European Union Network for the Implementation and Enforcement of Environmental Law

Various Aspects of BAT Conclusions and Permits

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Introduction to IMPEL

The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is an international non-profit association of the environmental authorities of the European Union (EU) Member States, and of other European authorities, namely from acceding and candidate countries of the EU and European Economic Area (EEA). The association is registered in Belgium and its legal seat is in Brussels, Belgium.

IMPEL was set up in 1992 as an informal Network of European regulators and authorities concerned with the implementation and enforcement of environmental law. The Network's objective is to create the necessary impetus in the European Community to make progress on ensuring a more effective application of environmental legislation. The core of the IMPEL activities concerns awareness raising, capacity building and exchange of information and experiences on implementation, enforcement and international enforcement collaboration as well as promoting and supporting the practicability and enforceability of European environmental legislation.

During the previous years IMPEL has developed into a considerable, widely known organisation, being mentioned in a number of EU legislative and policy documents, e.g. the 8th Environment Action Programme that guide European environmental policy until 2030, the EU Action Plan: "Towards a Zero Pollution for Air, Water and Soil" on Flagship 5 and the Recommendation on Minimum Criteria for Environmental Inspections.

The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on both technical and regulatory aspects of EU environmental legislation.

Information on the IMPEL Network is also available through its website at: www.impel.eu

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Executive Summary

The Industrial Emissions Directive (IED) is the main EU instrument for regulating emissions from around 50,000 industrial installations in Europe. The IED uses the application of Best Available Techniques (BAT) through permits to ensure these emissions are minimised. The application of BAT requires permit writers and other regulators to interpret issues related to BAT. It is important that this is done effectively and consistently to achieve environmental objectives and maintain a level playing field for industrial operators. This report and the associated factsheets set out the findings of an IMPEL working group relating to nine issues related to the interpretation and implementation of BAT.

The working group used surveys and questionnaires to gather information on current approaches and identify best practice for inclusion in the report / factsheets. The following summarises the outputs for each topic.

1. General Binding Rules. Implementation of BAT conclusions through General Binding Rules is common and several pros and cons were identified relating to their use.

2. Application of Emission Ranges. Generally, the highest value of the BAT-AEL range is applied. The criteria used in setting Emission Limit Values below the top of the range were identified.

3. Application of BAT within 4 years. Permits must be reviewed within 4 years of publication of BAT conclusions for the main activity at an installation. Criteria for determining the main activity were explored and pros and cons of applying more that one main activity were identified.

4. Narrative BAT Conclusions. There are various approaches to implementing narrative BAT conclusions. Examples of narrative BAT conclusions were identified and the pros and cons of different ways of implementing them were considered.

5. Application of BAT where there are no BAT Conclusions. Most member states set permit conditions for activities that are not covered by BAT conclusions usually driven by national legislation. Standards applied take reference from relevant BAT conclusions and horizontal guidance.

6. Substantial Change. The definition of substantial change and how it is applied through national law and permit application / determination was explored. Determination of substantial change is generally case by case although some countries have provided further guidance and thresholds.

7. Streamlining IE and EIA Directives. About half of member states have streamlined requirements under IED and EIA. Streamlining could not be shown to shorten determination times but advantages for both applicants, the public and determining authorities were identified.

8. Use of BAT-AEPLs. Examples of BAT AEPLs from BREFs were identified and a number of approaches to their implementation were found.

9. Streamlining Seveso and IED requirements. IED and Seveso generally fall under different competent authorities. Because of this considerable variation was found in how and whether member states were streamlining requirements.

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1 Purpose of the Project

1.1 Background

In 2019 the European Commission has launched the so called European Green Deal with the aim of to transforming the EU into a fair and prosperous society, with a modern, resource-efficient, and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use.

Industrial production processes account for a considerable share of the overall pollution in Europe due to their emissions of air pollutants, discharges of wastewater and the generation of waste. Achieving a climate neutral and circular economy requires the full mobilisation of industry. It takes 25 years – a generation – to transform an industrial sector and all the value chains. To be ready in 2050, decisions and actions need to be taken in the next five years.

