

Drone Regulation 2021

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**Laura Pierallini, Francesco Grasseti and
Francesco Ballirano**

Studio Pierallini

Lexology Getting The Deal Through is delighted to publish the second edition of *Drone Regulation*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on China.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

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GENERAL FRAMEWORK

Basic rules and regulators

- 1 | What basic rules govern the operation of remotely piloted aircraft and unmanned aircraft (drones) in your jurisdiction? Which regulatory bodies are charged with enforcing these rules?

The legal framework applicable to drone operations in Spain is composed of international conventions and accords, European regulations and directives, and domestic legislation.

At an international level, conventions such as the Convention on International Civil Aviation, of 7 December 1944 (the Chicago Convention), and the International Civil Aviation Organization (ICAO) Circulars set forth the main rules on how drones must be treated by states. Spain, as a state party to the Chicago Convention, must comply with its provisions, resolutions and recommendations issued by ICAO.

From the perspective of EU legislation, the main applicable legislative pieces are:

- Regulation (EC) No. 216/2008 of the European Parliament and of the Council, of 20 February 2008, on common rules in the field of civil aviation and establishing a European Aviation Safety Agency;
- Regulation (EU) 2018/1139 of the European Parliament and of the Council, of 4 July 2018, on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and amending, among others, Regulation (EC) No. 216/2008;
- Commission Delegated Regulation (EU) 2019/945, of 12 March 2019, on unmanned aircraft systems and on third-country operators of unmanned aircraft systems;
- Commission Implementing Regulation (EU) 2019/947, of 24 May 2019, on the rules and procedures for the operation of unmanned aircraft; and
- Commission Delegated Regulation (EU) 2020/1058 amending Delegated Regulation (EU) 2019/945 as regards the introduction of two new unmanned aircraft system classes.

Most of these regulations are currently applicable. The entry into force of Regulation (EU) 2019/947 was scheduled for July 2020 but has been postponed until the end of 2020 due to the covid-19 outbreak. When applicable, this regulation will extend the regulatory strength of the European Aviation Safety Agency (EASA) more than the limited regulations only applicable to the use of drones weighing more than 150kg and harmonising the regulations to allow cross-border drone operations across the different member states. In addition to these rules, a large number of Acceptable Means of Compliance and Guidance Material has also been published to accommodate the many differing uses of drones and safety and security measures under cover of the EASA jurisdiction.

Finally, Spain also has its own domestic legislation. The core legal provision regulating the use of drones is Royal Decree 1036/2017,

of 15 December, pursuant to which the use of civil remotely piloted aircraft is regulated (RD 1036/2017). This Royal Decree contains the main terms and obligations with which an operator must comply to use drones lawfully. Spain's Aviation Safety State Agency (AESA) is the main government entity in charge of the control, surveillance and enforcement of RD 1036/2017 and European regulations, although Spain's Ministry of Interior Affairs also has jurisdiction to authorise certain specific operations where public security issues arise. RD 1036/2017 provides a wide regulatory framework that covers all parts of drone operation, such as identification of the aircraft, obligations for recordation with the Spanish Aircraft Registry for aircraft that exceed the 25kg maximum take-off weight (MTOW) threshold, certification and manufacturing, maintenance of aircraft, and pilots and rules for the use of airspace for the different types of aircraft and operations developed. Once Regulation (EU) 2019/947 enters into force, by the end of 2020, most of the provisions of RD 1036/2017 shall cease to apply.

In addition to RD 1036/2017, the legal framework governing drones is scattered across different other regulations and acts. A non-exhaustive list of such applicable regulations includes:

- Royal Decree 384/2015, of 22 May, on Regulations of the Spanish Civil Aircraft Registry: since certain aircraft are subject to registration, this Royal Decree also applies to the drones that meet certain requirements.
- Air Navigation Act 48/1960, of 21 July: as users of the Spanish airspace, the rules of air traffic, air crew, transportation, insurances and compensations in cases of damage and accident assistance on drone operations are regulated herein.
- Air Safety Act 21/2003, of 7 July: this piece of legislation applies to cases of accident, incident and inspections of AESA, and it also regulates the specific administrative proceedings that apply in the case of non-compliance and breaches of the law by drone operators, as well as the relevant fines and appropriate sanctions.
- Presidential Order of the Government, of 14 March 1957: this is one of the oldest regulations applicable to drone operations and provides the different requirements and restrictions for drone operations based on aerial photography restricted to certain areas of Spanish territory owing to their sensitive material or essential infrastructure.

In addition to the main air navigation framework, other non-specific regulations will also be applicable to drone operations depending on the nature and purposes of the operations. Some of these could relate to the telecommunications and radioelectric public domain (Royal Decree 123/2017, of 24 February, and Act 9/2014, of 9 May), or to data protection (Regulation (EU) 2016/679, Spanish Organic Law 3/2018, of 5 December).

2 | What are the penalties for non-compliance with the laws and regulations governing drones?

