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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
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Brussels, 18.12.2013
COM(2013) 919 final

2013/0442 (COD)

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)

{SWD(2013) 531 final}

{SWD(2013) 532 final}

{SWD(2013) 536 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

General context – Grounds for and objectives of the proposal

The Decision of the European Parliament and of the Council on a General Union Environment Action Programme to 2020 "Living well, within the limits of our planet"¹ has been an important driver in the process of reviewing the EU Air quality Policy, in particular where it identified the need for measures to tackle air pollution at source.

The Communication from the Commission to the Council and the European Parliament "A Clean Air Programme for Europe"² calls for action to control emissions of air polluting substances from combustion plants with a rated thermal input between 1 and 50 MW (hereafter medium combustion plants), thereby completing the regulatory framework for the combustion sector also with a view of increasing the synergies between air pollution and climate change policies.

Medium combustion plants are used for a wide variety of applications (including electricity generation, domestic/residential heating and cooling and providing heat/steam for industrial processes, etc.) and are an important source of emissions of sulphur dioxide, nitrogen oxides and particulate matter. The approximate number of medium combustion plants in the EU is 142,986.

The combustion of fuel in new small combustion plants and appliances can be covered by provisions 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 products³. Combustion of fuel in large combustion plants is controlled by Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)⁴ from 7 January 2013, with 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 plants⁵ continuing to apply to existing large combustion plants until 31 December 2015.

Emissions of air pollutants from medium combustion plants are generally not regulated at EU level, and it is therefore appropriate to complement the existing legislation relating to combustion plants with provisions for this category.

Consistency with other policies and objectives of the Union

The present proposal is part of the new framework of action in the field of air quality in the EU, as set out in the revised EU Thematic Strategy on Air Pollution, and is consistent with

¹ COM(2012) 710 final [after adoption: OJ L , , p. .]

² COM(2013) xxx final

³ OJ L 285, 31.10.2009, p.10

⁴ OJ L 334, 17.12.2010, p.17

⁵ OJ L 309, 27.11.2001, p. 1

and reinforces the Europe 2020 objectives on smart, inclusive and sustainable growth⁶. Care is taken to safeguard the interests of SMEs along the "think small first" principle.⁷

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

Stakeholders and the public were consulted through a series of formal and informal events, including two online questionnaires, a Eurobarometer survey, and a continued dialogue through multi- and bilateral meetings. Consultation with Member States also took place via the meetings of the Air Quality Expert Group. A significant part of stakeholders highlighted the importance of EU source controls for sharing the pollution reduction burden, and expressed favourable opinion in controlling emissions from medium combustion plants, noting however the need to limit administrative burden, which could become disproportionate, both for operators and for competent authorities, in case of a "full" permitting regime. Input from stakeholders has been taken into account when designing the different possible options for controlling emissions from medium combustion plants.

A first scoping on-line public consultation was carried out at the end of 2011 with a view to broaden the information base for the initial development of the policy options. An internet consultation ran for 12 weeks from 10 December 2012 on the European Commission's 'Your voice in Europe' web page. The consultation used two questionnaires, one short questionnaire aimed for the general public, the second one longer and more articulated, including questions on sources controls, targeting experts and stakeholders. A total of 1934 individuals answered from general public, while 371 responses were received from experts and stakeholders. Out of those latter, about 40% agreed on the necessity of regulating combustion plants below the 50MW threshold set in the Industrial Emissions Directive (IED) at EU level, with 20% from business representatives, 43% from individual experts, 48% from government representatives and 55% from NGOs. Business and government representatives chose a light permitting regime or registration regime, while about half of individual experts and NGOs opted for a "full" permitting regime with EU-wide emission limit values.

All background information is available on a website⁸ dedicated to this initiative.

Result of the impact assessment

As stated in the Impact Assessment (IA) of the Review of the Thematic Strategy on Air Pollution while the overall structure of air quality policy is logical and coherent, a better match must be ensured in practical implementation between source controls, emission ceilings and ambient air quality standards, notably to ensure that local achievement of ambient air quality standards is not compromised by (a) failure to limit pollution from significant point sources or from products (e.g. real world emissions), or (b) high background concentrations resulting from the overall emission burden.

⁶ Communication from the Commission "EUROPE 2020 -A strategy for smart, sustainable and inclusive growth", COM(2010) 2020 final, 3.3.2010.

⁷ Communication from the Commission "'Think Small First' - A "Small Business Act" for Europe" COM(2008) 394 final, 25.6.2008.

