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Trans-national Representation and Collective Bargaining in Europe: The Pilots' Approach



European Cockpit Association – *Piloting Safety*



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Trans-National Representation and Collective Bargaining in Europe - The Pilots' Approach

ECA TNA Seminar
9–11 May 2007, Brussels



European Cockpit Association

**Trans-National Representation and Collective
Bargaining in Europe - The Pilots' Approach**

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Foreword



Capt. Martin Chalk, ECA President

The European aviation market is a reality. Over three days, representatives from European pilot associations discussed their place in this new open market. The conclusion is a clear message to the EU Institutions and to the Member States: pilots need a framework where they can interact effectively with trans-national airlines in the European civil aviation market.

The discussions showed that, in the absence of this framework, pilot associations should adapt to the new situation and find appropriate solutions to represent their members in the best possible way. However, these measures cannot be fully effective without a system that guarantees the enforceability of agreements, and this can only come from a set of rules defined by the decision-makers.

This publication contains a summary of the discussions of the seminar and is addressed both to the EU decision-makers and to pilot representatives. We hope it will help them to understand the need to act at different levels to complete the economic liberalisation with adequate social tools and to move forward.

By publishing this document, we also wish to share with other professional associations the results of our discussions. We believe that by sharing information on needs and best practices, professional associations can improve the current situation of under-representation of workers in the open EU market.

I hope you enjoy reading our publication – and discovering the conclusions of our work; as well as great success in the passionate work of building a more social Europe!



Martin Chalk
ECA President

Executive Summary

You will find in this report a summary of the ideas debated during the Seminar that the European Cockpit Association (ECA) organised, with the support of the European Commission, from the 9th to the 11th of May 2007.

The Seminar was entitled “Trans-national Collective Representation and Bargaining in Europe – The Pilot’s Approach”. Forty-five representatives of airline pilot associations participated to the seminar, which counted with the intervention from 13 speakers coming from the European Institutions, the pilot associations and from other sectors.

The seminar combined contributions from the speakers and participation of attendees during both panel discussions with the invited speakers and small group workshops focused on specific aspects of trans-national collective bargaining. We have compiled in this report the result of this fruitful interaction.

This report is divided in three parts:

- **Part 1** reflects on the reasons why a seminar like this was organised. The seminar discussed basic questions like the need for collective bargaining at a level that goes beyond the national borders of current agreements, the applicability of the perceived benefits of national collective bargaining to trans-national bargaining, and finally, why it is necessary to have “a pilot approach”.

- **Part 2** sets out the political context in which industrial relations evolve and analyses the political strategy the pilot associations could follow within this framework. The Commission's initiative for a voluntary framework for trans-national collective bargaining is addressed and acknowledged. This part shows also the high expectations that pilot associations have from the European Institutions which contrasts with the current blockage of European projects on this area.
- **Part 3** develops ECA's industrial strategy and that of its pilot associations. Given the complexity of the political and legal framework and the extended timeframe for any significant political initiative on trans-national collective bargaining at the European level, pilot associations realise the need to take immediate action. A series of actions are proposed to engage other stakeholders in a process that may translate to new forms of trans-national representation and collective bargaining.

Part 1. Introduction and Background

1.1 A Changing Industry in a Changing World



*George Karambilas,
ECA Professional Director*

Why organise a seminar on trans-national airlines representation and collective bargaining? As stated during the Seminar, this initiative responds mainly to a request from ECA's Member Associations who see the need to adapt to the changes of the industry, to discuss and look in to the future of the profession of airline pilots.

ECA's Member Associations present in the Seminar observe that the industry is changing as a result of the liberalisation of the European Aviation Market. Airlines are no longer "national." Some European companies have opened permanent bases out of their State of origin and some trans-European mergers have started to take place. The conclusion of agreements between the EU and third countries, especially the US and the East European countries, indicate that the airline industry is already on the train of globalisation.

The expansion of the airline business over national borders may be driven by simple commercial considerations or by the fact that individually the states and their markets are not large enough to support an international airline.

Faced with these changes pilot associations ask themselves several basic questions: Where do you pay your tax, social security and pension contributions? Which employment legislation applies? And finally, where do you bargain?

