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

Peter VAJDA, Environmental Expert, Energy Community Secretariat
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)
Thank you for your attention!

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