



**The Netherlands
Ministry of Housing, Spatial Planning
and the Environment**



Supported by
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Joint workshop to examine connections between environmental management systems and permitting, inspection and enforcement in regulation - including the formal launch of the remas project

11, 12, 13th June 2003 Conrad Hotel, Chelsea London, United Kingdom

Workshop Report

Prepared by:



Foundation for International
Environmental Law and
Development (FIELD)



Institute for
European
Environmental
Policy

Joint workshop to examine connections between environmental management systems and permitting, inspection and enforcement in regulation

Workshop Report

Workshop Summary Recommendations

“The Chelsea dozen”

The workshop participants recommended to:

Clarify and Communicate

- Terminology on EMS, certified EMS and verified EMS
- Roles and responsibilities of certifiers/verifiers and regulatory authorities, including assessment of legal compliance
- Roles of EMS within the overall regulatory process
- Role of EMS in EU legislation
- Whether EMS aims for a large number of small benefits or small number of large benefits

Ensure

- Focus on environmental outcomes, not the tools
- Quality of certification and verification
- Clear brand image
- Involvement of front-line practitioners in development of EMAS 3 and related legislation

Develop

- Suitable method for facilitating the uptake of EMS for small and medium enterprises
- A clear strategy on references to (elements of) EMS in EU legislation and policies
- The next generation of voluntary instruments:
 - *Beyond environment*
 - *Beyond site*
 - *Toward sustainable development*

Details are given in the Main Proceedings – Closing Session

Joint workshop to examine connections between environmental management systems and permitting, inspection and enforcement in regulation

Workshop Report

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ABBREVIATIONS

ANNEXES

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Joint workshop to examine connections between environmental management systems and permitting, inspection and enforcement in regulation

Workshop Report

1. Introduction

This report covers the workshop - *Connecting (Elements) of Company EMS with Permitting, Inspection and Enforcement* –held on the 12th to 13 June 2003 at the Conrad Hotel, Chelsea, London and organised by the Netherlands Ministry of Housing, Spatial Planning and the Environment (VROM) and the Environment Agency for England and Wales (EA). This workshop is the second in a series within the European Dialogue on Exploring New Approaches in regulating industrial installations - the ENAP-project (see Box 1.1) - and marks the launch of the REMAS project (a UK and Ireland LIFE funded project, see Box 1.2), which is a pan-European project that will examine the value of environmental management systems in the context of regulation.

Box 1.1: The ENAP Project

The Dutch government has offered to be the “lead country” for the European Dialogue on Exploring New Approaches in regulating industrial installations (the ENAP-project). The ENAP project aims to facilitate a series of three international workshops:

- The first workshop “Emissions Trading in NEC Substances¹ (in particular NO_x and SO_x)” was held in The Hague 21-22 November 2002.
- The workshop covered by this report: “Connecting (Elements) of Company EMS with Permitting, Inspection and Enforcement” was held in London on 12-13 June 2003.
- A third workshop is foreseen in 2004, focusing on multi-installation / multi site permits. A concluding symposium in 2004 is under consideration.

The ENAP project offers a valuable opportunity to explore and share insights on new approaches to regulating environmental issues – through fostering a dialogue on key promising innovations to address persistent environmental problems. The June 2003 ENAP-REMAS workshop sought to advance understanding and policy on how to build on the potential benefits of EMSs and integrate them more broadly into policies and regulation to address emissions from industrial installations.

Box 1.2: The REMAS Project

REMAS is a three-year European study into the benefits of environmental management in the context of regulation. The project is co-financed by the LIFE Environment Fund, the Environment Agency (EA), the Scottish Environment Protection Agency (SEPA), the Institute of Environmental Management and Assessment (IEMA) and the Irish Environmental Protection Agency.

By studying the performance of industrial sites and comparing those sites that have robust EMS with those that do not, the project will identify which factors are most valuable for the regulator.

The project is a major effort to develop the tool of performance indicators and to assess the performance of EMSs. The inception phase was completed in June 2003, and key insights were presented at the workshop. The discussions at the workshop will also be taken on board in the fine-tuning of the REMAS approach.

¹ For proceedings go to either <http://sharepoint.infomil.nl/enap/> or www.ieep.org.uk

More particularly, the main objective of the workshop was to assess and discuss options and possible solutions and, on the basis of this, to draw conclusions to the following questions:

1. What are the potential advantages of EMS for the regulator (and other parties involved)? How could - in an ideal situation – these advantages be quantified/measured? What would be suitable performance indicators?
2. In what ways could EMS be linked to steps in the regulatory process (notably permitting, inspection and enforcement) in order to fully realize/optimize these (assumed/potential) advantages? What conditions should be met in this respect? What modalities of linkage between EMS and permitting/inspection/enforcement can be regarded as good practices?

These questions were looked at from the perspective of companies, Member State governments and enforcement authorities and the EU. Relevant outputs from these will be incorporated into the remas project.



Participants ENAP-REMAS Workshop

2. Workshop Summary

After the welcome and opening presentations, the workshop's first session started with an overview of various national experiences on the advantages of EMS and the linkage with permitting, inspection and enforcement. The second session, in the afternoon of the first day, allowed the participants to discuss the potential advantages of EMS and explore performance indicators on EMS in three parallel working groups. Day 2 opened with a short third session, looking at the conditions and modalities of linkage between EMS and permitting, inspection and enforcement. Session 4 consisted of parallel working group discussions, focussing on three specific themes – the role of the company and the desired scope and quality of the EMS; the role of the regulator and the voluntary/mandatory approach; and EU policies and legislation. The Closing Session included presentation of the workshop recommendations – “The Chelsea Dozen”.

This part of the report contains a short summary of the presentations and discussions under each of the workshop sessions. The slides of the presentations held during the workshop can be found on the internet at: <http://sharepoint.infomil.nl/enap/>

Day 1

Opening Session

Cees Moons (NL, Ministry of the Environment), chairman of the first morning session, gave a brief welcome emphasising that command and control approaches are not the only tools available to deal with the environmental problems of today. He then passed the floor to **Derek Osborn** (UK) who argued that we should seek the road towards sustainable development – remembering the many goals, which were reconfirmed in Johannesburg. He also stressed the development and the importance of regulatory effectiveness which, in light of the problems that need to be solved today, require supplementary tools. He referred to new reports showing that Environmental Management Systems (EMS) do not always deliver improved outcomes in terms of improved environmental performance and compliance and this results in disagreement over the usefulness of these systems in the context of regulation of industrial installations.

Jan Teekens (NL, VROM/ENAP Project team) continued the opening session with an introduction to the ENAP-project and its link with the REMAS project, raised some key questions for the workshop and presented some insights on the EMS instrument and practice in the Netherlands. The important questions for the workshop (and beyond) he noted were:

- What are the advantages of EMSs, especially for the regulator, and how can these be assessed?
- What would be suitable performance indicators?
- In what ways could EMS and regulation be linked in order to fully realize these advantages? What conditions should be met?
- What existing or future modalities of linkage can be considered?

He noted that EMSs are first and for all meant to be a management tool, designed for companies and to be implemented on a voluntary basis. On the other hand: EMS standards like ISO 14001 and EMAS do, to a greater or lesser extent, reflect the interests of other parties (notably regulators, NGOs and the public). The level of industry ambition for the use of EMSs varies as do the sources of motivation and they type of measures being implemented to support the EMS. For example, a company may have as a predominant motive for

implementing an EMS; that the EMS enables it to get control over its environmental effects. Yet authorities, NGO's and other stakeholders all have their own interests and expectations with regard to (certified) EMSs. Thus they do not necessarily correspond and it is important to understand where stakeholder objectives are divergent and where they are common objectives.

He stressed that ISO 14001 and EMAS are to a large extent procedural standards – required performance in terms of compliance and continual improvement is not quantified. A company may get a certificate or registration while in the opinion of the authorities its performance is mediocre or even less than that. His impression was that on legal compliance, ISO 14001 leaves regulators with a lot of questions: what would be expected from an ISO 14001 certified company in this respect? EMAS would not take away these questions, on the contrary: what would “provision for legal compliance” in EMAS adds to “commitment to legal compliance” in ISO)?

Regulator perception of EMSs seems to be changing in recent years, with some elements of EMSs no longer considered a luxury or a merit of a company, but indispensable, self-evident and standard parts of a company's management. As a consequence an EMS cannot, on all points, serve as proof of excellence or as a means to distinguish positively from others who stay behind. The standard text for the IPPC BREFs on EMSs, recently adopted, is a good illustration of this. There is also a growing realisation that the regulator can take different approaches towards the different EMS elements. Options are: making EMS elements mandatory; allowing EMS elements to fulfil or replace legal requirements and offering regulatory relief when EMS elements are in place.

Guidance on these issues at the EU level would be very welcome. It is also desirable that when in EU legislation references are made to be EMSs, this is done in a consistent manner, paying particular attention to practical and legal issues.

Regarding the Netherlands, he noted that there was experience with encouraging companies to implement ambitious EMSs (certified EMSs accompanied by company environmental plans and yearly environmental reports) by rewarding those companies who do so with more flexible permits (the so called framework licenses²). The basic idea behind the more flexible permit is that of attuning the permit to the companies' EMS. Thus the better the EMS, the bigger the supporting role of the EMS in relation to the permit.

Implementation of these policies is not without problems. Authorities tend to rely too heavily on EMSs and forget that they should set the (minimum) standards and targets and not the company. In short they have difficulties with keeping apart their own role and responsibilities from those of companies and some companies are disappointed in that they gain only limited extra flexibility.

He concluded by noting that the provision of regulatory relief is quite difficult; a lot of creativity is needed to overcome legal constraints. From the other side, giving the regulator a greater say in EMSs is not an easy legal and organisational task either.

² To give further technical and legal guidance to the permitting authorities in the Netherlands the Dutch Example Permit Project was launched. The aim of the project is to provide permitting authorities (provinces and municipalities) with practical examples of flexible licences attuned to the level of environmental management adopted by companies. Two example licenses have been translated into English and are available on the ENAP web site.

Martyn Cheesbrough (UK, Environment Agency/REMAS Project Manager) concluded the opening session with a presentation launching the REMAS project – stressing a need for common definitions because of the many different languages involved in the EU. He explained how the project seeks to demonstrate linkages between the implementation of an EMS and a company's environmental performance and to determine the extent to which EMAS (and other EMSs) support regulation. This will be done by gathering data on environmental performance of industrial sites and correlating this with the level of EMSs in place. The project will seek to build consensus on the information gathered. He outlined the timescales of the project, which started in Autumn 2002, which is to be finalised by the end of September 2005 and is now, in July 2003, a year into the data collection and analysis phase. The key steps of the REMAS project are:

1) Company recruitment & data gathering: The data that REMAS will use to provide the evidence linking environmental management systems to improved environmental performance will come from companies throughout Europe. The first stage in this process is therefore to recruit a large number of companies ranging in size, industrial sector and level of EMS in place so that statistically significant comparisons can be made. By comparing sites that are registered under EMAS with sites that have an alternative EMS, or no EMS, REMAS will be able to demonstrate which key components of the system produce the best environmental improvements and why. REMAS has been recruiting companies from the following sectors: agriculture, manufacturing of food, leather, pulp and paper, chemicals, rubber, minerals and cement, machinery, transport equipment, mining, textiles, wood, basic metals, pharmaceuticals, plastic, coke, electrical and optical equipment, electricity and construction.

2. Establish assessment criteria: To compare the performance of sites, a standard set of environmental performance criteria will be established. Academia, industry and regulators will be consulted when developing the criteria to ensure that the criteria are both comprehensive and acceptable for use across a range of industry sectors.

3. Analysis and interpretation: By analysing the environmental performance against the EMS on site, we will begin to identify those companies that perform well and those that do not. The project will then examine the make-up of the good performer's EMS, in terms of implementation and operation and will attempt to tease out the elements that makes their system so successful. These will be known as the REMAS criteria.

4. Demonstrate mechanisms: The information collected in assessing good and bad performers will be used to assess where there is any overlap of work between the regulators and companies. Mechanisms will then be developed and demonstrated that will benefit the companies that perform well. This will stimulate the poor performers to improve.

5. Dissemination: Informing others about project findings, encouraging company participation in the project and replication of good practice are key elements of the project. We will achieve this on an on-going basis by using a mix of seminars, reports and web-based media to provide an arena for consultation, participation and communication.

Further information is available through the website www.remas.info.

Session 1: Presentations: advantages of EMS; linkage with permitting, inspection and enforcement

This session presented views, policies and experiences in the Member States. Patrick ten Brink (IEEP), summarised the results of the background study (see Annex 3). The first half focused on the *proof of benefits* and the second half on the *links of EMS to the permit cycle*. This presentation included a series of interventions by the UK, Germany and the Netherlands on the nature of the proof of benefits, and then a further set of interventions by other speakers from these countries on the links of EMS to the regulatory cycle. This was followed by discussion and subsequently a joint presentation by Jose-Jorge Diaz del Castillo and Magnus Gislev from the European Commission on *views, perspectives and policy considerations*.

Advantages of EMS

Patrick ten Brink (IEEP) opened the first workshop session with a presentation of the results from the survey conducted for the background report. The aim of the study had been to collect views, experiences and insights on the benefits of EMS to permitting, inspection and enforcement and the linkages between EMS and these three steps in the regulatory cycle. He continued by presenting the study's findings on benefits of EMS for the regulatory cycle, stressing the differences in perception of whether an EMS does or does not improve compliance. Some of the main points from the survey were: 72% (94%) of the respondents reported that EMAS improves compliance strongly (strongly+somewhat) and 55% (100%) reported that EMAS improves performance beyond compliance³ strongly (strongly+somewhat). For ISO14001, 17% (92%) of respondents reported that it improves compliance, and 27% (95%) that it improves performance beyond compliance strongly (strongly+somewhat). Some countries noted that EMAS benefits are greater than those of ISO14001 and other countries argued that they offer the same benefits – it was highlighted that this depended significantly on the way in which EMAS and ISO were implemented in the countries. Furthermore, 87% of the respondents considered that EMSs simplify the task of permitting, while 83% felt that it simplified inspection tasks and 71% reported simplified enforcement. The full report is included as annex III to this report.

Kristina Dahlström (Policy Studies Institute, UK) presented a UK study⁴, which assessed the potential for the role of EMS in regulation. The data sets came from a survey of 800 sites subject to Integrated Pollution Control and analysed differences in patterns of performance and compliance between groups with either (a) ISO 14001 only, (b) ISO14001 and EMAS or (c) no certified EMS. She reported that the study found a higher level of “procedural” performance (training, procedures etc.) in companies that have both EMAS and ISO14001, compared to those with ISO14001 alone. ISO14001 companies performed better than those with no certified EMS. However, there was no evidence that these lead to improvements in “outcome” measures, such as reductions in pollution incidents or increased rates of legal compliance.

³ The terms “performance” and “compliance” can be interpreted in different ways and the way the terms are related can be debated. Does bad compliance always imply bad performance? Can a company with an excellent compliance record, perform badly? Performance beyond compliance in the background study were defined as ‘*performance that goes beyond what is strictly required by laws or by a regulatory institution*’. For IPPC installations performance beyond compliance could take place where an installation chooses to implement the most ambitious BAT or beyond.

⁴ *Modernising Regulation: The Role of Environmental Management Systems* by Dahlström, Kristina and Jim Skea, for the Environment Agency, 2002

Matthias Weigand (Bavaria, Ministry of Environment) pointed out that it is positive that we now can acknowledge that EMAS changed paradigms towards self responsibility and good performance. He stressed that the avoidance of duplication part of Article 10, para 2 of the EMAS regulation should be self-evident. He explained that the problems of command and control include the delay of innovation and complex and contradictory regulation. He argued that environmental covenants and schemes for regulatory flexibility based on EMAS or ISO-Plus schemes could be introduced without lowering environmental standards. Experience in Bavaria showed that a move towards regulatory simplification leading to deregulation and substitution, which will mean more responsibility, less bureaucracy, harmonisation of environmental laws and consequently a saving of time for the government authorities and industry, without any reduction in environmental performance.

