of competition for operators respectful of rules and often disadvantaged by substandard shipping
- seeks to limit social dumping to secure fair competition for ship owners who respect seafarers’ rights



Transnational – European – Globalization

Flags of convenience



“global maritime regulatory regime which allows ship owners to avoid unions and regulation by flagging their vessels in countries with weak regulatory systems⁵¹”

Protection



Different protection between seafarers who work on board of commercial vessels and fishers who work on fishing vessels

No guarantee



No guarantee for decent working conditions, vessel safety, security, etc.



Level playing field

Need for a level playing field in the sector to prevent race to the bottom



Exploitation

Labour exploitation, slavery and human trafficking⁵²



Whipsawing

National unions are ill-equipped to deal with whipsawing by management⁵³

- amendments to MLC-2006 have been approved at ILO level, tackling issues such as protection of abandoned seafarers, provision of financial security for death or long-term disability of seafarers and establishing binding international law on essential issues for the shipping industry.

The EU strongly supports the MLC-2006 and has transposed large parts of the Convention in its legislation despite the fact that it is party neither to ILO nor to the Convention itself. This was achieved through the sectoral social dialogue committee for maritime transport. The social agreement concluded by the European Community Shipowners' Association (ECSA) and the European Transport Workers' Federation (ETF) and was implemented into EU Law with Council Directive 2009/13/EC⁵⁸.

Since October 2017 there is a Maritime legal framework in place (deadline introduction Guideline (EU) 2015/1794) that dictates a uniform application of European labor law for seafarers. With the introduction of these uniform rules, Europe not only wants to improve working conditions, the operation should also make the profession more attractive and ensure that seafarers are treated in the same way in all Member States.

The next step for the maritime sector will likely be taken in November 2018 with the discussion about higher minimum wages within the Subcommittee on Wages of Seafarers of the Joint Maritime Commission⁵⁹.

As indicated at the beginning of the exposition of this good practice, the parallels between aviation and maritime sector are often made but there are some definite differences and legal restrictions to make note of:

- The legal framework is much more developed in the maritime sector: ILO, etc. It should be considered whether one would seek a same kind of framework for the aviation sector and what the role of ITF and ILO in cooperation with the ICAO⁶⁰ could be⁶¹.
- The dimension is purely international whereas in aviation we have: European and International dimension but they do not have a bond, this results in boundaries where European initiatives collide with international legislation and vice versa.

- Problem in aviation is also that national airlines are functioning in an international context but joint consultation is almost impossible because of national legislation.

IMPLEMENTATION AND ENFORCEMENT

Implementation and enforcement is ever challenging and even a thorny problem for any global right implementation system. Especially when there is no legal framework or no legal status attached to the used tools for transnational agreements.

The Maritime sector is a success story at a very large scale with its range in enforcement directives:

Directive
2013/54/EU

... on flag State responsibilities for compliance and enforcement of MLC-2006, ensures that the Member States concerned effectively discharge their obligations as flag States with respect to the implementation of the relevant parts of MLC-2006

Directive
2013/38/EU

...amending Directive 2009/16/EC on port State control, obliges Member States to ensure, through their inspection mechanism, that the treatment of ships and its crew, flying the flag of a State which is not a MLC-2006 ratifying is not more favourable than that of a ship, and its crew, of a ship flying the flag of a MLC-2006 ratifying State.

Directive
2009/13/EC

has also amended the specific legislation for seafarers on working time i.e. Directive 1999/63/EC that aimed to protect the health and safety of seafarers by laying down minimum requirements with regard to working time. In parallel, Directive 1999/95/EC aims to improve safety at sea, combat unfair competition from third-country ship owners and protect the health and safety of seafarers on board ships using EU ports.

We can commend the positive and grand steps in the maritime sector but every small success booked concerning implementation (the step before enforcement) is worth mentioning. Within the European sectoral dialogue, the European Commission handles a classification of the different texts negotiated by social partners based upon the implementation procedures. We give a graphic overview of the hierarchy in texts handled on EU level⁶².

Agreements

Implementation within timeframe

Framework of action, guidelines, codes of conduct, political orientations

Recommendations national members regular monitoring

Joint Opinions & Declarations

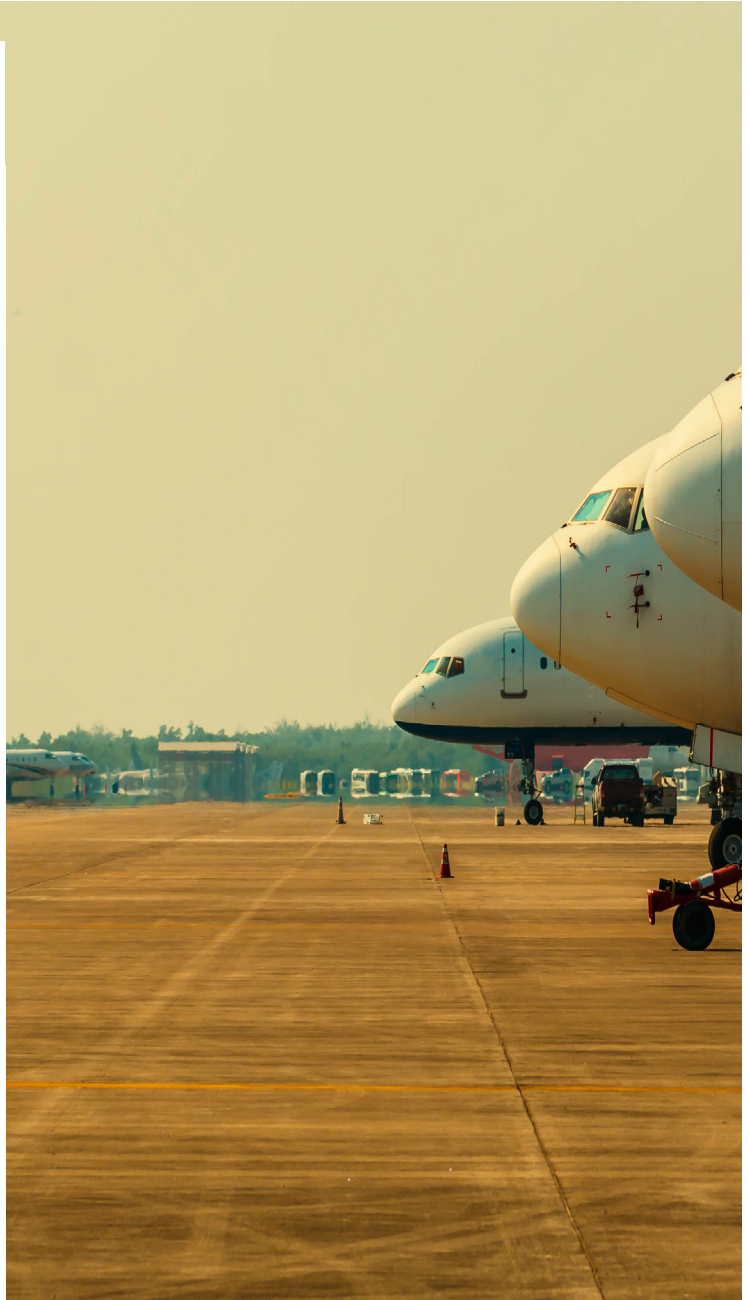
a role in information & contain provisions on their implementations

Procedural text that establish rules for the social dialogue between signing parties

Reports that evaluate the implementation

“

The parallels between aviation and maritime sector are often made but there are some definite differences and legal restrictions ...



With every form of text the implementation is still uncertain for the members of the EU sectoral social dialogue: problems linked to implementation at national level/internal dynamics of a country and the EU social partners have little power to enforce the implementation. In the venture to face these challenges the European social partners have developed a set of tools that fit within the current legal framework; they contact studies regarding monitoring and implementation, working groups, they organize conferences, publish reports⁶³. At company level, it is even more difficult since there is no legal framework. However, experience teaches us that almost every transnational company agreement contains provisions concerning implementation, evaluation and enforcement⁶⁴. This going in to the parallels existing between sector and company level agreements.

The Canadian researcher Hennebert is of the opinion that international framework agreements are the most advanced for protecting employees' rights in view of the current proliferation of instruments of corporate social responsibility⁶⁵. The study, within the automotive sector, emphasizes the importance for trade union representatives of the same multinational enterprise to join forces in international alliances or coalitions in order to follow up on these agreements and ensure their implementation at the local level.

A comparative study in the Telecom sector in Portugal also exposes the importance of the procedural effectiveness for normative effectiveness through organizational institutional resources of the international union alliances with the enforcement of the international framework agreements⁶⁶.

Suggestions for action to be taken at EU level:

- Shift in mentality and view on labour and social dialogue is needed -> solution for crisis instead of a sustaining factor. It is pivotal that we can find ways to compete that do not only revolve around price competition. In the context of the maximization of minimization there is no room for productive (transnational) social dialogue
- Creating a private international law solution or strive to a revised version of the Ales report of 2006
- Construction of a new equivalent of the Clayton Act -> capture anti-competitive practices – prohibit types of conduct not in interest of a competitive market -> to prevent the leveling up of pricing but to try to prevent the race to bottom and to protect employees
- European works council as a positive actor in successful transnational social dialogue
- Creation of European rule on the standing of workers' representative bodies -> Recognition of unions
- European Collective Agreement - Result in framework agreement which is subsequently given legal force by means of a Directive

Despite the shortcomings in the legislation at European level and difficulties in the coordination with the national level, the good practices show us that there is room for constructive transnational social dialogue that can be translated in to (enforceable) agreements. Even for agreements that find (in part) a place in European legislation that counters the race to the bottom.

Part 2

Experiences from

Transnational Pilot Groups

No two transnational pilot groups experiences are alike. Each TNA pilot group has a different background, a different history, and a different type of management to deal with but as the following testimonies will show, one element is always central: unity. The breakthroughs that have been achieved at times when managements have sought to play pilots, their associations and countries against each other were possible because the workforce stuck together as one family in unison and solidarity.