RD 1036/2017 provides that a breach of its provisions shall be considered as an administrative violation and thus, the penalty proceedings foreseen in the Air Safety Act shall be applicable. Under article 44 of the Act, it can be considered a serious penalty, for example, to cause injury to people, or cause death, or damage to goods and property on the ground or to other airspace users. The fines for these administrative offences range from minor offences with a simple warning letter to fines of €4.5 million depending on the severity of the case for serious offences. The Spanish administration is also entitled to establish penalties for the breach of European regulations within its territory pursuant to article 131 of Regulation (EU) 2018/1139.

Beyond the administrative penalties and in addition to the possible court claims, if certain damages, injuries or even death is caused by the pilot or the operator during a drone operation, criminal proceedings could also be initiated. In Spain not just natural persons but also legal entities can be subject to such proceedings, since article 31-bis of the Spanish Criminal Code establishes that companies will be criminally liable for certain crimes – for example, in the drone industry, crimes against the environment, nuclear energy, crimes of risk provoked by explosives, trafficking drugs or smuggling, to mention a few examples.

Classification

3 | Is there any distinction between public and private drones, as well as between leisure use and commercial use?

Under Spanish regulations, there are a few differences between public and private drones. RD 1036/2017 sets forth the requirements that all operators must comply with to fly lawfully; however, for public drones, there are certain particular exclusions to those requirements. Article 3 of RD 1036/2017 provides that for state security forces (ie, the various police, national or regional bodies, traffic surveillance, National Intelligence Centre activities and customs authorities) the distance (BVLOS, VLOS or EVLOS) and weight restrictions applicable to civil operators shall not be applicable and their specific protocols will apply to adjust their activities to the scope of the public body that is providing the service or carrying out the relevant activity. Therefore, it would be such public body and not AESA that is responsible for authorising the operation and establishing the requirements guaranteeing the compliance with certain minimum safety measures.

Notwithstanding the above, public drones of more than 25kg are also subject to the requirement to register the aircraft with the Spanish Aircraft Registry. Besides, as happens with manned aircraft, in the case of anti-drug, anti-terrorism or where there are severe public threats, state security forces shall not be obliged to issue a notice to airmen (NOTAM) for the specific operations carried out in the airspace.

Concerning the leisure use and commercial use distinction, the differentiation made by RD 1036/2017 is not strictly based on the commercial activity. The Spanish regulation distinguishes between the use of drones for specialised air operations, experimental flights and leisure, aeromodelling or sportive or exhibition activities. In respect of specialised air operations, the law makes a distinction between commercial and non-commercial specialised air operations, defining the former as an air operation carried out by a drone for hire or reward in which a remuneration, financial compensation or consideration is given or promised with respect to the object of the flight. Therefore, any operation falling outside this definition could not be considered as a commercial operation. At a European level, leisure operations will also be regulated if these are carried out by an aeromodelling club or association supervised by the local authorities.

4 | Is there a weight-based classification system for drones resulting in the application of different rules?

RD 1036/2017 establishes different requirements depending on the weight of the drone carrying out the operation. In the first place, the regulation clearly establishes that it is not applicable to those drones exceeding 150kg, which are, therefore, subject to the general provisions governing aircraft. Then, there are certain general features applicable to the different scenarios depending on the weight of the drone.

Scenario 1: those drones with an MTOW up to 2kg will be allowed to fly within uncontrolled airspace up to 120 metres in VLOS or BVLOS range capacity of the radio and under visual meteorological conditions (VMC).

Scenario 2: those drones with an MTOW up to 10kg will be allowed to fly within uncontrolled airspace up to 120 metres in VLOS range and no more than 100 metres away from the position of the pilot. This operation can be done above groups of people and in urban areas with certain additional requirements and authorisations.

Scenario 3: drones with an MTOW between 10kg and 25kg are permitted to fly within uncontrolled airspace up to 120 metres in VLOS of the pilot or in a range and no more than 500 metres of horizontal distance, in non-urban areas and away from groups of people.

Scenario 4: drones with an MTOW exceeding 25kg, the capabilities of the operations will be strictly subject to the provisions and restrictions of its relevant remotely piloted aircraft airworthiness certificate issued by AESA. These drones must be registered at the Spanish Aircraft Registry.

Under certain conditions, the restrictions of the above scenarios can be modified to allow the operations to be more flexible.

However, as soon as Regulation (EU) 2019/947 becomes applicable by the end of 2020, this weight-based classification will shift to a risk-based classification system. Among other changes, three categories of UAS operations will be established (OPEN, SPECIFIC and CERTIFIED categories) and depending on the UAS and the nature of the operation, zone or airspace, more or less requirements will apply to said operation, ranging from no actions to carry out, through specific declarations or operational authorisations to mandatory certification and registration of UAS and operators to carry out the flight.

5 | Is there any distinction between completely autonomous drones and remotely piloted drones?

Yes. Although in the past the Spanish legal framework provided that only remotely piloted drones were subject to the applicable regulations, paving the way for the harmonisation of the Spanish legislation with the European regulations, the definition of aircraft contained in article 11. b) of the Air Navigation Act has been recently updated, pursuant to the Royal Decree-law 26/2020, of 7 July, and autonomous and remotely piloted drones are both now considered aircraft.

