

HAZBREF Workshop Documentation on Activity 3.1

“Analysis of the interfaces, links or gaps between the different pieces of EU-legislation and marine convention”

Conclusions from the workshop regarding the discussion of the draft report proposals, Berlin, 25 September 2018

The aim of the workshop was to discuss with experts and stakeholders proposals of the draft report on the analysis of the interface between relevant EU-regulations regarding the use of hazardous substances. The proposals of the report are considered a first draft of ideas and analysis. Organisers of the workshop intend to improve the document in the light of the feedback from workshop participants.

The objective of the workshop was to organise this exchange of experience with participants and specify ideas about issues such as:

- Where could the exchange of information and the use of data between relevant legal frameworks and expert communities be improved?
- Should more specific BAT conclusions regarding use/application/release of hazardous substances be developed?
- Do we need a guidance for authorities/ industries at the interface of EU-regulations and how could first elements look like?

39 participants followed the invitation to the workshop. The workshop started with a presentation of the proposals and conclusions of the draft report, followed by a panel discussion with representatives from the German, Finnish and Polish permitting/supervising authorities on practical experience at the interface of BAT conclusions and other EU legislation on hazardous substances. Subsequently, the workshop was split into two breakout sessions the results of which were reported back to the auditorium. In the following, we report the main feedback from participants both from the panel and from the breakout sessions.

A few weeks after the workshop, the project team received also more comprehensive and fundamental comments from DG ENV and a few representatives from industry. These comments were rather critical, spotted some weaknesses of the draft report and lead us to the conclusion that we will carry out some additional work to present proposals that respond to the suggestions.

The next draft report will include propositions that are more specific and try to express clearer how we think the interrelation between different legal frameworks could be improved and how improved BAT conclusions could be formulated. However, this will take some more time. In this sense, the attached report is the first draft output of the project, which will undergo further improvement. The results of the improved report will feed into

and be utilised for **HAZBREF activity 3.2 “Development of method to include information of hazardous substances into BREFs”** which will deliver more detailed recommendations towards the end of the project.

The input from stakeholders was important for making practical and realistic proposals on how to include hazardous substances more systematically into BREFs. The groups responsible for the addressed issues could then decide which measures are possible to put into effect. These decisions are not made by the HAZBREF project; since the aim of the project is to provide ideas and possible ways forward to responsible actors.

Next steps:

- The draft report shall be finalized in the first quarter of 2019. After distribution of the more developed version of the report, the project team will invite again for comments.
- The results of the report will also be used in the closely related next step of HAZBREF activity 3.2: Method to include information on hazardous substances systematically to BREFs.

Activity 3.2 aims to work out a methodology for addressing hazardous substances more systematically and at the right time in BREF process. The activity will identify where to find relevant information concerning less hazardous substances with the aim to provide a model solution for how to include information from REACH and other frameworks in the preparation of BREFs. It will focus on the improvement of institutional, process-related and informational aspects of the BREF process and looks at weaknesses and opportunities. The activity will provide a jointly elaborated methodology that allows for addressing more systematically, and supported by evidence, the use of hazardous substances in BREFs.

Presentation of the conclusion and proposals of the draft report (9.15 – 10.00)

Lisa Löffler, Consultant

Panel discussion (10.00 – 11.00)

Moderator: Michael Suhr, German EPA

Representatives from the German, Finnish and Polish permitting/supervising authority: Bartosz Nowak (Poland), Sami Koivula (Finland), Markus Gail (Germany)

- ***Challenges of authorities at the interface of EU-regulations in practice?***

All representatives reported difficulties considering hazardous substances in permitting and supervision activities of industrial installations. An important statement was that operators in many cases are not aware of the substances they are using and its potential effects on the environment. In contrast, large companies often have a good knowledge about the environmental features of the substances they are using.

The Finnish and Polish representatives concluded, that the absence or incompleteness of information on hazardous substances in BAT conclusions often lead to poor information on hazardous substances used in a given installation as far as application documents for permits are concerned. However, a permit writer has to build on information contained in the application documents when granting permits.

