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Subject:	Proposal for a Directive of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from medium combustion plants - General approach

INTRODUCTION

1. The Commission submitted its proposal to the Council and the European Parliament on 18 December 2013 as part of the "Clean Air Programme for Europe" Strategy. It is based on Article 192(1) TFEU.

The proposal covers medium-size combustion plants (MCP) with a rated thermal input between 1 and 50 MW which are an important source of emissions of sulphur dioxide, nitrogen oxides and particulate matter (dust). It aims at closing the regulatory gap between the provisions of Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control - IPPC) ¹ and the provisions of Directive 2009/125/EC on ecodesign requirements for energy-related products ².

2. The European Parliament ENVI Committee has not yet voted on its report on the proposal. Consequently, the European Parliament position in first reading is not yet available.
3. The Economic and Social Committee and the Committee of the Regions delivered their opinions on 10 July 2014 and on 6 October 2014 respectively.

II. WORK WITHIN THE COUNCIL

4. The Working Party on the Environment (WPE) examined the MCP proposal as well as its impact assessment at several occasions and, for the last time, on 11 November 2014. It made substantial progress in its discussions and found balanced compromises on the main aspects of the proposed Directive.
5. After the last WPE, the Presidency informally continued to explore bilaterally with the delegations possible solutions to the remaining open points, mainly related to the applicability of the proposal to existing plants and to the figures in Annex II of the proposal, setting out the Emission Limit Values for each pollutant.

¹ OJ L 334, 17.12.2010, p.17.

² OJ L 285, 31.10.2009, p.10.

6. The Committee of the Permanent Representatives considered the proposal on 10 December 2014. An agreement in principle was reached by qualified majority on the basis of a Presidency compromise text , adjusted in the light of the discussion in the Committee, with a view to the adoption of a general approach at the Council (Environment) on 17 December 2014.

In the context of that discussion in the Committee, and against the background of the current review of legislative proposals by the Commission, including on air quality, with a view to its forthcoming work programme for 2015, a number of delegations underlined the importance of environmental legislation also in terms of economic growth and job creation.

7. The BG/CZ/EE/FI delegations indicated they could not support the text, while NL and the Commission maintained a general scrutiny reservation. MT maintains a Parliamentary scrutiny reservation at this stage.

III. CONCLUSION

8. In the light of the above, the Council is invited to adopt a general approach on the basis of the text as set out in the Annex to this Note ³, which will constitute the basis for future negotiations with the European Parliament in the context of the ordinary legislative procedure.

³ Revisions to document 16105/14 are marked as **bold**, deletions are indicated by [...].

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the limitation of emissions of certain pollutants into the air
from medium combustion plants

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee ¹,

Having regard to the opinion of the Committee of the Regions ²,

Acting in accordance with the ordinary legislative procedure ³,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

³ Position of the European Parliament of xx/xx/xxxx (OJ C ..., p. ...) and position of the Council at first reading of xx/xx/xxxx (OJ C ..., p. ...). Position of the European Parliament of xx/xx/xxxx (OJ C ..., p....) and decision of the Council of xx/xx/xxxx.

- (1) Decision 1386/2013/EU of the European Parliament and of the Council ⁴ (the Action Programme) recognises that emissions of pollutants to air have been reduced significantly over the past decades, but at the same time air pollution levels are still problematic in many parts of Europe, and citizens of the Union continue to be exposed to air polluting substances, potentially compromising their health and wellbeing. According to the Action Programme, ecosystems continue to suffer from excess nitrogen and sulphur deposition associated with emissions from transport, unsustainable agricultural practices and power generation.
- (2) In order to ensure a healthy environment for all, the Action Programme calls for local measures to be complemented with adequate policy at both national and Union level. It requires in particular strengthening efforts to reach full compliance with air quality legislation of the Union and defining strategic targets and actions beyond 2020.
- (3) Scientific assessments show that the average lifetime loss for citizens of the Union due to air pollution is of eight months.
- (4) Emissions of pollutants from the combustion of fuel in medium combustion plants are generally not regulated at Union level although they contribute increasingly to air pollution, due in particular to an increase in the use of biomass as a fuel, driven by climate and energy policy.

⁴ Decision 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 "Living well, within the limits of our planet" (OJ L 354, 28.12.2013, p171).

- (5) The combustion of fuel in certain small combustion plants and appliances is covered by acts implementing Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products ⁵. Further measures are however needed under Directive 2009/125/EC in order to cover the remaining legislative gap. Combustion of fuel in large combustion plants is covered by Directive 2010/75/EU of the European Parliament and of the Council ⁶ from 7 January 2013, while Directive 2001/80/EC of the European Parliament and of the Council ⁷ continues to apply to large combustion plants covered by Article 30(2) of Directive 2010/75/EU until 31 December 2015.
- (6) The report of the Commission of 17 May 2013 ⁸ on the reviews undertaken under Article 30(9) and Article 73 of Directive 2010/75/EU concluded that for the combustion of fuels in medium combustion plants, a clear potential for cost-effective abatement of air emissions was demonstrated.
- (7) The Union's international obligations on air pollution to abate acidification, eutrophication, ground-level ozone and emissions of dust are agreed under the Gothenburg Protocol of the Convention on Long Range Transboundary Air Pollution, which was amended in 2012 to strengthen the existing reduction commitments for sulphur dioxide, nitrogen oxides, ammonia and volatile organic compounds and introduce new reduction commitments for fine particulate matters (PM2.5), to be attained from 2020 onwards.

⁵ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (OJ L 285, 31.10.2009, p.10).

⁶ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p.17).

⁷ Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants (OJ L 309, 27.11.2001, p. 1).