Another important element should be noted from those TNA PGs that have a direct engagement with their management: it highlights the efficiency and benefits of open social dialogue both for the workers and for the productivity of the company. The time has come to embrace and recognise the benefits that direct engagement with transnational pilot groups can bring in combination with national pilot unions and associations.

Norwegian Pilot Group

INNOVATING TRANSNATIONAL NEGOTIATIONS

by Alessandro de Blasio, NPG Secretary

The Norwegian Pilot Group (NPG) was formed in 2014 by the pilot associations present in the Norwegian network back then: NPU, SEPLA, BALPA and NPUF representing the Norwegian, Spanish, British and Finnish pilots respectively.

Since those early days Norwegian has expanded its business into new countries and jurisdictions and so has the NPG with ANPAC (Italy), SNPL (France), VNV (Netherlands) and IALPA (Ireland) having also officially joined the NPG in order to be able to represent the Norwegian pilots in their respective territories.

The NPG has its own internal bylaws and rules which are contained in the so called “NPG Protocol”, the backbone of the Protocol is based on simple yet very significant elements like the commitment to transnational coordination in all matters affecting Norwegian pilots in more than one jurisdiction.

Such coordination is achieved by diligently abiding by a small set of rules which are solely aimed at preventing a breakdown in transnational communications and consequently helping the various NPG Member Associations (MAs) in making their collective activities more effective when tackling transnational issues affecting all pilots.

Effective communication is therefore one of the keys for success and the NPG has mastered this area through the latest and most modern social media and communication tools which make it possible for the various union reps as well as the normal line pilots in the network to remain in close contact with each other and readily available.

The reasons for the popularity and success that the NPG has enjoyed so far are deeply rooted into one simple value: unity.

It is in fact very important to understand that the feeling of unity and sense of belonging amongst the Norwegian pilots has played a key role in making the NPG an effective and respected entity which has sparked lots of enthusiasm in the Norwegian pilot community.

THE NPG NEGOTIATING EXPERIENCE

The NPG Protocol deals with the subject of negotiations with a focus on the principles described above: effective communication and coordination on transnational matters.

When it comes to negotiations, the NPG has therefore created simple procedures that all MAs shall abide by: if any NPG MA enters into negotiations in their respective jurisdiction then the delegated union representatives of that specific MA will promptly inform the other NPG MAs of the coming negotiations and especially of any matters that could have a transnational impact or influence. Any elements of a national negotiation that have or might have any transnational effect will be discussed and agreed at NPG level to the widest extent possible, prior to being agreed locally.

For this purpose, the NPG has created a Master Executive Council (MEC) which is formed by an elected President, a Vice-President and a Secretary that have a coordination mandate.

It is important that all NPG MAs have informed representatives available during all local negotiations to make sure that all parties involved are in the loop should any transnational issues be discussed. That's why the MEC is responsible for communication and coordination activities on transnational issues. The MEC is available to support and provide information in real-time to pilot representatives of an MA that is negotiating with Norwegian in their jurisdiction.

To illustrate the effectiveness of NPG communication & coordination during local negotiations: a local MA was faced with an issue about salary vs seniority pay scales and benchmarking became necessary. On that occasion the MEC was able to provide the local negotiating team with a specific reference in another contract of another Norwegian MA in a matter of minutes. This information ensured the local MA negotiated a contract clause that was in line with what had already been done in another Norwegian jurisdiction.

Another example: during a local negotiation with Norwegian, a contract clause that would potentially affect the wider seniority agreement was presented. In this particular case the MEC helped the local MA to carry out a company-wide assessment of the potential consequences of this clause. Seeing the effects, the local MA decided to renegotiate that specific clause before it was introduced.

THE LATEST NPG DEVELOPMENTS

Recently it became apparent that a more direct relationship between the NPG and Norwegian would benefit both the company and the pilots. In this context the NPG approached Norwegian and invited management to one of the NPG's regular meetings. During this first meeting the NPG MEC briefed Norwegian about the aims and vision of the NPG and a fruitful exchange of information and opinions followed. Both parties saw big potential in a constructive and direct relationship and agreed to take further steps to increased cooperation.

Today, Norwegian and the NPG hold regular meetings. In addition, joint committees about specific transnational issues have been setup with the aim of finding coordinated solutions. Having the company managers and the NPG representatives in one room together with all the relevant HR and operational stakeholders is helping in streamlining the industrial relations and is making all processes with a transnational impact more efficient and transparent. A win-win situation for both company and pilots alike.

easyJet Pilot Group

PIONEERS OF TNA PILOT ORGANISATION

by Patrick Barbary, ePG Chairman

The easyJet Pilot Group (ePG) was the first TNA pilot group to be formed in 2006. At that time the company had cautiously started to expand on the continent, which in turn necessitated the organisation of a good alliance among the different pilot unions.

Initially the company started its operations on the continent with UK contracts, first under secondment but as the operations became successful, permanently based. The Paris base Orly was the first non-UK base. The first pilots were seconded in 2003 when the base opened before being permanently based there a year later. The French contract was only introduced in May 2008, after the company lost a court case about non-compliance of local labour laws. The incompatibility of a UK contract with the local labour law forced the company to provide local contracts. With this move also came the start of transnational pilot association cooperation for workers of one airline.

Being a pioneer means being confronted with uncharted terrain and several obstacles were encountered at the beginning.

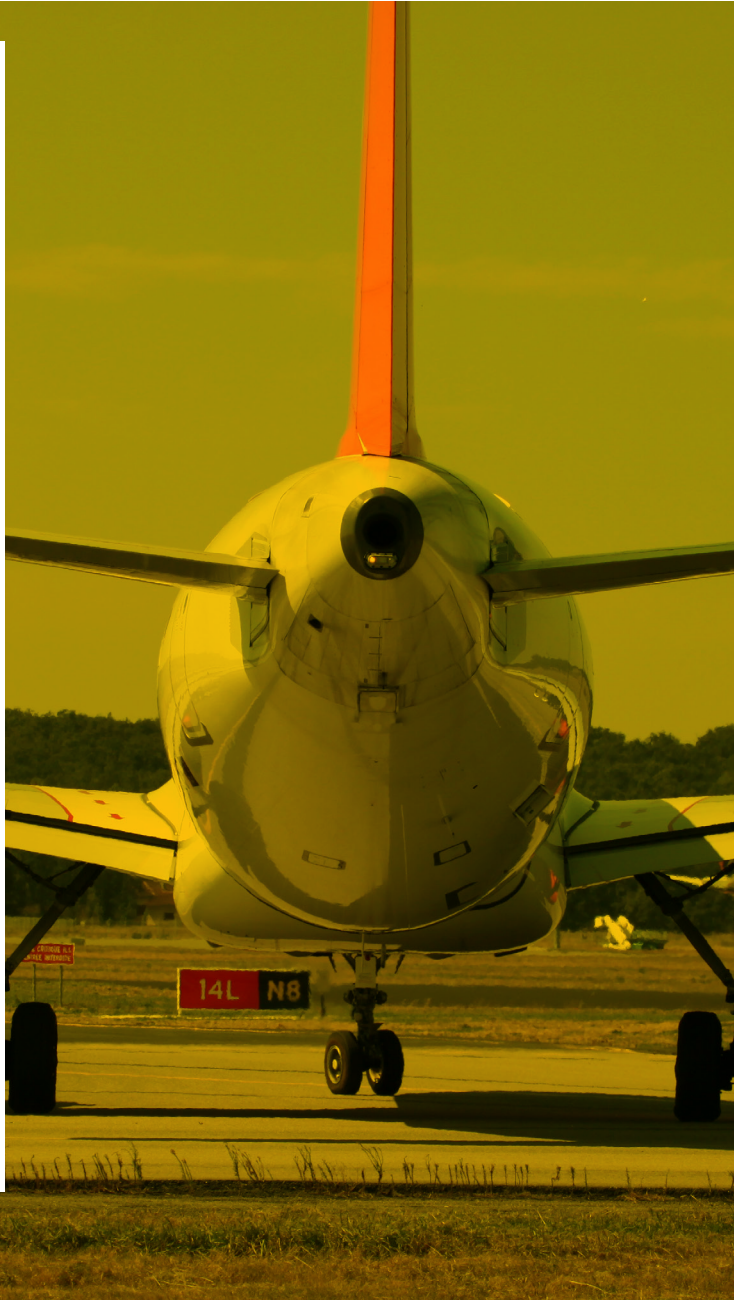
THE STRUCTURE

As easyJet is a UK airline, BALPA was the driving member of the ePG. Initially, pilots started working for easyJet in the UK, subsequently signing up for union membership with BALPA, before moving to a base on the continent. This link with BALPA was translated within the organisation of the ePG by BALPA having a leading position: all decisions needed their approval (veto-right) and a considerable part of membership fee contributions were transferred back to BALPA to fund ePG activities. This soon became a point of disagreement

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While initially the divide and conquer strategy of the company led to some short-term gains, on the long-term it was detrimental to social dialogue and created a lot of discontent among the pilot community.

Patrick Barbary,
ePG Chairman



between the different unions. Another important point was the lack of jurisdiction outside the UK, which meant that BALPA had no the power to sign agreements outside the UK.

While the intentions were genuine, the initial organisation of the ePG led to unwanted tensions between the unions, often at a high level.

Non-recognition from management

The intention of the ePG was to negotiate all matters directly affecting employees of more than one branch of easyJet (e.g. rostering, pay, base transfer). Unfortunately, the company did not share this idea. They thought it would be far more beneficial to divide the unions. In the absence of a legal framework to permit transnational negotiations and agreements, we could not force the company to the negotiation table.

Non-ECA Member Association

In the first German base, Dortmund, pilots and cabin crew worked under a UK-contract even though they were permanently based in Germany. When the base closed, only 4 years after it opened, pilots and cabin crew were forced to relocate. In the second German base – Berlin – local contracts were introduced following pressure from the local general union (Verdi). A lack of support for the pilots in Dortmund at the time of the closure motivated a majority of pilots to join Verdi, where the cabin crew were organised, rather than VC, the German airline pilots' association. This complicated the representation of the German pilots in the ePG as Verdi is NOT an ECA-member and the ECA Constitution does not enable more than one Member Association per country. After some time, an understanding was reached between VC and Verdi to enable German based easyJet pilots to stay informed of discussions within the ePG.

