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Proposal for a

COUNCIL REGULATION (EC)

**ALLOWING VOLUNTARY PARTICIPATION BY ORGANISATIONS IN
A COMMUNITY ECO-MANAGEMENT AND AUDIT SCHEME**

(presented by the Commission)

**PROPOSAL FOR A
COUNCIL REGULATION
ALLOWING VOLUNTARY PARTICIPATION BY ORGANISATIONS IN
A COMMUNITY ECO-MANAGEMENT AND AUDIT SCHEME**

Explanatory Memorandum

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EXPLANATORY MEMORANDUM

1. INTRODUCTION

On 29 June 1993, the Council adopted Regulation (EEC) No 1836/93 allowing voluntary participation by companies in the industrial sector in a Community eco-management and audit scheme. This Regulation - known as the EMAS Regulation - entered into force on 13 July 1993 and has been open to industrial participation since April 1995.

The role of EMAS in the context of sustainable development

EMAS represents a direct response to some of the key principles embodied in the Fifth Environmental Action Programme, in particular the concept of broadening the range of instruments and of promoting an approach of shared responsibility in the area of environmental protection.

EMAS is part of the overall objective to promote sustainable production and consumption patterns by providing a framework for the effective management of environmental effects and for the promotion of continuous improvements in the environmental performance of industry. EMAS is a market-based instrument which provides for voluntary participation. This means that rather than relying on traditional enforcement measures through national regulators it is intended to generate peer pressure and supply chain pressure to encourage companies to participate. However, industrial sites participating in EMAS must comply with all the requirements of the EMAS Regulation. This ensures a credible and rigorous approach to environmental management.

EMAS reconciles both economic and environmental concerns by allowing industry to set its own environmental objectives as a result of examining its environmental performance. Industry can thus address environmental issues within the framework of their economic considerations.

EMAS also embodies the qualities of credibility and transparency. The implementation of EMAS is independently verified by an accredited environmental verifier. This verifier also checks the reliability of the data and information in the environmental statement which is used by industry to communicate information about its environmental performance to stakeholders and the public.

EMAS thus represents a new approach to environmental protection through the use of market mechanisms and the integration of environmental considerations into the core of company management. At the same time EMAS is complementary to the traditional command-and-control approach.

Main elements of EMAS

The Regulation provides economic operators from the industrial sector with a tool to implement good environmental management practices. The objectives of EMAS are

- to improve environmental performance,
- to demonstrate compliance with environmental legislation,
- to communicate environmental achievements to the public.

Participation in EMAS requires the economic operator to

- define its environmental policy
- review its environmental effects and performance
- establish an environmental programme and an environmental management system
- conduct environmental audits
- produce an environmental statement.

When the Scheme was conceived it was thought necessary to take-stock of its success, in particular its effectiveness as a voluntary market-based instrument, after a given period of time. Thus, Article 20 of the EMAS Regulation provides for the revision of the Regulation as follows

“Not more than five years after the entry into force of this Regulation, the Commission shall review the scheme in the light of the experience gained during its operation and shall, if necessary, propose to the Council the appropriate amendments, particularly concerning the scope of the scheme and the possible introduction of a logo.”

This review has provided a good opportunity to identify the strengths and weaknesses of EMAS and where appropriate to improve the effectiveness of the Regulation.

2. REVIEW OF THE IMPLEMENTATION OF THE EMAS REGULATION

As part of the review process of the EMAS Regulation, the Commission has co-funded an EU study which provides an assessment of the status of the implementation of the EMAS Regulation in the Member States¹.

Extensive consultations with EMAS stakeholders have also been carried out, involving

- industry
- managers of experimental applications of EMAS outside the industry sector
- accredited environmental verifiers
- accreditation bodies
- SMEs
- NGOs
- trade unions
- competent bodies
- product experts
- participants of the project "Euromanagement-Environment" of DG XXIII's
- Member States.

The review process has identified the areas in which the Regulation needs to be improved.

- ***Rigour and credibility of EMAS***

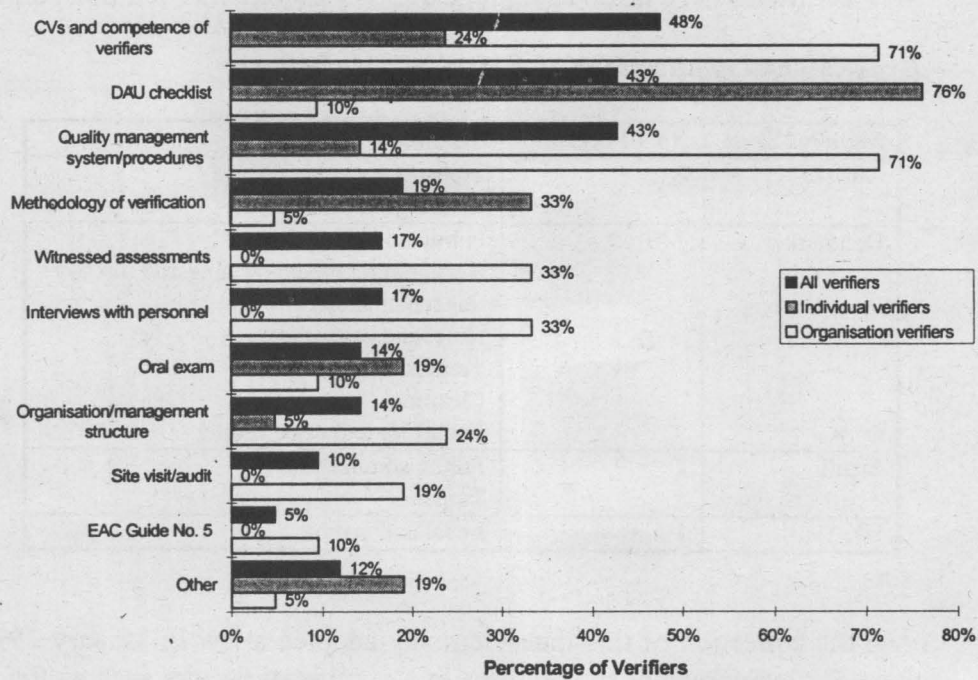
Within the EMAS Regulation, the rigour and credibility are ensured through the action of the accreditation body and the competent body which are required to be established by Member States.

- *The accreditation body*

The accreditation body is in charge of granting accreditation to environmental verifiers. Accreditation is the process by which the competence of a candidate verifier is assessed on the basis of the general principles listed in Annex III of the EMAS Regulation and the detailed criteria defined by the accreditation body. It is key to the overall credibility of EMAS to ensure the competence of verifiers at technical, legal and environmental management level. Accreditation also ensures the independence of the verifiers. There is evidence¹ that accreditation bodies act rigorously, using a whole range of means to assess the candidate such as oral examination, witnessed assessments and analysis of documents as illustrated in the graph below.

¹ An assessment of the implementation status of Council Regulation No 1836/93 Eco-Management and Audit Scheme 28/02/1998-Imperial College Centre for Environmental Technology

Means used by accreditation bodies when assessing the ability of candidates to become accredited verifiers



In addition, the accreditation bodies ensure the continuing competence of accredited verifiers through regular supervision.

— *The competent body*

The competent body is responsible for registering sites in compliance with EMAS requirements. The competent body however is not simply a passive registration organisation in EMAS. It has a role to play in ensuring that the site requesting registration complies with the EMAS requirements as well as with environmental legislation, through contact with the enforcement authority. This active role is demonstrated by the fact that competent bodies from three Member States have refused to register sites because of non-compliance with relevant environmental legislation². According to the latest information available to the Commission 17 sites have been refused for this reason. This clearly illustrates that registration is not an automatic procedure.

The practical implementation of these requirements of the EMAS Regulation by Member States has generally been effective. However, their effectiveness could benefit from a larger dissemination of best practice and from consistency in implementation in Member States. This is to be achieved by setting up a forum of accreditation bodies and a forum of competent bodies in order to provide for a common understanding and application of the requirements of the Regulation. Articles 4 and 5 introduce these two fora in the new EMAS Regulation.

² See footnote 1.

• **Scope of the EMAS Regulation**

EMAS is only available to sites in the industrial/manufacturing sector, although according to Article 14 of the EMAS Regulation Member States can apply provisions analogous to EMAS to sectors outside industry. A number of Member States have taken advantage of this possibility as outlined below³.

Experimental applications of EMAS outside industry

Member State	No. of Sectors	Sectors
Austria	2	Transport Banking
Denmark	7	Public bodies Horticulture, mixed farming and forestry Car repair shops Hotel and restaurants Transport Cleaning Laundries and dry cleaning
Spain	2	Public administration Tourism
UK	1	Local authorities

Since the collection of this data Germany adopted a law in January 1998 which allows for experimental applications in a number of sectors such as the financial sector, the retail trade and sporting activities. Sweden and Finland are carrying out some projects, in particular in ministries, forestry, transport.

In addition, five pilot projects have been co-financed by the Commission to test both the interest of the sectors concerned and to identify those areas of the existing Regulation which need to be changed to accommodate new sectors.

These pilots have applied to

- the transport sector (airports)
- the tourism sector
- the water supply sector
- the education sector (universities)
- the retail and wholesale sector.

Experience from the implementation of EMAS and from pilot schemes in new sectors has highlighted a number of issues concerning the restricted scope of EMAS.

³ See footnote 1.

Thus,

- All the pilot schemes show demand exists for EMAS outside the industry sector.
- Many organisations outside the industrial/manufacturing sector have significant environmental impacts.
- Environmental management systems are equally applicable to all sectors.
- The site-based approach of EMAS and the emphasis placed by EMAS on the management of direct environmental effects generated by the site's operation is not applicable in some sectors. The non-industry sector is characterised by indirect environmental impacts and non-site based operation.
- There is a need to include key service providers in the Scheme, such as financial institutions, in order to improve their understanding of the process.
- The supply chain pressure is greatly reduced if parts of the supply chain are excluded from participation.

In order to resolve these issues EMAS should be open to participation of all economic sectors. Article 3 allows for this.