Patrick ten Brink (IEEP) explained how Dutch experiences showed that certified EMSs have added value for communication between companies and authorities, and also on environmental performance and improvement processes. He emphasised that these benefits do not come automatically. The findings were based on two studies from 1999 and 2001, carried out by the SCCM of the Netherlands. The lessons to be learnt were that the different roles of certification bodies and authorities should be clear and harmonisation of certification practices between certification bodies is needed.

Linkage between EMS and permitting, inspection and enforcement

Patrick ten Brink (IEEP) presented the background report results regarding links of EMS to the regulatory cycle, with specific reference to permitting, monitoring, reporting, inspection and enforcement and where links relate to different stakeholders – permitting agents, inspectors, enforcers, industry and third parties including NGOs. He gave examples of how countries have linked the EMS to permit application, assessment, content (simplification) and duration, and posed the question of whether the schemes are always in place because of time saving or whether they are incentive schemes for the uptake of EMS. He then gave examples of links to monitoring and reporting (where EMAS reports fulfil other reporting obligations) – again leading to the question of whether these are introduced and function as incentives or simply avoid duplication of monitoring and reporting. Finally he explored the links to inspection and enforcement – looking at the impact of the existence of EMS to inspection frequencies and the potential influence on the nature of inspections. He also gave examples of the use of mandatory EMS requirements in some countries and posed the question as to whether and where EMS should be used as a mandatory instrument. Full details are presented in the IEEP background report in annex III.

Karin van der Maesen (NL, Province of North Holland) presented a Dutch regulator's experience of attuning permits to EMS. She used Enci, a cement and IPPC industry with ISO 14001 certification, as an example of how a framework licence is used. She explained that the conditions for receiving a framework licence are: a company environmental plan, a good compliance record, an (externally certified) EMS, an environmental annual report and open communication with the competent authority and towards others. Finally she pointed out that with the framework licence the authorities' focus will no longer be on procedures or specific technical requirements for an installation. Since there are sufficient guarantees in place for transparency, their main regulatory focus is now on the environmental objectives and effects on the environment, rather than plant operation.

Rob Huydts (NL, Enci) presented the Dutch experience of attuning permits to EMS from an industry perspective. He stressed that the attuned permits will be an opportunity for business, since there will be no detailed rules, fewer procedures, more efficient enforcement activity, increased trust of the authorities and the environmental goals are more easily reached. He pointed out that legal uncertainty with regard to the framework permit can be a threat to industry; he noted that it is difficult for industry when they can be repeatedly challenged by NGOs, even when they already have a deal with government authorities. He advised that full EMS should not be made a mandatory part of the permit.

David Pugh (UK EA) presented the UK experience of a risk based approach to permitting, inspection and enforcement – OPRA (Operator and Pollution Risk Appraisal). Under OPRA the permit charges are linked to risk which is consistent with the polluter pays principle. One of the factors considered is the presence or absence of an EMS. Installations which have EMAS are given a lower risk rating than those with only ISO14001 and these in turn have a lower risk rating than installations with a non-standardised EMS (assuming that all other factors remain constant). He pointed out that the concerns are: confidence in the approach; and confidence in delivery of EMS – as while there is proof that EMAS offers improvements in process when compared to ISO14001 which in turn has improvement when compared to non standard EMS, a difference in the final actual environmental outcomes is more difficult to demonstrate statistically. This therefore questions whether offering different risk ratings is appropriate as it unclear (so far not demonstrable⁵) that a standardised management system really does reduce risk. He also stated that the approach introduced some financial uncertainty since neither the authority's income nor industry's costs remain constant with this approach.

Danny Lawrence (Larfarge) began by stating that Larfarge (a major cement company) are strong believers in EMS. He identified the signals that industry will respond to in taking up EMS, i.e. money saving changes, proposals which reduce duplication of efforts, time and costs, improved recognition of voluntary efforts, being able to demonstrate regulatory compliance and improved relations with regulators. He stressed that the true benefits come when all work together. He also made the point that a generous use of logos connected with the existence of an EMS was of key importance to industry. He then presented the signals that industry will not respond to, i.e. over-complicated procedures or procedures that increase time and costs without benefits, bureaucracy and the lack of recognition of efforts. He finally gave some examples of the financial benefits of EMAS on IPPC/OPRA links with time savings estimated to € 3400 on initial applications and € 1600 on annual fees. He underlined, that time savings was a particularly strong motivating factor.

Stefan Frey (Baden-Württemberg, Ministry of Environment) presented the Baden-Württemberg experience with EMAS. He pointed out that EMAS has only provided a marginal improvement of the image of its participants as perceived by the regulator. Industry has therefore requested more incentives, eg deregulation or regulatory relief. He explained how the approach taken was to send a clear signal by reducing permit and inspection fees. The rationale behind this was reduced workload, but whether the workload is really reduced is arguable, and in the end the (policy) interests in offering a positive price signal for the uptake of the EMS is core rationale. He also explained a number of other drawbacks of reduced permit fees, such as cost recovery for authorities and that fee reduction mainly

⁵ Field experience by inspectors suggest that there the assumptions of different risks is correct, but that the statistical analysis on existing data can simply not prove it. Some experts feel confident that it can be proven in due course.

benefits large companies. He concluded his presentation by stating his hope for a new push from Brussels for EMAS by giving more incentives for its use in other legislation.

Rüdiger Beising (Energie Baden-Württemberg -En BW) gave his personal viewpoint on regulatory relief as a representative of industry. He pointed out that the arguments against EMAS are that no money is given for industry's added effort, EMAS is too formal, there is no manpower to maintain EMAS and that there are no significant advantages in the market. He highlighted that, as a consequence, EMS without verification could be sufficient for industry. He therefore argued strongly for the need to give enterprises incentives, privileges and trust to promote EMAS.

Patrick ten Brink (IEEP) presented questions for the road map to effective and appropriate use of EMS in the regulatory cycle. He started by exploring what Member States could do. He pointed at the need for further encouragement for the uptake of "quality" EMSs, such as EMAS, (strictly interpreted) ISO14001, and "ISOPlus" schemes. Furthermore guidelines for EMSs could usefully be developed to ensure a rigorous interpretation of the EMS scheme and Member States could usefully take measures to ensure quality of certification/verification. He encouraged Member States to check areas of potential overlap between regulatory requirements and EMS activities and outputs to help encourage efficiency. However, in any move towards regulatory flexibility, it is also necessary to check risks and conditions and only reward those with clear improved performance. He suggested that the European Commission should offer a high level endorsement of EMAS and clarify the links to existing and future legislation. Finally he posed a number of questions to be considered in the working groups:

- What regulatory requirements or issues are eligible for regulatory relief? Should these be described in a European Commission recommendation?
- To what extent should EU legislation be amended to offer greater possibilities for linkage with EMSs (providing regulatory relief)?
- What minimum conditions should (always) be met throughout the EU when offering regulatory relief? Should these be described in a European Commission recommendation?
- To what extent could and should EU wide minimum criteria for certification/verification be issued?
- To what extent should the European Commission further distinguish and clarify the role of (elements of) EMSs in general and the role of certified/verified ISO 14001/EMAS EMSs in particular? Could and should these specific or preferred EMSs be further developed?
- To what extent do key issues like compliance and continual improvement in EMAS need further clarification? To what extent does the role of the authorities in EMAS need strengthening?
- What further links would you like to see between EMSs/ISO/EMAS and (other) EU legislation and policies? What kind of links would these be: (elements of) EMS as mandatory requirement; (elements of) EMS that can fulfil or replace legal requirements?
- Are additional EMS requirements necessary for Directives that have chosen a different approach – eg on the use of emissions standards? In short do we need both ELVs and EMS – is this "belts and braces" / double security approach necessary?
- Should there be a broader European Commission policy document setting a framework for further EU approaches on the use of (different) EMSs in relation with the implementation of EU Environmental legislation?

- Should recognition of EMS be based on performance?

A **comment** was made on the point that often not all aspects of facility operation which are important for the environment are regulated and EMSs can address several areas that are not regulated, though industry lacks incentives for implementing and maintaining EMSs. He also stated that often regulators do not sufficiently take into account whether industry has EMSs. A **question** from a university representative asked for clarification of the EU rules for public procurement regarding the possibility of taking into account EMS referring to a recent European Court of Justice ruling. Magnus Gislev (European Commission) explained that it is allowed to take EMS as proof of technical competence if it is an environmentally significant project – but it is not allowed to exclude other proofs. A **comment** from a representative of regulators stated that the way forward is not to provide grants to participate, since in particular EMAS can be used as a signal in the market place – ie the market incentive should be enough. He therefore emphasised the strong incentive that is connected to having a logo for the EMAS and the importance of working towards an eventual use of this on products as well. A **comment** from a representative of industry explained how his company also did use the EMS to improve its image. He also stated a wish for more involvement of SMEs.

Jose Diaz del Castillo (European Commission) presented the policy considerations behind EMAS and stressed that the objective under the Sixth Environmental Action Programme (6EAP) is to both improve the implementation of existing legislation as well as working in partnership with business. He congratulated the ENAP- and REMAS projects on helping to achieve these objectives. He explored the policy areas which are, or could potentially, be linked: Integrated Pollution Prevention and Control, Integrated Product Policy, Public Procurement, Energy Using Product Directive, Corporate Social Responsibility, Emission Trading Scheme Directive and EMAS Energy Efficiency Guidelines. He also underlined that the European Commission is in the process of drafting a report showing the link of EMAS to different policy instruments and presenting an overview of country practice as regards incentives for EMSs.

Magnus Gislev (European Commission) presented the links to the IPPC Directive. He distinguished between mandatory requirements (eg possession of permits, procedure to obtain a permit, etc.), flexible implementation (eg permit review frequency, intensity of monitoring, reporting or inspection) and, finally, areas which are not an issue for the EU (eg discounts on permit charges). He explained that EMS is part of Best Available Techniques (BAT), as is clear from the standard text on EMS for BREF notes⁶. Some features of EMS can be BAT (environmental policy, planning and procedures, implementation, checking/auditing and review). Others are not generally BAT but are ‘support measures’ – like external verification, the environmental statement or the EMAS or ISO registration/certification. He made clear that, in principle, non-standardised systems could be equally effective, though it is generally recognised that standardised systems, in particular EMAS, have higher external credibility. He also noted some questions for the workshop, namely:

- Do Member States make enough use of the flexibility under the IPPC Directive (Solvents Directive, Seveso Directive etc)?
- Is the IPPC Directive (etc.) flexible enough?
- What evidence of environmental performance does the authority need?
- Which type(s) of simplifications (“regulatory relief”) is most justified?

⁶ See <http://sharepoint.infomil.nl/enap/>

- What are the effects of an EMS on transparency and hence implications for the Aarhus Convention?
- Should/will IPPC authorities not grant a permit unless there is an EMS?

Session 2: Working Group Discussions on the Advantages of EMS & Performance indicators

Three parallel working groups were held to discuss *the advantages of EMS and to explore performance indicators of EMS*. The three chairpersons of the working groups were given a list of suggested issues for discussion (Box 2.1 below). Each working group started with two brief presentations, addressing the specific questions set out in Box 2.2 below. The rapporteur of each working group reported the results of the discussions in that working group back to the plenary meeting. The comments from the three working groups should be seen together and in context of the other presentations and background paper.

Box 2.1: Parallel Working Groups, suggested issues for discussion

Common questions for all commentators in working groups for this session:

- What are the most important benefits arising from different management systems, (please include comment on compliance and performance benefits and simplification of permitting, inspection and enforcement). On compliance rates – what impact is there of using an EMS?
- What elements of EMS offers this and what type of EMS offers the greatest benefits and in what contexts (eg national context)?
- What proof is there of benefits and what experience surveys and/or performance indicators are used or could be appropriate to use ?

Part A: Insights on Experience (noting “P:” for priority questions)

- **P:** What do you see as the **benefits** of EMS to compliance and why?
- Where are there real and significant benefits and where fewer or none?
- **P:** How does this relate to (a) type of EMS; (b) national situation (national policies; national EMS schemes, national coordination and quality assurance mechanisms for certification and verification) ; (c) industry ambition of EMS an role of other stakeholders; (d) other factors (which?)
- **P:** Are there cases where benefits are sufficiently important to suggest that a shift away from traditional command and control approaches can be appropriate?
- What type of companies go for EMAS/ISO? Are they all environmental leaders? Are the more responsible and less polluting/risky than others and more in compliance? Are there other companies more compliant/better performers that decide that they do not need EMS?
- **P:** What is the basis for the statements on benefits – expert experience ? studies using performance indicators?
- **P:** What proof is needed and what approach or combination of approaches (expert opinion, performance indicators) is appropriate?
- What are good performance indicators – for compliance issues, for performance beyond compliance and other benefits? What is being used already? Which others can be tried? How can they be implemented, tested and made operational?
- **P:** What improvements does “performance beyond compliance” or continual improvement entail? Is it on regulated issues or non-regulated issues? How can one measure these benefits?
- **P** What are the most important other benefits?
 - Transparency?
 - Getting further insight in key environmental issues and better prioritising?
 - Better relationships with regulators and neighbours?
 - Better follow-up of incidents and complaints?
 - **P:** Who benefits what and who benefits most – industry, permitters, inspectors, enforcers or third parties?

Note – not all these questions were fully explored. The full list is noted here as they remain relevant.

- **P:** Are **permitters, inspectors and enforcers tasks simplified**/facilitated by EMS existence, if so why?
 - What reason lies behind some countries noting no simplification while (most) others do see EMS simplifying permitting, inspection and enforcement?
 - What national differences, or other differences play a role here?
 - Where EMS simplify inspection – does this, should this, change the inspectors role?
 - **P:** What **conditions** are there **for benefits** to be achieved and what barriers?
 - How important is the quality of permitting, inspection and enforcement?
 - How important is the quality of the certification process and of certification bodies?
 - **P:** What **solutions** have been found / are appropriate?

Box 2.2: specific questions for commentators

Working Group 1 – Specific questions for commentators

Valarie Doyle (Irl)

- What are the reasons behind the national system in Ireland and what makes it particularly beneficial?
- What are the factors that lead to the benefits and what are the constraints – roles, perceptions, attitude, conditions, checks and threats?

Armin Pecher (A)

- What experience lies behind the statement “*EMS (especially EMAS) helps companies prove and support legal compliance*”?
- Why is EMAS the best EMS – notably what elements make it the best?
- What proof is there of this conclusion ?

Working Group 2 – Specific questions for commentators

Ulla Ringbaek (Dk)

- The Danish result suggested no benefits to compliance from the use of EMS – what is the basis for this outcome? Could other factors determining performance levels have been predominant?
- Is it that compliance is already high and EMS cannot add much, or is it due to implementation factors (eg EMS not rigorous)?
- Could you see EMSs offering benefits to compliance in the future if other conditions apply? If so what would need to be done to make it work?

Ruzicka (Cz)

- EMSs are understood to offer valuable benefits to operators filling in the IPPC application forms – how valuable is this to industry and how does it help the permit authorities?
- Can other steps/aspects of permitting be supported by EMSs?
- Is this something that other countries could benefit from?

Working Group 3 – Specific questions for commentators

Colin Chambers (Ind)

- What particular benefits do industry see from the implementation of EMS?
- What are the key drivers for implementing EMS – EMS, ISO and EMAS?
- How does the implementation of an EMS affects the relationship with the regulator?

