

Proposals for an EU BREF Process fit for the 2050 goals of climate neutrality, zero pollution and circular economy

The updated¹ EU framework on industrial emissions is paving the way for the much-needed transformation of industry towards the EU 2050 goals of climate neutrality, zero-pollution, and circular economy. The process of developing the EU Best Available Techniques reference documents (BREFs), that form the basis for the environmental permitting of the biggest industrial installations, should be adapted accordingly. We need to address the reform of the BREF process with a forward-looking approach. The development of the Best Available Techniques (BAT) conclusions, especially the principles and methodology for the BAT determination, need to be fit for delivering on the transformation.

Key relevant amendments of the EU Industrial Emissions Directive (IED)

- **The definition of BAT has been amended to include human health and climate protection:** *'best' means most effective in achieving a high general level of protection of the environment as a whole, including human health and climate protection* (IED Art. 3(10)(c)).
- **The criteria for the determination of the BAT have been similarly amended to include considerations for the protection of human health, the limitation of the use of substances of very high concern, and decarbonisation** (IED Annex III).
- **The BAT conclusions should now identify emerging techniques and best available techniques that industrial operators may implement to innovate and transform their processes towards the 2050 goals.** The need for the process to become more dynamic, in order to support the timely deployment of such transformative techniques is also recognised.
- **The principle of continuous improvement of the environmental performance and safety of the installation, on the basis of specific objectives and performance indicators, is highlighted,** especially through the implementation of environmental management systems (EMS). Such objectives and benchmarks shall be included in the relevant BAT conclusions for a given sector (IED Art. 3(12), Art. 14a).
- **The BAT conclusions should now include binding environmental performance levels (incl. resource efficiency levels) associated with BAT (BAT-Associated Environmental Performance Levels or BAT-AEPLs), indicative environmental performance values associated with emerging techniques, and indicative benchmarks** (for other cases) to be included in the EMS.

¹ A political agreement was reached between the EU co-legislators. Any reference to legislative provisions in this paper refer to the latest publicly available texts of 18 December 2023. Source: [Industrial emissions: Council and Parliament agree on new rules to reduce harmful emissions from industry and improve public access to information - Consilium \(europa.eu\)](#)

- **The provisions on the setting of emission limit values (ELVs) have been clarified to explicitly demand that operators and authorities consider the entire range of the BAT-Associated Emission Levels (BAT-AELs), and the feasibility of setting an ELV at the strictest achievable level** for a given installation; the provisions on indirect discharges to water bodies have similarly been amended and strengthened.
- **The provisions on the control and substitution of hazardous chemicals have also been strengthened**, namely through: the requirement for substitution analysis for the hazardous substances present (irrespective of form) and emitted (EMS provisions); the obligation for permit writers to consider the hazardousness of pollutants in permitting, and the protection for water catchment areas; and enhanced maintenance and surveillance measures (IED Art. 14). The role of the European Chemicals Agency (ECHA) in the BREF process has been formalised.

A BREF process fit for the future

The future BAT conclusions need to enable and drive the transformation towards a zero-pollution, climate-neutral, resource efficient industry, and need to be fully compatible with this vision:

- **The BAT conclusions should especially determine which techniques, and under what circumstances, constitute ‘deep transformation techniques’ for a given sector; and which techniques and processes are incompatible with the transformation vision (and timeline) and should be phased-out.** Any technique, e.g., involving the use of fossil fuels (or feedstock) needs to be included in the BAT conclusions as a so-called ‘negative BAT’, accompanied by a mandatory decommissioning or phase-out plan (example: BAT2 and BAT3 in CAK BREF²). The future BAT conclusions will inform the content of the Transformation Plans; it is therefore important that these elements are included therein for a uniform approach, and a clear signal to operators and authorities. The new innovation centre on industrial transformation and emissions (INCITE) shall be mandated to provide an opinion, that will subsequently be examined by the Forum, on which techniques qualify as ‘deeply transformative’ for a given sector. Furthermore, minimal expectations should be set in the BREF guidance³ as to the meaning of what ‘deeply transformative’ is. Due to the political implications attached to this matter, there shall be shared views among the majority of EU member states, NGOs, and the industry stakeholders concerned (operators and technique providers).
- **The techniques should systematically appear in a hierarchical order**, e.g., pollution abatement techniques shall be categorised based on their effectiveness to first prevent, or if this is not practicable, to reduce pollution in an integrated manner. The same approach shall apply to techniques implemented for a decarbonised (promotion of renewable energy production and use) and more resource efficient operation (techniques ranking according to the ‘waste hierarchy’ of the EU Waste Framework Directive⁴).