Liberalisation has opened up the market, creating real opportunity for new airlines to emerge, giving passengers more alternative routings and options. However, liberalisation has also increased the pressure on cost cutting. Some airlines have adapted in a determined and aggressive way, seeking continuously to reduce costs with a ruthless attitude for all actions that serve their business interests. In these airlines, collective bargaining is the only mechanism to avoid a downwards spiral of pilots' terms and conditions and indeed their basic employment rights. The big question here is how to ensure that collective bargaining happens in this hostile environment?

All this is taking place at a time when the environment of industrial relations in general is changing. An important lesson of history is that major changes in the world of work call for new forms of legal regulation. The violent confrontations from the times of the industrial revolution were settled by the setting up of a legislative framework that encouraged collective agreements and established workers' employment rights within the nation state. Over the years, this framework has served European Member States very well, creating industrial peace and prosperity. The globalisation and liberalisation of business, while bringing economic growth, is now challenging the efficacy of these different legal frameworks.

Workers' rights and collective bargaining needs to be re-established in relation to the global corporations that now dominate the world economy.

Since EU is now one of the largest markets and regulators in the world, ECA's Member Associations see clearly how liberalisation is challenging the current balance of powers between the social partners and seek appropriate changes to redress the situation. The European Challenge is to establish rules to prevent social dumping, which is created as a result of the fact that social legislation is lagging behind liberalisation.

1.2 Benefits of Collective Bargaining Apply to TNA

The Pilot Associations are great believers in the utility of the tool "collective bargaining", even in the trans-national context. It appeared very clearly to the participants to the Seminar that collective bargaining is the most effective tool to redress the balance of powers between employees and managers. Basically, it was concluded that all the benefits from national collective bargaining apply to the trans-national mode, to a greater or lesser extent, and that there should be no barriers for collective bargaining at any level.

Some agreements have been made and best practices are being developed by Member Associations. However many barriers exist and Pilot Associations ask for strategies both at industrial and political level to have these barriers removed.

1.3 Uniqueness of Pilot Associations

Ideally, pilots see the new context of trans-national collective bargaining allowing specific categories of workers such as flight crew to negotiate international contracts. This preference can be explained by historical, professional and strategic reasons.

Pilots have been organised since the beginning of aviation and have made a considerable contribution to the development of the industry.

“*The history of pioneering pilots has been entertained in the course of aviation history through the commitment of pilots to improve their flying machines and increase safety.*”

Still today pilots contribute directly to the evolution of aviation and have a number of committees on different aspects of aviation, from the design of the aircraft and the airports to the training and human performance of pilots.

Like doctors or lawyers, the vocational nature of the job and the responsibilities linked with their license has created a strong professional identity.

“*Issues like seniority, training, instruction, and rosters are technical and safety issues that are regulated through legislation but also through collective bargaining.*”

Pilots have traditionally prepared themselves to address these issues both with their national civil aviation authorities and with their employers.

As a result of this background, Pilot Associations are well established and enjoy a relatively high membership density when compared to other groups of civil aviation staff. This strength places pilot associations in a strong position to negotiate separate collective agreements or dedicated parts of more general collective agreements that address the specific needs of a special category of highly specialised mobile staff. An effective trans-national collective bargaining framework should allow the continuation of this type of relationship between the pilots and their employers.

Part 2. Political Strategy



*Professor Peter Turnbull,
Cardiff University*

ECA and its Member Associations recognise that any political strategy to secure an international (European) framework for collective bargaining will be a long-term process. In the immediate term, ECA and pilot associations will continue to consolidate and develop their emerging industrial strategy, which is outlined in Section 3 of this report.

While the industrial strategy is certainly more pressing, an appropriate political response to recent Commission initiatives could also bear fruit in years to come.

2.1 The Political Framework

2.1.1 The Case for Political Action

According to the Commission, a voluntary framework for transnational collective bargaining would enable the social partners to improve productivity and quality through more intensive cooperation between economic players.

The Social Agenda for 2005-2010¹ maintains that:

“*Providing an optional framework for trans-national collective bargaining at either enterprise or sectoral level:*

- *could support companies and sectors to handle challenges dealing with issues such as work organisation, employment, working conditions, training,*
- *it will give the social partners a basis for increasing their capacity to act at trans-national level. It will provide an innovative tool to adapt to changing circumstances, and provide cost-effective trans-national responses.*

”

Such an approach is firmly anchored in the partnership for change priority advocated by the Lisbon strategy and is consistent with the principles of “regulated self-regulation” applied to other areas of trans-national industrial relations such as European Works Councils (EWCs), Sector Social Dialogue (SSD) and the provisions for employee participation in European Companies (SEs). The three basic principles of “regulated self-regulation” are:

- (1) providing for subsidiarity,
- (2) establishing procedural rules and an enforceable set of minimum provisions, and
- (3) offering flexibility of regulations.

