



Ms Marianne WENNING

Head of Unit
European Commission
DG Environment
Avenue de Beaulieu 5
1160 Brussels

22 March 2011

Dear Ms Wenning,

Re: BUSINESSEUROPE comments on the draft Guidance on the preparation of BAT reference documents (Article 13(3) (c) and (d) of the IED)

The new Industrial Emissions Directive (IED) goes right to the heart of industrial production, with far-reaching new requirements for the granting of permits. It also makes significant changes to the decision-making process of EU-wide guidance documents. Let me assure you that BUSINESSEUROPE is committed to engage with you in a constructive dialogue in order to find the right balance to achieve health and environmental objectives while maintaining EU competitiveness.

The development of the guidance on the preparation of the BAT reference documents (according to Article 13(3) (c) and (d) of the IED) is a decisive step in this process. Following the useful exchange of views on a draft version of the guidance at the 8 and 9 March 2011 meetings, BUSINESSEUROPE would like to contribute with the following comments.

Firstly, it should be acknowledged that the emission levels associated with Best Available Techniques (BAT AELs) in the existing BAT reference documents (BREFs) or those in the final steps of review were set under the former IPPC regime with very different framework conditions compared with the new IED. For this reason, BUSINESSEUROPE thinks that in most cases these old BAT AELs cannot be embedded as “BAT conclusions” as they stand, using the new Article 75 Regulatory Committee. An in-depth examination of BREFs’ chapter 5 by the Technical Working Groups (TWG) is indispensable to ensure that appropriate and sufficient information is included in these “BAT conclusions”.

Secondly, the guidance on the preparation of BREFs and on their quality will be adopted by the Article 75 Regulatory Committee. It will thus have legal standing. As emission limit values in permits will be derived from the so-called “BAT conclusions” section of the BREFs, it will be essential that the guidance ensures implementation under economically and technically viable conditions. Therefore, the role of costs and advantages, especially for old installations which are often hard to retrofit, should be highlighted much more than in the draft discussed on 8 and 9 March.

Other issues in the draft guidance that deserve careful examination are:

- Overlaps in the BREFs require exact scope definitions, besides the cross-reference suggested in the guidance. Moreover, it would clarify matters if the guidance were to include a clear indication on the hierarchy of BREFs so that vertical BREFs should always prevail over horizontal BREFs (section 1.1.3)



- BUSINESSEUROPE supports the Commission's efforts to streamline the BREFs, to improve data collection, and to further improve the overall quality of the BREFs. However, it is hard to see how advanced BREFs can be generated with shorter time for comments and without a second draft which has been a tool for substantial corrections and improvements. This is especially true for the first round of BREF revisions which turn out to be at least as complex and labour-intensive as the preparation of new BREFs. Additional TWG meetings should also be possible on justified TWG requests (section 1.2)
- With regard to improved data collection BUSINESSEUROPE recommends to consider the suggestion of a two-step approach which seems to be a logical consequence of questionnaire supplements in the past which reflect the problem to ask the right questions for BAT conclusions at the beginning of the process.
- Split views are essential information to understand the TWG discussions and results and must be part of the process of reaching "BAT conclusions" (section 2.3.11).
- A meaningful coordination on the nomination of industry experts in the TWG is essential for proper and balanced discussions at the technical level. Therefore, an industry-wide coordination process for the nomination process of industry experts should continue to be pursued (section 4.4.1)

Lastly, given the new provisions set by the IED it should be noticed that a distinction between a technical "Sevilla process" (i.e. TWG work and decision by the Article 13 Forum) and a political "Brussels process" (i.e. Article 75 Committee) is not the right way forward. BUSINESSEUROPE suggests that in cases where the Commission proposal on "BAT conclusions" for decision by the Article 75 Committee deviates from the outcome of the Sevilla process, a thorough impact assessment should be carried out, applying close scrutiny, in accordance with the Better Regulation agenda set by the European Commission¹.

I trust that you will give your best attention to these views and remain at your disposal should you require any additional information.

Yours sincerely,

Peter Breidenbach
Chairman of BUSINESSEUROPE's IED Task Force

Cc: Christopher Allen (DG Environment), Didier Herbert (DG Enterprise), Heidi Moens (DG Enterprise)

¹ COM(2009)15 on the Third strategic review of Better Regulation in the European Union