Opinion of the Committee of the Regions on revision of EMAS and the Ecolabel

(2009/C 120/11)

THE COMMITTEE OF THE REGIONS

— considers organisations' environmental management systems and product Ecolabels to be a good, market-based means of encouraging environmental responsibility among various players in society and raising the level of environmental protection;

— considers the EMAS regulation to be a useful instrument for many kinds of organisations, which could benefit in a wide variety of ways from adopting them, e.g. reduction in harm to the environment, cost savings (energy and waste disposal), certainty that environmental legislation is being complied with, more efficient operation, etc.;

— believes that it is also necessary to define the scope of environmental performance assessment for organisations under the EMAS scheme, as well as the appropriate requirements for environmental audits at different levels, namely the primary (production), secondary (supply) and tertiary (other) levels of analysis. The information, skills and expertise needed for environmental audits are not available in all SMEs or local and regional authorities; rather, they have to rely on external consultants;

— sees keeping the ex-ante evaluation procedure as important in terms of the European Ecolabel's credibility and reliability. Meeting the ISO standard requires the body responsible for the label to check both ex ante and ex post that the product for which the Ecolabel was requested meets the Ecolabel criteria. The proposal to switch from assessment to registration and ex post monitoring is a serious threat to the credibility and reliability of the label.

Rapporteur-general: Ms Britt Lundberg (FI/ALDE), Member of the Regional Government of the Åland Islands

Reference document

Proposal for a Regulation of the European Parliament and of the Council on a Community Ecolabel scheme — COM(2008) 401 final — 2008/0152 (COD)

and

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 final — 2008/0154 (COD)

I. **POLICY RECOMMENDATIONS**

THE COMMITTEE OF THE REGIONS:

General recommendations (EMAS and Ecolabel)

1. considers revision of the EMAS scheme and the EU Ecolabel to be particularly necessary and firmly supports the EU's objectives of promoting a sustainable product and consumption policy, as laid down in the Lisbon agreement and the Community's sustainable development strategy, also with a view to achieving the Community's climate policy goals;

2. believes that the revisions are particularly necessary because neither scheme has had the uptake or impact that were originally aimed at;

3. considers organisations' environmental management systems and product Ecolabels to be a good, market-based means of encouraging environmental responsibility among various players in society and raising the level of environmental protection;

4. believes that local and regional authorities could also make more use of these systems, and that the revised legislation and Member State support measures should draw attention to the potential for both small and large public-sector organisations to make use of them;

5. considers that although the proposal on the EMAS scheme includes quite detailed rules, procedures and requirements, it still complies with the subsidiarity and proportionality principles (implementation being left to the Member States or their local and regional authorities). The Ecolabel scheme is not exclusive, but can operate in parallel with national and regional schemes, provided these are based on rigorous criteria;

6. believes that neither of the two schemes, which are based on voluntary participation, creates unnecessary burdens — the development and revision of the criteria for the Ecolabel are flexible, and the proposal for the EMAS scheme provides for flexible rules;

7. believes that the proposals are consistent with the European Commission's Better Regulation strategy (simplifying legislation and reducing administrative burdens for business and public authorities);

Objectives of revising the EMAS regulation

8. considers the EMAS regulation to be a useful instrument for many kinds of organisations, which could benefit in a wide variety of ways from adopting them, e.g. reduction in harm to the environment, cost savings (energy and waste disposal), improvement in environmental image, certainty that environmental legislation is being complied with, more efficient operation, etc.;

9. supports the setting of measurable quantitative targets for the number of EMAS-registered organisations five and ten years after entry into force of the Regulation;

10. believes that it would help to reach the target if the Member States were required to set their own targets for increasing the number of EMAS-registered organisations;

11. strongly endorses raising the visibility of EMAS by every means possible, since for instance in the Nordic countries EMAS is hardly known or used in the public sector;

12. believes that the structure of the regulation should take into account the perspective of the organisations planning to adopt EMAS. A key issue for such organisations is the structure of the EMAS scheme, which is tucked away in Annex II of the proposal. The easiest way to rectify this shortcoming would be to make Annex II an article in its own right, with the heading 'Structure and requirements of the EMAS scheme';