WORKING ON THE FUTURE

Despite these obstacles nobody questioned the necessity to stay united. The different representatives understood that it remained important to maintain the cohesion among the different easyJet MAs within the network.

Therefore the administrative matters were passed on to ECA and the chairman in an effort to free the discussions from non-pilot related subjects. This more pragmatic approach worked well and made it possible to concentrate again on the core business.

The lengthy discussions during the MA updates showed that we could learn a lot from each other's experience and that, as expected, in most cases the company dealt with us in the same way.

But soon we were faced with a new threat: easyJet 2.0

EASYJET 2.0

With the first continental bases the employment contract was still mirrored on the UK-contract, with loyalty bonus, sick pay and pension benefits, this soon changed with the opening of the Lisbon base. In the absence of a legal framework to discuss transnational working conditions, the company took advantage of this loophole to impose lower terms and conditions in countries where they had not previously operated. The company even closed the Madrid base in order to get rid of the beneficial employment contract that was in place and opened a base in Barcelona 3 years later at much lower terms and conditions.

As an informal organisation, the ePG had no legal means to fight these practices. Other means had to be used. The ePG wrote a letter to the CEO to express its concern about how the company was undermining terms and conditions. As there is no legal framework in the EU that enables a network-wide strike, the ePG actively started to help the Portuguese union to organise. This eventually led to a couple of strikes that forced the company to

considerably increase the terms and conditions it was offering. This success was however not without casualties: as pilots were on temporary contracts at the time, those of union representatives were not renewed. While the overall outcome for the pilot community was successful, they paid a high price.

A similar scenario unveiled with the opening of the Amsterdam base where the company again attached low terms and conditions. Despite a huge Dutch community in easyJet, the company struggled to fully crew the base as many were not willing to accept such working conditions. Tense CLA negotiations with the company followed and ultimately lead to industrial action. The ePG actively supported their Dutch colleagues with a joint letter to the CEO, as did ECA through a press release. These actions combined with the tenacity of our Dutch colleagues lead to successful CLA negotiations being concluded.

While initially the divide and conquer strategy of the company led to some short-term gains, on the long-term it was detrimental to social dialogue and created a lot of discontent among the pilot community. Additionally, the different agreements in each country created an non-transparent set of rules, complicating operations which are centralised and managed from the HQ in Luton. For a low-cost carrier where cost-effectiveness is essential, it is a nightmare.

CHANGE OF MANAGEMENT

In 2016, easyJet replaced its CCO, group people director and most importantly the head of employee relations. This new team, especially the head of employee relations, understood the importance of a constructive social dialogue on a network-wide level.

Due to ongoing resistance by some at easyJet HQ to embrace collective work with unions, initial contacts between the ePG and the company started cautiously. We looked at which platform would be the best to deal with transnational negotiations, and while from a legal perspective the existing European Works Council provides a better basis, not all pilot unions have representatives within it. In addition, as the European Works Council is for

all company employees, it is not the most optimum way to touch upon pilot-specific topics.

Consequently, in the autumn of 2016, the ePG decided to invite the head of employee relations to its meeting in London Gatwick. Since that “informal” meeting, the relationship with the company has gradually improved. The first real project that is being collectively negotiated with the company is a new base transfer protocol, covering every country where the company is operating, including Switzerland. 8 months and several meetings later, we’re getting close to an agreement.

Since the start of 2018, all ePG meetings are planned in agreement with the company. The company provides roster release for one union representative per country (usually the chairman of the Company Council), the ePG chairman and the ePG secretary. Most of the bi-monthly meetings are spread over two days, allowing ample time for discussions and also offering the opportunity to have informal conversations over evening dinner, which further enhances the team spirit.

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During the two-day meeting, one or more slots are foreseen for discussions with management, either in person or by conference call. So far, such discussions have covered topics such as cabin air quality and fume events, diversity and Airline Management Board inclusion. A delegation of the ePG was also invited by the company for a visit to the Airbus research centre in Hamburg recently.

One of the next ePG meetings will provide the opportunity for the group to meet the company's CEO for the first time.

PLANS FOR THE FUTURE

In the future, two-day ePG meetings will take place in London to facilitate the attendance of management. It will also facilitate the positioning of the union members as these places have the best connections within the network.

The company intends to use the ePG as a platform to discuss subjects that are of a network-wide importance and to negotiate all matters directly affecting employees of more than one branch of easyJet (e.g. rostering, pay, base transfer). Following the implementation of the new base transfer protocol we expect to streamline rostering and pay package aspects. While the salary will probably differ from country to country as taxes and social security contributions are not aligned, the structure will be the same, meaning loyalty bonus, sick pay and pension benefits will be part of every contract. The unions would also like to see fatigue mitigation addressed.

With ECA we are working on a new ePG protocol, better adapted to our requirements. In addition, the ePG would welcome any move from EU decision-makers to establish an appropriate legal framework that would enable transnational negotiations in a transnational airline.

SAS Pilot Group

by Ole Knutsen, Norsk Flygerforbund & Martin Lindgren, Svensk Pilotförening

SPLIT & REUNITE

SAS, Scandinavian Airlines Systems, is a Scandinavian based so called “legacy carrier”. Its history goes back to the early days of aviation when the Danish, Swedish and Norwegian states founded separate air carriers post World War I. In 1946, SAS was formed by merging DDL (Danish), DNL (Norwegian) and SILA (Swedish), the state-owned entities providing air services in Scandinavia. SAS is the first transnational airline in the world.

In 1986, SAS founded Spanair, a Spanish subsidiary based in Palma de Mallorca, for flights from the Mediterranean Island to Scandinavia. Other airlines such as Linjeflyg, Air Botnia (later renamed Blue1), Air Baltic, Continental, BMI, Skyways, Wideroe and Braathens have all been partly or fully owned by SAS and either remained separate brands or been incorporated into the SAS brand.

When the de-regulation of the European aviation market began in the 1990s SAS was thought to be well positioned for the changes to come. But the diversity of the company at the time did not help the airline to adapt to new challenges introduced. The economic downturn that came after the IT-crash in the beginning of the 2000s combined with the devastating effects on air travel that 9/11 contributed to was disastrous for SAS. The company was not prepared to meet a new market where especially the price of air fares was used by competitors to gain market shares. In 2001 and 2003 some 300 pilots were made redundant and management required concessions from the pilots in the company. At the same time SAS merged with Braathens and their 300 or so pilots. The merger of SAS and Braathens was felt as deeply unfair on both sides. Seniority within SAS became divided into two lists: one list for the ‘old’ SAS pilots and one list for the incoming Braathens pilots and Norwegian SAS pilots. By making the Braathens pilots not part of the old SAS, they only worked with Norwegian colleagues and never felt they were part of the big SAS family.

In addition, the two-tier seniority caused a deep split among unions. SAS pilots in Norway are divided in two unions NSF and SNF. NSF is the old SAS union. SNF, previously BSF, the union for Braathens pilots evolved into SNF after the merger between SAS and Braathens (not to be mixed with the airline in Sweden today).

Throughout the 2000s SAS management desperately struggled to re-organise the company to meet new market conditions. In 2003 SAS launched “Snowflake” in an attempt to meet competition from low-cost airlines. The attempt failed miserably and the Snowflake project was cancelled after 18 months of operations.

In the mid-2000s management decided to definitely re-organise the structure of the company. Separate entities were formed in the three countries where four AOCs were introduced for national flying and intercontinental flying. This structure was later abandoned as it proved not to be economically rational.

But the split of the production division into 4 AOCs gave birth to competition among the pilots within these three countries, the cheapest bidder got the production and so on. Existing tensions among the unions were further fuelled by the CEO of the Norwegian platform in SAS aspiring to turn the Norwegian AOC into a new company. His plans were cut short when his superior found out what he was planning.

In 2009 and 2010 SAS faced economic problems once again. Pilots were made redundant and SAS needed to raise capital.

The events described above paved the road for what was to come.

CHANGE IN MANAGEMENT AND COMPANY CULTURE

In 2011 Rickard Gustafsson was appointed CEO of SAS, a position he is still holding. SAS management was re-structured and a new more aggressive management style, in relation to employees, was introduced. In November 2012 the SAS CEO made a public statement to all employees claiming that new

terms and conditions would now be introduced, including wage cuts, slashed pensions and productivity increases resulting in further redundancies. The public campaign was followed by negotiations with unions that eventually resulted in substantial concessions from the pilots. The threat of bankruptcy was directed against the negotiators from the pilot associations, where the chairman of the board already had the filings filled-in and signed, and in the end a new CLA for SAS pilots was accepted.

The concessions agreed to were close to 40% reductions including pay, pensions, productivity and insurances, scope clauses were watered out and union work was restricted.

The following years SAS management focused on union busting tactics that were and still are easily identifiable.

Wet-leasing, transfer of aircraft, and further threats of outsourcing, playing on national interests, carrots for some groups, sticks for others and all types of demoralising actions that can be taken to undermine the pilot role and union representation.

In 2015, SAS terminated the transnational CLA for pilots in Sweden, Norway and Denmark that had been in place for 60 years and refused to negotiate with the pilot group as one entity and instead engaged in separate negotiations with the pilot groups, represented by four pilot unions, of which two were in Norway.

Threats in the form of transfer of pilot jobs, increased outsourcing, redundancies and more were directed towards pilot representatives and the unity among the pilots' associations broke down. In the end four new CLAs were signed further reducing terms and conditions, mainly focused on long haul productivity and further watering down of scope clauses.

The CLA that was scrapped in 2015 had 250 pages with detailed rules and regulations, the new one only had 50 pages and was written in a way that left every paragraph open to interpretation. It is noteworthy to state that in Scandinavia the employer has the right to interpret and decide on issues not explicitly described in the CLA.