The Industrial Emissions Directive 2010/75/EU of the European Parliament and the Council (IED) is the main EU instrument regulating emissions from industrial installations. The IED aims to achieve a high level of protection of human health and the environment by reducing harmful industrial emissions across the EU, particularly through the application of Best Available Techniques (BAT). Around 50,000 installations undertaking industrial activities listed in Annex I of the IED are required to operate in accordance with a permit (granted by the authorities in the Member States). This permit should contain conditions set in accordance with the principles and provisions of the IED. The Implementation Challenge project of IMPEL since 2014, the Industry and Air Expert Team, and consultations with the European Commission identified many unresolved problems in the implementation of industrial regulation.

As part of the IED Implementation Project, members of the project started a subgroup/Working Group "Various aspects of BAT conclusions and permits" in 2018 with the intention to highlight and understand a range of interconnected interpretational issues related to the IED and the BAT Conclusions (BATc). Work consisted mainly about finding out the different ways Member States apply BATc and other provisions of the IED with the aim of developing a common understanding of these issues and develop good practice.

The subgroup developed good practice examples for the following topics:

1. General Binding Rules
2. Application of Emission Ranges
3. Application of BAT within 4 years
4. Narrative BAT Conclusions
5. Application of BAT where there are no BAT Conclusions
6. Substantial Change

7. Streamlining IE and EIA Directives

8. Use of BAT-AEPLs

9. Streamlining Seveso and IED requirements

Although this work involved the preparation of factsheets since 2020, it included previous work on related guidance and best practice examples during the first phase of this project which was concluded in 2019.

The IED has recently been evaluated and is being revised. During this evaluation process, member states have actively gathered interpretational issues and issues that could be improved. This project has attempted to address such issues related to IED 2010/75/EU and did not consider the proposed changes to the IED.

1.2 Methodology

The subgroup conducted a survey of the project containing questions to Member States (MS) about a range of interconnected interpretational issues related to BAT Conclusions (BATc) and the IED. The aim was to develop a common understanding of these issues and develop good practice based on the answers of the questionnaire. The subgroup team has developed a lot of good practice examples that could be used to further develop the Doing the Right Things (DTRT) Guidance which contains guidance and factsheets from other previous and related IMPEL projects dealing with issues of industrial regulation.

Work on the factsheet involved gathering of data on that topic through various means such as face-to-face meetings and surveys. For certain topics these were collated into a discussion paper which was discussed in monthly online meetings of the project team. Online meetings started following the COVID-19 pandemic and have going on since. These discussion papers containing background information, definitions and information provided by Member States can be obtained through a request to the authors. Finally, factsheets were produced to summarise the outcome of the previous work in a manner which could be read as either as a stand-alone document or as part of the DTRT Guidance.

Working Group Meetings included:

- Ghent (part of Supporting IED Implementation project meeting) – October 2022
- Berlin – April 2023
- Stuttgart (part of Supporting IED Implementation project meeting) – October 2023
- Helsinki – February 2024.

1.3 Acknowledgements

The project team would like to acknowledge the contribution of various people from several regional and national authorities who have contributed towards the data and discussions required for this project. Another word of thanks goes to IMPEL members and participants of the Industry and Air Expert team for their input and continuous support in producing the factsheets as project deliverables.

2 Factsheets

2.1 General Binding Rules

2.1.1 Use of General Binding Rules (GBR)

Both the use of GBR and permit conditions for each installation are common. Some countries implement BATc for each installation in permit conditions, but some implement BATc for all installations within the same sector through GBR.

2.1.2 Are GBR found within the permit, the legislation or by some other method?

The most common practice is to incorporate GBR into domestic legislation.

The GBR are in some countries used as guidance documents with minimum requirements but aspects that are more specific such as ELVs are put in each permit. When GBR are found within the permit it is in general as a reference to a technical document or a legislation.

2.1.3 How GBR are used?

GBR are in general used to impose general IED (Industrial Emissions Directive) requirements BAT-AELs, BAT-AEPLs and BAT monitoring. Nevertheless, it is possible to apply for derogation of GBR.

2.1.4 Pros and Cons related to GBR

Pros:

- GBR are efficient to implement BATc and provide a level playing field for operators within same sectors.
- Some countries notice that implementation of BATc through GBR can be helpful for sectors that include many similar installations.
- Time and cost effective.

Cons:

- It can though be more complicated for operators since they can be subject to many GBRs.
- Implementation of BATc with GBR also limits the possibility to require site-specific conditions and preferable individual differentiations for each installation. Therefore the implementation of GBR is sometimes combined with individual evaluations – and if necessary a permit update – of all installations in order to account for site-specific conditions and requirements.

