

ARTICLE 29 Data Protection Working Party



Brussels, 16 December 2013

European Commission
Mr Daniel Calleja Crespo
DG Enterprise and Industry
1049 Brussels
Belgium

Subject: Remotely Piloted Aircraft Systems (RPAS) – Response to the Questionnaire

Dear Mr Crespo,

In May 2013, DG Enterprise and Industry of the European Commission addressed a questionnaire to the Article 29 Working Party (hereafter the Working Party) on privacy and data protection issues related to the utilisation of Remotely Piloted Aircraft Systems (RPAS) by governmental, commercial and private operators, leaving the personal or recreational use of RPAS out of the scope.

First of all, let me express the Working Party's appreciation for the attention paid by the Commission to the data protection and privacy aspects related to the use of such devices, which is also visible in the detailed background paper of the questionnaire accompanying the questionnaire and the measures envisaged to address the issue of RPAS in the near future.

Due to the importance of the issue, also considering its link to the development of civil applications of RPAS, or drones, with a view to the safe integration of RPAS into the European airspace, the Working Party decided to respond to these questions jointly. Below you will find the main outcomes with regard to the questionnaire.

1. Importance of the issue from a data protection perspective

There is unquestionably a real need to focus on the threats that an uncontrolled proliferation of drone applications could bring about for individuals' fundamental rights and freedoms.

From a data protection point of view, what is relevant is not so much the use of RPAS as such, but mainly the different technologies they can be equipped with (i.e. high-resolution cameras and microphones, thermal imaging equipment, or devices to intercept wireless communications) and the subsequent collection and processing of personal data that may take place.

In particular, the increasingly powerful techniques drones may be equipped with would allow collecting personal data through high resolution image and video recordings as well as storing and, if necessary, transferring such data to the relevant ground station. Data subjects would hardly be aware of this kind of processing as it is difficult to notice RPAS, because of their small size and the altitude of operation. Furthermore, it is difficult, if not impossible, even for

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Fundamental rights and Union citizenship) of the European Commission, Directorate General Justice, Freedom and Security, B-1049 Brussels, Belgium, Office No MO59 02/34

Website: http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm

individuals noticing such devices, to know who is observing them, for what purposes and how to exercise their rights.

The potential processing of images (including images of individuals, driving licence plates, houses, etc.), sound and geolocation data related to an identified or identifiable natural person carried out by data processing equipment attached to RPAS is subject to the application of both European and national data protection laws.

2. (As yet) limited EU experience : initial contacts with the national CAAs

It appears that the European Union lags significantly behind other countries, such as the USA or Canada, regarding the use of RPAS. A few systems in the <150 Kg category have been licensed for use in the European airspace by the Civil Aviation Authorities (CAAs), but so far none of the European data protection authorities (DPAs) has dealt with a case of personal data processing arising from the use of a drone.

Nevertheless, all the European DPAs agree on the need to proactively address the data protection threats linked to the different RPAS applications. This is why most of them have started evaluating these aspects, while some of them are collaborating with the national competent CAAs in order to address the issue jointly.

In the UK, the ICO is a member of a Cross Government Working Group on the use of RPAS, alongside other bodies including the Civil Aviation Authority.

In Germany, the air traffic regulations (Luftverkehrs-Ordnung (LuftVO)) were amended in 2012 to include compliance with data protection requirements as part of a relevant discretionary examination by the competent aeronautical authorities of the Federal States when granting permissions to operate aircraft.

Similarly, the Italian DPA is collaborating with the national CAA (ENAC) with a view to introducing a provision into the aeronautical regulations whereby compliance with data protection rules must be considered before granting any permission to operate a RPAS.

In Macedonia, the CAA is preparing a Rulebook for using RPAS and the Macedonian DPA is collaborating with them.

In Malta, the Civil Aviation Directorate closely collaborates with the Office of the Information and Data Protection Commissioner on data protection matters.

