**Draft Report**

**'BAT information exchange as the heart and driver of the IED'.**

**Joint Workshop organised by DG Environment and the German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety**

**Berlin, 16 and 17 October 2014**

**Summary**

A workshop was held in Berlin in October 2014 to take stock of 17 years' experience of BAT information exchanges under the IPPC Directive and IED. The aim was to share stakeholder experiences and explore suggestions to further improve the process and its products i.e. BREFs and BAT conclusions.

The workshop was very successful and attended by 74 members and observers of the IED Article 13 forum representing all stakeholder groups involved (Member States, NGOs, industry and the Commission). In highly constructive discussions, the participants underlined the uniqueness and effectiveness of the BAT information exchange process while identifying a number of suggestions for its continuing refinement. A number of these suggestions are now being tested.

**1. Overview**

Under the Industrial Emissions Directive (IED), there has been considerable strengthening of the role of Best Available Techniques (BAT) in the permitting of EU industrial facilities. BAT conclusions are developed through an extensive information exchange, the result of which is documented in a series of BAT reference documents (BREFs). In 2012, the Commission adopted guidance (Commission Implementing Decision 2012/119/EU, the 'BREF Guidance') on the practical arrangements for this exchange of information and the drawing up of BREFs, including the BAT conclusions which are the key parts of BREFs.

With nearly four years of reviewing and drawing up BREFs and BAT conclusions under the IED, it was considered appropriate to share the respective experiences of IED Article 13 forum members. In cooperation with the German Federal Ministry for the Environment (BMUB), the Commission organised a dedicated workshop on *'BAT information exchange process as the heart and driver of the IED*'.

The workshop was hosted by BMUB in Berlin on 16–17 October 2014. The event was well-attended by 74 participants representing all stakeholder groups (38 IED Article 13 forum members from Member States, 23 from industry, 4 from NGOs, 2 observers and 7 Commission staff - DG Environment and JRC-IPTS's European IPPC Bureau).

The aims of the workshop were to**:**

1. Take stock of the lessons learnt from four years of BAT information exchange under the IED.
2. Identify where the process has been successful and where there might be room for further improvement considering the application and users of the BAT reference documents and their BAT conclusions.

The workshop opened with the following three scene-setting presentations[[1]](#footnote-2):

* Gertrud Sahler (Director General, German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety) welcomed the participants and gave an overview of the workshop's purpose;
* Christopher Allen (Deputy Head of Unit C3, DG Environment, European Commission) presented the *'Policy landscape'* which summarised the context of industrial emissions, the prominence given to the IED in the 7th Environment Action Plan and the Commission's desired outcomes from IED implementation;
* Serge Roudier (Head of the EIPPCB, Joint Research Centre, European Commission) presented *'17 years of making BREFs – from IPPC to IED'* which recounted the evolution of the BAT information exchange process, explaining key milestones in the EIPPCB's history and the measures that are being taken to respond to ongoing challenges.

A number of forum members then presented their experiences of the BAT information exchange under the IED and their suggestions for how it might be made more effective and efficient:

* **Member States**

**- Italy**: Nicoletta Trotta, Ministry for the Environment, Land and Sea

**- Poland**: Marcin Wiśniewski, Department of Environmental Protection

**- Germany**: Michael Suhr, Federal Environment Agency

**- Sweden**: Malin Johansson, Environmental Protection Agency

* **Environmental NGO** – Christian Schaible, European Environmental Bureau
* **Industry** – Bernd Sojka representing the Industrial Emissions Alliance

The second day of the workshop provided an opportunity for detailed discussion of topics that had been suggested by the organisers in a supporting paper sent to participants in advance of the meeting. The suggested topics were nominally divided into 'Products' (i.e. BREFs and BAT conclusions) and the 'Process' (i.e. how the BAT information exchange is carried out), whilst recognising that there were overlaps. Discussion occurred in four parallel working groups; each with a balanced mix of stakeholder representatives and each aided by a 'moderator' and a 'rapporteur'[[2]](#footnote-3). At the end of these discussions, the participants re-congregated to hear feedback from all the working groups and to allow plenary discussion.

**2. Main Observations**

In view of the very wide range of topics covered, this section is not an exhaustive record of discussions but instead indicates the general tenor by focussing on recurring and important messages. Particular attention is given to recording concrete suggestions for improving the effectiveness or efficiency of the BAT information exchange process whilst keeping the process transparent and adhering to the timetable.

**2.1 The workshop itself**

The participants worked together in a highly constructive manner during the two-day workshop. There was a very positive atmosphere and a cooperative desire to work together to further improve the BAT information exchange process. In the four working groups there was a significant convergence on prioritisation of the key issues.