² https://eippcb.jrc.ec.europa.eu/sites/default/files/2019-11/CAK_BREF_102014.pdf

³ [Implementing decision - 2012/119 - EN - EUR-Lex \(europa.eu\)](#)

⁴ [Directive - 2008/98 - EN - Waste framework directive - EUR-Lex \(europa.eu\)](#)

- **The BREF guidance shall further provide (Key) Performance Indicators (KPIs) as to what expectations/outcomes the BAT conclusions shall deliver at installation (or sector) level.** The main entry point is provided through the revised provisions of the IED referring to the dynamic nature of BAT, such as the need to continuously reduce emissions, to improve resource efficiency, circular economy and decarbonisation (IED Art. 1), and similar provisions within the EMS (Art. 14a). The EMS shall include 'environmental policy objectives' for the 'continuous improvement of the environmental performance and safety of the installation', based on 'objectives and performance indicators' (in relation to environmental aspects), and those are to be developed on the basis of the so-called 'benchmarks' set out in relevant BAT conclusions (IED Art. 14a(b)). Hence the KPIs, or outcome-oriented indicators, should be an integral part of the BREFs; and hence the BREF guidance shall provide clarity as to what common 'headline KPIs' should apply across the IED activities. Some ideas have been provided by the EEB in the context of the development of the Transition roadmaps for Energy intensive industries⁵, and an NGO-drafted briefing on the need for a forward-looking framework for the transformation of industrial production (see section III of the briefing)⁶.
- **The reviews of the BREFs for energy-intensive sectors (steel, cement) should be prioritised,** in line with IED Article 13(5) (highest potential to improve the protection of the environment), but to also ensure that the updated BAT conclusions will be taken up in the Transformation Plans (as these sectors should produce their plans, in priority, by 30 June 2030).
- **The process needs to be fast-tracked** if the 8-year review cycle and dynamic nature of BAT is to be respected. Furthermore, to be reminded that the average time lag from the date of the performance information collected (through questionnaires) to serve as a basis for the BAT determination to the date of effectively implementing the BAT conclusions is 12.2 years in average⁷. There are currently no tools to factor in the dynamic aspect of BAT determination, or to speed-up the information exchange. *See our proposals in [section 5.1 \('Fast-tracking the BREF process'\)](#).*
- **A different governance model is needed, where consensus-finding will be fact-checked against the first point above (compatible with the 2050 transformation vision), and where industry frontrunners (technique providers and operators) will be adequately represented** instead of sidelined by the well-established industrial associations (representing a wide range of industry actors) currently present in the IED Forum and the Technical Working Groups (TWGs). *More on this topic in [section 5.4 \('The governance of the BREF process'\)](#).*

⁵ [Standalone doc on the Key Performance Indicators \(KPIs\) section \(3 - Google Docs\)](#)

⁶ [IED-briefing_innovation_v01_15July2022.pdf \(eipie.eu\)](#)

⁷ The average time lag of revised BAT conclusions v. date of information/data basis from reference installation is 12.2years. See the EEB timeline overview here: <https://eipie.eu/wp-content/uploads/2023/02/BREF-timeline-overview.xlsx>