¹ (COM (2005) 33 final)

Despite the potential benefits to all parties from a European framework to support trans-national collective bargaining, the prospect of any positive developments in the immediate future appears weak in the face of concerted employer opposition, a “mixed” response from Member States, and apparent “indifference” within some sections of the trade union movement. ECA and its Member Associations cannot afford to be indifferent or inert. Liberalisation of the European civil aviation industry has already opened the internal market to low cost airlines and created the potential for social dumping. As Capt. Neil Johnston (IALPA) demonstrated at the ECA Seminar, trans-national airlines such as Ryanair, which operates eighteen bases in eight different Member States, enjoy unparalleled scope to play one group of pilots off against another. The result has been a marked deterioration in the terms and conditions of Ryanair pilots. This has had a further negative effect on the terms and conditions of many other European pilots.

The EU-US “open skies” agreement further extends the geographical and (de)regulatory scope for trans-national airlines (TNAs) to drive down labour and other social costs. This will further widen the gap between (market-making) economic policies and (market-correcting) social policies, contrary to the Lisbon agenda. At the ECA Seminar, pilot associations unanimously welcomed the prospect of a voluntary framework for trans-national collective bargaining within the EU. However, they also called for any voluntary framework to be just the first stage of progress towards a mandatory system. The most common phrase used by delegates was that any proposed framework “needs teeth”.

2.1.2 From a Voluntary to a Mandatory System of Trans-national Collective Bargaining

Previous experience demonstrates that the social partners in general, and employers in particular, are more likely to reach agreement when they operate “under the shadow of the law” (i.e. the social partners are in no doubt that the Commission will take legislative action if voluntary negotiations fail). In the transport sector, for example, the shadow of the law was cast over negotiations on working time to significant effect. If a European framework for trans-national collective bargaining is to be established, the social partners will need the Commission, as always, to be the “prime mover” in the political process.

In its relationship with Member States, the Commission has often pursued a “divide and conquer” strategy whereby it uses its legal obligations and rights under the Treaty to “single out” member States that might vote against Commission interests in a Council negotiation and requests them to adapt parts of their national situation. Alternatively, and more appropriately in the current situation, the Commission can work towards change by proposing a comprehensive reform that puts pressure on Member States and other stakeholders to propose alternatives.

“*The advantage of allowing the social partners to determine a “lesser evil” position in relation to trans-national collective bargaining would be that such an approach is consistent with the principles of “regulated self-regulation”, which is widely favoured by employers and most Member States.*”



Christian Welz, European Foundation for the Improvement of Living and Working Conditions

The EWC Directive, which was discussed in some detail at the ECA Seminar by Christian Welz, offers a useful comparison. This Directive was a multi-stage process demarcated with deadline dates and specific negotiation rules. This created increasing pressure on the social partners and Member States to conclude agreements and transpose the legislation.

In effect, Article 13 of the Directive created a process of “politically enforced voluntarism”, which led to a significant number of EWCs being established before September 1996 because they could remain in force after that date as long as they satisfied certain minimum standards. This provided greater flexibility for the social partners to establish “tailored” arrangements to suit the company’s own organisation and the interests of employees. A similar approach could be adopted for the introduction of a European (voluntary) framework for trans-national collective bargaining.

2.1.3 Progress without Political Support?

Through their industrial activities, several pilot associations have already negotiated trans-national collective agreements with progressive trans-national airlines, demonstrating that some airline managements, however grudgingly, accept the benefits of such agreements (e.g. the minimisation of

transaction and administration costs, harmonisation of terms and conditions of employment, legal certainty, equality of opportunity, more effective communications and consultation, exchange of information, and a stronger corporate identity). Several examples of “best practice” were presented at the ECA Seminar (KLM-Air France Pilots Agreement, CHC Helicopters and NAUTILUS in the maritimes sector). More widespread coverage, however, especially if it is to extend to trans-national airlines who practice social dumping rather than social justice, will depend on concerted political action.