- ***Relationship between EMAS and ISO***

EMAS requires participating industrial sites to establish an environmental management system (EMS). When EMAS was adopted, no international EMS standards existed. However, on 1 September 1996 the International Organisation for Standardisation adopted ISO 14001 as the international EMS standard, three years after the entry into force of EMAS.

This standard is applicable world-wide and open to participation by all economic sectors. ISO 14001 therefore has a broader scope than EMAS in terms of geographical and sectoral coverage. It is the result of international consensus and thus represents a significant achievement in the field of EMS. It does not however fulfil all the requirements of EMAS, in particular the publication of an environmental statement. Since its adoption, in September 1996, it has been possible to use ISO 14001 as a building block of EMAS.

On 16 April 1997, the Commission adopted a Decision which recognises those elements of ISO 14001 equivalent to the corresponding EMAS requirements. The purpose of this Decision is to allow companies to use an existing ISO 14001 certificate as a stepping stone towards EMAS registration and thus avoid duplication of work. Given that EMAS and ISO 14001 were drafted at different times and by different committees, it is not surprising that differences exist in the EMS requirements. This has caused confusion in the market and in some cases has led to the perception that EMAS and ISO 14001 are competitors. Having to choose between ISO 14001 and EMAS will only diminish the overall level of participation. To this end ISO 14001 will be introduced as the management system requirements of EMAS. Annex I covers this.

In order to ensure a continuing compatibility between ISO 14001 and EMAS, it is important that the Commission can react quickly to international developments in the field of environmental standards. To this end, the Committee described in Article 14 is a management Committee type II a.

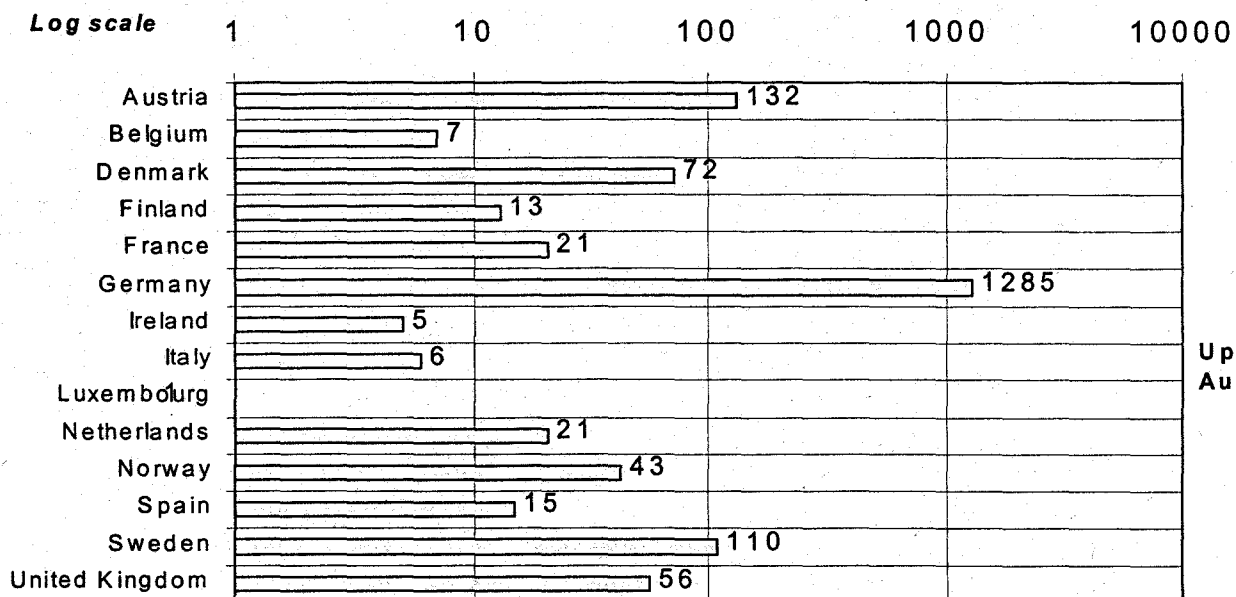
- *Involvement of employees*

The involvement of employees is a key element in the successful implementation of EMAS. The EU study showed clearly that one of the main benefits generated by EMAS is improved employee morale as shown in the graph presented page 13. This example of good practice is recognised by all stakeholders, particularly ETUC and UNICE. The involvement of employees should therefore be a requirement in the revision of EMAS. The introduction of this provision in Article 1 regarding the objectives of EMAS will ensure that a higher profile is given to employees in the implementation of EMAS.

- *Consistency of the implementation of EMAS in the Member States*

By the end of August 1998, there were 1787 registered sites, representing a geographical coverage of 14 countries - 13 Member States and Norway -. However, the level of EMAS participation in the Member States differs as shown in the table below.

NUMBER OF REGISTERED SITES BY MEMBER STATE



This unbalanced geographical coverage is due to a number of reasons which include

- *The time taken by Member States to set up the national structures required by the EMAS Regulation.*

The period between July 1993 and April 1995 was designed for the setting up by Member States of the two national structures necessary for companies to participate in EMAS, the competent body and the accreditation body.

This essential procedural stage has been completed at different speeds by the Member States, in some cases longer than the time allowed by the Regulation. The direct consequence was that it was impossible for industry to join EMAS, irrespective of its interest in the Scheme.

At the moment, the required structures are still missing in Portugal and Greece where industry is expressing its interest for EMAS directly to Commission services. Legal procedures under Article 169 of the Treaty are ongoing against Portugal and Greece.

- *The type of structures chosen by Member States to fulfil the EMAS obligations, in particular that of the competent body.*

Article 18 of the EMAS Regulation allows Member States a degree of discretion in designating the competent body. Thus, some Member States have chosen a decentralised approach, as in the case of Spain and Belgium where there is more than one competent body, on the basis of the regional divisions. In Germany, the political decision was made to keep the competent body as close as possible to businesses and thus 44 Chambers of Industry and Commerce and 21 Chambers of Skilled Craftsman have been designated as competent bodies for the purpose of EMAS. This link with business has been well received by industry. In the case of France however, the link between the competent body and the inspection authority has caused industry to fear a potential increase in control of industrial sites and thus to question the voluntary nature of EMAS.

- *The commitment from Member States themselves towards EMAS.*

In the case of the UK or the Netherlands, British standard BS 7750, which predates EMAS, represented a direct competition to EMAS. Where a multiplicity of schemes exists the level of participation in any one scheme will of course be reduced. In addition, when the national standards British, Irish and Spanish were withdrawn, companies with a national certificate upgraded their certificate to an ISO 14001 one, thus contributing to an artificially quick uptake of ISO 14001.

The principle of subsidiarity which is embodied in EMAS allows Member States to implement some requirements of the Regulation in line with their particular situations. Thus the Regulation cannot dictate how national implementations should be addressed, however it can provide for Member States to come to a common understanding of the implementation of the Regulation. The means to achieve this consistency have been established under Articles 4 and 5 by establishing a forum of competent bodies and a forum of accreditation bodies.

- ***Visibility of EMAS participation***

The study also indicates that benefits to be generated by the reporting aspect of EMAS - the environmental statement - have not yet been fully achieved. The success of EMAS depends to a large extent on the degree of awareness of the Scheme among the public and other stakeholders.

To achieve greater recognition of participation in EMAS, companies registered in the Scheme suggested the adoption of a logo. This logo could be used in conjunction with the environmental statement and hence be associated with the provision of credible information on environmental performance. The introduction of a logo is covered in Article 8.

The responsibility for promoting EMAS rests with a number of different bodies, Member States, participating companies and the Commission. Member States have responsibilities within the Regulation for the promotion of the Scheme which include

- *The provision of information to the public.*

To date the effectiveness of this has been variable. Member States have used different methods, such as dissemination of brochures and organisation of seminars, with varying degrees of success.

- *The promotion of EMAS to companies, particularly SMEs.*

The degree of success is variable in Member States. Different organisations are used as channels of promotion, mainly chambers of commerce, sectoral associations, competent bodies and ministries.

It is interesting to note that those Member States which use local bodies such as chambers of commerce as the competent bodies and to promote EMAS have the largest uptake in terms of EMAS registrations, as in the case of Germany.

Participating companies have a responsibility in the promotion of EMAS particularly with regard to supply chain management. This provides another mechanism through which to increase awareness about the Scheme by involving a larger number of companies, many of which will be SMEs.

The Commission is responsible for ensuring that there is a consistent message concerning registration, procedures and direct benefits of participation in EMAS. These principles on communication are covered in Article 10.

3. OBJECTIVES OF THE REVISION

The objectives of the Proposal put forward are to

- increase the potential of EMAS to make a contribution to sustainable development,
- rationalise the relationship between EMAS and the international standards in the field of environmental management,
- enhance the involvement of employees,
- increase the visibility of participation in EMAS for businesses,
- increase the consistency of the implementation of EMAS across the Member States.

