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Subject: Commission response on the request to use the EMAS logo on packaging used for several different products

1. BACKGROUND

Germany's representative at the EMAS Art. 14 Committee asked the following question to the Commission: can an EMAS registered company use the EMAS logo on a packaging, which is used for several different products?

The Commission presented a draft response to the above question during the March 25-26 meeting of the Art 14 Committee and asked for additional comments from the Member States to be submitted after the meeting.

2. OBJECTIVE OF THIS NOTE

- Report on the Commission analysis of 1) the legal background (EMAS regulation (EC) No 76/2001) and its guidance document on the use of EMAS logo and 2) all comments submitted by the Member States.
- Present a response from the Commission on the above question.

3. LEGAL BACKGROUND ANALYSIS

3.1. EMAS regulation No 761/2001:

3.1.1 Art 8, point 3 (a): the logo shall not be used on products or their packaging

- The regulation does not provide a clear definition of what is exactly a packaging. This definition must be found in The EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 94/62/EC of 20 December 1994 on packaging and packaging waste, which provides a clear definition of packaging and separates packaging into 3 types:

(a) sales packaging or primary packaging, i. e. packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase;

(b) grouped packaging or secondary packaging, i. e. packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is sold as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale; it can be removed from the product without affecting its characteristics;

(c) transport packaging or tertiary packaging, i. e. packaging conceived so as to facilitate handling and transport of a number of sales units or grouped packagings in order to prevent physical handling and transport damage. Transport packaging does not include road, rail, ship and air containers;

- The most illustrative example regarding the question asked to the Commission by Germany would be e.g. an EMAS registered supermarket where the EMAS logo is put on plastic bags which are made available by the supermarket at the counter, for customers to fill in their different purchased items.
- The European Court of Justice ruling 341/01 “Plato Plastik Robert Frank GmbH v Caropack Handelsgesellschaft mbH” points 52 and 53 clarifies that such supermarket plastic bags are type (c) transport packaging or tertiary packaging.
- In the packaging and packaging waste directive 94/62/EC, primary, secondary and tertiary packaging are all types of packaging and therefore, strictly speaking, the interdiction in point 3 (a) of the EMAS regulation applies to all of them.
- However, given the spirit of the EMAS regulation which is to prevent the use of the EMAS logo on packaging in order to avoid confusion with environmental product labels, a reasonable exception might be granted for the use of the logo on packaging if there was no risk of such confusion; Such exception is allowed by the Art. 8. 3 of the EMAS regulation.
- Primary packaging are, and secondary packaging could be, directly related to specific products and therefore could create confusion with other product related schemes such as the European Eco-Label; Tertiary packaging, on the other hand, are not related to any product in particular, and so cannot be misinterpreted with products claims.

➔ In that context, it can therefore be concluded that the EMAS logo may not be used on primary and secondary packaging, but that the logo can be used on tertiary packaging only.

3.1.2. Art 8, point 3 (b): the logo shall not be used in conjunction with comparative claims concerning other products, activities and services.

There is no proposal in the question asked to the Commission to make comparative products claims and therefore point 3 (b) is irrelevant in this particular case.

3.2. Guidance document on the use of the EMAS logo (Commission Decision of 7 September 2001 – Annex III):

3.2.1. *Relationship between the EMAS logo and eco-labelling schemes (point 1.2. of the EMAS guideline)*

The EMAS logo should not imply any of the Eco-Label products characteristics (selective, comparative claims between products, activities, services; ecological criteria met by these products) nor shall it be used in a way that leads to confusion with these characteristics

→ Tertiary packaging does not relate to any specific product (and therefore not with Eco-Label products) so there is no risk of confusion.

3.2.2. *Guidance on the use of the logo on selected information from the environmental statement (point 3 of the EMAS guideline)*

The appropriate use of the logo (version 2 – validated information) does not depend on the technical means by which information is presented. The only general requirement is that the logo should be linked to specific validated information and that no confusion can arise on this point. Examples provided in this section do not specifically cover the present case.

→ Provided the above general requirement is met, there is no interdiction from this section to use any validated information coming from the environmental statement, together with the EMAS logo version 2, on tertiary packaging.

3.2.3. *Guidance on use of the logo on, or in, adverts for products, activities and services (point 5 of the EMAS guideline)*

In no case must the logo be used alone in adverts for products, activities or services (like eco-label). A clearly visible connection to the validated information is necessary. It is not the technical way as such by which the logo is presented that decides whether its use is allowed or not but the content of the information delivered.

→ Provided that the logo (version 2) is put together with the relevant validated information, there is no interdiction from this section to use validated information, together with logo version 2, on tertiary packaging.

4. CONCLUSION

The Commission response, based on existing decisions, is that it is allowed to use the EMAS logo version 1 (verified environmental management) and version 2 (validated information), on Tertiary packaging only.

The following table summarises when the EMAS logo can be used **on tertiary packaging**:

EMAS Logo type	Explanation	Reference
Without text	Not allowed as no specific information may create risk of confusion with Eco-Label in the mind of the consumer	Point 1 of EMAS guideline on logo use
Version 1 logo « verified environmental management » + registration number(s)	Allowed as logo version 1 clearly refers to environmental management of the company / organisation and therefore no confusion is possible with the Eco-Label Scheme	Point 1 of EMAS guideline on logo use
Version 2 - logo “validated information” + registration number(s) + related validated information.	Allowed as logo version 2, together with the relevant validated information, provide clear claims related to the organisation management and therefore no confusion is possible with the Eco-Label Scheme.	Point 3 & 5 of EMAS guideline on logo use.

Disclaimer: The aim of the present document is to help Member States in applying the EMAS Regulation by suggesting an approach to certainly asked questions related to the use of the EMAS logo. This document does not represent an official position of the Commission and cannot be invoked in the context of legal proceedings. Final judgment concerning the interpretation of the Regulation can only be made by the European Court of Justice.