Titta Schulz (Fin)

- Do you think that EMAS offers greater benefits than ISO, if so why?
- How does industry and how does the regulator, NGO’s and other stakeholders appreciate ISO and EMAS? What are the reasoning behind?
- Are there any particular conditions/actions required to ensure greater benefits?

Working Group 1

The rapporteur of working group 1 summarised their discussions on *‘the advantages of EMS and performance indicators of EMS’*.

The group agreed that there are *benefits from EMS*, though there were differences between countries’ experience and views on how to assess these. Particular points noted include:

- Austria underlined that benefits included improved legal compliance, improved environmental performance as well as image benefits for companies. He pointed out that there are significant risks for the brand value of EMAS and ISO if sites certified or registered are shown to be non-compliant and it is therefore important for the credibility to look at all stages of the system, including the link between EMS and regulatory control and to clarify objectives of the EMS, the brand concept and hence realistic expectations of what the EMS offers.
- Germany noted that there are internal benefits (cost reduction, good internal management) and external benefits – broadly speaking ISO offers benefits to business and EMAS offers benefits to regulators.
- Industry representatives agreed that their benefits are firstly cost reductions and then a good structure for improving environmental performance. They also noted that they opt for ISO for international business and EMAS for relations with regulators. A Swedish survey of 3000 companies reported cost savings and some market benefits.
- Most, but not all, agreed that an EMS cannot “guarantee” compliance, though there was agreement that an EMS can contribute to improving compliance. This does not mean that companies with EMAS or ISO are guaranteed to have a better level of compliance than other installations without either of these standardised systems.

The debate also addressed the *relative qualities of EMAS, ISO14001 and other systems*, and while there were some strong voices arguing that EMAS was better than ISO, this was not shared by all participants. Some key points are:

- Austria underlined its strong preference for EMAS, a view also shared by an NGO participant, who underlined the transparency/disclosure benefits of EMAS - also reflected in the comment of another participant who noted that ISO can be headlined as *“I’ve got one, but am not going to you tell you about it”*. Austria, furthermore, said that it would be easier to demonstrate legal compliance when the local authorities are asked about it by the registration body before a registration under EMAS takes place. In Austria the local authorities are obliged to report to the registration body whenever legal proceedings are pending (see: Austrian Environmental Management Act; section 16 (4) and section 17 (2)."
- On the disclosure side, some participants noted that the environmental statement required by EMAS was a positive element in any comparison with ISO. Others noted that it is still possible to have ISO plus an environmental report.
- Others argued that EMAS might be better, but the market demands ISO. A concern was also raised that market pressures may lead to ISO becoming the norm and EMAS disappearing. This was linked to a plea for more support for EMAS and this to be addressed at the upcoming EMAS III discussions. A particular focus on the disclosure aspects could be valuable in EMAS III, building on the particular value added of EMAS over ISO.
- The Irish noted that there is huge variability in the quality of ISO14001, and that the implementation of some schemes can be as good as those certified to the ISO standard. Other participants noted that the company ambition for the EMS as well as

national interpretation guidelines for EMS can be crucial factors in the quality of the EMS and ensuing benefits – and more important than whether the issue of being EMAS, ISO or non-standardised EMS.

- Finally, there was some discussion on whether to broaden EMAS to be internationally available so that it can better compete with ISO. Many questioned whether one should really see the two systems as competing, preferring to say that they are complementary, with EMAS building on and going beyond ISO.

On *measuring performance and performance indicators*, some points of interest were made:

- The EMS itself provides a tool for demonstrating performance, given that goals have to be set and progress towards these has to be shown. Ireland supported this, stating that they use the number of environmental targets that are achieved as indicators. Additional indicators discussed include a range of physical indicators, number of pollution incidents, non-compliance rates, number of complaints, etc. Indeed, it was pointed out that the non-compliance rate and the number of complaints indicators were already used as a basis for setting the inspection programmes.
- Most agreed that it is difficult to attribute benefits to either EMAS registration or ISO certification. Ireland noted that there is huge variation in the quality of ‘ISO14001’ sites and the existence of an EMS itself is not the deciding factor. Germany underlined that all companies have some sort of management systems and therefore assessing benefits attributable to a particular EMS can be difficult. Ireland also underlined that the EMS and permit were launched together and therefore it is difficult to attribute benefits between the two.

Working Group 2

The rapporteur of working group 2 summarised their discussions on ‘*the advantages of EMS and performance indicators of EMS*’.

The group examined the issue from different perspectives – industry, NGOs and Accession Countries.

From the **industry perspective**, general views on the **benefits** of EMS are:

- Benefits are not always clear;
- There are some positive benefits, such as for the reputation of a company;
- EMS should be seen as a tool to meet requirements – though there should not be undue focus on it. The EMS deals not only with regulated substances but also non-regulated substances. Furthermore, the EMS, while helping address compliance, should not be relied on to ensure compliance as this is the role of regulator;
- It is important to be sure about the specific and different objectives of EMS and regulation;
- EMS may be required within industry, as exemplified by supply chain requirements in the automotive industry;
- EMS might help in persuading other authorities, eg planning authorities when proposals for new plant are considered.

Issues identified from the **NGO perspective** included:

- It is important to ensure that work on EMS results in money being spent on improving the environment, not in the generation of documentation;
- EMS should focus on specific performance issues which can act as benchmarks against which performance can be assessed in concrete terms;
- Benchmarks should be agreed with all relevant stakeholders;
- NGOs generally do not trust the verification process, as verifiers are paid by the company;
- Legal compliance must be considered to be the minimum performance under EMS, i.e. much of the effort must address how to go beyond this and/or address issues not addressed by legal requirements.

The group discussed the **relationship between EMAS and ISO14001**, particularly from the **industry viewpoint**. Key conclusions reached were:

- That ISO should be considered to be part of (contained within) EMAS;
- As EMAS requires more from companies than ISO, ISO tends to be preferred by industry;
- EMAS actually provides no (or few) additional internal benefits to a company when compared with ISO;
- There are differences between the Member States in the debate on the relative merits, etc, of ISO and EMAS and on how they coordinated (for example, in the Netherlands and UK the accreditation processes are combined, but this is not the case in Germany).

The group also discussed **the key drivers** that assist in the adoption of EMS and the barriers to its uptake. The critical drivers that were identified included:

- Pressure from stakeholders;
- The position of competitors with respect to EMS;
- Where there are specific needs/requirements, e.g. for reporting.

Important **barriers** identified included:

- Lack of confidence on the effectiveness of EMS in terms of delivering compliance as good environmental performance due to lack of objective evidence to this effect.
- Time – how long it can take to obtain a certified EMS.
- Lack of interest from stakeholders.
- Lack of independence of certifiers.
- The availability for NGOs of better data elsewhere, e.g. from regulatory authorities.
- The ‘system’ boundaries of EMS are blurred – hence the importance of clear benchmarks.
- The difficulty of clarifying the role of EMS within sustainable development objectives.

Finally, the group discussed the specific issues for take-up and operation of EMS in the **Accession Countries**. The main conclusions from the discussion were:

- EMS is often taken more seriously in the Accession Countries than in many existing Member States;
- EMAS is actively used to improve the performance of specific industrial sectors;
- Industry is currently investing to meet EU requirements – this is all a cost, whereas EMS can offer some benefits;

- EMAS uptake within Accession Countries also occurs as this helps to overcome the perception from existing Member States of poor environmental performance (or that environmental protection is not taken seriously) by these countries.

Working Group 3

The rapporteur of working group 3 summarised their discussions on *‘the advantages of EMS and performance indicators of EMS’*.

A number of key points were made in the discussions. On the **benefits** side, the group noted that:

- It is difficult to identify isolated benefits of an EMS, since very often the EMS is just one part (or should be) part of an integrated system of management systems. The environmental aspect is but one integrated element and other elements can be safety, health, sustainable development etc.
- EMS can help to identify the risk of business and to improve the control of risk strategies. By reducing the risks it also helps to lessen the liabilities in the future, and to create better conditions for insurance, since you can prove that you are addressing the risks,
- EMSs can help to both improve the image and the credibility of products, and also the image and credibility of the company towards the public and employees,
- Having an EMS may in some cases help the companies to improve their image and thereby help the companies to hire highly qualified people, which results in the system supporting the future of the company.

A wide discussion was held on the **drivers** (and the combination of these) for the uptake of EMSs, a number of suggestions for drivers were made and these included:

- EMS can be introduced to provide increased security to suppliers.
- EMS can simply be introduced to improve the management of the company.
- Internal desire to improve the performance can be a driver for introducing an EMS in a company.
- A wish to improve communication with the outside world – including business partners, regulators and the general public.
- Some companies are driven by concerns of how to implement SEVESO II.

Barriers – it was mentioned that if a company already has a useful management system in place, this could be a barrier, since the company might not see a greater need for changing to a certified/verified one. In the general discussion of the working group, key discussions points included:

- There is a need for strengthening the marketing of the EMS – this point was based on a German comparison with how much resources are actually used in other areas for marketing.
- It was also argued that there is a need for integration of all kinds of management systems to reduce duplication of efforts and achieve cost-effective schemes.
- Cultural differences in companies’ attitudes was mentioned and underlined as a very important factor in the uptake, implementation and performance of EMSs, but the problem of how to measure these differences was raised.

Finally, the group noted the fact that legal compliance is only a small part of EMS, and that the EMS often detects many more problems and can hence address issues and environmental aspects not covered by regulation. There is therefore a need for regulators to recognise the

particular benefits of EMS - -recognise that they have a significant role beyond supporting compliance issues that benefit the environment and benefit the regulators' broader remit.

Day 2

Session 3: Presentations: conditions and modalities of linkage between EMS and permitting, inspection and enforcement

Rob van Gestel (NL, Tilburg University) presented dilemmas, expectations and aspirations concerning the use of certified EMS into public regulation and enforcement. He started by telling a fairy tale of the ‘OEMPS’ – Outstanding Environmental Management and Performance System – to illustrate the dilemma between, on the one hand, EMAS-registration not providing a legal guarantee for compliance, better environmental performance or better communication, and, on the other hand, EMAS could be a useful mechanism for accelerating environmental performance. He then explored the frictions between self-regulation and public regulation. In his view successful environmental management cannot be enforced by regulation, and that certification or verification cannot substitute for public monitoring and enforcement, and public rulemaking cannot be replaced by communication. He drew attention to lessons learned from the EPA Performance track program in the USA. This voluntary program rewarded companies for environmental performance beyond compliance through a number of incentives. An important lesson learned was that even if industry has been in compliance it can fall back, so regulators should keep alert. He ended his presentation by proposing these concluding propositions:

- Making EMAS a standard of excellence cannot go along with maximising the number of registered organisations.
- EMAS is bound to be pushed off the market if it does not succeed in proving its surplus value in relation to ISO 14001.
- A transparent and open attitude of organisations cannot be enforced, but requires ‘temptation’ and persuasion.
- Lowering inspection visits should not be regarded as a natural reward for having a certified EMS.
- Negotiated rulemaking should not lead to a ‘communicative’ style of enforcement.

The presentation was followed by a heated discussion since several people could not agree with the concluding propositions. A German representative intervened that in their schemes the above propositions do not apply. A participant from another country did, however, feel that the above propositions were not inaccurate for their country. A common area of agreement, as stressed by a number of participants, was that caution should be taken when using the USA as a “good” example to follow. A UK participant noted that while there are clear weaknesses with the US approach, there is still something to learn and the experience, while it should not be followed, should not be ignored completely. The full text of the paper is presented in Annex 4 of these proceedings.

Session 4: Conditions and modalities of linkage between EMS and permitting, inspection and enforcement

Three further parallel working groups were held to allow workshop participants to explore three sets of issues. Working group 1 discussed the *'Role of the Company and the desired scope and quality of the EMS'*. Working group 2 considered the *'Role of the Regulator and the voluntary/mandatory approach'*. Working group 3 looked at *'EU Policies and legislation'* – see Boxes 2.3 to 2.5 for the suggested issues for discussion for the respective groups. The rapporteur of each working group reported the results of the discussions in that working group back to the plenary meeting, with the main points summarised after the boxes below. The comments from the three working groups should be seen together and in context of the other presentations and background paper in the Annex and the Chairman's conclusions.

Box 2.3: Discussion Issues for Working Group 1: Role of the Company and the desired scope and quality of the EMS

Common questions for all commentators in working groups for this session

- Where do expectations on EMSs of industry and regulator differ and where do they correspond?
- What elements of EMSs could be linked with the permit cycle and how (on what conditions)?
- Should companies be given regulatory flexibility where they have quality EMSs? If so where, on what conditions and for which EMS?
- To what extent can regulatory relief reward or encourage companies to further implement EMSs? What kind of regulatory relief is needed?
- What different approaches and roles and can/must the regulator choose with regard to EMSs?
- What are the benefits and risks of offering regulatory flexibility?
- How can one make sure that the right companies get the right rewards/incentives/savings?

Specific questions for commentators

Malcolm Gall (Ind)

- What types of links do industry see and what type of links / incentives would you like to see in place?
- Are there any particular links/incentives that are important for you?
- In what form (eg how detailed) would you like to see these?

Joss Tantram (NGO)

- What are the dangers of offering regulatory flexibility incentives for EMS?
- What would you like to see companies offer to ensure at least equivalent action and equivalent results to pre-flexible regimen (eg ensuring least functional equivalence)?
- Is there risk of "rolling back the state" beyond the appropriate point with regulatory flexibility given for voluntary action? At what point do we start to renege on statutory duties (eg inspection/protection of environment)

General Questions to Select from

- **P:** Quality of EMAS vs ISO14001 vs other EMS – what are companies perceptions ?
- **P:** Quality variation within EMAS? Or within ISO14001(Plus)? - **and what is the role of the company in achieving quality?**
- **P:** Improving ISO14001 based EMS and ensuring credible benefits – moving to “ISO14001 Plus”- what type of combination of EMS elements is appropriate? Is ISO enough? Should ISO14001plus be sought (and what are the elements of the “plus”) and should EMAS be the final quality goal?
- Issues for Companies:
 - **P:** Operational control: basis element of EMS’?
 - **P:** Compliance – how important is an EMS in this respect and how is it appreciated by industry?
 - **P:** Continued improvement – how ambitious can/ should companies be?
 - Engage and develop trust – does the EMS help here; what specific efforts are needed and by whom?
 - Simplified permits – are they attractive to business? Are objective based permits more attractive than means based permits?
 - Reporting to the public – are there cost savings by avoiding duplication?
 - **P:** Self-monitoring and self auditing – can the regulator and other stakeholders witness?
 - Transparency – what are the benefits and how can one address the risks?
 - **P:** What conditions should be met (hoe should an EMS be implemented) to ensure that the benefits are achieved?
- **P:** What type of link/incentives would companies react to in particular – related to permitting, inspection and enforcement?
- **P:** Which ones are the most important? And which ones uninteresting? Discuss around permitting, monitoring, reporting, inspection and enforcement?
- **P:** How can they best be presented – eg what legal form?

Working Group 1: The role of the company; desired scope and quality of the EMS

The **Rapporteur of Working Group 1** summarised the group’s discussions on a range of issues including the expectation of EMS by industry and the regulator, incentives and regulatory relief, and for what is EMS a driver. The rapporteur focused primarily on recommendations.