All representatives were in favour of presenting ranges of BAT AEL within the BAT-conclusions either better specified or as distinct emission levels instead of what we have now. This applies also to BAT AELs for releases of hazardous substances, if they are part of the BAT Conclusions.

- ***Is a better linkage of the legal frameworks/expert communities and competent institutions sufficient?***

All representatives confirmed that they experience poor collaboration between the different legal sectors in their daily work. Provisions and restrictions of hazardous chemicals in other legal frameworks often do not mesh during permitting and supervision activities.

- ***Should we strengthen BAT conclusions with regard to hazardous substances?***

The Polish and Finnish representative clearly would like to see more information on hazardous substances in BAT-conclusions as authorities of their countries are working directly with the BAT-conclusions during permitting and supervising activities. This would directly lead to measures that are more effective to address hazardous substances in industrial installations.

The German representative stated that the inclusion of hazardous substance information into BAT-conclusions would not *per se* be helpful from the German point of view. The reason for this is that in Germany BAT-conclusions have to be transposed into general sectoral national law. Anyway, it could help to raise awareness both on the side of regulators and on the side

of (IED) permitting and supervision authorities. This applies particularly if BAT-conclusions on hazardous substances would be not only transposed into national chemical legislation but also into the German Immission Control Act.

Questions and Comments on the report and the panel discussion (10.30 – 11.00)

- Industry and NGOs criticised both the poor consideration of their role in the report. Only the REACH part did consider industry as an important key actor, although industry and NGOs provide a huge amount of information on hazardous chemicals during registration (E.g. “SIN-List” from ChemSec, Registration Data from REACH context provided by industry).
- EEB wished that also the CLP-Regulation (EC) 1272/2008, the Minamata-Convention and the Biocides-Regulation (EU) 528/2012 should be included in the analysis.
- Industry recommended elaborating best practise examples and checklists how to handle hazardous substances safely instead of including “everything” in BREFs/BAT conclusions.
- To strengthen the already existing frontloading stage and the concept of Key Environmental Issues adopted by the EIPPCB it would be helpful to improve the BREF review process – trying to better use what we already have.
- The Commission stated that the report was built on the hypothesis that information on hazardous substances would not be sufficiently considered in the BREF reviews. This hypothesis is not proven in the report since evidence for this statement is missing.
- The Watch-list for groundwater could be a helpful source of information on hazardous substances to be up taken by BREF reviews.
- EEB asked how permitting and supervising authorities as well as industry would ensure the phasing-out-criteria of priority hazardous substances from the water context during permitting, supervising, permit application and operation of industrial installations.
- The used abbreviation “WFD” for Water Framework Directive in the report is confusing since the common abbreviation for Waste Framework Directive is identical.

Breakout-session 1 (11.30-13.00) – Focus on proposals / conclusions of the report (Group 1)

Moderator: Michael Suhr, German EPA

Rapporteur: Mike Hale, EURITS, UK

1. Introductory question - Do you see a benefit in considering information on hazardous substances and their possible chemicals management/release reduction measures from the analysed legal frameworks in the BREF review process?

- General agreement that there is a need for the frontloading process to be more systematic in the consideration of hazardous substances.
 - Maybe by applying a work flow/check list for aspects that usually are considered.
 - Benefits: More transparent and complete approach, streamlining and filling in missing links.

- Question: How do we focus attention on main sources of pollution/substances?
 - Need to define an agreed set of hazardous substances and relevant criteria e.g. priority substances from Water Framework Directive; POPs as defined by Stockholm Convention; information from REACH that is available in the ECHA database (e.g. SVHC, etc.).
 - Usefulness of E-PRTR data is limited since it includes only a limited list of substances and high thresholds for reporting/inclusion for some substances.
 - ECHA has potentially a key role to play in helping this process by providing data, but the data extracted from ECHA database will mostly not easily match to the requirements and needs of IED activities i.e. needs more preparation, categorisation and processing.

