Manual of European Environmental Policy

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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.
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Disposal of polychlorinated biphenyls (PCBs)

96/59/EC (OJ L243 24.9.96)	Directive on the disposal of polychlorinated biphenyls and polychlorinated terphenyls
Proposed 18.10.88 – COM(88)559	
Legal base	Article 192 TFEU (originally Article 130s EEC Treaty)
Binding dates	
Entry into force	16 September 1996
Formal compliance	16 March 1998
Inventories of PCBs and plans for disposal to be drawn up	16 September 1999
PCBs to be disposed of	31 December 2010

Note: Directive 76/403/EEC which preceded Directive 96/59/EC was repealed on the date of adoption of Directive 96/59/EC.

Purpose of the Directive

Polychlorinated biphenyls (PCBs) are organohalogen compounds that have been used most recently as dielectric fluids. Prior to 1973 they were more widely used as hydraulic fluids, heat transfer fluids, lubricants and plasticisers in such products as paints and carbonless copying paper. PCBs are not believed to occur naturally, but being very resistant to degradation they have been widely detected in the environment, particularly in predatory birds feeding on aquatic organisms. PCBs may have accounted for the spectacular catastrophe among wild birds in the Irish Sea in 1969. It is known that some aquatic organisms such as shrimps may be killed at very low concentrations of PCBs in water. PCBs can be destroyed in high-temperature incinerators.

Separate Directives 76/769/EEC and 85/467/EEC (see section on historical legislation: restrictions on marketing and use of certain dangerous substances and preparations) restricted the sale and use of PCBs, while Directive 96/59/EC, commonly known as the Disposal of PCBs Directive, sets out a system of control for the elimination of PCBs within the Waste Framework Directive. It requires steps to be taken to identify PCBs, to dispose of them by a specified deadline (end 2010), and to decontaminate or dispose of contaminated equipment. A previous Directive, 76/403/EEC, had required disposal of some PCBs but also promoted their regeneration and reuse. Directive 96/59/EC repealed Directive 76/403/EEC and does not allow regeneration of PCBs.

Summary of the Directive

'PCB' is defined to include not only PCBs themselves but also polychlorinated terphenyls (PCTs), certain other substances and mixtures. 'Disposal' is defined by reference to certain operations listed in Directive 75/442/EEC.

Prior to agreement on the Directive, EC legislation relating to PCBs already existed in the form of Directive 76/403/EEC, which laid down general requirements for protection from the hazards of PCB disposal, and Directive 85/467/EEC, which has prohibited the marketing and use of new PCBs since 1985. Directive 96/59/EC is concerned with the management and disposal of PCBs which entered use before 1985, and so replaces Directive 76/403/EEC. Directive 85/467/EEC remains in force.

The Directive requires the disposal of waste PCBs, and the disposal or decontamination of equipment, 'as soon as possible'. Member States have to compile inventories of equipment containing more than 5 dm^3 PCBs; for these items disposal and decontamination must be complete by 31 December 2010. Inventories are to include the location and description of equipment, the quantity of PCBs contained, and the dates of treatment and replacement, and are to be based on information from the holders of the equipment in question. Equipment which is subject to inventory must also be labelled. The inventories themselves must be completed and sent to the Commission by 16 September 1999.

Used PCBs and equipment on the inventory must be transferred 'as soon as possible' to licensed disposal facilities. These facilities must record the quantity, origin, nature and PCB content of any consignments received which contain PCBs, and must provide these data to the competent authorities. The Directive specifies that where incineration is used for disposal of PCBs the provisions of Directive 94/67/EC (now the Waste Incineration Directive 2000/76/EC) will apply, although other methods of disposal may also be used as long as the same standards are achieved. Incineration on ships is prohibited, however.

The separation of PCBs from other substances for reuse is prohibited, as is the topping up of transformers with PCBs. Maintenance of transformers may be undertaken while they remain in service, so long as the objective is to ensure that the PCBs they contain comply with technical standards and that there is no leakage. The Directive also includes provisions relating to the decontamination of transformers containing more than 0.05 per cent PCBs by weight.

The Directive specifies a due date of 16 September 1999 for Member States to draw up 'plans' for the decontamination and/or disposal of inventoried equipment, and 'outlines' for the collection and disposal of equipment which is not subject to inventory. The content of these 'plans' and 'outlines' is not defined.

Development of the Directive

Following a number of incidents, including one in Japan where rice oil contaminated by PCBs caused injury to humans and death to poultry, the Council of the OECD issued a Decision in February 1973 requiring Member States of the OECD to regulate both the use and disposal of PCBs. An OECD Decision places an obligation on Member States to put it into effect but there is no court to ensure that effective action is taken, as there is with an EC Directive. It is significant that notwithstanding the OECD Decision the Community nevertheless felt the need for a Directive.

Following that OECD Decision, the French government forwarded to the Commission a preliminary draft, 'Conditions of the Use of PCBs', which also dealt with PCB disposal. The Commission decided to propose two separate Directives, one dealing with the use of PCBs and the other with their disposal.

In July 1974 a Directive was proposed which became Directive 76/769/EEC restricting the sale and use of PCBs to closed circuit electrical equipment (transformers, resistors and inductors), condensers (capacitors) and a few other limited applications. Seven months later the Commission issued the proposal which led to Directive 76/403/EEC.

