SPO operators: stay tuned!

On the 21st of April, 2017, the world of aerial work operations will undergo a revolution with the introduction of the new EU regulation called "Part-SPO." This is a small revolution for many operators who are already familiar with the requirements of commercial aviation. It is a much bigger revolution for many other operators who until now were hardly regulated (or not at all) by their national authorities. While the rights and obligations of all the parties are defined in the regulation, some practical and legal aspects have not yet been resolved and may yet raise lingering issues for operators and national authorities. Here is a brief overview of the situation just a month away from its introduction.

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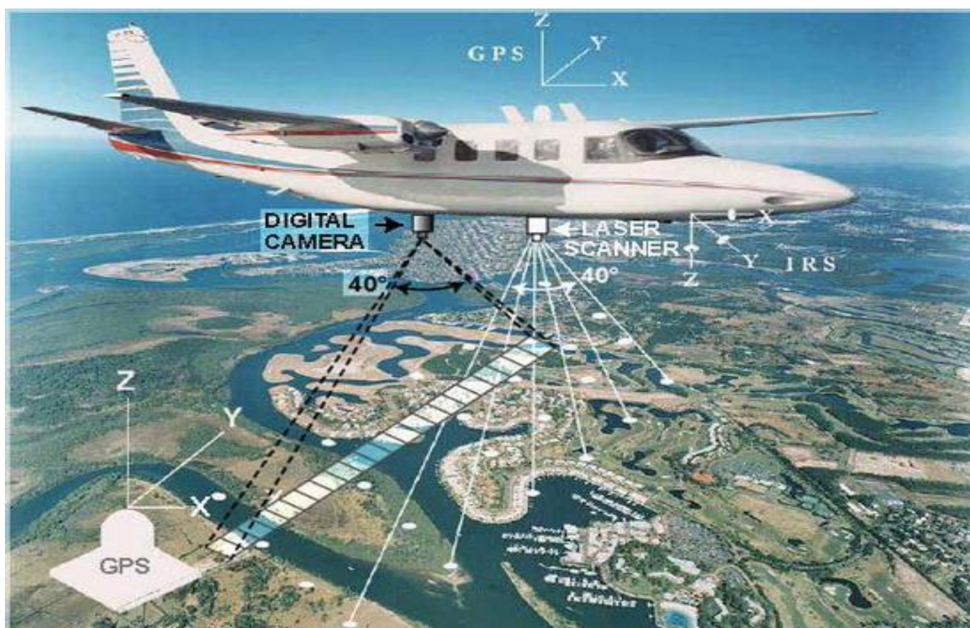

In the absence of ICAO regulations on this aviation sector, it was time for Europe to come up with a unified regulation on aerial work operations. It includes (among other things) activities as diverse as: helicopter external loads, aerial mapping and parachute operations, glider towing, agricultural and media flights. Indeed, freedom of movement and downward pressure on prices in Europe is pushing more and more authorities and companies to contract foreign companies to fulfil specialised operations on their soil. It was time to standardize norms and practices to ensure an adequate level of safety and a level playing field across all the Member States of EASA. Although the system established by Part-SPO ("SPO" stands for "Specialised Operations") and related provisions (Part-ORO and Part-ARO) should be given time to prove itself – as with any new regulation – we can already make two observations.

1) The first concerns the legislative process leading to the adoption of the new regulation. For what reasons the stakeholders in the industry were not consulted on topics as sensitive and important as the concept of "high risk" operations or the system of cross-border authorisations applying to commercial operators? Two subjects that were not included in the EASA Opinions 02/2012 and 04/2011 but were incorporated into the regulation later, on the sly. This way of bypassing the consultation process to the detriment of stakeholders in the industry is incomprehensible and will unreservedly need to be corrected in the future so that the interests of the industry are effectively taken into account.

2) The second observation refers to a number of legal and practical aspects that were insufficiently considered or not taken seriously by the authorities in the implementation phase, which lasted almost three years and ends in April. This laxness now threatens to derail the goals of adequate level of safety and a level playing field that the regulation is supposed to achieve, starting on the 21st of April, 2017 – not in three or five years. These aspects will be discussed below.

COMMERCIAL vs NON-COMMERCIAL

The new regulation imposes very different obligations on commercial and non-commercial specialised operations. Commercial operators of a complex or non-complex aircraft will need to develop a professional structure and have: skilled personnel, an operation manual, Standard Operating Procedures (SOPs), a safety management system, and a compliance monitoring system. They will also need to declare their activities to the relevant National Aviation Authority (NAA). But non-commercial operators of a non-complex aircraft will not need any of that.

While commercial operators will need an authorisation to conduct "high risk" operations, non-commercial operators of a complex or non-complex aircraft will not need any authorisation for such flights.

