

Legal Situation of using drones in Germany

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When may I fly?

How may I fly?

Which data may I collect?

When may I fly? – Use of airspace

The German Air Traffic Act constitutes the “Freedom of the Air”:

The **airspace is open for use by aircraft**,
But only **as far as** it is not restricted by law.

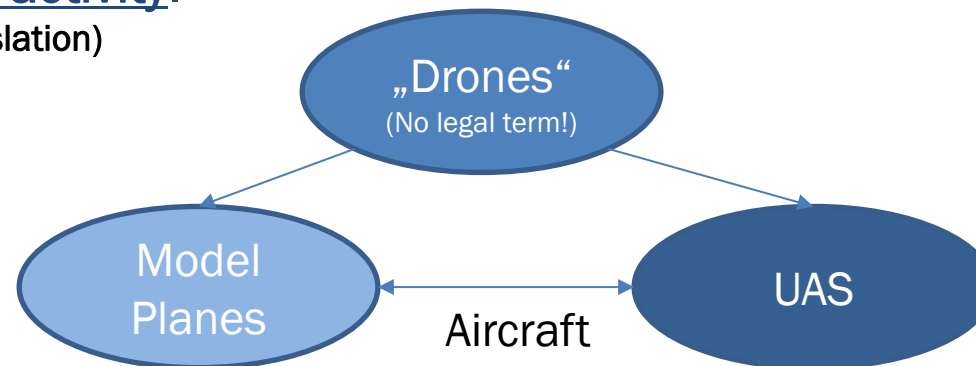
When may I fly? – Model planes and UAS

- Only “aircraft” defined in the law may profit from the freedom of the air.
- The Air Traffic Act initially only applied to model planes i.e. hobby use.
- Did **commercially** used drones profit from the “freedom of the air”?
- In 2012 a new definition was added:

Also considered as aircraft are unmanned aerial vehicles, including their control station, which are not used for the purpose of sports or of recreational activity.

(non official translation)

- For illustration:



When may I fly? – The “use based approach”

- The amendment introduced a “use based approach” (in contrast to the “**risk based approach**” in EASA’s technical opinion:
 - Flying at a picnic for enjoyment of the family on the weekend → **model plane**
 - Flying for supervising work on a construction site the next working day → **UAS**
- **Result:** Confusion, lack of understanding or disregard of applicable rules.

When may I fly? – Liability insurance

- Rules for using model planes or UAS are quite different.
- But: Holders of model planes and UAS are **always liable for the use**
- They must **always take out third party liability insurance before taking off.**
- **The law requires :**
 - The insurance has to cover at least **750.000 units of account** (for aircraft < 500 kg MTOM).
 - It must be from an insurance provider **authorised for Germany.**
 - A free **proof of insurance must be provided.**
 - The proof **must be carried during the operations.**

When may I fly? – Implementation of the German Air Traffic Act

The German Air Traffic Act is implemented through a number of regulations.

The Air Traffic Regulation (LuftVO) in its version of 2015 provides the most relevant limitations on the “freedom of the air” for UAS:

- **Sec. 19 Air Traffic Regulation – prohibited use of airspace**
- **Sec. 20 Air Traffic Regulation - requirements for permit to fly**

When may I fly? – Forbidden use of air space – UAS only

- The use of UAS is generally prohibited:
 - (1) Operation beyond visual line of sight (no augmentations allowed); or
 - (2) above > 25 kg MTOM.
- **Exceptions may be granted:**
 - In **absence of a risk for public safety or law and order and**
 - (a) for operations are limited **segregated airspace or**
 - (b) do not go beyond the **limits of air traffic at an aerodrome.**
- Operation may take place outside segregated airspace **if restricted to all of the following**
 - (i) Operation within visual line of sight (*reintroduces restriction (1) above*),
 - (ii) Agricultural or forestry related purpose,
 - (iii) Not more than 50 meter above ground or water, **and**
 - (iv) Outside controlled airspace.

When may I fly? – Use with permission UAS

- If not prohibited, operating UAS always requires prior permission (exceptions for police and armed forces).
 - **In contrast – use of model planes is generally free** if below 5 kg MTOM, electronic engine, not close to aerodromes or above gatherings of people.
- Going back to the initial scenario:
- The aircraft with electronic engine below 5 kg MTOM is operated on the weekend in the recreation area as a **model plane, without need of permission.**
 - The same aircraft is used for supervising work at the construction site the next working day as a **UAS, requiring prior permission.**

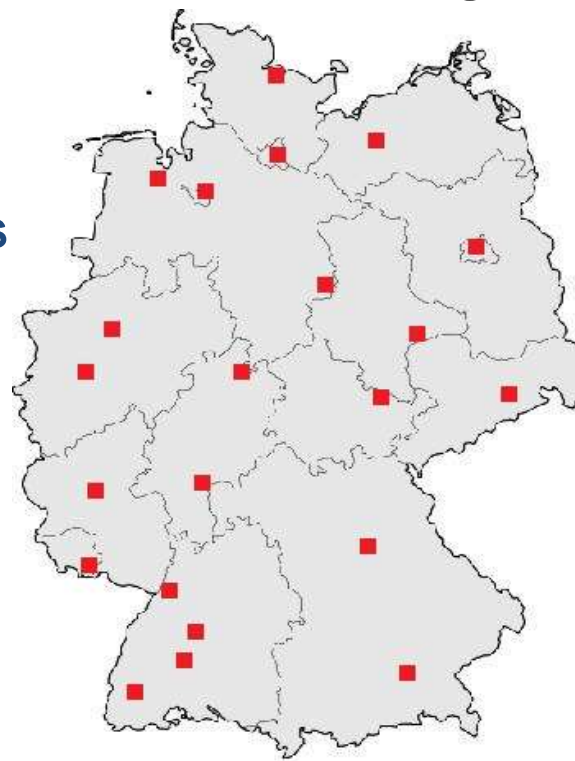
When can I fly? – Competence for permission

- Competence depends on MTOM:
 - **Over 150 kilogram MTOM** – European Aviation Safety Agency (EASA, Cologne);
 - **Below 150 kilogram MTOM** – Federal administration / ordered management of the administration of the federal states.