⁸ COM(2013)286 final.

- (8) The Communication from the Commission to the Council and the European Parliament "A Clean Air Programme for Europe"⁹ calls for action to control emissions of air polluting substances from medium combustion plants, thereby completing the regulatory framework for the combustion sector. The Strategy completes the pollution reduction agenda for 2020 laid down in Commission Communication of 21 September 2005 on the Thematic Strategy on Air Pollution¹⁰, and develops impact reduction objectives for the period up to 2030. To achieve the strategic objectives, a regulatory agenda should be established, including measures to control emissions from medium combustion plants.
- (9) [...] Medium combustion plants that are part of a combustion plant covered by Chapter III (because of the aggregation rule set out in Article 29) or by Chapter IV (because waste is being fired) of Directive 2010/75/EU should [...] be exempted from the scope of this Directive as they already are subject to Union-wide minimum requirements under Directive 2010/75/EU. Certain other combustion plants should also be exempted from the scope of this Directive, on the basis of their technical characteristics or their use in particular activities.
- (9a) As medium combustion plants firing refinery fuels within mineral oil and gas refineries and recovery boilers within installations for the production of pulp are subject to emission levels associated with BAT set out in best available techniques (BAT) conclusions already established under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, this Directive should not apply to such plants.
- (10) In order to ensure the control of emissions of sulphur dioxide, nitrogen oxides and dust into the air, each medium combustion plant should operate only if it is at least registered by the competent authority, based on notification by the operator.

⁹ COM(2013) xxx final.

¹⁰ COM(2005) 446 final.

- (10a) In order to ensure that the operation of a medium combustion plant does not lead to a deterioration of air quality, measures taken to limit emissions of sulphur dioxide, nitrogen oxides and dust into the air should not result in an increase of emissions of other pollutants, such as carbon monoxide.
- (10b) This Directive should apply to combustion plants, including a combination formed by two or more combustion plants, with a total rated thermal input equal to or greater than 1 MW and less than 50 MW. Individual combustion plants with a rated thermal input below 1 MW should not be considered for the purpose of calculating the total rated thermal input of a combination of combustion plants. In order to avoid regulatory gaps, the provisions of this Directive should also apply to a combination formed by medium combustion plants where the total rated thermal input is equal to or more than 50 MW, without prejudice to the provisions of Chapter III of Directive 2010/75/EU.
- (10c) In view of their location and the technical and logistical issues associated with it, for Spain with regard to the Canary Islands, for France with regard to the French Overseas Departments, and for Portugal with regard to the archipelagos of Madeira and Azores, it is more appropriate for the Member States concerned to set the emission limit values for medium combustion plants operating within these areas without making them subject to the EU-wide minimum requirements. [...];

- (11) For the purposes of controlling emissions into air from medium combustion plants, emission limit values and requirements for monitoring should be set out in this Directive. For medium combustion plants covered by Chapter II of Directive 2010/75/EU, the emission limit values and monitoring requirements set out in this Directive should be considered to represent the Union-wide minimum requirements. [...] However, **[...] where medium combustion plants [...] are part of an installation covered by Chapter II of Directive 2010/75/EU and emission limit values apply pursuant to the provisions of article 13(5) and article 15(3) of that Directive to those plants, it may be unduly burdensome to subject the plants to additional emission related obligations under this Directive. Therefore, Member States should in such cases have the possibility of exempting such plants** from compliance with the emission limit values set out in Annex II and the provisions of article 6 for those pollutants for which emission limit values apply pursuant to the provisions of article 13(5) and article 15(3) of Directive 2010/75/EU **to** those combustion plants.
- (12) In order to provide existing medium combustion plants with sufficient time to adapt technically to the requirements of this Directive, the emission limit values should apply to those combustion plants after a fixed period from the date of application of this Directive.
- (13) In accordance with Article 193 of the Treaty on the Functioning of the European Union (TFEU), this Directive does not prevent Member States from maintaining or introducing more stringent protective measures, including stricter emission limit values, than the requirements set in this Directive. [...].
- (14) Member States should ensure that the operator of a medium combustion plant [...] takes the necessary measures in the event of non-compliance with this Directive. Member States should set up a system to check compliance of medium combustion plants with the requirements of this Directive.

- (15) In order to limit the burden for small and medium enterprises operating medium combustion plants, the administrative obligations on operators for notifying, monitoring and reporting should be proportionate, while still allowing effective compliance verification by the competent authorities.
- (16) To ensure the consistency and coherence of the Member State information on the implementation of this Directive and promote exchange of information between Member States and the Commission, the Commission, assisted by the European Environment Agency, should develop an electronic reporting tool also available for internal use by Member States for national reporting and data management purposes.
- (16a) The Commission should assess the need to amend the emission limit values set out in Annex II for new medium combustion plants, on the basis of the state of the art technologies. In this context, the Commission should also consider the opportunity of setting out specific emission limit values for other pollutants, such as carbon monoxide (CO).
- (17) In order to adapt to scientific and technical progress, the power to adopt acts to adjust the provisions on emission monitoring set out in Annex IV in accordance with Article 290 TFEU should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.
- (18) Since the objectives of this Directive, namely the improvement of environmental quality and human health, cannot be sufficiently achieved by Member States, and can therefore be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

- (19) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure the application of Article 37 on the environmental protection of the Charter.
- (20) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents ¹¹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down rules to control emissions of sulphur dioxide, nitrogen oxides and dust into the air from medium combustion plants, and thereby reduce emissions to air and the potential risks to human health and the environment from such emissions.