⁸ http://ec.europa.eu/environment/air/review_air_policy.htm

To make progress towards the EU's long-term objective (after 2020) of further reducing health and environmental impacts of air pollution, a number of policy options were assessed with the aim of identifying a cost-effective package of measures. This included the consideration of selected additional EU source control measures, one of them addressing emissions from medium combustion plants. The result of the assessment is that an EU-wide instrument to control emissions from medium combustion plants would extend to all Member States the technical measures identified as cost-effective in the multi-sectorial analysis, and has led to the conclusion to propose a legislative instrument for controlling emission from such plants at EU-level.

Out of the five policy options considered and in depth analysed to control emissions from medium combustion plants, the preferred option would set emission limit values in line with those set in Directive 2010/75/EU for plants between 50-100 MW and in a number of Member States, and complemented with a number of emission limit values set out for new plants in the amended Gothenburg Protocol⁹. To limit the costs associated to nitrogen oxides reductions, the emission limit values should be mainly based on the application of primary emission abatement measures. In situations where air quality is not meeting the EU standards, Member States should however apply stricter limits.

To avoid significant impact on SMEs, in which most of the medium combustion plants are operated, a number of mitigation measures have been taken on board: operators will not require a permit, but need to notify the operation of the plant to the competent authorities, which will ensure registration; phased implementation providing existing plants a longer transitional period to comply with the limits has been also recommended with longer periods for the smallest plant category; limited or simplified monitoring and reporting obligations are foreseen.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

The proposal, when establishing provisions for medium combustion plants, aims at filling in an existing gap in legislation. It introduces minimum requirements, keeping the administrative burden at the lowest possible level and taking special account of the situation of SMEs.

Specific information on the Articles and Annexes of the proposal is provided below.

Article 1 makes it clear that the directive aims at reducing emissions to air of sulphur dioxide, nitrogen oxides and particulate matter from medium combustion plants and thereby reducing the potential risks to human health and the environment from such emissions.

Article 2 defines the scope of the Directive in a way to avoid overlap with Directive 2009/125/EC or with Chapter III or IV of Directive 2010/75/EU, and exempts also some combustion plants on the basis of their technical characteristics or their use in particular activities.

Article 3 lists the definitions applicable for the purposes of this Directive.

⁹ Protocol to the United Nations Economic Commission for Europe (UNECE) Convention on Long-Range Transboundary Air Pollution to abate acidification, eutrophication and ground-level ozone (1999).

Article 4 sets out the obligation of the competent authority to register medium combustion plants, based on notification by the operator. The elements of such notification are listed in Annex I.

Provisions on emission limit values are laid down in Article 5, with the corresponding values applicable for existing and new plants in Annex II. It is proposed that the emission limit values apply to existing combustion plants after a fixed period from the date of application of this Directive, in order to provide them with sufficient time to adapt technically to the requirements of this Directive. Article 5(4) requires Member States to apply more stringent emission limit values to individual plants in zones not complying with air quality limit values. Annex III lays down the benchmark values for that purpose that reflect the performance of the most advanced techniques available.

Monitoring requirements are set out in Article 6 and Annex IV. This Annex is proposed to be adapted to technical and scientific progress by means of delegated acts (as per Articles 14 and 15).

Articles 7 and 8 of the proposal lay down provisions to ensure an effective implementation and enforcement of this Directive. In particular, a provision is introduced to require operators to immediately report on non-compliance to the competent authority. Member States should also ensure that the operator and the competent authority take necessary measures in case of non-compliance with this Directive. Furthermore, the proposal introduces requirements for Member States to provide for a system of environmental inspections of medium combustion plants covered by this Directive, or implement other measures to check compliance thereof.

Article 9 provides for the obligations of the operator and the competent authority in case of changes to a medium combustion plant.

Article 10 is concerned with the right of access to information and refers, for that purpose, to Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC¹⁰.

Article 11 requires Member States to designate the competent authorities responsible for carrying out the obligations arising from this Directive.

Article 12 establishes a reporting mechanism. While Member States' first report to the Commission, due by 30 June 2019, shall contain a summary of data of key importance in implementing this Directive, the following reports 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. Article 13 also lays down the Commission's reporting duties.

Article 14 lays down the applicable delegation procedure with a view to adapting Annex IV to scientific and technical progress through delegated acts, in accordance with Article 13.