1. Climate protection:

- **The BAT conclusions should systematically address decarbonisation, considering e.g., the options of electrification, (fossil) fuel or feedstock switch, and the derivation of benchmarks or BAT-AE(P)Ls on greenhouse gases (GHG).** The European Integrated Pollution Prevention and Control Bureau (EIPPCB) shall be assisted by DG CLIMA in this exercise, based on the data and conclusions derived from the development of the respective benchmarks under the Emissions Trading System (ETS). As a starting point, the 10% most efficient performers list (under the ETS) shall be shared with the EIPPCB and the given BREF TWG, for a more focused data analysis.
- **Other relevant considerations include the substitution of materials, or smart design options which can deliver on decarbonisation gains throughout the value chain.** In the production of ceramics, e.g., we see the design of 'lego-like' (self-locking) bricks that limit the use of carbon-intensive mortar in the use phase of those products, and the design of lighter products in general⁸. The only limitation of such technique options (which include alternative design and ways of production, not just 'hardware') is what is 'under the control' of the operator carrying out that activity. A more open-minded approach of the TWG as to installation based / activity-based approach is hence required.
- **As highlighted above (['a BREF process fit for the future'](#)), the use of fossil feedstock/fuels shall be 'recorded' as 'negative BAT', and a decommissioning/phase-out plan shall be systematically set where installations in the EU would still employ these 'obsolete, fossil age BATs'.** When this is not feasible due to applicability restrictions that are not under the control of the operator (e.g. insufficient electricity supply), these restrictions should be reported in the BAT conclusions and should be well-crafted to not undermine the transformation of the entire sector (see the applicability text in the FMP BREF⁹ on electrification). Carbon capture and storage/use (CCS/CCU) may only be considered when there is no technical feasibility to substitute the fossil-based process, but in any case it cannot be accepted as 'BAT'.
The IED lists CCS/CCU as an activity that should be subject to a BREF¹⁰. In the European Commission's Communication on the 2040 climate target¹¹, it is noted that CCS/CCU is a solution for 'hard-to-abate' sectors in the absence of other solutions, requiring a definition of what CO₂ emissions should be defined as 'hard to abate'. The Net-Zero Industry Act (NZIA) framework¹² states that 'transformative industrial technologies for decarbonisation' means 'transformative industrial technologies that are used to significantly and permanently reduce emission rates of CO₂-eq of a commercial facility of an energy-intensive business in the steel, aluminium, non-ferrous metals, chemicals, cement, lime, glass, ceramics, fertilisers, as well as pulp and paper sectors to the extent which is technically feasible'.

⁸ eippcb.jrc.ec.europa.eu/sites/default/files/2023-08/CER_BREF_Draft_1_black_for_web.pdf

⁹ [Ferrous Metals Processing Industry | Eippcb \(europa.eu\)](https://eippcb.europa.eu/Ferrous-Metals-Processing-Industry)

¹⁰ see Annex I, section 6.9

¹¹ https://climate.ec.europa.eu/eu-action/climate-strategies-targets/2040-climate-target_en

¹² [The Net-Zero Industry Act \(europa.eu\)](https://europa.eu/legislation/future/net-zero-industry-act); pending adoption

2. Prevention and control of pollution:

- Based on the pollution abatement hierarchy (prevention first):
 - **the future BREFs shall prioritise the phase-out of fossil-based processes as a means to prevent pollution in the first place, instead of driving investments in end-of-pipe pollution control options.** (End-of-pipe controls may still be relevant for (green) hydrogen and biomass combustion processes that cannot be substituted, or when the substitution comes with significant cross-media impacts).
 - as aforementioned, the **techniques should systematically appear in an hierarchical order**, based on their effectiveness to first prevent, or if not practicable, to reduce pollution; the related **pollution abatement efficiencies should also be systematically noted.**
- **The data collection should only focus on the most effective BAT**, e.g., by a more suitable selection of reference installations that indeed have BAT to showcase; by a more suitable selection of the data used for the BAT-AELs derivation; by ensuring an adequate representation of innovative technique providers and operators in the TWG (and in the INCITE) that would advise on these issues in the frontloading phase. Furthermore, we could have a more focused and faster data collection, validation and analysis, if few operators of best-performing installations and Member States would volunteer to already provide the feasibility assessments (on whether they / the installations under their control) can comply with the lower BAT-AEL ranges of current BREFs) as early in the process as possible. **All these elements would allow for a focused approach that would speed-up the process without compromising on the ambition.** *More in section 5.1.*
- **The BAT Conclusions should systematically contain information on the circumstances allowing the achievement of lower emissions levels within the BAT-AELs range**, incl. the technique(s) used, and potential cross media effects. This will further facilitate the implementation of the updated IED Art. 15(3). Furthermore, the practice of setting wide BAT-AEL ranges, with a factor difference of, e.g., 3 or more, of the lower v. the upper end, shall be avoided. This practice is undermining an ambitious implementation of Art. 15(3). Where some installations, for very specific technical reasons present such high emission levels, this shall be recorded in a footnote instead.
- **The BAT-AELs ambition shall be consistent with the outcome-oriented approach** (*see above section on KPIs*), and shall hence aim for the achievement (receiving area) of the latest World Health Organisation (WHO) air quality standards¹³. This approach is similar to the US approach setting standards based on maximum technical feasibility that would apply automatically in non-attainment areas.
- **The BAT Conclusions should systematically contain BAT-AELs for indirect releases of heavy metals and other persistent pollutants** that the average wastewater treatment plant is not adequately designed and equipped to abate. The operators of downstream treatment plants shall be involved in the determination of such BAT-AELs. This will further facilitate the implementation of the updated IED Art. 15(1).

