



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.07.2000
COM(2000)512 final

1998/0303 (COD)

OPINION OF THE COMMISSION

**pursuant to Article 251 (2) (c) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposal for a**

**REGULATION OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

**allowing voluntary participation by organisations in a Community eco-management and
audit scheme (EMAS)**

**AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 250 (2) of the EC Treaty**

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1. BACKGROUND

The Proposal for a Council Regulation allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) [COM(1998)622 – 1998/0303 (COD)], was adopted by the Commission on 30 October 1998 and was published in the *Official Journal* on 22 December 1998.

The Commission submitted the above-mentioned Proposal to the Council 30 October 1998 and to the European Parliament on 30 October 1998.

The Economic and Social Committee gave a generally favourable Opinion on the Proposal in its Plenary on 26 May 1999. The Committee of the Regions decided on 28 June 1999 not to deliver an opinion on this Proposal.

The European Parliament gave its opinion in a first reading on 15 April 1999.

The Commission accepted 18 of the 59 amendments of the European Parliament and pursuant to Article 250 (2) of the Treaty, the Commission adopted an Amended Proposal on 23 June 1999 and forwarded it to the Council.

The Council adopted unanimously its Common Position on 28 February 2000.

The Commission supported the outcome of the Common Position in its Communication to the European Parliament, adopted on 10 March 2000.

On 16 March 2000 the President of the Parliament announced that the Common Position had been received and referred to the Committee on the Environment, Public Health and Consumer Policy. On 6 July 2000, at its second reading, the European Parliament adopted 27 amendments to the Council Common Position.

This Opinion sets out the Commission's position on the European Parliament's amendments in accordance with Article 251 (2)(c) of the EC Treaty.

2. AIM OF COMMISSION PROPOSAL

The objective of the Proposal is to improve the contribution of EMAS to the protection of the environment through the revision of the existing Council Regulation 1836/93 of 29 June 1993.

The Proposal extends EMAS to all economic sectors providing them with an instrument to continually improve their environmental performance

The Proposal calls explicitly for the involvement of employees as one means to achieve this continuous improvement of environmental performance.

The compatibility between EMAS and the international standard ISO 14001 is also strengthened by incorporating ISO 14001 as the environmental management system element of EMAS. This allows the elements where EMAS goes further than ISO 14001 to be clearly defined, namely compliance with environmental legislation, the improvement of environmental performance, external communication and employee involvement.

The Proposal promotes the participation of small and medium-sized enterprises (SMEs) in EMAS by appropriate support mechanisms.

The Proposal provides for increased visibility of participation in EMAS for businesses through the introduction of a logo as well as for the credibility and consistency at Community level of the Scheme.

3. COMMISSION'S OPINION ON THE AMENDMENTS PROPOSED BY THE PARLIAMENT

3.1 Summary of the Commission's position

The Commission can accept 2 amendments in full (Amendments 1 and 2) and 7 in part or in principle (Amendments 3, 16, 19 (2nd and 3rd parts), 25, 30 (1st part), 32 and 33 (2nd part)). The remaining amendments cannot be accepted.

3.2 Parliament's amendments on second reading

Amendments accepted in full or in part

Amendment 1 (*Training of verifiers*) (Recital 13)

It contributes to ensuring the competence, and maintenance of it, of the environmental verifiers. This is part of ensuring the credibility of EMAS.

Amendment 2 (*Incentives for organisations*) (Recital 14a (new))

This amendment invites Member States to create incentives for organisations to participate in EMAS which will strengthen the Common Position in making EMAS more attractive to potential participants.

Amendment 19 (2nd part) (*Fees of participation in EMAS*) (Article 11(1) last indent)

Applying reasonable registration fees will contribute to making EMAS more attractive to potential participants.

Amendments accepted in principle

Amendment 3 (*Support to candidate countries*) (Recital 14b (new))

This amendment calls for providing support in the field of EMAS to candidate countries for accession in the European Union. This is part of the pre-accession strategy to provide for technical support but shall not imply more specific resources to be dedicated to this process. In particular, this cannot imply providing direct financial support to candidate countries but should be limited to the following wording: *“The Commission should provide technical support to accession candidate countries in the setting up of the necessary structures for the application of EMAS”*.

Amendment 16 (*Exchange of data between local competent bodies*) (Article 7(2))

Subsidiarity represents one of the guiding principles of the Common Position which allows Member States to appoint national, regional or local structures to act as EMAS competent bodies. This amendment is therefore building on this principle by encouraging communication between these local bodies. This should in fact be broadened to exchange of information in general, not only data (*“exchange of information”* instead of *“data exchanges”*).

