

The President

Mr. Karmenu Vella
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Dear Commissioner Vella,

Large Combustion Plants BAT Reference Document: revision process questioned

Environmental protection, based on the sensible application of best available techniques (BAT), is a guiding principle of EU environmental law which EURACOAL supports.

We have previously written to the director responsible for the revision of the Large Combustion Plants BAT Reference Document (LCP BREF) to express our concerns on particular technical issues (letters to Director Wenning dated 7 April and 27 September 2016). Separately, we wrote to the Commissioner for Climate Action and Energy calling for a cost-benefit analysis (letter to Commissioner Arias Cañete dated 14 October 2016).

We now understand that the revised draft LCP BREF is in inter-service consultation (ISC). Although we have not seen the draft sent for ISC, we are deeply concerned that DG Environment is proposing emission limits for power plants in the industrial and energy sectors that are not achievable. We also note here that the minutes of the Article 13 Forum meeting are still open for comment, so those involved in the ISC may not even be aware of the ongoing concerns of particular stakeholders.

If the Commission proceeds with its proposals and submits these to the Article 75 Committee in the spring of 2017, then the risk is that this committee will feel obliged to agree to the proposed LCP BREF without amendments. Then, after a short period, the plants affected across Europe would likely face decommissioning or have to be granted derogations – a “solution” referred to by DG Environment when we met with officials on 26 May 2016. Any such plant closures would have serious consequences for the security of energy supply in many Member States, potentially damaging confidence in EU law making.

We question the solution proposed by DG Environment, namely derogations for individual plants negotiated by the competent authorities in Member States. This approach is legally questionable and likely to be challenged. Indeed, with this in mind, one NGO has already announced that it will monitor the implementation by Member States of the LCP BREF. This could lead to a breakdown of European unity as Member States are drawn into unnecessary battles.

As a delegated act, the LCP BREF revision process was intended by legislators to be a technical process. What we have witnessed is a political process where the aim appears to be to eliminate coal rather than improve air quality. We question the transparency of a process chaired by DG Environment in which representatives from NGOs funded by DG Environment are pitched against representatives from industry and Member States.

In the case of NO_x, the proposed upper end of the BAT-AEL range (175 mg/Nm³) cannot be met by many coal-fired boilers with primary NO_x control measures. Yet, such measures are identified as BAT in the draft LCP BREF. The limit value stipulated in the Industrial Emissions Directive remains appropriate in these cases (200 mg/Nm³), *i.e.* at existing plants where secondary NO_x control measures would not be possible for economic or technical reasons such as a lack of physical space.

For mercury, we are astonished that, despite clear evidence, DG Environment does not intend to re-evaluate the proposed emission limit range which was incorrectly derived. Prior to the Article 13 Forum, we informed DG Environment of the expert opinion provided by Prof. Dr.-Ing. Kather from the Hamburg University of Technology. His report shows that the derivation of the proposed emission limit range for mercury was full of technical errors. His report goes onto question whether DG Environment's basic methodology is not flawed, in terms of what the phrase "best available techniques" means legally.

The draft LCP BREF states that the lower end of the mercury emission range (<1 µg/Nm³) "can be achieved with specific mercury abatement techniques". This is incorrect and yet would lead to calls for limits to be set at the lower end of the range, even though no mitigation techniques have been demonstrated that can achieve this limit on a large industrial scale.

In view of the urgency of the situation and the questionable derivation of emission limits, I would ask you to instruct DG Environment to carry out a thorough review of the mercury and NO_x limits for coal-fired power plants before the ISC concludes and the Article 75 Committee is convened. We further suggest that the derogation for sulphur-rich indigenous fuels is an integral part of the IED that should be retained in the form agreed by legislators.

I would be delighted to have the opportunity to meet and personally explain to you this most problematic situation and our proposed solutions.

I have taken the liberty of copying this letter to other Commissioners with a direct interest in the outcome.

Yours sincerely,



Dr. Wolfgang Cieslik

cc: Commissioner Elżbieta Bieńkowska
Commissioner Miguel Arias Cañete
Commissioner Corina Cretu
Vice President and Commissioner Maroš Šefčovič

EURACOAL members