In 2016, Swedish and Norwegian pilots, encouraged by a better financial situation for the company combined with increasing terms and conditions for pilots world-wide, demanded increased pay and the abolishment of the B-scale, introduced in the mid 2000's concessions, that new pilots hired in 2013 were placed on. Pilots in Norway were on a limited strike while pilots in Sweden went on a 5-day all-out strike before reaching a new agreement ridding the B-scale. SAS Ireland, or SAIL, was launched in 2017 with bases in London and Malaga. Pilot unions in the three Scandinavian countries, still somewhat scared by the breakdown in 2015, did not manage to form and follow a joint strategy to counter the threat of further outsourcing of SAS pilot jobs.

The launch of SAIL is said to lower costs for the company by avoiding the high Scandinavian labour costs. However, the reductions of terms and conditions that have been made since 2012 place SAS pilots lower than most competitor airlines in Europe, irrespective of high costs associated with employing staff in the Scandinavian countries. Therefore in order to truly lower costs, the terms and conditions for pilots hired in SAIL must be significantly lower than for pilots in competing airlines, such as BA, easyJet, Norwegian UK or even Ryanair.

UNION BUSTING

The SAS company council in SAS have formed part of the Trans-National co-operation of PFOR that until 2015 was negotiating on behalf of pilots from all three countries. PFOR was mainly made up of the chairman and vice-chairman of the respective pilot associations.

NSF (old SAS pilot union in Norway) was part of the mentioned SAS Trans-National co-operation, PFOR. SNF (ex- Braathens) was not a member of PFOR.

In November 2012, an internal memo from SAS management to all employees stated that all employees will have new terms and conditions reducing wages, pensions and increasing productivity starting the following week. SAS management had not even contacted the unions to initiate negotiations. Instead, the CEO of SAS is seen in several media stating that it is this deal – or a bankrupt airline.

Q: Why play pilots against each other?



There was no doubt about the financial struggles of SAS. The largest owners of SAS, the Scandinavian states and the Wallenberg family made it clear that the airline would receive no additional funding from them. The CEO communicated through the media that SAS would be bankrupt should the unions not accept the concessions the company demanded. The unions did not accept the pre-written CLA from SAS, and the debate and negotiations rolled across national TV over days, with politicians and stakeholders hammering that SAS would be bankrupt if the unions did not accept the terms.

The pressure was tremendous on the negotiation team representing the pilots, there are stories about threats and disputes entering a near physical stage between negotiators and top-level management. Chief pilots and pilots were urged to put pressure on the union leaders, there was no concern given to flight operations and the pressure all the crews were operating under.

Different unions started making different announcements on TV about accepting deals and this in turn led to a major break down in trust between the unions. With the current CLA still standing however, SAS needed PFOR to be united as it was not possible to alter or terminate the then current CLA unless all parties agreed. In these negotiations, SAS in a way unified the unions to ensure that all would agree to the concessions. After several days of intense uninterrupted negotiations, the parties finally agreed to a new CLA where salaries were cut by 8,3%, the defined benefit pension scheme was closed and replaced by a direct contribution scheme, cutting pensions in half for many pilots and even more for some. Working hours were increased, insurances reduced and other benefits taken away. The seeds of dismay were planted during this process which would lead to the break to come. To start, each country got slightly different pensions (which also led to internal union struggles on decisions on how to spread them and weakening of national company councils), the former scope clause on wet-lease was watered down and SAS management were trying to turn unions against each other by painting negative pictures and creating rivalries.

Then in 2014, SAS management further enhanced their union busting strategies and the divide and conquer tactics. In Denmark, discussions relating to SAS' takeover of Cimber meant that the Danish union was under pressure

to negotiate separately with SAS, without the Swedish and Norwegian pilots present. The company also decided to disregard seniority principles stating that a court judgement in 2012 had rendered the seniority system in the CLA illegal. Instead, SAS said they could choose whomever they wanted to captain and long-haul positions. Some pilots used the argument of an illegal seniority list to advocate the need to build a new list, based on a system that would take into account the entry date into companies that had later been taken over by SAS, whereas the previous, now deemed illegal, list took into account effective entry into SAS, after the takeover.

In 2015, two days before the CLA would be prolonged for another year, SAS decided to terminate all agreements between the company and the unions stating there would be no intention to renegotiate any of the agreements. Soon after, using the bilateral agreement SAS reached with DPF on Cimber, SAS continued to offer only bilateral negotiations with the different unions, refusing to allow the pilots to negotiate as a single body as they had done up until now. Gradually, the unions were pressured into accepting different CLA deals and lengths and threatening unions that stood their ground. In the end, the remaining unions were forced to capitulate, all unions now had different CLAs and 60 years of history was more or less flushed down the drain. The former common agreements, protocols, precedents and routines were replaced by four new CLAs with slight differences. The formed "Grønne bok" was a collection of agreements and protocols of almost 250 pages. The new agreements were 40 pages. SAS were quick to use the lack of details in the new CLAs to their advantage, pushing the limits on working hours, pay, insurances, sick benefits, employer responsibilities and more.

For the following CLA negotiations in the different countries, the unions tried to coordinate as best they could as SAS still refused to negotiate with all parties at the same time and the unions didn't push hard enough on this issue to enforce this principle, partly because some lack of trust between the unions still existed.

The pilots in SAS were very disappointed with their new terms and conditions, as were new-joiners once they realised that SAS wasn't any better than the low-cost carriers they had left to join the company. Once the company became

profitable again, union demands included pay rises above what the labour market in general had agreed to. The Norwegian unions were able to agree improvements with the company, including pay rise. When SPF made the same request, SAS turned them down but following strikes in Sweden, the new pay scale was also included here.

FLAGS OF CONVENIENCE

SAS then decided to adopt the multiple AOC model, two AOCs meant two productivity units within the group, just like any other internal or external entity. The new AOC was created in 2017 and based in Dublin under the name Scandinavian Airlines Systems Ireland Ltd. with two bases: London Heathrow and Malaga.

“Scandinavian airline SAS is creating an Irish subsidiary — also called SAS — to fly some shorter routes because that’s the only way it can compete on costs with discounters like Norwegian Air, Ryanair and EasyJet on certain competitive routes”, its CEO told Skift in a recent interview.

“[...] Among its competitors to London, SAS is the only airline that must pay its employees according to Scandinavian laws, Gustafson said. British Airways employs its crews in the UK, while the other airlines can hire from anywhere in Europe, giving them a major cost advantage.

The new SAS, like its competitors, will hire employees from outside Scandinavia. The alternative, Gustafson said, might be taking drastic action, like leaving London.”⁶⁷

SAS argued that the competing airlines primarily flying from the UK to Scandinavia had lower crew costs and therefore forced SAS to take this decision. Pilots, however, did not see it the same way, the cut backs that had taken place over the years meant that terms and conditions for SAS pilots were in the bottom range when benchmarking with competitors. Reducing costs through SAS Ireland’s London base would mean having to offer substantially lower wages and benefits to pilots based there.

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Consequently, it can be argued that the Irish AOC was instead established to whipsaw one pilot group against the other, driving down terms and conditions further.

Whenever management met with the Scandinavian unions, this was translated by demands for concessions and threats of moving more jobs out of Scandinavia. Despite their willingness and lessons learned over the past years, the unions could not agree on how to counter the threat of the Irish based AOC, with negotiations still being conducted bi-laterally and not as one entity. Until...

A NEW DAWN

At the start of 2018, the unions in SAS agreed to strengthen their cooperation through the creation of the SAS Pilot Group following the realisation that a unified front and strategy is crucial to face the next negotiation talks with the company, which are due to take place in 2019 (at the earliest).

In the meantime, SAS management is expected to continue challenging existing agreements, the Scandinavian labour model and testing relations between the company and its pilots. Still, the largest owners, the Swedish, Norwegian and Danish states, have not commented on the fact that SAS are outsourcing jobs and following the leads of other companies using flags of convenience to cut costs and circumvent labour rights.

Ryanair Transnational Pilot

Group

by Interim EERC & ECA

UNITE BEFORE FLIGHT

During 2017 the pilots of Ryanair began to vote with their feet in their hundreds. They left because of the toxic, divisive and oppressive strategy followed by the CEO and his management team for years.

In early September 2017, Ryanair cancelled 40-50 flights per week over a 6-week period blaming a miscalculation of annual leave based on a requirement to align the annual leave year from April-Mar to Jan-Dec. Later in September, realising that this action would not ensure preservation of the roster, they cancelled a further 18000 flights and announced a slowing of growth. The management team were quick to make the insinuation that it was the pilots' fault, having to be granted all this annual leave. The pilots resented this. The pilots also resented the degrading remarks made by the CEO on TV news channels:

>> "I would challenge any pilot to explain how this is a difficult job or how it is they are overworked or how anybody who by law cannot fly more than 18 hours a week, could be suffering from fatigue."

>> "I can force them to defer their time off"

>> "We have some goodies to discuss with pilots, but if pilots misbehave, that will be the end of the goodies."

Little did the CEO realise that these remarks would be the single biggest factor driving the unity of pilots that followed.



At that time, Ryanair used the so-called Employee Representative Councils (ERC) as a form of representation of its pilots. This ERC system did not enjoy any support from the pilots. The vast majority of ERC “representatives” found themselves unilaterally appointed by management instead of being elected by their peers. They were pressured to carry the company’s divide and conquer message, forcing terms and conditions down base by base with arbitrary take it or leave it “deals”. Ryanair conveniently claimed this was abiding by the rules of

employee representation, but which ignored any meaningful practice that prevails in normal employer-employee relationships.

Following the remarks made, the ERCs from Italian bases wrote to the COO requesting an Italian CLA and sufficient resources for key departments to enable them to be adequately staffed. ERCs from 59 bases wrote to the COO to refuse his offer of money with conditions to give up their annual leave days. A small group of these ERCs began to communicate together with a view of providing some organisation and to promote the massive surge in unity that had begun with the CEO’s remarks. And so, the European ERC was born – EERC.

The EERC was a grassroots initiative. Contrary to the same old “competitor pilot unions” rhetoric by Ryanair management, we all worked for Ryanair, flew full rosters and gave our time off for the greater good of the pilot body in the company. Two brave colleagues, Capt. Imelda Comer and Capt. Terry O’Connor came forward to clarify this fact. Until then, Ryanair employees had rarely publicly expressed their views about the company in an honest manner and revealing their identities. Ryanair management were quick to brand their efforts as disingenuous but the message that these pilots spread could not be contained. Unlike other transnational airlines, we did not have recognition of unions or any protection from the vindictive culture that exists in Ryanair.

