



***Joint ANEC¹ / ECOS² / EEB³ position on
Commission proposal for a revised EMAS (EMAS III)***

SUMMARY

The recent Commission proposal for a revised EMAS⁴ misses the opportunity to transform EMAS⁵ into a system of excellence based on substantive performance requirements and meaningful sector-specific indicators which would allow for performance comparisons and benchmarking. Instead, it appears that EMAS will remain a system which will leave it up to the organisations themselves to determine the performance levels, and even heavy polluters may qualify for registration under the scheme. It therefore remains doubtful whether EMAS compliance can be taken as proof of better than average environmental performance, let alone be seen as a label of excellence. Regrettably, the main beneficiaries will continue to be

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⁴ Proposal for a Regulation of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) – COM(2008) 402/2

⁵ Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)

consultants and verifiers involved with EMAS, rather than the environment. Despite this, ANEC, ECOS, and EEB welcome some of the proposed changes, such as the announced development of sector-specific best practice documents including indicators, as positive steps in the right direction.

However, ANEC, ECOS, and EEB underline the need for significant changes to ensure credibility of the system and to differentiate EMAS compliant organisations from those which only conform to ISO 14001⁶. Such measures include the following:

- At the very minimum, industrial EMAS organisations must comply with BAT⁷, i.e. must provide evidence that they comply, or are even better than the state-of-the-art as described in the BREF documents⁸, where these exist. Where such documents contain performance ranges, the EMAS registered organisation should have a performance corresponding to the top of the range.
- The envisaged sectoral reference documents must include best practice environmental performance levels, and must be binding rather than voluntary. Further, the Commission should have a clear obligation to come up with working plans based on agreed priorities and targets similar to the existing Energy-Using Products Directive⁹. These documents should be based on a high level of ambition awarding only organisations with a better than average environmental performance which is significantly better than the legal minimum, and should provide benchmarks covering all significant direct and indirect environmental aspects.
- These sectoral reference documents should also identify a limited number of relevant and comparable (sub) sector-specific indicators. These indicators ought to cover not only direct but also indirect impacts (in particular from products) and should be compulsory, once available. Sufficient resources should be made available for this.
- The use of the EMAS logo on products or in connection with product information/advertising must be strictly prohibited. Such use would open the door to misuse and confusion with eco-labels.
- Any incentives for organisations or promotion activities should not be accepted until EMAS has been transformed into a system awarding only top performers.

⁶ ISO 14001:2004 Environmental management systems - Requirements with guidance for use

⁷ BAT – Best Available Technology

⁸ Best Available Technique Reference Documents

⁹ Directive 2005/32/EC establishing a framework for the setting of eco-design requirements for energy-using products

INTRODUCTION

In July 2008 the Commission presented a proposal for the second revision of the EMAS regulation. One of the main aims of revising EMAS is to increase participation, and to make the scheme more attractive to organisations by promotion and reduction of administrative burdens, in particular for SMEs, and by extending it beyond Europe. The Commission's primary goal is to increase the number of registered sites from circa 6,000 to 35,000 within 10 years after the entry into force of this Regulation - thus equaling the number of organisations or sites currently certified under the ISO 14001:2004. On the other hand it is the objective of the proposal to strengthen the political profile of the scheme and have it recognised as a benchmark for environmental management systems (EMS). This is intended to be achieved by the introduction of general performance indicators and the announcement of the development of sector-specific best practice documents, including specific indicators, and reinforcing measures on compliance with environmental legislation.

It is, however, doubtful whether these goals will be reached. A strong move from ISO 14001 to EMAS is unlikely to happen unless EMAS provides a significant added value compared to its ISO counterpart. The key question is therefore whether EMAS can be considered as a label for best environmental performance. The so-called EVER study¹⁰, carried out on behalf of DG Environment of the European Commission, included the statement that most quantitative studies have not been able to confirm a better environmental performance of EMAS-registered organisations as compared to other organisations, and that EMAS is not generally seen as a benchmark of environmental performance.

Despite this, we regret to note that substantive environmental performance requirements did not find their way into the revised scheme. Under the proposal, the organisations would remain entirely free to choose ambition levels themselves. The only tangible requirement is (and was) to comply with legislation – hardly a demanding pre-requisite for an environmental certificate. The only other performance-related requirement is the commitment to “continual improvement” – a rather vague notion which can be interpreted in many ways. It is, for instance, entirely unclear how many environmental impacts have to be improved upon, and to which extent. After all, even a heavy polluter can claim to comply with this principle based on marginal advancements in some areas.