4. MAIN ELEMENTS OF THE PROPOSAL

In order to fulfil the above objectives, the Commission proposes, with reference to the 93/1836/EEC Regulation, to

- open the scope of the EMAS Regulation to cover all organisations with significant environmental effects, direct and indirect, in order to maximise the market drivers for the Scheme as well as providing maximum coverage of significant environmental impacts (Article 3);
- include ISO 14001 as the EMS requirement of EMAS in order to send a clear message to potential participants that moving from ISO 14001 to EMAS would not require any duplication of work (Annex I A);
- change the Committee described in Article 19 to a management Committee type II a. This will ensure a continuing compatibility between ISO 14001 and EMAS by allowing the Commission to react quickly to international developments in the field of environmental standards. This will also allow EMAS to adapt quickly to stakeholders and market needs (Article 14);
- include the requirement for participating organisations to involve their employees in the implementation of EMAS (Article 1);

- increase the participation of SMEs by developing a set of supporting tools for them, such as
 - issuing guidance to verifiers in order to ensure that they understand the culture of SMEs and thus ensure that their checks are proportional to the requirements of SMEs whilst fulfilling the objectives of EMAS, (to be developed by the Commission).
 - encouraging Member States to take the measures falling under their competence, such as reducing or waiving any registration fees they levy on participating SMEs (Article 10.1);
- encourage Member States to use the potential of EMAS participation in the implementation and control of environmental legislation (Article 10.2);
- adopt a visible and recognisable logo in order to assist the promotion of EMAS and to provide organisations with a means to easily advertise their participation (Article 8);
- develop a promotional strategy shared between Member States and the Commission (Article 11);
- increase the follow-up of the improvements of the environmental performance carried out by organisations through more regular verification and reporting (Annex V);
- ensure compliance with the requirements of EMAS by increased verification frequency and strengthened supervision of the work performed by verifiers (Annex V);
- enhance the added value of EMAS compared to other EMS (Annex I B);
- ensure the consistency of implementation of the Regulation across Member States by setting up a forum of accreditation bodies and a forum of competent bodies in order to provide for a common understanding and application of the requirements of the Regulation. These fora would also facilitate the dissemination of best practice (Articles 4 and 5).

5. SUBSIDIARITY

The adoption of EMAS at Community level was necessary to ensure a level playing field within the Single Market. The lack of a European scheme may have resulted in the establishment of national schemes which could potentially have been incompatible. Such a situation would have had repercussions for the Single Market.

This Proposal does not alter the situation with regard to the internal market and continues to respect the principles of subsidiarity by leaving the technical implementation of EMAS to the Member States through the functioning of the competent bodies and accreditation bodies.

The effectiveness of EMAS in contributing to better environmental performance of European companies is thus ensured whilst the measures that can be adequately performed at national level are left to the Member States.

6. POSITION OF STAKEHOLDERS

A wide range of consultations have been carried out with EMAS stakeholders. There is general agreement on the main elements of this Proposal. However, some reservations have been expressed regarding specific issues. Germany has concerns regarding the credibility of extending the Scheme to all economic operators. Industry has concerns regarding increased costs associated with more frequent surveillance and NGOs have concerns over the use of ISO 14001 as a replacement for the initial environmental review. All of these concerns have been addressed in the text of the proposed revision as shown in attachment 1.

7. ECONOMIC ASSESSMENT

The EMAS Regulation is a voluntary instrument, which defines an environmental management system, but does not prescribe the environmental objectives and improvements to be reached by a company. It is therefore not possible to perform a traditional cost/benefit analysis. However, the review process provides some insights on the costs and benefits that can be generated by the implementation of EMAS.

• *Costs*

The costs encountered by economic operators in the implementation of EMAS are of two types, internal and external.

The external costs related to the participation in the Scheme include

- the cost of verification, which is market-regulated;
- the cost of registration, which is set by the Member States.

A zero cost is applied by some Member States, as in the case of France, the UK, Belgium and Spain. In other countries the cost may vary according to different factors, such as the size of site, the national enforcement policy and administrative costs as illustrated below⁴.

Cost of registration

Member States	Total cost (ECU-30.11.97)	Breakdown of costs	Variation in costs	Average cost (ECU)
Austria	506	None	None	
Germany	229 to 877	See table below	Yes	413
Denmark	267	134 registration 134 annually	None	Not applicable
Finland	1015 to 1691	1015 to 1691 registration 169 annually	Yes, <50 employees pay 1015, all others pay higher rate. All	Not available

⁴ See footnote 1.

Sweden	1165 to 24240	1165 to 24240 registration fee annually = 291 to 6060	25% of registration fee	pay same annual fee Yes	2913 registration fee, 728 annual fee
Germany - Breakdown of costs	Little administrative effort (ECU)	Average administrative effort (ECU)	Significant administrative effort (ECU)		
small enterprise <50 employees	229	392	554		
Medium enterprise 50 to 250 employees	392	554	712		
Large enterprise >250 employees	554	712	877		

In addition, the company may also incur internal costs in order to implement an effective environmental management system. These costs may cover technical assistance and the implementation of specific measures to improve the industrial process. These costs vary with the size of the company, the production process and the initial level of environmental performance of the company.

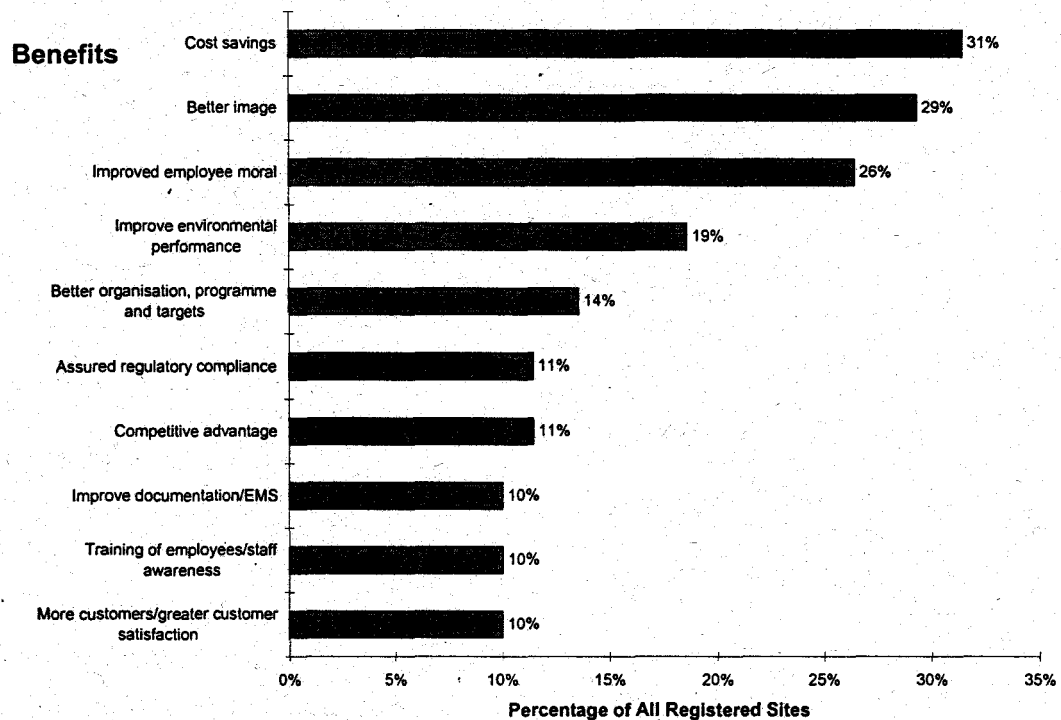
However, over a period of three years, evidence shows that the average pay back period for companies having implemented EMAS is 18 months, taking account of in performance improvements as well as direct cost reductions generated by participation in the Scheme.

- **Benefits**

Experience with the practical implementation of EMAS over a period of three years provides insight into the direct benefits generated by EMAS participation. The benefits identified by companies are shown below⁵

⁵ See footnote 1.

Benefits identified by participating sites



In addition, other benefits of EMAS participation are beginning to become visible. These include

- reduced insurance premiums and improved access to loans at more favourable conditions,
- a decrease in fines,
- increased market shares.

These benefits provide clear evidence that the implementation of an effective environmental management system can contribute to sustainable production. They also show that improved environmental performance can go hand in hand with enhanced competitiveness through the EMAS process.

8. IMPACT ON SMEs

The larger part of economic operators in the European Union are SMEs which contribute to 65% of the EU GNP. As a whole they play an important part in the economy of the EU and contribute considerably to the impact of industrial activity on the environment. In a number of sectors where EMAS is applicable, SMEs represent the largest proportion of operators, as in the case of the manufacture of food products and beverages and the manufacture of fabricated metal products.

With 47% of EMAS registered sites having less than 250 employees, the participation of SMEs in EMAS is good but could be improved.

Widespread participation of SMEs in EMAS would in addition have a substantial effect on the environmental performance of industry as a whole in the EU.

However, it must be noted that, while SMEs may face specific difficulties linked to the lack of financial, technical and human resources, available evidence suggests that there are no intrinsic characteristics of the Scheme which inhibit SME participation.

Difficulty in understanding the Scheme is a good indicator of barriers that may be presented to participation. According to available information, 35% of all registered sites considered no element of EMAS difficult to understand. This percentage is of 62% in the specific case of small sized enterprises.

The specific impact this Proposal intends to have on SMEs is to increase the support provided to them as covered in Article 10. In addition other practical means can be adopted to assist SMEs.

– *Development of business co-operation*

Large companies can play a decisive role in promoting the number of SMEs participating in EMAS by sharing the knowledge and resources they have in environmental management systems.

– *Reduction of administrative procedures*

The simplification of administrative procedures, in particular documentation requirements, necessary to obtain an EMAS registration should make SME participation easier. The most effective means by which this can be achieved is to ensure that accredited verifiers are fully aware of the special circumstances of SMEs and take them into account upon verification. In addition Member States should consider the use of EMAS as a tool to fulfil certain regulatory requirements, an element which would be of particular relevance to SMEs. The rationale behind this would be to avoid any unnecessary burden whilst ensuring the added value of EMAS implementation.

– *Provision of support to SMEs*

SMEs can be encouraged to participate in EMAS by providing them with specific technical and financial assistance measures.

9. PROMOTION

As a result of its voluntary nature, EMAS has to be treated differently to the traditional mandatory Regulation. In effect EMAS can be seen as a “product” of the European Community and should be marketed to the target audience in the same manner as any other product. The main target audience for EMAS consists of organisations with significant environmental effects, which will implement the Scheme and publish an environmental statement. However, the decision to participate will be influenced by a variety of stakeholders. The general public, NGOs, customers and regulators will all have a significant influence on the decision of organisations whether to participate in EMAS or not.

The challenge for EMAS is to be a product that is recognised, understood and accepted by its target audience, whilst also ensuring that those actors who will influence the target audience appreciate the benefits of the Scheme and will apply pressure on the target audience to participate in EMAS.

