Opinion of the Economic and Social Committee on the "Proposal for a Council Regulation (EC) allowing voluntary participation by organisations in a Community eco-management and audit scheme" (1)

(1999/C 209/11)

On 11 December 1998 the Council decided to consult the Economic and Social Committee, under Article 130s of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 May 1999. The rapporteur was Mr Pezzini.

At its 364th plenary session (meeting of 26 May) the Economic and Social Committee adopted the following opinion by 71 votes to three with five abstentions.

1. Background

1.1. The review of the Regulation builds on an assessment of implementation in the Member States, and on the trend in Community environmental policy to emphasise voluntary instruments and the responsibility of all stakeholders in promoting sustainable growth. The review contains some important new elements which call for further discussion.

1.2. The Committee is pleased to note that some of the new elements correspond to recommendations made in the Committee opinion on the original proposal (2), in particular as regards worker participation, provision of support to SMEs, the case for a logo, and gradually widening the scope of the Regulation.

1.3. The main new elements are intended to:

- widen the scope of the regulation (Article 3);
- establish a link between ISO 14001 and EMAS, in order to make it easier to move between the two and avoid duplication of work (Annex I);
- involve employees in the implementation of EMAS (Article 1);
- increase the participation of SMEs (Article 10(1));
- use EMAS in the implementation and control of environmental legislation, without calling for blanket implementation (Article 10(2));
- adopt a visible logo (Article 8);
- develop a promotional strategy (Article 11);
- ensure the consistency of implementation across the Member States by setting up an accreditation forum and other competent bodies (Articles 4 and 5).

1.4. It should be emphasised that the proposal contains major elements of continuity, particularly as regards the added value of EMAS, which requires organisations to go beyond mere compliance with current environmental regulation (third recital). The proposal also puts considerable emphasis on subsidiarity, leaving the Member States ample discretion in implementing EMAS.

1.5. The Committee notes that the January 1999 conference on the EMAS review hosted by the German presidency provided an occasion for fruitful discussion and analysis of current achievements. Moreover, the conference confirmed the need to overcome certain major obstacles to the uniform implementation of EMAS throughout the Member States, particularly in view of the considerable fall in certification applications in Germany, which had previously been at the forefront in implementing the scheme.

1.6. In particular, the Committee endorses the need to develop EMAS, especially by making it easier for SMEs to sign up to the scheme, whilst safeguarding the objective of continuously improving environmental performance by keeping the public fully informed.

1.7. The Committee had the opportunity to address the problems posed by uneven geographic implementation — and especially to look at the obstacles encountered in some Member States and ways of solving them — inter alia at the hearing organised together with ANPA (the Italian Environmental Protection Agency) on 16 March 1999 in Rome, where much valuable oral evidence was taken from the socio-economic partners and associations involved in EMAS.

1.8. The hearing revealed the need for better promotion of the system on the part of the Member States and the Commission; for wider stakeholder participation — especially professional associations, trade unions and NGOs; and for partnership arrangements for EMAS dissemination.

1.9. In this respect, the ESC will study the case for an additional opinion to look more closely into all aspects of the implementation procedure ignored by the Regulation, and which do not tend to make EMAS participation easy, particularly for SMEs.

2. General comments

2.1. The Committee believes that EMAS provides a useful instrument for achieving the main objective of promoting sustainable production and consumption (development) patterns, and would reiterate some of its fundamental principles, i.e. the fact that it:

— is market-based;
— provides for voluntary participation;
— promotes shared responsibility for environmental protection;
— provides a framework for the effective management of environmental effects;
— improves environmental performance, particularly that of industry, but also that of other sectors;
— gives credible, transparent results;
— is complementary to the traditional command-and-control approach.

2.1.1. Because of its complementary nature, EMAS must be combined with other environmental policy instruments used in public authority promotion of sustainable development, with all partners playing an active role. Clearly, although EMAS is mainly business-oriented, it will improve its profile and value added if it involves a wider audience — especially the public, who are the end-targets of environmental statements.

2.1.2. Attention should be paid to ‘green’ developments in public procurement (green procurement), which are designed to foster environmentally sustainable production methods and services and — more generally — pursuit by the Commission of the integrated product policy (IPP) which is to be the subject of a green paper. These new developments could provide a more conducive climate for EMAS certification.

