



Study on employment and working conditions of aircrews in the EU internal aviation market

Final report

Study contract no. DG MOVE/E1/2017-556



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Report for DG MOVE

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Executive Summary

A.1 Introduction

This report presents the findings of the study on the employment and working conditions of aircrews in the EU aviation market, commissioned by the European Commission (DG MOVE) and undertaken by Ricardo Energy & Environment and their partner Gomez Acebo & Pombo.

A.2 Context and study objectives

The liberalisation of the EU air services market since the adoption of the Third Aviation Package in 1992 has contributed to a significant growth of the aviation sector. However, the intensification of competition and the pressure to reduce costs, which have led to the emergence of new business models in particular, have also raised concerns among aircrew (pilots and cabin crew) that these developments may lead to a deterioration of their employment and working conditions, including heavier working time schedules, development of various employment arrangements (such as atypical contracts¹ and bogus self-employment schemes), re-negotiations of existing collective agreements and other practices such as so called pay-to-fly schemes. This has also had implications for the national authorities that are responsible for implementing and enforcing the relevant social legislation and has raised concerns among some air carriers associated with the knock-on impacts on the level playing field in the sector.

As part of its social policy, the EU is committed to improving working conditions, promoting equal pay and protecting workers' rights². It is thus necessary to ensure that the working conditions of aircrew and the various employment arrangements which have developed in the aviation sector are in conformity with relevant EU and national rules which aim to protect workers' rights and high social standards³.

The importance of creating and maintaining quality working conditions and ensuring a level playing field in the air transport sector in the EU has been reiterated in various strategic EU policy documents⁴. Recognising the importance of social issues in aviation and across transport modes, the Commission is closely monitoring the developments in the internal market for aviation to better understand the potential social implications of atypical employment and whether any further measures to ensure fair working conditions and prevent abuses are needed.

In this context, the main aims of this fact-finding study were:

- To help develop a comprehensive view of the different forms of employment and working conditions of aircrews employed by European Economic Area (EEA)-licensed air carriers – based inside and outside the EEA - clarifying the nature and extent of use of various alternative forms of employment as well as their possible implications on employment and working conditions; and
- To help understand whether and how the existing EU and national social rules effectively cover the activities of aircrews, identifying the legal challenges (e.g. possible legal loopholes) in protecting this category of highly mobile workers in the fast-developing aviation market.

¹ 'Atypical contracts' have been defined as "employment contracts that do not conform to a standard, open-ended and full-time contract. This can encompass many types of contract including part-time, fixed-term, temporary, casual and seasonal". Eurofound (2017) <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/atypical-contracts>

² European Pillar of Social Rights proclaimed by all the EU Institutions in November 2017.

³ In this context it is important to note that whilst air transport rules have been largely harmonised at the EU level to guarantee that all operators have equal access to the air transport market, social protection and labour law remain primarily a responsibility of the Member States in accordance with Article 153 of the Treaty on the functioning of the European Union. This can lead to an uneven playing field. It also explains why aircrew may enjoy different rights and levels of protection depending on which national law applies to them.

⁴ In particular in the 2011 White Paper "Roadmap to a Single European Transport Area" and the 2015 Aviation Strategy.

A.3 Methodology

This fact-finding study builds upon data and evidence from existing studies and reports, updating this analysis where needed with more recent data (where available) and other relevant data sources. This was complemented with extensive inputs from relevant stakeholders. The research tools used included the following:

- Desk research/review of relevant documents (including legal texts and relevant studies);
- Stakeholder engagement activities, including five surveys targeting pilots, cabin crew, air carriers, labour inspectors, and ministries of employment. 35 interviews were also conducted with these groups, as well as wider organisations involved in the industry;
- Analysis of a sample of employment contracts reflecting the different forms of atypical employment arrangements, and instructions given to aircrew; and
- Ten case studies that analysed specific topics in greater depth to support the analysis. The topics covered were i) Temporary work agencies and other intermediaries; ii) Pay-to-fly; iii) Self-employment; iv) Posting of workers, v) Gender equality and reconciliation between private and working life and vi) Applicable law to aircrews' employment contracts.

In terms of the representativeness of the survey samples achieved, the following should be noted:

- The responses to the survey of pilots (5,957) represent 11.5% of commercial pilots flying in Europe. Within the sample, around 34% of respondents stated that they fly for a low-cost carrier, which is considered by ECA to be representative of the share of pilots flying for such carriers;
- The responses to the survey of cabin crew (2,195) represent a smaller share (around 4.4%) of the cabin crew that are members of EurECCA and ETF (total number not known);
- There were 27 responses to the survey of air carriers, representing around 7.5% of the total number of licenced carriers with 9 respondents belonging to the top 20 carriers in terms of passenger numbers in 2017. However, there is certain bias in the sample, with traditional air carriers overrepresented, with 74% of the total responses;
- Nine responses from labour inspectorates in seven Member States (that account 21% of licenced EU air carriers) and 12 responses from employment ministries in 11 Member States (that account for 33.8% (92) air carriers); and
- Supporting interviews were undertaken with national authorities (2), air carrier representatives (4), individual air carriers (6), air crew organisations (unions) (3), national aircrew unions (4), individual air carriers aircrew representatives (2), individual aircrew staff (11), flight school (1) and law firm (1). However, no temporary work agencies/intermediaries were available/willing to participate in an interview.

Overall, while not fully representative of the relevant stakeholders, we consider the responses to the survey to provide a good coverage of the four target groups (pilots, cabin crew, air carriers and national authorities). Compared to the various studies which have been published on similar topics since 2012, this study includes both pilots and cabin crew, and a broad range of air carriers representing different business models. Nonetheless, limitations of the samples (e.g. overrepresentation of traditional carriers, small number of responses from national authorities) need to be taken into account when considering the input from the surveys.

A.4 Conclusions by topic

A.4.1 Temporary work agencies/intermediary companies

Our analysis explored the presence, nature and extent of use of temporary agency work and employment via other types of intermediaries in the EEA aviation sector.

A first important observation is that air carriers make use of a broad range of employment arrangements that include the use of an intermediary organisation. Temporary work agencies within the meaning of Directive 2008/104/EC on Temporary Agency Work refer to those intermediary

organisations which hold contracts of employment or employment relationships with temporary agency workers and assign them to user undertakings (air carriers) to work there temporarily under their supervision and direction. These agencies are therefore the formal employer and are required to uphold the associated responsibilities. Other arrangements also exist whereby aircrew are employed by subsidiaries of the air carrier (i.e. human resource agencies), which are generally responsible for the associated employer's obligations. In this case, it is not always clear whether or not the services provided by these subsidiaries fall within the scope of the Directive – it might be that part of their services fall within the scope of the Directive.

Although the study attempted to provide clarity on the differences in the use of temporary work agencies compared to other types of intermediaries, in practice it has not been possible to collect specific data on the level of use of temporary work agencies as defined by Directive 2008/104/EC. Survey respondents (aircrew) were most often not in the position to know whether the work agencies they work for fall within the scope of the Directive or not. It was also not possible to obtain input from these work agencies despite our invitation. Therefore, our assessment of the use of temporary work agencies and other intermediaries is based on a comparison between the number of aircrew who hold a **direct contract of employment with the air carrier** and aircrew who hold a **contract with an intermediary manning agency**. The latter could thus include both temporary work agencies as defined in Directive 2008/104/EC but also some other form of intermediaries. Thus, the analysis of the survey results concerning aircrew hired via an intermediary manning agency should be interpreted with this consideration in mind but still provide relevant insights into the extent of employment through intermediaries in the sector compared to direct and permanent employment with the air carrier.

Taking this into consideration, our surveys (cabin crew, pilots and air carriers) reveal that between 9 and 19% of cabin crew (depending on the source used – surveys of air carriers and cabin crew respectively) and around 8% of pilots responding (similar figure reported in both surveys of air carriers and pilots) are employed via some form of intermediary manning agency, including the different arrangements indicated above.

These employment practices were found to be more prevalent amongst low-cost carriers for those aircrew responding to our survey (97% of cabin crew and 69% of pilots who indicated that they are employed via some form of intermediary manning agency). Our survey results also found that these practices were more common among younger aircrew that are just entering the job market with limited experience and therefore more vulnerable to such offers.

The relationship between the agency worker and the air carrier was an important area of focus in our analysis. Given the complexity of the arrangements, our study attempted to understand whether some features of the relationship between the aircrew and the air carrier are in practice those of an employment relationship. At the extreme, if this is verified, intermediary companies could potentially be used as a social construct to avoid direct employment contract with air carriers as suggested by some stakeholders (aircrew organisations) and reported in studies (e.g. (Jorens, Gillis, & De Conisck, 2015)).

Our analysis found that the high degree of complexity in some of these arrangements, poses the challenge of determining the actual employer in some cases. Aircrew employed by intermediary companies reported they often have difficulties identifying who is the actual employer, even though it is clear which air carrier they operate for. Some aircrew even considered the air carrier to be the real employer, even if the intermediary company takes this role officially. Issues also arise when a subsidiary of the air carrier is used to provide aircrew to the parent company, causing similar confusion regarding identification of the employer as illustrated by the case study on the court case which was initiated by a group of pilots and cabin crew members against Norwegian Air Shuttle ASA (parent company) and its subsidiary company in Norway (Norwegian Air Norway AS) with the view of having Norwegian Air Shuttle AS to be declared as the real employer. More recently, the Supreme Court has ruled in favour of Norwegian, concluding that the parent company did not have the level of managerial control over the pilots and cabin crew which would classify it as their employer (BAHR, 2018).

In addition, the use of temporary agency work repeatedly and for prolonged periods has been reported by aircrew organisations and unions, and is assessed in the case study concerning a complaint filed by a Spanish trade union USO on behalf of aircrew against Norwegian Air Shuttle which argued that the air carrier was using temporary agencies in a fraudulent manner since the employees' roles were not related to temporary tasks (as required by the national applicable law), and

the employees were exclusively working for one air carrier for years. This could suggest a situation of permanent employment, raising the question of whether the air carrier should be the employer in these cases.

The respondents to the survey suggested important differences in terms of employment and working conditions between aircrew occupied via intermediary manning agencies and those directly employed. Aircrews occupied via intermediary manning agencies tend to indicate that they are less satisfied with their working conditions in general. They are also more likely to report that they do not receive sufficient training as well as reported lower levels of satisfaction with their pay (the difference with those directly employed were more limited in the case of pilots in comparison to cabin crew). Furthermore, the responses of aircrew suggest that recognition of unions by air carriers is less likely in the case of aircrew employed via intermediary manning agencies compared to those who are directly employed by an air carrier.

Finally, aircrews occupied via intermediary manning agencies also had more negative views regarding their day-to-day working conditions compared to those directly employed, although the difference was relatively small, except regarding the environment for reporting risks which was considered unfavourable.

Another challenge identified in this study that arises from the use of indirect employment arrangements in the air services sector concerns the correct application of national labour, tax and social security laws, given the cross-border nature of aircrew jobs, which becomes more complex when more parties and countries are involved (e.g. identifying which country's labour laws are applicable, which country aircrew should be paying tax/social security contributions in, etc.). Nevertheless, among the 12 labour inspectorates (out of a total of 30) that responded to the survey, only five of them reported specific issues with enforcement and application of the rules in the case of temporary agency workers and workers employed via other types of intermediaries (Spain, Italy, Estonia, Sweden and Denmark). Where concerns were identified, they were linked to the determination of the employer, cross-border use of workers involving intermediaries and overlaps with rules on posting of workers. We note that these concerns were stated very broadly by the responding authorities which did not allow a full assessment of the magnitude of these issues in these countries. Some stakeholders (unions) argued that complex employment arrangements are created to circumvent more stringent laws.

A.4.2 Pay-to-fly

The study investigated what constitutes 'pay-to-fly', the extent to which so-called pay-to-fly schemes are used in the EEA and the challenges faced by pilots involved in such schemes.

The analysis has shown that there is still a 'grey area' in relation to what could constitute a 'pay-to-fly' scheme. Different definitions in use among stakeholders (aircrew organisations and unions, air carrier associations, individual air carriers) were examined. The analysis suggests that so-called pay-to-fly schemes typically refer to a situation where, in the context of a pilot's **line training** to gain the requisite flight experience, a pilot operates an aircraft as a second or first officer in a commercial service (i.e. revenue earning flight) and pays the air carrier for the training. This definition of pay-to-fly schemes was used for the purposes of this study. In line with this definition, the pilot may or may not have a direct employment contract with the air carrier. 'Line-training' is where pilots, who have obtained an Airline Transport Pilot Licence (ATPL) during an initial basic training, achieve the requisite 1,500 hours flying time/experience in order to 'unfreeze' their ATPL licence and to be able to operate as a captain on a commercial aircraft⁵. They can fly as a second or first officer with a "frozen" ATPL licence. However, it should be noted that line training can be, and is often, packaged with type rating (training to fly a specific type of aircraft), which typically includes a ground course and simulator sessions and is not considered to constitute pay-to-fly.

There is no clear information on the extent of the use of such schemes in EEA, partly due to the absence of a definition or commonly agreed notion of 'pay-to-fly'. On the basis of the responses we received from the survey we estimate that between 2.2% and 6.1% of pilots have been involved in

⁵ A pilot who has obtained an Airline Transport Pilot Licence (ATPL) can fly as a second or first officer (but not as a captain) until he has gained the requisite flight experience through line training.

pay-to-fly schemes. The upper limit 6.1% refers to all pilots that indicated that they have participated in a pilot training scheme requiring them to contribute financially in order to be allowed to fly and gain requisite flight experience. When asked to specify what type of training it was that they contributed towards financially, only a proportion of them (2.2% of the total respondents to the survey) indicated that the type of training they paid for was “line training” (which is in line with the definition of pay to fly presented above). Thus, we consider that, on the basis of the survey responses, this 2.2% represents the lower limit of pilots involved in pay to fly schemes. However, estimates provided by stakeholders representing air carriers and air crew suggested a figure as high as 10% in general.

Responses from the pilots in the survey suggest that pay-to-fly is more common among charter (12% of pilots working for charter air carriers) and low-cost air carriers (8% of pilots working for low-cost air carriers), compared to 3% of pilots flying for traditional scheduled air carriers. Among air carriers the majority (19 out of the 27) that responded to the survey stated that they had not made use of (or participated in) pilot training schemes that require pilots to contribute financially for line training, namely schemes that fit the definition of pay-to-fly. Nonetheless, four carriers, including a low-cost air carrier and three other unspecified air carriers suggested that such schemes are very or quite common.

In addition, as expected, stakeholders (including air carrier representatives and aircrew representatives) suggested that such schemes are more common among younger pilots with limited flight experience that may use such schemes to build flight hours experience as part of their line training and improve their career prospects.

Pay-to-fly schemes raise concerns amongst stakeholders regarding pilot working conditions including pay levels (or lack thereof) but also diminished job quality and potential impacts on the safety culture, job security and employment rights. However, there is no sufficient evidence to reach the conclusions that these schemes would have an impact on aviation safety levels or on working conditions. Pay-to-fly schemes are considered as illegal in France as they are seen as constituting unlawfully non-remunerated or undeclared work within the context of an employment relationship. However, no Member States has, to date, explicitly prohibited such schemes by law

Another question considered was whether those participants in pay-to-fly schemes who operate as a regular pilot during their line training but are not remunerated should be considered as employees. Remuneration is generally an essential condition for the qualification of the relationship as employment. However, following the case law developed by the Court of Justice of the EU in relation to the definition of worker within the meaning of Article 45 TFEU other elements such as dependency or a long relationship with the air carrier or performance of real and genuine services can also be an indication of the existence of an employment relationship.

A.4.3 Self-employment

The study examined the use of self-employment arrangements among carriers and assessed the challenges associated with the use of self-employment for the pilots and for the national authorities.

There is currently no specific legislation referring to (self-)employment at EU level and no single standard approach to what constitutes (self-)employment. Nor is there any specific legislation establishing the rights and obligations for self-employed (pilots) and for those that use their services (air carriers – directly or indirectly). Approaches differ among Member States but also depending on the specific topic covered (tax, labour law, social security). Criteria have been developed by some Member States to define self-employment and differentiate it from arrangements that are characterised by a high degree of dependence and subordination to a single client. Furthermore, in some Member States such criteria are used to identify so-called “bogus self-employment”. According to the OECD, this refers to people whose conditions of employment are similar to those of employees, who have no employees themselves, and who declare themselves (or are declared) as self-employed with the intention to reduce tax liabilities, or employers’ responsibilities). Other Member States have defined a third category of “economically dependent workers” that stands between employees and self-employed both in terms of their contractual obligations but also in terms of their access to social benefits.

The analysis of pilot survey responses suggests that around 9% of pilots identified themselves as self-employed. This figure varies among countries and type of air carrier (business model). Most of the pilots that identified themselves as self-employed (88%) are contracted through an intermediary

company and 75% of them indicated that they worked for a low-cost carrier. According to the survey of pilots (and input from other stakeholders), Ryanair is the carrier that has made most common use of this practice (59% of self-employed pilot respondents), followed by Wizzair (3.6%). In general, the responses from the pilot's survey suggest that traditional carriers have made very limited or no use of such arrangements (with some exceptions, such as the Polish national carrier, LOT). However, some unions suggested that traditional carriers may consider doing so if they establish operational bases outside their home base.

However, the analysis also suggests that the majority of pilots that identified themselves as self-employed cannot be classified as genuinely self-employed. The majority of self-employed pilots responding to the survey (90%) disagreed or strongly disagreed that they were free to work for more than one air carrier in parallel, and (93%) disagreed or strongly disagreed that they had the flexibility to decide when and how many hours they fly. Both are conditions that are associated with self-employment which suggest that large part of those that identify themselves as self-employed may not be genuinely self-employed. Based on interviews with pilots and the pilot survey, self-employed pilots most often act in the same manner as any normal employee as they have an exclusive relationship with the air carrier; they receive their instructions from the air carrier and they report to the same persons as direct employees do. Unions also noted that self-employment arrangements are largely incompatible with the way the passenger air services sector operates (scheduled services, need to have type rating for a specific carrier, need to follow carriers' specific instructions and observe safety rules and procedures). It is only within the business aviation sector that self-employment was considered to be possible, due to its nature (non-scheduled services) although the responses to the survey could not confirm this (less than 4% of business aviation pilots declared themselves as self-employed).

From their side, only a few authorities (ministries of employment and labour inspectorates) responding to the survey (thus possibly not fully representative) were able to provide estimates on the extent of the use of self-employed pilots operating with their Member States (3 employment ministries and 6 labour inspectorates stated that it was very or quite uncommon⁶). Most appeared to have limited views on the implications this may have on employment conditions, remuneration, or tax/social security contributions for those pilots. Some Member States' authorities (Belgium, Germany) had made specific efforts to understand the extent to which pilots in their country are genuinely self-employed, although very few actual cases of bogus self-employment were reported among the authorities that responded to the survey.

Finally, interviews with pilot representatives and air carriers suggested that self-employment is seen as having an impact on the level playing field in the air services sector, as it is thought that some carriers use it to avoid tax and social security obligations that should normally apply to them and that other carriers are complying with. Nonetheless, air carriers should be expected to seek a competitive advantage – including through labour cost reduction – as long as they comply with the applicable rules. However, in the absence of a common approach among Member States – both in terms of the definition of self-employment as well as to the actions taken to monitor its use and avoid the use of bogus self-employment – its use may raise issues of lack of level playing field among air carriers.

A.4.4 Posted workers

The use and the relevance of the Posting of Workers Directive (96/71/EC⁷) for the aviation sector was another question examined. The Posting of Workers Directive defines the minimum terms and conditions of employment to be applied to workers who are temporarily sent by their employer to carry out work in another EU Member State in the context of a service provision. However, in the context of the aviation sector, with the increasing use of multiple operational bases of some air carriers and the

⁶ Out of 7 employment ministries responding, 4 indicated that they did not know. Out of 12 labour inspectorates responding, 5 indicated that they did not know.

⁷ On 29th May 2018, the European Parliament voted in favour of the revised Posting of Workers Directive, including new rules concerning pay, workers conditions, duration of posting, and protection against fraud. The new elements of the revised directive will apply to the transport sector once the sector-specific legislation, included in the Mobility Package, enters into force. Until then, the 1996 version of the directive remains applicable: <http://www.europarl.europa.eu/news/en/press-room/20180524IPR04230/posting-of-workers-final-vote-on-equal-pay-and-working-conditions>

temporary placement of aircrew in other countries for a certain period, as well as practices such as wet leasing, it was not clear whether such situations could fall within the scope of the Directive.

Our analysis suggested that the Directive is rarely applied in the aviation sector. This was supported by the responses to surveys of pilots and cabin crew. Around 6% of cabin crew and 12% of pilots that responded to the survey reported that they had been temporarily placed in another Member State (answering “yes” to at least one of the questions regarding temporary placements in another Member State). Among those, only a small number of aircrew stated that the rules of the Directive had been applied to them: 11% of cabin crew and 19% of pilots. Some workers may have been *de facto* posted within the meaning of the Directive, even if they or their employers do not recognise/inform them of this. Still, it was not possible to confirm based on the evidence collected in this study whether or not any of the workers who said they had been temporarily placed in another Member State should have been considered as posted workers within the meaning of the Directive.

There seems to be lack of awareness among those concerned about whether the Directive is applied, when the Directive should be applied, and what that application involves. Responding to the surveys, 61% of cabin crew and 47% of pilots did not know whether their employer had applied the rules relating to posting of workers to them. In the interviews, labour unions and air carriers confirmed that there is lack of awareness regarding which rules apply in each case – the conflicting figures in terms of the numbers of workers that said they have been posted under the Directive or that they have been informed of their rights when posted also seems to indicate that the issue of posted workers is one where lack of awareness is still an issue. A few of the national labour inspectors that responded also indicated issues with assessing who is responsible for enforcing provisions and how to enforce the provisions given the difficulty in determining whether the Directive should be applied or not.

The limited awareness surrounding the application of the Directive was also evidenced in the case studies that focused on cases of aircrew involved in the two common situations of (1) wet-leasing agreements and (2) temporary assignment of aircrews to a different operational base. In the case of wet lease arrangements, the application of the Posting of Workers Directive is limited by definition to the situations in which there is a temporary posting to a different Member State. In this sense, the Directive is not applicable when the posting is not temporary or when the employee is just working across different countries.

A.4.5 Gender equality and reconciliation between private and working life

The study also investigated whether atypical employment forms and associated working conditions have an impact on work-life balance and gender equality.

Overall, the analysis suggests that there are only small differences in the share of aircrew in alternative employment arrangements on the basis of gender. The surveys found that female aircrew responding to the survey tend to be more likely to have a permanent working arrangement directly with the airline. More specifically, the share of male cabin crew working via an intermediary agency responding to the survey was higher than that among female cabin crew (22% and 17% respectively), and even more so for so called “zero-hour” contracts (8% and 4% respectively). Similar results were found for pilots, with 22% of male pilots responding to the survey working via an intermediary manning agency compared to 16% of female pilots (to be noted that female pilots only represent 3% of the pilot work force). While self-employment is not common overall amongst survey respondents, men (8%) were found to be more likely to be on this type of contract compared to women (4%). Despite these differences, no evidence of gender bias in the allocation of contract type or work arrangement was found amongst respondents. The results of our survey suggest that employee experience, age and job role have more of an impact on the type of working arrangement someone is likely to be offered, than gender.

On the question of work-life balance, around half of the aircrew that were surveyed (52% of pilots and 46% cabin crew) stated that they were satisfied with their work life balance. Furthermore, unions interviewed felt that atypical work arrangements used by air carriers put individuals in a worse situation compared to direct employment, irrespective of gender and have a negative impact on their work life balance. This was supported by the surveys where 52% of pilots with a permanent contract considered that their schedule allowed them to have enough time at home, compared to only 36% among those working via an intermediary manning agency. There were no overall differences in satisfaction for cabin crew concerning the time spent at home on the basis of the type of contract. However, 57% of female cabin crew with direct contracts agreed that they have enough time at home

compared to 47% among those working via an intermediary agency. This was attributed to women generally taking up more childcare and household responsibilities than men.

Part time work was also suggested by some air carrier workers as a way of achieving a better work life balance. However, the evidence from the surveys and interviews seems to suggest that this is only an option for those employed directly with an air carrier, and not for those in atypical employment arrangements. Additionally, although self-employment should in principle provide greater control over the hours worked, pilots on this arrangement explained that working less than full-time put them at risk of losing further work. This resulted in a significant drop in reported satisfaction amongst respondents with time spent at home and control over hours for self-employed aircrew.

Concerning access to maternity and paternity benefits, our data from surveys and interviews with air carrier representatives and staff confirm the tentative conclusions presented in the earlier study by Steer Davies Gleave (2015); that women and men in atypical forms of employment are unlikely to receive the same maternity/paternity pay and leave as their colleagues in direct employment. A range of stakeholders, including air carrier employees and social partners, are of the view that atypical employment structures are used to circumvent these employment rights. The surveys found that the number of cabin crew and pilots who have access to maternity/ paternity pay in accordance with applicable law (59% and 69% respectively) was lower among aircrew employed via an intermediary (48% and 48% respectively). Considering the contract arrangements, 68% of pilots on open-ended contracts with an air carrier stated they have access to maternity/paternity pay, compared to only 45% for those on fixed-term contracts, and only 2% for those on zero-hours contracts.

Despite views expressed in interviews suggesting similar treatment of male and female temporary agency workers, there was also discussion among some interviewees and survey respondents (both male and female aircrew respondents) that would suggest that women in these positions are more vulnerable. The main issue identified is the risk of losing work, as shifts or temporary contracts are not renewed after pregnancy. This behaviour is enabled by lack of protection offered by temporary work arrangements.

The study also found that aircrew responding to the survey who work for low-cost carriers have less access to maternity/paternity pay and leave compared to those working for traditional carriers. The survey found that 78% of pilots and 64% of cabin crew working for traditional scheduled air carriers agree they have access to maternity/paternity pay compared to 38% of pilots and 46% of cabin crew for low-cost air carriers. Similarly, for leave, 68% of pilots and 68% of cabin crew working for traditional scheduled air carriers agree they have access, whereas 44% of pilots and 46% of cabin crew on low-cost air carriers agree.

Finally, there was also a significantly higher proportion of respondents indicating in both surveys and interviews that they did not know about their access to maternity or paternity leave among those working for low cost air carriers for both jobs roles (15-23% for low-cost air carriers, compared to 3-6% for traditional scheduled). Comments in surveys and interviews pointed to a less transparent culture surrounding available benefits among low-cost air carriers.

A.4.6 Employment by EEA air carriers of aircrews based in third countries and employment of third country aircrews based on EEA territory

Another topic investigated concerned the level of use, by EEA licensed air carriers, of third country (i.e. non-EEA) crews on flights between the EEA and third countries and/or on internal EEA flights, and of EEA-national crews working from bases outside the EEA, and key features of this use.

The employment of third country nationals by EEA licenced air carriers has historically been used for cultural and language reasons on specific routes. However, more recently there have been claims that air carriers have been using third country nationals due to the less demanding employment and social security legislation in the third country concerned.

It has not been possible to estimate the existence and extent of practices whereby air carriers have used third country air crews provided by local temporary manning agencies established outside the EEA. There is no available literature on this topic beyond anecdotal evidence of certain air carriers (e.g. Norwegian, Finnair) employing third country nationals on specific routes. The data collected through interviews and surveys confirmed that there is use of third country air crew (mainly for flights to/from third countries and less so for intra-EE flights). However, it is not possible to tell on the basis

of the data collected how common this practice is, nor whether the third country aircrew's home base was located in a third country or in the EU.

The use of these practices has been predominantly associated to some low-cost carriers (e.g. as identified by aircrew representatives), and to differences in national legislation / lack of EU harmonisation and to situations of abuse /circumvention of applicable law which can create an unlevelled playing field among air carriers. However, due to the small sample size of respondents, it has not been possible to test and verify these claims.

Finally, there has been one specific claim related to the use of wet-leasing from third countries' air carriers by British Airways as a way to address the impacts of strikes. We have not identified other cases where other workers' rights (such as the right to strike) were affected by the use of third country nationals.

A.4.7 Applicable law to aircrews' employment contracts

A final aspect explored related to the applicable law to aircrews' employment contracts.

The use of multiple operating bases outside their principal place of business (PPB) has been a particular feature of low-cost air carriers following the point-to-point business model (one such air carrier has up to 87 different bases inside and outside the EEA). While much more limited, some traditional scheduled network carriers have also started developing additional operating bases (the majority of these have one or two operating bases within the EEA).

A sample of contracts analysed for this study and interviews conducted with aircrew suggest that some specific air carriers that have developed a low-cost business model with multiple operational bases are more likely to apply the law corresponding to the country where they have their PPB, regardless of where their workers are home based. However, further evidence including an analysis of contracts from a wider range of low-cost airlines would be needed to verify this finding.

The majority of survey respondents indicated that the law applicable to their contracts is the law of the country where they are based (88% of cabin crew and 82% of pilots) suggesting that air carriers, in general, do apply local labour law to employment contracts. Slight deviations were identified within the business models, with a smaller share of aircrew working for low-cost carriers indicating that this is the case (74% and 62.5% respectively). Nonetheless, in general, a large proportion of aircrew do still agree that the law applicable to their contracts is the law of the country where they are based. These statements should however be considered with caution since the large majority of the aircrew reported difficulties when determining the law applicable to their contracts and, in some cases, gave contradictory replies to this question. There are thus indications that aircrew are not always clear about the extent to which local labour law actually applies. According to aircrew representatives, even some courts have found it difficult in some specific cases to determine the competent jurisdiction and law that applies to employment contracts in the aviation sector. However, evidence, including an analysis of a wider range of national courts would be required in order to verify this finding.

The multiplication of operational bases outside the territory of the PPB may in some cases create confusion as to which legislation applies, and which court is competent, potentially to the detriment of the employee. Aircrew and aircrew representatives referred to cases of air carriers who employ workers in bases outside the country where the air carrier has its PPB and seek to take advantage of the confusion created for employees by the different national laws that apply in the locations where their employees are based. Instead, they select to apply the national law chosen by them (typically the relevant laws of its PPB). Aircrew and aircrew representatives referred to problems between the worker and the tax and social security authorities, as the worker will usually pay his/her taxes and social security contributions according to the employer's instructions, regardless of the applicable legal framework.

It should be noted that in the case of carriers with no operating bases outside the principal place of business (PPB) – as is the case of most traditional carriers - there is no issue of the determination of the applicable law and the competent court. There is unique jurisdiction involved in the contracts concerned: both the PPB and the home bases of aircrews are located within the same territory and so the question does not arise.

Recent rulings by the Court of Justice of the European Union (CJEU) and national case law were also analysed to examine if they have led to any changes in practices of air carriers (e.g. to the contracts

removing or changing provisions related to the applicable labour law or where employees can bring proceedings in the case of dispute). Aircrew representatives believe cases like the joint C-168/16 and C-169/16 brought to the European Court of Justice against Ryanair and Crewlink by former cabin crew members should help in the future. Some air carriers who were not applying the “home-base” location as the law applicable to their employees have now stated to change their approach. However, large share of cabin crew and pilots are still – and understandably - largely unaware of the law applicable to their contracts, and some air carriers were still trying at the time of collecting data for this study to hold onto practices claiming that the law of the PPB should apply (e.g. through evidence identified in review of contracts). Furthermore, with only few exceptions, the few national authorities and labour inspectors who provided responses indicated limited awareness of the Court decisions.

1 Introduction

This is the Final Report for the “Study on employment and working conditions of aircrews in the EU international aviation market” (hereafter, the ‘study’), reference MOVE/E1/2017-556.

The Report is submitted by Ricardo Energy & Environment and Gomez Acebo & Pombo, the consultants appointed to conduct this study.

This report includes the following:

- **Section 1.1 – Background:** An overview of the topics of interest to the study, including study objectives;
- **Section 1.2 – Study Objectives:** Key objectives of the study;
- **Section 2 - Approach/methodology:** A high-level overview of the methodology and identification of limitations and how they were addressed;
- **Section 3 to 9 – Topic Analysis:** Detailed analysis of the topics answering key questions; and
- **Section 10 – Conclusions:** Summary, conclusions and recommendations where relevant.

More detail on each individual task is presented in the following sections.

1.1 Background: Developments in aviation sector and implications for employment/working conditions

The liberalisation of the EU air services market has contributed to significant improvements to the aviation sector. There has been strong growth in air travel, with the number of daily flights more than doubling (from less than 10,000 in 1992 to around 23,000 in 2016) and a much greater number of routes offered (from under 2,700 in 1992 to more than 7,400 in 2016) (European Commission, 2017).

Importantly for the consideration of working conditions, liberalisation has also led to the intensification of competition and the development of new business models – in particular, the emergence of low-cost carriers (LCCs). Broadly speaking, low-fare versus network business models can be characterised according to various aspects shown in Table 1-1. However, business models have had the tendency to converge, therefore the distinction has become blurred over time and many air carriers operate hybrid models that cannot be classified as pure low-fare versus network.

Table 1-1: Overview of low fare vs network air carrier business models

Features	Low fare air carriers	Network air carriers
Network	Point-to-point	Network / hub and spoke
Airports	Secondary / regional airports	Primary airports
Bases	Multi-country bases	Home country hub
Interlining	No interlining	Interlining and code sharing
Utilisation	High aircraft utilisation / quick turnaround	Lower aircraft utilisation on short-haul flights
Fleet	Single aircraft type	Mixed fleets
Aircraft	High seat density	Mixed class cabin
Product bundling	Pay-for-service (e.g. checked baggage)	Inclusive service
Ticketing	One-way fares	Round trips are often cheaper
Ticket selling	Direct selling	Different channels (e.g. travel agents)

Source: Adapted from OECD (2014)

The intensification of competition and the pressure to reduce costs, which have led to the emergence of new business models in particular, have had an impact on social and employment conditions. Workers unions have raised concerns over a number of developments that are seen as leading to a deterioration of working conditions. These include the re-negotiation of existing collective agreements, the emergence of so-called atypical forms of employment (such as self-employment, triangular relationships etc.) and other practices such as alleged pay-to-fly or heavier working time schedules. According to the respondents to a survey conducted by Ghent University (Jorens, Gillis, & De Conisck, Atypical forms of employment in aviation, 2015), one surveyed pilot out of six is employed under an atypical employment contract⁸. Furthermore, technological changes and increasing automation have led to increased labour productivity in the sector, but also to changes to content of the work, skills required and the number of jobs.

The EU is committed to improving working conditions, promoting equal pay and protecting workers' rights^{9,10}. Chapter II of the European Pillar of Social Rights¹¹ on Fair Working conditions supports adaptable and innovative forms of employment that respect fair and equal treatment, access to social protection and training. According to Principle 5, employment relationships that lead to precarious working conditions shall be prevented, including by prohibiting abuse of atypical contracts. It is necessary to ensure that the new employment forms are in line with employment rules relevant to aircrews (e.g. working hours, safety requirements etc.). Appropriate employment and working conditions are relevant in the aviation sector, in which the safety and security of passengers and staff are paramount (as in other transport-related sectors). More generally, they need to be in line with the EU judicial, employment and social acquis that applies to all workers, intended to ensure worker's rights and high social standards (e.g. (Melin, Lager, & Lindfors, 2018)).

The importance of maintaining high social and working conditions has been reiterated in various strategic documents. In the context of the 2011 White Paper "Roadmap to a Single European Transport Area", the Commission recognised the importance of social issues, calling for "*a socially responsible aviation sector*" and the need to continue to evaluate the "*EU approach to jobs and working conditions across transport modes*" (Actions 10 and 11 of the White Paper). Furthermore, as part of the 2015 Aviation Strategy, the Commission committed itself to:

- Closely monitoring the developments in the market;
- Better understand the social implications of atypical employment; and
- Understand the extent to which existing EU and national laws can prevent abuses and whether measures to ensure fair working conditions are needed.

1.2 Study objectives

This study should be considered in the context of the 2015 Aviation strategy where, among other actions, the Commission proposed to:

- Strengthen its analysis on jobs and employment in aviation with Member States and make this analysis available to all interested parties; and
- Consider the need for a policy initiative on the clarification of applicable law and competent courts vis-à-vis employment contracts of mobile workers in aviation.¹²

⁸ An atypical employment contract is defined in this study as any employment contract that is not a direct employment contract between the pilot and the air carrier. It includes employment relationships such as when the pilot works for the air carrier via a temporary work agency with whom the pilot has the contract or when the pilot works for the air carrier as self-employed r, among others.

⁹ European Pillar of Social Rights proclaimed by all the EU Institutions in November 2017

¹⁰ In this context it is important to note that whilst air transport rules have been largely harmonised at the EU level to guarantee that all operators have equal access to the air transport market, social protection and labour law remain primarily a responsibility of the Member States in accordance with Article 153 of the Treaty on the functioning of the European Union. This can lead to an uneven playing field. It also explains why aircrew may enjoy different rights and levels of protection depending on which national law applies to them

¹¹ Rules on freedom of movement of workers, posting of workers, temporary agency work, social security coordination, information on their employment conditions, part-time work, fixed-term work, health and safety, transfer of undertakings, collective redundancies and protection of employees in the event of the insolvency of their employer, law applicable to individual employment contracts and the right to collective bargaining enshrined in the Charter of fundamental rights of the European Union

¹² 'An Aviation Strategy for Europe' COM(2015) 598 of 7 December 2015

In relation to the first point, the 2015 study by SDG (SDG, 2015) on employment and working conditions in air transport and airports provides a basis for understanding developments in the labour market in aviation, the extent of to which various atypical employment forms are used and identified some of the relevant issues. The study by Ghent University (Jorens, Gillis, & De Conisck, Atypical forms of employment in aviation, 2015) – which is also referenced in the 2015 study by SDG – provided a more detailed analysis of the extent of the use of various employment schemes, but focused primarily on aircrew staff (mainly based on input from a survey of pilots). Nonetheless, given the significant level of competition in the sector and the adoption of new business models, there is a need to update the analysis and develop a further and more in-depth understanding of the implications for working conditions especially in relation to aircrews, who are highly mobile.

Concerning the second point, the Aviation Strategy Communication stated that the situation of highly mobile aircrews who have their operational base ('home base') located outside the territory where the air carrier is licensed deserved specific attention. It is important to bring clarity on the applicable labour law and on the competent court in charge of disputes. A number of issues arise concerning the applicable legislation for mobile aircrew and these have already been a point of discussion in the context of the Market Access Expert Group and its sub-group on social matters¹³. Members were asked to provide information on court cases on jurisdictional competence; on the level of air carriers outsourcing inside and outside the EEA; and the extent to which non-EEA nationals are restricted in accessing specific aircrew professions. Inputs to those questions suggest that this area remains complex with national legislation potentially leading to different practices that need to be further understood.

At the same time, there is an increasing media interest on the working conditions of aircrew, which is also reflected in questions from Members of the European Parliament¹⁴ asking for specific action and proposals to address alleged deteriorating working conditions in the sector. Specific stakeholders, e.g. the European Cockpit Association (ECA), have also reported on the alleged problem of pay-to-fly in aviation and asked for it to be made illegal (ECA, 2016).

In response to the above, a need has been identified for the Commission to be able to analyse the various concerns raised and to assess the progress made in relation to the commitments made in the Aviation Strategy. Therefore, the main aims of this study were to:

- Help develop a comprehensive view of the different forms of employment and conditions of aircrews employed by EEA-licensed air carriers – based inside and outside of the EEA - clarifying the nature and extent of use of various atypical forms of employment, as well as their implications on working conditions; and
- Understand how the existing EU and national social rules cover (or not) the activities of aircrews, identifying the legal challenges (e.g. legal loopholes) in protecting this category of highly mobile workers in the fast-developing aviation market.

In doing so, the study needed to:

- Build on data and evidence from existing studies and reports, updating this analysis where required with more recent data (where available) and other relevant data sources; and
- Complement it with a more in-depth analysis of the nature, substance, scope and magnitude of possible issues and identification of possible abuses associated with the different forms of employment, the challenges arising for aircrews (employment rights, work-life balance, gender equality issues) and in terms of the implementation of the legal framework.

In response to the request from the Commission, the study focusses on the following topics of interest:

- **Temporary work agencies/intermediary companies:** Explore the presence, nature and extent of use of temporary work agencies and intermediaries in the EEA aviation sector.

¹³ SUMMARY RECORD - Expert Group on application of the legislation on access for Community air carriers to intra-Community air routes - Brussels, 23 September 2016

¹⁴ Parliamentary questions: Social aspects of the Aviation Strategy, 22 June 2017: <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2017-004176&language=EN>

- **Pay-to-fly:** Extent to which pay-to-fly schemes are used in the EEA and challenges faced by workers affected by schemes.
- **Self-employment:** Assessing the types and use of self-employment forms by pilots in EEA, including the use of bogus self-employment.
- **Posted workers:** Level of use and relevance of the Posting of Workers Directive for workers in the aviation sector.
- **Gender equality and reconciliation between private and working life:** Consideration of whether atypical employment forms and associated working conditions have an impact on work-life balance and gender equality.
- **Employment of EEA air carriers' aircrews based in third countries and employment of third countries aircrews based on EEA territory:** An overview of the level of use and key features of EEA licensed air carriers using third country crews on flights between the EEA and third countries and/or internal EEA flights, and EEA-licensed carriers using EEA-national crews working from bases outside the EEA.
- **Applicable law to aircrews' employment contracts:** Exploring the applicable law to aircrews' employment contracts

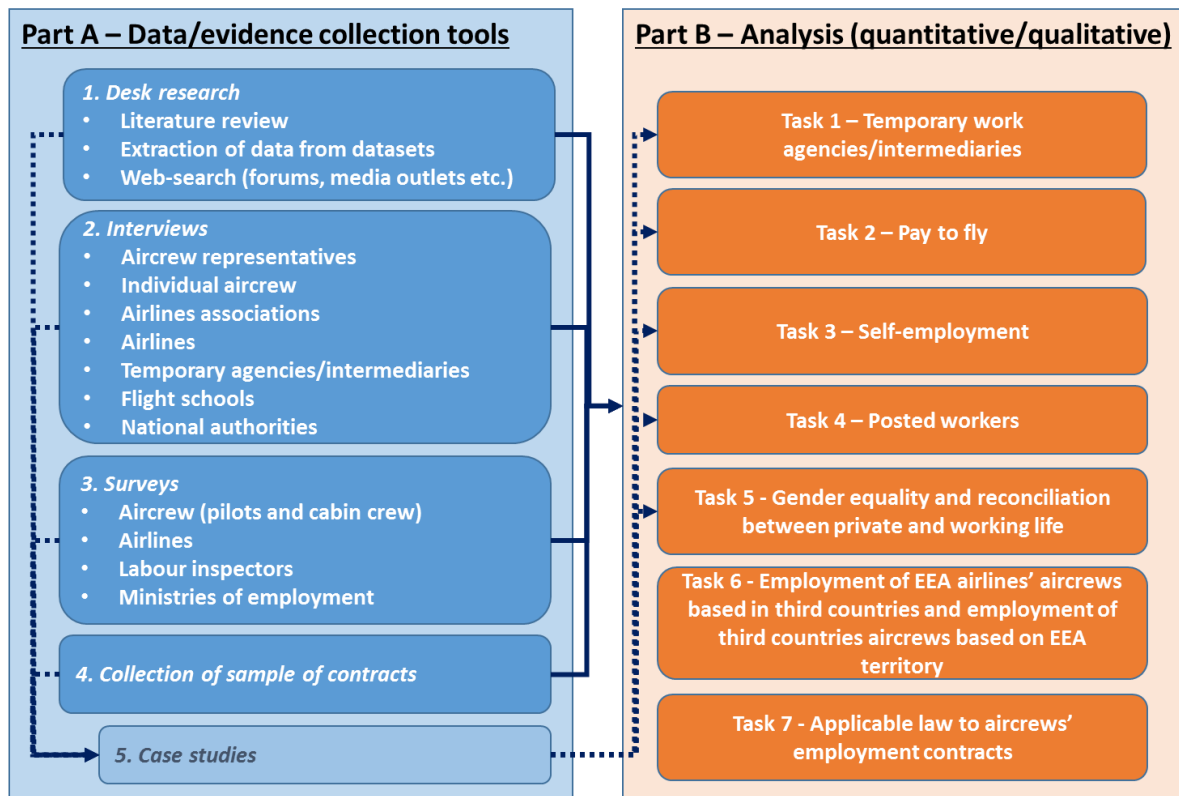
2 Methodological approach

This section presents an overview of the high-level approach taken to the methodology. It also identifies study limitations and how they were addressed. A more detailed report on the approach to Stakeholder Engagement and analysis of the responses has been produced for the Commission and was submitted alongside the Final Report.

2.1 High level approach taken to the methodology

An overview of the methodology is shown in Figure 2-1.

Figure 2-1: Summary diagram of the methodological approach



The methodology is structured in two parts:

- **Part A** includes all of the data collection tools that have been used to provide the necessary input for the analysis that took place in Part B.
- **Part B** includes the analysis of the data/information collected to address the questions for each of the following topics:
 - Temporary work agencies/intermediary companies;
 - Pay-to-fly and equal pay;
 - Self-employment;
 - Posted workers;
 - Gender equality and reconciliation between private and working life;
 - Employment of EEA air carriers' aircrews based in third countries and employment of third countries aircrews based on EEA territory; and
 - Applicable law to aircrews' employment contracts.

2.2 Part A – Data/Evidence Collection

2.2.1 A1 – Desk research

Desk research primarily consisted of a review of relevant literature and data sources. An initial list of studies, reports and other documents at the EU and national level identified at the start of the study were reviewed and further sources were subsequently identified through the exploratory interviews undertaken with selected stakeholders (see Section 2.2.2). A standard review template was used to ensure a consistent approach to the analysis of the literature sources (see list of references in Section 11).

2.2.2 A2 – Interview programme

Four exploratory interviews with key stakeholders were arranged and undertaken during the initial stages of the study. These included European Transportation Workers Federation (ETF); European Cockpit Association (ECA) (representing a large share of pilots employed in EEA air carriers); an association representing air carriers based in the EEA; and EasyJet. The objectives of the exploratory interviews were to:

- Ensure that relevant issues are properly addressed in the data collection tools; and
- Discuss with stakeholders the data collection approach and identify the best possible approach in reaching their members.

Interviews were planned with individual stakeholders at the EEA and national levels with a view to collecting, in a focussed way, crucial information for the study that could be difficult to gather via desk-based research and/or the surveys. In total, 35 interviews were undertaken with stakeholders. The exploratory interviews were used to inform the initial development of the interview checklists for the following stakeholder groups:

- National authorities – tax/social security authorities;
- Air carrier representatives¹⁵;
- Aircrew organisations (unions);
- National aircrew unions;
- Individual air carrier aircrew representatives;
- Temporary work agencies and intermediaries; and
- Flight schools.

Interview checklists for national labour inspectorates, air carriers and aircrew (pilots and cabin crew) were developed following receipt of responses to the survey (see Section 2.2.3). These stakeholders were required to respond to the survey first. Interview questions built upon their initial responses. The interview programme was launched on 28th March 2018 and ran until late May 2018. Table 2-1 below summarises the interview programme in terms of completed interviews (see Appendix 1 for further details).

¹⁵ Air carriers were contacted requesting participation in an interview. It was explained that the most appropriate person should be identified within the organisation to participate in the interview based on the interview checklist questions provided – including representatives from Human Resources departments. Air carriers subsequently identified the most appropriate representative to participate in interviews.

Table 2-1: Interview programme (list includes exploratory interviews, as identified above)

Type of stakeholder	Number of completed interviews	Number of stakeholders approached / invited to interview
National authorities: Labour inspectorates	1	4
National Authorities: Tax / social security	1	4
Air carrier representatives	4	4
Individual air carriers (passenger and freight)	6	9
Aircrew organisations (unions)	3	3
National aircrew unions	4	4
Individual air carriers aircrew representatives	2	2
Individual aircrew staff	11	11
Temporary work agencies / intermediaries	0	8
Flight schools	1	5
Law firms	2	2
TOTAL	35	56

No interviews were carried out with Temporary Work Agencies/Intermediaries (see section 2.4.1 for limitations associated with the interviews). Additional interviews were undertaken with lawyers involved in a case in the development of one of the case studies.

For the majority of stakeholder groups, targeted contacts were identified and agreed with the Commission at the start of the study. This was with the exception of the following, who were identified following receipt of responses to respective surveys:

- National authorities – Labour inspectorates;
- National authorities - Ministries of employment;
- Individual aircrew (pilots and cabin crew):
 - Mix of pilots and cabin crew respondents required.
 - Potential candidates selected based on their responses to the survey, i.e. they identified issues relating to the topics of interest.
- Air carriers:
 - Aimed to interview respondents from legacy, low-cost, charter and regional air carriers.

Stakeholder interviews and anonymity

All stakeholders were consulted regarding the level of anonymity their responses to the interviews required. Where permission has been given to attribute responses to named stakeholders, they have been referred to by name in the remainder of this report. However, some stakeholders requested to remain anonymous – their responses have therefore instead been attributed to the stakeholder group that they belong to (e.g., air carrier, national aircrew union etc.).

Full details and an overview of the interview responses are provided in the accompanying ‘Stakeholder Engagement Report’.

2.2.3 A3 – Survey of stakeholders

A total of five surveys were undertaken covering the following stakeholders:

1. Pilots
2. Cabin crew
3. Air carriers
4. Labour inspectors
5. Ministries of employment

The draft survey questionnaires targeting pilots, cabin crew and air carriers were reviewed and piloted with the support of the respective European associations:

- European Transport Federation (ETF);
- European Cockpit Association (ECA); and
- Association representing air carriers.

The feedback from the associations was taken into consideration in the revision of the surveys. They were subsequently sent to the Commission for final sign-off prior to distribution.

The pilot, cabin crew and air carrier surveys were all launched online using the Survey Monkey tool rather than the EU survey tool as originally intended. This was in response to concerns raised by stakeholders regarding the need to control against possible efforts to influence results. Settings were activated within the online survey tool to ensure that multiple responses could not be submitted from the same device, and that IP addresses were collected to provide further assurances regarding legitimate responses. Surveys for Ministries of Employment and Labour Inspectorates remained in a Word template.

2.2.3.1 Survey distribution and response rate

The study team enlisted the assistance of relevant associations to distribute the surveys to their members, and subsequently the survey targets. The approach to distributing the surveys is summarised in more detail in Table 2-2. The surveys were launched between the 20th March 2018 and 26th March 2018. Each survey remained open for a period of 6 weeks, with the last deadline being 7th May 2018. Responses received to each of the surveys are shown in the Table 2-2.

Table 2-2: Overview of Survey distribution and responses received

Survey	Format	Distribution / promotion method	Involvement from/ distribution by	Date distributed/live	Survey deadline	Period open (min - weeks)	No. of responses received
Pilots	Online	ECA members were introduced to the survey at a meeting on 17 th March 2018, attended by the Commission. Email link posted on ECA website and other websites accessed by pilots and link sent to members. Targeted social media campaign (Facebook and LinkedIn). Reminder emails were sent to the associations (distribution and deadline).	ECA ETF	26 th March 2018	7 th May 2018	6	5,957
Cabin Crew	Online	Email link sent to relevant associations to distribute to their members. Reminder emails were sent to the associations (distribution and deadline).	ETF EurCCA	22 nd March 2018	3 rd May 2018	6	2,195
Air carriers	Online	Email link sent to relevant associations to distribute to their members. Reminder emails were sent to the associations (distribution and deadline). Direct requests sent to selected air carriers encouraging them to respond to the survey.	A4E ERA IATA EBAA Airline Coordination Platform EEA AIRE	22 nd March 2018	3 rd May 2018	6	27

Survey	Format	Distribution / promotion method	Involvement from/ distribution by	Date distributed/live	Survey deadline	Period open (min - weeks)	No. of responses received
Ministries of Employment	Word/email	The survey was sent to the social attachés to forward to ministry of employment contacts within each Member State. Reminder emails were sent to the social attachés (distribution and deadline).	Social attachés <i>Forwarded to relevant ministries of employment in each Member State</i>	20 th March 2018	2 nd May 2018 Extended to 7 th May 2018, and subsequently 8 th June 2018	6	9 ¹⁶ (AT, CZ, EE, ES, LU, MT, SE)
Labour Inspectorates	Word/email	The survey was sent to the social attachés to forward to labour inspectorate contacts in each Member State. Reminder emails were sent to the social attachés (distribution and deadline).	Social attachés <i>Forwarded to relevant labour inspectorates in each Member State</i>	20 th March 2018	2 nd May 2018 Extended to 7 th May 2018, and subsequently 8 th June 2018	6	12 ¹⁷ (AT, CZ, DK, EE, ES, HR, LU, NL, IT, MT, SE)

¹⁶ Nine responses were received from seven Member States

¹⁷ Twelve responses were received from eleven Member States

Once closed, the study team analysed the responses to the surveys. The data was first checked and cleaned. Cleaning the data involved removing junk responses (e.g. where respondents spent less than 30 seconds on the survey), as well as checking for possible coordinated responses¹⁸. There was no evidence of coordinated responses. The representativeness of the sample considering the share of the total population covered was also analysed – see Section 2.4.2 for more details.

The data was analysed using standard descriptive statistics and, where relevant, developing cross-tabulations (e.g. comparing the use of atypical employment between network, low-cost carriers, business aviation and freight transport and number of years of work experience). We also compared the results on the extent of the use of various employment forms on the basis of the responses from air carriers and aircrew and identified any important deviations that required further investigation during interviews with stakeholders.

Full details of the survey responses are provided in the accompanying ‘Stakeholder Consultation Report’.

2.2.3.2 Assessment of the representativeness of the surveys

This section considers the representativeness of the survey samples. This is important when it comes to interpreting the responses and trying to extract conclusions on the use of different forms of atypical employment across the sector. Thus, besides considering the overall share of respondents compared to the total population of aircrew, the extent that the sample reflects the distribution of aircrew among air carriers with different business models was also examined. This can be an important determinant of the employment arrangements used and was also examined in earlier studies on the topic. Thus, such a comparison enabled an assessment of the validity of any conclusions in relation to these other studies. Other possibly relevant criteria – e.g. gender, age distribution of the sample – were also analysed.

Pilot survey

In total, **5,957 responses** were received to the survey of pilots over the 6-week period. This is in comparison to 6,633 responses in the case of 2015 Ghent study (2015) and 7,239 responses to a recent study by London School of Economics (LSE) (2016), on European pilots’ perceptions of safety culture in European aviation.

Based on data provided by ECA and their partners at the time, the Ghent study concluded that the known population of pilots flying professionally in Europe was 55,000 to 70,000 while, according to the LSE study their responses represented around 14%¹⁹ of commercial pilots working in Europe, which equates to 51,707.

Discussions with ECA revealed that no further studies considering the pilot population in Europe had been carried out (not including national studies), and no other detailed data on the number of pilots was identified. Thus, on the basis of the data from the LSE study, the responses to the survey carried out for this study potentially represent 11.5% of the commercial pilots flying in Europe, which is considered satisfactory in terms of the overall population.

Concerning the business model of air carriers that pilots worked for, 44% of the pilots responding to the survey carried out for this study work for network/legacy/traditional scheduled air carriers, compared to 45% in the Ghent study and 55% in the LSE study²⁰. Whilst Ghent and LSE have comparable figures for the proportion of pilots working for low-cost carriers (22% and 24% respectively), 34% of the pilots responding to the survey carried out for this study stated that they did so.

Discussions with ECA suggest two possible explanations for this difference. Firstly, Ryanair pilots have recently become a member of the trade unions which means that they can be more easily reached. They accounted for 13% of all pilot responses (highest proportion of pilots responding to the survey²¹). Secondly, pilots belonging to more traditional legacy carriers may be experiencing ‘survey

¹⁸ For instance, in the Ghent study, around 4200 responses were removed because there was clearly evidence of coordination of the responses.

¹⁹ Details on the methodology for determining this figure are not available

²⁰ See Appendix 2 for details of how business model was defined for respondents to the survey.

²¹ 650 Ryanair pilots responded to the Ghent study survey (9.8%) compared to 760 who responded to our survey.

fatigue' due to participation in a number of similar surveys over the past few years²². While it is not possible to corroborate this statement, ECA considered that the increased participation of Ryanair pilots (and low-cost carriers more generally) has actually increased the representativeness of the sample by business model.

Table 2-3: Pilots survey sample distribution by air carriers business model (% of total responses) - Comparison of Ricardo survey with earlier surveys

Air carrier business model	Ghent study	LSE Study	Ricardo study
Network/legacy/traditional scheduled	45%	55%	44%
Low-cost carrier	22%	24%	34%
Regional carrier ²³	8%	-	-
Charter	7%	7%	5%
Cargo/freight	7%	6%	2%
Business	4%	2%	7%
Other	6%	6%	3%

In the case of the Ghent study (Jorens, Gillis, & De Conisck, 2015), the study team assessed the representativeness of the respondents by air carrier, relying on data provided by the ECA and relevant contacts. Data from the Ghent study has been used as a high-level indication of representativeness amongst individual air carriers, acknowledging that pilot numbers are likely to have changed since then (2015). Where more up-to-date information on pilot numbers has been obtained, this has been used within the analysis. Table 2-4 shows that the potential proportion of pilots responding from selected individual air carriers ranges from 0.3% to 36.1%.

Table 2-4: Representativeness of pilot responses by air carrier

Air carrier	No. of survey responses (Ricardo)	Total no. of pilots occupied by the air carrier ²⁴	% responses from the air carrier
Ryanair	760	4714 ²⁵	16.1%
SAS	485	1345 ²⁶	36.1%
KLM	269	2800	9.6%
Lufthansa	255	4540 ²⁷	5.6%

²² Despite the proportion of pilots from legacy/network carriers responding to the Ghent survey and our survey were similar, there are distinct differences in the number of respondents from selected air carriers. For example, the Gent study received 627 and 565 responses from Air France and KLM respectively, compared to 235 and 269 in our study.

²³ See Appendix 2 for methodology regarding air carrier business model types.

²⁴ 2015 data obtained from ECA and their contacts – member air carriers and partners confirmed the number of pilots flying for them or who were members. Except where indicated.

²⁵ Data provided by Ryanair, 2017

²⁶ Data provided by SAS, 2017

²⁷ Data provided by Lufthansa, 2017

Air carrier	No. of survey responses (Ricardo)	Total no. of pilots occupied by the air carrier ²⁴	% responses from the air carrier
Air France	236	3864	6.1%
Easyjet	212	2400	8.8%
Norwegian	207	1000	20.7%
Finnair	141	720	19.6%
TUIfly	138	500	27.6%
Swiss International Air carriers	122	1340	9.1%
Cargolux	103	468	22.0%
Transavia	80	655	12.2%
TAP	67	700	9.6%
Iberia	62	1300	4.8%
Condor	33	750	4.4%
Germanwings	31	700	4.4%
Vueling	2	750	0.3%

Age and gender of the pilots who responded to the survey were also compared to the samples achieved for the Ghent and LSE studies (due to official data for pilot population not being available, e.g. Eurostat). As Table 2-5 and Table 2-6 show, the results were broadly similar for all three studies.

Table 2-5: Pilots survey sample distribution by age (% of total responses) - Comparison of Ricardo survey with earlier surveys

Age	Ghent study	LSE Study	Ricardo study
20-30 years	18%	18%	20%
30-40 years	30%	36%	33%
40-50 years	29%	39%	24%
50-60 years	19%	23%	19%
60+ years	3%	4%	3%
Missing	1%	0%	1%

Table 2-6: Pilots survey sample distribution by gender (% of total responses) Comparison of Ricardo survey with earlier surveys

Gender	Ghent study	LSE Study	Ricardo study
Male	Not asked	95.7%	94.7%

Gender	Ghent study	LSE Study	Ricardo study
Female	Not asked	4.3%	5.3%

Cabin crew survey

Over the 6-week period, **2,195 responses** were received to the survey of cabin crew. Whilst official cabin crew statistics are not available, according to EurCCA and ETF it is estimated that there are approximately 50,000 operational organised cabin crew in Europe. However, this figure only accounts for EurCCA and ETF affiliated members. Therefore, this figure is likely to be higher including cabin crew from European countries with few/no major air carriers.

Thus, our sample accounts for around 4.4% of cabin crew EurCCA and ETF affiliated members, but most probably less than that when the whole cabin crew population in Europe is considered. Information on cabin crew in Europe by air carrier business model was also not available.

Air carriers survey

Over the 6-week period, **27 responses** were received to the survey of air carriers. The Commission publishes data regarding the number of operating licences granted each year (European Commission, 2018). Data correct as of 16th May 2018 revealed that there were 362 active category A licences²⁸. Using these figures, air carriers responding to the survey represent 7.5% of the total number of licenced carriers.

However, it should also be noted that our sample captures an important share of the major air carriers. When considering the top 20 air carrier groups by number of passengers per year in 2017 (CAPA, 2018), 9 air carriers that responded to the survey are represented by 6 air carrier groups included on the list²⁹. When considering the top 40 air carrier groups (Wikipedia, 2018), 13 (belonging to 10 groups) out of the 27 air carriers responding are included on the list.

Finally, the business model split of air carriers operating in the EU was considered. Eurocontrol data have been used to identify the number of operators with at least one flight (and at least one passenger) that provided specific types in 2017³⁰. These were compared to the business model split of respondents to the air carrier survey (see **Error! Reference source not found.**Table 2-7).

The main difference is the absence of business service air carriers from the survey despite the fact that the relevant association sent the invitation to its members. Traditional scheduled air carriers are overrepresented within our sample of 27 air carriers, whereas the other air carrier business models are underrepresented. However, it is important to point out that, according to their own responses, 7 of the identified traditional air carriers follow the point-to-point services model (similar to that adopted by low-cost carriers) and do not have established hubs (as is the case of the traditional legacy carriers).

Table 2-7: Air carrier business model – based on operators with at least one flight registered by type in 2017

Air carrier business model	Eurocontrol (2017)	Ricardo
Network/legacy/traditional scheduled	29%	74%
Low-cost carrier	11%	7%

²⁸ Category A: Operating Licences without restriction of Article 5(3) of Regulation (EC) No. 1008/2008

²⁹ The CAPA list includes number of passengers by air carrier 'group', whereas air carriers responded to our survey on an individual basis. It was therefore possible to have more than one air carrier responding from the same air carrier group.

³⁰ Data from Eurocontrol on EEA aircraft operators that classify operators depending on the type of services were used. Operators with no passengers in 2017 were not considered and the same for freight carriers with no flights. In the case of 110 operators providing passenger services, Eurocontrol data suggested that they provided services in more than category. In this case, operators were classified depending on the type of service with the highest number of passengers.

Air carrier business model	Eurocontrol (2017)	Ricardo
Charter	19%	4%
Cargo/freight	-	-
Business	37%	-
Other	4%	4%
Not specified	0%	11%
Total	272	27

Source: Eurocontrol data, Survey of air carriers

National authorities

Two surveys were prepared for employment ministries and labour inspectorates. As outlined in Section 2.2.3.1 and Table 2-2, the study team attempted to contact national employment authorities and labour inspectorates via social attaché contacts provided by the European Commission. Several emails were sent to all social attaché contacts during the survey (and interview) period, requesting that the surveys were forwarded to the relevant national authority contacts.

Nine responses (from 7 Member States)³¹ were received from employment ministries and **12 responses** (from 11 Member States)³² were received from labour inspectorates (from a possible 30 responses).

In terms of representativeness, the Member States responding to the employment ministry survey accounted for 21% of EU air carriers (57 out of 272), whereas the Member States responding to the labour inspectorates survey accounted for 33.8% (92) air carriers (see Table 2-8). Survey responses from National Authorities should therefore not be considered robust in terms of findings.

Table 2-8: Representativeness by Member State and number of air carriers

Member State		Air carriers (Count)	Percentage of air carriers (%)	Labour inspectorate responses	Employment ministry responses
AT	Austria	25	4.62%	✓	✓
BE	Belgium	11	2.03%		
BG	Bulgaria	13	2.40%		
CY	Cyprus	5	0.92%		
CZ	Czech Republic	10	1.85%	✓	✓
DE	Germany	60	11.09%		
DK	Denmark	16	2.96%	✓	
EE	Estonia	3	0.55%	✓	✓
ES	Spain	50	9.24%	✓	✓
FI	Finland	9	1.66%		
FR	France	40	7.39%		
GB	United Kingdom	94	17.38%		

³¹ AT, CZ, EE, ES, LU, MT, SE

³² AT, CZ, DK, EE, ES, HR, LU, NL, IT, MT, SE

Member State		Air carriers (Count)	Percentage of air carriers (%)	Labour inspectorate responses	Employment ministry responses
GR	Greece	13	2.40%		
HR	Croatia	4	0.74%	✓	
HU	Hungary	5	0.92%		
IE	Ireland	9	1.66%		
IS	Iceland	7	1.29%		
IT	Italy	35	6.47%	✓	
LT	Lithuania	12	2.22%		
LU	Luxembourg	6	1.11%	✓	✓
LV	Latvia	4	0.74%		
MT	Malta	4	0.74%	✓	✓
NL	Netherlands	16	2.96%	✓	
NO	Norway	13	2.40%		
PL	Poland	10	1.85%		
PT	Portugal	18	3.33%		
RO	Romania	9	1.66%		
SE	Sweden	29	5.36%	✓	✓
SI	Slovenia	1	0.18%		
SK	Slovakia	10	1.85%		
Total		272	100.00%	92 (33.8%)	57 (21%)

Source: Eurocontrol, 2017

2.2.4 A4 - Collection of samples of employment contracts and instructions

As part of the data collection exercise the study team planned to collect examples of:

1. Employment contracts reflecting the different forms of atypical employment arrangements.
2. Instructions given to aircrew – since these can be more relevant in determining the nature of the relationship with the air carriers in the case of employment via intermediaries.

The study team made contact with the European Aviation Safety Agency (EASA) and a number of other associations in order to attempt to obtain examples of contracts and instructions, including European EurECCA, ETF, and ECA. Only one association was able to provide limited contract information, and the remainder were unable to obtain/provide examples of contracts and instructions, largely due to either not having access to any or acknowledging that they were of a sensitive nature and aircrew are unable to share them.

Requests were subsequently sent to cabin crew and pilots who responded to the online survey (see Section 2.2.3) asking if they would be willing to share examples of relevant contracts and/or instructions. In total, 23 documents (contracts and instructions) were received and analysed in the context of the study topics. Although not representative of the industry's trends and practices, the analysis provides an overview of how the aviation industry deals with the main issues examined throughout the study.

2.2.5 A5 – Case studies

Case studies were prepared in support of the analysis of the study topics. The case studies focus on real and relevant cases, and have been compiled through desk research, inputs from the surveys, and through interviews. The case studies compiled are outlined in Table 2-9 and have been incorporated in the respective topic analysis chapters.

Table 2-9: Case studies prepared in support of study topics

Topic	Relevant case studies
Temporary work agencies and intermediaries	1. Complaint against Norwegian Air carriers in Spain: alleged abuse of temporary agency work 2. Case against Norwegian Air Shuttle ASA and its subsidiary company in Norway: determination of the employer
Pay-to-fly	3. Study of offers for participation in pay-to-fly schemes – Low-cost air carriers 4. Study of offers for participation in pay-to-fly schemes – Legacy air carriers
Self-employment	5. Recruitment of pilots through self-employment
Posting of workers	6. Wet leasing 7. Temporary assignment of aircrews to different operational base from home base
Gender equality and reconciliation between private and working life	8. Comparative assessment of gender equality in the aviation sector in several Member States 9. Gender equality – air carrier fined for requiring pregnancy tests
Applicable law to aircrews' employment contracts	10. The right of air crew members to bring proceedings against its employer before the courts of the place where they perform the essential part of their duties: • Cases C-168/16 and C-169/16 and the Belgian legislation • Cocca case and the Norwegian legislation

2.3 Part B – Analysis

The collection of data in Part A provided the basis for the quantitative and qualitative analysis in Part B of the study. Table 2-10 summarises the role of each of the research tools in answering the questions in Part B.

Table 2-10: Research tools covering the different tasks

	Task 1 & 3 Temp Agency Work & Self- Employment	Task 2 Pay-to- fly	Task 4 Posted Workers	Task 5 Gender equality/work- life balance	Task 6 Third Country crews	Task 7 Applicable law
Literature Review	✓	✓	✓	✓	✓	✓
Datasets	✓					
Web searches		✓			✓	
Surveys						
Aircrews	✓	✓	✓	✓	✓	✓

	Task 1 & 3 Temp Agency Work & Self- Employment	Task 2 Pay-to- fly	Task 4 Posted Workers	Task 5 Gender equality/work- life balance	Task 6 Third Country crews	Task 7 Applicable law
Air carriers	✓	✓	✓		✓	
Labour inspectors	✓	✓	✓		✓	✓
Employment ministries	✓	✓	✓		✓	✓
Interviews						
Representatives of air carriers & aircrews	✓	✓	✓	✓	✓	✓
Individual aircrews	✓	✓		✓	✓	✓
Individual air carriers	✓	✓	✓	✓	✓	✓
National authorities	✓	✓	✓	✓	✓	✓
Temp agencies & other intermediaries	✓		✓	✓	✓	✓
Flight schools	✓	✓	✓	✓	✓	
Contract samples	✓	✓		✓		✓

Key:

Primary method/contribution

Secondary method/supporting evidence

The analysis for each of the tasks is presented in Sections 3 to 8 of this report.

2.4 Limitations and how they were addressed

2.4.1 Interviews

The interview programme was designed to capture the views, opinions and knowledge of a range of stakeholders relevant to the key topics of interest. This was to ensure that a complete overview of the situation in the sector could be achieved. Whilst the majority of stakeholder groups were keen and willing to participate in targeted interviews, participation was notably lacking from selected groups:

- National authorities:
 - Labour inspectorates and
 - Tax/social security authorities;
- Temporary Work Agencies / Intermediaries;
- Air carriers; and
- Flight schools.

2.4.1.1 National Authorities - Labour inspectorates

Selected Member State labour inspectorates were invited to participate in an interview following submission of their response to the survey. However, due to the initial low response rate to the survey of labour inspectorates (see Section 2.2.3 and 2.4.2), invitations were sent to four Member States³³ who had both responded to the survey and indicated some awareness of the topics of interest. One interview (IT) was arranged and conducted, whereas two further labour inspectorates replied to state that they could not provide further information (beyond that already provided in the survey³⁴). Despite follow up emails, no further interviews were arranged. Acknowledging efforts made to obtain responses, the lack of response may partly be due to the questionnaires not reaching the relevant persons within the different national authorities.

2.4.1.2 National Authorities - Tax/social security authorities

Eight Member States were targeted for this topic³⁵. The fiscal attachés for each of the selected Member States were contacted by the study team and asked to identify the relevant contact within their respective Member State in the absence of any direct/existing contacts. Contacts were subsequently identified for Germany, Hungary, Italy and Finland. These contacts were invited to participate in an interview. However, despite a dialogue with the individuals (including sharing of the interview checklist), it was only possible to arrange an interview with one authority. Inability to secure more interviews with this group of stakeholders was primarily due to a lack of awareness of this topic area and/or unable to arrange suitable dates.

2.4.1.3 Temporary Work Agencies and Intermediaries

Representatives of temporary work agencies and intermediaries are an important stakeholder for a number of the topics, namely temporary work agencies/intermediary companies and self-employment. Agencies/intermediaries, including Brookfield, CAE Parc Aviation, OSM Aviation, Contractair Ltd., Aeroprofessional, Rishworth Aviation, SIGMA Aviation Service Ltd. and Aerviva were all contacted initially via email and invited to participate in an interview. Follow up emails and calls were made to the agencies. Three responded to state they were not interested in participating, whereas the remainder did not respond to any communication.

2.4.1.4 Air carriers

Seven interviews with air carrier representatives were undertaken. Whilst this was close to our originally intended number of interviews (8), the interviewees could only be selected if they had first responded to the survey and left their contact details. The potential pool of respondents for selecting interviewees was therefore limited - the majority of the interviewees had little or no experience/participation in the various atypical employment practices, but this could also be due to the limited number of responses received.

2.4.1.5 Flight Schools

Inputs from flight schools were envisaged to primarily contribute to the analysis concerning the pay-to-fly topic, but they were also likely to explain the relationships between newly qualified pilots and use of temporary work agencies/intermediaries. The study team contacted a number of flight schools, including L3T Training, European Flight Academy and other leads provided to the study team by aircrew. However, despite emails and calls inviting them to participate in an interview, the study team were only successful in arranging one interview with a flight school.

2.4.2 Surveys

Input to the surveys organised represent an important part of the evidence base. Thus, it is important to understand the characteristics and representativeness of the survey samples. Of particular relevance is the extent to which surveys of aircrews (pilots and cabin crews) are representative of the actual distribution of aircrew among air carriers that follow different business models but also in terms

³³ CZ, DK, EE, IT

³⁴ EE, CZ

³⁵ FI, DE, EL, HU, IE, IT, NL, UK

of the age distribution (i.e. seniority of pilots) since the use of alternative employment schemes tends to be more common among younger pilots (Jorens, Gillis, & De Conisck, *Atypical forms of employment in aviation*, 2015). Furthermore, the gender distribution was also considered since this is relevant when considering gender equality issues.

2.4.2.1 Pilots

Whilst the focus of our study was on EEA aircrews, one topic was concerned with the use of non-EEA pilots and cabin crew by EEA air carriers (see Section 8). Due to the way in which the survey was distributed, primarily via European associations (both pilot and cabin crew), it did not reach many non-EEA respondents. 93 out of 5,957 (1.6%) pilots and 14 out of 2,195 (0.6%) cabin crew stated that they were non-EEA/third country nationals. Of the 93 pilots, 71 were Swiss nationals based in Switzerland with all but two working for a Swiss air carrier, leaving just 22 other non-EEA nationals (0.4%). The results for this topic should therefore be treated with caution.

One of the background questions required respondents to provide the name of the air carrier that they worked for. As this question required a text response, it became clear from the responses that multiple variations of air carrier names were provided by respondents. The responses were therefore reviewed and allocated to the correct air carrier names. The study team is confident that the data were appropriately cleaned to ensure responses are allocated to the correct air carrier and subsequently business model type.

It was clear in some instances the respondents did not fully understand the questions presented to them. Notably “Q2.3 *Are you a third country (non-EEA) national?*” presented a problem for respondents (for example). Although 255 pilots stated that they were, their answer to “Q1.1.1 *What is your nationality?*” often contradicted this (i.e. they were Belgian, German, Dutch, French etc.). the study team therefore reduced the number of responses to Q2.3 (from 255 to 93) based on their response to Q1.1.1.

Finally, it can be noted that there was a diminishing number of responses as the survey went on for both the pilot and cabin crew surveys. The percentage of respondents who did not answer/skipped selected questions ranged from 1% to 26%.

2.4.2.2 Cabin crew

The limitations outlined for the pilot’s survey, including responses from non-EEA nationals, understanding/interpretation of the questions and diminishing number of responses, are also relevant for the cabin crew survey responses.

2.4.2.3 Air carriers

Over the 6-week period, **27 responses** were received to the survey of air carriers, out of over 350 contacted. The air carrier survey was distributed primarily via the following relevant associations: A4E (15 air carriers) including the Airline Coordination Platform (ACP), ERA (50 air carriers), IATA (285 air carriers), EBAAEEA, and AIRE (16 air carriers). Reminder emails were sent to associations whilst the survey was live to encourage their members to respond to the survey, and subsequently to inform them of the deadline. We are aware that a number of the associations followed up with their members to encourage them to respond. The study team also made direct requests to known air carrier contacts to respond to the survey. As discussed above in Section 2.2.3.2, the survey is not representative of the number of air carriers, or air carriers by business model type, which presents a limitation regarding the inputs received from air carriers to the survey.

2.4.2.4 National authorities

As discussed in Section 2.2.3.2, **Nine responses** (from 7 Member States) were received from employment ministries and **12 responses** (from 11 Member States) were received from labour inspectorates to their respective surveys (from a possible 30 responses – approximately a third for both surveys). The member states responding to the employment ministry survey account for 21% of EU air carriers (57 out of 272), whereas the Member States responding to the labour inspectorates survey accounted for 33.8% (92) air carriers (see Table 2-8).

The study team did not have access to direct contacts within the respective authorities, so social attachés were contacted in the first instance asking them to identify relevant contracts within the appropriate authorities in their respective Member States. Follow up emails were sent, and 14 social attachés confirmed that the surveys had been passed on to the relevant national authorities.

Additional reminder emails were sent after the survey had been live for three weeks, and prior to the deadline. It is not known whether surveys were distributed to the relevant national authorities in all of the EEA Member States.

The low response rate from labour inspectorates also had subsequent impacts for the study team's ability to secure interviews with labour inspectorates (who had answered the survey), as mentioned in Section 2.4.1.1.

3 Temporary work agencies/intermediary companies

3.1 Introduction and scope

This section explores the presence, nature and extent of use of temporary work agencies and other intermediaries in the EEA aviation sector through which air carriers reportedly engage and hire aircrew staff. More specifically, the analysis covers the following aspects:

- The different models of recruitment of aircrews through temporary work agencies and other intermediary companies.
- The level of use of temporary agency workers by air carriers compared to the employees directly employed by air carriers.
- The extent of the use of other intermediary companies,
- Cases where the features of the relationship between the assigned worker and the air carrier are those of an employment relationship.
- The challenges for the workers and the national authorities linked to the use of these employment arrangements.

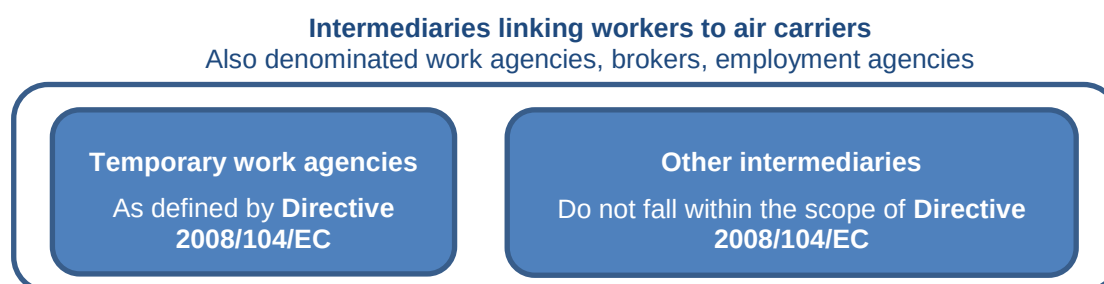
The analysis is based on the combination of data collected from primary sources (surveys and interviews) and secondary sources (relevant literature and contract samples). In addition, two case studies have been developed to gain a better understanding of recruitment of aircrews through temporary work agencies and other intermediaries, and to examine whether and how the relevant EU and national legislation addresses the situation.

It is worth noting that, when reference is made to temporary agency work, the analysis has been based on the definition of temporary work agency and temporary agency worker established by the Directive on Temporary Agency Work (2008/104/EC), which sets out the legal framework covering the working conditions of temporary agency workers in the EEA.

3.2 Models of recruitment of aircrews through temporary work agencies and other intermediaries

Agency work involves a trilateral relationship between the worker, the agency and the air carrier (Jorens, Gillis, & De Conisck, 2015), (Steer Davies Gleave, 2015)), where the agency can be identified as a temporary work agency or another type of intermediary. For the purposes of this study, whether a work agency is defined as a temporary work agency or another intermediary depends on whether it falls within the scope of **Directive 2008/104/EC on Temporary Agency Work**. Only those agencies which could be defined with a reasonable degree of certainty as temporary work agencies under this Directive will be classified as such. Temporary work agencies are assumed to be part of a larger group of 'intermediaries' which also includes other types of intermediaries that may also be called work/employment agencies or brokers (see Figure 3.1).

Figure 3.1: Schematic of definitions used in this chapter



Temporary work agencies and **temporary agency workers** are defined in Directive 2008/104/EC as indicated in Box 3.1.

Box 3.1: Definitions provided in Directive 2008/104/EC on Temporary Agency Work

Temporary work agency

Article 3 (b) states: “‘temporary-work agency’ means any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction”

Temporary agency worker

Article 3 (c) states: “‘temporary agency worker’ means a worker with a contract of employment or an employment relationship with a temporary-work agency with a view to being assigned to a user undertaking to work temporarily under its supervision and direction”

As such, in the air services sector, temporary agency workers are employed by a temporary work agency and assigned to an air carrier (Jorens, Gillis, & De Conisck, 2015), (Steer Davies Gleave, 2015)). In this case, the employment relationship is between the workers and the agency; the agency is responsible for their pay, along with associated tax and social security obligations. An employment relationship between the worker and the air carrier does not exist. However, the worker must follow the rules of the air carrier which will supervise the work, whilst the air carrier must ensure compliance with some legal obligations such as the health and safety of workers.

As indicated above, in addition to temporary work agencies, other intermediaries can be **recruitment agencies** used by air carriers to identify and select staff for them as explained in Box 3.2. The main difference resides in the fact that the worker is not bound by an employment contract with the recruitment agency.

Box 3.2: Intermediaries as recruitment agencies

Recruitment agencies

These are agencies which find and select cabin crew for air carriers, but the air carriers hire these crew directly. The role of these agencies may also differ depending on the situation in the country. If it is not easy to find aircrew staff, the agency allocates most efforts into attracting and recruiting candidates. In a country where there are many candidates for aircrew staff positions, the agency focusses on screening candidates.

Based on Trafikstyrelsen study (Trafikstyrelsen, 2014), if the recruitment agency is not classified as a temporary work agency, it could be considered that the employment takes place directly with the air carrier.

According to the study by Ghent University (Jorens, Gillis, & De Conisck, 2015) and our interview with EurECCA, these work agencies do not have responsibility for upholding the employment rights, taxation, social security obligations associated with aircrew; they only find and select crew for the air carrier.

It is worth noting that an intermediary can act both as a temporary work agency, a recruitment agency or another type of intermediary (not covered by Directive 2008/104/EC). According to ECA, in aviation, “brokers” are being used for both temporary work and for entering the profession, i.e., they are both used as temporary work agencies and staffing agencies. Examples of brokers in aviation typically cited by the stakeholders consulted include entities like CAE Parc Aviation, Brookfield, Crewlink and AeroProfessional (list not exhaustive). As the description in Box 3.3 suggests, it is difficult to state with certainty whether these organisations are recruitment agencies, temporary work agencies or a different kind of agency. A question from a Member of the European Parliament to the European Commission alluded to this difficulty by enquiring whether Crewlink could be considered a temporary work agency (European Parliament, 2013). The Commission replied that this classification is regulated by national law which should be in compliance with the definition laid out in Directive 2008/104/EC.

Box 3.3: Examples of different roles of intermediaries in aviation (including temporary work agency)

CAE Parc Aviation is a provider of jobs, technicians and aviation professionals to air carriers that is based in Ireland with offices in Shannon, Ireland, Beijing, Shanghai, Tokyo and Singapore. They provide flexible solutions to enable clients to deal with unscheduled work or market demands, manage labour costs and access highly qualified and experienced flight crew and technical personnel. Based on the jobs advertised on their website, they help several air carriers with recruitment for permanent positions within those air carriers but also offer positions whereby the contract is with them, but the staff provides services to the air carrier.

Brookfield Aviation is a supplier of pilots to the worldwide aviation industry. They complement clients' permanent staff with flight crew, enabling clients to take up opportunities relating to unscheduled workloads and demands for additional staff during peak season operations.

Crewlink specialise in recruiting and employing air carrier cabin crew and are an official recruitment partner with Ryanair. It appears to exclusively provide staff for Ryanair: "*Crewlink's contracted cabin crew fly on Ryanair aircraft, wear the Ryanair uniform and follow Ryanair's rules, regulations and procedures*".

AeroProfessional support aircraft operators and aviation companies with their people strategies. They provide campaigns for air carriers looking for temporary contractors, permanent employees and hold pool staff.

OSM Aviation offer total crew management for a variety of air carriers – a full range of management and recruitment services for the aviation industry. This includes permanent employment, but they also offer a range of other services, including crew management services.

Source: Websites of CAE Parc Aviation, Brookfield Aviation, Crewlink, AeroProfessional, OSM Aviation³⁶

The services provided by these companies can include selecting aircrew for direct employment with the air carrier, holding a pool of staff for providing services temporarily to air carriers and providing full crew management services³⁷. Regarding the latter feature, the Steer Davies Gleave (2015) study reported Finnair's plan to completely outsource cabin crew on two routes (Hong Kong and Singapore routes), which entailed that the third-party provider (in this case, OSM Aviation) is fully responsible for all crew management, including provision of uniforms and training. For an air carrier association, air carriers simplify recruitment by using temporary work agencies and other types of intermediaries, especially if buying the 'full package' that is recruitment, training, license arranging, and contacting local authorities. This package model is being used more and more especially by low-cost carriers and regional air carriers, and it is more common for cabin crew than pilots.

A further variation to the recruitment model is the use of a **subsidiary of the air carrier**. Trafikstyrelsen's report of the working group on "Social dumping" in aviation (2014) and other stakeholders (ETF, SNPL, Norwegian Pilot Group) make reference to air carriers owning work agencies (in contrast to the previously mentioned agencies that are independent and/or serve multiple air carriers). In this case, the subsidiary is the employer and is responsible for taxation and social security obligations; there is no direct link with the air carrier. Box 3.4 below presents an example of such intermediaries.

Box 3.4: Example of intermediaries as human resources agencies which are a subsidiary of the air carrier

Norwegian Air Resources Holding (NARH) is a company subsidiary of Norwegian Air Shuttle ASA based in Ireland and founded in 2013 (Bloomberg, n.d.). It is a resource company providing, via its subsidiaries, crew and crew management services to the parent company Norwegian Air

³⁶ CAE Parc Aviation: <https://caeparcaviation.com/services/>; Brookfield Aviation: <https://www.brookfieldav.com/about-us>; Crewlink: <https://www.crewlink.ie/>; AeroProfessional: <https://www.aeroprofessional.com/>; OSM Aviation: <https://osmaviation.com/>

³⁷ Full crew management services are assumed to include recruitment, training, management, planning and execution of the service. Since these are ancillary services, they are not expected to be covered by Directive 2008/104/EC.

Shuttle exclusively (European Commission, 2016). More recently, NARH acquired 50% of **OSM Aviation** (OSM Aviation, n.d.), described above.

It is not clear whether these subsidiaries can be defined as temporary work agencies. It is possible that they provide multiple services to the parent air carriers, of which only a sub-section could be considered to fall within the scope of Directive 2008/104/EC.

Cases have also been reported in which air carriers create subsidiary air carriers – usually under the same brand - and adopt recruitment models that differ from that of the parent company including the use of temporary agency workers. In addition, the emergence of so called virtual air carriers, whereby the air service is provided by different companies each playing a different role, means that in many cases the use of staff from a work agency (which could be a temporary work agency or other intermediary) is part of the broader range of intermediaries used by virtual air carriers. These cases are further explored in Box 3.5.

Box 3.5: Other arrangements

Multiple air carriers under the same brand

A different model is the opening of a new air carrier in a different country but under the same brand. According to the Norwegian Pilot Group, the two air carriers, although under the same brand, resort to different recruitment models: whereas the original air carrier typically directly employs aircrew staff, the newly-created air carrier uses temporary work agencies to hire staff. They have multiple bases across different countries where pilots are employed via a temporary work agency. As such, there is no connection with the original air carrier.

Example: air carrier has operated traditionally from Denmark but gets AOC (Air Operator Certificate) in Latvia and uses Latvian staffing agency to provide staff for operating aircraft but still flying out of Denmark.

Air carriers composed by multiple companies

Stakeholders also referred to the emergence of **virtual air carriers**. According to the Norwegian Pilot Group, the virtual air carrier model is based on a group holding company (the brand) which holds multiple companies with different assets. In this model, the AOC holder contracts pilots and cabin crew from a work agency and obtains aircraft from a leasing company. The work agency can be a subsidiary of the company.

According to SPNL (French pilot union), Norwegian uses this model – as described above it has a human resource company (NARH) whereby pilots are employed by HR agency, part of Norwegian but independent from the AOC holder, from firm that owns airplanes, etc. These companies act as service providers for the AOC holder. Pilots working for Norwegian are still under French contract, the agency applies French labour law, pays tax and social security in France. It is not clear whether the HR agency can be defined as a temporary work agency. It is possible that it provides multiple services to the AOC holder, of which only a sub-section could be considered to be covered by the scope of Directive 2008/104/EC.

Finally, Countouris, Deakin, Freedland, Koukiadaki, & Prassl (2016) indicate that in some cases agencies do not hold an employment contract with the aircrew but are used to engage them as self-employed personnel who provide services to user undertaking. Thus, in the case of pilots, a limited liability company can be created by crew members and the employment relationship is defined between the aircrew members and the limited liability company (Jorens, Gillis, & De Coninck, 2015). More information on the models of recruitment involving self-employed aircrew is presented in Section 5 (Self-Employment).

A general finding from the interviews conducted for this study is that the differences between “temporary work agencies” (as defined and covered by the scope of Directive 2008/104/EC) and other intermediaries are not always clear and the terms are often used interchangeably. Note that there are significant differences in relation to how temporary agency work arrangements are set up in each Member State (Countouris, Deakin, Freedland, A., & Prassl, 2016), which helps explain the confusion surrounding these concepts.

To summarise, there are various possible arrangements through which air carriers may engage with aircrew via temporary work agencies or other types of intermediaries. These are summarised below:

- A temporary work agency holds contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings (air carriers) to work there temporarily under their supervision and direction. These temporary work agencies must abide by the national rules implementing Directive 2008/104/EC on Temporary Agency Work, or, in case of a transnational assignment within the European Union, by Directive 96/71/EC on the Posting of Workers (see point 3.5.2.3 below).
- Other intermediaries can be recruitment agencies which identify and select aircrew for the air carrier. In this case they do not have an employment contract with the aircrew and are not responsible for upholding their employment rights, taxation and social security obligations
- Aircrew can also be hired by subsidiaries of the air carrier (i.e. human resource agencies). They are in effect the employer and have to uphold the associated responsibilities. The aircrew are then contracted by them but provide services to the air carrier, which has no contractual relationship with them. It is not clear whether these subsidiaries can be defined as temporary work agencies. It is possible that they provide multiple services to the parent air carriers, of which only a sub-section could be considered to be covered by Directive 2008/104/EC. The national rules implementing the Directive would therefore only apply to the activities falling within its scope.
- Variations of the model exist whereby the air carrier is in effect a group of different companies with different functions (AOC holder, leasing firm, human resources company, etc). As such, the work agency is only one other intermediary amongst all the individual companies that in combination provide the services of an air carrier (i.e. virtual air carrier). It is not clear whether the work agency in this case can be defined as a temporary work agency. It is possible that it provides multiple services to the AOC holder, of which only a sub-section could be considered to be covered by the scope of Directive 2008/104/EC.

In practice, the distinction between temporary work agencies and other intermediaries is not always clear due to a number of reasons:

- Considerable differences in the use of temporary agency work across the EU which can help explain the confusion surrounding these concepts; and
- The same company can provide the services of both temporary work agencies and other intermediaries (i.e. provide both services that are within and outside the scope of the Directive).

As a result, the following concepts will be used in the sections below:

Table 3-1: Definitions used in this chapter

Concepts	Definition
Intermediaries (also equivalent to: <i>work agencies,</i> <i>employment agencies,</i> <i>intermediary manning</i> <i>agencies</i>)	Encompass all agencies linking workers to air carriers – thus it also includes temporary work agencies. The same intermediary company can perform different roles - within and outside the scope of Directive 2008/104/EC on Temporary Agency Work. Intermediaries can be owned by air carriers (i.e. subsidiaries) and/or provide aircrew exclusively to one air carrier. Workers generally hold an <u>employment contract</u> with these intermediaries who are responsible for the associated employer obligations. The exception is the <i>recruitment agencies</i> which merely find and select aircrew to be employed directly with the air carrier.
Temporary work agencies	Hold contracts of employment or employment relationships with temporary agency workers in order to assign them to air carriers to work there temporarily under their supervision and direction. Only intermediaries that fall within Directive 2008/104/EC on Temporary Agency Work are classified as temporary work agencies.