Article 2

Scope

1. This Directive shall apply to combustion plants with a rated thermal input equal to or greater than 1 MW and less than 50 MW (hereinafter referred to as ‘medium combustion plants’), irrespective of the type of fuel used.

¹¹ OJ C 369, 17.12.2011, p. 14.

This Directive shall also apply to a combination formed by medium combustion plants according to article 3a, including where the total rated thermal input of such combination is equal to or more than 50 MW, unless this combination is a combustion plant covered by Chapter III of Directive 2010/75/EU.

2. This Directive shall not apply to the following:

- (a) combustion plants which are covered by Chapter III or Chapter IV of Directive 2010/75/EU;
- (b) [...]
- (c) combustion plants in which the gaseous products of combustion are used for the direct heating, drying or any other treatment of objects or materials;
- (d) post-combustion plants designed to purify the waste gases from industrial processes by combustion and which are not operated as independent combustion plants;
- (e) any technical apparatus used in the propulsion of a vehicle, ship or other watercraft or aircraft;
- (f) [...]
- (g) facilities for the regeneration of catalytic cracking catalysts;
- (h) facilities for the conversion of hydrogen sulphide into sulphur;
- (i) reactors used in the chemical industry;
- (j) coke battery furnaces;
- (k) cowpers;
- (l) crematoria;
- (m) **gas oil engines**, gas turbines and gas engines used on offshore platforms, with the exception of new gas engines and new gas turbines which are used for mechanical drives;
- (n) combustion plants firing refinery fuels alone or with other fuels for the production of energy within mineral oil and gas refineries;
- (o) recovery boilers in installations for the production of pulp;
- (p) on-farm combustion plants with a total rated thermal input not exceeding 5 MW, which are exclusively using unprocessed poultry manure, as referred to in Article 9(a) of Regulation (EC) No 1069/2009, as a fuel;

(q) combustion plants covered by Directive 97/68/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery.

2a. This Directive shall not apply to research activities, development activities or the testing activities relating to medium combustion plants.

Member States may establish specific conditions for the application of this paragraph.

Article 3

Definitions

For the purposes of this Directive the following definitions shall apply:

- (1) 'emission' means the discharge of substances from the combustion plant into the air;
- (2) 'emission limit value' means the permissible quantity of a substance contained in the waste gases from the combustion plant which may be discharged into the air during a given period;
- (2a) 'general binding rules' means emission limit values or other conditions, at least at sector level, that are adopted with the intention of being used directly to set permit or registration conditions;
- (3) 'nitrogen oxides' (NO_x) means nitric oxide and nitrogen dioxide, expressed as nitrogen dioxide (NO₂);

- (4) ‘Dust’ means particles, of any shape, structure or density, dispersed in the gas phase at the sampling point conditions which may be collected by filtration under specified conditions after representative sampling of the gas to be analysed, and which remain upstream of the filter and on the filter after drying under specified conditions;
- (5) ‘combustion plant’ means any technical apparatus in which fuels are oxidised in order to use the heat thus generated;
- (6) ‘existing combustion plant’ means a combustion plant put into operation before [1 year after the date of transposition] or for which a permit was granted before [date of transposition] pursuant to national legislation provided that the plant is put into operation no later than [1 [...] year[...] after date of transposition];
- (7) ‘new combustion plant’ means a combustion plant other than an existing combustion plant;
- (8) ‘engine’ means a gas engine, diesel engine or dual fuel engine;
- (9) ‘gas engine’ means an internal combustion engine which operates according to the Otto cycle and uses spark ignition to burn fuel;
- (10) ‘diesel engine’ means an internal combustion engine which operates according to the diesel cycle and uses compression ignition to burn fuel;
- (11) ‘dual fuel engine’ means an internal combustion engine which uses compression ignition and operates according to the diesel cycle when burning liquid fuels and according to the Otto cycle when burning gaseous fuels;

(12) ‘gas turbine’ means any rotating machine which converts thermal energy into mechanical work, consisting mainly of a compressor, a thermal device in which fuel is oxidised in order to heat the working fluid, and a turbine; this includes both open cycle and combined cycle gas turbines, and gas turbines in cogeneration mode, all with or without supplementary firing;

(13) ‘fuel’ means any solid, liquid or gaseous combustible material;

(13a) ‘gas oil’ means:

- (i) any petroleum-derived liquid fuel falling within CN code 2710 1925, 2710 19 29, 2710 19 47, 2710 19 48, 2710 20 17 or 2710 20 19, or
- (ii) any petroleum-derived liquid fuel of which less than 65 % by volume (including losses) distils at 250 °C and of which at least 85 % by volume (including losses) distils at 350°C by the ASTM D86 method.

(13b) ‘heavy fuel oil’ means:

- (i) any petroleum-derived liquid fuel falling within CN code 2710 19 51 to 2710 19 68, 2710 20 31, 2710 20 35, 2710 20 39, or
- (ii) any petroleum-derived liquid fuel, other than gas oil as defined in points 13a, which, by reason of its distillation limits, falls within the category of heavy oils intended for use as fuel and of which less than 65 % by volume (including losses) distils at 250 °C by the ASTM D86 method. If the distillation cannot be determined by the ASTM D86 method, the petroleum product is likewise categorised as a heavy fuel oil;

(14) ‘waste’ means [...] waste as defined in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council on waste;

- (15) 'biomass' means any of the following:
- (a) products consisting of any vegetable matter from agriculture or forestry which can be used as a fuel for the purpose of recovering its energy content;
 - (b) the following waste:
 - (i) vegetable waste from agriculture and forestry;
 - (ii) vegetable waste from the food processing industry, if the heat generated is recovered;
 - (iii) fibrous vegetable waste from virgin pulp production and from production of paper from pulp, if it is co-incinerated at the place of production and the heat generated is recovered;
 - (iv) cork waste;
 - (v) wood waste with the exception of wood waste which may contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coating and which includes, in particular, such wood waste originating from construction and demolition waste;
- (16) 'operating hours' means the time, expressed in hours, during which a combustion plant is operating and discharging emissions into the air, excluding start-up and shut-down periods;
- (17) 'operator' means any natural or legal person who operates or controls the combustion plant, or, where this is provided for in national law, to whom decisive economic power over the technical functioning of the plant has been delegated;

(18) [...]