2.1.3. Although EMAS participation is voluntary for firms and organisations, it is the duty of the authorities to promote dissemination of this instrument as part of their public commitment to environmentally-friendly development. They could, for example, view it as a ‘plus’ — on a par with other strengths — when assessing the criteria for awarding public contracts.

2.2. Geographical imbalance and subsidiarity

2.2.1. Since there is a strong geographic imbalance in the success of EMAS across the Member States — which could have a negative impact on business-market relations — we need to look more carefully at past experience in order to identify instruments which can encourage more consistent application. This should not be confused with a rigid implementation of the rules; the aim is rather to identify incentives and promotion schemes which are compatible with the rules of competitiveness and competition.

2.2.2. Four Member States — Austria, Germany, the Netherlands and Sweden — have a much higher relative density (number of EMAS-compliant firms as a percentage of all firms) than the rest of the European Union.

2.2.2.1. This ‘positive anomaly’ should provide food for thought; these results were most certainly achieved through instruments and measures which were not specifically provided for in the Regulation, and which could be usefully applied elsewhere.

2.2.2.2. Key features of this experience could include the following: administrative procedures were decentralised; the Chambers of Commerce, employer and union organisations, and other associations were involved in promoting the system; the competence and number of the verifiers; dissemination of information; implementation of new advanced environmental technologies; the availability of a tried and tested legislative framework for the environment. Clearly, a strong environmental tradition helps take-up of voluntary environmental protection practices such as EMAS.

2.2.3. The following instruments might be used:

— retroactive tax rebates for management procedures which have yielded concrete environmental gains;
— decentralised administration of control and certification;
— EMAS coverage of other national requirements in the environmental field;
— incentives to encourage big business to involve subcontractors in implementing EMAS programmes;
— inclusion of the names of sub-contracting firms in the environmental statement;
— involving local authorities in areas where different approaches are being adopted in a given sector, and considering them as coordination instruments for collective certification;
— more management responsibility for decentralised business associations, in order to encourage the participation of SMEs, and backed up by technical and financial support;
— enhanced visibility and communication of achievements to the public;

— information and education campaigns, particularly for associations representing small-business interests.

2.2.4. The forum of accreditation and other competent bodies will no doubt be able to promote exchanges of experience, but harmonisation will also be a result of single market pressure. It is no coincidence that in Italy, the companies which have signed up are mainly large multinationals or firms which supply central and northern European markets.

2.2.5. The need to provide a level playing field in the single market is one of the main reasons for adopting EMAS (cf. point 4 of the Explanatory Memorandum); the Commission places strict curbs on the action it may take, in deference to subsidiarity. It does not however shirk its obligations under Article 10(4) (promotion of a coherent approach) and Article 11 (Community awareness campaign). Given the uneven results, one wonders whether these obligations have been met in full, bearing in mind the need to improve environmental awareness amongst the public and players in the various sectors.

2.3. Extension of scope

2.3.1. This ambitious goal is warranted by the track record of a number of pilot projects. Besides demonstrating the need for an extension of scope, they have also shown time and time again how all human activity impacts — albeit to varying degrees — on the environment.

2.3.2. When discussing the case for extending the scope — which the ESC endorses in principle — two somewhat simplistic views must be refuted.

2.3.2.1. The first is held by those who do not believe it is possible to extend the scope of the Regulation, because, in their opinion, some sectors — the service sector for example — do not impact on the environment in a specific geographic area. This is to forget that there are knock-on effects.

2.3.2.2. The second view is held by the Commission, which considers all the problems solved when it simply asserts that:

a) the pilot projects are proof that demand exists for environmental certification outside the manufacturing sector;

b) that other sectors also impact significantly — both directly and indirectly — on the environment;

c) and that EMAS management systems can be applied to all economic sectors.