13. welcomes the suggestion that national or regional environmental management systems should be able to acquire full or partial EMAS recognition, which if applied would help organisations to switch from these schemes to EMAS. This would give the EMAS scheme a large number of potential applicants for registration under EMAS that are already moving towards eligibility for EMAS. This would also improve the credibility of local schemes, as they would become a part of the EMAS scheme;

14. considers that the Commission could set minimum requirements for schemes that are partially EMAS-compliant, so that applications are not made for separate elements of an environmental management scheme that cannot yet be defined as such a scheme;

15. suggests that such minimum requirements could for instance be the following: an environmental policy under which a commitment is made to ongoing improvement; an environmental review specifying the environmental aspects of the organisation that have a significant impact on the environment; compliance with provisions of environmental legislation; environmental objectives covering important environmental aspects; an environmental programme or action plan setting out the responsibilities, measures and timetable for implementing measures in order to achieve environmental objectives; adequate resources for implementing the environmental programme; internal communication about the environmental management scheme at various levels within the organisation; and external audit of the environmental management scheme;

16. considers that the guidelines on environmental reporting contained in Annex IV of the proposal should be improved. It is impossible in particular for small and medium-sized service sector businesses, and for instance local players, to calculate a number of the values envisaged, such as material efficiency. The amount of material used is so large that gathering data, even for most important materials, is often an insuperable task. The impact of organisations on biodiversity is also negligible for the majority of SMEs and small public-sector organisations, and reporting requirements that would affect them should not be proposed;

17. believes that it is also necessary to define the scope of environmental performance assessment for organisations under the EMAS scheme, as well as the appropriate requirements for environmental audits at different levels, namely the primary (production), secondary (procurement) and tertiary (other) levels of analysis. The information, skills and expertise needed for environmental audits are not available in all SMEs or local and regional authorities; rather, they have to rely on external consultants;

18. Questions the costs involved for public authorities and private companies in applying EMAS and the eco-label schemes; believes a broader participation in both schemes would be possible if the fees could be abolished or reduced. However distinction should be made for EMAS on the one hand and eco-label on the other hand because of different cost structure for participating organisations;

19. Considers that businesses must be relieved of administrative burdens when introducing EMAS, although cutting back red tape must never result in a loss of the EMAS system's credibility in the eyes of the public authorities, consumers, or organisations likely to join the scheme;

Ecolabel scheme

20. considers the objectives set to be a step in the right direction, especially opening up the development of Ecolabel criteria to different stakeholders and shortening the acceptance process, since in this way new products can be brought more quickly into the labelling scheme;

21. Calls for the name 'EU' to be added to the label itself in order to make it clearer for the general public that the Ecolabel is a European Union initiative;

22. considers the shortened criteria development procedure in other Ecolabel schemes to be useful for accepted product groups, since for instance the swan label in the Nordic countries and the German Blue Angel are such well-recognised brands in their own countries that they could give impetus to the EU Ecolabel;

23. endorses the proposal to abolish annual fees for products that have been awarded the Ecolabel, because this removes the financial barrier to joining the scheme for many SMEs;

24. welcomes the proposal requiring the parties concerned to produce a manual for authorities awarding public contracts. This will make it easier for public contractors to incorporate the Ecolabel criteria into their procurement procedures. A manual would be a welcome source of support for the work of the regional and local authorities;

25. sees keeping the *ex-ante* evaluation procedure as important in terms of the Ecolabel's credibility and reliability. The European Ecolabel is a labelling scheme based on life-cycle assessment in accordance with ISO 14024, verified by a third party. Meeting the ISO standard requires the body responsible for the label to check both *ex ante* and *ex post* that the product for which the Ecolabel was requested meets the Ecolabel criteria. The proposal to switch from assessment to registration and *ex post* monitoring is a serious threat to the credibility and reliability of the label;