Concepts	Definition
Agency workers	Consist of workers who have an employment contract with an intermediary.
Agency work	Consists of work performed by agency workers.

3.3 Extent of use of temporary work agencies and other intermediaries

3.3.1 Overall picture

There is already some evidence of a growing trend regarding the use of temporary work agencies and other types of intermediaries by some air carriers. Steer Davies Gleave (2015) gathered the views of different stakeholders on the use of these workers and the study by Ghent University (Jorens, Gillis, & De Coninck, 2015) included a survey of 6,633 pilots where they were asked to indicate the type of contract they hold.

The surveys of cabin crew, pilots, air carriers, employment ministries and labour inspectorates conducted for this study provides further insights into the use of these forms of employment and have been compared against the literature to develop a more up-to-date picture and examine if there are any new trends that have emerged. The key question asked aircrew to describe their working arrangement and provided the following options:

- Employment contract directly with the air carrier;
- Employment contract via an intermediary manning agency; or
- Self-employed – (analysed in detail in Section **Error! Reference source not found.**)

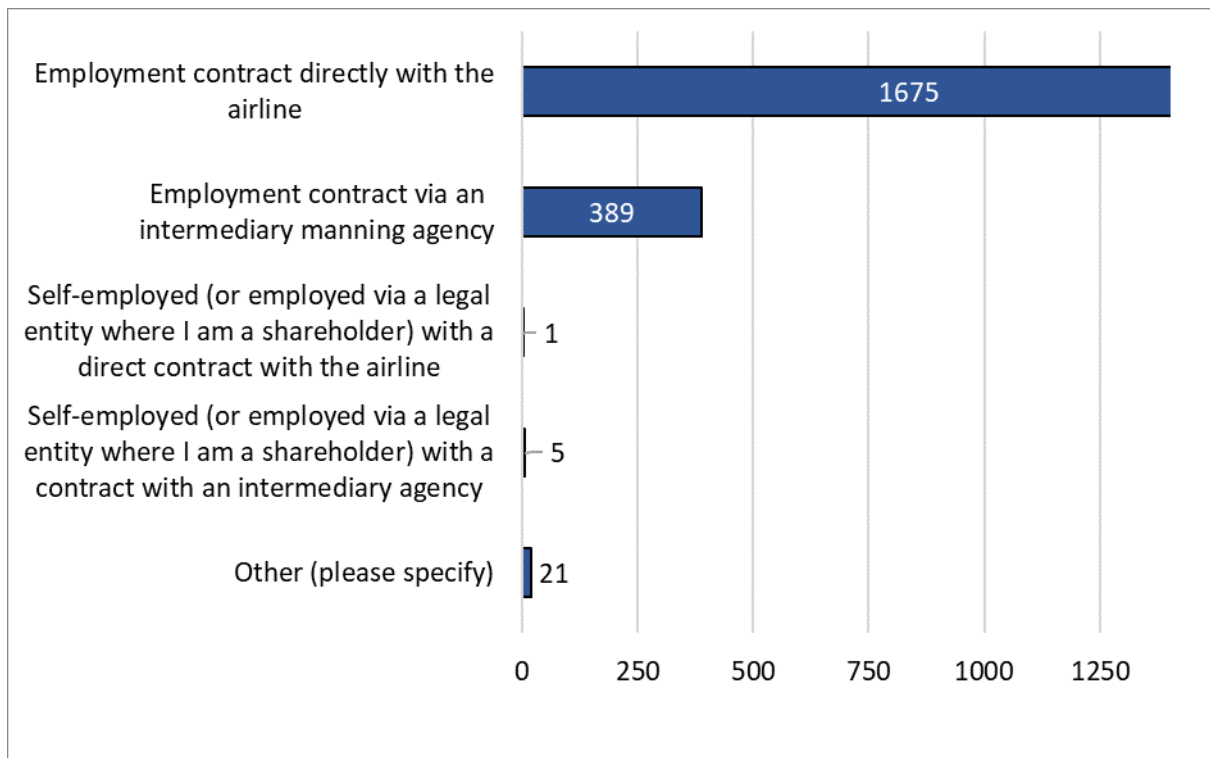
Although the previous section attempts to provide clarity on the differences between temporary work agencies and other intermediaries, in practice it has not been possible to collect specific data on the use of temporary work agencies. Associated with the confusion surrounding these concepts, survey respondents (aircrew) were not in a position to know whether the work agencies they work for fall within the scope of the Directive or not. In addition, as mentioned in section **Error! Reference source not found.**, it was not possible to obtain input from these work agencies, despite our invitation.

Therefore, the assessment of the use of temporary work agencies and other intermediaries is based on a comparison between the number of aircrew who hold a **direct contract of employment with the air carrier** (irrespective of whether a recruitment agency or other intermediary was used) and aircrew who hold a **contract with an intermediary manning agency**. The latter could include a temporary work agency as defined in the Directive 2008/104/EC or another intermediary. In both cases, the main feature is that the worker does not have a contract with the air carrier. This assessment will help understand the importance of intermediaries as employers in the air services sector (i.e. atypical employment) compared to the more typical employment model (i.e. direct contract between worker and air carrier). Specific references to temporary agency work have been made whenever possible based on stakeholder input. We also note that a number of studies (e.g. Countouris, Deakin, Freedland, Koukiadaki, & Prassl (2016), Eichhorst, et al., (2013), Department of Trade and Industry (1999), UK Department for Business, Innovation and Skills (2014)) point to the difficulty of gathering and analysing quantitative data on temporary agency work. This is in part due to surveys relying on the self-assessment of respondents in relation to concepts which are difficult to define clearly as argued in the previous section. The following results on aircrew hired via an intermediary manning agency should thus be interpreted with caution and in light of the sample representativeness discussed in Section 2.2.3.2.

According to the survey of cabin crew (Figure 3.2), 389 out of 2,091 (19%) cabin crew who responded have an employment contract via an intermediary manning agency. However, the majority of cabin crew hold direct employment contracts with the air carrier (1,675 out of 2,091 - 80%). Note that cabin crew could also indicate to be self-employed (or employed via a legal entity where they are a

shareholder) with a contract with an intermediary manning agency or with a contract directly with the air carrier (detailed analysis of these categories is provided in Section 5 and the stakeholder consultation report – this section focuses on comparing aircrew with employment contracts via an intermediary manning agency against those with a direct employment contract with the air carrier).

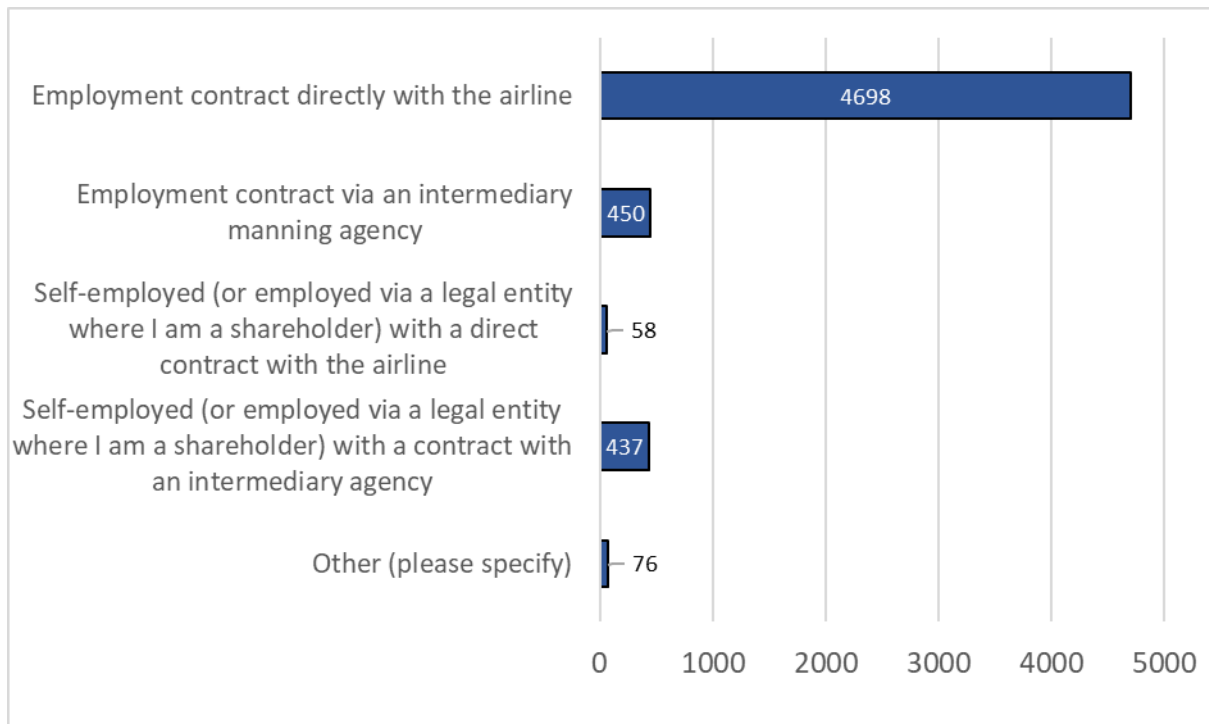
Figure 3.2: How would you describe the working relationship with the air carrier you currently work for? (Question 2.1 of the survey of cabin crew)



Source: Survey of cabin crew

Regarding pilots (Figure 3.3), the survey indicates that 450 out of 5,719 (8%) pilots have an employment contract via an intermediary manning agency. Similarly to cabin crew, the majority of pilots hold direct employment contracts with the air carrier (4,698 out of 5,719 - 82%). Note that, as for cabin crew, pilots could also identify as being self-employed (or employed via a legal entity where they are a shareholder) with a contract with an intermediary manning agency or with a contract directly with the air carrier (detailed analysis of these categories is provided in Section 5 and the stakeholder consultation report – this section focus on comparing aircrew with employment contracts via an intermediary agency against those with a direct employment contract with the air carrier).

Figure 3.3: How would you describe the working relationship with the air carrier you currently work for? (Question 2.1 of the survey of pilots)



Source: Survey of pilots

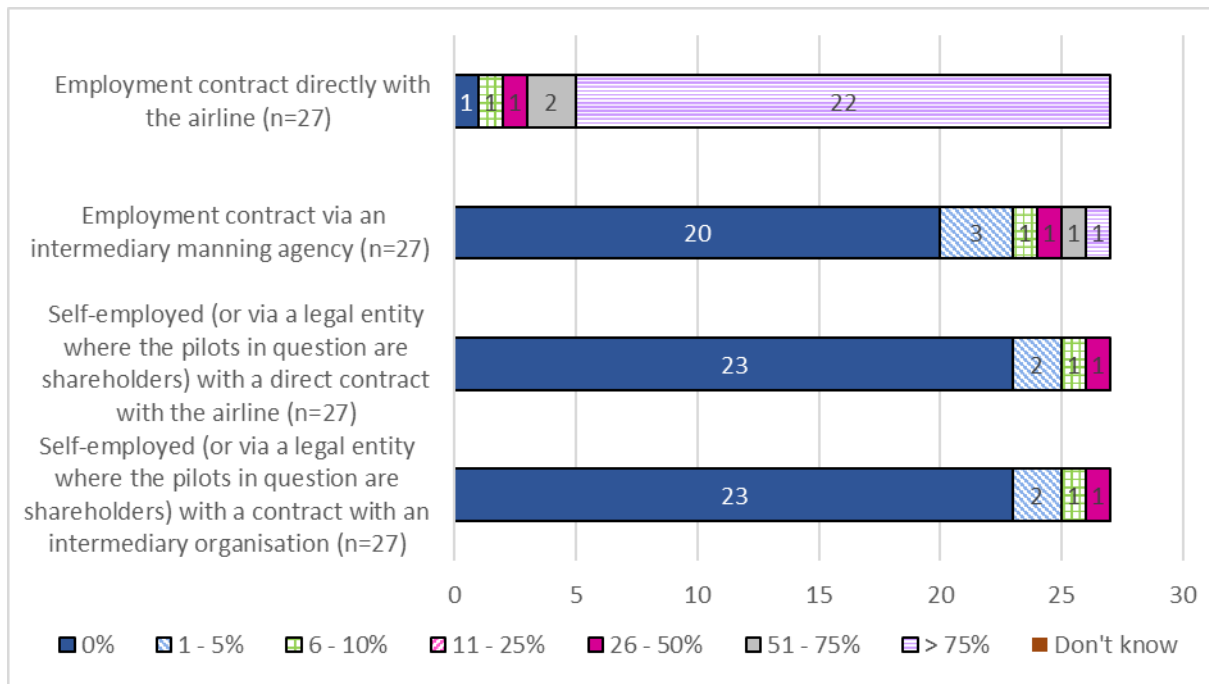
The higher share of workers with contracts with intermediary manning agencies among cabin crew is in line with the findings of the Steer Davies Gleave (2015) study where unions (ETF, ECA, Unionen and SLSY) had indicated that temporary agency workers are more prevalent among cabin crew whilst the phenomenon is relatively new for pilots.

Furthermore, when compared to the study undertaken by Ghent University (Jorens, Gillis, & De Conisck, 2015), 5% of the pilots indicated that they are engaged through a temporary work agency and 2% indicated they work for the air carrier via a company but are not a shareholder of the company (i.e. they work for the air carrier via an intermediary). Combined (7%), this represents a slightly smaller share than the finding from our survey where 8% indicated that they have an employment contract via an intermediary manning agency.

From their side, only a minority of air carriers that responded to our survey indicated that they resort to employing pilots and cabin crew with contracts via an intermediary manning agency. Figure 3.4 shows that 20 out of the 27 air carriers stated that they do not employ pilots under these contracts, whilst 19 of the 27 air carriers stated that they do not employ cabin crew under these contracts (see Figure 3.5). The weighted average of the responses from the specific air carriers suggests that 9% of cabin crew and 8% of pilots work on the basis of a contract with an intermediary manning agency³⁸. Air carriers also referred to other options regarding employment arrangements (e.g. self-employment) that are discussed in more detail in Section 5.

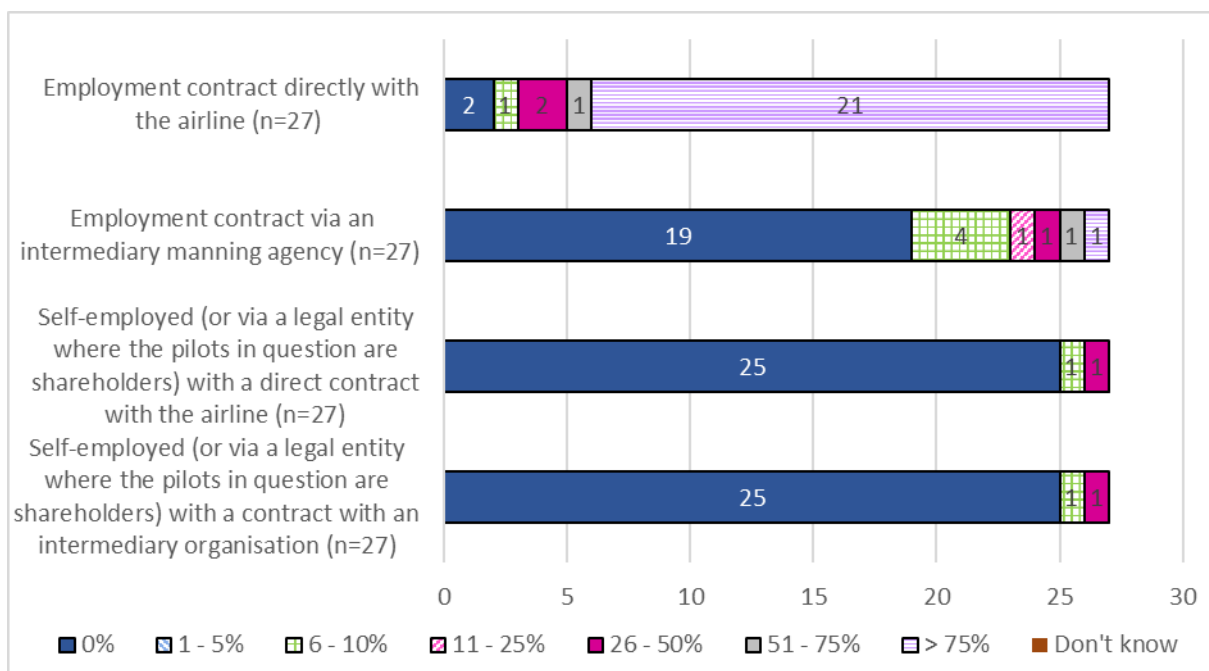
³⁸ Air carriers were asked to select the range that represents the share of pilots and cabin crew covered by an employment contract via an intermediary manning agency. Based on the central value of each range, an average share was calculated from all the responses provided.

Figure 3.4: What share of the pilots flying for your air carrier in 2017 (or most recent year for which data is available) was covered by one of the following working arrangements? (Question 2.2 of the survey of air carriers)



Source: Survey of air carriers

Figure 3.5: What share of the cabin crew flying for your air carrier in 2017 (or most recent year for which data is available) was covered by one of the following working arrangements? (Question 2.2 of the survey of air carriers)



Source: Survey of air carriers

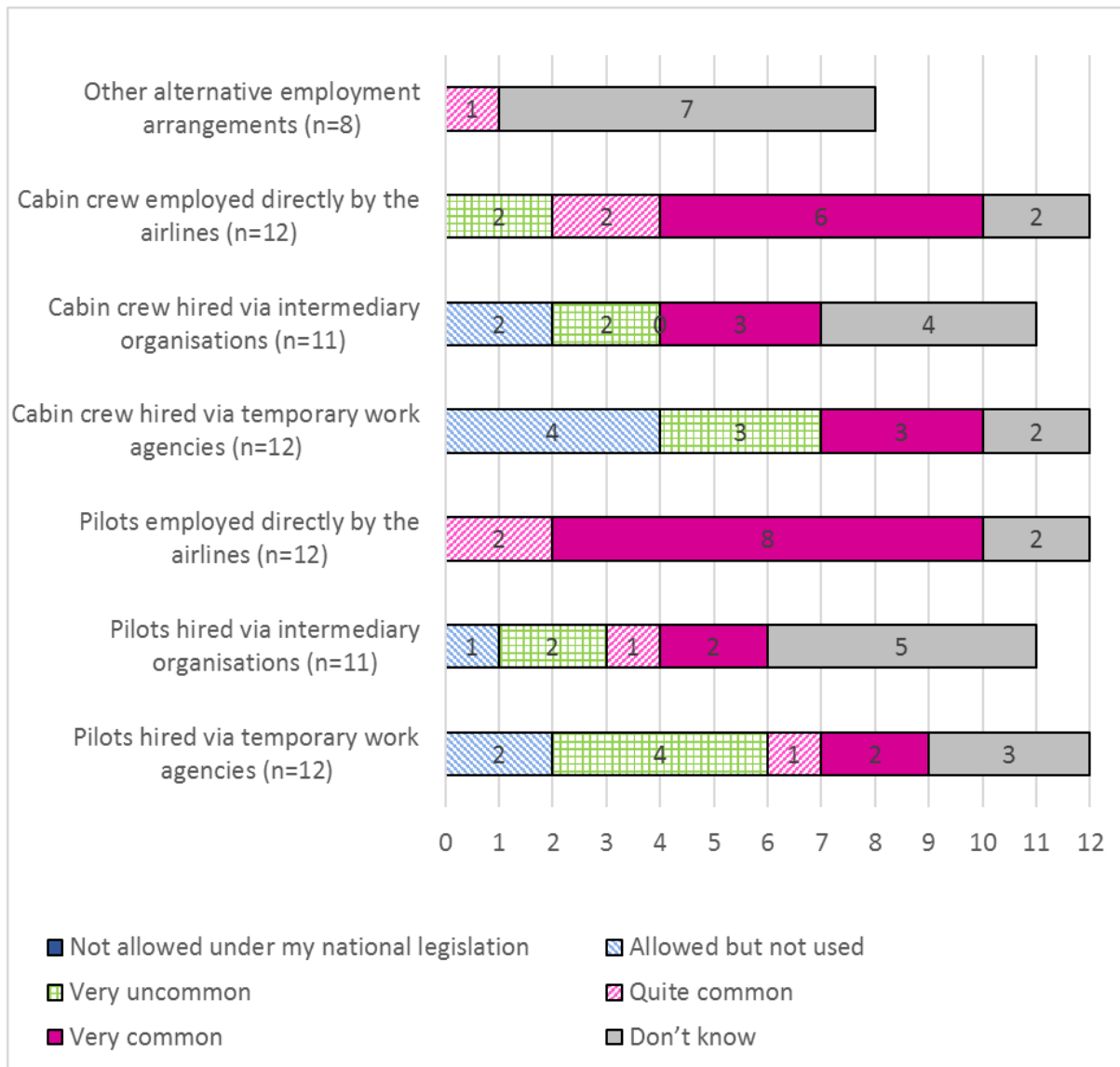
Authorities (ministries of employment and labour inspectorates) were also asked to provide input on the same topic, being given the option to comment on the use of workers hired via temporary work agencies and other intermediaries separately³⁹. In general, their responses seem to support the overall picture presented above even if they could not provide specific estimates. The majority of employment ministries did not know (between four and five out of six responding). Two (Estonia, Sweden) of the six ministries of employment surveyed stated that pilots and cabin crew hired via temporary work agencies are very uncommon. Regarding pilots and cabin crew hired via other intermediary organisations, one (Sweden) of the six employment ministries indicated that it is quite common and the other (Estonia) noted that it is very common.

Among the 12 labour inspectorates responding to a similar question, the overall picture is that direct contracts with air carriers are the most common but that other employment relationships are also used. More specifically, four (Luxembourg, Sweden, Denmark, Czech Republic) reported that it is very uncommon for pilots to be hired via temporary work agencies, whilst three (Sweden, Denmark, Czech Republic) reported the same for cabin crew (Figure 3.6). On the other hand, two labour inspectorates (Italy, Netherlands) also stated that it is very common in the case of pilots whilst three labour inspectorates (Croatia, Italy and Netherlands) stated it is very common in the case of cabin crew. It is worth noting that both Malta and the Czech Republic have indicated that they do not have atypical employment relationships in the aviation sector.

Regarding pilots and cabin crew hired via other intermediary organisations, two labour inspectorates (Sweden, Denmark) reported that it is very uncommon for pilots and cabin crew to be hired via intermediary organisations. On the other hand, two labour inspectorates (Estonia, Netherlands) stated that it is very common for pilots to be hired via other intermediary organisations whilst three labour inspectorates (Estonia, Netherlands and Italy) noted it is very common for cabin crew.

³⁹ Level of confusion between concepts should be lower for authorities

Figure 3.6: How common is the use of the following forms of employment among air carriers with operating bases in your country? (Question 2.1 of the survey of labour inspectorates)



Source: Survey of labour inspectorates

In line with the surveys and literature findings, the stakeholders interviewed had a similar view. EurECCA and ECA noted that the share of this type of employment is small. BALPA indicated that in the UK about 5-10% of pilots overall are employed by intermediaries.

Furthermore, intermediaries appear to be more prevalently used in some countries, according to ECA, Norwegian Pilot Group, BALPA, one union, and two air carrier association:

- In Eastern Europe according to the Norwegian Pilot Group, a union, and air carrier association
- In the UK and Ireland according to BALPA, a union, and two air carrier associations
- Southern European according to a union

According to the Norwegian Pilot Group and BALPA, intermediaries tend to hire aircrew where labour law is less restrictive. An air carrier interviewed also indicated that it happens in other countries as they have different national laws but did not specify where. Along the same line, SNPL indicated that the market is relevant as it is linked to social security and employer taxes. It was explained that in France there is a labour legislation article that states that if air carriers have an establishment in France (premises, facilities) they must pay taxes and employ under French contract, which is why in

France the aviation sector does not resort to the use of intermediaries as much as other places. Asked about differences between countries, ETF noted that legacy air carriers opening bases abroad often fill their posts with agency workers.

In terms of the current trends, reporting on changes over the last three years of the use of the different working arrangements, 22 and 17 out of the 25 air carriers surveyed indicated that no change has been observed regarding the use of pilots via temporary work agencies and those hired through other intermediary organisations, respectively⁴⁰. Similarly, the majority of air carriers (22 and 19 out of 24 responding to this question) suggested that no change has been observed regarding the hiring of cabin crew via temporary work agencies and those hired through other intermediary organisations, respectively. This finding is in line with the study by Steer Davies Gleave (2015) where air carriers did not report any changes. In contrast, an air carrier association suspected that it is increasing due to the need for flexibility, cost, and complexity of hiring practices in different Members States.

Furthermore, the feedback provided by two temporary work agencies in Steer Davies Gleave (2015) suggested an increase in the use of temporary agency work among flight and cabin crew. These agencies have regular arrangements with the air carriers to provide workers in times of high demand during peak periods or to cover sick leave. In addition, temporary agency workers are also engaged to provide particular skills linked to training (simulator instructors, type rating instructors, etc). It was not possible to gather the views of temporary work agencies and other intermediaries during this study, despite multiple attempts, and as such this finding cannot be verified by our own research.

According to EurECCA and another union, low-cost air carriers resort to this employment arrangement more commonly and as their importance in the internal aviation market is growing so is the use of temporary work agencies and other intermediaries. Differences in the use of this employment arrangement by type of air carrier is assessed in the next section.

3.3.2 Analysis by business model air carrier

According to the unions interviewed for the Steer Davies Gleave study (Steer Davies Gleave, 2015), temporary agency work tends to be mainly observed among low-cost carriers, even though it is becoming more common among network carriers.

The results of the survey of cabin crew seem to support the above statement: 372 out of 854 (44%) cabin crew who are working for a low-cost carrier have an employment contract via an intermediary manning agency (Table 3-2). In other words, about half of cabin crew working for low-cost carriers stated that they have a contract with an intermediary. This form of employment is insignificant in other types of carriers apart from charter carriers where 4 out of 32 (13%) cabin crew indicated that they have an employment contract via an intermediary manning agency. However, given the small number of respondents this number should be treated with caution.

Table 3-2: Share of cabin crew with an employment contract via an intermediary manning agency of the total cabin crew working by type of air carrier

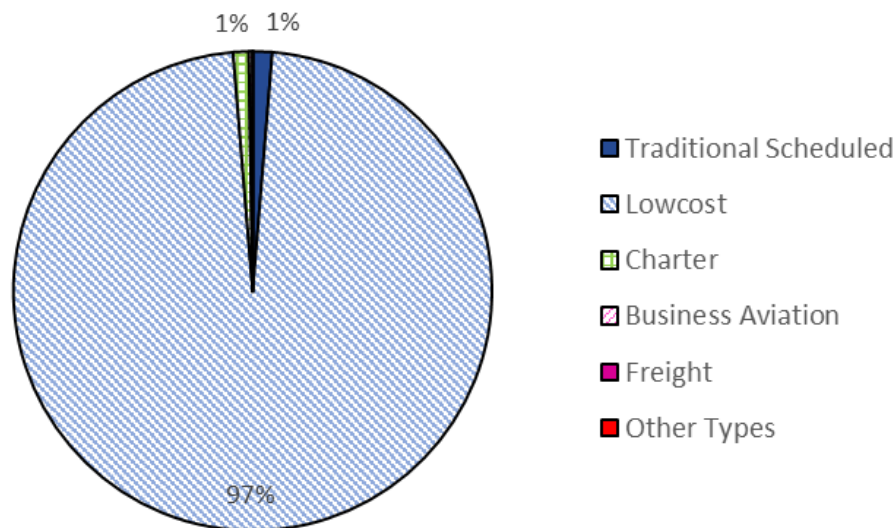
Type of air carrier	Number of cabin crew with employment contract via an intermediary manning agency	Number of cabin crew working for this type of air carrier	% of respondents
Traditional Scheduled	5	1,099	0%
Low-cost	372	854	44%
Charter	4	32	13%
Business Aviation	1	46	2%
Freight	0	1	0%
Other Types	0	8	0%
Total	382	2,040	18%

⁴⁰ Air carriers were given the option to comment on temporary agency work separately from other work via intermediaries

Source: Survey of cabin crew

From a different perspective (Figure 3.7^{Error! Reference source not found.}), of those cabin crew who have indicated they have an employment contract via an intermediary manning agency (382⁴¹), 372 (97%) have also indicated that they work for a low-cost carrier. In other words, the vast majority of agency work seems to take place mainly for low-cost carriers.

Figure 3.7: Distribution of cabin crew with an employment contract via an intermediary manning agency by business model of the air carrier (percentages indicate share of survey respondents)



Source: Survey of cabin crew

The differences are less prevalent in the case of pilots (Table 3-3): 283 out of 1,940 (15%) pilots who are working for a low-cost carrier have an employment contract via an intermediary manning agency.

In addition, 32 out of 298 (11%) pilots working for a charter air carrier have an employment contract via an intermediary manning agency and seven out of 98 (7%) pilots working for a freight air carrier have an employment contract via an intermediary manning agency.

Table 3-3: Share of pilots with an employment contract via an intermediary manning agency by type of air carrier

Type of air carrier	Number of pilots with employment contract via an intermediary manning agency	Number of pilots working for this type of air carrier	% of respondents
Traditional Scheduled	68	2,540	3%
Lowcost	283	1,940	15%
Charter	32	298	11%
Business Aviation	13	391	3%
Freight	7	98	7%
Other Types	10	144	7%
Total	413	5,411	7%

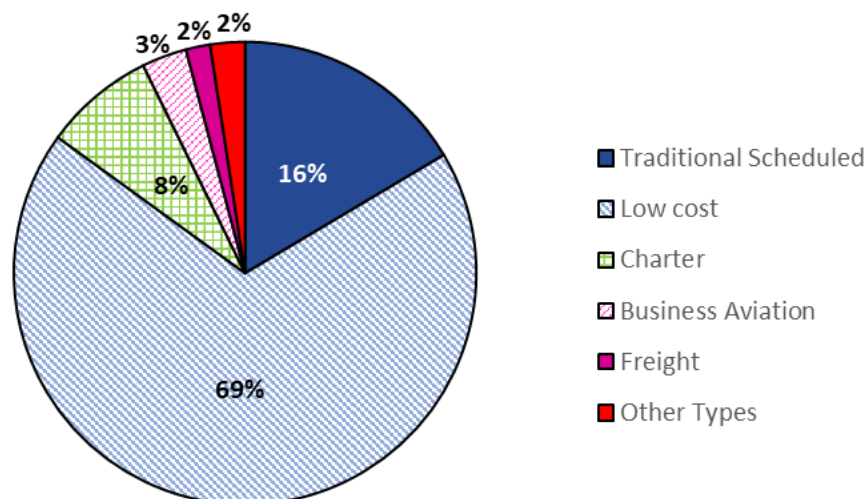
⁴¹ It has only been possible to allocate a type of air carrier for 382 of the 389 cabin crew with this type of contract

Source: Survey of pilots

The results of the survey suggest a smaller share of pilots working for low-costs carriers are being occupied via an intermediary manning agency in comparison to what was suggested in the findings of the study undertaken by Ghent University (Jorens, Gillis, & De Conisck, 2015). In the latter, 16.7% of respondents who stated they work for a low-cost carrier indicated that they work for the air carrier via a temporary work agency. Regarding other intermediaries, no further information was provided on this study about pilots working for the air carrier via a company but are not a shareholder of the company (i.e. working via other intermediaries).

From a different perspective (Figure 3.8), of all those pilots who have indicated they have an employment contract via an intermediary manning agency (413⁴²), 283 (69%) have also indicated that they work for a low-cost carrier. This means that more than half of pilots hired via an intermediary are working for a low-cost carrier. This finding is similar to the results of the survey done by Ghent University (Jorens, Gillis, & De Conisck, 2015) where 67% of the respondents who stated that they work via a temporary work agency also stated that they fly for a low-cost air carrier. As above, regarding other intermediaries, no further information was provided on this study about pilots working for the air carrier via a company but are not a shareholder of the company (i.e. working via other intermediaries).

Figure 3.8: Distribution of pilots with an employment contract via an intermediary manning agency by business model of the air carrier



Source: Survey of pilots

In the survey of air carriers undertaken for this study, the response from the two low-cost carriers surveyed also support the overall finding that the use of aircrew with employment contracts with intermediary manning agencies is most common in the case of carriers using the low-cost business model. One indicated that 6-10% of their pilots have contracts via an intermediary manning agency whilst the other indicated a larger share (26-50%). Regarding cabin crew, one of the low-cost carriers indicated that it does not resort to employment contracts via an intermediary manning agency whilst the other stated that 51-75% of the cabin crew it uses are employed under this type of contract.

In comparison, 11 of the 12 legacy carriers, three of the five charter carriers, both of the freight carriers and all three of the regional carriers surveyed indicated that they do not employ pilots via contracts with intermediary manning agencies. For cabin crew, the survey findings were as follows: 9 of the 12 legacy carriers, two of the five charter carriers, both of the freight carriers and all three of the regional carriers stated that they do not employ cabin crew via intermediary manning agencies.

⁴² It has only been possible to allocate a type of air carrier for 413 of the 450 pilots with this type of contract

In addition, the stakeholders interviewed are also of the opinion that the extent to which they are used depends on the business model of the air carrier. Generally, there was agreement that low-cost air carriers resort to intermediaries more frequently, as suggested by a number of stakeholders including unions and their EU-level associations (EurECCA, ETF, a union, SNPL), two air carrier associations and a labour inspectorate (via interviews). Nevertheless, one air carrier noted that a number of low-cost air carriers do not resort to this type of employment and ECA pointed out that EasyJet has agreed with their unions to stop using temporary agency workers, and Norwegian has stopped using external temporary agencies (i.e. agencies not owned by Norwegian).

Charter air carriers also appear to resort quite intensively to the use of temporary work agencies (based on EurECCA's, ECA's views). For an air carrier association, atypical employment forms⁴³ in the regional air carrier sector is in the region of 40% (compared to 60% direct/conventional employment).

On the other hand, legacy carriers are reported to rarely use intermediaries as the employer (according to EurECCA, Vereinigung Cockpit (German Pilot union) and Norwegian Pilot Group). According to the Norwegian Pilot Group, legacy carriers use mostly direct employment contracts due to their history as state owned carriers with a highly unionised workforce. Furthermore, EurECCA explained that network carriers tend to use agencies to find crew for them and screen them (i.e. as recruitment agencies), but eventually the air carrier will hire the cabin crew directly.

Nonetheless, as the differences between business models seem to become blurred there are also some indications that other carriers – besides low-cost - resort more to this employment arrangement. SNPL, the Norwegian Pilot Group and another union argued that there is an increasing trend for the use of temporary agency work and other agency work by legacy carriers. The Norwegian Pilot Group explained that legacy carriers are now looking at models used by low-cost carriers and open a new air carrier outside the original home base area to hire pilots via work agencies. Similarly, ECA noted that SAS has opened a new subsidiary in Ireland, which is now fully staffed through Parc Aviation while SAS main company also uses temporary agencies. It is also claimed that collective agreements may have a role to play. As argued by the Norwegian Pilot Group, while traditional air carriers are often restricted by collective agreements in terms of their hiring practices, there are still ways devised to circumnavigate them, one of which is to launch a new low-cost air carrier.

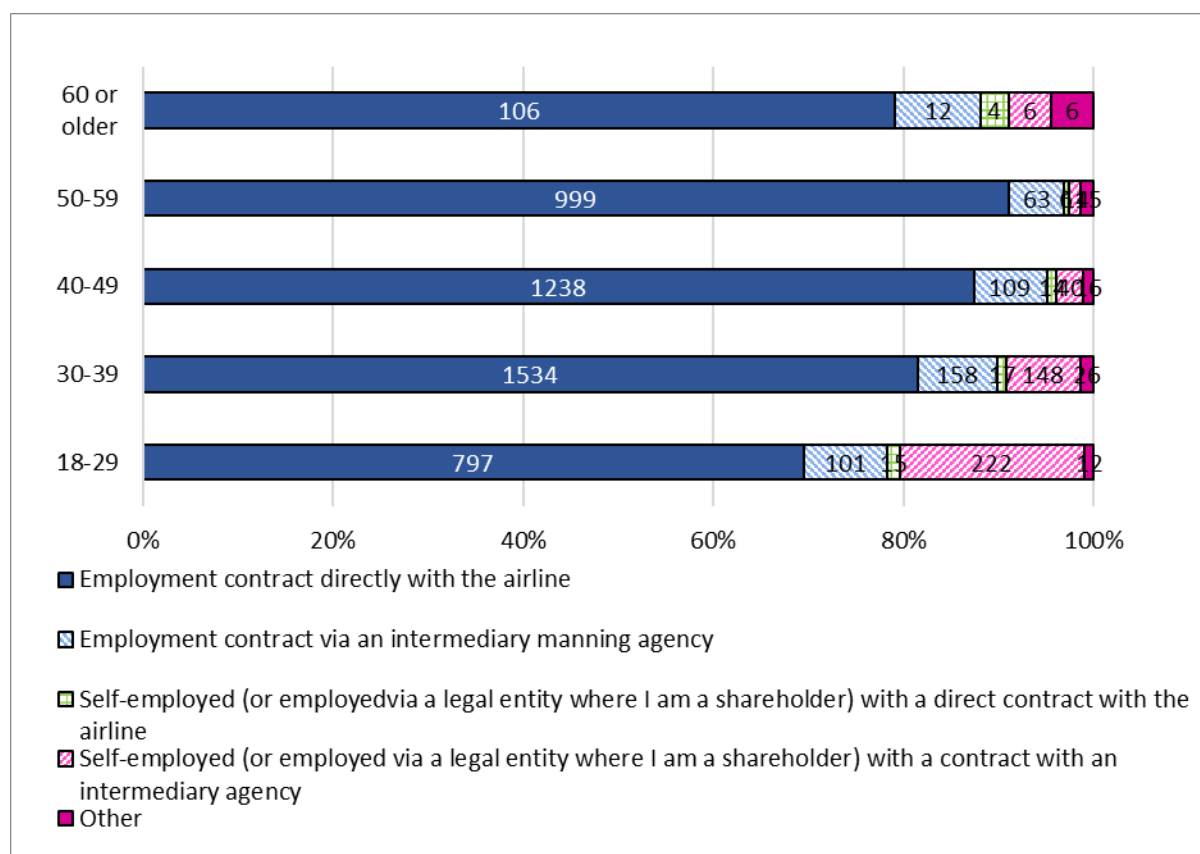
An air carrier also provided their views on this, suggesting that while most legacy carriers mainly use direct employment, some are resorting to different forms of employment. Regarding the other type of air carriers, this air carrier has indicated that there is a plurality of approaches, including those who make use of atypical contracts to a large extent. Another air carrier was not aware of any differences in the use of agency staff for the different types of air carriers.

3.3.3 Age and gender of aircrew staff

Another aspect concerning the use of temporary agency workers is that this tends to be more common among younger workers, as was argued by the unions (ETF, ECA, Unionen and SLSY) consulted in the context of the study by Steer Davies Gleave (Steer Davies Gleave, 2015).

Compared to our own survey results, Figure 3.9 shows that the share of pilots with a contract with an intermediary manning agency is relatively small for all age groups: 101 of 1,147 (9%) pilots aged 18-29, 158 of 1,883 (8%) pilots aged 30-39, 109 of 1,417 (8%) aged 40-49, 63 of 1,097 (6%) aged 50-59 and 12 of 134 (9%) aged 60 or older.

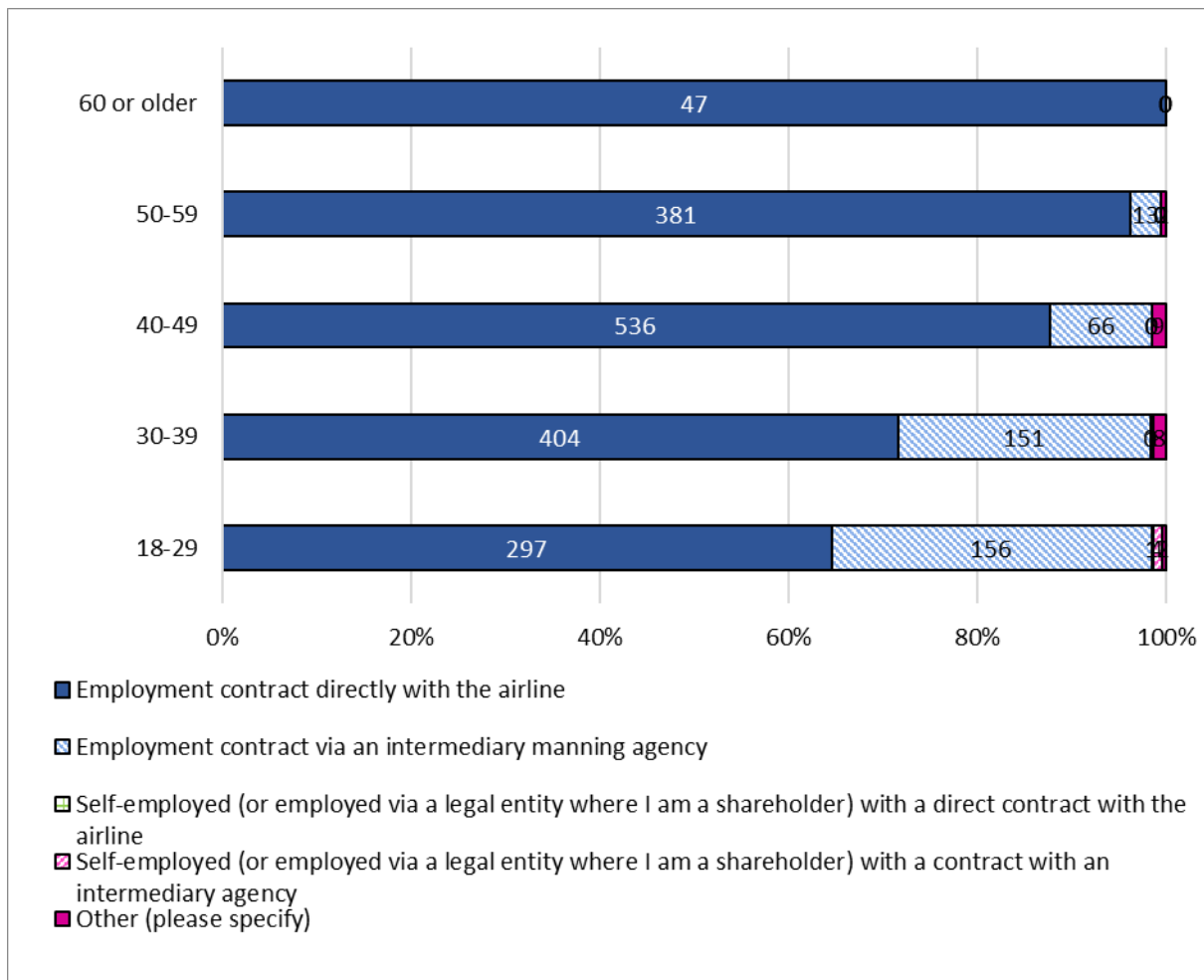
⁴³ Assumed to include all employment types apart from the direct employment contract between the worker and the air carrier

Figure 3.9: Type of employment contract and age of pilot

Source: Survey of pilots

On the other hand,

Figure 3.10 shows that the share of cabin crew with an employment contract with the intermediary manning agency is higher in the younger age groups: 156 of 460 (34%) cabin crew are aged 18-29, and 151 of 564 (27%) cabin crew are aged 30-39 compared to 66 of 611 (11%) cabin crew aged 40-49, 13 of 396 (3%) cabin crew aged 50-59 and 0 of 47 (0%) aged 60 or older.

Figure 3.10: Type of employment contract and age of cabin crew

Source: Survey of cabin crew

Gender of aircrew and type of contract is considered in more detail in Section 6 on gender and work-life balance.

3.4 Working conditions of temporary agency workers and other workers employed by intermediaries

In addition to understanding the extent of use of temporary agency workers and other agency workers employed by intermediaries in the aviation sector, it is also important to assess their working and employment conditions.

In this section, we consider the EU legal framework covering temporary agency workers and other workers employed by intermediaries. In this context, we assess whether being employed with a work agency has an impact on the employment and working conditions of aircrew (compared to those directly employed with the air carrier). Finally, it is important to understand whether there are features of the relationship between the assigned worker and the air carrier that would be those of an employment relationship – this could potentially reveal an abuse of this type of work arrangement.

3.4.1 EU legal framework

Working conditions of temporary agency workers are protected by **Directive 2008/104/EC on Temporary Agency Work**, which establishes that the temporary agency workers must be provided

with the same basic working and employment conditions as the workers employed directly by the company and performing the same tasks (see Box 3.6).

Box 3.6: Principle of equal treatment in Directive 2008/104/EC

Article 5 states: “The *basic working and employment conditions* of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job.”

Article 3 (f) defines *basic working and employment conditions* as “working and employment conditions laid down by legislation, regulations, administrative provisions, collective agreements and/or other binding general provisions in force in the user undertaking relating to:

- (i) The duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays; and
- (ii) Pay.”

Additional protection is awarded to temporary agency workers by Article 6 of the Directive which ensures access to employment, collective facilities and vocational training. In addition, it prevents temporary work agencies from collecting a fee from agency workers as a compensation for recruitment activities or for ending a contract of employment or an employment relationship with a user undertaking after conducting an assignment in that undertaking.

It should be noted that self-employed aircrew engaged by a temporary work agency or workers employed by other intermediaries are not covered by this Directive (Steer Davies Gleave, 2015), (Countouris, Deakin, Freedland, A., & Prassl, 2016). Since the distinction between the two is not always clear, this could give rise to uncertainty.

In addition, the Directive also pursues a more flexible employment market, so it requires Member States to review any prohibition or restriction to the use of temporary agency work – any restriction or prohibition may only be justified on the basis of the general interest.

All Member States have transposed the Directive, however, as it is inherent to this instrument, transposition has been carried out in diverse ways (European Commission, 2014), (European , 2008)):

- For some Member States (Bulgaria, Cyprus, Estonia, Malta, Latvia and Lithuania), the rules of the Directive were completely new since prior to its adoption, they did not have national rules for temporary agencies.
- One Member State (Denmark) used to regulate temporary agencies through collective agreements.
- Other Member States merely amended the already existing internal legislation.
- Three Member States (France, Luxembourg and Poland) considered that the national rules they had in force prior to the adoption of the Directive were aligned with the latter.

Restrictions on the use of temporary work agencies (which are considered to be justified on grounds of general interest) continue to be imposed by Member States. In Spain, for example (the Member State concerned in the case study provided in section 3.4.3.2), temporary agency work can only be used for temporary reasons in the terms established by Spanish Employment Law⁴⁴. This results in differences in the application of the Directive across the EU and thus on the protection awarded to these workers.

In addition, different levels of protection can be given to temporary agency workers as the Directive allows Member States to derogate from the principle of equal treatment, so long as an adequate level of protection is provided. Thus, although recognising the principle of equal treatment, 12 Member States have introduced such derogations as described in Box 3.7 (European Commission, 2014).

⁴⁴ Report issued by the European Commission on the application of the Directive 2008/104/EC, dated on 21st March of 2014.

Box 3.7: Derogation from the principle of equal treatment established in Directive 2008/104/EC

At the time of the issue of the report on the transposition of the Directive (European Commission, 2014), 12 Member States had used the possibility to derogate from the principle of equal treatment established in Directive 2008/104/EC:

- Derogation provided for in Article 5(2): Hungary, Ireland, Malta, Sweden and the United Kingdom allow the possibility to derogate from equal pay during assignments for agency workers with an open-ended contract of employment and who are paid during periods in which they are out of work.
- Derogation provided for in Article 5(3): Austria, Bulgaria, Denmark, Finland, Germany, Hungary, Ireland, Italy, the Netherlands and Sweden allow collective labour agreements to deviate from equal treatment of agency workers.
- Derogation provided for in Article 5(4): The United Kingdom and Malta include a qualifying period for equal treatment

According to a study carried out by the working group on social dumping in aviation of the Danish Transport Authority (Trafikstyrelsen, 2014), the current EU legal framework on temporary agency work as implemented by Member States may provide incentives for employers to rule shop, i.e., select the country where rules on temporary agency work are more favourable. Unions have also claimed that these forms of employment are intended to circumvent social protection rules and lead to the location of headquarters where the local legislation is more favourable (Steer Davies Gleave, 2015).

3.4.2 Differences in employment and working conditions

Whilst agency workers employed by other intermediaries are not covered by Directive 2008/104/EC, temporary agency workers are protected by this Directive and thus should in principle have the same basic working conditions as those directly employed. The results presented below shed light on the reality in the air services sector

Differences between the employment and working conditions of agency workers and those directly employed by the air carrier are reported in the literature. According to the study by the working group on social dumping in aviation of the Danish Transport Authority (Trafikstyrelsen, 2014), employees engaged via temporary work agencies do not always benefit from the same working conditions as those directly employed by the air carrier⁴⁵. Unions consulted for the Steer Davies Gleave study (Steer Davies Gleave, 2015) also claim that temporary agency workers tend to receive lower wages, social security and training opportunities compared to employees directly employed by the air carrier. However, the temporary work agencies consulted have an opposite view stating there are no differences between these workers in these respects.

To be able to compare these findings from the literature with our survey results, we explored the nature of the different employment relationships in terms of:

- Job satisfaction;
- Training;
- Level of pay; and
- Union participation.

As before, our analysis is based on the comparison of aircrew who hold a **direct contract of employment with the air carrier** (irrespective if a recruitment agency or other intermediary was used) and aircrew who hold a **contract with an intermediary manning agency**, which would include a temporary work agency as defined in the Directive 2008/104/EC or another intermediary. This assessment will help understand possible differences in working conditions resulting from the use of intermediaries as employers in the air services sector (i.e. atypical employment) compared to the

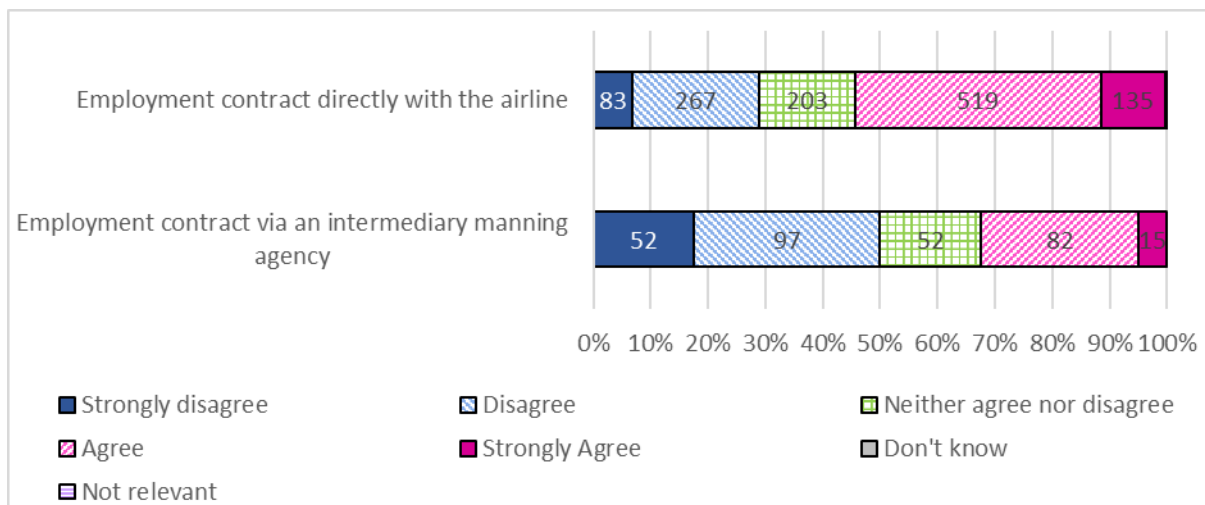
⁴⁵ We note that the Directive only imposes equal treatment regarding basic working conditions.

more typical employment model (i.e. direct contract between worker and air carrier). Specific references to temporary agency work are made whenever possible based on stakeholder input.

3.4.2.1 Job satisfaction

In terms of job satisfaction, Figure 3.11 shows that cabin crew directly employed by the air carrier seem to be more satisfied with their working conditions than those with an employment contract via an intermediary manning agency. Among those employed directly with the air carrier, 654 of 1,212 (54%) responded that they strongly agree or agree with this statement, compared to 97 of 298 (33%) of those that have an employment contract via an intermediary manning agency – instead 149 (50%) cabin crew employed via an intermediary manning agency who disagree or strongly disagree with this statement.

Figure 3.11: Please indicate to what extent do you agree with the following statements regarding your working conditions and how they relate to your personal life. I am satisfied with my working conditions (question 3.1 of survey of cabin crew)

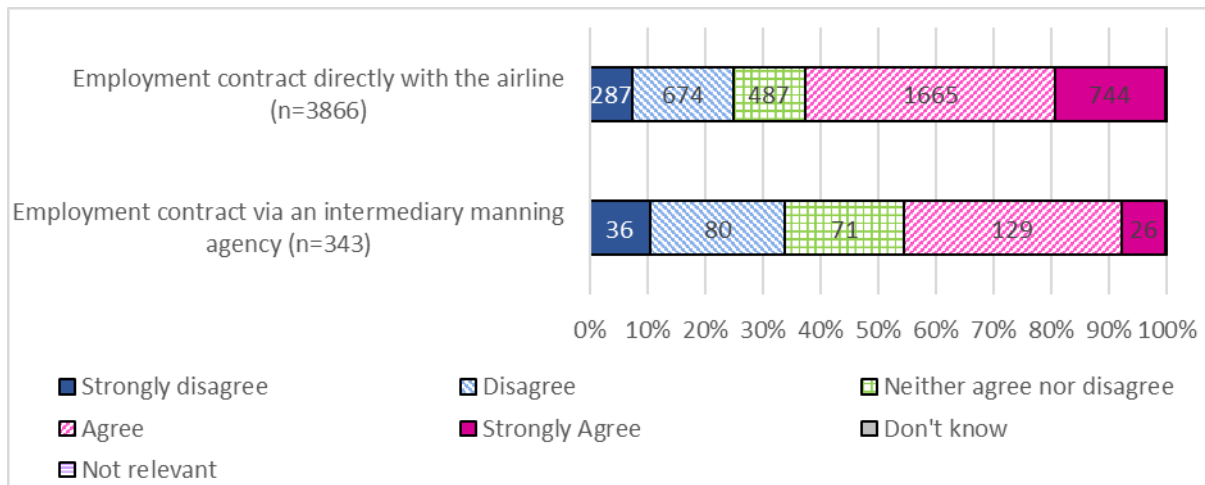


Source: Survey of cabin crew

The type of air carrier where cabin crew are employed also seems to play a role in the level of job satisfaction. Cabin crew directly employed with an air carrier, report slightly lower job satisfaction when employed by a low-cost carrier: 155 of 338 (46%) cabin crew with this type of contract working for a low-cost carrier agree or strongly agree compared to 445 of 776 (57%) working for traditional scheduled carriers. Note that as discussed in section 3.3.2 the majority of cabin crew with employment contracts with intermediary manning agencies are working for low-cost carriers, and as such it is not possible to investigate whether there are differences in job satisfaction between types of air carriers using this employment arrangement.

In the case of pilots, Figure 3.12 shows that pilots directly employed appear to be more satisfied with their working conditions than those with an employment contract via an intermediary manning agency. Those who strongly agree and agree that they are satisfied with their working conditions represent 2,409 out of 3,866 pilots directly employed (62%) against 155 out of 343 pilots with an employment contract via an intermediary manning agency (45%).

Figure 3.12: Please indicate to what extent do you agree with the following statements regarding your working conditions and how they relate to your personal life. I am satisfied with my working conditions (question 3.1 of survey of pilots)



Source: Survey of pilots

Furthermore, as in the case of cabin crew, among those employed directly with the air carrier, pilots who have a contract with a low-cost carrier are also generally less satisfied with their working conditions compared to those employed with legacy carriers: 453 of 1,023 (44%) pilots under this employment arrangement working for low-cost carriers agree or strongly agree with this statement compared with 1,432 of 2,066 (69%) pilots working for legacy carriers. On the other hand, among those pilots with a contract with an intermediary manning agency, there are no major differences in their views on job satisfaction between those working for legacy carriers and low-cost carriers: 25 of 54 (46%) pilots under this employment arrangement working for legacy carriers agree or strongly agree with this statement against 106 of 214 (50%) of pilots working for low-cost carriers. It is important to note the small sample of pilots surveyed who hold these types of employment contracts and thereby treat these findings with caution.

Overall, according to the survey responses both cabin crew and pilots who have employment contracts via an intermediary manning agency appear less likely to be satisfied with their working conditions. The level of satisfaction seems also to be partly affected by the type of air carrier since, among those directly employed with the air carrier, cabin crew and pilots working for low-cost carriers are also less satisfied than those working for legacy carriers. However, in the case of pilots engaged via an intermediary, there are no major differences in job satisfaction if they work for a low-cost carrier or for a legacy carrier. Nonetheless, we should note that given the high share of aircrew with employment contracts via an intermediary manning agency among low-cost carriers, it is not easy to identify from the analysis which of the two drive the lower level of job satisfaction.

The discussions with stakeholders interviewed assist in understanding these findings. From the point of view of one air carrier interviewed, the job is exactly the same irrespective of the nature of the employment contract and aircrew enjoy the same facilities. The SNPL and another aircrew union also agreed that the quality of the job is the same in terms of onboard work as all aircrew do the same work. However, an air carrier association proposed that job quality may be different depending on the temporary work agency.

Nonetheless, some differences were still identified. According to an aircrew union, long-time standing staff with permanent contracts have some benefits compared to seasonal staff. SNPL suggested that pilots hired via temporary work agencies and intermediaries have less future prospects and they are not sure if they will be paid or not in the future. For ECA, pilots under this employment arrangement also have less individual training, less career opportunities, less ability to change aircraft types and from short to long haul flights, and no bidding opportunities (some air carriers offer bids on days off or routes they'd like to fly). Thus, according to ECA, pilots are not voluntary temporary agency workers – in fact, they suggested that less than 5% want to stay as temporary workers. For the Norwegian Pilot Group, pilots are more willing to accept lower standards when they are younger as they would have just obtained their pilot licence and normally have large amounts of debt which means they will do (nearly) anything to keep their contract.

To the extent that agency workers **move between bases** more often, this could also help explain their lower level of job satisfaction. Indeed, an air carrier association noted that there is lower job quality as these aircrew staff do not have a permanent base and move around frequently. A union commented that crews move frequently (e.g. moving every 6 weeks from one base to another). For example, the Scandinavian company Primera uses a subsidiary and the contract stipulates appointment by rotation (i.e. no fixed workplace). In addition, SNPL also suggested that pilots hired via temporary work agencies and intermediaries change bases often which also has implications for the **payment of taxes and social security contributions**. For them, pilots find it difficult to know where to pay these obligations, giving the example of pilots who were recently sued in Germany as they were not paying taxes. This happened because of the complexity of the situation. Indeed, ECA finds there are also gaps in social security laws that can lead to the loss of social security rights. For one air carrier association, social security benefits and various advantages for payment of taxes are also likely to differ, with fewer rights for atypical employment arrangements. This topic is explored further in Section 3.5.2.

Agency work (in general) could also affect **work-life balance** of aircrew. EurECCA noted that basic FTL (Flying Time Limitations) defined by EASA are used by the low-cost carriers as their standard which results in very poor job quality. This disproportionately affects cabin crew with contracts with intermediaries which are mostly used by low-cost carriers. According to EurECCA, under this arrangement, cabin crew cannot have a decent balance between work and private life. The impact of alternative employment forms on work-life balance will be further explored in Section 6.

In addition, there is a possible connection made between the access of agency workers to **collective labour agreements** and job satisfaction. ECA, ETF and EurECCA explained that collective labour agreements are not generally in place for aircrew under a work agency contract. For EurECCA, this usually results in lower job quality. Similarly, the Norwegian Pilot Group argued that a pilot who is employed by an air carrier which recognises unions and there is a collective agreement in place is better-off than those employed by work agencies. This is further assessed below (section 3.4.2.4).

According to some stakeholders (aircrew union, Norwegian Pilot Group, EurECCA), **job security** is also higher when aircrew have a permanent contract. An air carrier association also indicated that the use of work agencies is often associated with lower job security. On the other hand, another air carrier association highlighted that the perceived level of security differs with the work agency.

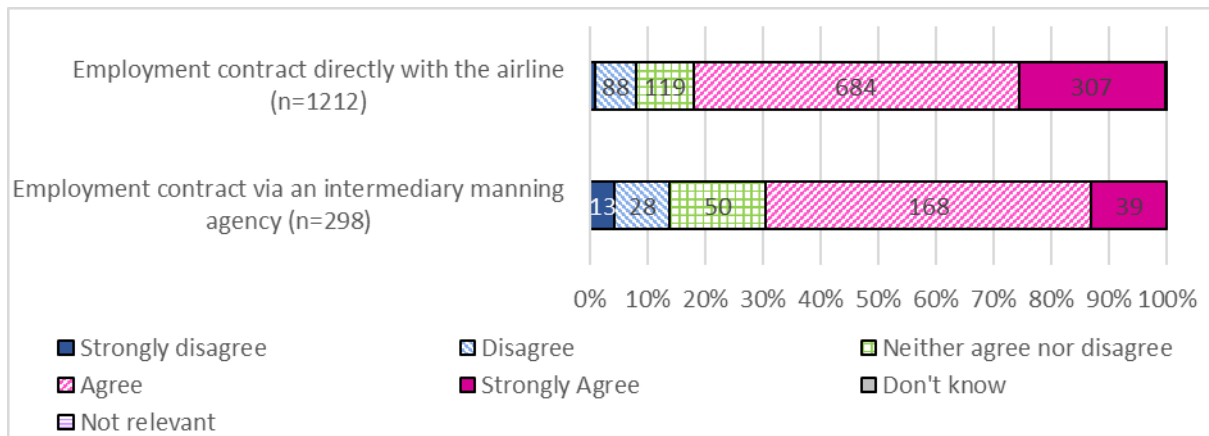
Lower job security could lead to perverse incentives as unions have argued. The Norwegian Pilot Group explained that it is easier for temporary work agencies to dismiss staff as pilots generally have temporary contracts with these agencies. They suggested that there may be an incentive **not to report illness / make use of social rights** due to the risk of not getting the contract renewed. Similarly, BALPA noted that flexi-crew are only paid by the hour (i.e. if they do not fly, they do not get paid), which for them is in strict conflict with their duty to only fly when fit to do so. In the grey areas, especially with a large training debt to service, pilots are tempted to fly. ECA and ETF also considered that aircrew with a contract with a temporary work agency have less autonomy and less benefits in terms of annual leave and sick leave. For ETF, temporary agency workers tend to have less freedom to exercise professional judgement. However, there is so far no evidence regarding a link between work contract relationship and safety. Safety implications will be further examined in Section 3.5.1.

3.4.2.2 Training

Unions have also argued that the level of health and safety training tends to be slightly lower for all atypical employment arrangements (Steer Davies Gleave, 2015) whilst the temporary work agencies consulted did not share the same view and stated that there is no difference in the level of training they provide.

In our survey, Figure 3.13 shows that a higher percentage of cabin crew employed directly by an air carrier report that they receive sufficient education and training (991 of 1,212 cabin crew agree or strongly agree – i.e. 82%) compared to those with an employment contract with an intermediary manning agency (207 of 298 cabin crew agree or strongly agree – i.e. 69%).

Figure 3.13: Please indicate to what extent do you agree with the following statements regarding your training: I receive sufficient education and training (question 3.3 of survey of cabin crew)

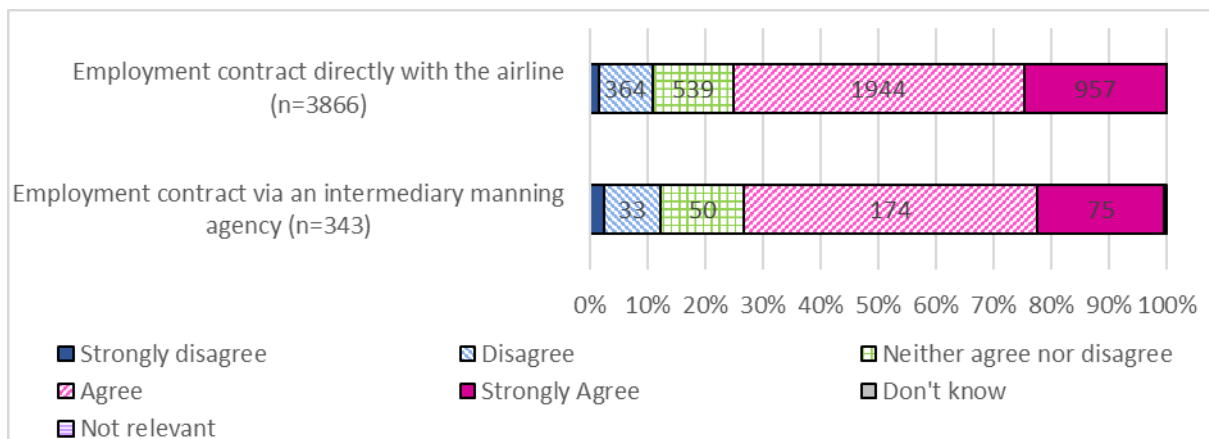


Source: Survey of cabin crew

As before, there are differences in the views of cabin crew who have a direct employment contract with the air carrier depending on the business model of the air carrier: those working for a low-cost carrier (244 of 338, i.e. 72%) tend to agree and strongly agree less with the statement compared to 665 of 776 (86%) working for legacy carriers. As explained above, it is not possible to carry out the same analysis for those with an employment contract via an intermediary manning agency.

In contrast, pilots do not appear to report significant differences in the education and training received (Figure 3.14). Of those employed directly by the air carrier, 2,901 of 3,866 (75%) agree or strongly agree that they receive sufficient training. The share is similar for pilots who have an employment contract via an intermediary manning agency (249 of 343 or 73%).

Figure 3.14: Please indicate to what extent do you agree with the following statements regarding your training: I receive sufficient education and training (question 3.3 of survey of pilots)



Source: Survey of pilots

Similarly, no major differences exist between pilots employed by type of carrier under the two employment arrangements analysed.

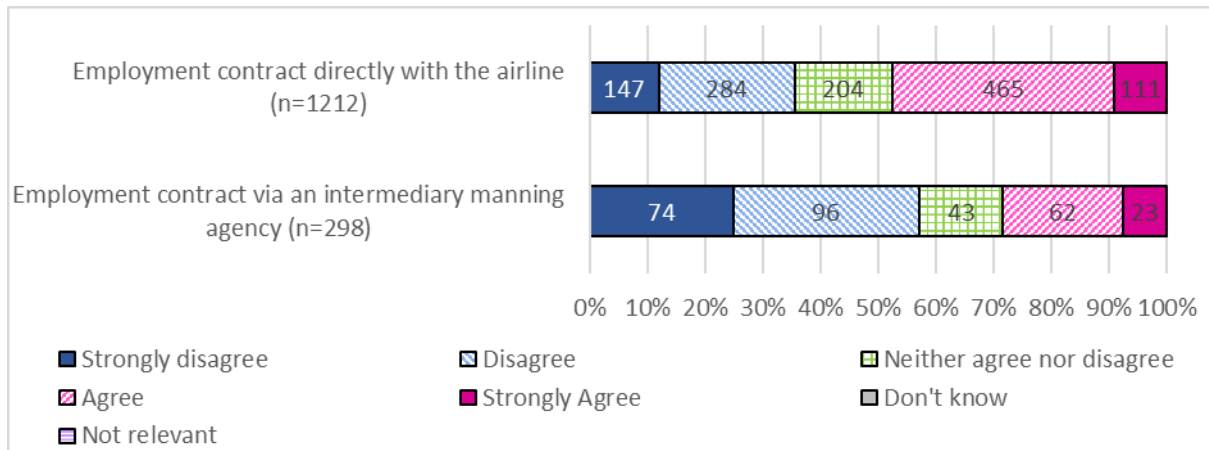
Only cabin crew with employment contracts with intermediary manning agencies appear to receive less education and training compared to those directly employed, whilst no major difference is apparent for pilots.

3.4.2.3 Level of pay

Both cabin crew and pilots were also asked whether they were satisfied with their level of pay. As before, Figure 3.15 clearly shows that cabin crew who have an employment contract directly with the

air carrier are more satisfied with their level of pay than those employed via an intermediary manning agency (576 of 1,212 responding agree or strongly agree – i.e. 48% against 85 of 298 – i.e. 29%).

Figure 3.15: Please indicate to what extent do you agree with the following statements regarding your working conditions and how they relate to your personal life. I am satisfied with my level of pay (question 3.1 of survey of cabin crew)

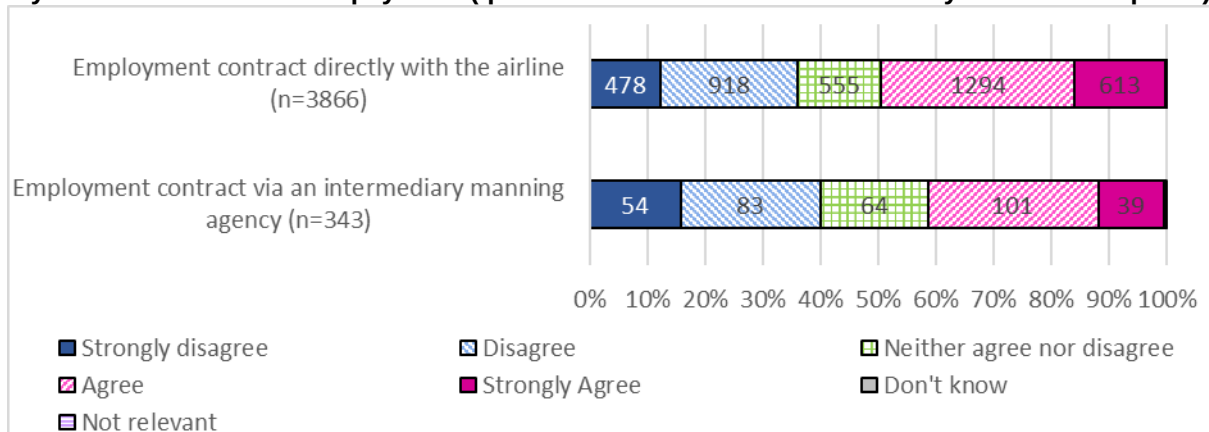


Source: Survey of cabin crew

The business model of the air carrier is also found to be linked to differences in the views of cabin crew directly employed with the air carrier: Those working for low-cost carriers report being less satisfied with their level of pay: 116 of 338 (34%) cabin crew agree or strongly agree with the statement compared to 423 of 776 (55%) working for legacy carriers.

In the case of pilots (Figure 3.16), the share of those agreeing and strongly agreeing that they are satisfied with their level of pay is only marginally higher for those directly employed with the air carrier (1,907 of 3,866 or 49%) than those with an employment contract via an intermediary manning agency (140 of 343 or 41%).

Figure 3.16: Please indicate to what extent do you agree with the following statements regarding your working conditions and how they relate to your personal life. I am satisfied with my level of pay (question 3.1 of survey of pilots)



Source: Survey of pilots

Nevertheless, a difference exists between those directly employed by legacy carriers and low-cost carriers (1,090 of 2,066 (53%) pilots working for legacy carriers agree or strongly agree compared to 372 of 1,023 (36%) working for low-cost carriers). The same is not observed for pilots with employment contracts via intermediary manning agencies as pilots do not have significantly different views on the level of pay (25 of 54 (46%) pilots working for legacy carriers agree or strongly agree against 101 of 214 (47%) who work for low-cost carriers).

The survey findings thus suggest that cabin crew who hold employment contracts with intermediary manning agencies are less satisfied with their level of pay overall. It was not possible to investigate

whether there are differences depending on the type of carrier they work for. However, for those employed directly with the air carrier, it was found that cabin crew working for low-cost carriers have more negative views on their pay level. In the case of pilots, the differences of opinion about the level of pay between those directly employed with the air carrier and those working via an intermediary manning agency are marginal. Nevertheless, differences exist depending on the type of air carrier: compared to a legacy carrier, those employed by low-cost carriers less satisfied, but the same does not hold for pilots with contracts with intermediary manning agencies.

Input from stakeholders interviewed could help explain and provide some context to these findings. In the case of cabin crew, EurECCA suggested that pay for those cabin crew employed by work agencies and low-cost carriers is lower. For SNPL, the level of pay is the same for pilots under both arrangements but because pilots employed via work agencies are only paid for the hours they fly whilst those directly employed are paid during low seasons; therefore, the former have a lower total pay. Similarly, BALPA stated that zero-hour contracts (i.e. where the employer is not obliged to provide any minimum working hours, and the worker is not obliged to accept any work offered and is paid for the hours worked only) result in lower salaries for these pilots compared to those directly employed. In contrast, an air carrier that resorts to this type of employment explained that the pilots working for them through intermediaries and that are on the temporary contracts have a higher salary (they charge them more) than their permanent pilots. Regarding the cabin crew employed through intermediaries, the situation is different, as they often come from third countries - they operate normally in these countries, where they receive the respective wage levels for these countries. Also, according to an air carrier association, there is not a big difference between direct and atypical employment in terms of pay as air carriers need to offer a pay level that attracts people. The structure of the pay could be difference though, as there could a productivity component to atypical contracts in a model whereby there is a lower fixed salary, and performance related element, based on productivity.

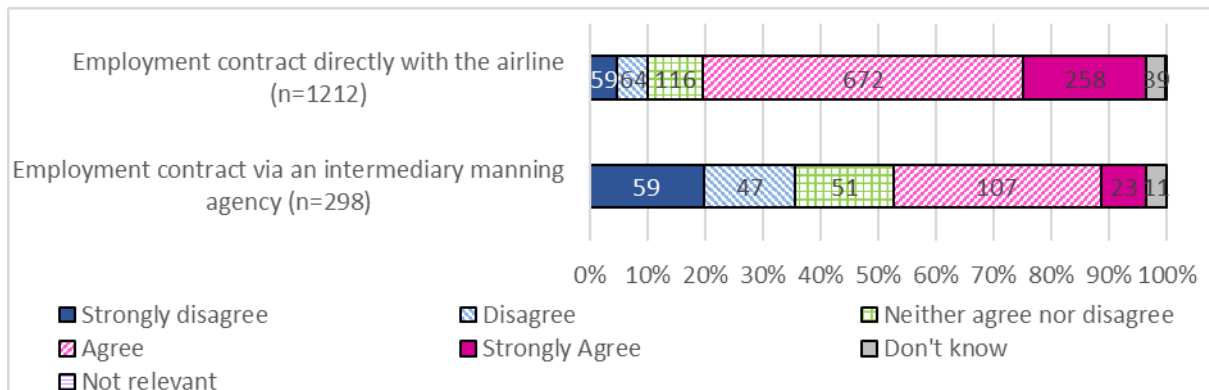
On differences in the pay structure, an aircrew union noted an air carrier has introduced a different pay scale for permanent and new staff. The permanent staff who have been in the company a while have a 15-point incremental scale attached to their salary. The new staff only have a 5 point incremental scale and they are pushing for new people to come in under an even less preferential scale. Furthermore, the study from Ghent University (Jorens, Gillis, & De Conisck, 2015) found that a large majority of pilots employed with temporary work agencies reported receiving a lump sum with extras, although the authors would expect that this type of work would be more closely linked with variable pay (per hour). They argue that this could reveal a bogus situation. It was not possible to investigate this further.

3.4.2.4 Participation in unions

Participation in unions appears to be lower amongst temporary agency workers according to Trafikstyrelsen (2014). However, the Steer Davies Gleave study (2015) found limited evidence of this across the EU. The use of collective labour agreements also seems to be marginally lower amongst temporary agency workers.

Our survey shows that for cabin crew (Figure 3.17) there are significant differences between those directly employed and those under an employment contract with an intermediary manning agency regarding whether their employer recognises unions: 930 of 1,212 cabin crew (77%) with direct employment contracts strongly agree or agree with this statement compared to 130 of 298 cabin crew (44%) with an employment contract via an intermediary manning agency.

Figure 3.17: Please indicate to what extent do you agree with the following statements regarding your day-to-day work. My employer recognises unions. (question 3.2 of the survey of cabin crew)

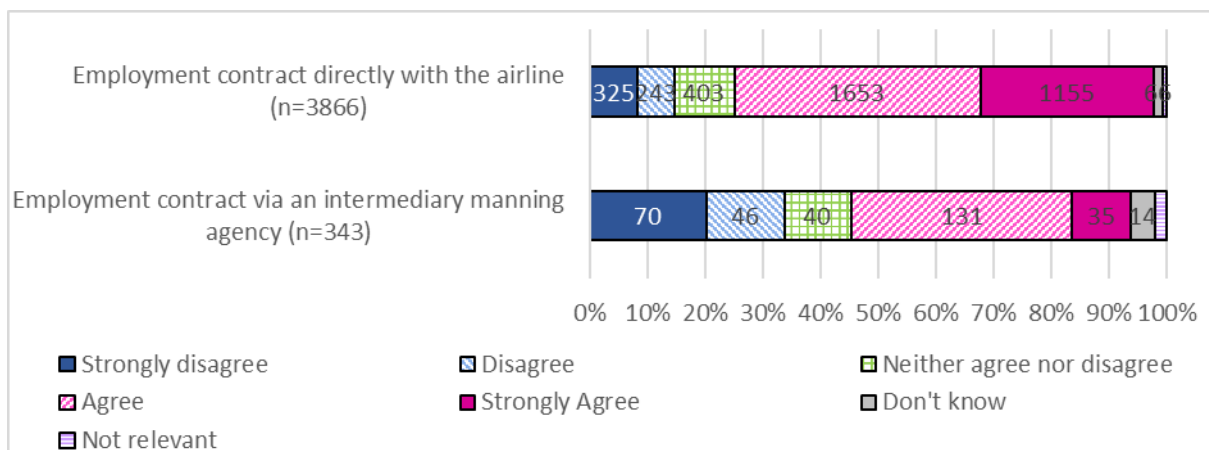


Source: Survey of cabin crew

Looking at trends by business model of the air carriers, for those cabin crew employed directly with the air carrier, they are more likely to agree or strongly agree that their employer recognises unions if they work for a legacy carrier (637 of 776 or 82%) than those who work for a low-cost carrier (227 of 338 or 67%). A similar analysis cannot be carried out for those with employment contracts with intermediaries due to the reason explained above.

In the case of pilots (Figure 3.18), our survey also shows significant differences between those directly employed and those under an employment contract with an intermediary manning agency regarding as to whether their employer recognises unions: 2,808 out of 3,866 pilots (73%) with direct employment contracts strongly agree or agree with this statement compared to 166 out of 343 pilots (48%) employed via an intermediary manning agency.

Figure 3.18: Please indicate to what extent do you agree with the following statements regarding your day-to-day work. My employer recognises unions. (question 3.2 of the survey of pilots)



Source: Survey of pilots

The analysis by business model of the air carrier reveals further differences. In relation to those pilots employed directly with the air carrier, more have indicated that they agree or strongly agree with the statement if working for a legacy carrier (1,754 of 2,066 or 85%) compared to those working for low-cost carriers (513 of 1,023 or 50%). On the other hand, looking at those pilots with a contract with an intermediary manning agency, the opposite holds true: more pilots agree or strongly agree with the statement if working for a low-cost carrier (128 of 214 or 60%) compared to those who work for legacy carriers (21 of 54 or 39%). It is important to stress again the small sample of pilots surveyed who hold these types of employment contracts.

Overall, both cabin crew and pilots that have employment contracts with intermediary manning agencies are less likely to indicate that their employer recognises unions. Focusing on the type of carrier, there is no clear picture of its role on the basis of the survey results. Among those directly employed, those working for a low-cost carrier more often indicate that the employer does not recognise unions in comparison to those working for legacy carriers. However, among pilots with employment contracts with intermediary manning agencies, the opposite seems to be the case, albeit on a basis of a small survey sample.

Among stakeholders interviewed, the majority of unions and their associations reported low levels of union participation. According to EurECCA, there is reluctance amongst temporary cabin staff to join a union due to possible retribution from air carriers. They explained that employers are not keen on negotiating collective labour agreements and as such cabin crew fear they would not be hired again if they join a union. For them, this makes job security very low. Some temporary cabin crew have reached out to unions, reporting low working conditions but they do not dare to join a union. An aircrew union and a pilot association shared the same view, explaining that temporary aircrew are in a vulnerable position. In addition, BALPA suggested that it is very difficult to organise pilots if their work location is uncertain.

On the other hand, an air carrier association commented that the approach varies by air carrier. Another air carrier stated that it was not aware of aircrew being unionised or having a company representative, it could be that they have but they have not discussed this.

3.4.3 Extent that features of the relationship between the assigned agency worker and the air carrier are those of an employment relationship

As outlined in Section 3.2, agency work involves a trilateral relationship between the worker, the agency and the air carrier, where the employment relationship is established between the agency workers and the intermediary. Nevertheless, given the complexity of the recruitment models, it could be that the features of the relationship between the assigned worker and the air carrier are those of an employment relationship. Further, it could be that these alternative recruitment models are used as a social construct to avoid permanent and direct employment with air carriers, but the air carrier is the de facto employer.

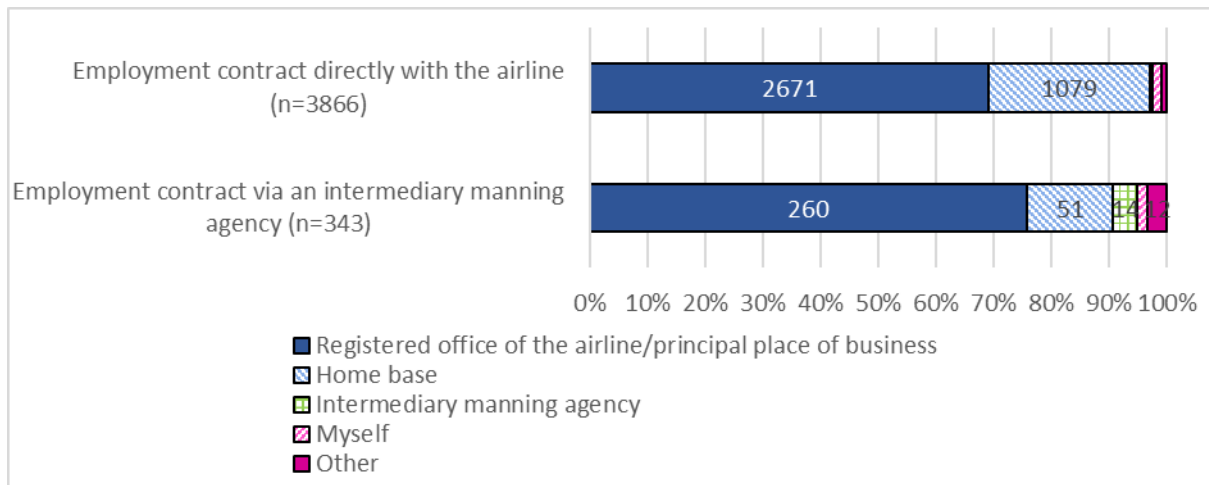
The risk of bogus agency work has been raised by some stakeholders. For ECA, agencies owned or controlled by the employer could be identified as cases of bogus agencies. They gave the example of an air carrier which uses staff hired by a temporary work agency which is a letterbox company to avoid direct employment. Similarly, the authors of the Ghent study (Jorens, Gillis, & De Conisck, 2015) also identify the risk of bogus situations where a chain of several subcontractors is formed.

In this section we will first refer to situations where the air carrier could be seen as acting as the employer although formally the role is undertaken by the work agency, looking also at the challenges of determining the actual employer. We will in particular assess the repeated use of temporary agency work and for prolonged time which raises the question of whether the air carrier should be the employer in these cases.

3.4.3.1 Who is the employer?

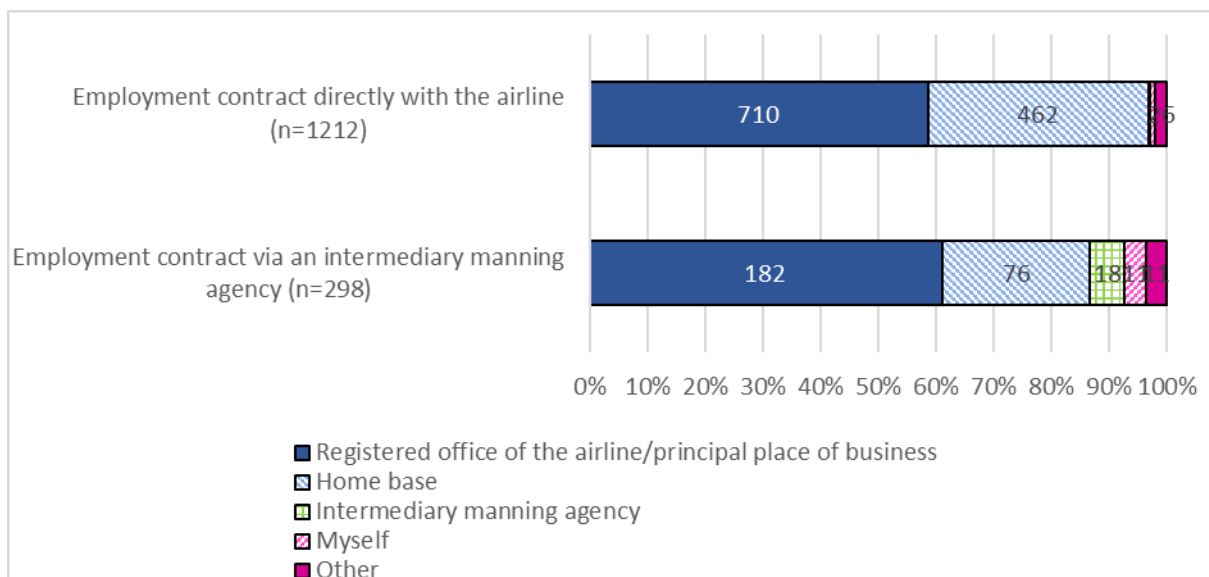
Given the number of organisations involved in the relationship between the worker and the air carrier as outlined in section 3.2 it is not always clear who the actual employer is.

One possible indirect indicator of the confusion experienced by some aircrew regarding the hierarchy is their response to our survey question on who provides their flight instructions. Although the majority were able to indicate this, some pilots and cabin crew provided comments that illustrate some confusion and the complexity of some of the work arrangements they are part of (see Box 3.9). As expected, our survey results show that the majority of pilots get their flight instructions from the registered office of the air carrier and the home base regardless of the type of employment contract (Figure 3.19): 3,750 out of 3,866 pilots with an employment contract directly with the air carrier (97%) and 311 of 343 pilots employed via an intermediary manning agency (91%). However, 116 (3%) pilots who have a direct employment contact with the air carrier and 32 (9%) who have a contract with an intermediary manning agency report that they receive flight instructions from other sources (intermediary manning agency, themselves, other).

Figure 3.19: From whom/where do you get your flight instructions? (Question 3.5 of survey of pilots)

Source: Survey of pilots

Similarly, our survey analysis suggests that the majority of cabin crew get their flight instructions from the registered office of the air carrier and the home base (Figure 3.20): 1,172 out of 1,212 (97%) cabin crew with an employment contract directly with the air carrier and 258 of 298 (87%) cabin crew employed via an intermediary manning agency. Nevertheless, 40 (3%) cabin crew employed directly with the air carrier and another 40 (13%) employed with an intermediary manning agency indicated that they receive their flight instructions from other sources.

Figure 3.20: From whom/where do you get your flight instructions? (Question 3.5 of survey of cabin crew)

Source: Survey of cabin crew

Some pilots and cabin crew providing comments when responding 'other' revealed they are confused about who is responsible for these instructions. In particular, the sample of comments provided below demonstrate this point (see Box 3.8).

Box 3.8: Views from aircrew

- *Rather complicated... Nothing is really clear as sometimes we get called by our AOC (NAI), sometimes by the main one (NAS). OSM never says anything⁴⁶ (pilot working for low-cost carrier with employment contract via an intermediary manning agency)*
- *I have never met anyone from the agency I supposedly work for! The air carrier is the point of contact for all queries (self-employed pilot working for low-cost carrier with employment contract via an intermediary manning agency)*
- *A lot of channels at the same time (cabin crew working for low-cost carrier with an employment contract via an intermediary manning agency)*
- *AOC is different from main air carrier, and employer is another company belonging to the main (cabin crew working for low-cost air carrier with employment contract with a company owned by the main air carrier, but different from it)*
- *From OSM, the human resources agency, from NAI, OCC based in Ireland, from NAS, based in Oslo (cabin crew working for low-cost carrier employed by subsidiary of the company)*

The interviews with pilots revealed further insights into the complexity of some of the relationships and the difficulties that can be experienced in some cases to identify who is the employer. As summarised in Box 3.9, some pilots have argued that the air carrier is their actual employer despite the role being formerly assigned to the work agency.

Box 3.9: Determination of employer**Case 1**

Two pilots (one directly employed and another employed via a work agency) were ordered by an air carrier to change base with a short notice. They complained about that and they were both dismissed. They are appealing this dismissal, and during the court case the question arose of “who is my employer”.

One of the pilots was dismissed by the agency but the pilots claim that the air carrier was the employer. Both pilots received all the instructions on how to operate from the air carrier, the money is transferred through different points to their account but it's originated from the air carrier. They had the same contact person if they wanted to have an annual leave, they reported to the same persons, they received the same instructions on how to operate the airplane but they had a different contract.

The case has been pending since December 2016.

Case 2

Another pilot mentioned a pending case in Denmark related to pilots being hired by Primera Air via intermediate agencies. It is an active case in court where pilots argue that Primera is their real employer.

The case was brought by certain pilots against the air carrier in 2017 and it is still pending.

Similarly, ECA commented on the use of multiple subsidiaries (for operations and another for hiring personnel), explaining that in their view when the employer owns the temporary work agency, this should be considered direct employment. The EU Directive on temporary agency work is not clear in this respect.

Furthermore, the case study provided in Box 3.10 below further looks at the specific issues surrounding the determination of the employer when a subsidiary of the air carrier is used to provide aircrew to the parent company and where the aircrew defend that the actual employer is different from the entity officially undertaking this role.

⁴⁶ NAI refers to Norwegian Air International; NAS is Norwegian Air Shuttle; OSM is OSM Aviation

Box 3.10: Court case against Norwegian Air Shuttle ASA and its subsidiary company in Norway

A court case was initiated by a group of pilots and cabin crew members against Norwegian Air Shuttle ASA (parent company) and its subsidiary company in Norway (Norwegian Air Norway AS) with the view of having Norwegian Air Shuttle AS to be declared as the real employer. Interviews with Norwegian's lawyer and the employee's lawyer provided further details of the case.

With regard to Norwegian's lawyer's description (Mr. Tarjei Thorkildsen, partner of the law firm BAHR, who was interviewed for the purposes of this study):

- Norwegian currently has 4/5 AOC from different countries, one of which is from Norway, the home-base of the affected pilots and cabin crew members.
- There is a flexible Group structure which is based on the following aspects:
 - A service contract formalised between the specific company which holds the AOC and a Centralised Service Unit (hereinafter CSU).
 - A lease agreement between the CSU and the crew's employer company.
- The operational model would be that the holder of the AOC orders a flight service to CSU and the latter contacts the crew's employer company to carry out such flight.

