

**Comments to the reply of the communicant, derived from the questions raised by the Compliance Committee of the Aarhus Convention, regarding the communication on compliance by Spain with the provisions of the Convention on public participation in connection with the updating of environmental permits (ACCC/C/2014/122)**

1. In coherence with what we have been exposing during this whole process, the updating of the permits described in paragraph 1 of the Spanish Transitional Disposition (STD) sets a minimum common content for the integrated permits already delivered under IPPC Directive 2008/1 (existing installations) in order to adjust their conditions to the changes introduced by the Industrial Emissions Directive (IED) in regards to the content of the permits, not being related this content in any case to technical nor functioning characteristics of the installations.
2. The response received from the communicant IIDMA to the Compliance Committee last 2 June, in relation to the correspondence between articles of the IED and the STD of the Royal Decree 1/2016 (RLD), states that paragraphs c) and d) of STD correspond to article 12, paragraph 1, subparagraphs h) and e) of the IED respectively.
3. According to the purpose for which the STD was intended, we would like to note that to our understanding this correlation is not correct; paragraph c) and d) correlate respectively, as we conclude in our reply to the Compliance Committee of 2 June 2020, to subparagraphs e) and h) of article 11.1 of the IED. To this extend, we would like to express some remarks:
  - The updating of the STD does not correspond to the granting permit procedure for new installations regulated in article 12 *et seq.* of IED and in article 12 ff. of RLD 1/2016, and for which an application is needed.
  - The updating of the STD is not a reconsideration and ulterior updating of permits for existing installations, as it does not fit in any of the casuistry enumerated in article 21 IED (paragraphs 3 and 5) and in article 26 RLD 1/2016 (review and adaptation according to the wording of our legislation), and for which an application is also necessary.
  - The updating of the STD does not correspond to a procedure to introduce changes in existing installations, as set out in article 20 of the IED and in articles 10 of RLD 1/2016 and article 15 of RD 815/2013, for which applications must be submitted.

Taking into account these considerations, for the updating of permits as provided in STD there is no legal obligation to submit an application, as the nature of this procedure does not correspond to any of the other processes regulated in the European or Spanish legislation needing an application.

Therefore, if no application is needed, the content of the subparagraphs c) and d) of paragraph 1 of the STD cannot be correlative to article 12.1 of the IED, which establishes what must be the minimum content of the application of the integrated permits.

4. With respect to the breach of article 6.10 of the Aarhus Convention, and in coherence to what has been stated in previous paragraphs of this document, we would like to make some reflections:

- Article 6 of the Aarhus Convention establishes the “Public participation in decisions on specific activities”, in concrete:

“1. Each Party:

(a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I (...)

10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied “*mutatis mutandis*”, and where appropriate.”

This paragraph 10 refers to the reconsideration and updating procedure (review and adaptation in the Spanish legislation), as it is specified in article 21 of the IED, and since the updating of the STD does not adjust, as we mentioned before, to the casuistry of their paragraphs 3 or 5, article 6.10 of the Aarhus Convention cannot be applied to the Spanish disposition.

- Article 24 de la IED, related to “Access to information and public participation in the permit procedure” states:

“1. Member States shall ensure that the public concerned are given early and effective opportunities to participate in the following procedures:

(a) the granting of a permit for new installations;

(b) the granting of a permit for any substantial change;

(c) the granting or updating of a permit for an installation where the application of Article 15(4) is proposed;

(d) the updating of a permit or permit conditions for an installation in accordance with Article 21(5)(a)”.

As we have indicated several times in previous sections, the updating procedure of STD does not correspond to any of the cases included in article 24.1 IED describes, so this provision cannot be applied to it.

- Considering these two legislations that regulate the access to information and public participation in the permitting procedure in Europe, **we can conclude that no public participation process was needed for the updating of the conditions listed in the STD in regards to the permits for existing installations authorized under IPPC Directive.**

5. Finally, we would like to stress that the conditions related to technical or functioning characteristics of the permits that were updated under STD, have been reviewed and their conditions adapted to article 21 and, where appropriate, to article 20 of the Industrial Emissions Directive during the time elapsed from the enactment of Law 5/2013 until today.