2.1.5 Individual checks and individual binding rules

A common practice is to allow individual binding rules (specific conditions) in each permit.

2.2 Application of Emission Ranges

2.2.1 Decision where on the BAT-AEL range, an emission limit value (ELV) should be applied

In general no specific criteria are applied and the highest value of the BAT-AEL range is applied.

However, there are some exemptions

- In some cases, the lower value of the BAT-AEL is applied, namely if it is required by local environmental conditions or stricter legislation.
- New installations are often set at the lower end of the range.

The alternative is to set ELV on the part of the range that reflects what an installation can achieve if its performance is optimised, that is, being run correctly and maintained properly. Unfortunately, this is not often applied in practice.

2.2.2 Relevant criteria used in deciding where on the range an ELV should be applied

Relevant criteria:

- Sensitivity of the surrounding environment;
- Rules for new versus existing installations;
- Technical characteristics of the installation;
- Existing legislation;
- Existing action plans (e.g. lower dust levels should be reached on a regional or national level);

The answers indicate the use of varied combinations of the criteria. This appears to be because of the legislative tradition and national policy. However, there is not a major trend in identifying the PROS and CONS of using these criteria.

The alternative seems to be to apply the BAT-AEL through GBR, though if individual permit condition ELV's are required factors like sensitivity of the surrounding environment are considered.

NOTE: It seems that the basis for setting ELV may be different across the Member States. This is of particular interest as it could have implications on the information gathering phase (in particular emissions and performance of the installations), when writing the BAT conclusions – as environmental performance of the installation may not necessary be primary condition for establishing an ELV – and could have a knock-on effect on BAT-AELs.

2.2.3 Defining the ELV on the range when using GBR

No GBR are used when the upper level of the range of BAT-AEL is applied.

Discussion on whether there is a level playing field among member states regarding where on the BAT-AEL range each permit is set.

2.2.4 Setting emission levels during other than normal operating conditions (OTNOC)

ELVs are not established for OTNOC, unless it is required for environmental protection purposes.

Alternatives can be set in the permit that can directly counteract the effects of OTNOC. This can include setting restrictions on the amount of time that an installation can be in OTNOC, and/or impose a logbook where all OTNOC is documented which should be kept at the disposal of the inspectors.

2.2.5 Handling footnotes with unclear information on BAT-AEL ranges and emission limit values (ELVs)

There is a wide range of different approaches to handling footnotes that allows Member States some flexibility in interpreting them. This can be a problem, since the concept of the level playing field can be compromised.

2.2.6 Difficulties on the application of stricter ELV than the upper level of the BAT-AEL range

There can be a pressure from the industry to set ELVs within or at the upper end of the range, though this approach can ultimately result in backsliding.

2.3 Application of BAT within 4 years

2.3.1 Criteria used to decide the main activity of the operator

Criteria used to decide the main activity differ between the countries. Even within a country, different criteria can be used (e.g. depending on competent authority).

When deciding the main activity, the following approaches/criteria were mentioned:

- Environmental criteria
- Comparing inputs vs outputs vs environmental impact
- European Commission's suggestions in its FAQs (the main purpose(s) and the product(s))
- Main activity is clarified in the permitting process
- Main activity is an activity that other ones are supporting and causes most emissions

2.3.2 One or more main activities

A common practice is to define only one main activity. Though, there are countries where it is possible to have more than one main activity.

2.3.3 Pros and cons of having more than one main activity

Pros:

- deals with all main activities in one single permitting process; better equability in setting up permit conditions
- integrated approach to the installation
- if an operator has two (or more) activities and it is difficult to decide which the main activity is, the possibility of having more than one main activity will simplify the matter
- some BATc will be implemented and followed earlier than otherwise, which is an advantage from an environmental protection perspective

Cons:

- time and resources consuming, more burden for both operator and permit authority (permitting process may last for a longer period and might require involvement of more staff on behalf of permit authority due to more frequent reconsideration and update of the permit)
- difficulties with the implementation since there will be many formal dates, "triggering dates", to keep in mind and work with for both operators and competent authorities within short time periods, when different BAT Conclusions should be followed
- the concept of main activity suggests that it can only be one main activity and not several main activities
- there may still be cases when it is not straightforward to decide what the main activities are
- having more than one main activity generates uncertainty implementing the BATc

- there may be links between the installations that may not correspond to the technical connection referred in the IED definition of installation, but can result in difficulties to the review process (e.g. common water treatment, concurrent soil affection, concurrent acoustic emission...)

