

Manual of European Environmental Policy

The following pages are a section from the Manual of European Environmental Policy written by the Institute for European Environmental Policy.

The Manual was published by Earthscan/Routledge from 2010 to 2012. It was designed as an on-line interactive reference work and annual printed versions were also produced.

This section is the text of the Manual as published in 2012. It is therefore important to note the following:

- The contents have not been updated since 2012 and no guarantee is given of the accuracy of the contents given potential subsequent developments.
- The sections include links to external websites (e.g. to legal texts). These links continue to work as long as those links are not broken by those websites.
- The sections also include the original links that enabled interactivity within the published on-line version of the Manual. These links no longer work.

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The Manual should be cited as follows:

Farmer, A.M. (2012) (Editor). Manual of European Environmental Policy. 1043pp. Routledge, London.

Historical legislation: Municipal waste incineration

Formal references	
89/369/EEC (OJ L163 14.06.1989)	Directive on the prevention of air pollution from new municipal waste incineration plants
Proposed 1.3.88 – COM(88)71 (OJ C/1988/75/4)	
89/429/EEC (OJ L203 15.07.1989)	Directive on the reduction of air pollution from existing municipal waste incineration plants
Proposed 1.3.88 – COM(88)71	
Legal base	Article 192 TFEU (originally Art. 130s EEC Treaty)
Binding dates	
89/369/EEC	
Formal compliance	1 December 1990
89/429/EEC	
Formal compliance	1 December 1990
Larger plants to meet standards	1 December 1996
Smaller plants to meet standards:	
Stage 1	1 December 1995
Stage 2	1 December 2000 Note: these Directives were repealed by the Waste Incineration Directive 2000/76/EC on 28 December 2005.

Purpose of the Directives

In order to reduce air pollution, the Directives specified emission limit values and other conditions to be met by new and existing municipal waste incineration plants. These were defined as plants handling only domestic, commercial and trade waste. Plants for the incineration of sewage sludge, chemical, toxic and dangerous waste and hospital waste were excluded from their scope but were covered by Directive 2000/76/EC. They could be considered ‘daughter’ Directives of the framework Directive 84/360/EEC on combating of air pollution from industrial plants on air pollution from [industrial plants](#) and the Waste Framework Directive [75/442/EEC](#).

Summary of the Directives

89/369/EEC – New plants

The Directive on new plants laid down emission limit values, and operating and monitoring requirements, which (from 1 December 1990) had to be attached to the prior authorizations required by Directive [84/360/EEC](#) and the Waste Framework Directive [75/442/EEC](#).

Emission limit values covering dust, heavy metals and acid gases (hydrochloric acid (HCl), hydrofluoric acid (HF) and sulphur dioxide (SO₂)) were established for three categories of incineration plants. The most stringent limits applied to plants with a capacity greater than 3 tonnes per hour (t/h). Lesser requirements applied to plants between 1 and 3 t/h, and to those below 1 t/h. Member States' competent authorities could in some circumstances grant limited derogations for plants below 1 t/h, following consultations with the Commission. They could also fix emission limits for other pollutants where this was considered appropriate, in particular for dioxins and furans, pending the adoption of future Community Directives limiting emissions of these substances.

In the absence, at the time, of cost-effective dioxin measurement techniques, the Directive sought to ensure the prevention of dioxin formation by establishing minimum requirements for combustion. Maximum concentrations of carbon monoxide (CO) and organic compounds in combustion gases were also specified.

The Directive set monitoring and compliance requirements varying with the size of the plant and the nature of the pollutant, and provided for the publicity of monitoring information and authorizations.

In the event of limit values being exceeded, emergency measures were required to ensure compliance, and plants which continued to fail to comply after remedial action could be closed down. In the event of breakdown of purification devices, plants could be authorized to continue operation for a specified limited period.

Member States could in some circumstances grant derogations from some of the Directive's requirements for plants designed to burn waste-derived fuels, provided the requirement in Directive 84/360/EEC to use the best available technology not entailing excessive cost was respected.

89/429/EEC – Existing plants

The Directive on existing municipal waste incinerators – defined as all those granted a first authorization before 1 December 1990 – set out the timetable by which they were to reach the standards for new plants laid down in Directive 89/369/EEC.

For plants with a capacity greater than 6 t/h, the compliance date was 1 December 1996, except for a requirement to meet a two second residence time. This needed not to be met at the latest until the furnaces are replaced, where earlier compliance would have given rise to 'major technical difficulties'.

Plants with a capacity below 6 t/h were to meet the standards for new plants by 1 December 2000. Interim standards, however, were to have been met by 1 December 1995. These applied to emissions of dust and the concentration of carbon monoxide (CO) in combustion gases, and varied according to the size of plant – the two categories being 1–6 t/h, and below 1 t/h. By the interim deadline, all plants below 6 t/h were required to meet the same combustion conditions as for new plants, with the important exception that the appropriate residence period could be determined by the competent authorities.

The Directive set out the required monitoring and compliance regime associated with the interim standards, and included provisions on technically unavoidable stoppages and publicity requirements similar to those in 89/369/EEC.