- In Germany air law is **Federal Law**
- But it is **executed by the “Bundesländer”** in commission.

When can I fly? – Local authorisation administrations

- Under the federal constitution, Germany has
 - **16 Federal States** ('Bundesländer') – with some having more than one local air traffic administration,
 resulting in
 - **22 local air traffic administrations**
 - **Permits to fly have to be obtained from the local administration responsible for the area where the flight will take place.**



When can I fly? – Decisions on granting permission

- **The administration is bound to grant the permission** as long as:
 - the intended use **does not endanger air traffic or public safety and policy,**
 - the intended use does not violate **legislation on data protection** particularly relevant for the use of UAS.
 - **In addition, the permission may be made subject to**
 - **further ancillary provisions, requirements and conditions** (e.g. **expert opinion** on the suitability of the terrain and airspace used, expertise in operations etc.).
 - Local administrations follow common principles (NOTAM).
- **But through different legal interpretations decisions may greatly vary.**

When can I fly? – Obtaining permissions

- Two types of permissions:
 - (1) General Permission;
 - (2) Single Permission – above 5 kg MTOM or combustion engine.

- Different approaches depending on the Federal State...
 - Some issues permissions for 2 years
 - Some only for 1 year– e.g. in Brandenburg, Saxony
 - Some Federal States allow transfer of permissions from another State
 - Some Federal States require transfer fees or full check of the permission.

- **Single permissions** are limited to **one time uses**, determining a certain date, time, place, specific surrounding conditions and specific purpose.

When can I fly? – General permissions

- Even general permissions are further restricted:
 - Only up to 5 kg MTOM and without combustion engine
 - No operations:
 - above **gatherings** of people;
 - above scenes of **accidents, disaster zones and other incident scenes**;
 - above correctional facilities, military facilities, **industrial facilities, power plants and facilities** in the energy production and distribution sector, **unless permitted** by the owner;
 - additional conditions may be required by the local administration.

When may I fly?

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How can I fly? – Scope of application of the LuftVO

- UAS are **legally considered aircraft**
- The **rules of the air for aircraft** have to be followed.

How can I fly? – Flight over private property

- May I fly over private property **without permission of the owner?**
- **German Civil Code** protects private property, including the air space.
- But: The “**freedom of the air**” derives from the more specific law.
- **Result: „obligation to tolerate“.**
- **But also a weighing of interests is required.**
- The use of the UAS **must not result in nuisance or intrude privacy.**

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Which data may I collect? – Data Protection

- **Prior to granting the permit:** The local authority has to check that data protection requirements are observed.
- The drone user has the **obligation of proof** that no data protection rules are violated.

Which data may I collect? – Initial summary

Data Protection Rules are “technology-neutral“.

Specific relevant regulatory areas for the collection of data by drones are:

- **Data Protection Acts (EU and national)**
- **Copyright Laws**
- **German Criminal Code – and ancillary penal laws**

Which data may I collect? – Data Protection

- **Not applicable for the pure private/individual use – not relevant for model plane use**
- **But for UAS:**
 - Gathering of data must be **kept at a minimum** required for the use described in the permit to fly.
 - **Generally requires a permit by the data subject.**
 - **In lack of a permit, general rule:**

The interests of the data controller in the data must outweigh the personal interests of the data subject .

Which data may I collect? – Copyright Law

Pictures of buildings:

- **Works of architecture which stick out of the mass of commonplace constructions** may be **copyright protected**.

→ No photography or filming **without permission** from the copyright holder.

Exception:

Taking pictures of and **filming buildings from public roads, streets or squares** is admissible (so-called “Freedom of Panorama”).

BUT: The concept may not apply to the aerial view from drones!

Which data may I collect? – Copyright Law

Pictures of Persons - German law regulating art copyrights:

In principle, an **image of a person** can only be **distributed or publicly displayed** with the **prior consent** of the person illustrated.

Exceptions:

1. Images categorised as being part of the “sphere of contemporary history”;
2. Persons only appear as an **accessory** in the background next to a landscape or another locality;
3. Pictures of **gatherings**, public processions, and similar activities;
4. The distribution or the display of images categorised as serving for the **greater good of art** (without having been ordered).

Which data may I collect? – Criminal Law

Use of UAS may also have a **criminal law impact**:

- **Section 94 StGB (German Criminal Code)** – Acts of treason (theft of state secrets);
- **Section 96 StGB** – treacherous spying; exploring state secrets;
- **Section 109g StGB** – security endangering images (pictures of military facilities etc.);
- **Section 201a StGB** – injury of personal living sphere by visual recordings.

Which data may I collect? – Outlook

Data protection law will **become harmonised across the EU Member States.**

The **General Data Protection Regulation (EU) 2016/679** entered into force on **24 May 2016.**

It applies from **25 May 2018** – allowing a two year transition period.

The GDPR is still **technology neutral** – it **does not mention drones.**

Harmonised data protection rules may help professional drone users **establish a Europe wide business** – together with the expected EU rules on drones to be developed by EC/EASA.

Additional Information

- For additional information, we invite you to visit our website www.bho-legal.com with latest news and data base on relevant laws on drones.
- ...or contact me directly...

Thank you very much!



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