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WALA 2015** | Athens,  
Sept 9<sup>th</sup>-11<sup>th</sup>, 2015

## **Session 6: RPAS INDUSTRY & AIRPORT OPERATION**

# **European Perspective on third party liability and insurance**

Anna Masutti  
LS Lexjus Sinacta, Italy  
11<sup>th</sup> September 2015

# The Topics

- 1. The current European position on RPAS**
- 2. How harmonised is third-party liability and insurance regulation in the EU?**
- 3. Where does liability lie in the use of civil RPAS?**
- 4. Liability and insurance implications and consequences**
- 5. Proposals for going forward**

**1. The current European position on RPAS**

**2. How harmonised is third-party liability and insurance regulation in the EU?**



# Principles for RPAS Regulation:

## EU Communication 207/2014

The EU COM (2014) 207 established that:

A legal framework is needed incorporating all the elements required for manned aircraft, such as:

- ✓ airworthiness, certification, pilot training and licensing, data protection and also civil law that clearly defines responsibility and consequently establishes a **civil liability regime** for **third party damage** and appropriate **insurance** cover to guarantee compensation for victims.

# Data and privacy protection issues: recent Opinion on Privacy Data Protection Issues(June 2015)

- ▶ Not the drone per-se, but the data processing equipment on-board represents a high risk
- ▶ There is no specific legislation – rules differ amongst the Member States (The relevant framework is the Data Protection Directive 95/46/EC)
- ▶ WP ART. 29 (set up under Directive 95/46/EC) suggests the adoption of **Codes of Conduct** in order to help operators to prevent infringements, and they might also contain sanctions

# Lack of harmonization regarding TPL regime in EU

## (EU Report November 2014)

1. No harmonized regime for **liability for damage to third parties caused by RPAS (or even manned aircraft)** exists at the EU level.
2. Only some Member States have RPAS (< 150kg) third party liability regulation: most of these regulations establish:
  - a **strict liability regime**
  - the **identification** of the liable party in the **operator of the system**
  - operators are **required to insure third-party liability.**

# The RPAS Insurance Market in Europe

1. These frameworks refer to EC Regulation 785/2004, which defines requirements for **third party liability insurance** for manned aircraft operators, **based on the maximum take-off mass (MTOM)**.
2. Apart from Regulation 785/2004, there are no other national rules defining third party liability insurance requirements within the EU MS.



## 4. Liability and insurance implications and consequences





# What problems arise from lack of harmonization on TPL in the EU?

## (EU Report 2014 Conclusions)

1. The **timescale** for payment of **compensation** may be **long and complex**;
2. It may **not be possible to identify the operator (liable party)**;
3. **Lack of insurance** offered in some Member States (resulting from the lack of information necessary to price insurance?) or the **insurance may not be valid**.
4. Moreover, there are also the issues of a lack of protection arising from the **illegal use** of RPAS such as privacy, data protection and security.



## 5. Proposals for going forward



# The nature of the liability (I)

International civil liability Conventions (CLC Convention; Fund Conv.; Hazardous and Noxious Substances Conv., etc.) generally make applicable a regime for which liability is:

- ✓ *absolute* regardless of negligence (*strict liability*)
- ✓ *implies the identification of the (sole) liable party to channel liability*
- ✓ with *very few exemptions* (contribution to the damage by the person claiming compensation or third parties who have contributed to causing the damage, etc; exoneration from liability is provided where *damage is the direct consequence of armed conflict or disturbance* )

# The nature of the liability (II)

- ✓ *strict liability compensation* is *capped*, with a parallel ...
- ✓ *compulsory insurance* of the liable party, up to the limit of the liability, and
- ✓ with a *direct claim against* the insurer
- ✓ with a *compensation fund*.

# The nature of the liability (III)

## Existing international Aviation Civil Liability Conventions:

- The Rome Convention 1952\* on Damage Caused by Foreign Aircraft to Third Parties on the Surface;
- The Montreal Conventions 2009: - The Convention on Compensation for Damage Caused by Aircraft to Third Parties (General Risks) and
- The Convention on Compensation for Damage to Third Parties Resulting from Acts of Unlawful Interference Involving Aircraft (Unlawful Interference).

\* The 1952 Rome Convention; Protocol to Amend the Rome Convention, as adopted and signed at Montreal on 23 September 1978 and entered into force on 25 July 2002. Today 49 ratifications, the largest being the Russian Federation and the UAE, but only 12 States ratified the Montreal Protocol of 1978.

# The Rome Convention 1952

The Rome Convention of 7<sup>th</sup> October 1952\* is **fundamentally important** to accidents caused by RPAS.

