



17 April 2015

EEB reaction to the EIPPCB proposed amendments to the interim WI BREF KoM conclusions circulated on 27th March 2015 (objection) *(sent by email)*

Dear Ms Marianne Wenning, Dear Ms Aneta WILLEMs,
Dear IED Forum members, Dear WI BREF TWG members,

In the email of the WI BREF review team on 27 March 2015, the final proposal of the EIPPCB amended KoM conclusions is outlined. The EEB welcomes the fact that the EIPPCB took into account the high number of IED Forum members' concerns following the 'further exchange on KEI for air emissions' and its decision to proceed with an almost complete¹ data collection process and to conclude on which parameters shall be considered as KEI only after the data collection results are available.

However, we regret that an arbitrary categorization of pollutants remains in the final EIPPCB proposal and we also believe that the proposed criteria upon which the characterization of a parameter as KEI (or not) shall be based, needs further consideration. The EEB, further to prior input submitted on 13 March, would like to react on the following new elements put forward by the European Commission sent by email on 27/03/2015 to the WI TWG.

Since these proposals are -in our view- not in line with the BREF review rules, we bring it to the attention of the members of the IED Forum in order to react to what we see as an arbitrary change of approach in the Sevilla Process by the European Commission which may have significant consequences for other upcoming BREFs. We refuse being forced to “compromise “on this issue.

Issue 1 (new): According to the final proposal of the EIPPCB, *'based on the outcome of the data collection, a review of the (above) prioritisation of (these) key environmental pollutants will be made based on the following principles:*

- *The potential for the BREF and BAT conclusions to identify techniques that would further **significantly** reduce emissions from the pollutant within the WI sector taking into account any cross-media effects;*
- *The potential for the BREF to set BAT-AELs that would **significantly** improve the level of environmental protection for the environment as a whole from the WI sector in comparison with the current performance (which will mainly be driven by the ELVs in Annex VI of the IED).'*

It is further noted that *'the TWG does not anticipate setting BAT-AELs on those pollutants shown by the data collection where a BAT-AEL would not **significantly** improve the current*

¹ The data collection process would have been considered complete if included all relevant pollutants. Please see the 2nd EEB remark.

level of environmental protection already provided by the Chapter IV / Annex VI ELV' and that 'where contextual data on this issues PM10/PM2.5, CO2, N2O and CH4 are provided, this would be used in order to improve the current emissions and consumption levels chapter of the WI BREF, **but it is not expected to set BAT-AELs on these parameters**'.

The EEB objects to the introduction of a 'significant' improvement threshold. First, the attempt to define this term in the context of the review will give rise to a new, time-consuming debate which has not been raised at the KoM. Secondly, it is worth noting that the Commission guidance for drawing-up/reviewing of BREFs², in the sections 1.2.2 ('General procedure for the review of a BREF') and 1.2.3 ('Objective of a BREF review') there is no reference that would justify the introduction of this additional criteria. As a reminder, the relevant provisions of the BREF review rules of section 1.1.1 'What a BREF is and its aim' read as follows: "A BREF should also serve as a **driver towards improved environmental performance across the Union.**" (not "significantly improved"). The BREF review rules are binding as well upon the Commission, therefore they cannot depart from the agreed procedures. It is for the IED Forum to provide its opinion on the practical arrangements for the exchange of information in accordance with the second subparagraph of Article 13(3) of the IED, but in this case we think the BREF review rules would need to be changed to allow this new approach proposed to materialise. Lastly, the EEB would indeed welcome if the revised BAT-AEL would "significantly improve the level of environmental protection for the environment as a whole", however that depends in essence on the attitude of the EIPPCB and DG ENV to be serious about it and ambitious when setting the upper range of the BAT-AEL. Recent developments on BAT conclusions (e.g. Refineries BREF, the revised draft BAT conclusions for the LCP BREF recently released) show that this is unfortunately NOT the case. The attitude taken on the WI BREF is yet another example that the intentions by DG ENV are likely to deliver the opposite (see point 2) since it affects environmental protection standards outside the EU borders.

The EEB proposes that the "threshold of significance" shall be removed from the revised proposal since this additional criteria is not in line with the BREF review rules. We ask for the deletion of the term "significantly" in the revised Draft KoM meeting report (i.e. pages 12 points 22 and 23).