The first theme – on expectations of EMS - focused on the issue of the relative roles of regulator and verifier/certifier. The mains points were that there is a need for clarification of the roles between the verifier/certifier and regulators. It was noted that regulators retain their responsibility for checking compliance while the verifier/certifier checks the EMS. There was also the recommendation that the certifier/verifier should contact should, as a must, the regulatory authorities and that their comments are taken on board (EMAS already gives some requirements on this). Relatedly, the point was made that there should be avoidance of “double-tasking” where inspectors and verifiers/certifiers do the same thing, and cases where no action is carried out given that both parties expect the other to do so. There needs to be good and appropriate communication. To ensure that the system works well, there is a need for a quality assurance mechanism for the certifying body, including training and a complaints forum.

On the issue of incentives and regulatory relief the question asked was whether this is an appropriate reward and encouragement for companies. Industry noted that the main benefit that it looks for is time savings. Industry from the Netherlands noted that it was interested in permit flexibility and simplicity with a focus on environmental performance rather than a focus on technical measures – eg objectives rather than means. However, they noted that there might be a problem with the legal status – for in cases of non-compliance the permit can be revoked (in principle) and they had a concern that it can also be in conflict with

requirements of the IPPC Directive. In Germany, the comment was made that the discussion on regulatory relief was one of “promising a lot, obtaining little” – in short, they argued that regulatory relief has been oversold. Finally a comment was made that benefits should build on more than trust, and that performance that “merits” the benefits should be auditable and have checks and threats in place.

On whether EMS is a driver for compliance, the point was made that EMS should be used for improving performance and not compliance. Compliance should be evident or measures should be in place to achieve this. EMS can be a tool to facilitate compliance, but it is not a guarantee. It was also noted that the EMS focused not only on regulated issues, but also on non-regulated issues, and here significant benefits are potentially available in areas where compliance is not currently an issue.

Finally, the working group felt strongly that some clarity was needed regarding the “branding of EMS and asked for DGENV to push for a clear brand image for EMAS. A suggestion was made – namely that EMAS is associated with *‘a commitment to continually improved environmental performance, compliance, prevention and transparent communication’*.

Working Group 2: Role of the regulator; voluntary/mandatory approach

Box 2.4: Discussion Issues for Working Group 2: Role of the Regulator and the voluntary/mandatory approach

Common questions for all commentators in working groups for this session

- What do you see as the most important links between EMS and the permit cycle – notable elements of permitting, monitoring, reporting, inspection and enforcement? Who benefits from these links?
- Which of these offer benefits to the uptake of EMS (and which type)?
- What additional links could be appropriate and under what conditions?
- Where is mandatory approach suitable and for which purposes?
- Are there national or regional issues that make some countries/regions better suited to linking EMS and the permit cycle, and the “move towards regulatory flexibility”?

Specific questions for commentators

Rob Kramers (NL)

- What are the benefits, reasons and form of flexible permits?
- Does a shift from “means based” to “objective based” permits offer only benefits or also risks?
- How can the risks be addressed –eg format, conditions etc?

Joakim Kruse (Se)

- Under what circumstances, if any does it make sense to have any links and/or incentives for EMAS?
- Where do you see the greatest dangers lying – in flexibility for permitting, inspection, enforcement?

Erik Forberg (No)

- What mandatory action have you in Norway?
- What other mandatory actions are appropriate – eg EMS for high risk/impact or complex installations?
- Should mandatory EMS, or elements of EMS be a regular aspect of enforcement action?

General Questions to Select from

- **P:** Where is offering regulatory flexibility appropriate, where does it effectively lead to “rolling back the state” and where is it simply making regulation more (cost) effective?
- *Permitting:* How can one ensure that flexible permits and simplified permit applications are sufficiently “thorough” – ie do not lose anything?
- *Permitting:* Does extending the permit validity period appear an interesting and viable option for other countries?
- **P:** *Permitting:* Is the issue of time saving for permit authorities exaggerated? What data is there? What performance indicators?
- *Monitoring:* Is a reduction in monitoring data provision an incentive for EMS or simply a means of avoiding unnecessary paperwork, and hence an administrative benefit for companies and regulatory authorities?
- *Reporting:* Is there any evidence that avoided duplication of reporting is an incentive for implementing EMAS? Or is it simply an efficiency/bonus issue?
- *Reporting:* Where can voluntary EMS replace mandatory requirements and where can it fulfil mandatory requirements – eg reporting? What conditions should be met? And is there a problem of principle with voluntary measures implementing mandatory requirements?
- *Reporting:* Is there any evidence of problems arising (eg loss of data) from having EMAS statements implement or replace mandatory requirements?
- **P:** *Inspections:* Should there be an explicit possibility for fewer inspections or should this be at the inspectors’ discretion? Should this be a formal or informal system (eg as part of normal inspection planning)?
- **P:** *Inspections:* Do inspectors see the existence of a quality EMS as being a sufficient reason to change frequency, length or methods of inspections? or are there other (predominant) considerations to do so?
- *Inspections:* Where there is a possibility for reducing inspection frequency related to the existence of a quality EMS, to what extent is this taken up?
- *Inspections:* Are reductions in inspection or supervision fees related to actual time saving by inspectors, or is it simply an incentive mechanism to encourage the uptake of EMAS or ISO? If the latter, what is the incentive effect?
- **P:** *Mandatory:* Is there any potential for mandatory EMS and if so which and what are the dangers?
- *Mandatory:* Is there a potential for a mandatory approach for EMS through permits, enforcement notice and for the courts?

Working Group 2: Role of the regulator; voluntary/mandatory approach

The Rapporteur of Working Group 2 summarised the group’s discussions on a range of issues. It began with a short presentation on the use of the framework licence in the Netherlands. This licence is customised to the level of environmental management in the company (the better the management, the greater the flexibility). The use of framework licences is at the discretion of the regulator – there is no right to such a licence. The main requirements for a framework licence are a certified EMS, a company environmental management plan, good relationships with stakeholders, a good compliance record and a validated annual environmental report. The latter is a four year report, with staged objectives. The key benefit to the company is that the framework permit represents a switch from means (i.e. specifying actions) to objectives (specifying outcomes), so that the company can identify least cost routes to achieving these outcomes. The objective for the regulator is that it will need to spend less time on the company. However, companies tend to have more dialogue, thus regulatory staff time is not, in reality, reduced.

The working group next had a short presentation on the situation in Sweden. Here elements of EMS are incorporated in a mandatory way into regulation. The Swedish Environmental Code requires all those which might affect the environment to take preventative and remedial action. All are obliged to have an ‘internal control system’ (ICS), which can be considered to be a ‘mini-EMS’. The requirements on the ICS vary, depending on whether the operation

requires a permit or not. For operations requiring a permit, e.g. IPPC-installations, requirements are rather far-reaching. Key elements of such an ICS are:

- Companies must have fully documented their activities and environmental impact and monitor these regularly.
- Companies must have an organisational responsibility scheme in place for environmental issues.
- They must have documented procedures for quality assurance, etc.
- There must be continuous and systematic assessments of environmental risks.
- Companies must, on their own initiative, undertake testing, etc, whenever necessary to ensure legal compliance.
- Companies must produce an annual environmental report, including both compliance data and general environmental impacts (elements of EMAS/ISO could be used for this).
- ICS is backed up by enforcement actions.

Although the system of ICS is mainly focused on compliance issues, it is perceived to also improve performance beyond compliance, due to its wide application. Sweden has looked into the issue of lowering inspection fees for companies with EMAS/ISO, but due to official reports claiming that there is no direct connection between the existence of a voluntary EMS and less need for inspection, this has not yet been implemented. Discussions noted that this was an interesting system, given the requirement for some form of non-certified EMS within IPPC permits. The Swedish system has also shifted in recent years to incorporate sustainability issues, e.g. conditions on transport and energy use. The official reports mentioned above have pointed out that the use of voluntary EMS actually may result in an increase in the workload for authorities, due to the number of questions that it raises. However, it is hoped that, in the longer term, voluntary EMS will result in a reduction in workload. Furthermore, some authorities and most companies perceive that voluntary EMS help to improve both compliance and performance beyond compliance.

The working group continued with a short presentation on the situation in Norway. Here there is a mandatory management system required for industry. However, it does not just cover environment, but also addresses health, safety, products and other issues. Thus companies only have one system to manage. Given the range of issues covered, all employees come into contact with it and, therefore, wider understanding of environmental issues occurs. This system has been easier to obtain the attention of management. The regulator has also changed its approach as a result. It now focuses on major items, as it is the responsibility of the company to identify risks in other areas. For those companies with EMAS/ISO, the authorities have reduced inspection fees. Also permitting has been simplified, as in the past permits contained detailed requirements, but today there is a standard text referring to the ICR (Internal Control Regulations).

The general discussion of the working group identified the following additional issues and examples:

- In Denmark there is a range of flexible/detailed licences. Their use is not linked to EMS (all have emission limit values, irrespective of the presence of an EMS) and the option chosen is decided by those issuing the permit.
- There are important links between EMS monitoring and permit monitoring requirements, although these are not the same.

- Reporting links also vary. In Denmark it can substitute for the required annual “green account” and in the Netherlands it can substitute the annual public Annual Environmental Report. In Sweden, the EMAS statement can substitute part of the annual reporting obligations that companies holding special pollution permits face.
- Regulatory reporting requirements are often highly specific (e.g. under EPER). Reports under EMAS often do not meet these requirements – maybe we should consider how to make EMAS reports more acceptable for reporting other obligations.

The use of framework/flexible licences and their relationship to EMS is interesting, but in each case a Member State would need to adapt such an approach to its own specific conditions.

Working Group 3: EU policies and legislation

Box 4: Discussion Issues for Working Group 3: EU Policies and legislation

Common questions for all commentators in working groups for this session – select from list:

- **P:** What regulatory requirements or issues are eligible for regulatory relief and in what form? Should these be described in a Commission recommendation?
- **P:** To what extent should EU legislation (IPPC, other directives particularly important for industry) be amended to offer greater possibilities for linkage with EMSs (providing regulatory relief)?
- **P:** What minimum conditions should (always) be met throughout Europe when offering regulatory relief? Should these be described in a Commission recommendation?
- **P:** To what extent could and should European wide minimum criteria for certification/verification be issued?
- **P:** To what extent should the Commission further distinguish and clarify the role of (elements of) EMSs in general and the role of certified/verified ISO 14001/EMAS EMSs in particular? Could and should these specific or preferred EMSs be further developed?
- **P:** To what extent need key issues like compliance and continual improvement in EMAS further “filling-in”? To what extent does the role of the authorities in EMAS need strengthening?
- **P:** What more links would you like to see between EMSs/ISO/EMAS and (other) EU legislation and policies? What kind of links would these be: (elements of) EMS as mandatory requirement; (elements of) EMS that can fulfil or replace legal requirements?
- Are additional EMS requirements necessary for Directives that have chosen a different approach – eg one use emissions standards? In short do we need both emissions standards and EMS – in other words is this “belts and braces” / double security approach necessary?
- **P:** Should there be a broader Commission policy document setting a framework for further EU approaches on the use of (different) EMSs in relation with the implementation of EU Environmental legislation?

Specific questions for commentators

Matthias Weigand (Ge)

- Should the EU support mainly EMAS or be flexible and support both EMAS and ISO14001?
- What recommendations do you have for the discussions on EMAS III?

Tomasz Podgajniak (Pl)

- What would be particularly beneficial for Poland and other soon to be new Member States?
- Are there any particular conditions in Poland and indeed other candidate countries that have important effects on the benefits of EMSs?

The **Rapporteur of Working Group 3** reported to the plenary that the group found that providing regulatory relief to companies with EMSs was not as important an issue as ensuring that legislation contains clear requirements so companies can easily assess how EMS fits in. Key notion should be that EMS can be a means to deliver and not so much an aim in itself. The group agreed on the need to be precise in EU legislation when referencing to EMS; it should – for example - be made clear whether an EMS is a mandatory requirement

or a supporting mechanism. The group also wished to see a consistent strategy on the use of EMS in EU legislation building on the above-mentioned elements. For EMAS III the group saw the need for a clear choice between EMAS as another EMS standard or EMAS as a standard of top performance. If the first was chosen then the regulation scheme should be less bureaucratic and facilitate the involvement of SMEs. If, on the other hand, the second was chosen then EMAS III should be established to push the boundaries of ‘people, profit and planet’.

Closing Session

The Workshop Chairman **Paul Leinster** (UK) closed the workshop with a summary of the two days’ discussion. He pointed out that our goals should be based upon the environmental outcome required (better environment, progress towards sustainable development) and the question is what the best measure to achieve it? He saw two measures within the context of the workshop: one is related to the role of the regulators with regard to EMSs, which need to be clarified. The other measure of importance is that of voluntary efforts. He pointed out that one key issue of the workshop had been on how regulators can use information contained in the EMS in order to facilitate their tasks and also help avoid duplication of effort. He also noted that in order to ensure the increased up-take of EMSs it might be necessary to give regulatory relief or other incentives. However, whether regulators can go further and offer regulatory relief was not completely clear and the workshop participants held different views as to appropriate regulatory support. .

The workshop agreed on a number of recommendations for taking forward the question of EMS and links to permitting, inspection and enforcement - the “Chelsea Dozen”. These recommendations focussed on three areas: (a) needs for **clarification and communication**; (b) what issues need to be **ensured**; and (b) what areas need to be **developed**. These are presented in turn below.

The recommendations below have elaborated the recommendations made in the last session of the workshop. They were made by the ENAP-REMAS project team with the purpose of clarifying the initial recommendations and making them more accessible for a broader public.

Recommendations of the workshop: The Chelsea Dozen

The workshop participants recommended to:

Clarify and Communicate

1. Terminology on EMS, certified EMS and verified EMS

The term EMS in itself still leads to some confusion. To some EMS means only externally certified or verified systems meeting the requirements of ISO 14001 or EMAS – to others the term includes company or industry specific schemes or even less formal systems. Furthermore the terms “certified” or “verified” EMS, EMAS “registration” and “accredited” are often not used in a correct manner. Therefore a clear distinction should be made between different types of EMS and the terms should be used with care.

2. Roles and responsibilities of certifiers/verifiers and regulatory authorities, including assessment of legal compliance

The roles of accredited certifiers/verifiers and regulatory authorities in the assessment of legal compliance at sites with Certified ISO 14001 or EMAS systems are not clear to all parties involved. The relevant provisions in ISO 14001 and EMAS are ambiguous and need to be interpreted or - if possible - improved. A lot of misunderstanding exists with regard to when accredited ISO 14001 certificates or EMAS registrations could or should be revoked or refused because of legal non-compliance.

Furthermore there is a danger that certifiers/verifiers rely on the absence of regulatory action by authorities as evidence of legal compliance whilst regulators reduce compliance checks in the belief that certifiers are doing them. Rather than removing “unnecessary duplication of effort” as required by Article 10 of EMAS II, such an approach would reduce compliance assessment per se.

It is therefore important that:

- certifiers/verifiers have clear guidance on how they assess the effectiveness of the system with specific regard to legal compliance
- accreditation requirements are amended to require that the procedure for “periodically evaluating compliance” (required by ISO 14001 and EMAS) takes account of the guidance referred to above and has been effectively applied to all relevant environmental legislation prior to certification
- certifiers/verifiers have procedures that require them, should they identify non-compliance with relevant environmental legislation, in consultation with the organisation seeking certification/verification and the relevant environmental regulator, to assess these failures before taking a decision on certification/verification;
- certification and accreditation bodies have open and robust systems for dealing with complaints from regulators and members of the public and providing feedback
- the public have confidence in accredited certification systems to deliver legal compliance as a minimum requirement

- there is an ongoing dialogue between accredited certification bodies and regulators at a European and national level to understand relative responsibilities

3. Role of EMS within the overall regulatory process

There is growing awareness that a number of elements of EMS, especially certified ISO 14001 systems and EMAS, can be utilised in the regulatory processes, such as permitting, inspection and enforcement. At the workshop a series of examples were presented and discussed. However it was also recognized that often some minimum conditions must be met, e.g. that external certification or verification is needed. Furthermore the notion was expressed that the regulator may deal with EMS elements in different ways: EMS elements may either be made mandatory or EMS elements in place may substitute or replace regulatory requirements or even lead to more substantial regulatory relief. The workshop discussions provide a good basis to clarify the connections between EMS and permitting, inspection and enforcement, but further development is needed.

