



Discussion paper

Criteria for identifying key environmental issues for the review of BAT reference documents under Article 13 of the IED

1. Introduction

This paper is to support a discussion at the IED Article 13 Forum meeting of 19 October 2015 on improving the environmental effectiveness of the exchange of information by targeting efforts on the key environmental issues for each BREF review. It takes as point of departure discussions held over the past years in the Forum, as well as during the Berlin workshop (October 2014) and in recent Technical Working Group (TWG) meetings.

Building on the focused approach agreed by the Forum in December 2014, this paper aims to set out how the key environmental issues for a BREF review may be identified in a consistent and practical manner.

Such an approach is in line with the "big on big/small on small" commitment of the Juncker Commission, which has been endorsed by the Council and the European Parliament.

2. Where we are

2.1. Objectives of the information exchange

The exchange of information defined under Article 13 of the IED, involving Member States, the industries concerned, non-governmental organisations promoting environmental protection and the Commission, results in new or revised BREFs containing BAT conclusions that serve as the reference for setting or updating permit conditions.

The BREF guidance¹ focuses the information exchange on key environmental issues and defines as a main task of the TWG members to identify and list new/updated key data and issues relevant for deriving or updating BAT conclusions for the sector. While the term "key environmental issues" is not explicitly defined, it can be considered to refer to those issues for which the BAT conclusions have the highest likelihood of resulting in noteworthy additional environmental benefits.

In view of their enhanced role under the IED, the adoption of BAT conclusions through Commission Implementing Decisions is a cornerstone of IED implementation. In order to ensure that the BAT conclusions remain up-to-date, the IED sets the objective to have an eight-

¹ Commission Implementing Decision 2012/119/EU of 10 February 2012 laying down rules concerning guidance on the collection of data and on the drawing up of BAT reference documents and on their quality assurance referred to in Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, OJ L 63/1, 2.3.2012.

year review cycle of the BREFs. The EU's 7th Environmental Action Programme² foresees that BAT conclusions are to be adopted for all IED activities by 2020 in order to achieve a generalised uptake of BAT across EU industry.

This challenging objective has been set by the legislator as any delays in the adoption of BAT conclusions are synonymous to delays in harvesting the environmental improvement they can bring, which is particularly important where key environmental issues for a sector are at stake.

2.2 Improvements already proposed by the IED Article 13 Forum

In the course of 2013 and 2014, the IED Article 13 Forum identified a number of challenges for achieving the objectives of the information exchange and possible ways to overcome them. It highlighted that the timely adoption of high quality BAT conclusions is a critical factor for the full implementation of the IED and confirmed the timelines set in the BREF guidance.

The Forum identified the need for ensuring the acquisition of better and more relevant data and enhancing stakeholder commitment to adhere to the established deadlines. This should allow a better targeting of available resources of the Commission and experts participating in the information exchange, thereby maximising the environmental outcome of the Sevilla process. Account was also taken that currently available resources allow the European IPPC Bureau and the TWGs to work on maximum 10 BREFs simultaneously.

The TWGs were requested to reconsider some of their working methods and to cooperate in delivering relevant information, commenting on draft documents and proposals, and finding consensus at the technical level. In particular, the Forum noted the need for enhanced frontloading and adopting a more focused approach to the information exchange.

"Frontloading" refers to the early preparation for the information exchange in order to allow timely submission of necessary data/information as well as to avoid the collection of unnecessary data. Key factors are better anticipation of potential issues, evidence supporting proposals for a course of action and clear decisions at the kick-off meeting on the scope of the BREFs and on the key environmental issues to focus on.

A "focused approach" can be achieved by building on the existing BREF and updating only those parts required for deriving BAT conclusions, while targeting a manageable (i.e. limited) number of key environmental issues through sound data collection and processing.

In the course of 2014, the Forum also confirmed the need for a more effective review of the BREFs for the chemical sector in order to ensure that resource inputs match the expected outputs. In particular, the need to focus efforts on BAT and BAT-AELs for key environmental issues and to readjust the balance between generic and specific BAT conclusions were noted.

2.3. Berlin workshop (October 2014)

The Berlin workshop reaffirmed the BAT information exchange process and acknowledged its continuous improvement, in particular since the entry into force of the IED. It highlighted that the BAT conclusions and BAT-AELs should contribute to achieving the IED's objectives and broader EU environmental targets (e.g. on air and water quality).

² 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 354/171 of 28.12.2013.

It endorsed the frontloading and more focused approach principles, while noting that this requires the early identification of key environmental issues and defining suitably targeted data collection priorities and procedures. The focus of efforts should be on delivering clear, precise and concise BAT conclusions, especially in order to derive BAT-AELs with narrow ranges.