“ *Political action must therefore go hand-in-hand with the industrial strategy articulated in Section 3.* ”

The proposed political strategy arising from the ECA Seminar is addressed primarily to the Commission and other institutions of the EU, but it will also consider the role of TNAs and pilots’ own representative organisations (i.e. pilot associations, ECA and IFALPA). In many situations, it appears that other parties will only consider the force of pilots’ argument in favour of trans-national collective bargaining when they are concerned about the employees’ ability to impose costs on the airline and/or passengers. Put differently, the “force of argument” is conditional, at least initially, on the “argument of force”.

2.2 Future Political Strategy

While industrial activities (Section 3) typically rely on the mobilisation of membership – engaging pilots in campaigns of action to support contract negotiations, share information, participate in education and training programmes and the like – political activities usually require trade unions to adapt their aims and methods to the decision-making processes they face. These activities, such as lobbying, social dialogue, commissioning research, disseminating information, formulating policies and the like, are more likely to involve union officials, whether at the local, national or international levels.

Having said this, both ECA and pilot associations recognise that it is also imperative to involve their general membership in political campaigns, especially where concerted international action is called for.

“During the Workshop discussions at the ECA Seminar, delegates affirmed that conventional forms of national action can still be effective (e.g. collective bargaining, strikes, lobbying national politicians, etc) even, on occasion, in relation to TNAs.”

However, they also recognised the need for more unconventional forms of international action, especially in relation to the institutions of the European Union.

2.2.1 European Institutions

The route into the Council of Ministers is via national representation, so pilot associations need to lobby their respective ministers for transport, labour/social affairs and other relevant departments in order to promote their interests in the Council. Conventional, national level action is most appropriate in these circumstances, but these activities will be more effective if they are coordinated by ECA, with pilot associations seeking a “common position” or at least comparable standards.

When dealing with the Commission, conventional action at the international level becomes more important, as does the role of ECA. The Commission values expert opinion and research-based evidence, which means that it is open to formal lobbying by representative European organisations such as ECA. It is vital for ECA to collate information from the Seminar, with supporting documentation, to present to the Commission (the importance of this activity was highlighted by Stephen Hughes MEP and both Jackie Moran and Ellen Durst of DG Employment, Social Affairs and Equal Opportunities). The Commission is strongly committed to social dialogue and would welcome contributions from ECA and other European industry federations on the “value added” of trans-national collective bargaining.

An effective framework for trans-national collective bargaining should include:

- a clear timetable that ultimately casts a shadow of

legal compulsion on TNAs and other trans-national corporations (i.e. a voluntary framework is acceptable in the short term but a clear timetable should be established for a mandatory system)

- criteria to establish “representative organisations” who can participate in trans-national bargaining
- guidelines on the issues that can be subject to negotiation at the trans-national level, including wages and other terms and conditions of employment
- a system of legal enforcement at the European level (e.g. an EU arbitration and dispute resolution procedure with the European Court of Justice extending its remit to collective aspects of employment and contract enforcement)
- protection of national collective bargaining systems (any European framework should be complementary to national collective bargaining and should neither interfere with existing national arrangements nor diminish their existing functions, based on the “non-regression” principle)
- flexibility to allow specific occupational groups with specialist skills, such as pilots, to negotiate separate agreements within TNAs.

The European Parliament is the only democratically elected decision-making body in the EU. As such, it is more open to “political alliances” (along official party lines) and there are many MEPs, such as Stephen Hughes, who would strongly support a robust framework for trans-national collective bargaining. In addition, the Parliament is susceptible to “unconventional” activities as MEPs are often swayed by the “argument of force” (e.g. mass protests or “Euro-strikes” that demonstrate the capacity of organised labour to inflict significant costs on the European as well as national economies).

Under the co-decision procedure, the Parliament now exerts a much greater influence on the legislative process. Therefore, ECA needs to develop stronger links with individual MEPs as well as various political groupings. In addition, ECA needs to develop its own capacity to organise more unconventional activities at the European level. Arrangements already exist for such activities to be coordinated with IFALPA, adding further weight to this particular facet of the political strategy.

2.2.2 Trans-National Airlines (TNAs)

Employers have found that lobbying, rather than social dialogue, is a more effective means of pursuing their interests at the European level. To reiterate, employers, as a group, will only negotiate if the Commission threatens to legislate, although progressive employers already appreciate the advantages of trans-national collective bargaining and have entered into constructive negotiations with pilots’ associations (see Section 3).