Notwithstanding the above, the specific drone legislation shall only be applicable to civil remotely piloted aircraft systems (RPAS) for now – this is expressly stated in article 2.1.(b) of RD 1036/2017. It is foreseen that said regulation shall not apply to autonomous drones as such have only been regulated under the scope of military operations as per Royal Decree 601/2016, of 2 December, pursuant to which the Regulation on Operational Air Traffic is approved.

Taking into account both regulations, the main distinction between autonomous drones and RPAS is the capacity of the pilot to access the control to manage and pilot the aircraft at any time. Thus, under current Spanish regulations, if a pilot cannot control a drone from take-off until landing, then the drone should be considered as an autonomous drone but subject to military regulations. Once the Regulation (EU) 2019/947 enters into force, its provisions will be applicable to all member states,

including the definition of 'Autonomous Operation' and the related requirements. Furthermore, under Regulation (EU) 2019/947, currently applicable, the definition of UA includes both autonomous and remotely piloted aircrafts.

DESIGN AND MANUFACTURE

Registration

- 6 | Do specific rules regulate the design and manufacture of drones in your jurisdiction?

RD 1036/2017 establishes certain rules for design and manufacturing organisations, although the most relevant provisions stem from European regulations. Manufacturers and designers must comply with the obligations of Part 21 of Commission Regulation (EU) No. 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances. Both design and manufacturing organisations will need to be approved in advance by Spain's Aviation Safety State Agency (AESA).

Additionally, the Commission Delegated Regulation (EU) 2019/945, of 12 March 2019, on unmanned aircraft systems and on third-country operators of unmanned aircraft systems and Commission Implementing Regulation (EU) 2019/947, of 24 May 2019, on the rules and procedures for the operation of unmanned aircraft, also apply to designer and manufacturing organisations. Regulation (EU) 2019/945, which has been amended by the Regulation (EU) 2020/1058, provides the design and manufacturing requirements that manufacturers must meet for unmanned aircraft included in the Open category. Depending on the capacity, features, speed and other ancillary systems, the aircraft should bear the relevant marking classification from C0 to C6.

Manufacturing authorisation

- 7 | Must drone manufacturers obtain any licences or other authorisation to carry out their business? Are manufacturers subject to any other specific rules?

The same legal provisions applicable to design and manufacturing organisations shall apply to drone designers and manufacturers being previously approved by AESA. However, one exemption is made for a specific case if the following requirements are met:

- the drone manufacturer must be considered as a micro or small enterprise in accordance with European Commission Recommendation, of 6 May 2003, concerning the definition of micro, small and medium-sized enterprises;
- the manufacturer is exclusively dedicated to drone production of remotely piloted aircraft with simple design and technology;
- the manufacturer must hold a production inspection system and be certified so that it complies with the conditions of Sub-part F of Part 21 supported with documentation and evidence foreseen in this Part; and
- the production flow of the manufacturer is not constant and limited to a reduced number of batches of aircraft per year.

At a European level, manufacturers are subject to Regulation (EU) 2019/945 whereby if a manufacturer wishes to introduce its UA in the European market, the requirements provided in said regulation must be met. The main new requirement is the process of EU declaration of conformity and the CE marking.

Product liability

- 8 | Do general product liability rules (or other specific liability rules) apply to the manufacture of drones?

On leisure drones, general product liability rules established in the Royal Legislative Decree 1/2007, of 16 November, pursuant to which the restated wording of the General Law of Defence of Consumers and Users and other ancillary laws is approved, shall apply in cases of damage caused by defective products.

However, for drones aimed at professional or commercial operations, RD 1036/2017 establishes that manufacturers will be liable for the damage caused by malfunctions in drones produced by these organisations. This has also been implemented in the Regulation (EU) 2019/945, of 12 March 2019, pursuant to which drones subject to the regulations shall be compliant with CE marking and EU conformity.

In addition to these rules applicable to drone product liability, special warranties given by the manufacturers must also be taken into account, provided that these do not contravene the legislation in force in this matter.

REGISTRATION AND IDENTIFICATION

Registration

- 9 | Must drones be registered in a specific national registry? If so, who is entitled to register drones and what requirements and restrictions apply? Is the registry organised as an operator registry or an owner registry?

Pursuant to Spanish domestic regulations, only drones with a maximum take-off weight (MTOW) exceeding 25 kg will be subject to mandatory registration at the Spanish Aircraft Registry (RMA). However, owing to the singular aircraft registration system in Spain, those drones subject to registration at the Aircraft Registry will need to be registered first with the Movable Assets Registry (MAR). The basis for this dual registration system lies in the provisions of Royal Decree 384/2015, of 22 May, pursuant to which the regulation of the civil aircraft registry is approved.

The main features of this dual registration system can be summarised as follows.