Articles 15, 16 and 17 lay down, respectively, the provisions on penalties applicable to breaches of the national provisions enacted pursuant to the proposal, on the transposition by xx/xx/xx at the latest of the proposal into the law of the Member States and on its entry into force.

¹⁰ OJ L 41, 14.2.2003, p. 26.

Annex I lists the information to be notified by the operator to the competent authority.

Annex II sets out the emission limit values applicable for existing and new combustion plants, in accordance with Article 5(2) and 5(3), respectively.

Annex III provides for benchmark values for the application of more stringent emission limit values, in accordance with Article 5(4).

Annex IV details the requirements applicable to the monitoring of emissions.

Explanatory documents

The Commission considers that explanatory documents are necessary in order to improve the quality of information on the transposition of the directive for the following reasons.

The complete and correct transposition of the Directive is essential to guarantee that its objectives (i.e. protecting human health and the environment) are achieved. Given that certain Member States already regulate emissions of air pollutants from medium combustion plants, the transposition of this directive would probably not consist of one piece of legislation, but would rather consist of various amendments or new proposals in relevant fields. In addition, the implementation of the Directive is often highly decentralised, as the regional and local authorities are responsible for its application and, in some Member States, even for its transposition.

The above factors are likely to increase the risks of incorrect transposition and implementation of the Directive, and complicate the Commission's task of monitoring the application of EU law. Clear information with respect to the transposition of the Directive is instrumental in ensuring the conformity of national legislation with its provisions.

The requirement to provide explanatory documents may create an additional administrative burden on those Member States which do not work on this basis in any case. However, explanatory documents are necessary to allow effective verification of complete and correct transposition, which is essential for the reasons mentioned above, and there are no less burdensome measures to allow efficient verification. Moreover, the explanatory documents can contribute significantly to reducing the administrative burden of compliance monitoring by the Commission; without them, considerable resources and numerous contacts with national authorities would be required to track the methods of transposition in all Member States. Hence, the possible additional administrative burden of providing explanatory documents is proportionate to the aim pursued, namely to ensure effective transposition and fully achieve the objectives of the Directive.

In view of the above it is appropriate to ask Member States to accompany the notification of their transposition measures with one or more documents explaining the relationship between the provisions of the Directive and the corresponding parts of national transposition instruments.

Legal basis

As the primary objective of the Directive is the protection of the environment, in accordance with Article 191 TFEU, the proposal is based on Article 192(1) TFEU.

Subsidiarity and proportionality principles and choice of instrument

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the European Union.

The objectives of the proposal cannot be sufficiently achieved by the Member States and Union action will better achieve those objectives for the following reasons.

While emissions to air often cause transboundary pollution, emissions of air pollutants from medium combustion plants are generally not regulated at EU level at the current stage. The major thrust of this proposal is to lay down emission limit values to control emissions of sulphur dioxide, nitrogen oxides and particulate matter into the air from medium combustion plants as minimum standards of protection for the environment and for all citizens of the EU.

All Member States must therefore take measures to comply with the minimum requirements; varying national regulation might hamper transboundary economic activities. Action at EU level is necessary and brings added value compared to individual national actions.

The proposal therefore complies with the subsidiarity principle.

The chosen legal instrument is a directive as the proposal lays down objectives and obligations, while leaving sufficient flexibility to the Member States as regards the choice of measures for compliance and their detailed implementation. The proposal therefore complies with the proportionality principle.

4. BUDGETARY IMPLICATION

The proposal has no implications for the EU budget.

5. OPTIONAL ELEMENTS

The proposal concerns a matter relevant to the European Economic Area and should therefore be applicable to it.

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 Committee¹¹,

Having regard to the opinion of the Committee of the Regions¹²,

Acting in accordance with the ordinary legislative procedure¹³,

Whereas:

- (1) Decision XXX/XXXX of the European Parliament and of the Council¹⁴ (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.

¹¹ OJ C , , p. .

¹² OJ C , , p. .

¹³ 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.

¹⁴ Decision XXX/XXXX of the European Parliament and of the Council of on a General Union Environment Action Programme to 2020 "Living well, within the limits of our planet" (OJ L... , , p...).

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.
- (5) The combustion of fuel in small combustion plants and appliances can be 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 products¹⁵. Combustion of fuel in large combustion plants is covered by Directive 2010/75/EU of the European Parliament and of the Council¹⁶ from 7 January 2013, while Directive 2001/80/EC of the European Parliament and of the Council¹⁷ 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 2013¹⁸ 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 particulate matter 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 matter (PM 2.5), to be attained from 2020 onwards.
- (8) The Communication from the Commission to the Council and the European Parliament "A Clean Air Programme for Europe"¹⁹ 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 Pollution²⁰, and develops impact reduction objectives for the period up to 2030. To achieve the

¹⁵ 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).