4. Role of EMS in EU legislation

When EU directives refer to (elements of) EMS, it often remains unclear how exactly EMS can fulfil or support the application of requirements of these directives. In addition, directives that have the potential to link to EMAS or ISO 14001 (or other EMS) often do not contain any explicit references. Therefore EU policy makers and legislators should be clearer about the intended role of EMS when references are made to it in EU legislation, and what minimum results should be expected thereof.

5. Whether EMS aims for a large number of small benefits or small number of large benefits

It is possible for EMS recognition schemes to aim for participation by a relatively large number of sites, resulting in a large number of small, non-quantified or unsecured benefits. It is equally valid for EMS recognition schemes to aim for a smaller number of participants at a higher level of ambition and to recognise only quantified top performance. However, the objectives of individual schemes should be clear. If the objective is to recognise top performance, this should be based on the achievement of environmental performance, rather than the capability to achieve such performance. In particular the purpose of the EMAS regulation should be clarified – with particular regard to the need to demonstrate good performance in addition to continual improvement, if it is to be seen as a mark of good performance.

The workshop participants recommended to:

Ensure

6. A focus on environmental outcomes not the tools

The assessment of existing EMS standards, such as ISO 14001 and EMAS, focuses more on the capability of the system to deliver outcomes than on the achievement of the outcome. However, research suggests that certified/verified EMS do not always deliver what external stakeholders expect. For external credibility, there should be a greater emphasis on performance, including compliance, during certification or verification assessments. It is therefore desirable that existing certification/verification guidance is reviewed in order to strengthen the links between the systems and performance.

7. Quality of certification and verification

Concerns have been expressed about the quality of EMS certification and verification audits. Although some of this may be due to a lack of understanding of the certification and verification process, these concerns are widely held by stakeholders.

The concerns can only be resolved through a transparent and effective accreditation process which ensures that certifiers/verifiers apply consistent standards of assessment which achieve comparable outcomes. A review of the existing process is required.

8. Clear brand image

EMAS needs a clear brand image – we have to be clear what it stands for. This is not currently the case for EMAS. It is not clear if the scheme is simply about environmental management, about stakeholder dialogue, product labelling or a standard of performance. In addition, there is little profile for the scheme. Therefore the brand image of EMAS needs to be developed in the eyes of consumers as this is likely to have a greater positive effect on industry than small regulator driven incentives.

9. Involvement of front line practitioners in the development of EMAS 3 and related legislation

The importance of direct experience in EMAS in the preparation of revisions to the EMAS scheme and any amendments in European legislation to create links to the EMAS Regulation was stressed.

The workshop participants recommended to:

Develop

10. A suitable method for facilitating the uptake of EMSs for SMEs

Developing and implementing an EMS is still seen to be disproportionately expensive for SMEs, compared to larger organisations. Care is needed to ensure that SMEs receive appropriate levels of support. Schemes are being developed, such as Acorn / BS8555⁷, that will help do this but they are still in the early stages of implementation by industry. The DG Enterprise BEST project is also reviewing good practice examples of how public authorities in Member States can encourage a higher uptake of EMSs (both informal and formal) in SMEs and better environmental performance from SMEs. EMAS is seen by many as too bureaucratic for SMEs. Therefore Member States and the Commission should make further attempts to support the up take of EMS, e.g. by simplifying EMAS.

11. A clear strategy on references to (elements of) EMS in EU legislation and policies

This recommendation is linked with the recommendations described under 3 and 4. A coherent line of action, laid down in a communication or recommendation, is needed with regard to the different ways in which EMS can be referred to in EU legislation and policies. This guideline should give specific guidance on how to use elements of EMS in the context of EU directives and policies, explaining precisely when and how the different elements may be interlinked with regulatory requirements or policy objectives and what accompanying organisational, legal and other conditions should be met. Future legislation and policies should always be drawn up in accordance with the adopted guideline.

12. The next generation of voluntary instruments:

- **Beyond environment**
- **Beyond site**
- **Toward sustainable development**

In 1993, when EMAS I was passed, it pushed boundaries as an EMS standard and as an environmental reporting standard. Now, in many countries, EMS and environmental reporting is commonplace, if not the norm, particularly for large organisations. There is now a need to assess how wider sustainable development issues, such as product and social responsibility can be dealt with, and consideration is needed for how this can best proceed – for example, either as part of an EMAS revision, or a new parallel initiative.

⁷ BS8555: 2003 Environmental management systems - Guide to the phased implementation of an environmental management system including the use of environmental performance evaluation. This British Standard provides guidance to all organizations seeking to implement a formal environmental management system, for example BS EN 14001 or the EU Eco-Management and Audit Scheme (EMAS). In doing so the standard makes particular reference to small and medium sized enterprises (SMEs). It outlines an implementation process that can be undertaken in up to six separate phases. It also allows for phased acknowledgement of progress towards full environmental management system implementation. The Institute of Environmental Management and Assessment (IEMA) has recently established the IEMA Acorn Committee to look at ways in which the standard can be promoted and specifically to develop of a registration scheme to enable independent recognition of the achievement by organisations of the different phases of BS 8555.

Follow up of the Chelsea Dozen.

The Netherlands' Ministry of Housing, Spatial Planning and the Environment and the UK's Environment Agency will make a joint effort to give proper follow up to the Chelsea Dozen. The further stages in the ENAP project and the REMAS project and the coming Dutch and UK EU-presidencies will serve as the framework for this. The UK and the Netherlands are committed to urge all the relevant stakeholders to participate in the further implementation of the Chelsea Dozen. Close collaboration with and between the other member states, the European Commission, the European Parliament and European industry and NGO's is essential. Input and support from experts and practitioners will be sought through the relevant committees (e.g. EMAS, IPPC) and networks (IMPEL).

Further information on the outcomes and follow up of the ENAP-REMAS workshop can be found on the web:

- <http://sharepoint.infomil.nl/enap/workshop2/>
- www.remas.info

Further information can also be obtained by contacting:

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ABBREVIATIONS

BAT	Best Available Technique
BREF	Best Available Technique Reference Document
EA	Environment Agency
EAP	Environmental Action Programme
EIA	Environmental Impact Assessment
EMAS	The Eco-Management and Audit Scheme
EMS	Environmental Management System
ENAP	Project on exploring new approaches in regulating industrial installations
EPER	European Pollutant Emissions Register
EP OPRA	Environmental Protection, Operator Pollution Risk Appraisal
FIELD	Foundation for International Environmental Law and Development
ICS	Internal Control System
IEEP	Institute for European Environmental Policy
IEMA	Institute of Environmental Management and Assessment
IMPEL	EU Network for Implementation and Enforcement of Environmental Law
IPPC	Integrated Pollution Prevention and Control
ISO 14001	International Organization for Standardization - environmental management standard
PSI	Policy Studies Institute
REMAS	Study of the benefits of environmental management systems (EMS) in the context of regulation
SCCM	Stichting Coördinatie Certificatie Milieuzorgsystemen (the Association for the Co-ordination of Certification of EMSs in the Netherlands)
SEPA	Scottish Environmental Protection Agency
SEVESO	Control of Major-Accident Hazards Involving Dangerous Substances
SMS	Safety management system (under Seveso)

ANNEXES

ANNEX I: PARTICIPANTS ENAP-REMAS WORKSHOP

ANNEX II: WORKSHOP PROGRAMME

ANNEX III: IEEP-FIELD BACKGROUND REPORT

ANNEX IV: PAPER BY ROB van GESTEL (NL, Tilburg University)

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ANNEX II: WORKSHOP PROGRAMME

joint workshop

to examine connections between environmental management systems and permitting, inspection and enforcement in regulation

Date: 11, 12 and 13 June 2003
 Location: Conrad Hotel, London. United Kingdom

DAY 0 (11 June)

19:00	Registration of participants	<i>Location: Long Gallery</i>	2:00
19:00	Reception	<i>Location: Drakes</i>	3:00

DAY 1 (12 June)

Exploring the advantages of EMS for the Regulator, Industry and other stakeholders

8:00	Registration of participants	<i>Location: Marina Level</i>	1:00
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Location: Plenary room Henley

9:00	Welcome	Chairman: Cees Moons	0:05
9:05	Opening address	Derek Osborn	0:10
9:15	Introduction to ENAP- and REMAS projects	Jan Teekens (VROM) Martyn Cheesbrough (EA)	0:40
9:55	Order of the workshop		0:05

*Location: Plenary room Henley***Session 1**

Presentations: advantages of EMS; linkage with permitting, inspection and			
10:00	Views, policies and experiences in the Member States: report back from the survey		
	Part A: EMS and permit cycle background study intro	Patrick ten Brink (IEEP)	0:25
	Part B: The Benefits of EMS for the Permit Cycle	Patrick ten Brink (IEEP)	
	<u>Interventions on proof of benefits</u>		
	<i>UK: first study says no benefits</i>	Kristina Dahlstrom (PSI)	0:05
	<i>Bavaria: study says yes, experience says yes</i>	Matthias Weigand (MoE Bavaria)	0:05
	<i>NL: regulators and companies say yes</i>	Frans Stuyt (SCCM)	0:05
	Part B: The Benefits of EMS for the Permit Cycle (cont.)	Patrick ten Brink (IEEP)	0:10
10:45	Coffee / Tea	<i>Location: Drakes</i>	0:30
11:15	Views, policies and experiences in the Member States (continued)		
	Part C The Links of EMS to the permit cycle	Patrick ten Brink (IEEP)	0:10
	<u>Interventions</u>		
	<i>NL- Attuning permits to EMS</i>	Karin van der Maesen (Province of North Holland)	0:05
		Rob Huydts (ENCI)	0:05
	UK- Reducing Permit charges and link to risk – OPRA	David Pugh (EA)	0:05
	UK- What signals will industry respond to?	Danny Lawrence (Lafarge)	0:05
	<i>D - Baden-Württemberg – Rationale for permit charge reductions</i>	Dr Stefan Frey (MoE Baden-Württemberg)	0:05

	Part C The Links of EMS to the permit cycle (cont)	Patrick ten Brink (IEEP)	0:10
		Patrick ten Brink (IEEP)	0:10
	Part D: Questions for the road map to effective and appropriate use of EMS in the permit cycle.		
	Discussion		0:20
12:30	Views, perspectives and policy considerations European Commission	Magnus Gislev Jose-Jorge Diaz Del Castillo (DGENV)	0:20
	Discussion		0:10

13:00	<i>Lunch</i>	<i>Location: Drakes</i>	1:30
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Session 2

Working Group Discussions			
14:30	Three parallel Working Groups: discussing advantages of EMS and exploring performance indicators of EMS		1:30
	- working group 1:	<i>Location: Sub-room Henley</i>	
	- working group 2:	<i>Location: Sub-room Harbour</i>	
	- working group 3:	<i>Location: Sub-room Thames</i>	
16:00	<i>Coffee / Tea</i>	<i>Location: Drakes</i>	0:30
<i>Location: Plenary room Henley</i>			
16:30	Reporting back Working Group Discussions	Chairman: Derek Osborn	
	- working group 1		0:15
	- working group 2		0:15
	- working group 3		0:15
	Plenary discussion		0:30

Location: Plenary room Henley

17:45	Summary of findings and conclusions of day 1		0:10
18:00	Closure and announcements		

19:45	<i>Naticia Thames Dinner</i>	<i>Location: Drakes</i>	
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DAY 2 (13 June)

Exploring the linkage between EMS and permitting, inspection and enforcement

Location: Plenary room Henley

9:00	Welcome, summary of the discussions of day 1	Chairman: Cees Moons	0:10
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Location: Plenary room Henley

Session 3

Presentations: conditions and modalities of linkage between EMS and permitting, inspection and enforcement			
9:10	Dilemma's expectations and aspirations on the use of EMS into public regulation and enforcement	Rob van Gestel (Tilburg University)	0:35
	Discussion / questions		0:20

10:05	<i>Coffee / Tea</i>	<i>Location: Drakes</i>	0:15
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Session 4

Working Group Discussions			
10:20	Three parallel working Group Discussions on conditions and modalities of linkage each introduced by 2 speakers of Member states/Commission		1:45
	- working group 1: The role of the company; desired scope and quality of the EMS	<i>Location: Sub-room Henley</i>	
	- working group 2: Role of regulator; voluntary / mandatory approach	<i>Location: Sub-room Harbour</i>	
	- working group 3: EU policies and legislation	<i>Location: Sub-room Thames</i>	
12:05	<i>Lunch</i>	<i>Location: Drakes</i>	1:30

Location: Plenary room Henley

13:35	Reporting back and discussion on WG discussions	Chairman: Paul Leinster	
	- working group 1		0:15
	- plenary discussion		0:20
	- working group 2		0:15
	- plenary discussion		0:20
	- working group 3		0:15
	- plenary discussion		0:20

15:20	<i>Coffee / Tea</i>	<i>Location: Drakes</i>	0:20
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Location: Plenary room Henley

15:40	Conclusions of the workshop and recommendations for further action	Chairmen: Paul Leinster, Cees Moons	0:25
16:05	Closure		

ANNEX III: IEEP-FIELD BACKGROUND REPORT

(separate electronic file - see <http://sharepoint.informil.nl/enap> or www.ieep.org.uk)

ANNEX IV: PAPER BY ROB van GESTEL (NL, Tilburg University)



Tilburg University Centre for Legislative Studies

Dilemma's, expectations and aspirations concerning the use of certified environmental management systems into public regulation and enforcement

Dr. Rob van Gestel
Dr. Guido Evers

Tilburg University, June 2003

Dilemma's, expectations and aspirations concerning the use of certified environmental management systems into public regulation and enforcement

Rob van Gestel⁸
Guido Evers

1. A fairy tale

Once upon a time, in a country not so far away the Environmental Protection Agency (EPA) decided that a strategic change was necessary to improve the environmental performance of individual companies. The Agency believed that a “command and control” approach had been useful to deal with the first generation of environmental pollution, like the cleaning up of contaminated industrial sites, but not with more “wicked” problems such as a drastic reduction of greenhouse gas emissions or, more in general, a strategic change in the use of natural recourses in certain branches of industry.

At a certain time, the EPA of this imaginary country made a strategic turn in its regulatory policy. Whereas previously, environmental measures tended to be proscriptive in character with an emphasis on the “thou shalt not” approach, the new strategy leant more towards “let’s work together”. This regulatory switch reflected the growing believe in the business world that industry does not only produce a significant part of the environmental problems, but also plays a strategic role in the quest for solutions. The new approach implied, in particular, a reinforcement of the dialogue with industry and the encouragement of voluntary agreements and other forms of self-regulation, like the introduction of environmental management systems (EMS).

To this end the EPA developed the so-called OEMPS standard (Outstanding Environmental Management and Performance System). This was a voluntary eco-management and audit scheme that had been established for the evaluation and (continual) improvement of the environmental performance of organisations. The OEMPS system consisted of the introduction of an organisational structure, planning and monitoring activities and other procedures, including the internal and external verification of the working of the system and the validation of a periodic environmental statement.