It is important to ensure that the position of EMAS is clearly understood. Up to now the perception has been that ISO 14001 and EMAS are in competition. Data suggests that although some companies have gained both EMAS registration and ISO certification, over half have chosen only EMAS registration even though the requirements of ISO 14001 are covered by EMAS. This situation is more common for SMEs. This suggests that the two schemes are not seen as complementary and that a choice between the two has to be made.

It is therefore important that EMAS is seen as “going beyond” ISO 14001. It would then be perceived as a progression from ISO certification, adding credibility to the system elements of ISO 14001 with the addition of legal compliance, performance improvement and external communication. There is a clear market opportunity here as has been demonstrated in the field of Quality Management (ISO 9001). The major question asked by ISO 9001 certified companies is “where do I go now?”. In the field of environmental management EMAS can fill this gap. With this market positioning, EMAS as “going beyond” ISO would have more credibility.

The successful promotion of EMAS implies that the key messages reach the target audiences. This will require partnerships between the key actors, the Commission, Member States and participating organisations. The key messages should be developed by the Commission and disseminated to the Member States. Member States should be responsible for the promotion of these messages to the stakeholders and the general public. In addition the Commission should work in partnership with economic operators to ensure that the benefits of EMAS are promoted through the supply chain, using traditional customer/supplier relations.

These partnerships between participating organisations, Member States and the Commission should ensure that the key messages reach the target audiences using traditional public relations methods such as

- Presentation in seminars and conferences,
- Promotion of business partnerships between large and small companies,
- Developments of key messages for Member States,
- Development of electronic communication such as a Web-site,
- Preparation of articles for publication in trade and other journals.

10. CONCLUSIONS

The proposed changes are essential to drive EMAS to increase its contribution to sustainable development and to maintain the potential of such a market-based instrument, in order to effectively complement the command-and-control approach of environmental policy.

The main elements of the Proposal which will contribute to this are

- extension of the scope of EMAS to organisations with significant environmental effects;
- integration of ISO 14001 as the EMS requirements of EMAS;
- involvement of employees in the implementation of EMAS;
- increase in the participation of SMEs by developing a set of supporting tools;
- adoption of a visible and recognisable logo;
- increase in the follow-up of the improvements of the environmental performance carried out by organisations;
- enhancement of the added value of EMAS compared to other EMSs;
- promotion of the consistency of implementation of the Regulation across Member States.

11. CONTENTS OF THE PROPOSAL

Article 1 concerns the objectives of EMAS. It introduces the concept of organisation as the basis for EMAS registration. It is a direct consequence of the widening of the scope of EMAS from the industry sector to all activities having significant environmental effects. In addition, Article 1 introduces that employees are part of the successful implementation of EMAS and key components for achieving the aim of continuous improvement of the environmental performance of the organisation.

Article 2 provides the definitions of the phrases used in EMAS.

Article 3 presents the different steps required from organisations for the implementation of EMAS in a logical and usable way.

Article 4 defines the role of the Commission in ensuring that the requirements concerning verifiers and their supervision are applied consistently across the Member States. It introduces a forum of accreditation bodies as a practical means for ensuring that all the issues related to the environmental verifiers are considered on an equal basis in the Member States.

Article 5 defines the role of competent bodies in the framework of ensuring the consistency of registration. It introduces a forum of competent bodies as a practical means to achieve this.

Article 6 defines the way in which competent bodies should handle requests for registration. The intent is to ensure that organisations are treated on an equal basis in the different Member States and have some certainty on the criteria applied to registration.

Article 7 introduces a harmonised frequency in the communication of registration and accreditation from Member States to the Commission.

Article 8 introduces a logo to be used by EMAS registered organisations in order to communicate to the public and their other stakeholders. It will be a more efficient tool for visibility than the previous statement of participation. It embodies safeguards concerning the use of the logo in order to avoid misleading use of it.

Article 9 includes the latest developments in the standardisation field and aims to accommodate any future developments by standardisation bodies. In addition, it details what organisations have to demonstrate when they are making use of this Article.

Article 10 details the support and recognition to be given to organisations, in particular to SMEs to ensure that participation in EMAS is adequately promoted.

Article 11 emphasizes the importance of information regarding EMAS and defines the respective roles of the Member States and the Commission.

Article 12 requires Member States to set up procedures in case of infringements of the provisions of the EMAS Regulation.

Article 13 provides for technical adaptation of the annexes of the Regulation to face needs for clarification in the implementation requirements of EMAS.

Article 14 defines the Committee responsible for managing the Regulation.

Article 15 introduces an opportunity for the Regulation to be revised and to take into account the developments that will arise from the experience with the amended Regulation.

Article 16 defines the costs and fees associated with the EMAS Regulation.

Article 17 details the transition measures from the 93/1836/93 EMAS Regulation to the new Regulation.

Article 18 provides for the entry into force of this Regulation.

Annex I A allows for the International standard ISO14001 to be used as the EMS requirement for EMAS.

Annex I B covers the element specific to EMAS which shall be delivered by the EMS set up according to ISO 14001.

Annex II details the functioning of the internal audit.

Annex III defines the requirements for the environmental statement to enable participating companies to better target their information.

Annex IV defines the characteristics of the logo.

Annex V details the requirements concerning the competence and supervision of the environmental verifiers in order to take into account the extension of the scope to new sectors as well as enhancing the credibility of the activities performed by verifiers.

Annex VI provides information to help organisations in the identification and assessment of their environmental aspects, in particular in the context of extension of EMAS outside the industry sector.

Annex VII provides support to organisations in conducting their environmental review, listing the issues to be considered when building an effective EMS.

Annex VIII standardises the information to be provided by the organisation during the registration process with the objective of gathering harmonised data, allowing comparison across Member States.

Attachment I

Position of stakeholders

Main issues of the Proposal	Objective of the elements proposed	Position of EMAS stakeholders and potential remarks	Article addressing the main issues
Extension of the scope of EMAS	Allow all economic activities having significant environmental impacts to use EMAS to improve their environmental performance.	No objection.	Article 3
Compatibility of EMAS with ISO 14001	Increase the compatibility between EMAS and ISO 14001 where they overlap in order to avoid companies having to build two Environmental Management Systems. To be achieved by including ISO 14001 as the Environmental Management System component of EMAS.	Agreement of all the stakeholders provided the added value of EMAS is ensured and strengthened.	Annex I A and Annex I B
Employees involvement	Ensure that organisations implementing EMAS provide their employees with training on the environmental impacts of their tasks and allow them to contribute actively to the implementation of EMAS on an interactive basis.	Agreement of all the stakeholders for introducing this element in the Article concerning the objectives of EMAS.	Article 1
Support and incentives for SMEs	Ensure that practical means are put in place in order to allow for the implementation of EMAS for all sizes of business.	Agreement of all the stakeholders.	Article 10
Logo	Design a more visible sign of EMAS participation.	Agreement of all the stakeholders. Need to ensure that the use of the logo is not misleading and is not confused with the eco-labelling scheme. Practical details to be explored on the basis of these principles.	Article 8 and Annex IV
Promotional strategy on EMAS	Ensure that EMAS, as a voluntary instrument, benefits from consistent information and promotion measures across Member States.	Agreement of all the stakeholders.	Article 11

Cycle of verification	Enhance the credibility of EMAS by changing the length of the cycle of external verification from 3 years maximum to yearly verification.	Agreement of most of the stakeholders. Germany in favour of a maintained cycle of three years maximum. UEAPME and Austria in favour of a flexible approach (1 year with exceptions) to be defined through guidelines, in particular for SMEs.	Article 3.2
Environmental statement	Strengthen the quality and use of the statement, which is the external communication element of EMAS. Enhance the interface between stakeholders and organisations participating in EMAS.	Agreement of all the stakeholders.	Annex III
Competence of the verifiers	Ensure the competence and the monitoring of verifiers in order to provide for the overall credibility of the EMAS. To be achieved by defined criteria of competence and in creased supervision of verifiers.	Agreement of all the stakeholders. Germany in favour of the supervision of verifiers on a 3 year basis.	Annex V
Consistency between Member States	Ensure that EMAS is applied in the same way in all the Member States. To be achieved with the support of two technical fora gathering accreditation and competent bodies.	Agreement of all the stakeholders. Number of meetings of the two fora not to be too prescriptive in the Regulation. Mandate of the fora to be clearly defined.	Articles 4 and 5
Definition of organisations/sites	Modify the existing site-based registration to encompass all types of economic activities following the extension of the scope of EMAS and to be compatible with ISO 14001.	Agreement of all the stakeholders provided the entity covered by the EMAS implementation is clearly defined in the environmental statement and agreed with the environmental verifier.	Article 2

**PROPOSAL FOR A
COUNCIL REGULATION
ALLOWING VOLUNTARY PARTICIPATION BY ORGANISATIONS IN
A COMMUNITY ECO-MANAGEMENT AND AUDIT SCHEME**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130 S (1) thereof,

Having regard to the Proposal from the Commission,

Having regard to the Opinion of the Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 189c of the Treaty in cooperation with the European Parliament,

Whereas Article 2 of the Treaty stipulates that the Community shall have among its tasks to promote throughout the Community sustainable growth and the Council resolution of February 1993¹ stresses the importance of such sustainable growth;

Whereas the programme 'Towards Sustainability', presented by the Commission and approved as to its general approach by the Council resolution of 1 February 1993, underlines the role and responsibilities of companies, both to reinforce the economy and to protect the environment throughout the Community;

Whereas the programme 'Towards Sustainability' calls for broadening the range of instruments in the field of environmental protection and for using market-mechanisms to commit organisations to adopt a pro-active approach in this field beyond compliance with all relevant regulatory requirements regarding the environment;

Whereas Council Regulation 93/1836/EEC allowing voluntary participation by companies in the industrial sector in a Community eco-management and audit scheme (EMAS) demonstrated its effectiveness in promoting improvements of the environmental performance of industry;

Whereas EMAS should therefore be made available for all organisations having significant environmental impacts, providing a means for them to manage these significant impacts and to improve their overall environmental performance;