The ECA and its Member Associations (MAs) were quick to offer assistance. Unlike previous campaigns against Ryanair's treatment of its workers, this campaign was supported by the MAs, not organised by them. A pilot unity letter from the ECA was instrumental in enhancing confidence within the pilot body. The MAs posted open letters to their pilot members encouraging support for the EERC. MAs challenged the CEO's message citing his attitude as having a negative effect on its employees and its company culture. They called for unity across airlines, MAs and within the Ryanair Pilot Group under the coordination of the EERC. Letters of support also came from across the Atlantic (US ALPA-I, APA, SWAPA, IFALPA and the Sky Team Alliance to name a few). Every correspondence from the EERC ended with the same message to pilots: "JOIN YOUR PILOT ASSOCIATION – THIS IS YOUR FUTURE". The Ryanair pilots responded en masse.

As the Ryanair share price continued to fall, the Ryanair management team responsible for the eventual visibility of the company's failed strategy were removed. The EERC continued to dispute Ryanair's propaganda with facts and began work on a Conditions and Pay Proposal that would serve as a framework for CLA negotiations and an elevation of terms and conditions to parity with airlines across Europe. When the CPP was published it was met with extraordinary enthusiasm from the pilots. They subsequently voted overwhelmingly to be represented on a transnational level by the EERC Company Councils, composed of Ryanair Captains and First Officers, directly employed and contractors and supported by MA negotiating expertise, started to form within the pilot unions. The pilots in Portugal (SPAC) were the first to form a Ryanair Company Council. And were followed by Germany, Ireland, Sweden, Italy, Spain, the Netherlands & Belgium. The importance of such Company Councils cannot be underestimated. It is via the Company Councils that Ryanair pilots can negotiate directly at national level. These set-ups are designed to facilitate and formalise negotiations – and this in line with national legal and social requirements and protections. They also ensure fair and transparent deals that would apply to all pilots in a given country.

At the end of November the EERC wrote a letter to the Ryanair board, attaching

all correspondence that had, until then, been ignored by Ryanair management. We also reminded them of the increasing number of resignations from the airline. Pilots also volunteered 2500 working off days to the EERC to offer to the company in exchange for meaningful engagement with MAs and the EERC. Pilots from different countries met with their respective MAs to discuss industrial action. The EERC continued to keep colleagues throughout Europe informed on developments through their eerconline website and via email.

On December 15th 2017, the day of the declared strike by Italian pilots, with strikes elsewhere looming and under enormous pressure from Board members, investors and customers, Ryanair made a historical U-turn as the airline announced it would recognise unions for the first time in its over 30 years of existence and deal with its pilots through national unions. The old system of ERCs would disappear.

To those colleagues from all airlines reading this, our biggest weapon was unity brought about from years of division and denigration of our profession. We followed the lead of our brothers and sisters in NPG and ePG. We succeed through common goals.

THE ROLE OF THE ECA

At ECA, we swiftly re-arranged our daily business, putting the Ryanair pilots at the top of our priority list. The determination we witnessed to improve terms and conditions – not simply pay but gaining respect as employees – coupled with leaders within the Ryanair pilot community who were willing to openly speak up was key to success and was what had lacked in previous attempts to organise Ryanair pilots across Europe. Suddenly, there was a critical mass of pilots to organise and a way to raise awareness about the issues they faced with their management towards other pilots, the public, shareholders and politicians. But these pilots needed and were seeking guidance and advice. They needed someone to channel their efforts in a specific direction. They needed someone to smooth and streamline the communication between them. This is where ECA played a key role.

Our well-established network of MAs across Europe provided a suitable framework for Ryanair pilots. All these associations have years of experience and know-how in dealing with transnational employers, organising pilots, direct negotiations and legal advice. Becoming a member of an ECA-affiliated union provided these Ryanair pilots immediate access to an umbrella family that was there to support them and under which they could remain united and collectively share information, experience and know-how almost real-time. This is of particular importance for TNA pilots who work for one single central employer that operates from different countries with different jurisdictions and must negotiate terms & conditions locally.

Being a member of an ECA MA gave an additional advantage – member associations decided to facilitate as much as possible the transition of Ryanair pilots by introducing “seamless membership” for Ryanair pilots – allowing them to change their membership to a different MA in case of a base transfer without losing on their benefits and ensuring continuing legal support. This gave an additional incentive of pilots to stick together under the ECA umbrella.

But that protection was not enough. We realised that many pilots are vulnerable and may be sacked or disciplined because of their efforts to organise the community. For contractor pilots particularly, there were very few protections that could be used. This is why ECA set up a voluntarily crowdfund for pilot leaders. The fundraising was very successful and thousands of pilots, sympathising members of the public and aviation stakeholders raised over 150.000 EUR in 2 months’ time. As we faced an extraordinary situation, we looked for out of the box solutions. The Pilot Unity 2017 fund was exactly this.

In March 2018, ECA Member Associations signed a protocol establishing the Ryanair Transnational Pilot Group (RTPG). The protocol would provide the formal framework for Ryanair pilots, their company councils, pilot unions and ECA. It established some ground principles of coordination and cooperation. The protocol establishes the RTPG as being the primary Ryanair pilot body for all transnational matters. The new RTPG allows ECA Member Associations from across Europe and their Ryanair Company Councils to pool resources, legal, political and technical know-how, as well as decades of experience in constructive social dialogue and collective bargaining.

ECA Member Associations sign the Ryanair Transnational Pilot Group Protocol,
March 2018, Luxembourg



Negotiations with Ryanair are still not a success story after several strikes in many jurisdictions and some local agreements on specific topics, we have yet to see the establishment of fair and equal treatment for all Ryanair pilots across the whole of Europe. But pilots are still determined and ECA supports them with a clear coordination role. Together with our MAs we look at what tools are available to help the Ryanair pilots achieve their objectives. At the same time, we work with decision-makers in Brussels to create new tools (e.g. European Labour Authority to oversee labour law application, transparent and predictable working conditions and posting of workers across Europe). And we go the extra mile to do 'out of the box' campaigns, maintain unity, communicate and raise awareness about the challenges faced by Ryanair pilots.

One employer, different bargaining units

by a Spain-based pilot

HOW THE EU RULES FALL SHORT OF PROTECTING THE RIGHT TO STRIKE AT TRANSNATIONAL LEVEL

During the spring of 2015, Norwegian was in the middle of its big expansion and apart from our Scandinavian bases we also had bases in Finland, Spain and UK.

Our Scandinavian colleagues were unionised and had a Collective agreement in place with the airline while the rest of us didn't. Outside of Scandinavia, individual and non-negotiated contracts through various placement agencies were the norm.

The Scandinavian pilots, through their Pilot Association NPU, were in a dispute with the airline about the creation of a seniority system applicable to all Norwegian pilots regardless of contract type or base country, the so-called Master Seniority List (MSL). The dispute was such that it led to an all-out confrontation which climaxed in an 11 consecutive day strike by our Scandinavian based colleagues.

The days that led to the beginning of the strike were very hectic for all pilots, both those in Scandinavia who were gearing up for the action as well as the rest of us in other jurisdictions who didn't really know how to deal with such a situation. While the unionised pilots based in Scandinavia were organising

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... such a situation was very divisive and controversial with many of us based outside Scandinavia were left with a feeling of frustration and anger because of not being able to show support for a cause we all believed in...



themselves for the strike, the rest of us started enquiring about the sort of rights/obligations we had in respect to what was about to happen.

What we found out was quite significant in the context of a transnational airline like Norwegian where pilots and cabin crews can fly with one another regardless of contract type or base country without restrictions but cannot support each other in case of a labour dispute. The contrary was actually the case as many of us based outside of Scandinavia were rostered to fly Scandinavian production, de facto undermining the protest of our Scandinavian colleagues and the effectiveness of their strike.

Needless to say that such a situation was very divisive and controversial with many of us based outside Scandinavia were left with a feeling of frustration and anger because of not being able to show support for a cause we all believed in but that only some of us had the legal right to fight for. The fact that the company could legally use pilots from other jurisdictions to undermine the efforts of our Scandinavian colleagues made things even more bitter.

During those days frustration amongst Norwegian pilots grew exponentially and many considered taking individual initiatives of protest in order to show solidarity to the Scandinavian pilots, however the NPU officially advised non-Scandinavian pilots not risk their individual jobs in an environment where their rights were not protected by any legislation and asked all colleagues to stick with their published rosters. In simple terms the message was “we appreciate your support but please don’t risk your jobs, we will fight this battle also for you”.

Regardless of this noble message the company experienced a record high level of sickness during the strike days.

I personally felt so frustrated and angry that I also called in sick as I was not mentally fit to go out and fly an airliner with the required levels of concentration and professional focus. I do remember the heated discussions with colleagues and also at home with my family about the whole situation which made us all realise how much work still needs to be done at legislative level when it comes to transnational companies.

The strike finished after 11 days with an agreement between Norwegian management and the NPU that gave birth to the MSL (Master Seniority List) that we still enjoy today and that makes Norwegian a much more attractive and fair employer.

A few years have gone by since the strike, however the situation in Europe is still such that airlines can build a transnational business model based on total flexibility in the way they use their workforce, while the employees have almost no transnational rights and almost no way to pursue any collective improvement in their workplace.

Something really needs to be done at EU legislative level.

Part 3

TNA Toolkit

Working on offering transnational airline pilots the best possible representation and support has been and still is in many ways a learning curve. There is no one solution fitting all response to what each pilot group will need. Compared to 2006, when ECA and MAs first started the initiatives around transnational representation and collective bargaining in Europe, what has evolved can be described as follows:

European decision-makers, realising that transnational business models are multiplying (not just in aviation) with increased worker mobility across borders, have shown a willingness to propose regulations in order to avoid abuses, although effective regulation still needs to be implemented.

Whereas before each national Member Association (MA) may have organised pilots from one or two transnational airlines with bases in their country, the model has clearly gained a large portion of the aviation market. Realising

that adjustments in their working methods are necessary, some MAs have adapted in a way that they have a full department to deal with supporting transnational airline pilots.

