

**16 December 2019 Workshop** **2/12/2019 V1**  
**on ‘Changing the culture of regulating industrial activities’**

***Background information***

**Objective of the workshop:** Allow an exchange between NGOs and Member State delegates on a selective list of (4) issues faced within the implementation work of the Industrial Emissions Directive. The NGO would provide some inputs on bottlenecks faced during IED implementation, some relevant good/bad practice identified and possible recommendations on how to address them. Those recommendations will specify those requiring an IED formal review and those that don't.

**Proposed format of the workshop:**

- A NGO delegate will give a short introduction (10-20minutes) to the topical issue, present concerns identified, share -where relevant- good/bad practices identified with possible recommendations to fix those
- A Member State delegate(s) will present some ‘thought starters’ on the theme of the session (10-20minutes per speaker). This could be what they consider “good practice” / or share information on a practice in that country, which in the opinion of the delegate, should change (*opinions expressed ‘in a personal capacity’ will be respected and treated confidentially, were requested*)
- The group should then be able to reflect and exchange on the proposed NGO recommendations and ideally the group may conclude with some shared understanding on the way forward on the topic (approx. 45 minutes per session).

In order to help guiding the discussions a preliminary shortlist of 5 questions per session is shared with the participants. The delegates from the Member States should familiarize themselves with those questions and try to provide answers to them at the workshop.

**Preliminary set of guiding questions:**

**Session I: Setting of permit conditions**

This is about the BAT-AEL range implementation, how to drive for innovation and compliance with environmental quality standards, consideration of SDG goals and transboundary pollution. Facilitator for this (max 1.5 hours) session, [Christian.schaible@eeb.org](mailto:Christian.schaible@eeb.org)

**Q1: Does your country have a policy that the ELVs should rather be set on the upper range of the BAT-AEL or the lower end of the BAT-AEL, if so what are the reasons behind that policy?** The EEB regards the strict BAT-AEL range set for existing plants to already constituting the standard on what is “economically viable” to the operators, because based on data from installations that run / did run under economically viable conditions at least 8 years prior to the deadline of enforcement (BREF review period taking in average 4 years prior to publication + 4 years compliance deadline). Would you disagree?

**Q2: What mechanisms does your country have in place to reward/ promote “frontrunners” or improve compliance beyond the existing IPPC BREF levels / revised IED BREFs levels?** Please list some examples such as economic instruments, stricter than middle range BAT-AELs or mechanisms in place that drive for improved environmental performance of operators, compared to the existing BREF levels (IPPC BREFs). If there are none we welcome any ideas on those.

**Q3: How is compliance promotion against relevant Environmental Quality Standards (EQS) enforced and assessed when implementing the BAT-C? Does resource consumption play any role, and do you set load-**

**based limits for certain pollutants e.g. pollutants with PBT properties and/or that have a trans-boundary impact?** The BAT-C set often indicative BAT-AE<sub>PL</sub> on resource/energy consumption and BAT-AEL are mostly expressed in concentrations only. However for a certain group of pollutants the absolute environmental impacts (loads) also matters.

**Q4: Do permit conditions integrate in a systematic manner any developments in relation to substitution of chemicals of concern and/or addressing cocktail / cumulative effects?** The use and production of chemicals is regulated under the REACH framework and hazard categories are evolving under the CLP Regulation, affecting the classification of the inventory of substances used. The substance by substance approach is heavily criticized because cocktail / cumulative effects are not considered. How are cumulative effects of emissions taken into consideration when setting permit conditions e.g. air or wastewater discharge? Will the water permit consider all the upstream or downstream discharge sources and apply a whole effluent assessment of the permitted waste-water discharge installation?

### **Session II: Use of Article 15.4 IED derogations**

scoping of options, cost-benefit assessment, methods, how to find the right balance of interests? Facilitator for this (max 1.5 h) session: [Laura.Haiselova@frankbold.org](mailto:Laura.Haiselova@frankbold.org)

**Q1: For the purposes of cost-benefit assessment (CBA) of BAT derogations, would you agree that the valuation of external damage costs should be updated and harmonized at the EU level?** E.g. the OECD recommends using the US EPA adapted Value of Statistical Life (VSL)<sup>1</sup> method for air pollution costs that is in the range of 6 Million € (whilst the current method allows Value Of Life Year lost or VSL but not adapted to those price levels).

**Q2: Do you agree that binding criteria for applying Art 15.4 a) / b) of the IED would be useful?** In the derogation proceedings, it is necessary to interpret, whether "geographical location or the local environmental conditions" or "technical characteristics of the installation concerned" are the reason for disproportionate costs. However a study from AmecFW showed there are different approaches in the EU on this provision.

**Q3: For the purposes of CBA, what should be considered the "BAT scenario"?** In your opinion is it the upper BAT-AEL, the lower BAT-AEL or the real proven emission level which can be achieved by the technique used for a given BAT scenario and should overall environmental impacts, including at transboundary level, be the lead criteria?

**Q4: What would be good proportionality criteria for public versus operators' interest, how are Environmental Quality Standards (EQS) objectives considered and should a maximum derogation cap be fixed?** The derogation procedure is based on a (dis)proportionality of higher costs incurred for the operator versus the public benefits. Who defines what an acceptable level of proportionality actually is, what are those criteria of balance or what are valid trade-offs to consider?

Illustration1: In some cases there is a wider public benefit or having an industrial activity to end rather than to retrofit for abating air pollution i.e. example of coal power plants. In those cases the public concerned may agree to have a higher air pollution burden during a limited – and to be commonly agreed- transition phase in exchange of earlier shutdowns of a coal power plant until alternative energy source is provided and where no alternative exist by the BAT-C compliance deadline.

