NOTE: the same paper has already been submitted in the IP for the STM BREF, but all recommendations hold for LVIC as well.

Additional input to the Initial Position on the STM BREF

Brussels, 21 January 2022

The present document contains positions on elements that do not directly link to any of the questions in the provided template. However, they are in our opinion relevant for the BREF process, and link directly to the BREF guidance’s mention in section 4.6.1 that a “*wish should be accompanied by […] information on how to collect the information considered necessary for the review*”.

1. Reference plants: best vs. well-performing

The present document builds on an [earlier EEB paper on this topic](https://eeb.org/wp-content/uploads/2020/06/2017-05-31-BAT-derivation-EEB-proposal-FINAL.pdf), updated and adapted as appropriate to the current situation.

* 1. A two-step approach

It is important to distinguish “reference” and “best” installations.

* “Best” installations are logically those with the best environmental performance, i.e. clearly not all installations, nor necessarily many installations.
* “Reference” plants are those installations on which data are collected.

The BREF guidance clarifies in section 5.2.1 that *“This does not mean that only information on best performing plants should be collected and submitted”.* This is common sense, as one cannot know which installations are best before having the data.

In other words, plants for the collection should be selected broadly, but not indiscriminately. Plants for analysis, i.e .potentially qualifying for BAT status should be carefully selected as “best plants”. From these, BATs and BAT-AE(P)Ls should be derived by thorough analysis.

* 1. Well-performing plants in the data collection

Sheer quantity of plants is not a goal per se. There is little value in spending time, effort and money on plants that are obviously not to become *best* plants. For this reason, some plants should be disqualified from data collection upfront, e.g.:

* Those exceeding the BAT-AEL levels of the 2006 STM BREF
* Those systematically and massively exceeding the BAT-AEL levels of the FMP BREF.[[1]](#footnote-1)

MS proposing reference plants should also provide a short statement for what reasons (which techniques, which designs, which emission levels etc.) each plant is selected. Those reasons doubtlessly exist, there is no reason not to report them in the process.

* 1. Best plants for Best Available Techniques

The larger set of reference plants should then be narrowed down towards the set of plants on which BAT(-AE(P)L) determination is carried out. A set of 40 or 50 plants for analysis is likely sufficient: on larger datasets, one resorts to overly statistical approaches (as happened in other BREFs), as the human eye and brain can comprehend such large datasets with difficulty.

In this step, obvious poorly performing outliers should be removed, as they clutter the data set and distract from real BAT-AEL.

Narrowing down a set from 200 plants to e.g. 40 plants does not mean that only the 40 best plants should be selected. Rather, the selection should be focussing on the better plants, slightly preferring those with uncommon techniques that perform very well. Plants with good description of their BAT should also be privileged.

* 1. Avoiding superficial statistical approaches

With datasets of more than 50 items, one tends to look at the overall picture (“statistical approach”), losing track of the finer analysis. As an example, the technique applied, and the averaged pollutant concentration are often the two only factors considered in these statistical analyses.

Instead, the following “how” aspects[[2]](#footnote-2) are often neglected:

* How is the technique designed and dimensioned?
* How is the technique operated, which parameters are used?
* How is the technique maintained?

Of course, to be able to analyse these “how” data, they must be collected. Proper questionnaire design, including a prototyping phase are crucial.

1. Back-up data and plausibility checks
   1. Using public data

Data in questionnaires is valuable, yet practical experience from other BREFs tells that doubts and questions can arise. In such cases, and especially in relation with the “how” parameters mentioned above, further contextual back-up information would be extremely valuable for informed decision-making.

Operating permits and compliance reports (which include emission data) are available to the authorities. Permits and reports for the relevant years should be uploaded to BATIS for all reference plants, or at least for those included in the dataset to be analysed.

Questions and doubts can be resolved quickly and easily in many cases with such back-up data.

* 1. Using human brains

The questionnaires should undergo a plausibility check by the national authorities before uploading; this check should rest on their technical knowledge and experience. It should identify obvious errors, data gaps or unclear information.

Having cross-national checks in the proposed prototyping phase would further enhance critical appraisal and alignment across countries.

1. CBI

Confidential Business Information has led to unnecessary complications, delay and discussions in recent BREF developments. The degree of secrecy of some parameters varies largely between BREFs (e.g. the data situation in the TXT BREF was exemplary as compared to that of the WGC BREF). Logically, the quality of contextual information, connectedness of data sets and the possibility to investigate further increase with higher transparency.

* 1. Legal justification needed

To ensure good quality datasets and an equal treatment of industrial sectors, CBI status of datasets should be limited to those with legal justification. Where a TWG member proposes CBI status, they should be required to provide the legal justification for their proposal, based on competition legislation. This way, the TWG status could be transparently discussed and assessed by the TWG members.

* 1. Ways to deal with CBI

Where the CBI status is justified based on competition legislation, we propose a procedure [already suggested for the CER BREF](https://eippcb.jrc.ec.europa.eu/batis/console/forumIndex.jsp?fuseAction=forum_showPost&forumID=133142&postID=133251).

1. Concentration or efficiency metrics?

BREFs generally set concentration-based BAT-AELs, esp. for emissions to water. Where responsible water use is also valued, this can lead in some cases to the following contradiction: wastewater are higher in pollutant concentration if less water is used (other parameters remaining unchanged).

In some cases, BAT-AE(P)Ls on the same parameter can be more effective, e.g. “emissions of pollutant x per treated m2 of substrate” or “emissions of pollutant x per treated kg of deposited metal x”. The data collection should not pre-empt this decision; instead the questionnaire data should allow for derivation of both types of metrics.

Only upon analysing data, it can see which of the two methods better serves the objective of the IED, i.e. a high level of protection of the environment.

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1. This proposal could be discussed and refined at the KoM. In both the STM and the FMP sector, it is BAT (STM section 5.1.6.4, FMP: BAT 19b) to segregate and pre-treat highly waste streams highly loaded in heavy metals (e.g. spent baths). Pre-treatment of similar wastes with similar techniques should generate similar results. [↑](#footnote-ref-1)
2. It should be noted that these aspects are inherent aspects of a BAT, as per its definition in IED Art. 10 (a). Nevertheless, these aspects are generally overlooked. [↑](#footnote-ref-2)