Moreover, there are only few changes aimed at enhancing the (poor) credibility of the system, including the introduction of generic core performance indicators - the benefit of which can be called into question, as outlined below. Although, the announcement of sector-specific guidance documents (including specific indicators) is a very positive step which deserves to be applauded, it remains to be seen how ambitious the Commission will be in pursuing the preparation of such documents considering the lack of concrete targets or an obligation to provide working plans.

All other proposed changes are related to an extension of the system through promotion and provision of incentives. As long as the scheme does not ensure a high level of environmental performance, and does not provide instruments allowing for an assessment of the

¹⁰ “Evaluation of EMAS and Eco-label for their Revision”, 26 December 2005

environmental achievements in terms of clear-cut comparable indicators and benchmarks, ANEC, ECOS and EEB do not consider the proposed measures to be appropriate.

CRITIQUE BY THE EUROPEAN CONSUMER AND ENVIRONMENTAL ORGANISATIONS

The umbrella federations of the European environmental and consumer organisations¹¹ have for many years questioned the value and usefulness of the EMAS systems. In particular, the organisations have called for a substantive reform aimed at transforming EMAS into an environmental label for organisations – into a true “system of excellence”¹². The central points of criticism on environmental management systems, including EMAS and ISO 14001, were:

- The approach tends to shift decision-making on environmental performance issues from democratic institutions, involving public interest advocates, to companies.
- The business interest is limited to environmental investments which pay off, whilst many protection measures are not profitable.
- EMS systems do not require a minimum environmental performance and even legal compliance cannot be taken for granted.
- EMS certifications do not allow for a differentiation between good and bad performers.
- Tax reductions or reduced governmental controls linked to EMS compliance are questionable because of the fact that such compliance does not mean better environmental performance.
- There is little convincing evidence on the table which would suggest that the implementation of an EMS standard has indeed boosted environmental performance.
- Reporting requirements are either missing (ISO 14000), or inadequate (EMAS), lacking clearly defined key indicators of environmental performance and scales of comparison.

The position paper contains a detailed discussion and justification of these points as well as suggestions for alternative approaches.

¹¹ ANEC, BEUC (the European Consumers Organisation), ECOS (European Environmental Citizen's Organisation for Standardisation), and EEB (European Environmental Bureau)

¹² See joint ANEC, BEUC, ECOS, EEB paper “Making EMAS a system of excellence – Going beyond EMS” - <http://www.anec.org/attachments/ANEC-ENV-2006-G-047.pdf>

THE ALTERNATIVE APPROACH – STAYING BELOW BAT LEVELS

With sufficient political will EMAS could be transformed into a demanding eco-label for organisations - into a true system of excellence – within a few years, without unjustifiably high expenses. Sector-specific rules could easily be established based on BAT levels as defined in European BREF documents, eco-label criteria, "black lists" of chemicals intended to be phased out, and other benchmarks for e.g. buildings' energy demands. One possible option could be to require EMAS registered organisations to stay below BAT levels, or to have a performance corresponding to the lower third where ranges of performance are indicated in BREF documents (which is often the case with emissions). One could even envisage a process where top levels are identified in the BREF documents themselves.

BREF documents are available for many industrial processes. For processes or aspects not covered (e.g. products) or for non-industrial areas the state-of-the art will have to be defined separately. ANEC, ECOS, and EEB strongly support the concept of sectoral reference documents and the envisaged approval process making use of a comitology procedure, and consider this to be an excellent opportunity to initiate changes in the right direction. However, the use of sectoral reference documents should be binding rather than voluntary (i.e. the identified best practice performance levels should be obligatory), and the Commission should have a clear obligation to come up with working plans based on agreed priorities and targets, similar to the process under the existing Energy-Using Products Directive. Sufficient resources would need to be made available for this.

Moreover, multinational organisations should be obliged to apply the same (high) environmental criteria in all the countries in which they operate, including those outside the EU.

THE ALTERNATIVE APPROACH – SPECIFIC COMPARABLE KEY PERFORMANCE INDICATORS (KPIs)

The Commission proposal introduces the obligation to make use of general "core indicators" both in the environmental statement and the environmental performance report. These include energy efficiency, material efficiency, water, waste, biodiversity, and emissions (only direct aspects). In addition to the total amounts (e.g. of water per year), normalised figures must be indicated by relating the environmental burdens to the total annual gross value added (industry in the production sector), the total annual turnover or number of employees (small organisations), or number of employees (organisations in the non-productive sectors). At a later stage these indicators are intended to be complemented by sector-specific indicators incorporated into sector-specific reference documents, to be approved through the comitology procedure.

