



## Evolution of the Labour Market in the Airline Industry due to the Development of the Low Fares Airlines (LFAs)



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## Preface

The liberalization of the air transport in the early 1990's has brought benefits to the travelling public in terms of democratization, cheaper air fares and diversified offer. But who pays the price and what is the amplitude of this phenomenon? Jobs in aviation that used to be prestigious and high-quality are disappearing and being outsourced or replaced by cheaper work. This development can be attributed to the liberalization of the industry without social regulation which leads to social dumping: airlines are facing fierce competition, the profit margins are lower than in any other industry and employers are looking for ways to cut costs in order to remain competitive. While some costs (such as fuel or aircraft ownership) are to a certain degree fixed, airlines believe that labour costs can be pushed down in a never-ending spiral. Some of them have also discovered "flags of convenience" as one of the vehicles to pursue further cost cutting by using social dumping.

Due to the increased share of atypical forms of employment, such as agency work, zero-hours contracts or even (bogus) self-employment, job precariousness in aviation has increased. This also brings big challenges for trade unions. We therefore need to engage in meaningful campaigns to address the concerns of the workforce, both at national and European levels.

In addition to unfair competition on the backs of the workers in the EU, we have to face increased pressure from non-European airlines which do not respect workers' rights. We therefore need to find global answers to these problems together with the international trade union movement.

For these reasons, the European Transport Workers' Federation (ETF) decided to launch an EU co-funded project looking at the evolution of the labour market in aviation in connection with the development of low fares airlines. Besides a scientific study aimed at documenting the incidence of the new "flexible model" of employment in European civil aviation and explore its impact on civil aviation workers primarily in terms of work remuneration, workload, and employee involvement and participation, the project included a two-day conference that took place on 1 – 2 July 2014 in Catania. Around 120 delegates have gathered in order to discuss preliminary findings of the study and discuss strategies on how to cope with the new situation.

Three dedicated workshops examined the main challenges and came to the conclusion that ETF needs to organize workers in low fares airlines. This is the main strategy that both the ETF and national affiliates have to follow; representing only traditional legacy carriers is not enough and we have to attract workers from all sides of the aviation industry. In addition, the ETF should strengthen its role as an interface between the national unions and EU institutions, including more training for union representatives on EU-related issues, use of modern technologies and communication tools and scientific research. Finally, the ETF should work together with employers that provide quality jobs, recognize trade unions and engage themselves in collective bargaining to fight social dumping and flags of convenience in European aviation.

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# Contents

- Summary ..... 4
- List of Abbreviations..... 7
- List of Tables..... 9
- List of Figures..... 9
- List of Pictures ..... 9
- About the ETF ..... 10
- I. Background..... 11
- II. The Emergence and Growth of LFAs ..... 13
- III. Low Cost Competition and Trade Union Strategies ..... 25
- IV. The Power Resources of Aviation Workers and Aviation Unions in Europe ..... 32
- V. Conclusions ..... 64

**Annexes**

- Annex I. The Viking Case and Civil Aviation ..... 67
- Annex II. EU Member States (country codes)..... 72
- Annex III. On-Line Questionnaire ..... 73
- Annex IV. Demographic Characteristics of the Survey Respondents..... 74



# **Evolution of the Labour Market in the Airline Industry due to the Development of the Low Fares Airlines (LFAs)**

Final Report

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## Summary

Although it has been only 2 years since the ETF's last major study of the low cost model, there have been significant developments in the European civil aviation sector in terms of LFA and legacy airline business strategies, industrial restructuring in the face of competition and austerity, and an accelerated 'race-to-the-bottom' as a result of new forms of 'social dumping'.

The ETF's Civil Aviation Section (CAS) is concerned that 'social dumping' involves a downgrading of working conditions, training, health and safety and wages: each company cites unfair competition organised by another company to justify tougher working conditions and impose more flexibility, wage cuts or a weakening of the welfare of its workers, such as the use of unsafe working practices, which increase the risks of industrial accidents.

The present study, based on a survey of more than 2,700 European aviation workers as well as case studies of both LFAs and legacy airline, demonstrates that many airlines now resort to more precarious forms of employment through the use of agency, temporary, and (bogus) self-employed workers. They also demand new forms of flexibility that benefit the company rather than the worker and rarely involve employees in any meaningful way in decision that (adversely) affect their daily working lives and future careers.

Faced with ever more intense competition from LFAs, several legacy airlines have developed a low cost version of the main brand to fly short haul routes (e.g. Lufthansa/Germanwings, Iberia/Iberia Express, Air France/transavia) or have grown a low cost workforce within main line operations (e.g. British Airways Mixed Fleet). As for the LFAs, there is growing evidence of 'diminishing returns' from the low cost model as the market leaders expand their route networks in search of more passengers. LFAs are now targeting major airports and higher value (business) passengers, which puts them in more direct competition with the legacy airlines. All too often, the result is a further assault on the terms and conditions of legacy airline staff, which is reflected in the (disgruntled) responses to the current ETF survey.

When LFAs such as easyJet and Vueling target major airports and business passengers, this shifts the 'balance' between cost and service, placing new demands on the workforce. This can present opportunities for aviation unions to develop new relationships with airline management. To date, however, there is little evidence of more cooperative relationships, at least in the eyes of the workforce.

The self-styled 'ultra-low cost carriers' such as Ryanair and Wizz Air, in contrast, will no doubt continue to bear down relentlessly on labour costs and staff will find themselves working right up to the maximum flight and duty time during the busy summer schedule with enforced lay-offs (furlough) during the winter when aircraft are grounded. It is the ultra-low cost carriers that rely most heavily on precarious forms of employment, and it is the ultra-low cost airlines that have developed the most aggressive anti-union strategies.

The multi-base strategy of (ultra) low cost airlines – with labour hired in country X, working in country Y, but with an employment contract under the laws of country Z – has the effect of 'dis-embedding' the worker from his or her 'home country' (i.e. the country of nationality

and/or residence). These business and employment strategies presented a very different, and difficult, challenge for national aviation unions in terms of organising the workforce and securing recognition and a collective bargaining agreement with the airline. While changes introduced under the Rome I Regulation<sup>1</sup> will mitigate some of the problems faced by national trade union organisers, there is still a vital role for the ETF in terms of supporting and coordinating the national organising activities as well as international solidarity between the aviation unions with current or potential members at the airline(s) in question.

A particular and immediate concern is the recent emergence of a new European ‘flag of convenience’ airline, with Norwegian Air International (NAI) acquiring an Irish Air Operator’s Certificate (AOC) in order to serve trans-Atlantic routes with ‘aircrews of convenience’ hired via agencies in Asia, thereby reducing airfares by 50 per cent. NAI has no plans to operate out of Ireland – its Irish AOC is simply a ‘convenient flag’, enabling NAI to escape from national (Nordic) class compromises and exploit the EU-US open skies agreement.

NAI’s ambitions have been stalled by the decision of the US Department of Transportation (DOT) to deny Norwegian an exemption for a foreign air carrier permit, following months of intense pressure exerted by a broad labour coalition from both sides of the Atlantic.<sup>2</sup> However, the US DOT has yet to decide on a permanent foreign air carrier permit for NAI. This campaign, like others before and no doubt many more to come, demonstrates that social dumping, in whatever form and from whatever source, can only be countered through coordinated national and international action. National aviation unions and international federations such as the ETF and ITF need to develop effective strategies for different ‘targets’ (principally airlines, national governments, the supranational institutions of the EU, and other stakeholders such as employer associations and NGOs), drawing on their structural, associational and legal power resources.

In this Report, these power resources are considered in relation to two inter-connected decision-making levels (national and European) and two inter-related decision-making processes (democratic and technocratic). Four different trade union strategies are generated by the ‘2x2’ combination of decision making levels and processes: (i) national democratic, (ii) national technocratic, (iii) European technocratic, and (iv) European democratic. These strategies are considered in relation to the data generated by the survey of aviation workers and the case studies of LFA and legacy airlines. Different strategies are more or less appropriate at different times, in different contexts, and in relation to different targets, and in all situations depending on the power resources at the disposal of national aviation unions and the ETF. For example, while effective ‘partnerships’ have been developed between management and unions at several airlines, typically based on robust forms of social dialogue at the national level that is supported by the European social dialogue for civil aviation, there are other airlines that persist with an anti-union strategy that can only be countered by equally determined organising campaigns by aviation unions at the national and international levels.

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<sup>1</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations states in Article 8 that individual employment contracts shall be governed by the law chosen by the parties; however, such choice cannot deprive the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable (i.e. law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract).

<sup>2</sup> <http://www.etf-europe.org/etf-press-area.cfm/pressdetail/10845/region/2/section/0/order/1>

It is only by 'shifting scale' and developing new repertoires of contention 'from the ground up' that aviation unions will be able to deploy all available strategies at their disposal. Hence, the first priority is to: Organise! Organise! Organise! Given recent developments in the evolution of the labour market, it is only through the ETF that aviation unions can accomplish this task and thereby stall, and ideally reverse the current 'race-to-the-bottom'. All the evidence suggests that the evolution of the labour market in the airline industry is simply not sustainable. Precarious forms of employment fail to meet workers basic needs for security of income, work-life balance, and the right to have a say in decisions that (adversely) affect their daily working lives.



## List of Abbreviations

AEA	Association of European Airlines
AESP	agency employment service provider
AOC	Air Operator's Certificate
ASEAN	Association of Southeast Asian Nations
ASK	available seat kilometres
BA	British Airways
BAMF	British Airways Mixed Fleet
BALPA	British Air Line Pilots' Association
BASA	bilateral air service agreement
CAA	Civil Aviation Authority (UK)
CAC	Central Arbitration Committee (UK)
CAS	Civil Aviation Section (ETF)
CEO	chief executive officer
CoC	Crew of Convenience
GUE/NGL	Confederal Group of the European United Left/Nordic Green Left
DG Employment	Directorate-General of Employment, Social Affairs & Inclusion
DG MOVE	Directorate-General for Mobility and Transport
DOT	Department of Transportation (USA)
EASA	European Aviation Safety Agency
ECA	European Cockpit Association
EC	European Commission
ECJ	European Court of Justice
EIP	employee involvement and participation
ELFAA	European Low Fares Airline Association
ENP	European Neighbourhood Policy
ERA	European Regions Airline Association
ERC	Employee Representative Committee (Ryanair)
ETF	European Transport Workers' Federation
ETUC	European Trade Union Confederation
EU	European Union

EWC	European Works Council
FoC	Flag of Convenience
FTL	European flight time limitations
HR	human resources
IACA	International Air Carrier Association
IAG	International Airlines Group
IATA	International Air Transport Association
ICAO	International Civil Aviation Organisation
ID	identification card
ICTU	Irish Congress of Trade Unions
IMPACT	Irish Municipal Public and Civil Trade Union
ITUC	International Trade Union Confederation
ILO	International Labour Organisation
ITF	International Transport Workers' Federation
LFA	low fares airline
MEP	Member of the European Parliament
NAI	Norwegian Air International
NAFTA	North American Free Trade Agreement
NAS	Norwegian Air Shuttle
NGO	non-governmental organisation
OAG	Official Airline Guide
RPG	Ryanair Pilots Group
RPK	revenue passenger kilometre
SAS	Scandinavian Airlines (previously Scandinavian Airlines System)
SEAM	single European aviation market
TFEU	Treaty on the Functioning of the European Union
US	United States

## List of Tables

Table 1.	On-Line Questionnaire Sample
Table 2.	Sample Airlines
Table 3.	Stated Reasons for Non-membership of a Trade Union

## List of Figures

Figure 1.	The Growth and Market Share of LFAs
Figure 2.	Market Share of LFAs in EU Member States
Figure 3.	Passenger Traffic – London-Barcelona
Figure 4.	European Airlines Labour Cost as a percentage of Revenues, 2011 or 2012
Figure 5.	Airline Presence in Europe’s Top 100 Market Pairs
Figure 6.	Cost per Passenger and Average Sector Length – Low Cost Carriers (LCC) and Legacy Airlines
Figure 7.	Ryanair’s Quarterly Operating Profit (EUR, million)
Figure 8.	On-going Liberalisation of the Skies
Figure 9.	Tax Rates Across the EU
Figure 10.	Strategic Options for Trade Unions
Figure 11.	Unemployment in the European Union (seasonally adjusted), June 2014
Figure 12.	Airline Profitability (net profit margins)
Figure 13.	Flight Crew Contractual Arrangements with Ryanair
Figure 14.	Contractual Relationships
Figure 15.	(Un)Satisfactory Contracts of Employment
Figure 16.	Satisfaction with Contracts of Employment
Figure 17.	Seasonal Variation in Days Worked per Month
Figure 18.	Optional Flexibility for the Employee
Figure 19.	Requisite Flexibility for the Airline
Figure 20.	Adequacy of Pay and Benefits
Figure 21.	Forms of Communication between Management and Employees
Figure 22.	Employee Involvement and Participation (EIP)
Figure 23.	Resistance to and Cooperation with Trade Unions
Figure 24.	Priorities from Work
Figure 25.	The Organising Cycle
Figure 26.	Reporting Safety Concerns to Management
Figure 27.	Labour Regulation in Four OECD Countries, 1970-2006
Figure 28.	Upward Scale Shift

## List of Pictures

Picture 1.	ETF block in the ETUC demonstration, 14 April 2014
Picture 2.	Report of the previous ETF project on "Development of the low cost model in the European civil aviation industry", August 2012
Picture 3.	Dr Geraint Harvey and Professor Peter Turnbull presenting the results of the survey at the ETF Conference in Catania, 1 – 2 July 2014
Picture 4.	Enrique Carmona, ETF CAS President speaking with François Ballestero, ETF Political Secretary at the ETF Conference in Catania, 1 – 2 July 2014
Picture 5.	European Court of Justice, Luxembourg

## About the ETF

The European Transport Workers' Federation (ETF) is a pan-European trade union organisation that embraces transport trade unions from the European Union (EU), the European Economic Area and Central and Eastern European countries. The ETF represents more than 2.5 million transport workers from 231 transport unions and 41 European countries, in the following sectors: railways, road transport and logistics, maritime transport, inland waterways, civil aviation, ports and docks, tourism and fisheries. Ninety ETF affiliated unions from 32 countries organise civil aviation workers.

Working within an overall framework of global solidarity, the ETF operates both as the European region of the International Transport Workers' Federation (ITF) and as the transport federation of the European Trade Union Confederation (ETUC). Its principal activity is to represent and defend the interests of transport workers throughout Europe. It formulates and coordinates trade union transport and social policy, organises concerted industrial activities, engages in education and training and conducts innovative research on a variety of subjects from workers' health and safety to employment impact studies.

The activities of the ETF's Civil Aviation Section (CAS) focus on ensuring an inclusive and socially oriented approach to European legislation with the aim of avoiding a downward spiral in employment, job security, safety, social welfare and salary cuts in the aviation industry. Through its routine work of representing workers in the different aviation professions, as well as various campaign and research activities, the ETF has developed expertise and unrivalled insight on the terms and conditions of aviation workers and the expression of their collective voice. The ETF is the recognised Social Partner in the European Social Dialogue and represents the interests of transport workers across Europe vis-à-vis the European Commission and the Council of Ministers.

**Picture 1. ETF block in the ETUC demonstration, 14 April 2014**



## I. Background

With the support of the European Commission (EC), the ETF launched a project on the *Evolution of the Labour Market in the Airline Industry due to the Development of the Low Fares Airlines (LFAs)* in January 2014. Although only 2 years have passed since the publication of a previous ETF study of LFAs,<sup>3</sup> there have been significant developments in the interim period that call for a further (re)assessment of LFAs, with particular focus on the growing problem of ‘social dumping’. The latter is a ‘strategy geared towards the lowering of wage or social standards for the sake of enhanced competitiveness, prompted by companies and indirectly involving their employees and/or home or host country governments’.<sup>4</sup>

The ETF’s Civil Aviation Section (CAS) has identified social dumping as ‘a practice designed to take advantage of competition between workers from different regions or sectors’. Geographically, social dumping is perfectly illustrated by the phenomenon of delocalisation/offshoring. At the sectoral level, the nature of the transport sector in question can increase (or decrease) the possibilities to hire agency or temporary workers through various forms of subcontracting, replace direct employees with (bogus) self-employed workers, and create more precarious employment contracts for all workers as a result of new forms of flexibility that benefit the company rather than the worker. Such employment practices, by design or default, prevent or certainly erode the collective representation of the workforce. According to the CAS there is, then, in the name of ‘competitiveness’:

a downgrading of working conditions, training, health and safety and wages: each company cites unfair competition organised by another company to justify tougher working conditions and impose more flexibility, wage cuts or a weakening of the welfare of its workers, such as the use of unsafe working practices, which increase the risks of industrial accidents.<sup>5</sup>

The current project was designed to ensure a comprehensive analysis of the on-going evolution of the labour market as LFAs continue to increase their market share and legacy airlines continue to restructure their own business in response to the competitive challenge from their (short haul) rivals. Like the previous ETF study of the European civil aviation sector,<sup>6</sup> the current project combines secondary, survey and case study evidence, although on this occasion the questionnaire survey was directed to aviation workers rather than union officials and the case studies included legacy as well as low fares airlines.

Initial results were presented at a conference in Catania (1-2 July 2014), where the Association of European Airlines (AEA), SAS, Airport Services Association (ASA), and several aviation unions (including the Ryanair Pilots Group) also made presentations. Three working groups were established at the Catania conference to consider: (i) EU institutions and legislation, (ii) working with employers, and (iii) union organising. Research findings from the project and the

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<sup>3</sup> Harvey, G. and Turnbull, P. (2012) *The Development of the Low Cost Model in the European Civil Aviation Industry*, Brussels: European Transport Workers’ Federation ETF, available at: <http://www.itfglobal.org/files/extranet/75/35584/Final%20Brochure%20LFAs%20220812.pdf>

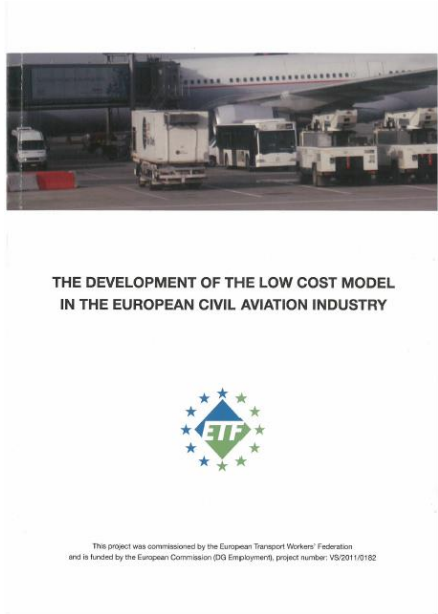
<sup>4</sup> Bernaciak, M. (2012) ‘Social Dumping: Political Catchphrase or Threat to Labour Standards?’ Working Paper 2012.06, Brussels: European Trade Union Institute.

<sup>5</sup> CAS (2014) ‘Social Dumping in Civil Aviation’, Brussels: ETF.

<sup>6</sup> Harvey and Turnbull (2012) *op. cit.*

conclusions of the working groups were presented at a fringe meeting – ‘Tackling the Low Fare Airline Model’ – held at the ITF’s 43<sup>rd</sup> Congress in Sofia (13 August 2014). The fringe meeting was attended by over 90 delegates from around the world and generated a well-informed debate on European and worldwide developments in the civil aviation industry. This *Final Report* incorporates all these data.

Systematic socio-economic analysis of different airline business strategies, alongside recent developments in the labour market, is essential if labour organisations want to understand the aviation world. The primary purpose of this *Final Report* is to enhance such understanding. But trade unions not only want to understand the world around them, they want to change it. This demands consideration of the organisational resources of labour at the local, national and international levels, most notably in relation to workers’ *legal rights*, the *structural power* they enjoy as a result of their location within the economic system (e.g. supply and demand for labour, whether particular workers occupy key positions in the airline, the interdependencies between different groups of workers and the activities they perform, etc.), and workers’ *associational power* derived from various forms of collective organisation and representation (e.g. trade unions, political parties, and institutional forms of representation such as works councils or board-level employee representatives).<sup>7</sup> Unless transport unions can more effectively ‘leverage’ these different resources at different levels, the European aviation industry is likely to experience an accelerated ‘race-to-the-bottom’ precipitated by the social dumping of modern-day ‘sky pirates’.<sup>8</sup> Employers as well as aviation unions now acknowledge that the business strategies and associated HR/industrial relations policies of some LFAs is driving a ‘slow descent to the lowest common denominator’.<sup>9</sup>



**Picture 2. Report of the previous ETF project on "Development of the low cost model in the European civil aviation industry", August 2012**

<sup>7</sup> Wright, E.O. (2000) ‘Working-Class Power, Capitalist-Class Interest, and Class Compromise’, *American Journal of Sociology*, 105(4), p.962.

<sup>8</sup> Public Hearing on ‘Pirates of the Sky: The Corners Cut by Low Cost Airlines’, European Parliament, Brussels, 10 April 2014, organised by the Confederal Group of the European United Left/Nordic Green Left (GUE/NGL).

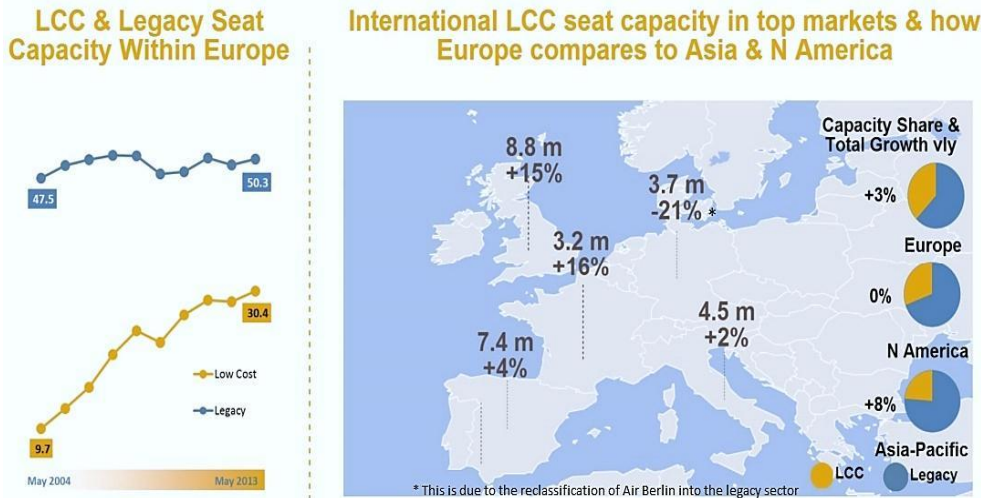
<sup>9</sup> Submission by Scandinavian Airlines (SAS) to US regulators on Norwegian Air International’s (NAI’s) application for a US Foreign Air Carrier permit, reported in *Airline Business*, April 2014.

## II. The Emergence and Growth of LFAs

In 1992, Michael O’Leary, then Deputy CEO of Ryanair, visited Dallas to study Southwest Airlines’ low cost model, which subsequently shaped the transformation of Ryanair from a ‘full service’ into a ‘no frills’, ultra-low cost airline. In 1995, easyJet offered its first flights from Luton (near London) to Scotland (Edinburgh and Glasgow) with two leased aircraft contracted to British World Airlines to fly and maintain. From these inauspicious beginnings, LFAs grew steadily in the newly created single European aviation market (SEAM)<sup>10</sup> but their market share by the turn of the millennium was still only 5 per cent of the European market.

Not surprisingly, the legacy airlines paid little attention to the emerging LFAs. In the new millennium, however, the growth of LFAs has been exponential. In fact, since 2000 almost all the growth in intra-EU traffic has been fuelled by LFAs, as the left-hand diagram in Figure 1 clearly illustrates.<sup>11</sup> Collectively, legacy airlines still carry the same amount of traffic today as they did in 2000, but their market share has declined dramatically, with LFAs capturing a much larger market share in Europe than their counterparts in other aviation markets around the world. This is depicted in the right-hand map in Figure 1 and is perhaps a portent for other regions of the world, especially the Asia-Pacific region where liberalisation is very much the order of the day.<sup>12</sup> As Figure 2 clearly illustrates, in several EU Member States LFAs now hold a majority share of the market.<sup>13</sup>

**Figure 1. The Growth and Market Share of LFAs**



Source: OAG FACTS, May 2013

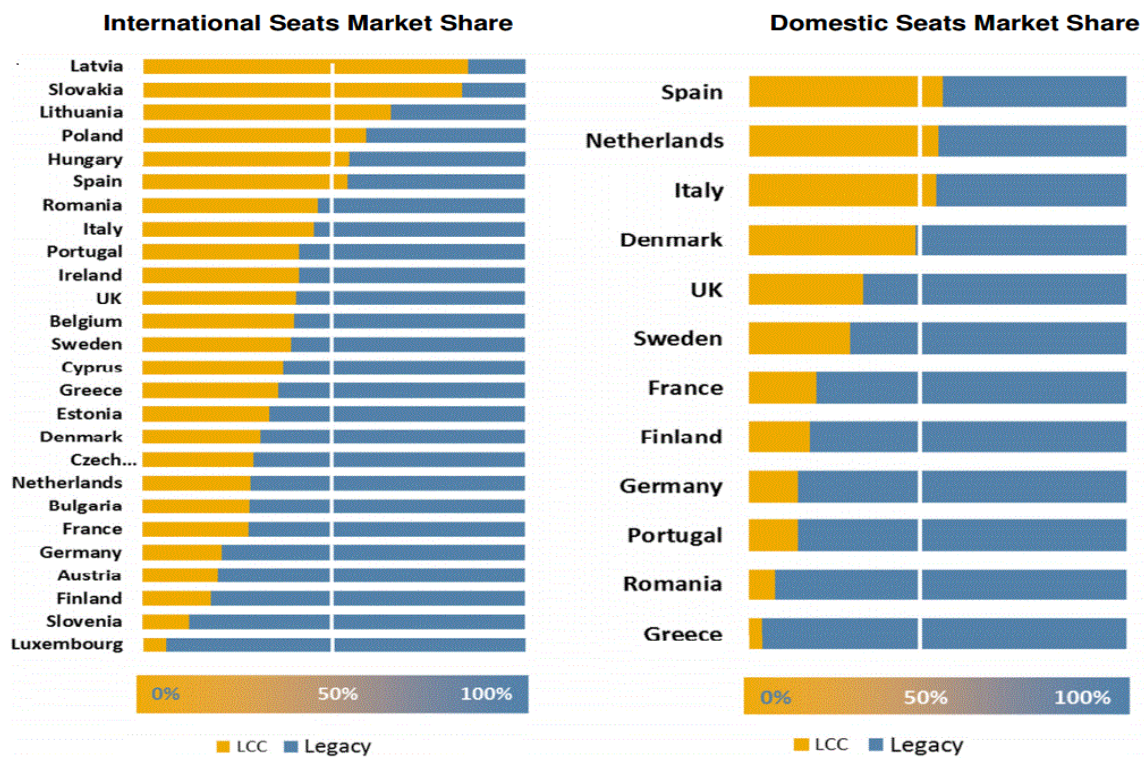
<sup>10</sup> Dobson, A. (2010) ‘Civil Aviation and European Integration: Creating the Seemingly Impossible SEAM.’ *Journal of Common Market Studies*, 48(4), pp.1127-47.

<sup>11</sup> Between May 2004 and May 2014, LFAs grew at an average of 14 per cent per annum whereas legacy airlines grew by only 1 per cent per annum. See OAG May FACTS 2013, available at: <http://www.oag.com/sites/default/files/May%20FACTS.pdf>.

<sup>12</sup> Current negotiations are expected to create an ASEAN single market by 2015.

<sup>13</sup> The seat capacity of LFAs in the UK more than doubled between 2004 and 2013. LFAs did not enter the Spanish market with any significant volumes until 2007 but now hold a majority share of both domestic and international seat capacity. The international market share of LFAs in France is only 28 per cent and is even lower (18 per cent) on domestic routes where Air France still dominates with 74 per cent of seat capacity. LFAs market share in Germany (domestic and international) has declined following the reclassification of airberlin as a legacy airline. In Italy, Alitalia is still the biggest domestic carrier but LFAs now account for 49 per cent of all seats.