26. does not endorse the proposal to make the criteria for national or regional labelling schemes at least as strict as the Community Ecolabel criteria in the case of those product groups for which EU Ecolabel criteria already exist. The stringency of labelling requirements applicable under different labelling schemes should be evaluated in the relevant context and in relation both to the environment and to the market. Many key labelling factors, such as the state of the environment, environmental stress and resistance, differ very widely between EU regions;

27. believes it is particularly important that the Member States and Commission step up their awareness-raising and information activity for the Ecolabel. In this context, cooperation with traders may be the most effective approach, since from the consumer's perspective shops are the places in which decisions about choosing and buying products are most often taken, and thus shops have considerable power to influence those decisions;

28. considers that the progressive growth in the range of products and services available to consumers, that satisfy the criteria for obtaining a Community Ecolabel, should be one of the priority aims. This growth needs to be promoted by supporting the development of design methods for products that meet the established criteria for the relevant product group throughout their life cycle. It therefore recommends that the competent authorities implement programmes to promote eco-design (based, amongst other things, on existing Ecolabel environmental criteria), to support businesses in this area, and to back pilot projects;

II. **RECOMMENDATIONS FOR AMENDMENTS**

Amendment 1

EMAS Regulation

Article 7

Text proposed by the Commission	CoR amendment
Article 7 Derogation for small organisations	Article 7 Derogation for small organisations
1. Competent Bodies shall, upon request of a small organisation, extend for that organisation, the three-yearly frequency referred to in Article 6(1) up to five years or the annual frequency referred to in Article 6(2) up to two years, provided that all the following conditions are met:	1. Competent Bodies shall, upon request of a small organisation, extend for that organisation, the three-yearly frequency referred to in Article 6(1) up to five years or the annual frequency referred to in Article 6(2) up to two years, provided that all the following conditions are met:
(a) no environmental risks are present,	(a) no environmental risks are present,
(b) the organisation has no operational changes planned to its environmental management system, and	(b) the organisation has no operational changes planned to its environmental management system, and
(c) there exist no significant local environmental problems.	(c) there exist no significant local environmental problems.
2. In order to obtain the extension referred to in paragraph 1, the organisation concerned shall submit a request to the Competent Body that has registered the organisation and provide evidence that the conditions for derogation are fulfilled.	2. In order to obtain the extension referred to in paragraph 1, the organisation concerned shall submit a request to the Competent Body that has registered the organisation and provide evidence that the conditions for derogation are fulfilled.
3. Organisations benefiting from an extension as referred to in paragraph 1 up to two years shall forward the non-validated environmental performance report to the Competent Body in each year that they are exempt from the obligation to have a validated environmental performance report.	3. Organisations benefiting from an extension as referred to in paragraph 1 up to two years shall forward the non-validated environmental performance report to the Competent Body in each year that they are exempt from the obligation to have a validated environmental performance report.
	4. In organisations granted an extension to five years under Article 7(1) the auditing cycle will be adapted accordingly.

Reason

The declared intention of the EMAS III Regulation of providing relief for SMEs in particular is threatened here, as an extension of the validation cycle to a maximum of five years will on the one hand be possible, and yet the compulsory three-yearly auditing cycle will remain unchanged. The two cycles need to be coordinated.

Amendment 2

Eco-label Regulation

Article 9(4)

Text proposed by the Commission	CoR amendment
Article 9 — Registration for use of the Ecolabel	Article 9 — Registration for use of the Ecolabel
4. Within two month of receipt of an application for registration, the competent body concerned shall check the documentation referred to in paragraph 2.	4. Within two month of receipt of an application for registration, the competent body concerned shall check the documentation referred to in paragraph 2.
Provided that the documentation is complete, the competent body shall assign a registration number to each product.	Provided that the documentation is complete and has been checked by, the competent body, the competent body shall assign a registration number to each product.

Reason

Meeting the ISO standard requires the competent body to check ex ante that the product for which the Ecolabel was requested meets the Ecolabel criteria. The proposal to switch from assessment to registration and ex post monitoring is a serious threat to the credibility and reliability of the label (doing only spot checks is not enough).