(19) [...]

(19a) [...]‘refinery fuel’ means solid, liquid or gaseous combustible material from the distillation and conversion steps of the refining of crude oil, including refinery fuel gas, syngas, refinery oils and pet coke.

(19b) 'small isolated system' (SIS) means a small isolated system as defined in point 26 of Article 2 of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity;

(19c) 'micro isolated system' (MIS) means a 'micro isolated system' as defined in point 27 of Article 2 of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity;

Article 3a

Aggregation rules

1. The combination formed by two or more new medium combustion plants shall be considered as a single medium combustion plant for the purpose of this Directive and their rated thermal input added for the purpose of calculating the total rated thermal input of the plant, where:
 - the waste gases of such medium combustion plants are discharged through a common stack; or
 - taking into account technical and economic factors, [...] the waste gases of such medium combustion plants could be discharged through a common stack.

Article 4
Permit or Registration

1. Member States shall take the necessary measures to ensure that no [...] new medium combustion plant [...] is operated without a permit or a registration [...].

Member States shall take the necessary measures to ensure that as of 1 January 2025 no existing medium combustion plant with a rated thermal input above 5 MW is operated without permit or registration.

Member States shall take the necessary measures to ensure that as of 1 January 2030 no existing medium combustion plant with a rated thermal input of 5 MW or less is operated without permit or registration.

2. Member States shall specify the procedure for the permitting or registration [...] and this shall include at least an obligation for the operator to inform [...] the competent authority [...] of the operation or the intention to operate a medium combustion plant and to provide at least the information listed in Annex I.

3. [...]

4. [...]

5. [...]

6. [...]The competent authorities may hold a register with information on each medium combustion plant including [...] the information listed in Annex I [...].

The competent authorities shall make available to the public, including via the Internet, the register, in accordance with Directive 2003/4/EC.

- 6a. Without prejudice to the obligation to hold a permit or a registration, Member States may include requirements for certain categories of medium [...] combustion plants in general binding rules. Where general binding rules are adopted, the permit or the registration may simply include a reference to such rules.
- 6b. For medium combustion plants which are part of an installation covered by chapter II of Directive 2010/75/EU on industrial emissions, the requirements of this Article are deemed to be fulfilled through compliance with the provisions of that Directive.
- 6c. Without prejudice to paragraph 6b, provided that the requirements of this Article are complied with, any permit or registration produced pursuant to other national or Union legislation may be combined with the permit or the registration required under paragraph 1 to form a single permit or registration.

Article 5

Emission limit values

1. Without prejudice to the provisions of Chapter II of Directive 2010/75/EU, where applicable, the emission limit values set out in Annex II shall apply to [...] medium combustion plants.

For medium combustion plants located in the Canary Islands, French Overseas Departments, and the archipelagoes of Madeira and Azores, the emission limit values set out in Annex II shall not apply. Member States shall set emission limit values for these plants in order to reduce their emissions to air and the potential risks to human health and the environment.

- 1a. Member States may exempt medium combustion plants which are part of an installation covered by Chapter II of Directive 2010/75/EU from compliance with the emission limit values set out in Annex II and the provisions of article 6 for those pollutants for which emission limit values apply pursuant to the provisions of article 13(5) and article 15(3) of Directive 2010/75/EU for these plants.

- 1b.** Where a medium combustion plant simultaneously uses two or more fuels, the emission limit value for each pollutant shall be calculated in accordance with the following steps:
- (a) taking the emission limit value relevant for each individual fuel as set out in Annex II;
 - (b) determining the fuel-weighted emission limit value, which is obtained by multiplying the individual emission limit value referred to in point (a) by the thermal input delivered by each fuel, and dividing the result by the sum of the thermal inputs delivered by all fuels;
 - (c) aggregating the fuel-weighted emission limit values.
2. From 1 January 2025 emissions into air of sulphur dioxide, nitrogen oxides and dust from an existing medium combustion plant with a rated thermal input above 5 MW shall not exceed the [...] emission limit values set out in Part 1b and 1c of Annex II.

From 1 January 2030 emissions into air of sulphur dioxide, nitrogen oxides and dust from an existing medium combustion plant with a rated thermal input of 5 MW or less shall not exceed the [...] emission limit values set out in Part 1a and 1c of Annex II.

Member States may exempt existing medium combustion plants which do not operate more than [...] **1000** operating hours per year as a rolling average over a period of 5 years from compliance with the emission limit values set out in Parts 1a, 1b and 1c of Annex II. In that case, for plants firing solid fuels, an emission limit value for dust of 200 mg/Nm³ shall apply.

Existing medium combustion plants being part of SIS and MIS [...] shall comply with the emission limit values set out in Part 1a, 1b and 1c of Annex II from 1 January 2030.

Until 1 January 2030, existing medium combustion plant with a rated thermal input above 5 MW may be exempted from compliance with the emission limit values referred to in this article provided that at least 50 % of the useful heat production of the plant, as a rolling average over a period of 5 years, is delivered in the form of steam or hot water to a public network for district heating.