Amendment 19 (3rd part) (*Administrative simplification for businesses*) (Article 11(1) 2nd subparagraph)

Administrative simplification resulting from EMAS participation, in particular for SMEs, is desirable. However, the wording shall be carefully chosen to avoid lowering the requirements of EMAS for SMEs (*“The system shall operate with the objective of avoiding unnecessary administrative burdens for participants, in particular small organisations”*).

Amendment 25 (*Insertion of the full text of Section 4 of EN ISO 14001:1996*) (Annex I A)

This amendment includes the full text of the Section 4 of EN ISO 14001:1996 in Annex I A and will contribute greatly to the clarity of EMAS requirements. Only a small addition should be made in the form of a footnote explaining the provenance of the text and where a full copy could be obtained, for the Commission to be in legal compliance with the terms of the contract signed with CEN (European Standardisation Body). The text of the footnote would be: *“The use of the text of the national standard reproduced in this annex is made with the permission of CEN. The full text of the national standard can be purchased from the national standard bodies the list of which is given in this Annex.”*

Amendment 30 (1st part) (*Information on continuing improvement in the environmental statement*) (Annex III, 3.1, 1st subparagraph)

Including a formal reference to reporting on environmental improvements is part of the commitment to transparency which EMAS represents. However the terminology used should be consistent with Article 2 (b) as regards “*continual improvement of environmental performance*” which should be the wording used.

Amendment 32 (*Use of environmental indicators by organisations*) (Annex III, 3.3, introduction)

It is important that environmental information reported in the environmental statement is understandable and comparable. The use of environmental indicators may therefore contribute to this purpose. However, it should not result in an undue burden, for small organisations in particular, by implying that they need to define such environmental indicators. This is still a field under development and it would not be the role of EMAS to require the definition of these indicators (“*For this purpose, organisations may use relevant existing environmental performance indicators...*”).

Amendment 33 (2nd part) (*Guarantee of access to the environmental statement for anybody*) (Annex III, 3.6)

Ensuring that environmental statement is accessible to interested parties is central to EMAS objectives. This should not however result in heavy procedures for EMAS registered organisations and measures taken to ensure transparency should remain proportionate (“*guaranteed*” to be replaced by “*given*”).

Amendments not accepted

Amendment 9 (*Definition of organisation*) (Article 2(s), 2nd subparagraph)

This amendment contradicts the chain of responsibilities prescribed by the Common Position to define adequately the organisation to be registered under EMAS. The competent body does not intervene at the stage of definition of the organisation but may take action during the registration process if the definition of organisation does not correspond to the requirements of the EMAS Regulation. In addition, this amendment suppresses a clause of flexibility which would have allowed for taking into account potential issues regarding the minimum entity suitable for registration under EMAS.

Amendment 11 (*Scope of reporting in the environmental statement*) (Article 3(2)(c))

The structure of the Common Position includes in particular a set of definitions for the terminology used throughout the whole text. If the Regulation is to be clear to potential participants, it has to be consistent in its terms and requirements which is not the case with amendment 11. Furthermore, this amendment introduces elements which are already covered elsewhere in the Common Position and this will harm the logical structure of the EMAS steps on the way to registration.

Amendment 12 (*Compliance with environmental legislation*) (Article 3(2)(new subparagraph))

This relates to the issue of compliance by organisations with environmental legislation and includes a requirement to grant registration to organisations only when they are in compliance with environmental legislation. The objective of EMAS is to help organisations to perform over and above this minimum. This intent is already covered in the Common Position under the environmental policy implementation as well as the verification that organisations provide for legal compliance (Annex V 5.4.3). However, EMAS is a voluntary scheme and amendment 12 risks changing its nature by making it a substitute for environmental controls, carried out by competent enforcement authorities within the Member States.

Amendment 13 (*Frequency of validation of the environmental statement*) (Article 3(3)(b))

Amendment 13 replaces the principle of yearly validation of updates to the environmental statement by a reference to regular validation. This weakens the transparency and credibility of the EMAS process. The environmental statement is the visible part of an EMAS registration and therefore must bring about credibility about its content, on an ongoing basis. It must also be noted that requirements regarding validation frequency are confusing for organisations. The new Article 3.3 (b), as amended, refers to a “regular” frequency according to requirements defined in Annex V 5.6 which in fact mentions only yearly validation.

Amendment 15 (*Verification by ‘visiting’ verifiers*) (Article 4(5))

Article 4 of the Common Position sets the principle that environmental verifiers can work in all Member States wherever they have been accredited in the European Union. The conditions for applicability are referred to in Annex V. Amendment 15 repeats some and modifies others of the conditions defined in Annex V. This would harm the overall consistency of the EMAS Regulation.

Amendments 18 and 20 (*Report to European Parliament*) (Article 10(2) 2nd subparagraph and Article 11(3))

Rather than preparing such a Report, it would be more appropriate to concentrate resources on the working of EMAS. Information for the Parliament can of course be provided on request.

