



Industry proposals for improvement of BAT information exchange

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1. Introduction

The members of the Industrial Emissions Alliance welcome the initiative of the EU Commission, the German Ministry for the Environment and the German Environmental Agency to discuss the BAT information exchange at the workshop in Berlin on 16 and 17 October 2014. This endeavour is well in line with previous contributions of the Industrial Emissions Alliance to further optimise the BREF revision process and the BREF quality.

The Industrial Emissions Alliance represents 17 industrial sectors that are covered by the Industrial Emissions Directive (IED) and for which more than 25 BREFs have been developed under the IPPC Directive framework. Under the IED framework, the members of the Industrial Emissions Alliance have been involved in the revision of about a dozen BREFs and have been actively contributing to the finalisation of seven BREFs. The members of the Industrial Emissions Alliance remain fully committed to providing the necessary extensive input during further development of BREFs under IED.

The suggestions in this document are based on broad experience across multiple industry sectors during BREF revision. The Industrial Emissions Alliance trusts that this document will be helpful to further improve the BAT information exchange. It remains to be seen how BAT Conclusions developed under IED will be transferred into individual permits and the Industrial Emissions Alliance would also welcome an exchange of thoughts on this topic in the future.

The following text is structured in accordance with the topics of the working groups on the second day of the workshop. Thus, the suggestions first elaborate on the BAT information exchange (“the process”) before providing a view on BREFs and BAT conclusions (“the product”).

2. Suggestions for BAT information exchange (“the process”)

A reliable framework for an efficient and workable BREF process is required

- Provide clear and reliable definitions as a solid basis for BREF development to avoid any uncertainties. Whenever definitions are modified, the implications for ongoing or future BREF revisions need to be assessed by EIPPCB in close collaboration with the TWG concerned. If definitions are modified when a given BREF revision is at an advanced stage, there should not be any retroactive effects on the ongoing process unless the respective TWG has agreed to the modifications. Furthermore, it has to be ensured that any definitions in translated BAT Conclusions are consistent with the original definitions
- Avoid inconsistency of interpretation between IED and BREFs (e.g. averaging periods, measurement uncertainty). IED is the legal framework for the revision of BREFs and the adoption of BAT conclusions

A well-defined BREF process needs to be followed

- Arrange additional TWG or subgroup meetings whenever required and ensure that the outcome of additional meetings is accepted by all TWG members. A data evaluation workshop before release of the first draft will be helpful to reduce the number of comments and will thus speed up the review process. An additional meeting before the Final Meeting will facilitate the discussions at the Final Meeting, especially if issues are likely to be controversial
- Seek early settlement of issues and provide documentation on settlement. Any settlement should be considered as binding for all TWG members until the review has been completed. Transfer pending issues which are not a priority for BAT Conclusions to the section on "Concluding remarks and recommendations for future work"
- Have consistent approach on how to organise and do site visits. Schedule site visits between Kick-off Meeting and the start of the drafting phase to illustrate fundamental issues. Arrange additional site visits during the drafting phase and after release of the first draft to clarify specific/technical aspects
- Do not accept input from TWG members which cannot be verified by other TWG members and the EIPPCB, including late input from TWG members which is not in line with previous contributions. Equally, any information that cannot be verified should not be considered during the Final Meeting
- Do not modify structure and content of documents once agreement has been reached by TWG; reduce the number of revision cycles for any pre-drafts of individual sections
- Do not systematically apply the approach according to which only one draft should be sufficient. If there is a broad agreement within the TWG that a second draft is required it should be developed in order to reach as much consensus as possible ahead of the Final Meeting

A strong working relationship is required between Commission, EIPPCB, Member States, Environmental NGOs and Industry

- Establish regular exchange of thoughts during meetings, site visits and conference calls to share industry knowledge, especially with BREF authors that have taken over a new assignment
- Send regular updates on the state of play of a given BREF to ensure full information and transparency about the ongoing process. Those updates should be provided by EIPPCB in a continuously revised roadmap that may include: to-do list, requests for additional information, interim reports in case of hand-over to another BREF author, and adaptation of the schedule in accordance with the evolution of the process (e.g. where the significance of issues has dramatically changed)

The workload has to match the scarce resources of EIPPCB, Member States, Environmental NGOs and Industry

- Do not intend to revise more than a manageable number of BREFs at the same time. Take into account that some industry sectors are covered by more than one BREF (e.g. chemical industry is affected by eight vertical and seven horizontal BREFs) and that availability of TWG experts is limited
- Allow sufficient time for making comments, especially if a large number of fundamental concerns need to be addressed. Issue revised draft with sufficient time to review before Final Meeting; a commenting period of two months on the draft and on the background document would be more appropriate to have a constructive dialogue on the issues. Do not allow time pressure to jeopardise the quality of documents; discussion of applicability (with focus on technical and economic restrictions) is a key aspect that cannot be neglected due to time constraints