¹³ [What are the WHO Air quality guidelines?](#)

- **There should be a zero-tolerance approach on persistent, bio-accumulative and toxic (PBT) substances.** This would mean to require (in the BREFs) the use of effective techniques that can deliver on this ambition, and to set BAT-AE(P)Ls in such a way that emissions close to detection limit for substances qualifying, e.g., as Priority Hazardous Substances under the EU Water Framework Directive¹⁴ are achieved as well as the progressive cessation of all other Priority Substances. The lack of adequate data shall not be an obstacle in preventing (e.g. via closed-loop systems) or minimising discharges when the relevance of the sector has been established through studies, e.g., in the case of PFAS and the BAT (cross-sectoral) studies¹⁵ executed by the Flemish BAT centre; the answer there should be to mandate the most advanced treatment techniques available.
- **The methodology for the determination of the Key Environmental Issues (KEI) in each BREF review (which is not yet Forum-approved but has been used in many reviews) is not fit-for-purpose and shall not be used for future BREF reviews. Only the criterion of the ‘environmental relevance’ is valid. We need to ensure that all relevant PBT substances are targeted,** alongside pollutants of emerging concern (as per IED Recital 36). [See more in section 3.](#)
- The BAT conclusions shall also include a whole effluent / toxicity sum parameter approach (see the TXT BREF¹⁶) in order to prevent a single substance-by-substance / dilution approach.
- Increased water recycling rates may lead to higher pollutant concentrations at the discharge point; it needs to be ensured, however, that the load of the pollutant is kept to the minimum and without affecting compliance with Environmental Quality Standards (EQS).
- Regarding the substance inventory, it should be clarified that the term ‘relevant as occurring’ refers to any emission level above the given detection level.

3. Towards a toxic-free environment (focus on chemicals):

- **The European Chemicals Agency (ECHA) and the European Environment Agency (EEA) shall be mandated, in the frontloading phase, to support in the identification of the relevant hazardous substances for each IED sector,** incl. substances fulfilling the criteria of article 57 or substances addressed in restrictions in annex XVII to the REACH Regulation¹⁷, e.g., through screening of the REACH dossiers, available chemical management systems of well-performing plants (also as a source of information on BAT), the inventories of inputs and outputs and independent research projects such as the ‘Forever Pollution Project’ collecting data as to PFAS pollution hotspots (the dataset, available [here](#), lists many IED related activities). The main approach for the collection of BREF data (the questionnaire) is not appropriate for this type of information. For more proposals regarding screening of resources, please see the ‘EEB paper on KEI

¹⁴ [Directive - 2000/60 - EN - Water Framework Directive - EUR-Lex \(europa.eu\)](#)

¹⁵ [Flemish BAT, \(B\)REFs and other studies | EMIS \(vito.be\)](#)

¹⁶ notably BAT 7 and BAT 8 https://eippcb.jrc.ec.europa.eu/sites/default/files/2023-01/TXT_BREF_2023_for_publishing%20ISSN%201831-9424_finaL_1_revised.pdf

¹⁷ Regulation (EC) No 1907/2006

determination¹⁸. Furthermore, the ECHA database shall be adapted – it is currently not fit to deliver on the BREF-related data needs.

