



20 October 2014

EEB views on 'Strategy to review the chemical BREFs'

Dear team of DG ENV and the EIPPCB,
Dear IED Forum members,

Further to the comments made orally at the 23rd IEDF please find herewith the written contributions to the set of questions asked / considerations raised in relation to the strategy to review the Chemicals BREFs.

We are pleased that some points are "inspired" and refined on the basis of previous contributions made by other Member States which -in essence- go in the same direction.

A specific workshop with dedicated time (at least half a day) should be held on the strategy for the next upcoming 4th December IED Forum, as agreed at the last IEDF in September.

Best regards,

Christian Schaible

Question A. In light of the IED and experiences from chemical BREF reviews to date, does the IED Article 13 forum agree that there is a need to update the Strategy?

Yes the EEB fully agrees that this is urgently needed provided the objectives of the strategy are reflecting the aims of the IED (high level of environmental protection as an outcome) and are delivered in a timely manner.

Explanation / position:

We welcome the explicit reference by the European Commission to the need to achieve the 7th EAP objectives that have been agreed by policy makers: in particular, relevant environmental impacts have to be prevented and reduced. The review of the strategy on the Chemicals BREFs, in particular its objectives and concrete actions, need to be aligned to deliver full achievement of the thematic priorities in chemicals, waste, water, air and wider ecological footprint work.

- 1) The strategy was set up in 2007, at the time the REACH Regulation entering into force but prior to deadlines for providing key registration data on the high volume (and certain hazardous) chemicals used and produced in the EU.

For this reason the prioritization strategy (highlighting only 40 substances or groups to be addressed) needs a thorough update in light of new information generated through the REACH registration dossiers or other actions promoting the substitution of substances of very high concern (SVHC).

As a first step we would strongly encourage the Commission to task ECHA to review (update) the prioritization of chemicals (identified in Annex II of the 2007 Chemicals Strategy) based on findings generated through the respective work on substances of concern. The shortlist provided by the Swedish EPA is a good starting point for further assessment.

The EEB would like to the following tasks to be carried out in advance of the 4th December meeting in order to provide useful input for further consideration which are needed to "frame" the strategy:

- check of REACH registration data for chemicals produced / used in IED Annex I activities (that would capture the high volume chemicals and certain substances of concern)
- thorough assessment on whether any substance covered in the Roadmap on Substances of Very High Concern (SVHC), candidate list SVHC or CoRAP (substances under evaluation), the Substitute It Now (SIN) list, substances under Annex VI for CLP or substances of concern

identified by the ECHA experts groups on PBTs, EDCs, and nanomaterials are used and/or produced in IED Annex I installations¹

- check within those substances of concern on whether they are used in industrial processes (intermediates) or produced as end products and whether grouping of substances could be made.
- Provide indication of volumes (production) and (uses) for the respective IED activities.

The above findings should provide essential elements to make an informed assessment on the “key environmental issues”, a quantification of sectors or processes where those substances are mainly produced / used and for what purpose (chemical function).

Efforts undertaken by Member States, ECHA, NGOs and industry to promote substitution of the chemicals of concern have to be supported through the BREFs. Focus should be made in particular in those areas where the REACH Regulation will not deliver (use as intermediates or for export), nano-like substances, candidate SVHC not yet subject to authorization or where the substances of concern are not otherwise restricted.

The EEB can support in the establishment of listings of substances of concern (identified through the EU Roadmap on SVHC) that are relevant to IED activities.

2) The IED requires special attention to those substances of concern through various provisions, based on an “intrinsic hazard approach”:

- Annex II (Air) point 12 and Annex II (Water) point 4, 5, and 13 (PHS/PS), referring to substances of concern based on intrinsic hazard properties (similar to REACH Art 57).
- Article 14(1) (a) provides that permits have to set measures (such as ELVs) for ‘*polluting substances listed in Annex II, and for other polluting substances, which are likely to be emitted from the installation concerned in significant quantities, having regard to their nature and their potential to transfer pollution from one medium to another;*’
- Annex III point 2 provides that BAT have to require “*the use of less hazardous substances*”
- Annex III point 2 provides that BAT have to meet the “*need to prevent or reduce to a minimum the overall impact of the emissions on the environment and the risks to it*”
- The pollution prevention at source is explicitly referred to as the principle approach to address these issues.

It is therefore clear that the Annex II pollutants are considered as a minimal list of substances to be scrutinized and addressed in BAT conclusions and that a “hazard approach” is to be taken (point c) to support substitution objectives within the industrial activities subject to BREFs. BAT relating to processes in the chemical sector should be in coherence with the 12 Green Chemistry Principles / Sustainable chemicals approach².

Question B. Does the IED Article 13 forum agree with the general principles listed above?

We support in full the contributions made by Sweden on the question B i).

As indicated in our comments to question A the “targeted efforts” shall serve the policy objectives set. What matters most is outcome i.e. environmental performance of IED activities achieved.

In general, the EEB can agree with the general principles mentioned in the working document, such as the principle of fewer illustrative processes and fully support the principle iv) on transparency³, but we have “reservations” on the following principles:

- “Generic BAT if possible”
- “Efficiency”.

