

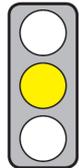
ECO-MANAGEMENT AND AUDIT SCHEME (EMAS)

Status: 24.10.2008

MAIN ISSUES

Objective of the Regulation: The environmental management system (EMAS) offered by the EU serves to encourage all sorts of organisations – who may participate in EMAS voluntarily – to improve their environmental activities. The regulation proposal is meant to increase the efficiency and attractiveness of EMAS.

Groups Affected: All sorts of organisations within and outside the EU.



Pros: (1) Participation in the eco-management system EMAS is voluntary.

(2) Participation in EMAS may help organisations to reduce the negative impact of their actions on the environment.

Cons: EMAS is costly and time-consuming in terms of audit, reporting and publication duties and therefore is not very attractive to many organisations.

Changes Required: Additional reporting duties should be waived. The frequency of audits and verification procedures in small organisations should be revised.

CONTENT

Title

Proposal COM(2008) 402 of 16 July 2008 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)**

Abstract

► Object of the Regulation

- EMAS (Eco-Management and Audit Scheme) is a European certification system for eco-friendly business management. All sorts of organisations from within and outside the EU may participate voluntarily (Art. 1). If an organisation participates in EMAS, it may promote this fact in public using the EMAS logo (Art. 10).
- Currently there are 4,183 EU organisations participating in EMAS, 1,412 (33.8%) of which are in Germany.
- EMAS has adopted the environmental management system requirements of the EN ISO 14001:2004 standard and has added several new elements (Annex II).

► Requirements for EMAS Participation

- Organisations wishing to participate in EMAS must apply for registration (Art. 3).
- Prior to registration organisations have to:
 - carry out an “environmental review”, which should confirm compliance with the applicable legal requirements relating to the environment (Art. 4 (1) in connection with Annex I),
 - establish an “environmental management system” and provide evidence of its efficiency by carrying out an “internal environmental audit” (Art. 4 (6) in connection with Annex III and Art. 2 (14)),
 - prepare an “environmental statement” informing the public as to the environmental impact of their activities, their environmental programme and targets (Art. 4 (7) and Art. 2 (17)).
- Organisations which already have a certified and approved “environmental management system” (e.g. subject to ISO 14001 standard) are not obliged to conduct an environmental review with regard to the already documented information procedure (Art. 4 (3) in connection with Art. 45 (4)).
- The initial environmental review, the environment management system, the audit procedure, and the environmental statement are to be verified by an accredited “environmental verifier” (Art. 4 (8)).
- An organisation with sites located in one or more Member States may apply for one single corporate registration of all sites (Art. 3 (3)).

► Ongoing Obligations for Organisations

- Organisations registered under EMAS must on an annual basis:
 - carry out an “internal environmental audit” of each individual activity, providing evidence that they comply with all legal requirements applicable in their Member State (Art. 6 (2) in connection with Annex III). Organisations outside the EU should refer to the legal requirements relating to the environment applicable in the Member State where they apply for registration (Art. 4 (5)).