In addition, the importance of consistent approaches across TWGs and achieving early agreement in the TWG on technical issues was highlighted, as was the potential of smarter working methods to facilitate closer and more effective TWG working.

3. The challenges we are facing

The adoption of seven³ BAT conclusions over the past three years, including for some of the most environmentally relevant sectors, is a major achievement. However, this has come with delays and the pursued objective of adopting high quality BAT conclusions for all IED sectors by 2020 remains a huge challenge.

Further prolonging the BREF reviews would imply that the full implementation of the IED would be postponed, which would undermine the effectiveness of the IED and hamper achieving its objectives. As a result, broader environmental objectives set at EU level, which depend *inter alia* on the uptake of BAT in industrial sectors, would be at risk.

The gathering of more (detailed) information and a more in-depth assessment is helping to improve the quality and consistency of the BREFs and BAT conclusions. Such increased efforts are particularly worthwhile when focusing on key environmental issues for the sector but risk generating bottlenecks where the scope of activities and environmental issues covered is broad. Therefore, focusing the review on key environmental issues for the sector would increase the environmental effectiveness of the process, ensuring that increased quality of the BAT conclusions is bearing results in the field through swift application.

In view of this, the commitment of the Forum to strive for a more focused approach should result in (1) targeting available resources and additional efforts on the areas where return on investment is maximal; (2) enabling timely adoption of the BAT conclusions.

Whilst, in line with the BREF guidance, a broad consensus exists that the review of a BREF should focus on the “key environmental issues”, there have been difficulties in applying this concept in practice.

In order to make the “focused approach” fully operational across the TWGs, a common understanding needs to be built on how the “key environmental issues” should be identified for each BREF review, including on which information would be needed for this.

4. The way forward

4.1 Priority setting under a focused approach

Establishing a focused approach for reviewing a BREF means that priorities have to be defined on which issues to cover, as follows:

- (i) Priority should be given to review and update those parts of a BREF that are directly related to the BAT conclusions and, in particular, the BAT-AELs. The more descriptive or

³ Adoption of the eighth BAT conclusions (WBP) is expected in the course of October 2015

contextual parts should have less priority, unless where additional information feeding into them would directly contribute to the identification of the key environmental issues.

- (ii) Further priorities should be defined as outlined below amongst all possible issues for which BAT conclusions might be derived (whether or not they have been dealt with in the original BREF). This implies choices on which activities and processes to cover, which types of pollution (emissions to air, water land) and which other aspects (e.g. raw materials use, water consumption, energy use, waste generation).
- (iii) The list of potential pollutants emitted from the activities concerned should be considered and prioritised.

In addition, in order to ensure a consistent and balanced approach across different BREFs, the overall environmental impacts of the activities concerned should be put into perspective and compared with pollution caused by other sectors and human activities in general.

4.2. Criteria for defining the "key environmental issues"

In order to put this focused approach into practice, the "key environmental issues" to target during the BREF review should be defined at the earliest stage of the information exchange possible.

For the purpose of establishing a common understanding of what the "key environmental issues" for the BREF review are, the following criteria should be used, which take into account both the environmental relevance of the activities and issues and the potential for the BREF review to improve the situation:

- (i) the environmental relevance of the (air, water, or soil) pollution caused by the activity or process concerned, i.e. whether it may cause an environmental problem;
- (ii) the significance of the activity in terms of number of installations, their geographical spread and their contribution to the total (industrial) emissions in the EU;
- (iii) the potential of the BREF review for identifying new or additional techniques that would further significantly reduce pollution;
- (iv) the potential of the BREF review for defining BAT-AELs that would significantly improve the level of protection for the environment as a whole in comparison with the current emission levels.

In order to facilitate application of these criteria before the actual review is started, information should be available on the following:

- (i) the emissions of the activities concerned and their broader environmental relevance;
- (ii) the general environmental performance of techniques applied within the sector;
- (iii) the recent evolution of techniques applied in the sector and their environmental performance.

4.3. Consequences for the information exchange

The priorities set and, in particular, the choices made as regards key environmental issues should be consistently kept in mind at the later stages of the information exchange, in particular

when collecting information and when drawing up and commenting on the draft BREFs and BAT conclusions.

For the data collection, this would mean the following:

- for the identified key environmental issues, a full and detailed data collection would be needed (including through plant-specific questionnaire), aimed to update the existing BAT and to define BAT-AELs;
- for issues given the lowest priority, no new data would be collected and the information and descriptions contained in the existing BREF can be maintained;
- for issues where it cannot be decided at the kick-off meeting whether they are key environmental issues, a short and simplified data collection would take place to allow such decision to be made before the full data collection is started. In case the additional evidence gathered would not still be insufficient, these issues would not be kept for the full data collection.