The employees' claim was brought before the District Court (first court) against the parent company⁴⁷ based on the fact that Norwegian Air Shuttle ASA was acting as the real employer despite the corporate structure of the Norwegian group. The employees' lawyer explained that the pilots and cabin crew were previously directly employed by the airline but in 2013 and 2014 were transferred to a subsidiary of Norwegian and contracted to keep performing the same tasks as before (in some cases they were hired back and in other cases they provided services through a wet lease agreement). They filed this lawsuit with the view of declaring that the parent and the subsidiary have a joint employment status. Whilst the formal employer is the subsidiary, in reality the parent company is still the employer as it is still in full charge and enjoy the benefit of the work provided by the employer – they are thus arguing that the parent company should also bear the burden of it.

The concept of "real employer" used by the employees' lawyer is similar to the Spanish and French case law. For example, in accordance with the Spanish case law, there is a "Group of Companies" for employment purposes when the following circumstances are met:

- (i) Co-ownership of assets: although the co-ownership of assets itself does not indicate the existence of a Group of Companies for employment purposes, it could be considered an indication of the possible existence of a Group of Companies for that purpose, especially if the percentage of co-ownership is significant;
- (ii) Sole Administration: the companies of the Group act together under the same directions and instructions, with Boards of Directors in common or several coinciding members;
- (iii) Confusion of the company's assets or one set of accounts: there is one employer when the companies operate with such a level of communication between their assets that these seem confusing; when said assets are used indifferently by the different companies of the Group; or when an indiscriminate payment of debts is made; or there are capital flows amongst the companies of the group;
- (iv) External unit appearance: this factor means that, vis-a-vis a third party, the Group seems to be one company (the companies perform under the same name or anagram; the same work centres are shared; the same visiting cards are used by their employees ...); and
- (v) Confusion of staff: the employees, without taking into account the company that formally employs them, simultaneously render services for several companies of the group, successively or interchangeably.

⁴⁷ However, Norwegian's lawyer affirmed that the employees claim against the AOC in Norway was rejected.

If the abovementioned requirements are met, a Group of Companies for employment purposes could be declared to exist, giving rise to the following consequences:

- (i) The Group of Companies would be considered one single employer;
- (ii) The companies belonging to the Group will be jointly and severally liable for any commitments (such as, salary or Social Security debts related to their employees); and
- (iii) If any of the companies carry out a collective restructuring process (i.e. collective dismissal, collective substantial modification of the working conditions...) or any individual dismissals by reason of redundancy justifying the measure based on economic grounds, the economic situation of the Group should be considered for these purposes (i.e. if the Company has economic losses but the Group obtains profits, the Company would not be able to justify the collective measure or the dismissal based on economic reasons).

However, bearing in mind both interviews, it seems that the concept of “real employer” in Norway is a concept developed by case-law whose limits are not clearly defined yet.

The District Court has affirmed that the restructuring process of the Group was not sufficiently finalised. In this respect, it should be highlighted that the parent company was the previous employer of the crew and that such parent company had a decisive role in the employment relationship.

However, the appeal revoked such decision affirming that there is a valid provision of services between the involved companies and that the parent company was not acting as a “real” employer. This last decision has been ultimately appealed before the Supreme Court (at the time of writing the case is still pending). Bearing in mind the information provided by the employees’ lawyer, the Supreme Court of Norway accepts only 10-15% of the appeals and its decision would be an important precedent to restrict the scope of the employment relationships in Norway. However, the Company’s lawyer disagrees on this and has affirmed that the acceptance of the appeal is not that uncommon.

More recently, the Supreme Court has ruled in favour of Norwegian, concluding that the parent company did not have the level of managerial control over the pilots and cabin crew which would classify it as their employer (BAHR, 2018).

The determination of the employer has implications for the application of the correct labour law, taxation and social security rights as further explored in section 3.5.2.1.

3.4.3.2 Use of temporary agency work for prolonged lengths of time

The use of temporary agency work repeatedly and for prolonged periods of time could also suggest a situation of permanent employment by the user undertaking, giving rise to the question of whether the air carrier should be the employer in these cases.

As reported in Steer Davies Gleave (2015) study, according to the unions consulted temporary agency work is often used for prolonged lengths of time. They noted that workers ended up staying longer on temporary contracts due to the shortage of permanent positions. It is also argued that this type of work could be used as a more permanent solution by some air carriers. Temporary work agencies reported instances of contract renewals, however one of the agencies also indicated that large shares of these workers were eventually offered to become direct employees of the air carrier.

In our interview, ETF noted that air carriers often use aircrew from temporary work agencies on a permanent basis. They pointed to the example of Crewlink which appears to assign the same workers for the same companies. According to ETF, this would be against the spirit of Directive 2008/104/EC as the temporary agency work is being used for a different purpose than what was originally intended.

According to an aircrew union interviewed for this study, a situation of “permanent seasonal” arrangements can be found where a worker has an 8 to 10 month seasonal contract and is dismissed for a couple of months and then brought back on another seasonal contract. The seasonal staff cover different months. For them it is an issue with how the term ‘seasonal’ is being used because cabin crew basically work all year round with different groups coming in. Thus, although the individual aircrew performing the work changes over time, the resource to temporary work is permanent. For BALPA, pilots tend to remain with a carrier for several years on contract and thus it is not temporary at all.

As described in the first section (section 3.2), national transposition of the Directive on Temporary Agency Work has resulted in differences in how arrangements are set up in practice in the different Member States. Countouris, Deakin, Freedland, Koukiadaki, & Prassl (2016) stated that it is unclear whether temporary agency workers that are assigned to a user company permanently fall within the scope of the Directive. The authors found that despite the lack of interpretation by the CJEU there are national court decisions (in Germany and the UK) that suggest that the assignment of workers to user undertakings for an undetermined period is outside the scope of the Directive. In Spain, for example, the use of temporary work agencies is restricted to a temporary period of time as can be also be seen in the case study presented below that concerns a complaint filed by a Spanish trade union USO on behalf of aircrew against Norwegian Air Shuttle. USO argued that the air carrier was using temporary agencies in a fraudulent manner, since: (i) the employees' roles were not related to temporary tasks (as required by the national applicable law), and (ii) the employees were exclusively working for one air carrier for years (Preferente, 2014).

Box 3.11: Employment inspections filed by USO against Adecco TT, S.A. and Norwegian Air Shuttle

The Spanish trade union USO filed six employment inspections (in Madrid, Seville, Canary Islands, Valencia and Malaga) against a temporary employment agency (Adecco TT, S.A.) and Norwegian Air Shuttle based on an irregular use of the temporary agencies by both companies. In particular, USO argued that Adecco was transferring permanent personnel to Norwegian Air Shuttle ASA (Norwegian parent company) and to its Spanish subsidiary "Norwegian Air Resources Spain, S.L" (USO, 2017). USO held that in 2012 Norwegian started to operate in Spain and, for this purpose, it irregularly used the said temporary agency to avoid directly hiring employees under open-ended contracts.

Under Spanish legislation, the transfer of employees is only allowed on a temporary basis under certain circumstances. In particular, Article 43 of the Spanish Workers' Statute establishes that only certified temporary employment agencies may temporarily provide such personnel when there is a temporary cause for that transfer in accordance with a regular temporary contract foreseen in Spanish Employment Law (otherwise, the transfer of employees would be declared unlawful, this is commonly called "illegal transfer of employees").

While the employment inspections were on-going, the temporary employment agency Adecco (as well as Norwegian Air Shuttle) decided to terminate some of the temporary employment contracts in force. Such terminations resulted in several judicial proceedings for unfair (or even, null and void) dismissal in Spain, in which it was analysed the temporary nature of the contracts in question. A summary of four of these court cases is provided below.

Although the content of the decisions that were adopted as a result of the abovementioned inspection resolutions is not public, the court rulings on the cases involving these inspections are public. The rulings declared there had been an abuse in the use of temporary employment agencies by Norwegian Air carriers and, consequently, Norwegian Air Shuttle was imposed a sanction for a very serious breach of Spanish Employment Law, i.e. illegal transfer of employees.

a. Court Rulings of the High Court of Justice of Andalusia (Malaga) of 19 May 2016 (appeal number 655/2016) and 2 June 2016 (appeal number 733/2016):

Both cases concern employees that were continuously working for a temporary employment agency (Adecco TT, S.A.) from March 2012 to 31 December 2014 by means of different temporary employment contracts. Particularly, the employees were rendering services as cabin crew members and assigned to Norwegian Air Shuttle ASA.

The judgements determined that when Norwegian Air Resources Spain, S.L. started to operate in the airport of Malaga (Spain) in 2015, 45 out of the 76 employment contracts were signed between the employees and the temporary agency Adecco TT, S.A. for the supplier Norwegian Air Shuttle ASA. However, the temporary employment agency (Adecco TT, S.A.) communicated to the employees the termination of the temporary employment contract in December 2014.

The employees filed several dismissal claims asking for their dismissals to be declared null and void because they were a consequence of their union activity or alternatively to be declared unfair, because they were rendering services on a permanent basis.

Spanish Labour Law differentiates between null and void dismissal and unfair dismissal, with

different consequences for the worker. In the first scenario, the company may choose between reinstatement (together with paying the salaries accrued during the proceedings) or compensation while in the second scenario the company can only opt for reinstating the person and paying the accrued salaries.

The court found that in October 2014 that only in one case was the dismissal declared null and void as the decision was adopted the same day in which the employee communicated the establishment of this representative body. Therefore, in such case it was concluded that the termination was adopted as a consequence of the exercise of the employee's union rights (which are considered a fundamental right of the workers).

In both court cases, the court considered that the employees' relationships were open-ended, as the cause of the employment contracts was not temporary and they had been continuously rendering the same services for almost three years for the same air carrier. As this was an open-ended employment contract, the temporary agency was not allowed to transfer the employees to Norwegian Air Shuttle ASA. Therefore, the practice constituted an illegal transfer of employees under Spanish Labour Law. This entailed that the employees were to be considered permanent employees and that they could decide if they wanted to be employed by the temporary employment agency or by the air carrier.

b. Court Ruling of High Court of Justice of Canary Islands, Las Palmas, of 19 September 2016 (appeal number 556/2016):

For the purposes of this case study, it is relevant to clarify that this judgment reflects that the Employment Inspections in Madrid, Seville and Canary Islands (Las Palmas) declared the abuse of temporary agencies by Norwegian Air Shuttle ASA.

c. Court Ruling of the High Court of Justice of Valencia of 12 December 2017 (appeal number 2738/2017):

The relevance of this ruling is that it partially refers to the measures adopted by the Employment Inspection concerning one of the inspections initiated by USO in Spain (Valencia).

In particular, the employment inspection has fined both the temporary employment agency and Norwegian, based on an alleged abuse in using temporary contracts, as it concluded that the temporary contracts were not temporary. Consequently, there was an illegal transfer of employees by the temporary employment agencies. At the time when the judgements were rendered, the fines were not definitive.

3.5 Challenges arising from these employment arrangements

In this section we examine certain key challenges that may arise from the increasing use among some air carriers of workers employed via temporary work agencies and other intermediaries. More specifically we investigate:

- The question of possible safety issues as a result of differences in the working conditions that apply in the case of agency workers; and
- The challenges to the application and enforcement of EU and national labour law and the correct application of tax and social security laws.

3.5.1 Safety aspects

Questions arise as to the existence of a link between working conditions and safety culture. In the context of a recent study conducted by Gothenburg University (Melin, Lager, & Lindfors, 2018) found that a high-risk environment is linked to worse working conditions, worse health and more dangerous safety behaviours, based on a survey of 1,299 pilots with a Swedish pilot's license.

A number of stakeholders interviewed suggested that safety issues could potentially arise from the use of workers employed via temporary work agencies and other intermediaries if the working conditions are poorer in the case of employment via work agencies. For the Norwegian Pilot Group, in the case of worse working conditions, pilots may potentially feel pressured to take decisions which are

favourable for the air carrier but not necessarily the safest course of action. Subtle pressure may therefore be present in a safety related environment. A pilot with a temporary contract could feel pressured and worry about certain factors such as sickness, vacation, career progression etc, as opposed to a pilot with a direct, permanent contract. SNPL explained that in case of employment through intermediaries, the air carrier is less concerned and less responsible for pilots as these cannot have direct communication with the air carrier regarding the aircrew's working conditions. ECA highlighted as an important shortcoming the fact that accident reports do not tend to ask about the employment conditions of the crew (e.g. if they are employed by temporary agencies).

Overall, these views suggest that working conditions and the day-to-day working life of agency workers could potentially affect the professional judgment and behaviour of aircrew. However, the views also highlighted the lack of data. There is in particular no statistics available that would allow a comparison between, for example, sickness reporting according to each type of employment relationship. A recent EASA working group report (EASA, 2017), which considered a range of emerging business models in aviation, identified that different employment models - such as employment via a temporary agency - within one operator might have potentially negative impact on the operator's safety culture. This is why the working group recommends operators to consider monitoring the following by type of contract or category of staff: levels of voluntary/mandatory occurrence reporting to the operator; impact on fatigue reporting; impact on sickness reporting; turnover rate of different categories of safety-critical staff; flight data monitoring events; actual Flight Data Monitoring (FDM) data versus occurrence reporting data by category of staff (for instance for unstabilised approaches); levels of cabin crew reporting versus occurrence reporting data.

In addition to the analysis of the survey responses regarding working conditions presented in section 3.4.2, in our survey of pilots and cabin crew we also examined their views on day-to-day working life, namely regarding the following statements which are directly or indirectly linked to safety:

- I have enough time for pre- and post-flight duties
- My rest time is in accordance with applicable safety rules
- I often feel fatigued
- I feel under pressure to fly even if I am fatigued
- I can decide not to fly for legitimate reasons of illness
- I don't feel pressured to fly when my professional judgement indicates that I shouldn't
- There are easy and clear ways to report any issues to the company
- I feel that there are no negative consequences to my employment status if I report any issues/problems

Table 3-4 suggests relatively small to moderate differences (up to 10%) among cabin crew employed via intermediary manning agencies and those directly employed in relation to most of the issues that could be directly or indirectly linked to safety aspects.

The most significant differences concern the ease in which they can report any issues to the company (68% of cabin crew in direct employment agreed or strongly agreed that it is easy, in comparison to 58% among cabin crew with contracts via an intermediary manning agency), the time available for pre and post-flight duties (46% versus 37%), the absence of any concerns over negative consequences to their employment status if they report any issues/problems (49% versus 41%) and their ability to decide not to fly for legitimate reasons of illness (81% versus 74%).

In contrast, there are small or no differences in relation to the level of fatigue or the presence of pressure to fly even if they are fatigued or when their professional judgment indicates that they should not. There are also small differences in relation to the level of rest time and whether it is in accordance with safety rules. Arguably, for those aspects that could be considered as more closely related to possible risks for the safety of the flights, the responses of cabin crew are largely similar irrespective of the contractual relationship with the air carrier.

Table 3-4: Share of cabin crew who agree and strongly agree by type of employment contract (question 3.2 of survey of cabin crew)

Statements	Employment contract directly with the air carrier (n=1,212)		Employment contract via an intermediary manning agency (n=298)	
	No. of respondents	% of respondents	No. of respondents	% of respondents
I have enough time for pre and post-flight duties.	556	46%	109	37%
My rest time is in accordance with applicable safety rules	897	74%	209	70%
I often feel fatigued	737	61%	184	62%
I feel under pressure to fly even if I am fatigued	608	50%	145	49%
I can decide not to fly for legitimate reasons of illness	985	81%	222	74%
I don't feel pressured to fly when my professional judgement indicates that I shouldn't	597	49%	136	46%
There are easy and clear ways to report any issues to the company	828	68%	174	58%
I feel that there are no negative consequences to my employment status if I report any issues/problems	594	49%	123	41%

Source: Survey of cabin crew

Regarding pilots, it can also be concluded from Table 3-5 that pilots with employment via an intermediary manning agency typically have a more negative view with regards to the statements that are directly or indirectly linked to safety aspects compared to those pilots with direct employment with the air carrier, although the differences are small for some statements.

The largest differences between the two employment arrangements are observed for the statements that concern the reporting of risks. In particular, pilots with an employment contract directly with the air carrier tend to agree more with the statement that they feel no negative consequences with regard to their employment status if they report any issues/problems compared to those pilots with an employment contract with an intermediary manning agency (61% versus 46%). In addition, those directly employed also are more in agreement that there are easy and clear ways to report any issues to the company (73% versus 67%).

Pilots with employment contracts with intermediary manning agencies are also less likely to agree that they do *not* feel pressured to fly when their professional judgement indicates that they shouldn't (55% agreed or strongly agreed compared to 66% of pilots directly employed with the air carrier). An important difference also exists regarding their views on whether they can decide not to fly for legitimate reasons of illness with 89% of pilots directly employed agreeing or strongly agreeing compared to 83% of those with an employment contract with an intermediary manning agency.

On the other hand, pilots covered by both employment arrangements shared similar views regarding whether they often feel fatigued, if they have enough time for pre and post-flight duties, if their rest time is in accordance with applicable safety rules and whether they feel under pressured to fly even if fatigued.

Table 3-5: Share of pilots who agree and strongly agree by type of employment contract (question 3.2 of survey of pilots)

Statements	Employment contract directly with the air carrier (n=3,866)		Employment contract via an intermediary manning agency (n=343)	
	No. of respondents	% of respondents	No. of respondents	% of respondents
I have enough time for pre and post-flight duties.	2,141	55%	183	53%
My rest time is in accordance with applicable safety rules	3,086	80%	266	78%
I often feel fatigued	1,832	47%	167	49%
I feel under pressure to fly even if I am fatigued	1,138	29%	107	31%
I can decide not to fly for legitimate reasons of illness	3,436	89%	284	83%
I don't feel pressured to fly when my professional judgement indicates that I shouldn't	2,542	66%	189	55%
There are easy and clear ways to report any issues to the company	2,814	73%	231	67%
I feel that there are no negative consequences to my employment status if I report any issues/problems	2,357	61%	159	46%

Source: Survey of pilots

In conclusion, the survey responses suggest that differences in the day-to-day working life of cabin crew and pilots who have an employment contract with an intermediary manning agency and those who are directly employed exist although they tend to be relatively small (up to 10% depending on the specific issue considered). The larger differences of opinion concern the environment for reporting risks, with aircrew engaged via an intermediary manning agency indicating they agree less with the presence of easy and clear ways to report any issues to the company, and with the absence of negative consequences to their employment status if they report any issues/problems. This suggests there is a higher risk of underreporting among those aircrew. In addition, from section 3.4.2, it was shown that cabin crew and pilots who have employment contracts via an intermediary manning agency are less likely to be satisfied with their working conditions. All in all, pilots and cabin crew with an employment contract with an intermediary manning agency have reported in most cases more negative views regarding their working conditions and day-to-day working life but the extent to which this leads to safety issues is not clear. Although underreporting of issues/problems that may be related to safety aspects may raise possible safety concerns, it should be said that, given the high safety record of the European aviation industry (EASA, 2017), this implication is not apparent.

It should be noted that there has not been specific input provided by air carriers on the specific questions/issues.

3.5.2 Application and enforcement of EU and national laws

As described in more detail in section 8, the determination of the applicable labour law and the correct application of tax and social security laws are particularly complex in the air services sector given the

cross-border nature of the profession. This becomes more complex as more entities and countries as well as various business models are involved. In this section we examine the issues specifically related to the application and enforcement of national laws to temporary work agencies and other intermediaries.

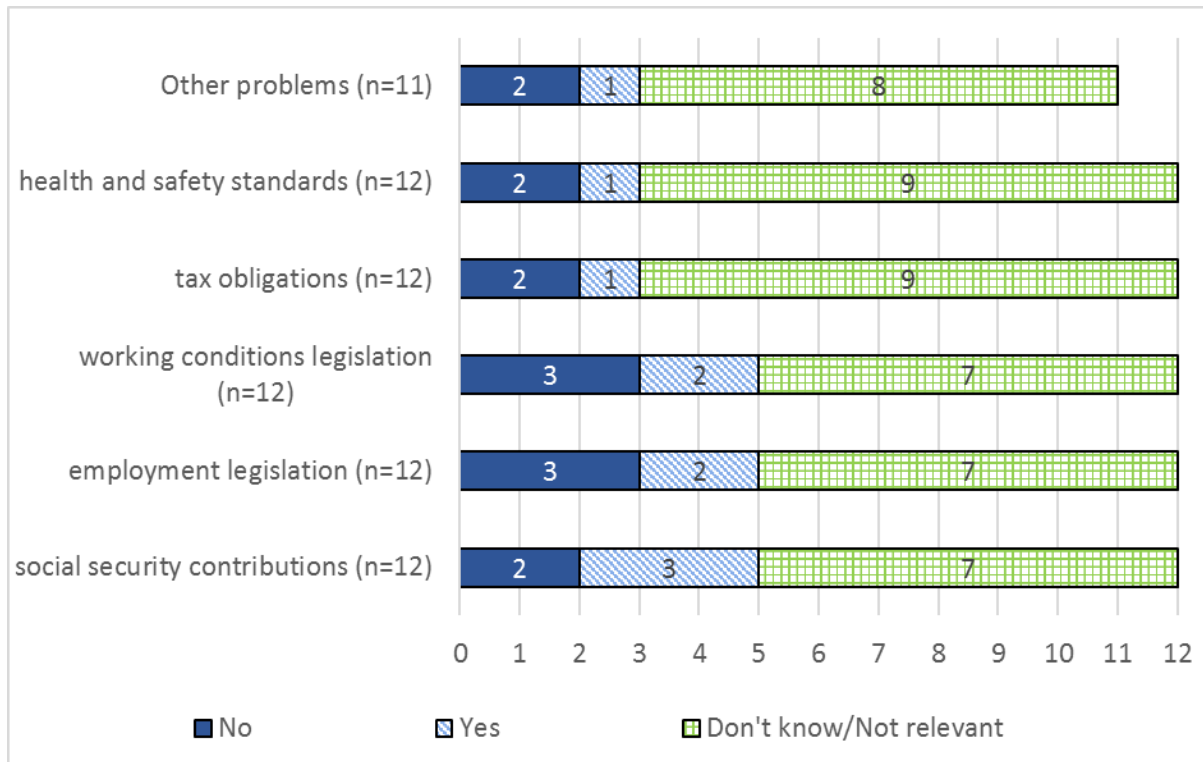
In our survey, labour inspectorates and employment ministries were asked whether they have experienced any challenges in applying or enforcing national laws to temporary work agencies and other intermediaries.

The majority of labour inspectorates surveyed (between seven and nine of the 12 labour inspectorates responding depending on the issue) stated that they did not know about any issues or difficulties in enforcing national rules or it was not relevant. However, Figure 3.21 demonstrates that some issues have been experienced by certain national labour inspectorates that are worth considering:

- Three authorities (Spain, Italy and Denmark) have experienced issues with enforcement of national rules on social security contributions in relation to agencies and agency workers. For the Spanish authority, this is linked to the impossibility of applying the Spanish norms regarding social security, whilst for the Danish authority this is associated to the difficulty of identifying the real employer. For the Italian labour inspectorate, they have experienced problems in determining the applicable legislation if the employment relationship falls in the scope of the Posting of Workers Directive. They indicate that a very important problem is the use (or misuse) of A1 forms, and their value for the host Member State's institutions.
- Two authorities (Estonia and Spain) reported issues with the enforcement of national rules on employment legislation in the case of agencies and agency workers. The Spanish authorities again made reference to the impossibility of applying the Spanish norms on employment relationships. For the Estonian labour inspectorate, issues are associated with conditions related to high value training provided by operators for recurrent training. The same two authorities identify issues with the enforcement of national rules on working conditions. On this, the Danish authority, although indicating that they don't know, noted that they are aware of some complaints that are linked to the use of multiple operating bases by air carriers and cross-border use of aircrew, where the circumvention of national laws is an issue.
- The Danish authority also reports issues with the enforcement of national taxation laws, referring to cases where double taxation has been applied but was unnecessary. This stems from the fact that temporary work agencies are often located in other European countries which means they need to determine who the real employer is.
- The Spanish authority identified a difficulty with the enforcement of health and safety standards due to the impossibility of applying the Spanish norms on this field.

Figure 3.21: Based on your experience, are there any specific issues/difficulties in the enforcement of the applicable national legislation in the case of pilots and cabin crew hired via temporary work agencies and intermediaries in relation to the following areas? (Question 2.5 of survey of labour inspectors)

Issues/difficulties faced in enforcing national rules related to...



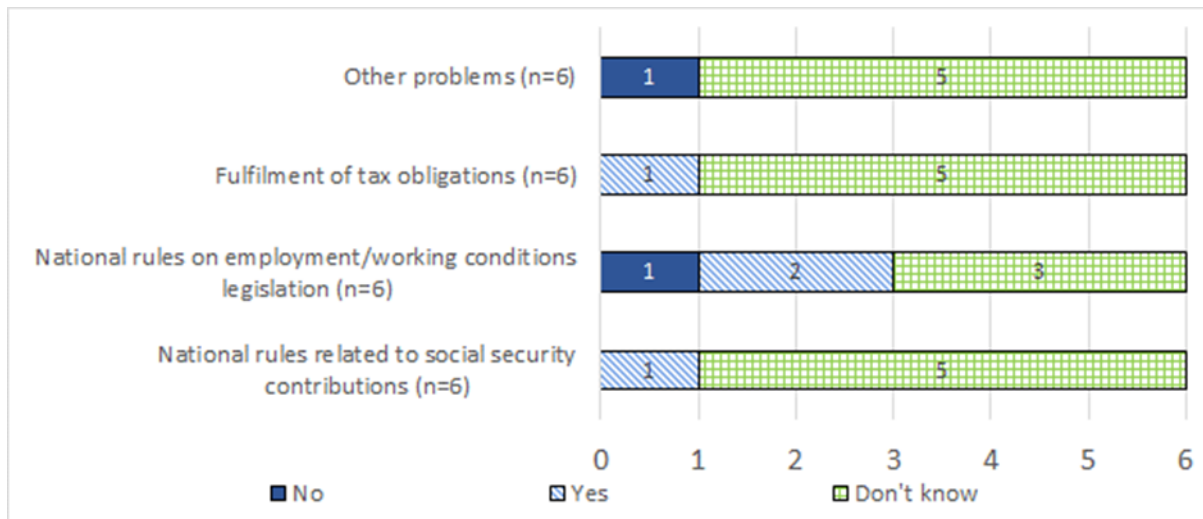
Source: Survey of labour inspectorates

Similarly, most employment ministries surveyed did not know if specific problems or challenges to the application and enforcement exist in the case of pilots and cabin crew hired via temporary work agencies and intermediaries as Figure 3.22 shows. Only two ministries provided additional comments:

- The Swedish Transport Agency indicated that they are aware of issues regarding the application and enforcement of national rules related to social security contributions and employment/working conditions, fulfilment of tax obligations for both pilots and cabin crew, explaining that these concern Swedish crew working for EU operators and employed abroad but living in Sweden.
- In addition, the Estonian CAA also indicated that they are aware of issues regarding national rules related to employment/working conditions legislation in what concerns conditions on high value training provided by operator for recurrent training.

Figure 3.22: Are you aware of specific problems/challenges to the application and enforcement of the following rules by authorities in the case of pilots and cabin crew hired via temporary work agencies and intermediaries? (Question 2.4 of survey of employment ministries)

Pilots



Cabin Crew



Source: Survey of employment ministries

Other issues were also identified by these authorities. Commenting on the survey, the labour inspectorate in Spain noted that there is a general uncertainty about laws in the aviation sector. For the Swedish Transport Agency, accountability and responsibility concerning workers health and safety is often not regulated between the operator and the employment agency.

Overall, only a small number of authorities reported specific issues with enforcement and application of the rules in the case of temporary agency workers and other workers employed via intermediaries. The main challenges have been identified in relation to:

- Determination of the employer;
- Cross-border use of workers involving intermediaries; and
- Overlaps with rules on posting of workers.

These three key challenges will be examined in more detail in the following sub-sections based on literature review and input from other stakeholders.

3.5.2.1 Determination of employer

The presence of more complex employment arrangements in the market make it more difficult to determine which entity is actually employing workers as summarised in section 3.4.3. In turn, this represents a challenge to identify the associated rights and obligations that arise from their employment relationship.

According to Trafikstyrelsen (2014), the interpretation of **Regulation 883/2004 on the coordination of social security systems** is not the same in all countries which may result in a different understanding of the concept of employer relatively to the applicable social security law. EEA countries thus appear to have different approaches to determining who the employer actually is. The authors state that this gives rise to instances where the employer's obligation is paid in more than one country or in no country.

This view is shared by EurECCA which argued that the definition of home base is not yet clear and varies by country. For them, it is even more complicated for cabin crew hired via work agencies as they need to consider at least two entities: the agency and the air carrier. They should consider their agency as their employers, but they then work for the air carrier (from whom they get uniforms, instructions) which makes it harder to have a clear view on who is responsible especially if these and the aircrew are not located in the same country.

Air carriers did not comment on this specific topic.

3.5.2.2 Cross-border use of workers involving intermediaries

Determining the applicable legislation and jurisdiction is further complicated if, as has already been reported in some cases, an agency worker is employed by a work agency in one Member State but provides services in a different or multiple Member States. Furthermore, in cases where temporary work agencies are located outside the EEA, determining the applicable laws and jurisdiction becomes even more complex and is further compounded by issues on immigration laws (Steer Davies Gleave, 2015).

According to the Norwegian Pilot Group (representing pilots working for the air carrier Norwegian), determining correct taxation and social security laws becomes complicated as more organisations are involved in different countries. For example, in the case of a pilot based in Spain and employed by an Irish work agency and flying for Irish-registered company, the Irish work agency needs to pay social security in Spain but as the pilot is employed in Ireland he needs to pay his taxes there. They explained that although the responsibilities for the payment of social security contributions and upholding employment rights fall on work agencies, normally agencies are established in jurisdictions with minimum or lax labour laws and low social security standards. Some agency contracts are structured in a way that lead to the employee also being responsible for the employer's share for social security contributions. This doubles the amount of deductions for the employee and results in a lower net income. Another pilot association explained that many pilots do not speak the language of the country to where they are sent to work and so they trust their employer to give them what they are entitled to.

Differences in national legislation can also create significant difficulties for work agencies. In the Steer Davies Gleave (2015) study, one of the temporary work agencies interviewed indicated that they are directly responsible for ensuring that the social security and tax arrangements are in line with the applicable EU law and the local law of the home base of the pilots they engage with. They highlighted that local laws are not always clear and there is a risk of conflict regarding the correct application of the laws. This translates into a significant burden in terms of time and effort required to ensure that the correct laws apply to the worker.

One temporary work agency interviewed also stated that there are cases where pilots need to pay tax in three different Member States as they work from bases in one or more country but live in a different country (Steer Davies Gleave, 2015). Differences in social security laws were also reported including discrepancies in the decisions on social security contributions made by the same authorities for similar circumstances. Similarly, the German pilot union Vereinigung Cockpit (National Aircrew Union) noted that Germany and Austria do not have a double tax treaty and pilots thus to pay income tax in both countries in some cases. They also gave the example of pilots in Spain working for Norwegian (Irish AOC), who have written to all of these countries asking them where they should pay their income tax, with no response.

An air carrier association explained that, since not all aspects of the internal market have been harmonised, there is an increasing level of “social and fiscal engineering” whereby companies create business models designed to circumvent both tax and social security legislation (i.e. “forum shopping”). For them, it is not reasonable when an air carrier engages with a crew member who is a national of Member State A, with a real (or fake) home base in Member State B, through an employment agency in Member State C (or a non-EU country), on behalf of a business unit in Member State D.

3.5.2.3 Relationship with rules on posting of workers

The cross-border use of aircrew involving temporary work agencies could also trigger the application of the rules on the posting of workers according to **Directive 96/71/EC on the Posting of Workers**. In this respect, it must be pointed out that whereas Directive 2008/104/EC, in principle, regulates the national situation of temporary employment agencies, Directive 96/71/EC applies to the employees who are temporarily working in another Member State in the framework of a transnational assignment. Therefore, in some cases, Directive 96/71/EC would be applicable to temporary agency workers, e.g. when there is posting of temporary employees of these agencies. This adds a further layer of complexity in the legal situation of aircrews and is further explored in section 0.

3.5.2.4 Impacts in terms of non-compliance with EU and national laws

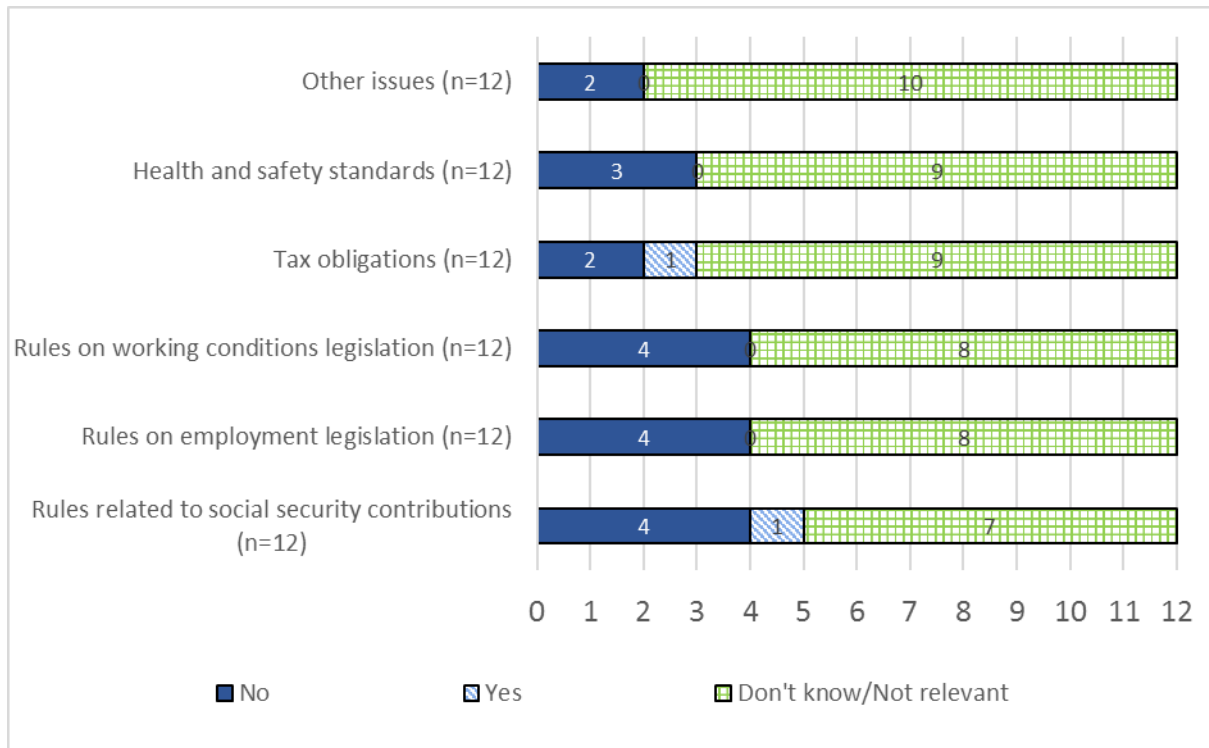
Given all the challenges identified, it is increasingly possible that aircrew hired via temporary work agencies and intermediaries could be non-compliant with EU and national laws. The surveys of labour inspectorates and employment ministries looked at this issue in further detail. However, the findings from the survey of labour inspectorates are not conclusive. Figure 3.23 shows that the majority of labour inspectorates surveyed (between seven and ten of the 12 responding depending on the legislation) indicated they do not know, or it is not relevant for their organisation whether the use of pilots and cabin crew hired via temporary work agencies and intermediaries are associated with higher than average levels of non-compliance with the applicable legislation. Only the Italian labour inspectorate found that there is a higher than average level of non-compliance with rules related to social security contributions, explaining that some companies wrongly apply the rules on posted workers to pay lower contributions.

Regarding tax obligations, only the Danish authority stated that there is higher non-compliance. They noted that when pilots and cabin crew are hired via temporary work agencies, this might lead to issues with double taxation when it was not necessary. They explain that these agencies are often located in other European countries which means they need to determine who the real employer is and thereby which double taxation convention to use based on the OECD convention. In their view, these are complicated rules, which air carrier employees find very difficult to understand and to use. There have been situations, where tax has been deducted in the country where the temporary work agency is located. This is often wrong and has resulted in double taxation.

All in all, the use of pilots and cabin crew hired via temporary work agencies and intermediaries does not appear to be associated with higher levels of non-compliance with the majority of relevant applicable legislation, according to the labour inspectorates surveyed.

Figure 3.23: Based on your experience, is the use of pilots and cabin crew hired via temporary work agencies and intermediaries associated with higher than average levels of non-compliance with the applicable legislation? Please explain. (question 2.4 of survey of labour inspectors)

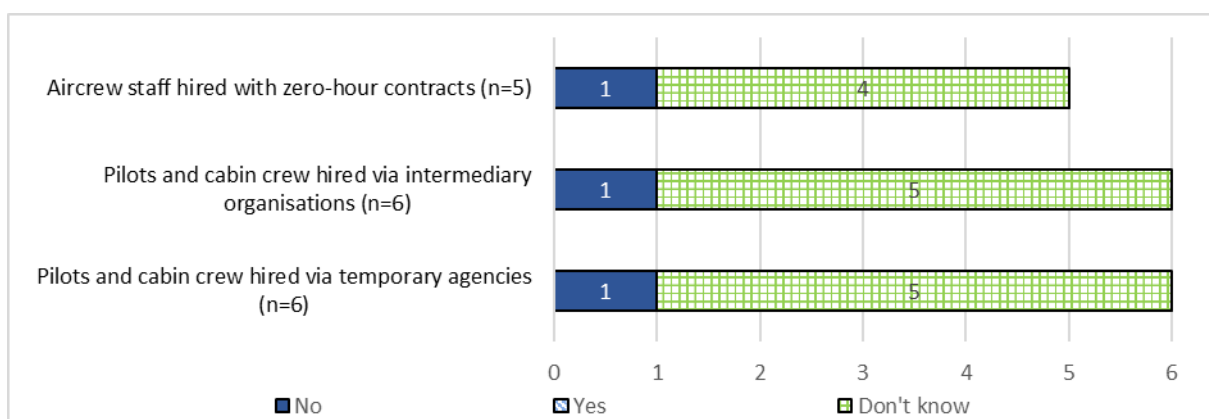
Higher than average level of non-compliance with...



Source: Survey of labour inspectorates

Similarly, the majority of employment ministries did not know and only one (Malta) confirmed they were not aware of issues/problems raised (e.g. in the form of complaints or court cases) by pilots or cabin crew employed under these atypical arrangements as Figure 3.24 illustrates. The Spanish ministry indicated that zero-hour contracts do not have legal existence in Spanish law.

Figure 3.24: Are you aware of issues/problems raised (e.g. in the form of complaints or court cases) by pilots or cabin crew employed under the following arrangements in relation to their working conditions? (Question 2.3 of survey of employment ministries)



Source: Survey of employment ministries

3.6 Conclusions

This section investigated the presence, nature and extent of use of temporary work agencies and other intermediaries in the EEA aviation sector. Agency work involves a trilateral relationship between the worker, the agency and the air carrier where the agency can be identified as a temporary work agency or another intermediary.

3.6.1 Definitions

A first important observation is that within the broad range of employment arrangements through the use of an intermediary there are various alternative arrangements used by air carriers. Temporary work agencies within the meaning of Directive 2008/104/EC on Temporary Agency Work, refer to those intermediary organisations which hold contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings (air carriers) to work there temporarily under their supervision and direction. These agencies are therefore the employer and have to uphold the associated responsibilities. Other arrangements exist whereby aircrew is employed by subsidiaries of the air carrier (i.e. human resource agencies), which are generally responsible for the associated employer's obligations. In this case, it is not always clear whether or not the services provided by these subsidiaries fall within the scope of the Directive. It is possible that they provide multiple services to the parent air carriers, of which only a sub-section could be considered to fall within the scope of Directive 2008/104/EC.

In practice, our analysis found that the distinction between temporary work agencies and other intermediaries is not always easy due to a number of reasons:

- Considerable differences in the use of temporary agency work across the EU which can help explain the confusion surrounding these concepts; and
- The same company can provide the services of both temporary work agencies and other intermediaries (i.e. provide both services that are within and outside the scope of the Directive).

For the purposes of this study, we used the following definitions:

- An intermediary is only defined as a temporary work agency if it falls within the scope of Directive 2008/104/EC on Temporary Agency Work;
- The same intermediary company can perform different roles - within and outside the scope of Directive 2008/104/EC on Temporary Agency Work;
- Intermediaries can be owned by air carriers (i.e. subsidiaries) and/or provide aircrew exclusively to one air carrier; and
- Intermediaries generally hold an employment contract with the agency workers and are responsible for the associated employer obligations. The exception is the recruitment agencies which merely find and select aircrew to be employed directly with the air carrier.

3.6.2 Level of use of agency work in aviation

Data collected to assess the extent of use of agency work focussed on understanding the importance of intermediaries as employers in the air services sector compared to the more typical employment model (i.e. direct contract between worker and air carrier). A detailed investigation of temporary agency work was not always possible as survey respondents (aircrew) were not in the position to know whether the work agencies they work for fall within the scope of the Directive or not. Moreover, we note that surveys relying on the self-assessment of respondents should be interpreted with caution and in light of the sample representativeness.

Taking the above into account, the analysis of available data collected in the course of the study (literature, surveys, interviews) suggests that the employment arrangement whereby the aircrew has a contract of employment with an intermediary manning agency (which includes temporary work agencies) appears to be a relatively small share of the total and more prevalent in some countries/regions.

Our surveys of aircrew and air carriers revealed that between 9% and 19% of cabin crew (depending on the source used – surveys of air carriers and cabin crew respectively) and around 8% of pilots responding to the surveys are employed via an intermediary manning agency (compared to 80% of cabin crew surveyed and 82% of pilots surveyed that are directly employed with the air carrier). Authorities surveyed are also not generally aware of this form of employment in their country. Agency work appears to be more prevalently used in some countries/regions (e.g. Eastern Europe, Southern Europe) amongst respondents – this is in line with comments provided by the stakeholders interviewed.

In addition, employment via intermediary manning agencies also appears to be mainly observed among low-cost carriers amongst respondents, which is in line with the findings from previous studies: of all those pilots and cabin crew surveyed who have indicated they have an employment contract via an intermediary manning agency, 69% of pilots and 97% of cabin crew work for a low-cost carrier. The responses to the survey of air carriers also support the conclusion that the use of aircrew with employment contracts with intermediary manning agencies is most common in the case of carriers using the low-cost business model. However, input from stakeholders (unions) suggests that while initially such employment arrangements were only used by low-cost carriers, their growing importance in the EU internal aviation market is putting pressure on other types of carriers to use similar approaches and it is thus spreading across the industry.

Another finding of the analysis, in line with earlier studies, is that such employment arrangements appear to be more common among younger cabin crew (and younger pilots to a lesser extent). According to the stakeholders interviewed, this can be linked to their lack of experience which puts them in a vulnerable position where they face less employment options and are more willing to accept these positions. It is also possible that crew are offered direct employment after a certain period of experience as a temporary worker, in which case the use of temporary agencies for younger aircrews could constitute a gateway to a more permanent form of employment.

3.6.3 Working conditions

In relation to the working conditions of aircrew employed by temporary work agencies or other intermediaries, Directive 2008/104/EC regulates temporary agency work to ensure minimum employment rights but other arrangements (e.g. self-employed aircrew engaged through intermediaries and other workers employed by intermediaries) are not covered by this Directive. Nevertheless, differences in the transposition of the Directive make it difficult to ensure a sufficiently harmonised level of protection of these minimum rights. This means that in practice working conditions could differ compared to those aircrew directly employed by air carriers. According to the literature, this situation could provide incentives to rule shop, that is, select the country where rules on temporary agency work are more favourable.

The analysis of the data collected on the working conditions of aircrew focussed on differences resulting from the use of intermediaries as employers in the air services sector (i.e. atypical employment) compared to the more typical employment model (i.e. direct contract between worker and air carrier). A detailed investigation of temporary agency work was not always possible for the reasons described above.

The findings from the surveys of aircrew and interviews with stakeholders suggest that cabin crew and pilots with an employment contract via an intermediary manning agency tend to be more dissatisfied with their working conditions than those directly employed by the air carrier. This could be linked to agency work requiring a more frequent move between bases, but also associated with negative impacts on work-life balance, lower job security and no collective labour agreements. Cabin crew (and to a lesser extent pilots) who have an employment contract via an intermediary manning agency are also more likely to report that they do not receive sufficient education and training as well as lower levels of satisfaction with their pay. In addition, both cabin crew and pilots who have an employment contract via an intermediary manning agency are less likely to report that their employer recognises unions. Unions suggest that aircrew with this employment contract are reluctant to join a union for fear of not being hired again.

The analysis also suggests that only some of these differences are related to the business model followed by the air carriers. Those cabin crew and pilots directly employed with the air carrier working for low-cost carriers are in general more dissatisfied than those working for legacy carriers. On the other hand, having an employment contract with an intermediary manning agency translates into a

more negative work experience regardless of the business model of the air carrier they work for: pilots engaged via an intermediary do not have different views if they work for a low-cost carrier or for a legacy carrier.

3.6.4 Nature of the employment relationship between aircrew and air carrier

Given the complexity of the recruitment models, it could be that the features of the relationship between the assigned worker and the air carrier are those of an employment relationship and that these alternative recruitment models are used by some as a social construct to avoid permanent and direct employment with air carriers, even if the air carrier is the *de facto* employer.

The possibility of non-genuine agency work has been raised in the literature and was also raised by some stakeholders in relation to air carriers owning or controlling temporary work agencies or when a chain of subcontractors is used. There are cases of aircrew stating that the air carrier is their actual employer despite the role being formerly assigned to the work agency. In particular, the study identified a case where there is no clarity as to the determination of the employer when a subsidiary of the air carrier is used to provide aircrew to the parent company and where the aircrew considered that the actual employer is different from the entity officially undertaking this role.

The use of temporary agency work repeatedly and for prolonged time has been reported by aircrew organisations and unions, and is assessed in the case study concerning a complaint filed by a Spanish trade union USO on behalf of aircrew against Norwegian Air Shuttle which argued that the air carrier was using temporary agencies in a fraudulent manner since the employees' roles were not related to temporary tasks (as required by the national applicable law), and the employees were exclusively working for one air carrier for years⁴⁸. This could also suggest a situation of permanent employment, giving rise to the questions of whether the air carrier should be the employer in these cases.

The lack of temporary character of the employment arrangement in some situations has led stakeholders to argue that they are against the spirit of Directive 2008/104/EC. It is not clear whether those permanently assigned to a user undertaking are covered by the Directive, although national court decisions suggest they are not. There are examples identified where national courts (e.g. Spain) concluded there has been an abuse of temporary agency work related to the fact that the employees' roles were not related to temporary tasks (as required by the national law) and that the employees were exclusively working for one air carrier for years.

3.6.5 Challenges arising from the use of work temporary work agencies and other intermediaries

Challenges could potentially arise from the use of workers employed via temporary work agencies and other intermediaries in relation to safety of air services and the application and enforcement of EU and national law.

In relation to safety, unions interviewed during the study argued that the lower working conditions of these aircrew increase fatigue and affect their professional judgment. Indeed, our surveys of aircrew showed that cabin crew and pilots who have employment contracts via an intermediary manning agency are less likely to be satisfied with their working conditions but the same differences are not observed regarding the day-to-day working life of aircrew, apart from aspects regarding the environment for reporting risks with those engaged via an intermediary agency reporting to have a less favourable environment to report risks. This could imply an increased risk of non-reporting of potential safety issues. Nevertheless, given the high safety record of the European aviation industry, the implications are not apparent.

Another challenge identified in this study that arises from the use of indirect employment arrangements in the air services sector concerns the correct application of national labour, tax and social security laws, given the cross-border nature of aircrew jobs, which becomes more complex

⁴⁸ More recently, the Supreme Court has ruled in favour of Norwegian, concluding that the parent company did not have the level of managerial control over the pilots and cabin crew which would classify it as their employer (BAHR, 2018).

when more parties and countries are involved (e.g. identifying which country's labour laws are applicable, which country aircrew should be paying tax/social security contributions in, etc.). Nevertheless, among the 12 labour inspectorates (out of a total of 30) that responded to the survey, only five of them reported specific issues with enforcement and application of the rules in the case of temporary agency workers and workers employed via other types of intermediaries (Spain, Italy, Estonia, Sweden and Denmark). Where concerns were identified, they were linked to the determination of the employer, cross-border use of workers involving intermediaries and overlaps with rules on posting of workers. We note that these concerns were stated very broadly by the responding authorities which did not allow a full assessment of the magnitude of these issues in these countries. Some stakeholders (unions) argued that complex employment arrangements are created to circumvent more stringent laws.

4 Pay-to-fly

4.1 Introduction to the topic and presentation of the key issues

This section is concerned with ‘pay-to-fly’ schemes and the extent to which they are used and regulated in the EEA. The chapter covers the following:

- Proposed definition of “pay-to-fly” and a justification for this definition.
- Using this definition, we have assessed the current market situation with respect to “pay-to-fly” schemes, including the extent to which such practices are used by air carriers and/or any intermediaries.
- Analysis of situations where the features of the relationship between the worker in a pay-to-fly scheme and the air carrier are those of an employment relationship.
- Assessment of the challenges for the workers linked to the use of such schemes.
- Two case studies on situations of recruitment of pilots through pay-to-fly schemes, including analysis of whether and how the relevant EU and national legislation address the situation.

The lack of legal definition and specific regulation at the EU level of ‘pay-to-fly’ schemes make it important to understand and explore in more detail what is meant in practice by the term ‘pay-to-fly’ (P2F) in order to answer the key questions. As will be seen in sections 4.1.3 and 4.4 below, ‘pay-to-fly’ schemes are only indirectly regulated or affected by more general national and EU rules in the field of labour law.

However, before addressing what pay-to-fly refers to, an understanding of the training requirements of pilots is also required (see 4.1.1), as both issues are heavily linked. This is followed by a more detailed review of the existing evidence from the literature.

4.1.1 Training requirements and routes to becoming a pilot

Article 7 and Annex III of the Regulation 216/2008 on common rules in the field of civil aviation set the essential requirements to fly an aircraft, including the necessary practical skills and experience.

In order to become a pilot for a commercial airline, the relevant training is typically provided in the context of an ‘ab initio’ full-time course of flying and ground training run by an Approved Training Organisation (ATO, a flying school) which leads to the achievement of the Air Transport Pilot Licence (ATPL). However, the ATPL is ‘frozen’ (fATPL) until the pilot has built up appropriate experience through **line training** (see below). The fATPL is made up of a number of individual licences and endorsements (including ground school examinations, Multi Engine (ME) Commercial Pilots Licence (CPL) Multi Engine Instrument Rating (IR) and Multi-Crew Co-operation Course (MCC). During this time a pilot can operate as a First or Second officer. When the ATPL is ‘unfrozen’, a pilot is fully qualified and can operate as a Captain (with the relevant training/experience).

The Multi-crew Pilot Licence (MPL) is an alternative option, and prepares the pilot for employment with a specific airline following graduation – it therefore includes type rating on a specific aircraft operated by the mentoring airline. However, those in possession of a MPL are restricted to First and Second Officer positions.

Type rating training includes the training and practical experience required in order to fly a specific aircraft type (e.g. Boeing B737 or Airbus A320) and typically includes a ground course and simulator sessions. The assessments for type rating can vary, but typically includes aptitude testing, interview and simulator assessments. A limited number of take-off and landings may also be included, but it does not include flights (commercial or otherwise). Type-rating can be purchased by the candidate (or employee), or can be sponsored by an air carrier, either in full or via a bond (see 4.2.4 for more details).

Base training refers to when pilots fly the aircraft for the first time following Type Rating (putting newly acquired skills into practice), using empty aircraft to complete a number of take-off and landings with a training captain.

Once a pilot has the frozen Air Transport Pilots Licence (fATPL) and Type-Rating, he/she is required to achieve a total 1,500 hours flying time (of which 500 must be in a multi crew environment) in order

to 'unfreeze' the ATPL and enable them to operate as Captain of a commercial aircraft. This final stage is known as **line training**. During line training, pilots operate in the cockpit as a regular pilot (as Second or First Officer) alongside a line training captain on a revenue-earning passenger flight. A third 'safety pilot' may also be present during some or all of the line training hours. Line training may be provided as part a pilot's employment with an air carrier, or pilots may purchase a package of flight hours to gain their flight experience (usually up to 500 hours). In some cases, type-rating and flight hours packages may be purchased together by pilots (e.g. type-rating +300 hours).

In terms of the ways that such training can be provided, the Aircrew Policy Training Group report (ATPG, 2018) outlines the typical routes to becoming a pilot, which are summarised in Box 4-1.

Box 4-1: Historical pilot career paths (ATPG, 2018)

- **State/Air carrier sponsored *Ab-Initio* training:** Traditionally used by legacy and state-owned air carriers in the 1970s and 1980s, potential pilots were selected to join an *ab-initio* cadet programme provided by a flight school. Pilots did not typically make any upfront financial payment but were bonded to their employer for a number of years (responsible for paying back a proportion of the training costs if they chose to leave the air carrier during this time).
- **Military service:** In the past, large numbers of pilots completed initial pilot training as part of military service in the past. Air carriers would subsequently hire experienced pilots and provide conversion training for commercial aircraft. However, as military funding has decreased substantially over the last 20 years - pilots that are able to gain a military position find that flying hours are severely limited and can potentially leave the military with insufficient experience to gain direct employment with air carriers.
- **Self-Improver/Modular Route:** Pilots progress through various qualifications over an extended period of time on the basis of self-funding of the training. Pilots would typically spend time flying for small air-taxi companies or working as flying instructors to build experience and funds in order to get to the next stage of training. Pilots would then typically progress to small regional air carriers or business jets to gain further experience before joining air carriers.

As can be seen, besides the situation of sponsored training by an air carrier, which is rather uncommon, pilots need to cover part or all of the costs of the training themselves (we examine this issue in more detail in Section 4.2.4).

In this context, in general terms, **'pay-to-fly' schemes are typically linked with the line training** element of achieving ATPL (thus, also referred to as 'self-sponsored line training') where pilots are required to pay to be given the opportunity to build up the required minimum flying hours in the context of a commercial flight. According to ECA, such schemes are also offered as Operator's Conversion Course (OCC⁴⁹). The following section aims to develop a clearer definition of "pay-to-fly" schemes and, to the extent possible, differentiate them from other self-sponsored training programmes.

4.1.2 Definitions of 'pay-to-fly'

According to the 2015 Ghent study, pay-to-fly schemes are defined as follows:

"Pay-to-fly schemes where the pilot actually pays to fly an air carrier's aircraft in order to 'build up experience' by clocking up flight hours so as to either get a first officer position at better conditions – e.g. base closer to home – at another air carrier or, as a first officer, clock up enough hours to be able to apply for a captain's position." (Jorens, Gillis, & De Conisck, 2015)

The European Cockpit Association (ECA) provides a more detailed definition, as follows (also supported by ATPG):

"'Pay-to-fly' schemes are an aviation industry practice whereby a professional pilot, whether in training or not, operates an aircraft in commercial service, i.e. on a regular revenue-earning flight – as any other qualified crewmember – but instead of receiving a salary he/she pays for the cost of gaining flight experience. Such schemes also extend to pilots who do not have

⁴⁹ Operator Conversion Courses are aimed at type-rated pilots to familiarise them with an air carrier's procedures and operating areas.

much flying experience (usually under 1500h) and want to gain experience on a specific aircraft type to increase their employability” (ECA, n.d.) or in short “Pay-to-Fly (P2F) is an atypical employment form that occurs when an air carrier requires the pilot to pay for his/her ‘line-training’ on board of revenue-earning flights, instead of earning a salary” (ECA, 2016).

During the interviews, stakeholders were also asked to provide a definition of pay-to-fly schemes for pilots. Responses received are shown in Box 4-2.

Box 4-2: Stakeholder definitions of ‘pay-to-fly’

“Pay-to-fly can be defined as the situation where a pilot has paid for their basic training, to obtain commercial pilot license. They then paid either agency or air carrier directly to train them for a type rating, with a view to obtaining a job afterwards. It is the only way to get access to an interview with the air carrier – paying for type rating. It can also be where the candidate not only pays for type-rating but for a proportion of hours to sit in co-pilot/first officer seat” [Air carrier Association 1]

“Pay in order to be allowed to work on a scheduled or commercial flight where passengers are transported for remuneration” [Air carrier Association 2]

“Pay-to-fly is where a pilot (trained) pays the air carrier to fly the airplane. This is distinct from paying for training – which is an investment in human capital and a skill, with benefits. Becoming a pilot can lead to a well-paid career, and it is therefore expected that pilots pay for part or all of their training (comparable with most other sectors). The amount paid for training by air carriers can vary greatly depending on the market - if there is a shortage of pilots then air carriers will pay more for training and vice versa. [Air carrier 1]

“Pay-to-fly is where a pilot that doesn’t have enough experience to meet general experience criteria actually pays an air carrier to fly as a co-pilot, operating commercial flights (or may not have been selected y that air carrier)” [Air carrier 2]

“Understand pay-to-fly to be any activity that is carried out on commercial aircraft with passengers with the pilot paying to fly” [Aircrew Association]

“P2F occurs when pilot is paying air carrier directly or indirectly though broker (which approach air carriers with pilots to be trained - it is their business model) and air carrier makes revenue from their flight. Other programmes occur when air carrier hires the pilot based on their aptitude and provides training and type rating on their own expense - either bonding the pilot to the air carrier or sharing the costs with the pilot”. [Aircrew Union 1]

“Pay-to-fly schemes continues past initial licencing costs. It is pilots paying for training after [gaining] their licencing” [Aircrew Union 2]

“In pay-to-fly, trainee is employed via school, and pays to fly as first officer. Normally pilot flying is paid but in pay-to-fly pilot is paying to fly. It goes via intermediaries, never directly with the air carrier.” [Aircrew Union 3]

Table 4-1 summarises the attributes of the various pay-to-fly definitions identified and provided by stakeholders. The following observations can be made:

- Most definitions largely refer to a situation of pilots paying to **obtain flying experience** (line training) to **improve their employability** during a **regular revenue-earning flights**;
- One stakeholder indicated that type-rating may be included as pay-to-fly (e.g. Air carrier Association 1);
- The definitions do not refer to the contractual arrangements between the air carrier and the aircrew staff or whether the participation in the training is linked with subsequent employment in the specific air carrier; and
- The proposed definitions are rather unclear as to the extent that the training should be considered mandatory or not (i.e. that is necessary to enable workers to carry out the work for which they are employed). In the case of pilots, in order to be able to fly certain aircrafts type rating certification is necessary and is linked with certain hours of flying experience.

Table 4-1: Summary of pay-to-fly definition attributes

Definition	Attributes mentioned			
	Pay to build up flight experience / Line training	Pay to obtain type rating	Pay-to-fly with paying passengers / revenue earning flight	Access to a job following training/increase employability
Ghent Study	✓			
ECA	✓		✓	✓
Air carrier Association (1)	✓	✓		✓
Air carrier Association (2)			✓	
Air carrier (1)	✓		✓	
Air carrier (2)	✓		✓	
Aircrew Association			✓	
Aircrew Union (1)	✓		✓	✓
Aircrew Union (2)	✓			
Aircrew Union (3)	✓		✓	

The varying definitions provided by stakeholders demonstrate that a 'grey area' exists in relation to what constitutes 'pay-to-fly'. Opinions differ in terms of where commitments for paying for training end for the pilots and begin for the air carriers (particularly in relation to type-rating) and associated conditions (employment status etc.). These differing interpretations have led to ambiguities, which require further investigation and clarification.

For the purposes of this study, based on the review of pay-to-fly definitions above and the absence of both a legal definition and a common agreed definition at the European level issued from the practice, this notion is consistent to encompass the following attributes:

- Pilot operates an aircraft in commercial service (e.g. revenue earning flight) to gain flight experience;
- Pays the air carrier for obtaining flight experience;
- Pilot may or may not have a contract with the air carrier;

It primarily relates to 'line-training'. However, it should be noted that line training can be, and is often, packaged with type rating, which is not considered to constitute pay-to-fly.

4.1.3 Evidence on level of use, impacts and existing regulation of pay-to-fly

Several studies acknowledge the issue of pay-to-fly (Ecorys Nederland BV, 2007; SDG, 2015; Jorens, Gillis, & De Conisck, 2015). The 2015 Ghent study points towards a perceived growing trend whereby air carriers are increasingly demanding that pilots finance their own training or ask crew members to reimburse the investment they have made in engaging them. They consider pay-to-fly to be a particular issue for more junior pilots who are potentially in significant debt due to the training and education they have already completed to become a pilot. The Ghent study identifies young, recently qualified pilots as those that are in an extremely weak labour market position who are only able to find jobs with deplorable conditions or having to resort to pay-to-fly schemes in order to clock up the flight experience required by air carriers offering better conditions. They conclude that a mandatory internship may be an option to deal with this issue.

Another study (Panteia & PWC, 2015) associates pay-to-fly with specific carriers (e.g. Ryanair) suggesting that it was the first air carriers to introduce this practice and even going further by providing 'instruction on the job', (i.e. training while flying) which led to pilots working for free for three years for the company. (Harvey & Turnbull, 2012), stated that low-cost carriers (LCCs) tend to pass on the costs of training to their employees. Feedback from a LCC confirmed that their pilots typically

pay for their training, but, as they point out, similar to a student attending a university would pay for their tuition. However, when it comes to using the pilots' professional services, the specific LCC claimed that the pilots are paid for.

From its side, in a recent report, the European Cockpit Association (ECA, n.d.) outlines the potential implications of pay-to-fly or 'self-sponsored training' schemes. They highlight the potential negative impacts on flight safety, whereby perverse incentives are created for the individual pilot to fly at any cost, even if they are not mentally or physically fit, and for an air carrier to use 'cheap' pay-to-fly pilots to lower its cost. A recent EASA working group report (EASA, 2017), which considered a range of emerging business models in aviation, identified that different employment models such as pay-to-fly within one operator might have potentially negative impacts on the operator's safety culture. This is why the working group recommends operators to consider monitoring the following by type of contract or category of staff:

- Levels of voluntary/mandatory occurrence reporting to the operator;
- Impact on fatigue reporting;
- Impact on sickness reporting;
- Turnover rate of different categories of safety-critical staff; flight data monitoring events;
- Actual Flight Data Monitoring (FDM) data versus occurrence reporting data by category of staff (for instance for unstabilised approaches); and
- Levels of cabin crew reporting versus occurrence reporting data.

ECA also argue that the use of pay-to-fly leads to exploitation of the pilot, by selling flight hours using pay-to-fly contracts (training schools/air carriers) and having the cost of hours is deducted from the pilot's salary (which can equal or exceed their pay). It is thus suggested that it is therefore mostly young, recently graduated pilots that are being exploited.

Thus, it is evident that some stakeholder groups consider that pay-to-fly schemes can have important implications for the labour market. Since such schemes are more likely to be used by younger pilots, given their limited number of flight hours, it can put these pilots at a disadvantage compared to more experienced pilots, potentially resulting in a segregated labour market with differing working conditions. At a meeting of the sub-group on social matters in air transport (Sub-group on social matters in air transport, 2015), the existence of two labour markets was acknowledged, with a primary market encompassing mainly younger pilots and a secondary more selective market of experienced pilots.

Issues have also been identified regarding the employment relationships and pay-to-fly schemes, which have been translated in a legislative concern at local and European level (see Box 4-3).

Box 4-3: Issues in the employment relationships referring to pay-to-fly

In France, in 2016 the French Member of Parliament Mr. Fernand Siré issued a written question to the French Government (Ministry of Transport) enquiring about "pay-to-fly" systems (Assemblée Nationale, 2016). The Ministry of Transport replied in writing that these schemes could be considered as bogus self-employment⁵⁰ ("*travail dissimulé*"). The Ministry concluded that this practice breaches national employment law (ex. article 8221 of the Employment Code - Code du Travail (Legifrance, 2015)). It was explained that "pay-to-fly" is a practice used by some "low-cost" air carriers based in Europe or Asia, which involves charging professional pilots to conduct their mandatory line training (or their type rating) in the company. It was suggested that this amounts to moving the company's training costs to pilots, the latter acquiring hours of flight beyond his or her initial training with the aim of securing a better job, whilst at the same time being in debt. This mechanism is similar to the use of certain types of "trainees" in an existing company until the Law No 2011-893 of July 28, 2011 for the development of work-study programmes and professional career security. This law prohibited "internships" for the purpose of performing a regular task corresponding to a permanent work position of the company. In France, work for the benefit of a third party is either carried out as an employee or

⁵⁰ Question 96248 de la 14^{ème} législature (Assemblée Nationale) dated 31 May 2016.

as a self-employed individual. When a pilot pays to fly, he is included in the crew of a commercial flight and is bound by a relationship of permanent subordination to an employer. Therefore, this practice must be considered as hidden work prohibited by the Labour Code (Articles L. 8221 and following). Pay-to-fly is therefore prohibited in France as the pilot is considered to be an “employee” due to the fact they are performing regular tasks without pay, and at the same time paying for the experience.

Likewise, “pay-to-fly” has been mentioned in a report about social dumping in the European transport sector carried out on behalf of the “*Commission des Affaires Européennes*” by Senator. Mr. Éric Bocquet, who has expressly stated that this practice has been adopted by low-cost air companies, such as, Ryanair (Bocquet, 2014)⁵¹.

Furthermore, a report made by Member of Parliament Mr. Gilles Savary to the French Assembly (Assemblée Nationale)⁵² concerning the Aviation Strategy for Europe issued by the European Commission, on 28 June 2016, argued that the employment legislation was not only being applied incorrectly, but that it was also insufficient to address these schemes⁵³.

France’s concern about the “pay-to-fly” issue was of such a nature that it resulted in a TV report⁵⁴ that was broadcast by the channel France 2 in 2015.

In Germany, it seems that the concern about “pay-to-fly” schemes is related to the possible abuse of this model by low-cost air carriers.

In fact, on 5th May of 2015, four German members of the Socialist and Democrats Party of the [European Parliament](#) issued a set of three written questions to the [European Commission](#) under the subject “Exploitative employment models at low-cost air carriers (‘Pay-to-Fly’)”⁵⁵, that were answered by the European Commission⁵⁶.

In particular, in the MEPs’ view, pay-to-fly constitutes an employment relationship. The MEPs asked the Commission whether it was aware of such practice and requested it to confirm its position on this matter. They also enquired if the Commission was going to carry out any investigation or take any possible actions against such training systems.

The Commission replied that it had been informed of this practice by pilots’ organisations and that it was investigating the matter.

However, the Commission stated, at the time, that it had not received enough evidence showing the impact of this practice on the employment relationships or aviation safety, but that this issue was being subject to further investigation.

At national level, in 2013, the weekly digest “Der Spiegel” published a report on the matter (Speigel, 2013) and German television also broadcasted a documentary on the issue.

In Ireland, the topic was also popular, especially taking into account that it is the home country of Ryanair⁵⁷. The topic was also mentioned in the Irish Times in July 2017 (Times, 2017).

Overall, due to their potential implications on both safety and employment relationships, trade union representatives such as the ECA argue that pay-to-fly practices should not be permitted. For the time being, as advanced in the introduction above, this “atypical” relationship has not been regulated at the European Union level. France is the only country that has taken action banning the use of pay-to-fly

⁵¹ Please see below for information on a recent change in Ryanair’s policy concerning pilots’ training.

⁵² Press Release: http://europa.eu/rapid/press-release_IP-15-6144_en.htm

⁵³ Rapport d’information déposé par la commission des affaires européennes sur la stratégie européenne pour l’aviation présentée par la commission européenne le 7 décembre 2015 (com(2015)) et présenté par M. Gilles Savary. La législation sociale dans le secteur n’est pas seulement mal appliquée, elle est aussi insuffisante, les formes de travail atypiques (contrats zéro heure, système « pay-to-fly », faux indépendants et sociétés boîtes aux lettres) ne relevant pas d’une interprétation divergente des règles mais bien des lacunes de ces dernières.

⁵⁴ Available at <https://www.dailymotion.com/video/x2gijvf>

⁵⁵ Parliamentary questions – Exploitative employment models at low-cost airlines (‘pay to fly’), 5 May 2015: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2015-007228+0+DOC+XML+V0//EN&language=en>

⁵⁶ Parliamentary questions, 10th July 2015: <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2015-007228&language=EN>

⁵⁷ Please see below for information on a recent change in Ryanair’s policy concerning pilots’ training.

schemes, albeit indirectly since its labour legislation (Code du Travail) forbids what is known as “travail dissimulé” (hidden or undeclared work). This means that, even though there is no specific regulation with regards to pay-to-fly in France, the fact that this practice would be qualified as “travail dissimulé” or undeclared work ensures that no French flag carrier currently engaging in pay-to-fly. However, other foreign air carriers that operate in French airports may be engaging in this practice (see Box 4-3: Issues in the employment relationships referring to pay-to-fly). Our research suggests that no other Member State has taken any action by introducing specific legislation⁵⁸. Therefore, as the example of the French Labour Code suggests, any regulatory impact on pay-to-fly schemes will come from laws or regulations covering other (more general) topics, but indirectly having an impact on them.

4.2 Analysis of data collected

This section presents the findings and analysis of our data related to pay-to-fly schemes collected during the course of the study. The analysis draws upon the following sources:

- Surveys with pilots, air carriers, and national authorities (labour inspectorates and employment ministries);
- Interviews with stakeholders, including pilots, air carriers, air carrier and aircrew representatives, national pilot unions and flight schools; and
- Examples of pilot contracts and instructions.

The analysis considers the necessary pilot training; how pilots pay for this training; whether pilots and air carriers are participating in pay-to-fly schemes; and how prevalent this is in Europe. Where there is evidence that pilots are participating in pay-to-fly schemes, the analysis considers which pilots and/or air carriers are most likely to be involved. Finally, the analysis considers the costs involved in pay-to-fly, and other impacts for pilots, air carriers and the industry.

4.2.1 Pilot training and payment responsibilities

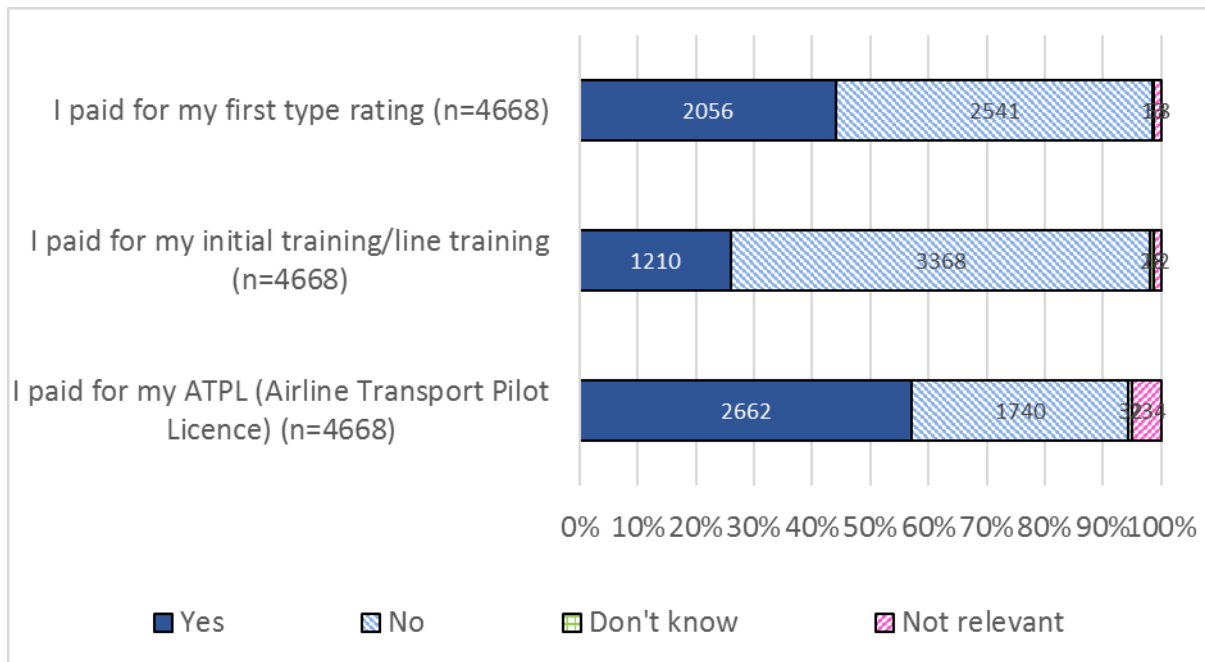
Section 4.1.2 highlighted the ambiguities surrounding defining ‘pay-to-fly’. This section explores the different ways that pilot training at different levels (basic, type rating and line training) is funded in more detail

Initial training costs relating to the achievement of the ATPL can range from €70,000-€100,000, with no guarantee of employment following the course (ATPG, 2018). Type-rating training can cost around €30,000 if paid in full by the pilot. In the past, Approved Training Operator (ATO) loans were used but these have now largely been removed by the finance industry, which has limited access finance for pilot training. Costs associated with line training vary greatly and are considered in more detail in section 4.2.5.

Pilots were asked in the survey whether they had paid for ATPL, type rating or line training. According to the responses, 2,662 out of 4,668 (57%) pilots paid for their ATPL. 2,056 (44%) of pilots responding paid for their first type rating. Finally, a lower proportion of pilots paid for their initial line training (working towards achievement of 1,500 flight hours experience in order to ‘unfreeze’ ATPL) – 1,210 (26%) (see Figure 4-1). Due to the pay-to-fly definition used in this study, these responses indicate that the upper threshold for participation in pay-to-fly schemes is therefore 26% of pilots responding to the survey (based on those indicating that they paid for their line training – although it is not known at this stage whether flights were undertaken on a commercial flight).

⁵⁸ One air carrier in Italy mentioned that they did not participate in pay-to-fly schemes due to a legal requirement that states pilots are not able to contribute financially in order to be allowed to fly and gain requisite experience. This is due to the Articles 117 1 375 of the Civil Code (Italy) which establish the principle of good faith in the execution of contracts. Whilst not directly aimed at pilots and associated training, this particular air carrier in Italy has interpreted the Code as meaning pay-to-fly schemes are prohibited. However, the principle is common to all EU jurisdictions and it is present in any Civil Code from countries of Civil Law tradition.

Figure 4-1: Did you have to pay for the following types of training? (Q3.6, pilot survey) (n=4668)



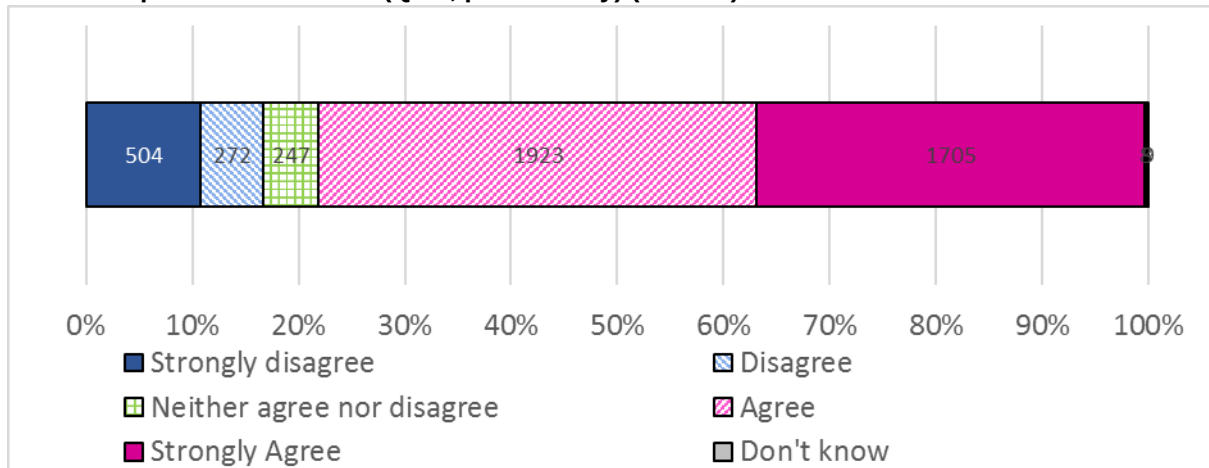
Source: Survey of pilots

Via discussions with stakeholders it became clear that there is no standard approach for determining who is responsible for paying for training beyond the ATPL. An aircrew union explained that in the past, air carriers were typically responsible for paying for pilots' training. However, as increasingly more candidates train to become pilots, the market has changed, and air carriers have ceased paying for training, with pilots having to take out loans to pay for the remainder of their training. The opposite trend is recently mentioned linked to a possible shortage of pilots and the willingness of the airlines companies to secure their pilot staff.

Interviews with pilots also point to the varying possible ways to finance the training. One pilot interviewed stated that they paid for their type-rating before signing a contract with an air carrier while another paid for the type-rating, but already had a contract with a low-cost carrier. Another two paid for their type-rating and then were subsequently hired by a low-cost carrier via an agency. One of these pilots mentioned that throughout their type-rating and beginning of their working career they had five to six months without a salary.

Pilots were also asked to indicate the extent to which they agreed with the statement "*my employer pays for the training I need to perform my work*" (see Figure 4-2). Out of 4,668 respondents, 1,923 (41.2%) 'agreed' and 1,705 (36.5%) 'strongly agreed'. This suggests that for the majority of pilot's air carriers are paying for the relevant training required to perform their duties once they are employed. However, 272 (5.8%) 'disagreed' and 504 (10.8%) 'strongly disagreed', implying that there was a small proportion of employers who are not providing or paying for training needed by pilots to perform their job and effectively passing this responsibility on to the pilot (affecting 16.6% of pilots responding).

Figure 4-2: Pilots indicating agreement with whether their employer pays for the training needed to perform their work (Q3.3, pilot survey) (n=4668)



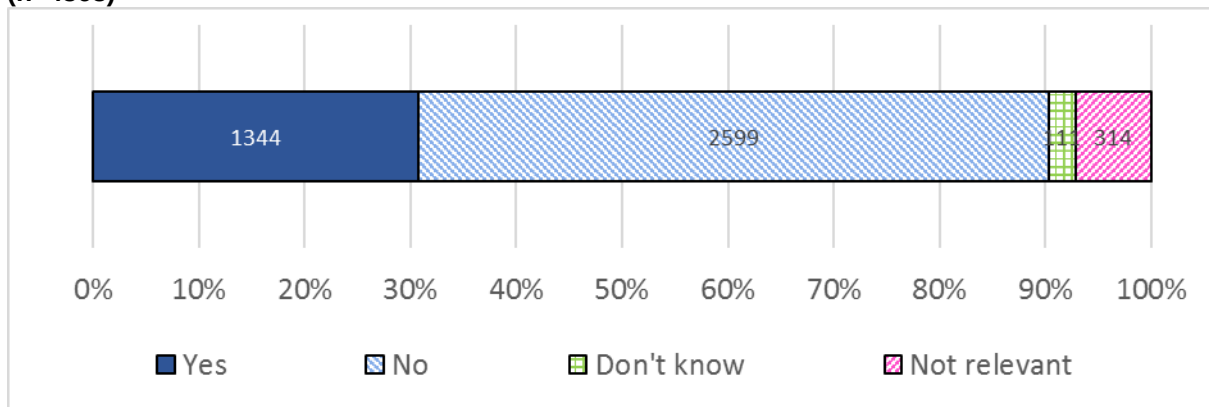
Source: Survey of pilots

The review of sample contracts identified six services agreements between a temporary work agency, a limited liability company created by the pilot and, the pilot. In each of these contracts, the pilot or its limited liability company commit to cover the cost of training and command upgrade training courses.

In this regard, it should be noted that in an Agreement on First Officer Training Program analysed, the air carrier providing for the program (Air Baltic) does not guarantee that the pilot will be hired as a regular employee after completion of the training, which cost for the pilot is €17,500.

Bonding schemes are also used by air carriers with regards to pilot training. This is where the air carrier agrees to pay for all or part of the training (e.g. type rating or line training, or future upgrades) and the pilot agrees to stay with the air carrier for an agreed number of years. If the pilot leaves before the end of this agreed period, then they are required to pay back a (usually a decreasing) proportion of the training costs. On the basis of the responses to the survey, this seems to be a relatively common approach.⁵⁹ When asked if they are bound by an agreement to which their employer will pay for training if they stay in the company for a certain number of years, 1,344 out of 4,368 (30.8%) pilots indicated that they were, compared to 2,599 (59.5%) who were not (see Figure 4-3).

Figure 4-3: Are you bound by an agreement according to which you employer will pay for the training of you stay in the company for a certain number of years? (Q3.8, pilot survey) (n=4368)



Source: Survey of pilots

⁵⁹ Who stated that they did not make use of (or participate in) pilot training schemes that require pilots to contribute financially while flying on commercial flights in order to be allowed to fly and gain requisite flight experience, or indicated that that it wasn't relevant – Pilot survey Q3.7 – see Figure 4-3

A representative from the Italian air carrier Neos mentioned that they did not typically train pilots in-house, but where they did, the pilot was not required to pay for their training – they instead signed a fidelity bond to stay for 5 years. Pilots are required to compensate the training investment if they leave⁶⁰. They also indicated that other Italian companies have been known to use similar fidelity bonds rather than require payment for training schemes. Another air carrier indicated that they provide training for the type-rating (via their own instructors) and pilots are given the option of paying in full at the beginning or end of their course, or through a salary deduction scheme (€12,000-15,000). However, in this case the pilot is contracted throughout and receiving a salary.

Nonetheless, ECA pointed out that in some cases the basic training schemes conducted in conjunction with an affiliated air carrier bond the pilot to an air carrier with either further chargeable revenue earning training and/or heavily reduced pay for a period of time. Thus, this basic training turns into a disguised form of pay-to-fly, even if not as problematic as other situations described elsewhere.

The Norwegian Pilot Group suggests that there is currently a demand for pilots, so pilots are offered more choice. Pilots can choose to go with the selected air carriers who are willing to pay for the type-rating, or the pilot can choose to pay for the type-rating themselves to increase their chances of getting the job that they want. This view was supported by one of the pilots that was interviewed, who agreed that things have changed, and the market is currently good for pilots. The Norwegian Pilot Group consider the most appropriate approach would be for the air carrier to hire a pilot who has obtained a licence and then train them to fly the aircraft they own.

This section has shown that just over half of pilots (57%) were responsible for paying for their ATPL training. Just under half (44%) have paid for type rating and 26% paid for their line training. Where air carriers have employed and provided training for pilots (including type rating and line training), they have tended to introduce training bonds in their contracts, requiring pilots to pay back training costs if they leave within a specified number of years rather than requiring pilots to pay. Once employed by an air carrier, 77.7% of pilots responding to the survey agreed that air carriers paid for the training required to perform their work.

4.2.2 Participation in pay-to-fly schemes: Pilots and air carriers

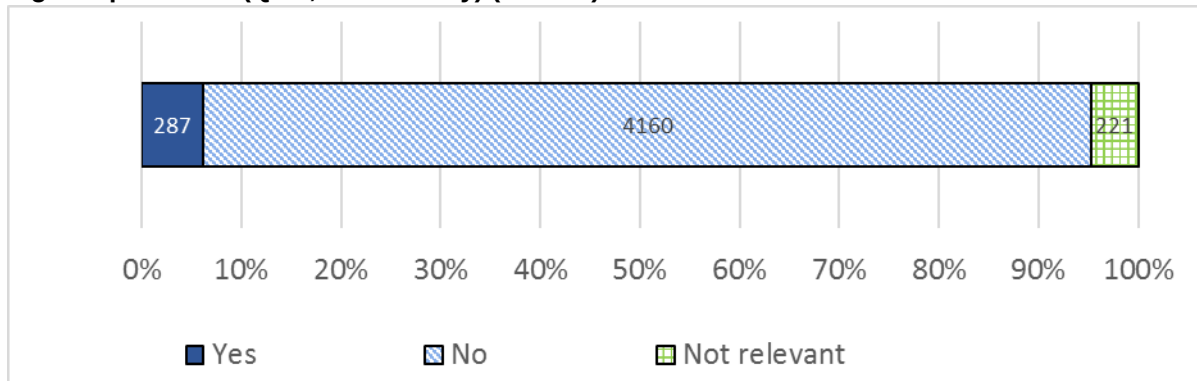
The analysis in the previous section suggests that pilots contribute to financing of their training (to some extent) at all stages. Up to 26% of pilots responding to the survey indicated that they paid for their line training, which was identified earlier as potentially (although not necessarily) as pay-to-fly schemes – this section therefore attempts to identify the extent to which pay-to-fly is used by air carriers/any intermediaries and participation by pilots themselves.

As identified in Section 4.1.2 a ‘grey area’ exists relating to defining what constitutes pay-to-fly particularly in relation to where commitments for paying for training end for the pilots and begin for the air carriers. Pilots were therefore asked via the survey whether they had participated in a pilot training scheme “*requiring them to contribute financially while flying on commercial flights in order to be allowed to fly and gain requisite flight experience*”. This question uses elements of the pay-to-fly definitions to determine whether pilots are participating in pay-to-fly schemes.

In total, 287 out of 4,668 pilots that responded to the specific question (6.1%) stated that they had participated in such schemes (see Figure 4-4).

⁶⁰ Investigating with Italian air carrier possibility of legislation requirement that pilots are not allowed to contribute financially to pilot training schemes to enable them to fly and gain requisite flight experience – to be confirmed.

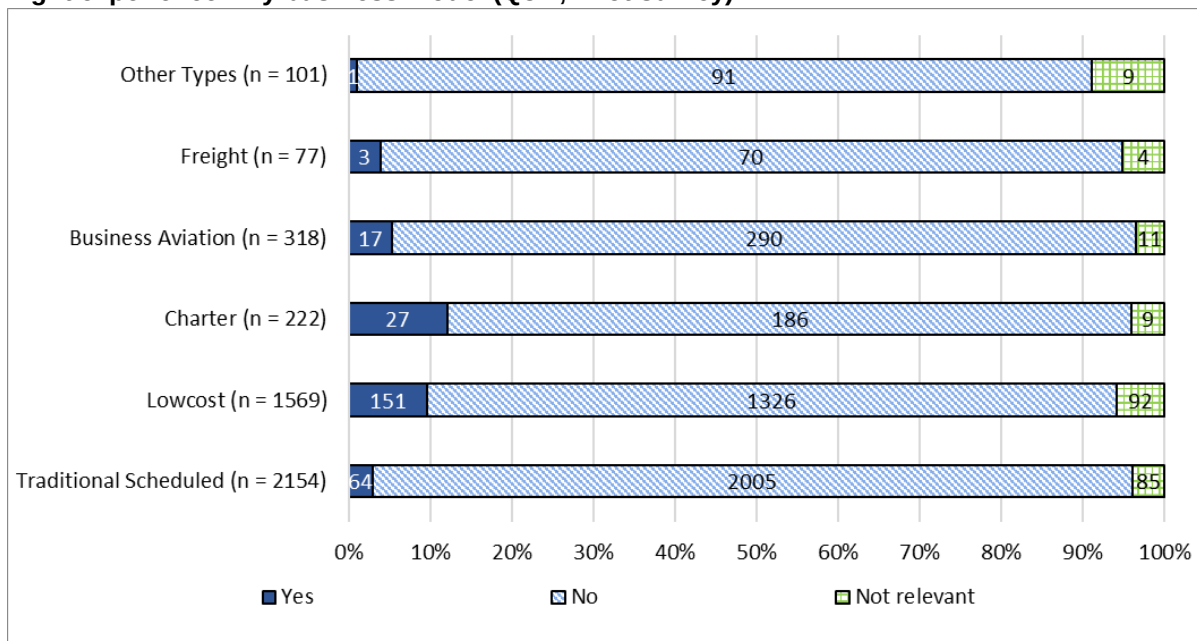
Figure 4-4: Have you participated in a pilot training scheme requiring you to contribute financially while flying on commercial flights in order to be allowed to fly and gain requisite flight experience? (Q3.7, Pilot survey) (n=4668)



Source: Survey of pilots

It is not known which air carrier/s the pilots responding positively to Q3.7 were flying for when they participated in pay-to-fly. However, responses from the pilots in the survey suggest that pay-to-fly is more common among charter and low-cost air carriers when considering responses by air carrier business type. Whereas 64 out of 2,154 (3%) pilots flying for traditional scheduled air carriers stated that they were involved in training schemes that have the characteristics of pay-to-fly schemes, the proportion is higher for charter (27 out of 222, 12.2%) and low-cost (151 out of 1,569, 9.6%) air carriers (see Figure 4-5).

Figure 4-5: Have you participated in a pilot training scheme requiring you to contribute financially while flying on commercial flights in order to be allowed to fly and gain requisite flight experience? By business model (Q3.7, Pilot survey)



Source: Survey of pilots

Pilots who responded positively to this question were also asked what the type of training was (free text response), how they paid for it and who provided the training. Regarding the type of training involved, answers varied. Although comprehensive responses were not given by all pilots (245 responses were received), by far the most common answers provided were line training and type-rating.

118 out of 245⁶¹ (47.4%⁶²) pilots cited that this referred to **line training**⁶³. Of those pilots who indicated that they paid for their initial line training in the previous question (1,210 of 4,668, 26%), 104 also answered 'yes' to this question (2.2% of pilots responding to Q3.7). Not all of the pilots specified how they paid for their line training, but a variety of methods were mentioned, including loans, and wage reductions/discounts.

An additional 59 pilots cited type rating as a response to this question. It has been acknowledged that pilots may pay for type rating and a package of line training hours – therefore it is possible when responding to this question they have indicated 'type-rating' but have actually also paid for line training (as the questions suggests), as type-rating includes ground and simulator courses rather than commercial flight experience. Although explicit responses from all 287 positive responses to Q3.7 were not received, this figure can be used as a maximum proportion of pilots referring to the survey that have participated in pay-to-fly. Based on the answers to this question we can therefore estimate that **a minimum of 2.2% of pilots (104 out of 4,668 respondents to the survey) have been involved in pay-to-fly** (using the definition of paying for line training whilst on a commercial flight). This minimum figure acknowledges that not all pilots who responded to Question 3.7 (pilot survey) gave a comprehensive answer regarding what type of training it was that they had contributed financially to whilst flying on commercial flights in order to be allowed to fly and gain requisite flight experience. Including all positive responses to this question provides a **maximum of 6.1% of pilots (287 out of 4,668 respondents) participating in pay-to-fly schemes**.

Taking into account the estimated total number of pilots across the EEA, the range of potential number of pilots having participated in pay-to-fly in Europe is presented in Table 4-2.