**Figure 2. Market Share of LFAs in EU Member States**



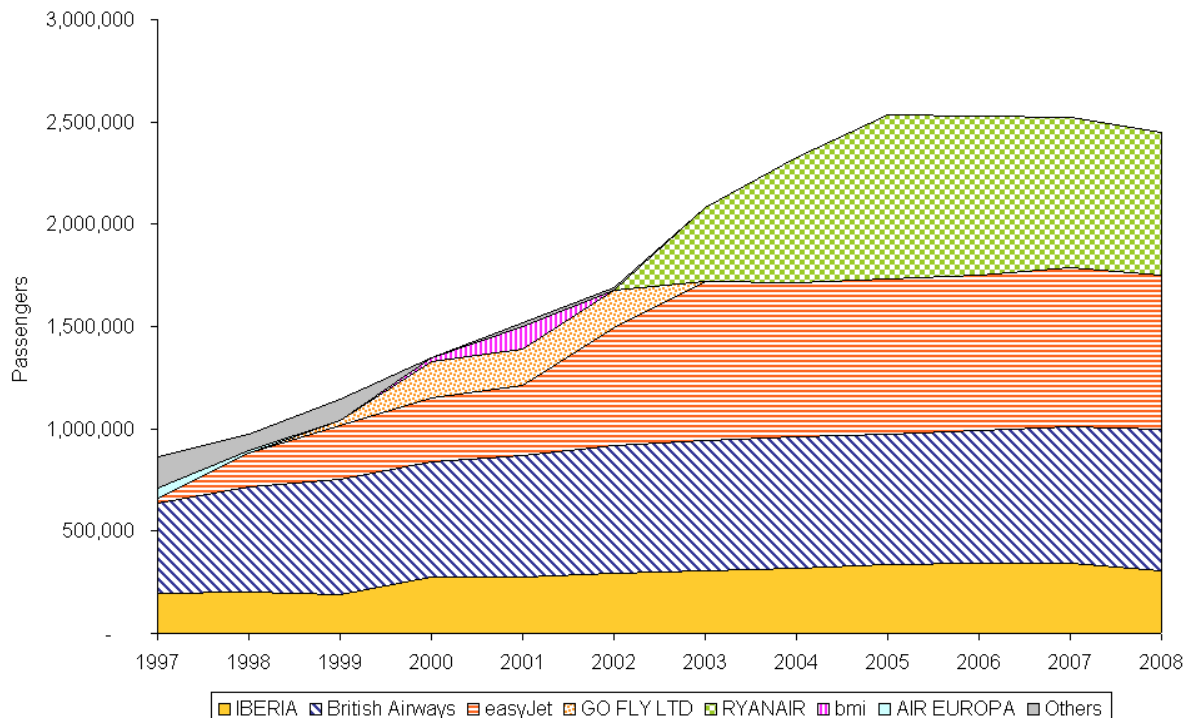
Source: OAG FACTS, May 2013

When LFAs first entered the European market the response of national (flag) airlines was essentially ‘studied neglect’ because the newcomers rarely competed ‘head-on’ with legacy airlines (i.e. they offered flights to/from different airports, even when advertised as the same destination<sup>14</sup>), which had little direct impact on passenger numbers at the legacy airlines. One example – flights from London (UK) to Barcelona (Spain) – is illustrated in Figure 3, which demonstrates how LFAs can ‘grow the market’ by offering a cheap(er) alternative to the service(s) provided by (full service) legacy airlines.

<sup>14</sup> Ryanair in particular has faced numerous legal challenges over ‘misleading’ advertising of airport destinations. For example, the German courts ruled in 2003 that Ryanair could not use the word ‘Düsseldorf’ for an airport 70km from the city. Beauvais, which Ryanair calls ‘Paris’, is a 90-minute bus ride to the French capital while travel from Hahn to Frankfurt is around 2 hours by bus.



**Figure 3. Passenger Traffic – London-Barcelona**



**Note:** Ryanair flights from Stansted (STN) and Luton (LTN) to Girona (GRO) and Reus (REU) (Tarragona). easyJet flights from London Gatwick (LGW), LTN and STN to Barcelona (BCN). Iberia and British Airways (BA) flights from London Heathrow (LHR) to BCN.

**Source:** Civil Aviation Authority, UK

As the low fares model took hold, and with LFAs increasingly competing ‘head-on’ with national (flag) airlines and capturing a greater share of the market, several legacy airlines introduced their own LFAs. British Airways (BA), for example, created Go, KLM introduced Buzz, and SAS set up Snowflake. One effect of these new start-ups, however, was to take some traffic away from the legacy airline’s own short-haul network, rather than new entrants such as Ryanair and easyJet.<sup>15</sup> Moreover, the success of airlines such as Go served to ‘legitimise’ the new low cost market: with the BA brand behind it, and ‘cafetière coffee’ and a free newspaper on-board, Go appealed to many of BA’s ‘high(er) value’ customers travelling on short business trips within Europe, as well as the more typical low cost customers (tourists and those ‘visiting friends and relatives’), and was widely regarded as the ‘low cost airline for the middle classes’.<sup>16</sup> Go was eventually sold to easyJet and Buzz to Ryanair. Snowflake only operated for 2 years, with SAS then deciding instead to offer a ‘no-fills’ (Snowflake equivalent) service in a section of the economy class cabin on its existing short-haul routes.

The primary focus of most legacy airlines has been to defend, and extend, their long haul services, which typically account for around 40 per cent of revenue but as much as 90 per cent

<sup>15</sup> A common criticism of the legacy airlines’ low cost start-ups was that they offered low fares without the low cost base and were therefore little more than a new product line.

<sup>16</sup> Harvey, G. and Turnbull, P. (2010) ‘On the Go: Piloting High Road Employment Practices in the Low Cost Airline Industry.’ *International Journal of Human Resource Management*, 21(2), pp.230-41.

of operating profit.<sup>17</sup> Legacy restructuring has involved a number of ‘mergers’ (e.g. Air France-KLM and BA-Iberia) and ‘takeovers’ (e.g. Lufthansa buying into Swiss, Brussels Airlines and Austrian Airlines), but the most significant development has been the formation and extension of global alliances. The Star Alliance<sup>18</sup> is the largest of the big three global alliances, with 27 member airlines, over 1,300 destinations and 192 countries served. SkyTeam<sup>19</sup> has 20 members, serves almost 1,100 destinations and 177 countries, while the oneworld alliance<sup>20</sup> has 16 members, serves almost 1,000 destinations and 152 countries.<sup>21</sup>

Alliances have allowed legacy airlines to focus on their ‘home hub(s)’<sup>22</sup> and offer an ‘anywhere-to-anywhere’ service via the alliance network. But legacy airlines still need domestic (i.e. European) feed for their ‘hub-and-spoke’ operations. As a result, some LFAs have been welcomed into global alliances in order to add more (short haul) destinations to the alliance network (e.g. airberlin-oneworld<sup>23</sup>) or brought into airline groups (e.g. Vueling-IAG<sup>24</sup>).

Most recently, two particular developments have directly and most significantly impacted on the labour market in the civil aviation industry. First, the major legacy airlines have

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<sup>17</sup> Premium (business class) passengers on long-haul flights are especially important for legacy airlines. It is not uncommon for these passengers to account for only 10-20 per cent of traffic but up to 50 per cent of revenue.

<sup>18</sup> [www.staralliance.com](http://www.staralliance.com)

<sup>19</sup> [www.skyteam.com](http://www.skyteam.com)

<sup>20</sup> [www.oneworld.com](http://www.oneworld.com)

<sup>21</sup> Collectively, these three alliances account for two-thirds of global airline capacity.

<sup>22</sup> Although Lufthansa has almost two-thirds of seat capacity at Frankfurt it is less dependent on its main hub because of its second major hub, Munich, where it has a 64 per cent market share (through its subsidiaries the airline also has important hubs in Zurich/Swiss, Vienna/Austrian and Brussels/Brussels Airlines). BA is more dependent on its London-Heathrow hub (where it has a 51 per cent share of seats) because of its withdrawal from regional airports. This contrast with Air France which has a 58 per cent share of Paris Charles de Gaulle, 47 per cent at Paris Orly (mainly for point-to-point services) and a significant presence at many other French airports (e.g. Bordeaux/63 per cent, Toulouse/55 per cent, Marseille/48 per cent, and Lyon/45 per cent) where the airline is now basing crews (instead of Orly) in order to reduce costs and increase productivity. KLM enjoys a 53 per cent share of seat capacity at Schiphol and Iberia holds a 48 per cent share of its Madrid hub. In effect, by focusing on their ‘home hub’, legacy airlines have ‘accommodated’ the growth of LFAs who seek to by-pass the hubs and avoid constraining connections. See Dobruszkes, F. (2006) ‘An Analysis of European Low Cost Airlines and their Networks’, *Journal of Transport Geography*, 14(4), pp.249-64.

<sup>23</sup> airberlin added 75 more points to the oneworld network. Although a one time a member of the European Low Fares Airline Association (ELFAA), airberlin does not define itself as a low cost carrier. According to the company’s former Chief Executive, Joachim Hunold, ‘We call ourselves a hybrid carrier, that means we aim to offer high quality product at favourable prices. We clearly differentiate ourselves from the no-frills carriers and offer a product that is comparable with legacy carriers’ (quoted in *Airline Business*, September 2010).

<sup>24</sup> Vueling’s merger with ClickAir, in which Iberia held a stake, initially brought the airline into IAG (created in January 2011 by the merger of BA and Iberia), with full acquisition of Vueling by IAG in April 2013. Vueling is the market leader at Barcelona, with a 30 per cent share of passengers in 2012 (up from 23 per cent in 2011). Transfer passengers at Vueling’s Barcelona hub accounted for 11 per cent of the total in 2012.Q4 (1.6 million passengers), up from 7 per cent in 2011.Q4. International passengers accounted for half of Vueling’s total for the first time in 2012, a year when the airline’s international traffic grew by 28 per cent compared to 13 per cent growth of domestic passengers. Vueling’s transfer passenger strategy is clearly a departure from the ‘pure’ or ‘ultra’ low cost model epitomized by the business strategy of Ryanair and Wizz Air. See: <http://centreforaviation.com/analysis/vueling-a-spanish-success-story-coveted-by-iag-99229>.

determined to grow a 'low cost version' of their main brand for short-haul routes, intended not so much to mimic the LFAs as to reduce labour costs within the airline's network.<sup>25</sup> Germanwings, for example, is Lufthansa's 'solution' for its non-hub services (i.e. all flights except those to/from Frankfurt and Munich) with cabin crew paid 40 per cent less at Germanwings than mainline Lufthansa crew and with much slower progression up the pay scale.<sup>26</sup>

An alternative approach, pioneered by BA, involves creating a new workforce inside the main airline with staff hired on inferior terms and conditions of employment. BA has pioneered this approach by creating a third (Mixed) Fleet to grow within the airline alongside its Euro and Worldwide Fleets. However, unlike the 'spatial fix' developed by Lufthansa (physically separating Germanwings from the 'home hubs'), the British Airways Mixed Fleet (BAMF) is based at London-Heathrow and BAMF staff are rostered not only for short haul (European) routes but also long haul (inter-continental) routes. We should not be surprised, therefore, if staff employed at these 'low cost versions' of the legacy brand report inferior terms and conditions of employment and lower levels of satisfaction with their current contracts and future prospects.<sup>27</sup>

The second major development to impact the labour market arises from the 'diminishing returns' of the low cost model, both financially and geographically. This has significant implications for labour in terms of both the rewards from work (e.g. pay and benefits) and the location of work. Consider first the financial scope to continually squeeze costs from the airline's operations – at some point the balance between service delivery (quality) and cost efficiency will be compromised, whether something as simple as mishandled bags or as serious as a breach of safety procedures.<sup>28</sup> To be sure, deals can be struck with (secondary) airports to reduce (subsidise) landing charges, aircraft ordered when recession hits the industry might attract a discount, newer aircraft are more cost efficient,<sup>29</sup> and airlines might occasionally 'beat the market' with a fuel hedge contract<sup>30</sup> – but most operating costs are (quasi-) fixed, at least in the short term, which is one reason why the 'cost axe' frequently falls

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<sup>25</sup> In a study comparing the world's top twenty-five legacy airlines and the leading six LFAs (including Ryanair, easyJet and airberlin), KPMG found that the cost gap between legacy and LFAs had narrowed from US3.6¢ to US2.5¢ per available seat kilometre (ASK) between 2008 and 2011, but most savings were achieved in 2008-09 and were classified as 'other expenses' (i.e. *excluding* fuel and labour costs). See KPMG (2013) *Airline Disclosure Handbook: Financial Reporting and Management Trends in the Global Aviation Industry*. Global Aviation Group.

<sup>26</sup> Lufthansa transferred over fifty aircraft to Germanwings under a 2-year transition scheme (2013-15) that is expected to save the company €900m. Other examples of this strategy include Air France-KLM/Transavia and Iberia/Iberia Express. Air France has also created Hop! by combining the regional services of three airlines (Brit Air, Régional and Airlinair).

<sup>27</sup> When BAMF crew were recently balloted on possible industrial action, it was reported in the press (*The Guardian*, 22 June 2014) that staff were reliant on working tax credit (state benefits) to supplement their income (in effect, therefore, the government was subsidising BA's operations).

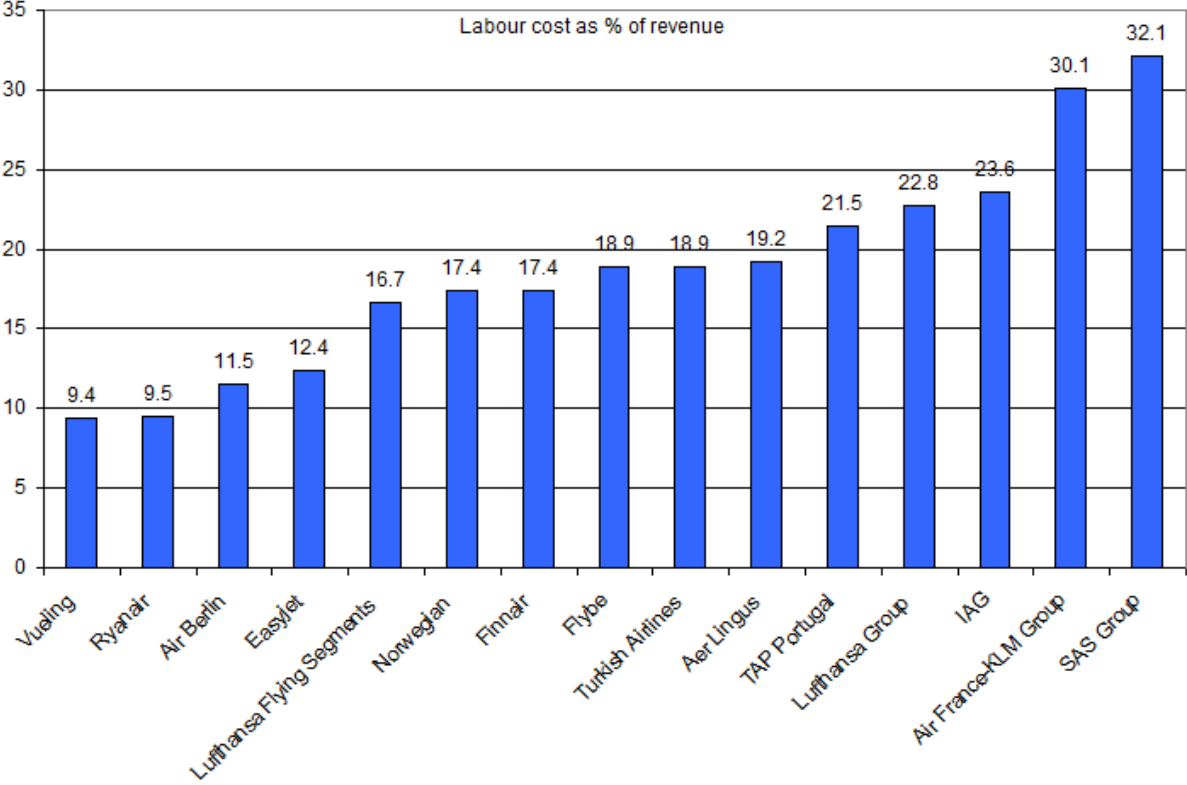
<sup>28</sup> Recent media and other coverage of Ryanair highlights these concerns (e.g. Channel 4 Dispatches, *Ryanair: Secrets from the Cockpit*, 12 August 2013, which looked at safety, and the *Which?* magazine survey of the UK's 100 biggest companies, published in September 2013, that rated Ryanair as the worst brand for customer service, <http://www.which.co.uk/news/2013/09/which-reveals-best-and-worst-brands-for-customer-satisfaction-334204/>).

<sup>29</sup> The average age of aircraft operated by easyJet and Ryanair is only 4 years compared to 9-11 years at most legacy airlines. Newer aircraft have lower fuel and maintenance costs.

<sup>30</sup> Morrell, P. and Swann, W. (2006) 'Airline Jet Fuel Hedging: Theory and Practice', *Transport Reviews*, 26(6), pp.713-30.

on the head of labour, typically the airline’s biggest controllable cost, especially during times of economic crisis.<sup>31</sup> Figure 4 illustrates the percentage of airline revenues accounted for by labour costs demonstrating the ‘cost gap’ between LFAs and legacy airlines.

**Figure 4. European Airlines Labour Cost as a percentage of Revenues, 2011 or 2012**



**Note:** 12 month period varies as follows: Lufthansa, Air France-KLM, IAG, easyJet and airberlin to Sept-2012; Ryanair and Flybe to Mar-2012; Turkish Airlines, Norwegian, Vueling and TAP Portugal to Dec-2011; SAS to Oct-2012; Aer Lingus and Finnair to Dec-2012. Labour costs include wages, state-mandated social contributions and pension contributions.

**Source:** [www.centreforaviation.com](http://www.centreforaviation.com)

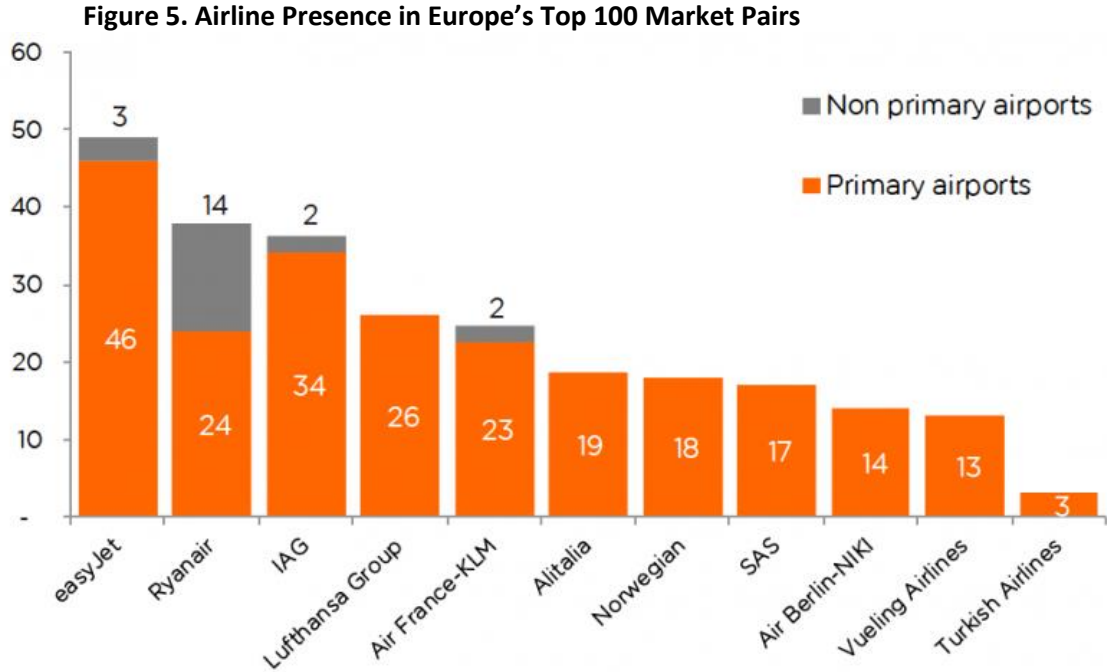
Consequently, if the options for continuous cost reduction diminish, the only financial alternative is to grow revenue. This can be achieved by ‘adding value’ (e.g. offering ancillary products and services such as travel insurance, car hire, hotel accommodation, surface transport, on-board and on-line gambling, and in-flight sales<sup>32</sup>) and/or targeting different passenger groups, especially those with more disposable income. By ‘unbundling’ the different components of air travel, LFAs not only turn the flight experience into a ‘commodity’ for the passenger, with payment for all the different elements of the flight (e.g. seat choice, checked-in baggage, in-flight food and drinks, etc.), they also change the nature and

<sup>31</sup> Turnbull, P. and Harvey, G. (2001) ‘The Impact of 11 September on the Civil Aviation Industry: Social and Labour Effects’, ILO Sectoral Working Paper No. 182, Geneva: ILO; and Harvey, G. and Turnbull, P. (2009) *The Impact of the Financial Crisis on Labour in the Civil Aviation Industry*, Geneva: ILO, available at: <http://www.ilo.org/public/english/dialogue/sector/themes/crisis/aviation.pdf>.

<sup>32</sup> Ryanair earns around 20 per cent of its revenue from ancillary product and services, including excess baggage charges, which is higher than other LFAs (e.g. 11 per cent at NAS in 2013). Ryanair’s dependency on such revenues is demonstrated by the fact that based on ticket revenue alone, Ryanair needed to sell 98 per cent of seats available to breakeven in 2008 whereas it actually sold 81 per cent. The company therefore returned a healthy profit on the back of ancillary revenues. See *Airline Business*, February 2010.

expectations of work for staff (e.g. a significant component of pay for cabin crew is often based on in-flight sales, which shifts the emphasis from safety and service to sales and marketing).<sup>33</sup>

Some LFAs, most notably easyJet, already target business passengers, which is a key component of the airline’s strategy to be ‘Europe’s preferred short-haul airline’.<sup>34</sup> easyJet’s focus on yield rather than market share is a viable strategy for an airline that already has a presence in more of the top 100 European city pairs (49) than any other airline, as demonstrated in Figure 5. The contrast between easyJet and Ryanair is particularly instructive in this respect as the Irish airline has a much lower presence (38) in the top 100 European city pairs and serves far fewer primary airports (24). These data indicate how, and why, the geography of competition is changing.



Source: easyJet

LFAs typically start their business at secondary airports located further from the main urban areas in order to avoid direct competition with established (legacy) airlines. They increase their catchment by offering flights at lower fares to generate new demand, as well as by attracting passengers from other transport modes and from full service (legacy) airlines. This enables LFAs to provide scheduled services on many more low-density routes than one would ever expect from a legacy airline.<sup>35</sup> As they grow in search of more traffic, they invariably target larger (primary) airports where service, and not simply cost, shifts the balance for both passengers and staff. Put differently, we should not be surprised if terms and conditions of employment, human resource management policies and industrial relations differ markedly across LFAs as a consequence of their business strategy, route network and the like.

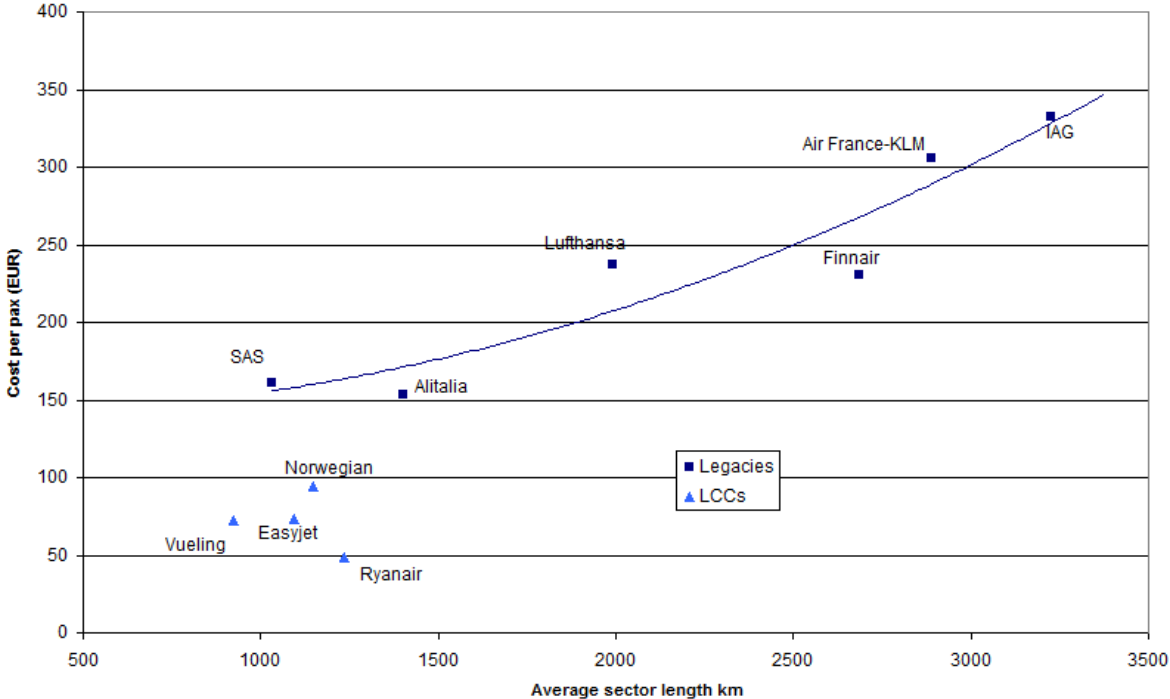
<sup>33</sup> The previous ETF study of LFAs found that most use some form of variable pay for cabin crew, which often comprises more than half the employee’s monthly pay. See Harvey and Turnbull (2012) *op. cit.*

<sup>34</sup> easyJet’s stated business strategy makes no mention of cost. In 2011, 18 per cent of the airline’s passengers travelled on business, a proportion the airline intends to increase to around 25 per cent by 2015.

<sup>35</sup> de Wit, J.G. and Zuidberg, J. (2012) ‘The Growth Limits of the Low Cost Carrier Model’, *Journal of Air Transport Management*, 21(C), pp.17-23.

Until recently, only Ryanair persisted with a secondary airport strategy, illustrated by the fact that the airline had a market share (measured by offered seats) of over 75 per cent at nearly half its bases whereas easyJet does not have such market share at a single base. Moreover, around three-quarters of Ryanair’s routes had a frequency of less than 7 per week in 2010, with most ranging from just 2-4 frequencies per week.<sup>36</sup> As 80 per cent of Ryanair’s routes are not directly contested by any other carrier it is clear that the density on these routes is insufficient to allow the airline to operate higher weekly frequencies. In fact, LFAs in general, and Ryanair in particular, need to look further and further afield to find more passengers and grow revenues, perhaps best illustrated by an exponential growth in the number of routes served by Ryanair<sup>37</sup> and a substantial increase in the airline’s average route distance.<sup>38</sup> Thus, while Ryanair has lower costs per passenger than other LFAs, and of course much lower costs than legacy airlines, its cost base is stretched by longer average sector lengths when compared to other LFAs, as illustrated in Figure 6.

**Figure 6. Cost per Passenger and Average Sector Length – Low Cost Carriers (LCC) and Legacy Airlines**

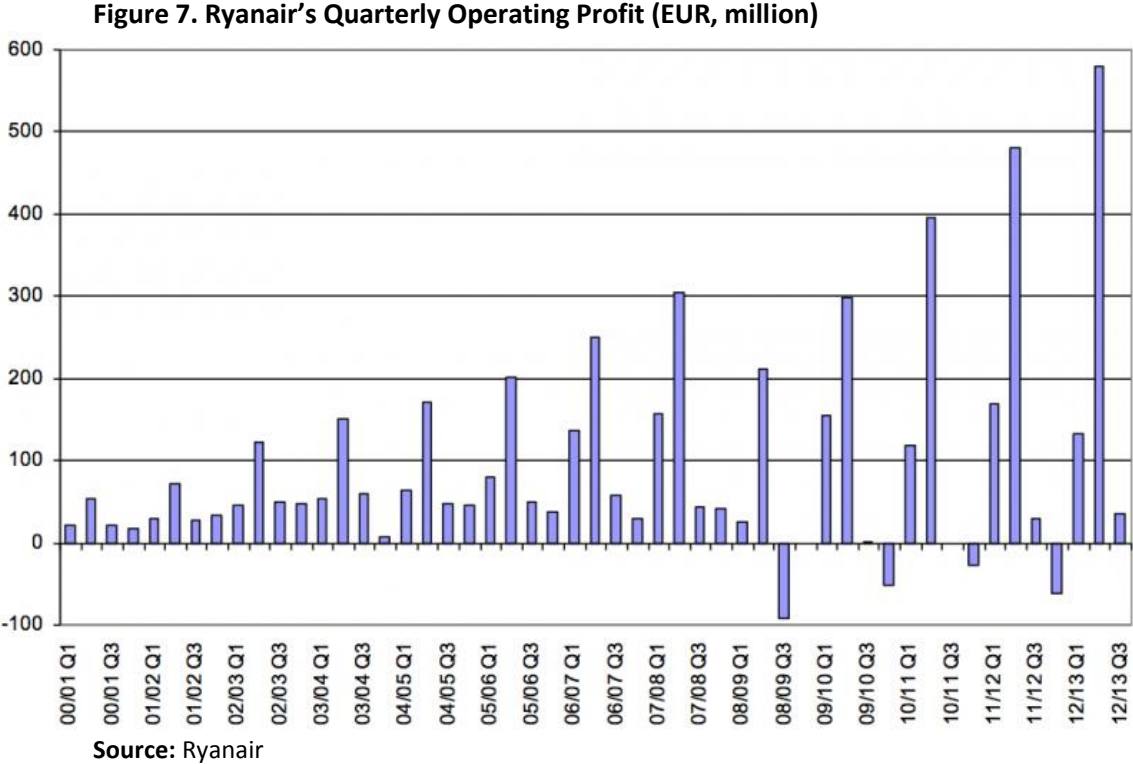


Source: [www.centreforaviation.com](http://www.centreforaviation.com)

All told, these developments explain why the business strategies of LFAs are evolving (e.g. facilitating transfers, entering alliances, acquiring other airlines) and why the experience of work will differ from one airline to the next. For example, LFAs such as easyJet with a denser route network and access to more and higher value passengers at primary airports (Figure 5) will have different expectations of staff and a more stable roster during the year (i.e. less

<sup>36</sup> This compares to 40 per cent of easyJet’s services operated daily. *Ibid*, pp.18-19.  
<sup>37</sup> In June 2014, Ryanair offered 1,600 routes compared to: easyJet = 686, Norwegian = 405, Wizz Air = 291, Jet2.com = 238, Vueling = 188, Flybe = 186 and transavia.com = 158. Go to: [www.elfaa.com](http://www.elfaa.com)  
<sup>38</sup> Between 2001 and 2010, Ryanair’s average route distance increased by 75 per cent compared to 40 per cent at easyJet. On the basis of these data, de Wit and Zuidberg conclude that Ryanair is only capable of starting thin routes, which in turn is an indication of a saturating market and future, or already existing, route density problems. *Ibid*, pp.19-20 & 22.

variation between summer and winter schedules).<sup>39</sup> In contrast, the self-styled ‘ultra low cost carriers’ (Ryanair and Wizz Air<sup>40</sup>) will no doubt continue to bear down relentlessly on labour costs and staff will find themselves working right up to the maximum flight and duty time during the busy summer schedule with enforced lay-offs (furlough) during the winter when aircraft are grounded. Ryanair, for example, now ‘flex’ the fleet between winter and summer schedules more than any other airline, principally because the carrier no longer makes a profit during the winter and relies on summer profits to offset winter losses, as illustrated in Figure 7.<sup>41</sup>



Consequentially, consider the implication for aviation staff employed by the legacy airlines as LFAs increasingly compete ‘head on’ at the primary airports. easyJet already poses a direct competitive challenge to many legacy airlines as the company has invested heavily in frequent services to/from primary airports (Figure 5) whilst maintaining a low cost operating base (Figure 6). In some EU Member States, easyJet is now the ‘benchmark’ used by management calling for a reduction in legacy labour costs, but in other Member States it is an ‘employer of

<sup>39</sup> Based on OAG data for 2011, a comparison between the lowest monthly flight capacity expressed as a percentage of the highest monthly flight capacity illustrates significant differences within the low fares group of airlines (e.g. easyJet = 74.6 per cent, Ryanair = 66.6 per cent and Vueling = 51.5 per cent) and between LFAs and legacy airlines (e.g. BA = 91.5 per cent and Lufthansa = 89.9 per cent).