2.3.3. It should however be emphasised that the immediate blanket extension of EMAS poses a problem which will not be easy to solve, owing to the fact that manufacturing industry and other sectors — services in particular — impact differently on the environment; In spite of this, it must be dealt with rationally, using a logical, three-pronged approach, based on:

— a clear assertion that EMAS can be applied in all sectors, in order to remove any ambiguity as to possible derogations or convenient exclusions;

— more detailed research — again backed up by evidence to provide specific benchmark criteria for a proper assessment of the environmental performance of the various sectors, and a clear definition of the certified site; this was called for in the Committee's opinion on the original Regulation (1);

— arrangements for extending the scope to sectors which have been excluded, based on a gradual, prioritised approach. The first step should be to explore the possibilities for implementation in the public and services sectors.

2.4. Employee participation

2.4.1. Although provided for under Article 1(d) in as much as it is regarded as vital to the success of EMAS, the notion of employee participation remains a general statement of intent. The operative Articles fail to provide further details as to the shape or form this participation might take, in contrast with the 1993 Regulation [Articles 3(1) and 7(2)].

2.4.2. The new regulation should ensure worker involvement and consultation, via their representative bodies within the firm, by involving them in drafting and implementing the programmes, particularly as regards vocational training and work organisation.

2.5. Using EMAS to implement and control environmental legislation

2.5.1. Article 10(2) enables Member States to use EMAS registration in the implementation and control of environmental legislation, in order to avoid duplication of effort.

2.5.2. This is a useful instrument, seen in the light of the comments contained in the ESC opinion on the implementation of environmental legislation (2).

2.5.3. Without forgetting that the added value of EMAS lies in the fact that it goes beyond mere compliance with legislation, participation in the scheme could be phased in, by means of dialogue between the firm and the competent authority. This would encourage compliance and help to shed light on any grey areas.

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2.5.4. Avoiding duplication of effort will undoubtedly be an incentive for firms, and will encourage the environmental authorities to promote greater use of the EMAS scheme.

2.5.5. The Committee is however concerned at the total lack of any mention of involving the European Environment Agency, which could play an important role in benchmarking, and provide technical and scientific support for the formulation of guidelines.

2.6. Persuading SMEs and craft industries to register

2.6.1. Attention should be paid to the special circumstances which account for the way small firms conduct their business and for the choices they make. These firms combine a significant number of skills which they have to administer according to priorities in terms of time available and limited human resources. This means that anything which is not strictly necessary — and which would involve considerable input in terms of time and resources — tends to be jettisoned unless it can be shown to be of use to the firm.

2.6.2. It would therefore seem necessary to provide specific procedures, simplified paperwork, and audit and control schedules which are in keeping with the size and nature of the firm. In this respect, the ESC notes that over-frequent controls result in red tape and unwarranted expenditure, particularly for SMEs.

2.6.3. Clearly, the budget of the vast majority of most micro-businesses will not stretch to employing someone to grapple with mountains of red-tape. Consequently, the competent environmental authorities should identify the appropriate local/regional level to set up service and back-up facilities, in order to encourage participation.

2.6.4. In particular, there is a need to address the problem of training internal auditors to meet the requirements of small firms, which — unlike larger firms which have management quality systems — are unlikely to have auditors on the payroll. Training must involve sectoral associations, which must receive adequate support from the authorities. The internal audit is a vital element in achieving — in partnership with the relevant environmental authorities — compliance with existing regulations, as a first step towards EMAS certification (cf. Article 10(2)).

2.6.5. Guidelines should also be drafted to assist the verifiers in their work with SMEs, and to ensure conformity of the assessment criteria.

2.7. EMAS visibility and credibility

2.7.1. EMAS is a voluntary instrument which, thanks to the transparency of its procedures and the fact that it is subject to environmental authority controls, is welcomed by the public as an attempt on the part of economic players to improve their environmental performance. As an instrument for sustainable development, it requires the participation of all stakeholders and a proper public information campaign. It is more widely used in areas where the authorities are actively pursuing a policy of sustainable development, involving all education and training providers, particularly schools.

2.7.2. An attempt must be made to distinguish EMAS from private certification systems, by emphasising the added value it offers in terms of public protection, and by cutting red tape and stepping up the consultation and information strands. The ESC therefore feels that a logo — as envisaged in the new proposal — would be extremely useful.