The basics for a BREF revision have to be agreed upon at Kick-off Meeting

- Define scope at the very beginning of the process and do not change during the review process in order to focus the available resources of the TWG on the relevant topics. The scope influences the identification of installations that will be able to provide input on emission data and process techniques. All justifications to define the scope should be included in the final BAT Conclusions
- Assign tasks to TWG members via the creation of subgroups. Subgroups may support EIPPCB during the drafting phase, may assist EIPPCB during the quality check of questionnaires or may assess the outcome of data processing. The activities of subgroups have to be coordinated (timelines and principles must remain consistent with the outcome of the Kick-off Meeting) and any intermediate reports must be shared with the whole TWG for the sake of full transparency and awareness
- Promote discussion on questionnaires in a dedicated meeting soon after the Kick-off Meeting to prepare the timely release of questionnaires. Discussion on questionnaires needs to be based on the general agreement reached during the Kick-off Meeting on the major data collection related issues

All BREF work has to be data-driven

- Define the data collection, data validation and data sharing process. Clarify if and how reference plants will be selected for the data collection process (for some sectors the diversity of installations and processes will make the identification of reference plants irrelevant), how questionnaires are distributed and returned to EIPPCB, how data is checked for accuracy/consistency, how and by whom data is processed and how data is aggregated and made available
- Only request data that is relevant, especially for derivation of BAT-AEL ranges. Provide justification for relevance of data to ensure that operators understand need for data collection and can provide data without delay. Clarify what additional contextual information is needed that goes beyond the basic contextual information that is always required
- Respect specific confidentiality claims made by TWG members. Respect agreements on confidentiality or sensitiveness of data and inform data providers accordingly by including specific information in the questionnaire and in the accompanying letter
- Issue requests for additional information only if required and if a need for further information has been identified by the TWG

3. Suggestions for BREFs and BAT Conclusions (“the product”)

BREFs have to be focused documents with a clearly defined content

- Adopt a more focused approach during generation of BREFs, including a stronger focus on BAT Conclusions targeting a manageable and therefore limited number of key environmental issues
- Avoid setting up BREF as blueprint for permits; only the most significant environmental issues should be covered based on a solid assessment of the associated environmental impact. Do not intend to replace national regulations nor try to reflect all the specificities in local permits but aim to harmonise common elements
- Keep size of BREFs within a reasonable limit that nevertheless provides sufficient information for derivation of BAT Conclusions. Minimise information that is available elsewhere and do not aim to make BREFs a textbook on techniques to prevent and control emissions. However, take into account that BAT Conclusions are stand-alone documents and make sure that any relevant background information (e.g. applicability, cross-media effects, economics) is included in the BAT Conclusions
- Agree as early as possible on substances/processes to be covered in BREFs; only include substances/processes that have significant environmental aspects. Define for which substances/process BAT-AEL ranges are required and to what averaging periods they apply
- Make sure that interaction with other BREFs (both ‘horizontal’ and ‘vertical’) is agreed early in the process and that there is an agreement on interfaces between BREFs in order to avoid any overlapping or inconsistencies. Also ensure consistency and appropriateness when making cross-references to other BREFs

BAT Conclusions have to be based on solid data

- Derive BAT-AEL ranges via a well-designed and transparent procedure. Agree on a suitable data evaluation procedure to avoid unachievable BAT-AEL ranges. Avoid lack of transparency in BAT-AEL range derivation; data treatment methodology must incorporate fluctuation and specificities of the process. Under normal operating conditions, a plant which is applying BAT and is operated at the most effective and advanced stage should always meet the BAT-AEL ranges. Provide justification when reported performances have not been taken into account and when this leads to a narrower BAT-AEL range
- Base discussions on BAT Conclusions on the common understanding that any conclusions on BAT in BREFs developed under IPPC are not fit for purpose under IED. Transposing conclusions on BAT from a BREF adopted under IPPC “one to one” to BAT Conclusions as defined and to be adopted under IED articles 3(12) and 13(5) may in some of the existing installations lead to technically and/or economically unachievable performances

The definition of BAT Conclusions has to be respected and not interpreted

- Issue comprehensible and unambiguously formulated BAT Conclusions (i.e. meaningful, understandable and fit for translation) with adequate applicability criteria to ensure that operators and competent authorities will apply them in a straightforward manner during the permitting process. This is of particular relevance for installations that are covered by BAT Conclusions from several BREFs
- Make sure that BAT are widely available without excluding other technologies that result in an equivalent protection of the environment in accordance with IED articles 15(2) and 17(2) that stipulate that no specific techniques or technologies may be prescribed in order to allow for unbiased and technology neutral regulation
- Clearly state in the BAT Conclusions if a BAT is not in all circumstances generally applicable
- Do not assume that Article 15.4 is a solution for issues that cannot be resolved during technical discussions. Article 15.4 which would allow the competent authority to set less strict emission limit values in specific cases should not be influencing TWG members when deriving BAT Conclusions
- Include an impact assessment based on the proposed BAT-AEL ranges in the first draft. Assess the consequences of the proposed BAT-AEL ranges in order to understand what investment costs will be triggered if those BAT-AEL ranges became legally binding