- collect data on their “environmental performance” based on “core indicators”. Core indicators are composed of key environmental areas such as energy use and the total emission of greenhouse gases, which are correlated to either the gross value added, the total annual turnover or the number of employees of the organisation’s site concerned (Art. 6 (2) in connection with Annex IV).
 - draw up an environmental performance report and have it validated by the “environmental verifier” (Art. 6 (2) in connection with Annex IV).
 - Organisations registered under EMAS must every three years:
 - assess all activities by way of an environmental audit programme (Annex III),
 - have the environmental management system and audit programme verified (Art. 6 (1)),
 - submit an updated environmental statement presenting clear information on their activities and their environmental policies (Art. 6 (1) in connection with Annex IV).
 - The environmental performance report and environmental statement must be made available to the public (Art. 6 (3)).
 - Organisations have to improve their environmental performance continually (Art. 17 (7) lit. b, Art. 24 (7) lit. d and Annex II).
- **Details on the Environmental Review**
- When an organisation is obliged to carry out an environmental review, it must identify the extent to which the organisation’s activities have a “significant” impact on “direct” and “indirect” environmental aspects (Art. 4 (1), Art. 8, Annex I).
 - “Direct environmental aspects” are emissions to air, discharges to water, waste management, land use and contamination, use of natural resources and raw materials as well as local environmental impacts such as noise and dust (Art. 2 (6), Annex I).
 - “Indirect environmental aspects” are in particular related to environmental impact resulting from life cycle issues caused by products manufactured by organisations as well as environmental activities of contractors and suppliers of an organisation (Art. 2 (7), Annex I).
 - The environmental review must be verified by an environmental verifier (Art. 4 (8), Art. 8 (3)).
- **Details of the Environmental Audit Programme**
- The environmental audit programme serves to assess the efficiency of the environmental management system (Art. 6. (2) and Art. 9 in connection with Annex II).
 - Environmental audits are to be carried out by external auditors or internal auditors employed by an organisation (Art. 9 (2), Art. 2 (15)).
 - Following the audit process, the organisation should draw up an “action plan” in order to remedy deficiencies (Art. 9 (6)).
- **Details of Environmental Verifiers**
- Environmental verifiers assess whether an organisation complies with the requirements of the Regulation (Art. 17).
 - The environmental verifier must:
 - be independent, impartial and objective (Art. 19 (4) and (5))
 - be approved by an “Accreditation Body” from a Member State; therefore he has to provide evidence of appropriate knowledge, relevant experience and technical capacities (Art. 19).
- **Simplifications for “Small Organisations”**
- The rules applying to “small organisations” are less strict. Small organisation means:
 - Small and medium-sized enterprises with less than 250 employees and an annual turnover not exceeding EUR 50 million, or an annual balance sheet not exceeding EUR 43 million (Art. 2 No. 25 lit. a in connection with Recommendation 2003/361/EEC)
 - Local authorities governing less than 10,000 inhabitants
 - Other public authorities employing fewer than 250 persons and
 - having an annual budget not exceeding EUR 50 million
 - or an annual balance sheet not exceeding EUR 43 million (Art. 2 No. 25 lit. b).
 - Small organisations may request to have the frequency of the internal environmental audit extended from one to two years and the frequency of the verification of the internal audit extended to five years (Art. 7).
 - The audit verification of small organisations may not impose unnecessary burdens on them (Art. 25 (2)).
- **Rules Applying to Member States and the EU**
- Member States have to promote EMAS and encourage organisations to participate in EMAS (Art. 34). As a promotion measure they may decide not to charge organisations a fee for registration (Art. 40).
 - Member States “should take account of” EMAS in their procurement policies and, “where appropriate”, refer to EMAS or equivalent environmental management systems as “contract performance conditions for works and services” (Recital 5).
 - The Commission and other EU organs and institutions shall, “where appropriate”, refer to EMAS or equivalent environmental management systems as “contract performance conditions for works and services” (Art. 44 (2)), without making EMAS participation a criteria for selection.

Changes Compared to the Status Quo

- ▶ Organisations seated outside the EU may participate in EMAS.
- ▶ To date, the period of time within which certain duties are to be fulfilled has been the same for all organisations registered under EMAS. Now, however, “small organisations” have the right to request that the frequency of the internal environmental audit and its verification be extended.
- ▶ To date, different sites of one and the same organisation had to register individually if located in other Member States. Now they are entitled to apply for one single corporate registration for all sites.
- ▶ To date, organisations were free to report on their environmental performance based just on annual figures, e.g. of noxious emissions, the use of resources, energy or water. Instead, they now have to apply core indicators related to either the gross value added, or the total annual turnover, or the number of employees of the organisation’s site concerned.
- ▶ The rules on environmental audit reports and the accreditation of verifiers will be harmonised so as to counteract unequal treatment of different Member States.

Statement on Subsidiarity

According to the Commission, the EU may act in accordance with the principle of subsidiarity, since an EU-wide system for environmental management and auditing with the aim of avoiding the existence of different state systems can only be managed at EU level and not by the Member States.

Political Context

The Community system for environmental management and audit scheme was introduced by the Regulation “EMAS I” (EEC) No. 1836/93 and first revised in 2001 by the Regulation „EMAS II“ (EC) No. 761/2001. The group of potential participants was extended to include all kinds of companies and organisations; moreover, the environmental management system requirements of the EN ISO 14001:2004 standard were adopted and the EMAS logo was introduced.

The current Proposal for a new revision of the Proposal („EMAS III“) is part of a larger “action plan on sustainable consumption and production” [COM(2008) 397].