Illustration 2: For some pollutants there is no safety net ELV set in the IED e.g. for mercury from coal power plants, in the same time there is a requirement to not risk compliance of an EQS (i.e. the mercury biota standard in surface waters already breached in 85% of EU surface waters). The IED requires that any derogation

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<sup>1</sup> <https://www.epa.gov/environmental-economics/mortality-risk-valuation#whatvalue>

is 'without prejudice to' the achievement of the EQS (Article 18). How is this safeguard implemented and would you agree that a derogation on this parameter should not be possible on the basis of the fact that mercury is a PBT chemical and therefore further emissions should cease at any source?

**Q5: Do you agree that BAT derogations should be periodically reviewed by the permitting authorities, based on a beforehand authorised plan?** How frequent should this review be? The EEB proposed a max 5-year validity date.

Should there be a CBA during each review? Do you agree that BAT derogations should be granted only once, without the possibility of a prolongation? What would be the impact and signals for frontrunner industries to provide those derogation?

### **Session III: Access to information and public participations**

Issues faced in access to and reporting on industrial activities as well as public participation and compliance promotion of benchmarking. Follow up to EEB 'Burning the Evidence' recommendations

Facilitator for this (max 2 hours) session: [Christian.schaible@eeb.org](mailto:Christian.schaible@eeb.org)

**Q1: Are you aware of the Irish IED portal – see here- and do you agree it is a good system? / and or that documents generated under the IED for permitting and enforcement purposes, including monitoring data, should be actively disseminated through an online database?** If not, please explain your point

**Q2: The EEB suggested in its [Burning the Evidence recommendations](#)<sup>2</sup>, amongst others, to require the reporting of relevant permit conditions (ELVs) in an harmonized electronic IED permit report template so that relevant permit conditions can be extracted and compared within a centralized EU data access portal (e.g. IED registry). Would you agree this to be a good approach for ensuring improved level playing field and comparison of permit conditions across the EU?** See also the US permit database allowing to extract and compare online certain permit conditions based on various search filters and criteria (works for US, Canada and Mexico) <https://cfpub.epa.gov/rblc/index.cfm?action=Search.BasicSearch&lang=en>

**Q3: Would you agree that making available real-time CEM data in a centralized database (linked to Q2) that can also be visualized on mobile apps by citizens would support more timely compliance promotion and performance improvements by operators? What are the current bottlenecks for doing so?** See notably the Chinese online data maps showing real time CEM data for air pollution and water discharge for the largest installations, available on real time on PhoneApps. The database is uploaded directly to a centralized database by the industry.

China CEM Air emissions real time map [http://wwwen.ipe.org.cn/AirMap\\_fxy/AirMap.html?q=1](http://wwwen.ipe.org.cn/AirMap_fxy/AirMap.html?q=1)

Water discharge map (real time) <http://wwwen.ipe.org.cn/MapPollution/Pollution.aspx?q=4&type=2>

**Q4: During permit review, do you consider that permitting authorities give equal weight to the reasoned perspectives of all groups, or is primary emphasis placed on perspectives of operators at the expense of equal consideration of alternative views? What are the practical tools that your authority puts in place to ensure "early and effective" involvement of the public (concerned)?** In most instances, it is the operators that will have the initiative to propose the permit conditions amendments when a BAT-C is affecting their operation. However, the IED requires to provide "early and effective" means to the public to provide its opinions before a decision is taken (Art 24.1 IED). To which extent can the public genuinely be able to influence outcome of the permitting procedures, and what is done to improve the ability of third parties to make meaningful contributions to this process in an early and effective manner, what is the meaning behind this?

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<sup>2</sup> <https://eeb.org/library/burning-the-evidence-a-case-study-on-large-combustion-plants/>

### **Session IV: Issues faced with enforcement**

Inspections, Sanctions, how to help compliance promotion?

Facilitator for this (max 1 hours) session: [Sam.Bright@clienterath.org](mailto:Sam.Bright@clienterath.org)

**Q 1: Do you consider that the penalties (fines, suspension of activities etc) imposed by enforcement bodies in the event of non-compliance are sufficient to achieve the objectives of Article 79 IED?** Article 79 requires that Member States impose penalties for violations of the IED that are "effective, proportionate and dissuasive". Are there any relevant thresholds to define on what is effective, proportionate and dissuasive?

What would be the sanction for an operator running without a valid permit? Any example(s) of where an installation was forced to shut down in the last 5 years due to breaching of permit conditions, or if not what was the highest penalties paid by the operator and can you put this in perspective to annual turnover?

**Q2: What is the level of flexibility for inspectors to require sanctions when a breach is identified during a site visit / environmental inspection?** Are there some "tolerance" criteria before referring the matter to the court for enforcement of penalties? E.g. would you first consider administrative procedures before initiating a legal route or is the CA bound to trigger a legal case?

**Q 3.: Do you consider that monitoring and compliance assessment provisions are sufficiently strict to ensure effective and sufficiently quick enforcement of the permit conditions?** The IED relies upon a mixture of self-reporting and inspections by environmental authorities to ensure appropriate monitoring of compliance. The information is often sent in an annual time frame (e.g. annual compliance report Art 14 of the IED as well as minimal annual frequency inspection frequencies), what systems does the CA have in place to monitor compliance, including below the annual frequency?

Certain Member States use a default approach on subtraction of "measurement uncertainty" when assessing compliance with ELV set for air pollutants that need to be monitored continuously e.g. LCP and WI. How is your CA approaching this and do you see an issue of uneven presentation of the emission levels situation across the EU?