Table 4-2: Potential European pilot participation in pay-to-fly

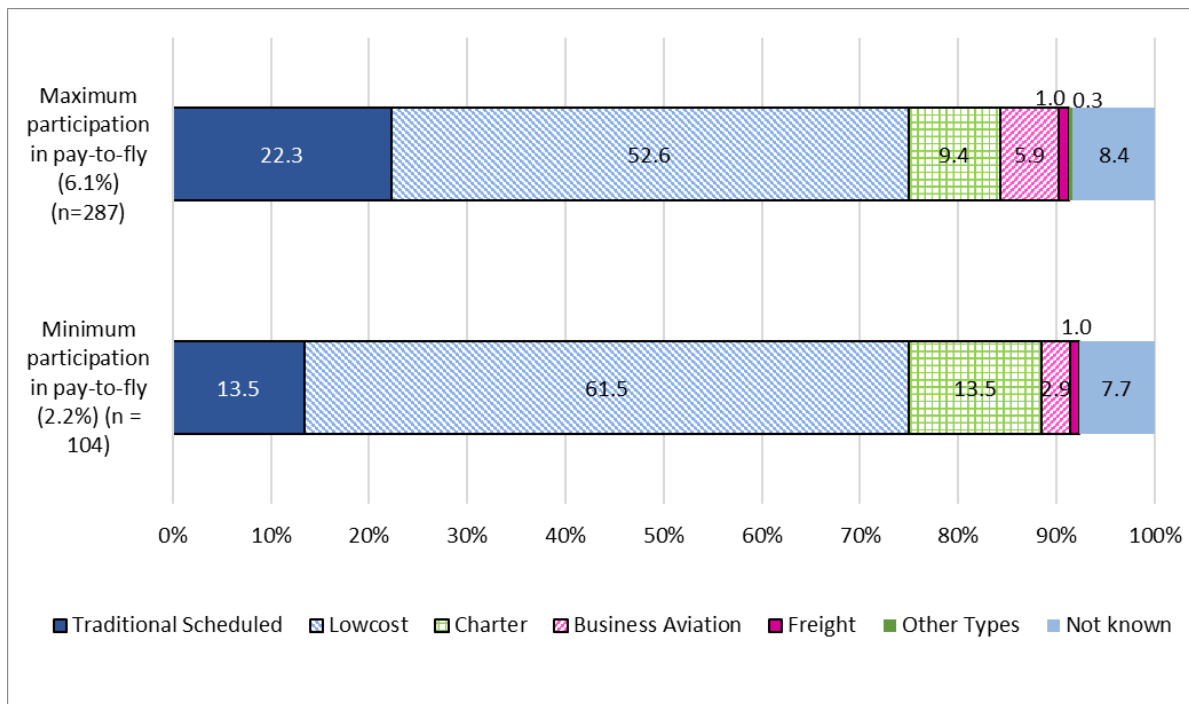
European pilot population (ECA - assumption)	Minimum pilot participation in pay-to-fly (2.2%)	Maximum pilot participation in pay-to-fly (6.1%)
55,000 (min)	1,210	3,355
70,000 (max)	1,540	4,270

This minimum and maximum proportion of pilots potentially participating in pay-to-fly has also been considered by air carrier business model (see Figure 4-6). Similar proportions by business model are shown for the range of potential pilots participating in such schemes (min and max). The majority of pilots are currently employed by low-cost air carriers, ranging from 52.6% (151 out of 287) to 61.5% (64 out of 104). This is followed by charter (9.4% (max) to 13.5% (min)) and traditional scheduled (13.5% (min) to 22.3% (max)). As discussed in Section 2.2.3.2, we believe the pilot responses to be representative by business model type.

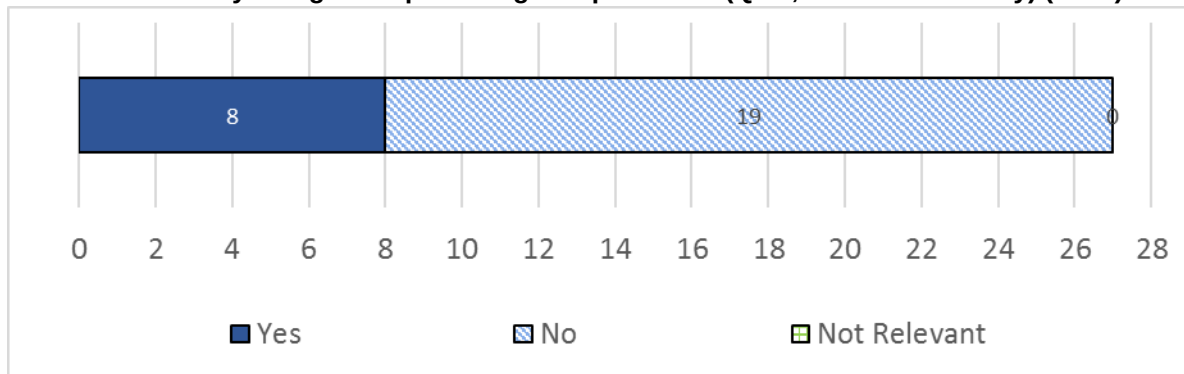
⁶¹ Number of pilots who provided an answer to this question

⁶² Not mutually exclusive – pilots were able to state as many types of training as applicable.

⁶³ In many cases, pilot response also mentioned type-rating in addition to the line rating

Figure 4-6: Pilots participating in pay-to-fly by business model

From their side, eight out of 27 **air carriers** indicated that they had made use of (or participated in) pilot training schemes that require pilots to contribute financially while flying on commercial flights in order to be allowed to fly and gain requisite flight experience (in the last three years) (see Figure 4-7). Four of these air carriers were traditional scheduled air carriers, one low-cost, one 'other', and two unspecified.

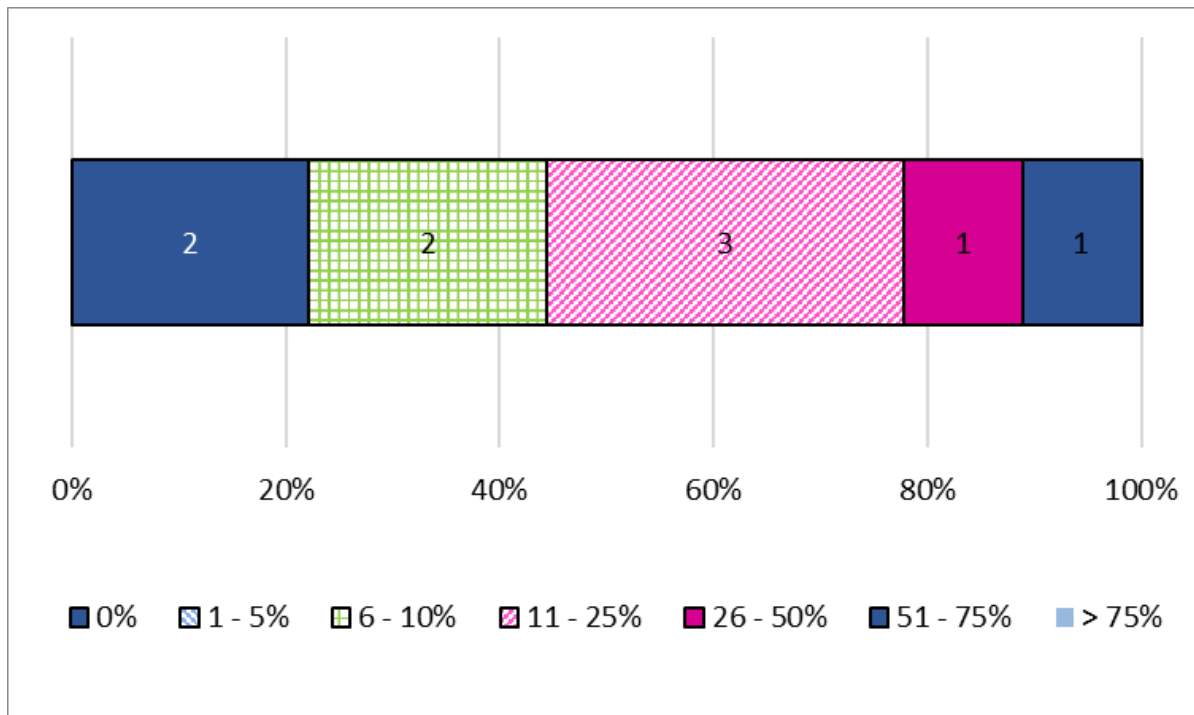
Figure 4-7: In the last three years, have you made use of (or participated in) pilot training schemes that require pilots to contribute financially while flying on commercial flights in order to be allowed to fly and gain requisite flight experience? (Q3.2, Air carrier survey) (n=27)

Source: Survey of pilots

These eight air carriers were also asked to provide an estimate of how common the use of such schemes was within their air carriers. Two of the traditional scheduled air carriers stated they were 'quite uncommon', with a further two stating they were 'quite common'. The low-cost air carrier stated they were 'very common', as did one of the unspecified air carriers. Finally, the air carrier classified as 'other' and the second non-specified air carrier stated they were 'quite common'.

Air carriers were asked to provide an estimate of the share of pilots flying for their air carriers that have participated in such schemes for the last three years. The results varied between air carriers (see Figure 4-8), but one air carrier stated between 6 and 10%, 3 air carriers stated between 11-25%, 1 air carrier stated between 26 and 50% and 1 air carrier stated between 51 and 75%.

Figure 4-8: Please provide an estimate of the share of pilots, flying for your air carrier, that have participated in such schemes in the last three years (Q3.5, Air carrier survey) (n=8)



Source: Survey of air carriers

Responses from air carriers concerning their own use of pay-to-fly suggest that their use is more common among traditional scheduled air carriers. However, 19 out of 27 air carriers responding to the survey did not participate in such schemes, and 15 of them were traditional scheduled implying it is not very common overall within this air carrier business model. Based on the low number of responses to the air carrier survey it is therefore not possible to comment confidently on how common the use of pay-to-fly is based on air carrier business model.

Stakeholders were also asked to provide estimates on the level of use of pay-to-fly schemes in the EEA. BALPA – representing air carriers - estimated that 10% of pilots may be involved. ETF agree with this estimate, stating that their own information suggest that the proportion of pilots participating in pay-to-fly is less than 10%, whereas ECA estimate that 8-10% of the profession have been through a pay-to-fly experience. However, other aircrew representatives also suggested that number of pilots involved in pay-to-fly is decreasing.

At the national level, the German pilot union stated that they were unaware of any pay-to-fly schemes in Germany and considered that most of the major air carriers operating in Germany do not use them. SNPL, a French pilot union, stated that it does not occur in France, since the French Civil Aviation Authority (CAA) does not allow it (see Box 4.6) and an Italian air carrier also stated that, in practice, pay-to-fly is also prohibited in Italy.

From its side, an air carrier association interviewed was unaware of the extent of involvement but suggested that only a relatively small proportion of pilots were involved (unspecified). Another air carrier representative estimated that at a regional level (pilots flying within Europe), 40% of new recruits have been involved in pay-to-fly schemes, and, in contrast to the assessment provided by the unions, they have experienced a 20-50% increase in the past few years.

A flight school based in Norway was not aware of many pay-to-fly schemes and was under the impression that they are very rare in Europe.

Interviews with pilots revealed that opinions on how common pay-to fly is varied. Pilots agreed that line training is usually paid for to some extent by the air carrier, in that you have some sort of salary. This view was supported by another pilot, who agreed that the market for pilots was currently very good, but acknowledged that if things were to change, then there is likely to be an increase in the prevalence of such schemes again. This was echoed by the Norwegian Pilots Group, who stated that

the strong demand for pilots has contributed to this decrease. It is more likely to be those pilots who are in desperate need of a job who agree to participate in such schemes due to pressures of paying off previously accrued debts. Another pilot thought that the use of such schemes was more common now than in the past.

At the national level, **employment ministries** and **labour inspectorates** were asked whether they were aware of the use of training schemes that require pilots to contribute financially in order to be allowed to fly a certain type of aircraft and/or gain requisite flight experience. Only one out of seven national authorities⁶⁴ was aware of the use of pilot training schemes that require pilots to contribute financially in order to be allowed to fly a certain type of aircraft and/or gain requisite flight experience (both by air carriers with principal places of business in their country and/or with operating bases in their country). For those that were identified as having to pay, the authority explained that it was typical that the pilot was covered by a bond whereby they were required to cover the training costs whilst earning a salary. They also indicated that the use of such schemes was fairly common. National authorities were unable to comment on whether there were any issues/problems in terms of the employment or working conditions from the use of such training schemes.

Out of 12 national labour inspectorates, one⁶⁵ was aware of the use of pilot training schemes that require pilots to contribute financially in order to be allowed to fly a certain type of aircraft and/or gain requisite flight experience by air carriers with principal places of business in their country and three⁶⁶ with operating bases in their country. Where it was identified that pilots have to pay, labour inspectorates explained that pilots can sign a contract and are required to pay training costs. It was indicated that it was quite common in Estonia, but the other labour inspectorates were unsure of how common their use is. They were asked whether there were any issues/problems in terms of the employment and working conditions from the use of such training schemes – it was mentioned that there was one case⁶⁷ of wage discrimination which stemmed from using pilot trainees and (experienced) pilots for certain specific tasks for which they were not remunerated equally. Another labour inspectorate⁶⁸ indicated that there may be issues relating to these training schemes as the pilot is not always employed at the time.

In terms of the potential proportion of pilots participating in pay-to-fly, our survey results suggest that it could range from between 2.2% and 6.1%. However, stakeholders suggested it could be as high as 10%. In terms of the European pilot population, this could affect up to 7,000 pilots.

4.2.3 Pilots typically involved in pay-to-fly schemes

In addition to the extent of use of pay-to-fly schemes, and types of air carriers involved, we also examined whether pay-to-fly schemes are more prevalent among specific pilot groups. Factors, including age and experience (years and flight hours), were explored to determine whether they had an influence on the prevalence of pilots stating that they participated in such schemes.

Considering the **age of the pilot**, 69 out of 862 (8%) of 18-29 year olds and 136 out of 1,528 (8.9%) 30-39 year olds had participated in such schemes (higher than 6.1% for all respondents), compared to just 2 out of 113 (1.7%) of pilots aged 60 or older (see Figure 4-9).

⁶⁴ EE

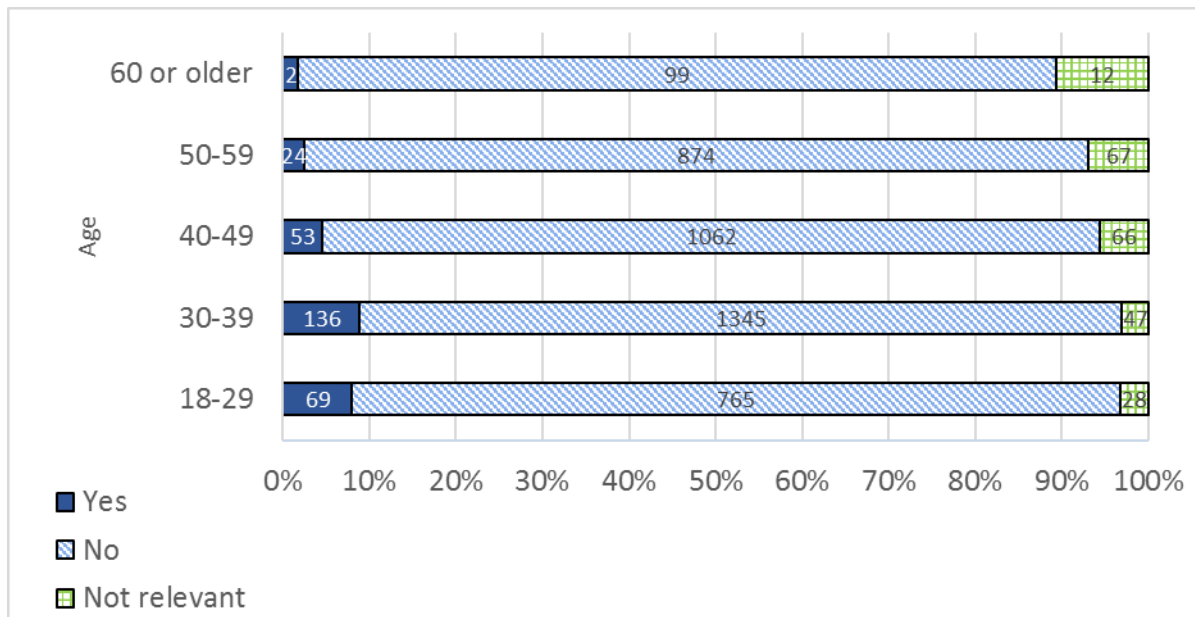
⁶⁵ EE

⁶⁶ EE, ES, DK

⁶⁷ CZ

⁶⁸ DK

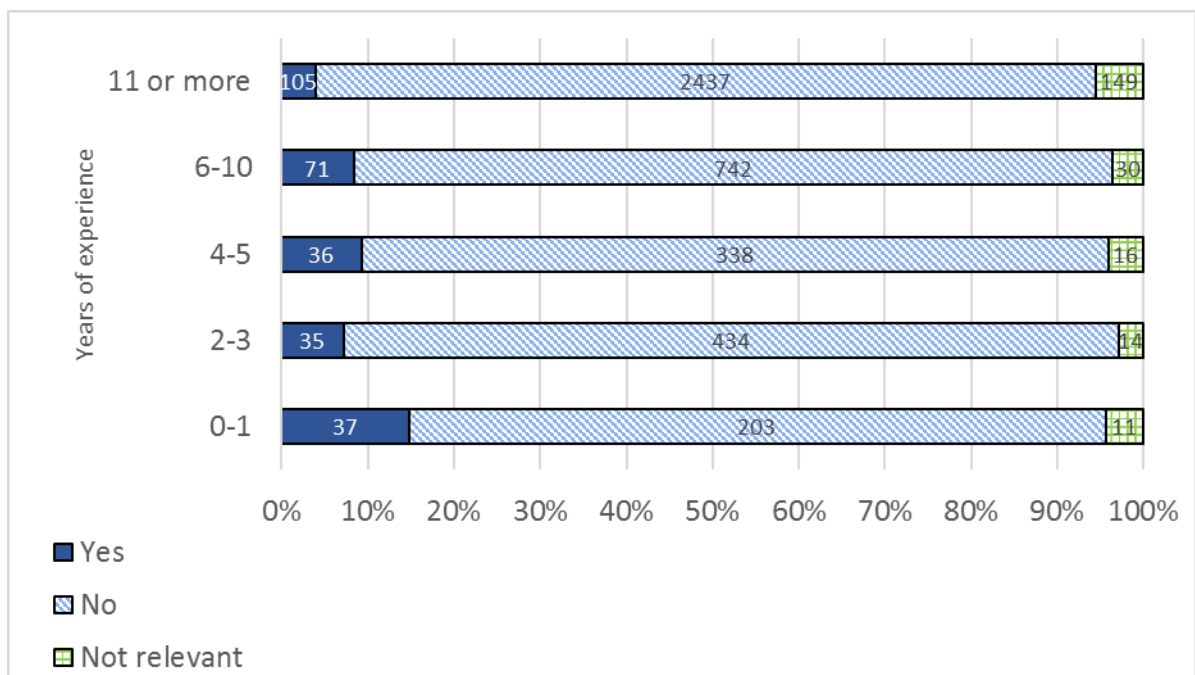
Figure 4-9: Have you participated in a pilot training scheme requiring you to contribute financially while flying on commercial flights in order to be allowed to fly and gain requisite flight experience? By age of pilot (Q3.7, Pilot survey)



Source: Survey of pilots

Similarly, when considering **number of years' experience**, 37 out of 251 (14.7%) pilots with 0-1 years' experience had participated in schemes (see Figure 4-10). This decreases significantly higher number of years' experience categories, with 35 out of 483 (7.2%) of pilots with 2-3 years' experience, 36 out of 390 (9.2%) pilots with 4-5 years' experience, 71 out of 210 (8.4%) pilots with 6-10 years' experience, and 105 out of 2,691 (3.9%) pilots with 11 or more years' experience.

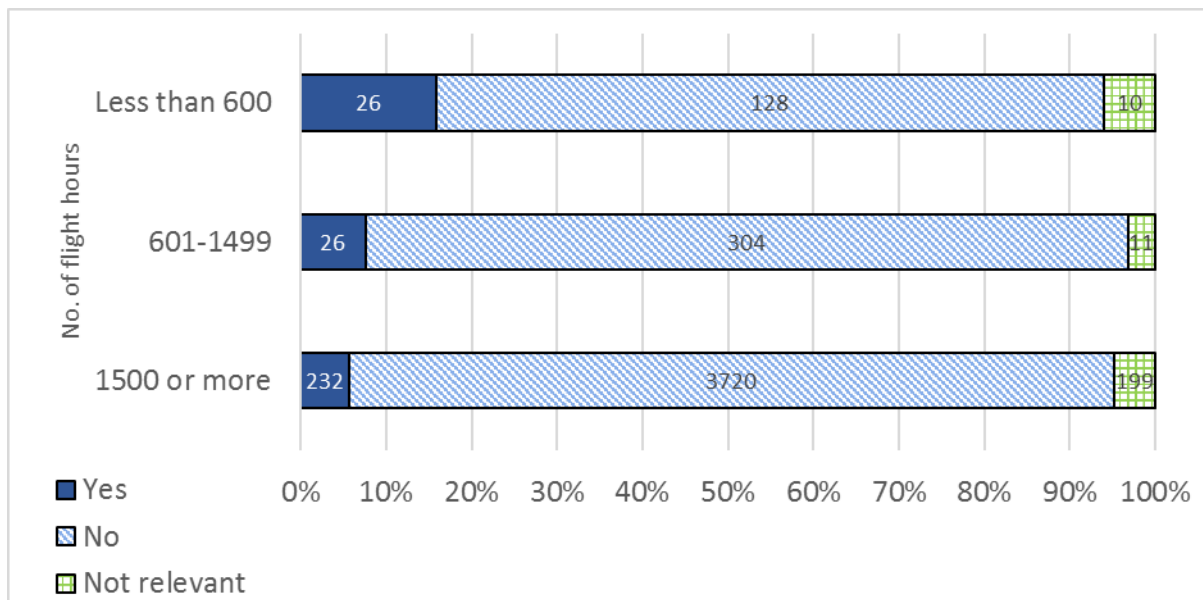
Figure 4-10: Have you participated in a pilot training scheme requiring you to contribute financially while flying on commercial flights in order to be allowed to fly and gain requisite flight experience? By years of flight experience (Q3.7, Pilot survey)



Source: Survey of pilots

Finally, when using the **number of flight hours** to determine experience, 232 out of 4,131 (5.6%) pilots with 1500 or more hours had participated in such schemes, compared to 26 out of 164 (15.8%) pilots who had less than 600 hours (see Figure 4-11).

Figure 4-11: Have you participated in a pilot training scheme requiring you to contribute financially while flying on commercial flights in order to be allowed to fly and gain requisite flight experience? By number of flight hours (Q3.7, Pilot survey)



Source: Survey of pilots

Our survey asked pilots about their age and experience (years and flight hours) at the point of responding to the survey – whilst the results showed that younger, less experienced pilots are most likely to participate in pay-to-fly scheme, it is likely that the impact is in fact much higher, due to (currently) older, more experienced pilots participating in pay-to-fly when they were younger/less experienced.

Overall, the analysis of the survey responses (Figure 4-9 to Figure 4-11) clearly show that pay-to-fly is mainly used in the case of younger pilots, with limited number of years of experience and number of flight hours. This is largely expected given that pay-to-fly is intended to allow pilots build flight hours experience as part of their line training and increase their career prospects. It is also in line with the views of certain stakeholders which stated that the proportion of pilots participating in pay-to-fly may be higher in specific groups. ETF suggested that newly hired pilots are required to accumulate hours in order to fly with reputable air carriers, which may encourage them to enter into pay-to-fly agreements to gain the necessary flight experience. The Airline Coordination Platform (ACP, 2018) in their position paper on European Social Affairs note that pay-to-fly schemes are *'nothing but pure exploitation of young people who need flight hours to pursue a career'*.

4.2.4 Arrangements between air carriers and pilots involved in pay-to-fly

The nature of the arrangement between air carriers and pilots who stated they were involved in pay-to-fly schemes was also explored to understand potential drivers to participate in pay-to-fly schemes. Of the 104 pilots who potentially participated in pay-to-fly schemes, 65 (62.5%) stated that there was an expectation that they would be able to join the air carrier in a permanent position after satisfactory completion of training⁶⁹.

⁶⁹ When considering the maximum number of pilots responding to the survey participating in pay-to-fly (287), 170 of them (59.2%) stated that there was an expectation that they would be able to join the air carrier in a permanent position after satisfactory completion of training.

This was supported to some extent by the responses received via the air carrier survey whereby air carriers were asked about the employment status of pilots participating in such schemes. Five (out of eight) of the air carriers confirmed that the pilots are employed directly by the air carrier, two stated that they are hired by an intermediary agency and one stated that the pilots are unemployed. Air carriers were also asked whether pilots that participate in such training schemes were eligible to apply for a permanent position at the end of the scheme. All eight air carriers indicated that they were (five of which previously stated that the pilot already had a direct employment contract with the air carrier).

One pilot mentioned during an interview that he was told by an air carrier (low-cost carrier) that they wanted to hire him, but he had to pay for the type-training himself. Once the trainee pilot had achieved type rating and all other training, he was told by the air carrier that they would not hire him directly, only via an agency contract.

This analysis suggests that the majority of pilots are participating in pay-to-fly schemes with the expectation of joining the air carrier in a permanent position.

4.2.5 Costs associated with pay-to-fly

Whilst it is widely reported that pilot training to obtain ATPL can cost up to €100,000, followed by potential type-rating costs of around €30,000 (see Section 4.2.1), very little information is available relating to the costs of pay-to-fly schemes, to both pilots and to air carriers.

Data on costs of pay-to-fly schemes collated via the interviews with stakeholders and contracts is presented in Table 4-3. The results show that where the number of hours and associated costs are specified, the cost to the pilot per hour ranges from €35 to €142. However, there are many variables including aircraft type and package type to take into consideration. Although stakeholders including aircrew unions and flight school have also estimated the costs to air carriers of such practices, these costs have not been substantiated.

Table 4-3: Potential costs associated with pay-to-fly schemes (where reported by stakeholders – not verified)

Source	Cost of pay-to-fly to pilot	Cost of pay-to-fly to air carrier	Notes
ECA	€30,000-50,000	Not mentioned	500 hours
Norwegian Pilot Group	€20,000	Not mentioned	Depending on number of hours contracted
Norway Flight School	€50-60,000	€20,000 ⁷⁰	-
Vereinigung Cockpit (German national aircrew union)	€30-80,000	Small initial costs for instructor pilot – estimated the air carrier can make approximately €10,000 profit	Depending on aircraft and number of flight hours
SNPL	€50,000	Air carrier cost is cost of the instructor rather than a regular captain (first few hours), followed by captain for remaining hours – at no extra cost to the air carrier	500 hours

⁷⁰ Potentially relating to the cost to the air carrier in providing the training, rather than 'pay-to-fly', which can provide the air carrier with profit (see SNPL example).

Source	Cost of pay-to-fly to pilot	Cost of pay-to-fly to air carrier	Notes
Air Baltic First Officer Training Programme contract (2015)	€17,500	Not mentioned	Air Baltic does not guarantee that the pilot will be hired as a regular employee after completion of the training
Contract between training services providers and pilot (2015)	€17,500	Not mentioned	Company Conversion course and up to 500 flight hours – Boeing 737
Contract between Dutch training company and pilot - private training agreement (2015) (Cockpitseeker, 2017)	€58,900	Not mentioned	A320 type rating and 1000 block hours (including Line Flying under supervision and Line Flying)
Flight Crew Solutions Ltd Contract (2017)	During training and up to line check pilot will be paid 60% of pilot's arranged monthly fee.	Not mentioned	Approximately 4-6 weeks duration.
Eaglejet (2018) (EagleJet, 2018)	€35,500	Not mentioned	250 hours experience in Boeing 737 Classic

Source: Interviews and contracts

As can be seen, the direct cost to pilots can vary. Furthermore, one could consider the possible loss of income during the period of the pay-to-fly scheme. Pilots responding to the survey also mentioned instances of no or reduced pay. Among the pilots who responded positively to the questions on whether they had participated financially while flying commercial flights in order to be allowed to fly and gain requisite flight experience (287 out of 4668 pilots), five mentioned that they received no pay during line training (stakeholders stated up to 6 months, but this has not been substantiated), five pilots stated that they received no pay until the safety pilot was released, then received reduced pay for the remainder of the line training. Finally, thirteen pilots mentioned that they received reduced pay for the duration of their line training.

For the air carrier the costs of providing the line training are associated with the provision of a safety pilot (during initial hours of line training) and the line training captain (who is likely to receive a small increase in salary). One air carrier confirmed that the safety pilot is likely to be present for the first 20 flights (approximately), which typically takes up to six days. However, the air carrier receiving payment for line training is saving the cost associated with a First Officer accompanying the Captain on a revenue earning-flight, whilst also being paid by passengers.

4.3 Assessment of the challenges of workers linked to use of pay-to-fly schemes

This section considers some of the challenges experienced by pilots who have been involved in pay-to-fly schemes, including reasons for participation, and potential impacts on pilot pay, job quality and job security.

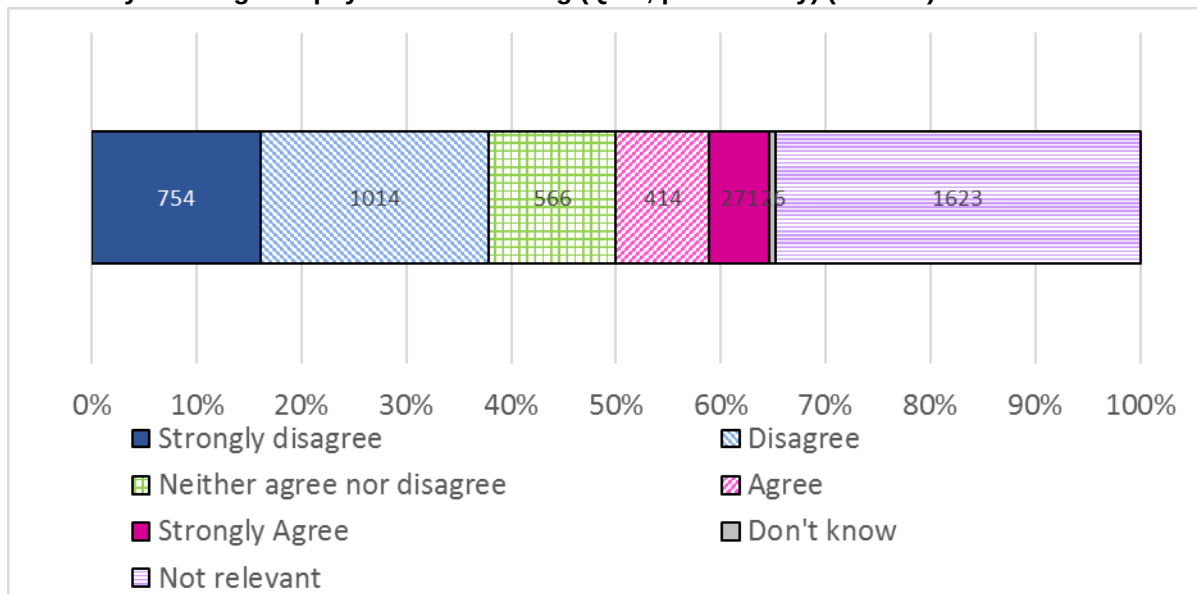
Stakeholders were asked about their views on the way in which pay-to-fly schemes differ from standard employment arrangements. One pilot interviewed mentioned that the potential reasons pilots participate in pay-to-fly schemes is due to pilot training debt. Pilots therefore require an income to begin to repay training costs and see pay-to-fly as a means of gaining access to employment. However, as identified earlier, not all pilots are guaranteed an employment contract after participating in such a scheme (see Section 4.2.4).

During interviews, pilots were asked about their opinions on the value of pay-to-fly schemes in terms of their curriculum vitae (CV). Whilst one pilot stated that it did not matter whether you paid for it or not the CV is essentially the same, one said no and two said yes – as they are likely to have more flight experience (although they paid for it) which may look better to future employers, and the fact that they are devoted to the job.

Impact on financial conditions

Where pilots are responsible for paying for all or some elements of their training (e.g. ATPL, type rating and/or line training etc.), this is often financed via loans. Pilots were asked in the survey to indicate the extent to which they agreed with the statement “*I have difficulties repaying the loans I had to get to pay for my training*” (see Figure 4-12). Out of 4,668 respondents, 1,623 (34.8%) said the statement was not relevant to them (potentially self-funding their training, not requiring loans). 414 (8.9%) pilots ‘agreed’ and 271 (5.8%) ‘strongly agreed’. 14.7% of pilots are therefore struggling financially to repay their loans for training, highlighting the financial pressures that a proportion of newly qualified pilots are facing when completing their training and seeking employment. However, 1,014 (21.7%) ‘disagreed’ and 754 (16.2%) ‘strongly disagreed’, implying that over one third (the majority) of pilots are not currently struggling financially to repay their loans for training.

Figure 4-12: Pilots indicating their agreement on whether they have difficulties repaying the loans they had to get to pay for their training (Q3.3, pilot survey) (n=4668)



Source: Survey of pilots

During subsequent interviews, pilots were asked whether pay-to-fly schemes were costly training or the only way young unemployed pilots have to get closer to their first job. One said it was completely unnecessary, another saw it as the way to get their first job, whereas another saw it as a last resort for people unable to get in the market after some training – i.e. in this pilot's view, air carriers are using the desperation of these people. In their opinion it is rare for someone who has just got their licence to go directly to pay-to-fly. None of the pilots interviewed had heard of any complaints being filed with authorities regarding pay-to-fly schemes.

With regards to **pilot pay**, one air carrier representative mentioned that due to the nature of the scheme, pay is usually less compared to a standard employment relationship. In some cases, there will be no pay at all. As mentioned earlier, ECA also consider that the use of pay-to-fly leads to exploitation of the pilot, through selling flight hours through pay-to-fly contracts (training schools/air

carriers) where the cost of hours is deducted from the pilots' salary, which can equal or exceed their pay. It is suggested that it is therefore mostly young, recently graduated pilots that are being exploited (ECA, n.d.). As stated by a pilot in the Ghent University study, flight schools train too many pilots for too few jobs. That is why some pilots are willing to start working 'for free with hopes of building up experience and leave as soon as possible for a better (and paid) job' (EP, 2016).

One air carrier representative suggested that **job quality** is likely to be diminished, largely due to the fact that pilots tend to have large financial undertakings (loans for training) and will therefore feel the need to work extremely hard. An aircrew representative stated that there are likely to be serious impacts on job quality, and potentially safety. They explained that pilots are trying to gain flight hours and have therefore resorted to paying for this experience. This in turn may have the following implications:

- During the walkaround before a flight to identify any potential issues/damage with the aircraft, a pilot who has paid to fly and then identifies damage/issues may be less inclined to report it (due to potential loss of hours).
- Similarly, there are legal requirements regarding maximum flight times for pilots. Pilots need to be fit to fly, and there is a potential risk that pilots who are not fit to fly may ignore these rules due to the need to accumulate hours having paid to fly.

These safety concerns are echoed by stakeholders in the literature. ECA (n.d.) explains that in order to fulfil the minimum requirements to be recruited by an air carrier, pilots require a substantial number of flying hours certified on their log book. Potential negative impacts on flight safety are highlighted, whereby perverse incentives are created for the individual pilot to fly at any cost, even if they are not mentally or physically fit, and for an air carrier to use 'cheap' pay-to-fly pilots to lower its cost. The EASA working group report (EASA, 2017) considered a range of emerging business models in aviation and identified potentially negative impacts of models such as pay-to-fly on the operator's safety culture

One air carrier representative commented that **job security** is unlikely to be strong, and there is often no guarantee that pilots will be kept on contract. An aircrew representative agreed that there are likely to be issues associated with job security depending on the type of contract arrangement in place between the pilot and the air carrier.

Finally, an aircrew representative mentioned that there may be impacts on other **employment rights**, depending on the type of contract between the pilot and the air carrier, for example, access to collective rights may differ.

4.4 Nature of relationship between pilots and air carriers in pay-to-fly schemes air carrier

As a final part of the analysis of pay-to-fly schemes, we examined whether training programmes in the form of pay-to-fly could hide a real employment relationship thereby enabling an air carrier to avoid any payment for the employee. The analysis was based on the examination of training offers published on websites and interviews with stakeholders covering both low-cost air carriers and legacy air carriers, as outlined in the case studies in Box 4-4 and Box 4-5 below. However, in the cases of both types of air carrier, it should be noted that very few publicly available documented examples of pay-to-fly could be identified. Type rating offers have been included in the analysis acknowledging that they sometimes include a line training element, which could be considered pay-to-fly.

Box 4-4: Case Study 1 - The use of the pay-to-fly schemes by low-cost air carriers

The following offers concerning training programmes for pilots have been analysed:

- (i) Offer from Latvian air carrier Air Baltic (March 2015), which has a programme known as First Officer Training Programme; and
- (ii) 2015 offer from Irish air carrier Ryanair, which used to have a programme called "Type Rating Program".

In addition to type rating offering, Air Baltic offers a course named First Officer Training Programme once a pilot is hired, which is not displayed on their website. Based on the copy of the agreement

analysed, this course would be divided into two parts, namely, “Company Conversion Course” and “Practical Training and Improving Skills”. The first includes (i) 14 classroom days, (ii) 3 full flight simulator sessions and (iii) 40 legs of Line Flying under Supervision. The second part indicates “*Flight Hours estimated: up to 500*”. The price for this course is EUR 17,500. The agreement also contains a clause on absence from scheduled flights and “vacation options under the Employment Agreement”.

Ryanair Type Rating Programme had fees related to the assessment (approx. Euros 295 GBP) and type rating (Euros 29,500 excluding VAT). Moreover, in the offer it was mentioned that the student would carry out base and line training after the training qualification course. In particular, the offer states “Line training will be provided by Ryanair from one of their many bases. The number of sectors varies with the experience level of the pilot. It is estimated that low hours cadets will fly approximately 90 sectors, and experienced JAR 25 pilots approximately 30 sectors at a rate of 50 sectors per month”. It is not mentioned whether this line training takes place on commercial flights. The programme flyer stated that the successful candidates might be offered to fly for Ryanair through other intermediary agencies. Although a fee for the line training is not mentioned within the flyer, certain interviewed pilots have mentioned that in the first months of their work for Ryanair, their salary was reduced.

The air carrier made some changes to the programme in 2018 (CAE, 2018), allegedly as a result of pilot shortages and strikes by pilots of the air carrier during last year⁷¹: The current programme’s price has been reduced to EUR 5,000 but linked to a five-year reducing bond.

Air Baltic’s and Ryanair’s offers are aligned with the information collected during the interviews undertaken with the pilots of low-cost air carriers in which we have detected that most of the pilots of such companies (as Ryanair or Primera Air) had to pay for training programmes, which often included line training programmes. In fact, the use of line training programmes is not an initial requirement, but is used as a requirement for promotion (i.e. in order to become a Captain, pilots are required to have 1,500 flight hour experience to ‘unfreeze’ their ATPL. Before these hours have been achieved, pilots can only fly as First or Second officer – see Section 4.1.1) – through paying for the line training a salary reduction associated with the promotion is implied.

Notwithstanding the above, the approach of the pay-to-fly schemes varies depending on the particular low-cost air carrier in question. In this sense, some employees have stated that in some cases the cost is very low or that they have only paid for certain training, such as the type rating (e.g., in Norwegian Air carriers).

Ryanair’s change of policy may be just a first step towards an overall change of the air carriers with regard to these schemes.

Overall, it is not clear from the offers analysed whether the line training associated to the paid courses offered by Air Baltic and Ryanair (either type rating or conversion course) would be carried out in a regular commercial flight. If this would be the case and the pilot would (i) perceive no salary, (ii) perceive a reduced salary or (iii) pay for the flight hours; this would unequivocally qualify as pay-to-fly. *A priori*, in the scenarios described above, the line training included in the Air Baltic conversion course and the line training included in Ryanair’s type rating (provided that the salary is indeed reduced at the beginning of their contract) both seem to be pay-to-fly schemes.

Box 4-5: Case Study - The use of the pay-to-fly schemes by the full-service air carriers

Figure 4-5 in Section 4.2.2 revealed that a smaller proportion of pilots working for traditional scheduled air carriers responding to our survey had participated in pay-to-fly schemes than in air carriers with a charter or low-cost business model (3% - 64 out of 2154).

Iberia training programme (November 2017) has a cost of Euro 117,000 (Flight Deck Friend, 2017). The training programme includes the required type rating for Airbus 320 and other items such as the full uniform, accommodation, landing and navigation fees, etc. The training programme expressly states that it does not guarantee a job position, but if there are first officer positions available, the pilot will be directly offered such a position without any further selection process.

Other companies (such as, Vietjet) have expressly condemned pay-to-fly schemes but offer another

⁷¹ This was reported by one of the pilots interviewed.

type rating course. In fact, stakeholders provided us with an exchange of emails related to pay-to-fly information (November 2015), including Vietjet as one company associated with this pay-to-fly practice, offering basic and line training for Euro 89,000 and a job contract of three years.

Further still, not only do air carriers (full-service and low-cost) offer pay-to-fly line training programmes, but so also do some recruitment/training companies which act as intermediary agencies in these programmes such as, Cockpit4u (Cockpit4U, n.d.) in Germany or BAA Training (BAA Training, 2018) in Lithuania.

Following the case law developed by the Court of Justice of the EU in relation to the definition of worker, some authors pointed out that there is a concept to declare the existence of an employment relationship, which is based on the concurrence of three elements:

- (i) Remuneration,
- (ii) Dependency or submission; and
- (iii) Continuing services (Aberg, 2016). or real and genuine activities⁷².

However, it should be noted that the interpretation of the concept of ‘employee’ by the Court of Justice of the EU could vary depending on the particular European Directive or Regulation which is analysed (Aberg, 2016). Therefore, not only the European perspective, but also the national legislation has to be considered to determine the existence of an employment relationship.

For our purposes, it should be considered that the Court of Justice of the EU’s approach is aligned with French and German legislation, as outlined in Box 4-6.

Box 4-6: Defining employment relationship – national legislation

- **In France**, an employment relationship is considered to exist when there is remuneration and submission relationship (ICLG, Employment and Labour Law 2018, 2018). This would imply that the employee cannot pay for a work done for and on behalf of the employer. Such a practice would be illegal, as it would breach the notion of employment relationship itself.
- In the same terms, **Germany’s** employment law applies dependency as a criterion to determine the existence of an employment relationship (ICLG, 2018).
- However, **in Ireland**, there are different levels of “employees”: (i) the employment relationship when work is regulated under a contract of services and (ii) “workers” for independent contractors (ICLG, 2018).

The main issue is that the pay-to-fly schemes are built on the basis of a non-remunerated training programme. Considering the Court of Justice of the EU’s judgment of 19 November 2002, some training activities may be considered an employment relationship. The judgment is outlined in Box 4-7.

Box 4-7: Court of Justice of the EU’s judgment of 19 November 2002 – Relationship between training and employment

“33. As regards, more specifically, activities which, as in the main proceedings, have been carried out in the course of vocational training, the Court has held that a person who serves periods of apprenticeship in an occupation that may be regarded as practical preparation related to the actual pursuit of the occupation in question must be considered to be a worker, provided that the periods are served under the conditions of genuine and effective activity as an employed person. The Court has stated that that conclusion cannot be invalidated by the fact that the productivity of the person concerned is low, that he does not carry out full duties and that, accordingly, he works only a small number of hours per week and thus receives limited remuneration (see to that effect, in particular,

⁷² It must be noted, next, according to settled case-law, **the concept of ‘worker’** within the meaning of Article 45 TFEU **has a specific independent meaning and must not be interpreted narrowly**. Any person who pursues activities that are **real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary**, must be regarded as a ‘worker’. (see, in particular, Case 66/85 Lawrie-Blum [1986] ECR 2121, paragraphs 16 and 17; Case C-138/02 Collins [2004] ECR I-2703, paragraph 26; and Case C-456/02 Trojani [2004] ECR I-7573, paragraph 15)

Lawrie-Blum, cited above, paragraphs 19, 20 and 21, and Bernini, cited above, paragraphs 15 and 16).

34. It follows that any person who, even in the course of vocational training and whatever the legal context of that training, pursues a genuine and effective economic activity for and under the direction of an employer and on that basis receives remuneration which can be perceived as the consideration for that activity must be regarded as a worker for the purposes of Community law”.

Accordingly, training programmes (line training programmes) could be considered as an employment relationship when they imply an economic activity under the management of an employer and it is being remunerated.

With regard to the remunerations requirement, in pay-to-fly schemes, pilots are not remunerated. By contrast, pilots must pay for these programmes. In the case-law of the CJEU the remuneration criterion is primarily used for distinguishing a volunteer from a worker. But a worker under EU law must receive remuneration in return for services. The fact of having limited remuneration does not prevent a person from being considered a worker⁷³.

Apart from the remuneration of services, other elements of the employment relationships appear in some of these training programmes, such as dependency. In this sense, some training programmes imply that the pilots would be using the same tools or uniforms as other employees, rendering services together with such employees and obtaining a job position (or a promotion) after such programme.

In conclusion, if a pilot carries out line training in commercial flights and: (i) is not remunerated, (ii) receives a reduced salary for an initial period of time, or (iii) pays the air carrier for the flight hours; this would be qualified as pay-to-fly. Analysis of different offers publicly available online or submitted by interviewed stakeholders show that this is not easy to identify and that often, line training is comprised within a self-sponsored type rating or a so-called conversion course.

4.5 Conclusions

For the purposes of this study, ‘pay-to-fly’ has been defined to encompass the following attributes:

- Pilot operates an aircraft in commercial service (e.g. revenue earning flight) to gain flight experience;
- Pays the air carrier for the experience;
- Pilot may or may not have a contract with the air carrier;
- It primarily relates to ‘line-training’ although it can be, and is often, packaged with type rating, which is not considered to constitute pay-to-fly.

The analysis has shown that there is still a ‘grey area’ in relation to what could constitute a ‘pay-to-fly’ scheme. Different definitions in use among stakeholders (aircrew organisations and unions, air carrier associations, individual air carriers) were examined. The analysis suggests that so-called pay-to-fly schemes typically refer to a situation where, in the context of a pilot’s **line training** to gain the requisite flight experience, a pilot operates an aircraft as a second or first officer in a commercial service (i.e. revenue earning flight) and pays the air carrier for the training. This definition of pay-to-fly schemes was used for the purposes of this study. In line with this definition, the pilot may or may not have a direct employment contract with the air carrier. ‘Line-training’ is where pilots, who have obtained an Airline Transport Pilot Licence (ATPL) during an initial basic training, achieve the requisite 1,500 hours flying time/experience in order to ‘unfreeze’ their ATPL licence and to be able to operate as a captain on a commercial aircraft⁷⁴. They can fly as a second or first officer with a “frozen” ATPL licence. However, it should be noted that line training can be, and is often, packaged with type rating (training to fly a specific type of aircraft), which typically includes a ground course and simulator sessions and not considered to constitute pay-to-fly.

⁷³ Cases 53/81, *Levin* and 139/85, *Kempf*

⁷⁴ A pilot who has obtained an Airline Transport Pilot Licence (ATPL) can fly as a second or first officer (but not as a captain) until he has gained the requisite flight experience through line training.

There is no clear information on the extent of the use of such schemes in EEA, partly due to the absence of a definition or commonly agreed notion of 'pay-to-fly'. On the basis of the responses we received from the survey we estimate that between 2.2% and 6.1% of pilots have been involved in pay-to-fly schemes. The upper limit 6.1% refers to all pilots that indicated that they have participated in a pilot training scheme requiring them to contribute financially in order to be allowed to fly and gain requisite flight experience. However, when asked to specify what type of training it was that they contributed towards financially, only 2.2% of the total respondents to the survey indicated that the type of training they paid for was "line training" (which is in line with the definition of pay to fly presented above). Thus, we consider that this 2.2% represents the lower limit of pilots involved in pay to fly schemes. In comparison, estimates provided by stakeholders representing air carriers and air crew suggested a figure as high as 10% in general. Responses from the pilots in the survey also suggest that pay-to-fly is more common among charter (12% of pilots working for charter air carriers) and low-cost air carriers (8% of pilots working for low-cost air carriers), compared to 3% of pilots flying for traditional scheduled air carriers. Among air carriers, the majority (8 out of the 27) that responded to the survey stated that they had not made use of (or participated in) pilot training schemes that require pilots to contribute financially while flying on commercial flights for line training, namely schemes that fit the definition of pay-to-fly.

In addition, as expected, stakeholders input (including air carrier representatives and aircrew representatives) suggests that such schemes are more common among younger pilots with limited flight experience that may use such schemes to build flight hours experience as part of their line training and improve their career prospects.

In this sense, some stakeholders stated in the interviews that there is a double payment or revenue for the companies that use pay-to-fly programs: the payment of the pilots for flying and the price paid by the customers on board.

Pay-to-fly schemes raise concerns amongst stakeholders regarding pilot working conditions including pay levels (or lack thereof) but also diminished job quality and potential impacts on the safety culture, job security and employment rights. However, there is no sufficient evidence to reach the conclusions that these schemes would have an impact on aviation safety levels or on working conditions.

In view of the above issues associated with Pay-to-fly schemes, aircrew representatives have shown opposition to this practice and have asked for a global ban of the schemes (ECA, n.d.). ACP (ACP, 2018) have also called for EASA to act against the practice of pay-to-fly. There has also been a recommendation issued by the European Parliament calling on the Member States to review their laws to eliminate "pay-to-fly" schemes. This proposal is aligned with the approach of the University of Ghent (Jorens, Gillis, & De Conisck, 2015):

In practice, while no Member States has, to date, legislated an explicit prohibition of these schemes, some countries such as France or Germany consider that these programmes could be considered as being part of employment relationships. While these services are not being remunerated – which is generally a condition sine qua non for the qualification of the relationship as employment - other elements such as dependency or a longer relationship with the air carrier are indications of the existence of an employment relationship. From this perspective, in France pay to fly schemes are characterised as unlawfully non-remunerated or undeclared work (*travail dissimulé*).

5 Self-employment

5.1 Introduction and scope

As already mentioned briefly in Section 3, examining the use of temporary work agencies, contracting the services of aircrew identified as self-employed is another atypical form of employment used in the aviation sector. This chapter focusses on self-employed pilots, including those contracted by intermediaries such as temporary work agencies.

The extent to which such aircrew are indeed self-employed, or de facto bound by an employment relationship (i.e. Bogus self-employed), has been the subject of several studies and the issue of bogus self-employment is now a core focus of the European Platform tackling undeclared work, with the 2017-18 work programme including a study on bogus self-employment in various sectors (Heyes & Hastings, 2017), although not explicitly including the aviation industry.

This chapter seeks to build on existing studies focusing on the air services sector and the use and implication of self-employments among pilots. More specifically, the following topics are examined:

- Examine the different forms of self-employment among pilots and review the legal framework. Assess available data on the extent of the use of self-employment forms among European air carriers;
- Assess the extent of the use of false (non-genuine) self-employment;
- Identify challenges for the workers and the national authorities (e.g. labour inspectorates, tax authorities) linked to the use of self-employment schemes; and
- Identify case studies on situations of recruitment of pilots through self-employment types of contract, and identify whether and how the relevant EU and national legislation address the potential use of false self-employment.

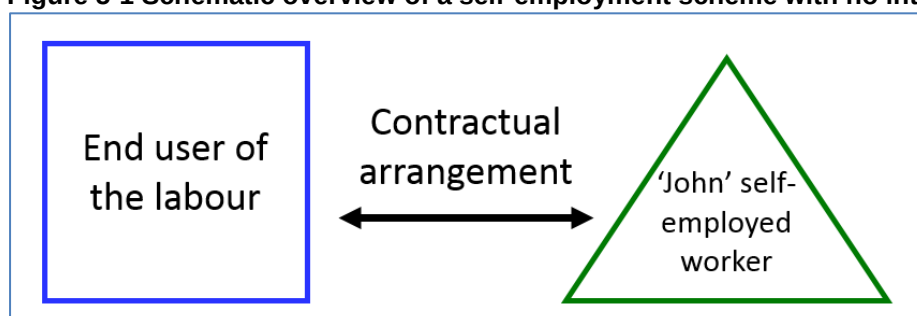
While the surveys sought to identify the use of self-employment schemes for pilots and cabin crew, the focus of this chapter is on pilots, as whilst there are instances where cabin crew are self-employed, this form of employment contracting is far more commonly used for pilots.

5.2 Different forms of self-employment in aviation

In this section we present the different self-employment arrangements for pilots as identified in the literature.

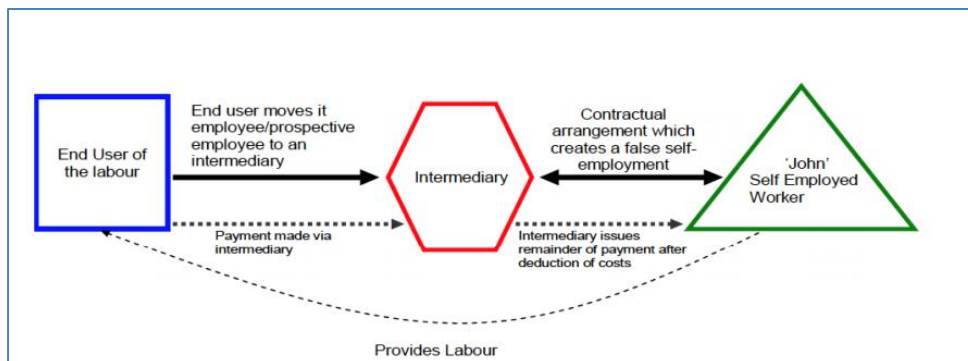
In their study of atypical employment arrangements, Jorens et al (2015) provide an overview of alternative self-employment schemes as depicted in Figure 5-1, Figure 5-2. and Figure 5-3. The first case (Figure 5-1) represents the simplest arrangement where the air carrier, referred to in the diagram as the “end user of the labour”, directly contracts the services of the pilot “John”, who is a self-employed pilot.

Figure 5-1 Schematic overview of a self-employment scheme with no intermediary



In the second case depicted in , Figure 5-2, the air carrier does not have a direct contract with the self-employed pilot, who provides his/her services to the air carrier but has a contract with an intermediary organisation.

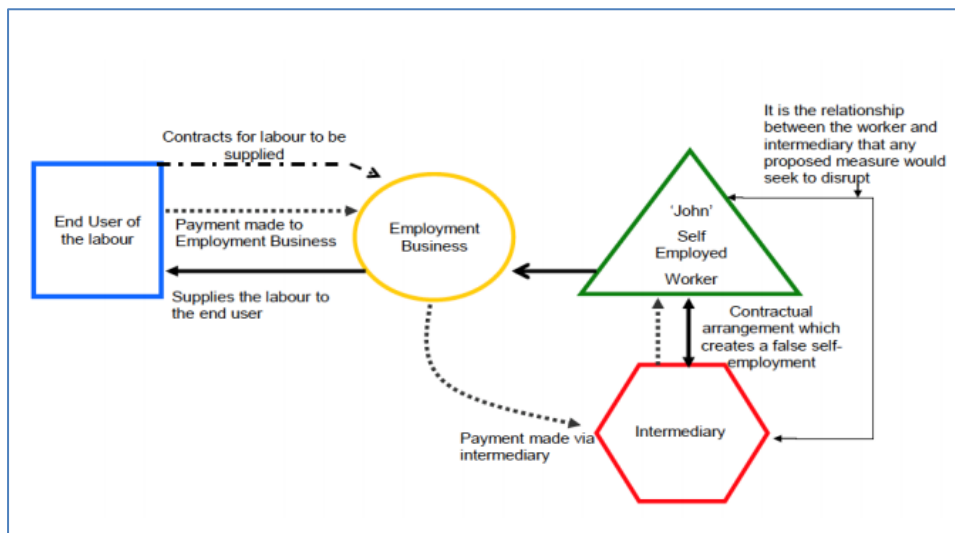
Figure 5-2 Schematic overview of a complex self-employment scheme with one intermediary



Source: (Jorens, Gillis, & De Coninck, 2015)

Finally, Figure 5-3 depicts a more complex self-employment scheme that uses several intermediaries. In this case, the air carrier uses an intermediary to contract the work as in the case above, which is here referred to as the “Employment business”, which then also uses an additional intermediary to manage certain contracting processes. In this case, the air carrier has no contractual relationship with the intermediary that the pilot is in contractual relationship and through which the pilot provides his/her services to the carrier.

Figure 5-3 Schematic overview of a complex self-employment scheme with multiple intermediaries



Source: Jorens, Gillis & De Coninck (2015)

A further variation of this model, according to the European Cockpit Association (ECA), is where groups of pilots set up their own limited liability company that acts as the intermediary that offers its services through agencies to the air carrier (ECA., 2014). Similarly, a study into the evolution of the labour market in the air carrier industry due to the development of low-cost air carriers referenced the practices of Brookfield, who stipulate an ‘approved list’ of accountancy firms to facilitate the ‘self-employment’ of flight crew (Harvey & Turnbull, 2014).

Box 5-1 also provides examples of self-employment arrangements, including the two air carriers that had the highest number of pilots indicating that they were self-employed via the surveys for this study (Ryanair and Wizz Air) and also provides an example of self-employment of pilots as reported by the working group on social dumping in aviation of the Danish Transport Authority (Trafikstyrelsen, 2014).

Box 5-1: Examples of self-employment arrangements in the case of pilots

According to interviews with **Wizz Air** pilots for this study, upon joining Wizz Air, pilots are offered the option of being hired under a local contract, or setting up a complex self-employment scheme, that was administered through the agency Confair. Wizz Air pilots interviewed didn't indicate that they were required to set up a limited liability company with the oversight of an accountancy firm from a pre-set list provided to them the air carrier's agency, nor did some of them indicate that they were unaware of who the other Directors were of the limited liability company, which was mentioned in an interview with a Ryanair pilot.

According to interviews with **Ryanair** pilots, captains within the air carrier tend to have direct contracts of employment with Ryanair and are considered employees. First officers however tend not to have direct contracts of employment with Ryanair, and instead are considered "independent consultants", and contract their services to Ryanair via an intermediary.

Regarding the hiring process, according to interviews with Ryanair pilots, it was stated that upon successfully passing a job interview in Ireland for a first officer position with Ryanair or successfully completing an assessment in the UK for a position on a type rating training course, the candidate receives a communication from a Temporary Work Agency (TWA) based in the UK to set up a Limited Liability Company in Ireland. The TWA provides the candidate with a pre-determined list of 3 or 4 accountancy firms in Ireland that they can choose from to facilitate the process, at which point they travel to Ireland to establish the company and become a Director, with a representative from the accountancy firm being named as the "Secretary" of the company. They then commence providing their services to Ryanair as a self-employed "independent consultant". In addition, they are not necessarily the only Director of this company, and through interviews with pilots it became clear that in some cases, the pilots did not know who the other Directors of the company were.

Similarly, according to a National Aircrew Representative, the "self-employed" pilots are typically required to establish or become directors of a personal service company. This personal service company is then engaged by a third-party employment agency to provide the services of the pilot (classified as an "independent consultant") to the air carrier.

From its side, following an interview with Ryanair, it was pointed out that for the last few years experienced new entrant pilots have had the option of contracting or direct employment. New entrant cadet pilots coming through the type rating training programme run by CAE Aviation have been offered direct contracting positions. Since April 2018, all incoming pilots have been offered direct employment contracts. Ryanair has also offered hundreds of existing contractor pilots direct employment. Many pilots prefer the flexibility of contracting.

The Danish Working Group on 'social dumping' in aviation identified cases relating to self-employed pilots and their associated contractual position (Trafikstyrelsen, 2014). In the case identified, a Danish pilot residing in Denmark takes a job at recruitment company B in a country outside the EU as a pilot for commercial scheduled air carrier services. Recruitment company B hires his labour out to air carrier A in an EEA country. The pilot is deemed to be a 'self-employed contractor'. The contract specifies:

- That the pilot is responsible for paying taxes and all other charges on his income
- That the notice period from the company's side is 30 days, except in a number of circumstances listed, whereupon termination can occur without notice, including in the event of more than seven consecutive sick days, and
- That the notice period from the employee's side is 35 days after the first three months. If the employee fails to comply with the 35-day notice period, he is liable to pay one month's salary to the company.

5.3 Motivations for using self-employment

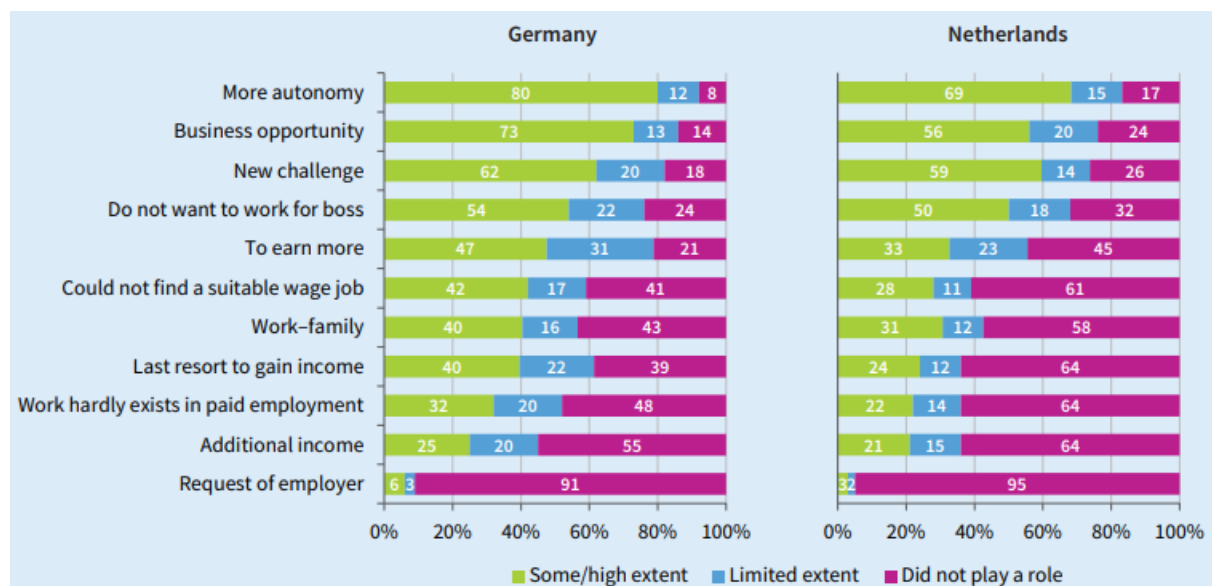
Evidence from the literature points to possible reasons and motivations for using self-employment, both from the side of employers as well for 'employees'.

From the point of view of air carriers, self-employment arrangements can provide increased flexibility in terms of access to and use of labour to respond to demand fluctuations, reduction in costs and support business growth (Steer Davies Gleave, 2015). As a result, in the context of a market with low profit margin, high levels of competition and pressure for productivity self-employment arrangements are one possible option. In addition to the flexibility to access labour, air carriers can benefit from not having to pay or administer income tax contributions; social security contributions (pension, health and risk etc) and other benefits that apply to employees (paid annual leave; sick leave; and, maternity or paternity leave).

Interviews with some carriers also supported some of the above. One legacy carrier linked self-employment mainly with flexibility and capacity to respond to changes in demand, but also with opportunity to reduce social security costs and taxes and, to a lesser extent to reduce salary costs but also the risk of industrial actions. Other air carriers did not provide a detailed view on the main motivations but generally referred to cost-cutting as a possible motivation while indicating that this does not apply to their carrier. From its side, one air carrier association considered that all motivations indicated earlier (flexibility in hiring staff, tax and social advantages) apply.

From the point of view of the self-employed, a recent study by Eurofound (2018) identified as key motivation for becoming self-employed (across all sectors), was the high degree of autonomy, business opportunity, new challenge presented, and desire not to want to work for a boss. Other motivations – such as work-family balance or additional income source – were not identified as equally important, while a direct request of the employer (thus forced self-employment) was considered as very uncommon.

Figure 5-4 Motives for becoming self-employed across industry



Source: Cohen et al (2016) in Eurofound (2018), Non-standard forms of employment: Recent trends and future prospects, Eurofound, Dublin.

However, the extent that above motivations apply to pilots that are hired through self-employed schemes in the aviation sector is questionable. As we can see in more detail in section 5.6 the vast majority of self-employed pilots are not in a position to choose self-employment arrangement (rather it is imposed to them). According to trade unions (ETF, ECA) and individual pilots it is very difficult to be self-employed in the sector – at least in relation in the case of the mainstream commercial passenger services - due to the nature of the sector and the fact that pilots cannot choose when, where and, in most cases, for who they want to work.

5.4 Legal framework covering self-employment

At EU level, there is no legislation that explicitly refer to self-employed⁷⁵ and there is also no single standard definition developed. According to Aberg (2016) the approach to the employment relationship by European Law varies depending on the particular area in which this term is applicable and, in general, European law prefers to delegate the concept of employee to national laws which do not use the same parameters in their definitions while in some situations European Law creates a term of employee for the specific Directive or Regulation assessed (Aberg, 2016).

Nonetheless, in the context of recent cases the Court of Justice of the EU has developed a broad concept of “worker” which is based on the concurrence of the following elements, which shall be evaluated taking into account all circumstances of the case:

1. Whether there is an authority relationship⁷⁶.
2. Whether workers form part of the employer's economic unit⁷⁷.
3. Whether there is a relation of subordination⁷⁸.

In addition, the CJEU had stated that “the essential feature of an employment relationship, however, is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.”⁷⁹ Nonetheless, these definitions still do not provide a clear definition to apply to what is definitely self-employment. Within the field of the aviation sector, there is no specific legislation addressing issues related to employment arrangements. However, Regulation (EC) No 2016/2008 which establishes the European Aviation Safety Agency (EASA) and is centred on ensuring the safety of civil aviation in Europe. Among others, the implementing regulations adopted as a result of the Regulation set the required licensing and qualification of pilots and cabin crew, requirements for flight and duty limitations and necessary rest periods (Regulation (EEC) No 3922/91), which, along with Regulation (EU) No 1178/2011 that sets technical requirements and procedures related to civil aviation aircrew are the most important for pertaining to the conditions of employment of pilots and cabin crew. Such provisions can have implications as to the work organisation practices but do not directly address aspects related to the contractual arrangements and none specifically define self-employment in aviation. (Jorens, Gillis, & De Coninck, 2015).

It should be noted that in the recent report developed by EASA working group on management of hazards related to new business models of commercial air transport operators (EASA, 2015), there is a recommendation that there should be a move towards monitoring of indicators such as occurrence reporting, fatigue and sickness by type of contract. This may create a need for a clearer definition of the different employment arrangements at EU level.

5.4.1 Legislation at national level

Member States have adopted different approaches in dealing with self-employment, both in terms of defining self-employed work as well as in terms of the rights and obligations related to tax, social security and labour law provisions (Jorens, Gillis, & De Coninck, 2015). In some cases, definition of self-employment within a same country may also vary depending on the legal area under consideration (European Commission, 2017).

Concerning the social protection provisions that are available to self-employed, a recent study by the European Commission attempted a detailed mapping of the different provisions (European Commission, 2017) looking into healthcare and sickness benefits, maternity/paternity benefits,

⁷⁵ The one exception that came to our attention is in cross boarder situations. See: https://ec.europa.eu/taxation_customs/individuals/personal-taxation/crossborder-workers_en

⁷⁶ Judgment of the CJEU of 4 December 2014 in case C-413/13, FNV Kunsten Informatie en Media v Staat der Nederlanden.

⁷⁷ Judgement of the CJEU of 16 December 1975, cases 40-48, 50, 54-56, 111, 113 and 114/73, Suiker Unie UA e.a. v CE.

⁷⁸ Judgment of the CJEU of 11 November 2010, case C-232/09, Dita Danosa v LKB Lizings SIA.

⁷⁹ Judgment of the CJEU of 3 July 1986, case C-66/85, Lawrie v Blum.

pensions, unemployment benefits, long-term care and occupational injury benefits and family benefits. In summary, the analysis points to the differences in terms of access to benefits among Member States while pointing out that benefits that tend to be linked with non-insurance-based schemes (tax based) are generally available to self-employed and the same generally applies to some insurance based (contributory) schemes such as healthcare, maternity/paternity/parental benefits. However, they are more often excluded from sickness, unemployment and/or occupational injury benefits and Member States vary in terms of the extent that self-employed are required to participate in insurance-based schemes, are allowed to opt-in or cannot opt-in.

Concerning the definition, a key difference among Member States rests upon whether a clear dichotomy between direct employment and self-employment is established or, whether Member States have attempted to introduce a third category as part of measures aimed at protecting workers who find themselves in employment situations that are identified as self-employed but in reality, depend mainly on one client can constitute a situation of subordination that is similar to that of an employed person (Eurofound, 2017). In that respect, the following different approaches can be identified:

- Creation of a hybrid status of self-employed with specific rights, especially with regard to social protection (e.g. Austria, Italy);
- Creation of a status of economically dependent worker with specific rights on the basis of a set of criteria – typically (in Portugal, Spain) related to the share of their income from a single client; (e.g. Portugal, Slovenia, Slovakia, Spain);
- Using the economic dependence criteria to identify and combat bogus self-employment (e.g. Germany, Malta, Latvia); and
- Establishing criteria to clearly distinguish employment from self-employment (e.g. Belgium, Ireland, Poland) (Eurofound, 2017).

We note here that the difference between the term ‘bogus self-employment’ which underlines the intention to circumvent labour, tax and social security rights and regulations and avoid payments and obligations, with the ‘economic dependence’ of a worker on one client/employer which can be an outcome rather than a deliberate construction. Nevertheless, both types share working conditions that resemble, in certain aspects, those of employees rather than of the self-employed. The degree of variance in the approaches from Member States, whilst there is alignment around some common themes, shows the difficulty in establishing a legislative approach that works across all Member States.

At the European Union (EU) level, the ‘European Platform tackling undeclared work’ has been developed to enable EU countries to deal with undeclared work, promote better employment conditions and to drive change at a national level. In March 2017, the Platform met for its second plenary meeting tackling undeclared work and focussed on bogus self-employment.⁸⁰ However, its work did not lead to the development of a common set of specific criteria for Member States to use to help determine cases of bogus self-employment but recommended that Member States develop such criteria and that such criteria in particular are clear, to facilitate the determination between dependent employment and self-employment.

Examples of the criteria used by some Member States are presented in Table 5-1 **Error! Reference source not found.**

Table 5-1: Criteria used to identify bogus self-employment

Member State	Criteria used to identify bogus self-employment
DE	1. Only one client rather than several 2. Billing by client (credit note) rather than by the person that is self-employed

⁸⁰ Second plenary meeting of the European Platform tackling undeclared work 9-10 March 2017
<https://ec.europa.eu/social/BlobServlet?docId=17399&langId=en>

Member State	Criteria used to identify bogus self-employment
	- work equipment (e.g. computer, software) provided by client rather than the person that is self-employed - billing by hours or days rather than by delivered project - working at client office, interacting with employees
IT	- a collaboration with one same client lasts for over eight months per year in two consecutive calendar years; - the remuneration coming from one client represents more than 80% of the individual's total annual income for two consecutive calendar years; and, - the worker has some kind of workspace at his client's company.
BE	- No worker's participation in the company's profits or losses; - No proper capital investments in the company; - No responsibility or decision-making power in the company; - The certainty of getting a regular payment; - The fact of having just a single and unique customer company; - The fact of having no personal workers/the fact of not being an employer; - The fact of not being able to organise one's working time; - The existence of in-house control procedures, with related sanctions; - No decision-making power concerning customers' invoicing.

Source: (EFIP, 2015)

Furthermore, Box 5.2 provides a definition of bogus self-employment as provided in the literature and focus on the fact that the self-employed are in essence in an employment relationship but do not have the benefits related to it while benefiting their employers by reducing their responsibilities. The definition by Jorens, Gillis, & De Coninck (2015) focuses specifically on the air services sector.

Box 5-2: Definitions of Bogus Self-Employment

The OECD has defined bogus self-employment or 'false' self-employment as consisting of 'people whose conditions of employment are similar to those of employees, who have no employees themselves, and who declare themselves (or are declared) as self-employed simply to reduce tax liabilities, or employers' responsibilities'.

In the practice guide on jurisdiction and applicable law (European Commission, 2016) a bogus self-employee person is defined as "a worker who meets the criteria of an 'employee' but is declared self-employed".

Jorens, Gillis, & De Coninck (2015) state that "bogus self-employment occurs when an individual pilot or cabin crew member is registered as being self-employed, but is de facto bound by an employment relationship. The latter is thus deprived of any safeguards awarded to direct employees, whereas the same restrictions and rules are nevertheless imposed as for a direct employee".

In the context of our study, the focus is on those pilots that identify themselves as self-employed. Attempts have then been made to assess whether they are genuinely self-employed or whether they may fall under a different category, which could be characterised as bogus-self-employment in some Member States or economically dependent workers in others. For the purposes of the analysis, we have used the following criteria to examine whether pilots are in genuine self-employment arrangements or not:

- Is the self-employed pilot only working for one client or for several? Does a significant percentage of their remuneration come from one client? Does the self-employed pilot have the realistic ability to work for more than one client?

- Does the self-employed pilot bill the client(s) for work, or is the billing done by the client(s)?
- Is there a difference in the duties being performed by the self-employed pilot compared with the pilots that are directly employed by the client(s)?
- Is the self-employed pilot's work equipment and working environment provided/determined by them or by the client(s)?
- Does the self-employed pilot have the ability to negotiate their remuneration and decide what work they do and when, where or how to do it?

5.5 Extent of pilot self-employment

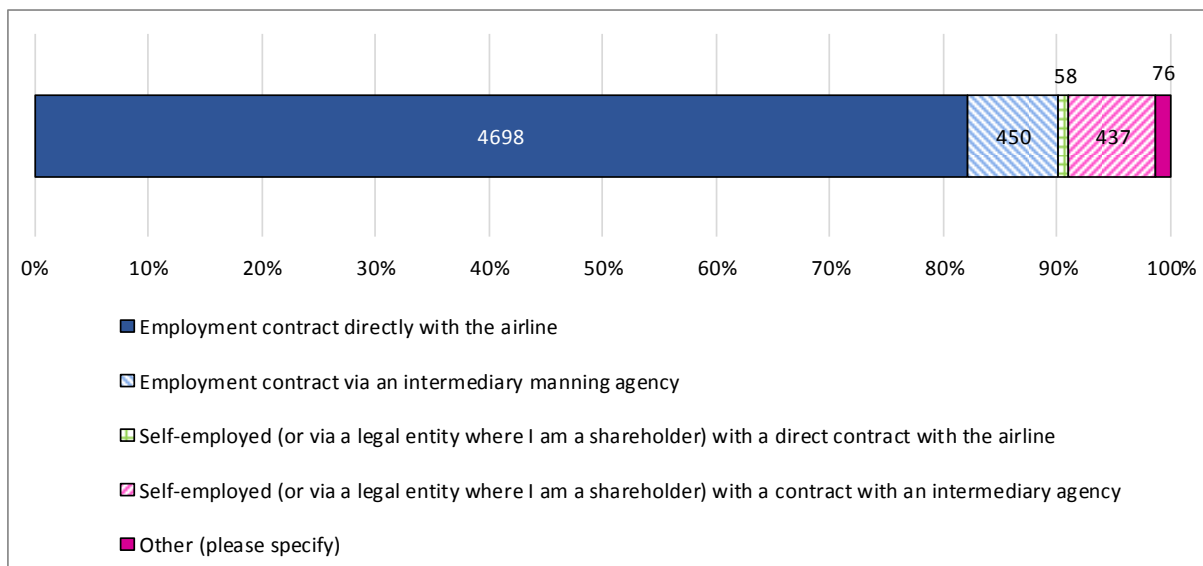
In this section we present the analysis of the survey of pilots and input from stakeholders to examine the extent of the use of self-employment schemes in the aviation sector.

5.5.1 Presentation of data

In the survey of pilots, respondents were asked to describe the working relationship with the air carrier they currently work for. Of the 5,719 pilots that answered this question, only 495 (9%) indicated that they were self-employed (see Figure 5-5), either in direct contract with the air carrier or via an intermediary⁸¹.

In comparison, according to the responses to the Sixth European Working Conditions Survey, the average proportion of workers in the EU 28 that are in self-employment is between 15% and 20%⁸². For the remaining pilots, 4,698 pilots (82%) indicated that they had an employment contract directly with the air carrier, and 450 (8%) indicated that they had an employment contract via an intermediary manning agency.

Figure 5-5: Distribution of pilots by employment relationship and air carrier business model (n=5,719)



Source: Survey of pilots

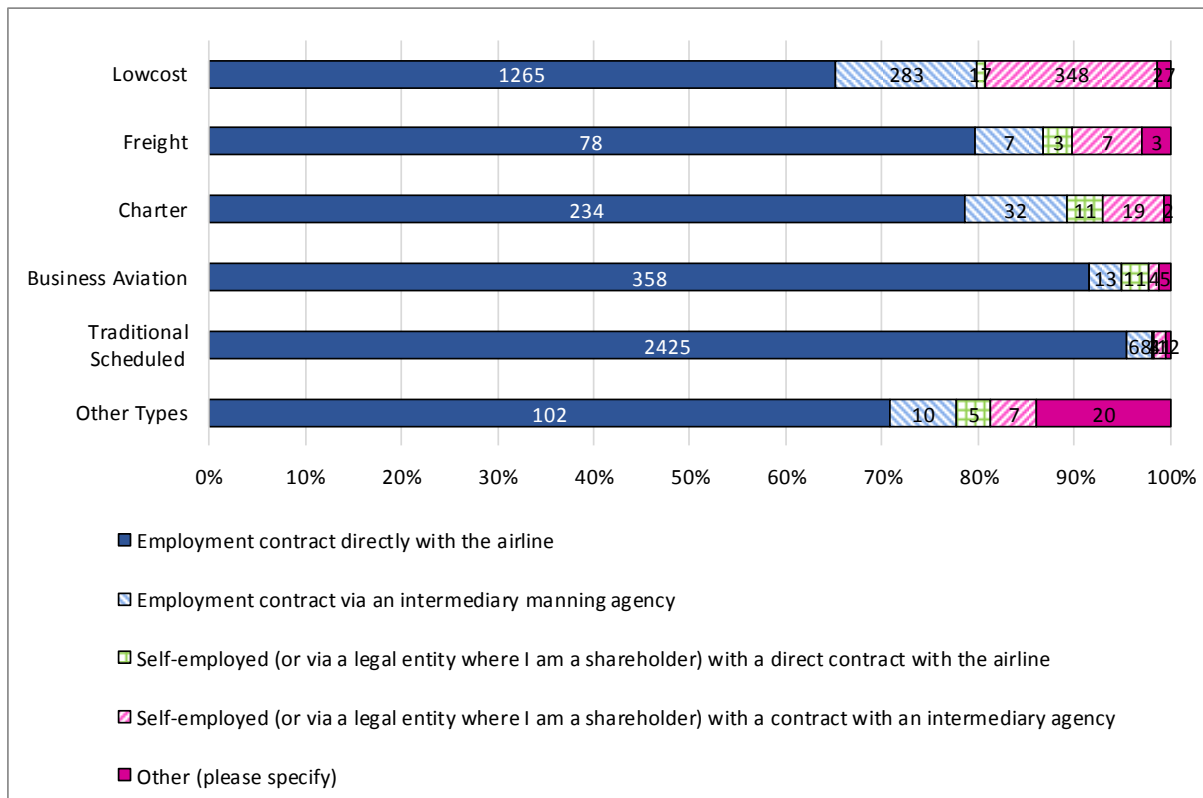
⁸¹ While not explicitly stated in the survey, it is assumed that it refers to a contract for the provisions of services or a commercial contract, but not a labour/employment contract as this would indicate an employment relationship. ,

⁸² "EU-LFS 2015; no comparable data were available for Albania, Montenegro or Serbia" in Eurofound (2017), Sixth European Working Conditions Survey – Overview report (2017 update).

Among the 495 pilots that indicated they were self-employed, the majority, 437 (88%), indicated that their contract was via an intermediary agency while the remaining 58 pilots (12%) indicated that they had a direct contract with an air carrier.

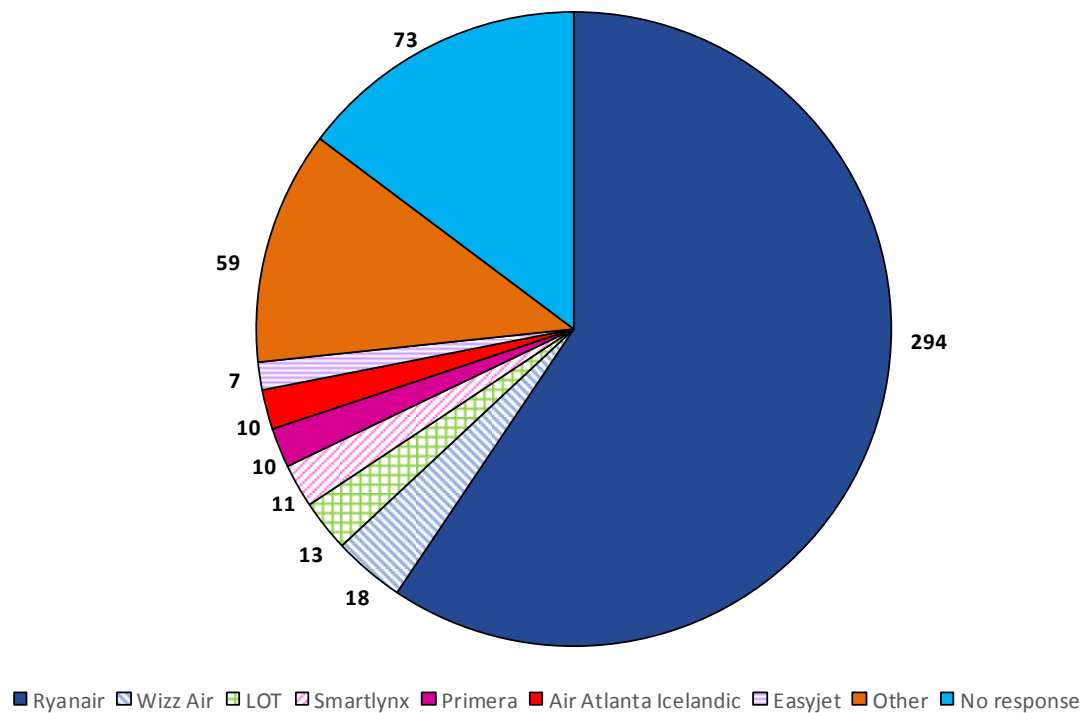
Furthermore 19% of the pilots in low-cost sector (365 out of 1940) identified themselves as self-employed, higher than any other sector. From the total of 465 of the pilots that identify themselves as self-employed in the survey, 365 (74%) stated that they work in the low-cost sector (see Figure 5-6).

Figure 5-6: Distribution of employment relationship by air carrier business model



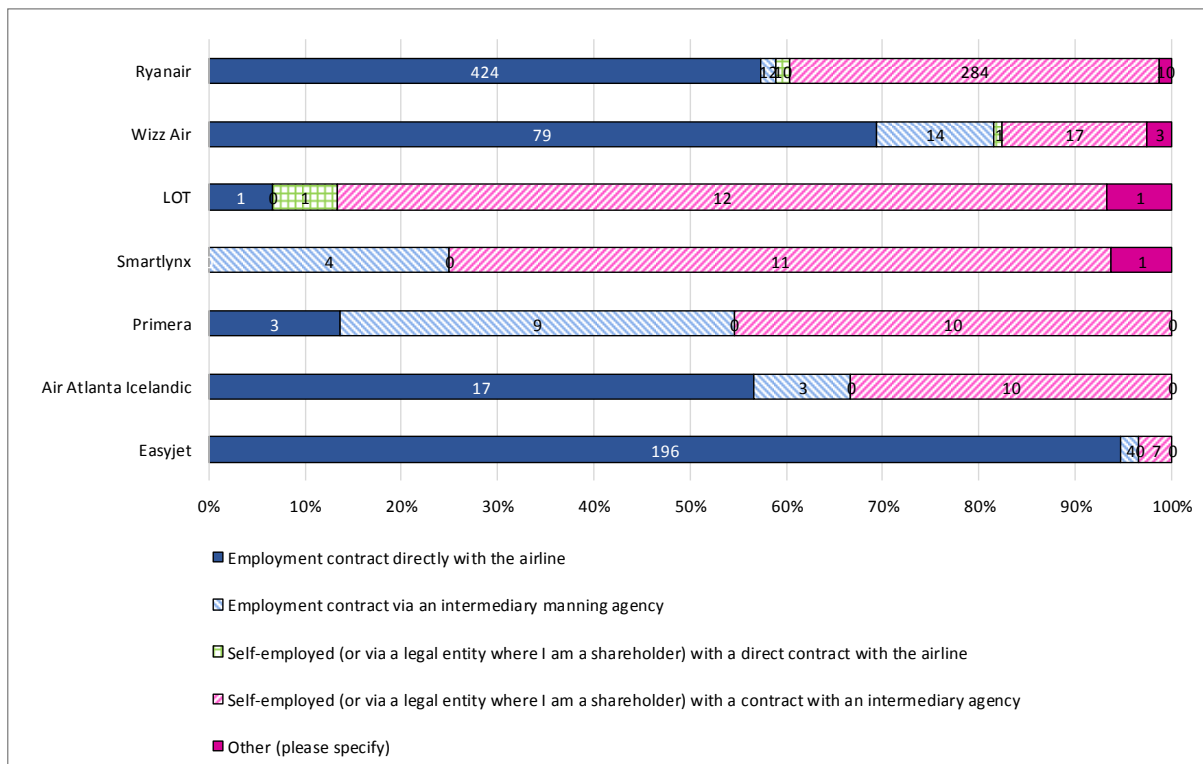
Source: Survey of pilots

In terms of the specific carrier they work for, most of the surveyed self-employed pilots indicated that they worked for Ryanair (294 of 495 (59%)) followed by Wizz Air (18 of 495 (4%) - both low-cost), and LOT (13 of 495 (3%)), the national Polish Air carrier. In total, among respondents 7 out of 58 air carriers had 5 or more self-employed pilots indicate that they were their employer (Figure 5-7). 363 of the 495 (73%) self-employed pilots represented by these 7 air carriers indicated that they were their employer.

Figure 5-7: Distribution of self-employed pilots by air carrier (n=495)

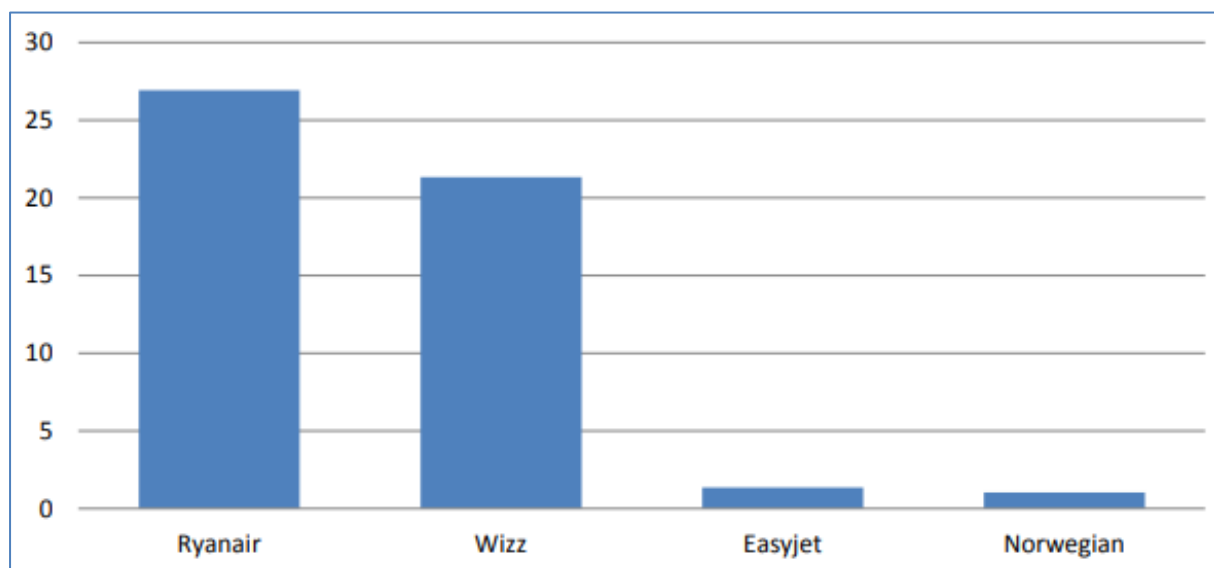
Source: Survey of pilots

Figure 5-8 also presents the share of self-employment among the total number of pilots for each of the 7 carriers. As can be seen, in the case of Ryanair 284 of 740 (40%) responding pilots identified themselves as self-employed. This was followed by Wizz Air pilots, with 18 of 114 (16%) indicating that they were self-employed. In contrast, only 7 of 207 EasyJet pilots (3%) indicated that they were self-employed.

Figure 5-8: Distribution of pilots working for key air carriers by employment type

Source: Survey of pilots

While there are differences in the overall percentages, these findings are not dissimilar to those in the Ghent Study in terms of the level of use of self-employment within these low-cost carriers. According to the Ghent study, 27% of Ryanair pilots indicated they were self-employed, as were 21% of Wizz Air pilots, and about 3% of EasyJet pilots (see Figure 5-9).

Figure 5-9: Proportion of pilots stating to be self-employed among four main low-cost carriers

Source : (Jorens, Gillis, & De Coninck, 2015)

Summarising, around 9% (495 of 5,719) of the pilots that responded to the survey identified themselves as self-employed. The majority (437 of 495, 88%) have contracts via an intermediary, and only 12% (58 of 495) are contracted directly to an air carrier. Furthermore, the majority of them (74%) indicated that they flew for a low-cost carrier. Among the low-cost air carriers, Ryanair and Wizz Air

(to a lesser extent), appear to be the air carriers that make extensive use of self-employment schemes.

While the majority of interviewees were not able to provide specific estimates to compare against the survey results, the views generally supported the main findings of the survey.

Thus, in relation to the 9% overall estimate of the share of self-employment according to the survey, BALPA (the British pilots union) suggested that around 5% of pilots in the UK are self-employed, in what they considered to be the traditional sense of the term (i.e. freelancing among multiple clients). However, they considered that this is probably twice that amount if more complex contractual models are taken into account. However, they also proposed that this share is higher in other Member States, arguably linked to the creation of satellite bases of low-cost carriers together with what they argued is a light-touch regulation and liberal labour market in some recently accepted EU countries. The German aircrew union also estimated that among the 14,000 pilots in Germany, 500-1000 (i.e. 3.5% to 7%) are identified as self-employed although, in their view, most of them should be considered bogus (see also Section 5.2.2). Finally, according to the European Regional Airline Association (ERAA), regional airlines also make use of self-employed, and estimated that they represent up to 20% of the total aircrew. From its side, while not referring to specific figures European Transport Workers Federation (ETF) proposed that there has been a decline in the use of self-employment schemes in a comparison to 2 to 3 years ago as a result of the increasing interest on this topic and the increased scrutiny by some authorities.

At the same time, most stakeholders (including European unions like ECA and ETF, national unions including BALPA and Vereinigung Cockpit, two pilot groups as well as two airlines) also supported the finding that the use of self-employment is most common among low-cost carriers and particularly among a few specific ones. An interviewed pilot commented that regarding Ryanair, 70% of the time the captain is employed directly by Ryanair (employee) but the co-pilot is a contractor (self-employed working via an intermediary organisation) 80% of the time. Ryanair is also referred to among the above interviewees, explicitly or implicitly, as the most important carrier in Europe that uses self-employment arrangements. In contrast, an EasyJet pilot stated that he was unaware of any self-employed pilots currently at the air carrier, likely explaining why only 3% of EasyJet pilots responding to this survey indicated they were self-employed. It should be noted though that – as was already indicated in Box 5-1 – Ryanair has for the last few years provided the option to new experienced pilots of contracting or direct employment and that, since April 2018, all incoming pilots have been offered direct employment contracts. They also pointed out that existing pilots who were offered the option of direct employment preferred the existing contracting arrangements.