Whereas trade unions favour integration, harmonisation and appropriate minimum standards, employers favour minimal regulation, subsidiarity and decentralisation. Pilot associations are content to deal with progressive TNAs through existing and innovative arrangements developed by the social partners, but unlike employers they cannot so easily live with a high degree of organisational fragmentation within a “deregulated space”. Herein lies the source of social dumping, which ultimately undermines the more progressive industrial relations and human resource management practices of TNAs who have already concluded international agreements with pilot associations.

The reluctance of employers to engage in social dialogue, and their hostility towards even a voluntary framework for trans-national collective bargaining, reinforces the importance of ECA’s political strategy towards the European institutions.

“ *ECA and its pilot associations need to match the employers’ lobbying activities and establish a more forceful and persuasive argument in favour of trans-national collective bargaining.* ”

An important way to do this is through the dissemination of good practice, highlighting the benefits or “value added” of trans-national collective bargaining and setting precedents for more widespread international coverage via “quick wins” (see Section 3).

Through these industrial activities the ECA can help the Commission to (re)frame the current political debate and establish a stronger base of support in favour of a European framework for trans-national collective bargaining. This is just one of many synergies that ECA will need to forge between its industrial and political strategies.

2.2.3 Union Organisation

Pilots already satisfy many of the “preconditions” for effective international trade unionism. ECA is a “comprehensive” organisation with 31 pilot associations in 23 of the 27 EU Member States (and all the candidate countries) and a total affiliated membership in excess of 36,000. In addition, ECA enjoys “external recognition” by other international agencies, the European social partners and the Commission, and unlike many other international trade union federations the Association is not hamstrung by the excessive costs of international communications (e.g. translation costs) and meetings (e.g. travel within the EU is relatively inexpensive).

However, despite relatively high union density within most pilot associations, in several countries there are “rival” pilot associations and in other cases questions of coordination and affiliation to address where the pilots’ association is company based (and affiliated to a national federation) as opposed to being nationally organised. Moreover, some pilot associations are “professional associations” as opposed to trade unions (under the terms of the relevant national legislation) which raises questions about their ability to engage in coordinated (international) action without the protection of the law.

In addition, there are important issues to consider in relation to the coordination of activities between pilot associations with members in the same TNA as well as between pilot associations and ECA and between ECA and other international union bodies. These myriad relationships are considered in turn.

The questions posed by TNAs for individual pilot associations will be addressed in the Industrial Strategy (Section 3). However, internal debates on possible rule changes, dual membership and the like should help to raise awareness among the pilot community of the challenges presented by TNAs and the need for a European framework for international collective bargaining, highlighting yet again the synergies between industrial and political activities.

The “natural” way to build stronger political as well as industrial ties between pilot associations, at least in the first instance, will be within TNAs (as demonstrated in the case of Air France/KLM). *Such arrangements require political compromise as well as industrial solidarity to be effective.* Appropriate mechanisms for such cooperation are suggested in Section 3.

At the Seminar, the relationship between ECA and pilot associations in their dealings with TNAs was most frequently described using terms such as “coordination” and “facilitation”. In other words, most pilot associations look to ECA to help “connect” them to other pilot associations, to expedite the exchange of information, and to build solidarity.

However, what also became clear at the Seminar is that while pilot associations need to become more involved in political activities, ECA may need to become more involved in industrial activities. This will require a positive mandate from pilot associations and might include activities such as coordinating campaigns by pilot associations directed towards relevant government departments within their own national borders or organising similar campaigns directed towards the institutions of the EU.

In general, national trade unions have been reluctant to give their respective European Industry Federation (EIF) a collective bargaining mandate. Member Associations of ECA are therefore not unusual in this respect. What is unusual, however, is the threat posed to pilots by TNAs, which is arguably far greater than the threat faced by workers in other industries where trans-national corporations play a leading role.

Other European Industry Federations (EIFs) have developed “coordinated collective bargaining” strategies (e.g. European Metalworkers’ Federation) as a “second best” option to direct collective bargaining with trans-national corporations.