¹⁶ 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).

¹⁷ 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).

¹⁸ COM(2013)286 final.

¹⁹ COM(2013) xxx final

²⁰ COM(2005) 446 final.

strategic objectives, a regulatory agenda should be established, including measures to control emissions from medium combustion plants.

- (9) This Directive should not apply to energy related products covered by implementing measures adopted in accordance with Directive 2009/125/EC or by Chapter III or IV of 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.
- (10) In order to ensure the control of emissions of sulphur dioxide, nitrogen oxides and particulate matter 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.
- (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.
- (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, for example for the purposes to comply with environmental quality standards. In particular, in zones not complying with air quality limit values, more stringent emission limit values, which would also promote eco-innovation in the Union, facilitating in particular market access of small and medium enterprises, should be applied by Member States, such as the benchmark values set out in Annex III to this Directive.
- (14) Member States should ensure that the operator of a medium combustion plant and the competent authority each take the necessary measures in the event of non-compliance with 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.
- (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 documents²¹, 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 particulate matter 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.
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) energy related products which are covered by implementing measures adopted in accordance with Directive 2009/125/EC where those implementing acts are

²¹ OJ C 369, 17.12.2011, p. 14.

setting emission limit values for the pollutants listed in Annex II of this Directive;

- (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 aircraft;
- (f) combustion plants which are covered by implementing measures adopted in accordance with Regulation (EC) No 1069/2009 of the European Parliament and of the Council²² where those implementing acts are setting emission limit values for the pollutants listed in Annex II of this Directive.

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;
- (3) ‘nitrogen oxides’ (NO_x) means nitric oxide and nitrogen dioxide, expressed as nitrogen dioxide (NO₂);
- (4) ‘particulate matter’ 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];
- (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;

²² Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (OJ L 300, 14.11.2009, p. 1.)

- (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;
- (14) 'waste' means any substance or object which the holder discards or intends or is required to discard;
- (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:
 - (a) vegetable waste from agriculture and forestry;
 - (b) vegetable waste from the food processing industry, if the heat generated is recovered;
 - (c) 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;
 - (d) cork waste;
 - (e) 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 discharging emissions into the air;
- (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) 'limit value' means a level fixed on the basis of scientific knowledge, with the aim of avoiding, preventing or reducing harmful effects on human health and/or the

environment as a whole, to be attained within a given period and not to be exceeded once attained, as laid down in Directive 2008/50/EC of the European Parliament and of the Council²³;

- (19) ‘zone’ means part of the territory of a Member State, as delimited by that Member State for the purposes of air quality assessment and management, as laid down in Directive 2008/50/EC.

Article 4 *Registration*

1. Member States shall take the necessary measures to ensure that medium combustion plants are operated only if they are registered by the competent authority.
2. The procedure for registration shall include at least a notification to the competent authority by the operator of the operation or the intention to operate a medium combustion plant.
3. For each medium combustion plant, the notification by the operator shall contain at least the information listed in Annex I.
4. The competent authority shall register the medium combustion plant within one month following the notification by the operator and shall inform the operator thereof.
5. Existing medium combustion plants may be exempted from the notification obligation referred to in paragraph 2 provided that all information referred to in paragraph 3 has been made available to the competent authorities.

Those combustion plants shall be registered by [thirteen months after the date of transposition].

6. For each medium combustion plant, the register held by the competent authorities shall at least include the information listed in Annex I, as well as any information obtained through the verification of monitoring results or other compliance checks referred to in Articles 7 and 8.

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 individual medium combustion plants.
2. From 1 January 2025 emissions into air of sulphur dioxide, nitrogen oxides and particulate matter 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 1 of Annex II.

²³ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L 152, 11.6.2008, p.1).

From 1 January 2030 emissions into air of sulphur dioxide, nitrogen oxides and particulate matter 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 1 of Annex II.

Member States may exempt existing medium combustion plants which do not operate more than 500 operating hours per year from compliance with the emission limit values set out in Part 1 of Annex II. In that case, for plants firing solid fuels, an emission limit value for particulate matter of 200 mg/Nm³ shall apply.