- Suggestions:
 - Checklist of sources to check for the identification of relevant substances
 - Greater understanding that even if particular substances are not deemed as KEIs for the sector as a whole that they may still be important at a local level and consequently for BREFs (e.g. due to specific site considerations).
 - Important that in BREF reviews priority substances are considered to positively confirm whether they are relevant or not for a sector – the main benefit may be a positive confirmation that a particular substance is not relevant (e.g. that in a particular industrial sector no priority substances are used and released).
 - Mechanism for continuous exchange of information on hazardous substances is needed (e.g. BAT Information system BATIS) rather than just a once every 10 year a BREF review.

Question 2 – not considered since it was the focus of Group 1 (see notes of Group 2)

Question 3 – Consideration of information from the WFD/MSFD context:

- a. Should priority (hazardous) substances of the Water Framework Directive and its Environmental Quality Standards (EQS) be considered in BREF reviews? (How could the information be used and what would the added value be?)**
- b. Would the highlighting of relevant WFD priority (hazardous) substances in the BAT conclusions/BREFs help the authorities to enforce sufficient requirements at the installation in order to comply with the EQS in the receiving waters?**

- Some Member States (MS) already include WFD priority substances in permits and ELVs are set in such a way that emissions do not lead to exceedance of EQS. However, it was acknowledged that there is a potential conflict between EQS levels and the contribution of individual plants.
- Suggestions:
 - Identify uses and releases of particular priority (hazardous) substances (P(H)S) in industrial sectors where relevant
 - Highlight their presence and techniques for reduction in BAT Conclusions, if necessary
 - Rank treatment options for reduction of releases of P(H)S by effectiveness

Question 4 – Consideration of information from Circular Economy context:

Could information on hazardous substances in specific waste streams be useful to address more specifically chemicals management under circular economy aspects in BREF reviews?

- Concerns that the scope of the IED may restrict consideration of Circular Economy aspects; however, general agreement that circular economy issues should be covered by BREFs where possible.
- Examples of areas, which could be considered:
 - Residue management e.g. to enable more recycling/recovery
 - End of waste issues
 - Process control and input controls – IED can't consider output quality but could consider input controls of recovered materials to prevent contamination being spread through secondary materials (this is already done in the WT BREF)
 - IED can cover decontamination steps necessary to use waste materials through either pre-treatment processes or waste management.

Question 5 – Consideration of information from POP-Regulation context:

Should the knowledge on unintentionally produced POPs, their potential transfer to other media and their presence in waste more systematically be considered in BREF reviews and if so, why and how?

- Consensus that POPs should be covered and addressed by BREFs, if they occur.
- The POPs Regulation tells us which substances should be covered but does not contain regulations on installation level.
- The IED has the facility to manage POP substances at installation level (is the right instrument), for example the unintentionally produced POPs (Annex C in Stockholm Convention).

Question 6 – Consideration of information from HELCOM context:

Could HELCOM Assessments and Pollution Load Compilations serve as justification to include substances as KEIs in the BREF documents?

- Suggestions:
 - Potential source of information during the frontloading process. Questions to HELCOM need to be precise to receive a useful response, i.e. not just a request for a database extract.
 - Pollution load compilation reports probably less or not useful, but thematic assessments on specific groups of substances may be useful.

Question 7 - How could the interaction between the EIPPCB/TWG and the key actors of the analysed legal frameworks be improved in order to

- facilitate the information flow on hazardous chemicals**
- improve the content BREFs/BAT conclusions with respect to chemicals management, limited use and reduction of releases of hazardous chemicals from industrial installations?**
- Are there any other information source that could provide significant contributions to BREFs/BAT conclusions? And if so, which?**

- There are many potential sources of information, the crucial task is ensuring communication at the right times, in the right format.
- Suggestions:
 - Interoperability of databases: large number of EU databases with potentially relevant information but difficulty of cross-referencing these data.
 - Access to BATIS as a common communication tool also for non-IED stakeholders.
 - “Pre-check” across the Commission before publication of background papers to ensure that issues with overlap of IED are not missed (not clear whether this is not done already).
 - More involvement of research scientists/institutes.
 - Continuous communication about new developments regarding new substances of concern.