Amendment 19 (1st part) (*Preferential access to public facilities*) (Article 11(1) 1st indent)

This amendment requests an eased access to ‘public facilities’ for EMAS registered organisations. It introduces an undefined and unclear concept which could thus not be implemented.

Amendment 21 (*Channels for informing on EMAS*) (Article 12(1) 2nd subparagraph)

Information about EMAS is important for the success of this voluntary instrument. However, prescribing the organisations to channel the information on EMAS may in fact limit the scope of information and not suit the local conditions.

Amendment 23 (*Protocol of intent on penalties*) (Article 13, 2nd paragraph (new))

Amendment 23 requires Member States to agree on ‘protocol of intent’ regarding penalties. It introduces an undefined and unclear concept which could thus not be implemented.

Amendment 24 (*Comitology*) (Article 14(2))

The legal changes in the Comitology Decision require a Regulatory Committee for the tasks to be performed by the Committee foreseen in Article 14 of the Common Position, and not a management Committee.

Amendments 27, 29 and 41 (*Involvement of workers*) (Annex I B(4); Annex II, 2.6 (f) and (Article 1(2)(d))

These all relate to the involvement of employees (or workers) and of their representatives in the implementation of EMAS. The principle of involving employees is already covered in the Common Position. These amendments add to it by prescribing the channels and means to be used by organisations to involve employees. Such requirements may in fact limit the scope of involving employees as great differences exist from organisation to organisation, from sector to sector and Member State to Member State. Disseminating best practice in this area, through guidance documents produced by the Commission with a representative organisation of employees, would be the most appropriate way to solve this issue.

Amendment 30 (2nd part) (*Printed form of environmental statement*) (Annex III, 3.1, 1st subparagraph)

Amendment 30 (2nd part) deletes the requirement for organisations to make available a paper copy of the environmental statement for those who have no other means to access it. Transparency is a key principle of EMAS and this amendment contradicts this.

Amendment 33 (1st part) (*Availability of environmental statement*) (Annex III, 3.6)

Transparency is a key feature of EMAS but it should not be too burdensome for organisations. Prescribing the submission of the environmental statement to the public, instead of making it publicly available, as stated in Amendment 33 (1st part) will increase the burden on companies, in particular SMEs.

Amendment 35 (*Competence criteria for environmental verifiers*) (Annex V, 5.2.1(b), (c) and (d))

Annex V of the Common Position defines the competence required from environmental verifiers in order to fulfil the tasks devoted to them by the EMAS Regulation. These competencies are thus appropriate and proportionate to EMAS purposes. Amendment 35 goes beyond EMAS objectives in the additional requirements it places on EMAS environmental verifiers.

Amendment 36 (*Verification frequency*) (Annex V, 5.6)

The added value of amendment 36 as far as it relates to ensuring a credible verification process within EMAS is not very clear. In any case, the frequency of verification cannot depend on the results of the previous statement. Firstly, because this could be understood differently (environmental results of the organisation or efficiency of the environmental management system); secondly, because one of the main elements is to determine if the environmental management system functions well or not through appropriate verification.

Amendment 37 (*Criteria for assessing significance of impact*) (Annex VI, 6.1, 1st paragraph)

Amendment 37 introduces elements not relating to the assessment of environmental impacts as defined in Annex VI 6.4 of the Common Position.

Amendment 38/46 (*Validation frequency of the environmental statement*) (Article 3 (3a)(new))

Amendment 38/46 weakens the transparency and credibility of the EMAS process by authorising extension of the validation frequency of the environmental statement from 12 to a maximum of 36 months on the basis of five criteria. Firstly, it is not clear if these criteria are cumulative or not. Secondly, the experience with environmental management systems (EMS) is more a criteria used to define the verification frequency but not to determine the validation frequency of external reports. Thirdly, one of the cases concerns SMEs which means companies up to 250 employees. There is no link between the number of employees and the impact on the environment. Thus, this would allow a 3 person organisation, with high impact on the environment, to report only every 3-years. This would act against the credibility of EMAS. Finally, the last case does not reflect the logic of EMAS. An EMAS registered organisation is in a loop of improvement. Changes may be minor one year but no changes at all is very unlikely and the proposed amendment would encourage organisations to remain passive.

Amendment 49 (*Introduction of environmental policy*) (Article 1(2)(a)(b))

Amendment 49 introduces environmental policy as a step prior to the establishment of the environmental management system. However environmental policy is already comprised in the overall concept of environmental management system as described in Annex I A. This amendment would therefore harm the logical structure of the EMAS steps on the way to registration.

3.3. Amended proposal

Having regard to Article 250, paragraph 2 of the EC Treaty, the Commission modifies its Proposal as indicated above.