



EMFU comments on NPA 2021-09

EMFU welcomes the opportunity to comment on the draft amendments to the AMC and GM. The comments below address some of these amendments, where relevant for the operation of model aircraft. They also address other issues that have proven problematic under the AMC and GM.

EMFU underlines that in the current situation a large share of aeromodelling activities is and will continue to take place under the open category, either due to lack of or the limited scope or use of exemption possibilities by Member State authorities. To avoid further endangering the future of aeromodelling in the EU, it is thus extremely important that also the open category rules explicitly accommodate our concerns.

1) Further narrowing of the definition of “Uninvolved persons”:

- a) The guidance on the application of this term is tightened further (p.27) and now also requires for a person to be involved that this person “is only focused on the operational activity so that the person can monitor at all times the position of the UA and, in case of a loss of control of the UA, can take action to avoid being hit”.

Already the previous interpretation of this term was too strict to accommodate real life situations for operations in the open category and has raised multiple problems in its application. Open category flights often take place in areas where there are occasional hikers, cyclists or cars passing by. Common practice in for instance aeromodelling is that these occasional persons passing by are warned through signs or by participants in the operation. Often, people passing by are aware that an area is frequently used for aeromodelling, and choose to accept any risk and pass through the area.

EMFU strongly urges EASA to rewrite the guidance to consider anybody who is informed and aware of the operation (e.g. through warning signs, buying a ticket to an airshow or otherwise) to be involved in the operation.

Proposed text for the GM for Article 2(18) on page 27: “a Person may be considered to be “involved” when the person has given explicit or implicit (e.g. as a spectator, or warned passer-by) consent to the UAS operator or to the remote pilot to be part of the UAS operation”.

- b) There is a mistake on p.146 where the AMC refer to category A3 flights only being allowed to take place “where no uninvolved persons are present”. This is contradicting the text of the Regulation, which states that those flights are to be “be conducted in an area where the remote pilot reasonably expects that no uninvolved person will be endangered” (UAS.OPEN.040 UAS operations in subcategory A3, point 1). This mistake should be corrected.

2) Modifications to UAS with a class identification label no longer under Category A3:

Under the existing AMC, any modification to a UAS class identification label that breaches compliance with the product requirements still allows that UAS to be flown under category A3. The new text of the AMC no longer allows this and automatically places such UAS under the specific category (p.140). It’s unclear what the purpose of this restriction is (a very unclear explanation is given on p. 22). Moreover, it is not clear why a modified UAS with class

identification should be treated differently from a privately-built UAS with identical specifications that can be operated in accordance with the requirements of A3.

In aeromodelling, modifications to “off the shelf” models are very frequent, and the same models can often also be bought as a kit, often also without electronics. Following the proposed amendment, changing the motor or using a more powerful battery in a ready-built version of the plane would thus place operations with that aircraft under the specific category, whereas building a plane with exactly the same specifications from a kit would be allowed to fly under category A3. The proposed change is an incentive not to buy a certified model aircraft (or UAS), but only use privately built aircraft, which cannot be the purpose of the AMC. EMFU urges EASA to withdraw this proposed amendment.

3) Explicit reference to the ability to provide exemptions to one or more open category requirements:

To date Member States have mostly used Article 15 to further restrict open category activities. The explicit inclusion of a reference and examples to the option to provide exemptions to open category requirements on p. 131 is thus helpful and supported by EMFU.

4) Other issues with the AMC/GM not addressed in the current NPA:

a) Interpretation of “in the framework of” under Article 16:

The current AMC/GM incorrectly interpret the term “the framework of model aircraft clubs and associations” as “members of” these clubs and associations. This interpretation contradicts the promises made to EMFU during the discussions on the draft implementing Regulation and the legal text of the Regulation as it was finally agreed. The legal text nowhere refers to “members of” – all such references were explicitly removed during the drafting of the Regulation. Instead, the term “in the framework of” was explicitly chosen to accommodate competition pilots, guests and tourists. EMFU urges EASA to change the current text of the AMC/GMN in accordance with the text in the Annex to these comments.

b) Minimum age supervising pilot

The current AMC/GM (GM1 Article 9) state that whereas a Member State may lower the minimum age of UAS pilots, this is not the case for pilots supervising a remote pilot who has not reached that minimum age. This interpretation is not supported by the legal text under Article 9 and unnecessarily restricts the ability of Member States to lower the minimum age requirements under Article 9. Article 9 paragraph 1 only knows one concept of minimum age and neither requires nor supports a different minimum age for supervising pilots. Lowering the minimum age under paragraph 1 thus automatically also includes lowering the minimum age of supervising pilots, unless explicitly decided otherwise by the Member State. There is no legal, practical or safety reason why a Member State should not be able to reduce the minimum age of a pilot, but not that of the supervising pilot.

Annex: Proposed amendments concerning “in the framework of” (tracked changes)

GM1 Article 16 UAS operations in the framework of model aircraft clubs and associations

GENERAL

Unless differently provided by national regulation, a model aircraft club and association may obtain from the national competent authority an authorisation that is valid for all operations in the framework of that club or association ~~their members~~ to operate UA according to conditions and limitations tailored for the club or association.

The model aircraft club and association will submit to the competent authority the procedures that ~~operators all members~~ are required to follow. When the competent authority is satisfied with the procedures, organisational structure and management system of the model aircraft club and association, it may provide an authorisation that defines different limitations and conditions from those in the UAS Regulation. The authorisation will be limited to the operations conducted within framework of the authorised club or association and within the territory of the Member State of the authorising competent authority. The authorisation cannot exempt members of the club or association from registering themselves according to Article 14 of the UAS Regulation; however, it may allow a model club or association to register their members on their behalf.

The scope of “activities in the framework of model aircraft clubs and associations” is to be defined by the member state authorities. The purpose of the Regulation is to enable authorities to include under an Article 16 authorisation all operations where the authorities are sufficiently confident that operators are aware of and will apply the conditions of the authorisation. This will usually include operations by members of those clubs or associations, but can in particular also include guest pilots at competitions and other guest pilots. It may for example also include guests of hotels or other tourism infrastructure at slope soaring sites. ~~authorisation may also include operations by persons who temporarily join in with the activities of the club or association (e.g. for leisure during holidays or for a contest), as long as the procedures provided by the club or association define conditions acceptable to the competent authority.~~

GM2 Article 16 UAS operations in the framework of model aircraft clubs and associations

OPTIONS TO OPERATE A MODEL AIRCRAFT

Model flyers have the following options to conduct their operations:

- (a) They may operate in the framework as members of a model club or association that has received from the competent authority an authorisation, as defined in Article 16 of the UAS Regulation. In this case, they should comply with the procedures of the model club or association in accordance with the authorisation. The authorisation should define all the deviations from the aforementioned Regulation ~~granted to the model club or association’s members~~. Members-Operators must register themselves in accordance with Article 14 of the UAS Regulation, except when the model aircraft clubs and associations have obtained from the Member State the right to register their members in the registration system on their behalf.

[...no modifications to the rest of the text]