<sup>40</sup> Wizz Air claims to have similar costs to Ryanair but this claim is impossible to independently verify as Wizz Air is a private company and does not publish data on ASK, RPK, etc. According to Józef Váradi, the CEO of Wizz Air, LFAs fall into two main categories: (i) the ‘ultra low cost carriers’, and (ii) the ‘lazy low cost carriers’ (see *Airline Business*, January 2013). Ryanair, of course, claims to be Europe’s only ‘ultra-low cost carrier’. See, for example, [https://www.ryanair.com/doc/investor/present/quarter4\\_2013.pdf](https://www.ryanair.com/doc/investor/present/quarter4_2013.pdf)

<sup>41</sup> Ryanair now ground around 60-80 aircraft during the winter months.

choice' for many aspiring cabin crew, including many staff who work for BAMF.<sup>42</sup> Direct competition from Ryanair is rather more ominous. Even rival LFAs are tempted to 'wave the white flag' and surrender routes when Ryanair enters direct competition<sup>43</sup> and the Irish carrier recently announcement that it would consider routes to all but three of Europe's major airports.<sup>44</sup> When legacy airlines with a much higher (legacy) cost base (Figure 6) face social dumping by an ultra-low cost carrier<sup>45</sup> the pressure on revenue and staff costs can be unbearable.

The turbulence created by low cost competition for legacy airline staff is not confined to the 'low cost version' of the main brand (e.g. staff employed by BAMF, Iberia Express, Germanwings and Transavia). A combination of more fuel-efficient aircraft and open skies agreements with neighbouring countries (under the European Neighbourhood Policy) has enabled LFAs to further extend the geographic reach of their route network to many of the attractive 'long haul' destinations traditionally served by legacy airlines.<sup>46</sup> easyJet, for example, already offers flights to Egypt, Iceland, Israel, Jordan, Morocco and Turkey, and recently added Moscow to its destinations. From a multi-base network, LFAs can retain the cost advantages of their original business model on these routes. Beyond this time/distance, however, it seems that more innovative forms of cost cutting are required, opening further cracks in the SEAM.

No low cost airline has ever survived a full economic cycle on a long haul (inter-continental) route. However, new market opportunities are being created through the negotiation of open skies agreements with non-EU countries,<sup>47</sup> as depicted in Figure 8, most notably the United

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<sup>42</sup> During both focus groups and one-to-one interviews with BAMF staff and union activists, the idea of 'gaining experience' with British Airways and then 'getting a better job' with easyJet was suggested as an attractive career move on several occasions.

<sup>43</sup> Interview notes with rival LFA CEO. Ryanair now accounts for well over a third of all LFA seat capacity in Europe.

<sup>44</sup> At the three (congested) airports in question – Frankfurt, London Heathrow and Paris Charles de Gaulle – Ryanair claims that it would not be able to achieve a 25-minute aircraft turnaround. Quick turnaround is vital for LFAs because aircraft represent the LFA's most costly asset and minimizing time on the ground and maximizing time in the air is critical to maintaining low costs. In the summer 2014, Ryanair added 138 new routes but axed 22 routes and dropped ten airports completely from its schedule, with reduced departures from secondary airports and higher frequencies at the primary airports it serves (e.g. Athens, Barcelona, Brussels, Lisbon, and Rome Fiumicino).

<sup>45</sup> In the words of Michael O'Leary (Ryanair's CEO), the Irish ultra-low cost carrier now 'cover[s] all of Europe, a bit like a social disease' (New Economic Leaders Forum, Dublin Convention Centre, 19 April 2013, view at: <https://www.youtube.com/watch?v=mKDyeN2CYsE>).

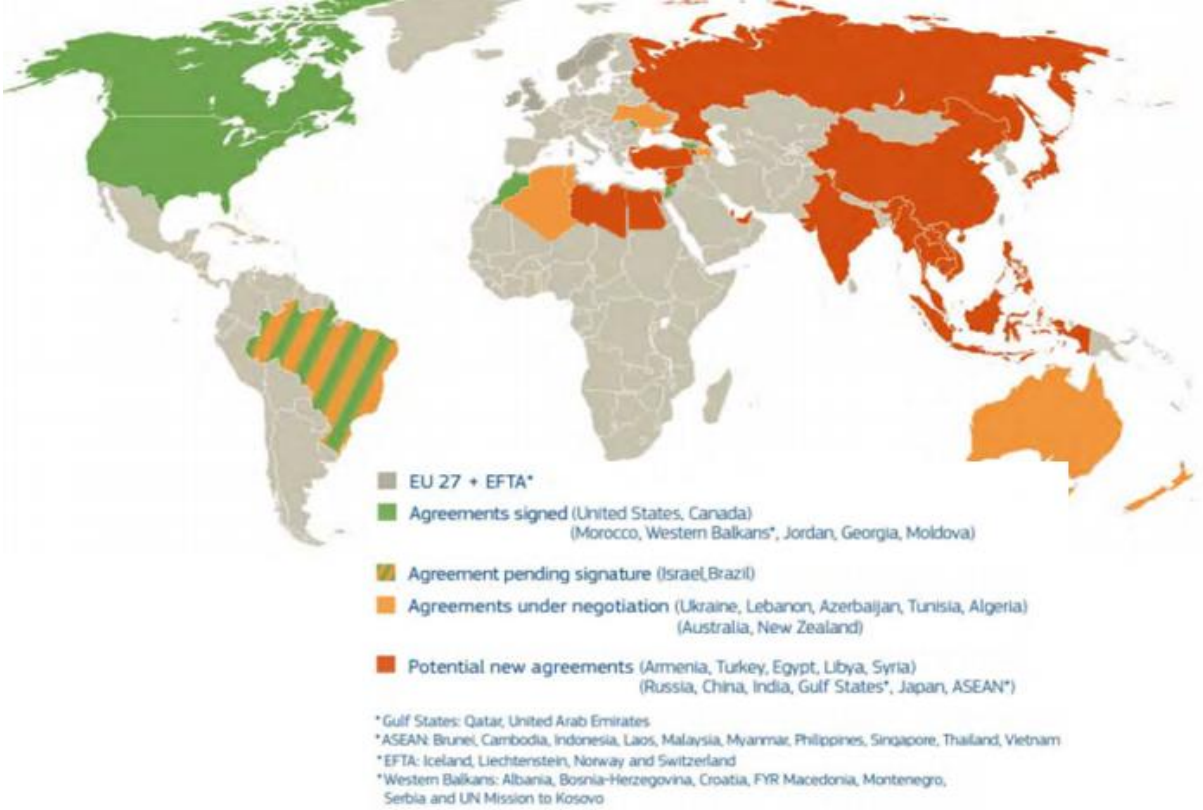
<sup>46</sup> The European Neighbourhood Policy (ENP) was established in 2004 and includes sixteen of the EU's closest neighbours: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Occupied Palestinian Territory, Syria, Tunisia and Ukraine. The ENP was largely a response to a ruling by the European Court of Justice in 2002 that declared BASAs between EU Member States and third countries to be contrary to Article 43 EC (now Article 49 of the Treaty on the Functioning of the European Union) where they deny market access to carriers owned and controlled by nationals of another Member State. This in practice marked the start of an EU external aviation policy.

<sup>47</sup> The Commission's 2005 Communication on *Developing the Agenda for the Community's External Aviation Policy* (COM[2005]79) proposed moving increasingly from bilateral agreements with third countries towards agreements between the EU and those countries. Since 2005, nearly 120 countries around the world have recognised the principle of EU designation. The EU-Morocco open skies agreement (2005) was the agreement signed by the EU with a non-EU country, introducing 5<sup>th</sup> freedom rights for both sides (19 European airlines, including easyJet and Ryanair, commenced flights to Morocco as a result of the



States (US).<sup>48</sup> With the commission of a European sovereign state (an Air Operator’s Certificate issued by a Member State), European LFAs are now able to adopt and adapt the maritime practice of Flags of Convenience (FoC) and Crews of Convenience (CoC) as a way of redefining employment relationships, exerting control over labour, and extracting surplus value. The clearest example of this strategy – the creation of Norwegian Air International (NAI), a subsidiary of Norwegian Air Shuttle (NAS) – is now a *cause célèbre* on both sides of the Atlantic.

**Figure 8. On-going Liberalisation of the Skies**



NAS is one of Europe’s largest LFAs<sup>49</sup> flying around 18 million passengers per annum and now operating from eleven bases across Scandinavia and the rest of Europe, as well as Bangkok.<sup>50</sup> The latter is used as a base for flights between Asia and Europe and then onwards to the USA, with aircrew hired via agencies in Singapore and Thailand. To completely break all ties between labour, location and license, the airline’s new subsidiary (NAI) has acquired an Irish Air Operator’s Certificate (AOC), even though the company has no plans to operate out of

agreement and around 80 per cent of Morocco’s international traffic is now on routes covered by the open skies agreement with the EU).

<sup>48</sup> The EU-US Air Transport Agreement (2007/339/EC) was provisionally applied from 30 March 2008 for all EU Member States. Under the Agreement, for the first time, European airlines could fly without restrictions from any point in the EU to any point in the US. The ultimate objective of the EU-US Air Transport Agreement (2007/339/EC) is to create a transatlantic Open Aviation Area: a single air transport market between the EU and the US with free flows of investment and no restrictions on air services, including access to the domestic markets of both parties.

<sup>49</sup> NAS commenced operations in 1993 and was re-launched as a low cost carrier in 2002.

<sup>50</sup> Around 50 per cent of the airline’s flights are now between ‘foreign’ countries (i.e. they neither start nor end in Norway). When it was suggested to Bjørn Kjos, NAS CEO, that in Norway the airline is no longer seen as a Norwegian company, his terse response was simply: ‘We don’t give a shit about that’ (*The Guardian*, 14 February 2014).

Ireland. Irish registration is simply a ‘convenient flag’ as NAS shifts the sovereign regulatory regime under which social relations take place, enabling NAI to escape from national (Nordic) class compromises and exploit the EU-US open skies agreement.<sup>51</sup> This agreement, concluded in two phases (2008 and 2010) and signed by Norway in 2011, allows European carriers to fly from any EU city to any city in the USA (see footnote 46). With the entry of a LFA into this market, the challenge for organised labour on both sides of the Atlantic is clear:

NAS is using the unique nature of EU aviation laws to effectively shop around for the labor laws and regulations that best suit its bottom line. It’s using a ‘Flag of Convenience’ strategy at the expense of decent labor standards. In addition to subjecting its own workforce to substandard wages and conditions, the NAS model threatens the US aviation workforce ... undercutting US carriers and their employees that serve [routes from London to New York City, Fort Lauderdale, Los Angeles, Oakland and Orlando] by as much as 50 per cent.<sup>52</sup>

**Picture 3. Dr Geraint Harvey and Professor Peter Turnbull presenting the results of the survey at the ETF Conference, Catania, 1 – 2 July 2014**



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<sup>51</sup> NAS claim that the company’s application for an Irish AOC was motivated mainly by access to existing and future traffic rights to and from the EU (e.g. EU open skies agreements with Israel and Canada) as well as Ireland’s adoption of the Cape Town Convention on International Interests in Mobile Equipment. In contrast, trade unions have pointed out that NAI’s international base strategy is estimated to save around 50 per cent on salary costs, with Thai crews paid only NOK3,000 per month (around €370 per month) which is below the minimum wage in Norway and many other parts of Europe.

<sup>52</sup> Transport Trades Department, AFL-CIO, 29 October 2013. NAI have announced that they intend to halve the ticket price for flights between Europe and the USA (*Airline Business*, July 2013). In September 2014, US regulators deferred a final decision on whether to grant NAI a temporary operating permit (the US Department of Transportation opted to dismiss the request without prejudice, with no set date for a final decision).

### III. Low Cost Competition and Trade Union Strategies

The way markets develop spatially shapes how they develop socially (and vice versa).<sup>53</sup> In fact, the geographic opportunities of the SEAM are arguably more important than the financial constraints of the low cost business model<sup>54</sup> because the business strategies of LFAs involve a reconfiguration of sovereign authority in defiance of physical geography.

Under the previous system of bilateral air service agreements (BASAs) between nation states, the sovereign authority of the state was clear: governments determined the designated airlines and airports in the relevant BASA, thereby defining the geographic scope of the market as well as market participation.<sup>55</sup> The creation of a single European aviation market (SEAM) not only opened the market to LFAs but also signalled a shift in regulatory authority from the nation state to the pan-European institutions of the EU. However, the shift was not complete, neither in terms of aviation policy nor, in particular, social policy. As a result, wherever there are unclear delineations in national sovereignty – or ‘cracks’ in the SEAM – capital can develop new ‘spatial juridical fixes’ in order to expand business opportunities and make profit.

Consider the differences between EU Member States in terms of employment laws, union representation, collective bargaining, social protection and the like. These differences are substantial as there has long been an asymmetry, or lag, between market-making (economic) policies at the European level (e.g. the creation of a SEAM) and market-correcting (social) policies at the national level.<sup>56</sup> One indicator of these differences, illustrated in Figure 9, is national tax rates. Note the differences in Figure 9 between ‘labour taxes’ across EU Member States. For example, if an airline can operate with Irish labour taxes across Europe (e.g. Ryanair) it will capture significant cost saving as there are only a handful of countries (Croatia, Cyprus, Denmark, Malta and the UK) where labour taxes are lower. Put differently, the absence of uniform social standards and social protection across the EU creates opportunities for social dumping as airlines ‘shop around’ for lower standards (often referred to as ‘regime shopping’).

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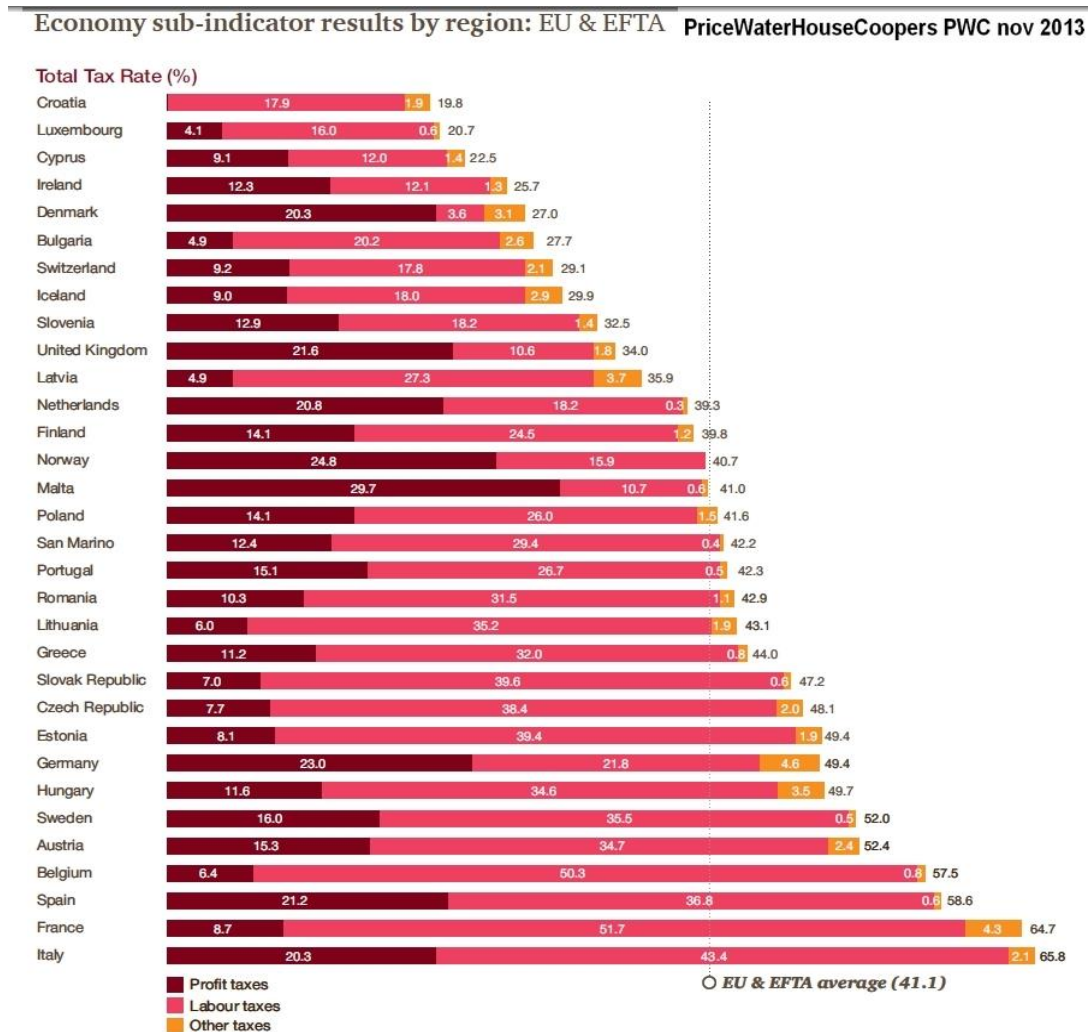
<sup>53</sup> Rainnie, A., Herod, A. and McGrath Champ, S. ‘Spatialising Industrial Relations’, *Industrial Relations Journal* 38, no.2 (2007): 102-18.

<sup>54</sup> The typical 25 per cent cost advantage of LFAs over legacy airlines on short haul flights is cut by half when seat density is removed from the equation (i.e. half the potential unit cost advantage for a long haul flight offered by a low cost carrier comes from shrinking premium seating and increasing the density of economy, which is a far less attractive proposition for passengers on longer journeys). The other half of the LFAs cost advantage comes from input costs, but some of these costs (e.g. fuel, which goes from 30 per cent to 50 per cent of operating costs when switching from short haul to long haul) are more difficult to contain. It is even more important, therefore, to contain (ideally reduce) other input prices, most notably labour costs.

<sup>55</sup> Combined with capacity rules, pricing and revenue sharing, the BASA also determined the key economic dimensions of the market.

<sup>56</sup> Scharpf, F.W. (2010) ‘The Asymmetry of European Integration, or Why the EU Cannot be a “Social Market Economy”’, *Socio-Economic Review*, 8(2), pp.211-50.

**Figure 9. Tax Rates Across the EU**



**Note:** Data includes all government-mandated taxes. Labour taxes include government-mandated contributions paid by the employer to a required pension fund or workers' insurance fund.

**Source:** [www.pwc.com/payingtaxes](http://www.pwc.com/payingtaxes)

Social dumping is only possible if (mobile) capital is able to remove specific workspaces, contexts and categories of people from the protection they would normally enjoy within sovereign states. Airlines still depend on the nation state for their operating licence and the protection of their property rights, but mobile elements of capital can operate in areas of less regulation by severing the connection or interdependencies between licence, location and labour, as demonstrated by the business and employment practices of Ryanair and NAI.

European LFAs are in fact unusual in developing a 'multi-base' strategy, which enables them to return aircraft and crew to the same base at the end of each day.<sup>57</sup> This facilitates more efficient rostering of crew, increasing labour utilisation and reducing costs (e.g. minimising

<sup>57</sup> Airline bases are typically defined as airports where the carrier permanently bases aircraft and crew, with both fleet and personnel returning the base at the end of the shift or working day. Routine maintenance is usually performed at the base although heavy maintenance is typically performed at select bases only. By the end of 2013, easyJet had over 20 bases and Ryanair over 60 bases. Vueling base aircraft and crew in Barcelona, Paris Orly, Rome Fiumicino and Amsterdam. NAS bases outside Scandinavia include London Gatwick, Malaga, Las Palmas and Alicante.

commuting and positioning costs, not using revenue seats for crew and avoiding stop-overs away from base). However, a multi-base strategy can also 'dis-embed' aircrew as the worker's base is not necessarily their 'home', nor is their contract of employment necessarily governed by their state of nationality. In this way, the airline operates in areas of less regulation – 'spaces of exception' – by disconnecting their activities (licence, location, labour) without challenging the right of the state to 'carry on discharging traditional roles as if nothing had happened'.<sup>58</sup> This is one reason why castigating some LFAs as 'sky pirates'<sup>59</sup> is not entirely appropriate as the definition of a pirate is one who steals at sea or plunders the land from the sea *without commission from a sovereign state*.<sup>60</sup>

Those seeking (social) protection from the vagaries of the market through their own 'spatial-juridical fix', most notably the working class,<sup>61</sup> have tended to 'follow the market' in terms of building their collective organisation and repertoires of contention 'from the ground up'. Historically, workplace trade union organisation and collective bargaining has been extended to embrace cooperation between workers in local firms in close proximity, with regional and national organisation to follow.<sup>62</sup> In an age of globalisation, the next phase in this process is the international stage. However, progression is by no means automatic<sup>63</sup> as the contest between capital and labour, between 'market making' (economic) policies and 'market correcting' (social) policies, has always been uneven.

The challenge for aviation unions, therefore, is whether they can 'shift scale'<sup>64</sup> and operate as effectively at the international (European) level in the future as they have at the national level in the past. To do so, they will need to draw on all the various power resources at their disposal – legal, structural and associational – to influence decision-making processes at both the national and European levels.

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<sup>58</sup> Palan, R. (1998) 'Trying to Have Your Cake and Eat It: How and Why the State System has Created Offshore', *International Studies Quarterly*, 42(4), p.627.

<sup>59</sup> Public Hearing on 'Pirates of the Sky: The Corners Cut by Low Cost Airlines', European Parliament, Brussels, 10 April 2014, organised by the Confederal Group of the European United Left/Nordic Green Left (GUE/NGL).

<sup>60</sup> This means that Michael O'Leary, Ryanair's CEO, is better likened to Sir Francis Drake than Captain Jack Sparrow, because Ryanair's aircraft are *licensed in Ireland* and aircrew are *employed on Irish contracts*, including non-Irish nationals who are hired via an agency and work at one of the company's sixty-plus bases outside the Republic of Ireland, who fly to other European countries and never set foot on Irish soil.

<sup>61</sup> Herod, A. (1997) 'From a Geography of Labor to a Labor Geography: Labor's Spatial Fix and the Geography of Capitalism', *Antipode*, 29(1), pp.1-31. In a recent 'Policy and Strategy Paper' (June 2014), the ETF's CAS called for 'set borders on competition' as one of the keys to survival of the EU aviation industry.

<sup>62</sup> This development was noted in the earliest studies of trade unionism and is still observed today. See Commons, J. (1909) 'American Shoemakers 1648-1895: A Sketch of Industrial Evolution', *Quarterly Journal of Economics*, 24(1), pp.39-84; and Turnbull, P. (2010) 'Creating Markets, Contesting Markets: Labour Internationalism and the European Common Transport Policy', in S. McGrath-Champ, A. Herod and A. Rainnie (eds) *Handbook of Employment and Society: Working Space*, Edward Elgar, pp.35-52.

<sup>63</sup> Marginson, P. and Sisson, K. (2004) *European Integration and Industrial Relations: Multi-Level Governance in the Making*, Houndmills: Palgrave Macmillan, p.312.

<sup>64</sup> A 'scale shift', according to Sid Tarrow, is characterised by a change in the number and level of coordinated contentious actions to a different focal point, involving a new range of actors, different objects and broadened claims. When social actors operate at different levels – local, national and international – this 'offers a special challenge for activists because it both opens conduits for upward shift and can empower national, regional and local contention with international models of collective action'. Tarrow, S. (2005) *The New Transnational Activism*, Cambridge: Cambridge University Press, p.121.

The strategic options facing trade unions are depicted in Figure 10 along two dimensions: the decision-making level (vertical axis) and decision-making processes (horizontal axis). There are challenges, dilemmas and possible contradictions confronting trade unions along both axes. Consider, first, the vertical axis. Traditionally, most aviation unions enjoyed considerable access to national decision-making bodies and processes, especially in relation to issues concerning the national (flag) airline and its workforce. As a result, national aviation unions were often reluctant to invest in European level structures and activities – they could protect their members interests through company-level and/or national collective bargaining, ‘supported’ or at least not usually obstructed by a sovereign state that was keen to protect the interests of the national (flag) airline.<sup>65</sup>

In fact, it is no coincidence that European trade union structures have been weakest at the industry level, where national trade unions are strongest, and strongest at the peak level, where national unions are weakest.<sup>66</sup> This serves to reinforce the domestic orientation of many national aviation unions, leading to calls for ‘renationalisation’ (i.e. a process in which the powers of the EU are ‘rolled back’ and re-established at the national level) rather than concerted action at the European level. The fact that European legislation and (neo-liberal) economic policies invariably ‘trump’ or in some cases nullify national legislation and socio-economic policies, as demonstrated in the Viking case<sup>67</sup> and subsequent legal proceedings, including several cases in civil aviation (see Annex I) has alerted aviation unions to the interaction and interdependencies between decision-making levels in Figure 10.

Consider, next, the horizontal axis. If and when trade unions decide to engage with European institutions and policy-making processes (e.g. via social dialogue) there is both a strong (technocratic) bias towards compromise<sup>68</sup> and the possibility of an ‘elitist embrace’ if there is too one-sided an engagement with the ‘Brussels machine’, which in turn can lead to ‘a suppression of both political alternatives and mobilization capacity’.<sup>69</sup> The EU’s decision-making process of formulating, analysing, revising, debating, amending, and reformulating policy within an elaborate network of interacting committees leaves little room for the democratic participation of rank-and-file union members. In fact, this (technocratic) process ‘is as far removed from the capacities and inclinations of the local movement constituencies as are the seats of these supranational organizations’.<sup>70</sup> Nonetheless, while the EU institutions are open to the views and interests of (aviation) workers, the force of workers’ argument at

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<sup>65</sup> The ‘patriotic interventionism’ of some governments resulted in a situation where, ‘in some countries it was difficult to tell where the management of the airline ended and the state began’. See Kassim, H. (1996) ‘Air Transport’, in H. Kassim and A. Menon (eds.) *The European Union and National Industrial Policy*, London: Routledge, pp.106 and 114.

<sup>66</sup> Dølvik, J.E. and Visser, J. (2001) ‘ETUC and European Social Partnership: A Third Turning Point’, in H. Compston and J. Greenwood (eds.) *Social Partnership in the EU*, Basingstoke: Palgrave Macmillan, pp.11-40.

<sup>67</sup> *International Transport Workers’ Federation and the Finnish Seamen’s Union v Viking Line ABP*: C-438/05 [2008] IRLR 143.

<sup>68</sup> In most cases, the party most interested in a compromise (usually labour) will make more concessions for the sake of an agreement with its less interested counterpart (invariably management). See Traxler, F. (2003) ‘Bargaining, State Regulation and the Trajectories of Industrial Relations’, *European Journal of Industrial Relations*, 9(2), pp.154-5.