In its statement of 10 October 2008 [BR-Drs. 532/08 (Resolution)], the Federal Council of Germany expressed doubts as to whether the above regulations will encourage companies to introduce or continue to participate in EMAS. It further states that rather than increasing the bureaucracy of EMAS and thereby imposing yet more obligations upon participating organisations, EMAS should be simplified.

The first reading in the European Parliament will be held on 24 March 2009.

Status of Legislation

16.07.08 Adoption by Commission

Open Adoption by European Parliament and Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Leading Directorate General:	DG Environment
Committees of the European Parliament:	Environment, Public Health and Food Safety (in charge), rapporteur: Linda McAvan (PES-Fraction, UK); Industry, Research and Energy; Internal Market and Consumer Protection
Committees of the German Bundestag:	Environment, Nature Conservation and Nuclear Safety (in charge); Affairs of the European Union; Economics and Technology
Decision Mode in the Council:	Qualified majority (approval by a majority of Member States and at least 255 out of 345 votes; Germany: 29 votes)

Formalities

Legal competence:	Article 175 (1) TEC (Environmental Policy)
Form of legislative competence:	Concurrent legislative competence
Legislative procedure:	Article 251 TEC (Codecision)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

From an ordoliberal standpoint, the suggested proposal is unobjectionable due to participation being voluntary. The environmental management system enables organisations to develop, free from government-

tal constraints, their own methods for improving environmental performance and reducing the negative impact of their activities on the environment.

EMAS is in competition with other alternative environmental management systems, e.g. EN ISO 14001:2004 standard, yet demands higher quality standards from participating organisations. This means that various certification options are available to organisations.

Impact on Efficiency and Individual Freedom of Choice

The option for collective registration as well as the possibility to participate in EMAS from outside the EU increases the attractiveness of EMAS.

However, reporting obligations have been increased too, at the same time creating heavy administrative burdens and new publication duties. **The preparation of an annual environmental performance report represents additional time and costs**, in particular for small organisations. The prolongation of the period of time between the environmental audit assessments to five years does not really alleviate the burden for small organisations, as long as the obligation to conduct an internal environmental audit of all activities every three years remains in effect. In order to really relieve the burden, both cycles should be harmonised.

The use of “core indicators” in small organisations by relating to the number of employees **does not necessarily lead to a proper reflection of environmental performance**. For instance, a small change to the number of employees might lead to large changes in indicators values, but without actually affecting environmental factors.

A clear evaluation of the gross value added for each single site is economically often impossible and demands substantial time and effort. **The extensive publication duty might raise issues in terms of competition**, since information on internal processes must be published.

Impact on Growth and Employment

Due to the voluntary participation in EMAS and its relatively limited dissemination, the Proposal's impact on growth and employment is not expected to be of significance.

Impact on Europe as a Business Location

Due to the voluntary nature of the measures Europe is not affected as a business location.

Legal Assessment

Legal Competences

The EMAS Regulation and the Commission's Proposal for revision serve to encourage organisations to improve their “environmental performances” continually. The legal competence for these environmental policy targets is laid down in Art. 175 (1) TEC.

Subsidiarity

Unproblematic.

Proportionality

The aspired EU-wide standardisation of EMAS cannot be achieved by a directive offering Member States room for manoeuvre. Hence, the legal form of the regulation, which applies in general and directly to all Member States, is consistent with the proportionality principle.

Compatibility with EU Law

Unproblematic.

Compatibility with German Law

The Regulation requires the modification of numerous implementation measures in Member States. In Germany it affects the Environmental Audit Act (*UAG*), the UAG Regulation of the Transfer of Sovereign Rights to the Admission Body (*UAGBV*) and the UAG Fee Structure (*UAGGebV*) as well as the UAG Licensing Procedure Rules (*UAGZVV*).

Alternative Policy Options

It is not only in the interests of small organisations that the reporting duties regarding environmental performance be significantly reduced and not linked to core indicators. The frequency of the intervals between internal environmental audits and their verification should also be harmonised for small organisations.

Possible Future EU Actions

Future EU actions are not expected.

Conclusion

EMAS enables organisations to improve their environmental performance individually without governmental constraint. As the participation in EMAS is voluntary the Proposal is unobjectionable from an ordoliberal standpoint. However, EMAS is already fairly unattractive due to costly and time-consuming duties regarding audit, reporting and information to the public. Therefore, the frequency of audits and verifications for small organisations should be harmonised so as to avoid imposing an additional burden. Further reporting duties for the regulation should be waived.