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***Joint ANEC / BEUC / ECOS / EEB position on
Making EMAS a system of excellence - Going beyond EMS***

Summary

ANEC¹, BEUC², ECOS³ and EEB⁴ question the usefulness of the European EMAS⁵ scheme in its present form and call for a substantive reform: a transformation into an eco-label for companies or a true system of excellence. Major shortcomings of the present system include a lack of performance requirements and the absence of a mandatory set of comparable performance indicators which would allow for a differentiation between good and bad performers. Not much convincing evidence is available which would suggest that the implementation of EMAS (or ISO 14000) leads to significantly improved environmental performance.

The proposed alternative comprises the establishment of general and sector specific minimum environmental performance requirements, going beyond legal compliance, in analogy to the European eco-label system for products. This should be complemented by a set of generic and sector specific indicators, including appropriate scales and benchmarks which allow comparisons between different organisations, as well as an evaluation of their relative performance.

Background

Environmental management systems (EMS), including ISO 14000 and EMAS, have been subject to criticism since they were created and promoted in the early nineties. In a joint position paper⁶ of

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⁵ Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)

⁶ "ANEC/EEB Position Paper on Environmental Management System Standards", 21 February 2003, see annex to this paper

ANEC and EEB, the following main objections were raised based on a thorough review of published literature on the subject:

- The approach tends to shift decision-making on environmental performance issues from democratic institutions, involving public interest advocates, to companies.
- The business interest is limited to environmental investments which pay off, whilst many protection measures are not profitable.
- EMS systems do not require a minimum environmental performance and even legal compliance cannot be taken for granted.
- EMS certifications do not allow for a differentiation between good and bad performers.
- Tax reductions or reduced governmental controls linked to EMS compliance are questionable because of the fact that such compliance does not mean better environmental performance.
- There is not much convincing evidence on the table which would suggest that the implementation of an EMS standard has indeed boosted environmental performance.
- Reporting requirements are either missing (ISO 14000), or inadequate, lacking clearly defined key indicators of environmental performance and scales of comparison.

The position paper of ANEC/EEB contained a number of suggestions for changes to make the instrument more substantive, including the establishment of minimum performance levels based on the state-of-the-art, the definition of a set of key environmental indicators which allow comparisons between different organisations, and relating the actual performance to legal provisions, best practices (BAT⁷) and other benchmarks using appropriate scales and detailed reporting requirements. The paper also requested to link the obligation of “continual improvement” to environmental performance, i.e. a measurable reduction of environmental burdens and resource consumption. Incentives (e.g. tax reduction) should also be linked to measurable environmental performance achievements. Finally, it was proposed that organisations should be required to apply the same environmental criteria in all countries they operate, and that they should comply with international environmental agreements using shorter time scales compared to the legal implementation periods.

EVER Study

From the perspective of the consumer and environmental organisations some of the findings of the so-called EVER study⁸, carried out on behalf of DG Environment of the European Commission, do not come as a surprise. In particular, the statement that most quantitative studies have not been able to confirm a better environmental performance of EMAS-registered organisations as compared to other organisations, or that EMAS is not generally seen as a benchmark, is in line with the review mentioned above.

The EVER study identified a total of 17 options for the further development of EMAS, including three basic scenarios:

- ending of the two schemes, by means of a sudden death or a slow death,

⁷ ‘BAT’, Best Available Techniques

⁸ “Evaluation of EMAS and Eco-label for their Revision”, 26 December 2005

- keeping the two schemes basically as they are applied today (a Business-as-Usual approach), or
- pushing for the development of the two schemes, by way of more or less innovative modifications to them.

Most of the proposed measures falling in the last category are not aiming at a change of the system in a direction of significantly improved output. They are more or less of promotional nature (financial support and tax reduction, increased promotion, making the scheme mandatory, use by authorities), trying to link the scheme with other instruments (use as communication tool, stronger product dimension, CSR) and aiming at simplification (reduce it to a code of principles, lower requirements for SMEs, cluster approach), or broadening its field of application (including banking and assurance sector). All these measures may be useful as complementary, but do not remedy the inherent shortcomings of the somewhat shallow EMS approach. Hence, ANEC, BEUC, ECOS and EEB neither consider these options as the way forward, nor do they support a continuation of the EMAS system in its present form.