However, no contacts with CAAs have yet been established by the DPAs in Austria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Lithuania, Luxembourg, Netherland, Poland, Portugal, Spain, Slovak Republic, Sweden, Slovenia.

3. Current and future regulatory framework

As for the the current regulatory framework addressing the privacy and data protection threats related to the use of RPAS, no specific legislation is in force or envisaged in any Member State.

The domestic provisions on video surveillance have been generally considered to be applicable to the processing of personal data related to the use of drones together with the

relevant data protection rules, such as notification and the data subjects' right to be informed. A need for policy guidelines has been identified in order to address the practical difficulties regarding the enforcement of some data protection rules regarding the use of data processing equipment onboard RPAS, for example fair processing, information notice, data minimization and compliance with data subjects' access rights.

As for the possible future regulatory framework, neither of the draft instruments currently being discussed at EU level (General Data Protection Regulation and Police and Criminal Justice Data Protection Directive) includes specific provisions on the processing of personal data carried out by means of RPAS. It can therefore be assumed that the general provisions on the protection of personal data will be applicable to such processing.

The new provisions relating to *data protection impact assessment*, the *principles of data protection by design and by default* and the specific *provisions on certification of data processing operations* might be of particular relevance to address the privacy and data protection threats related to the use of RPAS.

Article 33, paragraph 1, of the draft Regulation introduces the obligation for controllers and processors to carry out a data protection impact assessment prior to risky processing operations such as the monitoring of publicly accessible areas, especially when optic-electronic devices (video surveillance) are used on a large scale.

According to Article 23, paragraph 2, of the draft Regulation, the controller shall implement mechanisms for ensuring that, by default, only those personal data are processed which are necessary for each specific purpose of the processing and that data are especially not collected or retained beyond the minimum necessary for those purposes¹.

The specific provisions on certification of data processing operations might also have to be considered as an additional means to ensure that privacy by design is implemented in RPAS.

The risk of blanket surveillance arising from the use of RPAS for law enforcement purposes requires specific provisions in order to prevent misuse of these technologies and minimize the interferences with the fundamental rights and freedoms in accordance with well-known democratic principles. As outlined by the European Commission in the Staff Working Paper on RPAS of 2012, the future new Police and Criminal Justice Data Protection Directive, would, if adopted, "*define the benchmarks for data processing carried out by state authorities*" and its adoption "*could increase the confidence of citizens regarding the operation of state or governmental RPAS*".

4. Possible involvement of Civil Aviation Authorities

The legal framework that will be adopted to ensure the safe stepwise integration of RPAS into the European Air Traffic Management (ATM) system should clearly refer to the need for respecting data protection legislation.

¹ For example, in case of use of RPAS equipped with video cameras, video anonymization or other technical arrangements could be implemented by controllers to automatically process the images by using blurring or other graphical effects so as to prevent images of identifiable persons from being collected whenever they are not necessary. Depending on the purposes of the use of RPAS, the images could be encrypted immediately they are collected and decrypted only when necessary and made accessible to authorized personnel only.

The involvement of the competent CAAs to verify the fulfillment of data protection obligations by data controllers before granting them the requested authorization might be considered.

In order to address this aspect in greater detail, DPAs will be invited to collaborate with the national CAAs while, on the European level, the Working Party might meet with the European Aviation Safety Agency (EASA) and the main RPAS operators or makers within the first half of the next year.

To conclude, the intention of the European Commission's DG Enterprise and Industry to launch a study aimed at analyzing privacy threats in the context of the current and future legislative framework and aimed at issuing recommendations on possible measures to achieve efficient privacy and data protection, is very welcome. The Working Party is willing to cooperate in the most appropriate manner.

I look forward to a constructive and fruitful dialogue in this area and reiterate the Working Party's readiness to be an active partner in future initiatives.

Yours sincerely,

On behalf of the Article 29 Working Party,

Jacob Kohnstamm
Chairman