2.7.3. Since the Commission is responsible for promoting EMAS at Community level, the Committee suggests that the new regulation should include guidelines on best practice, the most frequent obstacles, and any other information which might help improve understanding and use of this instrument. The Committee hereby declares its willingness to help draw up such guidelines, should it be called upon so to do.

2.7.4. The Committee feels it essential that all Member States should ensure that socio-economic players interested in the scheme are widely consulted and actively informed. These schemes are most successful when they are run with the cooperation of the competent authorities. This requirement should therefore be included in the provisions of the text, so that the regulation contains an explicit reference to a participation-based approach, and to the need for a strong bias towards shared responsibilities in the field of sustainable development. Article 2 should give a definition of 'stakeholders', and they should be the recipients of the environmental statement. Article 5 should state explicitly that stakeholders must be consulted by the competent authorities. Finally, their active involvement in informing the public and promoting the system should be provided for in Article 11(1).

2.7.5. Finally, the ESC notes that there are no plans to produce a comparative study of results at European level. An instrument of this kind could be extremely useful in promoting EMAS registration. Consequently, the European Environment Agency might be given a fixed deadline to produce just such a report, to provide benchmarking for EMAS quality control at European level.
2.8. Specific comments

2.8.1. Definition of organisation and site (Article 2(1) and (m))

2.8.1.1. Although the site has a distinct geographic location, with a recognisable impact on the environment, the same cannot be said for the organisation. The proposal must not allow an organisation to register as such, when it has sites which do not conform to relevant environmental legislation. Consequently, specific reference criteria — particularly for services — must be drawn up. For example, what is the procedure for an organisation spread over several sites?

2.8.2. Best Available Technology (BAT)

2.8.2.1. Article 3 of EMAS I required the firm to declare its environmental protection strategies with a view to continuously improving its environmental performance by harnessing BAT. The new proposal no longer includes this important point. Annex I(8)(2) of EMAS II should include a reference to BAT as providing applicant firms with an instrument for the continuous improvement of their environmental performance, and as an important pointer for verifiers. This would obviously be confined to sectors where BAT is well established.

2.8.3. Compliance with environmental regulations

2.8.3.1. EMAS I was not open to firms which do not comply with environmental legislation. The new proposal, however, is not clear about the need for an EMAS-certified organisation to undergo regular checks on its compliance with national environmental provisions, although a number of provisions do refer to this (Articles 3(b) and 6.1(e), Annex I B(1), Annex II(2.6), Annex V(4.3)). In particular, it does not specify clearly whether the environmental statement must include information relating to the organisation’s compliance with national environmental legislation. This information should be included in paragraph 3.2 of Annex III, which sets out the content of the environmental statement.

2.8.4. Using EMAS to check compliance with environmental legislation

2.8.4.1. Article 10(2) on the duplication of control procedures should be read in the light of Article 1(3). EMAS is not a replacement for normal environmental controls, and does not lead to a duplication of effort since EMAS and environmental control are different but complementary. Registration is a voluntary instrument for industry, and cannot replace control and monitoring by the public authorities. It can, however, be used within the framework of subsidiarity — to avoid needless duplication and to simplify the administrative procedures required under national legislation.

2.8.5. Environmental statement (Annex III)

2.8.5.1. The Commission proposal is a watered-down version of the previous Regulation. Under the terms of Annex III (3.2), an organisation only needs to communicate its general objectives, without having to describe strategies or objectives in detail. Moreover, the environmental statement can be tailored to reflect stakeholders’ concerns. This should not be allowed; there should be a single, complete statement.

2.8.5.2. The content of the environmental declaration must tie in with the provisions of Annex I(3) on external communication, in the sense that there must be ‘an open dialogue with interested parties including local communities and customers with regard to the environmental impact of their activities’. The environmental statement must comply with this requirement.

2.8.6. Worker participation

2.8.6.1. In order to avoid the risk of selective interpretation in Annex II and Annex V, the word ‘personnel’ should be replaced by ‘workers’. In order to comply with contractual requirements on information and consultation, provision should be made to ensure that results are forwarded to workers’ representatives within the firm.

2.9. Management Committee (Article 14)

2.9.1. The shift from a regulatory committee to a management committee bolsters the Commission’s initiative and improves speed and efficiency at international level in particular.


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of the Economic and Social Committee
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