“*ECA could explore the potential for similar strategies in the civil aviation industry and in any event should examine the political and industrial strategies of other EIFs to determine whether other trade union “best practice” could be emulated.*”

The strategy developed by Nautilus, for example, is an obvious case in point (e.g. a specialist “officers” union which has simultaneously developed a new international organisation – combining British and Dutch seafaring unions – and a separate identity from the predominant international federation – the International Transport Workers’ Federation – in order to protect the interests of the profession).

The existing work of ECA in relation to research, lobbying, disseminating information, etc, is strongly supported by pilot associations and is expected to intensify. This raises questions about the resources available to ECA and the composition of its staff. Simply put, does ECA need more resources and should the Association employ specialists with a background in civil aviation if it is to become more involved in industrial as well as political activities?

Finally, there is the relationship between ECA and other international union organisations to consider. At the ECA Seminar, Erica Young of the ETF called for closer cooperation between pilots and other employee groups within the same national airline as well as TNAs. ECA and its Member Associations, in contrast, favour occupationally-based collective bargaining for pilots within national airlines and TNAs, given the highly skilled nature of pilots work and the peculiarities of their profession.

While these differences might affect the industrial strategy of the respective international organisations, they should not diminish cooperation in the political arena directed towards a new framework for international collective bargaining.

Similar arguments apply to ECA's relationship with the ETUC. If other EIFs are indeed "lukewarm" in their support for a European framework for international collective bargaining, then ECA must impress upon the ETUC the specific needs of mobile transport workers and the importance of a Commission Directive to protect these workers within the internal market.

Part 3. Industrial Strategy



*John Moore, Principal Negotiator
of British Airline Pilots'
Association (BALPA)*

The ECA Seminar and in particular the three workshops were successful in identifying and prioritising (1) the key challenges presented by trans-national airlines and (2) potential solutions to these problems.

This section focuses on the potential solutions. The overriding aim is to provide individual pilot associations with the resources they need to help them develop industrial strategies for organising and representing members in trans-national airlines (TNAs).

3.1 Potential Solutions - Using Existing Industrial Tools to Maximum Effect

As stated in Section 2, a voluntary European legal framework for collective representation and bargaining is still a long way off. The existing, piecemeal European legal framework for trans-national representation and collective bargaining is confusing and often contradictory.

In view of this, pilot associations should concentrate on using existing industrial tools to maximum effect. In light of recent developments – BA joining the private equity consortium bidding for Iberia; BA and Virgin Atlantic announcing direct

services between US and mainland European destinations and the possible opening of mainland European bases – it is essential that pilot associations adopt a proactive attitude. We cannot afford to wait around for a European legal framework that may take years to develop.

Solutions/Action Points

Develop and extend existing national bargaining arrangements (between national pilot associations and TNAs) to the trans-national level. These bargaining arrangements will usually be separate from other staff groups. To help pilot associations establish effective arrangements at trans-national level ECA needs to:

3.1.1 Establish a “Best Practice” Database

Establish a “best practice” database containing detailed examples of existing trans-national arrangements in civil aviation, including:

- Air Dolomiti
- Air France-KLM
- easyJet
- CHC helicopters

The Database should include, *inter alia*,: summary of existing TNA arrangements; copies of TNA agreements, CLAs and individual employment contracts.

3.1.2 Monitor Developments

Monitor Developments in Trans-National Representation and Collective Bargaining.

3.1.3 Provide Practical Advice

Provide practical advice and, if necessary, specialist support to help pilot associations use existing industrial tools effectively. Assist pilot associations in developing co-ordinated collective bargaining strategies, possibly drawing on the experience of other European Industry Federations such as the European Metalworkers' Federation (EMF).

3.1.4 Employment Protection/Scope Issues

Provide practical advice regarding employment protection/scope issues. We anticipate that more and more pilot associations will need to address the challenges of (i) trans-national consolidation (more cross-border mergers and acquisitions) and (ii) the organic expansion of existing TNAs like Ryanair and easyJet into new European and possibly non-European countries. Protecting the employment and career opportunities of existing and future members will therefore be a priority for pilot associations.

3.1.5 Develop a “Quick Win” Strategy

Develop with pilot associations a “quick win” strategy of targeting “progressive” TNAs/employers and seeking to establish a number of “model” TNA agreements as quickly as possible. This could include organising a briefing session for TNAs/employers in conjunction with supportive MEPs, national politicians, and other European Industry Federations.