Only one option is targeted towards a performance boost: making EMAS a recognised 'standard of excellence'⁹. The study notes that "this option relies on the fact that many actors (consulted in the study) do not consider EMAS as a benchmark and are asking for its requirements to be more strictly connected to the environmental performance of organisations, in order to raise the credibility and the positive perception of the scheme"¹⁰. It includes the obligation to use (sector-specific) Key Performance Indicators (KPIs) which would have to be published to "stimulate competition on environmental performance" and facilitate comparability of different organisations. In addition, it is proposed to define (sector-specific) quantitative reduction goals for certain indicators. The KPIs should be defined on the basis of existing reference documents (BREFs¹¹ or Eco-label criteria). A further enhancement of this option would be to use the reports of participating organisations for benchmarking or to link performance to awards and incentives. Finally, participants may be required to comply with all international environmental agreements. Also, EMAS participants could be requested to apply the environmental standards foreseen in their country of origin in all countries in which they operate.

It appears that some of the proposals contained in the ANEC/EEB position paper mentioned above have found their way into this section of the EVER study. Clearly this option goes in the right direction and could lead to the development of an EMAS scheme which is significantly different from the existing one and much better than ISO 14000, thus making it a world reference of sound environmental management.

However, ANEC, BEUC, ECOS and EEB doubt that it would be justified to consider such an approach as "a system of excellence". The number of indicators suitable for comparisons and benchmarking will have to focus on a (very) limited number of key performance aspects (and ignore many other aspects), otherwise the system would become too complex. Hence, the indicator approach should be complemented by minimum performance requirements, going beyond legal compliance, which need to be defined at the sector level. An EMAS scheme revised along these lines (i.e. an 'eco-label for companies') could gain increased recognition and its use could be awarded by e.g. tax reductions by regulatory authorities, lower insurance premiums

⁹ "Evaluation of EMAS and Eco-label for their Revision", 26 December 2005, point A.8

¹⁰ "Evaluation of EMAS and Eco-label for their Revision", 26 December 2005, executive summary, point A.8

¹¹ 'BREFs', BAT Reference Documents

offered by insurance companies, preferential treatment in a public procurement context, and simply by customers preferring products of the EMAS registered company. However, the above incentives should only be encouraged provided that positive elements of the existing EMAS scheme such as independent verification and full legal compliance can be maintained or reinforced.

Other options

The Consumer Council at the Austrian Standards Institute commissioned a study entitled "Going beyond EMS"¹². The basic idea behind the study was to develop an alternative to the management system approach which excludes performance requirements by establishing generic, global minimum requirements for the environmental performance of companies, complemented by a set of higher level sectoral requirements.

The proposed generic, global minimum requirements were intended to be - or to become after a process of discussion - an environmental equivalent of the SA 8000 standard which establishes global social baseline requirements based on core labour rights defined by the International Labour Organisation (ILO). Thus this part of the study could play a role in the global discussions on CSR and in the discussion on the future of ISO 14000.

The suggested additional sectoral requirements approach (a higher, second tier) could be used to transform the European EMAS system into an eco-label for companies in analogy to the eco-label for products. It could, of course, also be used in other more advanced regions of the world. The study uses the textile industry as an example to show the approach in principle, and therefore should only be seen as a starting point for further debate.

In the study, the proposed requirements are based on a variety of reference documents, including the Pollution Prevention and Abatement Handbook of the World Bank¹³, the European BREF documents, eco-label criteria and others. In all, 20 requirements have been developed on a general global level, and 33 requirements on a sector level for the textile industry.

The requirements cover the following aspects:

General principles, air emissions, liquid effluents, waste, noise, consumption of energy in production, consumption of water in production, hazardous and harmful substances, consumption of water, energy, etc. by products (only on sector level), and product quality (only on sector level).

Due to financial constraints certain aspects such as radiation, biodiversity, land use, transport, workers protection, social aspects, etc. had to be omitted but could be included. However, it should be borne in mind that the aim of the study was merely to show the approach in principle. Further studies are required to fully elaborate the concept. Therefore, ANEC, BEUC, ECOS and EEB are not endorsing any specific requirements of the study, but want to simply highlight the usefulness of the approach.

Conclusions and recommendations

- EMAS should be transformed into an eco-label for organisations - into a true system of excellence.

