

The background is a dark blue image featuring a stylized map of Europe. Overlaid on the map are numerous glowing blue lines and circular nodes, resembling a network or energy grid. Some nodes have concentric circles around them, suggesting signal or energy transmission.

The definition of „new“ and „existing“ plant under D/2013/06/MC-EnC

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Purpose and scope



- *Terms “new” and “existing” plants are used but no definition in D/2013/06/MC-EnC*
- *No decisive conclusions can be drawn upon the preparatory work on the two 2013 LCP decisions*
- *Common understanding is absolutely necessary for proper implementation*
- *Art. 94 Treaty – Ministerial Council’s right to provide guidance*
- *Secretariat’s position*

- **LCPD as adapted by Art. 1 of D/2013/05/MC-EnC: 1 July 1992 as cut-off date**
- **IED: no definition on “new” and “existing” plant, de facto distinction in Art. 30(2): “Part 1 installations” (less stringent ELVs), Part 2 installations (more stringent ELVs)**
- **D/2013/06/MC-EnC: CPs shall implement IED Chapter III and Annex V from 1 January 2018 for new plants and shall endeavour to implement for existing plants**
- **Parallel application of the two directives in EnC law**

Possible interpretations



- ***Apply the same definition as for the LCPD (1992)***
 - ***pro: consistent use of legal terms in EU law (ECJ), clear definition***
 - ***con: ECJ case-law based on highly different legal basis***
- ***Article 15 Treaty: after entry into force, all new plants have to comply with the acquis (2006)***
 - ***pro: clear distinction, legislative intent***
 - ***con: no IED in 2006, not touched upon in the preparation of D/2013/06/MC-EnC***

Possible interpretations



- **Link cut-off date to date of decision (2013)**
 - **pro: legislative intent (“new” after decision’s entry into force), Art. 15 analogy**
 - **con: Art. 2(1) of D/2013/06/MC-EnC: problems arising from transposition**
- **Link cut-off date to transposition deadline (2018)**
 - **pro: same concept as in IED, equal treatment**
 - **con: none**
- **Secretariat considers interpretations 3) and 4) as valid**
- **Analogy with EU approach**

Categories of plants



In practice, plants would need to comply with:

- *Operating permit before 1 July 1992: LCPD existing / NERP / opt-out*
- *Operating permit between 1 July 1992 – 30 June 2006: LCPD “old new” (Parts A of the Annexes)*
- *Operating permit between 1 July 2006 – 31 December 2017: LCPD “new new” (Parts B of the Annexes)*
- *Operating permit after 1 January 2018: IED*

Which permit counts?



- *In most CPs, more than one permit is necessary*
- *Art. 2(7) IED: ‘permit’ means a written authorisation to operate all or part of an installation or combustion plant, waste incineration plant or waste co-incineration plant*
- *The last one that allows the operator to permanently operate the plant (start-up or test mode not included)*

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