

EUROFER views and comments to DG ENV C4 Orientation document for amending Commission Implementing Decision 2012/119/EU being the BREF Guidance

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Background and timeline

According to the provisions of IED 2.0, Decision 2012/119/EU must be amended by 01/07/2026. As a first step, IED Art. 13 Forum members need providing their preliminary views on the orientation document (on issues and any concrete view proposals on the issues) by 25/10/2024 to DG ENV C4 and EU BRITE. The publication of the amended BREF Guidance in the EU Official Journal is scheduled for the end of Q2 of 2026.

EUROFER views and comments on the issues that the updated BREF Guidance could possibly address

As preliminary comment, we suggest to put more the “focused approach” principle – introduced by DG ENV C4 in 2013 - into practice. This means that a criterion for identifying key environmental issues (KEIs) should be defined at the earliest stage of the information exchange with a short (manageable) list of KEIs as basis of the BREF review without changes during the revision process¹.

BAT-AELs: it is vital that detailed information is provided on circumstances, applicability of the environmental performance and this especially in relation to the lower end of the BAT-AEL range. Compliance is a key issue. Make reference or copy/paste the appropriate part of recital 29 of IED 2.0 into the updated BREF Guidance being “BAT conclusions should contain information on the circumstances allowing the achievement of lower emissions levels within the range of BAT-AELs set for categories of installations having similar characteristics”.

Some examples of those “circumstances” can be (non-exhaustive list): *operational conditions of the technique applied, operational parameters of the applied processes, type of energy carriers as well as product related issues (shape, quality, composition), availability of resources and use, etc.*

In addition, a traceable methodology to derive BAT associated emission/environmental performance range levels (BAT-AE(P)L) should be put in place; This means that a methodology to derive both ends of the ranges should be defined.

¹ We fully support the content – including the criteria for identifying KEIs – of the discussion paper issued by the Commission and presented to the IED Article 13 Forum on 19 October 2015

Thirteen EU sector associations established a paper ², containing a systematic approach (= methodology) which should help deriving both ends of the BAT-AEL range systematically. In principle:

- *the upper end of the range should be set on the basis of the maximum observed emissions of the plants applying generally applicable BAT for the pollutant at stake after discarding all performances that only occur under specific circumstances;*
- *the lower end should be set based on the highest values of the lower emission levels resulting from the use of generally applicable BAT leading to the best performance after discarding all performances that only occur under specific circumstances;*
- *In both cases taking into account important elements such as variability in raw materials, fuel characteristics, product specifications and variable load, as well as any cross-(media) effects/integrated approach.*
- *both ends of the range will be derived from emissions reported under normal operating conditions for the same period of time and using the associated monitoring as referred to in the BAT conclusions.*

BAT-AEPLs: BAT-AEPLs for water are binding and that for waste and resources other than water, only the upper end (being the lower performing end) of the range BAT-AEPLs is binding. It applies for individual processes that have similar characteristics such as energy carriers, raw materials, production units and final products, when the data made available in the exchange of information supporting the determination of BAT are sufficiently robust; Reference should be made to recital 27 of IED 2.0, this means that a methodology should be considered in a way that:

- *If all the conditions are met (see recital 27) => BAT AEPL can be derived;*
- *In case of doubts or missing at least one of any of the conditions => benchmark may be derived;*
- *If no robust data, no BAT AEPL neither benchmark can be derived.*

Decarbonisation and DIT: IED review and trilogues outcomes must be respected with regards to IED Art. on “Emission of greenhouse gases” (in particular Art. 9.1). There shouldn’t be any description – imposing ways and means - of decarbonisation techniques in BAT-C for sectors covered via the EU ETS. Else, the IED Art. 14(3) mandate – being “BAT conclusions shall be the reference for setting the permit conditions” - contradicts the EU ETS (buy credits or reduce being a market-based instrument).

Reflection on additional steps already implemented in the Seville process, an effective frontloading approach and an earlier frontloading all go in the right direction as set in the orientation document with one consideration being that it should be well assessed whether intermediate decisions are solid and have no potential to contradict further decisions of the TWG in the final meeting.

² Informal Industrial Alliance paper “The undersigned sectors are willing to contribute to the development of a systematic approach for deriving suitable BAT-AELs ranges (24 May 2017)

Partial/Fast-track BREF reviews: following the IED Art. 13 Forum meeting of 30/04/2024, there are clearly different views on this. Before considering any partial review of BREFs, first it is vital to clarify/understand the legal implications. Related to fast-track BREF reviews: we are worried about the quality of the BAT-C that will be delivered. The Seville process should remain being a bottom-up approach technical discussion with consecutive logical steps and not a top-down one, skipping the necessary steps. Quality and robustness of BAT Conclusions are much more important than the speed to develop them. The new requirements associated to IED 2.0 will require additional time and deep dive discussions in TWGs and we believe will be challenging to keep the duration of the exchange of information to not more than four years as required under the reviewed Directive.

Differentiation between drawing up a new BREF and reviewing an existing BREF: the text in the orientation document reads now that identified KEIs will remain existing with in addition new ones. *Question: what about transformation techniques leading to new processes with other KEIs than the once set in the past?*

TWG commenting process: the orientation document refers to a compendium (summary) of the relevant data. This is not acceptable. The Seville process needs remaining fully transparent providing all data on emissions and environmental performance levels as well as the circumstances, applicability to the TWG.

Pre-Final Draft: a pre-final draft can be useful in some cases in order to have pre-final checks and identify data gaps or improvement potentials at an early stage.

A different process for split views: ideally, split views should continue to be dealt with as they are today, including producing a split view assessment report. A faster process will reduce the common understanding within the TWG leading to an increased number of split views in particular undermining the BAT conclusions. We believe that the timing required to evaluate the technical arguments of the split views is relevant and as such should be kept in the process.

Additional issues identified by EUROFER that should be taken on board in the updated BREF Guidance

Involvement of equipment suppliers in the exchange of information: based on the experience in the CER BREF, we are of the opinion that the text in the current BREF Guidance must be strengthened. Commercial intermediaries (wholesalers) that sell equipment or services to the operators/owners of the installations for a profit should be excluded from the TWG. Furthermore, it should be the European umbrella equipment supplier association(s) sending a representative to the TWG, providing valuable technical and economic data and information whilst having a sufficient technical understanding of the 'equipment' function and knowledge of its operational performance.