At the start of the OEMPS-campaign the EPA declared that a verified EMS according to OEMPS would require a proactive environmental behaviour from organisations that place special significance on legal compliance, improvement of environmental performance and external communication. In an official announcement the EPA stated that OEMPS registered organisations: “take a stance for environmental excellence contributing to a better environment for the benefit of society”. After a few years, however, trouble began. First of all, an OEMPS-registered company that had won several awards for its “greening of business”, was exposed as a criminal organisation. The company in question appeared to be responsible for a great number of illegal discharges of toxic waste water into an adjacent river, while according to the environmental permit, the water should had been collected for

⁸ Rob van Gestel (1966) is associate professor in legislative studies and environmental law at Tilburg University. Contact: (r.a.j.vanGestel@uvt.nl). Van Gestel wrote a thesis on “Self-regulation, environmental management and business”, Boom Publishers, The Hague 2000. Guido Evers (1971) is lecturer in constitutional and administrative law at Tilburg University. Contact: (g.j.m.Evers@uvt.nl). Evers wrote a thesis called “Blind Faith? A study on the use of certification for the purpose of enforcing legislation”, Boom Publishers, The Hague 2002.

purification and re-use. Local residents and environmental NGO's reacted surprised and disappointed: "how is it possible that a company with a verified EMS has systematically broken the law and has deceived numerous supervisors and enforcement agencies?" People started to ask themselves, more in general, what guarantees were offered for a continual improvement of environmental performance by the OEMPS system.

In reaction to this tragic incident, and all the media attention that came along with it, the government initiated a large-scale evaluation of the working of OEMPS. Some of the outcomes of this study were rather striking. For instance, empirical research indicated that there was, in general, no significant difference in environmental performance between companies with and without a verified OEMPS system. But even more alarming was, that quite a number of OEMPS registered organisations did not possess an immaculate compliance record. The research results, however, did show that companies with a verified OEMPS system got less frequently visited by public supervisors and enforcement agents. Interviews with local authorities entrusted with the inspection of environmental permit conditions, made clear that they had believed that companies with a verified OEMPS were more reliable than others when it came to compliance with laws and regulations. Compliance with relevant regulations was, after all, a key element of OEMPS that should have been checked by independent verification bodies. Moreover, the verifiers themselves were supposed to be supervised by the national accreditation board.

As soon as the evaluation report was made public, the finger pointing began. Environmental NGO's accused the accreditation board of falling short in its task to ensure that environmental verifiers comply with the accreditation requirements and in monitoring the quality of the verifications through witnessed audits. In its turn the accreditation board blamed public supervisors and NGO's for a lack of attention in using the existing procedures in the OEMPS system to complain about inaccurate environmental statements or about verifiers not doing their job properly. NGO's reacted furiously against the assumption that OEMPS systems provided for sufficient information to the public and an open dialogue with all interested parties. According to the NGO's most environmental statements looked more like "environmental advertising" than as a transparent presentation of objective figures on pollutant emissions, waste generation, consumption of raw materials and so on. Most environmental statements, they said, were totally useless for any comparison of the environmental performance between companies in the same branch of industry.

The end of this story is a sad one. What happened was that supervisors and enforcement agencies no longer paid attention to the working of OEMPS systems in their enforcement strategy. Licensing authorities on their turn stopped looking for ways to link an environmental permit with the plans and procedures in the EMS in order to make life easier for OEMPS registered companies by simplifying the regulatory framework and removing procedural impediments. In the business community itself, responsible companies that had invested a lot of money in the implementation of an OEMPS system, became frustrated by the fact that their investments did not pay off as they had hoped for. They were disappointed because of the fact that competitors with terrible compliance records and low ambitions to improve environmental performance could also get an OEMPS registration. Finally, policy makers gave up hope and the OEMPS standard for environmental management fell out of favour.

2. Connecting a fairy tale to real life regulatory dilemmas

Although this story does not correspond with reality and ends far too dramatically, discussing this imaginary case could be useful to shed some light on the expectations concerning the future of the EMAS-Regulation.

A decennium after the adoption of the European Regulation allowing voluntary participation of organisations in a Community Eco-management and audit scheme (EMAS), this regulation has only met with limited success. In most member states the number of participants is (very) low. Moreover, in most member states, the number of organisations that has been certified on the basis of the international environmental management standard ISO 14001 exceeds the number of EMAS-registered organisations. We think that this partly results from the ambivalent policies regarding EMAS. On the one hand, EMAS-Regulation is presented as something more comprehensive than just an environmental management system standard by explicitly focussing on legal compliance and transparency. On the other hand, the business community does apparently not seem to recognise the (extra) advantages that benefit the EMAS-registered organisation and, also, public authorities do not have a clear view on if and how they can EMAS registration make part of their environmental regulatory policies. Both companies and public authorities do seem interested in how EMAS-registration can serve their respective objectives, but a lack of clarity about the effectiveness of the obligations of the regulation provokes a rather passive attitude on both sides.

In this article we discuss some key issues and dilemmas that, we think, are crucial for the future of EMAS, when it comes to the possibilities of linking together or “transplanting” certain parts of environmental management systems (EMS) into public policy or regulation. First, in paragraph 3, we will specify the vagueness of the main EMAS-requirements from a legal point of view. Second, by comparing public regulation and self-regulation in paragraph 4, we will deliberate upon the frictions that can result from linking together environmental management regulation and certified environmental management systems. In paragraph 5, we will argue that, at this moment, critical choices will have to be made about the future of EMAS: Is EMAS in the future going to be promoted exclusively as a management tool or do we want EMAS to evolve towards a public environmental policy supporting regulatory system? In the paragraphs 6 and 7 we will present two different policy approaches to turn EMAS into a more regulatory standard. We will end this paper, in paragraph 8, with some concluding remarks.

3. Certified EMS between expectations and legal reality

In this paragraph we would like to address three major questions. The first one is: to what extent does EMAS *guarantee* a certain environmental performance of registered organisations? We would like to remind everybody that a legal answer to this question differs from an empirical one. Irrelevant here is, for instance if *in general* EMAS registered sites show higher or lower emissions than sites without an EMS. Relevant from a legal perspective is only to what degree EMAS registration warrants that individual organisations at least show the environmental performance that is required by relevant regulations. For industrial installations falling under the scope of the IPPC directive this means, among other things, operating according to the Best Available Techniques (BAT).

The second question addresses the relationship between EMS certification – ISO 14001 certification or EMAS verification – and enforcement. To be more specific, the true question is: what exactly does verification or certification prove in the sphere of compliance with environmental laws? Are certification bodies and public inspection agencies pursuing

the same goals, and roughly following the same methods of investigation? Or does certification essentially differ from monitoring compliance and enforcing laws by public authorities?

Last but not least it is interesting to see what EMAS has to offer when it comes to communication with the public. According to article 1, section 2, under c of EMAS one of the key objectives of the EMAS II regulation is providing information on environmental performance to the public and stimulating an open dialogue with all interested parties. This confronts us with the question if the focus on *external* communication means that EMAS is no longer primarily an *internal* management tool for those in charge of the organisation?

3.1 What does EMS say about environmental performance?

We hope this will not come as a shock to anyone but from a legal perspective EMAS – but the same goes for ISO 14000 - offers no special guarantees when it comes to the realisation of substantive environmental targets, like emission reductions, waste prevention or energy efficiency. The reason for this is very simple: the promotion of continual improvement in the words of EMAS and ISO 14001 hardly says anything about the speed of improvement of the environmental performances and does not mean the same as, for instance, performing according to BAT, like the IPPC directive demands from especially large industrial installations.

In our view environmental performance according to BAT implies that an installation should at least operate according to techniques that are developed on a scale that allows implementation in a certain sector, under economically and technically viable conditions.⁹ At the same time, operating according to BAT, could also mean that for an individual installation a higher level of environmental protection may be required if, for example, local ecological circumstances make this necessary or changes in scientific knowledge make this possible.¹⁰ Only through a loophole, one could argue that EMAS does say something about the level of environmental protection and improvement that is required from a registered organisation. After all, article 3 § 2, under a, and article 6 § 4 of EMAS indicate that EMAS registered organisations should at all times comply with relevant environmental laws and regulations. As far as these laws include emission targets, environmental principles (prevention or precautionary principle) or substantive environmental standards, like BAT, these elements should also become part of the EMAS verification process.

According to the Commissions “Working paper regarding incentives to EMAS registered organisations”, participation in this eco management and audit scheme suggests taking a stance for environmental excellence and even moving beyond compliance. But, what does this mean? Are environmental verifiers going to check if EMAS registered organisations, falling under the scope of the IPPC directive, have implemented measures that go further than “just” applying the best available techniques? Are certification bodies and verifiers equipped to perform such a complicated investigation? And finally, does the penetration of laws and regulations into an audit scheme not alter the fundamental characteristics of the EMS as a management tool and the job of verifiers as providers of a commercial service to the organisation?

⁹ The fact that every installation has to perform according to this general BAT-level has to do with creating equal obligations concerning the application of technical standards. An individual company, for instance, cannot call upon its unlucky financial situation to evade obligations to invest in technical improvements that are common in a certain branch. Otherwise this would lead to serious distortions of competition.

¹⁰ Annex IV of the IPPC Directive.

3.2 What does EMS certification say about compliance?

Perhaps the most interesting question from a public policy perspective is to what extent the verification on the basis of EMAS or the certification of an EMS on the basis of the ISO 14001 standard guarantees compliance with laws and regulations. Is there a difference between both standards in this respect? This question must be answered in two steps. First, it is important to determine to what extent both standards hold substantive rules that directly (and not only procedurally) relate to the compliance with regulations? Second, to what degree can third party audits be compared to public surveillance and enforcement activities?

However, in answering these questions one has to pay attention to some general differences between ISO 14001 and EMAS that can influence the extent to which the implementation of the EMS says anything about legal compliance of an organisation. ISO 14001, unlike EMAS does not prescribe the certification of the implemented environmental management system by an independent third party. Yet, if an independent party does not certify the implementation of ISO 14001, it seems precarious to attach in public policy any legal consequence to the assertion that a functioning EMS has been implemented within the organisation. Therefore we can only compare the EMAS registered organisation with its ISO 14001 *certified* counterpart. Furthermore, a pitfall under the ISO 14001 standard exists in the fact that the notion of ‘an organisation’ is not very accurately defined. Because of this, a firm can choose to bring only a part of its enterprise and business activities under the regime of the standard, thereby leaving processes that are more difficult to manage and improve from an environmental perspective outside the certification scope. Suchlike proceedings can, of course, lead to serious misunderstandings about the value of the EMS. EMAS, on the other hand, comprises stricter conditions concerning the registered organisations. The entity registered as an organisation under EMAS shall, in general, not be smaller than a site. The registration of entities smaller than a site is only allowed under exceptional circumstances and may not be used for ‘cherry picking’.¹¹

In general the ISO 14001 standard requires the top management to commit itself to comply with relevant environmental legislation and regulations, and with other requirements to which the organisation subscribes.¹² In accordance with this standard a certification body should verify the existence of the commitment to comply and the availability of internal procedures to: identify legal obligations, monitor compliance and if necessary take corrective measures. In other words a certification body should check if the implemented EMS enables an organisation to fulfil its legal obligations. External audits should establish the effectiveness of the EMS on this point. Nonetheless, it is important to point out that these audits seem to be unsuited to track down fraud and corruption in the operating of a company’s internal monitoring system as far as the information about compliance with regulations on a shop floor level is concerned. We believe that the only way a third party could check the effectiveness of the system when it comes to legal compliance, is to compare the knowledge about laws and regulations within the organisation with the existing obligations as established by the enforcement agency, which however is not *explicitly* required in any EMS-standard. Furthermore it might be useful for a certification body to perform spot checks to determine if monitoring procedures are really working and capable of preventing violations out of negligence. EMAS requires a method of verification that seems

¹¹ Commission decision of 7 September 2001 on guidance for the implementation of Regulation (EC) No 761/2001 (EMAS), Annex 1.

¹² ISO 14001:1996, Article 4.2.c.

to come close to this suggested “compliance test”.¹³ However, the Council regulation clearly leaves room for other interpretations in this respect. Furthermore, at least in the Netherlands, the actual certification and verification schemes that are used in external audits of EMAS and ISO 14001 by certification bodies look very much alike.¹⁴ This is the more alarming now that a recent Dutch empirical research has shown that ISO 14001 certification offers no guarantee for compliance in daily practice. The study performed by the Dutch Justice Department demonstrates that 63% of the companies with a ISO 14001 certified EMS violate the rules of the Pollution of Surface Waters Act (PSW), while only 24% of the companies without an EMS do the same.¹⁵ A possible explanation for a part of these striking results could be that companies with an EMS are usually larger and more complex organisations. The size of companies appears to be a relevant factor in matters concerning compliance with the law because 57% of the companies with over 200 employees violate one or more rules of the PSW, against only 31% of the smaller businesses. Another reason for this could be that businesses with a certified EMS maintain a close relationship with permitting and enforcement authorities leading to more “attention” in the sphere of surveillance and thereby to higher non-compliance rates. Thirdly, a theoretical possibility could be, that organisation with a certified EMS are supposed to live up to higher emission standards and therefore are also more likely to fail in “picking those higher fruits”. All the same, it remains striking that organisations with an ISO 14001 certificate do not have better compliance records.

In addition to the conditions of ISO 14001, EMAS registration requires a verification of the environmental statement and offers special attention to compliance with laws and regulations. EMAS registered organisations shall, according to annex I, under B, be able to demonstrate that they:

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

Although this special attention can indicate all sorts of verification activities it goes without saying that the verifier cannot be satisfied with just the finding of monitoring procedures. Article 10, § 2 of EMAS states that member states should consider how an EMAS registration may be taken into account in the implementation and enforcement of environmental legislation in order to avoid “unnecessary duplication” of effort by both registered organisations and competent enforcement authorities. This avoiding of duplications suggests that there is an overlap between, for instance, the external audits of the EMS with enforcement actions by public authorities. Yet, the provisions of EMAS leave open to what extent the highly procedural requirements of any EMS standard, can substitute the monitoring of more substantive legal provisions.

¹³ Annex V, § 5.4.3: “The environmental verifier shall not validate the environmental statement, if during the verification process he observes, for example through spot-checks, that the organisation is not in legal compliance.”

¹⁴ Compare the certification scheme for ISO 14001 and the verification scheme for EMAS as designed by the SCCM (also the notified body for EMAS) at www.sccm.nl.

¹⁵ H.M. Prinsen en R.M.M. Vossen, Eindrapport Naleving en handhaving van de Wet verontreiniging oppervlaktewateren in 2000-2001, The Hague 2002, p. 7.

Next to these distinctions concerning the characteristics of the regulations and EMS standards, there are also significant differences in approach and method of investigation between auditors and public supervisors. An environmental verifier is any person or organisation independent of the organisation being verified who has obtained accreditation in accordance with the conditions of the EMAS-Regulation.¹⁶ In most member states private certification bodies execute the verification. This corresponds to the acknowledgement by the Commission of the so-called EAC guidelines for the accreditation of certification bodies for environmental management systems.¹⁷ Certification processes show significant differences compared to the traditional public regulatory system as to the supervision and enforcement of legislation and permit conditions.

First of all, certification is normally a commercial service provided to a customer. In this commercial relationship the certification body has, unlike governmental authorities, no reason to adopt a “vigilant” or “distrustful” attitude towards the person or company under supervision. Audits of the EMS are meant to assess whether the organisation qualifies for a certificate. The assessments are systematically executed in a way that is roughly the same for all clients. For the certification body it is difficult to adapt its actions on grounds of a suspicion or the stained compliance record of its client; after all, his client has to pay for the extra activities that are possibly undertaken. Also, the certification body is in no position to enforce compliance when his client violates the law. Of course, he can take corrective measures, as a warning linked to a time period in which the certified organisation has to take corrective action, or a suspension of the certificate. Ultimately however, the client can always break up the contract with the certification body, if he does not agree with measures that are to be taken. Therefore, certification can only function as a kind of permit system based on regular assessments and not as an instrument of law enforcement.