¹² "Going beyond EMS", Force technology, Denmark, 2006, "[Going beyond EMS](#)"

¹³ "Pollution prevention and abatement handbook 1998 : toward cleaner production, volume 1", The World Bank

- Minimum performance levels should be established based on the state-of-the-art, using BREF and other documents describing best industry practice, eco-label criteria for products, “black lists” of chemicals intended to be phased out, and other information as a departure point.
- The requirements should be both generic as well as sector-specific.
- The obligation to comply with legal provisions should be reinforced.
- Organisations should comply with all applicable international environmental agreements using shorter time scales compared to the legal implementation periods (e.g. for the phasing out of chemicals).
- Multinational organisations, including those outside the EU, should be required to apply the same (high) environmental criteria in all countries they operate.
- A set of key environmental indicators should be defined - both generic and sector-specific - allowing comparisons between different organisations by using appropriate references for normalisation (e.g. using energy intensities rather than energy amounts)
- These indicators should also relate the actual performance to legal provisions, best practices (BAT) and other benchmarks using appropriate scales.
- Methods for overall performance ranking should be developed and the achieved scores of all participants should be made publicly available on a website.
- Detailed reporting requirements should be established allowing the reader to understand how good the environmental performance is. Levels of excellence need to be defined.
- Incentives (e.g. tax reductions) should be linked to environmental performance either in terms of improvement or in terms of best practices.
- Whilst a strengthening of the product dimension is much appreciated, the EMAS and Eco-label systems need to be clearly separated, not precluding the use of synergies between both systems. EMAS logos should not be used on products.
- The structure for developing the indicators and other criteria should be built in analogy to the European eco-label scheme with adequate stakeholder involvement.
- Sufficient resources need to be made available to assist the transformation of the scheme, e.g. to conduct the necessary preparatory studies.
- Other measures including promotion, use in a public procurement context etc. should be adopted only after reform of the scheme.

Annex: Analysis of EMS from ANEC/EEB Position Paper on Environmental Management System Standards

Features of EMS Standards

Environmental management system standards were developed in the early 1990s in several countries. The first standard was approved by the British Standards Institution (BSI) in 1992 and became a model for the ISO standard 14001, which was elaborated in the years 1991-1996. The European "Eco-Management and Audit Scheme" (EMAS) was adopted in 1993.

ISO 14000 specifies a set of measures to be incorporated into a company's management system aimed at dealing with environmental aspects in a systematic way including the following major elements:

- definition of an environmental policy including performance objectives
- assessment of environmental aspects
- identification of legal obligations
- establishing an environmental management programme
- definition of procedures to achieve the objectives
- monitoring of the system and improvement

The European EMAS scheme is based on the international standard but contains additional requirements:

- initial environmental review
- independent verification
- an accreditation system for verifiers
- validated environmental statements
- employee involvement

The systematic coverage of the environmental dimension by all relevant operations of an organisation undoubtedly offers opportunities for the reduction of environmental burdens and resource consumption. Nevertheless, the development of EMS standards in general and ISO 14001 in particular have raised considerable concern, most notably by the NGO community, but also by other parties. Comprehensive reviews have been made by e.g. Riva Krut and Harris Gleckman (1) and Virginia Haufler (2). ANEC and EEB have reviewed the arguments of parties involved and conclude that many of the reservations expressed are valid. Before Environmental Management Standards have not undergone a substantive change with respect to their content and application, they should not serve as instruments to implement eco-design schemes like Integrated Product Policy (IPP) or the one on End-use Equipment (EuE). Criticism with respect to the procedures to establish those standards – e.g. the strong dominance of business interests within ISO – are being dealt with elsewhere.

EMS – the Business Approach

It should be noted that ISO 14001 is generally referred to as the business answer to the challenge of sustainable development, which explains the limitations of the approach. Irrespective of the differences, all EMS standards share one idea, which raises discomfort – the idea that the setting of environmental performance levels is left to the discretion of industry rather than being based on a public debate and consequently a democratic decision-making process. This is one of the reasons why the majority of industry organisations enthusiastically support the EMS approach (but it is fair to say that many industry representatives have also expressed strong reservations). EMS is a system that fits into the neo-liberal paradigm of industry self-regulation.

However, industry has to follow the market rules that will leave little room for environmental investments if they do not pay off economically. Enterprises will only be interested in EMS as long as the EMS delivers benefits in financial and material resources. The moment these fruits have been harvested there is no direct interest left for them to strive for a higher level of environmental protection although they may still have an interest in the EMS for other reasons like tax reduction, reduced number of environmental inspections, image building etc.

