



NORWEGIAN AIR SPORTS FEDERATION
Møllergata 39

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Case officer: Per Kristian Haga
Phone directly:
Our date: 15.02.2023
Our reference: 22/26893-5

Your date: 23.01.2023
Your reference:

Norwegian Air Sports Federation-decision-approval-safety-system

Background

Reference is made to the complaint from the Norwegian Air Sports Association (NLF) of 23 January 2023 against the CAA's decision of 5 January 2023 in case 22/26893. The decision meant that the CAA approved

"Model aircraft manual" as a safety system for model flying under further conditions, cf. regulations

25 November 2020 No. 2460 on aviation with unmanned aircraft in open and specific category (BSL A 7-2) § 9, cf. § 1, cf. Regulation (EU) 2019/947 (Drone Operator Regulation) Article 16(1).

The complainant submits that the conditions for approval must be revoked, mainly on the grounds that, in the complainant's view, Section 9 of BSL A 7-2 and Article 16 of the Drone Operators Regulation imply a starting point that model aircraft activity must be continued seamlessly in the event of a transition from national to Community rules.

The CAA has conducted further investigations in the case and hereby amends its decision pursuant to Section 33, second paragraph, of the Public Administration Act.

Regulatory framework

Section 1 of BSL A 7-2 implements the Drone Operators Regulation in Norwegian law. Article 16(1) of the Drone Operators Regulation empowers the CAA as competent authority to "issue a permit for UAS operations in model aircraft clubs and associations" upon application. Article 16(2) provides that the permit shall be issued in accordance with "relevant national rules" (point (a) or

"established procedures, organisational structures and management systems of the model flying club or association" (point (b)). If the latter option is the basis for the authorisation, the applicant's procedures etc. shall comply with four specified conditions, cf. Article 16(2)(b), points (i) to (iv).

As is clear from the wording of the provision, the authorisation shall be based *either* on national rules *or on the* applicant's internal rules and procedures. The complainant submits that the wording "or" in Article 16(2) must be interpreted as "and/or" (see footnote 12 of the complaint), so that the authorisation can be based on a combination of national rules and the federation's private provisions of the safety system. In support of this interpretation, the complainant refers to the preparatory works and legislative history of the Regulation.

The CAA does not share the complainant's assessment on this point. The preparatory works show, as the complainant indicates, that the wording was changed from the draft's "any of the following" to "or". This speaks in favour of taking the wording literally, so that the permit must be based on one of two alternative grounds. The fact that the applicant's private regulations and procedures will in reality have to be assessed in both alternatives as a result of the content of the national rules, cf. Section 9(2) of BSL A 7-2, does not change this starting point.

Neither in the original application nor in the complaint has the complainant indicated whether the application for authorisation is based on Article 16(2)(a) or (b). Under the Regulation, the applicant is free to choose the basis for the application. The complainant has emphasised the national regulatory history in the letter of complaint, and referred to the fact that the safety system was already approved under provisions corresponding to Section 9 of BSL A 7-2, cf. Section 6a of Regulation No 1404 of 30 November 2015 on aircraft without a pilot on board (BSL A 7-1). It is therefore most obvious to assess the application on the basis of Article 16(2)(a), so that the requirements in Section 9, second paragraph of BSL A 7-2 apply. This corresponds to what the CAA assumed in the contested decision, and in the further proceedings we will proceed on the basis of this alternative.

BSL A 7-2 § 9 second paragraph states that the safety system shall include at least the following to be approved:

- a. plan for the training of remote pilots,
- b. rules for the issuance and possible renewal of certificates of competence for remote pilots, as well as rules for the revocation of certificates of competence in case of flight in breach of regulations or the safety system,
- c. operational procedures and safety rules for the different categories of unmanned aircraft used,
- d. construction and maintenance provisions for the different categories of unmanned aircraft used,

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e. procedures for reporting and handling deviations from the safety system; and

- f. a system that ensures that the elements referred to in points (a) to (e) are developed and complied with

In the following, the CAA will consider in more detail whether the conditions are met and whether conditions should be set for any approval.

Assessment

As stated above, the complainant's safety system must be assessed against the requirements in BSL A 7-2 § 9 second paragraph (a) to (f). The requirements are formulated with almost identical wording as the corresponding requirements for safety systems laid down in BSL A 7-1 § 6a first paragraph (a) to (f). The CAA agrees with the complainant that the intention of the provision in BSL A 7-2 § 9 second paragraph was to continue the material content of BSL A 7-1 § 6a first paragraph, as the CAA's consultation papers show.

The CAA approved the previous version of the complainant's safety system in its decision of 11 October 2019, cf. CAA document number 18/19033-15. As stated in paragraph 3 of the decision, the CAA has "assessed the safety system to be in line with the requirements set out in Section 6a" with regard to the "Model Aircraft Manual" version 1.4.1. Provided that the safety system applied for continues the content of version 1.4.1, the starting point will therefore be that the requirements in BSL A 7-1 § 9 second paragraph are also met.