These differences are both major and crucial and they hurt the bottom line of commercial operators. But they could also appear to be common sense and acceptable in a world where NAAs have the means to minimize the scope of non-commercial operators illegally operating commercial flights. In reality, for years the NAAs fighting against the grey market in the areas of general aviation and business aviation have been confronted with largely inadequate European regulations, which leave the door open to abuses by the grey market. The same thing will happen in the sector of specialised operations because in the absence of further details and guidelines, the definitions of *"commercial operation"* and *"commercial air transport"* included in the European regulations do not enable the NAAs to fight against those who will only too easily be able to more or

less legally bypass the purpose and spirit of the law. That is due to the unclear boundaries between commercial and private aviation that are not sufficiently tailored to the needs of each area of the aviation sector. A few specific examples:

- How will NAAs distinguish commercial operators from “corporate” or private (therefore non-commercial) operators, who nonetheless run exactly the same flights with the same risks?

- How will these same NAAs force some non-commercial aerial photography and mapping operators to adopt a commercial system when these operators (or their parent companies) do not actually sell flights to their customers – only data?

- How open will national and local, private and public authorities or companies that award aerial work contracts but have mostly no idea about aviation regulations and constraints – let alone the difference between commercial and non-commercial operations – be to awarding contracts according to the applicable rules?

- And how will NAAs ensure that these authorities and companies – who do not fall under their oversight – respect the legal framework imposed by “Part-SPO”?

Today, the problems brought up by these examples are common on the market. And due to the price constraints, that affect not only operators but also the authorities and companies that award contracts, they will only grow. That is why it is necessary and especially urgent that EASA partners with NAAs to take concrete legislative measures to put an end to the unfair competition that is already well established in some markets, so that the regulation’s objective of a level playing field can be achieved.

Until things are moving in that direction and the European legislator (finally!) regulate with greater precision the boundary that should separate commercial and private aviation - via provisions whose compliance can be effectively controlled by NAAs - it will continue to fall to commercial operators to fill in for NAAs. In some areas of specialised operations, they will have an interest in keeping an eye wide open when contacts are awarded, and they will not have any choice but to report abuse.

“HIGH RISK“ OPERATIONS

The new regulation requires that commercial operators of “high risk” activities obtain prior authorisation, which may be issued by the competent NAA after analysis and acceptance of the risk assessment documentation and SOPs submitted by the operator.

Determining which activities are “high risk” was left to the assessment of Member States, who are supposed to make a list. However, nearly three years after the adoption of Part-SPO and when there remains only a month before the regulation comes into force, only a very small number of European countries have published this list, leaving many operators in a state of total uncertainty. As a result, a number of operators have already had to accept and begin work on some contracts that will continue beyond the 21st of April, 2017, without knowing whether they will be eligible for an authorisation for “high risk” activities beyond that date. Moreover, as this authorisation is designed to control risk – particularly risks to which third parties and property on the ground are exposed – how is it that non-commercial operators are not also subject to them? They generate similar risks and probably higher risks, in fact, considering they do not have a professional structure in place and are not subject to oversight. This double standard does not make a lot of sense.

Furthermore, while the perception of “high risk” may not be the same in Portugal, Latvia, Scotland and Greece, and while it is understandable that the Member States wanted to retain their sovereignty over what is considered “high risk,” the lack of standardization across Europe greatly complicates the lives of operators, especially in cross-border operations.

CROSS-BORDER OPERATIONS

Given each State’s sovereignty in defining “high risk” activity and that cross-border operations are common in certain sectors of specialised operations, the regulation provides for a coordinated system between the operator’s competent authority and the competent authority of the place where the operation is expected to be performed, in order to meet the safety criteria established by these two States.

Although this coordination mechanism is a necessary evil, some concrete examples of operators who have already been subjected to this mechanism show that EASA and the NAAs will have to be very vigilant to prevent it turning into a disguised tool for protectionism. Indeed, varying degrees of this type of protectionism are currently commonly practiced in the aerial work sector by some countries. But this should end by the 21st of April, 2017, at the latest.

In order to prevent abuse, it seems that the operator’s competent authority should be able to require from the authority of the place where the operation would be carried out and which refuses to recognize the operator’s SOP and risk assessment (previously validated by the operator’s authority) to provide a clear, comprehensive and concrete justification for the refusal. In the same way, the operator’s authority should not be too quick to accept the operational limitations required without sufficient reasons by the other State. In all cases, it should ensure that its operator is not the victim of protectionist measures.

The entry into force of the regulations introduced by Part-SPO will also repeal existing national legislation covering aerial work operations. These usually include the requirement for a foreign operator to submit an AOC or a certificate of competency to the competent authority, subject them to authorization procedures, and in some cases, require them to contract a local operator to run operations in a foreign country. All of this will soon be in the past and any operators who would still be unlawfully affected by these standards after the 21st of April, 2017, will certainly be within their rights to oppose and denounce these abuses.

Despite these uncertainties and the risks to which operators are exposed, Part-SPO will come into force permanently and it is hoped that EASA and the NAAs now do everything in their power to ensure that the objective of a level playing field becomes a reality as soon as possible. It is also imperative that operators are meaningfully consulted regarding the serious problems they face every day on the ground and for which solutions will have to be found in the coming months.

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