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# Can Labor Arrest the ‘Sky Pirates’? Transnational Trade Unionism in the European Civil Aviation Industry

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## Abstract

In a single European aviation market (SEAM) that is open to innovative new business strategies, most notably the (ultra) low cost model developed by Ryanair, non-territorial forms of sovereignty have been used to redefine employment relations, exert control over labor, and extract surplus value. Although aviation unions recognize the need to ‘shift scale’ from a predominantly local focus on their national (flag) airline, they have yet to develop effective strategies at the supranational level as low fares airlines continually extend their geographical reach in the open skies over Europe and beyond. Union strategies are considered at different levels (national and EU) as well as the different processes to enact these strategies (technocratic and democratic). Unions need to develop a Euro-democratization strategy if they are to arrest the anti-unionism and social dumping of European ‘sky pirates’ such as Ryanair and Norwegian Air Shuttle.

**Keywords:** low fares airlines, transnational trade unionism

## **Introduction**

When the Confederal Group of the European United Left/Nordic Green Left (GUE/NGL) recently hosted a public meeting in the European Parliament on the future of civil aviation, focusing on the competitive challenge and ever-increasing market share of low fares airlines (LFAs), the Group designated carriers such as Ryanair as ‘sky pirates’.<sup>1</sup> The definition of a pirate, however, is one who steals at sea or plunders the land from the sea *without commission from a sovereign state*. 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 all crew 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. Thus, while ‘modern-day piracy’ in the skies over Europe clearly involves a reconfiguration of sovereign authority in defiance of physical geography, it also depends on the commission of a sovereign state. Such commission enables LFAs, like their counterparts on the high seas (flag of convenience shipping),<sup>2</sup> to adopt and adapt non-territorial sovereignty as a way of redefining employment relations, exerting control over labor, and extracting surplus value.

The low fares model was pioneered in the US domestic market during the 1970s by Southwest Airlines (SWA) and then copied, to a greater or lesser extent, by many other airlines. In Europe, the creation of a single European aviation market (SEAM) in the late 1980s and 1990s not only opened the market to LFAs but also signaled a shift in regulatory authority from the nation state to the supranational institutions of the European Union (EU). However, this shift was not complete, neither in terms of aviation policy nor, in particular, social policy. As a result, wherever there are unclear delineations of national sovereignty, capital can develop new ‘spatial-juridical fixes’<sup>3</sup> to sustain seemingly illegitimate practices (e.g. ‘piracy’) through a combination of ‘organizational liminality’ (the creative exploitation

of institutional and anti-institutional elements)<sup>4</sup> and ‘institutional deflection’ (deploying internal resources to neutralize threats in the external environment).<sup>5</sup>

During the mid- to late-1990s when brash new entrants such as Ryanair and easyJet occupied a niche on the margins of the SEAM, LFAs attracted only passing attention from established (legacy) airlines and organized labor, but they are now dominant players in the market with well over 40 per cent of all intra-EU passenger traffic, with Ryanair now classified as Europe’s largest airline on this basis. In this rapidly changing context, it is perhaps unsurprising that trade unions are struggling to create their own ‘spatial fix’ in response to the new non-territorial spaces and management systems developed by LFAs, wedded as they are to the nation state and in the case of civil aviation to their national (flag) airline.<sup>6</sup> Indeed, the historical roots of aviation unionism are predominantly ‘company-based’, such that even aviation unions that are now incorporated into multi-modal transport unions, or multi-sector general unions, still retain a close relationship with the nation’s legacy airline(s).

The continued dependence of airline unions on legacy airlines has led to political support for what Erne<sup>7</sup> denotes as ‘democratic renationalization’ (i.e. a reaffirmation of the autonomy of the nation state, not only with respect to aviation policy but also employment law and broader social protection) and practical support for ‘technocratic renationalization’ (i.e. national competitive strategies at the macro level and industrial restructuring and new business strategies at the micro level). This is not to suggest unquestioning support for the restructuring of national (flag) airlines, a process that has been accompanied by strikes and other forms of labor unrest across the EU, rather to highlight the imperatives of ‘regime competition’<sup>8</sup> and the absence of any effective trade union response, to date, at the supranational level.

Regime competition originates in national institutional arrangements that are now located in and constrained by international competitive markets extending well beyond their

territorial reach.<sup>9</sup> Firms located in less flexible and/or more costly institutional arrangements will find themselves at a competitive disadvantage and look for ways to maintain profitability, including new spatial-juridical fixes that exploit cracks in the inter-state system.<sup>10</sup> The ineffectiveness of trade union responses to the SEAM and new transnational business strategies, most notably those pioneered by LFAs, originates in the ‘national flag’ (airline) orientation of aviation unions. Moreover, the technocratic origins of the European Transport Workers’ Federation (ETF) and its ‘European technocratic strategy’ (i.e. leadership interaction with EU decision-makers)<sup>11</sup> has distanced aviation unions from their members and, at times, from each other. When unions’ engagement with the EU abdicates contentious politics in favor of industrial legality, then a ‘Euro-democratization strategy’ (i.e. the mobilization of aviation workers across all work spaces, contexts and job categories, their engagement in EU decision-making and their contribution to a European public sphere)<sup>12</sup> becomes all the more difficult.<sup>13</sup> Nonetheless, there is a growing recognition amongst union officials and aviation workers that the route to protecting and improving their terms and conditions of employment is no longer local (company-based) or even national, but via European or possibly global action.