Whereas the experience gathered from the implementation of Council Regulation 93/1836/EEC shall be used to enhance the ability of EMAS to bring about improvement of the overall environmental performance of organisations;

Whereas, in conformity with the principle of subsidiarity and the principle of proportionality referred to in Article 3b of the Treaty, the effectiveness of EMAS in contributing to better environmental performance of European organisations is to be

¹ O.J. no. C 138 of 17.5.1993, p. 1-4

achieved at Community level; whereas this Regulation limits itself to ensuring an equal implementation of EMAS throughout the Community by providing for common rules, procedures and essential requirements regarding EMAS whilst the measures that can be adequately performed at national level are left to the Member States;

Whereas organisations should be encouraged to participate in EMAS on a voluntary basis and should gain added value in terms of regulatory control, cost savings and public image;

Whereas it is important that small and medium-sized enterprises participate in EMAS and that their participation should be promoted by establishing or promoting technical assistance measures and structures aimed at providing such organisations with relevant expertise and appropriate support;

Whereas the information provided by Member States shall be used by the Commission to assess the need for developing specific measures aimed at greater participation in EMAS by organisations, in particular small and medium-sized enterprises;

Whereas the transparency and credibility of organisations implementing environmental management systems are enhanced when their management system, audit programme and environmental statement are examined to verify that they meet the relevant requirements of this Regulation and when the environmental statement and its subsequent updates are validated by accredited environmental verifiers;

Whereas it is therefore necessary to ensure the competence of the environmental verifiers by providing for an independent and neutral accreditation system and an appropriate supervision of their activities in order to ensure the overall credibility of EMAS;

Whereas organisations should be encouraged to produce and make publicly available periodic environmental statements providing the public and other stakeholders with information on their environmental performance;

Whereas the Commission should, according to a Community procedure, adapt the Annexes to this Regulation, recognise European and international standards for environmental issues of relevance to EMAS and establish guidelines in partnerships with EMAS stakeholders for ensuring a consistent implementation of the EMAS requirements across the Member States;

Whereas this Regulation should be revised in the light of experience gained after a certain period of operation,

HAS ADOPTED THIS REGULATION

Article 1

The eco-management and audit scheme and its objectives

1. A Community scheme allowing voluntary participation by organisations hereinafter referred to as EMAS, is hereby established for the evaluation and improvement of the environmental performance of organisations and the provision of the relevant information to the public and other stakeholders.
2. The objective of EMAS shall be to promote continual improvements in the environmental performance of organisations by:
 - (a) the establishment and implementation of environmental management systems by organisations;
 - (b) the systematic, objective and periodic evaluation of the performance of such systems;
 - (c) the provision of information of environmental performance to the public and other stakeholders;
 - (d) the involvement of employees.
3. EMAS shall be without prejudice to Community law or national laws or technical standards regarding environmental controls not governed by Community law and without prejudice to the duties of organisations under those laws and standards.

Article 2

Definitions

For the purposes of this Regulation:

- (a) *environmental policy* shall mean the organisations' overall aims and principles of action with respect to the environment including compliance with all relevant regulatory requirements regarding the environment;
- (b) *environmental review* shall mean an initial comprehensive analysis of the environmental issues, impact and performance related to activities of an organisation;
- (c) *environmental aspect* shall mean an element of an organisation's activities, products or services that can interact with the environment.

NOTE—A significant environmental aspect is an environmental aspect that has or can have a significant environmental impact.

- (d) *environmental impact* shall mean any change to the environment, whether adverse or beneficial, wholly or partially resulting from an organisation's activities, products or services;
- (e) *environmental programme* shall mean a description of the organisation's specific objectives and activities to ensure greater protection of the environment of an organisation including a description of the measures taken or envisaged to achieve such objectives and where appropriate the deadlines set for implementation of such measures;
- (f) *environmental objective* shall mean an overall environmental goal, arising from the environmental policy, that an organisation sets itself to achieve, and which is quantified where practicable;
- (g) *environmental target* shall mean a detailed performance requirement, quantified where practicable, applicable to the organisation or parts thereof, that arises from the environmental objectives and that needs to be set and met in order to achieve those objectives;
- (h) *environmental management system* shall mean that part of the overall management system which includes the organisational structure, responsibilities, practices, procedures, processes and resources for determining and implementing the environmental policy;
- (i) *environmental audit* shall mean a management tool comprising a systematic, documented, periodic and objective evaluation of the performance of the organisation, management system and processes designed to protect the environment with the aim of:
 - (i) facilitating management control of practices which may have impact on the environment;
 - (ii) assessing compliance with the environmental policies of the organisation;
- (j) *audit cycle* shall mean the period of time in which all the activities in an organisation are audited;
- (k) *environmental statement* shall mean the information detailed in Annex III 3.2 a-g;
- (l) *organisation* shall mean a company, corporation, firm, enterprise, authority or institution, or part or combination thereof, whether incorporated or not, public or private, that has its own functions and administrations.

The entity to be registered shall be agreed with the verifier taking account of Commission guidance, established in accordance with the procedures laid down in Article 14, but shall not exceed the boundaries of one Member State. Where the organisation constitutes a site this shall be the basis for registration.

- (m) *site* shall mean all land at a distinct geographic location under the management control of an organisation covering activities, products and services. This includes all infrastructure, equipment and materials;

- (n) *auditor* shall mean an individual or a team, belonging to the organisation personnel or external to the organisation, acting on behalf of the organisation's top management, possessing, individually or collectively, the competencies referred to in Annex II paragraph 2.4 and being sufficiently independent of the activities they audit to make an objective judgement;
- (o) *accredited environmental verifier* shall mean any person or organisation independent of the organisation being verified, who has obtained accreditation, in line with the conditions and procedures referred to in Article 4;
- (p) *accreditation system* shall mean a system for the accreditation and supervision of environmental verifiers operated by an impartial institution or organisation designated or created by the Member State, with sufficient resources and competency and having appropriate procedures for performing the functions defined by this Regulation for such a system;
- (q) *competent bodies* shall mean the bodies designated by Member States, in line with Article 5, to perform the tasks mentioned in this Regulation.

Article 3

Participation in EMAS

EMAS is open to any organisation dedicated to improving its overall environmental performance.

1. Registration to EMAS

In order for an organisation to be registered to EMAS it must:

- (a) conduct an environmental review of its activities, products and services in accordance with Annex VII of this Regulation addressing the issues contained in Annex VI and, in the light of the results of that review;
- (b) implement an environmental management system covering all the elements described in Annex I-A of this Regulation. An organisation must also provide for legal compliance, environmental performance improvement and external communication as explained in Annex I-B.

Organisations having a certified environmental management system, recognised according to the requirements of Article 9, do not need to conduct a formal initial environmental review when moving on to EMAS implementation, if the necessary information for the identification and evaluation of the environmental aspects of Annex VI is provided by the certified environmental management system.

- (c) carry out, or cause to be carried out, environmental auditing in accordance with the requirements of Annex II of this Regulation. The audits must be designed to assess the environmental performance of the organisation;

- (d) prepare, in accordance with Annex III 3.2 an environmental statement. The statement should pay particular attention to the performance of an organisation against its environmental objectives and targets;
- (e) have the initial environmental review, if appropriate, management system, audit procedure and environmental statement or extracts of it produced for defined stakeholders, if required by the organisation, examined to verify that they meet the relevant requirements of this Regulation and the environmental statements validated to ensure it meets the requirements of Annex III 3.2;
- (f) forward the validated environmental statement to the competent body of the Member State where the organisation is located and after registration, make it publicly available.

2. Maintenance of EMAS registration

In order for an organisation to maintain registration to EMAS it must:

- a) have the environmental management system and audit programme verified in accordance with the requirements of Annex V 5.6;
- b) forward the yearly validated updates of its environmental statement to the competent body and make them publicly available.

Article 4

Accreditation and supervision of environmental verifiers

1. Member States shall establish a system for the accreditation of independent environmental verifiers and for the supervision of their activities. To this end, Member States may either use existing accreditation institutions, the competent bodies referred to in Article 5 or designate or set up any other body with an appropriate status.

Member States shall ensure that the composition of these systems is such as to guarantee their independence and neutrality in the execution of their tasks.

2. Member States shall ensure that these systems are fully operational within 3 months following the date of entry into force of this Regulation.
3. Member States shall ensure appropriate consultation of parties involved, in setting up and directing the accreditation systems.
4. The accreditation of environmental verifiers and supervision of their activities shall be in accordance with the requirements of Annex V.
5. Member States shall inform the Commission of the measures taken pursuant to this Article and communicate relevant changes in the structure and procedures of the accreditation systems.

6. The Commission shall, in accordance with the procedure laid down in Article 14, promote collaboration between Member States in order in particular to:
 - avoid inconsistency between the criteria, conditions and procedures they apply for the accreditation of environmental verifiers;
 - avoid inconsistency between the procedures and measures they apply for the supervision of environmental verifiers they have accredited;
 - avoid inconsistency between the procedures and measures they apply for the supervision of environmental verifiers accredited in other Member States.
7. Environmental verifiers accredited in one Member State may perform verification activities in any other Member State, according to the requirements laid down in Annex V.
8. A forum, constituted of all accreditation bodies, shall be set up by the accreditation bodies with the aim of providing the Commission with the elements and means to fulfil its obligation under Article 4.6. It shall meet, as necessary, at least twice per year attended by a representative of the Commission.

The forum shall develop guidance on issues in the field of accreditation, competence and supervision of verifiers through developing a common understanding of Annex V requirements. These guidance documents shall be submitted to the procedures laid down in Article 14 of this Regulation.

In order to ensure a harmonised development of the functioning of accreditation bodies and the verification process in all the Member States, the forum shall develop procedures for a peer review process. The aim of the peer review shall be to ensure that the accreditation systems of Member States meet the requirements of this Regulation. A report of the peer review activities will be transmitted to the Commission.