3.3 External information and communication

EMAS requires an open attitude of the organisation towards its surroundings. A central aspect in the EMAS-Regulation is the environmental statement. This statement, which has to be made publicly available, must pay particular attention to the results achieved by an organisation against its environmental objectives and targets and the requirement of continuing to improve its environmental needs of relevant interested parties.¹⁸ The statement has to be validated by the environmental verifier and updated on a yearly basis. EMAS requires that the policy, programme, environmental management system and details of the organisations performance and legal compliance are made publicly available as part of the environmental statement. The organisation must be able to demonstrate to the environmental verifier that anybody interested in the organisations performances can easily and freely be given access to the information required. Also, EMAS registered organisations shall be able to demonstrate a dialogue with the public and other interested parties including local communities and customers with regard to the environmental impact of their activities, products and services in order to identify the interested parties’ concerns. These requirements are farther-reaching than those of ISO 14001, which only requires that the organisations environmental policy is publicly available. Nonetheless, we wonder if EMAS offers enough guidance to organisations in accomplishing all these specific assignments to establish the

¹⁶ EMAS, Article 2 (q).

¹⁷ COMMISSION DECISION of 16 April 1997 on the recognition of certification procedures in accordance with Article 12 of Council Regulation (EEC) No 1836/93 of 29 June 1993. The guideline concerned was replaced due to the publication of ISO Guide 66.

¹⁸ EMAS article 3.2.c.

right procedures for communication with all interested parties. Who are the interested parties?¹⁹ What exactly are the best practices for establishing a fruitful dialogue with the public?

The combined (recurring) environmental statement and the maintenance of a dialogue with interested parties outside the organisation can lead to an horizontal interaction of the organisation with the outside world that can have quite similar results as public rulemaking and enforcement activities. Most difficult is to what extent the EMAS-regulation can provide for this kind of openness of the organisation. Annex III, for example, comprehends stringent conditions for the environmental statement. The statement must give an accurate appraisal of the performance, has to be understandable and unambiguous and, must allow for comparison with performances in the past, with the performances of other organisations and with the legal requirements. Next to this, the information must be accurate, non-deceptive, substantiated, verifiable, relevant, representative, et cetera. Of course, the careful examination by the environmental verifier on the basis of the above-mentioned conditions can be an important aide for the organisation, but whether the statement will be informative for all interested parties like local residents, ngo's, or public authorities depends mainly on the aspiration of openness of the registered organisation. An organisation that does not intend to give the general public account of its environmental performance can hardly be compelled to do so by a verifier. While the EMAS regulation elaborates extensively on the conditions of the environmental statement, the verifier cannot fall back on strict rules concerning the content of the information that is required. For example, Annex III, § 3.2 requires 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, but leaves the organisation freedom of choice about what figures on pollutant emissions are enclosed.

We think that to achieve a truly informative environmental statement an organisation will have to communicate with interested parties about the question which information they particularly need. For this reason EMAS should more specifically link together the aspects of providing information towards the public and starting a dialogue with interested parties.

4. Market-oriented certification versus public policy related eco management and audit schemes

The EMAS-Regulation and related policy documents seem to target on two different aspects. First, one tries to persuade organisations to set up an EMS and draw up an environmental statement, so that the organisation starts a program to master and improve environmental performance in collaboration with its stakeholders, and make the organisation more transparent. Second, EMAS tries to link the increase of the organisations initiatives to a different approach in regulation and enforcement. These two different policy objectives (should) also correspond with different approaches by public authorities.

From a public policy perspective the whole spectrum of manifestations of self-regulation can be viewed as a sliding scale that begins at free unconditioned self-regulation (like codes of conduct, informal agreements and standardisation) which is initiated and accomplished by the private parties involved, and ends with the obligatory adherence to strictly conditioned self-regulation to which legal consequences are attached by legislation. This happens, for example, in the field of product safety. In the so-called "New approach" private standards and conformity assessment procedures are being used in European

¹⁹ Do public authorities for instance take a special position among the interested parties when it comes to the information that should be provided to the public?

directives that harmonise national legislative requirements for market access. Somewhere along this line, self-regulation gets linked to and will be used for the purpose of executing and enforcing public regulations. One has to be aware that, at that point, the type of self-regulation in question changes from a market-oriented (or group-oriented) phenomenon into something that has to fulfil the function that is attributed to it by the legislator or another regulatory authority. After all, not every kind of self-regulation can play a role in, or can be conditioned by means of legislation, without losing its effectiveness, or a part of the original purposes it had, in an unconditioned private sphere. Both environmental management systems and certification activities fulfil different purposes if looked at from a market-oriented perspective instead of a (public) regulatory perspective. Friction may arise, if public policy does not pay attention to those differences and to the possible limits of the potential of this phenomenon.

4.1 Management tool or administrative regulation?

The basis of EMAS is a management system focussed on mastering environmental performance. An EMS is first and foremost an internal management tool. This means that an organisation can have all kinds of reasons to implement an EMS. First, an organisation can commit itself to a better environmental performance from an ethical perspective. Second, the management can have economical reasons to improve environmental performance. The organisation could for example wish to cut back on its energy expenses. Third, the image of the organisation can be an important reason to turn to environmental management. This image can be important in the relation with (possible) clients, local residents, the general public, et cetera. These reasons for the implementation of EMS, all are internal or market-orientated. On the other hand, an organisation could also want an EMS to improve its relation with public authorities, and to get some kind of special treatment in the matter of more flexible permit conditions, lesser administrative burdens, or less frequent surveillance visits. However, this motivation asks for a change of perspective. How can public authorities benefit from EMS (is it possible to create win-win-situations)?

An environmental management system can only to a small extent cover for the compliance with laws and regulations. This is notably due to the fact that EMAS and ISO 14001 are rather “empty” management tools that have to be fed with environmental targets, while laws and regulations, on the contrary, can also consist of explicit and substantive environmental performance standards. The successful implementation of the EMS can aid the organisation to comply with laws and regulations. However, the actual contents of the EMS - that is the whole of allocated responsibilities, established processes and registering and monitoring procedures - strongly differs from the legal obligations concerning, for example, environmental permits according to the IPPC directive. The limited overlap between both regulatory frameworks mainly lies in (the compliance with) registering, monitoring and reporting obligations. Therefore the implementation of an EMS can only substitute legal specifications in a limited way.

Furthermore, the functioning of the EMS should be accomplished by the adherence of the complete organisation to the recurring processes of plan, do, check and act (the famous Deming circle). In other words, the effectiveness of the EMS highly depends on the internal motivation of the whole organisation (not only the top management, but also the personnel on a shop floor level). That is one reason why the EMAS-Regulation focuses on employee involvement. The internal motivation may very well be an important factor of compliance of an organisation with laws and regulations. Nonetheless, the enforcement agency cannot depend on the possible existence of this internal motivation. This agency needs clear

performance based standards to which compliance can be measured and enforced. In short, whereas environmental management standards are guidelines that can be used by well-motivated organisation to improve their performances, laws and regulations are supposed to hold clear rules and criteria for environmental performance. After all, these rules are not only guidelines for how to behave in ecological responsible manner, but are also used, by enforcement agencies, to check the environmental performance of the organisation.

One could, however, try to adjust EMS standards, like EMAS, into more performances based regulations or even standards of excellence. In that case there is a danger that a (significant) part of the business community is going to consider the EMS as something developed for external purposes, instead of something that can be modelled by and implemented for the benefit of the own organisation. These companies could abstain from participating as a consequence of a perceived lack of their own interest.

Notice that, the detailed environmental statement, which is prescribed by the EMAS-Regulation, can have an intermediate function, whereas, on the one hand, the organisation can set its own performance standards, but, on the other hand, shall have to account for its environmental performances in comparison to those of other organisation or its own environmental targets. In other words, an optimal implementation of EMAS can to some extent engender that substantive standards are 'imposed on' and 'enforced' through the communicative processes between the organisation and its stakeholders. As stated above, however, this effect is mitigated through the absence of strict rules concerning the exact contents of the environmental statement.

4.2 Private certification versus public inspection

Comparing certification and enforcement activities can uncover similar problems of a troublesome intermingling of private and public regulatory systems. The choice to have the organisation's EMS certified by a third party can also be explained from different perspectives. A reason for the management of an organisation to opt for certification can exist in creating an extra motivation for its employees to correctly implement the EMS. Most organisations, however, will have their EMS verified for grounds that are external to the own organisation. In principal, the fundamental ground for certification is public exposure. The certificate can play a communicative role in both the social environment and market-oriented activities of the organisation. The management of the organisation makes the choice for the use of this communicative tool. The advantages of the improvement of the image of the organisation must (at least) counterbalance the costs of certification. Normally, management will choose the certification body that comes closest in fulfilling its wishes. Although a certification body has a responsibility to all interested parties - a notion clearly embodied in the standards for the certification bodies - it remains, in general, a commercial organisation that provides certification services to his clients. Therefore, the *impartial* and *independent* status of the certifications body must be interpreted differently than the legal requirement of impartiality of an enforcement agency. In the international standards²⁰ for bodies operating certification systems the requirement of independence is closely connected with (the absence of) institutional connections with supervised organisations, or with (the absence) of market activities that could influence the judgement of the certification body, like counselling. This requirement looks very much like the requirement of independence for public supervisors. Yet, the commercial connection between the certification body and the certified organisation,

²⁰ The standard for bodies operating certification systems for environmental management systems is ISO guide 66.

as well as the existence of competition between certification bodies, are considered to be quite normal, while these characteristics would be inconceivable as far as the activities of public authorities were concerned.

This divergent character of certification compared to enforcement is clearly exposed when it comes to the question to what extent a certification body should measure the actual compliance of the certified organisation or the question if the certification body should report violations of public regulations discovered during an audit to the public authorities. Mostly the business community strongly opposes such suggestions, because they would result in the use of ‘their’ instrument in a way that can lead to self-incrimination. Certified organisations will probably feel that their willingness to provide for self-surveillance is going to be used against them.

4.3 Consequences of a troublesome mixture of different regulatory systems

All this leads to the conclusion that an EMS and the certification of an EMS have a commercial background and function in a different way than public regulation and enforcement activities. A public authority can try to link both systems to benefit from the way organisations have internalised the commitment for better environmental performances by means of their verified EMS. Nonetheless, the two regulatory systems cannot be fully exchanged for one another. The intermingling of elements of the verified EMS in the environmental regulations, can lead to friction due to incompatibilities. A company could be inclined to refrain from the effective implementation of an EMS, if that system would mainly target on objectives outside of the management’s demands. Also, a company would probably no longer adopt an open attitude towards the certification body that has as its sole objective to find violations of regulations that can be communicated to the public authorities. In other words a coerced use of self-regulation under strict conditions that benefits too little the organisations involved endangers the support for the use of self-regulation for public policy objectives. It is therefore of the utmost importance that a fair balance is struck between the public and private interests of the concerned parties.

5. Critical choices to be made

Without realising it, the European policy concerning the promotion, and the use of (certified) EMS has come to a crossroads: critical choices will have to be made about the future of EMAS. Are we going to promote EMAS as purely a market-oriented management tool, or do we want EMAS to develop towards a public policy supporting regulatory system?

Making a choice for the first option implies that EMAS will be considered as a phenomenon that belongs to the business community, and has as its primary goal to enhance “market transparency” in the field of commitment to environmental management. As a consequence policy makers should no longer refer to any advantage whatsoever that the implementation of EMAS might have for environmental permitting or enforcement policy. The answer to the question to what extent EMAS should benefit environmental performance is in this option no longer a concern of public authorities. Whether, an EMS will be used to improve, for instance, legal compliance is up to the management of the individual organisation.

If one is going to opt for the use of EMAS as a tool that should also benefit public policy goals, public authorities will automatically have to be more involved in making EMAS suitable for measuring environmental performance and legal compliance. This does not imply

that governmental influence will necessarily lead to the introduction of more obligatory elements into the Council regulation or national legislation, like the general requirement of compulsory registration for all installations under the scope of the IPPC directive. It does, however, indicate that registered organisations will have to meet stricter requirements in the field of transparency, continual improvement and legal compliance.

For the EMAS regulation itself this “regulatory approach” still leaves room to opt for different policy objectives. One essential choice that could be made is: do we want to transform EMAS into a genuine standard of excellence or do we first and foremost consider this regulation to be a method of harmonising certain basic administrative procedures and management techniques?

In the end it all comes down to the question: what do we want EMAS to be? The answer to this question is of great importance, because it also determines the future of EMAS compared to ISO 14001. If EMAS is going to become a real standard of excellence, this will mean moving away from equalizing the conditions for environmental management, and therefore losing the idea that EMAS registration is achievable for almost every organisation. In our view, this must also lead to a stronger differentiation between EMAS and ISO 14001 registered companies. In theory the EMAS regulation already adds requirements of openness and accountability to a regular environmental management system standard. However, as we have explained above, these additional requirements have to be strengthened to prove that EMAS registration actually has a serious surplus value over ISO 14001. If this choice is not made in the near future, we think, there is an imminent danger that the EMAS-Regulation will be pushed off the market.²¹

In the next paragraphs we are going to show two different policy approaches to make EMAS a more regulatory standard. The first one treats this EMS standard as a way to harmonise the *minimum criteria* for administrative procedures and management techniques necessary to master environmental performance. In the second approach EMS truly is considered as part of a special regulatory regime to promote *excellent environmental performance*.

6. EMS as a general administrative technique to manage environmental performance

In the slipstream of the implementation of the IPPC directive the proposal has been done to put essential elements of environmental management standards into BAT Reference documents (Brefs). This brings on that every IPPC-site will have to have an environmental management system as a consequence of the need for the use of the best available technique in operating an installation. According to this proposal every EMS for an IPPC-installation will have to contain at least the following features: a definition of an environmental management policy for the installation by top management, planning and establishing the necessary procedures, implementation of the procedures, checking performance and taking corrective action and review by top management. Optional features are: validation by a certification body (or verifier), preparation and publication of a relevant statement, implementation and adherence to an international standard like EMS and ISO 14001.

This proposal for an EMS-Bref demonstrates that a general obligation to implement EMS, reduces the elements of an EMS that are supposed to be essential for the enhancement of the environmental performance of an individual installation. The elements that are given a

²¹ M. Glachant, S. Schucht, A. Bültman, F. Wätzold, Companies' Participation in EMAS: The Influence of the Public Regulator, CERNA, Paris 2000, p. 11.

voluntary character in the EMS-Bref proposal are – in our view not surprisingly – exactly those elements that should be considered essential for an effective and more credible implementation of any EMS.

Moreover, does the fact that the essential elements of an EMS are laid down in a Bref document not indicate that the European legislator is anxious to actually prescribe an EMS in general for IPPC installations? After all, as a rule the promulgation of this Bref document leaves room for aberrance in an individual case because of local (geographical and ecological) circumstances or technical features of the installation in question. However, as far as an EMS is concerned it is quite difficult to imagine how these individual circumstances could influence the necessity of, for instance, introducing specific (additional) administrative procedures into the EMS. Again does this not imply that an EMS has become a legally binding requirement for every IPPC installation?