¹ the registration dossiers / ECHA database allows a filter of results for specific industrial sectors or end uses i.e. Sectors of Use category (SU) and descriptor list for Process categories (PROC) through the PROC codes for uses in industrial processes. See <http://echa.europa.eu/web/guest/information-on-chemicals/registered-substances> For SIN list substances please refer to the publication “The SIN Producers List for Investors” April 2014 of EEB member organization ChemSec

² <http://www.umweltbundesamt.de/publikationen/guide-on-sustainable-chemicals>

³ This issue should be solved following the commitment to never have again a similar approach like in the REF BREF, there are still some issues with the LVOC BREF however. The dissemination example of the LCP BREF questionnaire should be followed.

Explanation / position:

Whilst we agree that in the ideal situation generic BAT should be set, there is a risk that BAT-AEL derived would become too inclusive to reveal “Best” techniques for specific processes or sectors. The Commission may consider whether it would be more time and resource efficient in this case to make use of the EU safety net extension provision of Art 73 (1) of the IED instead (i.e. on all Chemicals BREFs adopted during 2013-2016). These could in particular address gaps on air emissions within the CWW BREF (see Answer under Question D).

Efficiency (time) should not lead to a reduced ambition level of the BAT conclusions if that could be upheld in exchange of extra time needed for necessary technical clarifications.

We agree that it is not necessary to have a full list of processes applied in the sector reported in the BREF. Rather focus should be made in the techniques considered for BAT determination.

Common techniques applied in IED sectors (i.e. air abatement) could also be described in a stand alone “air emissions prevention /reduction techniques” document the sector BREFs would cross-reference to. The Chemical sector BREF would then focus on deriving BAT conclusions in light of specific cross-media or technical applicability issues not addressed in that stand alone document.

C. What is considered to be a long-term, sustainable picture for the number and scope of BREFs covering the chemical sector and, if changes are needed compared to the current situation, by when do we want to achieve that goal?

As stated under B., Reducing the number of BREFs is not a goal in itself; the intended outcome should guide considerations on those questions.

The answer provided by Sweden to this question perfectly reflects our position and a suggested workplan for addressing this question.

Explanation / position

The robustness and ambition levels of BAT conclusions should be the indicators on whether we are on track to deliver the common IED goals.

D. How should the recognised gaps in the revised CWW BREF be best addressed and when should this happen?

As it stands the CWW BREF is deficient vis à vis the BREF elaboration rules and Annex II on air pollutants, because it lacks of any BAT- AEL on air pollutants.

The gaps should be closed through insertion in the draft BAT conclusions to the CWW BREF of BAT-AEL for all emissions to air. The CWW should contain BAT AEL for all emissions to air and should not be limited to the chemical sector in its scope.

The EEB supports the suggestion by the Netherlands to close and repair gaps in the current CWW BREF. An EU safety net BAT-AEL of <5-10 mg/Nm³ (daily averaged) for emissions of dust (PM 10) for new and existing CWW installations should be introduced in the BAT conclusions to close an important gap. A provision could be introduced enabling the vertical BREFs to take precedent in case of technically justified cases.

Explanation / position

As a general rule applicable to all industrial sectors, the BAT AEL of dust (PM 10) emissions to air should be <5 mg/Nm³. These values (daily average) can be met using a fabric filter. Based on data provided by Germany to the CWW BREF review and common abatement techniques applied for reducing air emissions in IED installations a range of <5-10 mg/Nm³ (daily) is appropriate.

It should be for the operators that wish to deviate from the standard BAT-AEL range to provide a justification that this is not technically feasible, not the other way round. Otherwise decision making at EU level on BAT would run counter to the polluter prevention and pays principle.

E. Is there a need to complement the CWW BREF with a new, targeted information exchange on emissions to air?

Not necessarily, but it would improve the justification basis for the safety net proposed under point D. The proposal under D. has been provided with the Dutch comments on emissions to air. However, other systems of General Binding Rules are available, like the German TA Luft and the Flemish VLAREM.

F. Should more efforts be made to define generic BAT conclusions for emissions to air and, if so, on which emissions should this focus and why?

In addition to the points we raised under D, we think the focus should be on the substances covered by the NEC Directive and substances of very high concern.

G. If a CWW information exchange on emissions to air was re-opened (see Question E), how should this affect the on-going LVOC BREF review?

No opinion. We can agree a short delay in finalization if it results in a better (more ambitious) outcome in environmental performance requirements. However the opposite is unfortunately true from current experience.

H. Are there any illustrative processes that could be dropped from the revised LVOC BREF (BAT conclusions) and why?

We agree that it is not necessary to have a full list of processes applied in the sector reported in the BREF. Rather focus should be made in the techniques considered for BAT determination if they are useful to permit writers.

I. Is there a benefit in enlarging the scope of the current information exchange with a view to a consolidated BREF covering:

- i. all large-scale organic chemical production (i.e. LVOC + POL)? or***
- ii. all organic chemical production (i.e. LVOC + POL + OFC)?***

No opinion at this stage. See answer to question B.

K. For which chemical sub-sectors or illustrative processes or products should there be an information exchange and, if so, which key issues this should focus on and why?

The Polymers BREF should be reviewed early, since these products are not covered by the REACH Regulation and it dates back to >10 years (KoM in 12/2003), whilst the revised revision should be published by August 2015.

L. Is there benefit in enlarging the scope of the currently proposed information exchanges with a view to a consolidated BREF covering:

No opinion at this stage. See answer to question B.

- i. all large-scale inorganic chemical production (i.e. LVIC-S + LVIC-AAF + CAK)? or***
- ii. all inorganic chemical production (i.e. LVIC-S + LVIC-AAF + SIC + CAK)? or***
- iii. all batch/speciality chemical production (i.e. OFC + SIC)?***