- ✓ The **Convention applies** to damage caused in the territory of a contracting state by an aircraft registered in the territory of another contracting state.
- ✓ The Convention is considered applicable to all kinds of vehicles, including spacecraft, provided they are “**usable for transport**”.
- ✓ Whenever the notion of aircraft is **interpreted broadly**, the set of articles contained in the Rome Convention - could **apply also to accidents involving RPAS**.

\* The 1952 Rome Convention; Protocol to Amend the Rome Convention, as adopted and signed at Montreal on 23 September 1978 and entered into force on 25 July 2002.

# Identification of the Liable Party

Liability for damage should be attributed to the operator of the RPAS\*.

✓The operator: “operator” means the person who makes use of the aircraft (directly or indirectly) at the time the damage was caused,

✓The registered owner shall be presumed to be the operator and shall be liable.

\*Pilot: the person who has the authority to direct a flight (RPAS - pilot in command), and who is responsible for the operation of the aircraft in accordance with the rules of air, and

Operator: the legal entity operating a RPAS (RPAS-operator).

(Reg. 785/2004: ‘aircraft operator’ means the person or entity, not being an air carrier, who has continual effective disposal of the use or operation of the aircraft....).

# Principles of Liability (I)

The same principle of **strict liability regime** of the Rome Convention could be applicable also for **damage on the surface** that is **caused by RPAS**:

- ✓ The victims do **not need to prove the liable party's negligence** or fault in order to make it liable
- ✓ strict liability regime **is limited according to the weight of the aircraft**
- ✓ Liability ceiling **breached** only if aircraft operator engaged in **gross negligence or willful misconduct**
- ✓ The plaintiff could **bring suit** in the State where the **damage occurred**.
- ✓ **Insurance** is required.

These principles could be applied if damage is caused by a **collision** between two RPAS or an RPAS and a manned aircraft.



# Principles of Liability (II)

**Is it possible to apply these principles of protection for victims in the EU?**

- ✓ The Rome Conv. 1952 is ratified only by a few Member States (4);
- ✓ In EU there are **no harmonized rules on TPL** caused by aircraft on the surface; but...
- ✓ **Reg. EC Reg. 785/2004 on insurance in respect of liability for third parties is applied.**

**Is Reg. 785/2004 sufficient to cover (and harmonize) all aspects regarding TPL for damage caused by RPAS? Not really...**

# Possible solutions... (I)

## A) EU Member States can apply the Rome Convention 1952 as national law

An example is offered by Italian navigation code which:

- ✓ enlarges the definition of aircraft - to include RPAS - and
- ✓ establishes that liability damage on the surface caused by an aircraft is subject to international law in force in Italy (which is the Rome Convention).



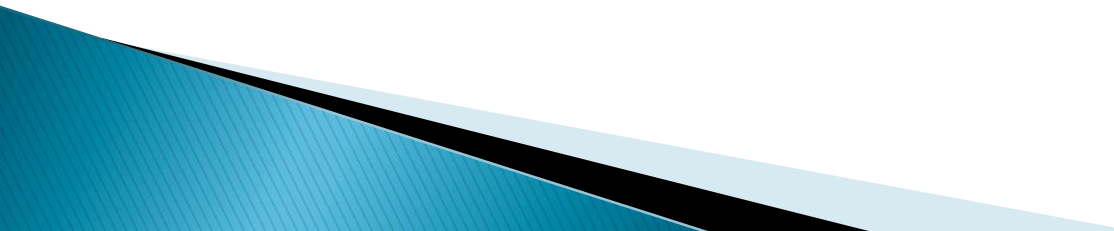
# Possible solutions... (II)

**B) The EU can set up a regulation on compensation for damage caused by aircraft to third parties (legal basis article 100 TFEU) and**

- ✓ Having adopted this regulation it can be sustained that the EU has exclusive competence to conclude International Agreement in this field (art. 3.2\*). So, the EU can approve the Rome Convention 1952 for the European Union.
- ✓ However, Article 31 of the Rome Convention establishes that the Convention shall remain open for signature on behalf of any State .... (and not to Regional Economic Integration Organization, such as EU).
- ✓ Therefore, **agreement of the 49 States who ratified the Rome Conv. is needed** in order to amend the Convention to allow REIO to sign the Convention.... or
- ✓ the **MS could ratify the Rome Conv. on behalf of the EU** (principle of cooperation).

\*Article 3.2 TFEU: “The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope”

# Conclusions

1. Currently, the EU does not have a harmonised regime on TPL in place.
  2. The EU already has several previously-mentioned legal solutions to work towards harmonisation between MS, and at the international level.
  3. As we have seen, there are several legal options that would work very well. The main problem is at the political level.
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# Thank You!

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