

If you have any questions about this Advisory, please contact:

DAVID HALL
215.988.8325
dhall@wiggin.com

TAHLIA TOWNSEND
203.498.4339
ttownsend@wiggin.com

BENJAMIN DANIELS
203.498.4350
bdaniels@wiggin.com

DANIEL GOREN
203.498.4318
dgoren@wiggin.com

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

U.S. Regulators Face European Competition on UAV

Just as the commercial space and satellite industry in the United States during the 1990s was hurt by export restrictions on its products, the country's commercial unmanned aerial vehicle ("UAV") industry may soon fall behind its European and Canadian counterparts.

According to news reports, Airbus Defense and Space recently filed an application with the European Aviation Safety Agency ("EASA") to fly the Airbus' Atlante UAV on civilian missions. The Atlante has a 26-foot wingspan and flies at a maximum speed of 123 mph using a propeller engine. The application—touted as the first of its kind in Europe—would allow UAV surveillance of oil pipelines, power lines, railways, large-scale sporting events, and environmental disasters such as forest fires. The UAV would replace more costly piloted aircraft currently performing the same tasks.

Because the application is reportedly the first of its kind in Europe, commentators predict delays in the approval process as Airbus works with EASA to develop a workable certification and regulatory framework. However, the application puts pressure on U.S. regulators to develop rules to address similar applications.

Other regulators are also loosening UAV regulations. Canada recently announced new regulations that will allow broad use of small UAVs in Canadian airspace. The regulations allow persons to fly small, commercial UAVs (under 2 kilograms) in unrestricted airspace without prior governmental approval. Larger

UAVs (up to 25 kilograms) are similarly exempt, as long as they have a maximum airspeed of 100.1 mph.

The Federal Aviation Administration ("FAA") has for years said it is developing regulations that will allow civilian use of UAVs in the national airspace, but no such rules have yet been published. The FAA's glacial pace in designing new rules for UAVs has upset many hoping to enter the industry and has hampered the ability of universities and entrepreneurs wanting to use UAVs in research, marketing, and business operations. In September, the FAA did authorize six film crews to use UAVs, but strictly limited such use to UAVs that weigh less than 55 pounds, operate at slower speeds, and fly lower than 400 feet in areas cleared of other air traffic. According to news reports, the FAA has received dozens of other applications from other industries, though approval of them depends on the FAA's assessment of the risks to public safety.

The steps by Airbus and Canada certainly place pressure on U.S. regulators. If those countries can incorporate civilian UAVs into their national airspaces faster than the U.S., then the U.S. industry might suffer a competitive disadvantage. And given the country's hefty restrictions on the export of UAVs under the International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR"), competing in the European or Canadian market may prove too costly.