Development of the Directives

In 1984 the Community adopted the framework Directive [84/360/EEC](#) establishing the elements of a Community-wide system for control of air pollution from specified industrial sources. Among the categories of plants listed in the Directive 84/360/EEC for Regulation in possible future daughter Directives were plants for the incineration of solid or liquid waste, and it was within this context that the two Directives on municipal waste incineration plants (MWIPS) were developed.

In the Community in 1988 some 25 per cent of municipal waste was incinerated. This figure varied from some 40 per cent in France, to zero in Portugal and Ireland. At the time of the Commission proposal only five Member States had detailed provisions regulating air pollution from MWIPs, and these arrangements differed widely.

Emissions associated with the operation of municipal incinerators include dust, heavy metals, acidic gases and traces of dioxins. The latter term is commonly used to refer to two large groups of chlorinated organic chemicals – polychlorinated dibenzo-dioxins, and polychlorinated dibenzo-furans. These may be generated when refuse is burnt at too low temperatures, for too short a residence time and with insufficient oxygen.

Work began within the Commission in 1986 on the two draft Directives, which were formally proposed to the Council in March 1988. Despite the requirement in Directive 84/360/EEC that emission standards for new plants should be set according to the ‘best available technology not entailing excessive costs’ (BATNEEC), the proposed limit values for MWIPs were in some cases significantly below the highest in the Community, in order to accommodate the wide variation in standards between Member States.

For new incinerators, varying requirements were to apply to only two categories of plants – above and below 5 t/h – which for those countries with a large number of very small plants potentially represented a considerable burden. The proposal on existing plants envisaged universal compliance with the requirements for new incinerators within ten years, and with interim standards, varying with capacity, to be in place within five.

Both the European Parliament and the Economic and Social Committee, while welcoming the principle of the draft Directives, called for more stringent limit values for new plants and suggested additional standards for other substances. The Economic and Social Committee in particular criticized the Commission for failing to base its proposed limit for dust (50

mg/nm³) on the highest standard then operating in the Community (30 mg/nm³ in the Federal Republic of Germany). For existing plants, both institutions called for a shorter transitional period (a reduction by half in the case of the European Parliament), and a tighter regime for small incinerators. The UK opposed the proposal for a dust limit of 50 mg/nm³ as this would have required the use of bag filters and rule out the use of electrostatic precipitators then normally employed in the United Kingdom, but it sought stricter monitoring requirements. Its Minister stated that ‘the United Kingdom sees some illogicality in the stance of those Member States which favour very strict emission limits, but then prefer to monitor over long averaging periods’.

The two Directives were both formally adopted by the Environment Council in June 1989. In the case of new incinerators, negotiations had produced more stringent standards than the Commission had proposed for larger plants, and a relaxation of requirements for the smallest. The move to tighten the dust limit for the largest new plants was successful (despite British opposition) and the deadline by which the largest existing plants should comply with the standards for new incinerators was brought forward by almost three years. Moreover, the two proposed size categories for new incinerators – above and below 5 t/h – were replaced by three, with slacker requirements for incinerators below 1 t/h. This concession was demanded by France in view of its large number of small plants. UK proposals on the monitoring and compliance regime, waste-derived fuels, and maximum permitted breakdown periods were incorporated into the Directives, while a proposed requirement for mandatory environmental impact assessment for the largest incinerators was dropped on the grounds that amendment of EIA Directive [85/337/EEC](#) was premature.

Implementation of the Directives

Information on national legislation transposing Directive 89/429/EEC can be found in the Member States’ national [execution measures](#).

Information on national legislation transposing Directive 89/369/EEC can be found in the Member States’ national [execution measures](#) for this Directive.

The Commission did not publish an available report addressing the implementation of Directives 89/429/EEC and 89/369/EEC.

Enforcement and court cases

There have been three cases concluded in the European Court of Justice concerning Directives 89/429/EEC and 89/369/EEC:

- [C-237/95](#) 20.06.96. This was a judgement against Italy for failure to ensure adequate transposition of the Directive.
- [C-139/00](#) 11.04.00. This was a judgement against Spain which failed to ensure that the Directive's requirements were respected as regards the three incineration furnaces installed at Mazo and Barlovento on the island of La Palma.
- [C-60/01](#) 18.06.02. This was a judgement against France for failure to ensure that all incinerators in France are operated in accordance with the combustion conditions of the Directive.

Related legislation

At the time of adoption of the Directives, the principal legislation relating to municipal waste incineration were the two framework Directives to which Directives 89/369/EEC and 89/429/EEC contributed, that is the Waste Framework Directive [75/442/EEC](#) and the Directive on Emissions from Industrial Plants [84/360/EEC](#). There also became a link with the later Hazardous Waste Incineration Directive [94/67/EC](#). All of these Directives have since been repealed or are in the process of repeal and other related legislation has been adopted. For a current list of legislation related to waste incineration see the section on the Waste Incineration Directive [2000/76/EC](#).