Article 5

Competent bodies

1. Within 3 months of the entry into force of this Regulation, each Member State shall designate the competent body responsible for carrying out the tasks provided for in this Regulation, particularly in Articles 6 and 7 and shall inform the Commission thereof.
2. Member States shall ensure that the composition of the competent bodies is such as to guarantee their independence and neutrality, and that the competent bodies apply the provisions of this Regulation in a consistent manner.

3. Member States shall develop guidelines for suspension and deletion of the registration of organisations, for the use of competent bodies. Competent bodies shall, in particular, have procedures for
 - considering observations from interested parties concerning registered organisations and
 - refusal of registration, deletion or suspension of organisations from registration.
4. The competent body shall be responsible for the registration of organisations to EMAS. It shall therefore control the entry and maintenance of organisations on the register. Refusal of registration, suspension or deletion of organisations from the register shall require the consultation of the appropriate interested parties, in order to provide the competent body with the necessary elements of evidence for taking its decision.
5. Competent bodies from all Member States shall meet, as necessary, at least twice per year attended by a representative of the Commission. The objective of these meetings is to ensure the consistency of procedures relating to the registration of organisations to EMAS. A peer review process shall be put in place by the competent bodies in order for them to develop a common understanding of their practical approach towards registration. A report of the peer review activities will be transmitted to the Commission and made publicly available.

Article 6

Registration of organisations

1. Registration of organisations shall be dealt with by competent bodies on the basis of the following cases:
 - a) If a competent body
 - has received a validated environmental statement and
 - has received a completed form (Annex VIII) from the organisation and
 - has received any registration fee that may be payable under Article 16 and
 - is satisfied, on the basis of evidence received, that the organisation meets all the requirements of this Regulation,it shall register the applicant organisation and give it a registration number. The competent body shall inform the organisation's management that the organisation appears on the register.

b) If a competent body receives a supervision report from the accreditation body which gives evidence that the activities of the verifier were not performed adequately enough to ensure that the requirements of this Regulation are met by the applicant organisation, registration shall be refused until assurance of compliance with EMAS is obtained.

c) If an organisation fails to submit to a competent body, within three months of being required to do so,

- the yearly validated updates of the environmental statement or
- a completed form (Annex VIII) from the organisation or
- any relevant registration fees

the organisation shall be suspended or deleted from the register, as appropriate, depending on the nature and scope of the failure. The competent body shall inform the organisation's management of the reasons for the measures taken.

d) If, at any time, a competent body concludes, on the basis of evidence received, that the organisation is no longer complying with one or more of the conditions of this Regulation, the organisation shall be suspended or deleted from the register, as appropriate, depending on the nature and scope of the failure. The competent body shall inform the organisation's management of the reasons for the measures taken.

e) If a competent body is informed by the competent enforcement authority of a breach at the organisation of relevant regulatory requirements regarding environmental protection, it shall refuse registration of that organisation or suspend it from the register as appropriate.

The competent body shall inform the organisation's management of the reasons for the measures taken and of the process of discussion with the competent enforcement authority.

f) Refusal or suspension shall be lifted if the competent body has received satisfactory assurances from the competent enforcement authority that the breach has been rectified and that satisfactory arrangements are in place to ensure that it does not recur.

2. The competent body shall update any changes in the list of organisations registered to EMAS on a monthly basis.

Article 7

List of registered organisations and accredited environmental verifiers

1. The accreditation systems shall establish, revise and update a list of accredited environmental verifiers in each Member State and shall directly, or via the national authorities as decided by the Member State concerned, communicate changes in this list each month to the Commission.
2. The competent bodies shall establish and maintain a list of registered organisations in each Member States. The competent bodies shall directly, or via the national authorities as decided by the Member State concerned, communicate changes in this list each month to the Commission.
3. The register of accredited environmental verifiers and EMAS registered organisations shall be maintained by the Commission which shall make it publicly available.

Article 8

Logo

1. Organisations participating in EMAS may use the logo detailed in Annex IV. Annex IV shall be completed by the Commission acting in accordance with the procedure of Article 14. The logo can only be used by organisations having a current EMAS registration.

The logo may not be used in any other form than that detailed in Annex IV.

2. The EMAS logo may only be used by organisations in the following circumstances
 - On validated environmental statements,
 - On registered organisation letterheads,
 - On information advertising an organisation's participation in EMAS.
3. The logo may also be used by organisations in conjunction with environmental information related to activities, products and services
 - provided the information is covered in the environmental statement and has been validated by the verifier as:
 - a) Accurate and non deceptive
 - b) Substantiated and verifiable
 - c) Relevant and used in an appropriate context or setting
 - d) Specific and clear as to the particular aspect the claim relates
 - e) Unlikely to result in misinterpretation
 - f) Significant in relation to the overall environmental impact

- and provided that the wording “validated information” is added to the logo as detailed in Annex IV.

4. The logo must not be used in the following cases

- on products or their packaging,
- in conjunction with comparative claims concerning products, activities and services,
- on adverts for products, activities and services.

Article 9

Relationship with European and international standards

1. Organisations implementing, European or international standards for environmental issues relevant to EMAS and certified, according to appropriate certification procedures, as complying with those standards shall be considered as meeting the corresponding requirements of this Regulation, provided that:

- (a) the standards are recognised by the Commission acting in accordance with the procedure laid down in Article 14;
- (b) the accreditation granted to the certification body is recognised by the Commission acting in accordance with the procedure laid down in Article 14.

The references of the recognised standards (including the relevant sections of EMAS to which they apply) and recognised accreditation shall be published in the *Official Journal of the European Communities*.

2. To enable such organisations to be registered to EMAS, the organisations concerned must demonstrate to the verifier only compliance with requirements not covered by the recognised standards.

Article 10

Promotion of organisations' participation, in particular of small and medium-sized enterprises

1. Member States shall promote organisations' participation in EMAS and shall, in particular, consider the need to ensure the participation of small and medium-sized enterprises (SMEs) by
- facilitating the access to information, to support funds and to public structures,
 - establishing or promoting technical assistance measures, especially in conjunction with initiatives from appropriate professional or local points of contact (e.g. local authorities, chamber of commerce, trade association).

In order to promote participation of SMEs concentrated in well defined geographical areas, local authorities, in participation with industrial associations, chambers of commerce and interested parties may provide assistance in the identification of significant environmental impacts associated with that area. SMEs may then use these in defining their environmental programme and setting the objectives and targets of their EMAS management system.

2. Member States shall consider how registration to EMAS according to this Regulation may be used in the implementation and control of environmental legislation in order to avoid unnecessary duplication of efforts by both organisations and competent enforcement authorities.
3. Member States shall inform the Commission of the measures taken under this Article.
4. The Commission shall promote a coherent approach between the legislative instruments developed at Community level in the field of environmental protection.

Article 11

Information

1. Each Member State shall ensure that:

- organisations are informed of the content of this Regulation,
- the public is informed of the objectives and principal components of EMAS.

Member States shall in particular use professional publications, local journal, promotion campaign or any other functional means to deliver a general awareness-level on EMAS.

2. Member States shall inform the Commission of the measures taken under this Article.
3. The Commission shall be responsible for promoting EMAS at Community level.

Article 12

Infringements

Member States shall take appropriate legal or administrative measures in case of non-compliance with the provisions of this Regulation and communicate these measures to the Commission.

Article 13

Annexes

The Annexes to this Regulation shall be adapted by the Commission, acting in accordance with the procedure of Article 14 in the light of experience gained in the operation of EMAS and in response to identified needs for guidance on EMAS requirements.

Article 14

Committee

1. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set in that Article. The chairman shall not vote.
3. (a) The Commission shall adopt measures which shall apply immediately.

(b) However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event:
 - The Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication;
 - The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph.

Article 15

Revision

The Commission shall review EMAS in the light of the experience gained during its operation and international developments no later than five years after its entry into force, and shall, if necessary, propose to the Council the appropriate amendments.

Article 16

Costs and fees

1. A system of fees in accordance with modalities established by Member States may be set up for the administrative costs incurred in connection with the registration procedures for organisations and the accreditation and supervision of environmental verifiers and the costs of EMAS.
2. Member States shall inform the Commission of the measures taken under this Article.

Article 17

Repeal of Regulation 93/1836/EEC

1. Regulation 93/1836/EEC shall be repealed at the date of entry into force of this Regulation.
2. Accreditation systems and competent bodies set up pursuant to Regulation 93/1836/EEC shall remain in force. Member States shall modify the procedures followed by accreditation systems and competent bodies under the corresponding provisions of this Regulation. Member States shall ensure that these systems are fully operational within 3 months following the date of entry into force of this Regulation.
3. Environmental verifiers accredited according to Regulation 93/1836/EEC may continue to perform their activities according to the requirements established by this Regulation.
4. Sites registered according to Regulation 93/1836/EEC will remain on the EMAS register. The new requirements of this Regulation applicable to organisations shall be checked at the time of the next verification.

Article 18

Entry into force

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

It shall apply 3 months after publication.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at,

For the Council The President

ANNEX I

A. Environmental Management System Requirements

The environmental management system shall be implemented according to Section 4 of the ISO 14001:1996 international standard for environmental management systems.

B. Issues to be addressed by organisations implementing EMAS

1. Legal compliance

Organisations must be able to demonstrate that they

- have identified, and know the implications to the organisation of, all relevant environmental legislation,
- provide for legal compliance and
- have procedures in place that will enable the organisation to meet these requirements on an ongoing basis.

2. Performance

Organisations must be able to demonstrate that the management system and the audit procedures address the actual environmental performance of the organisation with respect to the aspects identified from Annex VI and that performance evaluation is considered as part of the review process. The organisation must also commit to the continual improvement of its environmental performance.

3. External communication

Organisations must be able to demonstrate an open dialogue with interested parties including local communities and customers with regard to the environmental impact of their activities, products and services in order to identify stakeholders' concerns.