**2.2 Overall assessment of the BAT information exchange process**

The participants reaffirmed the fundamental and somewhat unique components of the BAT information exchange process; namely that it is inclusive, collaborative, consensual, and based on the objective evaluation of detailed first-hand technical and economic data. These features also mean that it has created a real cooperation and close interaction between public authorities, industry and NGOs; both at EU level and within Member States, and make it distinct from other Commission-led processes.

The continuous improvement of the BAT information exchange process was recognised and recent progress under the IED was acknowledged. The workshop focussed on how to continue on this continuous improvement path.

**2.3 The 'Process' - how the BAT information exchange is carried out**

**Frontloading and focused approach**:There was general endorsement of these principles that the Commission has extolled and which are currently being put into practice. Through 'frontloading' there is an intention to prepare early for information exchanges. The idea of a 'focused approach' includes building on the existing BREF by only updating those sections and chapters that are required for deriving BAT conclusions. The efforts of the information exchange process should also be 'focused' on the key environmental issues for the sector in question. This necessitates the early identification of those key issues and defining suitably targeted data collection priorities and procedures. Parameters and values in an existing IPPC-based BREF may be a good starting point for further consideration, without presuming that they are automatically transferable to an IED-based BREF. The focus of efforts should also be on concise BAT conclusions; especially in order to derive BAT-AELs with narrow ranges.

**Smarter working methods**:In order to circumvent the challenges ofworking across Europe, there was frequent mention that web conferences ('webinars') could facilitate closer TWG working. Webinars were seen as having potential in such cases as: clarifying BREF scope in advance of the kick-off meeting; explaining intermediate documents; presenting/assessing data before draft BREFs; and explaining how the proposed BAT-AELs had been derived (before the final TWG meeting).

**Data collection and questionnaires**:Since the whole information exchange process is based on the availability of comparable, high-quality data there was inevitably considerable discussion on this issue. Some key observations were:

* Distinguish data that is 'nice to have' from that the process 'must have' and focus data collection on the latter. The most important and useful data is that which will lead to BAT conclusions, especially BAT-AELs. In all cases, the key environmental issues must be addressed by balancing data complexity against data volumes. Slimmer questionnaires are more likely to get answered but they risk not having the full contextual information.
* On questionnaires, there is a need for consistent approaches in all TWGs on such issues as: the selection of reference plants, questionnaire completion, quality checking and submission route for the filled-in questionnaire. On the issue of 'quality checking' there were some views that only data verified by public authorities is suitable to derive BATs and BAT-AELs.
* There is also need for consistency and clarification on what constitutes “other than normal operating conditions” (OTNOC) and reference conditions.
* There should be early agreement in the TWG on averaging periods (short / long term) and whether to collect emission data as loads or concentrations, since this has a major bearing on the final format of the BAT conclusions.
* Some participants wanted a data evaluation step before issuing Draft 1 of a revised BREF (e.g. as a workshop or webinar). The aim of such a step would be to aide mutual understanding in the TWG, to detect possible errors, to establish criteria for deriving BAT AELs, to agree on the appropriate data sources and to ensure technically correct presentations of BAT.
* In some cases, the option of collecting data as a two-step process may be considered; firstly collecting general data, and then a more targeted follow-up on the key issues or those techniques or processes where more specific information is required to conclude on BAT.
* Some participants considered that it may be better to request additional information (RAI) than postpone aspects to the next BREF review since this provides greater legal certainty and less administrative burden.
* There was a proposal to hold a dedicated workshop on questionnaires in order to share good practices from different information exchanges.
* There should be early identification of where to source appropriate non-EU data e.g. by setting up a working group of volunteers that compile relevant data and context information.
* More attention should be paid to obtaining data that informs the lower end of BAT-AEL ranges (e.g. number of plants, specific conditions of those best performers).

**Establishment and management of subgroups:** There was a call for subgroups to have a balanced composition, with representatives from all the main stakeholders. Some participants asked for more direct management of subgroups by the EIPPCB and a presumption that the EIPPCB should generally take part in subgroup meetings. Some considered that any subgroup without EIPPCB participation would need a Member State rapporteur (or co-rapporteur). There should be clear reporting lines back to the full TWG on such issues as: intermediate results, BAT-relevant proposals, and any controversial issues. At least one face-to-face meeting, at the beginning of a subgroup's work, was considered good practice.