3. From [1 year after the date of transposition] emissions into air of sulphur dioxide, nitrogen oxides and dust from a new medium combustion plant shall not exceed the [...] emission limit values set out in Part 2a, 2b and 2c of Annex II.

Member States may exempt new medium combustion plants which do not operate more than **[...] 1000** operating hours per year as a rolling average over a period of 5 years from compliance with the emission limit values set out in Part 2a, 2b and 2c of Annex II. In that case, for plants firing solid fuels, an emission limit value for dust of 100 mg/Nm³ shall apply.

4. [...]

5. [...]

6. The competent authority may grant a derogation for a maximum of six months from the obligation to comply with the emission limit values provided for in paragraphs 2 and 3 for sulphur dioxide in respect of a medium combustion plant which normally uses low-sulphur fuel, in cases where the operator is unable to comply with those limit values because of an interruption in the supply of low-sulphur fuel resulting from a serious shortage.

Member States shall [...] inform the Commission of any derogation granted under the first subparagraph within one month.

7. The competent authority may grant a derogation from the obligation to comply with the emission limit values provided for in paragraphs 2 and 3 in cases where a medium combustion plant using only gaseous fuel has to resort exceptionally to the use of other fuels because of a sudden interruption in the supply of gas and for this reason would need to be equipped with a secondary abatement equipment. The period for which such a derogation is granted shall not exceed 10 days except where the operator demonstrates to the competent authority that a longer period is justified.

Member States shall [...] inform the Commission of any derogation granted under the first subparagraph within one month.

8. [...]

Article 5a

Limited life derogation

1. Member States may exempt existing medium combustion plants from compliance with the limit values set out in Part 1a, 1b and 1c of Annex II and the monitoring and reporting requirements set out in Article 6 and Annex IV for 5 years from the applicable dates set out in Article 5(2) provided that the following conditions are fulfilled:
 - (a) the operator of the combustion plant undertakes, in a written declaration submitted to the competent authority by 1 January 2024, not to operate the plant for more than 11,000 operating hours, starting from 1 January 2030 and ending no later than 31 December 2034 for plants with a rated thermal input between 1 and 5 MW and starting from 1 January 2025 and ending no later than 31 December 2029 for plants with a rated thermal input above 5 MW;
 - (b) the operator is required to submit each year to the competent authority a record of the number of operating hours since the applicable dates set out in Article 5(2)
2. Each Member State shall communicate to the Commission in the reports mentioned in paragraphs 1 and 2 of Article 12 a list of any combustion plants to which paragraph 1 applies, including their total rated thermal input and the fuel types used. For plants subject to paragraph 1, Member States shall communicate annually to the Commission a record of the number of operating hours since 1 January 2025 or 1 January 2030 as applicable.

Article 6

Obligations of the operator [...]

1. Member States shall ensure that the operators carry out monitoring of emissions at least in accordance with Annex IV part 1.
2. For medium combustion plants using multiple fuels, the monitoring of emissions shall be done while firing a fuel or fuel mix that is likely to result in the highest level of emissions and during a period representing normal operating conditions.
3. All monitoring results shall be recorded and processed [...] in such a way as to enable [...] the verification of compliance with the emission limit values according to the [...] rules set out in annex IV part 2.
- 3a. For medium combustion plants applying secondary abatement equipment in order to meet the emission limit values, the effective continuous operation of that equipment shall be demonstrated and recorded.
- 3b. The operator of a medium combustion plant shall keep the following:
 - (a) [...]
 - (b) the permit or the proof of registration by the competent authority;
 - (c) the monitoring results and information referred to in paragraph 3 and 3a;
 - (d) where applicable, the record of operating hours referred to in the third subparagraph of Article 5(2) and in the second subparagraph of Article 5(3);
 - (e) a record of the type and amount of fuels used in the plant and of any malfunctions or breakdown of secondary abatement equipment;
 - (f) the record of the events of non compliance and the measures taken, as referred to in paragraph 4a;

The data and information referred to in points (c) to (f) shall be kept at least for a period of six years.

3c. Data and information listed in paragraph 3b shall be made available to the competent authority upon request in order to allow the [...] check of compliance with the requirements of this Directive.

4. [...]

4a. In case of non compliance with the emission limit values set out in annex II the operator [...] takes the measures necessary to ensure that compliance is restored within the shortest possible time, without prejudice to the measures required according to article 7.

Member States shall establish type, frequency and format of communication of events of non-compliance to the competent authority.

4b. Operators of medium combustion plants shall provide the representatives of the competent authority all necessary assistance to enable them to carry out any inspections and site visits, to take samples and to gather any information necessary for the performance of their duties for the purposes of this Directive.

Article 7

Compliance check

1. Member States shall set up a system [...] to check compliance of medium combustion plants with the requirements of this Directive.

2. [...]

3. [...]

4. In the event of non-compliance, in addition to the measures taken by the operator according to article 6 paragraph 4a, Member States shall ensure that [...] the competent authority requires the operator to take any appropriate [...] measures, that the competent authority considers necessary to ensure compliance with the requirements of this Directive.

Where the non compliance causes a significant degradation of local air quality endangering human health, and until compliance is restored the operation of the plant shall be suspended.

Article 8

Verification of monitoring results

[...]

Article 9

Changes to medium combustion plants

Member States shall take the necessary measures to ensure that the operator informs the competent authority of any planned change of the medium combustion plant which would affect the applicable emission limit values. The competent authority shall update the permit or the registration as appropriate.

1. [...]

2. [...]

Article 10

Access to information

[...]

