

**THE EUROPEAN REGULATION ON OPERATIONS OF UNMANNED AIRCRAFT (UAS)  
IS TAKING-OFF ON DECEMBER 2020!**

On many occasions during the last months, both civil society and all members of the Spanish and European business community have had to adapt to a new social and commercial reality due to the effects created by the COVID-19 outbreak.

In the way to the “new normality”, the European UAS operations’ industry faces its new challenge next **December 31<sup>st</sup>, 2020**, when it will entry into force the Commission Implementing Regulation (EU) 2019/947 of 24 May 2019 on the rules and procedures for the operation of unmanned aircraft almost in its entirety. Although its effective date it was originally scheduled for July 1<sup>st</sup>, 2020, the European Commission has postponed its application until the end of this year due to COVID-19 outbreak which no one has emerged completely unscathed. Nevertheless, public authorities, UAS operators and pilots will have a 6-month of extra time to adapt before the date of entry into force by the end of this year. Said entry into force will unify de different legislations in the Member Stats of the Union under the same Regulation, reducing the variety of requirements, obligations and restrictions between the countries to harmonize the different legal frameworks both for leisure and commercial flights.

Said Regulation shall partially replace the aeronautical laws which governs drone operations in Spain, contained most of it in the Royal Decree 1036/2017 of 15 December, as the main source of law for operators and pilots as well. Until complete implementation of the Regulation in one year, both legal frameworks will need to coexist bearing in mind the Principle of `primacy of Union Law over the domestic law of the Member States what could bring a high number of doubts at the moment of assess if the flight is complying with the law.

The most significant changes introduced in the new Regulation for this sector are detailed, as follows:

**1. SUBJECT MATTER**

The main new feature of the Regulation is to whom and what it is regulated. Breaking with the former criteria of the Spanish specific law, **the Regulation will be applicable both to RPAS and completely autonomous UAS**. Likewise, it will be applicable to all agents involved in the operation, organisms of the Members States, operators and pilots.

However, the enabling law of Regulation 2019/947, this is, Regulation 2018/1139, excludes from elements subject to its regulatory scope operations carrying out military,

customs, police, search and rescue, firefighting activities, among others, which will be under control and responsibility of the public organisms, such as States, Autonomous Communities or Municipalities, and will be governed by the national law.

## 2. IMPLEMENTATION OF THE THREE CATEGORIES

At last, **the division of the aerial activities in the three famous categories comes into play**, depending on the level of risk of the UAS operation. Therefore, the MTOW factor of the UAS to be flow, as the only determining element of the operation, disappears. Although it will continue to be a very important feature when making the risk assessment (for example, through the SORA – Specific Operations Risk Assessment), **new elements are also introduced to establish in which category we can frame the operation** and, therefore, the requirements we must meet.

### 2.1. OPEN CATEGORY

This first category it is defined as **the one with less operational risk**, so its requirements will be a minimal. The good news in this regard is **the disappearance of requiring any kind of authorisation or making an operational declaration of compliance** to operate under this category. Among the requirements to be able to fly in “open” we highlight the most important ones, as follows:

- a. The UAS to be operated must be have an identifying mark of Class “C” (which currently goes from C0 to C4), however **if it does not have any marking, it will be subject to the specific and temporary requirements until 2022**. It also includes here those **privately built** manufactured for the builder’s/operator’s own use.
- b. The MTOW must not exceed from 25 Kg.
- c. Maximum distance from surface would be 120 meters, generally, unless for obstacles and exceptions.
- d. Within the Open category, depending on the operation, it will be included in one of the three subcategories A1, A2 or A3 with their respective operational requirements and restrictions.

**With the creation of this first category it is removed the burdens of the regulatory compliance from the operator, which will now fall on the UAS manufacturer or distributor and on most of the consumer drones in the market.**

### 2.2 SPECIFIC CATEGORY

**If the aerial operation cannot be fitted within any of the three “Open” subcategories** because only one of its requirements is not met, it is then when we must observe the

this second category. For operations included in this category it can be divided into three procedures to fly lawfully:

- a. **Through an operational authorisation**, non-transferable, issued by the competent authorities upon submission of as many documents, risk assessments and mitigating elements should be deemed necessary. In these cases, **the authorities shall determine if the authorisation is for one or more operations** in time and the applicable restrictions.
- b. **Through a prior operational declaration by the operator**, and valid only for those Standard Scenarios or “STS” when all requirements are met.
- c. **By obtaining a LUC certificate for the operator**. Said certificate shall exempt the operator to submit subsequent declaration or applying for authorisations.

Depending on the operation to be made, the requirements and documents to be filed with will increase or decrease. The same would happen with the risk mitigation elements adopted to ensure the safety in the operation.

### 2.3. CERTIFIED CATEGORY

Finally, **operations with certified UAS and those carried out which, due to the risk involved, cannot be included in either of the two previous categories** will be considered as operations within the certified category. That is to say, those drones whose design, production and maintenance are certified, if, for example, the aircraft has a dimension of more than 3 meters or is designed to fly over assemblies of people or transport people, will fall within this category.

To be able to perform operations within the certified category it will require compliance with the operational requirements typical of conventional aviation, such as, for example, the Implementing Regulation 923/2012, among others, where the so-called SERA requirements must be met.

### 3. REGISTERS

The recently implemented Regulation provides that **registration must be done for both operators whose operations have a certain risk for security, privacy or protection and UAS whose design is subject to certification**. At this point we could start pondering whether the Spanish Civil Aircraft Register could take over the function of recording certified UAS, even though these have not registration marks, or whether AESA will be in charge of maintaining and updating the current registers in Spain, even if they are only for the identification of operators nowadays.

It should be taken into account that said UAS registers could be massive since, apart from the above cases, **even in the open category, the UAS may need to be registered if it has an MTOW exceeding 250 g or is equipped with a sensor able to capture personal data.** This would lead us to expect that most drones will be subject to registration unless they are toy and very light.

#### 4. EXISTING CERTIFICATES AND AUTHORISATIONS

With regard to **the authorisations already granted by the authorities to UAS operators and their declarations, such as the certificates of proof of completion and competence of pilots, those already issued will be valid until January 1<sup>st</sup>, 2022.** Before that date, the Member States must have converted the existing certificates to comply with the new Regulation. Although a transitional period is provided for to update existing pilots' certificates, declarations and authorisations, **operators should not lose sight of the fact that, by the end of 2022, the competent authorities will no longer be able to accept declarations from operators if they do not comply with the provisions of the Regulation.** In order to adapt the certificates and authorisations to the new regulations, AESA has undertaken to provide timely information on the transitional periods in each area.