Breakout session 2 (14.00-15.30) - Focus on Elements for Guidance for authorities and companies (Group 1)

Question 1 – Do you see the need for guidance for authorities to better implement and enforce provisions from different legal frameworks that address hazardous substances during IED permitting and supervision activities? If so, why? What would be a helpful measure?

- No consensus on whether guidance is needed. Some actors felt that guidance or FAQs were necessary at all levels (local, regional, national and EU), others felt that there was already sufficient information available at national level.

- Especially Estonia is in favor of a guidance, Sweden, Finland and Germany stated that there is no need for a guidance because there is already enough guidance on national level.
- There was a request to include more context in BREFs (e.g. origins of restrictions and reasons why certain substances are restricted) and to consider whether BREFs could cover areas outside the IED (or at least properly cross-reference to other legislation or requirements). Others said that BREFs are already huge documents.
- Participants suggested that improvements to the BREFs and the BATCs would help – some saw the BREFs as a form of guidance in themselves. Improved BREFs with a checklist of items to consider could be a solution.

Question 2 – Operators’ perspectives: What would you need to better cope with the various legal obligations from the different legal frameworks during IED permitting/supervision?

- Some parts of industry felt that the data gathering needed to be made simpler so that smaller companies could participate. Others felt that guidance was not necessary.
- What was really required was some legislative change to improve the coherence of the EU’s environmental legislation [the legislation is good in many areas but not well integrated across different policy areas e.g. the IED and the Waste Framework Directive are not well integrated].
- There was a question about how are front runners rewarded?

Question 3 – Authorities’ perspectives

- The question was posed whether IED permit writers address specific chemicals with restricted uses under REACH or supervision authorities check them. At least in some Member States it seems that this is not the case.

Question 4 – What level should guidance be elaborated at?

- No consensus – different participants felt that there should be no guidance and other participants felt that there should be guidance at all levels.

Breakout-session 1 (11.30-13.00) - Focus on proposals / conclusions of the report (Group 2)

Moderator: Lars Tietjen, German EPA

Rapporteur: Karl Kupits, KLAB, Estonia

- 1. Introductory question - Do you see a benefit in considering information on hazardous substances and their possible chemicals management/release reduction measures from the analysed legal frameworks in the BREF review process?**

- The group mostly agreed that a more systematic approach is needed for the BREF review process how to consider information from other legal frameworks.
- Information should be preliminary “digested” before they are fed into the TWG in kick-off meeting (KoM).
 - Providing data on hazardous substances from other legal frameworks during the frontloading-phase well before the KoM may help the TWG to decide and understand what kind of substances are of concern in a specific industrial sector.
 - However, there were concerns that having too much information in TWGs to digest (e.g. hundreds of SDS) may result in a risk that the whole review process could fail by overloading it with unstructured information.
 - “You can’t compose BAT AEL when you can’t monitor it.”
 - The question is, if more information leads to different results in the content design of BREFs? (With this respect the opinions differed between industry and authorities/NGOs)
 - Industry underlined the need for procedures for shorter discussions in TWG meetings.
- Hazardous substances need to be identified and filtered because otherwise there would be too many substances to consider them all.
 - There should be guidance how all this data is used (screened). A recommended procedure should come from Art. 13 IED forum.
 - There was the need identified to distinguish KEIs which are relevant for the entire EU from those which are a concern only for specific MS.
- The Commission stressed that BAT AEL cannot be exhaustive. Some issues must be resolved between operator and permitting authority.
 - Permit writers still have to consider other limit values from other frameworks (EQS) and may in consequence include stronger limit values in the permit.
 - In contrast to that proposal, permitting authorities stated problems with the operator as well as with superior authorities in the case they want to go further than just applying BAT conclusions. For them, this is also an argument why more information on hazardous substances should be part of BAT conclusions.
 - Apart from this, EU environmental law next to the IED of course needs to be complied with.
- BREFs are one tool. If it is more convenient to solve some problems with other tools (frameworks), it should be considered.
- Industry stressed its interest in providing relevant information on hazardous substances to the BREF review process.

