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ENV.G - Sustainable Development & Integration  
ENV.G.2 – Environment & Industry  
The Head of Unit



Brussels, 1 August 2007  
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**NOTE FOR THE ATTENTION OF**  
**MEMBERS OF THE COMMITTEE ESTABLISHED UNDER COUNCIL REGULATION (EC)**  
**N<sup>o</sup>761/2001, ALLOWING VOLUNTARY PARTICIPATION BY ORGANISATIONS IN A**  
**COMMUNITY ECO-MANAGEMENT AND AUDIT SCHEME –EMAS-**  
**MEMBERS OF THE FORUM OF ACCREDITATION BODIES**

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**SUBJECT: NACE – Rev. 2**

The aim of the present paper is to provide guidance for the Member States in transposing and applying the Regulation by suggesting an approach on how certain provisions of the Directive should be understood. This document does not represent an official position of the Commission and cannot be invoked in the context of legal proceedings. Final judgments concerning the interpretation of the Directive can only be made by the European Court of Justice.

1. At the meeting of the Forum of Accreditation Bodies on 21 and 22 May 2007 in Helsinki, the question was raised whether Regulation (EC) No 1893/2006 of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90, obliges Member States to use the NACE Rev. 2 for the classification of economic activities that define the scope of accreditation of environmental verifiers under the EMAS-Regulation.

The question was repeated at the meeting of the Competent Bodies on 25 June 2007 in Warsaw.

Regulation (EC) No 1893/2006 shall apply from 1 January 2008.

2. Council Regulation (EC) No 761/2001 of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)<sup>1</sup> stipulates in its Annex V, point 5.2.2 that:

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<sup>1</sup> OJ L 114, 24.4.2001, p.1

*"the scope of accreditation of environmental verifiers shall be defined according to the classification of economic activities (NACE codes) as established by Council Regulation (EEC) 3037/90".*

A footnote to this provision specifies *"Regulation as amended by Regulation (EEC) No 761/93"*. The latter<sup>2</sup> incorporated minor amendments to NACE Rev.1.

Council Regulation (EEC) No 3037/90 was amended again by Regulation (EC) No 1893/2006 of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EU Regulations on specific statistical domains<sup>3</sup>.

The amendments (see Article 9 of Regulation (EC) No 1893/2006) introduced by Regulation (EC) N° 1893/2006 are limited to the deletion of Articles 3, 10 and 12 of Regulation (EEC) No 3037/90. These Articles contained in substance the obligation for the Commission and Member States to use NACE Rev.1 for statistics classified by economic activities.

3. In order to reply to the above question, the following elements should be taken into account.

- as a general rule, references to other acts in the enacting terms of an act are dynamic references, which means that the provision or act cited is taken to be the provision with any amendments. There is then no need to explicitly refer to the amending acts. The text of the EMAS-Regulation refers to Regulation 3037/90 and specifies in a footnote that this Regulation has been amended by Regulation (EEC) No 761/93.
- Point 5.2.2 of Annex V of Regulation (EC) No 761/2001 refers to the "NACE-codes" and not to the "NACE Rev.1". This makes it clear that the legislator wished to have a dynamic reference.
- Article 10 of Regulation (EEC) No 3037/90 introduced the rule according to which Member states must use NACE Rev. 1 for the classification of economic activities. This article has been repealed by Regulation (EC) No 1893/2006, which introduces in its Article 4 the obligation for Member States to use NACE Rev. 2 for the statistical classification of economic activities. The annex to Regulation (EEC) No 3037/90 will thus remain inapplicable.
- The intention of Regulation (EC) No 1893/2006 is to reflect the technological development and structural changes in the economy.
- It is not justifiable to keep NACE Rev.1 for one specific field of application only – the scope of accreditation of environmental verifiers under EMAS – whereas NACE Rev.2 is used for all other applications under Community law.

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<sup>2</sup> OJ L 83, 3.4.1993, p.1

<sup>3</sup> OJ L 393, 30.12.2006, p.1

On the basis of these considerations, the Commission is of the opinion that NACE Rev. 2 is the correct and updated reference for Member States to use for the classification of economic activities that define the scope of accreditation of environmental verifiers, which implies that of 1/01/2008, this classification shall be used.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'MISIGA', written over a circular stamp or mark.

Pavel MISIGA  
Head of Unit