- The recommendations of the HAZBREF project should be taken up further¹⁹.
- **Where an EU member state has already carried out such studies pointing to the relevance of a given substance/group of substances for an IED sector** (as in the aforementioned example of the PFAS BAT studies of the Flemish BAT centre), **it must be assumed that the very same finding is expected in the rest of the Union – the substance(s) shall be treated as KEI by default and addressed in the BAT conclusions.**

4. Addressing the preservation of natural resources, and the transition to a circular economy:

The updated IED has the potential to deliver more circular and resource-efficient processes through effective EMS and Transformation Plans, provided that these are based on ambitious BAT conclusions:

- **More resources shall be dedicated to tackle the (un)availability of data and expertise**, addressing inter alia the choice of appropriate boundaries for the data collection, the contextual information needed to ensure data comparability, the metrics to be used for the BAT-AEPLs, related monitoring requirements, industrial symbiosis applications, and concerns over cross-media effects. In consultation with the respective technical forums under the European Sustainable Products Regulation (ESPR)²⁰, it may be explored if/how the BREF data collection could provide input for the products' environmental foot-printing calculation, for the purpose of also contributing on the EU's strategy on Sustainable Products.
- **The issue of deriving BAT-AEPLs vs benchmarks also merits attention.** As noted in IED Recital 13a, indicative benchmarks shall be derived (instead of BAT-AEPLs) 'where environmental performance is highly dependent on specific circumstances of the processes'. The BREF guidance should include a clarification on this issue to ensure a consistent approach across the different TWGs.
- The assessment of EMAS²¹ reports, benchmarking studies on resource consumption, or other sources, e.g., data supplied through Corporate Sustainability Reporting²² initiatives, shall systematically be part of the frontloading work. The EU member states shall further be systematically asked to screen and provide the latest annual compliance reports (last 3 years) with their list of reference plants selection.

¹⁸ [EEB comments to the European Commission study: 'Preliminary determination of Key Environmental Issues \(KEI\) for industrial sectors in BREF reviews under the IED' - EEB - The European Environmental Bureau](#)

¹⁹ see further information on the HAZBREF project here <https://eipie.eu/the-sevilla-process/brefs/hazardous-industrial-chemicals-in-the-ied-hazbref/>

²⁰ [Ecodesign for Sustainable Products Regulation - European Commission \(europa.eu\)](#)

²¹ [About EMAS \(europa.eu\)](#)

²² [Corporate sustainability reporting - European Commission \(europa.eu\)](#)

5. Horizontal issues:

5.1 Fast-tracking the BREF process

There are several aspects to be considered. The relevant aforementioned points in the section on 'prevention and control of pollution' are reiterated below and complemented. These elements would allow for a **focused approach that would speed-up the process without compromising on the ambition:**

- a) **The data collection should only focus on the most effective BAT**, e.g., by a more suitable selection of reference installations that indeed have BAT to showcase; by a more suitable selection of the data used for the BAT-AELs derivation; by ensuring an adequate representation of innovative technique providers and operators in the TWG (and in the INCITE) that would advise on these issues in the frontloading phase. **The information exchange shall only consider:**
 - installations whose performance is **in compliance with current BREF conclusions** for the BAT in question; and considering a politically-set 'improvement factor' (e.g. 15-25%).
 - installations whose performance **do not to exceed any national-level general binding rules** for the BAT in question.
- b) **The approach of using data of the past years shall further be reflected upon.** A more flexible and forward-looking approach would be sourcing of data through stack tests, e.g., as per the US model of the 'Maximum Achievable Control Technology (MACT)'. The method used to derive the MACT floor is based on the 'best controlled similar source'. For existing installations it cannot be less stringent than the average emissions of 12% of the best performing installations (if more than 30 sources). The practice of the US EPA is that data from stack tests, generally comprising three one-hour runs are used. As mentioned earlier, there is a considerable time lag between the date of the emissions / performance information used to inform the BAT determination and the moment the BAT Conclusions are finally implemented at installation level (12.2 years in average). Moreover, the **data currently used in the EU BREF process are mainly from EU installations, instead of tapping into innovative solutions worldwide.** For more on the topic of BAT determination, please see the EEB proposal on the BAT determination methodology ²³.
- c) **It would greatly benefit the process if feasibility assessments (on whether the installation can comply with the lower BAT-AEL ranges of current BREFs, as per IED Art. 15.3) are provided as early in the process as possible (frontloading phase).** This would enable more focused and faster data collection, validation and analysis. If not provided by operators of best performing plants, alternatively, member states authorities shall be mandated (via the BREF guidance) to provide such assessments, considering that it is – after all – the responsibility of member states (and their competent authorities) to implement the objectives of the IED; and that the exact deadline for the submission of the feasibility assessments depends exclusively on the authorities