Therefore, the margin for environmental performance improvements will be very limited. It is important to have a realistic view of the capabilities of EMS standards, in particular with regard to envisaged preferential treatments of organisations with certified EMS in place. Another reason of concern is the promotion of environmental product management systems by the European Commission with respect to energy consuming equipment (working document on EUE), which means to apply the principles of EMS to products. This approach has been strongly criticised by ANEC, BEUC and EEB. A critical review is also a precondition for considering enhancements of EMS standards in order to make them more meaningful than they are at present.

No Performance Required

EMS standards are management tools, which do not require specific performance levels. The legal obligations constitute the minimum requirement. Organisations are encouraged to go beyond legal compliance but the extent to which this is done can be freely chosen. Consequently, EMS certificates do not at all indicate a high level of environmental protection – much to the contrary to the way they are presented by industry.

Both the good performer and the heavy polluter can have EMS in conformity with the standards. ISO 14001 is inferior to the European EMAS regulation in that it does not even require legal compliance – it is just a commitment to regulatory compliance, which is asked for. This means that even non-complying companies can get an ISO 14001 certificate provided they can show that measures have been taken to meet their legal obligation. It is left to the judgement of the certifier how quickly this has to be done. The EMAS regulation stipulates that companies must "provide"¹⁴ for legal compliance and that at least spot checks have to be carried out by the verifier.

¹⁴ The EMAS Regulation is not quite clear whether it stipulates compliance or only a commitment to compliance: Article 3(2)(a) reads: "...covering all the requirements referred to in Annex I, in particular the compliance with the relevant environmental legislation." Annex I-A.2(c) reads: "... organisation's environmental policy ... includes a commitment to comply with relevant environmental legislation..." Annex I-B.1.(b): "Organisations shall be able to demonstrate that they provide for legal compliance with environmental legislation and (c) have procedures in place that enable the organisation to meet the requirements on an ongoing basis."

Another point, which needs to be mentioned, is that "environmental performance" according to ISO 14001 refers to the management system rather than to environmental impacts. Consequently, performance improvement can mean just a management improvement and not necessarily result in a reduction of environmental burdens. In the revision of the EMAS regulation 2001 the definitions of terms were aligned with the ISO definitions. The detailed annex I of the original Regulation and much of its articles' text have been replaced entirely by the very vaguely worded ISO 14001.

The last two points may be of limited relevance in practical terms but they say a lot about the spirit of this approach: to give industry an instrument which does not mean a real obligation to go beyond legal compliance. It is not even ensured that the legal provisions are fulfilled (see footnote 1 and Chapter on Reduced Environmental Controls).

No Differentiation Between Good and Bad Performers

Interestingly, EMS standards have been presented as market-oriented tools, which would lead to some sort of environmental competition between companies aiming at better performance compared to their competitors. As no differentiation is made between good and bad performers (the environmental pioneer gets the same label as the polluter who is just slightly above the legal minimum) there is not even an incentive to go for a high level of protection. Neither EMAS nor ISO 14001 provide for determining any benchmarks that would allow to compare the environmental performance of enterprises.

Another difficulty lies in the fact that legal obligations are different in different countries. This means that the standard is not a real standard because conformance is more difficult in countries with demanding environmental legislation. This issue is further complicated by different certification practices in different countries and even within one country. Those aspects are more relevant for the ISO standard compared to the EMAS regulation.

Reduced Governmental Controls

It is the intention of authorities to award EMS certified companies. Tax reduction, reduced compliance monitoring, and environmental inspections or exemption from some legal provisions are being discussed or have been already implemented. Such benefits are not justified if not linked to real environmental improvements or a high level of protection or a high level of internal monitoring of environmental issues related to legal obligations. In other words it is not the instrument that should be remunerated but the successful application of the instrument.

A particular problem is the envisaged reduction of governmental controls. De facto this means a step in direction of industry self control, while deferring governmental inspections to private certification bodies, which are dependent on certification/verification contracts from industry. Those bodies might be more interested in having a good long-term relationship with their clients to be asked also for the subsequent certification and may therefore be less strict compared to authorities. Another important aspect in this context is the strong competition between certifiers resulting in business advantages for less conscientious verification practices. In addition, it is questionable how comprehensive legal compliance checks are in practice. In many cases the certification body will have to rely on data presented by the organisation and internal audit reports which may be based on arbitrary and subjective choices and judgements (e.g. regarding applicable legislation).

Recent accounting scandals in the US, which have even brought about the ruin of some big companies such as Enron or Worldcom (probably we have just seen the tip of the iceberg) do not quite support the concept of weakening governmental rulemaking and enforcement. A society without clear rules and measures ensuring that these rules are actually complied with is unlikely to succeed – because it would encourage everyone to escape from his or her duties.

