

Challenges and good practices in decision- making related to changes to or extensions of existing activities

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article 6 paragraph 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.
- paragraph 22 of annex I, which extends article 6 to **changes in or extensions of activities** covered in that annex when those changes themselves meet the thresholds/criteria set out in it



Aarhus Implementation Guide

Верховенство права для захисту довкілля

- However, implicit in the concept of “mutatis mutandis”, as applied in the light of the objectives of the Convention, is the presumption that, in case of any doubt, the provisions *should* be applied. Furthermore, from an administrative point of view, it may be more efficient to develop a single set of procedures that could be applied in all cases, rather than to make a case-by-case determination.



Maastricht Recommendations

When a public authority reconsiders or updates the operating conditions for an activity referred to in article 6, paragraph 1, it should make a determination of whether it is appropriate to apply the provisions of article 6, paragraphs 2 to 9 based on :

- The nature and magnitude of the activity, the potential impact on the environment and the level of public concern;
- The goals of the Convention, recognizing that access to information and public participation in decision- making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns, enable public authorities to take due account of such concerns, further the accountability of and transparency in decision-making and strengthen public support for decisions on the environment

Current situation- NIRs 2014

- Legislation is in force, half of Parties did not answer (non-EU MS)
- E.g.:Austria – modifications of projects subject to EIA procedure
- Croatia – changes or reconstructions related to the listed projects are subject to standard EIA procedure or evaluation of the need for the EIA is carried out.
- France – changes to authorisation of activities – subject to EIA. Other procedure for changes in operation of installations classified for environmental protection purposes.
- Germany – PP for new relicensing of facilities covered by Industrial emissions directive.
- Latvia – reconsideration or prolongation of pollution permits if considered significant – require PP + amendments to the activities requiring EIA

- Netherlands – PP procedure applies to reconsideration or updating of the operating conditions for the activities listed in annex I.
- Norway – alteration of pollution permits+ reconsideration or update of licenses – require PP, except minor impact on environment.
- Romania – detailed process of PP when revision of screening decision, environmental permit or Natura 2000 approval is taking place
- Serbia – EIA and PP procedure is needed in cases of changes in technology, reconstruction, extension of capacity, termination of operations, etc.
- Sweden - When the conditions for an activity that has a permit are reconsidered or updated, EIA and PP apply

Case of Ukraine

- New EIA law was vetoed by the President
- Reconsideration of permits, decisions lack PP requirements, unclear procedures
- Nuclear decision-making on LTE (light improvements)
 - public is informed (not early)
 - public is provided with (in)sufficient information
 - public hearings are held (participants from the NPP invited)
 - field visit with public participation happens
 - final decision with no due account of PP outcomes

Challenges

- Text of art.6 para 10 provides discretion
- Absence of clear provisions in national legislation on EIA, permitting, licensing, planning etc.
- Absence of detailed list of possible decisions
- Changes of activities with no threshold – cases by case basis (p.22 Annex 1)?
- Change of activities with likely transboundary effects



Way forward

- Study on legal framework and practical implementation of para 10 art.6 among Parties (in particular non EU MS)
- Successful practices and good legal framework identified and shared
- Guidelines on implementation of art.6 para 10 is needed
- Separate focus on implementation of art.6 para 10 in nuclear decision-making
- Synergy with Espoo Convention
- Applications to national courts, ECJ on violation of art.6 para 10
- Potential of AC CC not fully utilized