If the driving force that links workers across Europe ‘is not the existence of a European market but the increasingly supranational reorganization of the firm’,<sup>14</sup> what are the prospects for aviation workers and trade unionism at LFAs such as Ryanair or indeed the legacy carriers that are now integrated into global airline alliances? Asked differently, when capital reorganizes labor on a transnational scale, how can workers reorganize themselves? These questions put the firm and its workforce, rather than the market, at the heart of our analysis, but not as decoupled or autonomous actors as firms and workers not only *exist within* different social institutions, they are *constituted of* competing social relations.<sup>15</sup> Transnational firms, including airlines, are still dependent on the nation state for their licenses

to operate and to protect their property rights, and even ‘the most flighty of capital must come to ground at some point’,<sup>16</sup> quite literally in the case of airlines, creating temporal and physical ‘spaces of opportunity’ for organization and action on the part of workers and trade unions. In other words, or more precisely the words of labor geography, ‘Workers, too, are *active* geographical agents whose activities can shape economic landscapes’.<sup>17</sup>

In what follows we draw primarily on data from two recent projects with the ETF, funded by the European Commission under the auspices of the European Sector Social Dialogue Committee for Civil Aviation,<sup>18</sup> as well as data collected for the International Labour Organisation (ILO) in the aftermath of the most recent crises to hit the sector<sup>19</sup> and other research dating back over the previous two decades.<sup>20</sup> In the following section we review the changing terrain of Europe’s single aviation market (SEAM), the business strategies developed by LFAs within this open market, and the turbulence this created for legacy airlines as they restructure their route networks, flight operations, business activities and industrial relations.

To understand the strategic choices available to trade unions and their members in the SEAM, in a subsequent section we draw on the typology developed by Erne that sets out four possible orientations that actors may take in relation to the European integration process: Euro-democratization, Euro-technocratization, democratic renationalization and technocratic renationalization.<sup>21</sup> While greater or lesser emphasis is placed on different strategies at different times or in response to different actors, they are not mutually exclusive. It is often remarked, for example, that workers’ voice in the technocratic decision-making process (the force of their argument) is only heard when backed by members’ democratic participation in union activities, including various forms of collective action (the argument of force). Historically, at the national and company levels, aviation unions have exploited their structural power in the labor process (their strategic location in a high risk, tightly integrated

and interdependent system of flight operations) through robust forms of associational power (collective organization and representation). This has yet to be translated to the European stage. To be sure, the ETF is a recognized ‘social partner’ for civil aviation and is closely involved in many aspects of European aviation policy. However, without the ability to mobilize aviation workers across the EU to engage in new disruptive repertoires of collective action the ‘default’ position becomes one of ‘bureaucratic international centralism’,<sup>22</sup> characterized by routine functions, modest aims, and the ‘lowest common denominator’ in terms of aviation policy and social protection. As Ryanair is now the ‘lowest common denominator’ in the SEAM, we pay particular attention to this modern-day ‘sky pirate’.

### **Exploiting Cracks in the SEAM**

How markets develop spatially shapes how they develop socially (and vice versa).<sup>23</sup> Spatially uneven development means that some workers, in some places, at certain times, will find themselves in a more privileged position than others, often as a result of their material interests coinciding (to a greater rather than a lesser extent) with those of capital.<sup>24</sup> Under the pre-SEAM system of bilateral air service agreements (BASAs) between nation states, the designated airports in the relevant BASA defined the scope of the market, both geographically and economically. With typically just two airlines on every route – the respective national flag carriers – a system of ‘bilateral monopoly’, with price-fixing between airlines and ‘rent sharing’ between capital and labor, prevailed. Hardly surprising, then, that organized labor should identify so closely with ‘their’ national airline and this particular spatial fix. In an open SEAM, in contrast, the business strategies of new entrant LFAs, and even those of threatened legacy airlines, can drive a ‘slow descent to the lowest common denominator’<sup>25</sup> via ‘regime shopping’ and ‘social dumping’.

Unlike US domestic deregulation in 1978, the SEAM was created over an extended period with three liberalization packages (December 1987, July 1990 and July 1992) that did not take full effect until 1997 with cabotage rights (i.e. the freedom to operate commercial services directly between two points in a foreign state). The first years of the SEAM brought little change, certainly in terms of pricing, but this was simply the (legacy) calm before the (LFA) storm. 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’ 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 but their market share by the turn of the millennium was still only 5 per cent of the European market. Thereafter, however, their growth has been exponential. In several Member States (e.g. Ireland, Italy, Poland, Spain and the UK) LFAs now hold a majority share of the short-haul market.

Behind every competitive challenge in a capitalist economy is an innovative enterprise with superior organizational capabilities.<sup>26</sup> The innovative organization either produces (delivers) a superior product (service) at a competitive cost (i.e. product or service innovation) or a saleable product/service at a lower cost (i.e. process innovation).<sup>27</sup> Market leaders often achieve both product (service) and process innovation. LFAs are evidently highly innovative enterprises, having reduced costs significantly and redefined the very experience of flying, epitomized by Ryanair’s business strategy that treats its passengers as ‘self-loading cargo’<sup>28</sup> and its aircraft as ‘just a bus with wings’.<sup>29</sup> The most significant cost savings secured by LFAs include:

- flying a single aircraft type and a much younger (fuel efficient) fleet, which minimizes training and maintenance costs and maximizes the flexibility of staff rostering



- using secondary and less congested airports, which minimizes landing charges and aircraft turnaround time
- maximizing the number of seats on-board the aircraft (e.g. reducing leg space, removing hot galleys, and providing only one class of seating)
- ‘commodifying’ the product by eliminating any ‘extras’ (e.g. complimentary in-flight food and drink) and offering the customer the option to pay separately (additionally) for an allocated seat, checked-in baggage, in-flight food and drinks, etc.
- direct selling, now almost exclusively via the internet rather than via travel agencies who charge commission
- point-to-point services and one-way (single class) fares (i.e. no interlining), and
- operating from a multitude of bases as the airline expands (spatially) such that staff can return to their ‘home base’ after every shift (i.e. no costly overnight stop-overs in a foreign country).