²³ [Comments and suggestions for improved BAT determination methodology - EEB - The European Environmental Bureau](#)

planning/timing for the reconsideration of permits (or general binding rules). Such early submission in the frontloading phase of the BREF process will allow the TWGs to quickly assess the improvement potential within a given sector.

- d) **Standardised texts should be included in (an Annex to) the BREF guidance, and be automatically inserted in future BREFs (example is the adoption of the standardised text of BAT 1, EMS).** The aim of this is to ensure a uniform approach across BREFs, avoid parallel debates in the different TWGs, (hopefully) reduce the amount of comments received by the EIPPCB and their subsequent analysis time, and liberate time for more in-depth discussions during the Final meetings. Issues to be addressed by such standardised texts would be (as per the points above) the BAT conclusions format for the hierarchy of techniques, and for the systematic provision of information on the circumstances allowing the achievement of lower emissions / stricter performance levels within the BAT-AE(P)Ls range, and other horizontal issues.
- e) With the release of the first draft of a given BREF, the EIPPCB shall provide additional justifications, as to how the proposals for the BAT conclusions incl. the BAT-AE(P)Ls derived, are fit for the wider transformation goals (see points above), and share such justifications in written form at the same time with the release of the first draft. Depending on the comments received, a data workshop may be considered prior to the Final meeting.
- f) **Another approach to limit lengthy exchanges (and texts duplicated in many sectoral BREFs), is to shift the description of the techniques and the elements mentioned above (techniques hierarchy, abatement efficiency, performance levels achieved) in a standalone document, e.g., a 'Common BAT candidates reference document', or 'Common BAT options compilation reference document', that would be of interactive and dynamic nature** so to allow more regular updates (notably on the cross-sector applicability, validated cross-media effects, performance levels expected, cost and benefit data, common maintenance criteria etc.). Sectoral BREFs would only cross reference to that standalone document and include sector-specific information if (substantiated) specificities of a given sub-sector or process do not allow for the application of the identified techniques therein and/or the achievement of such performance levels. This could also provide for 'default' BAT-AELs, such as a maximum 5mg/Nm³ dust to air level that shall apply to all IED activities involving dust emissions to air. For TVOC the trade-off is commonly between the catalytic or the thermal oxidation option, unless the operator can substitute upfront the generation of TVOC pollutants by switching to alternative solvents, inputs or change of the process. Different approaches depending on the sector and repeating over and over the same discussions and developing lengthy descriptive texts can be avoided. This approach will ensure a level playing field for the different sectors, and not repeat the current approach of setting less strict standards, e.g., for air emissions when waste is burnt in cement or lime kilns, than when it is burnt in waste incineration plants. Same end-of-pipe control, same abatement potential; the same requirements on environmental performance shall apply.