2.3.4 Revising the permit conditions of activities with BAT conclusions, which are not the main activities

A common practice is to revise the permit conditions of activities with BATc at the same time with the main activity.

2.3.5 Description of the process used to revise permits upon the publication of the BAT Conclusions

The process of revising permits differs between the countries. Different ways of implementing IED in MS cause the biggest difference: implementation by GBR (when the publication of BATc do not automatically trigger revision of environmental permits) and implementation through permit conditions (being periodically reconsidered by competent authority).

2.3.6 Time-limits on the application, review and permitting process

There are time limits introduced in more than half of the cases. These time limits are set as both aspirational targets/goals and statutory timescales (legislation).

2.3.7 Possibility of extending the 4-year review period

The answers indicate that common practice is not to extend the 4-year review period, unless derogation according to IED article 15(4) has been granted.

2.3.8 Factors/situations which make it difficult for installations to comply within the 4-year period

Only a granted derogation should allow the extension of the 4-year period. Nevertheless, there are factors and situations, which often make the compliance within the 4-year period challenging. One of the most often mentioned situations is a case when an installation requires substantial upgrades/changes in order to comply with BATc. In such case, the 4-year period can be too short for an operator to accomplish such extensive investments. This concerns mainly older plants but not only.

2.4 Narrative BAT Conclusions

2.4.1 Imposing of narrative BAT conclusions

The way to impose narrative BATc depends on the national legislation. The alternatives are general binding rules, indirectly via ELVs when possible, permit decision or a combination thereof.

It seems that the Member States generally have taken a more flexible approach for implementing narrative BAT, compared to implementing BAT-AELs.

2.4.2 Classification of narrative BAT conclusions

In most cases narrative BATc are put in different classes. Mentioned classes are:

- BAT describing technical solutions
- monitoring
- management of different issues / management of environmental aspects / managing the activity
- techniques in combination with BAT-AEPL / BATc and related BATc with BAT-AELs
- techniques without BAT-AEPL
- techniques to avoid soil contamination
- techniques to reduce noise and odours
- techniques to reduce consumptions / handling of use of resources
- “stand-alone” narrative BATc
- BATc as headline objectives

Putting narrative BAT into different classes can be a way of explaining them and putting similar types of BAT together to get the bigger picture. This doesn´t have to influence the permit conditions or inspections.

2.4.3 Examples of implementation and verifying compliance with narrative BAT conclusions

The permit authority implements narrative BATc for the individual BATs for each installation individually. The permit authority for instance checks the applicability including justification, evaluates the local impact and evaluates compliance of the permit conditions with the BATc. It also describes how the narrative BATc are followed and the BATc are compared with the current situation.

The inspection authority checks from the annual reports and in situ inspections if an installation actually complies with the set permit conditions and narrative BAT. If this is not the case, it can take corrective actions.

2.4.4 Pros and cons of different ways of implementing narrative BAT conclusions

PRO: flexibility to implement narrative BAT

CON: the verification of compliance with narrative BAT not associated with BAT-AEL can be subjective.

2.4.5 Implementing narrative BAT where there is a combination of techniques allowable

In case of a combination of techniques, an expert (team) should assess the list of techniques, which ones are applicable. Based on that assessment / expert judgement, the competent authority decides which combination

of techniques the operator may apply. Sometimes, the permit writer writes this in the permit, but not always (e.g. Finland). The operator's involvement – or even obliged participation – in this assessment, for instance for providing information and/or detailed descriptions is recommended.

Since techniques are neither prescriptive nor exhaustive, it is questionable if operators should necessarily employ all or any of the techniques that are listed in most BATc. Alternatives may be applied. They thus interpret it merely as *"BAT is to use an appropriate combination of techniques that may include the techniques given below"*.

2.4.6 Deviation from narrative BAT conclusions

Deviation from narrative BAT or the use of alternatives is common practice, but most often only if properly justified. The use of the criteria of Annex III in this assessment is also common practice.