On short-haul (point-to-point) routes, LFAs enjoy a cost advantage over legacy airlines anywhere between 25-50 per cent. Ryanair’s cost advantage is closer to 60 per cent,<sup>30</sup> with costs per employee less than €50,000 (in 2011-12) compared to well over €106,000 at Scandinavian Airlines (SAS), Europe’s highest cost legacy airline.<sup>31</sup> In fact, the most significant contribution to Ryanair’s low cost base comes from high labor productivity<sup>32</sup> and low unit labor costs (labor productivity x labor costs), with low(er) wages than its rivals and an intensive working schedule concentrated over a 9-month (summer peak) period when the majority of (temporary) staff work the maximum hours allowed under the European flight and duty time limitations (FTL). For example, most cabin crew (over 60 per cent) are employed on a 2-year contract with one of two agencies – CrewLink and WorkForce International – and then sub-contracted to Ryanair. Their contract stipulates 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 FTL – over a 9-month period. A similar scenario applies for flight crew, with an even more complex web of contractual relationships between Ryanair, the principal agency (Brookfield International, a UK registered company based in Gibraltar) and an ‘approved list’ of accountancy firms who facilitate the ‘self-employment’ of 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.

Flight and cabin crew can be assigned to any of Ryanair’s bases across Europe, at no extra cost to the company. Pilots, for example, must cover their own travel and accommodation costs when flying ‘out of base’, and then reclaim these costs against their (self-employment) earnings. For cabin crew, Clause 6 (Location) of the CrewLink contract 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). 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.<sup>33</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 a system of (company-managed) Employee Representative Committees (ERCs) for each category of staff in each base<sup>34</sup> as there are no recognized trade unions<sup>34</sup> in Ryanair. All other operational activities, such as check-in, ground handling, fuelling, maintenance, etc., are subcontracted to independent third parties, which is a particularly effective way for the employer to cut costs, shed responsibility, increase flexibility and disempower the workforce.<sup>35</sup> Thus, when Ireland

(the aircraft) does ‘come to ground’ it invariably lands in a union-free zone (i.e. a secondary airport where airlines, service providers and the local state are keen to keep costs as low as possible, especially labor costs). In effect, these airports can be likened to Export Processing Zones where worker and trade union rights are more explicitly restricted.

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. flights to/from the same airports). Experimentation followed as legacy airlines introduced their own LFAs, with BA creating Go, KLM introducing Buzz, and SAS operating Snowflake. In several cases, however, these new start-ups took traffic from the legacy’s own short-haul network, rather than new entrants such as Ryanair and easyJet, and they were soon sold to rivals (easyJet bought Go and Ryanair bought Buzz) or disbanded (Snowflake).

The primary focus of the 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 of operating profit. Legacy restructuring has involved a number of ‘mergers’, including 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.<sup>36</sup> This has allowed legacy airlines to ‘retreat’ to their ‘home hub(s)’ and offer an ‘anywhere to anywhere’ service via the alliance network. But they still need domestic (i.e. European) feed. As a result, some LFAs have been welcomed into global alliances in order to add more (short haul) destinations (e.g. oneworld-airberlin) or brought into airline groups (e.g. IAG-Vueling).

The most recent response has been to grow a ‘low cost version’ of the main brand for short-haul routes, intended not so much to mimic the LFAs as to address structural problems (legacy labor costs) within the legacy airline’s network. 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>37</sup> An alternative approach, more open to airlines based in more liberal market economies such as the UK where there are cracks in both employment law and the associational power of organized labor, 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 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.

The on-going restructuring of legacy airlines is a reflection of their inability to close the cost gap on LFAs, especially labor costs,<sup>38</sup> and the competitive challenges they continue to face in both their short-haul and most recently their long-haul markets. As LFAs reach ‘saturation point’ in the new markets they have developed using secondary airports, their attention has recently turned to primary airports that have traditionally been dominated by legacy airlines.<sup>39</sup> In many areas of their business, LFAs are finding it increasingly difficult to find further cost savings, with many now seeking to ‘grow revenue’ (e.g. targeting business class passengers) or further extend the geographical reach of their route network using the new generation of more fuel-efficient aircraft. easyJet, for example, already offers flights to Egypt, Iceland, Israel, Jordan, Morocco and Turkey, and recently added Moscow to its destinations. It is likely that LFAs will extend their operations to 4-7 hour routes where they can retain many of the cost advantages of their original business model, but beyond that time/distance it seems more innovative strategies are needed, opening further cracks in the SEAM.

Norwegian Air Shuttle (NAS) is one of Europe's largest LFAs, flying around 18 million passengers per annum and now operating from eleven bases across Scandinavia and the rest of Europe, as well as Bangkok. 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 labor, location and license, NAS has established a subsidiary, Norwegian Air International (NAI), with an Irish Air Operator's Certificate (AOC), even though the company has no plans to operate out of 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. 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. With the entry of a LFA into this market, the challenge for organized labor 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 U.S. 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 percent.<sup>40</sup>

### **Papering Over the Cracks – Organized Labor and the SEAM**

When capitalists are restricted to *in situ* strategies that involve working within national domestic class compromises, the strength and interests of trade unions and other actors limit

the possibilities for business innovation and extreme exploitation.<sup>41</sup> For example, when Iberia recently established its own low cost subsidiary, an arbitration agreement that settled a series of disputes involving the pilots' union limited the expansion of Iberia Express under the terms of the collective bargaining agreement. 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). 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 stall the outsourcing of cabin crew in Denmark.

