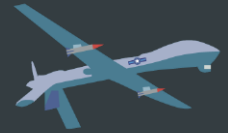


Bird & Bird & the legal and regulatory challenges facing the UAS market



Unmanned aircraft systems (UAS), also commonly known as 'drones', are big news. The UAS market is characterised by rapid diversification of use and impressive growth. Predictions are that this will continue over the next decade.

Military use of UAS is well-documented. However, it is in the civil and commercial world where UAS is booming. UAS is becoming used more and more commonly, for example, in the property and construction sectors, particularly for inspection of infrastructure such as buildings, oil rigs, wind turbines, solar farms and pipelines. UAS has also got clear applications for land surveying and mapping, video filming and telecoms. In addition, in late 2016 Amazon made headlines with a trial UK commercial UAS delivery.

The growing reality of broad UAS application clearly marks UAS as a disruptive technology with huge potential.

As with any disruptive technology, the growth of the UAS market creates significant legal and regulatory challenges.

Notably, the UAS regulatory framework is evolving. In April 2014, the European Commission announced its vision for creating a harmonised regulatory environment for all Member States. Under this vision, current EU Member State legislation would be replaced by common EU rules, with a view to further unlocking the potential of the UAS market in Europe.

The latest step in the EU regulatory evolution is the publication by the European Aviation Safety Agency (EASA) of the [Notice of Proposed Amendment 2017-05](#) (NPA). The NPA includes a draft regulation together with a detailed impact assessment.



The NPA proposes a shift from the current delineation of responsibility between the EU and Member States based on maximum take-off mass (MTOM) to an operation-centric, proportionate, risk and performance based regulatory framework. This means in essence that operations involving UAS with an MTOM of less than 150kg (currently governed at Member State level) would be brought within the scope of EU regulation. The caveat to this is that Member States would retain a degree of flexibility to designate 'special zones' in which, within certain parameters, certain requirements are added or dis-applied.

Turning to the detail, the NPA sets up three categories of UAS operations: 'open' (low risk), 'specific' (medium risk) and 'certified' (high risk), and addresses the regulatory requirements for UAS operations falling within the 'open' or 'specific' categories. It additionally includes a certification framework affording certified operators a degree of autonomy in authorising their own operations, subject to having certain systems and checks in place.

EASA is inviting comments on the NPA until 15 September 2017.

A further prevalent challenge concerns privacy and protection of personal data collected through UAS. In the European Union, data protection regulation laws and guidance (e.g. Article 29 Working Party Opinion WP 231) predominantly govern this part of the question. UAS operators and UAS owners need to comply with various obligations. This means, amongst other things, a need for a valid ground for processing data (e.g. legitimate interest of the controller) and a need to provide information to affected individuals – a particular challenge in the context of UAS operations.

An overview of the privacy and regulatory implications of UAS can be found [here](#).

The growth of UAS as a service also poses important questions around liability, insurance and risk allocation. It is clear that there is a need for UAS operators to carefully consider their terms and conditions and commercial offerings to customers.

With leading Tech & Comms and Aviation practices and a keen focus on disruptive technology, Bird & Bird is well placed to offer support on the legal and regulatory challenges facing the UAS market.

Get in touch

Simon Phippard

Of Counsel, Finance

Tel: 020 7415 6156
simon.phippard@twobirds.com



Joanne Wheeler

Partner, Commercial

Tel: 020 3017 6847
joanne.wheeler@twobirds.com



Gabriel Voisin

Partner, Commercial

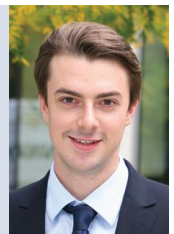
Tel: 020 7905 6236
gabriel.voisin@twobirds.com



Ben Woodfield

Associate, Commercial

Tel: 020 7415 6723
ben.woodfield@twobirds.com



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