- Spanish Aircraft Registry: the RMA falls under the jurisdiction of Spain's Aviation Safety State Agency (AESA). The RMA is an administrative registry of aircraft, but not a registry of title or ownership of aircraft. It is operator-based. The main effect of registration is that an aircraft is provided with a Spanish registration number (beginning with the letters EC, followed by a hyphen and a combination of three letters, eg, EC-XXX) and thus becomes a Spanish aircraft.
- Movable Assets Registry: the MAR falls under the jurisdiction of the Directorate General of Registries and Notaries, a body of the Ministry of Justice. The MAR is a register of title, ownership and encumbrances over movable assets, including aircraft. The main effect of registration is that evidence is provided in respect of the status of ownership and liens over assets.

At a European regulation level, Regulation (EU) 2019/947 provides the obligation to register all drones where MTOW is or exceeds 250 grams, even if these are used for the Open category. For those drones subject to the certification process, the aircraft and operators will be also registered.

Identification

10 | Are drones identified through a marking system similar to that used for manned aircraft?

As a general rule, all drones shall bear a fireproof identification plate affixed to their structure including the name of the manufacturer, type, model and serial number if applicable, as well as the name of the operator and its contact details. Specifically, for drones subject to registration at the Spanish Aircraft Registry, in addition to the fireproof plate, the marking system will be the same as that applicable to manned aircraft pursuant to Order FOM/1687/2015, of 30 July, pursuant to which the provisions relating to national marks and registration of civil aircraft are established. These marks will need to be clean and visible at all times.

Furthermore, drones subject to Regulation (EU) 2019/945 shall need to affix the classification marking of each aircraft from C0 to C6 depending on the features of the aircraft, and also de CE marking.

CERTIFICATION AND LICENSING

Basic requirements and procedures

11 | What certificates or licences are required to operate drones and what procedures apply?

Flying drones lawfully in Spain requires carrying out certain administrative procedures. Depending on the maximum take-off weight (MTOW) of the drone, the administrative proceeding will differ.

For drone operations with a MTOW of less than 25kg, outside controlled airspace, crowds and urban areas, with visual meteorological conditions (VMC) and visual line of sight (VLOS) range, it is only necessary to submit a prior communication to Spain's Aviation Safety State Agency (AESA) five business days before starting the operations. That notice shall contain certain technical documents of the aircraft, information about the pilots, insurance certificates and some other information such as an aeronautical safety test. Once the communication has been received, the licence is valid without time restrictions of any kind, but new communications need to be submitted if there is any modification to the documents or details initially provided to the authorities.

If the drone exceeds 25kg MTOW, then the operation shall require an administrative authorisation to be issued by AESA. Also, a remotely piloted aircraft system (RPA) airworthiness certificate needs to be obtained, and registration of the drone will be also required by the authorities.

Additionally, operators flying drones between 25kg and 50kg MTOW will need to comply with several additional measures such as having an appropriate business organisation and management to guarantee compliance with the legal requirements and the nomination of duly qualified operations managers.

In addition to the foregoing, a drone operator can request and obtain special certificates for specific types of operations, such as flying above urban areas, within controlled airspace, during the night or from moving vehicles. For each special certificate, certain documents and evidence of accomplishment of tests will need to be submitted to AESA.

At the moment of the entry into force and application of Regulation (EU) 2019/947, the above system will change and move to a risk-based operation. Depending on the risk of the operation, the aircraft will be classified within one of the three categories established in the regulation and different requirements will apply:

- The OPEN category, defined as the one with less operational risk, will release unmanned aircraft system (UAS) operators from requiring any kind of authorisation or making a prior operational declaration of compliance to carry out operations that fall under this category. In addition, the new UAS Regulation removes from operators the burden of having to comply with most of the technical

aspects of their aircraft; this burden will fall now on the UAS manufacturers and distributors.

- The SPECIFIC category will apply to those operations with UAS where the flight entails a certain level of risk, higher than in the OPEN category. Here a risk assessment will be key for each operation. In these scenarios we will find certain administrative processes with the aviation authorities where UAS operators will need to request an authorisation, obtain a specific LUC (Light UAS operator Certificate) that grants the operator certain privileges, or make an operational declaration if the flight is considered within the range of an Standard Scenario.
- Finally, the CERTIFIED category is reserved for operations with certified UAS and flights carried out where, due to the risk involved, they cannot be included in either of the two previous categories. That is to say, those drones the design, production and maintenance of which have to be certified will fall within this category. For example, this would apply to aircraft with a dimension of more than 3 metres or designed to fly over assemblies of people or for the transportation of people.

Taxes and fees

12 | Are certification and licensing procedures subject to any taxes or fees?

As the time of writing, no taxes or fees are required for the communication of activities for a drone of less than 25 kg MTOW. With respect to authorisations or certifications, certain taxes and administrative fees are involved, not for the authorisation process itself but for other procedures before applying for the authorisation, such as the airworthiness certificate procedure or the registrar fees of the Spanish Aircraft Registry.

Eligibility

13 | Who may apply for certifications and licences? Do any restrictions apply?

In respect of operators: for the time being, there are no nationality or citizenship restrictions applying to drone operators. If a company or a person (whether a Spanish resident or not) wishes to obtain a licence as a Spanish drone operator, certain documentary requirements must be met, such as insurance certificates, affidavits relating to the intended operations, evidence of satisfactory flight tests, personal details of the pilots and the drones subject to the licence of the operator, an operations manual and risk assessments.