In other words, it is of the utmost importance to realise that, the more public authorities try to compel organisations to implement an EMS, the more realistic the danger becomes that EMS loses its ability to work as an “acceleration mechanism” for continual improvement of environmental performance. This lesson should also be kept in mind if one wants to experiment with linking EMS elements to environmental permit requirements. Again, we believe the Dutch experience might be illustrative for the pitfalls one could easily run into. After all, for more than 10 years the Dutch Ministry of Housing, Spatial Planning and the Environment has been trying to develop a successful “framework license” for companies with a certified EMS that also have an approved environmental policy plan, a positive compliance record, and publishing an annual environmental report. The crux of the framework license is that it leaves maximum freedom of choice preventing the adverse effects of (mostly) industrial installations. Therefore, it does not contain detailed rules about emission reductions or about the internal organisation of a company that meets the just mentioned criteria.

Crucial, however, is that the General Environmental Management Act itself makes no distinction between a “normal license” and a “framework license”. The law does, up till now, not even mention the existence of a framework license. In fact, the framework license represents nothing more than another style of licensing and enforcement that uses the existing open-ended and aspirative rules in the General Environmental Management Act to create as much flexibility for participants as possible in deciding how to accomplish pollution prevention. Due to the fact, however, that many companies did not meet up with the criteria to get a framework license, soon policy makers came up with the idea of a “customized license” for companies that did not meet all of the criteria for a framework license, but were still entitled to receive (a little) more flexibility than ordinary license-holders. In the meanwhile, research has shown that in the course of time the difference between the two styles of licensing have faded. What is more, a lot of companies seemed to have lost interest in the whole idea of a framework license because of a lack of benefits for them that outweigh the extra efforts to meet the criteria to participate.²² For one thing, the IPPC directive, for example, already mentioned that permits should contain emission limit values and equivalent parameters, without prescribing the use of any technique or specific technology.²³ This comes very close to the Dutch preference to prescribe goal-oriented permit conditions instead of technical measures for companies that meet the criteria for a framework license.

²² ECWM, Vervolgonderzoek vergunning op hoofdzaken/vergunning op maat, ECWM 2002/11, The Hague 2002. The report is available free of charge at: www.ecwm.nl.

²³ Article 9 § 4 of the IPPC directive.

One of the main lessons the special Dutch Board for Evaluation of the General Environmental Management Act has recently drawn from the study of the policy of framework licensing is that it is perhaps no such a good idea to mitigate the differences between framework licenses and customized licenses because this could easily lead to a policy that rewards the wrong companies (i.e. those that do not have a better environmental performance than average) with a more flexible style of regulation.

7. An example of a “smarter” enforcement strategy

In several official European policy documents it is suggested that certification can, and should, be used to make public enforcement more effective and efficient.²⁴ Unfortunately, these documents only seldom explain in detail how and to what extent supervision and enforcement have to be changed to make use of certification in building a smarter enforcement strategy. The recommendation of the European Parliament and of the Council providing for minimum criteria for environmental inspections in the member states, for instance, declares that in making plans for environmental inspections, relevant information about self-monitoring data, environmental audit information and environmental statements by controlled installations registered according to the Community Eco Management and Audit Scheme, should be taken into account.²⁵ However, the recommendation does not reveal how these inspection plans can be shaped in a way that they provide outlines for procedures to differentiate between EMAS registered, and other sites, when it comes to problems of: balancing routine and non-routine inspections, performing risk assessments and determining the frequency of site visitations. This leaves public inspection agencies in uncertainty about the best way to treat installations with an EMAS registration. On the one hand they probably want to avoid that highly motivated companies with progressive environmental policy plans are going to get patronized and will be treated harshly, while “easy riding” competitors are welcomed with a coaching and stimulating style of regulation. On the other hand, inspection agencies would want to have some guarantees before adopting a more flexible and communicative approach towards EMAS registered organisations.

The first question one has to ask to overcome this dilemma is: how can I recognise if an organisation is trustworthy enough to rely on its internal procedures for compliance monitoring and be able to lower, for example, the priority for routine inspections? Is having an EMAS registration enough or do we need more, and other criteria? Perhaps the approach of the United States EPA, has laid down in its “performance track program” could teach us something here.²⁶

7.1 Performance Track

The Performance Track Program that was launched in June 2000 is designed as a voluntary public-private partnership that encourages continual environmental improvement through the use of certified EMS, local community involvement and measurable results.²⁷ The program recognises and rewards businesses and public facilities that demonstrate strong environmental performance beyond current requirements. In other words participants will have to

²⁴ For instance: IMPEL, Best Practice in Compliance Monitoring, London 2001, p. 11 and 26;

²⁵ Article IV, § 4, under b, of Recommendation 2001/331 EC, of the European Parliament and of the Council providing for minimum criteria for environmental inspections in the Member States.

²⁶ EPA, National Environmental Performance Track Program Guide: <http://www.epa.gov/performance-track>.

²⁷ Currently the Performance Track Program has little over 300 members in 41 States. Over 400 companies have already applied.

accomplish environmental results beyond what could be achieved through regulation and enforcement alone.²⁸ Important for the participants to the program is that they can get public recognition (members are listed on a special EPA website and the EPA also places articles in trade journals and issues press releases et cetera). Other benefits are lower priorities for routine inspections, be able to network with EPA officials and other (business) members to the program²⁹, gain benefits from the experience of the participants and a reduction of paperwork and reporting requirements.

One of the main criteria to qualify for the Performance Track Program is that a facility should have a clean compliance record, and be willing to accept a screening procedure by the EPA.³⁰ Participation will not be appropriate if the compliance sheet shows, for instance: a corporate criminal conviction or plea for environmentally-related violations of criminal laws involving the corporation or a corporate officer within the past 5 years or three or more significant civil violations at the facility in the past 3 years. In addition, EPA may also consider whether there are significant problems or a pattern of non-compliance in an applicant's overall civil or criminal compliance history. This could also be a reason for refusal.

Moreover a facility should be able to demonstrate specific environmental performance and commit to continued improvement. To demonstrate past performance, a facility is asked to select at least two environmental aspects from any of the categories in the so-called Environmental Performance Table and to describe the improvements in its performance during the current and preceding year. In making future performance commitments, facilities should select at least four environmental aspects, drawn from two or more categories and the aspects selected for past and future performance may not be the same! In documenting past performance and commitment to continual improvement, a facility will not rely on any actions that represent compliance with existing legal requirements at the federal, state or local level. As mentioned before, the improvements will have to represent actions taken by a facility that go beyond existing legal obligations!

Another demand to participate in the Performance Track Program has to do with public outreach and performance reporting. In the application, each facility will be asked to describe its activities and plans in three areas: identifying and responding to community concerns³¹; informing community members of important matters that affect them; and reporting on the performance of its EMS and other performance commitments. Applicants are also asked to provide a short list of community/local references who are familiar with the facility and to list any ongoing citizen suits against the facility.

²⁸ An overview from the first results of the program is offered in: EPA, Performance Track Progress Report: Top Performers, Solid Results, EPA 2003.

²⁹ The program is also designed as a learning community of trade organisations, NGO's and business. Performance Track Members have formed a private, independent membership organisation, the Performance Track Participants' Association. For more information about the activities of the organisation: <http://www.ptpaonline.org>.

³⁰ EPA staff and state officials visit a portion of Performance track member facilities each year. A site visit provides EPA with the opportunity to verify the information presented in a facility's application, particularly the quality of its EMS, and progress toward its performance goals. EPA provides an assessment of the facility's programs and progress relative to other facilities in the program and may suggest opportunities for improvements or partnerships with other firms and sources of technical expertise.

³¹ The Track Program Guide states that typical efforts could include a designated community liaison official, periodic public meetings or open houses, and similar mechanisms. The level of public outreach, moreover, would depend not only on the size of the facility, but also on the degree of community interest and the environmental effects of the facility's operations.

The EPA declared that through December 2002, it had conducted site visits at 79 Performance Track facilities. Sixty-eight percent of the site visits have shown that the member facility fully met all program criteria. Thirty-two percent of the visits revealed areas for improvement and only Twenty-two facilities showed more significant problems and fell short of meeting program criteria. EPA asked these facilities to withdraw from the program. Since the start a total of 41 members have left the program. The most common reasons for leaving were: EMS deficiencies found during site visits (22 facilities), closures or reorganisations (6 facilities), failure to submit an annual performance report (5 facilities) or other reasons (8 facilities). For the continuous success of the program it seems important, not only to encourage members to look for environmental innovations, but also to remove “easy riding” participants from the membership list to keep the competitive and exclusive character of the program alive. For the same reason it would also be unwise to make the membership more accessible in the future.

While the Performance Track Program is quite clear about the conditions for membership, it remains rather vague when it comes to the effect of participating in the program on the lowering of inspections. This is not so strange because diminishing the number of inspections always remains a hazardous undertaking. After all, It seems obvious that having a certified EMS and a clean compliance record in the past does still not guarantee full compliance. Therefore it would be naïve to believe that internalisation of environmental values and close communication between businesses and regulators could ever replace enforcement. Like Sparrow has already mentioned: “If complete consensus were possible on any regulatory issue – that is, if a solution existed that served the interest of every private party – then the issue would probably not warrant regulatory attention.”³²

So the real challenge is to develop an enforcement strategy that is able to balance between prevention and repression, trust and distrust, independence and cooperation. This strategy has as its starting-point, a knowledge-based method of risk assessment that enables inspection agencies to differentiate between reliable and less reliable organisations in deciding not only the number of site visits, but it could also affect the imposing of sanctions.

7.2 Inspection frequencies and sanctions

Starting-point of the enforcement strategy should be that government resources are limited, and universal compliance cannot be achieved without the active effort by the regulated community to “police” themselves. Inspection agencies shall have to establish priorities when it comes to checking compliance from different companies with different types of rules and regulations. For this reason, it seems quite natural that the most attention is going to go to those facilities and regulations that represent the highest risks. This corresponds with the principles of proportionality and non-discrimination as developed by the European Court of Justice. The only way, however, a fair balance can be struck between the efforts to discover offences and the threats that are posed by a non-compliance is through developing a monitoring and compliance policy on the basis of experience from the past. We think, such a policy should at least take into account:

³² M.K. Sparrow, *The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance*, Washington D.C. 2000, p. 17.

- the degree to which compliance with certain rules or permit conditions contributes to the interest of the environment (for instance mere administrative regulations versus emission standards);
- the general attitude toward compliance in a certain branch (branch related factors can also be: heavy international competition or the number of risk-seeking entrepreneurs);
- the compliance record of a business in the past and its sensitivity for blaming and shaming;
- the probability that certain violations will occur if inspection frequencies are lowered because of the existence of informal control mechanisms (neighbourhood watch, alertness of NGO's, media attention et cetera);
- the degree to which third parties, like local residents and NGO's, have an interest in regular inspections;
- the amount of manpower and means that are necessary to discover offences in relation to the success in terms of finding violations (the number of inspections related to the odds of tracing offences on the one hand, and the odds that one discovers a non-conformity by performing an individual investigation because of the complexity of the facility on the other hand);
- the degree to which other overseers on related policy areas keep inspections that can gain relevant information about the attitude towards compliance with environmental laws;
- the degree to which other parties (the regulated addressee itself, or third parties like certification bodies) already monitor compliance and the willingness to be open about violations.

Especially this last factor has also gained attention in the US policy towards facilities with a certified EMS. Since 1995 the US EPA has developed a policy on “incentives for self-policing: discovery, disclosure and correction”. The purpose of this policy is to enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, promptly disclose and expeditiously correct violations of Federal environmental regulations.³³

In the year 2000 this Audit Policy was revised but the essence remained the same. The policy contains nine conditions³⁴, and entities that meet all of them are eligible for 100% mitigation of any gravity-based penalties that otherwise could be assessed.³⁵ Organisations that want to benefit from this policy have to prove that they are able to systematically and voluntarily discover non-compliances through environmental audits or (other) compliance management systems before an inspection agency does so.³⁶ Furthermore the regulated entity should fully disclose specific violations that occur in writing to the EPA within 21 days (or within such shorter time as may be required by law) after it discovered a violation has, or

³³ The first Audit Policy was issued on December 22 1995, Federal Register volume 60, nr. 66706.

³⁴ One can find these nine conditions, together with an explanation of the EPA Audit policy as published in the US Federal Register of April 11, 2000, Vol 65, No. 70, pages 19618-19627.

³⁵ Gravity-based refers to that portion of the penalty over and above the portion that represents the entity's economic gain from non-compliance.

³⁶ Regulated entities that do not meet this one condition, but do meet the other eight conditions are eligible for 75% mitigation of any gravity-based civil penalties and EPA will not recommend criminal prosecution by the Justice Department.

may have occurred. The regulated entity should correct the violation within 60 calendar days from the date of discovery and certify this, again in writing, to the EPA. Nonetheless EPA retains the authority to order an entity to correct a violation in a shorter period of time whenever this is feasible and necessary to protect public health and the environment adequately. Also preventive steps should be taken to avoid recurrence of the violation. Important remains further that the specific violation, or a closely related one, may not occur in the next three years at the same facility or within five years as part of a pattern at multiple facilities owned or operated by the same entity.

While this US audit policy is developed to prevent self-incrimination and to reward openness about the regulatory behaviour of businesses, one must remember that at all times inspections agencies should now and then double check the results of monitoring reports, and investigate by themselves if a facility complies with relevant laws and regulations. Public authorities may never totally rely on the results of audits performed by certification bodies. By using a method of paying surprise-visits and performing spot checks public inspectors can keep private auditors and verifiers alert, thereby lifting their level of investigation. After all, one may assume that the management of a facility will not be pleased if it is confronted with a discovery of non-compliance by the authorities that could have been prevented by an adequately performed external audit. A warning is in place

8. Conclusions

First of all we may conclude that ten years after the start of EMAS, there is still no clarity about the true effectiveness of this environmental management system when it comes to improving environmental performance and legal compliance. Does EMAS merely guarantee that an organisation is able to master continual improvement and knows what its legal obligations are, or do EMAS-registered companies really have better performance records in this respect? The answer is that after all these years we still do not possess an overwhelming amount of hard data on this topic. What is even more striking, however, is that there also seems to be no *communis opinio* on the public policy regarding EMAS: do we want EMAS to be purely a business tool for enhancing market transparency or do we consider EMAS to be part of a more comprehensive regulatory strategy to improve compliance with existing environmental legislation? The answer is hard to give because the position of the European legislator seems to be ambiguous.

On the one hand EMAS has remained a strictly voluntary management tool for business purposes. On the other hand, EMAS has over and over again been linked to regulatory reform, deregulation and avoiding unnecessary duplication of monitoring and enforcement activities. Furthermore, the dominating policy regarding EMAS has up till now been to increase the number of participants without seriously asking oneself if a widespread participation will go hand in hand with a high level of environmental performance of the registered organisations. In our view a choice has to be made if we want EMAS to become a standard of excellence for “front runners”, or a set of minimum criteria for the implementation of environmental management systems that is suitable to serve the entire business community.

The choice to make EMAS a true “acceleration mechanism” for a successful environmental policy entails the need for special measures regarding transparency of the organisation, public accountability, and trustworthy verification. Furthermore, as a standard of excellence EMAS should be given an exclusive status. Only those organisations that clearly demonstrate to go beyond compliance have to be able to participate in the Eco

Management and Audit Scheme. For this reason, the criteria to determine the level of environmental performance should be crystal clear. Besides, a special warning is in place for regulators not to mix a more communicative style of licensing with a way of negotiated enforcement. Even in the case that companies have proven to be willing to go beyond compliance, this does not mean that they can never fall back into a less proactive position. Therefore public authorities should always stay alert, and from time to time keep performing unannounced surveillance checks to double check if the EMS is still functioning properly.

Last but not least, we also want to express that in itself there is nothing wrong with considering EMAS to be a minimum standard for the implementation of administrative procedures to manage environmental performance, however in that case public authorities will have to be extremely careful to attach importance to the fact that an organisation is EMAS registered as far as enforcement and environmental permitting is concerned.