



Ms Marianne WENNING

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

13 May 2011

Dear Ms Wenning,

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

As stated during the stakeholder experts' meeting on 2 May 2011, BUSINESSEUROPE acknowledges improvements in the second draft version of the guidance on the preparation of BAT reference documents, which mirror some of the comments we made in our letter dated 22 March 2011.

However, we would like to reiterate an issue that we think has not yet been properly addressed.

BUSINESSEUROPE is convinced that one of the major challenges linked to the new decision-making process is to ensure that the 'BAT conclusions' adopted under comitology do not differ from the result obtained during the Seville process.

As we underlined in our letter dated 22 March 2011, we therefore think that, especially if the Commission proposal for adoption under comitology is different from the opinion adopted by the Forum, an in-depth impact assessment, applying close scrutiny, will have to be carried out for a good evaluation of the social and economic consequences of this proposal. Such an impact assessment is the only way to ensure that the decisions under comitology are taken on a solid foundation and avoid far-reaching negative impacts on industrial activities.

If this proposal is not accepted, a mechanism must still be formally put in place in order to ensure complete transparency insofar as the decision adopted under comitology is different from the result obtained during the Seville process. To that end, please find below a proposal for adaptation of the text of section 1.4 in the guidance (proposed changes are highlighted in grey).

1.4 Adoption of the BAT conclusions and publication of the BREF

~~The chapter(s) of the BREF laying down~~ The draft decision on the BAT conclusions (see Sections 2.3.8 and 3) will be submitted by the Commission to the IED Article 75 Committee for delivering its opinion ~~adoption~~ in accordance with the procedure referred to in Article 75(2) of the IED (see Section 4.1).

After the adoption of the decision on the 'BAT conclusions', the EIPPCB will finalise ~~complete modify if necessary~~ the BREF ~~by according to~~ the adopted decision on the



BAT conclusions without altering the technical outcome of the Seville exchange of information and, without delay, will make the English version of the final BREF # publicly available. The technical conclusions of the Technical Working Group (as presently known in the Seville process) need to be clearly identified in the published BREF, securing transparency and traceability. In addition, if the decisions on 'BAT conclusions' adopted by the IED Article 75 Committee differ from the outcome of the Seville exchange and the opinion of the IED Article 13 Forum, either the English version of the final BREF or the 'BAT conclusions' should contain an Annex indicating, explaining and justifying any differences. The Commission will organise the translation of the 'BAT conclusions' into all the official languages of the Union.

In addition, BUSINESSEUROPE would like to re-emphasise the importance for the guidance to ensure implementation under economically and technically viable conditions. We are still of the opinion that the role of costs and advantages, especially for old installations which are often hard to retrofit, should be reinforced in the guidance.

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), Serge Roudier (European IPPC Bureau), Marianne Klingbeil (Chair of the Impact Assessment Board)