Amendment 3

EMAS Regulation

Article 43(2)

Text proposed by the Commission	CoR amendment
2. The Commission shall maintain and make publicly available:	2. The Commission shall maintain and make publicly available:
(a) a register of environmental verifiers and EMAS registered organisations;	(a) a register of environmental verifiers and EMAS registered organisations;
(b) a database of environmental statements and environmental performance reports in electronic format.	(b) a database of environmental statements and environmental performance reports in electronic format;
	(c) a database of best EMAS practice in different environmental sectors (e.g. energy, waste, procurement, communication).

Reason

The impact of introducing the EMAS scheme would increase if an easy-to-use handbook existed presenting the achievements of EMAS organisations in different spheres of environmental protection (waste, energy, procurement, etc.). Examples of good practice, which also include cost savings, could also encourage organisations to join the EMAS scheme.

Amendment 4

EMAS Regulation

Article 39(2)

Text proposed by the Commission	CoR amendment
2. Without prejudice to Community legislation, notably competition, taxation and State aid legislation, Member States shall, where appropriate, take measures facilitating organisations to become or remain EMAS registered. Those measures shall be taken, in either of the following two forms:	2. Without prejudice to Community legislation, notably competition, taxation and state aid legislation, Member States shall~~, where appropriate~~, take measures facilitating organisations to become or remain EMAS registered. Those measures shall be taken, in either of the following two forms:
(a) regulatory relief, so that an EMAS registered organisation is considered as; being compliant with certain legal requirements relating to the environment; laid down in other legal instruments, identified by the competent authorities.	(a) regulatory relief, e.g. longer environmental permits and looser reporting requirements for permit compliance so that an EMAS registered organisation is considered as; being compliant with certain legal requirements relating to the environment; laid down in other legal instruments, identified by the competent authorities.

Reason

The legislation should contain a clear indication that EMAS organisations are to receive public assistance, also in matters relating to environmental permits.

Amendment 5

EMAS Regulation

Article 45(1)

Text proposed by the Commission	CoR amendment
1. Member States may submit to the Commission a written request for recognition of existing environmental management systems, or parts thereof, that are certified according to appropriate certification procedures recognised at national or regional level, as complying with corresponding requirements of this Regulation.	1. Member States and organisations that co-ordinate national or regional EMS schemes may submit to the Commission a written request for recognition of existing environmental management systems, or parts thereof, that are certified according to appropriate certification procedures recognised at national or regional level, as complying with corresponding requirements of this Regulation.

Reason

There is no point in limiting to the Member States the right to make a proposal under Article 39, given that bodies managing local environmental management systems have the best knowledge of those systems and can therefore make informed proposals on EMAS conformity.

Amendment 6

EMAS Regulation

Article 4(5)

Text proposed by the Commission	CoR amendment
Article 4 — Preparation for registration	Article 4 — Preparation for registration
5. 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.	5. 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.
Organisations may request a statement on compliance from the competent enforcement authority or authorities in accordance with Article 33(5).	~~Organisations may request a statement on compliance from the competent enforcement authority or authorities in accordance with Article 33(5).~~
Organisations outside the Community shall also make reference to the legal requirements relating to the environment applicable to similar organisations in the Member States where they intend to submit an application.	Organisations outside the Community shall also make reference to the legal requirements relating to the environment applicable to similar organisations in the Member States where they intend to submit an application.

Reason

The option of obtaining proof of compliance from the authorities is a serious inconsistency and contradicts the principle of EMAS as a system of supervised self-regulation. It also undermines a key advantage of EMAS for authorities. In this case EMAS would not lead to a reduction in red tape and administrative burden, but on the contrary would actually produce them. Offering advantages to EMAS–registered organisations — lower fees, self-regulation instead of legal requirements — could no longer be justified, which would remove an important incentive for EMAS registration.