In the case of Ryanair, however, when the airline moved from a 'home hub' (Dublin) to a multi-base strategy across the SEAM, with aviation unions (quite literally) 'missing the flight', national trade union strategies have faltered. This is not to gainsay the potential of national trade union strategies, as witnessed by the organization of easyJet following the introduction of a statutory union recognition procedure in the UK (the Employment Relations Act, 1999), which first pilots and then cabin crew were able to use to secure collective bargaining rights. But national employment laws and domestic class compromises appear increasingly fragile as political parties across Europe move to the right and transnational firms position their operations in the interstices of prevailing regulative, normative and socio-spatial systems.<sup>42</sup> It is much harder for unions to organize these spaces when they are simply 'spaces of engagement' for workers and not 'places of dependence'. As Herod notes, 'Having an island of stability in which to stand in a sea of global change may provide the necessary support and traditions upon which workers can draw to defend their interests'.<sup>43</sup> But when

workers are employed in a foreign land, on short-term contracts, spending most of their working time ‘in the air’, there is very little stability in their lives.

The (in)effectiveness of union strategies on the development of the European polity can be considered along two dimensions – the decision-making level and decision-making process – to create the typology depicted in Figure 1.<sup>44</sup> Following Erne’s approach, the typology is used to provide a parsimonious framework to distinguish various strategies based on their effect on EU developments, recognizing that different actors are likely to adopt different strategies in different situations and in response to the (counter) strategies of different actors.<sup>45</sup> Thus, the strategy of organized labor will differ towards LFAs, legacy airlines, national and international regulatory authorities, the European Commission, European Parliament, Council of Ministers, etc. Moreover, while the vertical and horizontal dimensions of Figure 1 are ‘divided’ between national/EU and technocratic/democratic, in practice both decision-making levels and processes are interconnected.

\*\*\* FIGURE 1 HERE \*\*\*

Where (legacy) airlines are still reliant on a ‘home hub’, union officials have been drawn into protracted and often difficult negotiations with airline management to cut costs, increase flexibility (e.g. roster changes) and thereby remain competitive in an open SEAM. For example, unions at SAS recently accepted a major restructuring program (4XNG) that aims to reduce costs by 15 per cent between 2012 and 2015, including cuts to staff pay and benefits, driven in large part by competition from NAS and other LFAs. This form of technocratic renationalization is not so much a social-democratic compromise between capital and labor as a monistic alliance to boost the national flag airline’s competitiveness and thereby protect jobs. In contrast, if an airline’s business strategy is dependent on a new spatial-juridical fix in defiance of physical geography, the favored counter-strategy might be to reassert the jurisdiction of the nation state and use national institutions to (re)establish

workers' and trade union rights. This is the defining characteristic of democratic renationalization and has proved to be the primary countermovement against Ryanair and other LFAs. However, when trans-national organizations deploy their considerable internal resources in pursuit of institutional deflection in order to neutralize threats in their external environment, any progress for organized labor can be slow and ultimately elusive, certainly without engagement in other processes and decision-making levels.

Attempts to organize Europe's lowest cost carrier have been led by pilot associations in Ireland (IAPLA) and the UK (BALPA). The latter's involvement is a result of Ryanair's early market development based on flights between Ireland and the UK and the fact that pilots based in the UK were initially employed on UK contracts with the airline (as opposed to Irish contracts with an agency, which is now the dominant form of employment). 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 favor of collective bargaining below the 50 per cent needed under the recognition procedure.<sup>46</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, organizing in the UK effectively stalled, while a similar approach in Ireland, in a less favorable domestic socio-legal environment, ran up against even more aggressive anti-union tactics and led to a shift from the democratic to the technocratic, and from the national to the transnational.

In seeking to hold transnational actors to account in a national setting as part of a democratic process to prevent the market economy becoming a market society, organized labor invariably falls back on (national) market-correcting (social) policies and institutions to combat (European) market-making (economic) policies. In relation to Ryanair, Irish unions have taken action in relation to both individual and collective employment rights. With an



ever-increasing number of pilots on agency contracts – between 2010 and 2011 the proportion increased from 56 per cent to over 70 per cent – unions challenged 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 not satisfy these criteria as rosters and rates of pay are unilaterally determined by Ryanair and the Brookfield contract bonds the pilot to fly exclusively for Ryanair. IALPA therefore sought clarification of the ‘self-employment’ status of pilots with the Irish Revenue Commissioners and the Minister for Finance in 2008. In response, Ryanair followed its usual tactic of threatening legal action against IALPA officials<sup>47</sup> – in this instance for disclosing ‘confidential information’ (i.e. contracts of employment) to third parties – but otherwise avoided institutional engagement by requiring 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>48</sup>

While deflecting some Irish institutions (the Revenue Commissioners), Ryanair is still reliant on others (e.g. the Irish Aviation Authority and Irish employment laws and industrial relations). The ‘place of work’ for aircrew remains an Irish registered aircraft and most aircrew continue to pay income tax and social insurance contributions in Ireland, even if they are based in a different Member State. For obvious reasons, the State where aircrew resides would prefer taxes to be paid in their country – i.e. the country of residence of the worker rather than the country of registration of the aircraft – because residents are likely to use local (rather than Irish) social services. As a result, two national countermeasures have been implemented. First, several Member States, often at the behest of national aviation unions, have passed new laws to compel airlines with bases in their country to comply with national

labor and social laws (e.g. French decree law of 2006)<sup>49</sup> or to insist that companies (such as a pilot's limited company) pay taxes in the country where they make a profit (e.g. new business laws in Italy). LFAs have challenged these laws and when they lose, as they did in the *Conseil d'Etat* in 2007 in France, they can either transfer staff onto country of residence contracts (e.g. easyJet has switched from exclusively UK to 'country of base' contracts) or transfer the base (e.g. Ryanair closed its base in Marseille in 2010 and now serves the French market from bases outside France with aircrew on Irish contracts).<sup>50</sup> Secondly, tax authorities have sought 'unpaid taxes' (and fines) from Ryanair staff who reclaimed taxes from the Irish tax authorities (as they are entitled to do if living outside Ireland) but then failed to pay taxes in the country of residence. The latter places unions in a somewhat invidious position, as they cannot condone tax avoidance but understand the financial pressures facing newly qualified pilots and cabin crew.<sup>51</sup>