ANNEX II

Requirements concerning internal environmental auditing

2.1 General Requirements

Internal audits ensure that the activities carried out by an organisation are being conducted in accordance with established procedures. The audit may also identify any problems with those established procedures or any opportunities for improving those procedures. The scope of audits carried out within an organisation may vary from the audit of a simple procedure to the audit of complex activities. Over a period of time all activities in a particular organisation will be subject to an audit. The period of time taken to complete audits of all activities is known as the audit cycle. For small non-complex organisations, it may be possible to audit all activities at one time. For these organisations the audit cycle is the interval between these audits.

Internal audits shall be carried out by persons sufficiently independent of the activity being audited to ensure an impartial view. They may be carried out by employees of the organisation or by external parties (employees from other organisations, employees from other parts of the same organisation or consultants).

2.2 Objectives

The organisations environmental auditing programme will define in writing the objectives of each audit or audit cycle including the audit frequency for each activity.

The objectives must include, in particular, assessing the management systems in place, and determining conformity with organisation's policy and programme, which must include compliance with relevant environmental regulatory requirements.

2.3 Scope

The overall scope of the individual audits, or of each stage of an audit cycle where appropriate, must be clearly defined and must explicitly specify the:

1. subject areas covered;
2. activities to be audited;
3. environmental standards to be considered;
4. period covered by the audit.

Environmental audit includes assessment of the factual data necessary to evaluate performance.

2.4 Organisation and resources

Environmental audits must be performed by persons or groups of persons with appropriate knowledge of the sectors and fields audited, including knowledge and experience on the relevant environmental, management, technical and regulatory issues, and sufficient training and proficiency in the specific skills of auditing to

achieve the stated objectives. The resources and time allocated to the audit must be commensurate with the scope and objectives of the audit.

The top organisation management shall support the auditing.

The auditors shall be sufficiently independent of the activities they audit to make an objective and impartial judgement.

2.5 Planning and preparation for an audit

Each audit will be planned and prepared with the objectives, in particular, of:

- ensuring the appropriate resources are allocated,
- ensuring that each individual involved in the audit process (including auditors, management, and staff) understands his or her role and responsibilities.

Preparation will include familiarisation with activities of the organisation and with the environmental management system established there and review of the findings and conclusions of previous audits.

2.6 Audit activities

Audit activities will include discussions with personnel, inspection of operating conditions and equipment and reviewing of records, written procedures and other relevant documentation, with the objective of evaluating the environmental performance of the activity being audited to determine whether it meets the applicable standards, regulations or objectives and targets set and whether the system in place to manage environmental responsibilities is effective and appropriate. Spot-checking of compliance with these criteria may be used to determine the effectiveness of the system.

The following steps, in particular, will be included in the audit process:

- (a) understanding of the management systems;
- (b) assessing strengths and weaknesses of the management systems;
- (c) gathering relevant evidence;
- (d) evaluating audit findings;
- (e) preparing audit conclusions;
- (f) reporting audit findings and conclusions.

2.7 Reporting audit findings and conclusions

1. A written audit report of the appropriate form and content will be prepared by the auditors to ensure full, formal submission of the findings and conclusions of the audit, at the end of each audit and audit cycle.

The findings and conclusions of the audit must be formally communicated to the top organisation management.

2. The fundamental objectives of a written audit report are:

- (a) to document the scope of the audit;
- (b) to provide management with information on the state of compliance with the organisations' environmental policy and the environmental progress at the organisation;
- (c) to provide management with information on the effectiveness and reliability of the arrangements for monitoring environmental impacts of the organisation;
- (d) to demonstrate the need for corrective action, where appropriate.

2.8 Audit follow-up

The audit process will culminate in the preparation and implementation of a plan of appropriate corrective action.

Appropriate mechanisms must be in place and in operation to ensure that the audit results are followed up.

2.9 Audit frequency

The frequency with which any activity is audited will vary depending upon the

- (a) nature, scale and complexity of the activities;
- (b) significance of associated environmental impacts
- (c) importance and urgency of the problems detected by previous audits;
- (d) history of environmental problems.

More complex activities with a greater risk of environmental harm will be audited more frequently. An organisation shall define its own audit programme and audit frequency taking account of Commission guidance.

ANNEX III

Environmental Statement

3.1 Introduction

The aim of the environmental statement is to provide environmental information regarding the environmental impact and performance of the organisation. It is also a vehicle to address the stakeholder requirements identified as a result of Annex I B 3 and considered as significant by the organisation (Annex VI 4 d). Although the organisation is not required to produce the information detailed in 3.2 in a single report it is important that this information can be presented in a clear and coherent manner in hard copy to those who have no other means of obtaining this information.

3.2 Environmental statement

Upon its first registration an organisation shall produce environmental information, to be referred to as the environmental statement, to be validated by the environmental verifier. This information must be submitted to the competent body following validation, and then be made publicly available.

The minimum requirements for this information shall be as follows:

- a) A clear and unambiguous description of the organisation registering to EMAS and a summary of its activities, products and services and its relationship to any parent organisations as appropriate
- b) The environmental policy of the organisation
- c) A description of all the significant environmental impacts of the organisation and an explanation of the nature of that impact
- d) A description of the environmental objectives and targets in relation to the significant environmental impacts
- e) A summary of the data available on the performance of the organisation against its environmental objectives and targets with respect to its significant environmental impacts
- f) Other factors regarding environmental performance
- g) The name and accreditation number of the environmental verifier and the date of validation

3.3 Maintenance of publicly available information

The organisation must update the information detailed in 3.2 yearly and shall have any changes validated yearly by an environmental verifier. After validation changes shall also be submitted to the competent body and be made publicly available.

3.4 Publication of information

Organisations may wish to address specific audiences with the information generated by its environmental management system and use only selected information from the environmental statement. Any environmental information published by an

organisation can bear the EMAS logo provided it has been validated by an environmental verifier as being:

- (a) Accurate and non deceptive
- (b) Substantiated and verifiable
- (c) Relevant and used in an appropriate context or setting
- (d) Representative of the overall environmental performance of the organisation
- (e) Unlikely to result in misinterpretation

and makes reference to the environmental statement from which it was drawn.

3.5 Local accountability

Organisations registering to EMAS may wish to produce one corporate environmental statement covering a number of different geographic locations. The intention of EMAS is to ensure local accountability and thus organisations must ensure that where sites have significant environmental impacts these are clearly identified and reported within the corporate statement.

3.6 Public availability

The information generated in 3.2 a-g which forms the environmental statement for an organisation and the updated information specified in 3.3 must be publicly available. This does not mean that an organisation must publish and print one single document and distribute it on request. Organisations are encouraged to use all methods available (electronic publication, libraries etc.) The organisation must be able to demonstrate to the environmental verifier that individuals with an interest in the organisations environmental performance can easily and freely gain access to the information required in 3.2 a-g and 3.3.

3.7 Performance reporting

The raw data generated by an environmental management system will be used in a number of different ways to show the environmental performance of an organisation. If an organisation uses environmental performance indicators (e.g. energy usage per tonne of product), it must ensure that any performance indicators it selects:

- a) Give an accurate appraisal of the organisations performance
- b) Are understandable and unambiguous
- c) Allow for year on year comparison of an organisations performance
- d) Allow for comparison with sector, national or regional benchmarks as appropriate
- e) Allow for comparison with regulatory requirements as appropriate.

ANNEX IV

Logo

P.M.

ANNEX V

Accreditation, supervision and function of the environmental verifiers

5.1 General

The accreditation of environmental verifiers shall be based on the following general principles of competence. Accreditation bodies may choose to accredit individuals, organisations or both, as environmental verifiers. The procedural requirements and detailed criteria for accrediting environmental verifiers are defined according to Article 4 of this Regulation by national accreditation systems in conformity with these principles. It will be ensured through the peer review process established by Article 4.

5.2 Requirements for the accreditation environmental verifiers

5.2.1. The following competence constitutes the minimum requirements with which a verifier, individual or organisation, shall comply:

- Knowledge and understanding of the Regulation, relevant standards and guidance issued by the Commission, under Article 4 and 14, for the use of this Regulation
- Knowledge and understanding of the legislative, regulatory and other policy requirements relevant to the activity subject to verification
- Knowledge and understanding of environmental issues
- Knowledge and understanding of the technical aspects, relevant to environmental issues, of the activity subject to verification
- Understanding of the general functioning of the activity subject to verification in order to assess the appropriateness of the management system
- Knowledge and understanding of environmental auditing requirements and methodology
- Knowledge of information audit (Environmental Statement)

In addition, the verifier shall be independent, impartial and objective in performing his activities.

5.2.2. Scope of accreditation

The scope of accreditation of environmental verifiers shall be defined according to the classification of economic activities (NACE codes) as established by Council Regulation (EEC) No 761/93 (OJ No L83 03.04.1993). The competence and size of the scope of accreditation of the verifier shall be commensurate to the size and complexity of the organisation to be verified.

5.2.3 Additional requirements for the accreditation of individual environmental verifiers performing verifications on their own.

Individual environmental verifiers performing verification on their own, in addition to complying with the requirements of 5.2, shall have:

- all the necessary competence to perform verifications, in their accredited fields,
- a limited scope of accreditation dependant on their personal competence.

Compliance with these requirements will be ensured through the supervisory role of the accreditation body.

5.3 Supervision of environmental verifiers

5.3.1 Supervision of accredited environmental verifiers by the accreditation body which granted their accreditation

The accredited environmental verifier must immediately inform the accreditation body of all changes which have bearing on the accreditation or its scope.

Provision shall be made, at regular intervals not exceeding 12 months, to ensure that the accredited environmental verifier continues to comply with the accreditation requirements and to monitor the quality of the verifications undertaken. Supervision may consist in questionnaires, review of environmental statements validated by the verifiers, review of verification report, witnessing in organisations. It should be proportionate with the activity undertaken by the verifier.

Any decision taken by the accreditation body to terminate or suspend accreditation or curtail the scope of accreditation shall be taken only after the accredited environmental verifier has had the possibility of a hearing.