The European Parliament welcomed the proposal but suggested that the Commission should report on the application of the Directive to the Parliament and the Council. This was one of only two amendments (other than drafting amendments) made before Directive 76/403/EEC was agreed, the other being the insertion of a duty to promote regeneration of PCBs.

It is ironic that the amendment to promote regeneration was accepted in Directive 76/403/EEC, because the desire to ban regeneration was one of the driving forces behind the proposal that led to Directive 96/59/EC. The rationale was that, by regenerating PCBs and thus prolonging their use, the risks to the environment were maintained due to the continued possibility of escape. The alternative, therefore, was to ensure that all PCBs still in use were collected and disposed of, and the risks thereby eliminated. A proposal to this effect was tabled in October 1988, although it took nearly eight years for Directive 96/59/EC finally to emerge. By this time, several Member States had already agreed to dispose of all identifiable PCBs by the end of 1999, at the Third International North Sea Conference in Hague in 1990. The Directive in fact had to contain less demanding requirements than the North Sea accord to secure the agreement of the non-North Sea EU Member States.

Implementation of the Directive

A list of measures transposing the Directive in the Member States can be found in their national execution measures**.**

No report has been published to date on implementation of the Disposal of PCBs Directive. Many Member States received warnings from the Commission in 2000 with regards to elements of the Directive (see Enforcement and court cases below).

Enforcement and court cases

In April 2000 the Commission sent warning letters to all Member States with the exception of Finland for failure to submit the 'plans' and/or inventories of PCB equipment.

In January 2001, nine Member States were failing to comply with the Directive and six were referred to the European Court of Justice for failure to send inventories and plans to the Commission. Following this, the cases below were decided by the ECJ:

- C-46/01 27.02.2002. This was a judgement against Italy for failure to draw up and communicate to the Commission within the prescribed time limit the summaries of inventories provided for in Article 4(1) of the Directive and the plans and outlines provided for in Article 11. Italy argued that this was due to the absence of European-level reference methods of measurement for determining the PCB content of contaminated materials (those methods were adopted only on 16 January 2001). The Court deemed this an unsuitable excuse as prior measurement remained valid; Italy was therefore judged to have failed to fulfil its obligations.
- C-177/01 06.06.2002. This was a judgement against France for failing to communicate to the Commission a summary of the inventories of equipment with PCB volumes of more than 5 dm^3, a plan for the decontamination and/or disposal of the inventoried equipment and the PCBs contained therein, and an outline for the collection and subsequent disposal of equipment which is not subject to inventory in accordance with Article 4(1) of the Directive. France was therefore judged to have failed to fulfil its obligations under Articles 4 and 11 of the Directive.
- C-47/01 03.10.2002. This was a judgement against Spain for failure to draw up, or in any event to communicate to the Commission within the prescribed time limit, the plan, outline and summary of the inventory provided for in Articles 4(1) and 11.
- C-174/01 05.12.2002. This was a judgement against Luxembourg for failure to correctly draw up plans for the decontamination and/or disposal of inventoried equipment and the PCBs contained therein (Article 11(1)). The Court explained that Article 11(1), read in conjunction with the 10th and 16th recitals in the preamble, requires Member States to compare the amount of inventoried

equipment and quantities of PCBs contained therein which must be disposed of/decontaminated with the disposal or decontamination facilities available for that purpose. The plan must also enable the Member States to define the types of treatment for the various categories of equipment and the PCBs contained therein. The plan drawn up must therefore be specific and in conformity with the system for the disposal of PCBs laid down by the Directive as a whole.

- C-83/02 05.06.2003. This was a judgement against Greece for failure to draw up summaries, within the prescribed time limit, of inventories of equipment with PCB volumes of more than 5 dm^3, plans for the decontamination and/or disposal of inventoried equipment and the PCBs contained therein, and outlines for the collection and subsequent disposal of equipment which is not subject to inventory (Articles 4(1) and 11 of the Directive).
- C-508/06 29.11.2007. This was a judgement against Malta for failure to communicate the plans and outlines required under Article 11 of the Directive (related to disposal) and therefore failure to fulfil its obligations under that Article.

Further developments

In 2001 the Commission adopted a Community Strategy on Dioxins, Furans and PCBs (COM(2001)593) aimed at reducing as far as possible the release of these substances in the environment and their introduction in the food chains.

Related legislation

There are a number of other pieces of EU legislation which have interactions with the Disposal of PCBs Directive. These include:

- Directive relating to restrictions on the marketing and use of certain dangerous substances and preparations (Directive 85/467/EEC).
- Decision establishing two reference methods of measurement for PCBs (2001/68/EC).
- Regulation on Persistent Organic Pollutants (Regulation (EC) No 850/2004).
- Waste Incineration Directive 2000/76/EC.

The issues of relevance to these pieces of legislation are, where appropriate, covered in the chapters that deal with them. However, a brief outline of their relevance to the Disposal of PCBs Directive is given below.

Directive 85/467/EEC bans the marketing and use of PCBs and PCTs. The Decision establishing two reference methods of measurement for PCBs established European standards for determining PCBs in petroleum products, used oils and insulating liquids. The Regulation on Persistent Organic Pollutants also covers PCBs, including some waste-related provisions.