

COMMUNICATION ACCC/C/2014/122

SPANISH LEGAL FRAMEWORK

➤ On environmental matters:

- Central Administration (State): competent for the development of basic legislation on environmental protection (general guidelines).
- Autonomous Communities: competences for the execution and management of the protection of the environment, development of additional protection legislation (can be more strict but never less).
- Local Administration: development of legislation related to the protection of local environment, road cleaning and supply, and fire prevention and extinction.

➤ On industrial emissions:

- Legislative Royal Decree 1/2016 (consolidated text of the Law 16/2002 on Integrated Pollution Prevention and Control, including amendments introduced by: Law 1/2005, Law 27/2006, Law 34/2007, Law 42/2007, Law 40/2010, Royal Decree-Law 8/2011 and **Law 5/2013**).
- Royal Decree 815/2013, developing the technical aspects of the Law 16/2002.

CLARIFICATION OF TERMS: RECONSIDERATION - UPDATING / REVIEW – ADAPTATION - UPDATING

Article 21 Directive on Industrial Emissions (IED), “*Reconsideration and updating of permit conditions by competent authorities*”, establishes to **reconsiderate** and, if necessary, **update** the permit conditions:

Article 26 Royal Legislative Decree 1/2016: “*Review of the permit*” establishes the **review** and, if necessary, the **adaptation** of the permit conditions:

- At the request of the competent authority:
 - Within 4 years of publication of BAT conclusions (art. 26.1 and 2) (**art. 21.2 and 3**).
 - In case of significant pollution leading to a revision or setting new ELVs (art. 26.4 a) (**art. 21.5 a**).
 - Because of operational safety reasons (art. 26.4 c) (**art. 21.5 b**).
 - Sectoral legislation considers it so or to comply with environmental quality standards (art. 26.4 e) (**art. 21.5 c**).
 - In case of setting less strict ELVs than the ones established in BATAELs (art. 26.2) (**art.21.3**).
 - When it is possible to reduce the emissions significantly without imposing high costs (art. 26.4b). **Not included in IED**.
 - The basin authority considers necessary to review the conditions related to discharges in the water public domain (art. 26.4 d). **Not included in IED**.
- At the the request of the operator in case of carrying out a substantial change in the installation (article 10.3) (**art. 20**) by means of the simplified procedure of article 14 and 15 of the Royal Decree 815/2013.

IED foresees the **updating of permit conditions** as a consequence of the **reconsideration of the permit** in these concrete cases; Spanish legislation establishes the same figure but with diferent terminology: **reconsideration** = **review** , and **updating of permit conditions** = **adaptation of permit conditions**.

CLARIFICATION OF TERMS: RECONSIDERATION - UPDATING / REVIEW – ADAPTATION – UPDATING

1st Transitional Provision of the Royal Legislative Decree 1/2016 (Law 5/2013) stipulates

For the transposition of the IED in 2012: Spain transposed the provisions included in its article 11 *“General principles governing the basic obligations of the operator”*, and create a transitional provision for the Spanish permits to have a basis to work from in order to be in line with the basic obligations of the Directive before January 2014 (article 82 IED).

- Need of simplifying the administrative burdens to the competent authorities of the Autonomous Communities, complying at the same time with the provisions of the European acquis related to simplification of the regulations and better legislation.
- Need of harmonization of the legislation: by the time of the transposition, the Autonomous Communities had developed legislation on industrial emissions at very different levels of environmental protection; some of them had already included in their integrated permits these provisions contained in the 1st TD and others did not.

The 1st TD is an UPDATING THAT IS NOT A RECONSIDERATION (review in our legislation) nor updating (adaptation in RDL 1/2016) of the permit conditions; it is an **updating of the permit** by means of an addition of some provisions, a minimum content, that entitled the integrated permit to increase the environmental protection and be in line with the basic obligations of the IED. The provision **did not modify any technical condition of the permit already established**, as the emission limit values (ELVs), monitoring requirements or conditions for the minimisation of long distance or transboundary pollution.

Additionally, it is necessary to stress that no comments were made on the part of the Commission in relation to this transitional provision when Spain sent the legislation designed for the transposition of the IED.

PUBLIC PARTICIPATION

Article 24 Directive on Industrial Emissions (IED), *“Access to information and public participation in the permit procedure”*, stipulates an early participation for the public concerned in procedures of:

- Granting a permit for new installations or for existing installations in case of substantial changes.
- Granting or updating of a permit when derogation from article 15.4 is proposed (ELVs less strict as exemption).
- The updating of a permit or permit conditions for an installation in accordance with article 21.5 (significant pollution).

This provision of the IED does not foresee a public participation process for the updating of the permit as it is conceived in our 1st TD.

Transposition of article 24 IED into Spanish legislation

Article 24 Access to information and public participation in the permit procedure	Paragraph 1 a), b) and d)	Article 1 Paragraph 39 Law 5/2013, 11th June Annex 4 RDL 1/2016
	Paragraph 1 c)	Article 1 Paragraph 18 Law 5/2013, 11th June Article 24.3 RDL 1/2016
	Paragraph 2 a), b), d), e) and f)	Article 1 Paragraph 39 Law 5/2013, 11th June Annex 4 RDL 1/2016
	Paragraph 2 c)	Article 1 Paragraph 18 Law 5/2013, 11th June Article 24.3 RDL 1/2016
	Paragraph 3 a)	Article 1 Paragraph 18 Law 5/2013, 11th June Annex 4 RDL 1/2016
	Paragraph 3 b)	Article 1 Paragraph 18 Law 5/2013, 11th June Annex 4 RDL 1/2016

According to the second paragraph of the 1st TD itself, after the updating of the basic obligations of the IED the competent authorities in Spain have the obligation of reviewing all the permits according to the mentioned articles 20 and 26 of the Royal Legislative Decree 1/2016, procedures that include their own public participation and access to information process (articles 24 and Annex IV of the RDL 1/2016)..

Thank you for your attention,