In respect of the aircraft:

- if the drone has an MTOW of less than 25 kg, no licensing restrictions apply; or
- if the drone has an MTOW of 25 kg or more, then it must have either a European Aviation Safety Agency (EASA) certificate or, if it holds an airworthiness certificate issued by a non-EASA aviation authority, its airworthiness certificate will have to be recognised first by AESA.

In respect of pilots: there are no general restrictions provided in RD 1036/2017 to obtain remote pilot licences.

Notwithstanding the foregoing, when licences and authorisations are requested by non-Spanish individuals, an NIE (tax ID number) or foreigner's ID number shall be also required, and for both cases at least a Spanish address will need to be included in the application form. Also, a Spanish tax ID number will be required for non-Spanish companies prior to the application process to become a Spanish operator.

Remote pilot licences

- 14 | Must remote pilots obtain any certifications or licences to operate drones? If so, do the relevant procedures differ based on the type of drone or operation?

Yes, remote pilots need to pass a theoretical and a practical test to obtain the appropriate pilot's licence. In addition, pilots cannot fly on their own unless they obtain an operator's licence as well or have been hired by an operator. Once the pilot's licence has been granted, it needs to be updated periodically by flying regularly and at least three times every three months. If the aircraft weighs more than 25 kg, then a higher licence is required, such as the private pilot's licence.

Medical certificates in accordance with section MED.B.095 of Annex IV, Part MED, of Regulation (EU) No. 1178/2011, of 3 November 2011, are required for pilots permitted to fly aircraft up to 25 kg MTOW and Class 2 medical certificates for those pilots flying drones exceeding this MTOW limit.

Foreign operators

- 15 | Are foreign operators authorised to fly drones in your jurisdiction? If so, what requirements and restrictions apply?

As per RD 1036/2017, AESA may permit foreign operators to perform drone operations within the Spanish territory if they comply with the requirements established in the Commission Implementing Regulation (EU) 2019/947, of 24 May 2019. In addition to this regulation, all foreign operators will need to be expressly authorised to perform any type of aerial work. AESA will authorise operations in Spanish airspace provided that the foreign drone operator submits sufficient evidence to certify that its licence complies with all the requirements provided in Spanish regulations.

Certificate of airworthiness

- 16 | Is a certificate of airworthiness required to operate drones? If so, what procedures apply?

Those aircraft not exceeding 25 kg MTOW will not be obliged to request and obtain a certificate of airworthiness to operate, although they may request it voluntarily. Drones with an MTOW of 25 kg or more must obtain a certificate of airworthiness from AESA. A term of six months from the application is foreseen for the airworthiness certification procedure. Airworthiness certification can be conducted, in principle, in two different ways.

First, if the aircraft already has an EASA or AESA type certificate, this can be provided together with a manufacturer's statement to the authorities that will confirm that the aircraft is aligned with the provisions of that type certificate.

Otherwise, the procedure foreseen in Annex I, Part 21 of Regulation (EU) 748/2012, laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations, will apply. The airworthiness certificates shall include the aircraft itself, the remote pilot station, and the command and control links, as well as any other device or element used during any operation. These certificates shall have an indefinite validity unless the conditions of the aircraft change.

OPERATIONS AND MAINTENANCE

One drone, one pilot

- 17 | Does the 'one drone, one pilot' rule apply in your jurisdiction?

Yes, it does apply. RD 1036/2017 establishes that the pilot shall not perform a flight in respect of more than one aircraft at the same moment. However, this obligation could not be so clear as a result of the application of Regulation (EU) 2019/947 by the end of 2020, where no restriction is provided in this regard. For example, the requirements for operations under Specific category provide that the unmanned aircraft system (UAS) operator must designate a pilot for each UAS operation, however not for the specific UAS. This may open the door to carry out multiple operations controlled by one single pilot at the same time.

Maintenance

- 18 | Do specific rules regulate the maintenance of drones?

The conditions for drone maintenance are provided in RD 1036/2017. Operators are obliged to establish a maintenance programme adjusted to the recommendations of the manufacturer. The Aviation Safety State Agency (AESA) has published on its website a set of guiding materials and acceptable means of compliance with the reviews and tests to be carried out in a drone operator's maintenance programme, which provides the minimum necessary revisions and tests to be carried out on the aircraft. The operator is obliged to have an updated log system of the status, inspections and significant events that occurred in each aircraft. Similar rules will apply once Regulation (EU) 2019/947 come into force, where UAS operators will be required to have duly qualified personnel for the maintenance of its UAS.

Basic operational rules and restrictions

- 19 | What rules and restrictions apply to flights performed in 'visual line of sight' (VLOS) and 'beyond visual line of sight' (BVLOS)? Is there a distinction in this regard?

Under RD 1036/2017, visual line of sight (VLOS) is defined as an operation mode where the pilot maintains constant and direct visual contact with the aircraft without the assistance or help of any optical or electronic devices (eg, first-person view glasses). The main difference with beyond visual line of sight (BVLOS) is that, in the latter, there is no direct contact with the aircraft. In addition, RD 1036/2017 also foresees the possibility of operating under extended VLOS by using alternative means to keep contact with the aircraft, using observers with permanent radio contact with the pilot.