Amendment 7

EMAS Regulation

Article 7(1)

Text proposed by the Commission	CoR amendment
Article 7 — Derogation for small organisations	Article 7 — Derogation for small organisations
1. Competent Bodies shall, upon request of a small organisation, extend for that organisation, the three-yearly frequency referred to in Article 6(1) up to five years or the annual frequency referred to in Article 6(2) up to two years, provided that all the following conditions are met:	1. ~~Competent Bodies~~The environmental auditor shall, upon request of a small organisation, extend for that organisation, the three-yearly frequency referred to in Article 6(1) up to five years or the annual frequency referred to in Article 6(2) up to two years, provided that all the following conditions are met:
(a) no environmental risks are present,	(a) no environmental risks are present,
(b) the organisation has no operational changes planned to its environmental management system, and	(b) the organisation has no operational changes planned to its environmental management system, and
(c) there exist no significant local environmental problems.	(c) there exist no significant local environmental problems.

Reason

Having to complete a formal procedure with the competent body to extend the validation cycle results in unnecessary red tape and is counterproductive for SMEs. Until now, the validation cycle was extended by direct agreement between the environmental auditor and the company, without the need for a special application. The current procedure has proved effective and reflects the fact that the environmental auditor has the best understanding of a company's situation.

Amendment 8

EMAS Regulation

Article 28(1)

Text proposed by the Commission	CoR amendment
Article 28 Operation of accreditation	Article 28 Operation of accreditation
1. Accreditation Bodies appointed by the Member States pursuant to Article 4 of Regulation (EC) No 765/2008, shall be responsible for the accreditation of environmental verifiers and the supervision of the activities carried out by environmental verifiers in accordance with this Regulation.	1. Accreditation Bodies appointed by the Member States — respecting the existing distribution of powers within each Member State — pursuant to Article 4 of Regulation (EC) No 765/2008, shall be responsible for the accreditation of environmental verifiers and the supervision of the activities carried out by environmental verifiers in accordance with this Regulation.

Reason

Regulation (EC) No 765/2008 which sets out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 states in recital 11:

(11) The establishment of a uniform national accreditation body should be without prejudice to the allocation of functions within Member States.

Amendment 9

EMAS Regulation

Article 12(2)

Text proposed by the Commission	CoR amendment
Article 12 — Obligations concerning the registration process	Article 12 — Obligations concerning the registration process
2. Competent Bodies shall establish and maintain a register of organisations registered in their Member States, including their environmental statement or environmental performance report in electronic format, and update that register on a monthly basis. The register shall be publicly available on a website.	2. Competent bodies shall establish and maintain a register of organisations registered in their Member States, including their most recent environmental statement or environmental performance report in electronic format, and update that register on a monthly basis. The register shall be publicly available on a website.

Reason

The reference to the environmental statement or performance report should specify that this is the latest environmental statement or performance report.

Moreover, some organisations make their environmental statement accessible upon request (as provided under Article 6(3)), with a view to having a register of interested parties; they are thus reluctant for the statement to be publicly accessible without prior request.

Accordingly, organisations should not be obliged to put their environmental statement or report on a website enabling it to be consulted without prior request. Instead, the Competent Bodies could provide a similar service whereby it would be necessary to ask to consult such documents from any organisation, providing the latter with the relevant register when so requested.

Amendment 10

EMAS Regulation

Article 14(3)

Text proposed by the Commission	CoR amendment
Article 14 — Suspension or deletion of organisations from the register	Article 14 — Suspension or deletion of organisations from the register
3. A registered organisation shall be suspended or deleted from the register, as appropriate, if it fails to submit to a Competent Body, within one month of being required to do so, any of the following:	3. A registered organisation shall be suspended or deleted from the register, as appropriate, if it fails to submit to a Competent Body, within ~~one~~ three months of being required to do so, any of the following:
(a) the validated updates of the environmental statements, the environmental performance report or the signed declaration referred to in Article 24(9);	(a) the validated updates of the environmental statements, the environmental performance report or the signed declaration referred to in Article 24(9);
(b) a form, which includes at least the minimum information set out in Annex VI from the organisation.	(b) a form, which includes at least the minimum information set out in Annex VI from the organisation.

Reason

The deadline for submitting the missing documents should be increased to three months from the date of the request, so as to give organisations time to prepare the documents and get them validated, if necessary, as this also depends on the availability of the verifier.

Brussels, 12 February 2009.

The President
of the Committee of the Regions
Luc VAN DEN BRANDE