

FREQUENTLY ASKED QUESTIONS

ON



TRANSITION FROM EMAS II TO EMAS III

RIGHTS AND OBLIGATIONS OF ORGANISATIONS

The aim of the present paper is to provide guidance for organisations, Competent Bodies, Member States, third countries, organisations, environmental verifiers and Accreditation and Licensing Bodies, using the EMAS Regulation.

The paper suggests an approach to frequently asked questions on how transition from EMAS II to EMAS III should be understood. This document follows, where appropriate, the same approach as was taken at the transition from EMAS I to EMAS II.

This paper does not represent an official position of the Commission and cannot be invoked in the context of legal proceedings. Final judgements concerning the interpretation of the Regulation can only be made by the European Court of Justice.



For the purpose of this paper:

EMAS II = Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisation in a Community eco-management and audit scheme (EMAS)
(*Official Journal of the European Communities L 114 of 24 April 2001*)

EMAS III = Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisation in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC
(*Official Journal of the European Communities L 342 of 22 December 2009*)

Date of entry into force of EMAS III: 11/01/2010

The time of the verification is a crucial element for answering the question whether and at what moment an organisation, EMAS registered or not, has to fulfil the obligations defined in EMAS III. This follows from Article 51 (2) (b) of EMAS III, which provides that:

"organisations registered in accordance with Regulation (EC) No 761/2001 shall remain on the EMAS register. At the time of the next verification of an organisation the environmental verifier shall check its compliance with the new requirements of this Regulation. If the next verification is to be carried out before 11 July 2010, the date of the next verification may be extended by six months in agreement with the environmental verifier and the Competent Bodies;"

QUESTIONS ON ORGANISATIONS NOT YET EMAS REGISTERED

Question 1: What requirements shall an organisation fulfil at the time of first registration where the verification of site(s) and validation has been carried out before 11/01/2010, but registration is still pending.

Answer: As explained on the first page of this paper, the time of the verification is decisive for the answer to this question.

Verification and validation were performed according to EMAS II requirements. The subsequent entry into force of EMAS III does not entitle the Competent Body to require compliance with the requirements of EMAS III. The Competent Body has to grant registration on the basis of the successful verification and validation in accordance with EMAS II.

At the time of its next verification, the organisation must fulfil the requirements of EMAS III.

Question 2: What requirements shall an organisation fulfil at the time of first registration when the verification of site(s), including site visit(s) of the verifier, occurred before 11/01/2010 but where validation is pending, depending on improvements to be made further to the report of the verifier after the visit of the site(s).

Answer: As explained on the first page of this paper, the time of the verification is decisive for the answer to this question.

In this case, verification has started but has not been completed.

A degree of flexibility shall be applied in these cases, analogous to the flexibility provided in Article 52(2)(b) of EMAS III for EMAS registered organisations. Indeed, obliging an organisation in the process to EMAS registration on the basis of EMAS II and already at the stage of verification, to fully comply with the requirements of EMAS III, would put this organisation in a tougher regime than the one that applies to EMAS registered organisations.

However, the maximum extra time to be given to the organisation to implement the improvements requested by the environmental verifier should not exceed 3 months. The period of 3 months is a reasonable time as the organisation has to meet the requirements of EMAS II (not yet EMAS III).

In deciding the exact time to be given to an organisation to implement the requested improvements and to have the environmental statement validated, the environmental verifier and the Competent Body will jointly apply this flexibility. They should take into account the nature and scope of the improvements to be made by the organisation and the time period envisaged before validation is made compared to the date of entry into force of EMAS III Regulation.

Question 3: What requirements shall an organisation fulfil at the time of first registration where the organisation has already established its environmental management system under EMAS II, but for which, at 11/01/2010, the verification process has not yet started?

Answer: The organisation has to fulfil the requirements of EMAS III and will be verified on this basis. This is not different in cases where the organisation has already concluded a contract with a verifier for the verification and validation of the organisation.

Conclusion: Organisations not yet EMAS registered, where the verification has started before 11/01/2010, can choose to either:

- convert to EMAS III, extend or postpone the ongoing verification until the organisation considers that it fully meets the requirements of EMAS III and then continue the verification process, but now on the basis of EMAS III and have the validation also on the basis of EMAS III,

or

- stay with EMAS II and ask registration on the basis of EMAS II (only possible in the situations and respecting the conditions described in questions 1 and 2)

Whatever an organisation chooses, it has to make this clear to the environmental verifier as well as to the Competent Body, preferably as early as possible.

QUESTIONS ON EMAS REGISTERED ORGANISATIONS

Question 4: At what moment in time do registered organisations have to fulfil the requirements of EMAS III? Is there a transitional period?

Answer: Article 51(2)(b) of EMAS III provides that organisations registered under EMAS II will have to comply with the requirements of EMAS III at the time of the next verification.

However, the regulation provides for an exception to this rule by defining a **transitional period for organisations for which the next verification is planned before 11/07/2010**. For these organisations, the date of the next verification may be extended by 6 months, in agreement with the environmental verifier and the Competent Body. Organisations wanting to use this possibility should contact the Competent Body and the environmental verifier a sufficient time before the planned verification and they shall indicate that they wish

to invoke the exception. The (extended) verification and validation shall then be made on the basis of EMAS III.

Like at the transition from EMAS I to EMAS II, in 2001, it is the Competent Body that can grant the exception, not the environmental verifier. The environmental verifier can appreciate the amount of changes to be done to the environmental management system, which will help the Competent Body to assess the necessity of the extension in order to avoid it becoming an automatic one.

There is **no transitional period for organisations for which the next verification is planned after 11/07/2010**, These organisations cannot benefit from any extension possibility and have to fulfil the EMAS III requirements. Of course, the verification and validation will be on the basis of the EMAS III requirements.

Question 5: Can organisations that were registered under EMAS II use the logo as defined in EMAS III?

Answer: Yes, as long as an organisation is EMAS registered, it can use the EMAS logo. Since EMAS III is in force, it is the logo defined in EMAS III that is to be used. This is also the case for organisations that continue to be EMAS registered on the basis of of Article 51(2)(b) of EMAS III (i.e. complying with the requirements of EMAS II).

Question 6: Do organisations have to conclude a contract with an environmental verifier that has a duration covering the full period till renewal of the registration?

Answer: Normally, renewal of an EMAS registration occurs every 3 years and in exceptional cases every 4 years (only for small organisations on the basis of Article 7 of EMAS III).

The verification programme will be set up in agreement between the environmental verifier and the organisation to be verified and will be performed during a 3-year (or exceptionally a 4-year) period.

An organisation is free to define any contract duration when it enters into a contract with an environmental verifier and it is not compulsory for organisation to have a 3-year (or 4-year) contract.

However, it can be worthwhile for an organisation to contract an environmental verifier for the full period, so that the environmental verifier will gain experience with the way the environmental management system of the organisation functions.

Organisations should be aware that the environmental verifier must at every verification and validation activity, be accredited or licensed for the full scope of NACE codes for which the organisation is registered and that the environmental verifier must renew its accreditation or license on a regular basis.