In terms of the use of self-employed pilots among traditional carriers, the two carriers interviewed and also most of unions (ETF, ECA, and the Norwegian pilots groups) suggested that this is not a practice currently used. Nonetheless, one pilot interviewed suggested that the Polish Air Carrier LOT does also contract staff that are self-employed, and one union suggested that traditional carrier do also follow this model outside their home base.

Besides low-cost carriers, reference was also made to the use of self-employed in the case of business aviation services, where, according to ECA and ETF the use of self-employed pilots is more reasonable given the non-scheduled nature of the services provided. Similarly, as self-employed is identified as being quite common in the case of experienced pilots with many years of experience that work as trainers of new pilots and they often have contracts with more than one carrier.

5.5.2 Extent of bogus self-employment

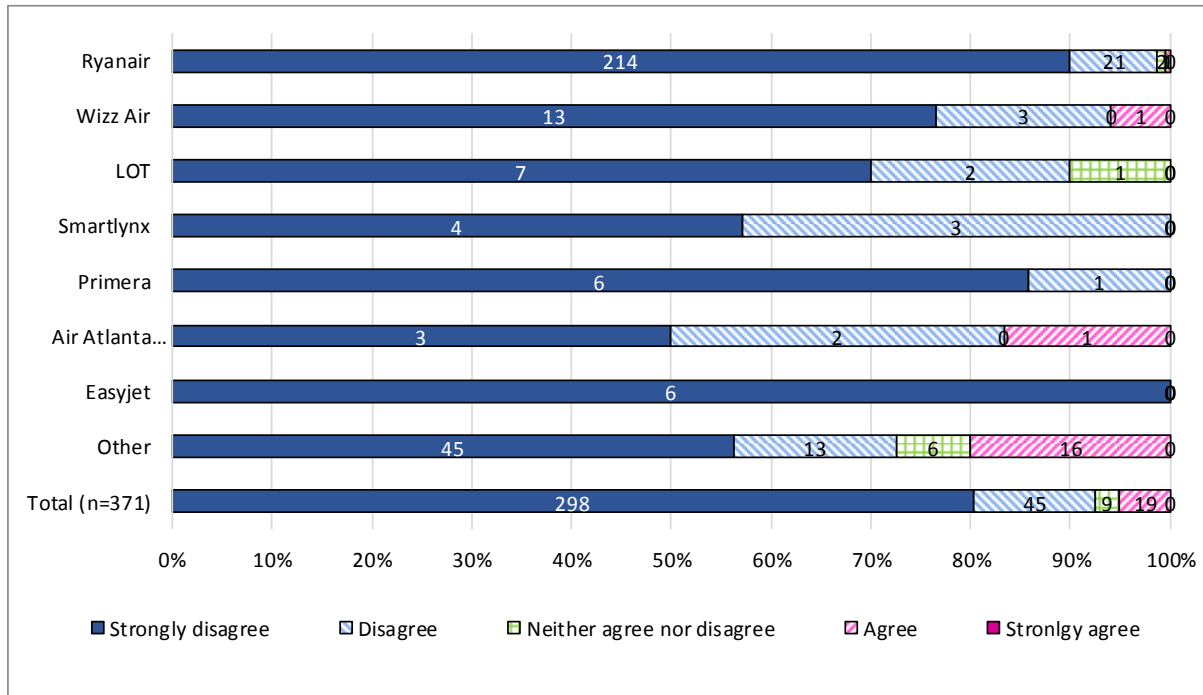
To assess the extent of bogus self-employment, responses to the survey of pilots were used to examine the following criteria:

- Extent that self-employed pilots are free to work for more than one air carrier; and
- Extent that self-employed pilots have complete flexibility to decide when and how many hours they fly.

One of the core aspects of being self-employed as highlighted in section 5.4 is the ability for a person that is self-employed to have the flexibility to determine who they work for and when. When asked to indicate the carrier they work for, none among the 495 pilots that identified themselves as self-employed indicated that they work for more than one carrier. At the same time, among the 343 out of

371 (90%) self-employed pilots that answered question 3.1 asking them to indicate if they are free to work for more than one air carrier in parallel (see Figure 5-10), disagreed strongly or disagreed with the statement. Furthermore, among the surveyed pilots indicating working in Ryanair, 90% (214 of 238) disagreed strongly or disagreed with the statement that they were free to work for more than one air carrier in parallel, and 9% (21 of 238) simply disagreed. The percentages vary among other airlines but due to the small numbers of responses they cannot be considered representative.

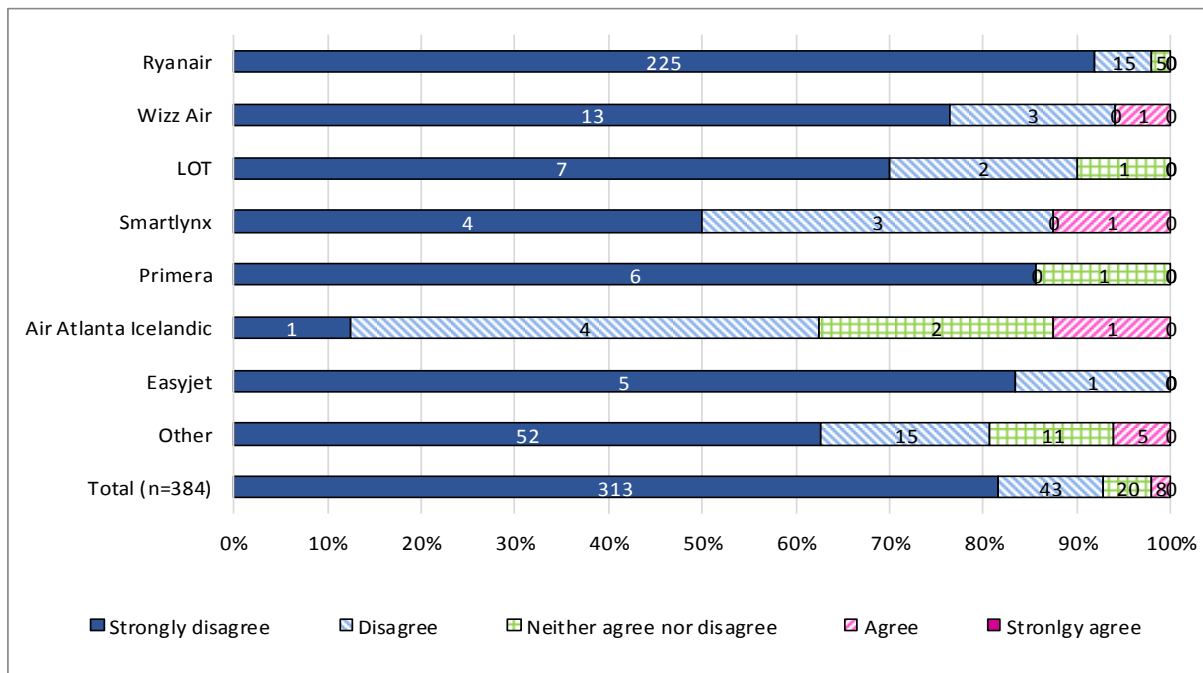
Figure 5-10: Pilot responses to question “3.1 If I am self-employed, I am free to work for more than one air carrier in parallel. (n=371)”



Source: Survey of pilots

Similarly, when self-employed pilots were asked whether they had the flexibility to decide when and how many hours they fly, 93% (356 of 384) strongly disagreed or disagreed as shown in Figure 5-11. The ability to decide when and how many hours to fly could be considered a core component of a self-employed pilot, based on the criteria developed within certain Member States highlighted earlier in the chapter. From the answers of the responding pilots, this is a flexibility the vast majority do not have.

Figure 5-11: Pilot responses to question “3.1 If I am self-employed, I have complete flexibility to decide when and how many hours I fly.” (n=384)



Source: Survey of pilots

As a result of the above findings, it is clear that almost all self-employed pilots do not consider that they are free to work for more than one air carrier in parallel (343 of 371 (90%)), and that they have complete flexibility to decide when and how many hours they fly (356 of 384, (93%)).

The above can be considered as an indication that the self-employment schemes that these pilots have in place are not in line with the criteria required to be genuinely self-employed and put them in the position of an economically dependent worker.

They are very much in line with the views of most representatives of pilots at European (ETF, ECA) and national level (BALPA, SNPL, German union) which considered that self-employment is not possible in the case of the traditional scheduled air passenger transport services. Further to that, a pilot that was interviewed that worked for solely for one air carrier stated that being self-employed in aviation was not possible. They said that as pilots need to have type rating, as well as follow air carrier policies and regulations it would be technically impossible for them to fly for different air carriers that have different rules, different operations, and different ways of working. Thus, in this view, it simply is not possible to work for 2-3 air carriers. Similarly, a pilot that was self-employed yet flying only for one air carrier mentioned similar points, stating that as a self-employed pilot, it should be the ability of a contractor to use their skills where they see fit, yet whilst they were technically allowed to fly for another air carrier, when you then came back to the original air carrier you had to pay EUR 5,000 to be retrained. It can be speculated upon whether this reflected the actual cost involved to be retrained, but essentially according to the pilot, it made it the practice of being self-employed and flying for several air carriers unviable, so nobody worked for any other carriers.

Overall, with a few exceptions mentioned earlier (such as in the case of non-schedule business aviation services or trainers) the large majority of pilots that identify themselves as self-employed – either directly or most often via intermediaries - do not seem to meet the criteria that would make them qualify as genuinely self-employed. They are in practice not able to work for more than one carrier and do not have complete flexibility to decide when and how many hours they fly. According to most stakeholders, at least in the case of the traditional scheduled air services, arrangements that meet the criteria of genuine self-employment are not compatible with the nature of the service provided.

Whether this means that such arrangements should be characterised as bogus or whether they should be considered as economically dependent workers (as discussed in Section 5.4.1) is primarily

an issue of the approach adopted in different Member States, albeit with implications in terms of the working conditions of pilots, the rights and access to social protection provisions.

5.6 Assessment of the challenges for pilots and national authorities linked to the use of self-employment schemes

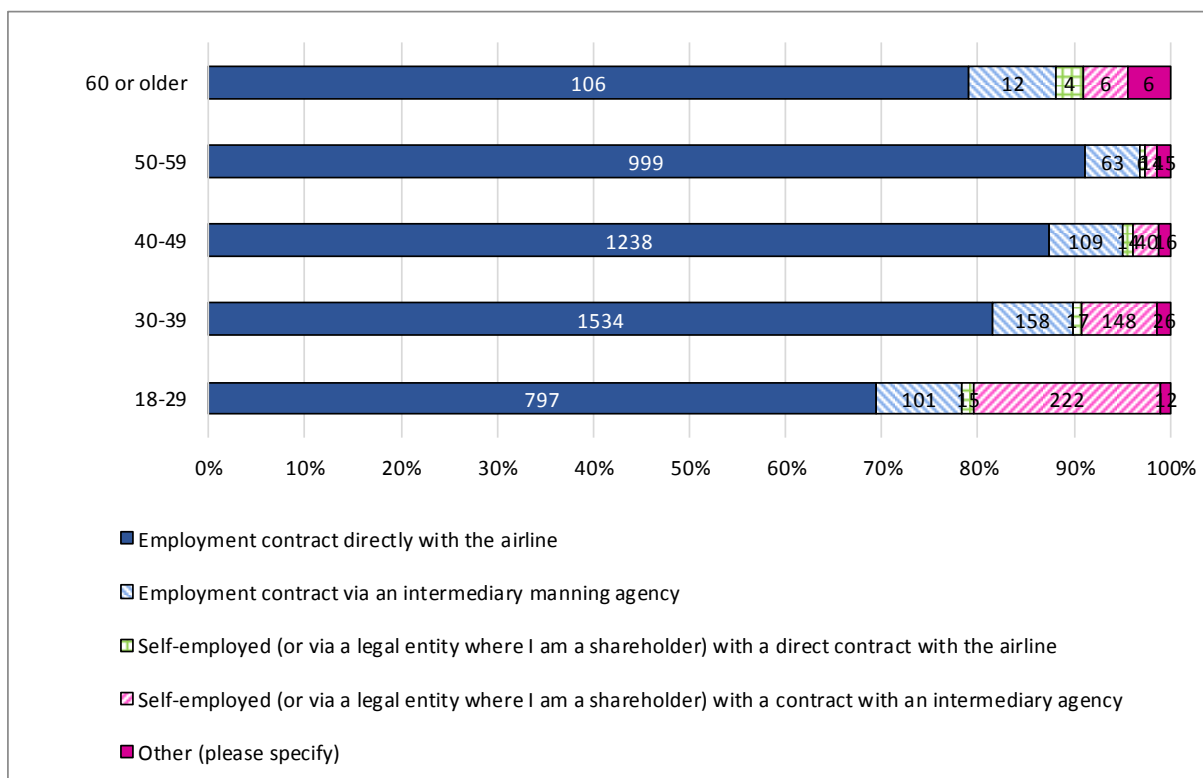
5.6.1 Challenges for pilots in self-employment schemes

In this section the working conditions that self-employed pilots have are here compared to the rest of the pilots surveyed, to identify any further challenges they may have. The types of employment contract are then also compared to see if there are differences between the types of employment relationship pilots have with an employer, and the types of contracts they are given, and then finally these are contextualised alongside quotations from several qualitative interviews undertaken with pilots.

5.6.1.1 Age distribution of self-employed

A first point to be made is that the highest proportion of self-employed pilots are under 30 years old (21% of their age group (237 of 1,147) (see **Error! Reference source not found.**). This is in line with the input from the interviews with some unions (the UK and German pilot unions and one pilot group) which suggested that self-employment arrangements are more common among young pilots, sometimes being the only type on offer to enter to the market.

Figure 5-12: Pilot age by type of working relationship (n=5,678)



Source: Survey of pilots

5.6.1.2 Pilot day to day working conditions

The pilot survey asked pilots to respond to eight statements regarding their day-to-day working conditions. The analysis presented in Table 5-2 compared the responses of self-employed pilots with pilots in employment contracts directly with the air carrier via an intermediary manning agency.

The analysis of the responses shows most notably that, compared with pilots that are not self-employed, self-employed pilots claim to be:

- More than three times less likely to indicate that their employer recognises unions;
- Almost twice as likely to feel pressured to fly even if they are fatigued;
- Almost half as likely to not feel pressured to fly when their professional judgement indicates that they shouldn't; and,
- Half as likely to have enough time for pre- and post- flight duties.

The most notable similarities between those not self-employed and self-employed as pilots regards their likelihood to indicate that they often feel fatigued (48% and 49% respectively) but that their rest time is in accordance with applicable safety rules (79% and 70% respectively).

Table 5-2: Share of pilots that “Strongly agree” and “agree” with the following statements concerning their working conditions

Statements to pilots	Pilots not self-employed (n=4270)	Self-employed pilots (n=398)
My employer recognises unions	70%	20%
I feel that there are no negative consequences to my employment status if I report any issues/problems.	59%	21%
There are easy and clear ways to report any issues to the company.	72%	45%
I don't feel pressured to fly when my professional judgement indicates that I shouldn't.	65%	32%
I can decide not to fly for legitimate reasons of illness.	88%	63%
I feel under pressure to fly even if I am fatigued.	30%	57%
I often feel fatigued.	48%	49%
My rest time is in accordance with applicable safety rules.	79%	70%
I have enough time for pre- and post-flight duties.	55%	27%

Source: Survey of pilots

In relation to the above findings, the European Transport Workers' Federation commented that the differences between a pilot who is an employee and a pilot that is self-employed is that pay is negatively affected as everything typically covered by the employer is now the responsibility of the self-employed (tax, social security etc.). In terms of job security, the protection that is available to employees does not apply unless there are clauses in the contract. Regarding job quality, the scheduling is done by the air carrier – the self-employed employees do not have the same rights and do not have access to collective rights/unions.

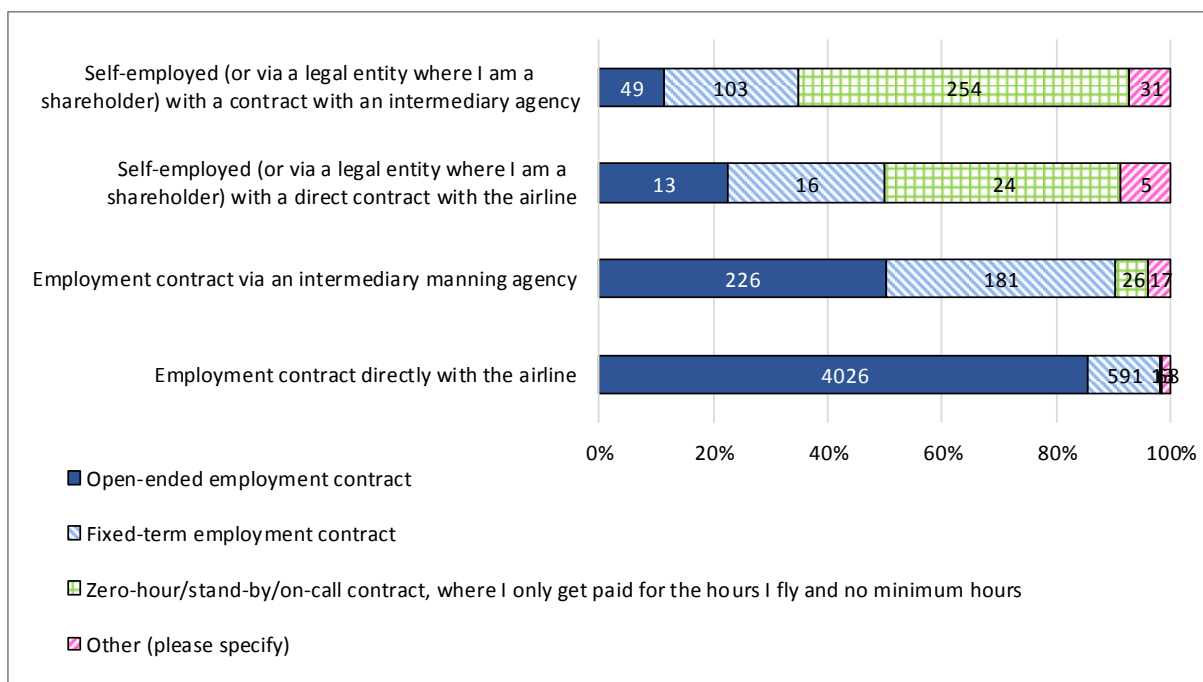
Similarly, the European Cockpit Association commented that the main difference is the lack of employment rights when self-employed (social security labour protection etc) unless they requalify employment status – then they are exposed to tax/social security adjustments and potential Government penalties. They noted that although the gross pay could seem attractive for self-employed pilots, it doesn't reflect the true cost of employment (does not contain social security/taxes) and alongside this, there is also no job security.

5.6.1.3 Different types of pilot employment contracts

Another challenge that self-employed pilots have is related to the type of employment contracts. Figure 5-13 below shows that self-employed pilots have the highest proportions of zero hour/stand-by/on-call contracts, particularly in the case of pilots that are self-employed via an intermediary. Of the 437 pilots that are self-employed via an intermediary, 58% (254) are on this type of contract. Whilst only 58 pilots responded that they were self-employed via a direct contract with an air carrier, 41% (24) are also on this type of contract

In contrast, pilots that weren't self-employed but had an employment contract directly with the air carrier had the lowest levels of zero-hour/stand-by/on-call contracts, with less than 1% (13) of the 4,698 pilots with this type of employment relationship.

Figure 5-13: Types of pilot employment contracts



Source: Survey of pilots

The text box below contextualises some of the qualitative responses from self-employed pilots regarding their working conditions.

Box 5-3 : Pilots quotes on working conditions associated with self-employment

- On fatigue and flight hours:** “My air carrier is using the flight time limitation regulations abusively as an excuse to roster their operating crew to the maximum flight hours with minimum or very close to minimum rests. Pilots are severely fatigued but if they would report each case, most of them would risk that this would be used as an excuse to permanently suspend their medical license. First officers are flying when sick on a regular basis as their number of sick leave days are a main factor during command upgrade selections. Early and late starting of duties are combined without any acclimatization considerations. Proper crew meal and heating equipment is not provided on board. Duties with planned extension up to 13 hours of duty on 4 sectors for a two men crew are used on a regular bases and cabin crew is extensively pressured to perform duties, even to attend company meetings on scheduled off days”.
- On taxes and lack of sick pay:** “The two main issues I see with my type of employment is: taxes, there is a lot of stress for me and my colleagues when we are unsure where and how to pay our taxes. Calling in sick, since there is no sick pay, a lot of my colleagues’ work when they are unfit to fly.”
- On social security and tax:** This air carrier by adopting a contractor model, has not only got around its social security contributions, holiday pay and sick pay, it has also put its other legitimate costs on to governments. We must pay for our training, uniforms, accommodation,

travel, equipment etc, and are told to claim it from our tax bill. Meaning new pilots pay close to 0 tax in their first 3 years in company, meaning governments are paying for this training by taxes not being paid.

- **On zero hours contracts and sick pay:** “I have loans to pay off every month on my zero hours contract and no sick pay that at times can be challenging and is always a worry”.
- **On a self-employment scheme:** “I get zero parental benefits. Zero sick pay, zero holiday pay. I have zero input on when or where I work. I am not self-employed in the correct sense, yet the air carrier makes us self-employed to avoid their social security liabilities.”
- **On a self-employment scheme:** “I have a self-employed contract, but I am not self-employed if I look at all the terms and conditions. As a pilot group we try to make our point to the air carrier and agency. We were told to take it or live it. Unfortunately, we need to work”

In the interviews carried out with pilots, several problems associated with their employment relationships with air carriers were identified, particularly among those working for low-cost air carriers, such as the case of pilots who were hired by an intermediary agency to exclusively work for a particular low-cost air carrier. These pilots were asked by the agency to set up a company, where they would be names as Directors along with several other pilots (sometimes of unknown identity to the pilots). These pilots then worked exclusively for the air carrier in question for years (due to the almost impossibility for the pilot to work for other air carriers), they receive all the instructions from the air carrier; and the salary, despite being transferred from different points, originally comes from the air carrier.

The nature of the tasks they perform are identical to those of pilots employed directly by the air carrier and they report to the same persons. By way of illustration, decisions on diverting the plane due to weather conditions are presented to the air carrier and not to the intermediary agency. In spite of this, the air carrier claims not to be the employer.

The use of such self-employment conditions could affect maternity/paternity rights, sick leave and fatigue reporting (incentivising the employees to work if they want to invoice the services) and minimum period of vacation.

In conclusion, it is quite clear that the challenges for self-employed pilots are more pronounced than for pilots in employment contracts. There are more self-employed pilots on zero-hour/stand-by/on-call type of arrangements compared with pilots employed directly by air carriers or through an intermediary. Additionally, the likelihood of union recognition by their employer is lower for pilots that are self-employed, yet the likelihood that they feel pressurised to fly even when they are fatigued or when their professional judgement indicates that they shouldn't is higher.

5.6.2 Challenges for national authorities linked to the use of self-employment schemes

National employment ministries and transport authorities also face challenges regarding the use of pilot self-employment schemes. Based on the survey responses from the 11 Member State employment ministries and 4 Member State national transport authorities, the first section presents the overall survey responses from the employment ministries and national transport authorities, followed by the discussion of two key challenges brought to the surface during these surveys and interviews which are the lack of awareness and understanding of self-employment within the aviation sector and its potential impacts on pilots and labour regulations and the variety of approaches amongst Member States to identifying and acting on potential bogus self-employment.

5.6.2.1 Employment ministries

Out of 9 employment ministries, 7 answered the survey question regarding how common the use of self-employed pilots was in their Member State. Four indicated that they didn't know, 1 (Estonia), indicated that it was very uncommon, and the two indicated that it was quite uncommon (Luxembourg, Sweden).

Three of the employment ministries indicated that they were not aware of issues/complaints/court cases in relation to the working conditions of pilots and cabin crew working as self-employed by airlines, with 4 stating they didn't know.

Only one employment ministry (Sweden) identified problems/challenges for authorities, which related to compliance with employment/working conditions legislation, with others responding 'don't know' or 'no' (one response in relation to social security contributions).

Table 5-3: Responses of employment ministries on awareness of problems/challenges to authorities in ensuring self-employed pilots fulfil the following obligations (n=7)

Awareness of problems for authorities in ensuring self-employed pilots fulfil the following obligations	Yes	No	Don't know
Social security contributions	0	1	6
Compliance with employment/working conditions legislation	1	0	6
Fulfilment of tax obligations	0	0	7

Source: Survey of employment ministries

Furthermore, when employment ministries were asked whether they had found cases of self-employed pilots that did not actually meet the conditions of self-employment as set out in their national legislation, 5 out of 7 responses stated "don't know". Only 1 responded "Yes" (Sweden), and 1 responded "no".

Lastly, one employment ministry answered the question regarding what the reasons were why pilots that identified as self-employed did not actually meet the conditions of self-employment, of the possible criteria that could be selected. They stated that the reasons were that they could not work for multiple clients (airlines) in parallel and they provided services for the same airline for long periods.

5.6.2.2 Labour inspectorates

Of the 12 labour inspectorates that answered the survey question regarding how common the use of self-employed pilots was in their Member State, 5 indicated that they didn't know (Luxembourg, Malta, Sweden, Czech Republic, Netherlands), 4 indicated that it was very uncommon (Estonia, Italy, Austria and Denmark), and the remaining two indicated that it was quite uncommon (Luxembourg, Sweden). One respondent stated that it was not allowed under their legislation (Spain). Limited information was provided by the employment ministries to explain their answers, and the main insight that can be drawn from this question is the high proportion, 5 out of 12, of labour inspectorates that indicated they did not know how common the use of self-employed pilots was.

The first follow-up question asked for labour inspectorates to state whether the use of self-employed pilots was associated with higher than average levels of non-compliance with various national legislation. The answer from most of them, as visible in Table 5-4, was "Don't know". However, two labour inspectorates (that were responsible for all the answers in the "No" column), indicated that the use of self-employed pilots was not associated with higher than average levels of non-compliance (Spain, Austria).

Table 5-4: Responses of labour inspectorates on self-employed pilots non-compliance with legislation (n=12)

Is the use of pilots with a self-employed status associated with higher than average levels of non-compliance with the applicable legislation?	Yes	No	Don't know
National rules related to social security contributions	0	1	11
National rules on employment legislation	0	2	10
National rules on working conditions legislation	0	2	10
Tax obligations	0	1	11

Is the use of pilots with a self-employed status associated with higher than average levels of non-compliance with the applicable legislation?	Yes	No	Don't know
Health and safety standards	0	2	10

Source: Survey of labour inspectorates

Similarly, when labour inspectorates were asked about their awareness of problems/challenges for the authorities in terms of ensuring that self-employed pilots fulfil certain obligations, most indicated that they “Don’t know” responses, as presented below in Table 5-3.

Only one labour inspectorate (Italy) identified problems/challenges for authorities, which related to social security contributions and compliance with employment/working conditions legislation. They added that across the mobile workers sector as a whole, in the case of self-employed, problems/challenges with the fulfilment of social security obligations could arise. Furthermore, since 2017 an ongoing inspection into a low-cost company in the air carrier sector had been going on, as they had found clues of self-employed pilots that indicated a non-sufficient autonomy of self-employed pilots from the employer/air carriers. Although at this stage the evidence is still small, and yet to be verified before any definitive outputs or analysis, there is an indication that this could consider bogus self-employed.

Four labour inspectorates responded that they were not aware of problems for authorities regarding self-employed pilots and ensuring they fulfil their social security contributions (Spain, Sweden, Denmark, Croatia) or comply with employment/working conditions legislation (Spain, Sweden, Austria and Croatia), whereas this figure was just two for fulfilment of tax obligations (Spain and Sweden) and one for other problems (Spain). All other labour inspectorates responded ‘don’t know’.

Table 5-5: Responses of labour inspectorates on awareness of problems/challenges to authorities in ensuring self-employed pilots fulfil the following obligations (n=12)

Awareness of problems for authorities in ensuring self-employed pilots fulfil the following obligations	Yes	No	Don't know
Social security contributions	1	4	7
Compliance with employment/working conditions legislation	1	4	7
Fulfilment of tax obligations	0	2	9
Other problems	0	1	11

Source: Survey of labour inspectorates

Furthermore, when labour inspectorates were asked whether they had found cases of self-employed pilots that did not actually meet the conditions of self-employment as set out in their national legislation, 6 of the 12 responded “No”. Only 2 of the 12 responded “Yes” (Estonia and Denmark) and the remainder indicated that they didn’t know.

Lastly, of the three labour inspectorates that answered the question regarding what were the reasons why pilots that identified as self-employed did not actually meet the conditions of self-employment, of the possible criteria that could be selected, all 3 indicated that this was because “They did not have sufficient autonomy from the air carrier/employer – the air carrier exercised high level of control in terms of working time and execution of the contract”. Further to this, two also indicated that “They provided the services for the same air carrier for long periods” and one indicated that “They could not work for multiple clients (air carriers) in parallel. None indicated that this was because “They received a fixed remuneration” or because “They did not have to provide their own material”.

5.6.2.3 Analysis of key challenges

As shown in the surveys, when asked to respond to questions regarding awareness of the use of pilot self-employment schemes within Member States, and the impacts this might have on enforcing certain type of labour regulations, national authorities, whether labour inspectorates or employment ministries most often indicated that they did not know. This low level of awareness of the national transport authorities and employment ministries to the extent of self-employment within their Member States could be due to the fact that such issues may not fall within the remit of the specific authority, difficulties in tracking the actual use of self-employment, or due to actual low levels of awareness which would hinder the ability of national authorities to tackle any issues relating to pilot self-employment.

Of the Member States that did respond to relevant questions, some provided useful insights into their national context.

The Spanish Ministry of Employment and Social Security articulated that legal insecurities currently exist around atypical forms of employment in the aviation sector due to the difficulties in ascertaining whether Spanish social security norms, Spanish labour relation norms and Spanish working condition norms are being correctly applied. The German authorities have taken steps to both increase their awareness of self-employment schemes within the aviation sector, and then go further by making pilot self-employment schemes suspected to be bogus unviable. Following a recent number of investigations conducted by the German tax authorities, during which the corporate relationships between Ryanair and its German-based pilots were scrutinised, Ryanair has subsequently stopped using self-employed agency pilots in Germany (RTE, 2018). According to the authorities, this model of hiring would have resulted in lower amounts of taxes and social security contributions being paid in the country. In this context, the traditional agency used by Ryanair to hire pilots for German bases (and for many other Member States) McGingley Aviation, in October 2017, communicated to German-based pilots that it would cease to provide services for Ryanair in Germany. Two interviewees reported that, in the course of the authorities' investigations, Ryanair started to make use of another employment agency "BlueSky Resources" and, subsequently, decided to begin to offer direct employment contracts to those pilots who were based in Germany (RTE, 2018).

Similar efforts have been made in Belgium to ascertain whether legal infringements were occurring with regards to self-employed pilots. In May 2018, 20 social security inspectors interviewed around 60 Ryanair pilots and staff at Gosselies Airport in Belgium. According to the labour inspector present in the interviews, it was noted that social security offences were uncovered and that the pilots interviewed had been forced to work as bogus self-employed. The national authorities are continuing with their investigation claiming that cabin crew hired after 2012 had not been subject to Belgian social security, which is mandatory, and that some of the pilots had been forced to set up and become directors of companies from scratch to work for Ryanair, which was therefore a bogus form of self-employment (Aviation24, 2018).

The issue of understanding and determining bogus self-employment has not been an issue in Austria, as since a court case in 2006, a ruling was made by the Vienna High Court in Austria in that the duty of care of social security insurance obligation lay with the employer for the employee⁸³. Subsequently to the ruling, a legal proceeding of the Austrian Social Security Authorities against Jetalliance over unpaid social security employer contributions resulted in the insolvency of the company, due to unpaid social security contributions. This set the precedent for it being the obligation of the employer to pay the social security insurance for its pilots, making it effectively impossible to be a self-employed pilot in Austria (RIS, 2012).

In this context, the European Platform for tackling undeclared work also provides a beneficial set of resources to Member States to access to better understand and tackle the issue of bogus self-employment. Similarly, the European Labour Authority can play a role in supporting Member State cooperation as well as providing easy access to information for individuals and employers on the subject.

⁸³ The legal Reference code is 22.12.2009 2006/08/0317 Fluglehrer einer Paragleiterschule" (flight instructor of a paragliding flight school), and this ruling is completely transferable to the commercial air carrier pilot profession, which resulted in the following law suit.

Regarding opportunities in European Union legislation, the Danish authorities referred to the draft proposal for targeted initiatives in the EU aviation sector concerning fair competition, and provide an example of how Regulation (EC) No 1008/2008 could be amended. While acknowledging that this suggestion should require additional analysis if taken forward, it proposes an amendment that reads as follows:

Recital 9a: Recruitment and employment of crew members indirectly through employment agencies should not exempt the employer who benefits from the labour (i.e. the Community air carrier) from obligations of the Community. 'Self-employed' who actually work for an air carrier, along with employees recruited via employment agencies, are to be regarded as being employed directly by the air carrier.

One final point raised by one pilot regards the ways in which national authorities and regulators receive their funding. It was noted that as in some Member State aviation regulatory bodies receive significant levels of income from air carriers (through the licencing fees) this potentially creates a conflict of interest with regards to acting upon and passing legislation or regulation that might affect the organisation's income stream. It was argued that in the context of such relationship, it is hard for the regulator to act independently and action at EU level (through EASA) would be needed to prevent air carriers from covering up dangerous practices. We should note that while this is a logical argument, there was no specific evidence provided of regulators adopting a relaxed approach as a result of their financial dependence.

5.7 An assessment of employment laws regarding self-employment in Member States

In this section we consider specific cases of recruitment of pilots as self-employed and analyse whether and how the relevant EU and national legislation address the potential use of false self-employment. It is closely related to the cases presented in the chapter on intermediary agencies (Section 3), pay-to-fly (Section 3) and gender and work-life balance (Section 5), as these topics are strongly connected to atypical employment relationships.

Particularly, this assessment has examined the current problems related to the increase of the use of self-employment in the place of employment relationships so as to identify any possible issues associated with such relationships in the aviation sector. It examines whether the recurrent formalisation of self-employment contracts with pilots by the air carrier itself (or through other intermediary companies) should lead to the requalification of these corporate contracts into employment contracts.

National labour inspectorates and tax authorities have detected problems that led them to open investigations so as to verify if there have been abuses in the use of self-employment. This has in some scenarios been brought to courts, which have confirmed violations of national employment legislation.

To illustrate possible abuses or breaches we examined legislation, investigations and recent court rulings that analyse a series of new types of employment relationships which, as in the aviation sector, could also be considered as atypical (for example, the relationships in the new digital platforms). The findings can be then transposed, by analogy, to air crew employment cases.

Given that the approaches to the definition of self-employment vary across the EU (as identified in Trafikstyrelsen (2014)), the aim of this assessment is to analyse the situation, under both applicable legislation and relevant case-law, in Member States with such different approaches to self-employment.

Therefore, a Member States with different legal cases with regards to labour law have been selected:

- (i) Two Member States with protective legislation towards employees (France and Belgium); and,
- (ii) One Member State with more liberal legislation (UK).

5.7.1 France

In general, **France** is characterised by a high level of protection for employees. Employees in France are defined as those persons who render services in exchange for a payment in a dependent/submission manner (ICLG, Employment and Labour Law 2018, 2018). However, the abovementioned definition is being questioned as illustrated by the following court rulings:

Ruling of the Cour d'appel of Paris of 13 December 2017:

The judgment considered that a self-employed driver was in reality an employee, irrespective of how the parties named the contract. This conclusion was based on the company's management facilities.

Ruling of the Conseil de Prud'hommes of Paris of 1 February 2018:

This resolution denied the employment nature of the relationship between a driver and Uber BV, based on the following reasons:

- "It has been proved that the Uber company does not carry out any time control" and "has no obligation of presence or connection time".
- The driver "was free to work according to the schedules and days that suited him".

The Court considered that the driver has an ability to control their working hours (which allowed him to choose whether or not to accept orders for providing services and stop working when he/she wanted).

5.7.2 Belgium

Belgium is Member State that has adopted a protective approach towards employment rights and whose authorities have actively fought against bogus self-employment (although not specifically in the aviation industry).

Settled case law

The essential character of a subordinated relationship and its elements, currently provided by law, were previously identified by case law, as it appears from the judgement of the Brussels Labour Court of Appeal (*Cour du travail / Arbeidshof*) of 29 January 2003.

Case law tends to view self-employment as false when many of the above elements are present. Indeed, the Brussels Labour Court of Appeal has frequently reiterated that case law makes use of the "*méthode du faisceau d'indices*", that is a "method of concordant indicia" (judgements of 24 November 1994 and 28 June 2001). This method consists of assembling indicators supporting a particular legal theory concerning an issue. Each indicator by itself does not determine the issue, it only points to a rebuttable presumption, but once all the indicators are assembled into a coherent body of evidence, the latter, taken as a whole, will tend to prove the issue.

In its judgement of 28 June 2001, the same Labour Court of Appeal recognised the existence of an employment relationship between a radio station and its hosts. The Court based its decision on the fact that the independent status was imposed on the hosts as well as the working hours and the hourly rates. In addition, prior consent for holidays was required and the hosts had no power of initiative.

In its judgement of 29 January 2003, the Brussels Labour Court of Appeal found the existence of an employment relationship between three workers and the car garage for which they provided services without any service contract, based on a bundle of indicators (of the abovementioned elements).

In a case concerning a lorry driver who was also the owner and manager of a transportation company, the National Social Security Office (*Office nationale de sécurité sociale / Rijksdienst voor Sociale Zekerheid*) rejected to change his status from employee to self-employed. In its judgement dated 16 September 2004, the Mons Labour Court of Appeal first recalled that, in the transport sector, an employee relationship shall exist when (i) the activity concerns the transport of goods, (ii) the transportation is instructed by an undertaking and (iii) the driver is not the owner of the vehicle used for the transportation. The Court ruled that, in this case the self-employment status was real; there was no subordinated relationship between the lorry driver and the company since, at the same time, he was the owner and manager of the undertaking.

The Mons Labour Court of Appeal delivered another judgement on 13 December 2012 concerning three self-employed drivers in charge of supplying a wholesaler's pharmaceutical products to different pharmacies. The Court recognised the existence of an employment relationship between these drivers and the wholesale company, on the basis of the following indicators, which proved the existence of a subordinated relationship: there were constraints on the drivers concerning the working time and the working organisation (itinerary, delivery order and schedule determined by the undertaking) and the drivers were paid at a fixed fare unilaterally set by the undertaking.

Recent inspections in the aviation sector

On 24 May 2018, the Belgian authorities (the Belgian Labour Prosecutor (*Auditeur du travail / Arbeidsauditeur*) along with the Social Affairs Inspection) carried out inspections at Brussels South Charleroi Airport and interviewed around 60 Ryanair aircrew (Libre, 2018). Certain pilots had been forced to work for Ryanair under a self-employed status. The Belgian Labour Prosecutor explained that Ryanair had created companies for the sole purpose of appointing these pilots as their directors and, therefore, imposing this specific status on them. In this regard, he gives the example of a French pilot who had been appointed as a director of an Ireland-based company together with two other people who he did not know⁸⁴. Furthermore, according to the Belgian Labour Prosecutor, certain members of the cabin crew hired after 2012 were not registered with the Belgian Social Security service, which is a mandatory legal requirement under Belgian Law.

New concerns about atypical employment relationships:

The use of new technologies also raises questions. Recently, the Belgian Federal Minister for Economic Affairs decided to coordinate the investigations opened by the Labour Inspectorate and Social Affairs Inspectorate concerning the social status of riders providing services for the delivery company, Deliveroo. The aim is to assess whether these riders are employees under Belgian law. Furthermore, in 2015, the Belgian socialist trade-union filed a complaint against Uber with the Belgian Labour Prosecutor concerning the use of bogus self-employment. This case is still pending.

5.7.3 United Kingdom

In contrast to the previous two Member States, the UK has been among the Member States that have introduced an intermediate legal status of "workers", between employees and self-employed. Workers are defined as those who personally render services in exchange for remuneration but have no freedom to decide not to turn up for work, (Gov.uk, 2018). Workers are also not protected in case of unfair dismissal and are not entitled to receive redundancy payments (ICLG, UK, 2018).

Such an approach presents the challenge of differentiating between an employee, a worker and a self-employed. UK case law has created some tests to identify the subordination or dependant element which is a basic character in an employment relationship (Prassl, 2015). Nonetheless, there are challenges as a result of the new atypical employment relationships (Prassl, 2015), as the following rulings show:

Ruling of the Employment Appeal Tribunal (UK) of 10 November 2017:

The Tribunal rules on the appeal brought by Uber BB, Uber London Ltd and Uber Britannia Ltd against the Ruling of the London Central Employment Tribunal ("ET") of October 2016, which recognised Uber drivers as employees and, consequently, confirmed their right to receive the minimum salary.

The Tribunal also stated the irrelevance of the contract's name, relying on the different proof of dependence recognised in first instance: monitoring of the driver, imposition of rules and a maximum price for service, assumption by Uber of certain expenses of the driver (cleaning); but contextualised by the circumstance of the driver's freedom to provide his services at any time, without being subject to a commitment of prior notice.

Ruling of Judgment of the Central London Employment Tribunal of 5 January 2017:

⁸⁴ Similar cases were reported by Ryanair pilots interviewed for this study.

The judgment recognises the existence of an employment relationship between a messenger and the company for which he provided services through a services contract. In the said contract, the messenger recognised his condition as a self-employed.

However, the judgement considers that the main element to decide if there is an employment relationship is if the company is exercising management functions over the messenger.

5.7.4 Conclusions from the analysis of three cases

From the abovementioned analysis of legislation and court rulings it can be concluded that the traditional vision of worker is undergoing a major change due to the transformation of the labour market. In this sense, the main difference between employees and self-employed individuals is based on the subordinated position in employment relationships (Aberg, 2016).

However, even in Member States like the UK that have introduced an intermediate concept of “economically dependent work” the analysis pointed to problem as a result of the new atypical forms of work.

At the same time, the CJEU has set limitations to this discretion in order to ensure the effectiveness of EU law (i.e. Member States cannot substantially deprive a Directive from its intended effect by limiting excessively its scope). In particular, in the recent judgment *Ruhrlandklinik*, the Court did not consider itself bound by the legal characterisation under national law of the employment relationship at stake (which had to be considered as a relationship covered by the Directive 2008/108/EC on temporary agency work).

As indicated above (see 5.5.1) In its case law, the CJEU has established the following autonomous European definition of worker⁸⁵: “A natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration.” Alleged self-employed fulfilling these criteria should be qualified as workers and therefore covered by EU labour law. On the contrary, persons: (i) providing services independently; (ii) under their own responsibility and (iii) bearing the risk of their business are considered as self-employed and are not covered by the EU labour law *acquis* since they do not fulfil those criteria.

Furthermore, some authors have challenged the rationale of a national approach to these atypical work relationships in view of the global nature of certain sectors, such as the aviation⁸⁶. In other words, there are calls for addressing or somehow regulating atypical work relationships at an EU level since certain sectors, such as the aviation one, by their very nature, imply that the core tasks performed by most people involved (like cabin crew) is carried out in different countries.

5.8 Conclusions

In this chapter we examined the different forms of self-employment in aviation, the extent of pilot self-employment and provided an assessment of the challenges associated with the use of self-employment for the pilots and the national authorities.

The analysis of the legal framework related to (self-)employment suggested that there is no specific legislation referring to (self-)employment at EU level and no specific legislation establishing the rights and obligations for self-employed (pilots) and for those that use their services (air carriers – directly or indirectly). Approaches differ among Member States and can also differ depending on the specific topic covered (tax, labour law, social security). Nonetheless, criteria have been developed by some Member States to define self-employment and differentiate from alternative arrangements that are characterised by a high degree of dependence and subordination to a single client. In some Member States such criteria have been adopted in order to identify bogus self-employment, while in others they have been used to introduce a third category of “economically dependent workers” that stands

⁸⁵ Judgments of 3 July 1986, *Deborah Lawrie-Blum*, Case 66/85; 14 October 2010, *Union Syndicale Solidaires Isère*, Case C-428/09; 9 July 2015, *Balkaya*, Case C-229/14; 4 December 2014, *FNV Kunsten*, Case C-413/13; and 17 November 2016, *Ruhrlandklinik*, Case C-216/15.

⁸⁶ This was also held by the professor Rodríguez Fernández, M. L. last 20th April 2018 in the Spring Conference organised by the Spanish Association of Employment Lawyers (“ASNALA”) in the context of a speech on digital platforms.

between employees and self-employed both in terms of their contractual obligations but also in terms of their access to social benefits.

The responses to the survey of pilots - largely in line with other input from stakeholders – points to the following key findings:

- Use of self-employment is relatively limited in the air services sector. Around 9% of pilots that responded to the survey identified themselves as self-employed. It varied in the range of 3-20% depending on the country and type of air carrier.
- The majority of pilots that identified themselves as self-employed (88% according to the survey) are contracted through an intermediary, and not directly with the air carrier.
- Self-employment arrangements are predominantly used by low-cost carriers, but even there only by certain carriers among them. According to the survey and input from stakeholders, Ryanair and Wizzair are the carriers that have made most common use of this practice.
- Traditional carriers appear to make very limited or no use of such arrangements (with some exceptions) – less than 1% according to the survey, although this could evolve due to the need for traditional carriers to adjust their model in a highly competitive environment.
- Business aviation is another sector where self-employment is considered to be possible due to its nature (non-scheduled services) among stakeholders although their responses to the survey did not confirm that (less than 1%).

On the basis of the responses of pilots and the input from stakeholders, the majority of pilots that identify themselves as self-employed cannot be classified as genuinely self-employed. The large majority of them disagreed strongly or disagreed that they were free to work for more than one air carrier in parallel. Similarly, the great majority (93%) disagreed strongly or disagreed that they had the flexibility to decide when and how many hours they fly.

In relation to that, all unions that contributed suggested that, in their view, self-employment arrangements are largely incompatible with the way the passenger air services sector operates (scheduled services, need to have type rating for a specific carrier, need to follow carriers' specific instructions and observe safety rules and procedures).

In terms of the working conditions of those identified as self-employed, the survey responses suggest some significant differences in comparison to those that are not self-employed pilots:

- Most self-employed appeared unlikely to agree that their employer recognised unions (only 20% in comparison to 70% among those not self-employed).
- They were also almost twice as likely (57% to 32%) to agree that they feel pressured to fly even if they are fatigued while almost half as likely to agree (32% to 65%) that they are not pressured to fly when their professional judgement indicates that they shouldn't.
- They were half as likely to agree (27% to 55%) that they have enough time for pre- and post-flight duties.

In contrast, there were no significant differences in regards their likelihood to indicate that they often feel fatigued (48% and 49% respectively) or that their rest time is in accordance with applicable safety rules (79% and 70% respectively).

In many respects, the responses provided suggest that most of those identified as self-employed could be characterised as economically dependent workers. Nonetheless, according to most of the unions even this could be called under question since, from the information collected during the interviews carried out with pilots and the pilot survey, it may be concluded that self-employed pilots most often act in the same manner as any other employees in the relevant companies. They have an exclusive relationship with the air carrier; they receive their instructions from the air carrier; and, they report to the same persons as direct employees.

From the point of view of the authorities, the responses to the respective surveys – albeit limited and thus possibly not fully representative – suggest that large number of them are not aware of the extent of the use of self-employed pilots operating with their Member States. Furthermore, most of those responding appeared to have limited views on the implications that the use of self-employment

arrangements in aviation may have with regards to the employment conditions and remuneration or tax/social security contributions of those pilots.

Some Member States (BE, DE) referred to specific efforts to understand the extent of self-employed pilots within their Member State and whether this form of employment was bogus, but there were no such cases identified.

A final point to be made is the extent that the use of self-employment arrangements has had an impact on competition and fair playing field in the air services sector. Pilot's representatives and air carriers interviewed linked the use of self-employment arrangement with efforts by some carriers to avoid tax and social security obligations. In principle, to the extent that such arrangements are available to all carriers under the same rules and conditions, an argument for unfair competition cannot be substantiated. Carriers should be expected to seek a competitive advantage – including through labour cost reduction- as long as they comply with the same rules. However, in the absence of a common approach among Member States – both in terms of the definition of self-employment as well as to the actions taken to monitor its use and avoid the use of bogus self-employment –issues of uneven playing field among air carriers can arise.

6 Posted workers

6.1 Introduction / scope

In this section we examine the level of use and the relevance of the Posting of Workers Directive (96/71/EC⁸⁷) for workers in the aviation sector. Although common in some sectors⁸⁸, it is not clear whether and to which extent this Directive is applicable to pilots and cabin crews. This section will delve into that issue.

6.2 Definitions and legal framework

Posting of workers occurs when workers are sent to carry out a service in another EU Member State **on a temporary basis**. Given the transnational nature of the work, the EU legal framework provides clarity on the legal position of such workers.

One key EU legislation covering these workers is **Directive 96/71/EC on Posting of Workers**. This Directive was adopted with the objective of “*of encouraging the exercise of the freedom to provide services across borders within a climate of fair competition and respect of the rights of workers by adapting to the new economic and labour market conditions*” (European Commission, 2016). It defines a set of mandatory rules regarding the terms and conditions of employment to be applied to posted workers aiming to guarantee that the rights and working conditions are protected throughout the EU and avoid “social dumping” where foreign service providers can undercut local service providers because their labour standards are lower. Even though workers posted to another Member State remain employed by the sending company and thus under the law of the origin Member State, the Directive ensures that these workers are entitled to core rights in place in the host Member State.

The Directive provides a definition of posted worker and establishes the situations in which its provisions should be applied (see Box 6-1).

Box 6-1: Definitions and scope of the Directive on Posting of Workers (96/71/EC)

Definition of Posted Worker

Article 2(1) states: “**a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works**”

Article 2(2) adds that: “**the definition of a worker is that which applies in the law of the Member State to whose territory the worker is posted**”

Scope of the Directive

Article 1(3) of the Directive states that it will apply to undertakings that take one of the following transnational measures:

- Post workers to the territory of a Member State on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State, provided there is an employment relationship between the undertaking (firm) making the posting and the worker during the period of posting.
- Post workers to an establishment or to an undertaking owned by the group in the territory of a

⁸⁷ On 29th May 2018, the European Parliament voted in favour of the revised Posting of Workers Directive, including new rules concerning pay, workers conditions, duration of posting, and protection against fraud. The new elements of the revised directive will apply to the transport sector once the sector-specific legislation, included in the Mobility Package, enters into force. Until then, the 1996 version of the directive remains applicable: <http://www.europarl.europa.eu/news/en/press-room/20180524IPR04230/posting-of-workers-final-vote-on-equal-pay-and-working-conditions>

⁸⁸ According to (Pacolet & De Wispelaere, 2016), in 2015 more than million workers were posted according to the Posting of Workers Directive, with a third of those being in the construction sector.

Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting.

- Being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting.

Summary of provisions

When applied to a posted employee, the Directive provides for the following:

- Certain terms and conditions of employment of the Member State where the employee is posted (host Member State) should apply if this is more favourable than the law of the habitual place of work. These include minimum rates of pay, maximum work periods and minimum rest period, and minimum paid leave, among others.

Workers can sue employers for any dispute in the country of posting as well as in their home Member States.

The objectives of the Posting of Workers Directive were further reinforced by the adoption of Directive 2014/67/EU which has the aim *“to improve the implementation and application in practice of the Directive on the posting of workers (Directive 96/71/EC), thereby guaranteeing better protection of posted workers and a more transparent and predictable legal framework for service providers”* (European Commission, 2014).

On 29th May 2018, the European Parliament voted in favour of the revised Posting of Workers Directive, including new rules concerning pay, workers conditions, duration of posting, and protection against fraud. The new elements of the revised Directive will apply to the transport sector once the sector-specific legislation, included in the Mobility Package, enters into force. Until then, the 1996 version of the Directive remains applicable.

Another relevant EU legislation for posted workers is **Regulation (EC) No 883/2004 on the coordination of social security systems**. For workers posted in another Member State, this Regulation ensures that social security affiliation remains stable and the rules of the sending Member State apply, unless the posting lasts more than 24 months⁸⁹. We note that the definition of posted worker differs from that of the Posting of Workers Directive (see Box 6-1), where self-employed persons are also covered (as opposed to the Directive which does not cover these persons).

Box 6-2: Definitions and application of Regulation (EC) No 883/2004 on the coordination of social security systems

Definitions

Article 12 (1) states: *“person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed twenty-four months and that he is not sent to replace another person”*

Article 2(2) adds that: *“a person who normally pursues an activity as a self-employed person in a Member State who goes to pursue a similar activity in another Member State shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such activity does not exceed twenty-four months”*

⁸⁹ Article 16 of Regulation (EC) No 883/2004 allows this period to be extended on a case-by-case basis if both Member States agree to that. Otherwise, after 24 months only the rules of the receiving Member State apply.

In cases of aircrew, a specific provision linking the social security coverage to the **home base** was introduced in 2012, with Regulation 465/2012. Thus, home base for aircrew became defined as “the location nominated by the operator to the crew member from where the crew member normally starts and ends a duty period, or a series of duty periods, and where, under normal conditions, the operator is not responsible for the accommodation of the crew member concerned”. This replaced the previous regime where social security contributions were made to the Member State where the crew member lived only if they performed more than 25% of their activities there, otherwise contributions were paid to the Member State where their employer was based (Taxation, 2012).

6.3 Evidence of posting of workers in the aviation sector

The available literature provides very limited indications of the extent to which posting of workers takes place in the aviation sector. The only available source concerns the issue of Portable Documents A1. In accordance with Title II of Regulation (EC) No. 883/2004, workers are issued an A1 document by the Social Security institution of the country whose legislation the workers are subject and confirms that they are not subject to the legislation of any other country. The A1 document is a formal statement on the applicable social security legislation and proves that the holder is:

- Subject to the social security legislation of the Member State issuing the A1 document (Article 11(5) of Regulation (EC) No. 883/2004);
- A posted employed/self-employed person (within the meaning of Regulation (EC) No. 883/2004 Article 12); or
- Active in two or more Member States (Article 13 of Regulation (EC) No. 883/2004).

An analysis of the number of A1 documents issued to pilots and cabin crew can therefore reveal the extent of posting in the sector but should be understood to include a more wide-ranging number of situations given the discussion above on the broader definition used by the Regulation 883/2004 (e.g. includes self-employed persons). Available data from the 2016 report on the coordination of social security systems under Regulation 883/2004 suggests a very limited issuing of A1 documents for pilots and cabin crew which, given that even those might not be posted workers according to the respective Directive, indicates very low usage of the mechanism⁹⁰. In total, 681 A1 documents were issued in 2016 for flight or cabin crew staff across the EEA which was around 0.03% of the total such documents issued across all sectors (Pacolet & De Wispelaere, 2017). In 2014 and 2015, the figures were in the same order of magnitude (Pacolet & De Wispelaere, 2015); (Pacolet & De Wispelaere, 2016). As mentioned, this fact in itself is not conclusive as to whether these workers were or were not posted according to the Posting of Workers Directive. Results from our survey show that around 25% of workers that have been placed on a temporary basis outside their home base had been issued an A1 document (123 out of 512 pilots (24%) and 21 out of 75 cabin crew (28%)).

The surveys conducted in the context of the study also shed light on the extent to which the temporary placement of aircrew in another Member State occurs. Aircrew (pilots and cabin crew) were asked to indicate whether their working arrangement could be described by the following options, representing temporary posting of workers in the sector:

- Placement on a temporary basis outside home base;
- Wet leasing; or
- Other temporary placements.

The following sections assess in detail the responses received and, combined with interview input from stakeholders, help understand trends in the posting of workers in the aviation sector.

⁹⁰ However, in some case workers that are posted for a very limited of time (a few days, e.g.) might decide to not ask for an A1 document, even if they are aware of their existence.

6.3.1 Placement on a temporary basis outside home base

Among survey respondents, only 50 out of 1,668 (3%) cabin crew and 311 out of 4,922 (6%) pilots indicated that they work for an EEA air carrier on a temporary basis (directly or via a temporary agency) in an operating base outside their home base (Table 6-1).

Table 6-1: “Do you work for an EEA air carrier on a temporary basis (directly or via a temporary agency) in an operating base outside your home base?” (Q2.6.1 pilot survey, Q2.6.1 cabin crew survey)

Aircrew type	Yes (%)	No (%)	Don't know (%)	Not relevant (%)	Total
Cabin crew	50 (3%)	1473 (88%)	62 (4%)	83 (27%)	1,668
Pilots	311 (6%)	4,277 (87%)	100 (2%)	234 (5%)	4,922

Source: Surveys of pilots and cabin crew

The overall low level of use of aircrew on a temporary basis outside their home base was also corroborated by other stakeholders.

Among national employment authorities and national labour inspectorates (21 in total), only three – the two Estonian authorities and the Spanish labour inspectorate – classified the use of temporary placement as “quite common”, while the Croatian labour inspectorate considered it “very common”. Nine more authorities responded “not used”, “very uncommon” or “quite uncommon” (national authorities of Czech Republic, Malta, Lithuania and Sweden and the labour inspectorates of Austria, Czech Republic, Malta and the two Swedish authorities).

Among air carriers, six out of 24 respondents to the relevant question reported to be placing crew on a temporary basis outside their home base – three traditional, and one of each of low-cost, charter and “other” air carriers. All other 18 air carriers indicated that have not done so.⁹¹ Two air carriers suggested during interviews that use of posting of workers was limited except in very specific cases where a worker was needed somewhere for a short period of time.

Looking at trends by business model of the air carrier, low-cost carriers appear to make greater use of such arrangements as 37 of the 50 cabin crew (74%) and 178 of the 311 pilots (57%) were aircrew employed by a low-cost carrier. The results from the surveys of pilots and cabin crew are in line with input from an air carrier representative, BALPA, which indicated that posting of pilots was more prevalent in the case of low-cost carriers (as well as new air carriers). It is however not supported by the responses from the air carriers, where only one out of six low-cost air carriers that responded indicated that it has placed crew on a temporary basis outside their home base.

In contrast, there is no clear pattern in relation to the nature of the contract although the share of those with a direct contract – 23 of these cabin crew (46%) and 156 of the pilots (50%) – is less than that of the total sample population – 80% and 82%, respectively. We should also note that nine of the 311 pilots (3%) reported being self-employed – these are not covered by the definition in the Posting of Workers Directive.

6.3.2 Wet leasing

The surveys also inquired about the use of workers temporarily placed in another Member State in the context of a wet leasing contract. This is a particular form of subcontracting, known as *wet leasing* in the aviation industry⁹², whereby an air carrier headquartered in Member State A can enter into a lease

⁹¹ The results might have been biased by the question being asked, which stated “Are pilots and/or cabin crew placed on a temporary basis* (directly or via a temporary agency) in an operating base outside their home base?” Given that this was asked using a present tense, it might lead some respondents to not answer positively in case they have only posted workers in the past.

⁹² Wet leasing is currently regulated by Article 13 of Regulation (EC) No 1008/2008 on common rules for the operation of air services in the EU. The Regulation defines this subcontracting scheme as follows: “an agreement between air carriers pursuant to which the aircraft is operated under the AOC (Air Operator Certificate) of the lessor”.

agreement with an operator of Member State B or a third country. By means of the agreement, the latter (“lessor”) puts at the disposal of the former (“lessee”) an aircraft, all or part of the aircrew, and possibly as well maintenance services and insurance. A wet lease generally lasts between 1 and 24 months but is more time limited and restricted when it comes to wet-leasing aircraft registered in third countries.

From the perspective of workers, they can be temporarily assigned to an operational base outside their home base in the context of these agreements. While a wet lease arrangement is on-going, the employees of the lessor continue to work for the lessor⁹³. The employment contracts signed between these employees and the lessor remain in force throughout the duration of the wet lease agreement.

In our survey, aircrew working for EEA carriers were also asked questions related to their wet leasing arrangements to establish whether they have been posted. More specifically, the questions tried to establish whether, in the case they work on a wet-lease, they work inside or outside their home base. In the case of the latter, that might indicate that they have been posted. Among the pilots, 166 out of 4,922 (3,4%), stated they were working on a wet lease with another EEA carrier from their home base and 126 out of 4,922 (2,6%) with a carrier from outside of their home base. 34 out of 1,668 (2%) of cabin crew stated they were working on wet leases from their home base and 16 out of 1,668 (1%) from outside of their home base (Table 6-2).

Table 6-2: “Do you work for an EEA air carrier as part of a wet-leasing agreement with another EEA carrier from your home base/from outside your home base?” (Q2.6.2/2.6.3 pilot survey, Q2.6.2/2.6.3 cabin crew survey)

Location of work as part of wet-lease	Type of worker	Yes (%)	No (%)	Don't know (%)	Not relevant (%)	Total
Home base	Cabin crew	34 (2%)	1463 (88%)	112 (7%)	59 (4%)	1668
	Pilots	166 (3%)	4474 (91%)	121 (2%)	161 (3%)	4922
Outside home base	Cabin crew	16 (1%)	1478 (89%)	113 (7%)	61 (4%)	1668
	Pilots	126 (3%)	4531 (92%)	108 (2%)	157 (3%)	4922

Source: Surveys of pilots and cabin crew

When asked about the use of pilots and cabin crew by the air carrier as part of a wet-leasing agreement to work in a different Member State, both types of national authorities (employment ministries and labour inspectorates) also said that their use was not standard, with only the labour inspectorates of Croatia, Estonia and Spain responding that their “quite common”; seven out of 21 authorities said that this type of arrangement was “not used”, “very uncommon” or “quite uncommon”.

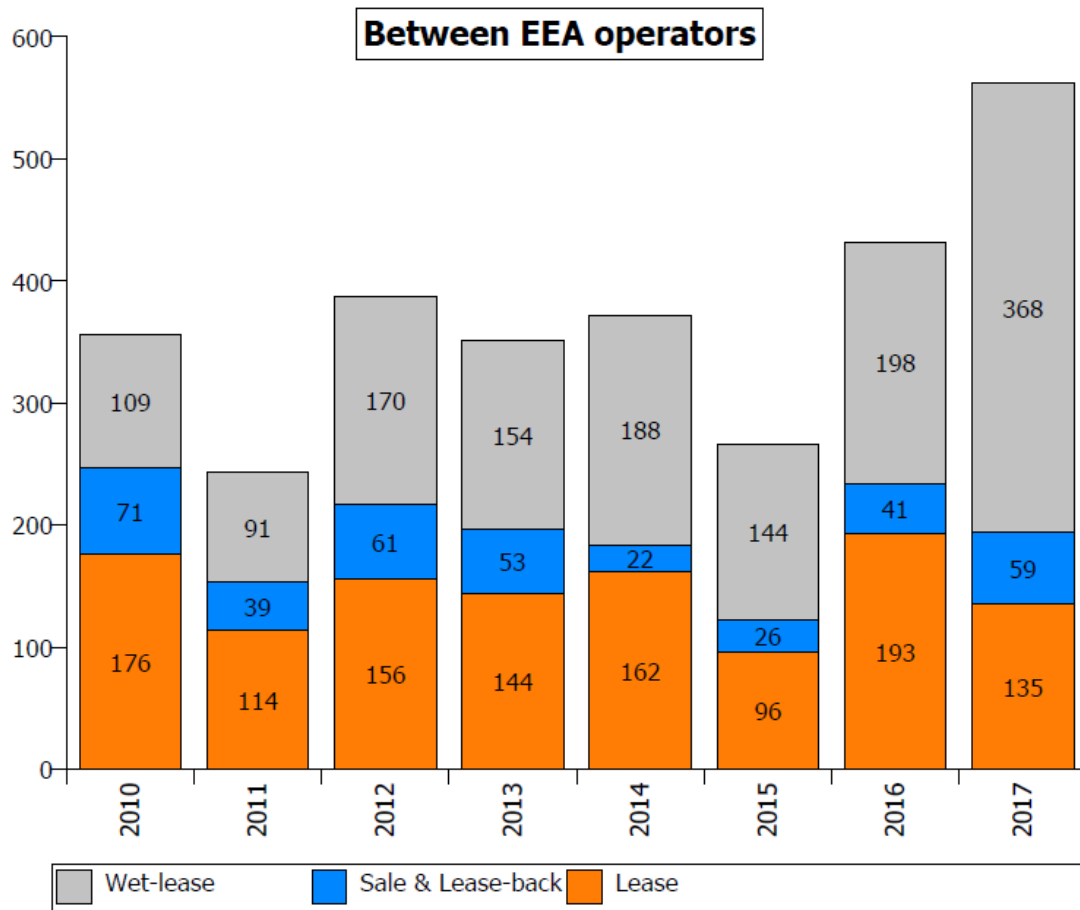
Among the air carriers that answered our survey, four out of 23 said that workers were temporarily placed with their air carrier being the lessee (two traditional, one low-cost and one charter), and five air carriers (out of 23) saying that was the case when they were the lessor (four traditional and one low-cost). That is, only a small number of air carriers reported making use of workers temporarily working from a base different from their home base as part of a wet lease agreement.

This finding is related to the fact that wet leases do not appear to be a common occurrence. Figures from Flightglobal show that the use of wet leases by EEA carriers is relatively small, both of intra-EEA and extra-EEA leased aircraft. Given than, according to Eurostat, in 2016 the commercial aircraft fleet

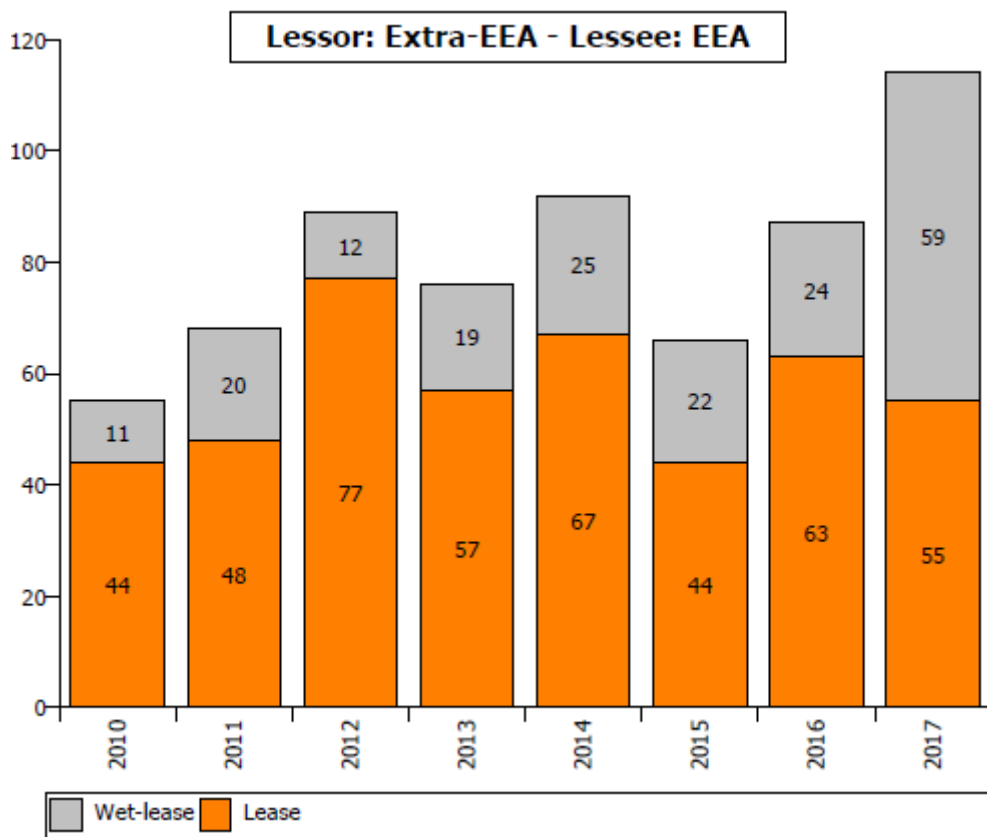
⁹³ A caveat to this notion was added by an interviewee, who pointed out that aircrews who are operating flights in a wet leasing agreement for the same air carrier into two groups, with different working conditions: (i) those working under a contract with the lessor, and (ii) those working under a contract with the lessee. In other words, although aircrews could be rendering services for the same air company (or “brand”), they could have different working conditions.

in the EEA consisted of 6,935 aircraft (Eurostat, 2018), this number of wet leases represent around 3% of the number of aircraft in operation in that year – assuming that the fleet was the same in 2017, the number of wet leases represented 6% of the fleet in that year. However, these numbers should be interpreted with caution, as wet-leases are usually only used temporarily and could be used for even just a single flight; a fairer comparison would be the number of flights operated in wet-leases compared to the total number of flights operated in the EEA - that data was not found, but it would be expected that these figures would be much smaller than 3% or 6%.

Figure 6-1: Leasing trends between EEA operators



Source: Flightglobal

Figure 6-2: Wet leasing trends by EEA lessees from operators registered in third countries

Source: Flightglobal

Note: data refers to wet-leasing in from third country operators, rather than third country registered aircraft as defined under Regulation 1008/2008.

6.3.3 Other temporary placements

Pilots and cabin crew were also asked if they worked in other arrangements that could be considered as temporary placement in another Member State (Table 6-3). Only 2% (34 out of 1668) of the cabin crew and 4% (185 out of 4922) of the pilots answered positively.

Table 6-3: “Other cases that could be considered as temporary placement in another Member State?” (Q2.6.4 pilot survey, Q2.6.4 cabin crew survey)

Aircrew type	Yes (%)	No (%)	Don't know (%)	Not relevant (%)	Total
Cabin crew	34 (2%)	1634 (98%)	0 (0%)	0 (0%)	1668
Pilots	185 (4%)	4737 (96%)	0 (0%)	0 (0%)	4922

Source: Surveys of pilots and cabin crew

6.3.4 Temporary nature of the placement

A follow-up question to pilots and cabin crew that indicated that they are in temporary placement asked whether they were expected to return and resume working from their contractual home base after working from a different operating base. Thirty-seven out of 69 (54%) cabin crew and 310 out of 491 pilots (63%) stated that they were (Table 6-4). Since posting of workers is supposed to be a temporary situation, the number of workers that do not expect or do not know if they are returning to

their contractual home base might indicate that these workers are not in fact in a temporary posting, but in a permanent one.

Table 6-4: “Are you expected to return and resume working from your contractual home base after working from a different operating base?” (Q2.7.2 pilot survey, Q2.7.2 cabin crew survey)

Aircrew type	Yes (%)	No (%)	Don't know (%)	Not relevant (%)	Total
Cabin crew	37 (54%)	6 (9%)	18 (26%)	8 (12%)	69
Pilots	310 (63%)	64 (13%)	42 (9%)	75 (15%)	491

Source: Surveys of pilots and cabin crew

Summarising, the evidence from the responses to the survey of aircrew suggests that around 6% of cabin crew (100 of the 1,668 answering the survey) and 12% of pilots (584 of the 4,922 answering the survey) are in some form of temporary placements in another Member State. Among aircrew working for low-cost carriers – which tend to have multiple operating bases – the numbers are somewhat higher, especially for pilots: 7% of cabin crew (64 out of 886) and 15% of pilots (300 out of 2,025) working for a low-cost carrier responded positively to at least one of the questions asking about temporary placement. This survey evidence seems to support the information provided by BALPA, who argued that posting was more common among pilots working for low-cost carriers and not the view of another workers' group which suggested that it is more common for cabin crew.

These answers indicate that these aircrew could potentially be considered to be posted under the Posting of Workers Directive regime; this issue will be explored in the next section.

6.4 Application of the Posting of Workers Directive

The next step in the analysis examined the actual level of application of the Posting of Workers Directive. The surveys of aircrew, air carriers and national authorities were used to help to understand if the Directive on Posting of Workers has been applied in the cases of posting of workers assessed above.

Two specific situations have been identified that represent occurrences where aircrew could be considered as posted workers and where the Posting of Workers Directive should apply. These include:

- Aircrew occupied in the context of wet leasing contracts; and
- Temporary assignment of aircrews to a different operational base from home base.

Case studies have thus been developed to assess to what extent the Directive applies to aircrew in those situations. Finally, a discussion is provided on problems concerning the application and enforcement of the Directive in the aviation sector.

6.4.1 Evidence from the surveys and interviews

Responses from pilots and cabin crew suggest some level of use of the Directive (Table 6-5), although at a very limited extent even for those aircrew working on a temporary basis. The number on Table 6-5 only list responses for those people that had identified themselves as being placed temporarily (i.e. responded 'yes' to the questions in Table 6-1, Table 6-2 or Table 6-3).

Table 6-5: “Has your employer applied the rules related to posting of workers in another Member State?” (Q2.7.3 pilot survey, Q2.7.3 cabin crew survey; Number and share of aircrew in temporary placement indicating)

Aircrew type	Yes (%)	No (%)	Don't know (%)	Not relevant (%)	Total
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Aircrew type	Yes (%)	No (%)	Don't know (%)	Not relevant (%)	Total
Cabin crew	8 (11%)	20 (27%)	45 (61%)	1 (1%)	74
Pilots	93 (19%)	129 (26%)	234 (47%)	45 (9%)	501

Source: Surveys of pilots and cabin crew

Among pilots that responded “yes”, 38 worked for a low-cost carrier (41%), 25 for a traditional (27%), 17 for a charter (18%), and the remaining for business (two, 2%), freight (one, 1%) and other (one, 1%) carriers. Among cabin crew that responded “yes”, four worked for a low-cost carrier (50%), two for a traditional carrier (25%) and one for an “other” carrier (13%) – none of these workers reported working for charter, freight and business carriers.

The surveys of both types of authorities and air carriers also seem to indicate limited actual use of the posting rules. Among nine national employment authorities, only Malta asserted that the Directive has been applied by air carriers. Four out of 12 labour inspectorates (AT, HR, EE, MT) also mentioned that the Directive has been applied by air carriers. The national authority of Sweden added that “posting is not common, its more common to open new AOC [air operator certificate] in the country of question”; while no further details were given, it is expected that this means that these air carriers will hire people in the country where they got their new AOC from.

From their side, none of the 27 air carriers surveyed reported having applied the Directive (nine air carriers said “no”, eight “don’t know” and six did not answer the question). However, in somewhat contradictory follow-up comments that are also possibly illustrative of the overall confusion around its applicability, four of the air carriers gave examples of situations where they have applied the Directive:

- One of the carriers mentioned that they have used the rules in a wet-lease outside of the EEA (they were supplying the aircraft and crew) and another when leasing in an aircraft from another carrier. This comment was unclear since the Posting of Workers Directive relates to the posting of workers within the EEA, so it is likely that the air carrier did not really understand the question being asked. No follow up was possible to clarify.
- An air carrier mentioned a situation where posted pilots were used via a temporary working agency. We do not know if they did apply the Posting of Working Directive in this case or not.
- Finally, one air carrier explained that they offered first officers the possibility of changing bases temporarily to access a captain position in another base with the aim of returning to the original base when a captain position becomes available there. This subject was also addressed by aircrew representatives, namely the Norwegian Pilots Group. According to this group, these offers are often only available in countries where worse contractual conditions apply, namely lower pay. On top of that, sometimes pilots are forced to resign from their original contract and sign a new one at lower pay in the new country. By doing this, the air carrier also avoids reimbursing any transport and accommodation expenses to the pilot, as technically he or she is not posted.

In line with these findings, the interviews with unions (ETF, EurECCA and ECA) also suggest that the Directive is not typically applied in the aviation sector. EurECCA argued that the use of the Directive is limited, mainly because it is quite expensive for employers (e.g. costs with daily allowances and accommodations etc.). However, they still claimed that low-cost carriers sometimes use it to post workers with lower-paid contracts signed in Eastern Europe into countries in Western Europe with higher costs of living, and avoiding hiring people in these countries with higher costs – this was a view also supported by the Norwegian Pilots Group. These groups did not provide concrete examples of employees in such a situation. EurECCA agreed that some low-cost carriers misuse the Posting of Working Directive by employing lower-paid workers in country with high cost of living, and argued that, in contrast to the low-cost carriers, legacy carriers tend to post workers for *valid purposes*.

Pilots and cabin crew were also asked if they had been informed, by their employers, of the rights applicable in the Member State where they were temporarily posted. For cabin crew, more workers said they were informed of their rights than said that the Directive had been applied to them. For pilots, less than 50% of the number of workers that have said the Directive had been applied to them

said that they were informed of their rights (Table 6-6). Still, in both cases, large numbers of aircrew have not been informed of their rights when temporarily posted: this was the case of 34 cabin crew (46% of those had identified themselves as being placed temporarily) and 355 pilots (70%).

Table 6-6: “Has your employer informed you of the rights applicable in the Member States where you are temporarily posted?” (Q2.7.5 pilot survey, Q2.7.5 cabin crew survey)

Aircrew type	Yes (%)	No (%)	Don't know (%)	Not relevant (%)	Total
Cabin crew	9* (12%)	34 (46%)	23 (31%)	8 (11%)	74
Pilots	41** (8%)	355 (70%)	32 (6%)	78 (40%)	506

Notes:

* 113% of the cabin crew that said that the Directive has been applied to them.

**44% of the pilots that said that the Directive has been applied to them.

Source: Surveys of pilots and cabin crew

As mentioned in the previous section, around 6% of cabin crew (100 of the 1,668 answering the survey) and 12% of pilots (584 of the 4,922 answering the survey) are in some form of temporary placements in another Member State. This indicates that they could potentially be posted in another Member State under the conditions stipulated in the Posting of Workers Directive.

Among those in temporary placement, less than 20% said that the Posting of Workers Directive had been applied to them. This leads to the conclusion that at least some workers are *de facto* posted under the Directive, even if they or their employees do not recognise it.

6.4.2 Case study on wet leasing

This case study examines which employment legislation is currently being applied to aircrew employees in the context of wet leasing and whether the practice is in line with what is legally required under the relevant legislation.

The case that has been selected to illustrate this issue has been inspired by the real situation of one of the cabin crew members interviewed for this study (see Box 6-3).

Box 6-3: Possible fraudulent use of wet leasing arrangements

The cabin crew member in question is a national of Member State A who has worked as an independent contractor for a wet lease company based in Member State B, who assigned him to work as part of a wet lease arrangement from the operational base of another air carrier located in Member State C for some months – no more precise timeframe was given. His independent contractor contract was subject to the Law and courts' jurisdiction of Member State D, the latter being well known for its liberal employment legislation.

The multilateral implications of this contract result in uncertainty regarding the applicable regulations and minimum rights for the cabin crew member concerned. In this sense, he has expressed that he was seriously concerned about his tax obligations and social security future benefits.

Likewise, an additional issue was that the terms of the contracts revealed several indicators of a dependant relationship between the contractor and the air carrier based in the Member State B (see Section 5 on Self-employment). In this sense, the cabin crew member was provided with the air carrier's uniform and crew insignia; the air carrier paid for his training; he had to follow the air carrier's instructions; he had to provide services exclusively for this air carrier and he had a post-contractual agreement. However, the employee did not receive any sick payment.

This case study shows that the use of complex contractual structures involving temporary work agencies, intermediary companies and Wet lease may lead to difficulties when determining the law applicable to the employment agreement with the cabin crew member and the rights and duties

arising therefrom⁹⁴. In this regard, it should be recalled that article 8 of Rome I Regulation foresees the following rules concerning the governing law in employment contracts⁹⁵:

- (a) *By the law chosen by the parties when such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him if the following rules applied.*
- (b) *By the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.*
- (c) *If the previous paragraph is not applicable, by the law of the country in which the place of business through which he was engaged is situated, unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country.*

Moreover, the CJEU (Grand Chamber) by judgment of 13 July 1993⁹⁶ stated that in case that the employee provides services in different countries, the point would be the place from where he is fulfilling the main labour commitments.

6.4.2.1 The application of the Posting of Workers Directive

Whether the Posting of Workers Directive⁹⁷ is applicable to wet leasing arrangements is not clear. Based on the definitions and scope summarised in section 6.2, the first step would be to determine which is the applicable employment legislation to the employment contracts under a wet leasing.

First, it should be analysed if the employee is providing services in different countries, in which case, the applicable regulation would be – as previously stated – the place from where he/she is fulfilling the main commitments (so, there would not be a temporary posting to another Member State), or if, by contrast, the employee is temporarily assigned by the employer to another Member State in order to execute the wet leasing agreement – in which case, the Posting of Workers Directive would be applicable.

In the concrete case of the situation described above, the application of the Posting of Workers Directive is unclear. The Directive is only applicable to employment relationships and, for that purpose, it is necessary to examine the definition of “employee” foreseen in the law of the Member State to which the aircrew has been posted. In this case there was no employment contract. Instead the cabin crew member worked as an independent contractor for the lessor. In this situation, to argue that Posting of Workers Directive applies it would be necessary to previously prove that he was *de facto* an employee.

Likewise, it seems that the independent contractor never had to work in Member State B. He was directly assigned to work as part of a wet lease arrangement from the operational base of another air carrier located in Member State C for some months, but was subject to the Laws and Jurisdiction of Member State D.

In sum, this example demonstrates that wet lease agreements make it difficult to ascertain the applicable employment regime that should govern aircrews’ rights in those situations. Therefore, a case-by-case analysis of the wet lease in question is necessary so as to determine if aircrews working in the framework of these arrangements can benefit from the Directive.

6.4.2.2 Conclusions

The following conclusions can be made regarding the applicability of the legal framework covering posted workers in the case of wet leasing:

⁹⁴ The applicable rules to the employment contracts would be analysed in a detailed manner in Section 9.

⁹⁵ This Regulation is basically repeating the wording of the previous article 6 of Rome Convention.

⁹⁶ C-125/92.

⁹⁷ Please note that, in the course of the preparation of this study, the European Parliament and the Council passed a revised version of the Posting of Workers Directive, namely, through Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. The deadline for Member States to adopt and publish the necessary national measures to transpose the Directive into their national legal orders expires on 30 July 2020 and such measures shall start to apply as of 30 July 2020. In this sense, until that date, Directive 96/71/EC shall remain applicable in its current wording.

- Due to the fact that it adds a layer of complexity to the legal situation of aircrews, wet leasing may have an impact on the application of rules protecting workers at both the EU and national levels.
- In order to determine if the Posting of Workers Directive is applicable to a particular wet lease agreement, it should be analysed if there is a temporary posting to a different Member State. If the analysis shows that there is no temporary posting but a permanent one or if the employee is just providing services for several different countries, the Posting of Workers Directive would not be applicable.
- Moreover, if the aircrews working under a wet lease are not employees of the lessor but self-employed, it would first be necessary to prove a *de facto* employment relationship, in accordance to the law of the Member State to which the aircrews have been posted, so as to explore the application of the Directive.

6.4.3 Case study on temporary assignment of air crews to a different operational base from home base

This case study aims to analyse the problems linked to the temporary assignment of aircrews to operational bases outside their home bases and, particularly, to clarify if the general Posting of Workers Directive is applicable in these situations and, if so, whether such application occurs in practice.

For the analysis of these issues, the starting point will be real cases identified through surveys and interviews, which will be then scrutinised in light of the current EU legislation and court rulings in the area.

6.4.3.1 Uncertainties associated to the applicable legal regime to the aircrew temporarily assigned to work in a base located in a different Member State

Samples of pilots and cabin crew members' contracts have been analysed for the purposes of this case study. These contracts comprise direct and indirect employment contracts as well as self-employment contracts. The review of such contracts has shown that the employer (or the client of the employer, in case of employment via temporary work agencies) regularly reserves the right to change the place from which pilots or cabin crew members provide their services. This ability can be used for temporary assignment, but in some cases as a permanent posting. Despite this, none of the contracts analysed included any provision related to the Posting of Workers Directive.

This is in line with what was reported by aircrews during interviews: in the case of temporary assignments, neither pilots nor cabin crew are normally informed of changes in the labour laws that govern their relationships with their employers. Interviewees have reported that assignments to work out of base are common across low-cost carriers. However, these normally last for short periods of time, e.g. for some days or weeks. In some cases, it has been reported that aircrew are not even informed about the duration of the temporary assignment when they are asked to do it.

It could be thought, at first sight, that aircrew employed by a temporary employment agency but sent to carry out a service in another EU Member State on a temporary basis should be subject to the Posting of Workers Directive. However, the fact is this Directive is not (or rarely) applied in practice.

Interviewees have noted that in some low-cost air carriers or work agencies working for them, temporary or permanent changes on the employees' (or contractors') home base do not affect the labour law that is applicable to them, as their contracts provide that the applicable legislation is the one of the Member State where the aircraft was registered.

Indeed, it is common that low-cost air carriers hire (either directly or by means of intermediaries/temporary employment agencies) aircrew whose home base is located in Member State A, but decide to submit their employment rights and obligations to the law of Member State B, where the aircraft was registered, instead of applying the employment legislation of Member State A. They support this practice on the 1944 International Civil Aviation Agreement (also known as the Chicago Convention), which foresees that aircrafts have the nationality of the place in which they have been duly registered. On this basis, those low-cost air carriers extend the law of the country of the nationality of the aircraft to the employment relationships. The relevance of the nationality of the

aircraft for the determination of the habitual place of work of air crews has, however, been dismissed by the CJEU⁹⁸.

These issues are intimately linked to the analysis undertaken in Section 8 (on the applicable employment law for aircrews), as it is a common practice in the industry to assign a particular applicable employment law to the employees irrespective of the place in which their home base is located.

However, as anticipated above, it could be held that the applicable law is the one that applies in the Member State where the employee is normally working (i.e. his or her home base), so the temporary posting rules should apply when there is a temporary change in the employees' home base.

Finally, some of the low-cost air carriers interviewed for this study have declared that they do not apply the Posting of Workers Directive, as they think it is not applicable following Regulation (EU) No. 465/2012. That Regulation provides some guarantees for aircrews, but it mainly regulates the applicable Social Security legislation and it is based on Article 48 TFEU (that is, Social Security concerns). However, Regulation (EU) No. 465/2012 and the Posting of Workers Directive refer to different issues and do not exclude but complement each other. In any event, the application of Social Security coordination systems – including when there is a temporary assignment to another Member State – does not limit the application of the Posting of Workers Directive.

6.4.3.2 Legal considerations concerning the applicable legal regime to aircrews temporarily assigned to work from a base located in a different Member State

Considering the information obtained from the contracts, but also from interviews, and bearing in mind the described rules, several scenarios should be mentioned:

Non-temporary assignments:

Without prejudice to Section 9 of this study, there is not a temporary assignment when there is a displacement which starts and finishes at the employee's home base, in which case it is arguable that the applicable legal law is the one in which the home base is located.

Temporary assignment of contractors or self-employed aircrews:

In accordance with Article 2 of the Posting of Workers Directive, this Directive does not apply to individuals who do not meet the requirements to be considered as a worker as per the law of the Member State to which territory the person is posted.

Temporary assignment of aircrew employees vs. mobile workers:

The Posting of Workers Directive is applicable to the temporary posting of workers in the framework of transnational provision of services in the Member States and its aim is to remove obstacles to the free movement of workers in the EU, but also to ensure that temporary assignments outside the usual place of work do not damage workers' rights. In this sense, the Posted Workers Directive does not derogate from the Rome I Regulation but offers additional protection to the employee who can invoke the law of the host Member State if it is more favourable to the employee than the law of his/her habitual place of work. Article 8(2) of the Rome I Regulation establishes that the country where the work is habitually carried out shall not be deemed to have changed if the employee is temporarily employed in another country. However, Article 8 of the Rome I Regulation does not prejudice the application of the overriding mandatory rules according to the Directive.

Thus, the Directive establishes the employment conditions that are to be guaranteed according to the host country rules when there is temporary posting of workers (particularly, maximum working periods, minimum rest periods and holidays, minimum rates of pay and overtime and to guarantee the same level of health and safety measures at work).

However, the application of the Posting of Workers Directive raises some doubts when the employees are "mobile workers" that are not yet integrated in the labour market of the host Member State (European Commission, 2017); (European Commission, 2018).

⁹⁸ Joined cases C-168/16 and C 169/16, Nogueira and Others, p. 75-76.

In cases where there is a temporary assignment to another Member State (for example, when there is an increase in seasonal flights and some members of the cabin crew are temporarily assigned to another home base), then the Posting of Workers Directive would be applicable.

In summary, the Posting Directive would only be applicable to temporary assignments in which the employee is effectively assigned to work in another Member State for a limited period of time, changing his/her home base during this time.

6.4.3.3 Conclusions

It can be concluded that:

- The Posting of Workers Directive would not be applicable to (1) self-employed aircrews or contractors who are not considered employees under the legal requirements of the host State, (2) such cases in which there is no temporary assignment, but operation of flights from-to the home base, and (3) mobile workers which are on a temporary and/or precarious situation, but are not considered as posted workers.
- However, the Directive would be applicable to those aircrews (1) who are temporarily posted to the territory of a Member State on the employer's account and under its direction and provided there is an employment relationship between the undertaking making the posting and the employee during the period of posting; (2) when this posting is carried out by one of the companies of the group in the territory of a Member State, provided there is an employment relationship between the undertaking making the posting and the employee during the period of posting and (3) in cases of transnational services in the framework of temporary employment agencies or placement agencies.

6.4.4 Problems associated with the application and enforcement of the Posting of Workers Directive

In this section we examine possible issues arising from the application of the Directive.

6.4.4.1 Input from stakeholders

National authorities that responded to the survey were asked if there were any problems with the application or enforcement of the Directive. No national employment authorities indicated any issues with either the application or the enforcement of the Directive. Three (CZ, MT and SE) provided negative responses and the remaining six did not know or did not provide an answer

Among national labour inspectorates, the Italian authorities referred to specific problems:

"There are problems related with the general issues of the rules applicable to mobile workers.

Then the same definition of "operating base" is not really clear and this may implicate problems in the application of rules on social security and working conditions established at EU and national level and linked to that definition

Consequently, there are problems related to the inspections, as in the general sector of mobile work."

Among other respondents, the Danish Transport, Construction and Housing Authority said that *"it can be difficult to assess if [the placement] is actually temporary"*. The Czech State Labour Inspection Office noted that there were *"no posting arrangements identified during inspections"*.

Air carriers were also asked if they had experienced any problems with the application of the Directive, with eight of them saying "no" and the remaining 19 not answering the question.

Aircrew unions were also asked what are the reasons that might prevent the Posting of Workers Directive from being used. ETF said that *"it is due to the lack of awareness, rather than other factors, that the Directive is not being applied"*. *"Authorities are also unaware"*, the same group added. ECA agreed that lack of awareness might play a role, but added that neglect and lack of clear accountability could also be reasons. On the latter point, ECA added that labour inspectors do not have ways to know what labour conditions apply to people that go through an airport, making enforcement difficult. Additionally, many civil aviation authorities wrongly claim that they regulate all aircrew issues, even if that is not true for labour matters. This point on the lack of enforcement and

unclear accountability/responsibilities by the different national authorities was also referenced by BALPA, a pilot's association.

Overall, with a few exceptions referring to the capacity to establish the applicability of the rules, the input provided suggests that there is limited experience in terms of the application of the Directive in the case of aircrew. This should be linked with the relatively limited level of use of the Directive already established in the previous sections.

6.4.4.2 Practical problems on the application of the Posting of Workers Directive to the temporary assignment of aircrew employees

It is relevant to mention that the Directive entails some practical problems. In fact, the objective of the Posting of Workers Directive was reinforced by the adoption of Directive 2014/67/EU; the purpose of this Directive was *"to improve the implementation and application in practice of the Directive on the posting of workers (Directive 96/71/EC), thereby guaranteeing better protection of posted workers and a more transparent and predictable legal framework for service providers"* (European Commission, 2014). The aim of this new Directive was to avoid *"fraud, circumvention of rules and (to ensure) the exchange of information between Member States"* (European Commission, 2017). This Directive was to be transposed by the Member States by 18th June 2016.