These “model” TNA agreements could then be used as blueprints by other pilot associations attempting to establish TNA arrangements.

3.1.6 Promote the Importance of a “European Voice”

Promote the importance of a “European voice” and solidarity between pilots working for the same TNA. This can be done by developing the identity of existing TNA groupings through branding, posters, stickers, articles in pilot associations journals/magazines, media activity, etc.

3.1.7 Organise (TNA) Training Course(s) for Pilot Associations Reps

Training is necessary, among others, to raise awareness, to inform on developments within the aviation industry or in other sectors, to define strategies and share best practices.

3.1.8 Review Existing ECA TNA Representation Policy

We also need to ensure that our TNA objectives do not conflict with other ECA policies and initiatives.

3.1.9 European Works Councils (EWC)

Using EWCs as a vehicle for flight crew collective bargaining was not seen as the way forward, especially as existing arrangements do not guarantee any formal trade union role. However, seminar participants did recognise the potential value of EWCs for information exchange and consultation. It might be possible to develop the role of EWCs to deal with important non-bargaining issues.



Stephen Hughes, Member of the European Parliament

At the same time, participants felt that EWCs are often toothless and are therefore bypassed by employers as Stephen Hughes (MEP) pointed out during the seminar. With these caveats in mind, ECA should encourage Pilot Associations to (i) actively participate in and strengthen existing EWCs where they exist and (ii) encourage the establishment of new EWCs where appropriate (only a handful for European airlines currently have an EWC).

It was also noted that in some trans-national companies (e.g. Bosch, BMW, Daimler Chrysler, EADS, GEA, Leoni and Volkswagen) EIFs and EWCs have moved beyond information exchange and consultation and have worked together to negotiate collective agreements. However these are usually framework or procedural agreements rather than substantive agreements covering “hard” issues such as pay and benefits. ECA should, nonetheless, monitor developments in this important area.

3.1.10 Provide List of Existing TNA Issues/Problems to the Commission

It is important to provide the Commission with relevant information on existing TNA agreements and the problems faced by pilots who work for these companies. Such information is vital for the future development of future EU social policy.

3.2 Potential Solutions - Develop New Legal and Industrial Tools Using Existing Legal and Industrial Framework

Although ECA and pilot associations should concentrate on using existing industrial tools to maximum effect we also urgently need to start developing new industrial and legal tools (within the existing legal/industrial framework) for organising and bargaining at trans-national level. As this is a global issue ECA will be working closely with IFALPA. Potential new tools/action points are set out below.

3.2.1 Develop concept of “Holding Pilot Associations”

The establishment of a “Holding Pilot Association” would be strictly voluntary between individual pilot associations. Taking Air Dolomiti as an example, VC and ANPAC would form the “Air Dolomiti Holding Pilot Association”. Conceptually, this would be similar to an EU company (“SE”) under the European company statute. The “Air Dolomiti Holding Pilot Association” could represent members and conduct collective bargaining in Germany and Italy but would be subject to only one set of legal rules (German) covering representation, collective bargaining, CLAs (including enforcement of CLAs). It would be the main body for negotiating with Air Dolomiti.

“Holding Pilot Associations” would be based on a clear non-regression principle. In other words, they should complement but not undermine or supersede any existing national representation or bargaining arrangements. Nor should they change or undermine any existing ECA affiliation arrangements.

The primary role of ECA will be to facilitate and co-ordinate the establishment of “Holding Pilot Associations”.

3.2.2 Role of ECA

It was noted that in other trans-national situations union federations have been given executive authority to negotiate on specific issues: e.g. the ITF sets minimum rates/standards through direct negotiation with IMEC (employers association) in the “flag of convenience” maritime sector. However, it was generally felt that **ECA should not take on a direct negotiating role**. It might, nonetheless, be desirable for

- (i) ECA officers to support negotiations where necessary and when requested by individual pilot associations and
- (ii) ECA to nominate an officer with specific responsibility for TNAs.

However, this is an ECA policy issue and therefore beyond the remit of the Seminar. If necessary it needs to be considered by the ECA Board/Conference.

3.2.3 Incentives for Employers

As stated in 3.1.5 above, ECA and affiliates need to work more closely with progressive employers and, among other things, identify the incentives TNAs would need to encourage them to recognise a “Holding Pilot Association”.