2.4.7 Relevant local/national factors that have influenced the adopted position of the member states

The few respondents that answered this question mention existing legislation/approaches as an important element for their answers *("legal tradition", "a long history in environmental permitting and emission limit values", "historical reasons"*).

2.5 Application of BAT where there are no BAT Conclusions

2.5.1 Setting permit conditions based on BAT for IED activities not covered by any BAT conclusions

The vast majority of the responding member states sets some kind of permit conditions also for Industrial Emissions Directive IED (and other) activities that are not covered by any BAT conclusions. Often the national legislation requires the use of BAT even in cases no conclusions are available. Then BAT is considered as a more general term.

2.5.2 The approach to setting these permit conditions. I.e. by setting conditions based on BAT from other BAT conclusions that are applicable to the activity concerned.

Conditions based on BAT from other BATc that are applicable to the activity concerned are set (in some cases) after consultation with the operator. Permit conditions are set considering the emissions, the site, technical and economical limitations and other BAT-documents (national). When deciding the ELVs, legislation from other countries, BREFs and other material may also be used as reference.

2.5.3 Conclusions

In general, respondents have indicated that they do regulate and set conditions for parts of the installation not specifically covered by the relevant BATc. The standards applied take reference from any relevant BATc and horizontal guidance. A degree of flexibility has been noted in the responses and site-specific approaches have been taken with limited direct links made to Annex III.

2.6 Substantial Change

2.6.1 Definition of a substantial change

For an installation under Industrial Emission Directive (IED), substantial change means a change in operation which may have significant negative effects on human beings or the environment (Article 3(9)).

2.6.2 Implementation of substantial change in National Legislation

All countries responding to the topic have implemented the IED provisions relating to substantial change in their national legislation. In all cases any change that meets the thresholds, as far as exists, set out in Annex 1 of IED, is considered substantial. Substantial change also includes any change in operation of an incineration or co-incineration plant for non-hazardous waste, which would involve the incineration or co-incineration of hazardous waste.

2.6.3 Determining if increasing capacity is a substantial change

In most cases assessment of whether a change in operation may have significant negative effects is made on a case by case basis by the competent authority.

In most countries a case-by-case consideration is made as to whether increasing the capacity of an activity constitutes a substantial change. In Malta increasing capacity is usually considered as a substantial change since the environmental impact of increased capacity might need to be reassessed. In some countries thresholds are applied e.g., in Portugal if the installed capacity is increased by more than 20%, the change is substantial. In Flanders the threshold is 50% with smaller changes assessed case-by-case.

2.6.4 Applying for a permit for a substantial change

In some countries it is the responsibility of the operator to apply for an update to the permit when a substantial change is proposed. In other countries the operator may apply directly if they think the change requires a new permit or, the operator may be directed to apply by the permitting authority if they consider that a change to the permit is required following an inspection or notification of a change by the operator. In Portugal they have a unique system where the operator must complete a questionnaire which results in a simulation that determines if the change is substantial or not.

2.6.5 Public participation

In most countries public participation is included in the procedure of permitting substantial changes.

2.6.6 Varying a permit following a substantial change

There is a lot of variation between countries regarding whether the updates following a substantial change are applied to the whole permit or just those conditions which are influenced by the substantial change.

2.6.7 Other changes

In some countries where an operator considers that a change is not substantial a simpler/faster procedure may be requested. If the competent authorities assesses that there is a substantial change after all, they can change the permitting procedure to the regular one which includes public participation.

2.6.8 Conclusions

Information was received from 15 countries/jurisdictions. All respondents indicated that they have transcribed the provisions relating to substantial change into national legislation. Determining if a change is substantial is generally done on a case-by-case basis although some countries have provided further guidance and thresholds. There is some variation in the approach to applying for / requiring an application for a permit variation for a substantial change. The permitting process includes public participation in most countries.

2.7 Streamlining IE and EIA Directives

2.7.1 Provision for streamlining

The Environmental Impact Assessment (EIA) Directive[1] includes provision for member states to streamline through coordinated and / or joint procedures the assessment requirements under the EIA directive with those arising from the Industrial Emissions directive (IED).

2.7.2 Implementation of streamlining provisions

Information was provided by 20 countries / jurisdictions. About half have EIA and IED requirements as part of a one process whilst the other half had two separate processes. A quarter of countries responding have a joint building and environmental permitting authority. Three quarters had separate authorities including some where there was a single process for EIA and IED.