With respect to individual employment rights, therefore, the disquiet expressed initially in Ireland has crossed borders and shifted from the (democratic) concerns of trade unions to the (technocratic) countermeasures of the nation state. The most recent example of this process concerned the (unfair) dismissal of two Italian cabin crew, working out of Ryanair's base at Rygge Airport, Moss (south of Oslo). Parat, the Norwegian aviation union, passed copies of cabin crew contracts to politicians who debated Ryanair's terms and conditions in the Norwegian Parliament. During the debate, various conditions were likened to 'slave contracts' (e.g. employees paying for their own training, uniforms and ID cards, with repayment deducted from monthly paychecks; '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). Ryanair's CEO flew into Norway to rebuke the claims of 'slave contracts' (on the grounds that workers can

always quit and the company has 5,000 people on waiting lists for jobs) 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>52</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>53</sup> After several (failed) legal challenges by Ryanair the Italian cabin crew won the right for their unfair dismissal claim to be heard in Norway rather than Ireland.

Action to promote and protect workers' collective rights has followed a similar pattern, once again inspired initially by Irish pilots. 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>54</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 recognized 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 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). 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 and the technocratic process of international law. As a branch of the Irish Municipal Public and Civil Trade Union (IMPACT), IALPA was able to enlist the support of the International Transport Workers’ Federation (ITF) as well as the Irish Congress of Trade Unions (ICTU) and the International Trade Union Confederation (ITUC) to submit a 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 labor 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>55</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, the length of this process (2004 to 2014) has convinced trade unions that a renationalization strategy can never be an 'end game' in an open aviation market where regime competition and social dumping is increasingly prevalent. Trade unions clearly need to 'shift scale' and build a transnational movement, with sustained work at an international level and not simply 'the reproduction, at a different level, of the claims, targets, and constituencies of the sites where contention begins', but 'new alliances, new targets, and changes in the foci of claims and perhaps even new identities'.<sup>56</sup> However, attempts by European aviation unions to shift scale, to date, have met with only limited success.

'Insiders' with access to EU decision-makers tend to favor a Euro-technocratization strategy<sup>57</sup> and as a recognized social partner the ETF is well versed in the 'politics of expertise' favored by the European Commission. Indeed, the ETF has relied historically on the 'force of argument' rather than the 'argument of force'. The main aims of the 'Brussels Committee', as the ETF was formerly known,<sup>58</sup> were to 'represent the interests of transport workers' unions to the institutions of the European Community', recognizing that 'the coordination of international solidarity ... is primarily a matter for the ITF'.<sup>59</sup> All too often, however, and certainly during the recent tenure of Siim Kallas as Transport Commissioner (2010-14), the Commission (DG Move) has been unwilling to accept the force of labor's arguments, which are rarely seen as compatible with the EU's free-market objectives. Thus,

the primary limits of Euro-technocratization lie not in a lack of access to EU institutions but the ‘insulation’ of EU decision-makers ‘from the dysfunctional aspirations of citizens by other means – namely, through a restriction of the realm of legitimate claims that social actors can make’.<sup>60</sup> When legitimate claims fail, trade unions need to develop less conventional repertoires of collective action (the transnational argument of force).

More often, however, it seems that when European trade union federations become embroiled in the comitology of the EU<sup>61</sup> – which is probably as far removed from the capacities and inclinations of local union organizations and their members as it is possible to be – they are enveloped in an ‘elite embrace’ accompanied by the suppression of both political alternatives and mobilization capacity.<sup>62</sup> To be sure, deliberative institutions at the supranational (EU) level can provide trade unions with strategic capacities they would not otherwise enjoy, but the democratic involvement of rank-and-file union members is often sacrificed and decision-making processes and agreements that are struck at this level are not always in the best (immediate) interests of aviation workers. The ETF’s campaign to redefine the ‘home base’ of aircrew, in conjunction with the European Cockpit Association (ECA),<sup>63</sup> is a case in point.

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). Trade union action (a Euro-technocratic strategy) 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’, which can be considered as a (counter) spatial-juridical fix for aviation labor, 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>64</sup> For the ETF, this represents an important countermeasure against social dumping, but for the individual worker it can mean a substantial increase in social security contributions and a reduction in net pay. Union organizers in Italy and several other EU Member States have already dealt with complaints from potential and current members about the increase in social taxes (i.e. reduction in their net pay), highlighting the need for much closer articulation between local, national and international levels of union organization.

The committee procedure (comitology) of the EU can also distance aviation unions from their European federation, as recent negotiations over new European flight time limitations (FTL) serve to demonstrate. Under pressure of time and the demands of other stakeholders, the ETF agreed to changes that several aviation unions fear will result in legacy airlines rostering staff to work right up to the maximum duty times in an attempt to match the labor productivity of LFAs. Many ETF affiliates objected to the lack of communication during the process of negotiations or any vote on the final draft, and as a result several unions have now left the ETF to form a rival European federation for cabin crew. Fragmentation is a particularly unwelcome development at a time when unions are trying to build stronger international solidarity, mobilize workers to participate in new forms of collective organization and action, and politicize EU decision-making in a transnational public sphere.