Except for drones below 2 kg maximum take-off weight (MTOW), the general rule in Spain is that all operations shall be carried out in VLOS conditions. This notwithstanding, BVLOS can be carried out if a specific authorisation is requested and obtained from AESA, or if the aircraft has been installed with a sense-and-avoid system approved by AESA or the aircraft has a certificate of airworthiness allowing it to carry out BVLOS flights.

However, once Regulation (EU) 2019/947 becomes fully applicable, restrictions and obligations foreseen in this legislation will apply. In Open category, in principle, VLOS will always apply and in case of BVLOS operations, these must be carried out in compliance with the Standard Scenarios' requirements approved pursuant to the Commission Implementing Regulation (EU) 2020/639 of 12 May 2020.

20 | What rules and restrictions apply to critical and non-critical operations? Is there a distinction in this regard?

Under RD 1036/2017 all operations shall be considered as non-critical unless expressly provided for therein. Critical operations definition and requirements are provided in article 44 of RD 1036/2017, whereby in cases of great risk or human or natural disasters some exemptions and other specific rules shall apply. When local or state authorities request citizens' collaboration in disaster situations, those operators that have volunteered to help the public authorities may be declared exempt from complying with most of the requirements. However, coordination with air traffic control (ATC) will be necessary as well in these cases. In the case of damage during disaster situations, operators may claim compensation from the administration.

Critical operations shall be also considered as operating in special facilities, being those affected by national defence or state security as well as those performed above or near critical infrastructures that are considered of strategic interest, such as nuclear power plants, transport facilities, energy, water and communication facilities. Flying above or near these zones shall be subject to the distance restrictions provided for under article 32 of RD 1036/2017 and also to the provisions of Act 8/2011, of 28 April, pursuant to which protection measures on critical infrastructures are established but ultimately shall be subject to the restrictions established by the State Secretary.

Transport operations

21 | Is air transport via drone (eg, cargo and mail) regulated in your jurisdiction? If so, what requirements, limitations and restrictions apply?

At the time of writing, under Spanish regulations, the use of drones for transportation of cargo is not yet regulated. To our knowledge, to date just a handful of licences have been granted to operators for the carriage of goods under high security and safety measures. The Spanish aviation authority may therefore allow certain UAS operators to carry out transport operations in specific cases if previously and specifically authorised for said purposes, mainly for experimental tests.

Regulation (EU) 2019/947 may open the door to carriage of goods by drone under the Specific or Certified categories. The reasons may lie on the requirements of the Open category where, during a flight, the UAS will not carry dangerous goods or drop any material. Therefore, the Regulation provides that if this requirement is not met, then a UAS operator shall be required to obtain the necessary operational authorisation of the competent authority (ie, the member state).

22 | Do any specific provisions governing consumer protection and tracking systems apply with respect to cargo and delivery operations via drone?

Not applicable.

Insurance requirements

23 | What insurance requirements apply to the operation of drones?

RD 1036/2017 sets out the obligation for the operator to subscribe and maintain an insurance policy or any other equivalent financial guarantee to operate drones. This insurance must be specific for the aviation industry because drones fall under the category of 'aircraft' under Spanish law. Therefore, a normal liability insurance policy is not enough. It would be necessary to subscribe a specific insurance, often referred to as third-party liability insurance, covering operators for damage caused by their aircraft or its payload to the ground (people and property damage) and other airspace users.

These insurances are subject to the limits set forth in Royal Decree 37/2001, of 19 January, by which compensation for damage is updated in the Air Navigation Act (specifically article 119 of the Air Navigation Act), which is applicable for remotely piloted aircraft systems (RPAS) that do not exceed 20 kg MTOW.

The above-mentioned Royal Decree establishes economic compensation for each aircraft and accident that are limited in relation to the weight to a certain amount in special drawing rights. For drones of more than 20 kg MTOW, the limits and liabilities for surface damage of Regulation (EC) No. 785/2004 shall apply.

Safety requirements

24 | What safety requirements apply to the operation of drones?

The safety requirements of RD 1036/2017 are aligned with the general safety measures foreseen by other supranational bodies, the European Aviation Safety Agency (EASA) and the International Civil Aviation Organization (ICAO) mainly. Operators are responsible for the safety of each drone operation and also for compliance with other applicable legal provisions, such as personal data protection regulations, for example.

Common obligations apply for drones not exceeding 25 kg MTOW other than security distances for take-off and during the flight. Furthermore, the flight needs to comply with the drone's operations manual, and generic or specific security tests and safety risk assessments need to be performed before the operation. During the flight, pilots must ensure they avoid reckless manoeuvres and take additional measures in the case of operations performed above properties or groups of people on the ground. Before the operation is performed, the pilot should establish protection zones as well as recovery zones in case of malfunctions during the flight.

Once Regulation (EU) 2019/947 becomes fully applicable, the safety requirements will change depending on the features of the operation in which the flight is classified, which can be minimal or included in the aircraft by-design in the UAS (Open category), additional to the ones provided by-design in the UAS (Specific category) or similar to the conventional aircraft (Certified category).