Question 2 - Consideration of REACH information in BREF review:

- a. **Should and could the candidate list (List of substances for eventual inclusion in Annex XIV REACH), the list of substances for authorisation (Annex XIV REACH), the list of substances with restricted use (Annex XVII REACH) be used to develop substitution scenarios/potential alternative substances/abatement techniques in BREFs/BAT conclusions out of the?**
 - b. **Should the extended Safety Data Sheets be considered to identify relevant hazardous substances, their uses and possible release routes for a specific industrial sector?**
- General agreement that the Candidate list, list of substances for authorization, list of substances with restricted use, Safety Data Sheets should be considered in the BREF reviews, especially in the frontloading-phase.
 - ➔ However, the same concerns (as under question 1 – too much information) arose, with respect of the preparation and prioritisation of this information in the process.
 - ECHA has to be better and more formally involved in the BREF reviews because it might play a significant role in the frontloading process. How can we improve the process?
 - Better exchange of information is needed- not only once every 10 years which is the duration of a BREF review cycle
 - ➔ Maybe through an internet based system and thus being accessible to all?
 - ECHA representatives should from now on formally be invited to the TWGs meetings (when the issue of hazardous substances is on the agenda). Experience of the last meetings KoM show that the presence of ECHA representatives was good (e.g., TXT BREF review).
 - It should be specified in the ECHA databases which substances are relevant to which subsector and application. This information needs then to be systematically considered in the BREF review.
 - HAZBREF is supposed to provide a tool how to identify substances of concern to a specific (sub)sector in close cooperation with ECHA
 - ECHA should provide data and specify substances on environment basis as well as provide monitoring methods
 - There is a need of a list of main process chemicals in order to facilitate the process for operators as well as permitting authorities.

Question 3 – Consideration of information from the WFD/MSFD context:

- There was general agreement for the need to include WFD priority and priority hazardous substances in the BREF review process, especially under the existing target to phase out priority hazardous substances of the WFD Annex X.
 - This is already done by some Member States in IED permits
 - (E.g. in Finland permit writers include/consider WFD substances in the permit)

- However, it has to be kept in mind that BREFs are dealing with emissions whereas EQS are addressing environmental quality standards. Possibly, there is a potential conflict between EQS levels and emissions from industrial installations.
 - Until now there is no common view on the aspect how to monitor EQS with respect of the contribution of individual industrial installations

Question 4 - Consideration of information from Circular Economy context:

Could information on hazardous substances in specific waste streams be useful to address more specifically chemicals management under circular economy aspects in BREF reviews?

- Consensus to include aspects from the circular economy context in BREF reviews
 - E.g. residue management, end of waste issues, was considered important.
 - It was proposed that BREFs really should address the aspect of hazardous substances in by-products
- Problem was identified, that BREFs only consider the activities on the site. In many cases toxic waste has effects outside the industrial installation.
- Agreement that circular economy legislation itself is no relevant source for information on hazardous substances.

Question 5 - Consideration of information from POP-Regulation context:

Should the knowledge on unintentionally produced POPs, their potential transfer to other media and their presence in waste be considered in BREF reviews (to perspective reduce their impact in the environment)?

- There was consensus that POPs should be covered in the BREFs in order to address the substances identified by the POP Regulation.
- A participant suggested that reporters of POP rely on BREFs on calculating some emissions because no other reliable data are available. However, BATs do not cover all POPs and there is hope that it will be in the future.

Question 6 - Consideration of information from HELCOM context:

Could HELCOM Assessments and Pollution Load Compilations serve as justification to include substances as KEIs in the BREF documents?

- HELCOM provides a potential source of information during the frontloading phase of the BREF review process. However, it can only provide information for a few substances, especially for heavy metals.
 - HELCOM may highlight substances but other legal frameworks need to identify a substance relevant in a specific industrial sector

- HELCOM recommendations on hazardous substances needs to be revised due to the fact that is not up to date
- Thematic assessment on specific groups of substances might be useful in BREF review process as it is a systematic system to address potential hazardous substances

Question 7 - How could the interaction between the EIPPCB/TWG and the key actors of the analysed legal frameworks be improved in order to

- Facilitate the information flow on hazardous chemicals**
 - Improve the content BREFs/BAT conclusions with respect to chemicals management, limited use and reduction of releases of hazardous chemicals from industrial installations?**
 - Is there any other information source that could provide significant contributions to BREFs/BAT conclusions? And if so, which?**
- The Article 13 IED forum and its associated Industrial Emission Expert Group (IEEG) with its different stakeholders could be an adequate platform for information exchange in order to discuss this type of information.
 - There are different potential sources of information within the different legal frameworks (as revealed by the report). The main task is ensuring communication between the different frameworks and at the right time.
 - More potential databases can be useful to be included in BREF review process. However, again as main task the filtering of the right information of the different legislations was identified so that the data can be used in the frontloading process.