However, generic indicators such as total energy consumption are normally not meaningful as they do not allow for reasonable comparisons between organisations. Even if such data are related to the physical or monetary output, including the value added or number of employees, they say very little, and could be equated with the results of comparing apples and pears. A prerequisite for serious assessments of performance and benchmarking is to compare comparable activities or processes. Different companies can have quite different portfolios of products and the vertical integration of manufacture might be completely

different. For instance, some companies produce textiles whilst others only trade in them, not to mention the number of mixed approaches in between. The level of outsourcing of stages of production can differ significantly between enterprises.

By relating the environmental impacts to turnover or value added the environmental balance may even be distorted. A producer of luxury cars with a high (added) value will have a comparatively good ecological record compared to a producer of cheaper cars, wrongly suggesting a better environmental performance of the former (a higher denominator means a lower value).

Moreover, the direct indicators may be irrelevant compared to impacts in other life cycle stages. Staying with the car example – the burdens associated with the assembly of cars are just a minor fraction of the overall impacts. Much more relevant are the production of raw materials (e.g. steel) and, in particular, the use of the cars (petrol consumption). So for the cars industry the relevant energy indicator is not the annual “total direct energy use” divided by the gross value added, but the average fleet consumption.

Also, in our view the Commission proposal lacks clarity regarding the details of the energy and material flows to be included. For instance, it is not clear which materials should be recorded at which level of precision using which methods? Without clear-cut rules for this the indicator results are unlikely to be more than arbitrary figures.

The numerous problems associated with the development of meaningful comparable indicators were investigated in a study published by the Consumer Council at the Austrian Standards Institute¹³ in 2008. A major conclusion was that such indicators can only be derived at a (sub) sector level focusing on processes or products (e.g. energy consumption for the production of 1 t of cement), defining precisely the method of calculation and the system boundaries. A general procedure for deriving such indicators was suggested.

Hence, ANEC, ECOS and EEB consider the proposed general indicators to be of little use. Instead, we believe the focus should be on the development of a limited number of relevant and comparable (sub) sector-specific indicators. These indicators should cover also indirect impacts (in particular products) and should be compulsory once they are available. Also, the revised EMAS regulation should contain an obligation for the Commission to provide a working plan.

Finally, the Commission should be obliged to elaborate rating and ranking systems using the indicators referred to above.

LEGAL COMPLIANCE

ANEC, ECOS, and EEB welcome the provisions to reinforce legal compliance verification through stronger involvement of enforcement authorities. The proposed system to be established by the Member States to assist in identifying and verifying legal obligations is

¹³ Consumer Council at the Austrian Standards Institute “Comparable environmental indicators for companies”, carried out by Force Technology, Denmark, 2008

<http://www.verbraucherrat.at/download/envidicators.pdf>

useful even for organisations not interested in an EMAS registration. Further, we appreciate that organisations “*shall provide material or documentary evidence showing that the organisation complies with all applicable legal requirements relating to the environment that have been identified*”¹⁴ before registration.

However, we consider it insufficient that the statement on compliance from the competent enforcement authority is merely optional, rather than compulsory. In addition, in our view this confirmation should be renewed every three years – in line with the regular maintenance cycle.

Finally, EMAS registered organisations should be obliged to publish any environmental data regarding legal compliance (e.g. measured values where legal limits exist), as well as all cases of non-compliance or possible penalties.

INITIAL REVIEW

An audit (e.g. carried out under ISO 14001) can exempt a company from having to conduct a “full” initial environmental review. However, such a review, including the compulsory procedures to follow, may not be envisaged in the recognised certified environmental management system (as in the case of ISO 14001). It is also unclear what “full” means – which elements could be omitted and who would take the relevant decisions. Hence, this unclear exemption does not seem to be justified.

USE OF THE EMAS LOGO

ANEC, ECOS and EEB strongly disagree with the suggested new provisions regarding the use of the EMAS logo on products as this will open the door to a number of possible means of misuse. In the current version of EMAS the use of the logo on products is strictly forbidden, and its use in the context of product advertising subject to restrictions by Commission Decision 2001/681/EC. According to this Decision the basic principle is to use the logo only in connection with validated information regarding environmental product features: “*In no case must the logo be used alone in adverts for products, activities and services (like an eco-label). A clearly visible connection to the validated information is necessary*”¹⁵. Unfortunately even these restrictions are not enough to exclude misunderstandings or misuses as the broad public are likely to interpret any logo as an eco-label.