**Data confidentiality**:Data confidentiality claims often prove to be a contentious element of information exchanges so cases should be minimised, fully justified and discussed early in the process. If confidential data is unavoidable, the whole TWG should be at least clear on how any BAT-AE(P)L has been derived. It might be useful to have a compendium of agreed confidentiality cases to help ensure a consistent approach by TWGs.

**Derivation of BAT-AE(P)Ls**: Whilst there was recognition that a standardised procedure for definition of BAT-AE(P)L is not possible, there were suggestions for both a general workshop on data assessment and for a webinar in advance of each final TWG meeting at which the EIPPCB would explain the approach in deriving BAT-AE(P)Ls. All BAT-AE(P)Ls should be backed by supporting data.

**Burden of final TWG meetings**: Final TWG meetings generally necessitate extremely long hours which may not always result in optimal decision-making. There was a suggestion to resolve some of the smaller issues before final TWG meetings and this would be facilitated by issuing the background paper 6 to 8 weeks before the final meeting (rather than the current 4 weeks).

**Timing**: There was a general plea to, as far as possible, keep to the announced work programme for information exchanges. Any unavoidable deviation should be announced with good notice since there were always implications for the supporting preparations of TWG members (i.e. their own frontloading).

**Meeting venue**:For TWG subgroup meetings and interim TWG meetings, many participants would prefer a more central location than Seville as this would reduce travel time and improve the overall efficiency.

**2.4 The 'Products' - BREFs and BAT conclusions**

Although inextricably linked with the 'process' of information exchange, there was generally less discussion on the 'products'. There were no major adverse comments on the structure of BREFs and BAT conclusions but the following refinements were suggested.

**Chapters 1 & 2**: In line with the principles of frontloading and focused approach, there was a proposal to establish an initial sector profile prior to the TWG kick-off meeting. This could be prepared by consultants, possibly with a strong contribution from industry.

**Generic BAT**: Generic BAT was seen as having value but it should be warranted and should not lead to a reduction of environmental standards.

**Mapping**: The overall coherence of the BREF series could be enhanced by 'mapping' which BREF covers which Annex 1 IED activities. This would help reduce any overlaps or gaps.

**Footnotes to BAT-AE(P)Ls**: Many participants called for the use of footnotes to be restricted to 'special cases'. If used, they should be precise, quantified, based on data, and cover more than one installation. Other participants saw footnotes as an essential practical recognition of installation variability to avoid the need to use IED Article 15(4) derogations for such 'special cases'. In any case, it was agreed that 'special cases' must be identified at an early stage of the information exchange (ideally before the release of Draft 1) so that data can be collected on them and lengthy discussion avoided at final TWG meetings by late mention.

**Priority substances**: In identifying the main pollutants on which BAT conclusions should be developed, several participants highlighted the specific need to include routine EIPPCB screening on whether priority substances may be emitted by the activity and whether any such release is a key environmental issue for the sector in question (e.g. substances listed under item 13 (Water) to Annex II of the IED - 'Substances listed in Annex X to Directive 2000/60/EC').

**Environmental outcome:** BAT AELs should contribute to the IED's objectives and EU environmental targets (e.g. air and water quality objectives). Some participants questioned whether the IED would be a driver for enhanced environmental performance if the majority of plants would already fall within the BAT AEL range.

**3. Way Forward**

A summary of the workshop was presented to the IED Article 13 forum on 4 December 2014.

Whilst the workshop concluded that there was no need for a fundamental overhaul of the BAT information exchange process or its products, there were some useful suggestions that could help with further refinement. In the short/medium term, the EIPPCB therefore intends to test the ideas that came out of the workshop in order to evaluate their potential for improving the efficiency or effectiveness of the BAT information exchange process. At the time of writing this report, the following promising ideas have been tested:

1. **Idea**: Use webinars, for example to explain intermediate documents and to present/assess data to the TWG.

**Testing:** A webinar was held on 16/12/14 for the Food Drink and Milk (FDM) TWG to explain and discuss the draft data collection questionnaires.

1. **Idea**: Issue background paper further in advance of the final TWG meeting. **Testing**: The background paper for the final TWG meeting on the review of the Intensive Rearing of Poultry and Pigs (IRPP) BREF was issued 6 weeks in advance of the final TWG meeting.

1. Presentations on CIRCABC <https://circabc.europa.eu/w/browse/ffd91761-bf83-43f0-958e-5d6dbbddf05a> [↑](#footnote-ref-2)
2. Group A: Marcel Taal & Kristine Stubdrup; Group B: Christian Tebert & Alex Radway; Group C: Thomas Brinkmann & Sebastian Plickert; Group D: Claude Loréa & Jan Bambas. [↑](#footnote-ref-3)