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

Member States may exempt new medium combustion plants which do not operate more than 500 operating hours per year from compliance with the emission limit values set out in Part 2 of Annex II. In that case, for plants firing solid fuels, an emission limit value for particulate matter of 100 mg/Nm³ shall apply.

4. In zones not complying with EU air quality limit values laid down in Directive 2008/50/EC, Member States shall apply, for individual medium combustion plants in those zones, emission limit values based on the benchmark values laid down in Annex III or on stricter values established by the Member States, unless it is demonstrated to the Commission that applying such emission limit values would entail disproportionate costs and that other measures ensuring compliance with the air quality limit values have been included in the air quality plans required under Article 23 of Directive 2008/50/EC.
5. The Commission shall organise an exchange of information with Member States and stakeholders on the benchmark values for more stringent emission limit values referred to in paragraph 4.
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 immediately inform the Commission of any derogation granted under the first subparagraph.

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 immediately of any derogation granted under the first subparagraph.

8. 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 product of multiplication by the sum of the thermal inputs delivered by all fuels;
 - (c) aggregating the fuel-weighted emission limit values.

Article 6

Monitoring of emissions and the operation of abatement equipment

1. Member States shall ensure that the operators carry out monitoring of emissions at least in accordance with Annex IV.
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, processed and presented in such a way as to enable the competent authority to verify compliance with the emission limit values.
4. For medium combustion plants applying secondary abatement equipment in order to meet the emission limit values, the effective operation of that equipment shall be monitored continuously and the results thereof recorded.

Article 7

Compliance check

1. Member States shall set up a system of environmental inspections of medium combustion plants, or implement other measures to check compliance with the requirements of this Directive.
2. 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.
3. Member States shall take the necessary measures to ensure that the periods of start-up and shut-down of the medium combustion plants and of any malfunctions are kept as short as possible. In case of a malfunction or a breakdown of secondary abatement equipment, the operator shall immediately inform the competent authority.
4. In the event of non-compliance, Member States shall ensure that:
 - (a) the operator immediately informs the competent authority;

- (b) the operator immediately takes the measures necessary to ensure that compliance is restored within the shortest possible time;
- (c) the competent authority requires the operator to take any appropriate complementary measures that the competent authority considers necessary to restore compliance;

If compliance cannot be restored, the competent authority shall suspend the operation of the plant and withdraw its registration.

Article 8
Verification of monitoring results

1. Member States shall ensure that no valid value of emissions monitored in accordance with Annex IV, exceeds the emission limit values set out in Annex II.
2. The operator of a medium combustion plant shall keep the following:
 - (a) without prejudice to Article 4(5), the proof of notification to the competent authority;
 - (b) the proof of registration by the competent authority;
 - (c) the monitoring results referred to in Article 6(3) and 6(4);
 - (d) where applicable, the record of operating hours referred to in the second subparagraph of Article 5(2).
 - (e) a record of the fuels used in the plant and of any malfunctions or breakdown of secondary abatement equipment.
3. The data referred to in paragraph 2 shall be kept at least for a period of ten years
4. Data listed in paragraph 2 shall be made available to the competent authority upon request to verify compliance with the requirements of this Directive.

Article 9
Changes to medium combustion plants

1. The operator shall notify the competent authority of any planned change to the medium combustion plant which would affect the applicable emission limit values. Such notification shall be provided at least one month before the change takes place.
2. Upon notification from the operator in accordance with paragraph 1, the competent authority shall register any such change within one month.

Article 10
Access to information

Without prejudice to Directive 2003/4/EC of the European Parliament and of the Council²⁴, the competent authority shall make available to the public, including via the Internet, the register of medium combustion plants.

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 [2 years after the date of transposition], report to the Commission a summary of the data listed in Annex I, with an estimate of the total annual emissions of sulphur dioxide, nitrogen oxides and particulate matter from these plants, grouped by fuel type and capacity class.
2. Member States shall send to the Commission a second and third report containing the update of the data referred to in paragraph 1 by respectively 1 October 2026 and 1 October 2031.

The reports drawn up under the first subparagraph 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.
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 5 (6), 5(7) and Article 10, 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, with special regard to the need to establish the benchmark values laid down in Annex III as Union-wide emission limit values, 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.

²⁴ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information (OJ L 41, 14.2.2003, p. 26).

Article 13
Amendment of Annexes

The Commission shall be empowered to adopt delegated acts in accordance with Article 14 in order to adapt 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 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: 1,5 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