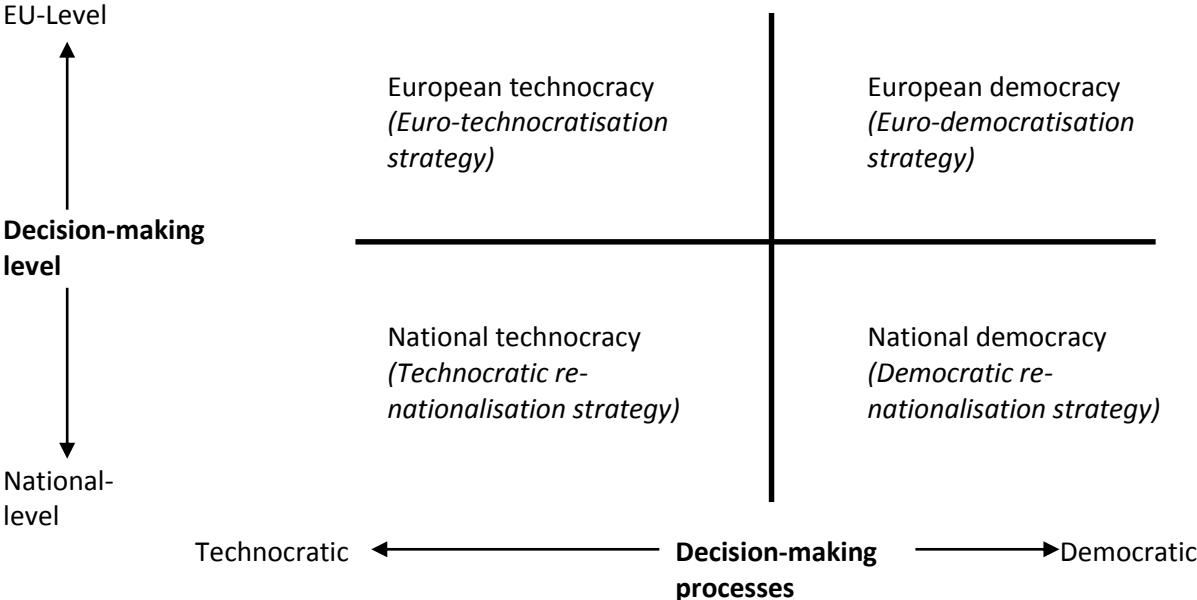
<sup>69</sup> Hyman, R. (2005) ‘Trade Unions and the Politics of the European Social Model’, *Economic & Industrial Democracy*, 26(1), p.27.

<sup>70</sup> della Porta, D. and H. Kriesi (1999) ‘Social Movements in a Globalizing World: An Introduction’, in D. della Porta, H. Kriesi and D. Rucht (eds), *Social Movements in a Globalizing World*, Basingstoke: Macmillan, p.20.

this level (the top left-hand quadrant in Figure 10) will be clearer, louder and more readily heard when backed by the argument of force (the top right-hand quadrant in Figure 10).

In this respect, the horizontal axis in Figure 10 depicts a tension facing all trade unions, namely that between the logic of membership (democracy) and the logic of influence (technocracy): unions are democratic organisations and all unions need to maintain their representative credentials by articulating the wishes and interests of their constituents (the logic of membership)<sup>71</sup> but they also need to adapt their aims and methods to the actual decision-making processes on which they exert an impact (logic of influence).<sup>72</sup> Clearly, these are not ‘either/or’ strategies as unions need to articulate the ‘force of argument’ whilst simultaneously being ready and able to mobilise the ‘argument of force’.

**Figure 10. Strategic Options for Trade Unions**



**Source:** Erne, R. (2008) *European Unions: Labor’s Quest for a Transnational Democracy*, Ithaca, NY: Cornell University Press, p.21.

In practice, therefore, unions must operate in all four quadrants of Figure 10, depending on the time and the target in question. For example, when legacy airlines maintain a ‘home hub’ it is natural for aviation unions to deal with national (flag) airlines in a domestic context through a combination of democratic and technocratic processes. However, the business strategies and operational activities of legacy airlines are increasingly shaped by European decision-making, whether in relation to the product market (e.g. the SEAM and open skies agreements with non-EU countries), safety and security (e.g. EASA or flight and duty time), or employment (e.g. posted workers or the legal definition of self-employment). Aviation unions

<sup>71</sup> As a result, unions rely on their members’ ‘willingness to act’ and not just their ‘willingness to pay’ for union membership (in the form of union subscriptions or membership fees).  
<sup>72</sup> Hyman (2005) *op. cit.* p.24.

must therefore operate at a European as well as the national level if they are to protect the interests of their members at legacy carriers.

Compared to legacy airlines, LFAs present a rather different challenge, especially as they are clearly not a homogenous group. Some LFAs have been unionised in a particular national context (e.g. easyJet in the UK) and then union recognition and collective bargaining has been 'rolled out' to other national contexts across Europe ('following the market'). Here the challenge is to connect these different workers across European Member States (and possibly beyond) in order to compare experiences, develop a common identity, and share a community of fate, both at the company level (e.g. via European Works Councils) and the national level (e.g. via the coordinating activities of the ETF). Other LFAs, in contrast, have no interest in recognising or cooperating with trade unions and their multi-base strategy militates against union organisation.<sup>73</sup> If national organisation and union recognition fails, a very different strategy is clearly called for.

While airlines remain the primary target of union organising activity and collective bargaining, they must also address their concerns and represent their members' interests in the political arena, both domestically and at the European level. In particular, trade unions must adapt to the market-making (economic) policy of the EU if they are to retain adequate social protection for their members (e.g. correcting or preventing the opportunities for 'regime shopping' and 'social dumping'). Where labour seeks to press its claims, and the processes involved, will depend on the particular target(s) in question and the influence they wield. Compare the Council of Ministers and the European Commission. The Council is an inter-governmental body so the path to exerting pressure on its decision-making runs through domestic action within individual Member States, through the democratic and technocratic activities of national aviation unions (e.g. lobbying the nation's Transport Minister), whereas the Commission is a permanent supranational body that is open to representative groups at the European level (e.g. the ETF).

Consider, next, the Commission and the European Parliament. The Commission values expertise above representation,<sup>74</sup> making it open to the logic of influence and 'conventional activities' such as institutionalised, elite lobbying taking place within established political channels. The European Parliament, in contrast, as the only democratically elected decision-making body in the EU, is more open to the logic of membership and 'unconventional pressures' (new repertoires of contention), such as non-institutionalised, symbolic or mass protests outside established political channels (e.g. demonstrations outside the Parliament building, ideally when aviation issues are being debated by MEPs).<sup>75</sup> Historically, the European Parliament has been the most reliable supporter of an effective social dimension to European

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<sup>73</sup> See Harvey and Turnbull (2012) *op. cit.*; and O'Sullivan, M. and Gunnigle, P. (2009) "Bearing All the Hallmarks of Oppression": Union Avoidance in Europe's Largest Low-cost Airline', *Labor Studies Journal*, 34(2), pp.252-70.

<sup>74</sup> Tarrow (2005) *op. cit.* There is, of course, more than one Commission and unions can expect a different response from DG Move, DG Employment and DG Competition.

<sup>75</sup> Marks, G. and McAdam, D. (1999) 'On the Relationship of Political Opportunities to the Form of Collective Action: The Case of the European Union', in D. della Porta, H. Kriesi and D. Rucht (eds), *Social Movements in a Globalizing World*, Basingstoke: Macmillan, pp.103-5; and Turnbull, P. (2010) 'From Social Conflict to Social Dialogue: Counter-Mobilisation on the European Waterfront', *European Journal of Industrial Relations*, 16(4), pp.333-49.



integration and over the past decade it has come to exercise real power over significant areas of policy-making.<sup>76</sup>

Having identified the primary dimensions of union strategy (i.e. levels and processes) and some of the primary targets for organised labour (e.g. aviation companies, regulatory authorities, and political parties/politicians, both national and European) aviation unions also need to consider their power resources (structural, associational and legal) and when, where, and how they can most effectively wield these resources. Our survey data, based on the responses of more than 2,700 aviation workers, suggests that labour’s structural power has been significantly eroded by LFAs, both directly as a result of the business strategies and associated HR/industrial relations policies of these companies and indirectly as a result of the competition they generate with legacy airlines. Consequently, it is all the more difficult for unions to build strong(er) associational power, especially when EU legislation undermines the application and effectiveness of national social laws. These three dimensions of workers’ and trade union power – structural, associational and legal – are considered in turn.

**Picture 4. Enrique Carmona, ETF CAS President speaking with François Ballestero, ETF Political Secretary at the ETF Conference in Catania, 1 – 2 July 2014**



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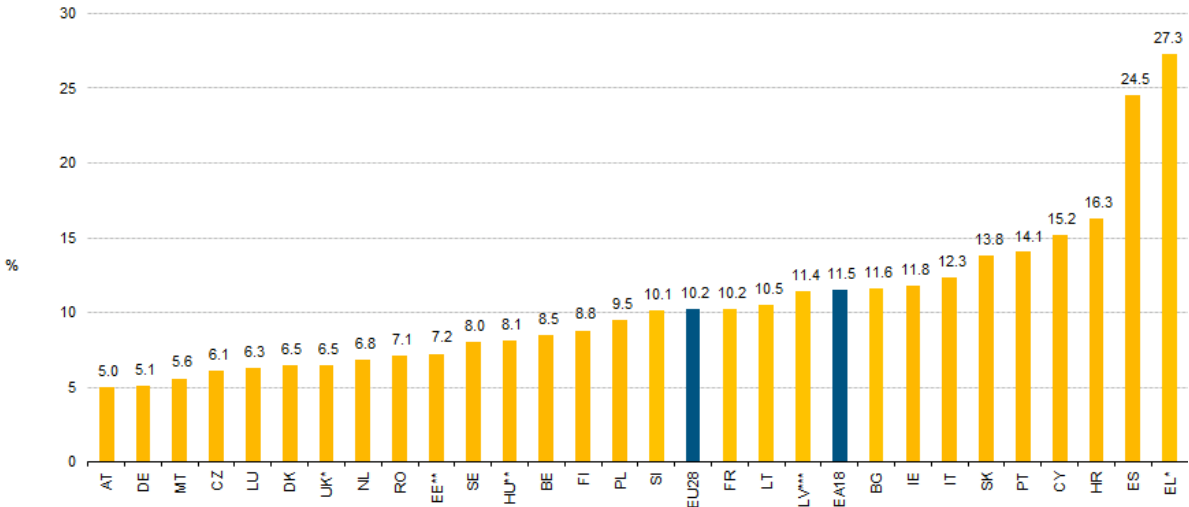
<sup>76</sup> Crucially, the political majority in the European Parliament is not tied to supporting the Commission or the Council, and while there is a high level of voting cohesion within party groups, with Members of the European Parliament (MEPs) voting more along party lines than national lines, these groups remain relatively loose organisations. Moreover, voting for MEPs in European elections is mainly oriented to domestic rather than EU issues, which creates opportunities for aviation unions, at particular times (i.e. immediately prior to elections), to campaign and exert an influence on European politics through their national activities.

## IV. The Power Resources of Aviation Workers and Aviation Unions in Europe

### Structural Dimensions of Power

At the macro (economy-wide) level, workers’ structural power is generally determined by supply and demand in the labour market. When unemployment is high, as it has been in Europe following the (financial) crisis of capitalism since 2008, workers find themselves in a much weaker bargaining position. Unemployment in Europe currently stands at just over 10 per cent and is much higher in many EU Member States, as clearly demonstrated in Figure 11. At the meso (industry) level, workers in civil aviation have faced significant job cuts since 2008,<sup>77</sup> including 20,000 job losses at scheduled airlines in Europe, and there is consequently very high demand for jobs at the micro (organisational) level. Thus, when airlines do recruit, they are currently inundated with job applications. NAS, for example, claimed to receive 5,500 applications when the airline recently advertised 300 cabin crew jobs<sup>78</sup> while Ryanair claims to have 5,000 pilots on waiting lists for jobs.<sup>79</sup> The reason for such high demand for any available jobs is not simply high levels of unemployment but the fact that labour supply has been (geographically) redefined (expanded) by the LFAs – the labour market is now European (Ryanair) if not global (NAI), rather than national (e.g. Ireland or Norway).

**Figure 11. Unemployment in the European Union (seasonally adjusted), June 2014**



\* April 2014 \*\* May 2014 \*\*\* Q1 2014

**Note:** Country codes are listed in Annex II.

**Source:** Eurostat

Civil aviation has always been adversely affected by external shocks (e.g. 9/11 and the current global financial crisis) and the industry displays a pro-cyclical pattern of demand (i.e. traffic increases and decreases in line with the ups and downs of GDP, but at an exaggerated rate

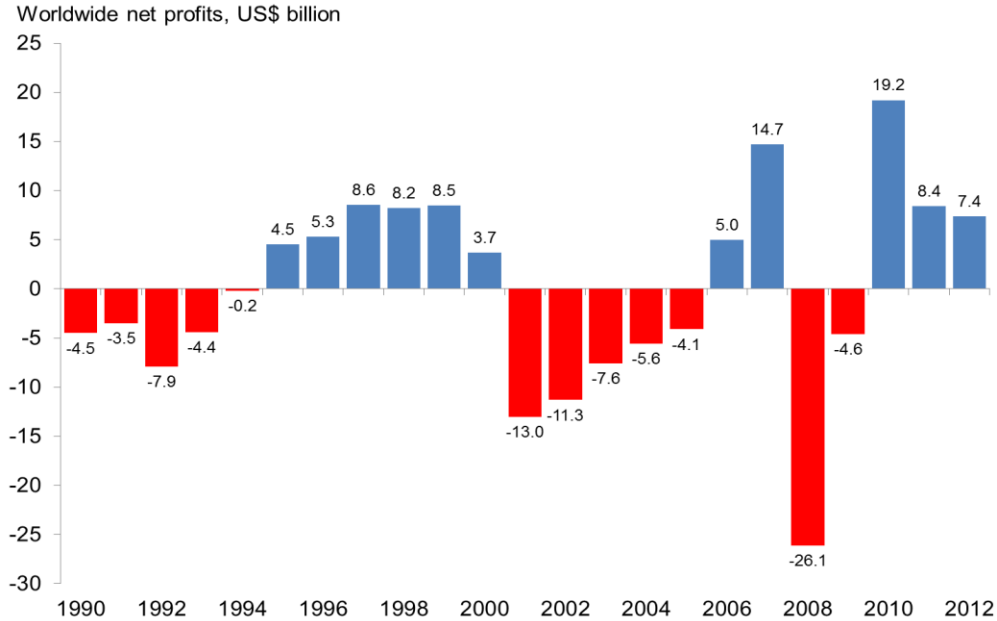
<sup>77</sup> Harvey and Turnbull (2009) *op. cit.*

<sup>78</sup> <http://www.theguardian.com/sustainable-business/ba-norwegian-air-shuttle-cut-costs-flight-attendants>

<sup>79</sup> <http://www.newsenglish.no/2013/04/11/ryanair-boss-denies-slave-contracts/>

such that airlines usually do very well in an upturn but are much harder hit in any downturn). This is clearly visible in terms of airline profitability, as illustrated in Figure 12. The result, to reiterate, is that with many costs beyond the (immediate) control of airline management (e.g. fuel, airport landing charges, air navigation services), workers often bear the brunt of variable demand over the business cycle. In addition, there is short-term seasonal variation to contend with, and despite almost continuous year-on-year growth it is LFAs who display the greatest variation in labour demand between summer and winter schedules.

**Figure 12. Airline Profitability (net profit margins)**



Source: ICAO, IATA

In this labour market context, our survey data provide a clear indication of the ways in which the structural power of aviation workers is being eroded by the employment practices of LFAs and the consequent restructuring of legacy airlines. Table 1 summarises the responses to an on-line questionnaire that was made available to aviation workers in five languages (English, French, German, Spanish and Italian). The questionnaire was distributed via ETF affiliates and both union and non-union members were encouraged to respond. The English version of the questionnaire was adapted for members of the Ryanair Pilot Group (RPG) and was also made available via [www.cabincrew.com](http://www.cabincrew.com).<sup>80</sup> The survey included 35 items and numerous opportunities (open text boxes) for respondents to elaborate on their responses. Links to the questionnaire are listed in Annex III. A summary of the respondents by age, tenure and gender can be found in Annex IV.

<sup>80</sup> Although this website returned only 15 questionnaires it provided an important check against the responses from ETF affiliates. In brief, there were no systematic differences between the responses from [www.cabincrew.com](http://www.cabincrew.com) compared to union sources, which provides an important check for the representativeness of the sample.

**Table 1. On-Line Questionnaire Sample**

<i>Survey</i>	<i>Responses (number)</i>
English (main)	2238
English ( <a href="http://www.cabincrew.com">www.cabincrew.com</a> )	15
English (RPG)	46
French	44
Spanish	321
Italian	42
German	7
TOTAL	2,713

As the response rate from some of the targeted airlines was insufficient for any detailed data analysis, we focused on seven airlines that are broadly representative of LFAs and legacy airlines. The response rate from these airlines is presented in Table 2.

**Table 2. Sample Airlines**

<i>Airline</i>	<i>Responses (number)</i>
British Airways*	666
SAS	496
Alitalia	182
easyJet	138
Norwegian	133
Iberia	115
Ryanair (RPG)	46
Ryanair (main)	32
TOTAL	1,142

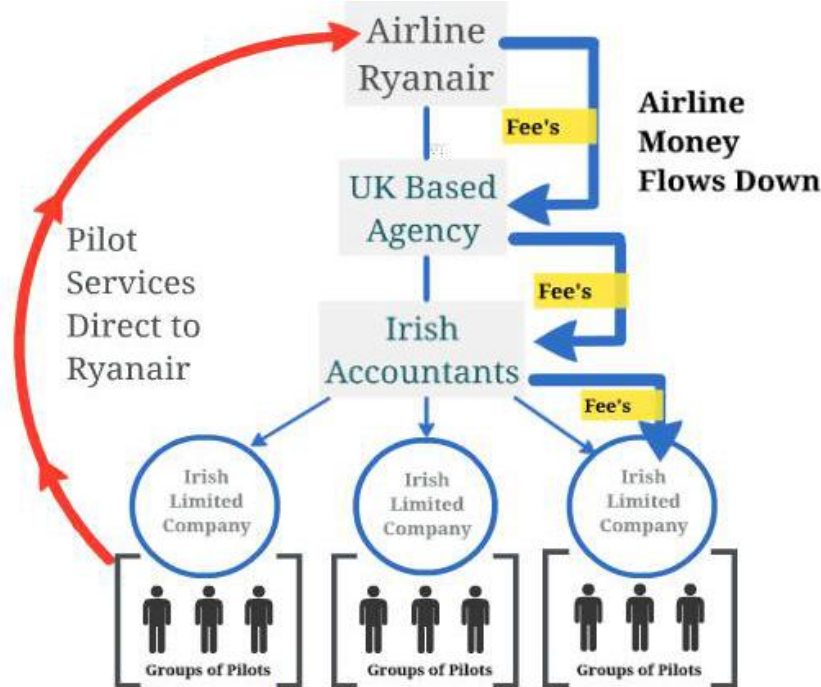
**Note:** \* Includes 22 respondents who identified themselves specifically as employees of BAMF. While there are no doubt more respondents from BAMF in the British Airways total the response of the 22 are separated for analysis as indicative (rather than necessarily representative) of work and worker attitudes at BA's newest Fleet.

An important indicator of the worker's structural location in the company – and thereby their bargaining power – is whether they are direct employees on a permanent contract or 'precarious' workers, hired via an agency on a temporary contract or even more complex contractual arrangements whereby the worker is classified as 'self-employed' but is still dependent on an agency, and ultimately an airline, for work. For example, most Ryanair cabin crew (over 60 per cent) are employed on a 2-year contract with one of two agencies (CrewLink and WorkForce International) whereas pilots are hired predominantly via Brookfield (a UK registered company based in Gibraltar). Brookfield previously stipulated an 'approved list' of accountancy firms who facilitated the 'self-employment' of flight crew. However, with an ever-increasing number of pilots on agency contracts,<sup>81</sup> unions questioned the 'self-employment' status of flight crew contracted to Brookfield and flying for Ryanair. Under Irish law, a self-employed person is someone who, *inter alia*, controls their hours of work in fulfilling the job obligations, costs and agrees a price for the job, and is free to provide the same service to more than one person or business at the same time. Brookfield contracts do

<sup>81</sup> Between 2010 and 2011 the proportion of flight crew on agency contracts increased from 56 per cent to over 70 per cent. Ryanair claim that 50 per cent of Captains are direct employees whereas 80 per cent of First Officers are on contracts (*Airline Business*, May 2013).

not satisfy these criteria as Ryanair (unilaterally) determines rosters and the Brookfield contract bonds the pilot to fly exclusively for Ryanair. The Irish Air Line Pilots' Association (IALPA) therefore sought clarification of the 'self-employment' status of pilots with the Irish Revenue Commissioners and the Minister for Finance in 2008 (an example of 'technocratic re-nationalisation', bottom left-hand quadrant of Figure 10). In response, Brookfield now requires all contract pilots to set up a Limited Company (an 'agency employment service provider') in any of one of the EU Member States (or Switzerland) to supply pilot services, via Brookfield, to Ryanair.<sup>82</sup> This arrangement is depicted in Figure 13.

**Figure 13. Flight Crew Contractual Arrangements with Ryanair**



**Source:** RPG Press Conference, Berlin (22 May 2014)

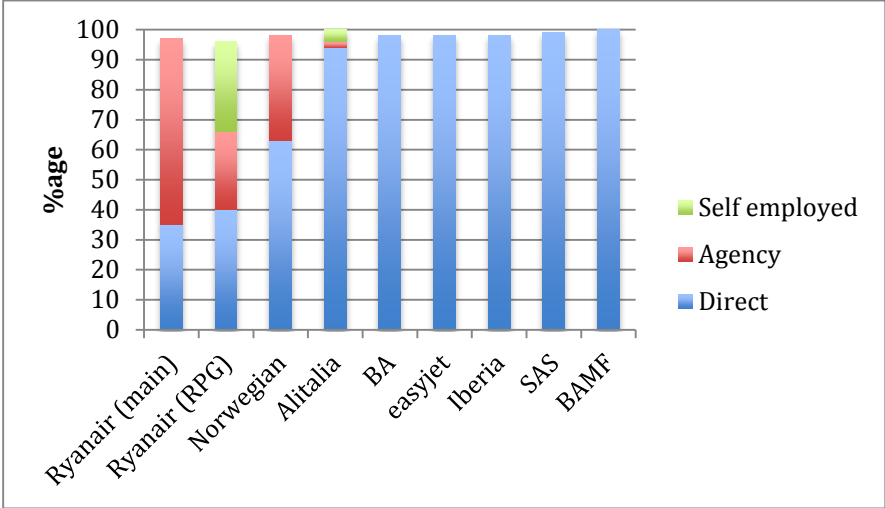
Not surprisingly, agency contracts and 'self-employment' was widely reported by respondents from Ryanair, as demonstrated in Figure 14. A significant number of respondents at Norwegian also reported agency contracts. However, when NAS recently sought to separate its bases in Norway and Denmark, which have been part of the same collective agreement since 2008, and transfer the Danish workforce to an employment agency (Proffice) with inferior terms and conditions, the airline experienced its first ever strike in Norway (a 'one-man' strike by René-Charles Gustavsen, the workers' member on the NAS board, for a period of 12 days) combined with demonstrations by aircrew and their families outside the airline's Head Office. Despite threats from management,<sup>83</sup> the one-man striker never felt alone – he knew he had the support of all other union members who conveyed their discontent directly

<sup>82</sup> In 2009, the Revenue Commissioners ruled that self-employment status would not be regarded as a 'contract for services', thereby prompting the change in contractual status. Under the new arrangements, pilots pay taxes in the country where they register their business (not where they work), but most retain Irish registration because of much lower labour taxes in Ireland compared to other EU Member States. There are estimated to be over 600 companies registered in Ireland supplying pilot services to Ryanair.

<sup>83</sup> Prior to the second meeting with the mediator in Norway, NAS sent all staff a SMS saying that cabin crew at the Danish base would be transferred to Proffice, the crew bases in Norway (except Oslo) would be closed and staff tickets would be withdrawn for a period of 3 years if the workers went out on strike.

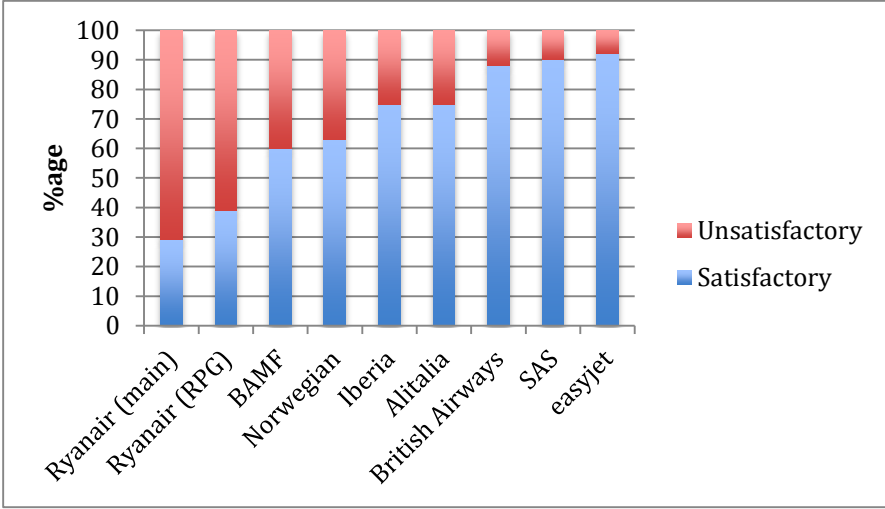
by demonstrating outside the airline’s Head Office (with additional support from family members). The dispute in Norway, combined with a postponement of a legal work conflict in Denmark by the mediator, which meant that a strike was never more than 4 to 19 days away, forced the company to agree common terms and conditions and stalled the outsourcing of cabin crew in Denmark. In short, national democracy prevailed (the bottom right-hand quadrant of Figure 10) and workers’ associational power was able to prevent an erosion of their structural power.

**Figure 14. Contractual Relationships**



Not surprisingly, aviation workers do not regard precarious forms of employment contract as ‘satisfactory’.<sup>84</sup> As Figure 15 clearly demonstrates, discontent is most widespread among Ryanair respondents, i.e. those most likely to be engaged through a non-standard employment relationship. Cross-tabulation of the survey data reveal that 86 per cent of respondents employed directly by the airline deemed their employment contract to be satisfactory, whereas only 22 per cent of self-employed workers and 18 per cent of those employed through an agency share this view.

**Figure 15. (Un)Satisfactory Contracts of Employment**



**Note:** sum of ‘highly satisfactory’ and ‘satisfactory’ (blue bar) and ‘highly unsatisfactory’ and ‘unsatisfactory’ (red bar)

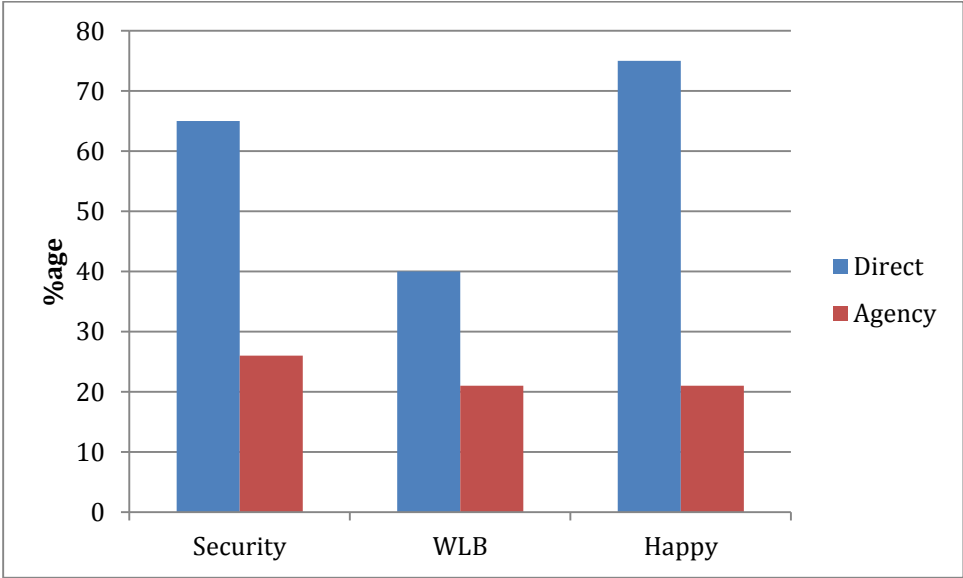
<sup>84</sup> Respondents were simply asked: ‘How do you feel about your type of employment?’