At ECA level, the number of transnational pilot groups has gone from one (the original easyJet Pilot Group) to over 10 different transnational pilot groups in some form, each having its own level of engagement, level of required support and level of ambition.

Even the airlines themselves, while always operating and managing transnationally have now started to engage with the pilot body on a transnational level, again with varying degrees to this engagement but clearly a step towards transnational social dialogue.

During a recent European TNA seminar organised by ECA within the scope of this project, when asked what TNA Pilot Groups needed in terms of support when starting up and progressing in time, the response was elements such as central coordination and overview, day to day management tools and templates (so called SOPs – Standard Operating Procedures), resources from the MAs, training in negotiations and representation and opportunities for sharing experiences from other airline representatives.

Over the years, ECA, MAs and Pilot Groups have worked on a number of tools to facilitate their cooperation and information sharing. Below you will find the elements that have been assembled constitute the start of a TNA toolkit.

Transnational collective

bargaining:

by Lien Valcke, UGent

Good & Bad experiences from other sectors.
Inspiration for the aviation sector?

Examining the possibility of transposing the good practices with transnational social dialogue in one sector, as a whole, onto the aviation sector; that was the initial aspiration of this chapter. An in-depth analysis of the current experiences with transnational union networks and transnational bargaining successes led to the conclusion that such a sector does not exist, however similar it may seem at first glance.

The aim was redirected: the main challenges and stumbling blocks for transnational social dialogue in the aviation sector were identified, at both sector and company level. Starting from these stumbling blocks we looked for good practices in very diverse sectors: the maritime sector, the arts, the telecom sector, automotive sector, etc. All these positive, constructive and prosperous experiences can inspire and strengthen the transnational social dialogue in the airline sector. In addition, this chapter includes relevant but broader scientific research that highlights which elements are detrimental to a successful transnational bargaining, social dialogue and cross-border cooperation between unions. In this segment, we will not go into the positive developments in aviation, for example ePG⁶⁸.

CONCEPTUAL FRAMEWORK

A clear conceptual framework is crucial for understanding the good practices, their limits, level, actors, etc.

For this chapter, we will see industrial relations⁶⁹ as “the multidisciplinary academic field that studies the employment relationship⁷⁰; that is, the complex interrelations between employers and employees, labour/trade unions, employer organizations and the state”. This is the umbrella under which we can bring collective bargaining and transnational social dialogue. Cross-border collective bargaining is a process between unions and employers regulating employment conditions, here seen as a narrow concept describing agreements concerning wages and working conditions⁷¹ (uni-lateral approach). The collective bargaining can take various forms: single – employer bargaining, multi-employer bargaining, sectoral and company level.

Transnational social dialogue concerns the consultation procedures between social partners on the different levels of industrial relations. We give a structured overview of the framework for transnational dialogue and the possible levels and the dimensions on which it can be conducted⁷².

The perfect illustration of a good practice of transnational social dialogue at company level is the case of the ArcelorMittal Social Dialogue Group⁷³. The Group was established in 2009 through a European transnational company agreement. The trade union at national level (Germany and Spain) saw this as an innovative channel to get more intensively involved in corporate decision-making. One of the main findings of the authors of the article digging through the experience in the field is that “trade union representatives are able to adapt their national discourses on industrial democracy under the influence of European practice⁷⁴” when good communication and respect can be achieved.

The (transnational) social dialogue on company and sector level is often thought of as a completely separate approach but literature shows that “creating links between the two levels of transnational social dialogue, favouring synergies⁷⁵ and thinking about how to share the role of each level,

At sectoral level

Almost exclusively European scope (maritime is the exception)

Clear legal and institutional framework

Legal status of the texts

Social partners meet within committees of European social sectoral dialogue

Scope: limited by action of public authorities and national social partners

At company level

European – global scope (other actors but lot of parallels)

European Works Council Framework (information and consultation) – No workers' representation exists at company level

Promotion on European level of Transnational company agreement -> Problem: no clear legal/ institutional framework (exl.: European Works Council and defining place of workers within European company statute): no need for notification (exl.: European works council/ place of workers), no rules for implementation, no mechanisms for monitoring -> employer's organisations oppose a legal framework

would reinforce the efficiency of social dialogue at both levels.⁷⁶

The links between transnational social dialogue at sectoral and company level cover the actors involved (see good practice Mine, Chemical and Energy sector), the subjects (working conditions, health and security, employment, training, equal opportunities) and the implementation procedures (see stumbling block implementation and enforcement). The actors could make the creation of definite links between those two difficult since their preference lies in another level: the unions prefer transnational dialogue on sector level (due to the evident reasons: clear legal framework and legal status of the text), the employer usually favours the agreements on company level⁷⁷.

We present a good practice from the employer's side in the Mine, Chemical and Energy sector where the link between the levels exists and there is a respect for the agreements on different levels⁷⁸; EMF and EMCEF are both members of several European social dialogue committees and have successfully negotiated several transnational agreements, mostly with a European scope. EMF in thus wants to avoid as much as possible any kind of competition between the countries and risking a race to the bottom in wages and working conditions. They used the following tools in implementing this strategy:

- Organisation of conferences;
- Definition of common minimum standard of wages;
- Definition of rules coordinating national negotiations;
- Creating a network enabling the members of exchange on practices shared with the textile and chemical sector -> internal procedure of negotiating transnational company agreements is defined that do not involve the European Works councils but all the national unions, the different stages of the negotiations are written out;
- Creation of committees

Transnational company agreements will be defined as “an agreement comprising reciprocal commitments the scope of which extends to the territory of several States and which has been concluded by one or more representatives of a company or a group of companies on the one hand, and

one or more workers' organisations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives⁷⁹". Where International/Global framework agreements⁸⁰ are "based on contract relationships between transnational corporations and global union federations which give mutual recognition of actors on both sides, provides processes for conflict resolution and handles a standard-setting contents regarding ILO core labour standards and additional ILO conventions"⁸¹.

ILO allows us to conceive the Global framework agreement as a concrete instrument of transnational collective bargaining⁸². The strong point of GFA's is that they are based upon a new transnational approach to labour relations where the workers are an important stakeholder⁸³. Core issue here is the mutual recognition, although we can see a definite shift in the mentality of certain low-cost airline companies in the recent months⁸⁴. GFA's are fundamental in the broader conceptualization of steps towards globalizing labour relations⁸⁵, their follow-up monitoring by works councils and GUF's increase the credibility of the promises made concerning minimum labor standards. This can have a positive effect on the, ever crucial, trust that must exist between his employer and the employees, united in a Trade Union.

STUMBLING BLOCKS FOR TRANSNATIONAL SOCIAL DIALOGUE

The undertaken questionnaire, interviews with key actors and a meta-analysis of scientific research⁸⁶ make it possible to determine the biggest challenges in the current climate to work towards a successful (transnational) social dialogue (in aviation) and the effectiveness of international union alliances in international framework agreements. The stumbling blocks and challenges are very concrete but the separation is a bit artificial, they are intertwined and they influence each other. References will be made to relationships and details but we want to draw the reader's attention to this reality upfront. The good practices usually contain elements that are applicable to different stumbling

blocks as well. We will start from the current European climate concerning labour, with a strong focus on social dialogue. Going from there, the challenges with (EU) legislation and their enforcement will be addressed. Building upon this reality we will address the methods used by employers to break down the power of unions, at all levels. After every section, you can find the existing challenges and a few suggestions for solutions, learned from good experiences in other sectors and literature.

STRATEGIES USED BY EMPLOYERS IN THEIR QUEST TO WEAKEN TRADE UNION POWER

Globalization

A growing number of companies have established their operations and investments in different countries, in and outside of the European Union⁸⁷. This has given a boost to competition but has had a negative impact on wages and working conditions. Globalization is seen as an employer's strategy of alienation⁸⁸, a form of Institutional avoidance and a tool to diminish the power of unions. The outcome of this strategically planned globalization is the fragmentation of the national bases of organisation (bargaining structures, national industrial relation systems, etc.) and in that weakening or even the falling apart of the transnational social dialogue. This is an evident consequence since the transnational power and battle force has to build upon strong national trade unions, as it is a grassroots up process.

The good practice in the maritime sector (See EU legislation) is the perfect example of how to regain the power after a strategic move by the employer to a transnational level. Furthermore, literature study teaches us that cross – border collective bargaining only plays a minor role in the efforts of unions the give answer to the globalization while transnational social dialogue including international and European framework agreements have developed significantly, even without legal framework. We are of the opinion that this might be due to the absence of this legal framework. The fact that there is no

need for notification (excluding European works council/place of workers), there are no rules for implementation and no mechanisms for monitoring, will respond to the wishes of the employer but at the same time gives the feeling to the employees that there is some evolution in the concession to their aspirations and wishes. Next to that, evidence suggest that transnational company agreements boost the social profile of multinational companies⁸⁹.

The difficult tension between national – transnational/international dimension remains intact and can give room for misuse by the employers; wet-leasing staff and plane/code-sharing are examples in aviation that are difficult to handle in the current legislation framework and tools for transnational social dialogue.

Eichhorst et al.⁹⁰ suggest the creation of a European rule on the standing of workers' representative bodies as a possible approach to the enforcement of transnational company agreements.

The answer to the strategically planned globalization as a form of Institutional avoidance and a tool to diminish the power of unions could be:

>> Build strong national unions, this is an uproot process and the only possible base for a good working transnational organ.

>> Use the existing tools with the most legal protection and possibilities to enforce – sector level transnational agreements, EU CA, etc.

>> Creation of a European rule on the standing of workers' representative bodies.