A review of the safety system shows that the requirements are met also in the requested version, in line with the compliance matrix below:

x

Requirements in BSL A 7-2 § 9 second paragraph	Applicable chapter(s) and provision(s) of the safety management system
<i>Subparagraph a:</i> Remote pilot training plan	Chapter 4 Education Annexes B, C, D and E (educational compendia)
<i>point (b), first comma:</i> Rules for the issue and possible renewal of certificates of competence for remote pilots	Points 4.1 - 4.4.7 Point 4.6 Competence requirements for foreign athletes
<i>Subparagraph (b), second comma:</i> Rules on revocation of certificates of competency in case of flight in violation of regulations or the safety system	Paragraph 4.5 Revocation of certificate of competence Paragraph 4.5.2 Suspension of club activities
<i>Subparagraph c:</i> Operational procedures and safety regulations for	Chapter 3 Operational provisions

the different categories of unmanned aircraft used	
<i>Subparagraph (d):</i> Construction and maintenance provisions for the different categories of unmanned aircraft used	Chapter 5 Provisions on maintenance and technical requirements
<i>Paragraph e:</i> Procedures for reporting and handling deviations from the safety system	Chapter 6 Aircraft recovery
<i>Letter f:</i> A system that ensures that the elements referred to in points (a) to (e) are developed and complied with	Section 1.2 Supervision of the safety system Section 6.2 Safety system

This facilitates that the CAA approves the safety system pursuant to BSL A 7-2 § 9 second paragraph. The CAA's decision of 11 October 2019 also contains four additional conditions. Since the activity is unchanged and the legal basis has essentially been continued, the CAA sees no reason to waive the four conditions from the 2019 decision.

The question is then whether additional conditions should be imposed. Since the prerequisite for the CAA's complaint handling is that the safety system is assessed on the basis of "national rules", cf. Article 16(2)(a) of the Drone Operator Regulation, the CAA agrees with the complainant that it is not natural to impose new conditions in this case that do not appear or can clearly be derived from the national rules.

However, the last paragraph of Section 9 of BSL A 7-2 expressly allows for "risk assessment requirements". Therefore, the complainant cannot be heard to argue that the CAA is precluded from imposing conditions on risk assessment. It is nevertheless a factor that the authority to impose risk assessment also existed under BSL A 7-1 Section 6a last paragraph, under which the previous version of the safety system was approved. As long as the activity and procedures in general have not been changed, and because a requirement for risk assessment was not imposed as a condition in the previous approval decision, the CAA shares the complainant's assessment that it is in principle not natural to introduce such a condition now. This must apply in particular since no safety-related deviations have been identified in the operations so far. With regard to the need for other conditions, the investigation and dialogue with the complainant has shown that there is a need to clarify the procedures for the use of airspace at high altitudes.

The CAA will therefore make it a condition of the approval that safety information on such flights is prepared within a specified time limit.

It also follows from EASA's ED Decision 2019/021/R, cf. AMC and GM to the Drone Operator Regulation point GM2 Article 16 UAS operations in the framework of model aircraft clubs and associations, that authorisations under Article 16 "should define all the deviations from the aforementioned Regulation granted to the model club or association's members". By mistake, these derogations were not defined in the contested decision. The table below lists the deviations and, for the sake of clarity, indicates in which parts of the safety system the matter in question is regulated:

Exemptions from open category, cf. Regulation (EU) 2019/947	Applicable chapters and provision(s) of the safety system regulating the exemption
<i>Article 4(1)(a)</i> about vessel classes	5 Provisions on maintenance and technical requirements.
<i>Article 4(1)(b)</i> on maximum take-off mass exceeding 25 kg	5 Provisions on maintenance and technical requirements. Model Aircraft Manual Appendix D: Requirements for a Class B model aircraft certificate
<i>Article 4(1)(c)</i> on safe distance to humans and prohibition of overflight of crowds in drone races with spectators, model aircraft events, etc.	3.2.2 Model Aerodrome Safety Recommendations 3.4 Safety equipment, specifically 3.4.1 <i>Established flying area</i> and 3.4.2 <i>Model aircraft event</i> 3.5.2 Flying in first person perspective (FPV)
<i>Article 4(1)(d)</i> on the requirement for UAS to be VLOS at all times in FPV flights without a lookout	3.5.2 Flying in first person perspective (FPV) 3.1.2 Aircraft site selection Model Aircraft Manual Appendix H Checklist FPV without a lookout
<i>Article 4(1)(e)</i> on flights higher than 120 metres above the ground	3.1.2 Site selection with the addition of safety information, see condition 5 of the decision. 4.3 Requirements for certificates of competency for model flying
<i>Article 4(1)(f)</i> on the prohibition of in-flight dropping of material when dropping cargo	3.5.5 Release from model aircraft

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<i>Article 9(5)</i> on minimum age	4.2 Candidates
<i>Annex Part A</i>	General regulation of the Model Aircraft Manual

Terms and conditions

1. Changes to the security system shall be notified in advance to the CAA before they are implemented.
2. NLF shall develop safety information clarifying the procedures for the use of airspace where flights at high altitudes are operated by 1 July 2023. The CAA can assist the NLF in this work.

For your information and our recommendation

For future correspondence, please refer to the case number as indicated in the top right-hand corner of this document.

Decision

The Civil Aviation Authority approves the Norwegian Air Sports Federation's safety system for model flying ("Model Flight Manual") with duration until 1 January 2027 and with the limitations that follow from the conditions set out in this decision, cf. Regulation of 25 November 2020 No 2460 on aviation with unmanned aircraft in open and specific categories (BSL A 7-2) § 9, cf. § 1, cf. Regulation (EU) 2019/947 Article 16 (1), cf. (2) (a)

The CAA will monitor compliance with the current safety system through inspections and may order changes or withdrawal of the permit if safety considerations so warrant.

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Access to justice

You can appeal this decision to the Ministry of Transport and Communications. An appeal must be sent to the CAA within 3 weeks of receiving the decision. You can read more about the right of appeal here: <https://luffartstilsynet.no/om-oss/saksbehandling/>. You can also contact the CAA for more information about the appeal procedure.

With kind regards

Bente Elisabeth Heggedal

LøvoldPer Kristian Haga

Section Chief Flight Operations Inspector

Unmanned aviation

The document is electronically approved and therefore does not require a signature.

Copy to: Unmanned Aerial Systems - Per Kristian Haga