- g) **The sectoral BREFs could also be adapted in a fast-track manner to align to the expected best performance levels pursuant to what is established in the “Common BAT candidates reference document”** (see point f above). Only where the sector concerned has robust evidence that the levels expected / achieved in other sectors cannot be achieved in the relevant sector under review due to ‘specificities of the sector’ (those need to be arguments on technical feasibility only), then a higher level may be allowed or even considered for discussion. Furthermore, the Commission shall be mandated to provide interim draft Commission Implementing Rules amending all existing BAT conclusions (based on the approach above), incl. the existing BAT-AE(P)Ls with a politically-set ‘improvement factor’ (or ‘innovation factor’, if this terms is preferred). Those BAT conclusions shall apply automatically as a fallback should a revised IED-BREF is not published within the foreseen 4 years after entry force of the revised IED (i.e. as from August 2028). Depending on the ambition level of the improvement factor, that approach may motivate interested stakeholders to conclude faster on revised BAT conclusions.
- h) Other options to be considered include the partial reviews of BREFs targeting only issues of significant environmental impact, following the opinion of the EEA and ECHA, as well as areas of advanced technological developments, following the opinion of INCITE. A first analysis (on where the focus of such partial reviews should be) could be provided by a dedicated group of member states to the Forum. In general, it is a wise approach to prioritise BREF reviews where BAT conclusions provide for a margin of progress on the performance of the activity as to the key objective of the IED, i.e. to achieve a high general level of environmental and human health protection and where there is room for improvement on resource efficiency, circular economy, and decarbonisation. It is quite clear as to which IED BREF sectors should be prioritised for the ‘ambitions expectations’ due to their higher contribution of negative environmental impacts compared to other IED sectors ([see BREFs fit for the future section](#)).
- i) Considerations on proportionality of costs versus benefits shall not take attention and time of the BREF process, but only be processed pursuant to Article 15(4). Applicability restrictions shall be based on strictly technical arguments or negative cross-media effects (in line with integrated approach). When assessing the meaning of ‘available’ (an implicit element of any BAT determination), any cost implications raised by operators shall be weighed against the benefits (health and environment) and compliance support of the EU environment acquis. For air pollutants the VSL method is to be used and for GHG a shadow carbon price of >283€/t CO₂eq is assumed as from 2040²⁴ also for assessing cost of inaction, which are wider costs to the economy.

²⁴ see notably page 88 of this report <https://www.eionet.europa.eu/etcs/etc-atni/products/etc-atni-reports/etc-atni-report-04-2020-costs-of-air-pollution-from-european-industrial-facilities-200820132017>

5.2 Monitoring the progress towards the fulfilment of environmental policy objectives, and towards improved accessibility to performance information

In IED Article 14, it is now noted that the operator shall provide ‘information on progress towards fulfilment of the environmental policy objectives referred to in Article 14a’. Similarly in Article 14a, it is noted that the EMS shall include at least the following: ‘objectives and performance indicators in relation to significant environmental aspects, which shall take into account benchmarks set out in the relevant BAT conclusions’. We suggest that the mandate of the IED Forum (supported by the TWGs) shall be further extended to determine such performance indicators (format, metrics, reporting obligations; see points on KPIs and benchmarks above). This will ensure that there will be common indicators in a given sector, and across sectors, at EU level, allowing the measurement and comparison of progress towards a given environmental objective and KPIs. The identification of hotspots requiring further attention and action would become faster and easier.

Depending on how tracking of progress against those environmental objectives and KPIs will be promoted through open sharing of key performance information (e.g. via an improved Industrial Emissions Portal), technique providers and operators within a given sector will also be enabled to exchange on best practice. Improved access to this key information, notably on resource consumption, will also lift vulnerabilities of the information process to be depending on the good will of operators to provide information through questionnaires.

Environmental performance information required under the BAT conclusions (e.g. EMS, inventory, annual consumption of materials) as well as yearly average emission performance monitoring results are standard requirements for all IED activities and recent BREFs. Similarly, operators are required to provide at least annually, all the necessary information to enable compliance checks with permit conditions in force (which normally should be aligned to the BAT-C requirements) (see Article 14(1) point d of the IED).

With the revised regulation establishing the European Industrial Emissions Portal but also through the improvement of national practices, we expect a better use of this information also for the purpose of speeding up the frontloading work. It should be possible to identify the better performing installations in a few clicks, provided the tools for data integration and sharing are improved. Providing tools for improved benchmarking and compliance checks of implementation on the ground does not only matter for assessing the real added value of BAT conclusions on the ground but can also help to make the information exchange much more time efficient and less vulnerable to the good will of operators (to provide questionnaires, random selection of reference plants etc).