SPLINTERING OF INTERESTS

“We rarely hear, it has been said, of the combinations of masters; though frequently of those of workmen. But whoever imagines, upon this account, that masters rarely combine, is as ignorant of the world as of the subject. Masters are always and everywhere in a sort of tacit, but constant and uniform combination, not to raise the wages of labour above their actual rate. To violate this combination is everywhere a most unpopular action, and a sort of reproach to a master among his neighbors and equals. We seldom, indeed, hear of this combination, because it is the usual, and one may say, the natural state of things which nobody ever hears of. Masters too sometimes enter into particular combinations to sink the wages of labour even below this rate. These are always conducted with the utmost silence and secrecy, till the moment of execution, and when the workmen yield, as they sometimes do, without resistance, though severely felt by them, they are never heard of by other people. Such combinations, however, are frequently resisted by a contrary defensive combination of the workmen; who sometimes too, without any provocation of this kind, combine of their own accord to raise the price of their labour.”⁹¹

This quote of Smith stresses the importance of coordinated action of the employees, matched with the level of the coordination of the employer. Discussions during one of the TNA seminar organized within the framework of this project exposed the tactics of transnational airlines where they play national unions against each other. The airline company knows everything, unions at national level (in best case scenario these are not splintered – Who are you talking too? Pilots, cabin crew, ground handlers, etc.) only knows what happens at their national level if there is no communication across the borders between national unions within the same airline company. Collective bargaining structures in the airline industry are complex, due to the different types of employee groups working in this sector. Overall, there is an absence of sectoral negotiations in many countries, most likely since in many cases the national airline dominates the sector and to the frequent absence of a sectoral employers’ organisation⁹².

Transnational pilot groups are no luxury but a much-needed answer to the organisation and tactics of the multinational airline company. Uncoordinated decentralization, particularly when combined with a lack of clear rules regarding who is/are the most representative trade unions that should negotiate agreements at company level, may reinforce the worsening of working conditions, increase inequality between (and within) companies by fissuring workplaces, and thereby generate precariousness for workers and individuals alike⁹³. We refer to the statement of Lillie⁹⁴ in 'EU legislation' where he states that the main issue the inability to achieve internal consensus between and inside unions.

A case study and good practice in the automotive sector in Germany and the US shows the challenges faced while building a transnational solidarity that is crucial in being able to leverage global corporate power in the defense of workers' interest across borders⁹⁵. The unions used the power resources approach⁹⁶ that built on mobilizing associational and institutional resources. The main conclusion was the need for an answer to the irreversible membership decline, which is no problem in the aviation sector at this time⁹⁷, and the fact that the members of the unions were in complete control of the legally mandated works councils and they held influential positions on the corporate supervisory boards. Next to that, the employee representatives at national level were forced to let go of their jealousy of each other's institutional power and were obliged to function on a transnational level and experiment in the joint exercise of this power.

Building on the above mentioned control of the legally mandated works councils and the importance in successful transnational social dialogue we would like to refer to the questioned need for a European Works council⁹⁸ or Transnational Institution for Social Dialogue (European Works Councils on the Move). Research shows a potential for 'bottom up' facilitating in latter option (as mentioned in 'Globalization', it ideally is a grassroots up process).

The evaluation of the European Commission in May 2018 of the European Works council Directive (2009/38/EC) has shown that the information for workers in terms of quality and scope had greatly improved, whereas the consultation procedure can still be improved in effectiveness⁹⁹. Companies with a European Works Council evaluated the organ from a managerial point of view in 2016¹⁰⁰,

they mention the existence of a learning curve (“The group works council or the works councils have been professionals for fifty years. They know how to do this, how to be organized, how to communicate with each other, who is the boss, who makes the decision, who you can rely on and so on. The European Works Council is learning that know”). They do make notice of the complex relationship between compliance and enforcement. We note that this merely involves transnational social dialogue at company level, this with its know limits.

The conclusion of Gennard¹⁰¹ after an analyses of different transnational company agreements was that substantial resources are needed to succeed, mainly that the help and assistance of the European Works Council is pivotal. The negotiations turned out to be more complex than expected and national unions would have never been able to negotiate with European level corporate level management, an international union organ was necessary. Works councils are associated with reduced strike activity, as well as good industrial relations¹⁰².

Issue of concern is the dispersed character of interests represented in the national unions, the mobilizing of resources and the focus of transnational union power on a few speer points that are common of relevance to all the parties is therefore essential .

>> Set up a sectoral employers' organisation

>> Develop clear rules regarding who is/are the most representative of trade union(s) that should negotiate agreements at company level - achieve internal consensus between and inside unions

>> Gain complete control of the legally mandated work councils and influential positions on the corporate supervisory boards

>> Use the positive evaluated possibility of the European Works council or Transnational

SOME EXAMPLES FROM OTHER SECTORS

A good practice can be found in the film and television industry trades (lighting, sound engineering, on location transportation)¹⁰³. The International Alliance of Theatrical Stage Employees (IATSE) have negotiated a Basic Agreements between IATSE and an association of theaters that determine terms of labor-management relationship. The Agreement includes union recognition, health and safety guidelines, minimum pay per day, transportation cost to location, housing during project, contribution to pension and health funds. But it contains no clauses concerning job security, workers can be hired for more than one job at a time. Next to that it includes an imbedded agreement where the worker and individual employer set the level of pay and other terms of compensation, this does not guarantee a specific level of income but is subjugated to a check-off of IATSE local representatives and does guarantee a minimum wage.

At national level, we can also make mention of a few good practices in the representation of atypical employed workers. For example, the Broodfonds (“Bread Funds”) in the Netherlands where self-employed have set up a mutual sickness fund and use Smart’s mutual invoicing system¹⁰⁴ to avoid non-payment. Next to that, within the freelance community (real independent contractors like writers, computer programmers, commercial artist, etc.) the Freelancers Union¹⁰⁵ was set up. The Freelancers Union is not a real union but is a worker center that advocates on behalf of freelance workers where they have trouble obtaining pension, affordable health insurance (since not eligible for favorable group rates), when they are confronted with delayed payment of clients and etc.

We would like to stress that previous good practices and steps is a positive development but that the projects do not go far enough to achieve the real objective since we are speaking about a private kind of Trade Union where the goal is to come together in a single Trade Union. This to provide an adequate answer to the centralized employer’s power¹⁰⁶ and to be able to achieve a common agenda¹⁰⁷. In addition, we should also not ignore the complexity of the reality in which there are many workers employed through subcontracting and complicated recruitment chains.

Lastly within this segment we would like to throw in the question regarding posting¹⁰⁸ in the aviation sector. Does this exist in the airline sector since the job of pilots and cabin crew imply a transnational and cross-border factor? Could this give an answer to the situation post-Brexit?

The key factor in the success is solidarity between workers, in all its guises. A bottom up culture is the starting point. Strong national unions based on a holistic view on the company and the embodiment of the voice of all the relevant actors is the only base on which a transnational union can be build. These actors will be given a voice through the representatives of the union. These proxies should receive a thorough training in the legal framework, learn to negotiate, how to conduct personal relations, etc. in order to achieve an intelligent, proactive, safe, sound interaction with the workers. Research proves that a “prevalent works council agency is associated with a lower strike incidence than when the workplace representation operates through a union agency”.

>> Guarantee representation of all workers (self-employed, on demand, freelancers, etc.) in one union, no private constructions

>> Be aware of complicated recruitment chains and subcontracting

>> Reflection needed about posting in the aviation sector

Tools

TEMPLATE PROTOCOL

The purpose of the Protocol is to establish an umbrella framework, a cooperation and communication platform with guidelines for all parties involved, with the aim of setting minimum requirements that should apply in every country, with substantive negotiations for individual CLAs per country being handled by the national company councils/unions as it is fully acknowledged that each country has specific legal requirements, and procedures for negotiating.

In this context, the Protocol is not a legally binding document. It is a framework document whereby each association involved recognises and commits to agreeing on specific 'floors' for particular topics to ensure that minimum standards would apply to ALL pilots operating for a transnational airline irrespective of what country they are based in. Striving to ensure the highest level of commonality of content across all CLAs negotiated at national level on behalf of all the pilots within a transnational airline who can be transferred to any country with bases.

The template foresees items for consideration and choice according to a Pilot Group's preferred level of scope and ambition. While the template is a first starting point to be amended and adapted in line with a Pilot Group's needs.

The voting procedures in the annex may seem complicated but they are in fact very familiar as these are based on the voting procedures in place between Member Associations at ECA. It is also to be noted that the Annexes are to be considered "alive" and can be changed according to needs and developments. The proposed guidance and adopted way forward in some Pilot Groups is to test drive them for the first 6 months or year and then make adjustments where needed. For a copy of the template protocol, please email eca@eurocockpit.be.

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[airlineinitial]PG Pilot Associations invited as Observers

ANNEX II – Negotiating goals, policies and principles of the [AIRLINEINITIAL]PG

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ANNEX IV – Protection of pilot representatives

Annex V – Communication (internal/external) rules and procedures

TEMPLATE TERMS & CONDITIONS DATABASE

This template was developed based on the benchmarking tools used by the ePG. The aim is to keep track of terms and conditions across countries (or bases if these also differ) as well as keep track of when national CLAs are up for renewal. For a copy of the template protocol, please email eca@eurocockpit.be.

ECA is currently investigating possibilities for software-based benchmarking for TNAs.

OTHER TOOLS FOR CONSIDERATION

As previously mentioned, several initiatives have been developed at national MA level, at ECA level and by the TNA Pilot Groups themselves. One of the recent changes adopted by the ECA Conference in November 2017 was the so called

“Seamless membership” for Ryanair pilots:

“ECA Member Associations (MAs) commit to strong coordination at European level, facilitated by ECA. MAs commit in particular to provide seamless pilot representation & seamless legal protection (according to the national rules of the MA) across national borders when Ryanair pilots change base & country, without a waiting/probation period in the new MA and ‘leaving period’ in the previous MA, and based on the principle that for pilots with an on-going legal case the previous MA continues to support that case.”

With this move, MAs further committed to the transnational reality. While the initial proposal of seamless membership has been applicable only for Ryanair pilots, the objective is to have the seamless membership opportunity rolled out to all pilots within transnational airlines.

In addition, some MAs have developed in house set-ups to improve the efficiency of how they support the company councils of transnational airlines.