Considering the above, the new text should be considered as a big step backwards compared to the existing unsatisfactory version. The new wording states that “*the logo shall not be used in conjunction with comparative claims concerning other activities and services*

¹⁴ Article 4(5) of new EMAS proposal (COM(2008) 402/2

¹⁵ 2001/681/EC, Annex III, 5(1)

*or in a way that may create confusion with environmental product labels*¹⁶. Regrettably this formulation does not offer an answer to the question of who will decide what ‘may create confusion’? Should the decision be left to the industry alone, it will be easy to foresee what the result will be and the provisions will likely be used to falsely claim environmental excellence of products where there is none (EMAS does not even ensure excellence with respect to direct environmental effects of organisations).

Following from this, ANEC, ECOS and EEB stress that the use of the EMAS logo on products or in connection with product information/advertising must be strictly prohibited.

PROMOTION, INCENTIVES

The Commission proposal suggests several measures to make EMAS registration more attractive for organisations. These include promotion activities by Member States, particular incentives for small organisations, pushing EMAS by embedding the scheme in other legislation, providing for financial subsidies (e.g. reduced taxes), and exempting organisations from, or reducing, the legal obligations. Article 35 of the proposal goes even so far as to suggest that the advertising should involve “industrial associations, consumer organisations, environmental organisations, trade unions and local institutions”.

ANEC, ECOS and EEB must underline that any advertising or incentives for a system which is doubtful in terms of its environmental benefit, and which can be regarded as a form of marketing rather than a sound environmental policy instrument - at the expense of the taxpayer - is not acceptable. Hence any incentive must be linked to performance achievements rather than be based on mere registration to the scheme. Similarly, regulatory reliefs should only be acceptable if the system has been made much more demanding than is currently the case.

A new element in the EMAS III proposal is the attempt to allow organisations outside the EU to register in a Member State of their choice. However, it will be very difficult to assess legal compliance and the environmental achievement of an organisation outside the EU. Hence, we do not believe it to be possible to have a credible EMAS if the scheme is extended to organisations outside the EU.

Finally, ANEC, ECOS and EEB question a stepwise approach to EMAS as the scheme does not stipulate stringent requirements, so establishing a ‘weaker brother’ of a weak system seems futile. Moreover, we must express our objections to the provisions which would allow recognition of other existing management systems – thus potentially undermining the credibility of EMAS even further. In our view allowing such practice would be diametrically opposed to the idea of European harmonisation.

¹⁶ Article 10(4) of new EMAS proposal (COM(2008) 402/2

VERIFICATION

In order to ensure that the strong competition between agencies providing verification services will not become a race to the bottom (where the interest to please the client is more important than a critical assessment), it should be stipulated that the contract is not made between the organisation and the verifier but between the competent body and the verifier.

Furthermore, ANEC, ECOS, and EEB do not consider it sufficient to call for independence of the environmental verifier. Regrettably the term “independent” has nowadays lost its original meaning - being a third party - not least because of its redefinition in the standards bodies which does not rule out the possibility of it being a first party (i.e. being part of the organisation). It should in our view therefore be clearly stated that the verifier shall be an *external* third party.

Finally, we find the provisions concerning the verification and validation of small organisations (SMEs) to be too vague, leaving much room for interpretation. There can in our view be no justification for applying double standards for verification and validation requirements depending on the size of the organisation.

FINANCING OF EMAS IMPLEMENTATION

It is questionable whether the ambitious tasks of the Commission can be conducted and realised in practice with the resources earmarked. In particular, the total number of human resources per year – a mere 10 from 2010 - and the total amount available for external studies – from 0,25 to 0,75 million Euro per year - seems insufficient, especially when starting to develop the announced sectoral reference documents, including best environmental management practice and environmental performance indicators for specific sectors. It is of utmost importance to ensure the necessary financial support for the Commission services if EMAS is to be lifted from a mere green alibi of low credibility to a real full-blown instrument of high ambition.

CONCLUSIONS

ANEC, ECOS, and EEB have long called for a substantial revision of EMAS in order to transform it into a true system of excellence. In doing so the organisations have, inter alia, highlighted the need for performance requirements and for a mandatory set of comparable performance indicators. Despite envisaging sector-specific best practice documents and reinforced legal compliance verification, which the organisations welcome as steps in the right direction, the proposal put forward by the European Commission does not deliver the change so urgently needed. Before incentive schemes are set up or promotional activities are allowed, the current proposal should be modified to ensure that the new EMAS can be equated with better environmental performance of organisations.

END.