2.7.3 Timescales for determination

There is a wide range of time limits for determination of EIAs and IED permits in different countries (40 days to 270 days). There is no obvious distinction in time limits between those countries using a single procedure compared to those using separate procedures.

2.7.4 Examples of streamlining

Italy, and Sweden have incorporated streamlining of EIA and IED into National Law. Spain has partially incorporated streamlining into their National Law.

In Italy streamlining of EIA and IED have been incorporated in national legislation under D.Lgs 152/06 article 26-26bis-27-27bis which describes the procedure to be followed to get a single comprehensive permit which encompasses both IED and EIA. The permit application and the EIA application are submitted and determined at the same time. Public participation is always required for both EIA and IED and these are always combined.

In Sweden Streamlining of EIA and IED have been incorporated in national legislation in The Swedish Environmental Code (1998:808). The permit application and the EIA application are submitted and determined at the same time. For EIA and environmental permit applications public consultation is always required and a public hearing can be required where the Land and Environmental Court is the authority processing the application but not for Environmental Permitting Committees.

In Spain streamlining of EIA and IED is incorporated into Spanish law under Article 19 of Royal Decree 815/2013. The EIA and environmental permit application are submitted but not determined at the same time.

[1] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, Text with EEA relevance: http://data.europa.eu/eli/dir/2011/92/2014-05-15

Public participation is always required for both EIA and environmental permitting processes, and these are always combined.

In Germany the IED and EIA processes are combined but not streamlined. EIA and permit applications are submitted and determined at the same time. Public participation is required for consideration of the EIA and for all new installation permit determinations. These are combined into a single public consultation process.

In the Netherlands streamlining of IED and EIA is not currently incorporated into national legislation but will be under new legislation expected in 2024. Where the EIA has not been determined in advance it will be included in the environmental permit application. EIA and permit applications do not have to be submitted or determined at the same time. Where a public hearing is required for both EIA and IED permit determination these are sometimes combined.

2.7.5 Conclusions

There clearly remains scope for wider streamlining of EIA and IED across member states. The data gathered was not completely comprehensive but gave no indication that streamlining coincided with shorter determination times for either EIA or IED determinations. However, there would be advantages for both applicants, the public and determining authorities from the arrangements which include joint application processes and combined public participation. If member states yet to implement streamlining of EIA and IED are considering this they may wish to investigate and consider how this has been approached in other member states such as Italy, Sweden, and Spain. Further information and full details of the survey responses from this workstream can be made available on request to the authors.

2.8 Use of BAT-AEPLs

2.8.1 Legislation and guidance

The term *"BAT-associated environmental performance levels (BAT-AEPLs)"* is not used in the Industrial Emission Directive (IED) and is introduced in the BREF guidance document. The BREF guidance document explains that individual BAT conclusions may be featured with or without an associated environmental performance level. The associated environmental performance level may either be an emission level or another kind of performance level.

BAT-AEPLs are typically set in BAT conclusions for specific energy consumption and wastewater discharge (water consumption). Where a BAT conclusion refers to emissions based on activity rate this should be described as a BAT-AEL and not a BAT-AEPL, e.g. hexane consumption per tonne of raw material processed.

IED allows, in specific cases, to derogate from BAT-AELs and thus set less strict emission limit values. This is not mentioned for BAT-AEPLs.

The term *"indicative performance levels"* is not mentioned in IED, nor the BREF Guidance document. However, indicative performance levels (both for emissions and other than emissions) have been introduced in the BREFs. Indicative levels are neither BAT-AEPLs nor BAT-AELs.

2.8.2 Examples of BAT-AEPLs

Examples of BAT-AEPLs were identified from a variety of BAT conclusions relating to energy consumption and efficiency, water consumption, water discharge, emissions to water before final treatment, waste arisings, other than normal operating conditions, removal or recovery efficiency and a few others.

2.8.3 Approaches for BAT-AEPLs that are not BAT-AELs

Most member states implement BAT-AEPLs that are not AELs. BAT-AEPLs can be implemented either by General Binding Rules (GBR) or in permits. In most cases the limit set is the upper value of the range unless national legislation or local considerations requires stricter performance levels. Some countries do not explicitly include BAT-AEPLs included in GBR or permits but operators are expected to achieve them and if a BAT-AEPL is not being met then an improvement condition may be used in the permit.