Article 11
Competent authorities

Member States shall designate the competent authorities responsible for carrying out the obligations arising from this Directive.

Article 12
Reporting

1. Member States shall, by [...] 1 October 2026, report to the Commission [...] an estimate of the total annual emissions in 2025 of sulphur dioxide, nitrogen oxides and dust from [...] medium combustion plants, grouped by plant type, fuel type and capacity class.
2. Member States shall, by 1 October 2031, send to the Commission a second [...] report containing the update of the data listed [...] in paragraph 1 with reference to the year 2030 [...].

The reports drawn up under the first [...] paragraph and the first subparagraph of paragraph 2 shall contain qualitative and quantitative information on the implementation of this Directive, any action taken to verify compliance of the operation of medium combustion plants with this Directive and any enforcement action taken for the purposes thereof.

3. For the purposes of the reporting referred to in paragraphs 1 and 2, the Commission shall make an electronic reporting tool available to Member States.

The Commission shall, by way of implementing acts, specify the technical formats for reporting in order to simplify and streamline reporting obligations for the Member States in relation to the information pursuant to paragraph 1 and 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14a.

4. The Commission shall, within twelve months from the receipt of the reports from Member States in accordance with paragraphs 1 and 2, and taking into account information made available in accordance with Articles 4(6), 5(6) and 5(7) [...], submit a summary report to the European Parliament and to the Council.
5. The second summary report of the Commission shall review the implementation of this Directive [...] and shall be accompanied by a legislative proposal where appropriate.
6. When carrying out its duties under paragraphs 3 to 5, the Commission shall be assisted by the European Environment Agency.

Article 12a

Review

The Commission shall, by 1 January 2023, assess the need to review **Part 1a, 1b and 1c as regards plants being part of SIS/MIS as well as** Part 2a, 2b and 2c of Annex II and on the basis of the state of the art of technologies. It shall also assess whether for certain types of medium combustion plants there is a need to regulate carbon monoxide emissions.

The Commission shall report the results of that review to the European Parliament and to the Council accompanied by a legislative proposal where appropriate.

Article 13

Amendment of Annexes

The Commission shall be empowered to adopt delegated acts in accordance with Article 14 in order to adapt paragraph 2 of Part 2 of Annex IV to technical and scientific progress.

Article 14
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 13 shall be conferred on the Commission for a period of five years from [the date of entry into force]. The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than four months before the end of each period.
3. The delegation of power referred to in Article 13 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 13 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 14a

Committee

1. The Commission shall be assisted by the committee established by Article 75(1) of Directive 2010/75/EU of the European Parliament and of the Council. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 15

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by [the date of transposition] at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 16

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [date: 2 years after the entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 17

Entry into force

This Directive shall enter into force on the twentieth day of its publication in the Official Journal of the European Union.

Article 18

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

ANNEX I

Information to be provided [...] by the operator to the competent authority

1. Rated thermal input (MW) of the medium combustion plant;
 2. Type of the medium combustion plant (diesel engine, gas turbine, dual fuel engine, other engine, other combustion plant);
 3. Type and share of fuels used according to the fuel categories laid down in Annex II;
 4. [...] Whether the date of start of the operation is later than [1 year after the date of transposition];
 5. Sector of activity of the medium combustion plant or the facility in which it is applied (NACE code);
 6. [...]
 7. [...]
 8. In case the third [...] subparagraph of Article 5(2) and the [...] third subparagraph of Article 5(3) are [...] used, a declaration signed by the operator to operate the plant not more than [...] 1000 operating hours per year as a rolling average over a period of 5 years [...];
 9. The name and the registered office of the operator and, in case of stationary medium combustion plants, the address where the plant is located.
-

ANNEX II

Emission limit values referred to in Article 5

All emission limit values set out in this Annex are defined at a temperature of 273,15 K, a pressure of 101,3 kPa and after correction for the water vapour content of the waste gases and at a standardised O₂ content of 6 % for combustion plants using solid fuels, 3 % for combustion plants, other than engines and gas turbines, using liquid and gaseous fuels and 15 % for engines and gas turbines.

Part 1a

Emission limit values (mg/Nm³) for existing combustion plants with a total rated thermal input between 1 and 5 MW.

Plants other than engines and gas turbines

Pollutant	Solid biomass	Other solid Fuels	<u>Gas Oil</u>	Liquid fuels other than <u>Gas Oil</u>	Natural Gas	Gaseous fuels other than natural gas
SO ₂	[...] ^{(4)(4a)} <u>200</u>	<u>1100</u>	-	350 ⁽⁸⁾	-	200 ⁽⁵⁾
NO _x	650	650	200	650	<u>250</u>	250
Dust	50 ⁽⁶⁾	50 ⁽⁶⁾	-	50	-	-

[...]

⁽⁴⁾ The value does not apply in case of plants firing exclusively woody solid biomass.

^(4a) 300 mg/Nm³ in case of plants firing straw.

⁽⁵⁾ 400 mg/Nm³ in case of low calorific gases from coke oven (iron and steel industry).

⁽⁶⁾ Until 01/01/2035, 100 mg/Nm³.

⁽⁸⁾ Until 01/01/2035, 1700 mg/Nm³ in case of plants firing heavy fuel oil.

Part 1b *

Emission limit values (mg/Nm³) for existing [...] combustion plants with a total rated thermal input above 5 MW.