AIRSPACE

Air traffic control

25 | How is air traffic control regulated in your jurisdiction? Which authority provides air traffic control services for drones?

Air traffic control (ATC) is provided by certain entities all over the country. The main entity in charge of providing flight information and air control is ENAIRE for area controls, approach and aerodrome tower services. These services are provided for manned aircraft and, since the enactment of RD 1036/2017, for unmanned aviation as well.

ENAIRE recently launched an initiative consisting of a smartphone application with a map of Spain to inform all drone operators and leisure pilots of the type of airspace and their respective flight levels, alerts, notices to airmen (NOTAMs) and other relevant information to help operators to plan their flight schedules in compliance with ATC requirements.

Restrictions

26 | Are there any airspace restrictions on the operation of drones?

Yes, there are. As a general rule, operations must be performed away from groups of people, cities and urban areas and within uncontrolled airspace, out of the flight information zone, within aviation, visual meteorological conditions and respecting the safety distances in each specific scenario. Nevertheless, with the corresponding authorisations

and taking account certain restrictions, drones may operate above urban areas and even within controlled airspace.

In operations in urban areas, the operator must coordinate with the competent authority to limit the access on the surface where the operation takes place. In drone operations within controlled airspace, the operator and pilot must comply with Standardised European Rules of the Air 5005 and with the relevant authorisations. In addition, the pilot must have ATC clearance to operate in said space, providing and updating its position at all times.

Additionally, pilots performing operations close to airports and aerodromes must comply with certain restrictions. It is necessary to keep a distance of at least 8 km from any aerodrome if it has Visual Flight Rules procedures or a distance of 15 km if those aerodromes have instrumental procedures. The latter is only available for beyond visual line of sight (BVLOS) flights and always in coordination with the relevant authorities and ATC. Prohibited, restricted and dangerous zones are also restricted for drone operations.

Finally, drones that cannot obtain a certificate of airworthiness but are obliged to obtain one, or experimental test flights, shall only be allowed to carry out operations in temporary segregated areas.

Take-off and landing

27 | Must take-off and landing of drones take place in specific areas or facilities?

The operator must establish a protection area for the take-off and landing, consisting of a minimum radius of 30 metres from the aircraft and ensuring that there are no groups of people who can be injured during both manoeuvres. If the aircraft is a quadcopter or takes off vertically, then this area is reduced to a radius of 10 metres.

LIABILITY AND ACCIDENTS

Cargo liability

28 | Are there any specific rules governing the liability of drones for losses or damage to cargo?

At the time of writing, since the RD 1036/2017 does not foresee specific rules for drones transporting cargo unless the Aviation Safety State Agency (AESA) grants a special permit, no specific rules govern the liability of drones for losses or damage to cargo.

Third-party liability

29 | Are there any specific rules governing the liability of drones for damage to third parties on the surface or in the air?

Under the Air Navigation Act, drones are considered as aircraft, hence in case of damage to third parties, the same liabilities that apply to conventional aircraft will be applicable to drones. Pursuant to RD 1036/2017, the operator is liable for the operations carried out by its drone towards the authorities and against third parties. In this regard, the compensation rules foreseen in Royal Decree 37/2001 are applicable to those drones whose maximum take-off weight (MTOW) does not exceed 20 kg. For drones of more than 20 kg MTOW, the limits and liabilities for surface damage of Regulation (EC) No. 785/2004 shall apply.

Accident investigations

30 | How are investigations of air accidents involving drones regulated in your jurisdiction?

If a drone accident occurs, the operator must notify the event to the Commission for the Investigation of Accidents and Incidents on Civil Aviation, to the Occurrence Reporting System (SNS) or the Events

National System of AESA. If the Commission considers that the incident presents an important issue for operational security, an investigation will be opened in accordance with the provisions of Regulation (EU) No. 996/2010.

Accident reporting

31 | Is there a mandatory accident and incident reporting system for drone operators in your jurisdiction?

All events that can be considered a potential incident or accident must be notified by the drone operator to the SNS within 72 hours of the moment the event occurred. Communication with the authority can be made electronically through the AESA website. Then, the administrative process will start in accordance with the Air Safety Act.

Safety management and risk assessment

32 | Are drone operators required to implement safety management systems and risk assessment procedures within their organisation?

Aside from the risk assessment and the safety tests required by RD 1036/2017 – at the time of obtaining the licence that needs to be implemented in each operation, maintained during all flights and modified in case of any change in the operations or drones operated by the operators – the regulation foresees additional remedies to protect third parties in certain situations.

For example, operators performing special operations with drones exceeding 25kg MTOW shall have an operative and technical organisation and management adequate to guarantee compliance with the requirements established in its licence, or an authorisation taking into account the risk of the operations to be performed to keep operational control of any flight. In addition, these operators shall appoint a duly qualified operations manager to comply with the operations manual, as well as a sufficiently trained airworthiness officer.