Analysis of why aviation workers are (dis)satisfied with their contractual status reveals how workers are ‘dis-embedded’ from the organisation, leading to an erosion of structural power. Contrast the responses of directly employed and agency workers in Figure 16 when asked the following questions:

- ‘My work gives me security’ (security)
- ‘My work gives me work-life balance’ (WLB), and overall
- ‘I am happy with my type of employment’ (happy)

The bar chart indicates the number of respondents reporting agreement with these statements (i.e. the combined total of those who responded ‘strongly agree’ or ‘agree’, expressed as a percentage of all respondents who stated a definitive opinion). Agency workers are far less likely to feel secure or enjoy work-life balance when compared to directly employed aircrew. This is a direct result of contractual obligations that often impose a very intense roster during the summer months and flexibility that works for the company but rarely benefits the worker. CrewLink contracts for Ryanair cabin crew, for example, stipulate 3 months unpaid leave (compulsory furlough) in every 12-month period between the months of November and March when passenger numbers are much lower. This means 900 hours of flying – the maximum allowed under European flight time limitations (FTL) – over a 9-month period. A similar scenario applies for flight crew – contracts with Brookfield state that ‘the services of the pilot are provided on an as required and/or casual basis’, but ‘there is no obligation upon Brookfield to locate or offer work’ (i.e. a zero hours contract). The work they are offered invariably exhausts the hours allowed by European FTL over the busy summer months.<sup>85</sup>

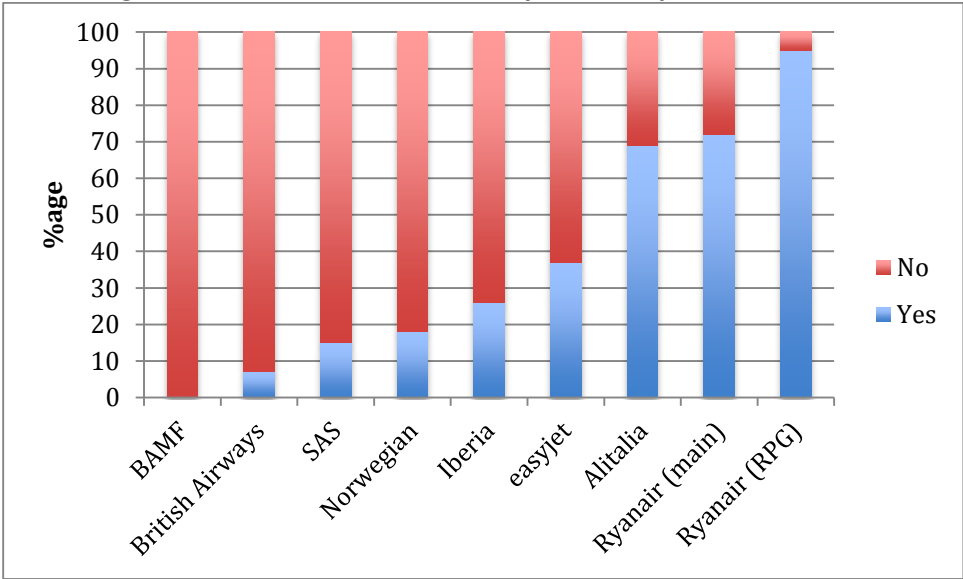
**Figure 16. Satisfaction with Contracts of Employment**



<sup>85</sup> In a recent survey of more than 1,100 Ryanair pilots undertaken by the RPG, over 95 per cent reported that they did not get annual leave during the months of April to October. Family holidays were impossible during summer.

Many respondents reported seasonal variation in the demand for their labour, but as depicted in Figure 17 it is not just workers at LFAs who report ‘considerable seasonal variation in the number of work days per month’. Moreover, it is important to recognise the differences between LFAs and the impact this might have on workers’ structural location within the organisation. Aircrew hired on agency contracts with Ryanair, for example, pay for their own training, which simultaneously: (i) reduces the dependency of the airline on individual members of flight and cabin crew (the airline has made little or no investment in its human resources so the cost of turnover tends to zero), and (ii) increases the dependency of (indebted) aircrew on the airline (at least until their debts have been repaid).<sup>86</sup> Other LFAs, such as easyJet, recruit, train and employ cabin crew directly. At easyJet’s Gatwick base, for example, an additional 300-400 cabin crew are required for the summer season but these workers are often re-hired each year on ‘seasonal contracts’.

**Figure 17. Seasonal Variation in Days Worked per Month**



Turning our attention to legacy airlines, the responses from Alitalia staff in Figure 17 are understandable given the market penetration of LFAs in Italy (Figure 2) and Alitalia’s increasing reliance on its short haul, seasonal network. Earlier in 2014, Alitalia announced the creation of eleven new routes to be flown throughout the summer months (June through August). Figure 6 (average sector length and cost per passenger for ten European airlines) clearly shows that Alitalia’s average sector length is comparable with LFAs but the Italian airline is some way off the cost per passenger of the LFAs. In the context of financial losses and restructuring involving a significant number of job losses, it seems that work for staff at legacy airlines can be as unstable as that of their contemporaries at LFAs. As one Alitalia respondent put it, the variation in days worked – around 20 days per month in the summer compared to as few as 10 days in the winter – amounted to an ‘enforced layoff’.<sup>87</sup>

<sup>86</sup> Cabin crew pay for their own training at Ryanair – at a cost of €1,649 plus a €500 non-refundable registration fee paid in advance – and staff must also pay €30 per month for uniform lease and dry cleaning. If recruits cannot afford all these cost up front, and most cannot, then the training costs (€1,649) plus an administration fee (€600) is deducted from monthly salary during their first year of employment.

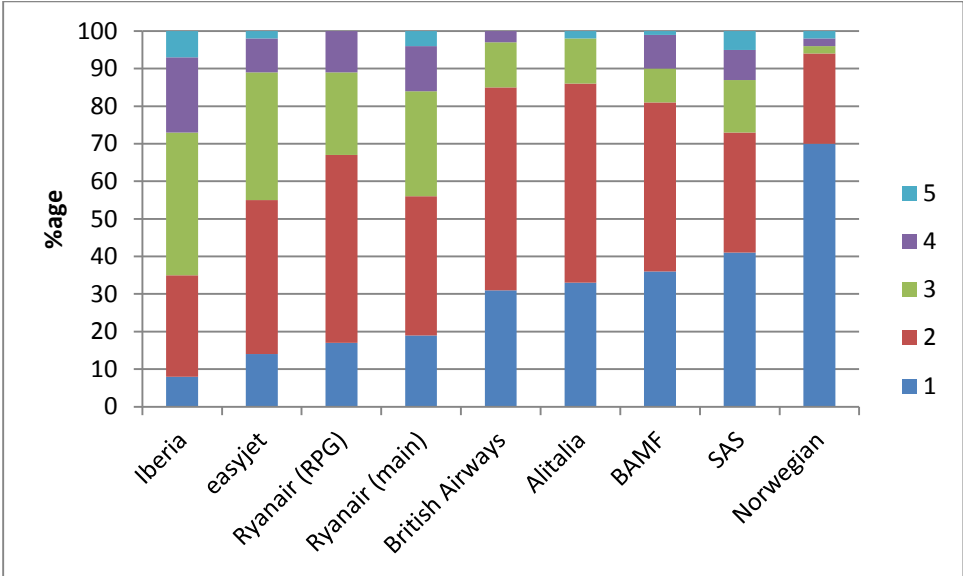
<sup>87</sup> Quotations in the text are from the open text boxes in the questionnaire survey unless otherwise stated.



The more important variable in relation to seasonal variation, however, is ‘contractual status’ (direct, agency or self-employed) rather than airline (legacy or LFA). The vast majority of direct employees (79 per cent) report no significant monthly variation in the number of days they work, compared to a much smaller proportion of self-employed (17 per cent) and agency (44 per cent) workers. Put differently, it is self-employed (83 per cent) and agency workers (56 per cent) who report seasonal variation in their working time and it is these workers who provide airlines with a ‘buffer’ to accommodate the peaks and troughs of summer and winter schedules. Moreover, when they are ‘inactive’, precarious workers are more likely to be unpaid, especially those who work for LFAs.<sup>88</sup> These data suggest there is ‘common cause’ for aviation unions to organise around this issue across all airlines (legacy and LFA) and EU Member States, especially as other forms of ‘flexibility’ appear to work primarily, if not exclusive, to the benefit of the airline rather than the worker.

Working time flexibility can be understood both in terms of flexibility for the employee, whereby the employee can adjust the hours they work due to personal need (i.e. ‘optional flexibility’), and flexibility for the firm, whereby the firm can adjust the hours worked by the employee based on business needs (i.e. ‘requisite flexibility’). Optional flexibility was measured by asking respondents to rate the difficulty of changing their roster to meet personal needs on a scale of 1 to 5 (whereby 1 indicates that it is ‘impossible’ to do so and 5 indicates that change is ‘very easy’). Figure 18 presents these data, which indicate that aviation workers have limited optional (or personal) flexibility.<sup>89</sup>

**Figure 18. Optional Flexibility for the Employee**



An important measure of requisite flexibility demanded by airlines is the extent of any advance notification received by employees with regards to a change in their roster. The survey asked respondents to evaluate the statement: ‘How much advance notice do you usually receive from your employer of any changes to your work roster?’ The options were as

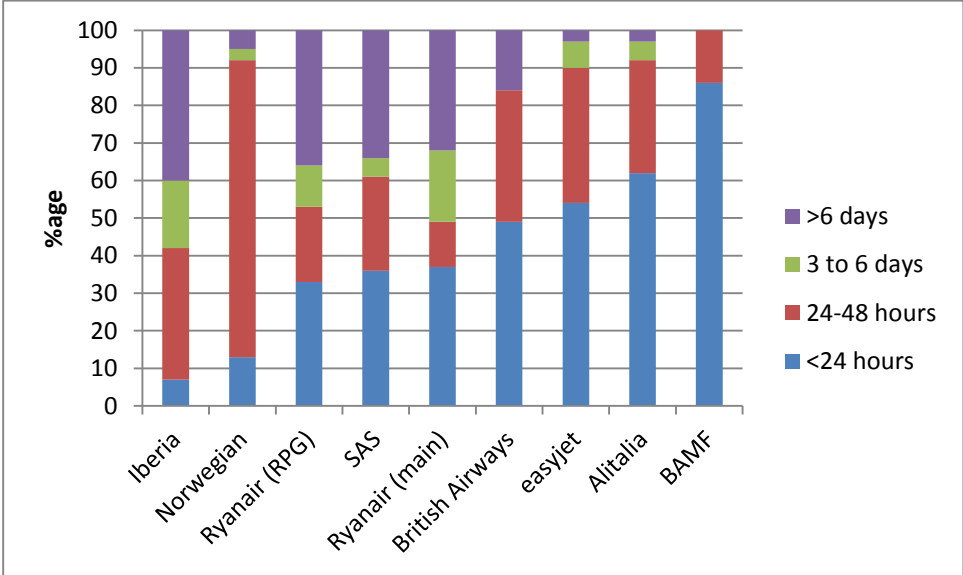
<sup>88</sup> The survey asked: ‘Do you get paid during the months you are not active in your job?’

<sup>89</sup> While just over a third of directly employed staff (35 per cent) reported that it was ‘impossible’ to change shifts, closer to half of agency workers (45 per cent) face extreme difficulty (‘impossible’) to adjust their working hours for personal reasons.

follows: less than 24 hours; 24 to 48 hours; 3 to 6 days; 7 to 14 days; 2 to 4 weeks; and 1 month or more. Figure 19 presents these data. When combined with the data in Figure 18, it is apparent that working time flexibility at European airlines operates predominantly in the interests of management rather than the worker. Moreover, the demand for temporal flexibility applies equally to direct, agency and self-employed workers.<sup>90</sup> Contracts between employment agencies and aircrew tend to be explicit on the flexibility demanded of staff and are explicitly 'one-sided', as the following extract from the contract between Brookfield and agency employment service providers (AESPs)<sup>91</sup> clearly specifies:

The Hirer [Ryanair] is operating predominantly short sectors whose continuing success depends in part upon high crew efficiency and flexibility in an extremely competitive environment ... The Hirer reserves the right to change the scheduling subject to operational requirements. They do not form any part of the agreement between the Contractor [Brookfield] and the AESP.

**Figure 19. Requisite Flexibility for the Airline**



The stand out case in Figures 18 and 19 is BAMF, with 81 per cent reporting extreme difficulties in changing rosters for personal needs (i.e. categories 1 and 2 in Figure 18) and 86 per cent of respondents reporting that advance notice of any change to their roster usually occurs within 24 hours (the remaining 14 per cent in Figure 19 indicated between 24 and 48 hours). Interviews and focus group meetings with BAMF staff corroborate these data. Focus group participants, for example, pointed out that management had proposed that staff be required to check their schedule for changes to their work roster on non-work days.<sup>92</sup> Changes to work rosters were so frequent (and problematic) that focus group members commented that unpaid leave was a positive feature of the employment relationship because it ensured that they would have some control over their working time. It is important to note the

<sup>90</sup> Combining the responses for 'less than 24 hours' and '24-48 hours', there is no statistically significant difference between the requisite flexibility demanded of directly employed (74 per cent), agency (73 per cent) and self-employed (67 per cent) aircrew.

<sup>91</sup> Brookfield requires pilots to establish an AESPs as a limited company that provides pilot services exclusively to Ryanair.

<sup>92</sup> Focus group meeting, May 2014.

intensive nature of the BAMF roster pattern, which can involve 7 days on and 1 day off (followed by 7 days on and 2 days off). This compares less favourably with the roster at Norwegian (typically 5 days on/4 days off) and easyJet (either 5 day on/4 days off, followed by 5/3, or 6 days on and 3 days off).

A final indicator of the extent to which aviation workers structural location in the organisation has been eroded or 'dis-embedded' is provided by a series of questions on the adequacy of pay and benefits in relation to the worker's current needs and future life plans. If workers are embedded in an organisation and there is mutual dependency between the parties (e.g. the airline has invested in the worker's training and provides career opportunities while the worker provides essential skills and services for the organisation and is keen to stay with the airline) then workers are in a much stronger bargaining position, not simply as a result of their structural power but also their willingness to become involved in union activities (associational power).<sup>93</sup> Consequently, respondents were asked to rate a series of statements concerning the adequacy of their terms and conditions. Figure 20 reports the sum of 'strongly agree' and 'agree' responses to the statements: 'My pay and benefits are sufficient to support my *current lifestyle*' (blue bar), and; 'My pay and benefits are sufficient to support my *future life plans*' (red bar). Overall, a minority of respondents regarded their pay and benefits to be sufficient for their current lifestyle and even fewer (typically less than 20 per cent) regarded their pay and benefits as sufficient for their future life plans. When faced with declining quality of employment, which has been widely documented in the civil aviation industry in recent years,<sup>94</sup> workers face two choices: exit (withdraw from the employment relationship) or voice (attempt to repair or improve the relationship through communication, grievances and collective action).<sup>95</sup>

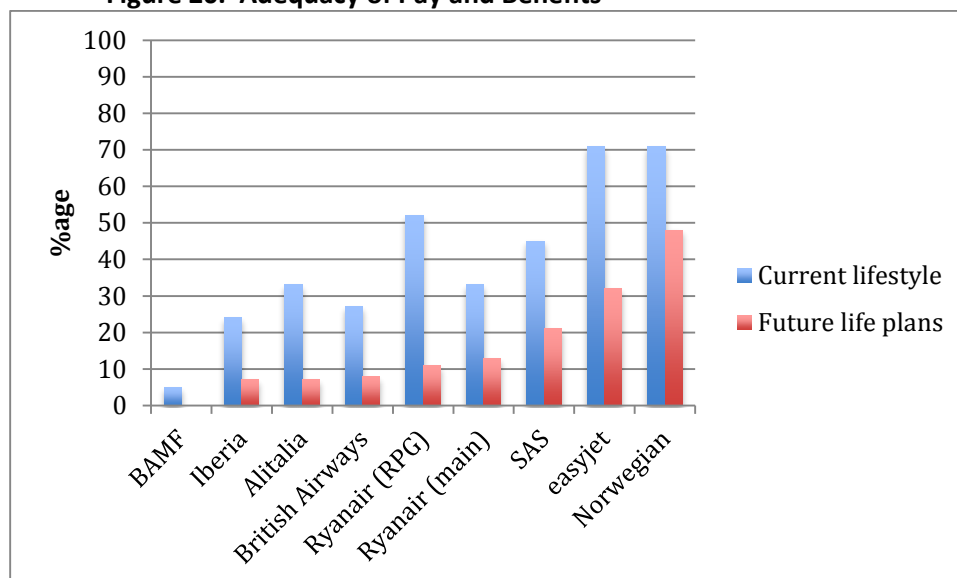
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<sup>93</sup> There is a strong correlation between contractual status and union membership – simply put, precarious workers are far less likely to join a union or participate in union activities.

<sup>94</sup> See, for example, Harvey and Turnbull (2009 and 2010) *op. cit.*; Harvey, G. and Turnbull, P. (2010) *Contesting the Financial Crisis: Aviation Industrial Relations and Trade Union Strategies After the Financial Crisis*, London: ITF; Bamber, G.J., Gittell, J.H., Kochan, T.A. and von Nordenflycht, A. (2009) *Up in the Air: How Airlines can Improve Performance by Engaging their Employees*, Ithaca, NY: Cornell University Press; ITF (2002) *The Industrial Landscape of Low Cost Carriers*, London: ITF; Air Scoop (2010) *Ryanair's Skyrocketing Success: Flying on Thin Air?* available at: [www.aircoop.com](http://www.aircoop.com); and Air Scoop (2011) *Ryanair's Business Model 2011*, available at: [www.aircoop.com](http://www.aircoop.com).

<sup>95</sup> Hirshman, A.O. (1970) *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations, and States*, Cambridge, MA: Harvard University Press. In Hirschman's model of exit and voice, the greater the availability of exit the less likely voice will be used. This highlights the interaction of structural and associational power (i.e. workers on precarious contracts are less likely to voice their complaints, either directly to management or via a trade union). Loyalty affects the interplay (costs and benefits) of exit *vs.* voice (especially loyalty to the 'national flag' airline) and is one reason why staff at legacy airlines have been prepared to tolerate the erosion of their pay and benefits in recent years rather than quit their jobs.

**Figure 20. Adequacy of Pay and Benefits**



There is an interesting contrast in the response of Ryanair pilots (the RPG sample), with the majority reporting that their pay and benefits are sufficient to support their current lifestyle, whereas very few believe that these are adequate for future life plans. These results reflect Ryanair’s policy of recruiting young workers on short-term contracts for cabin crew posts and early career pilots on agency (self-employed) contracts. Turnover is high amongst both groups, especially cabin crew (around 30 per cent compared to less than 10 per cent at easyJet), and reflects the fact that these are ‘temporary jobs’ rather than ‘long term careers’. Respondents employed by IAG group airlines are among the most disenchanted with their pay and benefits, with fewer than 30 per cent agreeing that they are sufficient to support current lifestyle, while fewer than 10 per cent felt that they were sufficient for future life plans.

While the most positive response to these questions came from Norwegian staff (Figure 20), there are some important qualifications to bear in mind (Figures 18 and 19), expressed as the ‘price’ of a reasonable salary and other benefits in the words of one of our respondents:

A nice salary and good payment is always great BUT you can earn all the money in the world, if you don’t have enough time off you won’t be able to use it and you’ll never feel fit to do anything when you aren’t working. Enough days off, for me, is HIGHLY important (respondent’s emphasis).

When pay and benefits, work-life balance, requisite flexibility and workload are considered in combination, the responses of legacy airline staff send a clear warning that current employment practices are unsustainable. At SAS, for example, only one-in-five respondents believed that pay and benefits were now adequate to support their future life plans. Criticism of pay and benefits at the airline is linked to the *per diem* allowance that was recently reduced (estimated by respondents at between 20 and 50 per cent) but most disquiet was related to workload. Working time at SAS increased from 44 hours to 47.5 hours (with a maximum duty time of 13 hours) under the 4Excellence Next Generation programme and numerous complaints were made about the impact of this programme on work-life balance, for example:

I would like to have full-time but due to today's schedule-pressure I don't see how I will survive, see my children or husband. So I feel forced to go on part-time unfortunately.

At my workplace we don't get paid for overtime, nightshifts, holidays etc. We can be away for 5 days straight extending over-days, which we have specifically asked about having time off. Compared to other airlines SAS is decent. Compared to other employers in other fields than aviation, it's horrible.

It is no surprise, then, that respondents at SAS are among the most likely to disagree with the statement: 'My work gives me work-life balance' (54 per cent disagreement).

Whereas legacy airlines used to provide enviable terms and conditions of employment, in an open SEAM with intense competition from LFAs there has been an inexorable 'race-to-the-bottom'. For many years, legacy employers have used LFAs as a benchmark to justify cost-cutting programmes and revisions to workers' terms and conditions of employment. During the recent negotiations at SAS, for example, management 'put the NAS agreement on the table and told the unions in no uncertain terms that they had to match it'.<sup>96</sup> In some cases, this downward spiral has reached the point where some legacy staff would prefer to work for a low cost airline. For example, during a focus group with employees from BAMF, several spoke of easyJet as an 'aspirational employer' and expressed their belief that cabin crew are 'better off' with easyJet.<sup>97</sup> A neat summation of the prevailing attitudes of BAMF employees who participated in this study was offered in the survey:

We are commonly known as 'cheap fleet' throughout the company for our low costs and how much profit we make for the company. Another recent motto was 'mixed fleet – to fly, to starve' [a pun on the BA motto 'To Fly to Serve']. How they treat us is appalling and it should change.

Elsewhere in the survey, a BAMF respondent stated:

I think basic pay is far too low. I have to do long haul to earn just enough money to pay bills, however this means constantly being away from home – resulting in awful work-life balance. Bidding<sup>98</sup> doesn't work therefore I miss numerous events at home, we don't have wrap around days so majority of the time I am rostered flights straight into annual leave – or annual leave is used as rest days!

But perhaps the clearest indictment of the perceived inadequacy of pay and conditions, and their social consequences, is provided by a British Airways respondent who reported that:

As a 30 year old I'm currently living back at home with my parents, as I'm unable to secure a mortgage on the salary I am on. I shouldn't have to be in a position that I should reconsider my career in order to achieve a step on the property ladder. But unfortunately this is what it has come to.

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<sup>96</sup> Interview notes, July 2014.

<sup>97</sup> Focus group meeting, May 2014.

<sup>98</sup> Staff can 'bid' for preferred flights but there is no guarantee that they will be rostered on preferred days or routes.

Even when employed at the airline's 'home hub', therefore, it seems that some employees cannot find a home – they too are 'dis-embedded' and their structural power is seriously eroded. The question for aviation unions is whether they can redress declining structural power through traditional and new forms of associational power?

### *Associational Dimensions of Power*

Associational power can be built on the back of corporate forms of employee voice as well as workers' own collective organisation. In fact, the foundations of workers' associational power are always local in the first instance (i.e. organisation at the company level), which provides the bedrock for local, national and international organisation and representation. At the ETF's meeting of aviation unions in Catania (1-2 July 2014) the first priority was clearly articulated by several speakers: Organise! Organise! Organise! In relation to Figure 10, therefore, the first priority is national democracy (the logic of membership) which provides trade unions with the necessary ammunition (the argument of force) to then adapt their aims and methods to the actual decision-making processes on which they exert an impact (the logic of influence). With strength in numbers, other stakeholders will be willing to acknowledge the force of workers' argument (i.e. the union is accepted as both a legitimate representative organisation for the workers in question and an organisation capable of mobilising its members in pursuit of their collective interests). By developing their technocratic skills at the national level (bottom left-hand quadrant in Figure 10), aviation unions can bring similar skills and resources to bear at the European level through an industrial federation of like-minded unions (top left-hand quadrant in Figure 10). To be effective at the European level, however, demands the active participation of aviation workers, when called upon, to reinforce the force of argument with international airlines and EU institutions (the top right hand quadrant in Figure 10). The aims of the ETF include: 'to unite all its members on the principle of solidarity' and 'to promote practical international cooperation and joint action'.<sup>99</sup>

At present, the interests of (increasingly precarious) aviation workers in many airlines are not adequately represented, either at the national or the European levels. In most European countries, aviation workers are well organised at the legacy airlines and hub airports where there is a long tradition of unionisation and collective bargaining. However, in common with legacy airline management, (legacy) aviation unions have paid insufficient attention to the low cost airlines. The ETF's 2012 survey of nineteen aviation union affiliates, for example, which provided data on 25 LFAs, found that at 11 low cost airlines the union(s) in question had members but no collective agreement.<sup>100</sup> Some LFAs are aggressively anti-union (e.g. Ryanair<sup>101</sup>) and even those that recognise trade unions often go out of their way to 'obstruct' union representation and the activities of union activists (e.g. changing rosters to make it difficult for activists to attend union meetings, refusing union officials access to crew rooms, taking down union posters displayed on company premises, and even invoking disciplinary proceedings against cabin crew who allegedly discuss 'union issues' during a flight). Some LFAs operate in a 'union free' environment on the ground as well as in the air, as secondary airports

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<sup>99</sup> <http://www.itfglobal.org/files/extranet/-75/43158/Constitution%20amended%20May%202013%20EN.pdf>

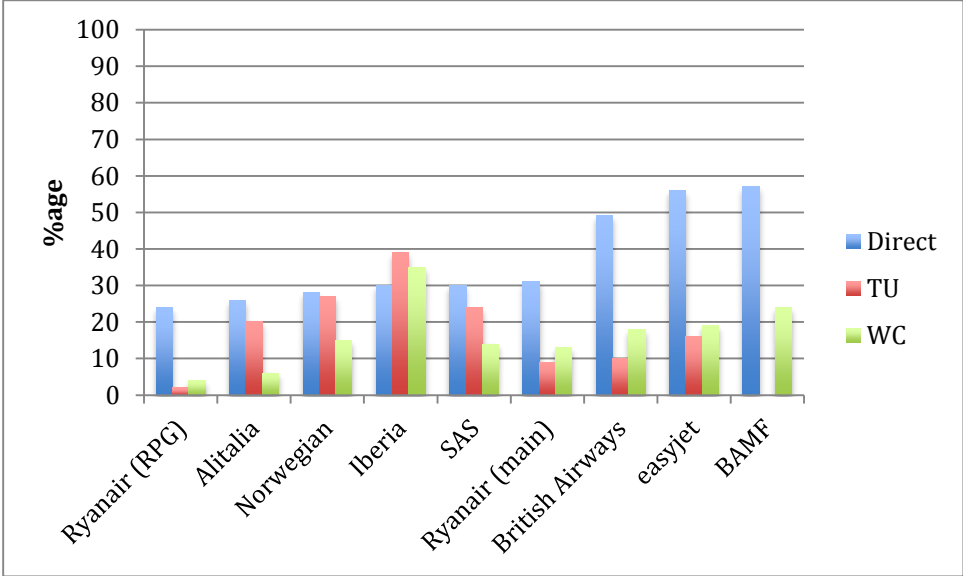
<sup>100</sup> Harvey and Turnbull (2012) *op. cit.*

<sup>101</sup> O'Sullivan and Gunnigle (2009) *op. cit.*

are often poorly organised with service providers employing staff on precarious contracts and actively discouraging union membership.<sup>102</sup>

Union organising starts with issues that concern the workforce. Some companies use direct communication and consultation with the workforce as a (deliberate) *substitute* for trade union representation of workers’ interests and concerns, others use communication and consultation as a *complement* to collective bargaining. Southwest Airlines, the leading low fares airline in America and also the most highly unionised airline in America, is an exemplar of the latter (complementary) approach.<sup>103</sup> In Europe, the provision of information and consultation with employees and their representatives by firms is mandated by Directive 2002/14/EC, whereby it is expected that ‘the employer and the employees’ representatives shall work in a spirit of cooperation and with due regard for their reciprocal rights and obligations, taking into account the interests both of the undertaking or establishment and of the employees’.<sup>104</sup> Figure 21 illustrates the (lack of) communication between management and employees (and their trade unions) at each of the airlines. The blue bar indicates the sum of ‘very often’ and ‘all of the time’ responses to the statement: ‘Management communicate with employees directly’ (Direct), while the red bar indicates the sum of similar responses to the statement: ‘Management communicate with employees through a trade union’ (TU). Finally, the green bar indicates the sum of like responses to the statement: ‘Management communicate with employees through a works council’ (WC).

**Figure 21. Forms of Communication between Management and Employees**



<sup>102</sup> One of the most important factors in the ITF’s FoC campaign has been the cooperation between seafarer and dockworker trade unions, with the latter facilitating the inspection of vessels and the working conditions on-board for CoCs. If more and more airlines adopt the FoC/CoC model then aviation unions will need to build similar forms of union cooperation and collective action (although inspection of aircraft may prove more difficult in terms of security access and the very short 25 minute turnaround).

<sup>103</sup> Gittell, J.H. (2005) *The Southwest Airlines Way: Using the Power of Relationships to Achieve High Performance*, New York: McGraw-Hill; and Gittell, J.H., Von Nordenflycht, A. and Kochan, T. (2004) ‘Mutual Gains or Zero Sum? Labor Relations and Firm Performance in the Airline Industry’, *Industrial & Labor Relations Review*, 57(2), pp.163-80.

<sup>104</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 *Establishing a General Framework for Informing and Consulting Employees in the European Community* – Joint declaration of the European Parliament, the Council and the Commission on employee representation.

With so little direct communication reported across all airlines, it seems implausible to suggest that management are using direct communications with the workforce in any strategic way – or rather, even when management attempt to use direct communications, the message is not getting through.<sup>105</sup> Another interpretation of these data is that direct communication is unlikely to undermine the foundations of union organisation. To be sure, some respondents commented that direct communication was, on occasion, precisely for the purpose of ‘undermining trade unions’ (BAMF respondent), but the fact that workers recognised this intention indicates that the strategy was unsuccessful.<sup>106</sup> Many respondents employed by British Airways made disparaging comments about the company’s ‘Our Voice’ as a communication medium, described by one survey participant as ‘a kind of internal trade union – ridiculed by most of us’ and by another as a ‘rather crass’ attempt to undermine trade union participation.

Overall, there seems to be a very negative perception of internal communications within the sample airlines. For instance, easyJet respondents commented on direct communications that are ‘seen as unreliable propaganda’, only made ‘when there are problems’, or in order to ‘pressure on-board sales results’. One respondent at BAMF commented that communications are made ‘very grudgingly’, while other BA staff complained that direct communications at the airline was simply ‘lip service rather than action’ or ‘dictats rather than genuine communication’. One BA respondent commented that management provided ‘biased communication’, while another stated that, ultimately, ‘[staff] do not trust them’.