In March 2016, the European Commission declared that the Posting of Workers Directive had to be reviewed in order to facilitate the temporary posting within a fair competition context and to assure the rights of the posted employees. Particularly, it was suggested to introduce changes with regard to equal pay, temporary work agencies and long-term posting (European Commission, 2016).

In the aviation sector, the abovementioned problems could be more severe than in other sectors based on the fact that mobility is inherent to the services, there is a significant use of temporary agencies or intermediary companies (see Section 3) and there are difficulties to assure the applicable labour law to the employment contracts (see Section 8).

In this sense, it is relevant to mention that Article 1(2) of the Posting of Workers Directive excludes from its scope the seagoing personnel of merchant navy undertakings whose status as travelling workers could be considered by some stakeholders as being similar to that of flight personnel. Despite this, there is no similar provision concerning cabin crew and pilots in the said Directive.

Likewise, other rules, such as Regulation (EC) No 883/2004 on the coordination of social security systems, assimilates to a certain extent seagoing personnel and aircrew staff. In particular, it considers relevant to guarantee the application of a sole social security legislation to aircrew staff (*"an activity as a flight crew or cabin crew member performing air passenger or freight services shall be deemed to be an activity pursued in the Member State where the home base, as defined in Annex III to Regulation (EEC) No 3922/91, is located"*). While Regulation 465/2012 introduced a definition of home base for aircrew, as seen in section 3.5.2.1, stakeholders and literature expressed concerned that this definition might not be clear enough, and as such there are concerns that this exceptional regime could be used in a fraudulent manner (for example, to avoid the application of a more expensive or protective labour law).

It is important to note that a legacy air carrier has shown concerns about the existence of unfair competition in the internal market due to the fact that some other air carriers would not be applying the home base employment and Social Security rules, in order to reduce their operational costs.

6.5 Conclusion

In this section we examined the use and the relevance for the aviation sector of the Posting of Workers Directive (96/71/EC⁹⁹). It defines the minimum terms and conditions of employment to be

⁹⁹ On 29th May 2018, the European Parliament voted in favour of the revised Posting of Workers Directive, including new rules concerning pay, workers conditions, duration of posting, and protection against fraud. The new elements of the revised directive will apply to the transport sector once the sector-specific legislation, included in the Mobility Package, enters into force. Until then, the 1996 version of the directive remains applicable: <http://www.europarl.europa.eu/news/en/press-room/20180524IPR04230/posting-of-workers-final-vote-on-equal-pay-and-working-conditions>

applied to workers who are temporarily sent by their employer to carry out work in another EU Member State in the context of a service provision.

However, in the context of the aviation sector, with the increasing use by some air carriers of multiple operational bases and the temporary placement of aircrew in other countries for a certain period as well as practices such as wet leasing, it was not clear whether such situations could fall within the scope of the Directive.

The Posting of Workers Directive is in principle applicable to aircrews in the following cases:

- Aircrews who are temporarily posted to the territory of a Member State on the employer's account and under its direction and provided there is an employment relationship between the undertaking making the posting and the employee during the period of posting.
 - When this posting is carried out by one of the companies of the group in the territory of a Member State, provided there is an employment relationship between the undertaking making the posting and the employee during the period of posting.
- In cases of transnational services in the framework of temporary employment agencies or placement agencies.

However, the Directive is, in principle, not applicable to:

- Self-employed aircrews or contractors who are not considered employees under the legal requirements of the host Member State.
- To such cases in which there is no temporary assignment, but flights from-to the home base.
- To mobile workers which are on a temporary and/or precarious situation but are not considered as posted workers.

In terms of actual use of the Directive, the analysis of available evidence indicates that, in practice, the Posting of Workers Directive is not frequently applied in the aviation sector and the input from the surveys of cabin crew and pilot surveys corroborates this. According to the responses to the survey questions 6% of cabin crew (100 out of 1668) and 12% of pilots (93 out of 501) were in some form of temporary placements in another Member State that could be covered by the Posting of Workers Directive. However, a much smaller share of aircrew stated that the rules of the Directive had been applied to them in this situation (8 out of 74/11% of cabin crew and 93 out of 501/19% of pilots). Some workers may have been *de facto* posted within the meaning of the Directive, even if they or their employers do not recognise/inform them of this. Still, it was not possible to ascertain whether any of these workers that were temporarily placed in another Member State should have been considered as posted workers within the meaning of the Directive.

At the same time there also seems to be lack of awareness among those affected about whether the Directive is applied, when the Directive should be applied and what that application involves. Responding to the surveys, 61% of cabin crew and 47% of pilots did not know whether their employer had applied the rules relating to posting of workers to them. In the interviews, labour unions and air carriers interviewed confirmed that there is lack of familiarity about which rules apply in each case – the conflicting figures in terms of the numbers of workers that said they have been posted under the Directive or that they have been informed of their rights when posted also seems to indicate that the issue of posted workers is one where lack of awareness is still an issue.

A few of the national labour inspectors that responded also indicated issues with assessing who is responsible for enforcing provisions and how to enforce the provisions given the difficulty in determining whether the Directive should be applied or not.

7 Gender and Work-life balance

7.1 Introduction

The increasing adoption of atypical employment in the aviation sector and the different working conditions may have implications for the work-life balance of air crew and on gender equality. The intensification of competition creates risks of increased operational pressure, which can subsequently impact the work-life balance of air crew.

This chapter examines whether atypical employment forms used in the aviation sector and the associated working conditions and employment rights (e.g. working hours, including unpredictable working hours, on-call and standby work, vacation/leave time, collective agreements, union participation, other benefits) have an impact on work-life balance and gender equality of aircrew.

7.2 Evidence from the literature

The existing literature does not specifically examine the impacts of atypical employment forms on gender equality or work-life balance although it does touch upon certain aspects that are relevant to the topic.

7.2.1 Gender and Aviation

Studies examining employment trends across sectors have found that flexible working is more often requested and utilised by women than men (Shagvaliyeva and Yazdanifard, 2014). For example, an EU wide study found that four out of five part-time workers in the EU are women (Eurofound, 2017). It has also been shown that women have greater preference for temporary working arrangements. In general, those sectors that are traditionally male-dominated, such as manufacturing and construction, have very high proportion of employees on full-time contracts with low shares of part-time employment (Eurofound, 2017). These trends are often attributed to women benefiting from the extra flexibility offered by these working arrangements as they take on the majority of family responsibilities. However, changing family patterns have increased the uptake by men (Shagvaliyeva and Yazdanifard, 2014).

These findings align with those in the report by Steer Davies Gleave (2015) that focused on the aviation industry according to which multiple stake holders (study aircrew representatives, CANSO, and air carriers) observed that temporary agency work tends to be more prevalent among women (although the scope of the report focuses on the wider air transport sector). Although childcare and family responsibilities have been cited as a motivation for women to move into flexible work arrangements (Shagvaliyeva and Yazdanifard, 2014), there are disadvantages associated with this work. Temporary agency workers typically receive limited benefits, such as paid annual leave, maternity leave and/or sick leave, in comparison to those in direct employment (Eurofound, 2017).

Additionally, Steer Davies Gleave report's survey results revealed that women were consistently more likely to be on temporary or fixed-term contracts than their male counterparts (Steer Davis Gleave, 2015). There are various disadvantages to fixed term employment, most significant is the lack of security as air carriers have no obligation to renew contracts (Eurofound, 2017).

Similar issues are found with other atypical employment arrangements. In the case of self-employment, increased flexibility may mean reduced access to certain benefits and protection, including to maternity leave/pay. Whereas full-time employees can benefit from more advantageous terms. Zero-hour employment contracts, whereby aircrew members are only paid for the duration of the flight, mean that the staff do not enjoy other typical employment rights.

In recent years several studies have sought to understand the factors preventing women becoming pilots. According to the founder of the *Aviadoras* programme¹⁰⁰, a project that aims to give visibility to female pilots, there are a number of factors that hinder women's access to the pilot profession (Del Velasco Calvo-Flores, 2017). Their research focuses on the Spanish labour market, where women represent only 3.5% of the overall number of pilots. This proportion is in line with other estimates (as detailed in section **Error! Reference source not found.**). The study found that the main reasons that may explain the lack of female pilots are (De Velasco Calvo-Flores, n.d.):

- (i) the absence of female references in the aviation sector during childhood;
- (ii) the absence of a community or group of female pilots;
- (iii) the limited visibility of professional female pilots.

There are further issues for those that do enter the pilot profession, as they are likely to experience sexist attitudes from peers in the sector (Davey & Davidson, 2000) and the public (Anderson, 2014). These and other barriers to women reaching the flight deck are explored in detail by (McCarthy, Budd, & Ison, 2015) and Ecorys (2018).

A study by McCarthy, Budd, & Ison (2015) concluded that once qualified, both male and female pilots face compromises between their home and their career as crew rosters, long haul trips, anti-social hours and nights away from home disrupt normal domestic arrangements and the required support to maintain 'normal' family life. Although female pilots responding to the survey did not have direct experience of combining a pilot career with motherhood, they could recognise that it may be an issue in the future. Thus, a need to undertake further research concerning what might constitute the most effective and appropriate mechanisms to support new mothers through pregnancy and parenthood was identified.

The analysis presented in this section does not look specifically at the drivers behind these gender imbalances. Rather, the focus is on the extent that the increasing adoption of atypical employment has implications on gender equality.

We also note that a study is being conducted in parallel by Ecorys, also on behalf of the European Commission, to build a business case for increasing female employment in the transport sector¹⁰¹. During discussions with the study team of Ecorys, we were informed that their research found that atypical employment contracts act as a 'secondary barrier' to women seeking employment in the aviation industry. While it does not appear to deter cabin crew from being female dominated, it can interact and enhance other 'primary' barriers affecting women becoming pilots. The main mechanism identified by which this occurs is by deteriorating the work-life balance of female air crew (which is already impacted by the atypical time schedules of this profession) and by further reducing financial security for pilots (rendering the investment into pilot training even more precarious) and deterring non-stereotypical entries to the profession.

7.2.2 Work-life balance issues for aircrew

Initially regarded as an issue to be managed by the individual employee, work-life balance has become increasingly important consideration among employers (Kim, 2014). The concept centres around the idea of conflict between work and life responsibilities. The increased attention from employers has been motivated by evidence which shows that, as well as being important for an employee's health and relationships, it can also lead to improved employee performance, increased commitment to their company, lower employee turnover and absenteeism (Kim, 2014; Jones, 2013; Shagvaliyeva & Yazdanifard, 2014).

Several studies (Fei, 2018; Lingard & Valarie, 2009; Tausig & Fenwick, 2001) have found evidence of a diminishing work-life balance across work sectors, but it appears to be more common to certain, such as shipping (Thomas, Sampson, & Zhao, 2003), due to the nature of work.

¹⁰⁰ De Velasco Calvo-Flores, V., *La mujer piloto: formación y desempeño en línea aérea.*, TFG, Adventia, European College of Aeronautics.

¹⁰¹ Due to be published in 2018 – date to be confirmed

In the aviation industry, cabin crew and pilots face increased compromises between their home and career as crew rosters and long-haul trips lead to anti-social hours and nights away from home. There has been little research focusing specifically on work-life balance of pilots and cabin-crew in the emerging atypical arrangements. However, the topic, and potential drivers, can feature as an aside to other topics (e.g. Ecorys Nederland BV, 2007).

For example, in research focusing on health and safety aboard commercial flights, concerns were raised surrounding increased working hours of pilots and crew resulting from the lack of social protection in atypical employment models (Ghent University, 2015). The study found that fatigue, sleep deprivation and use of multiple bases as having a significant effect on air carrier employees working under new employment arrangements. Elsewhere, Steer Davies Gleave's 2012 report found that companies in the aviation sector understood the extra flexibility associated with part-time work could help staff manage, and therefore improve, their work-life balance. However, this was a sector wide view that included companies other than air carriers, who are the main focus of our study. Due to anonymisation of stakeholders in the Steer Davies Gleave report, it is not possible for us to know who contributed this comment.

Studies focusing on employment structures more broadly have found that the type of contract may have a direct impact on employee's experience and work-life balance. Arrangements such as zero-hours contracts, temporary shift work or self-employment are said to provide increased flexibility and control over hours spent working and shift patterns. This increased flexibility is thought to be beneficial for both employee and employer (Shagvaliyeva & Yazdanifard, 2014). For the employee, the ability to control when how much they work can contribute to improvement in allocation of work and life responsibilities. This in turn can enable them to fulfil both working and non-work roles more easily, improving work-life balance and job satisfaction. These benefits to the employee can have a positive outcome for the employer too, as performance at work is likely to increase (Shagvaliyeva & Yazdanifard, 2014).

However, employee representatives contacted during Eurofound's cross-industry study, said that temporary and agency workers' working conditions and quality of life are worse than those of permanent workers (Eurofound, 2017). Furthermore, the effect of the type of contract on an employee is mentioned in EU legislation on the framework agreement on fixed-term work (Directive 1999/70/EC). The Directive aims to ensure those on fixed-term contracts do not suffer unjustified discrimination compared to permanent employees. It highlights benefits of indefinite employment contracts, explaining that they can "...contribute to the quality of life of the workers concerned and improve performance". Additionally, these findings are echoed in a report into low-cost air carriers by the European Parliamentary Research Service (EPRS) notes that *'agency workers are far less likely to feel secure or enjoy work-life balance when compared to directly employed aircrew'* (Juul, 2016), as a result of intense working schedules imposed by air carriers in busy periods.

A separate report into low-cost air carriers by the European Parliamentary Research Service (EPRS) notes that *'agency workers are far less likely to feel secure or enjoy work-life balance when compared to directly employed aircrew'* (Juul, 2016), as a result of intense working schedules imposed by air carriers in busy periods.

Considering that cabin crew and pilots are already known to struggle attaining a good work-life balance, there is therefore cause to investigate what the impacts of these new modes of employment have been on air carrier employees.

7.3 Analysis of data collected

This section presents the findings and analysis of our data collected during the course of the study. The analysis draws upon the following sources:

- Surveys with pilots, cabin crew, air carriers, and national authorities (labour inspectorates and employment ministries);
- Interviews with stakeholders, including pilots, air carriers, air carrier and aircrew representatives, national pilot unions and flight schools;
- Examples of pilot contracts and instructions.

The analysis considers the following topics:

- Workforce gender balance;
- Contract type and gender;
- Job satisfaction by gender;
- Work-life balance;
- Atypical arrangements and access to maternity and paternity rights.

Two case studies are also presented:

1. Differences in pay in Member States;
2. The Iberia case – use of pregnancy tests in the hiring process.

7.3.1 Workforce gender balance

There is some evidence that gender balance in aviation improved in the previous decade (Ecorys, 2007) however, there has not been any recent longitudinal studies. The majority of roles in the sector, excluding cabin crew, remain dominated by men (Ecorys Nederland BV, 2007); numbers published by the ICAO ahead of the Global Aviation Gender Summit¹⁰², taking place in August 2018 indicate that roughly 5.2% of the pilots worldwide are women (SACAA, 2018).

The proportion of female pilots found in our survey is consistent with these figures; from the 5,878 responses received to our pilot survey, 5,566 (95%), identified as male, and 312 (5%) as female.

While the dominance of female workers in cabin crew is well known (Steer Davis Gleave, 2015); (Jorens, Gillis, & De Conisck, 2015), industry-wide averages are not readily available. In our survey of cabin crew, 855 out of 2,167 (40%) are male and 1,312 out of 2,167 (60%) female. This is lower than figures published by specific air carriers. British Airways' official figures from 2015 reported that of 15,907 cabin crew staff world-wide, 5,297 (33%) were male and 10,610 (67%) female (Statistica, 2015). FlyBe's 2015 figures indicate that their cabin crew was 11% male and 89% female in that year (Statistica, 2015). The Global Aviation Gender Summit's draft concept note reports figures issued by air carriers 'as high as 79%'. Our numbers are also low compared to country averages from areas outside of the EU; Cabin crew demographics from the US show that 75.6% (81,898 out of 108,387) of American flight attendants are female (DATA USA, 2018). It is therefore possible that female cabin crew are underrepresented in this study. This is considered when the data is analysed in the following sections.

Table 7-1 - Gender of respondents (Pilots survey Q 1.1.4, cabin crew Q1.1.4)

Type Worker	Male	Female	No answer	Total
Pilots	5,566 (95%)	312 (5%)	79	5,878
Cabin Crew	855 (40%)	1,312 (61%)	28	2,167

7.3.2 Contract type and gender

The surveys of cabin crew, pilots, air carriers, employment ministries and labour inspectorates conducted for this study provide insights into the effects of these forms of employment on male and female workers in the aviation industry.

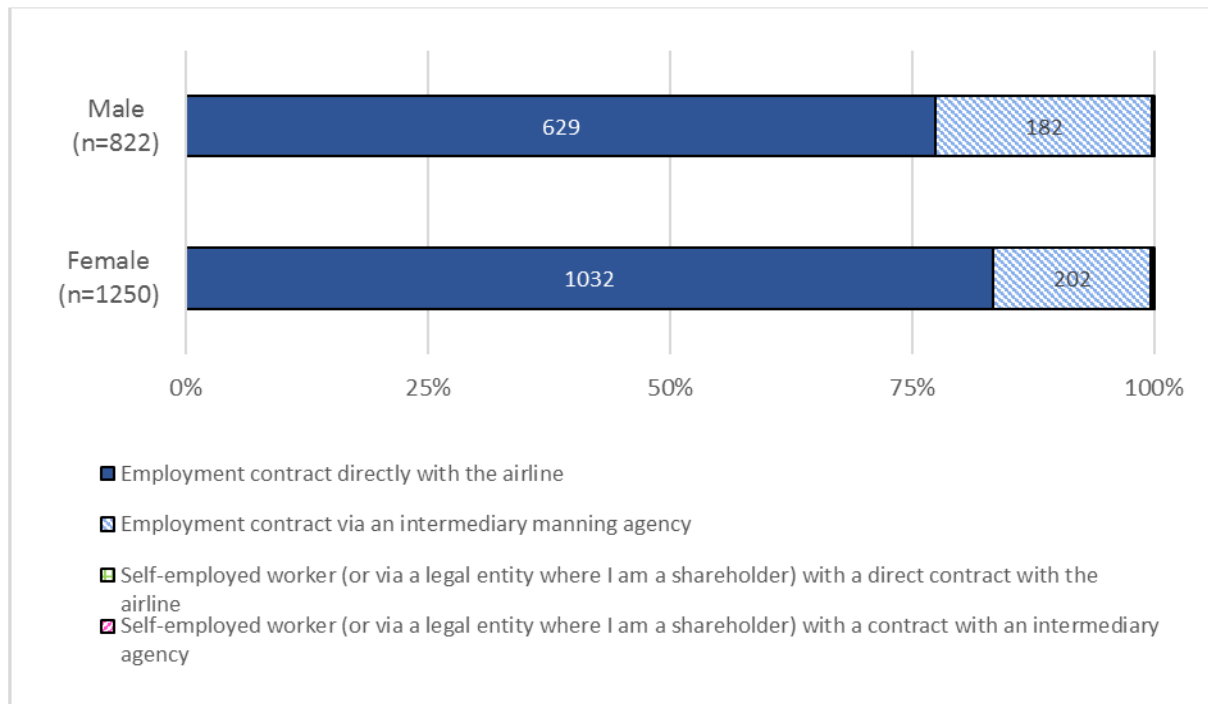
Overall, our survey found that 1,675 out of 2,091 (80%) cabin crew had a contract directly with the air carrier whilst 4,698 out of 5,719 (82%) pilots had a direct contract with the air carrier. This implies that

¹⁰² An event that will be hosted by the South African Civil Aviation Authority in cooperation with the ICAO. The ICAO has recently reaffirmed its commitment to gender equality and the promotion of women in the global aviation sector through Resolution A39-30 ICAO Gender Equality Programme.

atypical employment arrangements affect around 20% of the workforce for both pilots and cabin crew. Within this remaining 20%, the share of workers on different arrangements varies between the two cohorts.

A breakdown of cabin crew working relationships by gender, reveals that a higher percentage of men are on these types of contracts. 1,032 out of 1,250 (82%) of female cabin crew surveyed are employed via a contract directly with the air carrier, compared to 629 out of 822 (77%) male cabin crew. 202 out of 1,250 (16%) of female workers have an employment contract via an intermediary manning agency, this figure is 182 out of 822 (22%) for male cabin crew.

Figure 7-1: Gender split: How would you describe the working relationship with the air carrier you currently work for? (Q2.1 Cabin Crew)

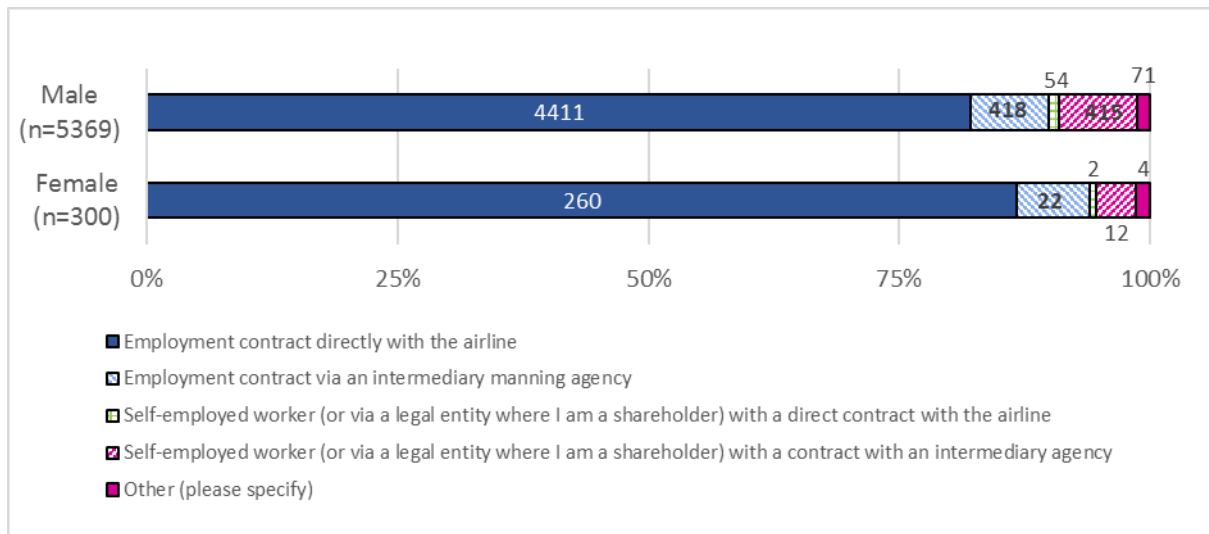


Source: Survey of cabin crew

This pattern is repeated in the data from the pilot survey, where there are more women in an employment contract directly with the air carrier, by 6 percentage points. Out of 300 female pilots, 260 (88%) have a direct contract with the air carrier, compared to 4,411 out of 5,369 (82%) male pilots. The gender distribution of other working arrangements remains relatively equal.

The data also shows that male pilots are twice as likely to be self-employed with a contract with an intermediary agency (415 out of 5,369, 8%) compared to female pilots (12 out of 300, 4%).

Figure 7-2: Gender split: How would you describe the working relationship with the air carrier you currently work for? (Q2.1 Pilot)

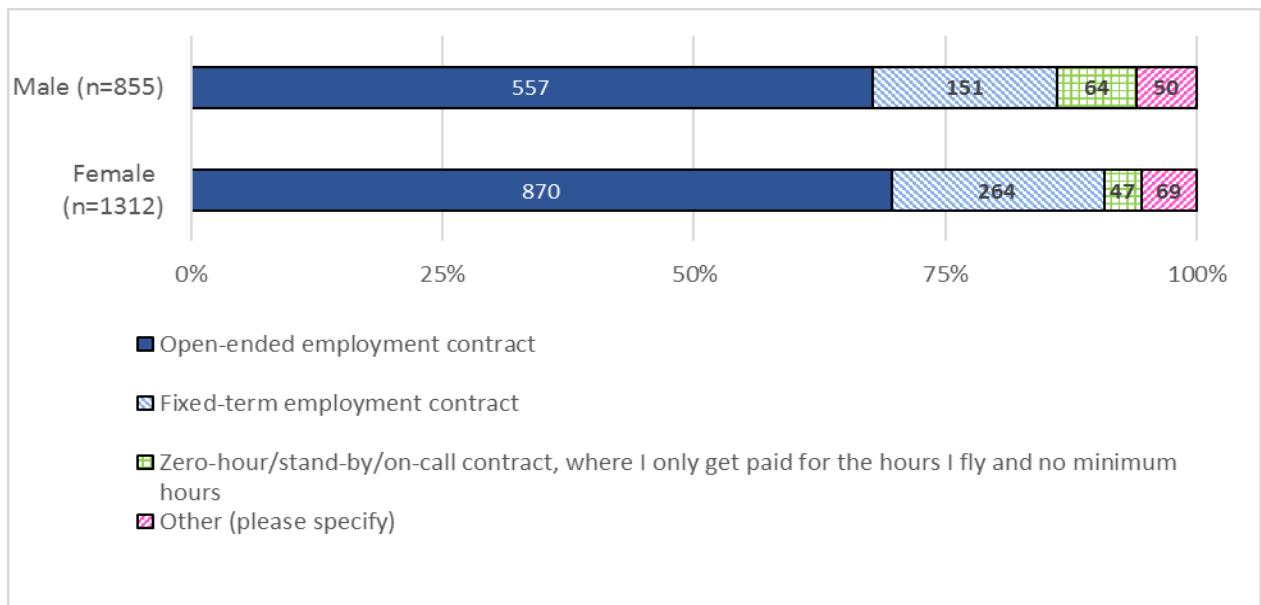


Source: Survey of pilots

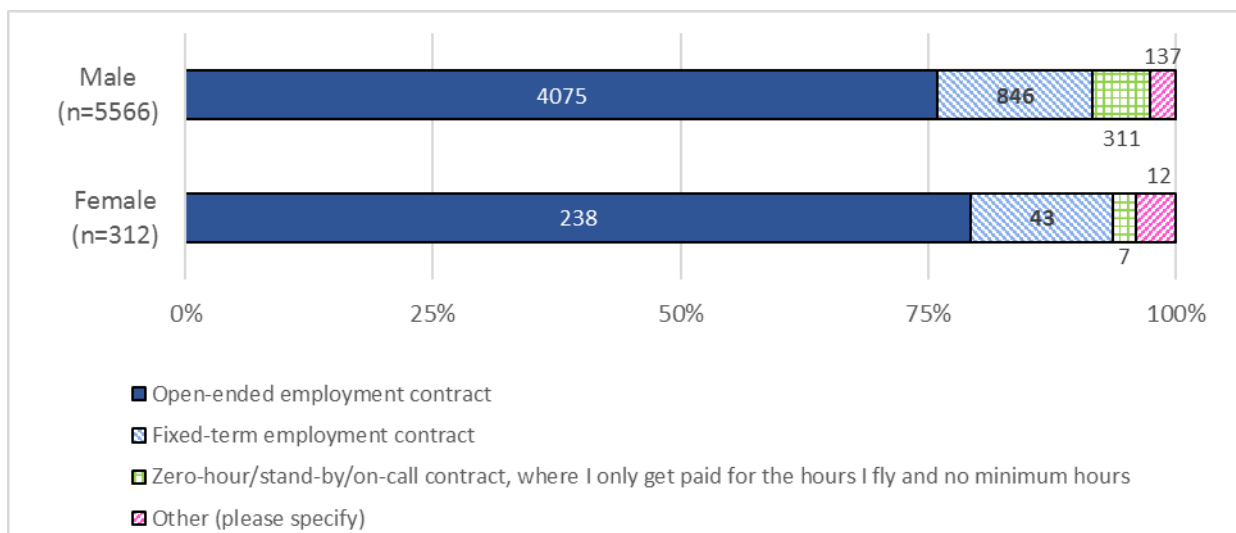
Due to the diversification of contractual arrangements across Europe (EU, 2016), such as the use of zero-hours contracts (European Parliament, 2016), the *type* of contract aircrew have is also relevant to this discussion. Previous analysis (temporary work agencies/intermediaries, see Section 3) found that 4,344 out of 5,719 pilots (76%) and 1,437 out of 2,091 cabin crew (69%) to be on more conventional open-ended contracts.

The same data has been analysed here to determine the proportion of male and female employees on each contract type. As shown in **Error! Reference source not found.**, cabin crew have similar proportions of men and women on the different forms of contract. 870 out of 1,312 female cabin crew (70%) and 557 out of 855 male cabin crew (68%) are on open-ended employment contracts. For fixed-term employment contracts there are 264 out of 1,312 (21%) female and 151 out of 655 (18%) male on these arrangements. Male cabin crew are twice as likely to be on a zero-hour contract than female cabin crew (47 females (4%), 64 males (8%)).

A similar story is observed in the pilot survey, shown in **Error! Reference source not found.**, where 238 out of 312 (76.3%) female pilots and 4,075 out of 5,566 (73.2%) of male pilots are on open-ended employment contracts. Finally, 43 out of 312 (13.8%) female pilots and 846 out of 5,566 (15.2%) male pilots are on fixed-term contracts.

Figure 7-3: What kind of employment contract do you have? (Cabin Crew survey, Q2.2)

Source: Survey of cabin crew

Figure 7-4: How would you describe the working relationship with the air carrier you currently work for? (Pilot survey, Q2.1)

Source: Survey of pilots

Overall, survey responses indicate that there is little difference in participation in atypical employment arrangements between male and female aircrew. Steer Davies and Gleave (2015) found a slightly higher proportion of women employed on fixed term contracts. Their survey data, which covers 2008 to 2012, shows some variance in the gender split, although 2012 is the only year the percentage of men on fixed term contracts was higher. Furthermore, the same report predicted a rise in the proportion of fixed term contracts from the 6%-8% range they recorded. This prediction was borne out in our survey data. However, it is important to note that the Steer Davies and Gleave study included a wider range of aviation workers, including airport and handling staff.

Additionally, our data shows an increase in the proportion of both male and female pilots working on zero-hour or stand-by contracts. 0.3% of pilots polled for Ghent University's 2015 study were on a zero-hours or 'stand by' contract whereas this study found 4% of women, and 8% of men to be on these arrangements. This is in contrast to previous cross-sector research which has found that women are more likely to be on a zero-hours contract (Tinson, Aldridge, & Witham, 2016).

As discussed in Section 3.3.3, there is evidence that these schemes are typically being used when hiring young people and those who are entering the workforce for the first time (see also (Juul, 2016; Jorens, Gillis, & De Conisck, 2015).)

Combined with the analysis above, this suggests that employee experience, seniority and job role have more of an impact on the type of working arrangement they are likely to be offered, than gender.

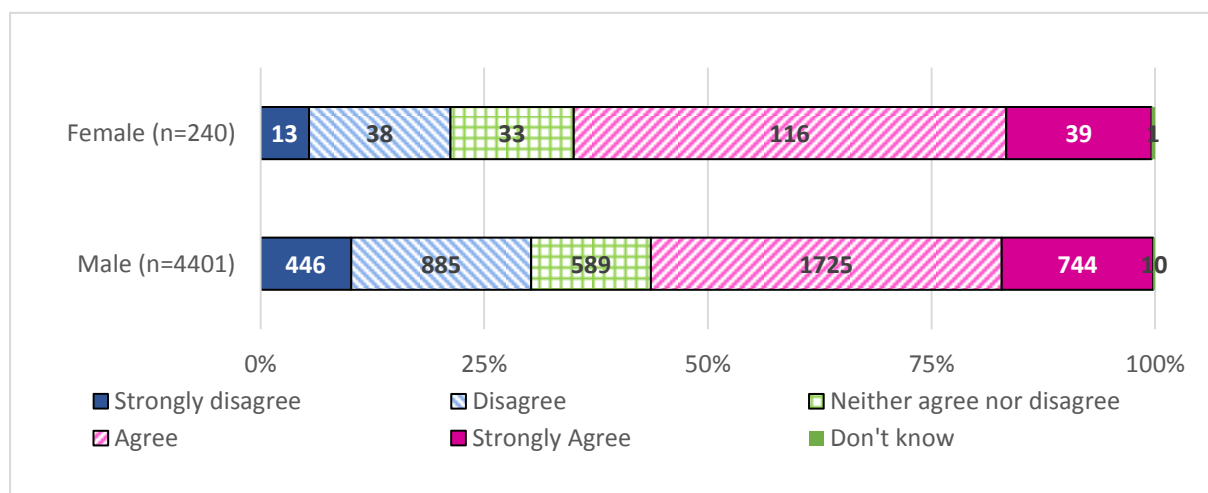
7.3.3 Job satisfaction by gender

Levels of job satisfaction by contract type was already analysed in detail in Section 3.4.2.1. In summary, both pilots and cabin crew directly employed by air carriers appear more satisfied with their working conditions than those with an employment contract via an intermediary manning agency and even more in the case of pilots that are self-employed.

In this section we examine the presence of differences depending on gender. The nature of pilot and cabin crew work, that regularly includes long working days, anti-social hours, and moving between various time zones, can have an impact on job satisfaction.

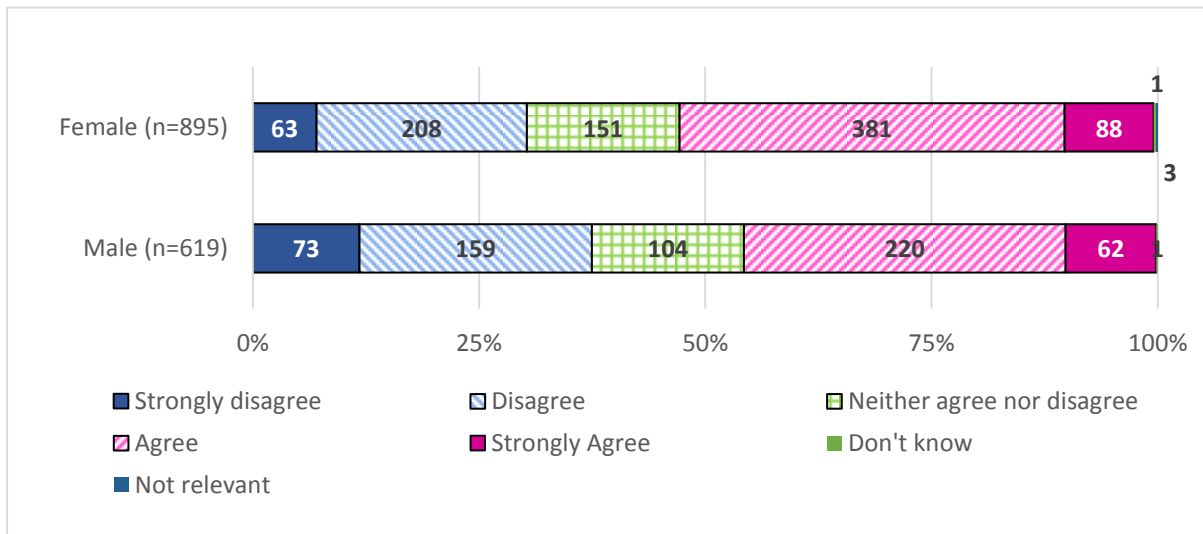
Overall work satisfaction among all air crew is mixed, but generally positive. Pilots (**Error! Reference source not found.**) and cabin crew (**Error! Reference source not found.**), were asked to indicate to what extent they agreed with the statement “*I am satisfied with my working conditions*”. Women consistently reported higher job satisfaction rates. 155 out of 240 female pilots (64%) and 2,469 out of 4,401 male pilots (56%) said they ‘agree’ or ‘strongly agree’ with this statement. 469 out of 895 female cabin crew (53%) said they ‘agree’ or ‘strongly agree’ and 282 out of 619 male cabin crew (46%) said they ‘agree’ or ‘strongly agree’ with the statement above,

Figure 7-5: Male/Female Pilot Percentages: 'Please indicate to what extent do you agree with the following statements regarding your working conditions and how they relate to your personal life. I am satisfied with my working conditions. (Pilot Q 3.1)



Source: Survey of cabin crew

Figure 7-6: Male/Female Cabin Crew Percentages: 'Please indicate to what extent do you agree with the following statements regarding your working conditions and how they relate to your personal life. I am satisfied with my working conditions (Cabin crew Q3.1)



Source: Survey of pilots

Ostensibly, the higher proportion of job satisfaction reported by women in the survey is surprising. This data goes against views expressed by cabin crew, pilots and social representatives in interviews, who universally report low job satisfaction and working conditions affecting men and women equally. However, studies have revealed that women often report higher job satisfaction in surveys than men despite often being identified as being in a 'disadvantaged position' in the labour market as defined by factors including earnings, recruitment/dismissals, promotions and career prospects compared to men (Bender et al, 2005; Clark 1997; Kaiser, 2002). This could be a factor in the levels of satisfaction reported by women.

While the majority of respondents indicated that they were satisfied with their working conditions, the level of job satisfaction is lower compared to other sectors, both nationally and internationally. A cross-national study found that, on average, 83.7% of workers in EU-15 countries reported being 'fairly satisfied' or 'very satisfied' with their jobs (Cabrita & Heloisa, 2006).

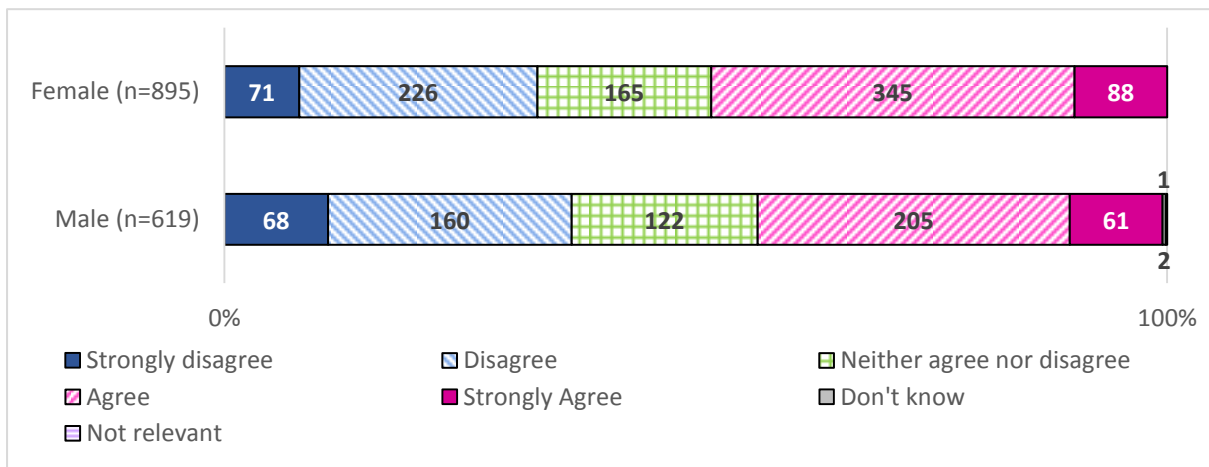
Furthermore, there remains a significant proportion of respondents expressing dissatisfaction. In interviews, aircrew cited working conditions such as long, anti-social hours as having an impact on their enjoyment of the job. Additional pressures related to the kind of working arrangements they were in, which ultimately left decisions about their pay, benefits, working hours and home-base in the hands of the air carrier.

7.3.4 Work- Life Balance

The nature of air carrier work can force staff to make compromises between their home and their career as crew rosters, long haul trips, anti-social hours and nights away from home disrupt typical domestic arrangements.

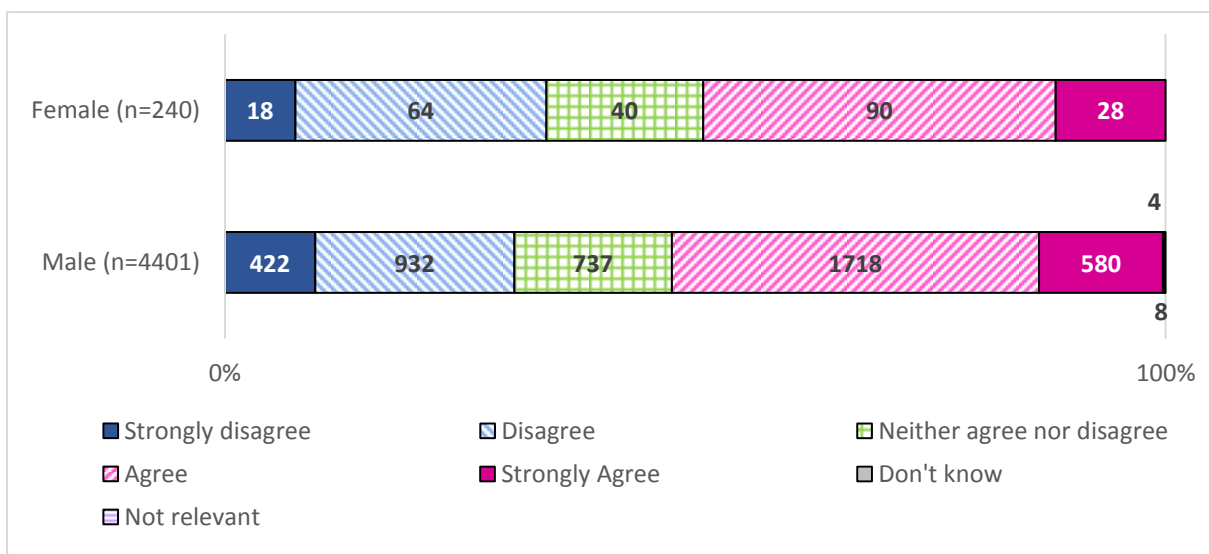
According to the surveys conducted, a significant proportion of the aircrew are satisfied with their work life balance (**Error! Reference source not found.**). More precisely, 2,427 out of 4,668 (52%) pilots and 704 out of 1,528 (46%) cabin crew stated that they 'agree' or 'strongly agree' with the statement "I am satisfied with my work-life balance". The replies to this question, nevertheless, seem to be quite polarised, as 1,445 out of 4,668 (31%) pilots and 531 out of 1,528 (35%) cabin crew either 'disagree' or 'strongly disagree' with the statement.

Figure 7-7: Male/Female Please indicate to what extent do you agree with the following statements regarding your working conditions and how they relate to your personal life: I am satisfied with my work-life balance?" (Q3.1 cabin crew survey)



Source: Survey of cabin crew

Figure 7-8: Male/Female Cabin Crew Please indicate to what extent do you agree with the following statements regarding your working conditions and how they relate to your personal life: I am satisfied with my work-life balance?" (Q3.1 Pilot survey)



Source: Survey of pilots

Although, according to the surveys, a significant proportion of the aircrew are satisfied with their work-life balance, the percentage of respondents who stated their dissatisfaction with it is worth taking into account. Several of the survey questions investigated drivers that could contribute to poor work-life balance and job satisfaction. Those that have yielded interesting responses in the context of this chapter are further investigated here. Details of the others can be found in the accompanying Stakeholder Consultation Report.

The respondents (cabin crew and pilots) were asked to express their level of agreement with the following statements:

1. My work schedule allows me to spend enough time at home.
2. Any changes to my work schedule are communicated with enough notice

In the analysis below, survey responses from employees on contracts directly with an air carrier and intermediary agencies are compared. These are the main categories of work arrangements for cabin

crew. Pilots have a more diverse range of working arrangements that includes a range of self-employed provisions. However, because the surveys received very few responses from self-employed female pilots, this sample is not compared with the male equivalent.

7.3.4.1 Level of time spent at home

Respondents expressed their level of agreement with the statement “*My work schedule allows me to spend enough time at home*”. In this case, 2,374 pilots out of the 4,668 respondents (51%) ‘agree’ or ‘strongly agree’ with it and 1,416 (30%) indicated they ‘disagree’ or ‘strongly disagree’. In the case of cabin crew, 807 out of 1,525 (57%) ‘agree’ or ‘strongly agree’ and 424 (28%) ‘disagree’ or ‘strongly disagree’.

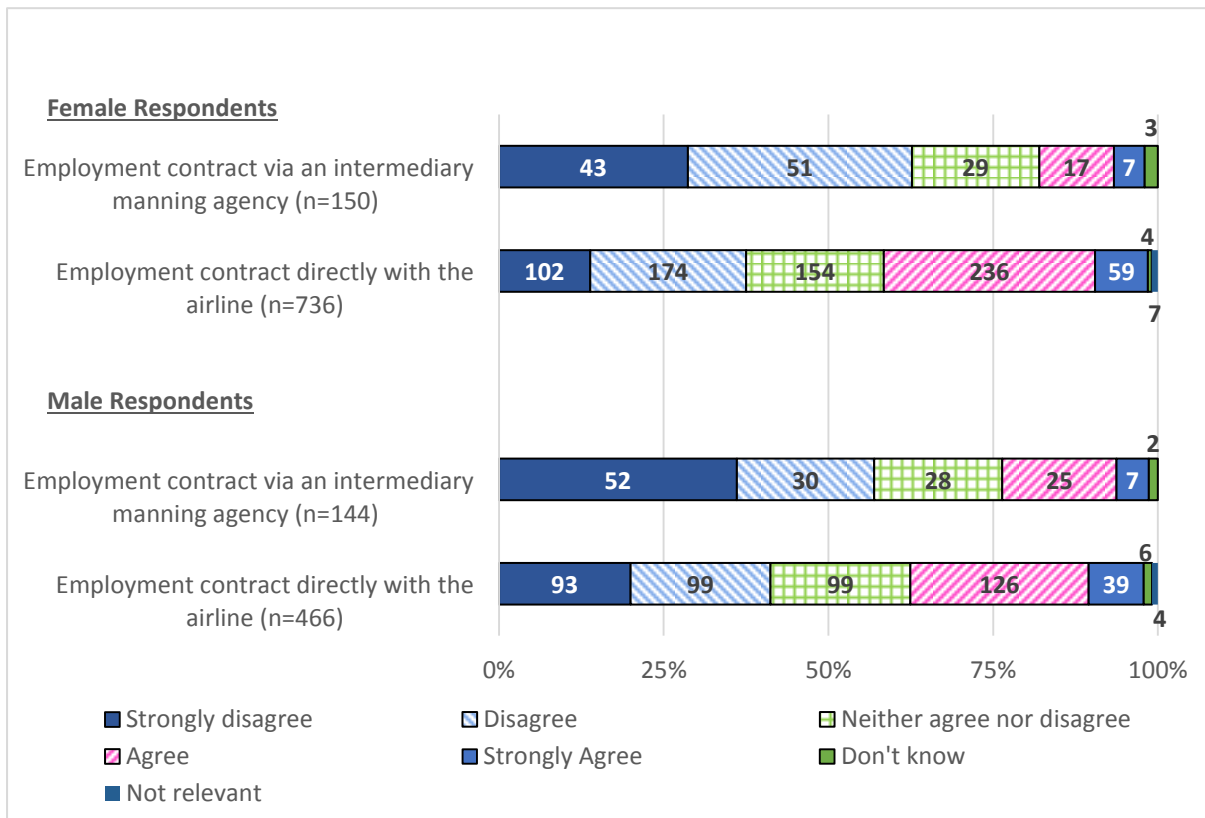
As discussed in Task 1 the majority of cabin crew are either employed directly with an air carrier, or through an intermediary agency. Here the responses of cabin crew working under these two employment arrangements are considered by gender.

As shown in **Error! Reference source not found.**, a higher proportion of women working through an intermediary agency ‘disagree’ or ‘strongly disagree’ with the statement ‘my work schedule allows me to spend enough time at home’ when compared to women who have a contract directly with their air carrier and their male counterparts. 47 of the 150 (31%) female cabin crew on an employment contract with an intermediary agency ‘disagree’ or ‘strongly disagree’ with the statement. Fewer women gave this response, 188 of 736 (26%), when on an employment contract directly with their air carrier and the proportion is lower still, 34 of 144 (24%), for men in a contract with an intermediary.

The employee representatives interviewed agreed that the influence that the type of employment has on the work-life balance of aircrew. The representative of the European Cabin Crew Association (EurECCA) highlighted that cabin crew hired through alternative forms of employment, such as temporary work agencies or other intermediaries, usually experience more difficulties with a decent balance between work and private life, since the low-cost air carriers using these methods tend to use the Basic Flying Time Limitations (FTL) defined by the EASA as their standard schedule.

Interview accounts from cabin crew working via a temporary work agency explained how they are often under pressure to work all the hours they are offered, for fear of losing future work. This coupled with a higher legal limit of flight hours for cabin crew (compared to pilots) is likely to have a significant effect on time spent at home.

Additional comments from surveys demonstrate that some cabin crew on a permanent contract with an air carrier manage to get enough time at home by going part-time. As one explained: ‘*For me work and time at home are in balance since I have been working part time, with 100% [full-time] this was not the case.*’ However, other cabin crew responding to the survey, who were working via an intermediary, explained that part-time was not an option for them.

Figure 7-9: “My work schedule allows me to spend enough time at home” (Q3.1 Cabin Crew)

Source: Survey of cabin crew

Pilots have a more diverse range of working arrangements. However, due to the small numbers of self-employed female pilots responding to the survey for these questions it is hard to draw comparisons between the samples. As shown in **Error! Reference source not found.**, for male pilots on an employment contract directly with the air carrier, 1,055 of 3,641 (29%) disagreed or strongly disagreed with the statement ‘My work schedule allows me to spend enough time at home.’

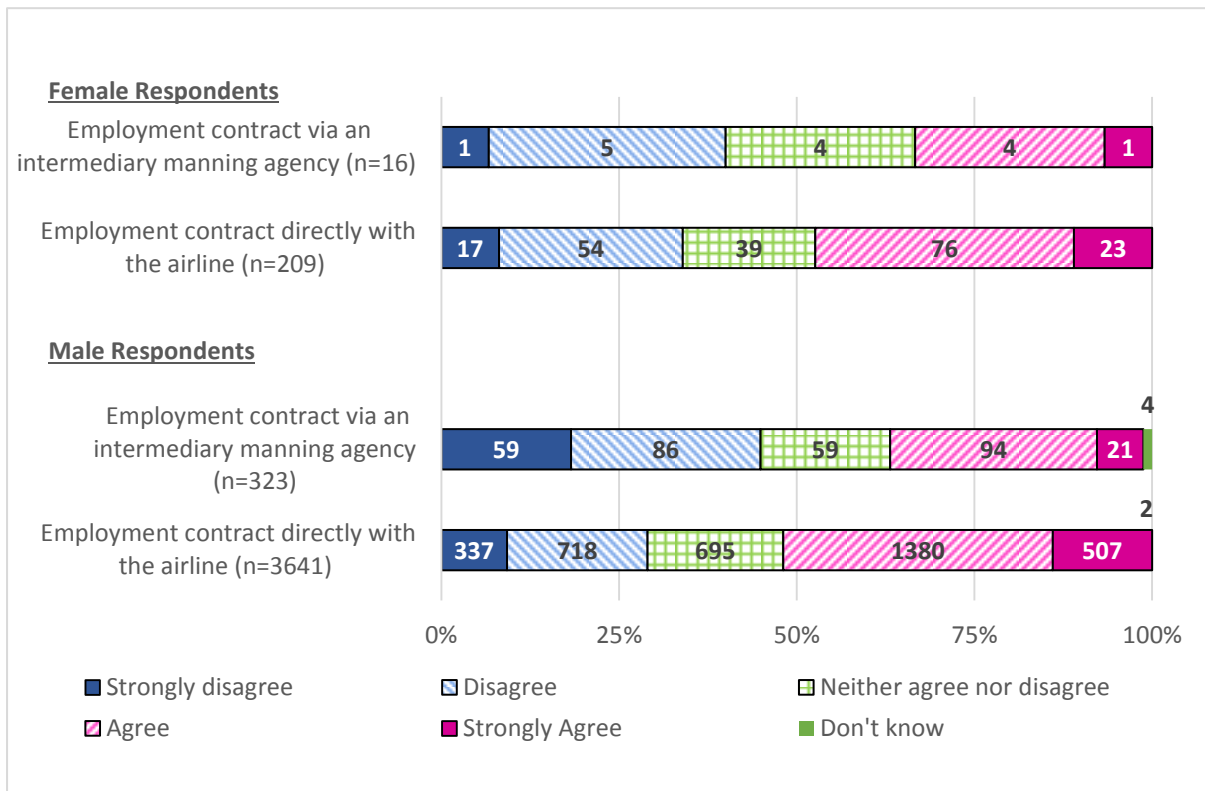
When comparing those with an air carrier contract to those with an intermediary contract, the proportion of respondents who ‘agree’ or ‘strongly’ agree with the statement falls by around 16 percentage points. Overall, 1,992 out of 3,866 (52%) respondents to this question with contracts with the air carrier answered ‘agree’ or ‘strongly agree’ and 122 out of 343 (36%) answered this way when working with an intermediary.

Due to the dominance of male pilots, these proportions remain the same when looking at the answers from men: 52% (1,887 out of 3,641) on contracts with their air carrier answered ‘agree’ or ‘strongly agree’ and 36% (115 of 323) for those working with an intermediary.

For women, however, the data shows 99 of 209 (34%) women on contracts with the air carrier ‘agree’ or ‘strongly agree’, whereas just 5 of 16 those working with an intermediary. It is difficult to draw comparisons between male and female pilots working via intermediaries, due to the low numbers of female pilots in this category who answered this question.

As with cabin crew above, comments in response to survey questions from pilots show us that as a way to ensure enough time at home, pilots opted to go part time. However, this option is not available for those working via an intermediary: ‘I had planned to go part time but there are no options for this through the agency.’

In the view of the European Cockpit Association, atypical employment is incompatible with a stable home life. They suggest that this could disproportionately affect women. Similarly, the Deputy Secretary of the European Cockpit Association indicated that atypical employment structures are far more frequently associated with forced mobility for pilots, who are required to move base at the request of the air carrier. This statement was confirmed by some of the pilots interviewed and surveyed; interviewees added that this is unsuited to those with a family.

Figure 7-10: “My work schedule allows me to spend enough time at home” (Pilots Q3.1)

Source: Survey of pilots

The most significant trend emerging from this data is the negative impact of working via an agency on satisfaction with time spent at home. It is clear from the cabin crew data, that the female staff felt this hardest, but due to a limited data set this gender analysis cannot be performed on the pilot data.

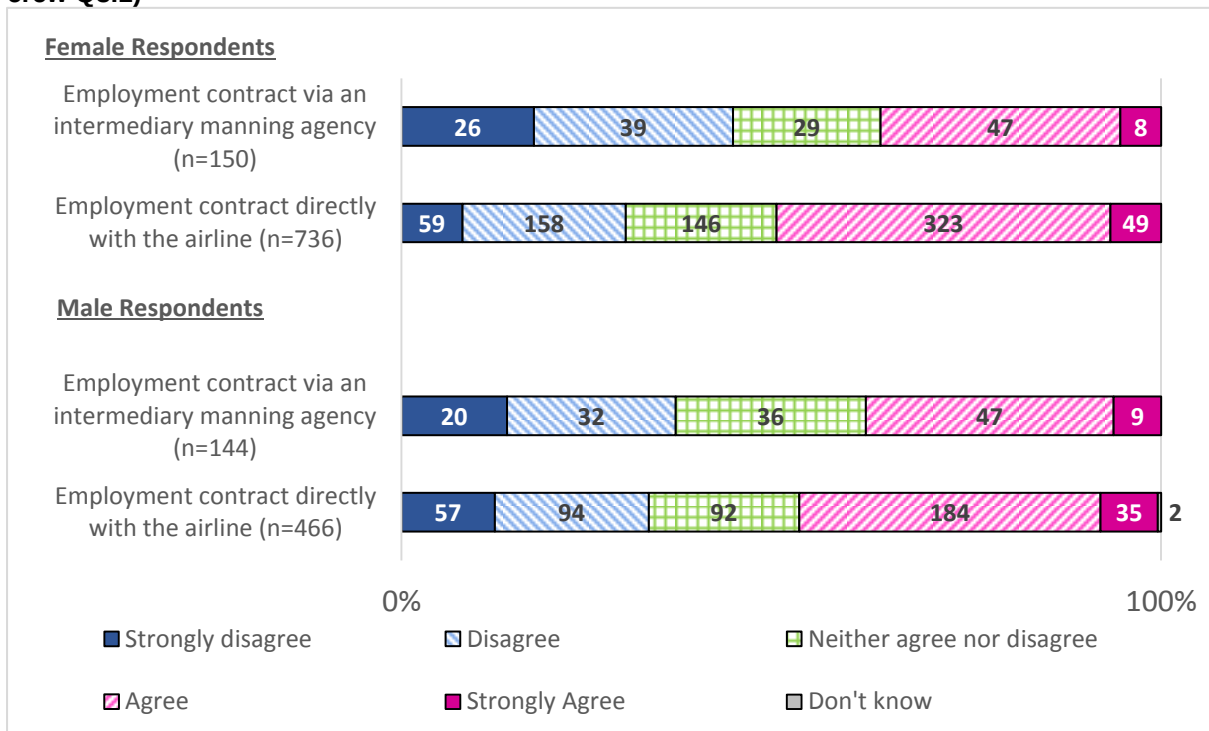
7.3.4.2 Notice provided on changes to work schedule

The respondents were also asked to express their level of agreement with the statement ‘Any changes to my work schedule are communicated with enough notice’. In the case of pilots, 1,627 out of 4,668 (35%) respondents agree with this statement and 946 out of 4,668 (20%) of them disagreed with it. On the other hand, in the case of cabin crew, almost 40% of the respondents (607 out of 1,528) agree with the statement and only 21% (321 out of 1,528) of them disagreed.

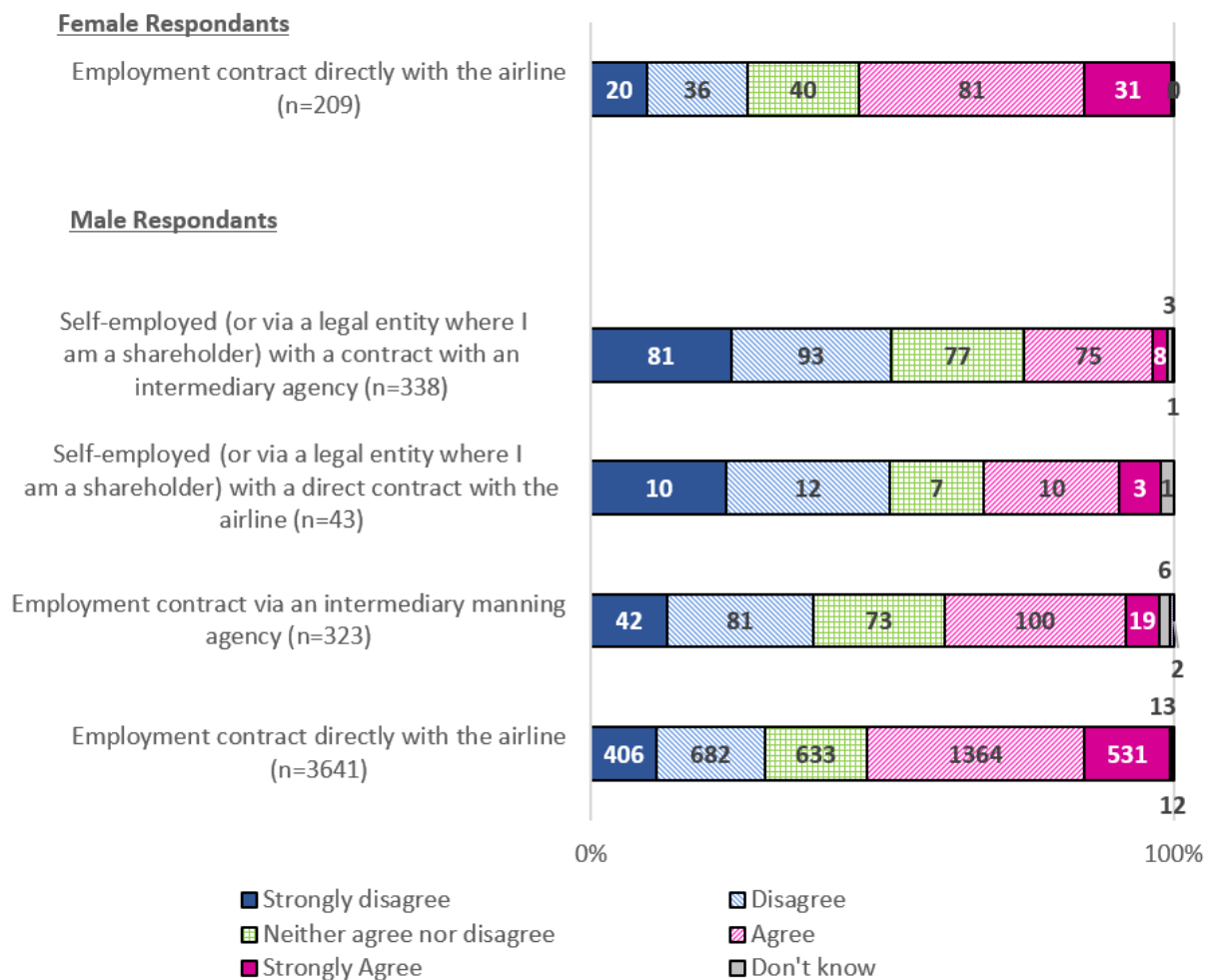
For cabin crew, female workers working via an intermediary disagree most strongly when answering this question: 65 out of 150 (43%) indicating they ‘disagree’ or ‘strongly disagree’ with this statement.

When analysed by gender, the results remain similar between the genders for the pilots, as shown in **Error! Reference source not found..** Too few self-employed female respondents replied to draw robust comparisons between genders and their contract types (only 11 self-employed and 9 working via an intermediary responded to this question). Looking at results for both genders, respondents the proportion indicating they ‘disagree’ or ‘strongly disagree’ rises 21 percentage points: from 30% (2,015 out of 3,866) of those employed by the air carrier to 51% (163 out of 398) of self-employed (combining the results for both of the self-employed arrangements).

Self-employment is typically associated with a higher level of independence and possibility for the professional to organise their own working hours, yet several interviewees indicated that this is not the case when working for an air carrier. Rather than gaining independence, aircrew are obliged to fulfil the carrier’s demands regarding hours of flight. Respondents explained that turning down shifts risks not being used by an air carrier, or intermediary company working on behalf on the air carrier, again.

Figure 7-11 'Any changes to my work schedule are communicated with enough notice' (Cabin crew Q3.1)

Source: Survey of cabin crew

Figure 7-12: 'Any changes to my work schedule are communicated with enough notice' (Pilot Q3.1)

Source: Survey of pilots

7.3.4.3 Summary of analysis on work-life balance

The analysis of the data suggests that the type of employment relationship that exists between aircrew and air carrier (e.g. traditional form of direct employment or any alternative scheme of temporary and/or indirect employment) does seem to have an effect on work-life balance (according to the surveys and interviews conducted).

Satisfaction with work life balance and time spent at home tend to be lower among cabin crew, compared to pilots. A key driver identified in interviews was the highflying time limitations that typically exist for cabin crew working for low-cost carriers. Due to the gender split of this job role (typically between 67-89% female), this will disproportionately affect female air carrier staff.

As well as consistently lower level of satisfaction with work-life balance being reported among those working with an intermediary company, there are trends among these workers associated with the gender of the employee. Both female cabin crew and pilots on intermediary contracts report lower satisfaction with their work-life balance, than their male counter parts. Air carrier representative organisations have suggested this relates to how mothers typically bear the burden of care at home, and therefore find it harder to balance work and home pressures

As previously discussed, female cabin crew are underrepresented in our survey sample. It is therefore possible that the effects of atypical working arrangements are felt more strongly than reported here.

Finally, interviews with self-employed pilots revealed that some felt pressure from air carriers to work all shifts offered to them, or risk losing future work. This added pressure likely contributed to the high share of self-employed pilots reporting a poor work-life balance. This lack of control over work patterns described by respondents is also an indication that their employment arrangement could be considered 'bogus' self-employment. This is discussed in more detail in Section 5.

7.3.5 Atypical employment arrangements and access to maternity and paternity rights

7.3.5.1 Maternity and Paternity leave in the EU and Aviation Sector

Maternity leave policy in EU Member States is governed by the 1992 Pregnant Workers Directive, which sets the minimum period for maternity leave at 14 weeks, with 2 weeks' compulsory leave (EUR-Lex, 1992). Council Directive 2010/18/EU (the Parental Leave Directive) sets minimum requirements for parental leave for male and female workers, and for related employment protection. In April 2017, the Commission put forward a proposal for a EU Directive on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (EUR-Lex, 2018), that aims to adapt current EU legal framework to increase equality between men and women regarding labour market opportunities and treatment at work. It includes the introduction of an entitlement of 10 days paternity leave, paid at least at the level of sick-pay and foresees the strengthening of the current parental leave provisions with non-transferability and compensation at sick pay level.

However, as there is *currently no* EU wide legislation on paternity leave access to it varies significantly between Member States. Out of the EU-28, eighteen offer some form of paternity leave, with an average length of 12.5 days. For both maternity and paternity pay, the amount received during this time is dependent on the Member State. It ranges from leave with no pay, basic statutory pay and up to 100% of salary (EPRS, 2016).

In 2015, the average compensation rate for paternity leave across the EU was 92% of previous incomes, which is 2 percent more than the average compensation rate for maternity leave (European Parliament, 2015).

Paternity arrangements currently vary greatly among Member States. Take-up rates have been found to depend on a complex mix of factors with compensation of previous incomes as the most important one as well as the possibility to return to the work place and cultural factors (e.g. stereotypes) (European Parliament, 2015). On average across the EU, less than 10% of fathers take their entitled leave¹⁰³ (Idem).

However, owing to the nature of aircrew work, and the added dangers flying presents to pregnant women, maternity leave is subject to further guidance. The International Civil Aviation Organization (ICAO) states that women with low-risk pregnancies can continue to fly up until 26 weeks of pregnancy (2011). Before this time, ICAO suggests women undergo a medical exam to confirm it is safe for them to do so. This is performed by specialist bodies, such as an Aeromedical Centre or an Aeromedical Examiner (ICAO 2011). Most air carriers therefore require expectant mothers to gain a medical certificate confirming her due date and that she is safe to fly (CAA, 2017). Past the 26-week of pregnancy mark, flying licences of flight crew will be temporarily suspended. The suspension is then lifted following a medical exam confirming full recovery at the end of the pregnancy. Guidance from the ICAO annual of Civil Aviation Medicine (2012) suggests that, provided a full recovery takes place, pilots should be able to resume aviation duties four to six weeks after birth (or termination of pregnancy).

7.3.5.2 Maternity and Paternity leave and pay - Survey data

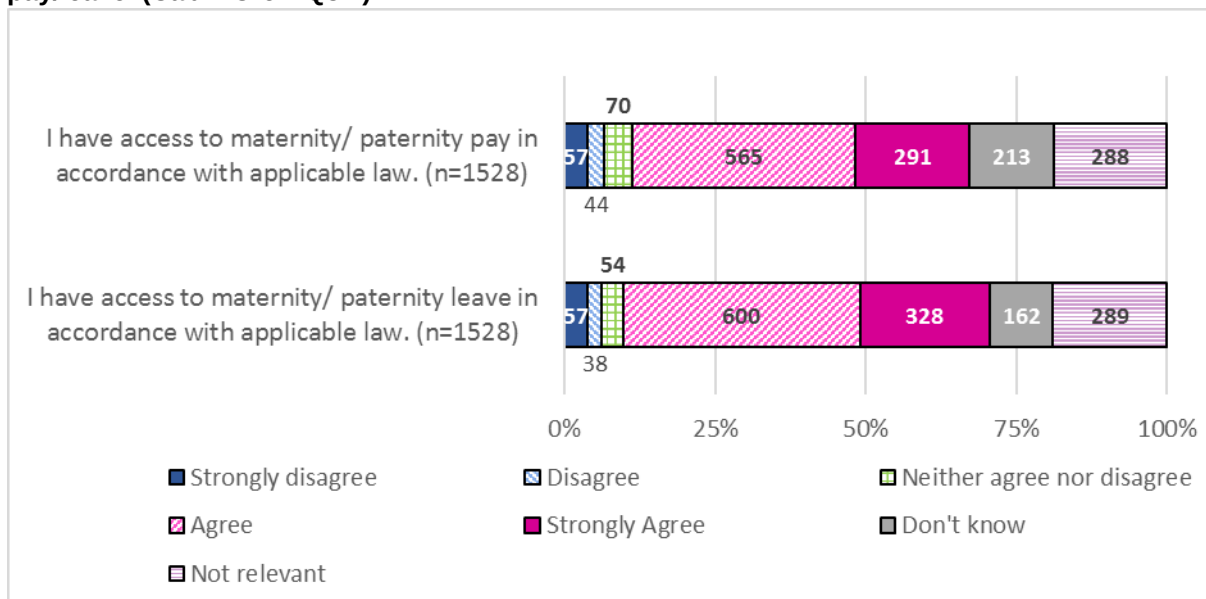
Our surveys asked both aircrew and pilots were asked if they agreed with the following statements:

- a) I have access to maternity/ paternity leave in accordance with applicable law.
- b) I have access to maternity/ paternity pay in accordance with applicable law.

¹⁰³ Note that this study also included the take-up of parental leave by fathers, which was not captured in this study.

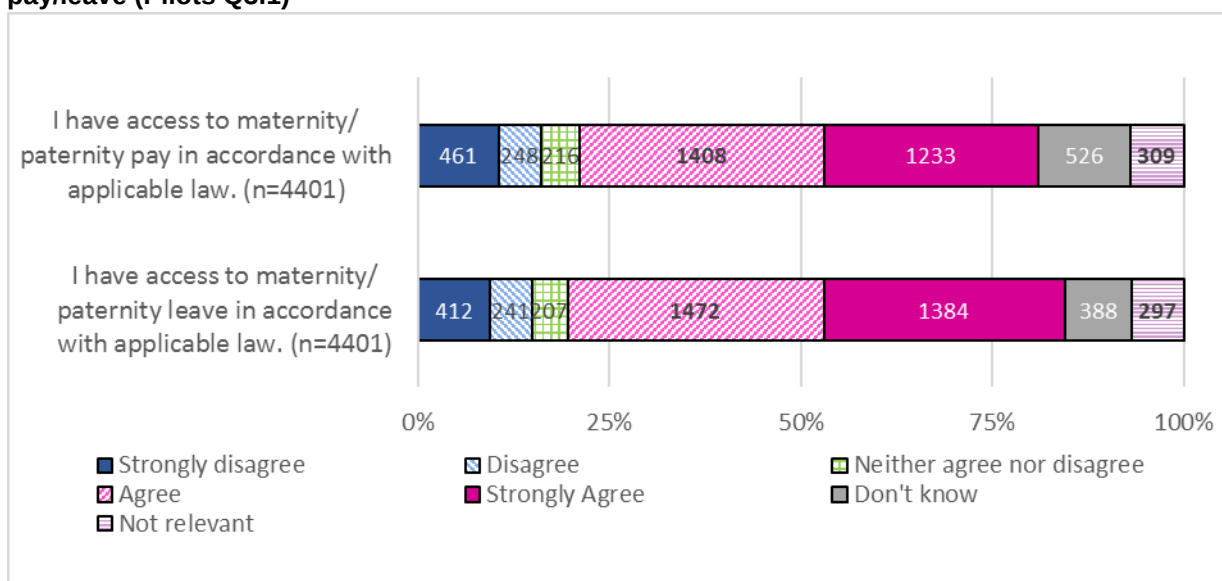
The responses to these questions are displayed in **Error! Reference source not found.** and **Error! Reference source not found.**, for cabin crew and pilots respectively. For both, the majority of respondents stated that they had access to maternity rights of leave and pay. 928 out of 1,528 cabin crew (61%) and 3,053 out of 4,668 pilots (65%) either 'agree' or 'strongly agree' that they have access to maternity/paternity leave. 856 out of 1,528 (56%) cabin crew and 2,821 out of 4,668 pilots (60%) 'agree' or 'strongly agree' that they have access to maternity/paternity pay. The EU's 1992 Pregnant Workers Directive sets the minimum period for maternity leave at 14 weeks for all Member States, and yet a significant proportion of respondents do not appear to have access to the rights they are legally entitled to. Potential drivers associated with employment arrangements are investigated in detail below.

Figure 7-13: Please indicate to what extent you agree with the following statements regarding your working conditions and how they relate to your personal life: Access to maternity pay/leave (Cabin Crew Q3.1)



Source: Survey of cabin crew

Figure 7-14: Please indicate to what extent you agree with the following statements regarding your working conditions and how they relate to your personal life: Access to maternity pay/leave (Pilots Q3.1)



Source: Survey of pilots

7.3.5.3 Maternity and paternity rights by gender

Disaggregating by gender shows that proportionally, more women indicated that have access to maternity leave, than male workers indicated they have access to paternity leave. For cabin crew (Figure 7-15), 66% (594 out of 8,955) female workers either 'agreed' or 'strongly agreed' that they had access to maternity leave and 62% (554 out of 895) indicated the same for maternity pay. For male cabin crew, proportion drops to 53% (328 out of 619) regarding leave and 48% (296 out of 619) regarding pay.

For pilots, (Figure 7-16), 78% (186 out of 240) female workers either 'agreed' or 'strongly agreed' that they had access to maternity leave and 71% indicated that they either 'agreed' or 'strongly agreed' that they have access to maternity pay. For male pilots, these proportions are 65% (2,856 out of 4,401) for leave and 60% (2,641 out of 4,401) for pay.

As previously discussed, at the time of this study, there was no legal instrument that required Member States to have a minimum standard regarding father's leave. Additionally, take-up of paternity leave across the EU is low.

Figure 7-15: Male and Female Cabin Crew: Please indicate to what extent you agree with the following statements regarding your working conditions and how they relate to your personal life: Access to maternity pay/leave (Cabin Crew Q3.1)

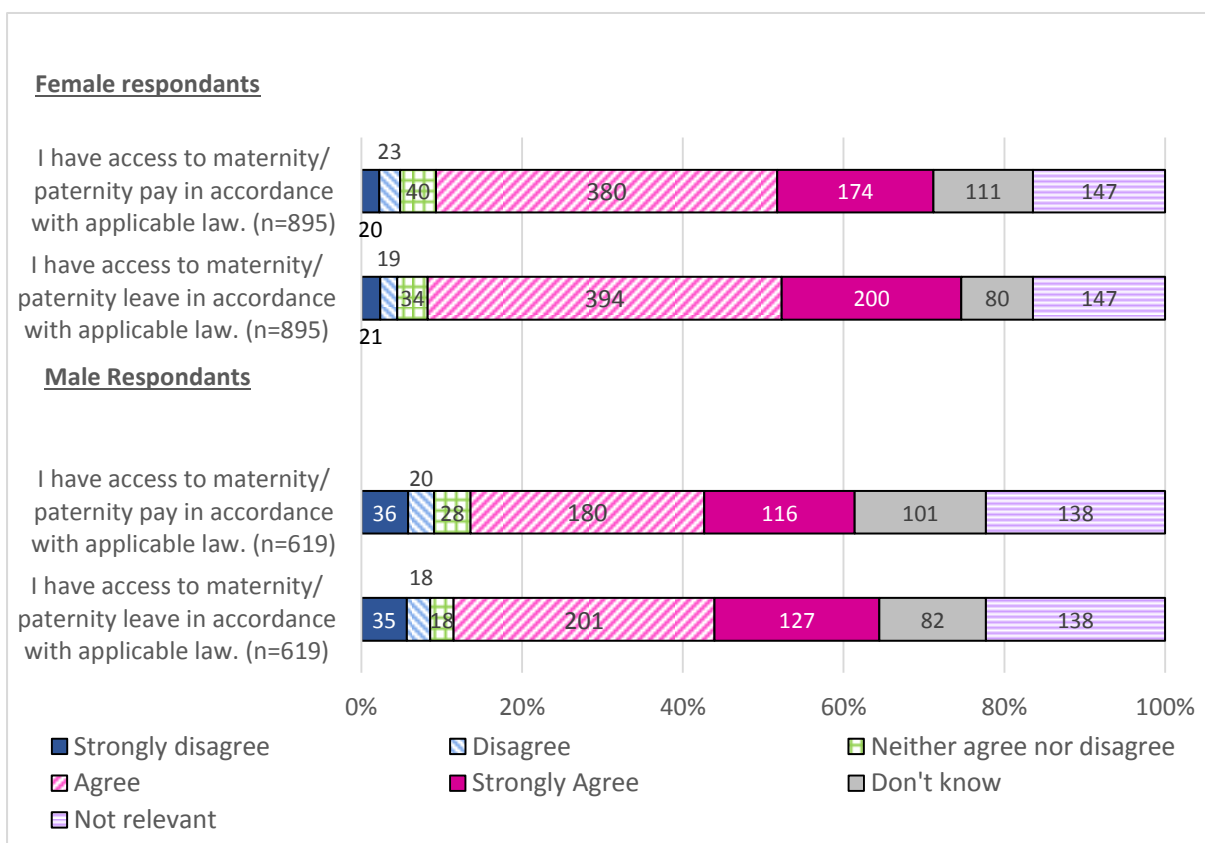
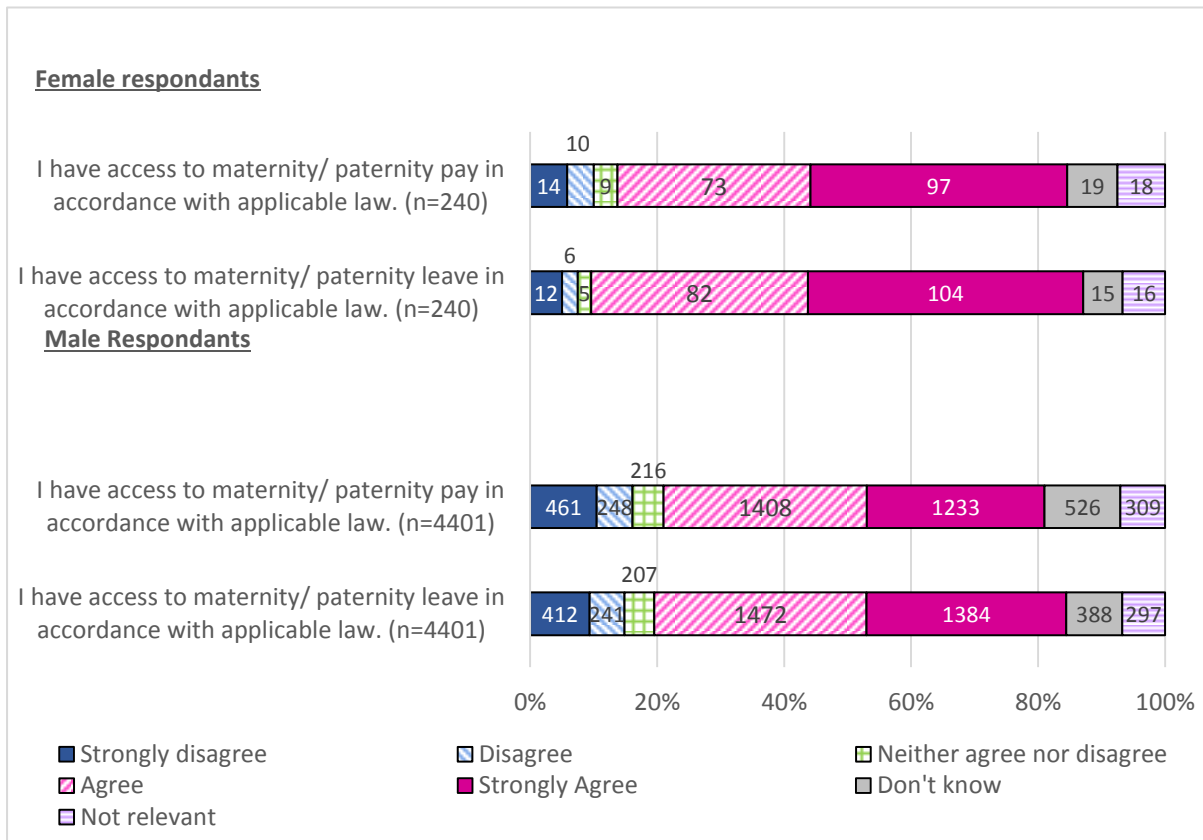


Figure 7-16: Male and Female Pilots: Please indicate to what extent you agree with the following statements regarding your working conditions and how they relate to your personal life: Access to maternity pay/leave (Pilots Q3.1)



7.3.5.4 Maternity and paternity rights by business model

Interesting trends emerge when this data is viewed according to business model. This analysis reveals higher levels of knowledge of, and access to, maternity and paternity rights for staff aboard traditional air carriers, and lower levels for low-cost air carriers. Table 7-2 focuses on cabin crew's access to maternity/paternity leave and Table 7-3 shows the access to maternity/paternity pay. The same analysis of maternity/paternity rights is repeated for pilots, with Table 7-4 showing access to leave and Table 7-5 showing access to pay.

When cabin crew were asked about the access to maternity or paternity leave 536 out of 783 (68%) of those working for a traditional air carrier either 'agreed' or 'strongly agreed' with the statement¹⁰⁴. For cabin crew working for low-cost carriers, 301 out of 604 (50%) either 'agreed' or 'strongly agreed'. Responding to the same statement, 1,774 out of 2,154 (82%) pilots working for traditional air carriers stated that they either 'agree' or 'strongly agree'. Agreement falls to 690 out of 1,569 (44%) pilots working for low-cost carriers.

Regarding access to maternity/paternity pay, 499 out of 783 (64%) of cabin crew working for a traditional air carrier and 292 out of 637 (46%) working for a low-cost carrier either 'agreed' or 'strongly agreed' with the statement. For pilots, 536 out of 783 (68%) working with a traditional air carrier indicate they 'agree' or 'strongly agree' and 322 out of 637 (51%) said the same.

It is also worth pointing out that the proportion of respondents indicating they did not know about their access to maternity or paternity leave was significantly higher among those working for low-cost air carriers. Cabin crew working for traditional air carriers proportion of 'don't know' responses is 30 out

¹⁰⁴ Respondents were asked if they agreed with the statement 'I have access to maternity/ paternity leave in accordance with applicable law.'

of 783 (4%), compared with 123 out of 637 (19%) of cabin crew working for low-cost carriers. Within the pilot sample, of those employed by traditional air carriers 128 out of 2154 (6%) said 'don't know' and this rises to 307 out of 1569 (20%) low-cost. In interviews with staff from two low-cost air carriers, it was clear there was confusion surrounding maternity and paternity arrangements.

Disaggregating this data by gender, we see similar proportional difference for cabin crew as reported in section 7.3.5.3 regarding pay for traditional scheduled air carriers. However, for maternity and paternity leave, there is a narrowing of the difference between men and women's answers of around 3 percentage points for those working for low-cost carriers or working via an intermediary company.

Due to the low number of female pilots working with air carriers with different business models, it is hard to draw concrete comparisons between the two genders access to pay and leave. It is possible to highlight that women report higher levels of access to maternity leave when working for when working for a traditional scheduled airline: 89%(117 out of 132) 'agree' or 'strongly agree' compared to 82% (1,649 out of 2,010) of men. There is also a difference seen regarding pay for these workers, 81% (107 out of 132) of women and 78% (1,569 out of 2,010) of men 'agree' or 'strongly agree' that they have appropriate access, when working for a traditional scheduled airline,

Table 7-2: Cabin crew indicating that they have access to maternity/ paternity leave in accordance with applicable law. (Cabin Crew survey Q3.1)

Business Model	Traditional Scheduled	Low-cost	Charter	Business Aviation	Freight	Other Types
Agree or strongly agree	536 (68%)	322 (51%)	15	24	0	6
Neither agree nor disagree	18 (2%)	29 (5%)	3	1	0	0
Disagree or strongly disagree	17(2%)	74 (12%)	2	1	1	0
Don't know	30 (4%)	123 (19%)	1	2	0	0
Not relevant	182 (23%)	89 (14%)	3	9	0	0
Total responses	783	637	24	37	1	6

Source: Survey of cabin crew

Table 7-3: Cabin crew indicating that they have access to maternity/ paternity pay in accordance with applicable law. (Cabin Crew survey Q3.1)

Business Model	Traditional Scheduled	Low-cost	Charter	Business Aviation	Freight	Other Types
Agree or strongly agree	499 (64%)	292 (46%)	16	22	0	1
Neither agree nor disagree	29 (4%)	34 (5%)	2	1	0	1
Disagree or strongly disagree	19 (2%)	77 (12%)	2	2	0	0
Don't know	54 (4%)	145 (23%)	1	3	1	1
Not relevant	182 (23%)	89 (14%)	3	9	0	0
Total responses	783	637	24	37	1	3

Source: Survey of cabin crew

Table 7-4: Pilots indicating that they have access to maternity/ paternity leave in accordance with applicable law. (Pilot survey Q3.1)

Business Model	Traditional Scheduled	Low-cost	Charter	Business Aviation	Freight	Other Types
Agree	1774 (82%)	690 (44%)	142 (64%)	201 (63%)	50	64 (63%)
Neither agree nor disagree	80 (4%)	84 (5%)	9 (4%)	26 (8%)	1	6 (6%)
Disagree	97 (5%)	447 (28%)	34 (15%)	34 (11%)	12	13 (13%)
Don't know	75 (3%)	250 (16%)	14 (6%)	27 (8%)	18	7 (7%)
Not relevant	128 (6%)	98 (6%)	23 (10%)	30 (9%)	7	11 (11%)
Total responses	2154	1569	222	318	88	101

Source: Survey of pilots

Table 7-5: Pilots indicating that they have access to maternity/ paternity pay in accordance with applicable law. (Pilot survey Q3.1)

Business Model	Traditional Scheduled	Low-cost	Charter	Business Aviation	Freight	Other Types
Agree	1684 (78%)	592 (38%)	132 (59%)	190 (60%)	47	35 (35%)
Neither agree nor disagree	92 (4%)	88 (6%)	9 (4%)	23 (7%)	0	4 (4%)
Disagree	121 (6%)	476 (30%)	38 (17%)	32 (10%)	14	16 (16%)
Don't know	128 (6%)	307 (20%)	19 (9%)	41 (13%)	8	9 (9%)
Not relevant	129 (6%)	106 (7%)	24 (11%)	32 (10%)	8	12 (16%)
Total responses	2154	1569	222	318	77	76

Source: Survey of pilots

Analysis of individual contracts (10 direct employment contracts) made available found that some traditional and charter carriers recognise 16 weeks of maternity leave, during which women receive their total fixed remuneration and social welfare benefits, as well as unpaid leave of a maximum of three years. Conversely, it was found that access to maternity rights for female employees of low-cost carriers is variable. In one example, maternity rights for female employees were granted depending on the starting date of employment:

- i. For those who started to work for the company before 31st March 2006, the air carrier pays 26 weeks of full basic salary, less social welfare benefits during maternity leave. Besides, the carrier also recognises the right to additional 16 weeks of unpaid leave,
- ii. However, those who signed the contract after 31st March 2006, only receive social welfare benefits during the 26 weeks of maternity leave, regardless of their right to the additional unpaid leave as described under paragraph (i) above.

Furthermore, interviews with staff from two low-cost air carriers also confirmed that there was some confusion about maternity and paternity arrangements or if they had any at all. For example, a member of Ryanair cabin crew (based in Italy) at first stated that she did not have access to maternity pay. When pressed for details she said that while she thought there may be an allowance for those employed with the air carrier, it was confusing how it could be accessed as it would come from Ireland's social security system. As discussed in Section 8 (Applicable Law), the differences between policies applied to an employee also depend on the applicable law which is usually imposed by the employer

The higher levels of awareness of, and access to, maternity and paternity rights for staff working with traditional air carriers than low-cost air carriers highlights an unlevel playing field among the air carriers.

7.3.5.5 Maternity and paternity rights, by employment arrangement

Although a significant majority of the respondents indicated that they are entitled to maternity/paternity leave and pay according to the applicable law, several interviewees working under alternative

schemes of employment stated that aircrew are not entitled to any rights related to maternity and paternity.

717 of 1,212 cabin crew (59%) and 2,654 of 3,866 pilots (69%) employed directly with their air carrier 'agreed' or 'strongly agreed' that they had access to maternity/paternity pay in accordance with applicable law. This level of agreement is higher than any of the other working arrangements, as can be seen in **Error! Reference source not found.** and **Error! Reference source not found.**

The analysis of the employment contracts made available confirmed that for pregnant women employed directly by their air carrier, after the 26-week gestation point they will be transitioned to an alternative job until they begin maternity leave.

One of the pilots interviewed had first-hand experience of this. Her impression of the treatment she received was largely positive; while on secondment to an office role, she maintained her pilot's salary and received her full wage while on maternity leave (made up of a social welfare payment, and the air carrier paid the additional amount to make it up to her full working wage). However, she had been a pilot with the same air carrier since 2001. While she received the same level of remuneration during maternity leave as before when she was flying, she said those who that have contracts that started after 2006 can only expect payments from social welfare in accordance with Irish Law. Her air carrier will no longer top the salary up.

The reduction in maternity rights as experienced by this pilot indicates that the air carrier is minimising its contribution to maternity pay. This perspective agrees with the European Cockpit Association's (ECA) view. In an interview, an ECA representative explained that even when air carriers are using atypical employment structures, '*maternity and paternity provisions are at the legal minimum*'. This is further backed up by comments received from the surveys, in which one pilot explained that their air carrier '*does not do anything more to help female pilots children than what the law says*'.

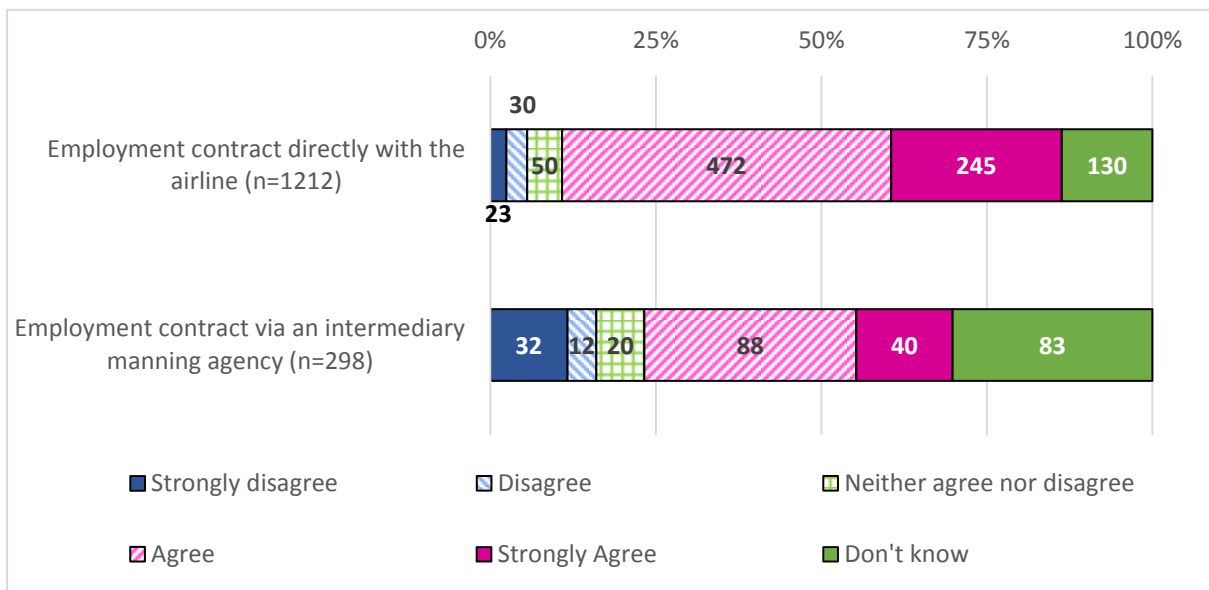
For aircrew employed via an intermediary agency, air carriers no longer bear responsibility to cover benefits. Compared to those employed directly by their air carrier, survey respondents indicating they have access to these rights drops in this category. As shown in **Error! Reference source not found.** and **Error! Reference source not found.**, 128 out of 298 cabin crew (43%) and 137 out of 343 pilots (40%) employed via an intermediary agency agreed or strongly agreed that they had access to maternity/paternity pay in accordance with applicable law. The view from stakeholder interviews is less ambiguous; several (four pilots and three cabin crew) stated that staff employed in this way would not receive any maternity or paternity leave.