Plants other than engines and gas turbines

Pollutant	Solid biomass	Other solid fuels	Gas Oil	Liquid fuels other than Gas Oil	Natural gas	Gaseous fuels other than natural gas
SO ₂	200 ⁽¹⁰⁾ (10a)	400 ⁽¹¹⁾	[...]	350 ⁽¹⁴⁾	-	35 ⁽⁷⁾⁽¹²⁾
NO _x	650	650	200 ^[...]	650	250	250
Dust	30 ^[...] ⁽¹³⁾	30 ⁽¹³⁾	[...]	30	-	-

[...]

⁽⁷⁾ 400 mg/Nm³ in case of low calorific gases from coke oven and 200 mg/Nm³ in case of low calorific gases from blast furnace (iron and steel industry).

[...]

⁽¹⁰⁾ The value does not apply in case of plants firing exclusively woody solid biomass.

^(10a) 300 mg/Nm³ in case of plants firing straw.

⁽¹¹⁾ 1100 mg/Nm³ in case of plants with total a rated thermal input between 5 and 20 MW.

[...]

⁽¹²⁾ 170 mg/Nm³ in case of biogas.

⁽¹³⁾ 50 mg/Nm³ in case of plants with a total rated thermal input between 5 and 20 MW.

⁽¹⁴⁾ Until 01/01/2035, 850 mg/Nm³ in case of plants with a total rated thermal input between 5 and 20 MW firing heavy fuel oil.

* [...]

Part 1c *

Emission limit values (mg/Nm³) for existing engines and gas turbines

Pollutant	Type of <u>combustion</u> plant [...]	<u>Gas Oil</u>	<u>Liquid</u> <u>fuels other</u> <u>than Gas</u> <u>Oil</u>	Natural gas	Gaseous fuels other than natural gas
SO ₂	Engines and gas turbines	-	<u>120</u>	-	15 ⁽⁵⁾ ⁽⁶⁾
NO _x	Engines	<u>190 [...]</u> (1a)	<u>190 [...]</u> (1) (1b)	190 ⁽²⁾	190 ⁽²⁾
	Gas turbines ⁽³⁾	<u>200</u>	200	150	200
<u>Dust</u>	Engines and gas turbines	-	10 ⁽⁷⁾	-	-

⁽¹⁾ 1850 mg/Nm³ in the following cases:

- (i) for diesel engines the construction of which commenced before 18 May 2006;
- (ii) for dual fuel engines in liquid mode.

^(1a) 250 mg/Nm³ in case of engine with total rated thermal input between 1 and 5 MW and in case of diesel engines the construction of which commenced before 18 May 2006.

^(1b) 250 mg/Nm³ in case of engine with total rated thermal input between 1 and 5 MW when firing heavy fuel oil; 225 mg/Nm³ in case of engine with total rated thermal input between 5 and 20 MW when firing heavy fuel oil.

⁽²⁾ 380 mg/Nm³ for dual fuel engines in gas mode.

⁽³⁾ Emission limit values are only applicable above 70 % load.

[...]

⁽⁵⁾ 60 mg/Nm³ in case of biogas.

⁽⁶⁾ 130 mg/Nm³ in case of low calorific gases from coke oven and 65 mg/Nm³ in case of low calorific gases from blast furnace (iron and steel industry).

⁽⁷⁾ 20 mg/Nm³ in case of plants with a total rated thermal input between 1 and 20 MW.

* [...]

Part 2a

Emission limit values (mg/Nm³) for new combustion plants with a total rated thermal input between 1 and 5 MW.

Plants other than engines and gas turbines

<u>Pollutant</u>	<u>Solid biomass</u>	<u>Other solid Fuels</u>	<u>Gas Oil</u>	<u>Liquid fuels other than Gas Oil</u>	<u>Natural Gas</u>	<u>Gaseous fuels other than natural gas</u>
<u>SO₂</u>	<u>[...] 200⁽¹⁾</u>	<u>1100</u>	<u>=</u>	<u>350⁽²⁾</u>	<u>=</u>	<u>110⁽³⁾</u>
<u>NO_x</u>	<u>500</u>	<u>500</u>	<u>200</u>	<u>300⁽⁴⁾</u>	<u>100</u>	<u>200</u>
<u>Dust</u>	<u>50</u>	<u>50</u>	<u>=</u>	<u>50</u>	<u>=</u>	<u>=</u>

[...]

- ⁽¹⁾ The value does not apply in case of plants firing exclusively woody solid biomass [...].
- ⁽²⁾ Until 01/01/2025, 1700 mg/Nm³ in case of [...] plants being part of Small Isolated Systems (SIS) and Micro Isolated Systems (MIS) [...].
- ⁽³⁾ 400 mg/Nm³ in case of low calorific gases from coke oven and 200 mg/Nm³ in case of low calorific gases from blast furnace (iron and steel industry).
- ⁽⁴⁾ Until 01/01/2025, 450 mg/Nm³ when firing heavy fuel oil containing between 0.2% and 0.3 % N and 360 mg/Nm³ when firing heavy fuel oil containing less than 0.2 % N in case of plants being part of [...] SIS and MIS [...].

Part 2b

Emission limit values (mg/Nm³) for new [...] combustion plants with a total rated thermal input above 5 MW.

Plants other than engines and gas turbines

Pollutant	Solid biomass	Other solid fuels	<u>Gas Oil</u>	<u>Liquid fuels other than Gas Oil</u>	Natural gas	Gaseous fuels other than natural gas
SO ₂	[...] <u>200</u> (⁸)	400 (⁹)	[...]	350 (⁵)	-	35 [...] (⁴) (¹⁰)
NO _x	300	300	200	300 (⁶)	100	200
<u>Dust</u>	20 [...] (¹¹)	20 (¹¹)	[...]	20 [...] [...]	-	- [...]

[...]