This is confirmed by the data presented in Figure 22, which reveals the sum of ‘very often’ and ‘all of the time’ responses to the provision of useful information by management (blue bar), consultation between management and employees (red bar), and employee involvement in decision-making (green bar). It is clear from these data that the perception of meaningful employee involvement and participation (EIP) is limited. Provision of information, which entails limited involvement in the firm, is most widely reported across the sample of airlines, but even this ‘soft’ form of EIP is only reported by a majority of respondents at SAS and even here is described by some respondents as ‘spam’ and ‘overwhelming’. As for involvement in decision-making, one respondent at SAS commented: ‘This question is almost hilarious. In a tragic way’. Comments made by employees at some airlines, such as Norwegian, suggest that the information is limited in scope in so far as it centres on safety and performance issues rather than information about the company. Most comments on consultation suggested it was all too often a ‘tell and sell’ exercise by management rather than two-way communication. As the data (green bar) on (the lack of) employee involvement in decision-making clearly demonstrate, there is very little evidence of meaningful forms of EIP across all airlines in the sample.

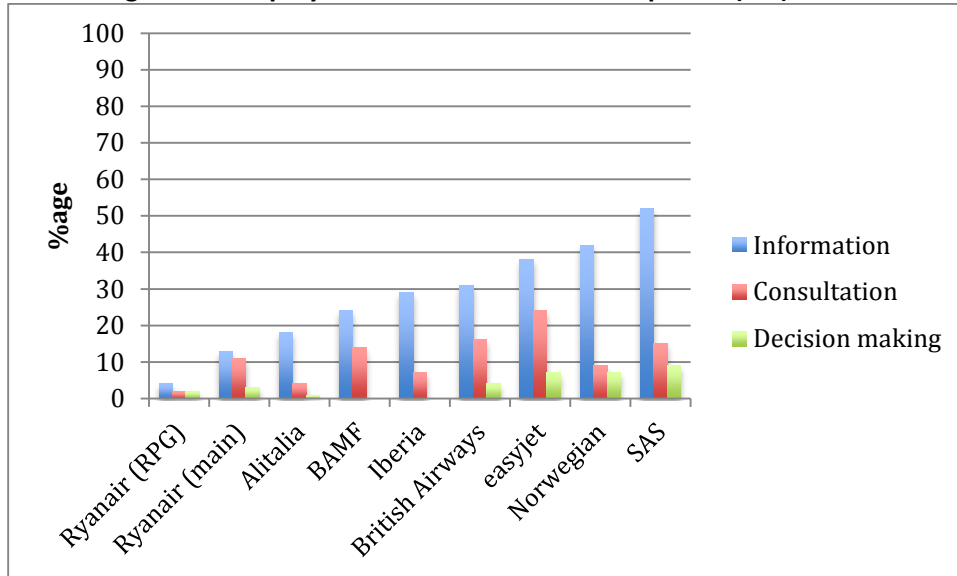
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<sup>105</sup> It is important to bear in mind that the survey data report employees’ *perceptions* rather than what someone else (e.g. airline managers or trade union officials) might regard as objective *reality*. For example, an airline might have an extensive communication programme in place but employees ignore such communication (e.g. delete corporate emails without opening) or are simply too busy or too disgruntled to engage with the organisation. Likewise, unions might have regular meetings with management but employees are unaware of what goes on ‘behind closed doors’ on their behalf.

<sup>106</sup> The particular worker who made this comment is a member of Unite.



**Figure 22. Employee Involvement and Participation (EIP)**

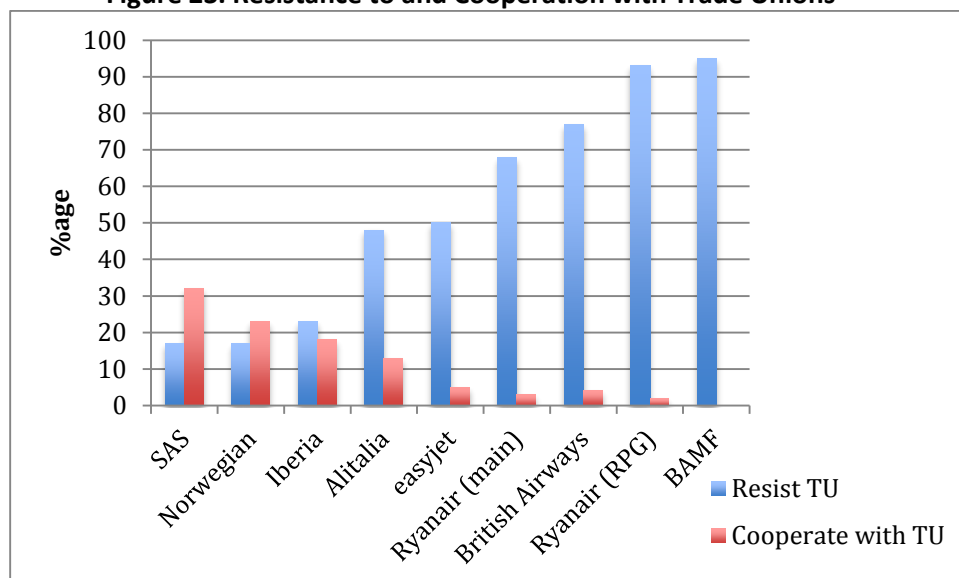


In sum, these data suggest that communication and consultation is neither extensive/ useful nor a potential substitute for employee voice in the absence or indeed the presence of trade unions. Put differently, aviation workers enjoy limited associational power through corporate HR policy initiatives at the company level.

Returning to Figure 21, it appears that institutional forms of association, such as works councils, are under-developed from both a management and especially a trade union perspective as legally mandated works councils have often provided an additional buttress for workers' collective organisations. Most importantly, Figure 21 reveals that, certainly in the eyes of the workforce, airline management fails to communicate with employees via trade unions, whether by omission or commission.<sup>107</sup> The data in Figure 23 suggest more by commission than omission. The columns in Figure 23 depict 'agree' and 'strongly agree' responses to the statements: 'Management actively resists trade union involvement', and; 'Management cooperate with trade unions'. These data indicate that cooperation with organised labour is limited, while resistance to trade union participation is rife. In particular, perceptions of resistance to trade unions can be widely held at both unionised (e.g. BAMF) and non-unionised airlines (e.g. Ryanair), indicating that unions not only need to secure recognition from the airline in question but also acceptance of their role as a legitimate (representative) voice of the workforce.

<sup>107</sup> Once again, it is important to note that the data report *perceptions* and employees may be 'mistaken' in their belief that management fail to communicate through the channels provided by trade unions. Nonetheless, perceptions influence behaviour and if employees believe that unions are ineffective, ignored, or a detriment to their future employment (e.g. precarious workers who believe that joining a union or participating in union activities might jeopardise their employment prospects) the workers' associational power will be seriously undermined.

**Figure 23. Resistance to and Cooperation with Trade Unions**



The challenges facing trade unions in terms of building effective forms of associational power and giving voice to increasingly precarious and ‘dis-embedded’ aviation workers will clearly differ from one airline to the next. For example, union recognition has yet to be secured at some LFAs, most notably Ryanair, whereas in the case of easyJet the challenge is to develop a more constructive relationship with managers who continue to resist, rather than cooperate, with trade unions. At the legacy airlines that have recently embarked on major restructuring programmes (e.g. SAS and Alitalia), unions are perceived by some workers as ‘complicit’ in cuts to jobs, pay and benefits, a more intensive work pattern and a deterioration in work-life balance.<sup>108</sup> Technocratic renationalisation (the bottom left-hand quadrant of Figure 10) often involves ‘competition pacts’ designed to boost productivity and preserve remaining jobs<sup>109</sup> but often serves to fuel ‘regime competition’ and hasten the ‘race-to-the-bottom’.<sup>110</sup> Rather than being angered by their union’s negotiating stance, other workers employed by legacy airlines appear resigned to the fact that, in order to survive and compete with the LFAs, jobs will be lost and pay and benefits will be eroded – and there’s not much that union negotiators or collective action by the workforce can do about it.

Another perspective on the challenges to workers’ associational power was provided by non-union members<sup>111</sup> who were asked why they did not belong to a trade union. The options are presented in Table 3. Respondents could select any options that applied to their own *personal* situation. Only four factors elicited a significant response, with ‘the trade union can do nothing for me’ most frequently cited, especially by non-members employed by legacy airlines. At Ryanair, the absence of formal recognition and the worker’s fear of losing his or her job were the reasons most frequently cited. It is important to note that very few non-members at Ryanair cited: ‘The trade union can do nothing for me’.

<sup>108</sup> Typical comments were that trade unions ‘cooperate in the interest of management and the union itself, not the workers’.

<sup>109</sup> Erne (2008) *op. cit.*, p. 24.

<sup>110</sup> Turnbull (2010) *op. cit.*, p.46.

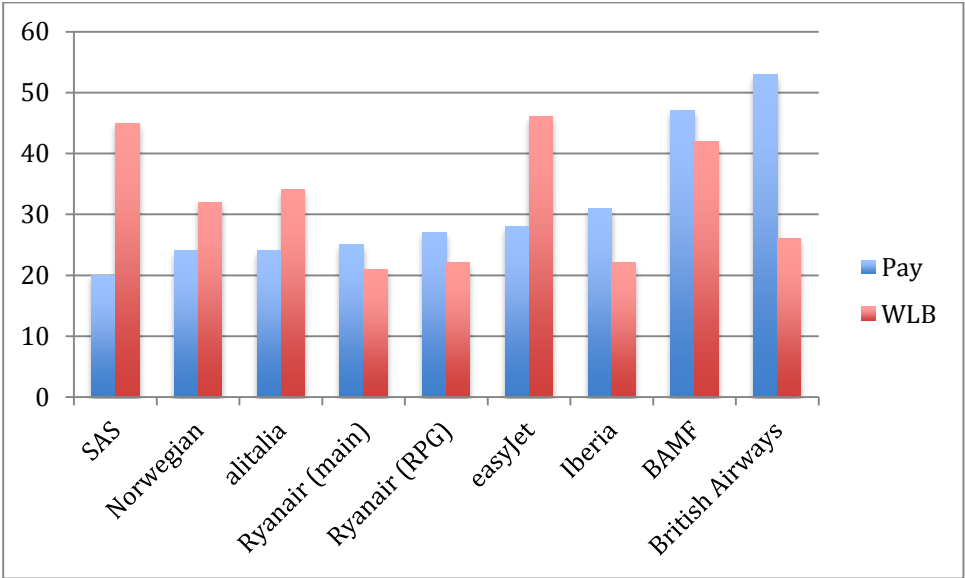
<sup>111</sup> The sample included 206 respondents (less than one-in-ten of the total sample) who identified themselves as non-members of a union. Not surprisingly, there were more non-union respondents at LFAs (as a percentage of all respondents) but also significant numbers at the legacy airlines, especially Alitalia.

**Table 3. Stated Reasons for Non-membership of a Trade Union**

Trade union membership is expensive (14 per cent)
The trade union can do nothing for me (30 per cent)
My employer does not recognise trade unions (12 per cent)
My job would be at risk if I became a member (9 per cent)
I would be punished if I joined a trade union
My firm already has an employee representative forum
Trade unions are not needed
My employer looks after my interests
I have very good terms and conditions and do not wish to risk losing these

If aviation unions are determined to: Organise! Organise! Organise! they need to start by identifying issues that affect and are of concern to most employees in the workplace. All respondents were asked to identify their three most important priorities from a list of eight factors – (i) pay, (ii) benefits, (iii) flexibility, (iv) time off, (v) security, (vi) work satisfaction, (vii) relationship with management, and (viii) work-life balance – and to then identify their single most important priority. Pay and work-life balance were the most widely cited priority (singular) across all the airlines, as depicted in Figure 24. When asked to identify three priorities, the options of time off, security and work satisfaction also polled large responses. Time off can be considered both in relation to work-life balance and recovery (health and safety).<sup>112</sup>

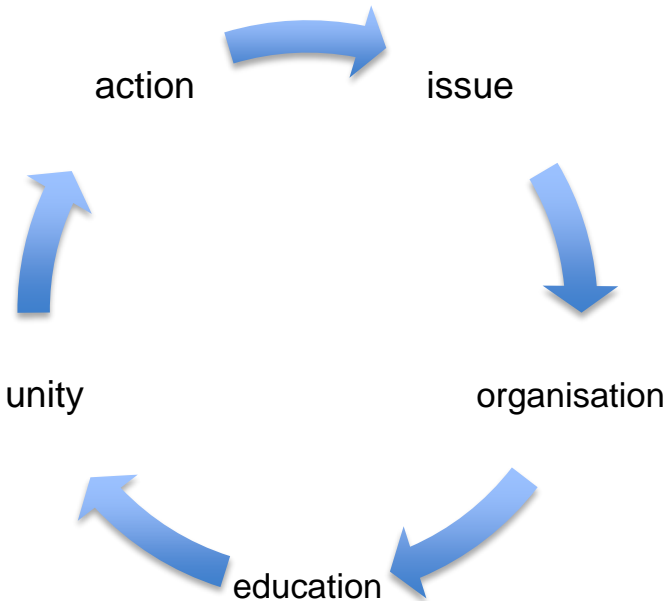
**Figure 24. Priorities from Work**



<sup>112</sup> A member of cabin crew at Alitalia, for example, commented on the ‘Impossibility to fly on the day after returning from long haul flight, e.g. remaining on standby after the flight instead of day off to recuperate from fatigue. This started happening recently but not frequently. However it is now becoming a habit. Employees are forced to open [report] sick leave for fatigue if they are called to do a flight’. Security of employment was also cited by a significant number of workers on precarious contracts and was also an issue for legacy airline staff who recently experience major restructuring programmes (i.e. Alitalia and SAS).

Once an *issue* or *issues* have been identified, *organisation* can be built on the basis of workers’ concerns, setting in place structures or networks to communicate effectively on a one-to-one, face-to-face basis with every employee in the relevant category of staff. Although more unions are now using social media to communicate with staff, and while this media is an attractive option for unions representing mobile workers who spend most of their working time ‘in the air’, there is no substitute for grassroots organising and personal (one-to-one) contact in order to demonstrate the commitment of the union to (potential) members and build trust and confidence in the organisation. The Ryanair Pilots Group (RPG), for example, has visited almost every Ryanair base across Europe in order to contact and communicate with potential members and it now represents the majority of the airline’s flight crew (although Ryanair is still not willing to formally recognise the RPG). Organisation is used *educate* each worker on the issue that concerns the workforce and what can be done, through *unity*, to redress the problem. When members understand the issues they can be asked to become involved in collective *action* to win changes at work. This is the basis of the ‘organising cycle’, depicted in Figure 25, which is ‘tried and tested’ by unions around the world.<sup>113</sup> Instead of workers asking: ‘What can the union do *for me?*’ the organising union asks: ‘What can *we* achieve *with* the union?’ Based on the data reported in Table 3, aviation unions clearly need to ask this question of the workforce in several legacy and low fares airlines alike if they are to reverse their fortunes.<sup>114</sup>

**Figure 25. The Organising Cycle**

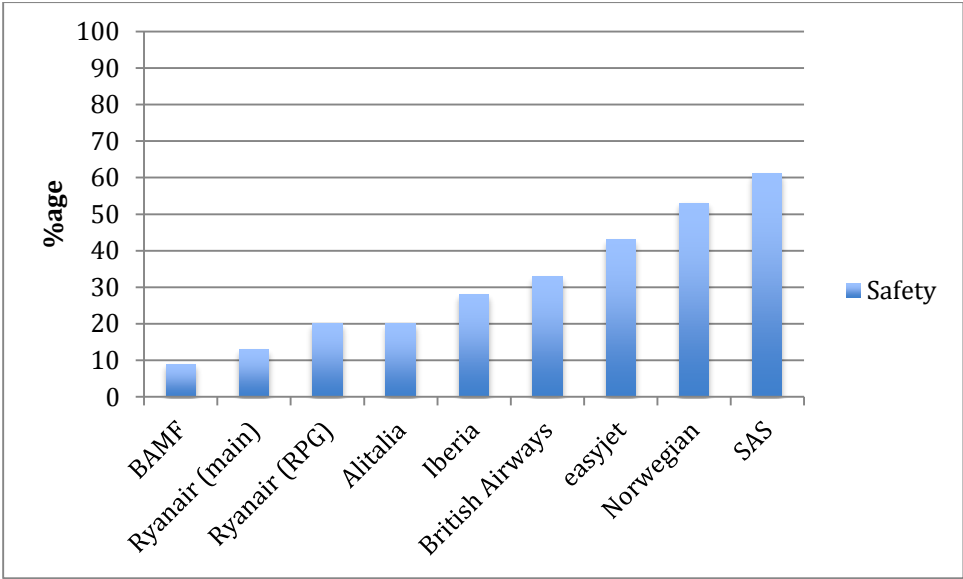


It is important for the organising union to pick a ‘winnable issue’. Pay might be the number one priority (Figure 24) but pay increases can be difficult to secure in times of austerity and ‘anti-social competition’ that is propelling airlines towards a ‘race-to-the-bottom’. Although

<sup>113</sup> Phelan, C. (2007) ‘Worldwide Trends and Prospects for Trade Union Revitalisation’, in C. Phelan (ed) *Trade Union Revitalisation: Trends and Prospects in 34 Countries*, Bern: Peter Lang, pp.24-6.  
<sup>114</sup> Recall that, despite Ryanair’s refusal to recognise trade unions, a negligible number of respondents from the most anti-union company in the sample complained that ‘the trade union can do nothing for me’.

safety and health was not one of the eight options previously listed for workers’ priorities, it is an important concern for all aviation workers and was addressed through a separate question on whether employees ‘feel comfortable reporting safety concerns to management’. Figure 26 depicts the percentage of workers who responded positively to this statement (i.e. they do indeed feel comfortable reporting safety concerns to airline management). For an industry that is publicly committed to safety – ‘Safety is our highest priority. The aviation industry is united in its commitment to ensure continuous safety improvement’ (Tony Tyler, IATA Director General and CEO)<sup>115</sup> – the data in Figure 26 should trigger alarm bells with management, regulators and passengers. Based on these data, it is only the Scandinavian airlines that might be able to claim they have a ‘just safety culture’.<sup>116</sup> At the other end of the spectrum, staff at BAMF were least comfortable reporting safety concerns. Employees acknowledged that ‘safety issues can be reported anonymously’ and ‘a lot of crew who have been with the company since the beginning of the fleet or who have flown for previous airlines are comfortable with reporting issues’. But in the case of new crew, they are ‘scared to report anything in case it gets them in trouble’. As another BAMF recruit pointed out: ‘Crew at Mixed Fleet are scared to report safety issues as our employment guide allows crew to be fired very quickly’.<sup>117</sup>

**Figure 26. Reporting Safety Concerns to Management**



Safety is a particular concern of aircrew at Ryanair, especially those employed on precarious contracts.<sup>118</sup> In a recent survey of more than 1,100 RPG members, 8-out-of-10 pilots said that

<sup>115</sup> <http://centreforaviation.com/news/iata-releases-2013-airline-safety-performance-data-322342>

<sup>116</sup> A ‘just culture’ has been defined as a culture in which front line operators and others are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, but where gross negligence, wilful violations and destructive acts are not tolerated. The implementation of the concept of ‘just culture’ is now widely seen as key for further improvement of aviation safety through more and better reporting of aviation occurrences. See, for example, <http://www.eurocontrol.int/sites/default/files/publication/files/201209-just-culture-policy.pdf>

<sup>117</sup> The recent BBC documentary about British Airways, *A Very British Airline*, which focuses on Mixed Fleet, presents a system of employment that is certainly rigorous (some might say draconian) in its approach to performance and dismissal for under-performance.

<sup>118</sup> Ryanair recruits first officers with only limited flying experience (one reason why the airline has a waiting list for pilot positions) and it is worth noting that around three-quarters of commercial airline

Ryanair did not have an open and transparent safety culture and two-thirds said they did not feel comfortable raising safety-related issues through Ryanair's own internal systems (a figure comparable to the data reported in Figure 26).<sup>119</sup> In April 2013, several hundred Ryanair pilots signed a petition calling on Irish and European safety regulators to urgently examine the impact of Ryanair's employment model on flight safety. Ryanair's response was to issue a memo to all pilots, warning that: 'any pilot who participates in this so-called petition will be guilty of gross misconduct and will be liable for dismissal'. When safety concerns at Ryanair featured in a Channel 4 TV documentary screened in the UK<sup>120</sup> the only pilot identified in the programme – Captain John Goss, a member of the RPG Interim Council<sup>121</sup> – was summarily dismissed by Ryanair. Respondents to the ETF survey reported similar experiences, albeit without the ultimate management sanction: 'I did it once [reported a safety concern to management] and I had a base meeting for it. My base supervisor told me to mind my own business if I wanted to stay longer in the company'. During focus group meetings with Ryanair pilots, safety was a recurring topic of conversation and concern, with several pilots reporting situations where their professional obligations to report safety concerns was held in check by the fear of punitive action if they were deemed to be 'at fault'. This was characterised as a 'blame culture' rather than a 'just safety culture'.

Union recognition would no doubt help allay the fears of (precarious) workers at Ryanair when it comes to reporting safety concerns, although when compared with the experience of BAMF staff the conclusion is surely that union recognition is a necessary but not a sufficient condition for a just safety culture. The priority must always be 'self-organisation' – empowering workers to look after their own interests, in this instance their safety and health at work – which is always more assured when a trade union is 'ever present' to provide advice and support, including collective action as the ultimate sanction against management who refuse to listen or respond to workers' concerns.

In many organising campaigns, unions have worked around formal recognition, especially when dealing with aggressively anti-union companies, as tactically it can be fatal to go for recognition if the union loses. This proved to be the fate of pilot associations in both Ireland

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'incidents' are experienced by flight crew with at least one new member. See Hackman, J.R. (2011) *Collaborative Intelligence: Using Teams to Solve hard Problems*, San Francisco, CA: Berrett-Koehler.

<sup>119</sup> Almost 90 per of respondents to the RPG survey said that Ryanair's system did not provide them with appropriate feedback on previous incidents that have occurred in the airline and over 98 per cent did not know how or where to access such information.

<sup>120</sup> Channel 4 Dispatches, *Ryanair: Secrets from the Cockpit* (12 August 2013).

<sup>121</sup> Captain Goss had worked for the company for 26 years and was a former Ryanair Flight Safety Officer. The RPG elected an Interim Council, staffed by full-time union officials from other pilot associations (with the exception of Captain Goss) in order to avoid victimisation of activists until such time as the company recognises trade unions. More specifically, the RPG has requested the following 'Terms of Engagement' for union reps: (i) no legal action will be taken against any pilot in the performance of their representative work; (ii) no scheduling of additional line checks or simulator checks. Any unexpected negative outcome from normal checks will be subject to independent scrutiny/adjudication by an independent third party acceptable to both parties; (iii) any disciplinary action, taken for any reason, will be handled by an independent third party, acceptable to both parties; (iv) representatives' base will not change unless requested by the pilot involved; (v) rostered hours per month for representatives will not be less than their average monthly hours from the year prior to becoming a representative, or the average hours for their base (which ever is higher); (vi) rostered time off (paid) to engage in representative activities on behalf of Ryanair pilots; (vii) RPG Representatives will NOT be assigned unpaid leave, unless they request it; and (viii) these conditions will apply for at least one year following the cessation of being a Representative.

and the UK in their initial attempts to secure recognition at Ryanair.<sup>122</sup> Unlike its failed predecessor (the Ryanair European Pilots' Association), the RPG is patiently building organisation across Ryanair's European bases, focusing on issues of greatest concern to the flight crew community.<sup>123</sup> Almost two-thirds of Ryanair pilots are now members of a national pilots' association and the majority are also members of the RPG. Moreover, the latest survey of RPG members indicated that approaching 90 per cent are 'prepared to take collective action' and more than one-in-ten is willing to stand for election to the RPG Council. The RPG is still cautious in its strategy to secure formal union recognition as it is extremely unlikely that Ryanair will concede recognition across the company as this goes against its policy of local (base) 'negotiations' via company controlled Employee Representative Committees (ERCs). If the RPG calls for formal (statutory) recognition at the national level there are both national and European hurdles to overcome, which is indicative of the erosion of the legal rights and resources at workers' disposal.

### *Legal Rights*

Workers' structural and associational power in the labour market, as well as their contractual status and terms and conditions of employment, can be enhanced or eroded by the strength or weakness of legal rights. These rights, as key elements of the system of industrial relations and collective bargaining, vary considerably from one European country to the next. This is clearly illustrated in Figure 27, which displays an index of labour regulation based on the aggregation of 40 basic employment variables (e.g. protection for different types of employment contract, regulation of working time, regulation of dismissal, employee representation, and industrial action).<sup>124</sup> Throughout the period depicted in Figure 27, France and Germany display a considerably higher degree of worker protection than the UK (and the USA).

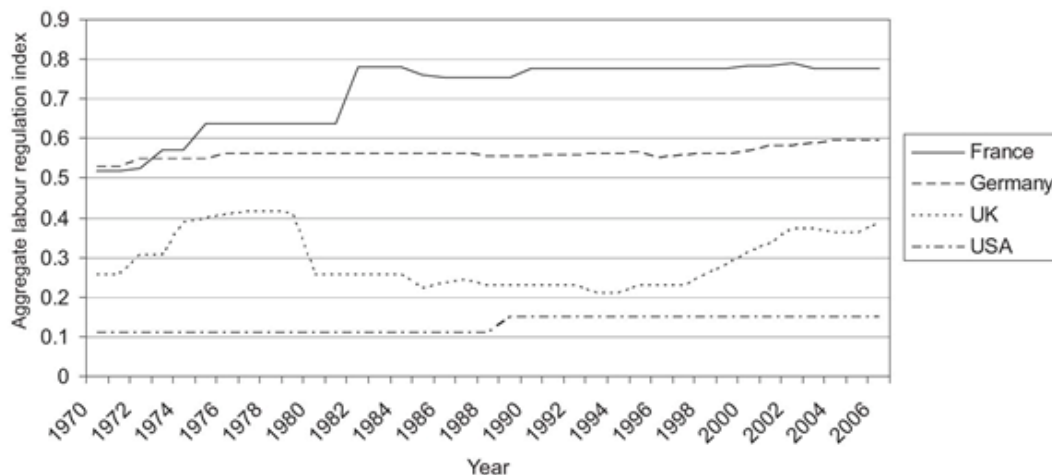
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<sup>122</sup> Wynn, M. (2011) 'Busting the Bases: Resistance to Trade Union Recognition in the Airline Industry', paper presented at the 'Voice at Work Conference', Wadham College, Oxford, 29-30 July 2011.

<sup>123</sup> Surveys undertaken by the RPG have identified the primary concerns of pilots to be: (i) a common contract (i.e. direct employment for all), (ii) tax issues, (iii) annual leave (specifically the 'impossibility' of taking annual leave during the busy summer months), and (iv) base transfers.

<sup>124</sup> Deakin, S. and Sarkar, P. (2008) 'Assessing the Long-Run Economic Impact of Labour Law Systems: A Theoretical Reappraisal and Analysis of New Time Series Data', *Industrial Relations Journal*, 39(6), pp.453-87. The index presented in Figure 27 takes into account collective agreements and also the extent to which legal rules 'bind' the parties to an agreement (many labour law rules are not mandatory at all but operate as 'default rules' that can be varied by individual or collective agreement).

**Figure 27. Labour Regulation in Four OECD Countries, 1970-2006**



**Source:** Deakin, S. and Sarkar, P. (2008) *Industrial Relations Journal*, 39(6), p.470.

In France a collective agreement binding an employer binds all relevant employment contracts unless more favourable conditions apply, automatically and immediately and not by contractual incorporation (*Code du Travail*, article L 135-2). In the UK, in contrast, a collective agreement is binding in honour only between the parties, although its normative terms (such as hours of work and pay) may be given legal effect by incorporation into the contract of employment. Contractual incorporation is tested in the courts by reference to the parties' 'intentions' and the 'aptness' of a collective norm forming part of the individual's contract of employment. There is considerable scope, therefore, for judicial interpretation of both 'intentions' and 'aptness', and in times of austerity judges appear more willing to permit employers to vary employment terms unilaterally and thereby support managerial freedom over the protection of employees. In the case of *Malone and others v. British Airways plc.*, for example, summarised in Box I, the Court of Appeal looked beyond the words of the collective agreement to question what a party 'really' intended in circumstances where a particular term now appears at odds with, or inconvenient to, a party's intentions (in this case management).<sup>125</sup> As this case clearly illustrates, and as several aviation unions have found to their cost, national employment laws cannot always be relied upon to buttress workers' structural and/or associational power.

<sup>125</sup> Russell, R. (2011) '*Malone and others v British Airways plc*: Protection of Managerial Prerogative?' *Industrial Law Journal*, 40(2), pp.212.



### **Box I. *Malone and others v. British Airways plc.*\***

#### Background

In October 2009, after a period of protracted negotiations with Unite and other unions to achieve cost savings (BA reported operating losses of £220m at the time), the airline decided to unilaterally reduce on-board crew complements (the removal of one position from all BA Worldwide Fleet flights from London Heathrow). Crew complements would still exceed the legal minimum required to operate the aircraft, as specified by the relevant regulator (in this case the Federal Aviation Authority), but cabin crew were concerned about the impact on service standards and work intensification. Three staff brought claims against BA on their own behalf and on behalf of other members of cabin crew, alleging that by reducing staffing levels the company had breached their individual employment contracts. BA submitted that any obligation on crew complements was owed only collectively – the intention could not have been, according to BA, for an aircraft ‘to be grounded at the will of one or two uncooperative members of staff who refused to board and work if the aircraft was not to carry the full agreed crew complement’, despite the fact that no employee had ever refused to work when ‘under-crew’.

