

From: Christian Schaible
To : IED Forum members

Sent : Friday 16/10/2015

Subject: RE: IED Article 13 forum - KEI

Dear Colleagues,

We also share concerns with this document. We can understand the intention to speed up the process under constrained resources, but as it stands we are very displeased about the current focus of the document and the approach put forward, which will undermine the objectives of the IED/BREFs as we understand it. There have been clear signals from various stakeholder groups that the understanding of KEI/focusses approach goes in the wrong direction.

We agree that a written procedure would be necessary and can definitely not sign up to this document.

The preliminary comments are as follows:

- This KEI has no proper legal basis and COM is trying to invent working approaches which as such are not in the BREF review rules and not in line with the IED policy objectives. Internal house rules (by President Juncker) have no value whatsoever to change the Seville Process. If the European Commission wants to change the way of working (which is not bad unless it restricts the effectiveness of the policy objectives), amendments to the BREF review rules should be proposed and need to be approved. As such we are not against changing those rules since we see wider structural problems (balance of interests, ambition level of BAT-AELs – no clear criteria to cut the true best from the rest; how to deal with proliferation of applicability restrictions etc) which could be addressed as well;
- Linked to previous point, about the “big on big/small on small” COM (Mr. Juncker) working motto: All the Annex I activities are de facto considered as having “significant” environmental impacts as per Annex I of the Aarhus Convention. It cannot get “bigger” than that!
- The starting point for COM to build up this “KEI / focusses approach” is in section 4.4.2 of the BREF review rules where the TWG is asked to identify and list “*new/updated key data and issues for deriving or updating BAT conclusions*”. The notion of KEI only appears for sector overview + current emissions / performance overview but NOT for deriving BAT conclusions (I invite all to have another reading of the BREF review rules by applying a ctrl+f search with search word “key environmental”);
- The focus should be to identify the environmental objectives (outcomes) to be achieved. A reference to EQS and 7th EAP objectives is therefore welcome but the target date is wrong (2020 should be achievement date, not adoption date of BAT conclusions, hence the publications of updated BAT conclusions should materialize in 2016 considering the 4 years extra compliance timeline set under Article 21) ;
- Experience so far has shown – point clearly made by Austria- that workload remains the same whether you assess 10 parameters or 40. The first sets of BREFs were elaborated “from scratch” in an average of 3-4 years pace. What are the real reasons it takes much longer to just update existing BREFs under the IED? ... without any significant extended scope? (It is even less understandable why this KEI appeared when even the industry i.e. waste incineration is very willing to collaborate in providing the data available),
- the real focus and idea of the KEI (we prefer “focused approach” or “particular environmental objectives of priority”) is to identify for BAT determination in order to

achieve “particular environmental objectives” and to ensure a high general level of environmental protection as a whole. We agree that some guiding criteria on how that can best be done are needed. For the EEB the starting point shall always be the existing BREFs. The criteria would for us rather be to deliver in most effective and timely manner a certain environmental objective which is coherent and supportive of the EQS / 7th EAP;

- we reject thresholds like “significant” “key pollutants” etc. This will result in a very arbitrary exercise and undermine the IED (a group of experts decide prior to data gathering to delist BAT, declare certain pollutants specifically listed in the IED/EQS as “irrelevant” etc). For us the “relevant” check of the limited list of IED Annex II pollutants will be a simple yes / no answer: Emission >0? = yes, this is “relevant”. Emissions (direct/indirect) <0 / detection limit? = “not relevant”.

The BREF should always have an added value against the environmental objectives and not confirm established standards (IED safety net).

Proposed alternative criteria: “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 or performance levels or which could provide added value to the achievement of relevant EU Environmental Quality Standards or policy objectives set in the 7th EAP. This should include effectiveness and technical potential to deliver the intended objectives within shorted possible timescales. Consideration on verification for enforcement and level playing field to industry should also be considered.”

On “the way forward” we would agree to have more clearer and precise suggestions which would deliver the intended policy outcome with less discretionary powers.

Bigger structural problems and other avenues the European Commission could carry out in parallel to achieve a certain environmental outcome should be explored (e.g. Safety net extensions, compliance promotion). Nothing is mentioned about these avenues in the paper, although these could equally achieve the 7th EAP objectives.

Basic messages / criteria:

- a) keep in mind the objective you need to achieve (EQS, 7th EAP), the BREF is just a means to get there. Techniques description can indeed disappear unless these describe potential cross media issues;
- b) the “frontloading” should be done by COM with support by an independent agency like the EEA. These should identify new issues and qualify the scoping exercise. COM should already check implementation of previous BREFs at this stage (otherwise frontrunners would be penalized and the BREF review may just end up as setting a common denominator compromise);
- c) existing BREF (all pollutants) shall be the starting point. The “focused approach” means to us you look at the best performer(s) first and make an expert judgment on whether that is technically implementable for the sector. Applicability restrictions should only be mentioned if cross-media impacts are raised at this stage, in line with the integrated approach concept of the IED. Certain operators can then raise specific “technical” and economic concerns (which can be overcome through Article 15(4));
- d) based on previous, COM would already consider to update the IED Safety net (Article 73(1) of the IED) in parallel;
- e) based on the previous assessment a prioritization could be made but this should also list those issues where potential for improved performance could be made (positive list)

As an alternative work method: establish a system where if the TWG/COM do not manage collectively to publish the revised BREF within a 4 years time period from the KoM, the BAT

conclusions of the previous BREF with a [30%] tightening of the upper range for all BAT set will automatically be adopted and published in the Journal as “Interim BAT conclusions” (under the IED format). At worst we will get a mass of Article 15(4) derogations to handle. In fact the frontrunner operators / operators in Member States that implemented previous BREF BAT conclusions already comply with the existing BREFs. Therefore it would not make sense to just do copy and paste since that would mean keeping the status quo. So some improvement factor –30% is arbitrarily chosen – could do the job in a very time efficient manner.

This is quite a sensitive agenda item for us.

Best wishes,
Christian

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