- This change in the Sevilla Process should be discussed first and subject to consensual agreement at the next IED-Forum. We cannot accept to be forced to compromise on this, just because DG ENV / (EIPPCB) is imposing this new approach- BAT that leads to ('significantly' or not) improved protection of the environment 'as a whole' and to lower emission levels of a given pollutant, comparing to IED Annex VI ELVs, should be included in the revised BREF and form part of the BAT conclusions. Furthermore, if the data collection shows no improvement potential on certain parameters (e.g. HF or HCL) then we expect the BREF upper ranges of the existing BAT conclusions to at least be maintained.

As raised in previous comments, we maintain our view that such an approach to decide for the prioritisation of pollutants to focus on for BAT/BATAELs determination is not appropriate.

The EIPPCB's suggests that *'It should be recognised that in these circumstances the BATAELs in the current BREF would cease to exist and have no status while for the environment the situation will not change, having or not BATAELs comparable to IED*

² Commission Implementing Decision 2012/119/EU ; OJEU L63/1 of 23.3.2012

ELVs, due to the application of IED Annex VI³". In fact the BREFs also serve as a 'BAT/BATAELs' record/inventory of what is technically achievable at a given time; a record that will be useful for the next BREFs reviews and as technical guides for the operators and for the permit writers that will use them as a reference point in the determination of BAT-based permit conditions, or by permit writers abroad that cannot rely on the Waste Incineration Directive's minimum requirements. Finally, the sector is considered as most advanced in terms of operation according to BAT and could be a "showcase" for the other sectors to follow. These are other reasons why information related to the specific techniques used (and the achievable BAT-AELs) should remain in the revised BREF; BAT-related information is not included in IED Annex VI.

Issue 2: We would like to remind once again to the TWG that 'frontloading' and 'focusing on KEI' were highlighted as the way forward at the IED Article 13 Forum of 6 June 2013, **along with the concern to 'maintain the level of environmental ambition and ensuring that the existing conclusions on BAT were not weakened'**. Considering the deletion of BATAELs already included in the current WI BREF (and related BAT conclusions on how to abate a given pollutant) is clearly not in line with the objective outlined above. In the IED Forum meetings and at the Berlin meeting, the EEB and other IED Forum members have (repeatedly) stated that the number of BATAELs / BATAE(P)Ls **should rather increase than decrease during a revision process. At worst, the ambition level of existing BAT conclusions is confirmed.**

The fact that an arbitrary categorisation of pollutants remains in the EIPPCB's proposed amendment (even improved comparing to the categorisation currently included in the draft interim KoM conclusions) is, in our view, in contradiction to the EIPPCB proposal to allow the TWG members decide on the prioritisation of key environmental pollutants based on the data collection results. Even if it is stated that '*a review of the prioritisation of the key environmental pollutants will be made based on the data collection outcome*', the fact that some of 'group 3' pollutants continue to be excluded from the data collection process, namely PM₁₀/PM_{2.5}, CO₂, N₂O⁴ and CH₄ and the EIPPCB's declaration that '*where contextual data on this issues PM₁₀/PM_{2.5}, CO₂, N₂O and CH₄ are provided, this would be used in order to improve the current emissions and consumption levels chapter of the WI BREF, but it is not expected to set BAT-AELs on these parameters*' clearly show that some decisions are already made without the consent of the TWG members and the justification of the necessary technical information/data. This restrictive approach is even less understandable in the light of a cooperative attitude by the industry sector concerned to deliver the data available.

EEB proposes that no categorisation of pollutants is considered before the results of a complete data collection are available. Furthermore, we would like to re-iterate our suggestion, of 13 March 2015, to carry out a complete data collection of an extensive list of parameters (from Chapter 2 and 4, Annex II, III and VI of the IED) and additionally those considered relevant by the TWG (for example the UK, in its initial position, suggested that there may be issues with Cr VI). IED Annex II pollutants (provided that emissions from the installations concerned are >0) are to be regarded as a minimal list of substances to be scrutinized and addressed in BAT conclusions; the data gathered will then enable an assessment on which of these substances could indeed be a KEI.

³ EIPPCB's document on the 'further exchange on KEI for air emissions' (uploaded on BATIS on 11/02/2015)

⁴ N₂O is one of the substances that, although not included in the then Directive 2006/76/EC on waste incineration (now repealed by IED), was included in the current WI BREF, along with NH₃, PM₁₀/PM_{2.5}, PCB and PAHs including B(a)P