(⁴) 400 mg/Nm³ in case of low calorific gases from coke oven and 200 mg/Nm³ in case of low calorific gases from blast furnace (iron and steel industry).

(⁵) Until 01/01/2025, 1700 mg/Nm³ in case of [...] plants being part of Small Isolated Systems (SIS) and Micro Isolated Systems (MIS) as defined in Directive 2009/72/EC.

(⁶) Until 01/01/2025, 450 mg/Nm³ when firing heavy fuel oil containing between 0.2% and 0.3 % N and 360 mg/Nm³ when firing heavy fuel oil containing less than 0.2 % N in case of [...] plants being part of SIS and MIS as defined in Directive 2009/72/EC.

[...]

(⁸) The value does not apply in case of plants firing exclusively woody solid biomass [...]

(⁹) 1100 mg/Nm³ in case of [...] plants with a total rated thermal input between 5 and 20 MW.

(¹⁰) 100 mg/Nm³ in case of biogas.

(¹¹) 30 mg/Nm³ in case of [...] plants with total rated thermal input between 5 and 20 MW.

Part 2 c

Emission limit values (mg/Nm³) for new engines and gas turbines

Pollutant	Type of <u>combustion plant</u> [...]	<u>Gas Oil</u> [...]	<u>Liquid fuels other than Gas Oil</u>	Natural gas	Gaseous fuels other than natural gas
SO ₂	Engines and gas turbines	-	120 ⁽⁴⁾	-	15 ⁽⁹⁾
NO _x	Engines ^(3a) ⁽⁵⁾	190 ⁽¹⁾	190 ⁽¹⁾ ^(5a) ^(2a)	95 ⁽²⁾	190
	Gas turbines ⁽³⁾	75	75 ⁽⁶⁾	50	75
<u>Dust</u>	Engines and gas turbines	-	10 ⁽⁷⁾⁽¹⁰⁾	-	-

⁽¹⁾ 225 mg/Nm³ for dual fuel engines in liquid mode.

⁽²⁾ 190 mg/Nm³ for dual fuel engines in gas mode.

^(2a) 225 mg/Nm³ for diesel engines with a total rated thermal input equal to or below 20 MW with ≤ 1200 rpm.

⁽³⁾ Emission limit values are only applicable above 70 % load.

^(3a) Engines running between 500 and 1500 hours per year may be exempted from compliance with these emission limit values in case they are applying primary measures to limit NOx emissions and meet the emission limit values set out in footnotes ⁽⁵⁾.

⁽⁴⁾ Until 01/01/2025, 590 mg/Nm³ for diesel engines being part of SIS and MIS [...].

⁽⁵⁾ Until 01/01/2025 in SIS and MIS [...], 1850 mg/Nm³ for dual fuel engine in liquid mode and 380 mg/Nm³ in gas mode; 1300 mg/Nm³ for diesel engines with ≤ 1200 rpm equal to or below 20 MW and 1850 mg/Nm³ for diesel engines above 20 MW; 750 mg/Nm³ for diesel engines with > 1200 rpm. [...]

⁽⁶⁾ Until 01/01/2025, 550 mg/Nm³ for plants being part of SIS and MIS [...].

⁽⁷⁾ Until 01/01/2025, 75 mg/Nm³ for diesel engines being part of SIS and MIS [...].

⁽⁸⁾ [...]

⁽⁹⁾ 40 mg/Nm³ in case of biogas.

⁽¹⁰⁾ 20 mg/Nm³ in case of plants with a total rated thermal input between 1 and 5 MW.

ANNEX III

[...]

ANNEX IV

[...]

Part 1: Monitoring of emissions by the operator

1. Periodic measurements of SO₂, NO_x and dust shall be required at least every three years or, as an alternative, after a maximum of 4500 operating hours, for [...] combustion plants with a [...] rated thermal input [...] greater than 1 MW and less than 20 MW, and at least annually or, as an alternative, after a maximum of 1500 operating hours, for [...] combustion plants [...] with a rated thermal input [...] equal to or greater than 20 MW but less than 50 MW.
2. Measurements are only required for pollutants for which an emission limit value is laid down in Annex II for the plant concerned.
3. The first measurements shall be carried out within six [...] months following the permit or registration of the plant or the date of start of the operation, whichever is the latest.
4. As an alternative to the measurements of SO₂ referred to in point 1, other procedures, verified and approved by the competent authority, may be used to determine the SO₂ emissions.
5. Sampling and analysis of polluting substances and measurements of process parameters as well as any alternatives used as referred to under point 4, shall be based on methods enabling reliable, representative and comparable results. Methods complying with EN standards shall be presumed to satisfy this requirement.
- 5a. As an alternative to the periodic measurements referred to in point 1, Member States may require continuous measurements.
In the case of continuous measurements, the automated measuring systems shall be subject to control by means of parallel measurements with the reference methods at least once per year and the operator shall inform the competent authority about the results of those controls.

Part 2: Assessment of compliance

1. In the case of periodic measurements, the emission limit values referred to in Article 5 shall be regarded as having been complied with if the results of each **of the series of measurements or of the other procedures defined and determined according to the rules laid down by the competent authorities [...], do not exceed the relevant emission limit value.**

2. In the case of continuous measurements, compliance with the emission limit values referred to in Article 5 shall be assessed as set out in point 1 of Part 4 of Annex V of Directive 2010/75/EU.

The validated average values are determined as set out in points 9 and 10 of Part 3 of Annex V of Directive 2010/75/EU.

For the purpose of the calculation of the average emission values, the values measured during the periods referred to in Article 5(6) and 5(7) as well as during the start-up and shut-down periods shall be disregarded.

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