5.3.2 Supervision of accredited environmental verifiers by the accreditation body of the Member States where the verification takes place

A verifier accredited in one Member State, before performing verification activities in another Member State, shall only provide to the accreditation body of the latter Member State, at least four weeks in advance, notification of:

- his accreditation details, and team composition if appropriate
- when and where the verification will occur: address and contact details of the organisation, measures taken to deal with legal and language knowledge if necessary

This notification shall be communicated before each new verification.

The accreditation body shall not require other conditions which would prejudice the right of the verifier to provide services in another Member State than the one

where accreditation was granted. It shall not also use the notification procedure to delay the venue of the verifier. Any difficulty to supervise the verifier on the date communicated shall be adequately justified.

If the supervising accreditation body is not satisfied with the quality of the work done by the verifier, the supervision report shall be transmitted to the verifier concerned, the accreditation body which granted the accreditation, to the competent body where the organisation being verified is located and the forum of accreditation body.

5.4 The function of verifiers

5.4.1. The function of the verifier is to check, without prejudice to the enforcement powers of Member States in respect of regulatory requirements:

a) compliance with all the requirements of this Regulation: initial environmental review if appropriate, environmental management system, environmental audit programme and the environmental statement

b) the reliability of the data and information in:

- The environmental statement (Annex III 3.2 and 3.3)
- Extracts from the environmental statement (Annex III 3.4)
- Environmental information (Article 8.3)

The verifier will, in particular, investigate in a sound professional manner, the technical validity of the initial environmental review, if appropriate, or audit or other procedures carried out by the organisation, without unnecessarily duplicating those procedures.

5.4.2. At the time of the first verification, the environmental verifier shall, in particular, check that the following requirements are met by the organisation:

- A fully operational environmental management system in accordance with Annex I
- A fully planned audit programme, which had already begun (At least one audit performed of the activity with the highest environmental risk) in accordance with Annex II
- Completion of one management review
- The preparation of an environmental statement in accordance with Annex III 3.2

5.4.3. Legal compliance

The verifier should establish that an organisation has procedures in place to control those aspects of its operations subject to relevant Community or national laws and that these procedures are capable of delivering compliance. The checks of the audit will, in particular, provide for evidence on the capability of the procedures in place to deliver legal compliance.

The verifier should not validate the environmental statement, if during the verification process he observes, for example through spot-checks, that the organisation is obviously not in legal compliance.

5.4.4. Organisation definition

When verifying the EMS and validating the environmental statement, the verifier shall ensure that the components of the organisation are unambiguously defined and corresponds to a real division of the activities. The content of the statement shall clearly cover the different parts of the organisation to which EMAS applies.

5.5 Conditions for the verifier to perform his activities

5.5.1. The verifier will operate on the basis of a written agreement with the organisation which defines the scope of the work, enables the verifier to operate in an independent professional manner and commits the organisation to providing the necessary co-operation.

5.5.2. The verification will involve examination of documentation, a visit to the organisation including, in particular, interviews with personnel, preparation of a report to the organisations' management and the organisations' solution of the issues raised by the report.

5.5.3. The documentation to be examined in advance of the visit will include basis information about the organisation and activities there, the environmental policy and programme, the description of the environmental management system in operation in the organisation, details of the previous initial environmental review or audit carried out, the report on that review or audit and on any corrective action taken afterwards, and the draft environmental statement.

5.5.4. The verifier shall prepare a report for the organisations' management. This report shall specify:

(a) all issues relevant to the work carried out by the verifier

(b) the starting point of the organisation towards implementation of an environmental management system

(c) in general, cases of non-conformity with the provisions of this Regulation, and in particular;

- technical defects in the initial environmental review; or audit method, or environmental management system, or any other relevant process;
- points of disagreement with the draft environmental statement, together with details of the amendments or additions that should be made to the environmental statement

(d) the comparison with the previous statements and the performance assessment of the organisation.

5.6 Verification frequency

The verifier shall at intervals not exceeding 12 months validate any updated information in the environmental statement. In addition, in consultation with the organisation he will design a programme to ensure that all elements required for registration to EMAS are verified in a period not exceeding 36 months. The frequency of the visits of the environmental verifier to the organisation shall take into account Commission guidance.

ANNEX VI

Environmental aspects

6.1 General

In order to decide on its significant environmental impacts an organisation shall consider all environmental aspects of its activities, products and services and decide on the basis of criteria, defined by the organisation, which of its environmental aspects have a significant impact.

An organisation shall consider both direct and indirect environmental aspects of its activities, products and services.

6.2 Direct environmental aspects

These cover the activities of an organisation over which it has management control and are local to the organisation and may include but is not limited to

- a) emissions to air
- b) releases to water
- c) waste management.
- d) contamination of land
- e) use of natural resources and raw materials (including energy)
- f) local-issues (noise, vibration, odour, visual appearance, etc.)
- g) transport issues (both for goods and services and employees)

In assessing the significance of the environmental impacts of these activities the organisation shall think not only of normal operating conditions but also of start up and shut down conditions and of reasonably foreseeable emergency conditions. Account shall be taken of past, present and planned activities, products and services.

6.3 Indirect environmental aspects

As a result of the activities, products and services of an organisation there may be significant environmental impacts over which it does not have management control or occur at a distance from the organisation.

These may include but are not limited to

- a) product related issues (design, packaging, transportation, use and waste recovery/disposal)
- b) capital investments, granting loans and insurance services
- c) new markets
- d) choice and composition of services (e.g. transport or the catering trade)
- e) administrative and planning decisions

f) product range compositions

In addition, organisations must be able to demonstrate that the significant environmental aspects associated with their procurement procedures have been identified and that significant impacts associated with these aspects are addressed within the management system.

The environmental aspects shall be relevant within the framework of the environmental programme, the environmental management system and the environmental audit insofar as the organisation has set itself objectives.

In the case of these indirect environmental aspects an organisation should consider how much influence it can have over these aspects, and what measures can be taken to reduce the impact.

6.4 Significance

It is the responsibility of the organisation to define criteria for assessing the significance of the environmental aspects of its activities, products and services. It is not intended that a detailed life cycle analysis is carried out however the criteria developed by an organisation should be comprehensive, capable of independent checking, and reproducible.

Considerations in establishing the significance of an organisation's environmental aspects may include but is not limited to:

- a) identification of activities, products and services of the organisation's operations, the specific environmental aspects associated with those activities, products and services, and the type of impact related to each environmental aspect.
- b) collection of information about the condition of the environment to identify activities, products and services of the organisation that may have an impact on specific conditions.
- c) assessment of the organisation's existing data on material and energy inputs, discharges, wastes and emissions data in terms of risk.
- d) identification of the views of stakeholders and the use of this information to help establish the organisation's significant environmental aspects.
- e) identification of environmental activities of the organisation that are regulated, for which data have likely been collected by the organisation.
- f) identification of procurement activities that are significant in terms of the direct and indirect environmental impacts of the organisation
- g) consideration of the design, development, manufacturing, distribution, servicing, use, re-use, recycling and disposal of the organisation's products.
- h) identification of those activities of the organisation with the most significant environmental costs, benefits or other financial effects.

ANNEX VII

Initial Environmental Review

7.1 General

An organisation with no existing environmental management system recognised under Article 9 must initially establish its current position with regard to the environment by means of a review. The aim should be to consider all environmental aspects of the organisation as a basis for establishing the environmental management system.

7.2 Requirements

The review should cover four key areas:

- a) legislative and regulatory requirements;
- b) an identification of significant environmental aspects;
- c) an examination of all existing environmental management practices and procedures;
- d) an evaluation of feedback from the investigation of previous incidents

In all cases, consideration should be given to normal and abnormal operations within the organisation, and to potential emergency conditions.

A suitable approach to the review may include checklists, interviews, direct inspection and measurement, results of previous audits or other reviews depending on the nature of the activities.

The process to identify the significant environmental aspects associated with the activities at operating units should where relevant, consider

- a) emissions to air
- b) releases to water
- c) waste management
- d) contamination of land
- e) use of raw materials and natural resources
- f) other local environmental and community issues

This process should consider normal operating conditions, shut-down and start-up conditions, as well as the realistic potential significant impacts associated with reasonably foreseeable or emergency situations.

The process is intended to identify significant environmental aspects associated with activities, products or services and is not intended to require a detailed life cycle assessment. Organisations do not have to evaluate each product, component or raw

material input. They may select categories of activities, products or services to identify those aspects most likely to have a significant impact.

ANNEX VIII

Registration Information

Minimum Requirements

Name of the organisation
Address of the organisation
Contact person
NACE code of activity
Number of employees

Name of the verifier
Accreditation number
Scope of accreditation
Date of the next environmental statement

Name and contact details of the competent enforcement authority for the organisation
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Done at.....on .././199

Signature of the representative of the organisation

EVALUATION FORM OF IMPACT

IMPACT OF THE PROPOSAL ON THE FIRMS AND, IN PARTICULAR, ON THE SMALL AND MEDIUM-SIZED ENTERPRISES (SME)

Title of the proposal : Proposal for Council Regulation (EC) allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)

Number of reference of the document :

The Proposal

1. In view of the principle of subsidiarity, why legislation communautaire is necessary in this field and are so its main goals ?

The impact on the companies

2. Who will be affected by the proposal ?
 - which sectors of companies : all
 - which sizes of companies (share of the small and medium-sized enterprises) : all
 - exists there individual geographical areas in the community where these companies are established. : no specific geographical locations
3. What measures will companies have to take to conform to the proposal ?

Implementation on a VOLUNTARY basis of an environmental management system

4. Which economic effects is the proposal likely to have ?
 - on employment : creation
 - on investments and the creation of new companies : development of environmental investments
 - on the competitiveness of the companies : increase in competitiveness
5. Does the proposal contain measures aiming to take account of the specific situation of the small and medium-sized enterprises (reduced or different requirements, etc) ?

The situation of SMEs is taken into specific account by providing them with means to support them in the VOLUNTARY implementation of this instrument.

Consultation

6. List of the organisations which were consulted on the proposal and statement of the essential elements of their position.

UEAPME, UNICE, ETUC, EEB : cf. table in annex of the explanatory memorandum.

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