“ *One potential incentive for trans-national employers would be industrial and legal clarity.* ”

In other words, they would only have to negotiate one collective agreement with one “Holding Pilot Association” and would be subject to only one set of legal rules covering collective representation and collective bargaining.

A well integrated “Holding Pilot Association” would be in a better position to explore which kind of action (industrial or similar) is possible or adequate to the needs of its members when interacting with their employers.

3.2.4 Pilot Associations Co-operation in TNAs Created Through Merger or Acquisition

In situations where two or more PAs find themselves working together as a result of a cross-border merger or acquisition (e.g. Air France-KLM and Lufthansa-Swiss), we should establish the following principle to, among other things, promote the importance of a “European voice” and solidarity between pilots:

“*During any interim period – in which collective representation and bargaining continues on a national rather than trans-national basis – representatives from each pilot association should attend national negotiating meetings, if necessary as observers. Taking Air France-KLM as an example, a VNV Rep should be encouraged to attend negotiating meetings between SNPL and Air France and vice versa.*”

3.2.5 Enforceability of Individual Employment Contracts

We need to address the problems that are created when pilots working for the same TNA are employed on individual employment contracts governed by different national law. This is confusing and time-wasting and is being used by unscrupulous employers to impede our ability to represent our members.

ECA should therefore assess possible solutions using the Rome Convention on contractual obligations and other relevant EU law. One option might be to exploit the legal rule which states that the signatories to an employment contract may choose the law applicable to the whole **or a part only** of the contract and select the court which will have jurisdiction over disputes.

This choice must not, of course, be at the expense of the protection of the employee. Taking Netjets as a practical example, we could seek to establish an arrangement whereby:

- all contractual matters are covered by Portuguese law and enforced in a Portuguese court with assistance from APPLA;
- all statutory matters (unfair dismissal, sex/race discrimination, etc) are covered by the law of the member state in which the pilot is based (France, UK, etc) with assistance from SNPL, BALPA, etc.

3.2.6 Conciliation and Arbitration at European Level

Disputes between the social partners will inevitably arise at the trans-national level, just as they do at national and local levels.

Under a voluntary framework for trans-national bargaining, an optional system of conciliation and/or arbitration would help resolve disputes between employers and pilot associations and avoid damaging industrial action. Stephen Hughes MEP called for precisely such arrangements during his speech at the seminar.

ECA should therefore explore the possibility of introducing a voluntary system of third-party intervention at European level with a view, over time, to establishing a mandatory system of conciliation and/or arbitration.

3.2.7 Legal Enforcement of Collective Agreements

Again, Stephen Hughes MEP expressed the view that the European Court of Justice should be ultimately responsible for the legal enforcement of transnational arrangements/agreements. This would need to be addressed as part of any voluntary European framework (see section 2.2 – political strategy).

3.2.8 Internal Pilot Associations Issues

Pilot Associations should be encouraged to review their constitutions/rule books to make sure they are “fit for purpose” and will, if required, facilitate (and not impede) any inter-“pilot associations” TNA activity. Specific issues which may need addressing include the introduction of a “Joint Membership” category and subscription sharing arrangements in situations where pilots employed by a TNA are encouraged to become joint members of two pilot associations.

Part 4. Conclusions



The Seminar was perceived as an important step for pilot associations to assess how the challenges of liberalisation and globalisation in civil aviation influence the representation of their members and any collective negotiation with trans-national airlines.

Pilot Associations realise that the changes in the industry require adjustments in their working methods. They also note that many barriers exist for this new role to be carried out effectively. The barriers are both industrial (mainly the lack of commitment of employers), and political (principally the lack of a legislative framework capable of enforcing trans-national agreements).

In this context, pilot associations have very high expectations from the European Institutions. Pilot associations expect that the European Commission and the EU Member States set up a framework enabling collective representation and negotiation. ECA will coordinate their efforts and work directly with the European institutions and other international organisations to achieve this objective.

Ideally, the framework, which could be voluntary in its first stage, should guarantee the enforceability of any trans-national collective agreements and be open for special categories of workers (i.e. there should be the possibility of concluding agreements that concern only one group of the employees in any particular company).

The pilot associations realise, however, that this framework might take some time to come. A political and industrial strategy is therefore needed, not only to accelerate the legislative process, but to achieve some protection and progress with the tools available at this moment in time.



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