

BDI Position Paper on the BREF Guidance Document

EU Commission's Orientation Document

Oktober, 22 2024

Introduction

The BREF guidance document sets out rules for the Seville process for the preparation of BREFs under the EU Industrial Emissions Directive (Implementing Decision 2012/119/EU). In October 2024, the EU Commission presented an orientation paper with considerations on how these rules for the Seville process can be revised and adapted to the new IED Directive.

An optimal design of the process for drafting BAT reference documents describing Best Available Techniques (Seville process) is of great importance for German industry.

The implementation of BAT requirements can result in considerable additional costs and expenses for emission reduction and process optimization of the existing installation park for affected industrial installations.

In the opinion of German industry, the Seville process needs to be improved considerably.

In this paper, the BDI comments on the EU Commission's orientation document on the revision of the BREF guidance

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I. 2.1 Specific elements / requirements introduced by the IED 2.0

Confidential Business Information (CBI)

We support that Confidential Business Information (CBI) should be considered.

It is important to preserve the confidentiality of sensitive data under competition law and therefore limit access to such data within the Article 13 Forum to civil servants who are bound by law to maintain professional secrecy. Representatives of non-governmental organisations should only have access to data that has been further processed, e.g. through anonymisation and aggregation, to make it less sensitive – allowing the same level of access to industry sector representatives and NGO representatives in the Forum. In addition, information that is classified as confidential for the purposes of the IED BREF process should also be considered as such if a third party requests access to this data in accordance with the relevant EU or national legislation.

Role of the European Chemicals Agency (ECHA)

The role of the European Chemicals Agency should be very limited. Only information about the toxicology profile of substances should be given. There is no need for information about a CMS or identification of substances for a BREF. They only provide data upon request but do not make their own suggestions on the approach or content of the BREF.

Decarbonisation and Deep Industrial Transformation (DIT)

The point „Decarbonisation and Deep Industrial Transformation (DIT)“ should be deleted.

The purpose and task of the Seville Process is to establish a process for determining the Best Available Techniques (BAT) for preventing or reducing emissions from industrial activities for all industrial sectors. In contrast, the new temporary transitional regulation introduced by Art. 27e IED for installations undergoing „deep industrial transformation“ concerns substantive legal requirements for the temporary non-application of the suspension of BAT determined by the Seville Process for installations with a foreseeable end of life. The application of „deep industrial transformation“ is not part of the Seville Process. Any necessary further elaboration of „deep industrial transformation“ must therefore take place at the level of Member State national IED implementation and not within the Seville process.

II. 2.2 Lessons learnt under the current practice

Reflection on additionally necessary quality management measures

The content of the point “Reflection on additionally necessary quality management measures“ should be amended and replaced by the following content.

The BAT conclusions lay down binding requirements for industrial installations. Therefore, the process of developing BREFs must ensure that the derivation of BAT requirements is based on sound technical and economic data. The previous BAT process for large combustion plants (BREF LCP), for example, has shown that qualitative improvements are required in the derivation of BAT conclusions and emission bandwidths.

The selection of reference plants is of central importance. The exchange of information to determine the best available techniques and to derive emission bandwidths must ensure that sufficiently representative reference installations feed data into the process. Clear specifications should be defined for data collection (normal operating conditions, type of average values (annual or daily averages values), consideration of measurement uncertainties, measurement method, no consideration of installations in trial operation, no consideration of measurement data for the lower bandwidth without information on the limit of quantification (LoQ), no consideration of data below the LoQ....). Quality assurance measures must be provided for. The experience of the BREF LCP process, for example, has shown that it is a great disadvantage for the comparability of data and their interpretation if data of different origin, different quality and without clear labelling are summarised (e.g. results of single measurements and periodic measurements, data from new plants and old plants, different averaging periods for minimum and maximum values...).

A transparent exchange of information is essential in order to be able to understand whether the data collected is truly comparable. This will become all the more important in future BREFs, as ranges for environmental performance must be determined in addition to emission bandwidths. The expert judgement should be avoided. Data from installations outside the member states of the European Union may only be taken into account after a thorough assessment of their applicability in the sector concerned, but under no circumstances should they alone determine the state of the art.

The revision of BREFs in accordance with IED 2.0 must be completed within four years. **However, under no circumstances should this time limit be at the expense of quality.** The requirements of the new IED make the Seville process even more demanding. It must always be borne in mind that the industry must also be able to implement the many new requirements. A thorough approach is clearly more decisive than a quick one.

An effective frontloading approach

Rules for the frontloading procedure are required to prevent a pure wish list from being created in the frontloading procedure. For example, clear reasons should be given as to why new BAT should be included or why certain techniques should not be further described in the BREF. Of course, the JRC will filter the objections accordingly and prepare them for the kick-off meeting. However, it is to be expected that more KEIs and techniques will be introduced through frontloading in the future. Therefore, a stricter filtering process is required to avoid overloading the kick-off meeting.

III. 2.3 Speeding up the Sevilla process

Partial/ Fast-track BREF reviews

The point „Partial/ Fast-track BREF reviews” should be deleted.

The IED does not provide for the partial creation and revision of a BREF document. Rather, the new IED contains the target that the BREF process should be based on an 8-year cycle. This applies to an entire BREF document.

This was not done without reason. A successive, partial revision of a BREF document with regard to certain types of installations, fuels or input materials would lead to considerable application difficulties. In accordance with the requirements of the IED, different transitional periods would apply to the installations covered by a BREF, depending on which installations would be included in a partial revision. A

distinction would also have to be made between new and existing installations, which would lead to an extremely difficult-to-apply set of regulations with a different BAT-Standard.

A partial revision would therefore result in an enormous increase in bureaucracy/effort during implementation. In addition, a partial revision also harbours the risk of leading to immense distortions of competition within an industry. Plants that use different process technologies or fuels but compete in the same sector would be confronted with new requirements and possibly retrofitting or higher operating costs at different times if the revision were only partial.

As the IED does not provide for a partial revision, it is not clear on what normative basis the Commission should be able to make such competition-relevant interventions. Accordingly, a partial revision of BREFs should be rejected.

Differentiation between drawing up a new BREF and reviewing an existing BREF

It should be clear that the objective is not to find more and more “potential new KEIs”, but to assess KEIs which have a “relevant” impact on the environment and that are “emitted” in a significant quantity by many installations to have such an impact. KEIs can change, old KEIs may no longer be relevant. Therefore, a discussion about all KEIs is also necessary for reviewing an existing BREF under the IED 2.0, it is not sufficient to discuss potential new KEIs. There needs to be a clear indication regarding the application of the 4 criteria or a similar alternative. And this alternative must be uncomplicated and practicable.

Pre-Final/ Final Draft

The BAT conclusions should be based on a sound, technical achievable basis and should not be drawn up in a hurry, which is why the possibility of a Pre-Final Draft should always be given. Also, the pre-final draft can be useful in order to have pre-final checks and identify data gaps or improvement potentials at an early stage.

Imprint

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