

Drones are fascinating But the rules are confusing

TV cameras are watching over us day and night, but drones aren't toys. The rules on their use differ from one country to another. We've compared the laws in Italy and Switzerland, and found that the Swiss situation is more broad ranging

By lawyers Cecilia Trevisi and Mariagiulia Signori of Comma 10 Commercialisti & Avvocati Studi Associati

The use of drones is undergoing a rapid expansion, even though neither Italy nor Switzerland currently have statistics on the sales of these devices.

Up to the end of the year, it's mandatory to register all drones that weigh more than 250 grams. This is the most recent rule, which came into force at the start of the year, introduced by the National Civil Aviation Authority (ENAC), which is responsible for the use of remotely piloted aircraft.

Switzerland is more open and tolerant on the use of remotely controlled aircraft, which include drones.

The Federal Civil Aviation Office (UFAC) applies less severe restrictions than Italian legislation for drones weighing less than 30 kg. The essential conditions for their correct use are that the pilot has to maintain constant visual contact with the drone and that they aren't permitted to fly over groups of people. The cantons and local authorities may apply further restrictions, however, and this is the case in the city of Lugano, considering the nearby airport of Lugano Agno, while in Zurich the use of the devices in public spaces is prohibited.

In any case, in both Italy and Switzerland the implications of using drones shouldn't be underestimated, especially if we consider the potential risk for the processing of personal data and the prohibition against photographing areas in which individuals are present and private events are taking place.

The Swiss federal law on data protection in relation to filming from aircraft lays down that filming people from drones or other aircraft is only legal if the persons concerned have expressed their consent or there is a prevalent private or public interest in doing so.

The Italian regulations, which were recently updated by the European Union regulations on the protection of data (in force since 25 May 2018), do not diverge from the principles which we referred to above, by means of which privacy and the right to safeguard the image operate within a context of common interests in which each party, who can easily be identified by a single photograph, has to be placed in a position in which he or she can express his/her consent, and therefore his or her willingness to be photographed and to be aware of the type of use which will be made of that photograph. These rules also have to apply when the photograph or filming take place from a drone.

In addition to rights to the personal image, there are also landscape rights (known as freedom of panorama, and freedom to take photographs of monuments, works of art and architecture, buildings and all public places in general).

In Switzerland, the works permanently installed in a public place or a place to which the public have access may be photographed, and the photographs may be used for commercial purposes or

published. In Italy, there is no specific law, which means that we have to refer to the copyright laws and the code on the cultural heritage and landscape. In the case of buildings, statues, installations and other structures, it is necessary first and foremost to check the year of construction, the permanent or temporary nature of the structure and whether it is public or privately owned. We then have to consider the type of use to be made of the photographs (personal, commercial, research or study).

The regulations on drones, in Italy especially, are strongly influenced by the purpose for which they are used - whether for sport and recreation, for specialist operations (such as filming for the cinema and TV, photographic services, environmental monitoring, advertising, etc) or scientific activities.

In the case of recreational uses, drones are regarded as model aircraft for legal purposes. This means that their use, including for filming and photographic purposes, is permitted without the need for a licence, provided a number of conditions are satisfied during flying. In flight, the maximum permissible height is 70 metres, the drone may not exceed a flying distance of 200 metres from the pilot, flying may only take place during the day, and the owner has to remain in continuous visual contact with the drone, without the use of optical or electronic devices (such as connections to smartphones). Flying has to take place away from populated zones, at a distance from buildings, infrastructures and installations and at least 5 km distant from airports, military zones and other zones in which overflying is prohibited. If one or more of the above criteria is not observed, drones may only be flown within specific zones set aside by ENAC for the purpose. There is an obligation to obtain certification issued by Aero Club d'Italia in the case of flights at altitudes over 70 metres. During flights for recreational purposes, the model aircraft has no right of way and should always be taken to a safety distance which does not interfere with other aircraft. When drones are used in spaces open to the public (parks, squares, streets and similar), the use of TV cameras or other filming equipment is prohibited. There is greater tolerance in the case of indoor flights within enclosed spaces.

When drones are used for scientific purposes or specialist operations (including the filming of marriage ceremonies, for advertising or cinema filming or by professional photographers), the ENAC regulations applicable differ in line with whether the drone has a take-off weight greater or less than 25 kg, and in any case not in excess of 150 kg. In either of these cases, it is necessary to stipulate an insurance policy, apply a plate to the device which contains the identity details of the operator, and ensure that the drone is flown by a pilot in possession of a licence (unless the take-off weight is less than or equal to 0.3 kg and the speed does not exceed 60 km/h). Before flying, a specific declaration or application for authorisation have to be presented to ENAC. Flying over groups of persons, parades and sporting events is in any case prohibited. As with the case of recreational uses, direct visual contact has to be guaranteed at all times. Beyond those limits, it is necessary to obtain a specific authorisation.

In Switzerland, the restrictions are much more limited than those applicable to aircraft used to take photographs and with respect to the content of the photographs. In this case too, however, it is necessary to consider the use to which the drone is put (amateur or professional). To fly a drone with a weight of less than 30 kg, three simple rules have to be observed: 1) constant visual contact with the device has to be maintained at all times, 2) the drone has to maintain a distance of at least 100 metres from groups of people, and 3) it is necessary to check the map for flight restrictions for drones (a radius of 5 km around airports and heliports). If these limitations are to be exceeded, it is up to LIFAC to take the decision on whether to grant permission.

Switzerland is probably the first European country to adopt a national system for the handling of drone traffic. On 26 June 2018, a demonstration took place of the Swiss U-Space, the first drone traffic handling system in Europe on a national scale. During the event, each drone was linked to a U-Space system and was able to transmit its position and flight trajectory to a traffic handling platform. At legislative level, a European directive is currently being examined which should come into force in the European Union member states in 2019 and enable a U-Space system similar to that in place in Switzerland to be set up.