Furthermore, pursuant to Regulation (EU) 2019/947, operational risk assessment must be carried out by unmanned aircraft system (UAS) operators. Article 11.5 of the Regulation describes the alternatives to consider when a risk assessment to mitigate damages and reach the optimal security and safety level. These goes from strategic operational restrictions on ground and during flight, design, and limits of the UA, to the availability of facing adverse operational conditions. In addition, to obtain the Light UAS Certificate, UAS operators must have a safety management system corresponding to the size of the organisation and the nature and complexity of the activities carried out. In this regard, the UAS operator shall need to nominate an accountable manager with authority for ensuring that all activities are performed in accordance with the relevant security and safety standards.

ANCILLARY CONSIDERATIONS

Import and export control

33 | Do specific import and export control rules apply to drones in your jurisdiction?

Originally, the Spanish customs authorities considered light drones as toys. However, with the approval and entry into force of the Commission Delegated Regulation 2019/945 this has changed, and the provisions of the European regulation shall apply for imported drones. Article 8 of the Regulation applies to all importers and distributors in the European Union.

Taking into account the consideration of drones as aircraft, the provisions of the Union Customs Code shall apply to their export outside the European Union, and procedures for issuance of the single

administrative document must be followed. For those drones registered at the Spanish Aircraft Registry, the single administrative document is one of the key documents required for the deregistration of aircraft.

Certain drones and related electronic devices may have to comply with the legal provisions relating to the control of dual-use products and technologies, which in Spain are embodied mainly in Act 53/2007 and in Royal Decree 679/2014.

Data privacy and IP protection

34 How are personal data privacy and IP protection regulated in your country with specific reference to drone operations?

Article 26 of RD 1036/2017 provides that data protection regulations are applicable to drone operations and operators shall be responsible for complying with said regulations if certain personal data are collected during the operation and individuals can be identified by it.

If this is the case, the requirements, obligations, rights and fines foreseen in the Spanish Data Protection Act and in the General Data Protection Regulation (Regulation (EU) 2016/679) shall be applicable, and the Spanish Data Protection Agency may start administrative proceedings against the operator if those provisions have not been complied with or some persons submit complaints against operators.

UPDATE AND TRENDS

Sector trends and regulatory developments

35 Which industry sectors have seen the most development in the use of drones in your jurisdiction and which sectors are expected to see further development in future? Have there been any notable recent regulatory developments relating to drones?

The last review released by the Spanish Ministry of Development, titled 'Strategic Plan for the development of the civil drone sector in Spain 2018-2020', reveals the development of the Spanish drone industry in the years since the first drone regulation was enacted. As in other bordering countries, drone economic activity in Spain is divided into two large groups: manufacturing companies and specific service providers. The second group has a higher number of stakeholders, although the drone manufacturing sector is strongly competitive if we take into account the drone military industry. However, for now, the sector with more revenue from the drone industry in Spain is still leisure and aeromodelling.

From the total of civil drone operators duly licensed or authorised by the Aviation Safety State Agency (AESA) for special and commercial operations since the enactment of the first Spanish drone regulation, 90 per cent of the operators' services are focused on photography, filming and photogrammetry. The rest of the operators are focused on surveillance and security, rescue and emergency, aerial advertising or agriculture treatment.

The 'Strategic Plan for the development of the civil drone sector in Spain 2018-2020' expects that agriculture, energy plant inspections, surveillance, telecommunications, e-commerce and transport and even air mobility are sectors with a high potential for increasing the number of operations in the future. However, at national level, the last key development presented was RD 1036/2017 AESA, together with the main stakeholders of the industry, are developing guidance materials to fill in the blank spaces left by the law. Nevertheless, authorities and stakeholders of this sector should not lose sight that by the end of this year, all parties must be adapted to the new Regulation, which will replace most of the current domestic provisions. The first consequence of this milestone will be the homogenisation of the different EU countries' legislation under the same umbrella, reducing the variety of



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operational requirements, obligations and restrictions between countries and harmonising the different legal frameworks.

Another key point of the development of the industry in Spain will be the establishment of a reliable U-SPACE system, which is still under development under European level.

Coronavirus

36 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programs, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

One of the most important events of 2020 will be the covid-19 outbreak and how this has affected during the fight against this global pandemic. In this regard, UAS operators has also suffered the consequences of the health emergency. From European level, the postponement of the entry into force of the Regulation (EU) 2019/947 scheduled in principle for July 2020 and has been re-scheduled now for the end of the year 2020. On the way to the 'new normality' this postponement will give to public authorities, UAS operators and pilots six months of extra time to adapt before the date of entry into force by the end of this year.

Particularly, in Spain, the government declared a state of alarm during the worst part of the outbreak in the country. During a short period at the beginning of the state of alarm, only essential activities were allowed, related to transport, provision of food and medical services, among others. Civil unmanned aircraft system (UAS) operations were not specifically prohibited if the activity was related to any of these 'essential activities'. However, those not considered essential were not allowed. It would be highly advisable when performing flight operations with UAS to comply with all health recommendations, such as, wearing masks and maintaining social distancing, however, if the outbreak severely spreads again, non-essential flights will probably be banned again.

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