The lowest proportion of respondents indicating that they have access to leave are self-employed. Grouping together those in contact with the air carrier or an intermediary, the survey found that only 17 out of 398 (2%) of these pilots indicated 'agree' or 'strongly agree' that they have access to maternity/paternity leave.

In interviews, two respondents stated that aircrew working under this type of employment were not entitled to any rights related to maternity and paternity. Furthermore, two of the pilots reported they were advised by their air carrier to become self-employed. As this removed the onus on the air carrier to cover maternity or paternity benefits (as well as other benefits such as sick pay and holiday), this tactic was regarded as a cost cutting move by the air carrier in the view of the respondent. Additional comments from a self-employed pilot who responded to the survey confirms this: '*I get zero parental benefits. Zero sick pay, zero holiday pay. ... I am not self-employed in the correct sense, yet the air carrier makes us self-employed to avoid their social security liabilities.*'

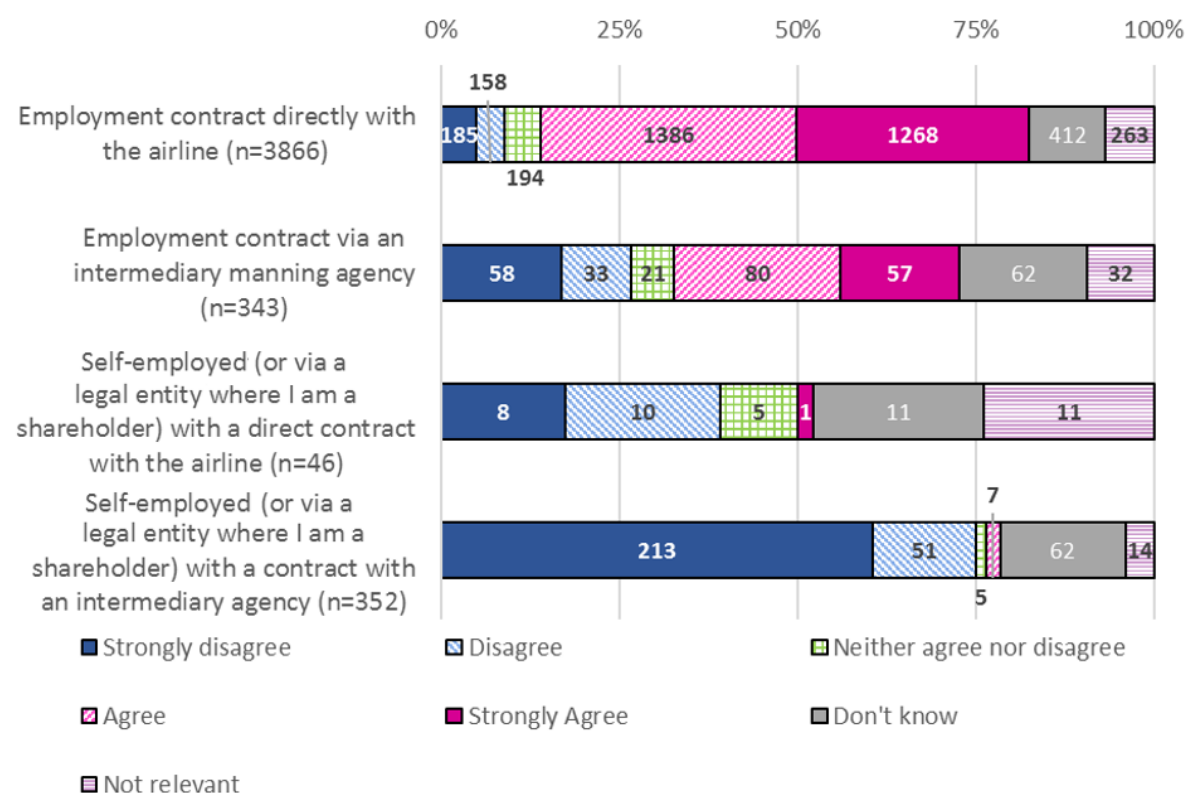
Separating the data into male and female respondents, there is a similar proportional difference (+/- 1%) to those reported in section 7.3.5.3 for maternity and paternity pay for those employed directly with the airlines. However, regarding access to maternity and paternity pay for cabin crew employed via an intermediary, we see a narrowing of the differences by around 4 percentage points: For men, 55 out of 144 (38%) reported they 'agree' or 'strongly agree' that they have access to appropriate paternity pay; For women, this proportion was 48% (72 out of 150). It is not possible to make comparison between male and female cabin crew on the other modes of employment captured (self-employed or zero-hours contracts) because of low response rates among these workers. Unfortunately, this also applies to the data set for female pilots employed via an intermediary manning agency, who are self-employed or on a zero-hours contracts. For male and female pilots employed directly by their air carrier, there is little change (+/- 1%) to the proportions reported in section 7.3.5.3.

Figure 7-17: Cabin Crew Indicating that they have access to maternity/ paternity pay in accordance with applicable law depending on working arrangement (Cabin crew survey Q3.1)



Source: Survey of cabin crew

Figure 7-18: Pilots indicating that they have access to maternity/ paternity pay in accordance with applicable law depending on working arrangement (Pilot survey Q3.1)



Source: Survey of pilots

Regarding maternity/paternity leave, as shown in **Error! Reference source not found.**, 2,848 out of 3,866 (74%) of all pilots that responded 'agreed' or 'strongly agreed' that they have access in accordance with applicable law. A pilot, with experience of pregnancy while employed directly by her

air carrier indicated during an interview that she was transitioned to a desk job until she was ready to go onto maternity leave, at a date chosen by her.

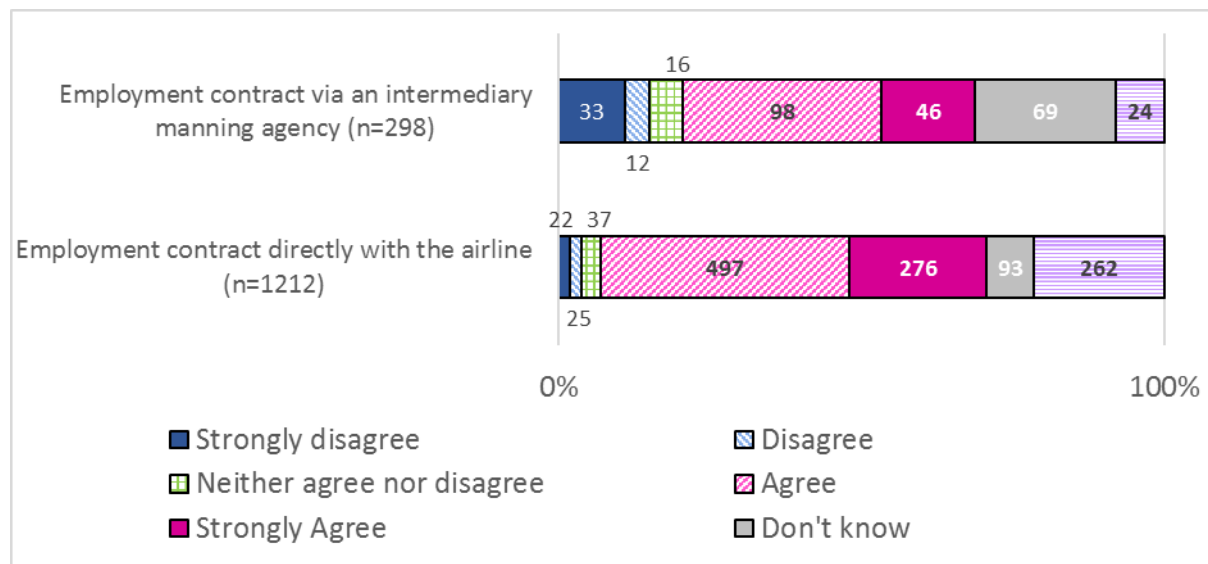
The proportion drops significantly when looking at responses for those employed via an intermediary agency. For this cohort, 144 out of 298 cabin crew (48%) and 163 out of 343 pilots (48%) agreed or strongly agreed that they had access to maternity/ paternity leave in accordance with applicable law.

Access to maternity/paternity rights in this arrangement is dependent on the intermediary company's policy. One cabin crew member employed by an intermediary, said he believed that there was a policy in place that he had been made aware of but that the implementation of it may differ in practice. All other interviewees (four pilots and three cabin crew) with knowledge of intermediary agencies, either through first-hand experience or through their colleagues, stated that staff employed in this way would not receive any maternity or paternity leave. As one cabin crew member explained, their air carrier is unlikely to find pregnant women alternative office work once they pass the 26-week mark. Instead *'Pregnant women are asked to stop working'*. The ECA agree with these comments and stated that pregnant women in atypical work arrangements face a high chance of losing their jobs.

The lack of access to maternity/paternity benefits is confirmed by analysis of 28 temporary agency contracts, of which only one specified the details of maternity/paternity leave and pay. Under this this contract, cabin crew are entitled to basic salary while on maternity or paternity leave, and women would be transferred to office duties while pregnant. Another contract suggested that women should notify the air carrier of their pregnancy as soon as possible, but there was no mention of maternity provision past this. No maternity/paternity provisions were found in the remaining 27 contracts from temporary work agencies.

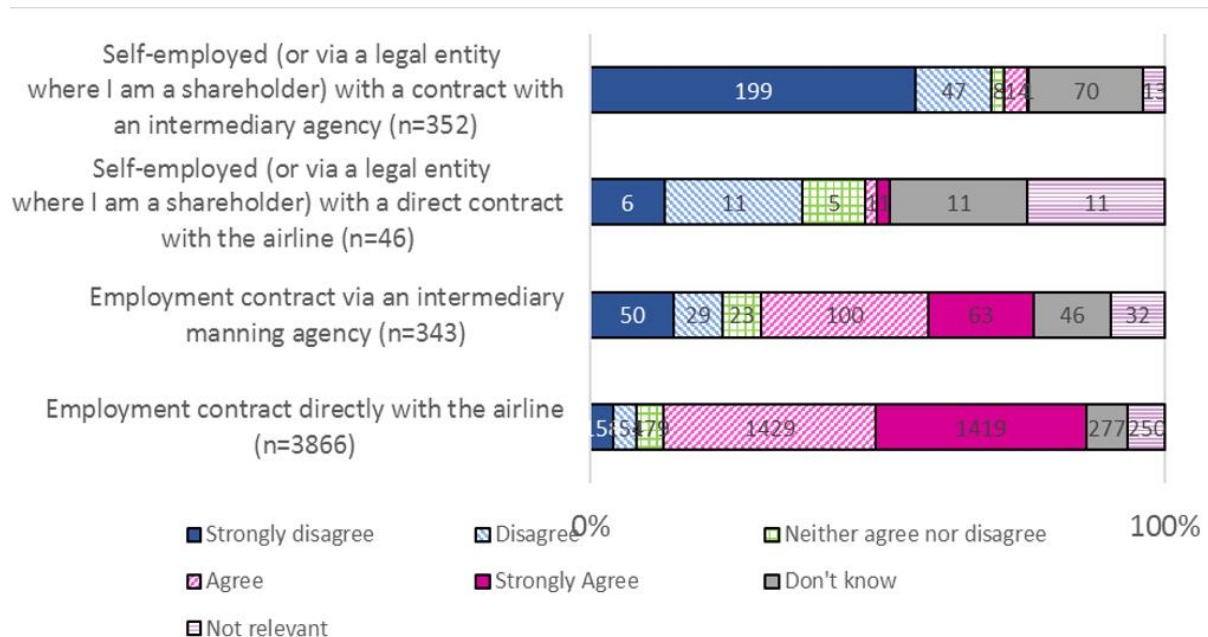
Separating the data into male and female respondents, there is a similar proportional difference (+/- 1%) to those reported in section 7.3.5.3. This is the case for cabin crew regarding leave for those employed directly with an airline and those employed via an intermediary company, and for pilots employed directly by their air carrier. Due to low response rates among some groups of workers, it is not possible to make a comparison between genders. This applies to cabin crew that are self-employed or on zero-hours contracts, and for pilots employed via an intermediary manning agency, who are self-employed or on a zero-hours contracts.

Figure 7-19: Cabin Crew indicating that they have access to maternity/ paternity leave in accordance with applicable law depending on working arrangement (Cabin crew survey Q3.1)



Source: Survey of cabin crew

Figure 7-20: Pilots indicating that they have access to maternity/ paternity leave in accordance with applicable law depending on working arrangement (Pilot survey Q3.1)



Source: Survey of pilots

Although the data shows that employees of air carriers are, on the whole, reasonably satisfied with their access to maternity/paternity rights, other trends arise when the data is viewed according to the type of contract air crew are on. As shown in **Error! Reference source not found.**, 57% (165 out of 287) of cabin crew on a fixed term contract 'agree' or 'strongly agree' that they have access maternity/paternity pay and, as shown in **Error! Reference source not found.**, 62% (179 out of 287) of cabin crew on a fixed term contract 'agree' or 'strongly agree' that they have access maternity/paternity leave. These are similar to the levels reported by those on an open-ended contract. This agrees with contract analysis that found little difference in benefits packages for employees of air carriers on either contract type

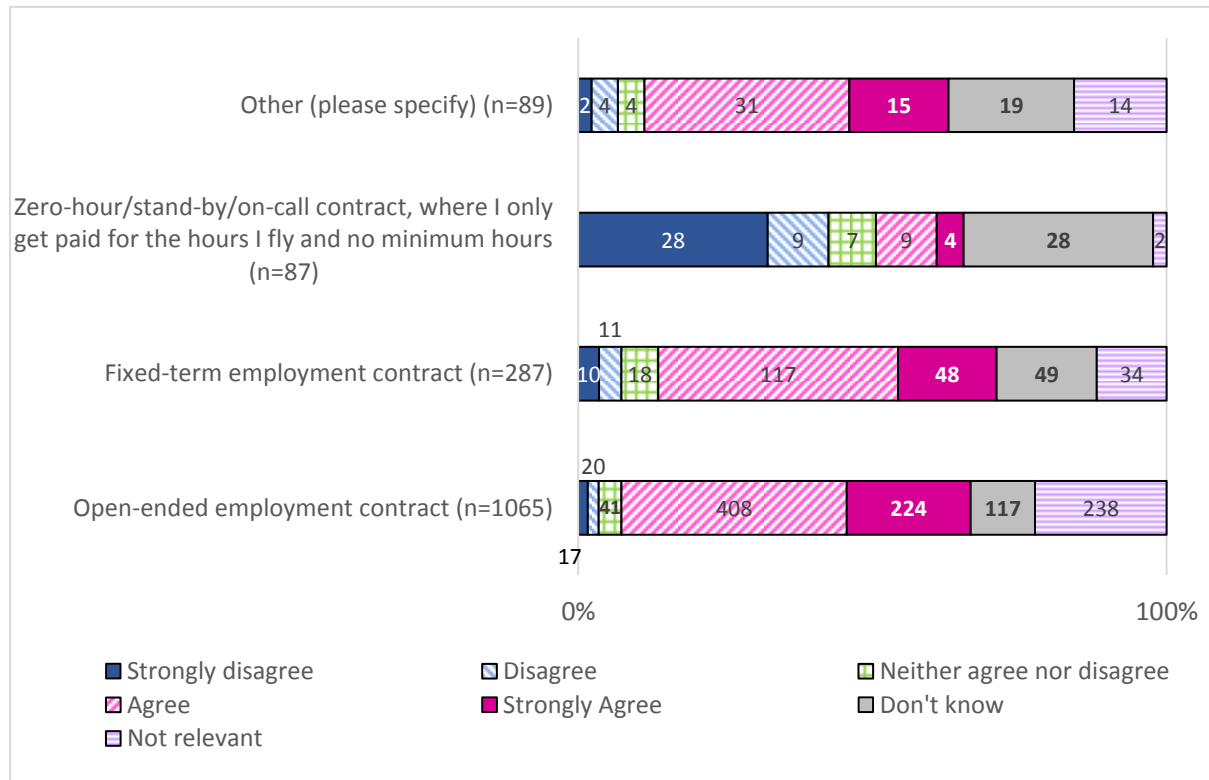
However, for pilots, there is over a 20-percentage point difference for those on fixed term contracts reporting access to parental pay (shown in **Error! Reference source not found.**) and parental leave (shown in **Error! Reference source not found.**). For open-ended contracts, 68% (2476 out of 3626) 'agree' or 'strongly agree' regarding pay and 73% (2650 out of 3626) regarding leave. This is compared to their colleagues on fixed term contracts of which 45% (296 out of 661) indicated this way for maternity/paternity pay, and 51% (355 out of 661) for maternity/paternity leave. Concerns were raised by interviewees regarding the future contract renewal of those on fixed term contracts; The president of the Norwegian Pilots Group explained that mothers are being supported by appropriate social security whilst their contract lasts but that it is unlikely to be extended after pregnancy.

From supporting data, it is not clear why there is this difference between cabin crew and pilots. It may be related to the cabin crew survey sample, wherein women are underrepresented.

While there was not direct input from pilots or cabin crew on zero-hour contracts contract analysis shows that staff working under such contracts are remunerated solely for the duration of their flights and do not receive additional benefits such as sick pay or annual holiday. This is reflected in the survey responses. For cabin crew, the data shows that 19 out of 87 respondents on these contracts 'agree' or 'strongly agree' that they receive maternity/paternity leave and 13 out of 87 indicated in this way regarding maternity/paternity pay. For pilots, only 16 out of 260 (6%) 'agree' or 'strongly agree' regarding access to leave (**Error! Reference source not found.**) and 6 out of 260 (2%) 'agree' or 'strongly agree' regarding pay (**Error! Reference source not found.**). There was little other evidence found suggesting that they might receive any support in the form of maternity or paternity pay or leave.

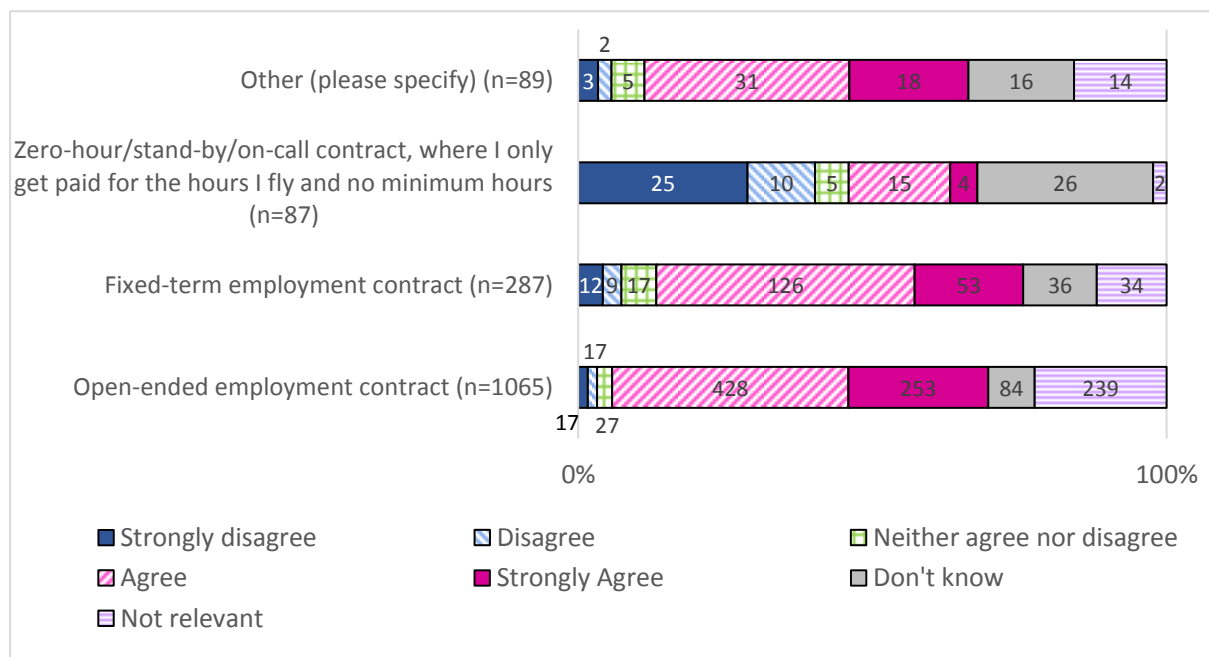
Overall, this data shows that the type of contract with air carriers can have a significant effect on air crew's access to parental pay and leave. Those on fixed-term or zero-hours contracts are notably less satisfied than their fully employed counter parts.

Figure 7-21: Cabin Crew indicating access to maternity/ paternity pay in accordance with applicable law depending on contractual arrangements (Cabin Crew survey Q3.1)



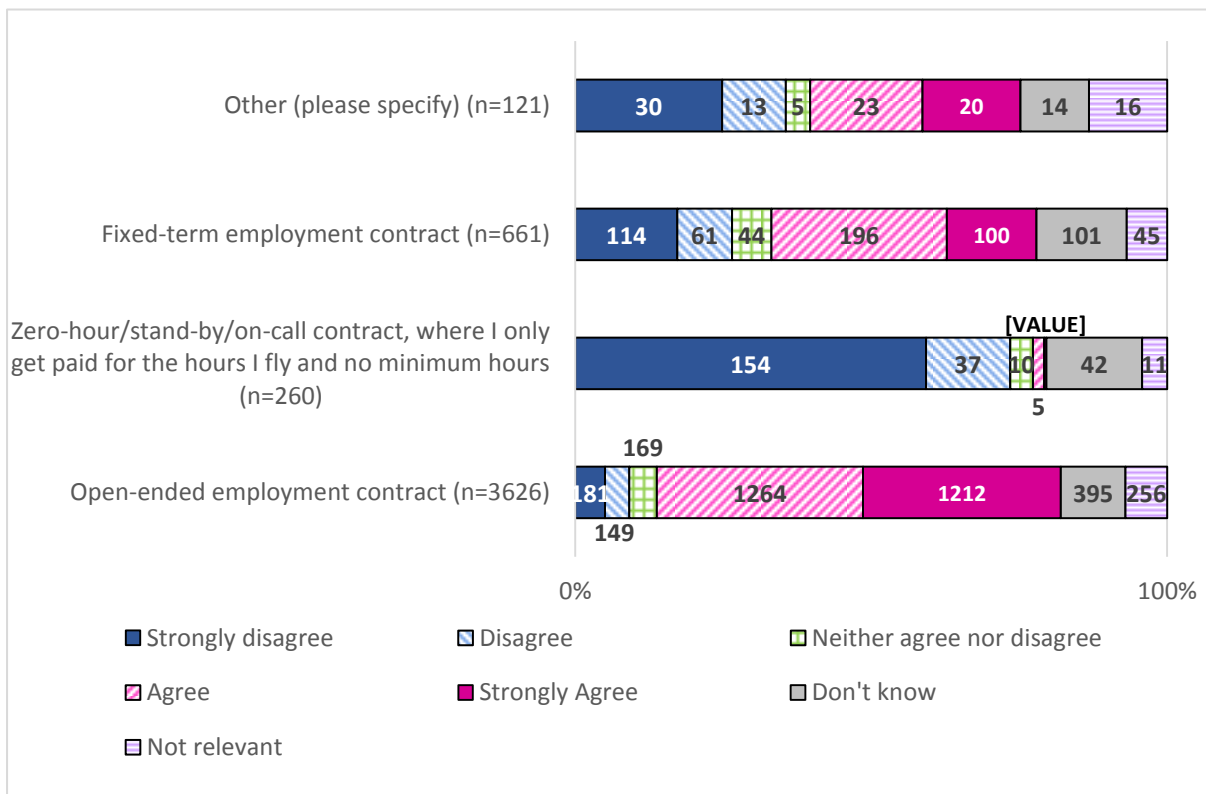
Source: Survey of cabin crew

Figure 7-22: Cabin Crew indicating access to maternity/ paternity leave in accordance with applicable law depending on contractual arrangements (Cabin Crew survey Q3.1)



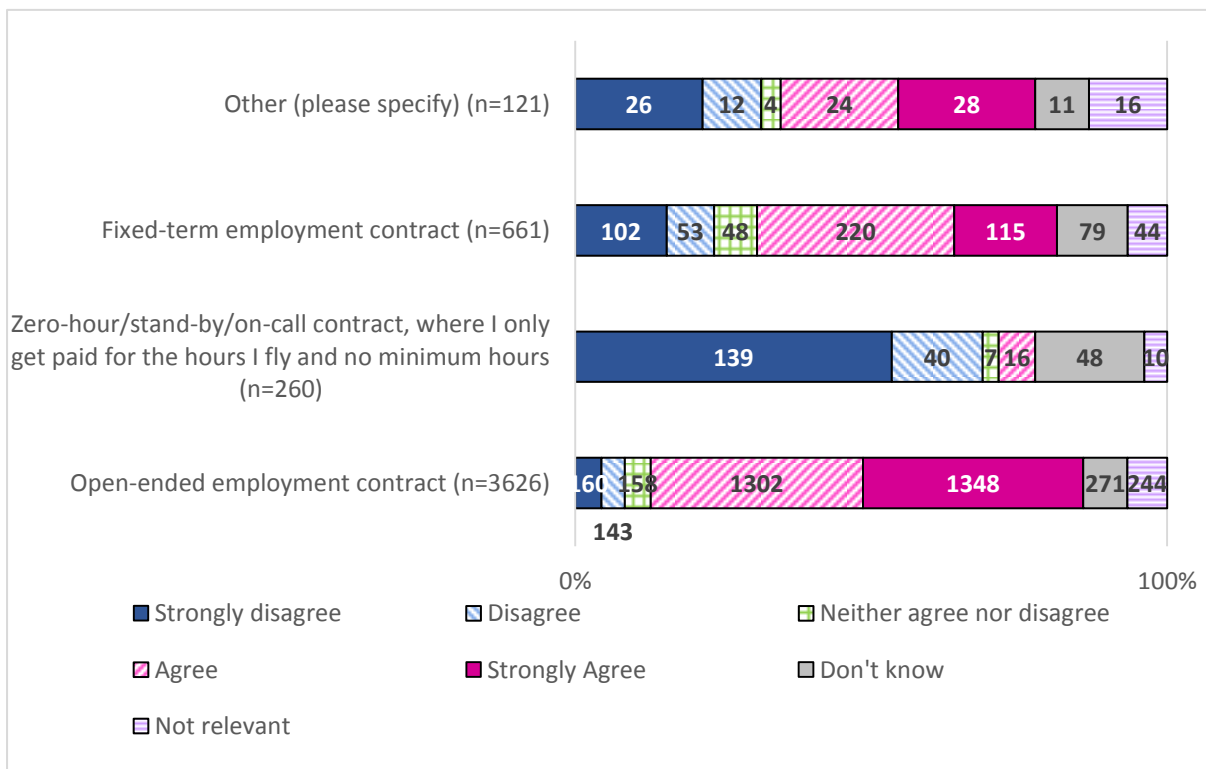
Source: Survey of cabin crew

Figure 7-23: Pilots indicating access to maternity/ paternity pay in accordance with applicable law depending on contractual arrangements. (Pilot survey Q3.1)



Source: Survey of pilots

Figure 7-24: Pilots indicating access to maternity/ paternity leave in accordance with applicable law depending on contractual arrangements. (Pilot survey Q 3.1)



Source: Survey of pilots

Due to low response rates, it is not possible to draw comparisons between genders, for pilots or cabin crew on fixed-term employment contract or zero-hours contracts or for either maternity/paternity pay or leave. For both pilots and cabin crew on open-ended contracts, the proportions of respondents that 'agree' or 'strongly agree' that they have access to maternity/paternity leave, remains similar. There are no significant results for these groups.

For male and female cabin crew on open-ended contracts, 66% (418 out of 637) of women on these contracts 'agree' or 'strongly agree' that they have access to maternity pay, whereas 50% (209 out of 419) men indicate this way. For pilots, 77% (153 out of 199) of female workers on an open-ended contract 'agree or 'strongly agree' they have access to maternity pay. Whereas 68% of male workers on these contracts agree they have access to paternity pay. In interviews and comments in surveys, paternity leave was very rarely mentioned. Instead, relevant issues highlighted, by men and women, focused on maternity leave. It is therefore possible that the increase in female satisfaction relates to trends seen in the way women answer surveys (Bender et al, 2005; Clark 1997; Kaiser, 2002) as discussed in section **Error! Reference source not found.**

7.3.6 Issues re-joining the workforce after maternity leave

In their study, McCarthy, Budd, & Ison (2015) considered the issues faced by female pilots, including potential barriers and challenges for re-joining the workforce, that may be contributing to their under representation. These issues, however, were not necessarily linked to the use of atypical employment.

Survey and interview data collected for this study revealed ways in which atypical employment scenarios can amplify barriers that mothers face when attempting to re-join the workforce.

According to ICAO, mothers are medically fit to re-join the workforce after four to six weeks (ICAO, 2011). To enable this, they indicate that a '*flexible phased return*' to work, that allows time for around childcare and domestic requirements, is required. However, social partners interviewed suggested that atypical forms of arrangements offer flexibility that suit the employer, rather than the employee (ECA, EurECCA).

Interviews with pilots and representatives revealed that there is resistance from intermediary companies to offer flexible, part-time arrangements that would facilitate re-entry to the workforce. The ECA has observed that these workers have little control over the hours they work, and that part-time work can be difficult to access in ways in which working hours are under the control of the worker. As a crew member working via an intermediary explained, if she wanted to reduce her working time in order to take up child care responsibilities, it would be very complicated. She described flexible working via a reduction in hours worked to even 75% of a full-time quota as '*practically impossible*'. Similarly, one survey respondent explained that while her air carrier follows the legal guidelines for maternity benefits (pay and leave), the provision is at the bare minimum. This leaves parents managing air carrier work unsupported as the '*the law does not consider parents to be pilots away from home for long periods.*'

Other interviewees report similar issues for the self-employed, who have little say over their shift patterns. Several pilots noted that those working in these arrangements are often posted abroad for longer and with less notice¹⁰⁵. However, according to the EFT, without access to collective rights or unions, they have little power to challenge this practice. For a mother working in these conditions, it would be impossible to take on the responsibility of child care. In this way, the effect of atypical arrangements on work-life balance can be seen to hit mothers disproportionately. Furthermore, as discussed in section **Error! Reference source not found.**, it is clear that women on atypical working arrangements have no guarantee of a job after pregnancy.

¹⁰⁵ A combination of factors, including work hours set by the employer, could mean these individuals should be an employee rather than self-employed. The issue of bogus self-employment has become a core focus of the European Platform tackling undeclared work, with the 2017-18 work programme including a cross-sector study on bogus self-employment. Whether the employment relationship of registered self-employed pilots and cabin crew can truly be defined as 'self-employed' is discussed in depth in Task 3.

All of these factors have been cited as reasons that women are avoiding having to balancing motherhood and the poor work-life balance that exists for workers with atypical employment arrangements by delaying having a family.¹⁰⁶

The time out of paid employment is considered to be a factor contributing to the gender pay gap, an issue which is discussed further in the following section (7.3.7) (European Parliament, 2015).

7.3.7 Gender and Pay levels

This section considers the issue of pay, promotion and gender. In terms of payment, the majority of the interviewees indicated that there are no differences in payment on the basis of gender in the aviation sector. In terms of satisfaction with level of pay, the surveys show that both male and female cabin crew are equally satisfied with their level of pay. 255 out of 618 (41%) of male cabin crew, and 411 out of 895 (46%) female cabin crew 'agree' or 'strongly agree' that they are satisfied with their pay. For pilots there was a higher level of satisfaction among women, 2028 out of 4401 (46%) male pilots and 129 out of 240 (54%) of female pilots.

This agrees with the employee survey results from Steer Davies Gleave (2015) who found no discernible difference in salary trends on the basis of gender. However, studies (Auspurg, Hinz, & Sauer, 2017) have shown surveys and interviews with employees to be unreliable for investigating issues of equal pay. Due to the private nature of salaries, individual employees tend to have little visibility on colleagues' pay and are therefore unlikely to know with any certainty. This method is further flawed because women, in general, have been found to have lower pay expectations than do men when it is not possible to compare to colleagues (Wayne & Brenda, 1994). The differences disappear when both genders are provided with more information.

The European Commission adopted the Pay Transparency recommendation in 2014, which provides guidance to Member States regarding the implementation of the equal pay principles in order to combat pay discrimination and to contribute to tackling the persistent gender pay gap (EUR-Lex, 2014). In a press release, DG-JUST explained that despite this, a third of EU Member States lack measures aimed at increasing pay transparency (EC, 2017). The UK has recently made significant policy efforts to provide transparency on the gender pay gap and the Equality Act 2010¹⁰⁷ (SI 2017 No. 172) requires that all employers with 250 or more employees publish specific figures about their gender pay gap¹⁰⁸. The UK government recently produced guidance document from the UK government detailing how to calculate and interpret the figures (ACAS, 2017) Five of the of the metrics are interesting in the context of our study, these are:

- Median average
- Mean average
- Proportion of males and females receiving a bonus payment
- Bonus pay gap

Proportion of males and females in each quartile pay band

How these metrics are calculated and should be interpreted is described in **Error! Reference source not found.**

Box 7-1: Gender Pay Gap Data

Employers with 250 or more employees must publish figures comparing men and women's average

¹⁰⁶ The pending EU Directive on work-life balance for parents and carers and repealing Council Directive 2010/18/EU would go some way in addressing this for cabin crew and pilots employed directly by an air carrier. The directive seeks to introduce more flexibility to the forms in which the compulsory four-month parental leave can be taken. For instance, it will be mandatory for it to be available on a part-time basis or in other flexible forms. (EUR-Lex, 2018)

¹⁰⁷ Full details on the gender pay gap reporting 2017 changes to the 2010 Equality Act can be found here. http://www.legislation.gov.uk/uksi/2017/353/pdfs/ukxi_20170353_en.pdf

¹⁰⁸ It is important to note that the gender pay gap is not the same as unequal pay which is paying men and women differently for performing the same work. Unequal pay has been unlawful in the UK since 1970.

pay across the organisation.

- Two figures included show the difference between the **average** earnings of men and women. The average is calculated in two ways:
 - A **median average** involves listing all of the numbers in numerical order. If there is an odd number of results, the median average is the middle number. If there is an even number of results, the median will be the mean of the two central numbers. This average is useful because it places the same value on every number value, giving a good overall indication of the gender pay gap. However, very large or small pay rates can 'dominate' and distort the answer.
 - A **mean average** involves adding up all of the numbers and dividing the result by how many numbers were in the list. This value is useful to indicate what the 'typical' situation is (i.e. in the middle of an organisation) and is not distorted by very large or small pay values.

For both of these figures, a positive percentage figure indicates that overall female employees are paid less than male employees, a negative would indicate male employees are paid less and zero would indicate pay equality.

- The **proportion of males and females receiving a bonus payment** requires an employer to report the proportion of male and female employees who were paid any amount of bonus pay. Comparing these two results will indicate how much more likely male relevant employees are to receive any amount of bonus payment compared to female relevant employees (and vice versa).
- The **bonus pay gap** requires an employer to show the difference between the mean bonus pay that male and female relevant employees receive. Female and male relevant employees who were not paid bonus pay during the 12-month period ending with the snapshot date are not included.
- The **proportion of males and females in each quartile pay band** requires an employer to show the proportions of male and female full-pay relevant employees in four quartiles pay bands. The bands are independent of any organisation definition and is calculated by ordering employees according to pay and splitting the workforce into four equal parts. Comparing results between the quartiles will indicate the distribution of full-pay relevant male and female employees across the organisation

Source: Adapted from (ACAS, 2017)

On the basis of the adopted methodology, the UK's office of national statistics reports a median pay gap of 9.1% (ONS, 2018). The published pay gap figures for air carriers are described **Error! Reference source not found.** below, the figures reveal significantly higher levels of pay disparity.

Traditional scheduled air carriers tend to have lower gender pay gaps, with Air France's median pay gap being -0.1%, and the mean 1.6%; United Air carriers follows with a median of 4.3% and a mean of 7.7%. However, traditional air carrier Thomas Cook has a median pay gap of 45.8%, and a mean of 57.7%. This is in a similar range to low-cost air carrier: Flybe's median gender pay gap is 41.2%, and the mean is 45.5%, and EasyJet's median is 45.5% and the mean 51.7%. Ryanair exhibits the largest gaps with a median and mean of 71.8% and 67% respectively.

Some air carriers including Ryanair and EasyJet (Morris, 2018) have justified these figures by focusing on the differences between equal pay and the gender pay gap. They state that equal pay, in which men and women receive equal pay levels for the same work, or work of equal value, does exist, as female pilots' and female cabin crews' basic salaries equal that of their male colleagues. EasyJet states that their gender pay gap gives a false impression, as the gender imbalance is due to the extreme lack of female pilots in the aviation industry as a whole, and pilots are paid higher salaries than cabin crew and other roles (EasyJet, 2018). Specifically, pilots on average earn between £97,000-140,000 (Prospects, 2018), compared to cabin crew, who earn between £17,000-£25,000 (Prospects, 2018).

Regarding bonus pay, the data show that a substantially higher percentage of women receive a bonus than men although they are also consistently receiving a lower mean bonus amount. Traditional air carriers such as Virgin Atlantic, British Airways tend to near parity between the

percentage of men and women receiving bonuses. Charter air carriers and business aviation show similar trends. With low-cost air carriers including Flybe and Ryanair the difference is significant; at Flybe 69% of women received bonuses, whereas only 13% of men did. Ryanair follows a similar tendency, with 82.8% of women receiving bonuses compared to 27.8% of men.

However, while the figures show consistently that a higher proportion of women earn bonuses than men, they are also consistently receiving a lower mean bonus amount (as shown in **Error! Reference source not found.**). For example, Ryanair's bonus pay gap is 20.6% in favour of men and EasyJet's is 43.8%. This trend also occurs among traditional carriers; despite both carriers having a similar level of men and women receiving bonuses, British Airways' bonus pay gap is 20% and Virgin Atlantic's is 72.2%, in favour of men. This could partly be because the bonus calculation does not account for part-time employees. Steer Davies Gleave found that part-time employees in the aviation sector are overwhelmingly female women (2015), and as British Airways (2017) explain, there are more part-time employees in their lower pay quartile. The UK Government requires that the calculation is based on actual bonuses received rather than on a full-time equivalent basis. Secondary sources suggest (easyJet, 2018) that bonuses are calculated on the actual time spent working and actual pay earned in the previous year. This coupled with part-time working and lower pay trends for women, could explain the mean bonuses for female staff reported.

While this is important to acknowledge when considering the mean bonus numbers, it is not possible for us to discern how significant an effect part-time workers have on the final bonus pay gap compared to other factors internal to the air carriers.

Finally, looking at female representation in the top quartile of earners, traditional air carriers fare better than their low-cost counterparts, although they remain far from parity. Women account for 60% of top earners at Air France, 50% at Emirates and 34% at British Airways. However, at others including British Midland Regional and Cathay Pacific, women make up just 4.7% and 1.4% of top earners respectively. In comparison, at low-cost air carriers, Flybe has the most women in the top quartile of earners at 11.5% followed by EasyJet at 10.7% and Jet2.com at 7.2%. Women account for just 3% of the highest-paid employees at Ryanair. Charter and business air carriers fare no better; at FR Aviation only 3% of the upper quartile are women and 8.7% at Loganair.

In the lowest earnings quartile, BA is again closer to parity than other operators. Some 49% of the lowest-earning employees at BA are women, with similar trends seen at BAE Systems and American Airlines. However, at other traditional carriers including Virgin Atlantic and Eastern Airways that figure rises to 80% or more. Similar ranges can be seen with low-cost air carriers, with Ryanair approaching parity at 57%, but others including Flybe and TUI Airways around 80%.

Initiatives to correct the gender pay gap and the highly unbalanced distribution of both genders through the different pay quartiles are reportedly developed by some air carriers themselves (Choat, 2017). EasyJet, launched its Amy Johnson initiative in 2015 with the aim of increasing its new-entrant intake of women to 20% by 2020. British Airways, whose gender pay gap statistics consistently displayed the greatest gender equality, have several schemes aimed at closing the gap: STEM places for female science graduates (British Airways, 2016); female pilot visibility raising projects by visiting schools and recruitment events; targeted media campaigns to attract female pilots; internal leadership initiatives for women in senior roles (British Airways, 2017). These schemes align with suggestions from the aforementioned Aviadora (2017) study on barriers to female pilots, which recommends financial grants, scholarships, leadership and mentoring programmes.

Table 7-6: Gender pay gap in selected air carriers

Air carrier	Business Model	Size	Median Pay Gap	Mean Pay Gap	% men receiving a bonus	% women receiving a bonus	Bonus pay gap	% women in top quartile	% women in bottom quartile
AMERICAN AIR CARRIERS, INC.	Traditional Scheduled	20,000 or more	-3.9%	12.2%	49%	51%	12.3%	34.3%	48.9%
BA CITYFLYER LIMITED	Traditional Scheduled	500 to 999	42%	41%	72%	88%	61%	9%	70%
BABCOCK AEROSPACE LIMITED	Other	1000 to 4999	13.8%	9%	11.3%	5.8%	-88%	10%	25.5%
BAE Systems Plc	Charter	5000 to 19,999	15.6%	17.3%	94%	96%	33.6%	21%	51%
BRISTOW HELICOPTERS LIMITED	Charter	1000 to 4999	51.5%	44.6%	9.2%	11%	82.9%	3.4%	38.6%
BRITISH AIRWAYS PLC	Traditional Scheduled	20,000 or more	10%	35%	98%	96%	20%	34%	49%
BRITISH MIDLAND REGIONAL LIMITED	Traditional Scheduled	250 to 499	41.4%	44.3%	0%	0%	0%	4.7%	66.3%
CATHAY PACIFIC AIRWAYS LIMITED	Traditional Scheduled	500 to 999	45.7%	46.7%	0%	0%	0%	1.4%	69.1%

Air carrier	Business Model	Size	Median Pay Gap	Mean Pay Gap	% men receiving a bonus	% women receiving a bonus	Bonus pay gap	% women in top quartile	% women in bottom quartile
DHL AIR LIMITED		250 to 499	49.8%	34.7%	25.8%	65.7%	56.2%	3.2%	22.8%
EASTERN AIRWAYS (UK) LIMITED	Traditional Scheduled	500 to 999	50.7%	46.4%	0%	0%	0%	6.2%	84.1%
EasyJet Air carrier Co. Ltd.	Low-cost	Not provided	45.5%	51.7%	75.1%	89.3%	43.8%	10.7%	68.9%
EMIRATES AIR CARRIER LIMITED	Traditional Scheduled	500 to 999	6.8%	13.7%	89%	92.5%	17.4%	50%	59.6%
FLYBE LIMITED	Low-cost	1000 to 4999	41.2%	45.4%	13%	69%	1.1%	11.5%	81.7%
FR AVIATION LIMITED	Business Aviation	250 to 499	24%	27%	7%	5%	66%	3%	25%
JET2.COM LIMITED	Low-cost	1000 to 4999	49.7%	53.5%	17.3%	45.7%	59.3%	7.2%	73.7%
LOGANAIR LIMITED	Traditional Scheduled	500 to 999	39.4%	37.1%	75.7%	79.7%	4.4%	8.7%	54.3%
Ryanair Ltd	Low-cost	1000 to 4999	71.8%	67%	27.8%	82.8%	20.6%	3%	57%
SOCIETE AIR FRANCE	Traditional Scheduled	250 to 499	-0.1%	1.6%	87.6%	91%	26%	60%	60%
THOMAS COOK AIR CARRIERS	Charter	1000 to 4999	45.8%	57.7%	42.4%	64.6%	6.4%	17.6%	81.1%

Air carrier	Business Model	Size	Median Pay Gap	Mean Pay Gap	% men receiving a bonus	% women receiving a bonus	Bonus pay gap	% women in top quartile	% women in bottom quartile
LIMITED									
TUI AIRWAYS LIMITED	Low-cost	1000 to 4999	47.3%	56.9%	93.5%	91.7%	2.9%	5%	79%
VIRGIN ATLANTIC AIRWAYS LIMITED	Traditional Scheduled	5000 to 19,999	27.2%	57.6%	94%	93%	72.2%	24%	80%

Source: Gender Pay Gap Data from the UK Government's website (Gov.UK, 2018).

Some air carriers have reported if pilots are excluded from the mean hourly pay gap calculation, the value falls significantly. For British Airways, it fell below the national average, to -1% (in favour of women). Cathay Pacific (Cathay Pacific, 2018) also ran the same calculation excluding pilots, and their mean pay gap fell from 46.7% to just 2%.

From the data reported by air carriers, it is clear that a large gender pay gap exists throughout the aviation industry. Traditional scheduled air carriers tend to produce more equal results over gender pay gap as a whole, as well as equality between who receives bonuses and the number of women in the upper quartile of earners. Low-cost air carriers exhibit some of the largest gender pay gaps and significantly fewer women in the upper pay quartiles. A noticeable trend is the high proportion of women receiving bonuses in comparison to men (although they mostly receive a smaller amount), which may be explained by the inclusion of part-time employees from these calculations.

Air carriers address this data by pointing to the fact that equal pay does exist and explaining that the gap stems from the large differences in the amount of male and female pilots in the aviation industry. However, many have no clear policies to increase the number of female pilots they employ.

7.3.8 Promotion

The majority of the interviewees indicated that there are no gender-based differences regarding promotion in the aviation sector.

Despite this, it is worth highlighting that some air carriers have requested employees (on a contract with the air carrier) a certain number of years' experience in order to qualify for a promotion¹⁰⁹. This minimum year criteria might be more difficult to achieve for women who have been pregnant or have been mothers during their employment relationship with the carrier, as they may have been absent from work for certain periods. Depending on the application of the regulation and on whether they have had the opportunity to continue to work in another position during pregnancy, this period of absence could extend to over a year.

These requirements have sometimes led to legal disputes. For instance, in 2012, the Spanish High Court of Justice of Madrid¹¹⁰ declared that AIR EUROPA had engaged in gender discrimination when excluding the periods of health and safety leave and maternity leave as periods of work to qualify for professional promotion. In particular, the Court concluded that gender discrimination existed based on the fact that the only factor preventing the professional promotion of the female pilot was a 'biological condition', namely, that she was pregnant. No recent similar judgements have been found.

It is not clear from the data collected here whether a similar assessment regarding promotion is performed for those working via intermediaries.

7.4 Case studies

7.4.1 The Iberia case – use of pregnancy tests in the hiring process

This section considers the case of Spanish air carrier Iberia who was fined for requiring the use of a pregnancy test in the hiring process. The case details are presented in **Error! Reference source not found..**

Box 7-2: Iberia Case Study

Spanish air carrier Iberia was fined EUR 25,000 in summer 2017 by the labour authorities of the Balearic Islands (Spain) for requiring female job candidates to take a pregnancy test during the hiring

¹⁰⁹ See Madrid's High Court of Justice, Labour Chamber, Section 6, Judgment 77/2008 of 4 February 2008, Appeal 5553/2007; and, Madrid's High Court of Justice, Labour Chamber, Section 5, Judgment 501/2012 of 21 May 2012, Appeal 2587/2012.

¹¹⁰ Madrid's High Court of Justice, Labour Chamber, Section 5, Judgment 501/2012 of 21 May 2012, Appeal 2587/2012

process.

According to public sources¹¹¹, Iberia's regular hiring processes included exhaustive medical tests for both genders involving, among others, blood, drug and pregnancy tests. The Balearic Institute of Women (a regional government body) referred Iberia to the Spanish Labour Authorities after learning of the existence of the pregnancy test practice. After reviewing the case, the labour authorities considered that the air carrier had committed a serious infringement of Royal Decree 5/2000¹¹² by engaging in gender discrimination. In addition, this constituted a violation of the constitutional right to equal treatment and had the potential to harm women's access to work.

Iberia argued that the test for female applicants was not intended to filter out expectant mothers, but instead to make sure they were placed in roles that would not involve any risk for the pregnancy. However, these claims and the EUR 25,000 fine was upheld.

The air carrier accepted the fine, despite the option to appeal, and issued an official statement in which it announced the withdrawal of these tests. However, it continued to insist that the pregnancy test was only a part of several precautionary measures and explained that it had never refrained from hiring a woman for being pregnant if she fulfilled the requirements for the job post. According to Iberia, in 2016, five pregnant women out of six who were aiming for a job in the company were hired (El Espanol, 2017).

7.4.1.1 Applicable rules

As described in **Error! Reference source not found.**, Iberia argued that the pregnancy test were required to ensure that expectant mothers who were hired were assigned to job positions that would not involve any risk for the pregnancy, in order to fulfil its legal obligations regarding safety and health at work.

This argument was found to have some legal grounds under Spanish law. Article 14.1 of Law 31/1995, of 8 November, on Occupational Risks Prevention (LLRP) recognises that all employees are entitled to effective protection regarding security and health. Consequently, all employers shall assume the duty to protect their employees against occupational risks.

However, the court case found that a medical examination, that includes a specific test for women, violates one of the 'Fundamental Right' protected by the Spanish Constitution: The Right to equal treatment.

- (i) A company can obtain very sensitive data from the results of a medical examination that could lead to them refraining from hiring an individual. This practice, especially in the case of tests addressed only to women infringes on the right to equal treatment.

In relation to this there is further legislation (article 22.4 LLRP) establishes that data obtained through medical examinations cannot be used for discriminatory purposes or be detrimental to employees.

The labour authority concluded that, Iberia's pregnancy tests violated the right to equal treatment on the grounds that (i) the measure (pregnancy tests) applied only to women and that (ii) its results have the potential to hinder or prevent their hiring. The labour authorities advised that employees should be required to inform the company about their pregnancy once they were hired, but not before.

7.4.1.2 Consequences of the Spanish ruling – the "blind curriculum vitae"

When Iberia's practice was made public, the Spanish Minister of Health took the opportunity to encourage the use of the so-called 'blind CV'. This method a useful tool to avoid discrimination in the recruiting process by removing personal data (name, age, gender or photographs) from applications. It has been successfully used elsewhere in Europe (EPSocial, 2017), but is not commonplace in Spain. It is.

However, in the field of aviation and, more specifically, in the case of pilots, the blind CV may have limitations. The pilot and founder of the Aviadoras programme¹¹³ pointed out during an interview with

¹¹¹ Please note that the labour authorities' resolution is not publicly available and, therefore, we have not had access to it.

¹¹² Royal Decree 5/2000, of 4 August 2000, which approved the consolidated version of the Spanish Law on Social Infringements and Sanctions.

¹¹³ "Female Aviators" in Spanish, <http://www.asociaciondepilotos.com/es/aviadoras/>

our study team that, beyond reviewing of CVs or written tests, subsequent phases, such as the personal interview or the pilot simulation test could still allow the possibility for discrimination. However, the interviewee also noted that the blind CV may be more useful in the selection processes for management positions in the areas of operations and instruction within air carriers.

7.4.2 Other cases

Although no similar rulings have been found, evidence of the practise was found during interviews for this study.

One of the cabin crew members interviewed indicated that she was asked to take a pregnancy test prior to signing her contract with a temporary work agency located in Italy, which assigns cabin crew to the low-cost carrier Ryanair. In her experience, this is a widespread practice for people hired through this specific agency. In addition, one pilot reported knowing of a case in which a pregnant woman applying to be a pilot with the same low-cost carrier was recommended to re-apply once she had given birth.

No other similar cases have been highlighted during the interviews conducted during this study.

7.5 Conclusions

Gender balance

The analysis of available evidence suggests that there are only small differences in the share of aircrew in alternative employment arrangements on the basis of their gender. On the basis of the survey responses, female aircrew most often have typical working arrangements. More specifically, the survey found that:

- The share of male cabin crew working via an intermediary agency is higher than that among female cabin crew (22% and 17% respectively). Furthermore, male cabin crew are twice as likely to be on so called “zero-hour” contracts than female cabin crew (8% and 4% respectively).
- In the case of pilots, 22% of male pilots are working via an intermediary manning agency compared to 16% of female pilots. While self-employment is not common overall, men (8%) are also more likely to be on this type of contract compared to women (4%).

Despite these differences, no evidence of gender bias in the allocation of contracts type or work arrangement was found. Instead it appears that employee experience and age (as seen in Section 3 and 4) and job role have more of an impact on the type of working arrangement someone is likely to be offered, than gender.

Work life balance

According to the survey results around half of the aircrew (52% of pilots and 46% cabin crew) stated that they were satisfied with their work life balance. Unions that participated in the consultation consider that atypical work arrangements used by air carriers put individuals in a worse situation compared to direct employment, irrespective of gender and have a negative impact on their work life balance. The responses to the survey seem to support this statement:

- Among pilots, 52% of those with permanent contract considered that their schedule allowed them to have enough time at home, in comparison to only 36% among those working via a intermediary manning agency.
- In the case of cabin crew, overall there are no differences in satisfaction concerning the time spent at home on the basis of the type of contract. However, among female cabin crew, 57% of those with direct contracts agree that they have enough time at home in comparison to 47% among those working via an intermediary agency. This was attributed to women generally taking up more childcare and household responsibilities than men.

Part time work was suggested by some air carrier workers as a way of achieving a better work life balance. However, evidence from the surveys and interviews seems to suggest that this is only an option for those employed directly with an air carrier, and not for those in atypical employment arrangements. Additionally, although self-employment should in principle provide greater control over

the hours worked, pilots on this arrangement explained that working less than full-time put them at risk of losing further work. This resulted in a significant drop in reported satisfaction with time spent at home and control over hours for self-employed aircrew.

Maternity and Paternity Benefits

Data gathered through surveys and interviews with air carrier representatives and staff confirm the tentative conclusions presented in the Steer Davies Gleave (2015); that women and men in atypical forms of employment are unlikely to receive the same maternity/paternity pay and leave as their colleagues in direct employment. A range of stakeholders, including air carrier employees and social partners, are of the view that atypical employment structures are used to circumvent these employment rights.

- According to the survey results, while 59% of cabin crew and 69% of pilots employed directly with their air carrier stated that they had access to maternity/ paternity pay in accordance with applicable law, this was lower among aircrew employed via an intermediary (48% of cabin crew and 48% of pilots).
- Considering the contract arrangements, 68% of pilots on open-ended contracts with an air carrier stated they have access to maternity/paternity pay. This figure is 45% for those on fixed-term contracts and only 2% for those on zero-hours contracts.

Despite interviewees views that treatment of male and female temporary agency workers is largely the same, it was recognised that under these atypical forms of employment women are, in practice, more vulnerable. This is due to issues surrounding the lack of access to maternity rights and support in balancing work and family life. The most significant issue is the risk of losing work, as shifts or temporary contracts are not renewed after pregnancy. This behaviour is enabled by atypical employment methods.

Significant differences also exist between reported access to maternity/paternity pay and leave among carriers with different business models those working with low-cost air carriers appear to have more limited access compared to those working for traditional carriers.

- 78% of pilots and 64% of cabin crew on traditional scheduled air carriers agree they have access to maternity/paternity pay. For low-cost air carriers, 38% of pilots and 46% of cabin crew agree.
- Regarding access to leave, 68% of pilots and 68% of cabin crew on traditional scheduled air carriers agree they have access, whereas 44% of pilots and 46% of cabin crew on low-cost air carriers agree.

Regarding carrier type, it is also worth noting that the proportion of respondents indicating in both surveys and interviews that they did not know about their access to maternity or paternity leave was significantly higher among those working for low-cost air carriers, for both jobs roles. 15-23% report this for low-cost air carriers, where as traditional scheduled the proportion is 3-6%. Comments in surveys and interviews pointed to a less transparent culture surrounding available benefits among low-cost air carriers.

8 Employment by EEA air carriers' of aircrews based in third countries and employment of third country aircrews based on EEA territory

8.1 Introduction and scope

In this section we analyse the employment and working conditions of aircrews in the context of the international aviation market. The scope of the analysis includes aircrews occupied in one of the two following arrangements:

1. EEA-licensed air carriers using third country (non-EEA) crews¹¹⁴ on flights between the EEA and third countries and/or on internal EEA flights (including use of third-country aircrews through wet-leasing agreement with third-country carriers).
2. EEA-licensed air carriers using EEA-national crews working from bases outside the EEA.

The objective is to provide an overview of the level of use of the above arrangements and their key features in terms of contractual relationships and working conditions.

In the case of third-country nationals, the analysis also explores what type of work authorisation is issued to workers, and is required by these workers, in operating intra-EEA flights.

The analysis is based on the data collected through desk research and stakeholder engagement. This includes data from the surveys of pilots, cabin crew, air carriers, and national authorities, and interviews.

8.2 Use of third country crews by EEA air carriers

8.2.1 Introduction

EEA-licensed air carriers have traditionally used third country aircrew to operate flights between their country and the third country for cultural and language reasons.

According to the literature, an increasing number of EEA air carriers have been opening operating bases outside the EEA where they recruit and base aircrew subject to the local legislation. While there are multiple possible reasons for an air carrier to do so, ECA (ECA, 2017) argues that one reason for this is to benefit from less demanding social legislation since the EU legal framework does not cover the employment of third country nationals but only entry requirements which are specified in Article 19 and Annex VII of the Schengen Borders Code (SBC) and in Annex 9 of the Chicago Convention and reproduced in Box 8-1.

Box 8-1: Entry requirements for third country crews in Europe

According to Annex VII of the Schengen Borders Code (SBC) the holders of a pilot's licence or a crew-member certificate are exempt from border controls if they are in the course of their duties to:

- (a) embark and disembark in the stop-over airport or the airport of arrival situated in the territory of a Member State;
- (b) enter the territory of the municipality of the stop-over airport or the airport of arrival situated in the territory of a Member State;
- (c) go, by any means of transport, to an airport situated in the territory of a Member State in order to

¹¹⁴ EEA countries include the 28 Member States of the EU (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom) and also Norway, Iceland and Liechtenstein. 'Third countries' refers to all other countries (i.e. non-EEA).

embark on an aircraft departing from that same airport.

Source: reproduced from (ECA, 2017)

Furthermore, wet leasing of aircraft¹¹⁵ from a third-country air carrier - allowed under Regulation 1008/2008 albeit under limited circumstances - could also result in the use of third country nationals to operate flights into/from the EEA as well as within the EEA. Box 8-2 provides an example of this as reported by ECA (ECA, 2017)

Box 8-2: Case of wet leasing of third country aircraft by British Airways

Under Article 13(3)(b)(i) of Regulation 1008/2008, the UK Government allowed British Airways to wet lease nine Qatar-registered aircraft in July 2017. The request to wet lease was made in response to industrial action taken by British Airways staff during peak summer season that would result in service disruption over that period.

During an interview the UK CAA noted that approval for this wet leasing arrangement was given because they had sufficient evidence provided that, at that specific time, there was no sufficient capacity to accommodate the specific needs of British Airways through the use of EEA registered aircrafts British Airways attempted to secure a wet lease with EU air carriers, however only found one carrier with capacity to do so for 9 days (non-consecutive) within the period required. Information on the rationale of this decision is also publicly available from the CAA on their website (CAA, 2017).

However, ECA argues that this arrangement circumvents EU immigration and social legislation. It claims that the aircrafts are intended to also operate on intra-EU flights (besides UK-Qatar connections) which should require third country nationals based in the UK to apply for work permits in the UK and be subject to UK labour legislation and taxation. In their view, the aircrew working onboard these flights do not hold valid work permits to operate within the EU.

8.2.2 Potential social issues arising

According to the members of the sub-group on social matters in air transport of the Market Access Expert Group (MAEG), a key question in the case of the use of third country aircrew is what type of work permits within the EU/EEA should be used and how they should be applied (Market Access Expert Group, 2015).

There appear to be differences among national rules concerning the work of third country nationals and the required work authorisations, that can lead to an unlevel playing field across the EU. Comprehensive information across the EEA is not available but specific examples help illustrate the point. According to the working group on social dumping in aviation of the Danish Transport Authority (Trafikstyrelsen, 2014), in Denmark a work permit is not necessary for third country nationals working aboard aircrafts not registered in the country - even if the aircraft often operates flights in to/out of Denmark. However, if it mainly operates domestic flights or if the aircraft is registered in Denmark, then a work permit is mandatory. In Norway a report by the Norwegian Ministry of Transport and Communications (2016) suggests that third country nationals working onboard foreign aircraft in international services (into and out of Norway) do not require a residence permit if they do not have an employer in Norway, and for employment relationships of up to three months. This exemption does not apply to Norwegian-registered aircraft even if in international service. Working for a Norwegian air services provider means that Norwegian nationals will automatically be a member of the National Insurance Scheme (even if he/she does not live in Norway) whilst a third country national will only have limited membership. Special rules apply to EU/EEA nationals. According to the study by the Danish Transport Authority mentioned earlier (Trafikstyrelsen, 2014), there are no restrictions on the use of third country nationals in Ireland or Sweden.

Different laws can thus lead to the situation where third country crew working on board an EEA-licensed aircraft may be able to operate without restrictions on flights between EEA countries and

¹¹⁵ A wet-leasing agreement is made between air carriers to lease aircraft with aircrew pursuant to which the aircraft is operated under the air operator certificate (AOC) of the lessor

third countries, but also on intra-EEA flights. The Air Crew Working Group of the Social Dialogue Committee called for the coordination and revision of laws on visas and work permits for non-EEA based crews so as to avoid the potential illegal use of non-EEA crews undertaking work on aircraft registered in the EU and operating in and from the EU (Air Crew Working Group of the Sectoral Social Dialogue Committee, 2014). In this context, the European Commission is currently undertaking a fitness check on existing EU legal migration legislation (European Commission, 2016). This could involve the revision of **Directive 2011/98/EU** to include mobile workers in civil aviation as recommended by the Air Crew Working Group of the Social Dialogue Committee (Air Crew Working Group of the Sectoral Social Dialogue Committee, 2014).

8.2.3 Level of use of third country aircrew on flights between EEA and third countries and/or internal EEA flights

There is a lack of reliable official statistics on the extent of use of third country aircrews by EEA licenced air carriers. In this section we use the available literature, along with interview and survey responses to gauge the level of use among air carriers.

8.2.3.1 Evidence from literature and interviews

Representatives from two air carriers, ECA, one air carriers' association (anonymous), a national pilots' union, and ETF all noted that historically air carriers have used third national crews for language and cultural reasons on flights into and out of Europe. This is especially prevalent on long-haul flights to Asia and South America. One air carrier noted that they normally only have one or two crew members from the third country for this reason. ETF and an air carriers' association did not see a problem with this practice if they are genuinely hired for cultural or language reasons, but still claimed, along with EurECCA, that in some cases they are hired due to the lower labour costs. The air carriers' association also noted that this results in jobs being exported to other countries, rather than employing EEA nationals. There have been cases reported of this happening with air carriers, such as Finnair cutting their costs by replacing EEA staff with third country nationals hired thorough temporary manning agencies (YLE, 2014). None of the interviewees were able to provide estimates on the frequency of these activities, although most noted that it is not common. EurECCA also noted that they are not aware of any EEA licenced carriers currently using this practice, although it has happened in the past.

The Norwegian Pilots Group highlighted the use of US national pilots by low-cost carriers on flights from the US to EEA. According to the pilots group, EEA licenced air carriers with bases in the US (such as Norwegian) can use US nationals with a US pilot licence to fly their aircraft, as they get a waiver for up to one year before they have to transfer and convert their licence to the EEA model. US cabin crew are also used, but do not require the waiver as they do not need a licence.

The use of third country nationals to operate flights connecting the EEA to a third country is also reported to be more prevalent amongst cabin crew than pilots. A recent study by Panteia and PWC (Panteia & PWC, 2015) suggests that EEA-nationals working as cabin crew are in direct competition with third country nationals (e.g. Norwegian air carriers operating a route between Norway and Thailand with cabin crew employed under Thailand's social legislation) but the same does not hold for pilots as they typically require EU qualifications (EASA pilots licence) in order to fly within the EU. An air carriers' association agreed with this assessment, noting that they are not aware of any third country pilots employed to operate inside the EEA, but that cabin crew are involved.

8.2.3.2 Evidence from the survey

The surveys of pilots and cabin crew organised in the context of this study aimed to provide some more detailed information on the level of use of third country nationals. However, there are certain limitations due to the low level of responses from non-EEA nationals. While there was a high response rate for both pilots and cabin crew, the surveys were distributed within the EEA through various national associations, and this may have limited the number of responses from third country nationals who would not be members of such groups. Thus, while there was an active promotion campaign at EU level from ECA and ETF, responses from third country nationals were expectedly limited.

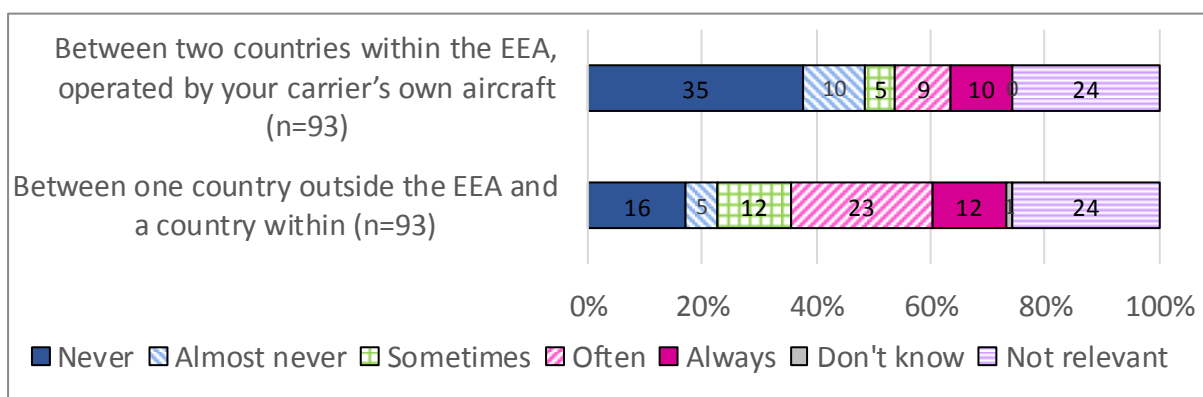
In the case of the survey of pilots, a very small share of respondents (93 out of 5957; 1.6%) stated that they were third country nationals working for EEA licenced air carriers. Furthermore, 83 of these

pilots were Swiss nationals (mostly working for Swiss International), while the remaining 10 respondents were mostly from neighbouring countries to the EU, with three from North or South America.

Figure 8-1 below shows the number of third country pilots employed by EEA licenced air carriers carrying out flights within the EEA and between the EEA and a third country. Pilots were more likely to make flights between a third country and the EEA, with 12 out of 93 respondents indicating that they always made these flights, and a further 23 indicating they often carried out this type of flight. Comparatively, only 10 and 9 respondents indicated similarly for involvement in intra-EEA flights, while 35 indicated they never carry out these flights.

The 34 third country national pilots who indicated that they did carry out flights between two EEA countries to any degree were mostly based in the EEA or Switzerland. Only four respondents were based outside the EEA (three in Serbia, one in Ukraine), and none of these indicated the type of work authorisation they had.

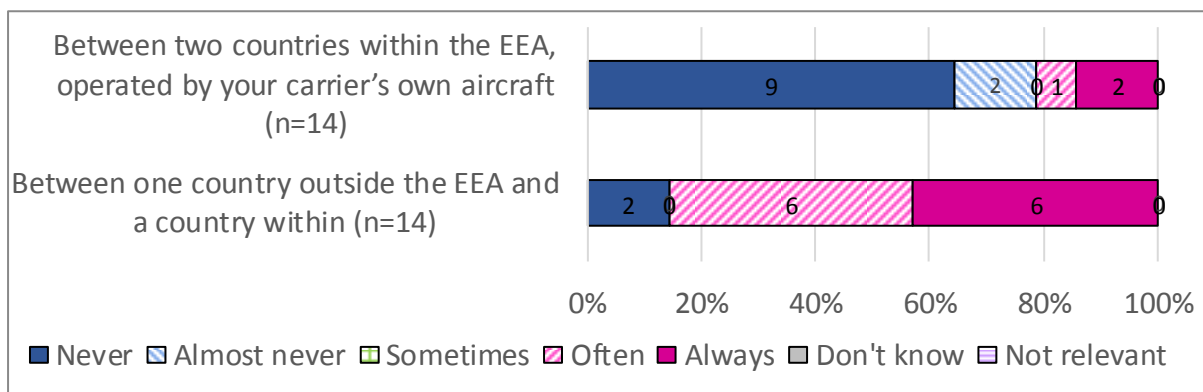
Figure 8-1: Flight types performed by pilots who are third country nationals working for EEA licenced air carriers



Source: Survey of pilots

The survey of cabin crew had even fewer responses from third country nationals working for EEA licenced air carriers, with only 14 out of 2195 respondents indicating as such. As shown in Figure 8-2, six out of 14 respondents indicated they always fly between EEA and third countries, with another six saying they often fly these routes. Nine of the respondents worked for Norwegian air carriers and are based in the US. As with the pilot survey, most respondents (nine out of 14) indicated they never carry out intra-EEA flights. The two cabin crew members who stated they always carry out these flights were self-employed and working through a wet-leasing agreement or employed by a temporary manning agency.

Figure 8-2: Flight types performed by cabin crew who are third country nationals working for EEA licenced air carriers



Source: Survey of cabin crew

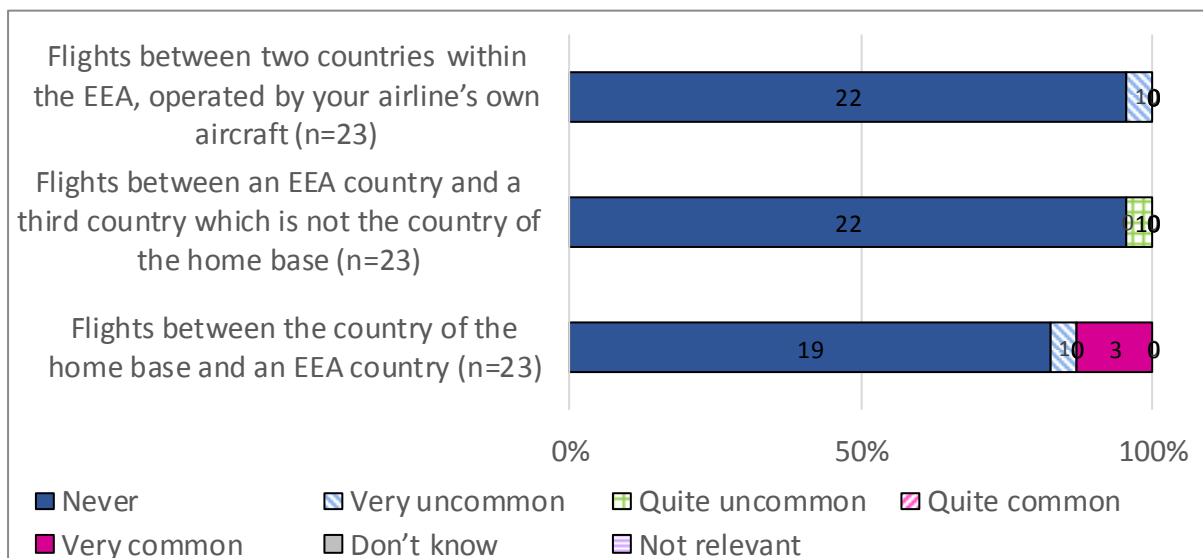
The above responses from the survey suggest that there are indeed certain cases where aircrew from third countries are involved in intra-EU flights but, due to the limitation of the survey it is not possible

to tell how common this is. We also note the survey responses are affected by the presence of a high number of third country nationals from Switzerland.

From the point of view of the air carriers, 19 out of 23 respondents to the survey indicated that third country crews never fly between EEA and third countries, one indicated it was very uncommon, and three indicated it was very common, as shown in Figure 8-3. The air carriers performing these flights were one low-cost carrier, two traditional scheduled carriers, and one chartered carrier.

This further supports the evidence presented during the interviews that use of third country crew is limited to a very few air carriers, while others do not use them at all. Most air carriers (22) also indicated that third country aircrews are not involved in intra-EEA flights at all. The remaining air carrier indicated that it is very uncommon.

Figure 8-3: Flight types performed by third country nationals working for EEA licenced air carriers



Source: Survey of air carriers

Finally, among national authorities, six out of seven respondents to the survey did not know if air carriers with an operating base in their country used pilots and cabin crew whose home base is outside of the EEA.

8.2.3.3 Use of wet-leasing

As indicated, one mechanism suggested that would allow third country aircrew to operate flights into or within the EEA is through wet-leasing of third country aircraft. An air carriers' association noted that this is the only way that third country nationals can be involved in intra-EEA flights.

However, it should be noted that available data collected in the context of the evaluation of the Air Services Regulation 1008/2008 found that, on an annual basis, the number of requests for wet-leasing aircraft from third country air carriers represents less than 1% of total requests made (in the range of 20-30 aircrafts per year) (Ricardo, 2018). Furthermore, due to the requirements set in Article 13 of Regulation 1008/2008 it is generally considered that the use of wet-leasing from third countries is very limited. Thus, cases like that of British Airways wet leasing from Qatar Airways are very uncommon and cannot be linked with a systematic practice of air carriers using aircrew from third countries used in intra-EEA flights.

8.2.4 Employment arrangements

Concerning the employment arrangements of these nationals, 86 of the 93 third country national pilots who work for EEA licenced air carriers indicated they had employment contracts directly with the air carrier. Four others had employment contracts with an intermediary agency, and the other 3 were self-employed. In contrast, nine of the 14 cabin crew in the same situation had employment contracts with intermediary agencies, and only four had contracts directly with the air carrier. Furthermore, 74 of

the third country national pilots had home bases outside the EEA, with the remainder based in the EEA.

Only three pilots indicated that they work for another EEA air carrier as part of a wet-leasing agreement, and four indicated that they work temporarily at an operating base outside their home base.

While the surveys do suggest a slightly higher incidence of this activity among cabin crew, both surveys showed a very low overall number of third country national pilots or cabin crew working for EEA licenced air carriers. Furthermore, the share of third country nationals with direct employment with the air carrier was higher than that of the general response (82%). However, given that small sample size and the fact that the survey was distributed mainly within the EU and through national unions, the conclusions on the prevalence of this practice should be treated with caution.

8.2.5 Issues/problems identified

In general, it is up to each Member State to monitor the employment of third country crews in their country and enforce any national rules. Two studies ((ECA, 2017) and (Trafikstyrelsen, 2014)) suggest that there is a high degree of heterogeneity in national rules. In Denmark, for example, rules only apply to aircraft registered in the country and for the period of time the aircraft is operating within the country's borders. There seems to be gap in national legislations concerning work from bases outside the country as well as work onboard aircraft registered in a different country but operating within the country (ECA, 2017). This has led the working group on social dumping in aviation of the Danish Transport Authority (Trafikstyrelsen, 2014) to claim that the current situation allows for the possibility to choose the employment legislation that is more convenient (i.e. rule shop) and create an unlevel playing field across the EU.

An alleged practice according to trade unions (ECA, ETF) is the use of 'flags of convenience' whereby the air carrier acquires a specific Air Operator's Certificate (AOC) with the intention to benefit from the laws of the licensing country without, in many cases, the establishment of actual operations in this country. Box 8-3 provides an example of this practice referring to the air carrier Norwegian Air Shuttle which opened up a subsidiary, Norwegian Air International (NAI), to operate its long-haul flights (ECA, 2017)(ETF-ATM, 2014).

Box 8-3: Norwegian Air Shuttle and its subsidiaries

The Norwegian Air Shuttle's subsidiary (Norwegian Air International (NAI)) was set up in Ireland where it obtained an Irish AOC. This was supposedly to get better market access to the US but has been argued by ETF to allow NAI to avoid the more stringent Norwegian labour and social security laws. This arrangement also allows NAI to evade Norwegian immigration laws. The company has reportedly based its pilots in Thailand who are employed via a temporary work agency in Singapore.

A question also arises on whether bilateral agreements can also be of relevance in these cases. The granting of further permission by the US to serve Trans-Atlantic routes has been polemical and delayed following notably allegations that the company contravened the spirit of the EU-US Air Transport Agreement (particularly Article 17b on the social dimension).

Source: ECA (2017) and ETF-ATM , (2014)

A national pilots' union noted that the main issue arising from the use of third country nationals is regarding the lower salary, social contributions and tax that can be offered compared to EEA national crew. At the same time, our analysis is that even within the EEA these areas have not been harmonised and may indeed vary within the internal market, while on the other hand aviation is highly integrated and liberalised meaning that air carriers are indeed allowed to exercise freedoms of establishment and to provide services within the internal market.

In this context, it is unclear to which extent the use of third country crews operating internal EEA flights and those between the EEA and third countries gives the possibility of air carriers gaining a competitive advantage over EEA national crews. The use of third country crews in order to avoid higher costs due to social security contributions and national tax law has been anecdotally reported to be used by certain air carriers, but there is no concrete evidence that this has been the case. Furthermore, there are other reasons that may have influenced the choice of the air carrier to establish itself in a given jurisdiction (geographical location, language used by the licensing authority,

registry of aircraft, supervisory experience and practices of the authority, traffic rights in bilateral agreements with third countries etc.). It is therefore difficult to gauge the extent of this issue. The survey does not point to a significant level of use of third country crew this type of activity. As noted earlier, the survey was distributed within the EU and may have failed to capture a significant response from third country nationals performing this type of flight.

8.3 EEA-licenced air carriers using EEA-national crews working from bases outside the EEA

8.3.1 Introduction

Another claim made by ECA is that some air carriers hire pilots that are EEA nationals through a temporary manning agency in a third country, employing local working conditions and contracts. Referring to the example of Norwegian, they argue that the objective is to use this employment practice to avoid EU regulations and reduce costs for social contributions and wages and avoid more demanding national law inside the EEA.

To explore this practice, the survey of air carriers asked respondents whether they had pilots or cabin crew with home bases outside the EEA (either at an operating base for that air carrier, or in a country where the air carrier does not have an operating base).

8.3.2 Level of use EEA-national crews working from bases outside the EEA

Only five out of 25 air carriers that responded to the survey indicated that they had operating bases outside the EEA. 18 out of 25 air carriers indicated that they do not have aircrew based at operating bases in third countries, and 19 out of 25 indicated similarly for aircrew with home base in third countries in which they do not have an operational base. Those who said they did included four traditional scheduled air carriers, one low-cost carrier, and two charter air carriers.

When asked about the type of employment contract these aircrew had, most air carriers did not give a response, indicating that this question is not relevant or that 0% of the staff had any type of contract. Two traditional scheduled air carriers indicated that 75% of these staff are directly employed by the air carrier, and one indicated that they are hired by temporary manning agencies. The one low-cost air carrier who responded indicated that less than 25% of staff are directly employed with the air carrier, while greater than 75% are hired by temporary manning agencies and/or self-employed.

According to the representative of a charter air carrier (Neos Air) approximately 15% of their pilots were working from contractual home bases outside of the EEA due to seasonal demand fluctuations typically experienced by charter air carriers. These pilots receive compensation schemes for such work, and have Italian legislation applied in their contracts. Neos also noted that Italian law requires that all air crew are directly employed by the air carrier, so they do not use any atypical employment practices.

A representative of a traditional scheduled air carrier noted that they do not have any bases outside their home Member State (which is more typical of traditional scheduled carriers) and therefore do not have any crews working in bases outside the EEA.

In general, low-cost carriers have made the most extensive use of this practice, however in most cases the additional bases are still within the EU. In 2013, only Norwegian was reported as having bases in third countries, although other air carriers may have opened third country bases since then (CAPA, 2013).

Among the pilots surveyed, 90 out of the 5513 EEA national respondents (2%) working for EEA licenced air carriers stated that they have a contractual home base outside the EEA. Of these, 38 respondents worked for low-cost carriers, and 39 were based in Switzerland. In contrast, only two (0.1%) of the 2012 cabin crew EEA nationals were in similarly employed.

The low share of respondents in this situation may be a result of limitations in the distribution of the survey outside of the EEA. As expected, EEA national pilots are more likely to be working from bases outside the EEA as the training and certification requirements to fly aircraft owned by EEA licenced air

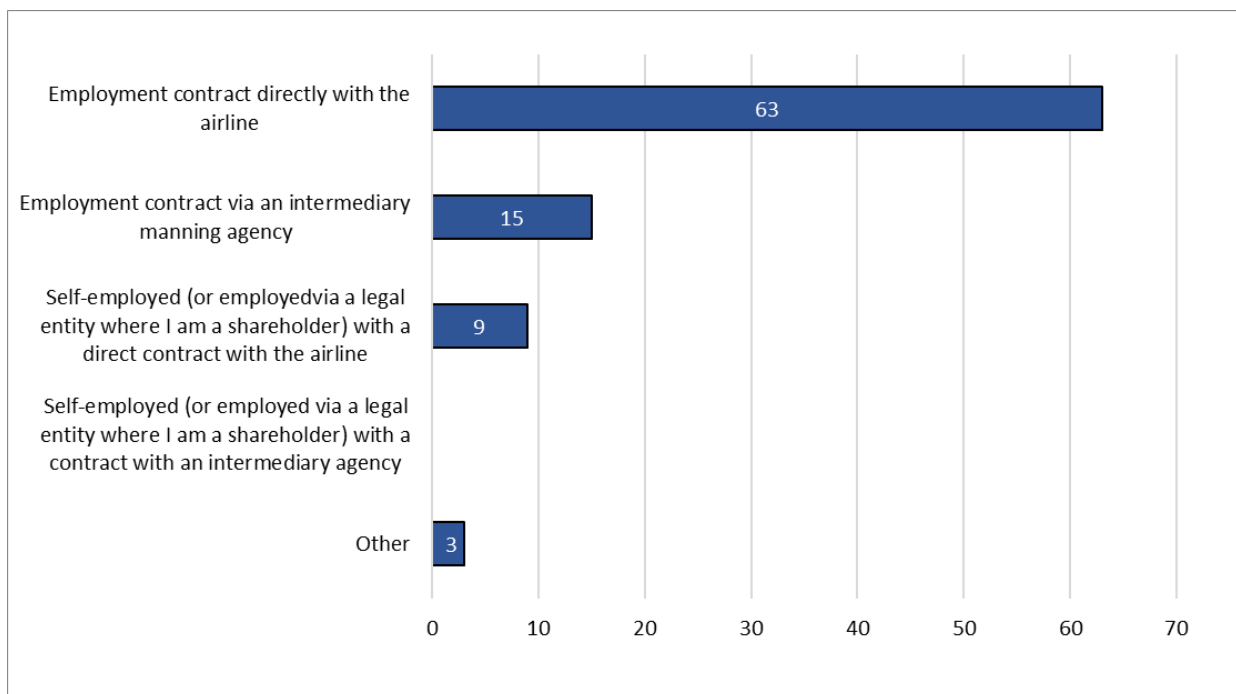
carriers make it less likely for third country pilots to fill this role. Cabin crews have less demanding requirements and can be sourced from third countries to provide local language skills.

Overall, we can conclude that the evidence presented suggests that this practice is not common as most air carriers do not have third country bases. Additionally, there may be legitimate reasons for placing crews at these bases, such as managing seasonal fluctuations in demand.

8.3.3 Employment arrangements

In terms of their employment arrangements (Figure 8-4), 63 of the 90 EEA national pilots working from contractual bases outside the EEA stated that they were directly employed by the air carrier, 15 were self-employed, and 9 were employed through temporary manning agencies. This is only slightly higher than the rate of atypical employment in the overall sample, where 82% of respondents were employed directly by the air carrier. As there were only two respondents to the cabin crew survey in this situation, it is not possible to compare their employment conditions with the general response.

Figure 8-4: Survey of Pilots – Working relationship with EEA licenced air carriers for EEA national pilots



Source: Survey of pilots

While there are claims that the use of third country manning agencies can be used to offer lower pay, working conditions, and social security, the evidence presented above suggests that this only happens to a very small share of aircrew. The majority of EEA nationals based outside the EEA have direct employment with the air carrier and are often being offered compensation for their placement.

8.4 Conclusions

The employment of third country nationals by EEA licenced air carriers has historically been used for cultural and language reasons on specific routes. However, more recently there have been some claims that air carriers have been using third country nationals due to the less demanding employment and social security legislation in the third country.

It has not been possible to estimate the existence and extent of practices whereby air carriers have used third country air crews provided by local temporary manning agencies established outside the EEA. There is no available literature on this topic beyond anecdotal evidence of certain air carriers (e.g. Norwegian, Finnair) employing third country nationals on specific routes. The data collected

through interviews and surveys confirmed the use of third country air crew (mainly for flights to/from third countries and less so for intra-EE flights). However, it is not possible to tell how common this practice was, nor whether the third country aircrew's home base was located in a third country or in the EU.

The use of these practices has been predominantly associated to some low-cost carriers (e.g. as identified by aircrew representatives) and to differences in national legislation / lack of EU harmonisation and to situations of abuse/circumvention of applicable law which can create an unlevelled playing field among air carriers. However, due to the small sample size of respondents, it has not been possible to test and verify these claims.

Finally, there has been one specific claim related to the use of wet-leasing from third countries' air carriers by British Airways as a way to address the impacts of strikes. We have not identified other cases where other workers' rights (such as the right to strike) were affected by the use of third country nationals.

9 Applicable Law to aircrews' employment contracts

9.1 Introduction and scope

This section examines the applicable law and its application to aircrews' employment contracts. It is thought that different approaches potentially still exist in the application of law to aircrews' employment contracts in the EU, even though we have harmonised conflict of law and of jurisdiction rules (Rome I Regulation and Brussels I Regulation (discussed later in section 9.4.1)) and the European Judicial Network in civil and commercial matters has published a Practice Guide on jurisdiction and applicable law in international disputes between the employee and employer in 23 languages in 2016 (European Commission, 2016). Determining the applicable legal framework in case of a dispute between the employee and the employer is complex for aircrew whose situation involves several countries and jurisdictions (European Commission, 2016), as highlighted by the European Commission's Aviation Strategy for Europe (European Commission, 2015). The aim of this section is therefore to:

- Provide figures on the number of air carriers who have developed bases outside the Member State where they have their principal place of business, and the number of these bases within and outside the EU/EEA.
- Provide figures on aircrew members who are employed locally vs. those who are not employed locally.
- Analyse the different views of employers' and employees' representatives on the applicable legal framework to aircrews.
- Assess the impact of the recent judgment of the Court of Justice of the European Union in Joined Cases C-168/16 and C-169/16, notably how it is being applied by air carriers and the national enforcement authorities (labour inspectorates and courts).

A key issue when it comes to ensuring that aircrews' employment rights and working conditions are protected is the establishment of the applicable law for employment contracts and the avoidance of gaps or loopholes that can be used by some employers to minimise their obligations. Those loopholes can give rise to situations in which aircrews are abused while not being aware of the rights which should theoretically apply under national labour laws that (otherwise) would govern their employment agreement.

Quite often, provisions of the employment contracts of aircrew hired directly or indirectly (via cabin crew recruitment agencies) by air carriers, assign jurisdiction and applicable law over any dispute related to the contract to the Member State where the air carrier is based¹¹⁶. However, this may be different from the "place where or from where the worker habitually carries out his work in performing the contract" – which may be a criterion when establishing applicable law and jurisdiction in a given case according to EU legislation (Rome I and Brussels I Regulation) as interpreted by the Court of Justice of the European Union (see Section 9.4.1).

These rules are especially relevant because of the multi-base strategy introduced by low-cost carriers adds a new level of complexity. It could be that the employee's habitual place of work differs from his/her usual place of residence, his/her assigned home base, the place where the employer is based, the country where the aircraft was registered, and the country of the law and/or jurisdiction chosen in the employment contract.

¹¹⁶ On the requirements imposed by the Brussels I Regulation and the Rome I Regulation as to the choice of court and of applicable law, see Section 9.4.1 below.

9.2 The use of multiple bases among EEA air carriers

The first step in the analysis was to review the extent of the use of multiple operating bases in Europe. According to the literature the use of multiple foreign operating bases has been a particular feature of the low-cost air carrier industry following the point-to-point business model and less so of legacy air carriers that follow a hub-and-spoke business model, despite the liberalised aviation market having been equally open to those carriers. Nonetheless, network carriers have also started following this model either as a result of mergers (e.g. the merger between Air France and KLM meant that the new company operates from two bases, in France and the Netherlands) (Ecorys Nederland BV, 2007), or in line with increasing hybridisation of the business models in aviation where traditional carriers adopt practices of the point-to-point approach.

As part of the survey of air carriers we asked respondents to indicate the number of operating bases they have both inside and outside the EEA to establish the extent of this growing trend. However, since we only received a limited number of responses to this question, we complemented this with desk research. Table 9-1 below presents the number of current operating bases for the top 20 air carriers in EEA in terms of total scheduled and chartered passengers.

It can be seen that the number of operating bases of air carriers range from just one operating base up to 87 operating bases (as reported by survey respondents). According to the results, most operating bases are inside the EEA (only 5 responses were received indicating bases outside the EEA). Out of the 24 responses received for inside the EEA, 16 air carriers only had one or two bases. However, the variance between some of the largest European air carriers as shown below highlights potential for multiple base issues.

Table 9-1: Top 20 largest EEA air carriers based on total scheduled and chartered passengers

Air carrier	Country of principal place of business	Total scheduled and chartered passengers (millions 2017)	Number of destinations	Number of Operating Bases inside and outside EEA
Low-cost Carriers				
Easy Jet	United Kingdom	81.63	132	28
Norwegian Air Shuttle ASA	Norway	33.15	153	22
Ryanair	Ireland	128.77	205	84
Wizz Air	Hungary	28.27	144	27
Jet2.com	United Kingdom	9.64	58	11
Flybe	United Kingdom	9.05	85	11
Vueling	Spain	Part of IAG ¹¹⁷ (104.83)	163	16
Traditional Scheduled				
Lufthansa	Germany	130	220	2
British Airways	United Kingdom	104.83 (IAG)	183	3
Iberia	Spain		89	1
Aer Lingus	Ireland		93	3

¹¹⁷ International Air carriers Group (IAG) in the parent company of British Airways, Vueling, Aer Lingus and Iberia

Air carrier	Country of principal place of business	Total scheduled and chartered passengers (millions 2017)	Number of destinations	Number of Operating Bases inside and outside EEA
Air France-KLM	France	98.72	243 ¹¹⁸	2
SAS	Sweden	28.37	119	5 ¹¹⁹
Alitalia	Italy	21.7	94	1 ¹²⁰
TAP Air Portugal	Portugal	14.27	88	1
Aegean Air carriers	Greece	13.22	81	8 ¹²¹
Finnair	Finland	11.9	132	1
Air Europa	Spain	10.6	44	1
LOT Polish Air carriers	Poland	8.56	90	1 ¹²²
Charter Air carriers				
Travel Service Air carriers	Czech Republic	8.17	92	1

Sources: Top 20 largest EEA air carriers based on total scheduled and chartered passengers based and adapted from Centre of Aviation¹²³. Number of passengers, destinations and operating bases based on information provided by air carrier websites (and when not available Wikipedia)

However when the survey of air carriers was analysed by business model, it can be seen that the majority of traditional scheduled air carriers had one or two operating bases within the EEA (14 out of 18), whereas the two low-cost air carriers have many more operating bases (up to 87 in the case of Ryanair). Table 9-1 highlights this clearly. The low-cost business model more frequently employs aircrew in home bases or countries that have been established outside the country where the air carrier has its principal place of business (PPB), and this is followed by traditional carriers.