Transnational campaigns to encourage involvement beyond the immediate workforce (e.g. claims of unfair competition and state aid at secondary airports, the impact of LFAs on the environment, poor customer service and the like) have highlighted concerns but achieved very little in terms of union organization (e.g. the ITF's 'Ryan-be-fair' campaign).<sup>65</sup> In contrast, unlike traditional union campaigns or forms of organization, the Ryanair Pilots Group (RPG) represents a new Euro-democratization strategy that makes use of 'distributed technologies' to create new structures and provide an outlet for suppressed voices. Established in October 2012 with the support of the ECA and pilot associations in several EU Member States, most notably IAPLA, the RPG started life as a 'virtual international union' to demand 'professional treatment for professional pilots'. The RPG has been very careful to verify that all its members work for Ryanair as a previous organization – the Ryanair European Pilots' Group – was infiltrated and disrupted by management. The RPG decided to elect an Interim Council (June 2013) staffed by union officials co-opted from other European pilot associations, with one exception (Captain John Goss who has flown with Ryanair for 26 years) in order to avoid any possibility of victimization and dismissal until formal recognition has been secured.<sup>66</sup> Members of the Council have visited almost every Ryanair base across Europe to identify the main concerns of contract pilots in particular and build support for the RPG.

Ryanair has indicated that it will only consider recognition if and when the RPG has a majority of pilots in membership, a milestone it in fact reached in the first quarter of 2014, but has so far resisted any involvement of the RPG in local negotiations and has even threatened pilots with discipline if they wear the RPG lanyard with their ID pass. Despite this oppression, the RPG provides a network that connects pilots across Europe and is an important outlet for discourses of identity building and solidarity that are needed to create a 'we-feeling' and a sense of belonging to a common polity. Put differently, the RPG creates a



bridge across the horizontal spatial divide between workers' organizations in different countries where Ryanair has its bases. It also fords the vertical gaps in the international system between local, national and transnational levels of union organization and representation. Thus, while the RPG will deal with Ryanair on any pan-European issues, all pilots are also encouraged to join their local 'home base' pilots' association and almost two-thirds now hold 'dual membership'. As Erne notes, 'if there is to be a Europeanization of organized labor, it must take place not only in the EU-level structures but also within the respective national-, local-, and firm-level union organizations'.<sup>67</sup> The extension of the low cost model to long-haul (inter-continental) routes demands a further level of union organization.

The potential for 'flags of convenience' (FoC) on trans-Atlantic routes was the major concern of aviation unions when they persuaded US and EU officials to hold a forum on 'Liberalisation and Labour' in 2008, prior to the conclusion of the second stage of the US-EU open skies agreement.<sup>68</sup> These concerns led to the inclusion of Article 17 in the US-EU Air Transport Agreement, which states that: 'the opportunities created by the Agreement are not intended to undermine labour standards or labour-related rights and principles contained in the Parties' respective laws'. Nonetheless, aviation unions once again found themselves on the defensive as Norwegian Long Haul, a subsidiary of NAS, began flights from Oslo to New York and Bangkok in 2012 using two Irish-registered aircraft under a Norwegian AOC with contract pilots (Global Crew Asia, based in Singapore) and agency cabin crew (Adecco, based in Thailand), an interim arrangement permitted for a 12-month period under Norwegian regulations.<sup>69</sup> The subsequent creation of NAI, a new (FoC) airline with a 'crew of convenience', was therefore entirely predictable but the trade union response has been predominantly national and fragmented.

Initially, Parat (the Norwegian aviation union) raised its concerns with the Norwegian Ministry of Transport and Communications. The union questioned whether Asian crews would be allowed to work on flights within the EU as well as inter-continental routes and whether Norwegian authorities would still be responsible for background checks of aircrew. The Ministry subsequently wrote to the European Commission (DG Move) to highlight the fact that: ‘Discrepancies between national legislation within the EU/EEA may result in a non-level playing field, both on operations within the EU/EEA and on operations between EU/EEA and third countries’.<sup>70</sup> For example, crew working for an EU/EEA air carrier may ‘check in’ on day one at a formal ‘home base’ in a third country (typically South East Asia or the Middle East), after which they travel to Europe and work on flights between EU/EEA countries for ten days, returning to the ‘home base’ and ‘checking out’ on day twelve. If they are accommodated by the airline while in Europe and receive compensation for food expenses then the airline will circumvent the amendments to the new ‘home base’ rule (labor’s spatial counter-fix). In effect, therefore, the NAS strategy not only opens the inter-continental market to low cost competition from an Asian ‘crew of convenience’ but also the intra-European market, potentially undercutting even Ryanair. However, despite the threat posed to labor on both sides of the Atlantic there was very little concerted opposition to NAI’s application for an Irish AOC, certainly not at a supranational (EU) level. Nor was there any coordinated trans-Atlantic action, rather a largely separate and sequential campaign to prevent NAI obtaining a Foreign Air Carrier permit in the USA. While the Transport Trades Department (AFL-CIO) persuaded the House of Representatives to defer a decision on NAI’s application, this hardly constitutes the arrest of a ‘sky pirate’ or evidence of a ‘scale shift’ that denotes international democratization.