Derogations from BAT-AEPLs cannot be granted (IED art. 15(4)). In general BAT-AEPLs are considered as a reference and therefore deviation from the BAT-AEPL is possible if it is justifiable in specific cases on various criteria e.g.

- if the same level of environmental protection can be demonstrated
- alternative methods can be demonstrated to be BAT
- if a plant has specific characteristics

Indicative performance levels are implemented in a similar way as BAT-AEPLs but are considered as a target value, not binding value, in the permit or GBR.

No monitoring requirements for BAT-AEPL are implemented unless it is explicitly stated in the BAT-conclusions, although additional monitoring can be set according to national legislation.

Upstream performance levels on wastewater streams before final treatment are generally implemented in the same way as BAT-AEPLs. Upstream performance levels other than those determined in BAT-conclusions are rarely set in permits, but it is possible to set specific ELVs even if they are not determined in BAT-conclusions.

BAT-AEPLs for OTNOC are generally implemented only if it is mentioned in BAT-conclusions.

Because the BAT-AEPLs are considered as a reference, implementation is based on considerations of the competent authority. This may lead to different assessments and variation of requirements. Difficulties can for example arise when defining the boundaries of an installation, or how to evaluate specific BAT-AEPL if it applies to the manufacture of several products.

2.8.4 Conclusions

We can see different approaches to BAT-AEPLs. The binding strength of BAT-AEPLs and the depth how they are cross-checked during BREF implementation varies.

Proposals to revise the IED are now well developed. The proposal aims, among other things, to improve the Directive by increasing the focus on energy, water and material efficiency and reuse, in addition to promoting the use of safer, less toxic, or non-toxic chemicals in industrial processes. The proposal will introduce binding BAT-AEPLs in the directive as a new term which will have an impact on implementing future BREFs.

2.9 Streamlining Seveso and IED requirements

2.9.1 Scope

The obligations of the Industrial Emissions Directive (IED) and those of the Seveso Directive[2] are somewhat related, so it is important to determine the different scopes of each of them:

- Many accidents and incidents could occur at an IED establishment of varying degrees of seriousness. If an accident or incident is judged to be *"significant"* it must be reported to the authority and the operator must take action to limit environmental consequences and prevent re-occurrence (article 7).
- Some IED accidents/incidents may also be Seveso accidents/incidents if they involve *"dangerous substances"* listed in the directive and cause a *"major accident".*
- Some Seveso activities take place on sites which do not require an IED permit.

2.9.2 Competent authority

In most of the participating countries the competence for issuing the IED permit and for environmental inspection coincides in the environmental administration, whether it is a national or a regional one, while the competent authority for Seveso is usually in a different body, such as the industrial or health and safety administration, either national or regional.

2.9.3 IED permit and incidents/accidents

Most of the respondents state that during the procedure of issuing the permit they consult other agencies with competence in safety and security, and the permit contains a specific section setting out conditions in the event of an accident/incident, irrespective of whether the installation concerned is under the scope of Seveso or not. These conditions normally include the duty to communicate the event to the environmental authority when it has or may have environmental effects, although this communication could also be required to other involved authorities.

2.9.4 Seveso and IED installations

For installations affected both by Seveso and IED some countries have regulated the integration through national regulations.

In some countries the Seveso requirements and the IED permit are handled separately while in others it is not possible to issue the IED permit if the Seveso requirements are not completely fulfilled.

[2] Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC Text with EEA relevance (https://eur-lex.europa.eu/eli/dir/2012/18/oj).

The type of the information that the operator must include in the IED application was not analysed in this project, but some of the participants declared that the safety plans where required.

2.9.5 Inspections

The responsibility to inspect a Seveso installation and an IED installation is in some countries in the same administration, where in other, it relies in different bodies. In this latter case, the main responsibility lies in the safety/industry authority, even though the environmental inspection has some kind of dependency or coordination with them, and joint inspections can be conducted.

2.9.6 Conclusions

According to the respondents, the streamlining of Seveso Directive and IED Directive is heterogeneous, although some common patterns can be observed.

The main variability is due to the fact that Seveso installations may fall under a different competent authority and when this happens, some countries have some kind of coordination.

Another reason for this variability could be the scope of both regulations, while Seveso relates to major accidents, IED relates to all kind of accidents/incidents with environmental consequences.