National initiatives

One such example is SEPLA, the Spanish Airline Pilots' Association, which has quarterly meetings of its TNA Working Group. This TNA Working Group is a response to today's need to exchange information across different transnational airlines, not just at a European level, but even within a country. SEPLA's TNA Working Group is attended by representatives from the company councils of transnational airlines with bases in Spain, and legal, administrative and communications staff members from SEPLA. During the meetings networking and benchmarking are promoted, common issues are identified, and common strategies agreed. Furthermore, SEPLA has assigned a new role within its national executive board by nominating a board member in charge of liaising with the different TNA company councils. Priority is also given to projects with a TNA focus.

TNA Seminars

Similarly to this development, ECA has been tasked by its members to hold regular TNA seminars. Although two seminars were already foreseen within the current project supported by the Commission, it is anticipated





that the TNA seminars will continue to take place once the project is over. These events have been warmly welcomed by the pilot community as an opportunity to network, exchange ideas, learn from experiences, grow from challenges and identify synergies.

As a result of these regular gatherings, the following mission, vision and values have been highlighted:

Mission statement

Transnational Pilot Groups in Europe are here to unite all pilots that work for an airline which has bases in different countries. On issues that affect all pilots throughout the airline's network, Transnational Pilot Groups seek to speak with one collective voice.

Together, our mission is to ensure fair working conditions for all in an industry that continues to maintain the highest safety standards.

Vision Statement:

Transnational Pilot Groups in Europe: to be the voice & face of pan-European pilot representation, recognised by law, employers and industry.

Values: safety, respect, unity, professionalism

Template Standard Operational Procedures (SOPs)

... have been identified as a tool to avoid duplication of work streams, keep track of progress and ensure efficient consultation and communication between national company councils and the Member Associations. SOPs can for example be applied to how a TNA pilot group (PG) is kept updated on the progress of national negotiations, to establish how transnational topics will be tabled in a coordinated manner or how to develop position papers for a TNA PG (See pp. 112-113)

Useful reading

The below list below was identified as useful references for TNA PGs:

Wiebke Warneck, "[Strike rules in the EU27 and beyond, a comparative overview](#)", European Trade Union Institute, Report 103 (2007).

"[TNA 2020 Plan](#)", ECA Conference (November 2016).

"[Trans-national Representation and Collective Bargaining in Europe: The Pilot's Approach](#)", European Cockpit Association (September 2007).

[Judgment of the Court \(Second Chamber\)](#) of 14 September 2017 (request for a preliminary ruling from the cour du travail de Mons — Belgium) — Sandra Nogueira and Others v Crewlink Ireland Ltd (C-168/16), Miguel José Moreno Osacar v Ryanair Designated Activity Company, formerly Ryanair Ltd (C-169/16).

"[Analysis of the Judgement of the Court of Justice of the European Union in cases C-168/16 and C-169/16 – Nogueira and others vs. Crewlink and Moreno vs. Ryanair](#)", I. Plaza (May 2018).

Example of SOP applied to drafting

position papers within a TNA PG:

1. Draft position papers may be originated from any source – Member Associations (MAs) national members, Company Councils (CCs), members of the TNA PG.

2. The appointed chair, secretary and vice-chair if applicable, should be advised that a paper is being developed to ensure there is no duplication at the earliest stage of development.

3. To ensure maximum clarity on the origin and purpose of the draft paper the first page should be set out as follows

> Title: Short but meaningful to reflect the main subject matter of the paper.

> Coordinating author: The name + affiliation (MA, CC, TNA PG member, chair, etc.), with contact details. The coordinating author is responsible for receiving and collating updates/ suggestions, and will steer the draft paper to a conclusion.

> Reason for development: Simple statement explaining why the position paper is required.

> Stage of development and status: Stage 1 Initial draft – as proposed by the originator of the paper; Stage 2 Working draft – updated with initial feedback from CCs through CC chairs or designated contact points; Stage 3 Developed draft – Contains developed argument based on initial feedback + Feedback from MAs; Stage 4 Final draft – completed paper that contains final

feedback; Stage 5 TNA PG chair/vice/secretary endorsed – with TNA PG leadership approval; Stage 6 TNA PG & MA approved - with TNA PG members' and MAs' approval and sign off.)

4. Submit first draft to TNA PG leadership team for their overview and initial inputs. Initial comments to be sent to a coordinating author within an agreed timeline.

5. Circulate draft to CC chairmen with the request for CC feedback and input. The CC chairmen are responsible for coordinating with their MA for national political input/approval. A deadline for feedback should be agreed with the coordinating author.

6. A coordinating author updates based on received feedback and develops the full argument for the subject matter.

7. A coordinating author circulates to TNA PG members, with request for detailed review and feedback to be provided by a specified deadline.

8. A coordinating author updates based on feedback from TNA PG members.

9. A coordinating author to submit to the TNA PG's leadership team for their endorsement by a specified date.

10. Final approval & sign off by TNA PG members and MAs by a specified date.

11. All approved position papers should be easily available and accessible to all CC members & MAs through the agreed channel.

TABLE OF TRANSNATIONAL AGREEMENTS

Company	Title	Duration	Status	Applicable law	Implementation	Dispute settlement	Topics
Lohist (BE) 2002	Charter on Subcontracting	Indefinite	Not defined	Not defined	Not defined	Not defined	Subcontracting/health
Club Med (FR) 2004 Amended 2009	Agreement relative to compliance with fundamental rights at work and the mobility of employees	Initially 3 years. From 2009 indefinite	Not defined	Not defined	Info by union visits and copy of the agreement to DG Employment	Monitoring cttee	Respect local law, rights, social security, mobility
Air France-KLM (FR-NL) 2013	Social Rights and Ethics Charter	Indefinite	Not defined	French law	Contact person EWC	Application Memorandum of the Charter	Fundamental rights, social rights, respect local law and trade union right, employment, mobility, etc.
ABB (CH) 2009	European Appendix to ABB Social Policy	Indefinite	Not defined	Not defined	The Country Management and the employee representatives/trade unions shall assure that any contractual arrangement amongst themselves resulting from the implementation of this agreement will be binding for all interested/parties affected (EWC)	In the event of conflict over the policy or its implementation, the ABB ECE President and the ABB Executive Committee member in charge of Human Resources will come together at an early date to resolve the conflict when escalated by either of these two parties. [...]	General commitments on respect for local law, career development, working time, family/work balance, benefits and restructuring
Dexia (BE-FR) 2003	Principles of Social Management at the Dexia Group	Indefinite	Not defined	Not defined	EWC	Not defined	Social Dialogue, skills, career, mobility
AXA (FR) 2004 2012	Management of the social dialogue within the AXA Group in Europe	Indefinite	Attached to EWC agreement	Directive on EWC	EWC Filed at EU Commission	Not defined	Restructuring, job security and search for alternative solutions, trade union recognition

ACKNOWLEDGEMENTS

ECA would like to thank all those who made the ECA TNA Handbook possible:

EU Commission

For funding and advice, especially:

Monique Beutier

Sylvine Finne

Members of the TNA Steering Committee

Patrick Barbary

Alessandro de Blasio

Susana Ruiz

Thomas Bieling

Damien Lataste

Ignacio Plaza

Kameliya Encheva

Sarah Kamer

Ghent University

Lien Valcke

Yves Jorens

Dirk Gillis

For their written testimonies

The Interim EERC

Martin Lindgren

Ole Knutsen

The Spanish Norwegian Pilot

Dirk Polloczek

All Participants to the ECA TNA Seminar in Madrid on 12-13 July 2018

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¹⁸ GREER, I & HAUPTMEIER, M, “Management Whipsawing: The Staging of Labor Competition Under Globalization, *Industrial and Labor Relations Review*,” 2016.

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²⁰ See endnote nr18

²¹ Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

²² Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation

²³ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1), as amended by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012 (OJ 2012 L 149, p. 4).

²⁴ Practical guide on the applicable legislation in the European Union (EU), the European Economic Area (EEA) and in Switzerland, European Commission, December 2013.

²⁵1. A person who normally pursues an activity as an employed person in two or more Member States shall be subject:

(a) to the legislation of the Member State of residence if he/she pursues a substantial part of his/her activity in that Member State; or

(b) if he/she does not pursue a substantial part of his/her activity in the Member State of residence:

(i) to the legislation of the Member State in which the registered office or place of business of the undertaking or employer is situated if he/she is employed by one undertaking or employer; or

(ii) to the legislation of the Member State in which the registered office or place of business of the undertakings or employers is situated if he/she is employed by two or more undertakings or employers which have their registered office or place of business in only one Member State; or

(iii) to the legislation of the Member State in which the registered office or place of business of the undertaking or employer is situated other than the Member State of residence if he/she is employed by two or more undertakings or employers, which have their registered office or place of business in two Member States, one of which is the Member State of residence; or

(iv) to the legislation of the Member State of residence if he/she is employed by two or more undertakings or employers, at least two of which have their registered office or place of business in different Member States other than the Member State of residence.

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²⁹ The competency of a judge in one country should change to another country because the convenience of the parties and the interest of justice would be better in one country should change to another country because the convenience of the parties and the interest of justice would be better served if the case were brought in a court having proper jurisdiction in another venue.

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⁴⁰ https://www.etuc.org/en/theme/european-social-dialogue?type=All&field_document_type_target_id=All&page=1

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Transnational pilot groups are no luxury but a much-needed answer to the organisation and tactics of the multinational airline company.

Lien Valcke, University of Ghent

Pilots, their national unions and ECA have developed many different ideas on Transnational Airline Pilot Groups in the past to assure that the borders of labour laws are not the borders of our representation.

Dirk Polloczek, ECA President

The complexity of evolving in a transnational environment has created loopholes that have been used by some airlines to reduce costs by choosing each time the most convenient legal framework and have had negative consequences for pilots whose pay and working conditions are being constantly threatened.

Ignacio Plaza, ECA Deputy Secretary General

No two transnational pilot groups experiences are alike. Each TNA pilot group has a different background, a different history, and a different type of management to deal with but as the following testimonies will show, one element is always central: unity. The breakthroughs that have been achieved at times when managements have sought to play pilots, their associations and countries against each other were possible because the workforce stuck together as one family in unison and solidarity.

Sarah Kamer, ECA Industrial Policy Advisor



ECA Piloting
Safety
European Cockpit Association

www.eurocockpit.be