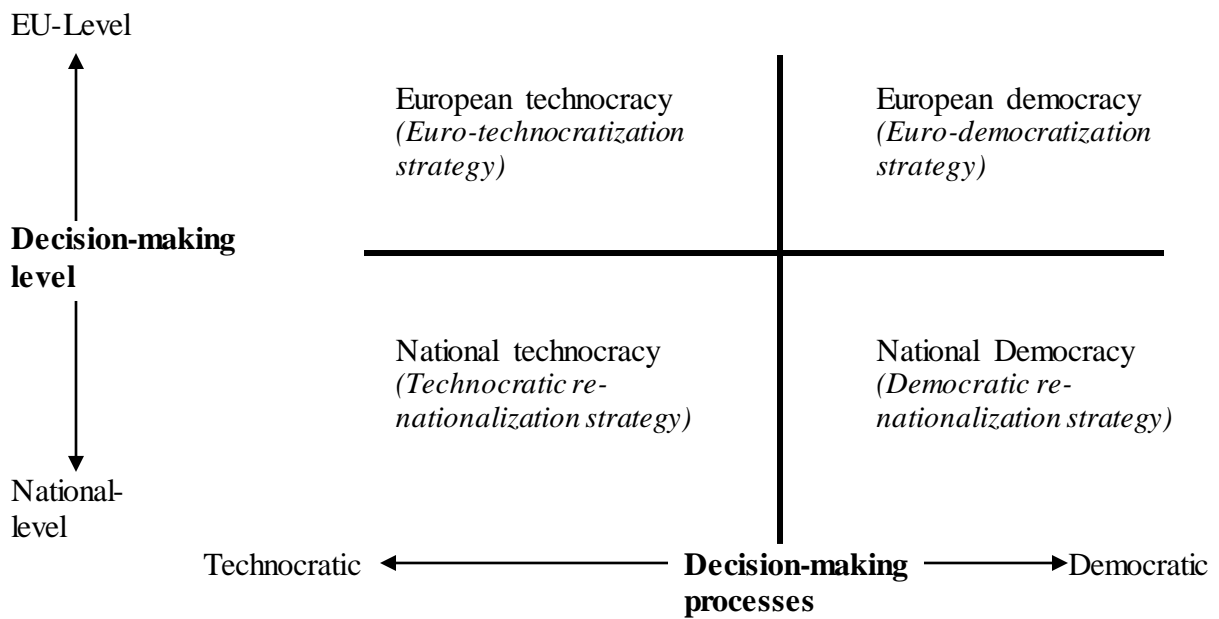
## **Conclusion**

In a SEAM where cracks have appeared as a result of LFAs innovative business strategies that exploit non-territorial sovereignty in order to reconfigure employment relationships and industrial relations, aviation unions have continued to focus predominantly on their national place rather than new European spaces opened up by the SEAM. They tend to view transnational activity, by and large, through the lens of challenges facing their national (flag) airline, neglecting to organize the many contract and temporary workers, domestic and foreign, who work for the LFAs. When they do turn their attention to the LFAs, they often find that national level strategies, whether democratic or technocratic, are easily deflected by airlines that have created new European spatial-juridical fixes to exert control over labor and extract surplus value.

LFAs in general, and the ‘sky pirates’ in particular, are far less embedded in national institutions and industrial relations when compared to trans-national corporations in other sectors such as manufacturing. To be sure, they still depend on the nation state for an AOC and are more than willing to exploit and export weak(er) systems of employment protection, social security and industrial relations via the ‘place of work’ (the aircraft). However, whereas manufacturing firms exploit labor as a ‘factor of location’ as well as a ‘factor of production’ (e.g. drawing on local traditions of work and skills in a particular economic activity), LFAs seek to ‘dis-embed’ labor from the country of origin and contractually distance aircrew from their ultimate employer. Even the new ‘home base’ – labor’s counter spatial-juridical fix – is unlikely to be the worker’s ‘natural home’. This makes union organization all the more difficult, certainly in the absence of a supranational strategy (a ‘scale shift’) that combines an engagement with EU institutions as well as the involvement of aviation workers in new transnational organizations and networks that can develop new repertoires of (disruptive) collective action. A strategy of institutional access (European technocracy), without direct

(democratic) action to back it up, or the force of argument without the argument of force, can lead to dependence and division, as the ETF has discovered to its cost. Euro-democratization, however, is still underdeveloped, suggesting there is little prospect, at least in the immediate future, of arresting the ‘sky pirates’ who plunder European skies and threaten to do the same over the Atlantic.

**Figure 1. European Actor Strategies**



Source: Erne, *European Unions*, 21.

