



MINISTERIO
DE AGRICULTURA, ALIMENTACIÓN
Y MEDIO AMBIENTE

SECRETARÍA DE ESTADO DE MEDIO
AMBIENTE

DIRECCIÓN GENERAL DE CALIDAD Y
EVALUACIÓN AMBIENTAL Y MEDIO
NATURAL

COMMUNICATION TO THE AARHUS CONVENTION COMPLIANCE COMMITTEE CONCERNING COMPLIANCE BY SPAIN WITH THE PROVISIONS OF THE CONVENTION ON THE CONVENTION IN CONECTION WITH THE UPDATING OF ENVIRONMENTAL PERMITS (ACCC/C/2014/122)

I. - INTRODUCTION

The 12th 2014 the Secretariat of Aarhus Convention received the Communication registered as ACCC/2014/122 addressed to the Compliance Committee in relation to the compliance of the Kingdom of Spain of the requirements set by article 6 (10) of the Convention related to public participation.

The communication was presented by Instituto Internacional de Derecho y Medio Ambiente (IIDMA).

The Compliance Committee on the sessions of 24-27 March decided to admit in a preliminary basis that Communication.

The 28th June 2015 the Secretariat of the Compliance Committee sent a letter to the Spanish National Focal Point giving a period until 28th November 2015 for submitting the allegations to be consider appropriate.

II. – FACTS OF THE COMMUNICATION

The Communication refers to how the provisions of the Aarhus Convention related with public participation has been taken into consideration for the updating of the existing permits regulated in 1st Transitional Disposition of the IPPC Law, for the activities under Annexe I of IPPC Law and Royal Decree 815/2013. More precisely, the Communication refers to article 6 (10) of the Convention that lays down:

“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.”



III. - ALLEGATIONS

1.- The main purpose of Spanish law 5/2013 , 11th June, is to incorporate into Spanish Legislation the Directive 2010/75/EU of the European Parliament and of the Council of 24th November 2010 on industrial emissions (integrated pollution prevention and control) ¹, that, according to Spanish legal system requires a Law legal act.

And therefore, it should be highlighted that the content of the Spanish Law is determined by the content of the Directive which is deemed to be correctly transposed as no communication has been received from the European Commission in relation with an improper transposition of the mentioned Directive.

2. - Without prejudice to the foregoing, should be highlighted that there are some differences between the terminology used in the Spanish Law and in the Directive. The term “update” is only applicable for the cases under the 1st Transitional Disposition of the Law. That is to say, the analysis of the permits granted before the Law entered into force to check that those permits fulfilled with the requirements of the IED before 7th January 2014.

That is not an automatic update of the permits as it is envisaged that the accreditation of compliance of the requirements sets in the previous paragraph. Moreover, it should be make publicly available in the Official Gazette of the competent Regional Authority.

On the contrary, the revision of the permits takes place when the particularities of the installation change (for example due to a capacity extension) o because the BAT Conclusion Document for the sector enter into force. In case of a review, the Spanish legislation includes a public participation period.

3. - Article 24 of the Directive lays down where a public participation process is enforceable. Amongst these assumptions, it is not included the cases where the update of the permits would be applicable (cases provided under Law 1st Transitional Provision).

4.- The Directive already lays down the cases (“where appropriate”) where a public participation process is needed. Consequently, the public participation in accordance with the precepts of the Aarhus Convention are guaranteed article 24 of the Directive 2010/75/EU, has been transposed into the Spanish Legislation as it is shown in to the following correspondence table between the Directive and the Spanish legislation. This correspondence table is included as Annex I of the Memorandum on the Regulatory Impact Analysis of the draft Law.

¹ <http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:32010L0075>



Article 24 Access to information and public participation in the permit procedure	Paragraph 1 a) y b)	Art 1 of Paragraph 36 Law 5/2013, 11th June.
	Paragraph 1 c)	Art 1 of Paragraph 36 Law 5/2013, 11th June.
	Paragraph 1 d)	Art 1 of Paragraph 36 Law 5/2013, 11th June.
	Paragraph 2 a), b), d), e) y f)	Art 1 of Paragraph 36 Law 5/2013, 11th June. Art 1 of Paragraph 16 Law 5/2013, 11th June.
	Paragraph 2 c)	Art 1 of Paragraph 36 Law 5/2013, 11th June.
	Paragraph 3 a)	Art 1 of Paragraph 16 Law 5/2013, 11th June.
	Paragraph 3 b)	Art 1 of Paragraph 16 Law 5/2013, 11th June.

5. - Besides this, it should be pointed out that during the processing of the Law 5/2013, 11th June, public participating and public hearing procedures set by Law 27/2006 that incorporates into the Spanish legislation the Aarhus Convention and lays down the access to information, public participation in decision-making and access to justice in environmental issues (transposing the 2003/4/EC and 2003/35/EC Directives)², as follow:

The draft bill was made publicly available into the corporative web-page of the Ministry for a month, since 9th May until 9th June 2011. After the public information period, all comments were compiled and all the observations made by all the stakeholders and the public were examined.

1st March 2012 draft bill was submitted for the information of the *Consejo Asesor de Medio Ambiente*, (Advisory Council for the Environment) as it lays down by article 19 of Law 27/2006. During the session, the Ministry of Agriculture, Food and Environment gave a period of ten days in case the participants considered necessary to make new comments on the text. The observations received were examined, and incorporated into the draft law text where appropriate.

² <https://www.boe.es/buscar/doc.php?id=BOE-A-2006-13010>



By the end of March the draft bill was sent to all the Ministries potentially affected by the text in order to get the reports provided for Law 50/1997, one example is the report drawn up by the Ministry of Finance and Public Administration, as the draft law could affect the system of distribution of powers between the State and the Autonomous Communities.

The results of the public participation period had been incorporated to draft text sent to the *Comisión Sectorial* held on the 28th May as a preparatory sessions for the *Conferencia Sectorial* (Consultative Bodies of the State with the Autonomous Communities) held on the 6th June 2012 were the one-month extension period for the issuance of the binding report issued by the River Basin Authorities on the proposed text.

The version of the text by that time did not include any transitional disposition although the aspects related with the revision and update of the permits were already included into article 25 of the draft bill version that was publicly available on the Ministry's web-page and into article 26 of text version remitted to *Consejo Asesor de Medio Ambiente*, with different drafting but the same content.

In one of the perceptive legal report, the *Secretaría General Técnica* of the Ministry says that the content of article 26.1 sets a transitional period due to the fact that the content refers to a concrete fact: the permits granted before the Law that modifies the IPPC Law; and it refers to a precise period of time: before 7th January 2014 and 31st December 2016 for Large Combustion Plants. In the followings versions of the draft bill, this is included into the 1st transitional disposition.

As a result of the allegations made In the *Conferencias Sectoriales* mentioned above, the paragraph 3 of the Transitional Disposition was included.

As evidence by the Memorandum on the Regulatory Impact Analysis of the draft Law any allegation was received during the processing of the Law by the *Instituto Internacional de Derecho y Medio Ambiente* in relation with the content of article 26.1 of the draft bill.

6. For all the explanations above, it is intended that the transposition was done correctly, in compliance with the precepts lay down article 6 of the Aarhus Convention and Directive 2010/75/EU, 2003/4/EC and 2013/35/CE.