Targets and objectives

When defining targets and objectives, both, EMAS and ISO 14001 ask enterprises to “consider” “environmental aspects that have a significant impact”, a wording that does not establish any priority nor obligation. The choice is left to the enterprise and so the link between the environmental impact of an organisation and the EMS is not necessarily targeted to remedy the most important environmental impacts, but only “significant” ones.

Reporting

Reporting is an issue where ISO 14001 is clearly inferior to the EMAS regulation. The ISO standard just requires that the environmental policy is made available to the public. EMAS requires a validated statement including a description of the significant environmental impacts. The lack of obligation to report significant environmental aspects in the ISO standard is not acceptable at all.

Even EMAS reporting requirements are far from being perfect and give large room for improvement. The production of environmental reports containing a number of different figures for environmental aspects is of limited use for the public at large. It is not astonishing that the interest in such reports is limited. Without clearly defined key indicators of environmental performance and scales to compare (as in case of the EU energy labelling scheme for household appliances) the figures are difficult to interpret even for experts. For instance, the impressive decline of energy consumption could be simply a result of outsourcing of manufacturing facilities. Figures as such do not indicate how they relate to the state of the art. The possibility to make comparisons of the results of environmental management is crucial for the functioning of the tool.

No Evidence For Improved Performance

It is not surprising that there is not much convincing evidence on the table, which suggests that the implementation of an EMS standard has indeed boosted environmental performance despite the fact that a number of studies have been carried out. Typically, these studies are based on interviews with company representatives. It is understandable that the interview partners confirm the benefits of the implementation of EMS standards and present the level of environmental commitment of their companies in a favourable way. The question is whether these claims can be taken as a proof of success.

But sometimes even the limited questionnaire approach delivers interesting results. For instance, an Austrian EMAS evaluation study (3) demonstrated that a large proportion of EMS companies were of the opinion that they could have achieved a similar environmental benefit without the EMS (though many respondents indicated that it might have been more difficult). Another result of this study was that few EMS companies felt that the implementation of the EMS triggered

environmental activities. Most firms considered that the implementation of EMS documented ongoing efforts rather than it initiated measures to protect the environment.

According to a Swedish study (4) 50% of the respondents thought that half of all environmental targets would have been achieved without certified EMS. "In the replies to the questionnaire question of the extent to which the EMS has reduced environmental impact from the company – the mean value lies somewhat nearer to "not at all" than "to a very great extent" on a 6-grade scale – a certain frustration is sensed that more environmental improvements are not being achieved as a result of environmental management work".

Even the literature study (5) ordered by the European Commission and produced in advance of the European EMAS conference in June 2002 and which conveys a very supportive attitude toward EMS has to admit: "Environmental results of EMAS (and other EMS) have been investigated with a lot of different methods. All of them lead to results that are interpretable, with answers that are not easy, clear and quantifiable". It is significant that this part of the literature study comprises just 2 pages.

These observations do not question the need for incorporating environmental considerations into a company's management. They do, however illustrate the limited benefit of the fashionable EMS standard approach in its present format. It must also be noted that companies which are registered according to ISO 14001/EMAS are environmental pioneers with a high level of commitment. Once this registration becomes a must in the future (which could easily happen) it can be expected that not even the environmental improvements achieved today will be found.

Cary Coglianese and Jennifer Nash query whether "the mere presence of an EMS is an appropriate metric for differentiating among firms" (6). Quite rightly they state:

"After all, what distinguishes superior novelists and painters is not the kind of word processors or paintbrushes they use but rather their skills, motivation and perseverance. Similarly, firms that achieve great strides in pollution prevention and other improvements in environmental performance may well owe little or none of that success to the mere use of an EMS".

The authors recommend to remain sceptical about the potential of EMSs and refer to a study, which found that chemical companies, which have adopted the Responsible Care programme (a management system used by chemical industry) do not perform better in terms of pollution reduction than comparable firms not using the approach. This sort of information is still missing with respect to EMSs - a serious omission.

A study regarding the effectiveness and performance of EMSs carried out in Switzerland (7) judges the results with respect to reduction of material use, energy consumption and waste production "disillusioning". It was found that the relative efficiency (related to turnover) was not improved in 25% - 35% of all cases. Only 3% - 12% of all asked firms indicated a strong reduction of these eco-efficiency factors.

Literature

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