## Endnotes

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- <sup>1</sup> Public Hearing on ‘Pirates of the Sky: The Corners Cut by Low Cost Airlines’, European Parliament, Brussels, 10 April 2014.
- <sup>2</sup> Lillie, ‘Bringing the Offshore Ashore.’
- <sup>3</sup> *Ibid*, 688.
- <sup>4</sup> Lindsay, ‘Organizational Liminality.’
- <sup>5</sup> Crane, ‘Modern Slavery.’
- <sup>6</sup> Turnbull, ‘Creating Markets.’
- <sup>7</sup> Erne, *European Unions*.
- <sup>8</sup> Streeck, ‘The Internationalization of Industrial Relations.’
- <sup>9</sup> *Ibid*, 429.
- <sup>10</sup> Lillie, ‘Bringing the Offshore Ashore’, 687.
- <sup>11</sup> Erne, *European Unions*, 24-5.
- <sup>12</sup> *Ibid*, 23-5.
- <sup>13</sup> Hyman, ‘Trade Unions’, 35.
- <sup>14</sup> Erne, *European Unions*, 192.
- <sup>15</sup> Amoore, ‘Work, Production and Social Relations’, 32-3.
- <sup>16</sup> Herod et al, ‘Working Space’, 253.
- <sup>17</sup> Herod, ‘From a Geography of Labor to a Labor Geography’, 3 (original emphasis).
- <sup>18</sup> Harvey and Turnbull, *Development of the Low Cost Model and Evolution of the Labour Market*. Both projects involved case studies of Europe’s leading LFAs and the latter also involved case studies of four major legacy airlines. The former project also involved a survey of 19 civil aviation unions affiliated to the ETF and the latter a survey of almost 3,000 civil aviation staff (flight crew, cabin crew and ground services).
- <sup>19</sup> Turnbull and Harvey, ‘The Impact of 11 September on the Civil Aviation Industry’; and Harvey and Turnbull, *The Impact of the Financial Crisis on Labour in the Civil Aviation Industry*.
- <sup>20</sup> For example, Blyton and Turnbull, ‘Confusing Convergence’; and Turnbull et al, ‘Cleared for Take-Off?’
- <sup>21</sup> Erne, *European Unions*.
- <sup>22</sup> Hyman, ‘Shifting Dynamics’, 145.
- <sup>23</sup> Rainnie et al, ‘Spatialising Industrial Relations’, 17.
- <sup>24</sup> Herod, ‘From a Geography of Labor’, 17.
- <sup>25</sup> Submission by Scandinavian Airlines (SAS) to US regulators on Norwegian Air International’s application for a US Foreign Air Carrier permit, reported in *Airline Business*, April 2014.
- <sup>26</sup> Lazonick, *Business Organization*, 148.
- <sup>27</sup> *Ibid*, 199.
- <sup>28</sup> *Airline Business*, November 2013.
- <sup>29</sup> Michael O’Leary, quoted in *The Telegraph*, 7 November 2012.
- <sup>30</sup> Harvey and Turnbull, *The Development of the Low Cost Model*, 15.
- <sup>31</sup> [www.centreforaviation.com](http://www.centreforaviation.com)
- <sup>32</sup> Barrett, ‘The Sustainability of the Ryanair Model’, 93.
- <sup>33</sup> 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>34</sup> In the case of flight crew these Committees exclude all contract (agency) and self-employed pilots.
- <sup>35</sup> Wills, ‘Subcontracted Employment’, 444.

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<sup>36</sup> The world's three major alliances – Star, SkyTeam and oneworld – account for two-thirds of global airline capacity.

<sup>37</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.

<sup>38</sup> Harvey and Turnbull, *Evolution of the Labour Market*.

<sup>39</sup> Ryanair, for example, recently announced that it will target all major European airports except London-Heathrow, Paris-Charles de Gaulle and Frankfurt as it cannot guarantee a 25 minute aircraft turnaround time at these airports.

<sup>40</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.

<sup>41</sup> Lillie, 'Bringing the Offshore Ashore', 688.

<sup>42</sup> Crane, 'Modern Slavery'; and Lindsay, 'Organizational Liminality.'

<sup>43</sup> Herod, 'Organizing Globally', 97.

<sup>44</sup> Erne, *European Unions*, 21.

<sup>45</sup> *Ibid*, 20.

<sup>46</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 favor of recognition with 94 against.

<sup>47</sup> O'Sullivan and Gunnigle, "Bearing all the Hallmarks of Oppression".

<sup>48</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 labor 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>49</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*.

<sup>50</sup> In October 2013, Ryanair was fined €8m in fines and damages for not respecting the French decree law of 2006 (for the period 2006-10).

<sup>51</sup> Commercial pilots, for example, typically qualify with around €80,000 to €100,000 debt. Their initial training with Ryanair for B737-800 aircraft will add an additional €28,500 and is expected to be paid in advance.

<sup>52</sup> Michael O'Leary, *Aktuelt*, 13 April 2013.

<sup>53</sup> <http://www.newsinenglish.no/2013/04/11/authorities-una-ware-of-ryanairs-base/>

<sup>54</sup> Mr. Justice Thomas Smyth quoting Isabella in Shakespeare's *Measure for Measure*.

<sup>55</sup> Freedom of Association Committee (Case No.2780) and Governing Body (GB.313/INS/9).

<sup>56</sup> Tarrow, *The New Transnational Activism*, 121.

<sup>57</sup> Erne, *European Unions*, 24.

<sup>58</sup> The *Comité syndicales des transports dans la Communauté européenne* (CSTCE), was established in 1958 and became the ETF in 1999.

<sup>59</sup> *Guidelines on the relationship between the Committee of Transport Workers' Unions in the European Community and the International Transport Workers' Federation*, ITF Circular No.65/A.12, March 1994.

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<sup>60</sup> Erne, 'The Politics of European Unions', 212.

<sup>61</sup> Comitology refers to the use of technical committees and/or expert policy networks in the EU decision-making process.

<sup>62</sup> Hyman, 'Trade Unions', 27.

<sup>63</sup> The ECA is the European federation for professional pilot associations in Europe.

<sup>64</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>65</sup> <http://www.itfglobal.org/campaigns/ryan-be-fair.cfm>

<sup>66</sup> Captain Goss, who was a former Ryanair Flight Safety Officer, was dismissed in August 2013 after he was the only pilot to appear on a Channel 4 Dispatches documentary ('*Ryanair: Secrets from the Cockpit*') that raised concerns about the airline's safety policies (other pilots were voiced by actors in the program). In a recent survey of more than 1,100 RPG members (March 2014), more than one-in-ten respondents indicated that they were prepared to stand for election to the RPG Council.

<sup>67</sup> Erne, *European Unions*, 5.

<sup>68</sup> [http://ec.europa.eu/transport/air/events/2008\\_12\\_03\\_int\\_us\\_prog\\_en.htm](http://ec.europa.eu/transport/air/events/2008_12_03_int_us_prog_en.htm)

<sup>69</sup> During the interim arrangements, NAS applied for an amendment to Norwegian immigration legislation (the requirement for employees from outside the EU/EEA to hold a residence permit), which was refused.

<sup>70</sup> Letter dated 15 January 2014.

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