During the surveys, we also asked national employment authorities and labour inspectors whether there are air carriers that have operating bases in their country that are different from their PPB. Out of the seven national authorities who provided a response, two stated there were and five did not know. A Czech Republic respondent added that there were three different air carriers they were aware of in their Member State. Eleven labour inspector stakeholders responded, for which seven said yes, one said no and three did not know. Two respondents did not know the exact numbers, whilst another two highlighted Norwegian, City Jet, Primera Air and Iberia as air carriers involved in the different schemes.

Employment authorities were additionally asked whether the multiplication of operational bases by air carriers has had an impact on the employment conditions of pilots and cabin crew. From the five responses received, one stated to a limited extent, one stated yes but only partly, and the remaining three did not know. No additional comments were received to explain these choices however.

¹¹⁸ Air France KLM site: <https://www.klm.com/corporate/en/about-klm/air-france-klm/index.html>

¹¹⁹ 3 bases within Scandinavia (Sweden, Norway and Denmark) and 1 in London and Spain in order to compete with the likes of Ryanair, Norwegian and EasyJet.

¹²⁰ Planespotters fleet details: <https://www.planespotters.net/airline/Alitalia>

¹²¹ Aegean site: <https://en.about.aegeanair.com/company/technical-base/>

¹²² LOT carrier information: <https://usitcolours.bg/en/flights/regular-air-carriers/lot/s/587>

¹²³ CAPA – Centre for Aviation – Europe's Top 20 airline groups by passengers 2017: <https://centreforaviation.com/analysis/reports/europes-top-20-air-carrier-groups-by-passengers-2017-lufthansa-wrests-top-spot-from-ryanair-394211>

9.3 Location of employment (home base)

Estimates of the share of aircrew members employed locally¹²⁴ versus not locally have been used to provide a more detailed picture of the current situation in the EEA internal aviation market. This is relevant since any discrepancies between the employees 'home base' and actual location of employment can give rise to issues in determining the applicable national legislation and jurisdiction. As the CJEU ruled in Joined Cases 168/16 and 169/16 on the Brussels I Regulation (as discussed in 9.5.1), the concept of 'home base' cannot be equated with that of habitual place of work, however the former is a significant indicium for the purposes of determining the latter (see below).

9.3.1 Presentation of the data collected

Two surveys covered questions relevant to this topic. Results from the pilot survey undertaken indicate that of the 5717 respondents, a large majority (96% (5462)) indicated they consider their 'home-base location as stated in their contract to be one from where they usually start and finish their duty. There is certain variation depending on the Member States. In the case of Germany, France, Netherlands, Sweden and Spain (representing 45% of the total respondents) 96-98% of respondents considered this where they start and finish duty. In contrast, only 57% of respondents from Slovenia and 25% from Slovakia agreed with this, however the sample size from these countries were very small (14 and four respectively) and so did not affect the overall percentage. When asked what the reasons were for any difference, the two pilots who provided a response indicated that it can depend on the project undertaken or type of employment as 'floating part time' can involve changing bases every block.

According to the 2091 responses received for the cabin crew survey, 98.5% (2060) of respondents stated that their contract 'home-base' is where they usually start and finish their duty. The five countries with most 'home bases' were Netherlands, United Kingdom, Spain, Germany and France (representing 75% of the total), for which 98-99% of respondents agreed. Eighty-nine% of respondents from Ireland and 75% from Poland agreed with this, however the sample size from these countries was very small (45 and four respectively) hence did not affect the overall percentage.

Out of the 31 cabin crew respondents who indicated this not to be the case, 12 provided additional information. Of these, five respondents stated the two locations were in the same country but different cities (thus not actually indicating different bases). Among the remaining six, different arrangements were indicated. One respondent commutes, one reported to be sent to different countries to start services, whilst not being remunerated for the time spent commuting, one declared to not being sure which country it will be, and another highlighted they are aware the home base is in a different country for taxation purposes as well as reduced employment rights. One respondent stated that, being on a self-employment contract, they are often sent to "overnight bases" without receiving proper *per diem* payment, and approximately 15 days out of the month on average are out of base. In all these cases it is not known what the employment contract conditions are in terms of home base. In some cases, aircrews can agree with the air carrier to be residing in a certain place and be transported each time to the airport from where to start the service. This practice is common for example in business jet operations, which is a segment of air services that are not always foreseeable in advance and where pilots are based in a so-called "gateway airport"¹²⁵ from where they commute.

These findings can be considered in line with earlier studies, as it was shown in the 2015 Ghent Study (Jorens, Gillis, & De Coninck, 2015) where 91% of responding pilots considered their official home base as cited in their contract to be their real home base. Furthermore, the top 5 countries where this was the case are very similar to our study findings (France, Netherlands, United Kingdom, Sweden and Belgium).

When analysed by business model (see Table 9-2), no significant difference could be seen between pilots and cabin crew when analysing whether their home base contract location is the same as where

¹²⁴ In this case locally refers to the same country

¹²⁵ A preliminary question was referred to the CJEU specifically on the legal framework applicable to a private jet pilot in the case C-242/16 Garrett Pontes Pedrosa (case withdrawn).

their work duties start and finish. For most business models at least 90% of respondents agreed this was the case, apart from freight air carriers where 18% of respondents disagreed (for pilots).

Table 9-2: Response from the two surveys on whether ‘home base’ location as stated on the contract is the same location as where their working duties usually start and finish, disaggregated by business model

Business model	Pilots		Cabin crew	
	Yes	No	Yes	No
Traditional Scheduled	2487 (98%)	53 (2%)	1086 (99%)	13 (1%)
Low-cost	1856 (96%)	84 (4%)	842 (99%)	12 (1%)
Charter	269 (90%)	29 (10%)	28 (88%)	4 (12%)
Business Aviation	371 (95%)	20 (5%)	45 (98%)	1 (2%)
Freight	80 (82%)	18 (18%)	1 (100%)	0
Other Types	138 (96%)	6 (4%)	8 (100%)	0

Source: Surveys of pilots and cabin crew

9.4 Applicable legal framework for aircrew

Increasing levels of complexity arising from the existence of several international factors involved in a contractual relationship may lead to aircrew not always being aware of their rights under national labour laws. Indeed, the determination of the applicable law to a particular employment contract might become a difficult task. In the case of aviation, the number of international factors involved can increase when an air carrier develops bases outside the Member State where it has its registered office and/or principal place of business (PPB) and, consequently, when the air carrier employs aircrew in these bases.

The Rome I Regulation (EC) No 593/2008 (on the applicable law) and Brussels I Regulation (EU) No 1215/2012 (recast) (on jurisdiction) are the general points of reference for employment contracts with a cross-border element. Both regulations exclude ‘social security’ from their scope. A central question to both Regulations is the determination of the ‘place where or from where the employee habitually carries out his/her work’¹²⁶, which is not always easily discernible in the air transport sector. Pursuant to the regulations, if it is not possible to determine that place (because the employee does not or did not habitually carry out his work in any one country), another criterion for determining jurisdiction and applicable law would apply: that of the place where the business which engaged the employee is or was situated. As discussed, the European Judicial Network in civil and commercial matters also published a Practice Guide in 2016 on jurisdiction and applicable law in international disputes between the employee and employer.

¹²⁶ Note that jurisdiction and applicable law are not completely aligned (e.g. the employee can also sue the employer at the place of domicile of the employer) and it might be the case that the court with jurisdiction will have to apply foreign law.

9.4.1 The law applicable to aircrew's employment contracts and the jurisdiction of the courts - Rome I Regulation (EC) No 593/2008 and Brussels I Regulation (EU) No 1215/2012

The applicable law to aircrew's employment contracts determines issues of great importance, such as which employment rights the aircrew will benefit from and what working conditions will apply to them.

Surveys and interviews conducted for this study and the sample of employment contracts analysed suggest that, usually, as the employee is the weaker party to the contract, he/she may not have a say in the choice of the law applicable to the contract. Typically, the law chosen in the contract is the one that corresponds to the seat of the air carrier (or, for some, the intermediary agency having signed the contract) i.e. the country where the company has its registered office and/or its PPB, without taking into account the employee's country of residence even if the home base¹²⁷ determined by the company is located in a different state. This seems to be a common feature in the industry.

The starting point of Article 3 of the Rome I Regulation¹²⁸, which determines the applicable law to the contractual obligations, is the freedom of choice, i.e. that a contract shall be governed by the law chosen by the parties. This choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. It is even possible to choose different applicable laws for the same employment contract, by specifying which law will be applicable to each part of the contract.

However, the Rome I Regulation does not grant parties unfettered discretion to determine the applicable law to the employment contract. It takes into account the fact that the employee is the weaker party to the contract and therefore it provides that the choice of the law applicable cannot deprive the worker of the protection of the law of the place where, or from where, he/she actually carries out the work.¹²⁹

As concerns jurisdiction, for the same reasons of protecting the weaker party pursuant to the Brussels I Regulation, the worker and the employer can conclude a valid choice of court agreement only in two cases: after the dispute has arisen or if the agreement allows the worker to bring proceedings in courts other than the one which would otherwise be available for him/her under the rules of the Regulation. The choice of court clause must therefore widen the choice available to the employee¹³⁰. These requirements lead to the invalidity of the usual choice of court clauses in the employment contract (i.e. before a dispute has arisen) which restrict, rather than extend, the employees' possibility of choosing between several courts with jurisdiction.

There is a rather extensive CJEU case law on the 'place where the employee habitually carries out his work' for the purposes of the Brussels I Regulation or the Rome I Regulation. Most recently, the CJEU in cases C-168/16 and C-169/16 (discussed later in section 9.5) has interpreted the concept of 'place where the employee habitually carries out his work' as 'the place where, or from which, the employee in fact performs the essential part of his duties vis-à-vis his employer'. With regards to the importance of 'home base' in determining the place in which the employee habitually carries out his work, in a nutshell, the CJEU ruled that the home base does not automatically determine the concept of 'place where the employee habitually carries out his work' under the Brussels I Regulation, but

¹²⁷ Council Regulation (EEC) No 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation, Annex III, Subpart Q, OPS 1.1095, point 1.7, defines the concept of home base as: "the location nominated by the operator to the crew member from where the crew member normally starts and ends a duty period or a series of duty periods and where, under normal conditions, the operator is not responsible for the accommodation of the crew member concerned".

¹²⁸ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6–16.

¹²⁹ In detail, Article 8 of Regulation Rome I provides that the applicable law to employment contracts shall be determined by the following criteria: first, the parties have the freedom to choose the applicable law. However, in case this law is less beneficial for the employee than the law that would be applicable according to the second and fourth criteria, the latter shall apply (article 8.1 of Regulation Rome I). Second, in the absence of choice, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract (article 8.2 of Regulation Rome I). Third, in case the applicable law cannot be determined in accordance with the second criterion, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated (article 8.3 of Regulation Rome I). Fourth, where it appears from the circumstances as a whole that the contract is more closely connected with a country rather than the one indicated in the second and third criteria, the law of that other country shall apply (article 8.4 of Regulation Rome I).

¹³⁰ See CJEU ruling in Case C-154/11.

constitutes a significant indicator. Although these cases only concern the interpretation of the Brussels I Regulation, they are also relevant for the Rome I Regulation, as the latter uses the same concept.

Other relevant EU legislation in this context is Regulation (EC) No 883/2004 on the coordination of social security systems (applicable in the EU, EEA and Switzerland) and amended by **Regulation (EU) No 465/2012** which aims to ensure equal treatment and non-discrimination in the context of freedom of movement established by the EU Treaties. The cross-border nature of the profession also causes problems in determining the national social security system under which aircrews should be covered. To simplify this process, the 2012 amendment established the “home base rule” whereby aircrew are covered and pay social security contributions to the Member State of their home base, that is, the place where the individual usually starts and finishes work¹³¹.

9.4.2 Existing practices regarding choice of legal framework and jurisdiction – Presentation of data collected

As part of the survey, pilots and cabin crew were asked where they signed their contract, which country’s labour law they considered to be applicable to them and whether this is the same country as their contractual home base or the relevant air carrier’s registered office.

In general, within each Member State there is a similar number of pilots that have contracts signed there compared to the number that have that country’s applicable labour law assigned to them. In comparison, cabin crew have seen a 77% higher rate of Irish law being assigned compared to the number of contracts signed there (from 100 to 177 respondents), and with Italy, a 57% lower rate (from 93 to 40).

However, this is not a problem as such, since the place where the contract is signed is immaterial to the determination of the applicable labour law. Therefore, we then wanted to include home base in this analysis to see the comparison. As discussed earlier, of the 5,717 polled pilots, 690 confirmed their **home base** is in Germany, according to their contract. This is the most common home base of the respondents, followed by the Netherlands (455). However, the most common applicable law of this group’s employment contracts is Irish (591 out of 5236 respondents), followed by German law (552 out of 5236). With cabin crew, 662 of the 2091 polled workers confirmed their contractual home base as the Netherlands, followed by the United Kingdom (280). However, unlike the pilots, this is in line, as the most common applicable laws of this group’s employment contracts is Dutch law (610 out of 1858) followed by British law (233).

When aircrew were asked whether they felt the country’s law applicable to them is the same as their contractual home base, in general the majority of the pilot and cabin crew who provided a response (82% (4534 out of 5555) and 88% (1742 out of 1974) respectively) indicated it is the same. Analysis was then disaggregated by business model, as shown in **Table 9-3**. For cabin crew, at least 89% of all carriers think that their country’s labour law applicable is the same as their contractual home base, apart from low-cost carriers where only 74% (599 out of 810) do. For pilots, opinion was more mixed across the carriers, with low-cost having lowest agreement (62.5% (1180 out of 1888)) followed by freight (74% (71 out of 96)) and charter (79.5% (231 out of 291)).

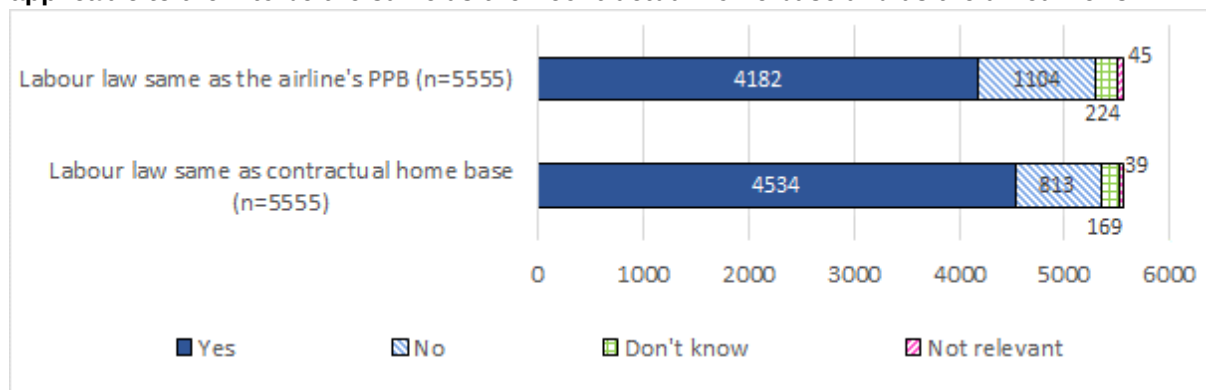
¹³¹ In accordance with recital 18b of Regulation 883/2004: “In Annex III to Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation (5), the concept of ‘home base’ for flight crew and cabin crew members is defined as the location nominated by the operator to the crew member from where the crew member normally starts and ends a duty period, or a series of duty periods, and where, under normal conditions, the operator is not responsible for the accommodation of the crew member concerned. In order to facilitate the application of Title II of this Regulation for flight crew and cabin crew members, it is justified to use the concept of ‘home base’ as the criterion for determining the applicable legislation for flight crew and cabin crew members. However, the applicable legislation for flight crew and cabin crew members should remain stable and the home base principle should not result in frequent changes of applicable legislation due to the industry’s work patterns or seasonal demands”.

Table 9-3: Responses to the pilots and cabin crew survey on whether they consider the country's law applicable to them to be the same as their contractual home base, by business model.

	Business model	Yes	No	Don't know	Not relevant
Pilots	Traditional Scheduled	2380 (96%)	75 (3%)	14 (0.5%)	11 (0.5%)
	Low-cost	1180 (62.5%)	567 (30%)	126 (7%)	15 (0.5%)
	Charter	231 (79.5%)	48 (16.5%)	10 (3%)	2 (1%)
	Business Aviation	324 (87.5%)	41 (11%)	3 (1%)	2 (0.5%)
	Freight	71 (74%)	19 (20%)	5 (5%)	1 (1%)
	Other Types	113 (84%)	16 (12%)	1 (1%)	4 (3%)
Cabin crew	Traditional Scheduled	1022 (99%)	6 (0.5%)	7 (0.5%)	0
	Low-cost	599 (74%)	152 (19%)	58 (7%)	1 (<0.1%)
	Charter	24 (89%)	3 (11%)	0	0
	Business Aviation	44 (98%)	0	1 (2%)	0
	Freight	1 (100%)	0	0	0
	Other Types	7 (100%)	0	0	0

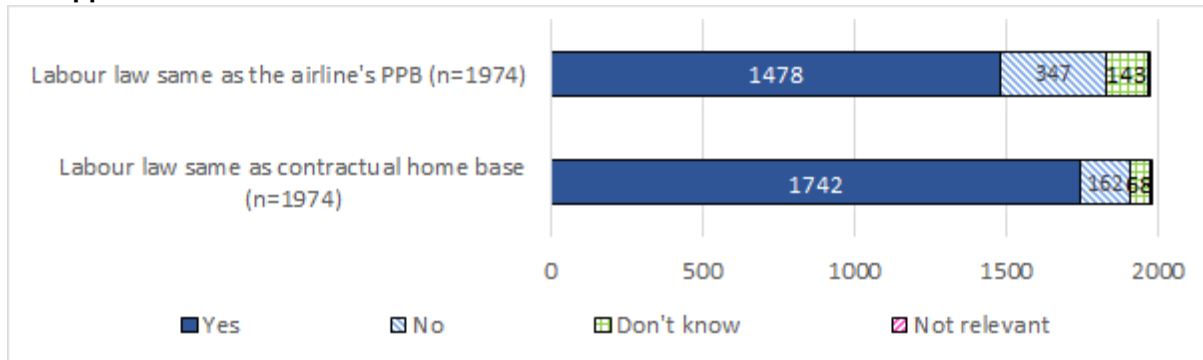
Source: Surveys of pilots and cabin crew

Furthermore, when aircrew were asked whether they consider the applicable law to them to be the same as the air carrier's principal place of business (PPB), again a fairly large majority agreed they were the same (75% of both pilots and cabin crew (4182 out of 5555 and 1478 out of 1974 respectively)). As Figure 9-1 and Figure 9-2 shows, this is less than the contractual home base as discussed above however (7% and 13% less respectively).

Figure 9-1: Response from the survey of pilots on whether they consider the country's law applicable to them to be the same as their contractual home base and as the air carrier's PPB.

Source: Surveys of pilots

Figure 9-2: Response from the survey of cabin crew on whether they consider the country's law applicable to them to the same as their contractual home base and as the air carrier's PPB.

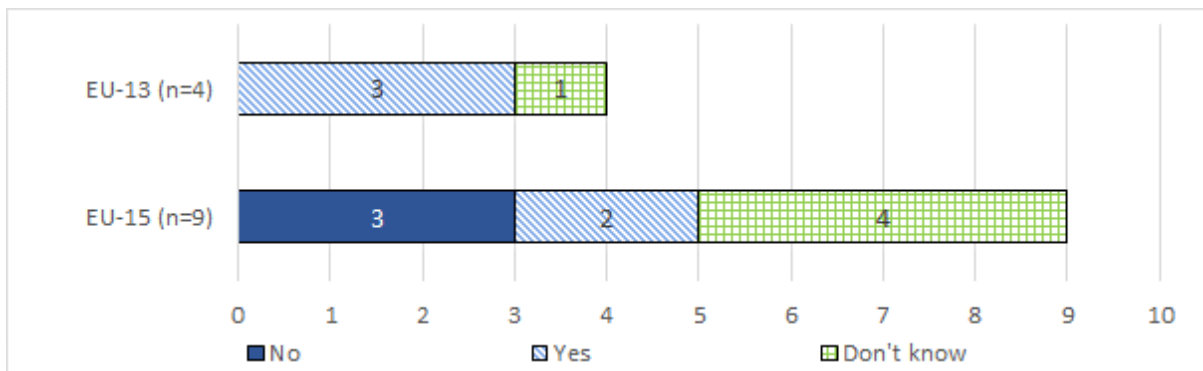


Source: Surveys of cabin crew

The results from the analysis are in line with the 2015 Ghent study (Jorens, Gillis, & De Coninck, 2015) for which 85% of respondents agreed their labour law is that of their official home base. In addition, 75% of pilot and cabin crew respondents highlighted that the country's labour law applicable to them is the same as the air carrier's registered office/PPB (4,182 and 1,478 respectively). However, this result should be treated with caution since as a lot of interviewees indicated difficulty to determine which labour, tax and social security laws apply to them (discussed more in section 9.4.3).

When employment authorities were asked whether they enforce their national labour legislation on pilots and cabin crew whose home base is in another EEA Member State, but work for an air carrier with its PPB in their country, all five respondents stated they did not know. When national labour inspectors were asked the same question, three¹³² out of four EU-13 country respondents and two¹³³ out of eight EU-15 respondents responded that this was the case (see Figure 9-3). However, the overall EU-15 response was mixed, with a further two Member State representatives stating this was not the case, and the remaining four stating they did not know.

Figure 9-3: Responses from labour inspector survey on whether they enforce their legislation on pilots/cabin crew whose home base is in another EEA Member State but place of business is in their country



Source: Survey of labour inspectorates

Among national labour inspector responses, six out of 13 (46%) stated that their Member States apply their national labour legislation on pilots and cabin crew whose home base is in their country but working for an air carrier with its PPB in another country (and one did not know). Four respondents said they did not, and the remaining three did not know. Table 9-4 presents the response for this by country. In comparison, all five national authority respondents stated they did not know.

¹³² EE, CZ and HR

¹³³ AT and DK

Table 9-4: Responses from national labour inspector survey on whether their Member State enforces their legislation on pilots and cabin crew whose home base is in their country but working for an air carrier with its PPB in another country

Country of respondent	Yes	No	Don't know
Estonia ¹³⁴	✓		
Spain	✓		
Italy	✓		
Luxembourg		✓	
Malta			✓
Sweden ¹³⁵			✓✓
Austria		✓	
Czech Republic	✓		
Denmark ¹³⁶	✓	✓	
Hungary	✓		
Netherlands		✓	

Source: Survey of labour inspectorates

During the stakeholder consultation, we also analysed the current method for which a particular legal framework is decided upon in employment disputes. According to interviews conducted with aircrew representatives (working for low-cost air carriers), cross-border employees tend not to engage in employment disputes because of the difficulty in determining the habitual place of work. It depends on the type of employment contract and if it states which specific laws apply, and difficulties seem to increase when carriers use **alternative forms of employment**. The association Norwegian Pilots Group highlighted that air carriers sometimes use temporary work agencies or other intermediary companies located in different Member States to hire their crew in order to hide who the real employer is and make the applicable law unclear. (For example, pilots that have contracts with subsidiaries of mother holding companies and air operator's certificates (AOC) not from the home base countries will need to negotiate with the official employer rather than the mother company. If the pilot is in disagreement with the AOC holder air carrier, the air carrier can influence their future work and there is nothing the pilot can do).

From their side, air carriers provided limited input on this topic. Air carrier Neos Air highlighted that it is the country of PPB that is used (they only have pilots based in third countries and hence use the same legislation as Italy), where as in comparison another air carrier stated their contracts and legal framework are local to the home base country because issues such as flight hour limits will be linked to this country. The only time this changes is when workers are posted (the home base and contract would remain the same whilst they are posted at another base). Two other air carriers stated it was not applicable when asked which legal framework is used in employment disputes and a third one stated they have not really had any disputes so cannot tell which framework is used.

As reported by EurECCA, the legal framework used **should** be very clear for air carriers that use bases in other European countries, however, there seems to be confusion among many. According to the unions, the concept of 'home base' constituting a significant indicator for the purposes of determining the place where the employee habitually carries out their duties has helped and it has

¹³⁴ This respondent stated that this is the case as long as the contract is concluded under that Member State's employment law

¹³⁵ There were two responses from Sweden

¹³⁶ The respondent from Denmark highlighted both sides: "Yes - It is up to the trade unions to enforce the collective agreements and not the Member State and can be done through collective action. It can be enforced on crew with Danish home base and principle place of business in another country." No – "The Danish Transport, Construction and Housing Authority cannot enforce working environment on board aircraft because the scope of the legislation is limited to the Danish territory and on-board aircraft with a Danish AOC. Since inspections regarding working environment on-board aircraft is primarily in the air and the Danish airspace is limited, it is not possible to conduct inspections on board aircraft that have a principle place of business in another country."

given more security for staff, but issues remain (i.e. low-cost air carriers and intermediaries (temporary work agencies) are applying the law of the country where the company has its registered office/PPB). The unions are aware of employers that try to continue the use of PPB, hoping employees will eventually give up on any disputes. As stated by both EurECCA and Norwegian Pilots Group however, eventually the court of the pilots' habitual place of work should have jurisdiction. As identified by interviewees (both aircrew and aircrew representatives), Ryanair is thought to continue to apply Irish Law in cases regardless of other relevant factors such as where the worker is based or which is his/her country of residence. One pilot group supported that this is the case, hence why everyone wants to open subsidiaries in Ireland. However, according to ECA, Ryanair pilots in Germany have gone on strike under German law.

By contrast, an air carrier association highlighted that whilst Ryanair has that view, national authorities (not specified) tend to have another. Some interviewees working for legacy carriers such as Iberia, along with other low-cost carriers such as EasyJet, confirm that their air carrier respects and applies the law of the place where the employee habitually carries out his work, which is in line with the CJEU rulings (discussed in section 9.5). According to the national cabin crew association BALPA (British Airline Pilots' Association), Denmark and Norway authorities have also rejected Ryanair's views, meaning they have been able to apply labour laws applicable to aircrew's home base country, rather than being subject to a third country's regulation that has no oversight of the regulation. Additionally, pilots' unions in some EU countries have already started legal actions in order to clarify the applicable law to the contracts. For example, at the beginning of this year it was reported that the Spanish union SEPLA announced its intention to sue Ryanair before the Spanish Courts, so as to clarify whether the Spanish law is applicable to the pilots who work in Spain (El Espanol, 2018).

During stakeholder consultation, a position paper on European social affairs was also submitted by Airline Coordination Platform (ACP). They stated that the law applicable to the employment of aircrew members in the social field should be clarified and tightened to avoid circumvention and should be applied in a uniform manner across the European Union to any air transport operator.

9.4.3 Awareness and appropriateness of current laws – views of stakeholders

In its assessment of the application of the labour law, the sub-group on social matters in air transport concluded that there is a lack of awareness among employees regarding their rights under the Brussels I and Rome I Regulations (despite the publication of the Practice Guide in an effort to raise awareness) and noted that the determination of the habitual place of work tends to vary with national courts (Sub-group on social matters in air transport, 2015).

According to aircrew, only a relatively small share does not think that the appropriate law applies to them. As part of the surveys of pilots and cabin crew, respondents were asked whether they consider the applicable law as issued in their contract is appropriate. The large majority of pilots (79%, 4387 out of 5408 respondents) felt the law was suitable, while 13% (728 respondents) did not and 8% (440) did not know or did not consider it to be relevant. When disaggregated by business model (see Table 9-5) pilots in low-cost carriers expressed higher levels of disagreement (29% (555 out of 1888)).

Table 9-5: Response from the survey of pilots and cabin crew as to whether they feel the applicable law as issued in their contract is appropriate.

Business model		Yes	No	Don't know	Not relevant
Pilots	Traditional Scheduled	2350 (95%)	44 (2%)	69 (2.5%)	17 (0.5%)
	Low-cost	1082 (57%)	555 (29%)	239 (13%)	12 (1%)
	Charter	237 (81%)	24 (8%)	28 (10%)	2 (1%)
	Business Aviation	329 (89%)	23 (6%)	12 (3%)	6 (2%)
	Freight	67 (70%)	17 (18%)	11 (11%)	1 (1%)
	Other Types	103 (77%)	17 (13%)	8 (6%)	6 (4%)

	Business model	Yes	No	Don't know	Not relevant
Cabin crew	Traditional Scheduled	928 (90%)	21 (2%)	78 (8%)	6 (1%)
	Low-cost	448 (56%)	180 (22%)	169 (21%)	8 (1%)
	Charter	18 (69%)	3 (12%)	5 (19%)	0
	Business Aviation	43 (96%)	0	2 (4%)	0
	Freight	1 (100%)	0	0	0
	Other Types	6 (86%)	0	1 (14%)	0

Source: Survey of pilots and cabin crew

Furthermore, out of the 1718 cabin crew stakeholders that provided an answer, 76% (1486 respondents) again stated the applicable law as written in their contract was appropriate, 10% (206) disagreed and 14% (274) did not know or did not think this issue was relevant to them. When disaggregated by business model (see Table 9-5) again low-cost carrier cabin crew respondents were less agreeing than other business models (only 56% (448) stated yes).

When aircrew representatives were asked during interviews whether they think aircrew are aware of the legal frameworks which are applicable to them, there was strong consensus that they are not. The process is seen as very complicated and requires an understanding of EU law, which even courts, unions and air carriers would struggle to grasp, even regarding their own employment contracts. The average pilot is also not legally orientated to deal with this and, according to ETF, there is usually no choice when signing the contract. The complexity of this matter, given the transnational nature of the business and the fact that aircrew usually have not received expert legal advice, are two of the factors that explain why usually aircrew are not aware of the applicable legal framework. However, one national union felt that legacy air carrier pilots are aware unless they are self-employed or hired via a temporary work agency (TWA). This is in line with earlier analysis undertaken: the legal framework is complicated for aircrew since they are mobile workers but even worse for those employed by TWAs as it involves more relevant entities (i.e. not always clear who the employer is) and more countries if the agency is located in yet another country (see section 3.5.2).

As mentioned, the issues rise when multiple countries with very different legislation are involved, and, according to Norwegian Pilots Group, some associations (not specified) are now offering to check the legality of contracts for pilots because of this. The presence of international factors (an air carrier's registered office/PPB in one country, with an employee based in a different country, and an employment contract signed in another country, etc.), and the fact that carriers (especially low-cost carriers) usually use intermediaries such as temporary agencies to employ their pilots/cabin crew, increases the difficulty further. The ability to move within the EU as a business currently suits air carriers better than moving workers between countries - there is more opportunity to move capital freely and set up companies rather than pilots moving from country to country with employment contracts. However, there is a need for clear rules and the removal of ambiguity. An air carrier association representative agreed that employers/agencies need to do a better job of becoming more transparent in terms of assessing the legal framework.

When air carriers employ aircrew in bases or countries outside the PPB Member State, it makes it more difficult to determine the applicable law of the contract not only to working conditions, but regarding taxes and social security issues. Four cabin crew respondents stated that it is difficult to determine which labour, tax and social security laws apply to them especially as no guidance or information has ever been provided to assist in this matter. It is common not to know where to pay their taxes or social contributions, which for some has even led to issues with tax agencies regarding lack of payment. One respondent knew she paid taxes in Ireland and Italy simultaneously, whilst another respondent knew of people leaving their company because of this knowledge gap. Four pilot respondents also highlighted the difficulty in determining which laws apply, particularly when employed by a subsidiary or self-employment company based in a third country (not the home base or the employers PPB). As Ryanair claims that Irish law should be applicable to all employers they

proceed to pay for Irish health insurance, taxes and social charges automatically from employee's salaries regardless of their home-base. As suggested, this leads to double taxation issues which, after proof of residence elsewhere, has to be reimbursed anyway, which can be a particularly burdensome and challenging process for cabin crew members with lower incomes.

The analysis also shows there is a mixed response to whether there is a jurisdictional clause in the respondent's employment contract (whereby, in case of a labour dispute, only the courts of a Member State different from the Member State of the home base/usual place of work can be seized). Three out of eight respondents stated there was not a jurisdictional clause whereas five did. One cabin crew respondent said that if there is a dispute it is heard before the law courts in the country of the employing agency, and another pilot supports this, highlighting that in the case of disputes Ryanair create new employee contracts with agencies in control, meaning their country has authority of the applicable law even if there is no connection to it. Another respondent highlighted that they think the reason it states in their contract that it is Irish law that applies is because Irish Law is more liberal.

Aircrew representatives were asked as part of their interviews whether they know if the Brussels I and Rome I Regulations as discussed above are correctly applied in determining the applicable national labour law and court in the case of aircrews. A BALPA representative did not know, another aircrew representative stated if it was clear enough there would not be these problems, and EurECCA added that if you don't have a national authority closely watching what is going on in an air carrier, things can go on unnoticed/you can become unaware. EurECCA suggested that it can be difficult for authorities to oversee pan-European air carriers whose PPB is outside their Member State and who are employing aircrew in their country that are not necessarily nationals of their country. Having said that, it is known that the two regulations are not always correctly applied: disputes are often concerning the low-cost carrier Ryanair where they want to apply Irish law (in some cases against Rome I). While this is the most visible air carrier, there could be similar issues with other air carriers. According to ECA, the Brussels I and Rome I Regulations have been applied before e.g. in Spain and France, where cases were settled before the judges made a ruling, when companies thought the courts would go against them.

Portuguese Labour Minister, Mr. J. Vieira da Silva, indicated that although most of Ryanair's contracts state that they are subject to Irish law, the Rome I regulation still guarantees worker rights under local legislation have to be respected (Khalip, 2018).

9.4.4 Overall EU legal framework

A few air carrier representatives provided opinions on the overall EU legal framework. An air carrier association suggested that the European Commission (and in particular DG MOVE and DG EMPL) should clarify and complement the present regulatory framework applying to air transportation with the support of the working group on social matters in aviation composed of national experts. The publication of a practice guide on the application of EU civil justice instruments to international disputes in employment contracts (European Commission, 2016) was seen as useful first step, but is not thought to be sufficient by itself as uncertainties still exist.

In the view of this air carrier association further action should include:

- Amendment of the definition of the "home base" for an aircrew member to unambiguously state that the home base is **the effective workplace of the aircrew member**, meaning the location where he substantially and habitually carries out his employment contract in/from one Member State to another State. For them, the concept of "home base" was developed in a different context (flight time limitations rules in the area of safety) and should be clarified for the purpose of the application of social security legislation, especially in the context of the multiplicity of operational bases and thus, multiple home bases for aircrews.
- Extend the "home base" criterion to determine not only the applicable social security regime to aircrews, but also the relevant employment and taxation legislation¹³⁷.

¹³⁷ The EU has very limited competences regarding taxation.

- Increase the capacity of the Commission to require national administrations to apply the current legislation (when they fail to do so).

The air carrier association supported efforts undertaken to close the current loopholes in the legislation (for which currently air carriers are avoiding aircrew being subject to the social legislation of a specific Member State), and their carriers believe that the long overdue update of Regulation 883/2004 must be given higher priority by all interested parties.

The European Transport Workers' Federation (ETF) also argued that a clear definition of principal place of business is needed in order to avoid letterbox companies, and a consolidated definition of home base needs to be in place to ensure proper application of labour law¹³⁸.

From their side, the Danish Government also highlighted the importance of having a clear and unambiguous definition of the concept of home base (in the sense of employees belonging to one home base only). In addition, the Danish government believes that amendments to Regulation (EC) No 1008/2008 of the European Parliament and the Council of 24 September 2008 on common rules for the operation of air services in the Community are needed to address the current issues concerning fair competition between all parties involved. They added that it is essential to find a solution that carefully balances the various stakeholders' legitimate concerns and at the same time duly takes into account interactions with related legislation.

The air carrier Neos Air also noted in their interview that it was pleased the European Commission is continuing to look into the situation regarding applicable legislation to aircrew as it has a negative impact on ensuring a level playing field among air carriers. For them, it is important that air carriers all have the same opportunities

9.5 Impact of recent judgments of the Court of Justice of the European Union

As mentioned, in most of the cases, provisions included in the employment contracts of aircrew hired directly or indirectly (e.g. via temporary work agencies) by air carriers provide that the applicable law and the competent courts for any dispute related to the contract are those of the Member State where the air carrier is registered. However, in cases where the "home base" of aircrew members is located in another Member State, a number of loopholes may arise which may ultimately be used by some employers to minimise their obligations vis à vis their staff. This is especially the case when aircrews are not aware of the rights recognised to them under the labour and social security laws of the country where they are based.

9.5.1 Presentation of relevant Court cases

In relation to the issues discussed in sections 9.2 - 9.4 above, cases have been brought to courts where employees and employers have supported different views on the applicable legal framework. Within the sub-group on social matters in air transport, four out of the ten members identified past or ongoing cases in their Member States (Market Access Expert Group, 2015).

Recently, the European Court of Justice ruled in favour of former Ryanair aircrew members who brought cases against the company to the Belgian courts (Joined Cases C-168/16 and C-169/16 which concerned Regulation 44/2001 (repealed Brussels I Regulation) but is equally relevant for the recast Brussels I Regulation, 1215/012) as summarised in **Box 9.1**.

Box 9.1: Joined Cases C-168/16 and C-169/16

In the Joined Cases C-168/16 and C-169/16, the CJEU ruled in favour of former Ryanair aircrew members who had brought actions against the company before the Belgian labour courts concerning the conditions of performance and termination of their individual contracts of employment as well as

¹³⁸ Commission commits to create long-awaited social package in aviation at talks with ETF and ECA - <http://www.etf-europe.org/etf-press-area.cfm/pressdetail/11632>

the international jurisdiction of the Belgian courts to adjudicate these disputes.

Background of the cases

Case C-169/16

Regarding case C-169/16, on 21 April 2008, Mr Moreno Osacar (one of the Ryanair aircrew members) signed a contract of employment with Ryanair in Spain (an air carrier with its head office located in Ireland). According to the contract, which was drafted in English: (i) only Irish courts had jurisdiction over any possible dispute that may arise between the parties regarding the performance and termination of such contract, and (ii) Irish law governed the work relationship between the parties. Furthermore, the contract of employment nominated Charleroi airport (Belgium) as the 'home base', and required that Mr Moreno Osacar lived within an hour's journey of the base he was assigned to, this being the reason why he moved to Belgium. Taking the view that his former employer had to respect and apply the provisions of Belgian law and considering that the courts of that Member State had jurisdiction to adjudicate on his claims, Mr Moreno Osacar, by summons of 8 December 2011, brought proceedings against Ryanair before the *Tribunal du travail de Charleroi* (Charleroi Labour Court, Belgium) seeking an order requiring his former employer to pay various heads of compensation.

Ryanair challenged the jurisdiction of the Belgian courts over the dispute. The company claimed that there was a close and real connection between the dispute and the Irish courts. In addition, Ryanair stated that Mr Moreno Osacar was subject to Irish law in the field of tax and social security since he performed his contract of employment on board of aircraft registered in Ireland and was subject to that Member State's laws. Finally, although Mr Moreno Osacar signed his contract of employment in Spain, that contract was only concluded once Ryanair had affixed its signature at its head office in Ireland.

The Charleroi Labour Court held that the Belgian courts did not have jurisdiction over the dispute. Consequently, the plaintiff brought an appeal against that judgement before the court du travail de Mons (Mons Higher Labour Court, Belgium). The court decided to refer the following question to the CJEU for a preliminary ruling, in order to determine whether the Belgian courts had jurisdiction over the dispute: "May the concept of "place where the employee habitually carries out his work" referred to in article 19(2) of the Brussels I Regulation be interpreted as being comparable to that of "home base" defined in Annex III to Regulation No 3922/91?"

Case C-168/16

The factual background of Case C-168/16 is quite similar to that of Case C-169/16. In this occasion, the proceedings concerned Ms Nogueira and other crew members of Portuguese, Spanish and Belgian nationality, who signed employment contracts with Crewlink, an employment specialized agency established in Ireland, in 2009 and 2010. According to these contracts, the workers were employed by Crewlink and the latter would second them as cabin crew to Ryanair. The contracts were drafted in English, subject to Irish law and jurisdiction and stated that the salaries of the aircrews would be transferred to an Irish bank account but designed as 'home base' of the crews Charleroi's airport. The employment relationships of these aircrew were terminated in 2011 following dismissal or resignation. As in Mr Moreno Osacar's case, the workers brought an action before the Charleroi Court claiming compensation from Ryanair. Again, the Charleroi Court found it had no jurisdiction over the dispute and this judgment was appealed before the Mons' Court, which decided to refer the abovementioned preliminary ruling to the CJEU.

Legal analysis

As for the legal analysis, in its judgment, the CJEU recalled that it follows from its settled case-law that, for disputes related to contracts of employment, Section 5 of Chapter II of the Brussels I Regulation lays down a series of rules which objective, as stated in Recital 13 of that regulation, is to protect the weaker party to the contract by means of rules of jurisdiction that are more favourable to his/her interests.

The CJEU stated that a jurisdiction clause, such as the one agreed to in the contracts of the main proceedings, does not meet either of the requirements set out in Article 21 of the Brussels I Regulation (included in Section 5 Chapter II) and, consequently, that clause is not enforceable against the claimants in the main proceedings.

According to the CJEU, the concept of 'place where the employee habitually carries out his work'

enshrined in current Article 21(1)(b) of the Brussels I Regulation must be interpreted as referring to the place where, or from which, the employee in question performs the essential part of his/her duties vis-à-vis the employer. To determine specifically that place, the national court must refer to a set of indicia.

For aircrew, assigned to or employed by an air carrier, that concept cannot be equated with the concept of 'home base', within the meaning of Annex III to Regulation No 3922/91. Indeed, the Brussels I Regulation does not refer to Regulation No 3922/91, nor does it have the same objectives, the latter regulation aiming to harmonise technical requirements and administrative procedures in the field of civil aviation safety.

However, the fact that the concept of 'place where the employee habitually carries out his work' (within the meaning of current Article 21(1)(b) of the Brussels I Regulation) cannot be equated with that of 'home base', within the meaning of Annex III to Regulation No 3922/91, does not mean that the latter concept is irrelevant in order to determine the place from which an employee habitually carries out his/her work. On the contrary, the concept of 'home base' constitutes a significant indicium for the purposes of determining the 'place where the employee habitually carries out his work'.

Contact with the lawyers that represented the applicants in cases C-168/16 and C-169/16 has been taken, as well as with the Labour Court of Mons. At the time of writing, the cases are still pending, and a hearing is scheduled on 23 November 2018.

Source: (Court of Justice of the European Union, 2017)

From the CJEU's judgment, it may be concluded that:

- i. the place where the employees habitually carried out their work was not Ireland but Belgium; and
- ii. that Belgian courts have jurisdiction over the dispute.

Although in these cases the CJEU did not address the issue of whether Irish law was applicable to the dispute that arose between the parties (as the Mons Higher Labour Court did not refer this question to the CJEU), the criteria established by the Court (i.e., the interpretation of the concept of 'place where the employee habitually carries out his work') are particularly relevant for the purposes of determining the law applicable to an employment contract.

In this context, it is considered likely that the Court of Mons will rule in favour of the application of Belgian Law, as regards the mandatory provisions which are more protective than Irish law, in accordance to article 8.1 and 8.2 of Regulation Rome I: although there was a choice of law in the employment contracts as foreseen in article 8.1 (Irish law), this choice could deprive the employees from the protection they would have been entitled to if a choice had not been made in the contract, i.e.: the law of the place where they habitually carried out their work applied, under article 8.2 (Belgian law).

In any event, as observed by ETF, a second case before the CJEU may still be necessary to further clarify the applicable labour law issues affecting aircrew's contracts.

The Norwegian Cocca case of 2013¹³⁹ is another case worth highlighting. Factual background of this case is similar to cases C-168/16 and C-169/16, although there are some relevant differences regarding the Court's reasoning:

Box 9.2: The Cocca case

Ms. Cocca was employed by Ryanair as a Cabin Services Agent. According to her contract, she was required to live within an hour's journey of the base she was assigned to (Moss Airport, Rygge, in Norway). The contract also specified that the Irish Courts had jurisdiction over possible disputes which may emerge between the parties regarding the performance and termination of that contract and the legislation of that Member State governed the work relationship between the parties.

¹³⁹ Case no. 13-202882ASK-BORG/04, Ryanair Limited v. Alessandra Cocca.

When Ms. Cocca was fired on disciplinary grounds, she brought a claim against Ryanair before the Moss District Court. Ryanair argued that this Court had no jurisdiction over the dispute, and grounded its defence on the following points¹⁴⁰:

- i. The parties agreed on their contract that only the Irish Courts had jurisdiction over possible disputes that may emerge between them, which would be governed by the Irish law,
- ii. The employee's salaries were paid into an Irish bank account,
- iii. The employee paid taxes in Ireland,
- iv. The employee was a member of the Irish National Insurance Scheme and
- v. Ryanair did not have any branches in Norway or other countries and it organised the work, including giving work instructions, from Ireland.

On the other hand, Ms. Cocca tried to defend the jurisdiction of the Moss Court mainly through the following arguments:

- i. Her home base was located in Moss-Rygge airport, where all standby duties were performed and where she received instructions from the air carrier before every departure;
- ii. She was required to live within an hour's journey of this airport ("residence duty");
- iii. Her routes always ended in Moss-Rygge airport; and
- iv. She received a separate "Norway Supplement" in salary.

By judgement of 21st June 2013, the Court of Moss found that the dispute did not have sufficient links to Norway and, therefore, should not have been brought to a Norway Court on the basis of the Norwegian Dispute Act and the Lugano Convention¹⁴¹. However, on appeal the Borgarting Court of Appeal concluded otherwise:

The Borgarting Court of Appeal assessed the jurisdiction of the case in light of the Lugano Convention and, more precisely, its article 19(2)(a), according to which: "an employer domiciled in a State bound by this Convention may be sued [...] in another State bound by this Convention [...] in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so [...]". This provision should, according to the Court, be interpreted broadly as it concerns the weak party's interests.

The Court highlighted that the Lugano Convention had been built in light of the Brussels Convention of 1968 (later replaced by the Brussels I Regulation) and that, consequently, for interpretation purposes the case-law of the CJEU on parallel provisions contained in these instruments must be taken into consideration. The Court also referred to the relevance of the concepts set out in the Rome I Regulation (former Rome Convention), which regulates the applicable law.

In this sense, the Court explained that not only ground work carried out by Ms Cocca (which was very limited) had to be considered. Instead, an overall evaluation had to be undertaken to determine her habitual place of work and, thus, the court with jurisdiction to hear the case.

In this context, the Court held that Ms. Cocca "residence duty meant that she had to live close to the airport as long as the employment relationship lasted. This represents an actual connection that must be given substantial weight. This meant that Rygge, and the area where she lived, was her natural social connection point regarding both work and leisure. In the Court of Appeal's opinion this actual connection weighs very heavily, even though a number of other factors must be taken into

¹⁴⁰ Jurisdiction and applicable law in individual employment contract at sea under European Law from Norwegian perspective, Faculty of Law, University of Oslo.

¹⁴¹ The Lugano Convention is the homologue of Brussels I Regulation for issues related to jurisdiction and enforcement of judgments between EU Member States and Iceland, Switzerland and Norway.

account.”

Taking these facts into account, the Court of Appeal followed the rule of close connection to determine the relevant jurisdiction and ruled in favour of the jurisdiction of the Courts of Norway over the dispute.

The Appeals Selection Committee of the Supreme Court endorsed the general interpretation made by the Borgarting Court of Appeal (Braut Svendsen, 2014).

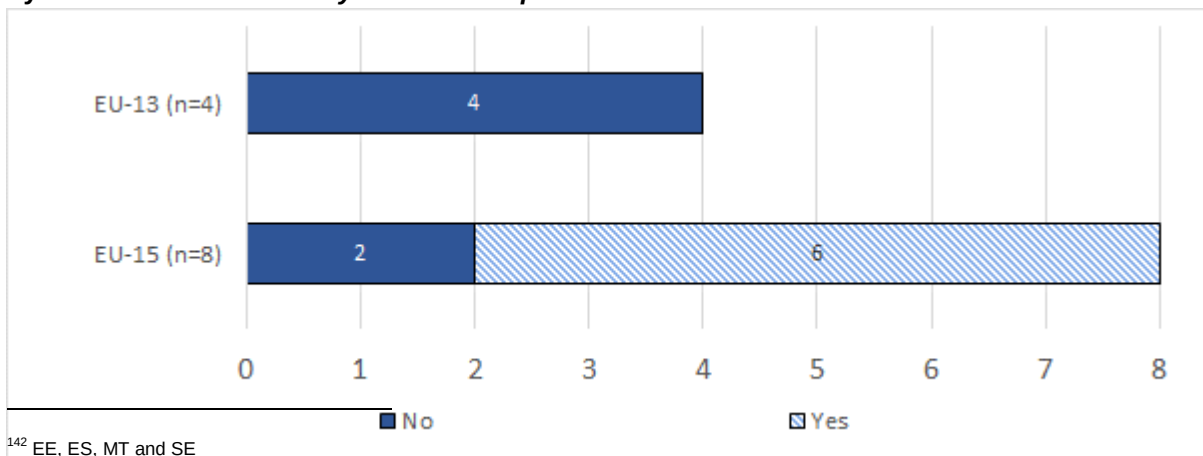
In March 2017 it was reported that Ryanair and Ms. Cocca had entered into a settlement whereby the latter was compensated for the dismissal with an amount equal to three times her annual gross salary.

9.5.2 Impact of the CJEU rulings

As part of the surveys of employment authorities and national labour inspectors, respondents were asked whether they were aware of the recent decisions by the CJEU (Joined Cases C-168/16 and C-169/16) on the determination of the place of habitual work of aircrews and the competent jurisdictions. Of the six national authority respondents, four¹⁴² were not aware and two¹⁴³ were. Respondents who were aware were then asked whether they knew whether the Court decisions had led to changes to the approach followed in terms of the application of the national labour legislation for pilots and cabin crew employed by an air carrier with its PPB outside their country but with the home base in their country. One Swedish respondent said no, and the Czech Republic respondent did not know.

Out of the 12 labour inspector responses received, six¹⁴⁴ stated they were not aware of these recent decisions and six¹⁴⁵ were. However, when disaggregated by EU-15/13 (see Figure 9-4) all respondents who were aware were from EU-15 Member States. When these six respondents were again asked whether they knew if the court decisions had led to changes to the approach carried out, a Danish respondent said no and the remaining four did not know. One such Italian respondent added that they can certainly imagine an effect from the CJEU decision from the joined cases C-168/16 and C-169/16 on the determination of the place of habitual work for pilots and cabin crew, as Italy was at the time of writing this report involved in a wide discussion on the applicable legislation to these workers (not only for the competent jurisdiction, but also for substantial rules on working conditions and social security issues). In their inspections in the aviation sector they have to deal with those issues, but currently they are not able to fully predict the effects of the CJEU decisions on the national Courts' judgements, because these inspections are still ongoing.

Figure 9-4: Response from the survey of national labour inspectors on whether they are aware of the recent decisions by the European Court of Justice (Joined Cases C-168/16 and C-169/16) on the determination of the place of habitual work of aircrews and the competent jurisdictions, by EU-15/13Source: Survey of labour inspectorates



¹⁴² EE, ES, MT and SE

¹⁴³ CZ and SE

¹⁴⁴ AT, CZ, EE, HR, MT, SE,

¹⁴⁵ DK, ES, IT, LU, NL, SE

During the consultation interviews, stakeholders were also asked to what extent any of the recent judgements of the Court of Justice of the European Union have affected the approach of air carriers in terms of their employment arrangements, and whether authorities have adapted their enforcement approaches as a result of these decisions.

Interviewees (in particular aircrew representatives) indicated the relevance of cases C-168/16 and C-169/16. Although to date they are still waiting for subsequent application of the rulings in other national cases and even unilaterally by the air carriers, they pointed out that the judgments will have a positive impact in the future of labour contracts in the sector. It has been a very important ruling (other European judges have decided differently) which can close loopholes being used at the expense of aircrew. According to the Norwegian Pilots' Group, unions and employee representatives have used this ruling and air carriers have reacted and checked how to adapt their approach. According to EurECCA, they have not as of yet seen changes to the approach followed by the low-cost carrier Ryanair and recent strikes are still related to the same issue. The Portuguese SNPVAC¹⁴⁶ cabin crew union called for the strike that led to various flight cancellations during the beginning of April 2018 and set a deadline by 30th June 2018 for Ryanair to change the applicable law to the employment contracts of its Portuguese aircrews (Reuters, 2018). SNPVAC claims that Ryanair uses Irish law and jurisdiction to ignore parenthood rights and so as not to recognise doctor-approved sick days, as well as resorting to disciplinary processes and threats for not reaching in-flight sales objectives.

From its side, ECA stated that Ryanair has started to recognise unions by offering contracts in different countries through them (albeit still insisting on Irish law). However, one French air carrier stated as there are different judgements and it is difficult to make legal assessments, they could not be specific about the extent of recent judgements on their approach while two other air carriers interviewed stated that they are not even aware of these recent judgements.

In general, as the recent judgements are only six months old, some air carriers are trying to hold on to old practices claiming that PPB law should apply, and this is the case even in national courts. According to ETF, Ryanair believes it will be able to keep contracts under the Irish law even after the ruling but will just make amendments to adapt them to other country's laws. Because of this, another low-cost carrier highlighted their frustration with the fact that the rules have not been applied properly by everyone. Nonetheless, in February 2018, it was reported by the Belgian press that, following the CJEU ruling, Ryanair had included in its Belgian employment agreements conditions equivalent to some of the minimum social features required by Belgian Labour Law (L'Echo, 2018). In this sense, it seems that Ryanair's Belgian directly employed air crew will now benefit from the following: a probation period of six months, 15 paid weeks of maternity leave, at least nine weeks of leave shall be taken after the birth of the baby, and fathers will also have right to a paternity leave of 10 days. Four months of parental leave are also provided under the new contracts. In addition, Ryanair agreed to introduce yearly bonuses for its Belgian aircrew members and expects to have to raise its salaries. Ryanair pilots in Germany have also gone on strike under German law (as stated by ECA). During interviews with cabin crew and pilots, we asked whether they have been informed by their respective employers about any amendments to their employment contracts as a consequence of the recent judgements of the Court of Justice of the European Union. All respondents stated they had not been informed of any changes to their contracts. Both an Italian cabin crew respondent and a Dutch pilot had heard nothing from their employer Ryanair, but found references to it on either the internet, or cases through unions, whilst another German pilot working for Ryanair had received no information on this issue through their contracting agency either.

9.6 Conclusions

Considering the data collected and analysis above, the following conclusions can be drawn. The use of multiple operating bases outside their PBB has been a particular feature of low-cost air carriers following the point-to-point business model (one such air carrier has up to 87 different bases inside and outside the EEA). While much more limited, some traditional scheduled network carriers have

¹⁴⁶ Sindicato Nacional do Pessoal de Voo da Aviação Civil (this is, National Union of Civil Aviation Flight Personnel).

also started developing additional operating bases, (the majority of these have one or two operating bases within the EEA).

According to the sample of contracts analysed and the interviews conducted, it is common that some specific air carriers who have developed a low-cost business model with multiple operating bases are more likely to apply the law corresponding to the country where they have their PPB, regardless of where their workers are home based. However, further evidence including an analysis of contracts from a wider range of low-cost airlines would be needed to verify this finding.

A large majority of survey respondents indicated that the law applicable to their contracts is the law of the country where they are based (88% of cabin crew and 82% of pilots) meaning that air carriers, in general, do apply local labour law to employment contracts. Slight deviations are present within the business models, with a smaller share of aircrew working for low-cost carriers indicating that this is the case (74% and 62.5% respectively). Nonetheless, in general a large proportion of aircrew do still agree that the law applicable to their contracts is the law of the country where they are based. However, these statements should be considered with caution since the large majority of the aircrew reported difficulties when determining the law applicable to their contracts and in some cases, gave contradictory replies to this question. There are thus indications that aircrew are not always clear about the extent to which local labour law actually applies. According to aircrew representatives, even some courts have found it difficult in some specific cases to determine the competent jurisdiction and law that applies to employment contracts in the aviation sector. However, evidence, including an analysis of a wider range of national courts would be required in order to verify this finding.

The multiplication of operational bases outside the territory of the PPB may in some cases create confusion as to which legislation applies and which court is competent, potentially to the detriment of the employee. Aircrew and aircrew representatives referred to cases of air carriers who employ workers in bases outside the country where the air carrier has its PPB and seek to take advantage of the confusion created for employees by the different national laws that apply in the locations where their employees are based. Instead, they select to apply the national law chosen by them (typically the relevant laws of its PPB). Aircrew and aircrew representatives also referred to problems between the worker and the tax and social security authorities, as the worker will usually pay his/her taxes and social security contributions according to the employer's instructions, regardless of the applicable legal framework.

However, it should be noted that in the case of carriers with no operating bases outside the principal place of business (PPB) – as is the case of most traditional carriers - there is no issue of the determination of the applicable law and the competent court. There is unique jurisdiction involved in the contracts concerned: both the PPB and the home bases of aircrews are located within the same territory so the question does not arise.

Recent rulings by the Court of Justice of the European Union (CJEU) and national case law were also analysed to examine if they have led to any changes in practices of air carriers (e.g. to the contracts removing or changing provisions related to the applicable labour law or where employees can bring proceedings in the case of dispute). Aircrew representatives believe cases like the joint C-168/16 and C-169/16 brought to the European Court of Justice against Ryanair and Crewlink by former cabin crew members should help in the future. Some air carriers who were not applying the “home-base” location as the law applicable to their employees have now stated to change their approach. However, a large share of cabin crew and pilots are still – and understandably - largely unaware of the law applicable to their contracts, and some air carriers are still trying to hold onto practices claiming that the law of the PPB should apply (e.g. through evidence identified in review of contracts). Furthermore, with only few exceptions, the few national authorities and labour inspector's who provided responses indicated limited awareness of the Court decisions.

Of the national authority respondents who were aware of the recent decisions, they either did not know or disagreed when asked whether decisions had led to changes to the approach used (in terms of the application of national labour legislation for pilots and cabin crew employed by an air carrier with its PPB outside their country but with the home base in their country). Labour inspector respondents either did not know or disagreed with any changes. However, one respondent could imagine an effect as their Member State was involved at the time of this report in a discussion of the applicable legislation of these workers.

10 Conclusions

This fact-finding study has attempted to develop a comprehensive view of the different forms of employment and working conditions of aircrews employed by EEA-licensed air carriers – based inside and outside the EEA - clarifying the nature and extent of use of various alternative forms of employment as well as their possible implications on employment and working conditions.

Where applicable, the analysis has aided the understanding of whether and how the existing EU and national social rules effectively cover (or not) the activities of aircrews, identifying the legal challenges in protecting this category of highly mobile workers in the fast-developing aviation market.

To do this, our study has built on data and evidence from existing studies and reports (updating where necessary where more recent data is available). This updated evidence has been complemented with a more in-depth analysis of nature, substance, scope and magnitude of possible issues and identification of possible abuses associated with the different forms of employment, the challenges arising for aircrews (employment rights, work-life balance, gender equality issues) and in terms of implementation of the legal framework. Extensive inputs from relevant stakeholders were gathered using a range of research tools including five surveys (targeting pilots, cabin crew, air carriers, labour inspectors, and ministries of employment), and 35 interviews (conducted with these groups, as well as wider organisations involved in the industry). In addition, a sample of employment contracts and instructions given to aircrew were collected and assessed; and ten case studies were developed to analyse specific topics in greater depth to support the analysis.

Whilst detailed discussion and conclusions can be found at the end of each topic section (see Sections 3 to 8), a summary of the key conclusions for the study is provided below and links between the topics are highlighted.

Note on representativeness of stakeholder input collected for this study

- The responses to the survey of pilots (5,957) represent 11.5% of commercial pilots flying in Europe. Within the sample, around 34% of respondents stated that they fly for a low-cost carrier, which is considered by ECA to be representative of the share of pilots flying for such carriers;
- The responses to the survey of cabin crew (2,195) represent a smaller share (around 4.4%) of the cabin crew that are members of EurECCA and ETF (total number not known);
- There were 27 responses to the survey of air carriers, representing around 7.5% of the total number of licenced carriers with 9 respondents belonging to the top 20 carriers in terms of passenger numbers in 2017. However, there is certain bias in the sample, with traditional air carriers overrepresented, with 74% of the total responses;
- Nine responses from labour inspectorates in seven Member States (that account 21% of licenced EU air carriers) and 12 responses from employment ministries in 11 Member States (that account for 33.8% (92) air carriers); and
- Supporting interviews were undertaken with national authorities (2), air carrier representatives (4), individual air carriers (6), air crew organisations (unions) (3), national aircrew unions (4), individual air carriers aircrew representatives (2), individual aircrew staff (11), flight school (1) and law firm (1). However, no temporary work agencies/intermediaries were available/willing to participate in an interview.

Overall, while not fully representative of the relevant stakeholders, we consider the responses to the survey to provide a good coverage of the four target groups (pilots, cabin crew, air carriers and national authorities). Compared to the various studies which have been published on similar topics since 2012, this study includes both pilots and cabin crew, and a broad range of air carriers representing different business models. Nonetheless, limitations of the samples (e.g. overrepresentation of traditional carriers, small number of responses from national authorities) need to be taken into account when considering the input from the surveys.

10.1 Alternative employment arrangements and their implications on working conditions

The results of our surveys of aircrew suggest that the majority of aircrew hold direct employment contracts with the air carrier (82% of pilots and 80% of cabin crew responding to our surveys) but **around one fifth of aircrew (18% of pilots and 20% of cabin crew)** are employed via alternative atypical employment practices.

Our analysis found that between **9% and 19% of cabin crew** (depending on the source used- surveys of air carriers and cabin crew respectively) and **around 8% of pilots** (similar figure reported in both surveys of air carriers and pilots) **are employed via an intermediary manning agency**¹⁴⁷. This includes **temporary work agencies** with whom aircrew have an employment contract but are providing services to the user undertakings (air carriers), working there temporarily under their supervision and direction. These agencies are therefore the employer and have to uphold the associated responsibilities.

In addition, **9% of pilots that responded to the survey identified themselves as self-employed** – the large majority of which (around 90%) had a contract¹⁴⁸ via an intermediary agency and only a small share directly with an air carrier. This form of employment is very rare among cabin crew.

In relation to these employment practices (temporary work agencies, other intermediaries and self-employment), our analysis reveals that:

- They tend to be more prevalent amongst low-cost carriers for those responding to our survey: amongst all aircrew who had an employment contract via an intermediary manning agency, 97% of cabin crew and 69% of pilots responding to our survey work for low-cost air carriers. In the case of self-employed pilots (with a contract directly with the air carrier or via an intermediary manning agency), 74% of pilots indicated that their contract was with a low-cost air carrier.
- They tend to be more common among younger aircrew that are just entering the job market with limited experience: a higher share of cabin crew in the younger cohorts have a contract with an intermediary manning agency compared to those in the older cohorts. Such a difference is not apparent for pilots with an employment contract via an intermediary manning agency but self-employed pilots are also found to be younger (highest proportion of self-employed pilots are under 30 years old).

10.2 Nature of the employment relationship

The relationship between the aircrew member (either agency worker or self-employed) and the air carrier was an important area of focus in our analysis. Given the complexity of the arrangements, our study attempted to understand whether some features of the relationship between the aircrew and the air carrier are in practice those of an employment relationship. At the extreme, if this is verified, atypical employment practices could potentially be used as a social construct to avoid permanent and direct employment contract with air carriers. Our analysis finds that:

- There is a high degree of complexity in some of these arrangements that poses the challenge of determining the actual employer in some cases: aircrew employed by work agencies reported they often have difficulties to identify who is the actual employer (demonstrated by confusion resulting from whom/where they get their flight instructions from, evident from

¹⁴⁷ Although the study attempted to provide clarity on the differences in the use of temporary work agencies compared to other types of intermediaries, in practice it has not been possible to collect specific data on the level of use of temporary work agencies as defined by Directive 2008/104/EC. Survey respondents (aircrew) were most often not in the position to know whether the work agencies they work for fall within the scope of the Directive or not. It was also not possible to obtain input from these work agencies despite our invitation. Therefore, our assessment of the use of temporary work agencies and other intermediaries is based on a comparison between the number of aircrew who hold a direct contract of employment with the air carrier and aircrew who hold a contract with an intermediary manning agency. The latter could thus include both temporary work agencies as defined in Directive 2008/104/EC but also some other form of intermediaries.

¹⁴⁸ Assumed to be a commercial contract or for the provision of services

survey responses and interviews with aircrew). Some aircrew even considered the air carrier to be the real employer even if the intermediary company takes this role officially.

- Issues also arise when a subsidiary of the air carrier is used to provide aircrew to the parent company, causing similar confusion regarding identification of the employer. This was illustrated by the case study reviewing the court case which was initiated by a group of pilots and cabin crew members against Norwegian Air Shuttle ASA (parent company) and its subsidiary company in Norway (Norwegian Air Norway AS) with the view of having Norwegian Air Shuttle AS to be declared as the real employer (see Box 3.10 in Section 3.4.3.1). More recently, the Supreme Court has ruled in favour of Norwegian, concluding that the parent company did not have the level of managerial control over the pilots and cabin crew which would classify it as their employer (BAHR, 2018).
- The use of temporary agency work repeatedly and for prolonged periods has been reported by aircrew organisations and unions, and is assessed in the case study concerning a complaint filed by a Spanish trade union USO on behalf of aircrew against Norwegian Air Shuttle which argued that the air carrier was using temporary agencies in a fraudulent manner since the employees' roles were not related to temporary tasks (as required by the national applicable law), and the employees were exclusively working for one air carrier for years. This could suggest a situation of permanent employment, raising the question of whether the air carrier should be the employer in these cases.
- In the case of self-employed pilots, the analysis suggests that large share of them could not be considered as genuinely self-employed since, in most cases, they only work for a single air carrier, operate in the same working environment and carry out the same tasks with permanent employees and accumulate flight hours in the same manner as pilots directly employed by an air carrier. Based on interviews with pilots and responses to the pilot survey, self-employed pilots most often act in the same manner as any normal employee as they have an exclusive relationship with the air carrier; they receive their instructions from the air carrier and they report to the same persons as direct employees do. Unions also noted that self-employment arrangements are largely incompatible with the way the passenger air services sector operates (scheduled services, need to have type rating for a specific carrier, need to follow carriers' specific instructions and observe safety rules and procedures). It is only within the business aviation sector that self-employment was considered to be possible, due to its nature (non-scheduled services) although the responses to the survey could not confirm this (less than 4% of business aviation pilots declared themselves as self-employed). Overall, 90% of self-employed pilots stated that they strongly disagreed or disagreed that they were free to work for more than one air carrier in parallel, whereas 93% stated that they strongly disagreed or disagreed that they have flexibility to decide when and how many hours they fly. Both are conditions that are associated with self-employment which suggest that large part of those that identify themselves as self-employed may not be genuinely self-employed.

10.3 Working conditions and level of protection

The **Directive on Temporary Agency Work (2008/104/EC)** protects the working conditions of temporary agency workers, although to varying extents depending on the Member State (as it is possible to derogate from the principle of equal treatment and there are differences in transposition). However, those in self-employment arrangements engaged through an intermediary company and workers employed by other intermediaries (which are not classified as a temporary work agency) are not covered by this Directive.

The survey responses suggest there are important differences between aircrew occupied via alternative employment arrangements (i.e. intermediary manning agencies or self-employment) and those directly employed:

- Our analysis of the aircrew survey responses finds that aircrew employed via intermediary manning agencies tend to indicate they are less satisfied with their working conditions in general. They are also more likely to report that they do not receive sufficient education and

training as well as lower levels of satisfaction with their pay (the difference with those directly employed were more limited in the case of pilots in comparison to cabin crew). Furthermore, the responses of aircrew suggest that recognition of unions by air carriers is less likely in the case of aircrew employed via intermediary manning agencies compared to those who are directly employed by an air carrier.

- Aircrew employed via intermediary manning agencies also reported in their survey responses more negative views regarding their day-to-day working life compared to those directly employed, although differences between the two groups tend to be relatively small. The exception are aspects regarding the environment for reporting risks: those engaged via an intermediary agency are more likely to state they have a less favourable environment to report risks.
- It is also found that self-employed pilots are more likely to agree that they feel pressured to fly even when their professional judgement indicates that they shouldn't, and that they are more likely to agree that they feel under pressure to fly even if they are fatigued compared with those pilots who are not self-employed.

The use of workers employed via temporary work agencies, other intermediaries or as self-employed could potentially imply poorer working conditions/day-to-day working life for aircrew. It has been suggested by aircrew associations that the poorer working conditions of these aircrew can lead to increased fatigue and affect their professional judgment, which can be detrimental in a safety environment. Whilst the survey results do indicate that those under alternative employment arrangements report worse working conditions than those directly employed, it is not possible to identify a connection with a negative impact on safety in view of overall high levels of safety of the European aviation industry. There is no statistical data available regarding the variations in the behaviour or fatigue of aircrew in accordance with each type of employment relationship that would allow to test and ascertain the presence of any such connection.

10.4 Gender and work-life balance issues

This study considered issues related to **gender and work-life balance** arising for aircrew in alternative employment arrangements. Our analysis (surveys of aircrew) revealed that there is **no evidence of a gender bias in the allocation of contracts or type of work arrangement**. It is considered that trends by gender relate primarily to the specific function being performed by the employee (e.g. more male pilots, rather than differences between atypical employment contracts) as well as their age and experience.

Similarly, differences **in the level of job satisfaction and work life balance appear to be most closely tied to the type of employment arrangement, however there are also trends by gender**. The survey data suggests a clear decrease in work-life balance for those on atypical employment arrangement compared with employed equivalents. The same is found to be true for those on atypical (fixed-term or zero hours) contracts compared to peers with open ended employment contracts:

- In particular, female cabin crew reported greater issues managing home life, reporting issues to the air carriers and managing the scheduling, as dictated by the air carrier.
- Part time work was suggested by some air carrier workers as a way of achieving a better work life balance. However, all evidence suggests that it is only an option for those employed directly with an air carrier.

Additionally, although self-employment typically provides greater control over the hours worked, pilots on this arrangement explained that working less than full-time put them at risk of losing further work.

Aircrew in atypical forms of employment also appear less likely to receive the same maternity/paternity pay and leave benefits as their colleagues in direct employment according to our aircrew survey results and earlier studies. Some interviewees and survey respondents (both male and female aircrew respondents) also suggested this is expected to have a greater impact on female aircrew in such arrangements (e.g. due to the risk of losing work, as shifts or temporary contracts are not renewed after pregnancy).

10.5 Pay-to-fly schemes

The study investigated the use of **'pay-to-fly' schemes among EU air carriers**. There is still a 'grey area' in relation to the definition of what constitutes 'pay-to-fly' schemes. For the purposes of this study, based on the review of pay-to-fly definitions, and the absence of a common understanding at the European level, pay-to-fly was concluded to encompass the following attributes:

- Pilot operates an aircraft in commercial service (e.g. revenue earning flight) to gain flight experience;
- Pays the air carrier for the experience;
- Pilot may or may not have a contract with the air carrier;
- It primarily relates to 'line-training' although this may be packaged together with type rating, which is not considered to constitute pay-to-fly.

Estimates provided by trade unions suggest that the level of use of pay-to-fly among pilots is in the range of 8 to 10% with suggestion that in specific cases of some regional air carriers it may be up to 40%. The responses to our survey of pilots indicate that, depending on the definition of pay-to-fly (namely, whether the definition only includes those pilots that explicitly stated that they paid for line-training or not) between **2.2%-6.1% of pilots** have been involved at some point in their career in pay-to-fly schemes. The upper limit 6.1% refers to all pilots that indicated that they have participated in a pilot training scheme requiring them to contribute financially in order to be allowed to fly and gain requisite flight experience. When asked to specify what type of training it was that they contributed towards financially, only a proportion of them (2.2% of the total respondents to the survey) indicated that the type of training they paid for was "line training" (which is in line with the definition of pay to fly presented above). Thus, we consider that, on the basis of the survey responses, this 2.2% represents the lower limit of pilots involved in pay to fly schemes. However, estimates provided during interviews with stakeholders representing air carriers and air crew suggested a figure as high as 10% in general.

Our analysis identified considerable concerns regarding the use of these schemes:

- Stakeholders (including air carrier representatives and aircrew representatives) suggested that such schemes are more common among younger pilots with limited flight experience that may use such schemes to build flight hours experience as part of their line training and improve their career prospects. Concerns relating to pilot working conditions, including pay levels (or lack thereof) but also diminished job quality and potential impacts on the safety culture have been raised by stakeholders, however there is no sufficient evidence to reach conclusions that these schemes would have an impact on aviation safety levels or working conditions.
- The study considered whether those participants in pay-to-fly schemes who operate as a regular pilot during their line training but are not remunerated should be considered as employees. Remuneration is generally an essential condition for the qualification of the relationship as employment. However, following the case law developed by the Court of Justice of the EU in relation to the definition of worker within the meaning of Article 45 TFEU other elements such as dependency or a long relationship with the air carrier or performance of real and genuine services can also be an indication of the existence of an employment relationship.

10.6 Employment of third country nationals

It is also important to consider the employment and working conditions of aircrews in the wider context of the international aviation market. To this end, our analysis also focussed on the level of use, by EEA licensed air carriers, of third country (i.e. non-EEA) crews on flights between the EEA and third countries and/or on internal EEA flights, and of EEA-national crews working from bases outside the EEA, and key features of this use.

It has not been possible to estimate the existence and extent of practices whereby air carriers have used third country air crews provided by local temporary manning agencies established outside the EEA. There is no available literature on this topic beyond anecdotal evidence of certain air carriers (e.g. Norwegian, Finnair) employing third country nationals on specific routes. The data collected

through interviews and surveys confirmed that there is use of third country air crew (mainly for flights to/from third countries and less so for intra-EE flights). However, it is not possible to tell on the basis of the data collected how common this practice is, nor whether the third country aircrew's home base was located in a third country or in the EU.

Historically, the use of third country nationals was based on cultural and language reasons for specific routes. However, more recently there have been claims that air carriers have been using third country nationals due to the less demanding employment and social security legislation in the third country concerned. There has been one specific claim related to the use of wet-leasing from third country by British Airways as a way to address possible impacts of strikes. We have not identified other cases where other workers' rights (such as the right to strike) were affected by the use of third country nationals.

10.7 Application and enforcement of EU and national law

The cross-border use of aircrew in Europe and beyond creates **challenges in terms of determining the applicable labour law, taxation and social security**. This concerns both pilots and cabin crew under regular employment arrangements and those under alternative employment arrangements.

Posted workers

At the EU level, the temporary cross-border use of aircrew can trigger the application of the **Directive on Posting of Workers (96/71/EC)**. This Directive covers all workers who, for a limited period, undertake work in the territory of a Member State other than the State in which they normally work (i.e. regardless of the employment arrangement). In the context of the aviation sector, the increasing use of multiple operational bases of some air carriers and the temporary placement of aircrew in other countries for a certain period, as well as practices such as wet leasing, may make it sometimes difficult to determine whether such situations could fall within the scope of the Directive.

Overall, around **6% of cabin crew and 12% of pilots that responded to our survey of pilots and cabin crew reported that they had been temporarily placed in another Member State (answering “yes” to at least one of the questions regarding temporary placements in another Member State)**. Among those, only a small number of aircrew stated that the rules of the Directive had been applied to them: 11% of pilots and 19% of cabin crew. Some workers may be *de facto* posted within the meaning of the Directive, even if they or their employers do not recognise/inform them of this. Still, it was not possible to confirm based on the evidence collected in this study whether or not any of the workers who said that they had been temporarily placed in another Member State should have been considered as posted workers within the meaning of the Directive.

There seems to be lack of awareness among those concerned about whether the Directive is applied, when the Directive should be applied, and what that application involves. Responding to the surveys, 61% of cabin crew and 47% of pilots did not know whether their employer had applied the rules relating to posting of workers to them. Representatives of labour unions and air carriers interviewed confirmed that there is lack of awareness regarding which rules apply in each case – the conflicting figures in terms of the numbers of workers that said they have been posted under the Directive or that they have been informed of their rights when posted also seems to indicate that the issue of posted workers is one where lack of awareness is still an issue. A few of the national labour inspectors that responded also indicated issues with assessing who is responsible for enforcing provisions and how to enforce the provisions given the difficulty in determining whether the Directive should be applied or not.

The limited awareness surrounding the application of the Directive was also evidenced in the case studies that focused on examples of aircrew involved in the two common situations of (1) wet-leasing agreements and (2) temporary assignment of aircrews to a different operational base. In the case of wet lease arrangements, the application of the Posting of Workers Directive is limited by definition to the situations in which there is a temporary posting to a different Member State. In this sense, the Directive is not applicable when the posting is not temporary or when the employee is just working across different countries.

Applicable national law to aircrew and their contracts

Regarding the **applicable national labour law**, our analysis finds that the majority of aircrew (82% of pilots and 88% of cabin crew) indicated in our survey that the law applicable to their contracts is the law of the country where their home base is, meaning that air carriers typically **apply the local law**.

The **use of multiple foreign operational bases** among air carriers has implications for the choice of the applicable law. The use of multiple operating bases outside their principal place of business (PPB) has been a particular feature of some low-cost air carriers following the point-to-point business model (one such air carrier has up to 87 different bases inside and outside the EEA). While much more limited, some traditional scheduled network carriers have also started developing additional operating bases (the majority of these have one or two operating bases within the EEA). According to the sample of contracts analysed and interviews conducted with aircrew, it was suggested that some specific air carriers that have developed a low-cost business model with multiple operational bases are more likely to apply the law corresponding to the country where they have their PPB, regardless of where their workers are home based. However, further evidence including an analysis of contracts from a wider range of low-cost airlines would be needed to verify this finding.

The multiplication of operational bases outside the territory of the PPB may in some cases create confusion as to which legislation applies, and which court is competent, potentially to the detriment of the employee, when the law applicable to the contract is the law of the PPB and the air crew have their home base in a country other than the PPB :

- Individual aircrew and aircrew representatives referred to cases of air carriers who employ workers in bases outside the country where the air carrier has its PPB and seek to take advantage of the confusion created for employees by the different national laws that apply in the locations where their employees are based. Instead, they select to apply the national law chosen by them (typically the relevant laws of its PPB).
- Individual aircrew and aircrew representatives referred to problems between the worker and the tax and social security authorities, as the worker will usually pay his/her taxes and social security contributions according to the employer's instructions, regardless of the applicable legal framework.

It should be noted that in the case of carriers with no operating bases outside the PPB – as is the case of most traditional carriers - there is no issue of the determination of the applicable law and the competent court. There is unique jurisdiction involved in the contracts concerned: both the PPB and the home bases of aircrews are located within the same territory so the question does not arise.

Recent rulings by the Court of Justice of the European Union (CJEU) and national case law were also analysed to examine if they have led to any changes in practices of air carriers (e.g. to the contracts removing or changing provisions related to the applicable labour law or where employees can bring proceedings in the case of dispute). Aircrew representatives believe cases like the joint C-168/16 and C-169/16 brought to the European Court of Justice against Ryanair and Crewlink by former cabin crew members should help in the future. Some air carriers who were not applying the “home-base” location as the law applicable to their employees have now stated to change their approach. However, large share of cabin crew and pilots are still – and understandably - largely unaware of the law applicable to their contracts, and some air carriers were still trying at the time of collecting data for this study to hold onto practices claiming that the law of the PPB should apply (e.g. through evidence identified in review of contracts). Furthermore, with only few exceptions, the few national authorities and labour inspectors who provided responses indicated limited awareness of the Court decisions.

Use of temporary work agencies and intermediaries

Further challenges may arise from the use of workers in atypical employment schemes in relation to the application and enforcement of EU and national law. The correct application of labour, tax and social security laws becomes more complex the more parties and countries are involved:

- The difficulties experienced in determining the employer in trilateral relationships have implications for identifying the associated rights and obligations that arise from the employment relationship. In particular, Trafikstyrelsen (2014), has identified differences in the understanding of the concept of employer for the purpose of determining the applicable social security law which may lead to the employer's obligation being paid in more than one country or in no country.

- This is compounded by the cross-border use of workers involving work agencies. Stakeholders (aircrew associations) indicated the use of work agencies based in a different country, exposing complicated arrangements whereby the social security and tax obligation must be paid in different countries. Agencies interviewed in the context of the study by Steer Davies Gleave (2015) also identified differences and lack of clarity in national laws which hinders the correct application of the law and creates an unnecessary burden. Some stakeholders (unions) argued that complex employment arrangements are created to circumvent more stringent laws.
- Nevertheless, among the 12 labour inspectorates (out of a total of 30) that responded to the survey, only five reported specific issues with enforcement and application of the rules in the case of temporary agency workers and workers employed via other types of intermediaries (Spain, Italy, Estonia, Sweden and Denmark). Where concerns were identified, they were stated very broadly by the responding authorities which did not allow a full assessment of the magnitude of these issues in these countries.

10.8 Implications for a level playing field amongst air carriers

The use of atypical employment arrangements among some carriers in the air services sector and the applicability of EU and national law have also potential implications for the level playing field between air carriers. Based on the analysis presented above, a discussion on the potential for market distortions and negative competition impacts is presented below.

The use of intermediary agencies can potentially affect competition to the extent that they provide an advantage to air carriers that resort to this type of employment. According to some stakeholders (mainly unions but also some legacy airlines), some air carriers use intermediaries as to circumvent stricter labour laws and employer obligations. Although, in principle, all air carriers are under the same rules and conditions and thus can all make use of such employment arrangements, differences in approaches among Member States (in terms of the applicable rules and the monitoring and enforcement efforts) can give rise to situations where those that would make extensive use of such schemes can gain a competitive advantage.

Similarly, the same stakeholders have argued that the use of self-employment arrangements by certain carriers is often intended to reduce costs by avoiding tax and social security obligations. In the absence of a common approach among Member States – both in terms of the definition of self-employment and of the actions taken to monitor its use and avoid the use of bogus self-employment – unfair competition among air carriers may arise.

At the same time, the analysis pointed to a limited use of third country aircrews provided by local intermediary manning agencies that are used for flights to/from third countries and less so for intra-EE flights. There are suggestions by some stakeholders (unions) that this is another mechanism to reduce costs by avoiding higher social security contributions and national tax legislation to gain a competitive advantage. However, our survey did not point to a significant level of use of third country crew while other reasons also drive choices to establish bases in a third country and to use local staff (geographical location, language used by the licensing authority, registry of aircraft, supervisory experience and practices of the authority, traffic rights in bilateral agreements with third countries, etc.). Thus, there is no indication of a significant negative impact on ensuring a level playing field associated with the use of third country aircrew.

In relation to the pay-to-fly schemes, to the extent that such schemes are not clearly defined and regulated across the EEA in a consistent manner, there is still a potential unfair advantage gained by those that use them. The lack of a clear and common legal framework concerning their use could provide an opportunity for some air carriers to exploit the need of young pilots to obtain flight experience, avoiding some of the labour costs and even creating extra sources of revenue in the context of commercial flights. However, the extent to which these schemes are used for this purpose has not been possible to verify in our study. .

The identified issues lead to the conclusion that impacts on the level playing field arise to the extent that EU air carriers that have the same level of access to the air services market do not have to comply with the same social and labour law rules and obligations depending on the Member State under whose legal framework they operate. These are due to the differences in the applicable

national rules, absence of rules in some cases (e.g. pay-to-fly) and differences in the level of monitoring and enforcement efforts across the EEA that can benefit some carriers, allowing them to reduce costs and thus obtain a competitive advantage.

Overall, although the use of alternative employment arrangements is not particularly common across the air transport sector, their use among certain carriers – mainly among some low-cost carriers - appears to be linked with poorer working conditions and job quality and reduced employment rights. They also tend to exacerbate the complexity of the legal context, beyond the difficulties already experienced by aircrews in general due to the cross-border nature of the job. Taken to the extreme, in the absence of a common legal framework across Member States and with different approaches in ensuring compliance with the relevant national legislation, these practices can be used as a way to avoid stricter national legislations and give such carriers an unfair competitive advantage. It is thus important to continue monitoring the employment and working conditions of this group of workers.

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Appendix 1: Stakeholder engagement – Interviews

Type of stakeholder	Number of completed interviews	Targeted Stakeholder	Date of interview
National Authorities: Labour inspectorates	1	National Labour Inspectorate (anon)	22 nd May 2018
National Authorities: Tax/social security	1	Federal Ministry of Finance - Germany	31 st May 2018
Air carrier representatives	4	Air carrier representative (anon)	8 th February 2018
		Air carrier representative (anon)	20 th April 2018
		British Air carrier Pilots' Association BALPA	1 st May 2018
		Air carriers International Representation Europe (AIRE)	19 th April 2018
Individual air carriers (passenger and freight)	6	EasyJet (low-cost)	28 th February 2018
		Neos	16 th May 2018
		Lufthansa (legacy)	29 th May 2018
		Air carrier – low-cost (anon)	14 th May 2018
		Air carrier – Charter (anon)	17 th May 2018
		Air carrier – legacy (anon)	17 th May 2018
Aircrew organisations (unions)	3	European Cockpit Association - ECA	6 th February 2018
		European Transport Federation - ETF	29 th January 2018
		EurECCA	20 th April 2018
National aircrew unions	4	SNPL (France)	8 th May 2018
		Vereingung National aircrew union (Germany)	11 th May 2018
		Cabin crew/aircrew union (anon) ¹⁴⁹	29 th May 2018
		Cabin Crew Union (anon)	24 th May 2018
Individual air carriers aircrew representatives	2	Pilot group (anon)	8 th May 2018
		Norwegian Pilots Group	1 st May 2018
Individual aircrew staff	11	7 pilots (anon)	Various April/May 2018 –
		4 cabin crew staff (anon)	
Flight schools	1	Norway Flight School	18 th May 2018
Lawyers	2	Aircrews' lawyer in case against Norwegian Air	18 th May 2018
		Norwegian Air's Lawyer	22 nd May 2018

¹⁴⁹ Interview arranged, but received written input instead.

Appendix 2: Defining business model of air carriers in aircrew survey responses

Pilots and cabin crew were asked in their respective surveys to identify the air carrier they currently work for. Their response to this question was used in order to identify the 'business model' used by the air carrier they fly for. There were a number of steps to this process, which are outlined below.

Where possible, the stated air carrier's business model was derived from a Eurocontrol Statistics and Forecast Service (STATFOR) data set (2018). This classification is based on a set of rules that use a mixture of operator, aircraft type and route information to determine the corresponding category.

Based on rules matching specific criteria, STATFOR classifies the air traffic in to five market segments¹⁵⁰

- Traditional-scheduled
- Low-cost
- Business aviation
- Charter (non-scheduled)
- Other types¹⁵¹

Eurocontrol STATFOR classify each individual flight operated by an air carrier. Air carriers may have flights that fit into multiple categories over a year. The segment with the highest number of flights per year is used to categorise the air carriers stated by the respondents in the respective surveys. Wherever possible, this was done with 2017 data. However, for 270 EEA air carriers, there was no recorded data for 2017, in which case figures from 2016 and then 2015 data was used. Pre-2015 data was deemed too old for these purposes.

When an air carrier mentioned in survey response was not present in the Eurocontrol STATFOR data, the business model was defined via desk research. Additional desk research was conducted when there were more than 10 respondents from an air carrier missing a definition.

The following definitions have been adapted from STATFOR's reports on market segments and their aviation glossary of terms¹⁵².

Traditional scheduled

A commercial air service operated according to a published timetable, or with such a regular frequency that it constitutes an easily recognisable systematic series of flights.

Charter

The 'charter' (or non-scheduled) market segment is the business of renting or providing an entire aircraft (i.e. chartering) as opposed to individual aircraft seats (i.e. purchasing a ticket through a traditional air carrier).

The charter segment focuses mainly on flights operated by charter air carriers with holiday destinations. These are usually reserved through tour operators (leisure travel groups such as TUI, Thomas Cook, etc.) as part of a package. That is why charter traffic is linked to and influenced by major tourist flows in Europe – in particular, North Europe and Russia flows to the Mediterranean (Spain, Turkey, etc.) and North-Africa (Tunisia, Morocco, Egypt).

Based on rules matching specific criteria, EUROCONTROL's Statistics and Forecast Service (STATFOR) defines charter as non-scheduled commercial flights not included in business aviation.

Freight

Freight refers to any property carried on an aircraft other than mail, stores and baggage. For statistical purposes, freight includes express freight and parcels and diplomatic bags but not

¹⁵⁰ Full definition can be seen here. <http://www.eurocontrol.int/sites/default/files/content/documents/official-documents/facts-and-figures/statfor-market-segments-rules.pdf>

¹⁵¹ The 'other' segment covers all the flight movements that do not match the criteria used to defined segments and, due to confidentiality reasons, military and other types of flights appear as "other" in this report.

¹⁵² ¹⁵² <http://www.eurocontrol.int/sites/default/files/fag/content/documents/official-documents/facts-and-figures/statfor/glossary-statistics.pdf>

passenger baggage. These flights can be using an aircraft configured solely for the carriage of freight and/or mail. There are also quick change or combi aircraft, that can also be used for passengers, these are not typically commercial passenger flights.

Low-cost Carriers

According to STATFOR's Glossary of Flight Statistics¹⁵³, low-cost carrier air carrier operator meeting most of the following characteristics:

- Marketing emphasis predominantly on price;
- Ticketless travel: low-fare air carriers operate largely ticketless operations, and their flights cannot be included on a traditional IATA-form international ticket;
- Online ticket sales: air carriers' emphasis is on direct/internet sales (telephone sales are discouraged by higher prices and limited service);
- No international offices;
- In-flight services charged separately;
- Most do not offer free meals and drinks on most flights. Snacks might be available, but at additional cost;
- For most, no seat selection;
- No in-flight entertainment; no newspapers; no seat cushions, blankets; etc.;
- No "frequent flyer program";
- No airport lounges;
- Use of less busy secondary city airports;
- High dynamism and flexibility in repositioning network;
- No interlining: absence of interlining or links with other air carriers;
- Baggage: strict interpretation of baggage allowances;
- High load factor: scheduling liable to change according to load factor; and
- Rapid aircraft turnaround (minimum time on the ground).

Business Aviation

Business aviation is an air transport option that includes some commercial 'for hire' or fractional operations, flying corporate-owned jets and owner-operated flying for business purposes. Since there is no 'best' definition, EUROCONTROL's Statistics and Forecast Service (STATFOR) simply categorises flights by aircraft type (with a selection on the ICAO flight type, for some). Compared to the main market segments, Business Aviation flights tend to fly from smaller airports, and are characterised by a very large number of routes focusing on city pairs where there is no daily scheduled service.

For air carriers with less than 10 respondents that were not yet classified, the respondents' answer to Question 1.4 was considered ('*What type of services are provided by the air carrier that you are currently employed?*' – Survey of Pilots and Survey of Cabin Crew). If they had selected one out of the following five options, it was used to derive the most appropriate market segment:

- Provider of hub & spoke scheduled passenger services (i.e. network/legacy carriers)
- Provider of point to point scheduled passenger services (typically associated with low cost carriers)
- Non-scheduled (charter) passenger services
- Business aviation services
- Freight transport services

It was not possible to derive this for respondents who had selected multiple answers to Q1.4, as assumptions cannot be made as to which service was the main service offered by the air carrier.

¹⁵³ <http://www.eurocontrol.int/sites/default/files/fag/content/documents/official-documents/facts-and-figures/statfor/glossary-statistics.pdf>

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