

# WHEN THINGS GO WRONG IN ATM

## ATM LEGAL ISSUES

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# *Introduction*

- ANS and legal: subject in motion
- Why are legal issues gaining importance ?
- The range of players is changing
- The ANS institutional environment is changing

# *Elements for discussion*

- **Levels and forms of Air Navigation Legislation and Regulation**
  - Global; Regional (Europe) and National level
- **New forms of Air Navigation Service provision**
  - Classical (Public) Providers
  - Corporatized or Privatized ANSPs
  - Other providers (SERCO)
- **Legal consequences**
  - State functions
  - Competition and Privatization
  - Responsibilities and liabilities

# *Air Navigation legislation & regulation*

## GLOBAL

CHICAGO CONVENTION

Other relevant Instruments of International Law

## REGIONAL

e.g. EUROPE

EUROCONTROL CONVENTION

EC Single European Sky (SES) Regulations

## NATIONAL

STATES

Applicable Legislation

Implementation, Oversight and Enforcement

Liability Legislation (Private and Criminal)

- Public Function
- Responsibility (Article 28 Chicago)
- Obligation to Regulate
- Obligation to provide ANS
- Effect of Corporatisation/Privatisation of ANS  
Provision Functions

# Air Navigation Service Providers (1)

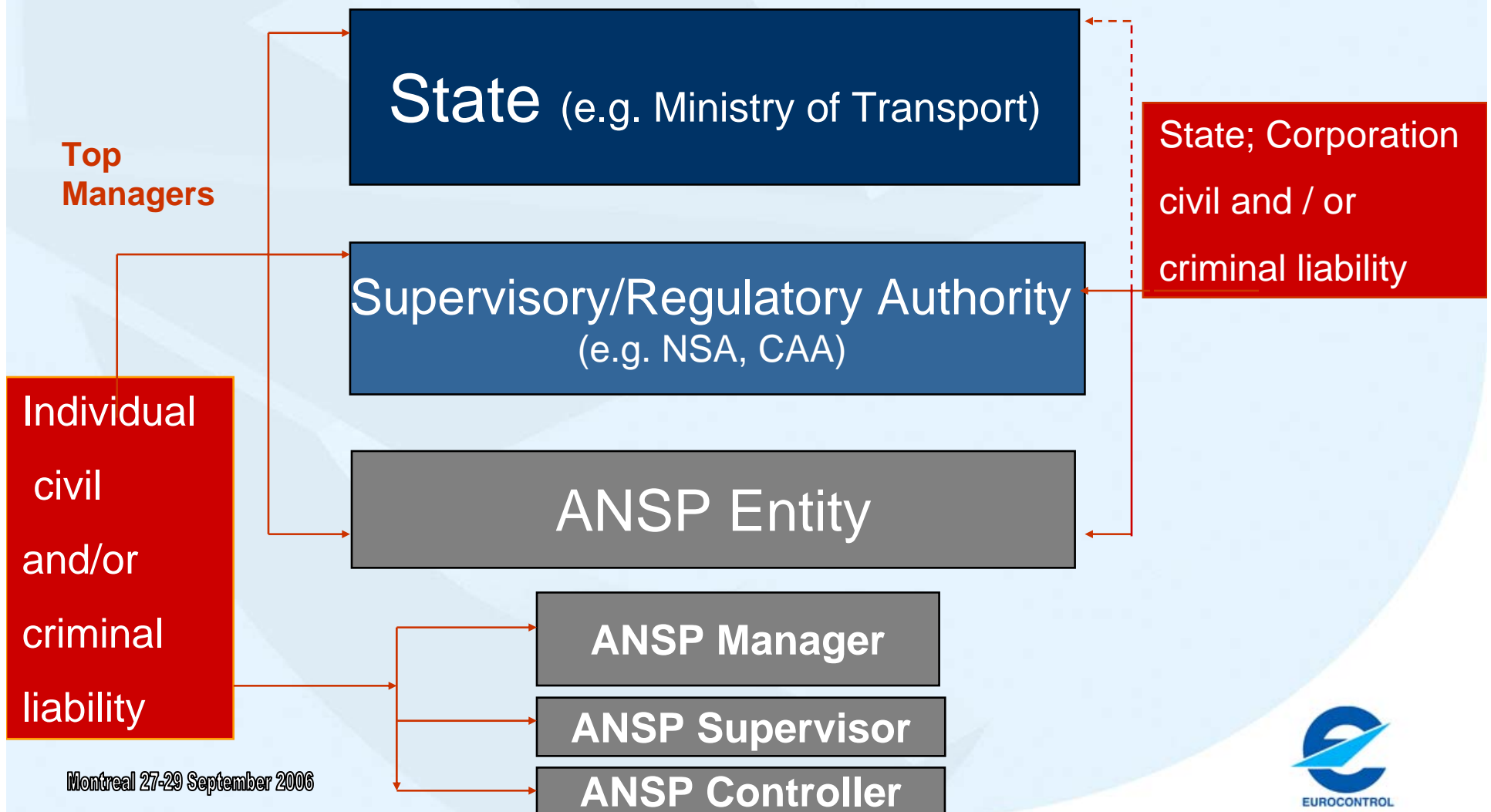
- ❖ Three forms of “classical” ANS provision
  - Individual State
  - Joint States (e.g. EUROCONTROL MUAC and EAD)
  - Non-Governmental Entity on behalf of a State/ States
  
- ❖ Other providers of Air Navigation Services ?
  - ANSPs (competitive provision of e.g. MET, AIS and CNS)
  - Airlines (e.g. Corporate AIS)
  - Other Entities (SERCO)

## *Air Navigation Service Providers (2)*

- Most EUROCONTROL States have Corporatized or privatized provision of ATS
- Corporate structure within State ownership prevails
- Tendency to reduce number of ANSPs
- States ultimately responsible for the provision of ATS (28 Chicago)
- *“FRANKENSTEIN effect”*

# Overview of liability subjects

## The chain of liabilities

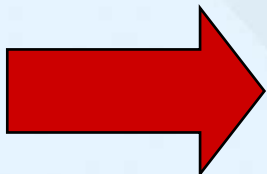


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# State Liability

- Article 28: State responsibility and related **Liability**
- **Because** it is the ANS Provider
- **And/Or** because it exercises regulatory/oversight functions (negligence in the exercise of supervisory responsibilities)
- Ultimate liability towards third parties (subject to a right of recourse against actual entity liable)
- Civil and Criminal liabilities



Delegation, Outsourcing, Privatisation, Commercialisation, etc do NOT exonerate the State from its obligations under the Chicago Convention

# *Delegation of services and liability*

## Delegation of air traffic services and/or buy-in of air navigation services

- Agreement between the Service Providers
- Need for States' prior approval (for ATS: agreement for the delegation of ATS to be concluded between the States)
  - Clear description of services subject of the Agreement
  - Allocation of inter-parties liability (usually, the provider of service)
- EUROCONTROL Model Agreements

# *Legal consequences*

- Liability could be shared between different actors (State, Supranational Organisation, Air Nav Service Provider)
- Various types of liability
  - Contractual liability (e.g. outsourcing contract)
  - Non-contractual liability (mostly National law/International Agreement)
  - Criminal liability
- Demonstrates difficulty in assessing liability when dealing with public/private law instruments and concepts (such as product liability, fault-based liability, etc.)
- Moving away from traditional liability issues and doctrines

# Conclusion

- Traditional Institutional framework questioned
- Public responsibilities vs Private functions
- Privatisation and Competition
- Responsibilities and Liabilities
- Article 28 Chicago Convention
- Another Liability Convention?
- (Regional) Harmonization?