#### Legal Ruling

It was accepted that the commitment to minimum staffing levels was intended partly to protect jobs and partly to protect crews collectively against excessive demands in terms of work and effort. For the individual, therefore, agreed terms regarding crew complements amount to a commitment that minimum standards of employee welfare will be maintained through adequate resourcing of flights (otherwise, working conditions would fall short of those collectively negotiated on behalf of the individual). Thus, the incorporation of these terms passed the ‘aptness’ test, but the court ruled that incorporation was inappropriate because the parties could not have ‘intended’ the terms to have normative effective, *given the negative consequences for BA*.

Although all previous amendments to crew complements had been agreed bilaterally, and the fact that crew received compensatory payments if they were obliged to work ‘under-crew’, the judge maintained that the intention of the parties was never to grant ‘individual refuseniks’ an entitlement to refuse work and ground an aircraft – to do so would create ‘anarchy’ if ‘individual crew members could, with impunity, refuse to fly with a reduced crew complement’. Clearly, the conclusion that no party could possibly have intended such disastrous consequences is to judge the effects of the incorporation of a collective agreement into an individual’s contract of employment *from the viewpoint of the employer*.

#### Implications

For BA cabin crew, this ruling clearly undermines their (structural) bargaining power, as the ‘individual refusenik’ no longer enjoys any legal protection in relation to crew complements as specified in the collective agreement. The wider implications for workers’ associational power are potentially more profound, as a precedent has been set by this judgement giving authority to the courts in subsequent cases to look beyond the words of the collective agreement to question what a party ‘really intended’ when the negotiations took place. Consequently, at a workplace level, the greatest risk is that the collective bargaining regime will break, as it is axiomatic that little faith can be placed in a collective agreement whose terms a court can so readily overturn. At a wider societal level, employees may question the point of collective bargaining, leading to a diminution in union membership.

\* This account is a summary of Russell, R. (2011) ‘*Malone and others v British Airways plc.: Protection of Managerial Prerogative?*’ *Industrial Law Journal*, 40(2), pp.207-13.

Legal action can be used to enforce workers' individual employment rights as well as the collective interests of the workforce. The former is especially important for precarious workers who often face draconian contractual terms and legal action for any breach of contract. For example, pilots flying for Ryanair on contract with Brookfield must give 3 months notice of termination of contract or pay Brookfield a penalty of €5,000.<sup>126</sup> The Mayors & City of London Court (Case No.1R65128, 26 July 2013, *Brookfield International Ltd v Robertus Johannes Willhelmus Van Boekel*) concluded that this clause – originally inserted in the 2007 iteration of the contract as a 'penalty'<sup>127</sup> – was designed not to compensate Brookfield for any pre-estimate of loss if a pilot quits the job (e.g. the cost of assigning another pilot to the base in question) but 'an "*in terrorem*" sum to deter breach'.<sup>128</sup> At the trial, it emerged that Brookfield calculated the sum (penalty) of €5,000 on the basis of what they thought pilots were prepared to tolerate as an 'exit cost' – if the penalty was any higher it would deter recruitment.

Winning individual employment contract disputes can be counted as 'minor victories' against LFAs and the agencies that supply their labour. Losing a collective interests dispute, in contrast, can represent a 'major defeat' in the battle to curtail 'regime shopping' and 'social dumping'. In general, European aviation unions regard statutory recognition procedures and nationally based recruitment and organising campaigns as 'effective' in securing recognition and collective bargaining at LFAs: when asked about the effectiveness, or otherwise, of statutory recognition procedures, 12 per cent of unions who responded to the ETF's 2012 survey of union officials regarded such procedures as 'highly effective' and a further 59 per cent as 'effective' (only 6 per cent rated them 'ineffective'); nationally based recruitment and organising campaigns were rated as 'effective' by 47 per cent of respondents and 'ineffective' by only 12 per cent.<sup>129</sup> In both the UK and Ireland, however, pilot unions have lost recognition battles with Ryanair, the ramifications of which affect virtually all European airlines as Ryanair is only able to achieve its 'ultra-low cost status' in the absence of collective bargaining and the

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<sup>126</sup> Clause 21 of the Brookfield contract states that: 'The Contractor [Brookfield] or the AESP [agency employment service provider] may terminate this Contract by giving not less than 3 months' written notice to the other parties. In the event that the AESP purports to terminate this Contract upon less than 3 months' notice then the AESP shall pay to the Contractor the sum of €5,000, such sum being payable as liquidated and ascertained damages by the AESP to the Contractor in full and final settlement and satisfaction of the AESP's entire liability for any loss, damages, costs or expenses suffered or incurred by the Contractor arising out of such event'. Between 300 and 500 Ryanair pilots quit their job in 2013-14 (more than one-in-ten) and in the recent RPG survey of over 1,100 pilots it was found that more than 72 per cent are currently planning to leave the airline within the next 2 years (average flight crew tenure at Ryanair is less than 5 years). Most quit because they have secured alternative employment but they must usually start work within 4-6 weeks. This creates a dilemma as those who agree to work 3 months notice often find themselves without work (recall that the Brookfield contract states that 'there is no obligation upon Brookfield to locate or offer work') so it can prove less costly to quit and pay €5,000. Cabin Crew employed by Ryanair on contract with WorkForce International are advised that: 'The Company reserves the right not to require you to work during any part of your notice but alternatively to make a payment in lieu of any notice or termination of employment' (Clause 2. Term of Contract).

<sup>127</sup> The word 'penalty' was removed from the 2009 iteration of the Brookfield contract following legal advice.

<sup>128</sup> *In terrorem* clauses (Latin for 'in fright or in terror; by way of a threat') are sometimes found in a will (or other testament) in the form of a legacy or gift with the condition that the recipient must not challenge the validity of the will. Conditions of such nature are labelled '*in terrorem*' as they are ordinarily regarded as threats, since the potential loss of the gift is thought to provoke fear or dread of litigation over the will on the part of the recipient.

<sup>129</sup> Harvey and Turnbull (2010) *op. cit.*

Irish airline sets the ‘benchmark’ (the nadir) in the ‘race-to-the-bottom’.

An attempt by BALPA to use the Employment Relations Act (1999) to secure recognition at Stansted (an airport north of London) in 2001 was thwarted when Ryanair ‘flooded the base’ with trainee pilots in order to increase the size of the bargaining unit and dilute the union’s potential vote in favour of collective bargaining below the 50 per cent needed under the recognition procedure.<sup>130</sup> A second campaign to secure recognition in 2009 was abandoned in the face of an aggressive anti-union campaign before even going to a vote. Thereafter, organising in the UK effectively stalled, while a similar approach in Ireland, in a less favourable domestic socio-legal environment, ran up against even more aggressive anti-union tactics. Both recognition cases, but especially the Irish dispute, led to a ‘scale shift’ from the national to the international.

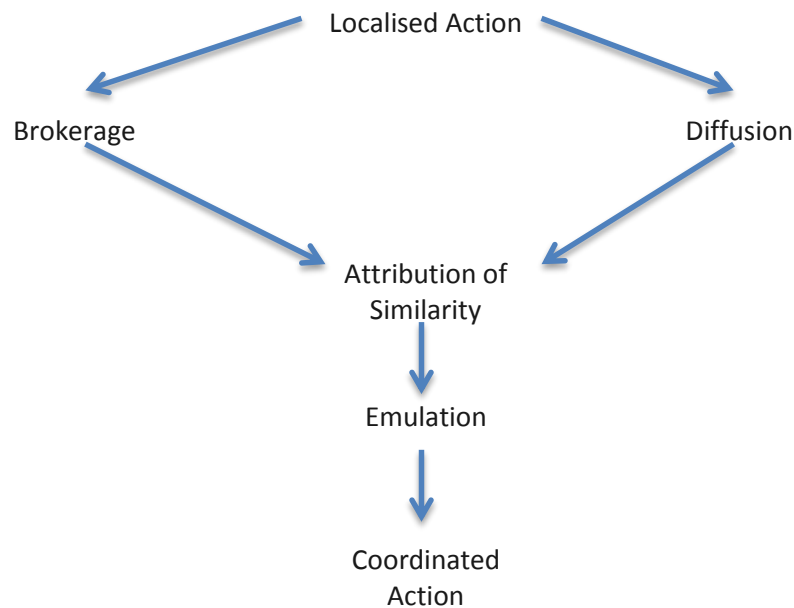
The processes involved in a ‘scale shift’ are depicted in Figure 28. Initially, localised action of a national aviation union takes place, which may or may not be successful. This action – or calls for action in support of those involved in the initial dispute – can be diffused through both impersonal mechanisms (e.g. email and social media) and brokerage by organisations or intermediaries who can bring like-minded actors together. This is where international organisations such as the ETF and ITF, or even the ETUC and ITUC, enter the picture. Brokerage takes place either directly (e.g. meetings and conferences) or via the education of union officials and activists.<sup>131</sup> It is through these activities that mutual identification of different aviation workers can be established (*attribution of similarity*). When actors in different geographical sites develop new repertoires of collective action, if they are deemed to be sufficiently similar and most importantly successful then these actions are likely to be *emulated* by others. Such action can be *coordinated* through the routine work of the ETF as it formulates and coordinates trade union transport and social policy, organises concerted industrial activities, and seeks to ensure an inclusive and socially oriented approach to European legislation with the aim of avoiding a downward spiral in employment, job security, safety, social welfare and salary cuts in the aviation industry.

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<sup>130</sup> When BALPA initially applied to the Central Arbitration Committee (CAC) to request a vote, the Association claimed 126 members out of a total of 184 on the employer’s count, but when the CAC had to decide whether to hold a secret ballot the union could claim only 116 members while Ryanair produced a list of 250 pilots at the base. Unions are far less likely to win recognition when the employer’s definition of the bargaining unit prevails and this proved to be the case – in the eventual vote, only 46 pilots voted in favour of recognition with 94 against.

<sup>131</sup> National officials and activists who engage with international issues are often described as ‘rooted cosmopolitans’, specifically: ‘individual and groups who mobilize domestic and international resources and opportunities to advance claims on behalf of external actors, against international opponents, or in favor of goals they hold in common with transnational allies’. See Tarrow (2005) *op. cit.* p. 29. Rooted cosmopolitans play a key role in educating rank-and-file union members in international issues and connecting them with workers in other countries who share similar concerns and challenges.

**Figure 28. Upward Scale Shift**



**Source:** McAdam, D., Tarrow, S. and Tilly, C. (2001) *Dynamics of Contention*, Cambridge, CUP.

When Ryanair switched from Boeing 737-200s to B737-800s in 2004, the airline wrote to all pilots who were to be retrained informing them that the company would not refund the €15,000 training costs: ‘if Ryanair be compelled to engage in collective bargaining with any pilot association or trade union within 5 years of commencement of your conversion training’. Several pilots who were unwilling to sign the contract found themselves in the High Court on a charge of bullying after encouraging other pilots (via a union website) not to sign the contract. The judge, however, ruled that Ryanair was the bully, describing the actions of management as being designed ‘to terrify’, quoting Shakespeare for good measure in his judgment: ‘Oh, it is excellent to have a giant’s strength; but it is tyrannous to use it like a giant’.<sup>132</sup>

More importantly, several pilots expressed their dissatisfaction with the company’s Employee Representative Committee (ERC), a non-union vehicle for the (local) determination of pay and conditions in each base. The Dublin representatives withdrew from the ERC in August 2004 and applied to the Labour Court with a request for IALPA to negotiate on their behalf. Under Irish law, trade unions have no right to be recognised for collective bargaining purposes by an employer – this ‘right’ is typically secured through the use, or threat of collective action – while the employer can establish an ‘excepted body’ for the purposes of collective bargaining, defined in the Trade Unions Acts of 1941 (s.6(3)(h)) and 1942 (s.2) as: ‘a body all the members of which are employed by the same employer and which carries on negotiations for the fixing of wages or other conditions of employment of its own members (but no other employees)’. As an increasing number of employers did not engage in collective bargaining in Ireland, especially in the ‘union free zones’ that proliferated during the years of the ‘Celtic Tiger’, the Industrial Relations (Amendment) Acts 2001-2004 gave workers (represented by a trade union) recourse to the Irish Labour Court, which IALPA used to establish that Ryanair’s ERC

<sup>132</sup> Mr. Justice Thomas Smyth quoting Isabella in Shakespeare’s *Measure for Measure*.

was not an 'excepted body'. When Ryanair appealed, however, the Supreme Court not only reversed the decision but declared that: 'as a matter of law Ryanair is perfectly entitled not to deal with trade unions *nor can a law be passed compelling it to do so*' (emphasis added).<sup>133</sup> As a result, with the commission of the state, and crew 'conscripted' on Irish contracts, the 'sky pirate' is free to plunder the European short-haul market.

Unable to secure the democratic rights of Ryanair workers in Ireland, IALPA turned to international trade union federations (the ECA) to establish the PRG (a Euro-democratisation strategy) and to fight for trade union rights via international law (a Euro- or global-technocratisation strategy). In respect of the latter, which was designed to add further weight to the unions' domestic campaign,<sup>134</sup> IALPA sought the support of the ITF<sup>135</sup> as well as the Irish Congress of Trade Unions (ICTU) and the International Trade Union Confederation (ITUC). The unions submitted a joint complaint against the Government of Ireland to the International Labour Organisation (ILO) in Geneva. Ireland has ratified ILO Convention No.87 (Freedom of Association and Protection of the Right to Organise, 1948) and Convention No.98 (Right to Organise and Collective Bargaining, 1949) and the unions alleged: (i) acts of anti-union discrimination, (ii) the refusal of Ryanair to engage in good faith bargaining, and (iii) the failure of Ireland's labour legislation to provide adequate protection against acts of anti-union discrimination and promote collective bargaining. Although the report of the ILO's Freedom of Association Committee<sup>136</sup> proved to be an important factor in the latest proposal (May 2014) by the Irish Government to reform the Industrial Relations (Amendment) Act 2001,<sup>137</sup>

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<sup>133</sup> The implication of this judgement was that it would require a referendum to change the Constitution of Ireland to enable a law to be enacted providing for trade union recognition.

<sup>134</sup> SIPTU did not support the original Lisbon Treaty because the Irish government of the day refused to commit to legislate to give effect to the entitlement to collective bargaining, which is enshrined in Art.28 of the Charter of Fundamental Rights (which subsequently had full legal force when the Lisbon Treaty was approved by Member States). The first Irish referendum on the Lisbon Treaty in 2008 was lost. When the question of a second referendum came up, the leader of the Irish Labour Party (Eamon Gilmore, TD), made a commitment that if the unions supported the Lisbon Treaty the Labour Party, when next in government, would promote a law to support collective bargaining rights for workers. The second Irish referendum overwhelmingly approved the Treaty.

<sup>135</sup> IALPA is a branch of the Irish Municipal Public and Civil Trade Union (IMPACT).

<sup>136</sup> Freedom of Association Committee (Case No.2780) and Governing Body (GB.313/INS/9). The Interim Report of the Committee was unequivocal in its statement that: 'the existence of legislative provisions prohibiting acts of interference on the part of the authorities, or by organizations of workers and employers in each other's affairs, is insufficient if they are not accompanied by efficient procedures to ensure their implementation in practice ... Irish law does not ensure adequate protection against acts of interference (e.g. non-prohibition of conditional benefits) nor does it promote collective bargaining (e.g. by providing for a procedure or require an employer to recognize a trade union' (paras.38-9, November 2013). In contrast, the report presented to the Governing Body of the ILO (313<sup>th</sup> Session, Geneva 15-30 March) noted that there was insufficient evidence on the allegations against Ryanair, but in view of the seriousness of the case the Irish Government should carry out an independent inquiry and, 'in full consultation with the social partners concerned, review the existing framework and consider any appropriate measures, including legislative measures, so as to ensure respect for the freedom of association and collective bargaining principles' (GB.313/INS/9, para.815).

<sup>137</sup> The commitment to change the law was part of the Labour Party's election manifesto in 2011 and the Party managed to negotiate this into the Programme of the 29<sup>th</sup> Government of Ireland, which is composed of Fine Gael and the Labour Party (Eamon Gilmore is now Tánaiste, Deputy Prime Minister – see note 124). In addition, changes to the law were necessary to ensure compliance with recent judgements in the European Court of Human Rights (specifically the ECHR Wilson case and Article 11 of the European Convention on Human Rights). Under the proposals before *Dáil Éireann* (the lower house – National Assembly – of the Irish legislature) collective bargaining is defined as 'voluntary engagements or negotiations between any employer or employers' association on the one hand and a trade union of workers

the length of this process (2004 to 2014) has convinced trade unions that a legal strategy can never be an ‘end game’ in an open aviation market where regime competition and social dumping is increasingly prevalent.

Across Europe, two legal counter-strategies (labour’s ‘spatial-juridical fix’) to combat social dumping are very much in evidence, demonstrating ‘attribution of similarity’ and ‘emulation’ (Figure 28) if not yet coordinated action. The first counter-strategy is based on ‘re-nationalisation’ (see Figure 10), which refers to a process in which the powers of the EU are ‘rolled back’ and re-established at the national level.<sup>138</sup> This strategy has involved support for individual aviation workers seeking to determine and protect their employment rights vis-à-vis their (low cost) employer as well as new national legislation designed to apply to all airlines and all workers based in the country in question. The second strategy is focused at the European rather than the national level and, to date, has been pursued primarily through technocratic rather than democratic means (i.e. the top left-hand quadrant in Figure 10).

The most recent example of re-nationalisation concerned the (unfair) dismissal of two Italian cabin crew, employed by an agency and working for Ryanair at Rygge Airport, Moss (south of Oslo),<sup>139</sup> which highlights how Ryanair has exploited cracks in the SEAM – a spatial-juridical fix – to keep labour and operating costs (ultra) low. It is not unusual for aircrew working for Ryanair to be based in a ‘foreign’ country. In fact, flight and cabin crew can be assigned to any of Ryanair’s bases across Europe, *at no extra cost to the company*. Clause 6 (Location) of the CrewLink contract for cabin crew states that they may be required to work: ‘at such other place or places as the Company reasonably requires for proper fulfillment of your duties and responsibilities under this Agreement ... This would include, for the avoidance of doubt, transfer to any of the Client’s European bases *without compensation*’ (emphasis added).<sup>140</sup> Wherever they are based, however, their ‘place of work’ (i.e. the aircraft) is Ireland, which is made explicit in the employee’s contact with the relevant agency. To quote again from Clause 6 (Location) of the CrewLink contract: ‘As the Client’s aircraft are registered in the Republic of Ireland and as you will perform your duties on these aircraft your employment is based in the Republic of Ireland’.<sup>141</sup>

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or excepted body on the other’, with the definition of an ‘excepted body’ remaining unchanged from Section 6 of the Trade Unions Acts 1941/1942. However, in determining if the body is an ‘excepted body’ within the meaning of the 2001/2004 Acts, ‘the Labour Court shall have regard to the extent to which the body is independent and not under the domination and control of the employer ... in terms of its establishment, functioning and administration’.

<sup>138</sup> Erne (2008) *op. cit.*, p.20.

<sup>139</sup> The crew were alleged to have used the PA improperly and allowed passengers to board a flight too early.

<sup>140</sup> Pilots must cover their own travel and accommodation costs when flying ‘out of base’, and then reclaim these costs against their (self-employment) earnings. In the recent RPG survey of more than 1,100 Ryanair pilots, 29 per cent said they were not happy to stay at their current base and 36 per cent have applied for a base transfer. More than half (56 per cent) reported that they have insufficient information to make an informed choice on base transfers (e.g. rosters at different bases, rates of pay, local accommodation costs, etc.).

<sup>141</sup> A further twist to this particular spatial-juridical fix is that while crew are employed on Irish contracts, their pay is determined locally through the system of (company-managed) Employee Representative Committees (ERCs) for each category of staff in each base. In the case of flight crew these Committees exclude all contract (agency) and self-employed pilots. Michael O’Leary informed Flightglobal (part of Reed Business Information) that the purpose of hiring more than 70% of its pilots on self-employed contracts

When the Italian aircrew handed their contracts over to Parat, the Norwegian aviation union, and the media, and the workers' terms and conditions were then debated in the Norwegian Parliament,<sup>142</sup> Ryanair's CEO flew into Norway to rebuke claims of 'slave contracts'<sup>143</sup> and to explain the airline's spatial-judicial fix (i.e. why Ryanair staff based in Norway do not pay taxes in Norway). In the words of the CEO: 'Ryanair must comply with Irish law because we're an Irish airline operating Irish-regulated aircraft, our employees are employed under Irish contracts and we must respect Irish law ... if the Norwegians have trouble with that they should take it up with the European Union or the Irish government'.<sup>144</sup> The Norwegians did 'have trouble' with this interpretation – in the words of Marit Arnstad, the Transport Minister, 'As long as the company has a base with aircraft stationed in Norway and the employees on board the aircraft reside in Norway longer than just the required resting periods between flights, they are covered by Norwegian labour laws'.<sup>145</sup> After several (failed) legal challenges by Ryanair the Italian cabin crew finally won the right for their unfair dismissal claim to be heard in Norway rather than Ireland.

To combat similar concerns in France, a rather different approach to re-nationalisation was adopted. In 2006 a Decree Law<sup>146</sup> was passed to ensure airlines with staff based in France comply with French labour and social laws. The Decree was targeted specifically at easyJet (Orly Airport) and Ryanair (Marseille), with the Irish airline claiming the Decree was a form of state protection for Air France. The French courts, however, ruled that employing aircrew based in France on Irish contracts constituted unfair competition. Ryanair was fined €8m in October 2013 (for the period 2006-2010) but the airline had already closed its base in

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was to prevent them from being able to form a bargaining unit. See: <http://www.flightglobal.com/blogs/learnmount/2013/10/ryanair-cuddly/#sthash.8ZiuTGXJ.dpuf>

<sup>142</sup> During the debate, various conditions of employment were likened to 'slave contracts', specifically: employees paying for their own training, uniforms and ID cards, with repayment deducted from monthly pay-checks; 'stand-by' shifts with no compensation when not called into work; compulsory unpaid leave during non-peak periods; participation in any strike or demonstration classified as grounds for immediate dismissal; and an 'administration fee' of €200 if the employee resigned prior to completing 15 months service.

<sup>143</sup> The CEO pointed out that agency workers could always quit their job, to be replaced by any one of the 5,000 applicants on waiting lists to join Ryanair.

<sup>144</sup> Michael O'Leary, *Aktuelt*, 13 April 2013. Note how many times the word 'Irish' is repeated in this statement, a linguistic device to reinforce the point that Ryanair rejects any sovereign authority outside the Republic of Ireland. Also, by constructing the sentence as he does, O'Leary establishes a 'common sense sequence', as it seems perfectly logical that a company based in a particular country should adhere to its prevailing laws. However, as critical analysts, we ask what this is masking, in this instance: (i) Irish regulations are advantageous to Ryanair, (ii) the words 'must comply' and 'must respect' the law establishes a moral position for Ryanair as law abiding and honest, and (iii) by referring to the EU and Irish government, O'Leary further positions himself and his company as powerless spectators without agency (in reality, of course, where they situate themselves in terms of legal regimes was their choice, and not anyone else's). In another incident in Norway, Ryanair claimed that its building at Rygge Airport was also Irish territory, or rather should be subject to Irish and not Norwegian law. This particular dispute surfaced when Ryanair illegally installed surveillance cameras that violated workers rights to privacy under Norwegian law.

<sup>145</sup> <http://www.newsinenglish.no/2013/04/11/authorities-unaware-of-ryanairs-base/>. Consider this (re-nationalisation) statement in relation to Figure 10 – the Norwegian state is seeking to 'roll back' authority over workers' terms and conditions of employment from the European level (i.e. an open SEAM where airlines can go 'regime shopping').

<sup>146</sup> *Décret n°2006-1425 du 21 Novembre 2006 relatif aux bases d'exploitation des entreprises de transport aérien et modifiant le code de l'aviation civile.*

Marseille in 2010 when the legal action started.<sup>147</sup> easyJet, in contrast, has switched to ‘country of location’ contracts rather than exclusively UK contracts for aircrew, suggesting that it is only the most determined buccaneers who can resist re-nationalisation.

It was previously noted that social dumping is only possible if (mobile) capital is able to remove specific workspaces (the aircraft), contexts (the overseas base) or categories of worker (aircrew) from the protection they would normally enjoy within sovereign states. Attempts to seal cracks in the SEAM through a strategy of re-nationalisation is bound to be uneven as airlines will seek the commission of a different Member State (a FoC) or relocate their operations to a different base beyond the geographical reach of the re-nationalising state(s). An obvious alternative strategy is for labour to secure its own (counter) spatial-juridical fix at the European level, via EU regulations that close the SEAM to social dumping. This is a viable strategy for organised labour because deliberative institutions at the European level – in particular, sector social dialogue and the deliberations of the Council and European Parliament – provide trade unions with strategic capacities they would not otherwise enjoy (and certainly do not enjoy in other ‘free trade’ regions of the world such as ASEAN or NAFTA).<sup>148</sup> The campaign to harmonise social security for aircrew is a clear illustration of the potential (and pitfalls) of this Euro-technocratic strategy (see Figure 10).

Under Article 13 of European Community Regulation 883/2004, social security was determined to arise in either (i) the country in which the individual is habitually resident (i.e. where personal and economic ties are strongest, based on at least 25 per cent of an individual’s income earned in the Member State of residence), or (ii) the country in which the individual’s employer has its registered office or place of business (e.g. Ryanair aircraft registered in Ireland) and where individuals do not work substantially in the country in which they habitually reside (e.g. aircrew who ‘work in the skies’ over Europe). Union campaigns (‘coordinated action’, Figure 28) led to an amendment to the Regulations (465/2012/EC), agreed by a qualified majority in the Council of Ministers (only Ireland abstained) and approved by the European Parliament. The amendment introduced a new concept of the ‘home base’ – a counter spatial-juridical fix – defined as the place where the employee normally starts or ends his or her periods of duty and where, under normal conditions, the operator is not responsible for the accommodation of the aircrew in question. As a result, an Estonian worker with Ryanair based in Italy, on an Irish contract, will now be subject to Italian social security legislation and no longer to Irish legislation (i.e. contributions paid in Italy and not Ireland).<sup>149</sup>

The pitfalls of this strategy to emerge already are twofold. First, there is still scope for (mis)interpretation of the regulation, as identified by the social partners for civil aviation<sup>150</sup> in relation to the *Practical Guide* issued by the Administrative Commission for the Coordination

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<sup>147</sup> Ryanair now serves Marseille in the summer months with staff based outside France.

<sup>148</sup> An important ‘gap’ in the European social dialogue is the non-inclusion of EFLAA. The Association was previously invited to join the social dialogue but was unable (or unwilling) to provide information on how its members engage in social dialogue within their own business across different bases in the EU. The current members of ELFAA are: easyJet, Flybe, Jet2.com, Norwegian, Ryanair, Sverigeflyg, transavia.com, Volotea, Vueling and Wizz Air.

<sup>149</sup> The regulation applies to all new workers and those who request a change of jurisdiction. Existing staff can retain their current tax status for a period of up to 10 years.

<sup>150</sup> ETF, ECA, AEA and ERA.



of Social Security Systems.<sup>151</sup> According to the social partners, the Administrative Commission's interpretation of 'stable applicable legislation' neutralises the changes made by Regulation 465/2012/EC and the guidelines for the application of the 10-year transitional provisions to aircrew are insufficient (specifically, what constitutes a change in relevant situation whereby a worker who retained their existing tax status would be covered by the new Regulation).<sup>152</sup> Second, workers who previously had deductions from their salary based on Irish taxes can suddenly find themselves worse off when obliged to pay local taxes (compare Ireland and other EU Member States in Figure 8),<sup>153</sup> certainly in the absence of union recognition and collective bargaining.<sup>154</sup>

The latter outcome highlights the 'distance' that exists between EU level decisions and the impact on workers at the local level. National aviation unions, with the support of the ETF, need to reduce this distance. The interaction of national and European legislation is not always easy to comprehend or explain to rank-and-file union members. Nonetheless, unions need to educate and engage their members in these issues (as per Figure 25) as the legal framework that underpins both the product and the labour market plays a significant, and at times determining role in the working lives of aviation workers. Transport unions need to mobilise legal rights alongside structural and associational forms of power if they are to add European democracy (top right-hand quadrant of Figure 10) to their established repertoires of contention in pursuit of decent work and sustainable employment in the European civil aviation industry.

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<sup>151</sup> Administrative Commission for the Coordination of Social Security Systems (2012) *Practical Guide: The Legislation that Applies to Workers in the European Union (EU), the European Economic Area (EEA) and in Switzerland*, Brussels: European Commission.

<sup>152</sup> One relevant example is Ryanair's practice of transferring First Officers to a different base when they are promoted, typically on a salary *less than* Captains at their current base.

<sup>153</sup> Tax authorities in several EU Member States have sought back-payment and fines from (agency) workers employed by Ryanair aircrew for non-payment of taxes, which has added to the woes of these precarious workers.

<sup>154</sup> Union organisers in Italy and several other EU Member States have already dealt with complaints from potential and current members about the reduction in their net pay, highlighting the need for much closer articulation between local, national and international levels of union organisation.