The BREF guidance shall improve data sharing and best use of generated performance information of BAT conclusions reporting e.g. by requiring authorities to provide an overview of the precise permit conditions in force for the sector in digital format, where those conditions are within the BAT-AEL range²⁵. This could also include a requirement on authorities to screen the pollution intensities as to resource consumption / emissions (subject to BAT conclusions) per production output at sector level and present the results for their countries (average, best 10% percentile, worst performers).

²⁵ Further EEB recommendations as to the European Industrial Emissions Portal and national reporting system on IED activities is available [here](#)

5.3 Handling of confidential business information claims

Regarding confidential business information (CBI) claims, amended Art. 13 shows a first attempt to address the issue but falls short of clarifying the actual procedure of validation and handling of CBI claims, esp. in cases where anonymising the information would not allow for an effective exchange of information on BAT. This shall be elaborated in the revised BREF guidance. **Furthermore, Art. 13 does not provide a definition for CBI, hence it would be useful to include at least a shortlist of what CBI could relate to. Any information relating to environmental performance shall be ruled out,** incl. installation-level information that is included in the EMS, Corporate Sustainability Reporting etc. For more information, please see our position on CBI²⁶.

5.4 The governance of the BREF process

The following elements shall be put in place to ensure a balanced and transparent exchange:

- **a conflict-of-interest policy** so that the experts involved in the exchange on behalf of governments do not have links to the industry being regulated. A clear prohibition on operators (or members of the TWG affiliated to operators) to act within the TWG on behalf of member states. Following scandalous revelations²⁷ regarding the industry infiltration of the LCP BREF TWG, the issue was partly settled when the European Commission (IED Forum of 27 November 2018) demanded that the member state delegations shall be led only by public servants; however there was no clear demand for the total exclusion of the concerned industry (operators to be part of that delegation). There are countries continuing this unacceptable practice (recent examples: CER BREF (CZ, ES, IT, PL, PT, SK); LVIC BREF (CZ, ES, HU, IT, PL, PT, SK); STM BREF (ES, IT)). Exemptions shall be allowed for research institutes (such as VITO in Belgium, or OEKOPOL in Germany) and independent consultants who advise various clients besides industry, especially governments and NGOs.
- **rules enabling a balanced representation of interests**, as currently industry is over-represented whereas NGOs are under-represented in the process. If no equal seat allocation is feasible then the balanced representation should be ensured through:
 - **giving more weight to NGOs that do participate**, e.g., through more speaking time during the kick-off and Final meetings (the NGO delegates should be systematically allowed to respond / react to industry or MS comments made), and through
 - **adapted decision-making rules for reaching consensus** when critical decisions are made. Consensus should mean agreement between the various interest groups present (member states, NGOs, operators, technique providers) and not a 'number-counting exercise' of TWG delegates around the table. For the member states the Council majority

²⁶ [2021_01_20-Annex-to-CBI-discussion.pdf \(eipie.eu\)](#)

²⁷ [Smoke and Mirrors | Greenpeace](#)

rules could be used. For industry, the proposal of having two separate groups has obvious benefits to the process; furthermore, we would propose that a special working framework shall be set up for technique providers, where they could contribute more frequently and freely, e.g., when performance levels are challenged (or applicability restrictions are overplayed) by the operators. Technique providers should be able to provide a differentiated assessment in a 'closed meeting' in such cases (operators not present) to avoid any reluctance to provide input due to potential harm to their business relations. Lastly, the competing industry shall also have a say, esp. on decisions taken at the Final meeting (e.g. waste industry groups v. cement industry, or operators of LCP v. energy efficiency solutions providers).

- Where **national BREF mirror groups** exist, NGOs shall be systematically consulted and provided with the resources for an effective participation in the decision-making progress, notably in relation to the national position expressed in the BREF milestones (submission of initial positions, Kick-off and Final meetings). Considering that fact that the Aarhus Convention provisions are mandating public participation in the process, the BREF guidance shall be clarified on this point.
- **The involvement of independent scientific community** should be promoted via the INCITE.
- **The right of citizens to know the position of their government:** to enhance the transparency of the process, the initial positions of the member states, the background papers of the kick-off and the Final meetings indicating the positions taken, as well as the written comments and positions expressed at the Final meeting, shall be made publicly available, indicating the origin of the comments made (EU member state affiliation, not personal information of the experts).

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