

Brussels, 15th Nov 2011

To Mr. Thomas Verheye
Acting Head of Unit
Unit C.3 – DG Environment

Dear Mr Verheye,

Eurometaux – European Association of Metals - on behalf of its members, would like to draw the attention of the European Commission to a situation of extreme relevance for the survival of our industries in connection with the ongoing implementation of the Industrial Emissions Directive 2010/75/EC.

Introduction: the requirements of the IED

According to article 15(3) of the IED, the competent authorities shall base the environmental permits for the installations under the scope of the IED on the conclusions on the Best Available Techniques of the sector-specific BREF (Best Available Techniques Reference document), which shall be published in the Official Journal as a Commission Decision as described in Article 13(5) of the IED.

Furthermore, as clearly stated in Article 21(3) of the IED, within 4 years of publication of decisions on BAT conclusions in accordance with Article 13(5) relating to the main activity of an installation, the competent authority shall ensure that:

- (a) all the permit conditions for the installation concerned are reconsidered and, if necessary, updated to ensure compliance with this Directive, in particular, with Article 15(3) and (4), where applicable;
- (b) the installation complies with those permit conditions.

The reconsideration shall take into account all the **new or updated BAT conclusions applicable to the installation and adopted in accordance with Article 13(5)** since the permit was granted or last reconsidered.

For the cases in which BAT conclusions adopted in accordance with Article 13(5) are not yet published after the implementation dates of the IED, Article 13(7) states that the conclusions on BAT from any relevant BREFs adopted under the IPPC Directive shall apply as BAT conclusions, with the exception of their application under Article 15(3) and (4). This clearly means that they should not be used by local authorities to set emission limit values that do not exceed the BAT AELs, or even setting less strict emission limit values based on a cost-benefit analysis of the BAT.

The implications for the Non Ferrous Metals industry

The revision of the Non Ferrous Metals (NFM) BREF, originally published in 2001, started in 2007 under the old IPPC legislative framework and is still ongoing through a difficult and complex process.

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A draft revised version, in line with the requirements of the IPPC Directive, was developed in 2009, way before the adoption of the IED, and is publicly available on the website of the IPPC Bureau for consultation.

However, the only BAT conclusions adopted by the IEF for the NFM sector are those from the 2001 document, and the provisions in Article 13(7) apply only to those.

Nonetheless, the IPPC permits of some NFM installations in EU are currently under revision, on the basis of a predetermined calendar, and some local authorities insist for applying the conditions of article 15(3) to the draft BAT conclusion of the 2009 draft NFM BREF which is not adopted.

The NFM industry considers this approach as unacceptable, because further than not being adopted, those conclusions were developed as guidelines values and are not adequate to be applied as strictly as article 15(3) would demand.

These concerns were already expressed verbally to Mr Phillip François, who kindly participated on 19 October at a meeting in Eurometaux on sustainable operations.

Our industry fully shares the view that the Industrial Emissions Directive should strive to ensure sustainable development in our installations EU-wide, but feels that it must point out that this target cannot be achieved without the involvement of competent authorities.

We would therefore like to ask the Commission for an official clarification to the Article 13 Forum Members on the following points:

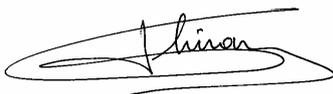
1. According to the Industrial Emissions Directive, only adopted BAT Conclusions can be used by competent authorities as a reference for the granting and renewal of permits.
2. Working drafts published on the EIPPCB website, especially those developed under the old legislative framework, are of public access only for information, but in any case could substitute a document formally adopted under the IED or, in the case of BREF documents under review, temporarily under the former IPPC

We trust that these essential concerns will be duly considered by the Commission and hopefully be clarified as soon as possible in the interests of equity and transparency.

Please do not hesitate to contact us if you would like to receive any additional details or clarifications.

Thanking you in advance for your attention, we remain,

Yours sincerely,



Guy Thiran
Secretary General



Araceli Zorrilla-Quinzá
Environment Project Manager

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