## V. Conclusions

Competition and crisis has significantly eroded the terms and conditions of European aviation workers in recent years. Indeed, all the evidence suggests that the evolution of the labour market in the airline industry is simply not sustainable. Precarious forms of employment fail to meet workers basic needs for security of income, work-life balance, and the right to have a say in decisions that (adversely) affect their daily working lives. While passengers might welcome lower fares there are growing concerns about safety, service standards and social dumping. In an open SEAM, any cracks in the regulatory system are easily and eagerly exploited by some elements of mobile capital, especially any cracks that appear as a result of different social standards and enforcement in different EU Member States. The result of this 'regime shopping' is a race-to-the-bottom, a race that undermines workers' structural and associational power while their legal rights are all too often subjugated to the 'freedoms of the market'.

While the race to the bottom is led by LFAs, both case study analysis and survey data (the latter conveying the lived experiences of aviation workers) demonstrates that not all LFAs are 'sky pirates'. Indeed, some LFAs are as highly rated by their workforce as some of the legacy airlines, who themselves face on-going restructuring in the face of low cost competition. This suggests scope for cooperation between unions and certain employers, and indeed between aviation unions as a group (represented notably by the ETF) and employers as a group (represented notably by the AEA, ERA and IACA) as many airlines are also hurt by anti-social competition. But this should not detract from the fact that all the evidence indicates that workers' voice is hardly heard in legacy and LFAs alike – communication between management and labour is typically poor, workers are not involved in decisions that (adversely) affect their daily working lives, and trade unions are more often excluded rather than included, at least in the eyes of the workforce.

The first priority for European aviation unions, therefore, is: Organise! Organise! Organise! Our survey data, based on the responses of more than 2,700 European aviation workers, suggests that labour's structural power has been significantly eroded by LFAs, both directly as a result of the business and associated HR/industrial relations policies of these companies and indirectly as a result of the competition they generate with legacy airlines. For example, extending the geographical boundaries of the labour market (i.e. recruiting workers from across the EU and deploying them at different bases across Europe, rather than their 'home country') greatly increases the supply of labour. In the context of financial austerity and airline restructuring, (European) labour supply now far exceeds (national) labour demand. Aviation workers still occupy an important structural position in the labour process as the work of different occupational groups and different categories of staff is highly *interdependent*, any delays or disruption has an *immediate* impact on the airline (e.g. disgruntled passengers or cancelled flights), and certain workers in particular are very difficult to *substitute* with alternative (scab) labour in the event of a dispute. However, the rise of precarious employment contracts and agencies who control a pool of labour that can be supplied to the airline on a very flexible basis has also diminished the (structural) bargaining power of aviation workers (i.e. it is now much easier to substitute any workers who organise or agitate).

While there are ways and means to redress the structural imbalance of power between management and labour in the civil aviation industry, most notably through changes to both national and European economic and social legislation that provides greater protection for workers, this can be a long and complex process and may not ‘fix’ the problem of social dumping in either a legal or geographical sense (e.g. employers may still open and exploit cracks in the legislation and a ‘national fix’ might simply lead to the relocation of bases and jobs to other, more convenient locations). This is not to suggest that trade unions should abandon all attempts to strengthen workers legal rights at the national and European levels, in fact quite the opposite. Rather, the point is to rethink this strategy and in particular to invest greater resources in the coordination (via the ETF) of national approaches (to establish common social standards that discourage and ideally foreclose social dumping) as well as concerted European action. The latter has two key dimensions. First, a more systematic approach towards the supranational institutions of the EU, specifically: (i) common and coordinated claims, approaches and action at the national level, focused on national transport departments, to feed through to the Council of Ministers, (ii) evidence-based policies to support the European social dialogue with employers and any policy discussions with the European Commission, and (iii) a combination of national lobbying of MEPs and coordinated European action to press workers’ interests with the European Parliament (e.g. demonstrations to coincide with debates in Parliament on EU aviation policy).

Secondly, working with the European Commission, it is important to recognise that there is not ‘one Commission’ but several. Working with DG Employment presents very different opportunities and challenges than working with DG Move or DG Competition. For example, DG Employment is more likely to be receptive to union concerns over social dumping, precarious contracts, ‘bogus self-employment’, etc. In recent years, DG Move has pursued a more liberal transport policy agenda, but in its latest Communication on *The EU’s External Aviation Policy – Addressing Future Challenges*, the Commission acknowledges that: ‘In negotiations with partner countries, due attention should also be paid to labour and environmental standards and respect for international conventions and agreements in both areas to avoid market distortion and prevent a race to the bottom’.<sup>155</sup> In other words, there is potential ‘leverage’ in EU policy for aviation unions to press workers’ claims for better social protection. Moreover, the explicit linking of economic (market-making), social and environmental policies opens up opportunities for collaboration between trade unions, NGOs and other stakeholders who support sustainable transport policies that place the ‘human element’ at their heart.

Likewise, labour clauses in international aviation agreements offer (potential) industrial and political leverage for trade unions. The EU’s open skies agreement with the USA, for the first time, included a ‘labour clause’ in the final agreement that represents an important reference point that provides leverage on both sides of the Atlantic:

The Parties recognise the importance of the social dimension of the Agreement and the benefits that arise when open markets are accompanied by high labour standards. The opportunities created by the Agreement are not intended to undermine labour standards or the labour-related rights and principles contained in the Parties respective laws’ (Art.17, EU-US Air Transport Agreement).

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<sup>155</sup> COM[2012]556 final, p.12

However, like all structural and legal power resources, trade unions must still capitalise on any available opportunities through the mobilisation of their associational power. Our survey evidence suggests that workers cannot rely on corporate forms of communication or employee involvement to express their voice. Most airlines appear, at best, to follow a rather perfunctory approach to employee involvement and participation or, at worse, a deliberate strategy to silence any independent employee voice. Only trade unions can give voice to the concerns of aviation workers – our survey and case study evidence has identified numerous issues that might unite aviation workers within specific airlines, particular Member States, and indeed across the EU if not beyond (e.g. cooperation with North American aviation unions in relation to NAI).

To capitalise on these concerns and any presenting opportunities, new forms of association are necessary to reflect both the changing nature of employment in the aviation industry (e.g. agency and contract labour, seasonal and self-employment, the demands for greater flexibility, etc.) and the geographical reach of the market. To support aviation unions in this endeavour, the ETF needs to create new forms of association within its own organisation, such as ‘working groups’ or bilateral/multilateral solidarity agreements to bring together and support trade unions from different countries who currently or potentially represent workers at the same LFA (the process of ‘brokerage’ depicted in Figure 28). To resist the spatial-juridical fixes of global capital, and create a new spatial-juridical fix of their own, aviation unions need to bridge the horizontal spatial divide between political cultures and union movements in different countries and the vertical gap(s) between levels of the international system (from local to national to international).<sup>156</sup> It is only by ‘shifting scale’ and developing new repertoires of contention ‘from the ground up’ that aviation unions will be able to deploy all four strategies depicted in Figure 10. It is only through the ETF that aviation unions can accomplish this task and thereby stall, and ideally reverse the current ‘race-to-the-bottom’.

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<sup>156</sup> See Tarrow (2005) *op. cit.*, p.127.

## Annex I. The Viking Case<sup>157</sup> and Civil Aviation<sup>158</sup>

### *Background*

Viking is a Finnish firm that owns the *Rosella*, a ferry that sailed between Finland (Helsinki) and Estonia (Tallinn) under the Finnish flag with a predominantly Finnish crew. According to the company, the *Rosella* was operating at a loss because of paying wages at the Finnish wage level while in competition with Estonian ferries with lower wage costs. Viking therefore planned to re-flag the ferry to Estonia in order to be able to pay lower wages. The ferry's crew were members of the Finnish Seamen's Union (FSU), an affiliate of the ITF, which issued a circular ordering all its affiliates not to negotiate with Viking.

In November 2003, the manning agreement for the *Rosella* expired; from then on, the FSU was no longer under an obligation of industrial peace under Finnish law. When re-negotiating the manning agreement, the FSU demanded that, regardless of whether the *Rosella* was re-flagged, Viking give an undertaking that it would continue to follow Finnish law and all collective agreements in place, and that the re-flagging would not lead to any redundancies or changes in the crew's terms of employment. When an agreement could not be reached, the FSU gave notice that it intended to commence industrial action. In the course of conciliation proceedings, Viking gave an undertaking that the re-flagging would not cause any redundancies. Finally, Viking accepted the union's demands to avoid the strike and undertook not to commence re-flagging before February 2005.

Meanwhile, Estonia became a member of the EU in 2004. Viking then had stronger arguments to support its position, and so it pursued its intention to re-flag the ferry. But the ITF circular remained in place, keeping the Estonian affiliate from negotiating with Viking and making it impossible for the company to acquire an Estonian crew.

### *Legal Proceedings*

Viking asked for an injunction in the Finnish labour court (in 2003), which was refused. Since the *Rosella* continued to make a loss and as the ITF circular remained in force, Viking decided to bring proceedings before the English High Court in August 2004 seeking declaratory and injunctive relief, which required withdrawal of the ITF circular and requiring the FSU not to interfere with Viking's free movement rights in relation to re-flagging of the *Rosella*. Viking argued that the action taken by FSU and ITF constituted a breach of its freedom of establishment (Article 43 EC),<sup>159</sup> since re-flagging a ship amounts to moving the place of establishment of a business. At first instance, the High Court in London held that the unions were in breach of Article 43. Mrs Justice Gloster (DBE) did not consider it necessary to make a reference to the European Court of Justice (ECJ) and granted an injunction to restrain the unions' industrial action.

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<sup>157</sup> *International Transport Workers' Federation and the Finnish Seamen's Union v Viking Line ABP*: C-438/05 [2008] IRLR 143.

<sup>158</sup> This summary is based on a range of sources, including: Bücker, A. and Warneck, W. (eds.) (2010) *Viking-Laval-Rüffert: Consequences and Policy Perspectives*, Report 111, Brussels: European Trade Union Institute; Davies, A.C.L. (2008) 'One Step Forward, Two Steps Back? The *Viking* and *Laval* Cases in the ECJ', *Industrial Law Journal*, 37(2), pp.126-48; Hinarejos, A. (2008) '*Laval* and *Viking*: The Right to Collective Action versus EU Fundamental Freedoms', *Human Rights Law Review*, 8(4), pp.714-29, and; Reich, N. (2008) 'Free Movement v. Social Rights in an Enlarged Union – the *Laval* and *Viking* Cases before the ECJ', *German Law Journal*, 9(2), pp.125-61.

<sup>159</sup> The English courts' jurisdiction over the case was found to be established pursuant to the Brussels Regulation 44/2001 (on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, as amended).

The unions appealed. The Court of Appeal was much less certain that Article 43 was applicable to the unions, noting that the case raised complex issues about the Article's role in cases between private parties, which had not previously been addressed by the ECJ. Moreover, even if the unions were to be held to be in breach of Article 43, there were serious questions to be tried as to whether the unions' actions amounted to direct or indirect discrimination and if so, whether or not those actions could be justified. The Court of Appeal decided that these issues should be referred to the ECJ. After detailed consideration, the Court refused to grant Viking an interim injunction against the unions pending the hearing of the case by the ECJ.

In setting out its position to the Court, the unions tried to use the Albany case<sup>160</sup> where the ECJ gave precedence to social considerations over economic ones, creating an employment-related exemption from EC competition law. But in Viking, the Court was not willing to argue that collective agreements fall outside the scope of the freedom of establishment – in fact quite the contrary, with the ECJ arguing that 'it cannot be considered that it is inherent in the very exercise of trade union rights and the right to take collective action that those fundamental freedoms will be prejudiced to a certain degree'.<sup>161</sup> In other words, not only do collective agreements fall within the scope of free movement law but also the law may be invoked against trade unions – the so-called 'horizontal effect'.

### *Judgement and Implications*

The ECJ clearly stated that it did not regard unions as public bodies, thus making it clear that the effect is genuinely horizontal. The ECJ's justification for applying these provisions to trade unions is that unions seek to play a role in determining terms and conditions of employment in ways which may impact upon freedom of establishment or freedom to provide services. The Court's concern was that the removal of barriers to free movement imposed by States might be 'neutralised' if private parties could create barriers of their own to which Community law did not apply. In the Viking case, the unions' collective action was highly (if not unusually) effective as the shipowner was deterred from re-flagging the *Rosella*, giving the impression that unions are able to impose terms and conditions on employers.

The ECJ's usual formulation of what is caught by Article 43 is very broad, referring to anything which 'hinders or renders less attractive' the exercise of free movement rights. Since collective action is intended to impose costs on employers and thus to 'render less attractive' a particular course of action, it is difficult to think of examples of meaningful collective action in a cross-border context that would not be caught by Articles 43.<sup>162</sup> However, the future impact of the Viking decision will turn on the application of the 'proportionality test' as the burden falls on the union(s) to demonstrate that its industrial action is proportionate in relation to the employer's freedom of movement.<sup>163</sup> It is in this context that the ECJ's recognition of the right to strike, which was welcomed by the union movement, is nonetheless *conditional* on the satisfaction of the proportionality test.<sup>164</sup> Put differently, the unions

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<sup>160</sup> ECJ, Case C-67/96.

<sup>161</sup> ECJ, Case C-438/05, paragraphs 51-2.

<sup>162</sup> Davies (2008) *op. cit.*, pp.140-1

<sup>163</sup> In the Court's view, collective action needs to have a legitimate aim, must be justified by over-riding reasons of public interest, must be suited to attaining the objective pursued, and not go beyond what is necessary in order to attain it. ECJ, Case C-438/05, paragraph 75. It is obvious that the Viking judgment may be used against other types of social action directly or merely indirectly infringing free movement if it cannot be established that it serves to improve the (concrete) protection of workers. Furthermore, the use of the concept of 'proportionality' gives rise to uncertainty, which in the end will prevent or at least make more difficult collective action. See Reich (2008) *op. cit.*, p.160.

<sup>164</sup> Recall that Viking brought its action horizontally against the union, not against the State. Therefore, the ECJ was assessing the unions' exercise of the right to strike, rather than the State's regulation of the unions' exercise of the right to strike, which led the Court to insist on an element of self-regulation on the part of

might have a fundamental right to strike but they can only exercise it when it does not impose disproportionate limitations on the employer's cross-border activities. In practice, 'This may be a high hurdle to overcome, particularly given the ECJ's lack of understanding of the industrial relations context'.<sup>165</sup>

More fundamentally, EC law is not qualified to solve conflicts between the unions' fundamental right to strike and a 'somewhat vague "proportionality" proviso', unless the social action is directed against the 'nationality' of the shipowner or serves merely to protect workers of a particular nationality.<sup>166</sup> In the Viking case, unions' acting in solidarity was justified by a *general* policy against FoCs, not against Estonian workers in particular. Therefore, why should Viking expect special protection against social actions designed to impede re-flagging? The company could still operate its ferry service, although perhaps without making the expected profit. But then making a profit is not protected under the free movement rules!<sup>167</sup> Having said that, this is precisely the form of 'protection' that shipowners and other transport companies want from the Commission and the ECJ, which can only be secured at the expense of social protection for seafarers and other mobile transport workers.

### *The Impact on Union Organisation and Collective Bargaining in Civil Aviation*

The full and future implications of the Viking case are still uncertain following the rejection by Member State parliaments of the proposed Monti II regulation, which was supposed to clarify the right to take collective action in cross-border situations (specifically whether, or to what extent, the fundamental right of workers to strike can be restricted by the employer's economic market freedoms).<sup>168</sup> As a result, the judgement of the ECJ in the Viking case still applies and precedence is still given to economic freedoms, which will continue to impair (if not prevent) collective action by trade unions in an EU (trans-national) context.<sup>169</sup> This has been demonstrated in cases brought before the domestic courts of Member States, most notably during the recent disputes between British Airways (BA) and the British Air Line Pilots' Association (BALPA) when the company set up a subsidiary in France that would offer flights to the USA.

The dispute between BA and BALPA, in brief, centred on BA's plans to set up a European subsidiary, called OpenSkies, with flights from Paris and Brussels to the USA using a new pilot workforce. BALPA

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the unions (i.e. the ECJ) wanted the unions to demonstrate that they were acting responsibly in exercising the right to strike, not just that they were exercising the right to strike). See Davies (2008) *op. cit.*, p.142.

<sup>165</sup> Davies (2008) *op. cit.*, p.145. It might be an obvious point to make but the ECJ is not a labour court and in the Viking case, and indeed other important cases such as *Laval v Svenska Byggnadsarbetareförbundet* (Case C-341/05), the Court has not shown much sensitivity to the industrial relations context.

<sup>166</sup> Reich (2008) *op. cit.*, p.150.

<sup>167</sup> *Ibid.*, p.154.

<sup>168</sup> COM(2012) 130 ('Monti II') was a proposal for a Council Regulation 'on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services'. If adopted, the Regulation would lay down 'the general principles and rules applicable at Union level with respect to the exercise of the fundamental right to take collective action within the context of the freedom of establishment and the freedom to provide services'. The stated intention was that the regulation would not affect 'the right or freedom to strike or to take other action covered by the specific industrial relations systems in Member States'. Opposition by national parliaments activated, for the first time, the so-called 'yellow card' procedure which, by virtue of the protocol on the application of the subsidiarity and proportionality principles annexed to the Lisbon Treaty, obliged the Commission to review the text of the proposed Monti II regulation. On 12 September 2012, the Commission informed the presidents of the European Parliament and Council that it had started a withdrawal procedure due to the lack of support for Monti II.

<sup>169</sup> See Ewing, K.D. (2012) 'The Draft Monti II Regulation: An Inadequate Response to *Viking* and *Laval*', Liverpool: The Institute of Employment Rights.

sought to extend the airline's scope agreement – 'Schedule K' – to OpenSkies. Schedule K is the current agreement for BA mainline pilots, which protects employment security and career opportunities for all pilots on the BA seniority list. At the time it was agreed (in 2003), Schedule K only covered relevant BA operations in the UK because the regulatory environment did not permit BA to fly from another EU Member State to the USA. BALPA's concern was that OpenSkies could provide leverage for BA to reduce or at least restrain labour costs within mainline BA operations. BALPA accepted that OpenSkies, as a new start-up airline, would need to operate with different terms and conditions of employment, but the Association wanted to ensure that OpenSkies' pilots were part of the BA pilot community with 'two-way' traffic for its members between BA mainline and OpenSkies. In other words, there would be a common seniority list for all BA mainline and OpenSkies pilots, such that a BA pilot based at London Heathrow, for example, would be able to bid for work in OpenSkies in Paris, and *vice versa*). Part of the Association's reasoning was that the distance between London and Paris is less than between London and Edinburgh.

As the disputes procedure was exhausted without agreement, even after the involvement of ACAS (the UK's arbitration and conciliation service) BALPA organised a strike ballot and secured a mandate for industrial action (86 per cent voted in favour on a 93 per cent turnout). By this stage, BA was already recruiting pilots for the new OpenSkies operation. BALPA issued a 7-day notice of strike action, in accordance with UK law, but BA threatened BALPA with an injunction and unlimited damages if it called for any action pursuant to the ballot. At issue was not whether BALPA had acted in accordance with UK employment law – which it had – but that any strike action, if called, would be unlawful by virtue of the European Court of Justice (ECJ) reasoning in the cases of *Viking*<sup>170</sup> and *Laval*.<sup>171</sup> As already noted, the ECJ held that the right to strike was subject to restriction under EU law where its effect might be disproportionately to impede the establishment of an economic base (or the provision of services) in one EU Member State by a company based in another Member State. Since the terms and conditions of BALPA's members were considered to be threatened by the establishment of a low cost subsidiary outside the UK, the *Viking* and *Laval* rulings could be fortuitously invoked by British Airways against BALPA. The outcome of the legal proceedings that followed was that BALPA was forced to abandon any contemplation of industrial action. The financial risks involved were simply too great as BA claimed that even a one-day strike would cost the company £100 million.

In sum, transport unions can expect national courts to favour economic freedoms over the right to collective action, especially in proceedings for an interim injunction against the collective action(s) of a trade union where the court will not be in a position to determine in advance of a full trial the issue of whether the action of the union was 'necessary' or 'proportionate' or indeed whether the union had exhausted all other methods of dispute resolution.<sup>172</sup> Given the uncertainty that still surrounds the rights and ability of (transport) unions to protect (mobile) workers in the EU – 'It is in the nature of disputes between economic freedoms and social rights that both cannot prevail simultaneously'<sup>173</sup> – the European Trade Union Confederation (ETUC) has called on the Commission to ensure that fundamental social rights cannot be restricted by economic freedoms. The ETUC has suggested a protocol to be attached to the European Treaties, which would clarify the relationship between fundamental social rights and economic market freedoms by:

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<sup>170</sup> *International Transport Workers' Federation and the Finnish Seamen's Union v Viking Line ABP*: C-438/05 [2008] IRLR 143.

<sup>171</sup> *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet*: C-341/05 [2008] IRLR 160.

<sup>172</sup> Ewing (2012) *op. cit.*, p.15. When BA (and IAG) went to court again during the dispute between the Spanish Airline Pilots' Association (SEPLA) and Iberia over the establishment of Iberia Express, the lawsuit was dismissed. However, this case involved a retrospective claim of €100,000 *in a UK court* for loss of cargo business during the 18 days of *legal* strike action by SEPLA *in Spain*.

<sup>173</sup> Ewing (2012) *op. cit.*, p.14. Thus, the Monti II proposal assumed that the exercise of economic freedoms is respectful of fundamental rights while fundamental rights are *de facto* considered a limitation of economic freedoms that need to be justified.



- confirming that the single market is not an end in itself, but was established to achieve social progress for the peoples of the Union;
- clarifying that economic freedoms and competition rules cannot take priority over fundamental social rights and social progress, and that in case of conflict, social rights shall take precedence;
- clarifying that economic freedoms cannot be interpreted as granting undertakings the right to exercise them to evade or circumvent national social and employment laws and practices or for the purposes of unfair competition on wages and working conditions.

**Picture 5. European Court of Justice, Luxembourg**



## Annex II. EU Member States (country codes)

Austria	AT
Belgium	BE
Bulgaria	BG
Croatia	HR
Cyprus	CY
Czech Republic	CZ
Denmark	DK
Estonia	EE
Finland	FI
France	FR
Germany	DE
Greece	EL
Hungary	HU
Ireland	IE
Italy	IT
Latvia	LV
Lithuania	LT
Luxembourg	LU
Malta	MT
Netherlands	NL
Poland	PL
Portugal	PT
Romania	RO
Slovakia	SK
Slovenia	SI
Spain	ES
Sweden	SE
United Kingdom	UK

## Annex III. On-Line Questionnaire

The on-line questionnaire – ‘Employment Relations in Civil Aviation 2014’ – is still ‘open’ until December 2014. Aviation workers are encouraged to complete the questionnaire before it closes.

In English: [https://www.survey.bris.ac.uk/bham/ereca\\_2014](https://www.survey.bris.ac.uk/bham/ereca_2014)

In French: <https://www.survey.bris.ac.uk/bham/rtace>

In Spanish: <https://www.survey.bris.ac.uk/bham/rlace>

In Italian: <https://www.survey.bris.ac.uk/bham/lace>

In German: <https://www.survey.bris.ac.uk/bham/bez>

## Annex IV. Demographic Characteristics of the Survey Respondents

Figure A1 presents the gender breakdown of respondents at the seven airlines and is fairly even across most airlines with the exception of Ryanair, which is indicative of the gender composition of pilots at most (European) airlines.<sup>174</sup>

**Figure A1. Gender Composition of Respondents**

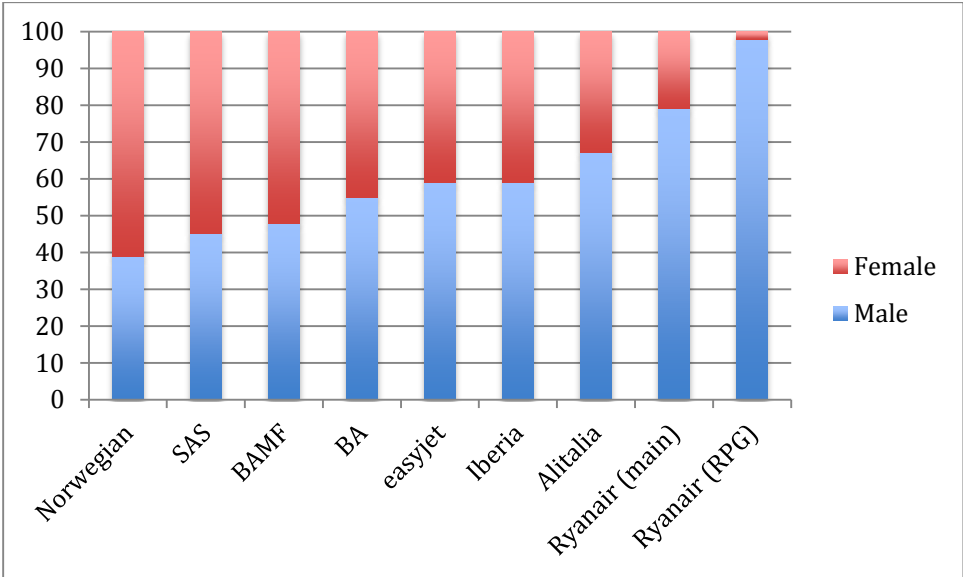
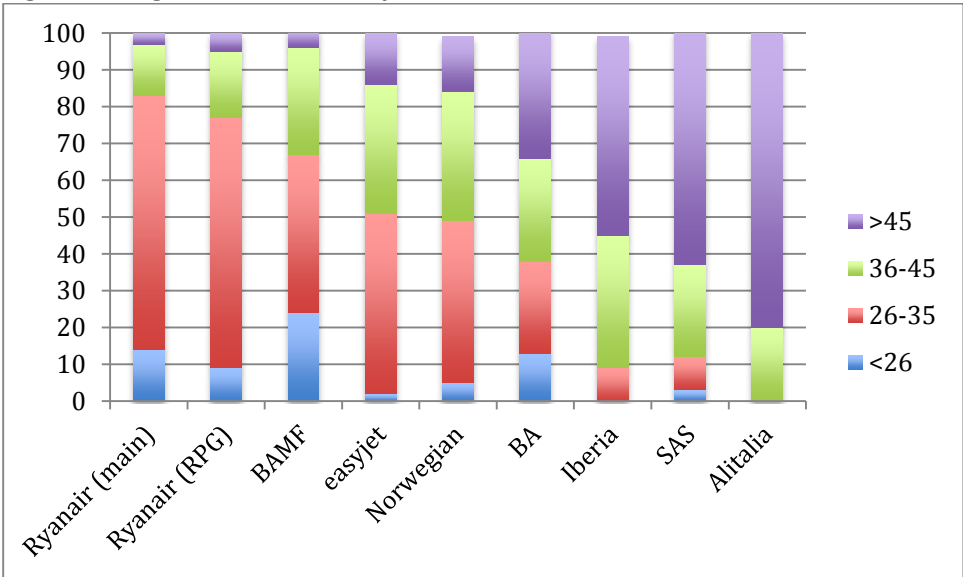


Figure A2 illustrates the age distribution of respondents at the airlines. It is unsurprising that the greatest percentage of workers in the more mature age category is found at the legacy carriers. It is notable that LFAs and BAMF have a comparatively young workforce.

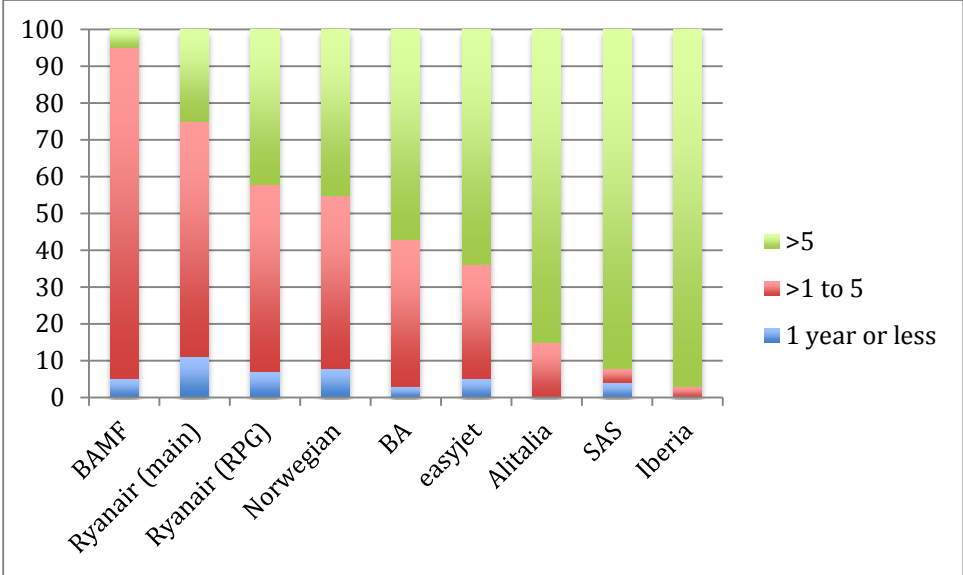
**Figure A2. Age Distribution Respondents**



<sup>174</sup> Turnbull, P. *Promoting the Employment of Women in the Transport Sector – Obstacles and Policy Options*, Working Paper No.298, Geneva: International Labour Organisation, 2013, available at: [http://www.ilo.org/sector/Resources/publications/WCMS\\_234880/lang-en/index.htm](http://www.ilo.org/sector/Resources/publications/WCMS_234880/lang-en/index.htm)

Figure A3 depicts the duration of employment (tenure) of respondents at the various airlines. As expected, tenure is longer among respondents at the legacy airlines and much shorter at the LFAs and BAMF.

**Figure A3. Respondents' Duration (tenure) of Employment**





With the support of the  
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