



# CONTRACT-BASED AIR TRANSPORTATION SYSTEM (CATS)

Legal analysis

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# Goal

- The Contract based Air Transportation System (CATS) purports to introduce a more market driven air transportation system. CATS is to be implemented by, amongst other things, the realisation of mutually agreed objectives laid down in a Contract of Objectives, henceforth also referred to as CoO.
- The CoO should be designed to enhance transparency with respect to the relations between the principal actors, that is, airlines, airports and ANSPs, and to create a more balanced relationship between these actors in terms of responsibility for the execution of ATM related tasks and liability for the compensation of damages when the execution of a tasks causes damage.
- The legal assessment plays an essential role in the realisation of CATS as the suggested ATS system is contract based, meaning that the legal concept of a contract forms the central pillar of CATS.

# Methodology

- The legal assessment takes a number of existing regulatory instruments into account, to wit:
  - at the international law, see the Chicago Convention and the Standards laid down in ICAO Annexes
  - European law, in particular the Single European Sky (SES) regime of 2004 as updated in 2009
  - national law and
  - private law level – including arrangements between airlines and airports, and airlines and ANSPs and among ANSPs

Also, policy objectives, formulated under, for instance, the Single European Sky regime may impact upon the achievement of the CoO.

- Other sources: case studies; case law

# Methodology

- Also, attention is paid to organisations dealing with Air Traffic Management (ATM).
  - Global organisations, see: the International Civil Aviation Organization, ICAO
  - European organisations:
    - Principally the European Commission, and also:
    - Eurocontrol
  - Private organisations:
    - the Airport Council International (ACI) and
    - the organisation of privatised and corporatised ANSPs (CANSO).

Publications from these organisations and interviews with their representatives have been a source of information and analysis

# Results

The legal assessment resulted into the following conclusions:

- For stakeholders to become parties to the CoO they must have the legal capacity to engage into contractual engagements.
- Private persons are entitled to assume rights and obligations under private law.
- Private actors are undertakings who will be engaged with the establishment of the CoO. Those actors concern principally but not exclusively airlines, ANSPs and airport operators; hence they must have the appropriate legal status under the CoO so as they have freedom of action and freedom to contract.
- Airlines normally have the required status under private law. They are parties to contracts in many fields.
- This is not always true for ANSPs and in some cases airport operators who may function as public bodies. Hence, arrangements under national law, supported by European law, may have to be made in order to make their participation to the CoO process possible.

# Results



- As a corollary of the foregoing conclusion, regard must be had to the application of public law to the activities of the stakeholders.
- So far, public law, including international and European law, dictates ATM and liability of service providers. In so far as the CoO will deal with new approaches towards ATM and current liability schemes, those international and European regimes may have to be taken into account when drawing up the CoO, and, if necessary and possible, adapted to the requirements of CATS.
- The SES II regime of 2009 could be used for supporting the realisation of the objectives of CATS as it paves the way for the introduction of Performance Review, initiating a more service and performance basis for the provision of ATM related services.
- A revision of the SES II regime, possibly in 2013, and the SESAR undertaking, could also be employed to enhance innovations in this area.

# Conclusions



- In conclusion, suggestions are made for the arrangement of contractual relations among the above private actors. Such arrangements which are drawn up through Collaborative Decision-Making (CDM) are designed to promote Punctuality at Destination, efficiency, transparency and productivity. These goals should be aligned with the SES II regime of 2009 amending the SES regime of 2004. The SES II regime focuses on, among others, *Performance Review*.
- The establishment of *multi*-partite arrangements among private stakeholders in the ATM field is an innovative undertaking as they do not yet exist. Current contractual arrangements between the stakeholders are made on a bilateral basis; they will be taken as an example for proposals for the CoO's underpinning CATS.
- The CoO can be designed to serve the above objectives. At the same time they may not conflict with the above regulatory, legal and institutional framework so as to ensure its viability. At all times, safety cannot be comprised whereas the public service character of Air Traffic Management must be kept in mind.