Breakout-session 2 (13.00-15.30) - Focus on Elements for Guidance for authorities and companies (Group 2)

Question 1 – Do you see the need for guidance for authorities to better implement and enforce provisions from different legal frameworks that address hazardous substances during IED permitting and supervision activities? If so, why? What would be a helpful measure?

- BREF should guide/point out interlinks of the different legal frameworks in IED permitting/supervision.
 - Benefit: Awareness of permit writers/supervision authorities that different frameworks may play a role
 - Regardless if there are many legislations to refer to it is important to list connected legislations that are relevant for a given sector. The question arose where to stop this list (and this was not answered).

- In one federal state of Germany, there are councils of operators, authority and NGOs. They discuss what they need during permitting/supervising industrial installations. They figured out that they need guidance.
- Different national experiences:
 - In Finland, trainings of specific topics are held for permit writers and supervision authorities.
 - In Austria, every time a new BAT conclusion is adopted permitting and supervising authorities visit plants. Authorities and operators go through the BAT conclusion to see how implementation could look like.
- With respect to the elaboration of a guidance document there was no consensus reached. Industry did not see the need for guidance while authorities voted for guidance in the permitting/supervising process.

Question 2 – operators’ perspectives: What would you need to better cope with the various legal obligations from the different legal frameworks during IED permitting/supervision?

- A guidance cannot provide the needed interlink of all legislations.
- Out of operators’ perspective, there is no possibility to elaborate such type of guidance because conditions in member states are very different and some authorities lack of experience.
 - It’s is not the governments task to inform the companies of legal requirements which apply for them.
- Authorities stated that smaller companies usually do not know which legislation they have to comply. Big companies are aware of relevant legislation. However, many do not have an overview of interlinks between the different legislation.
 - As an extreme case, a permit writer shared his experience that sometimes he is helping to write the application for the operator because the operator do not know all about the legal requirements that apply.
- Industry clearly voted against the elaboration of a guidance document from the government side for companies.
 - Companies best know the legislation they have to comply with. Companies often have own legal departments which address this issue.
 - Authorities are not in the position/have not adequate experience with respect of the functioning of a big company to provide real guidance.

Question 3 - Do you experience conflicts at national or regional level between different permitting/supervision authorities dealing with the use, management or release of hazardous substances on installation level?

- Consensus that there are conflicts on the level of legislation for setting stricter emission levels as well as on implementation levels, in particular because legal frameworks may request differing measures and because different competent authorities are responsible.
 - It remained open in which legal framework these possible conflicts should be solved
- There are conflicts of legislation for setting stricter emission levels and they often have been solved by court
 - The example of a lignite-fired power plant was introduced where mercury thresholds from the water context were exceeded while the IED permission was granted
 - Still there should not be conflicts because there is stated in the IED that a permit should contain stricter levels if environmental quality is under threat.

Question 4 - Should guidance best be elaborated on national or EU level? Who would be the adequate actor for this?

- Guidance on EU level is difficult due to differing conditions in MS.
- Suggestion:
 - Experience exchange with FAQs.
 - There is also an ongoing project commissioned by the DG ENV IED unit to support IED implementation
 - EU should provide guidance how to compare different emission factors used in different MS.
- There is already a Guidance document from the European Commission ([2012/119/EU](#)) laying down rules concerning guidance on the collection of data and on the drawing up of BAT reference documents. However, this Guidance is partially outdated as is it for example does not mention KEI, the front-loading phase in the BREF review process or the more and more common data assessment workshops.