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**REPORT FROM THE COMMISSION TO THE COUNCIL AND
THE EUROPEAN PARLIAMENT**

ON INCENTIVES FOR EMAS REGISTERED ORGANISATIONS

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TABLE OF CONTENTS

1.	Introduction	3
1.1.	EMAS challenges.....	3
2.	Types of external incentives.....	4
2.1.	Regulatory flexibility	4
2.2.	Promotional incentives.....	6
2.2.1.	Public procurement	6
2.2.2.	Support funding.....	7
2.2.3.	Technical and information support	7
3.	Conclusions	8

1. INTRODUCTION

The Eco-Management and Auditing Scheme (EMAS) is a voluntary environmental management system, under which organisations evaluate, manage and continuously improve their environmental performance.

The two main purposes of this report are to inform the European Parliament and the Council about the incentives currently in Member States for EMAS-registered organisations and to raise the awareness of national authorities about different national practices.

The report is designed to help government policy and regulatory decisions to become more knowledge-based so that incentives are provided in the most suitable way for each individual case. In addition, the information covered in this report will be useful for the Commission during the forthcoming revision of the EMAS Regulation¹ (hereinafter “the Regulation”).

The report meets the requirement in the second subparagraph of Article 10(2) and in Article 11(3) of the Regulation that the European Commission shall transmit to the European Parliament and the Council information received from Member States in the following fields:

- the avoidance of duplication of effort in the implementation and enforcement of environmental legislation by EMAS-registered organisations; and
- the promotion of participation of organisations in EMAS.

This report starts by describing the context of EMAS and the challenges lying ahead. It then lists the incentive measures provided by national authorities.

1.1. EMAS challenges

Since the Regulation took effect in 1995, it has been targeted at raising the quality threshold of environmental management systems. Its unique design, which aims at delivering high performance, transparency and credibility, makes EMAS a valuable tool which has the potential to contribute to environmental improvement by encouraging better environmental performance from all type of organisations.

EMAS incorporates a formal environmental management system (EN ISO 14001). Other less formal environmental management systems² are available in the market providing for different options for organisations in search of environmental management. It is worth noting that EMAS goes beyond EN ISO 14001 and sets the strictest requirements of all and so may require more effort from organisations trying to meet them. This may explain the difference between the statistics collected for EMAS and EN ISO 14001 registrations and certifications.

¹ Regulation N° 761/2001 of 19 March 2001.

² BEST-Project

http://europa.eu.int/comm/enterprise/environment/events/sme_conference/presentations/best_report.pdf

Organisations can benefit in many ways from implementing EMAS. For example, more sustainable use of resources gives financial advantages; a better public image; reduced risk of non-compliance with environmental legislation; improved relations with environmental regulators and other stakeholders, and proper risk management, which in turn may prompt lenders and insurers to offer better financial terms. But despite all these benefits, the scheme is now facing several challenges:

- The number of new registrations has declined over the last two years;
- The business community is particularly critical about the lack of external incentives as well as of the unbalance between costs and benefits; in particular for SMES;
- Most registered companies are located in only a few Member States, presenting an incoherent picture of EMAS uptake in the EU;
- In May 2004, the scheme became fully applicable in the new Member States, thus enlarging the potential for new registrations.

2. TYPES OF EXTERNAL INCENTIVES

The nature of the external incentives provided by national authorities can vary depending on the aims they are pursuing. Two main groups have been identified: those of a regulatory nature and those which aim to promote wider uptake of the scheme through public procurement, funding support and technical and information support.

2.1. Regulatory flexibility

Issue

Article 10(2) of the Regulation provides the legal base for Member States to consider how EMAS registration can be taken into account in the implementation and enforcement of environmental legislation. The aim of this provision is to avoid unnecessary duplication of effort by both organisations and enforcement authorities.

Governments are committed to providing an efficient, responsive and transparent regulatory framework that ensures compliance with environment legislation. Until now, *command and control* practices have been applied with different degrees of success. This may explain why, despite the use of these practices, there is still a high level of non- environmental compliance.

The issue is also linked to how enforcement authorities use what may be scarce resources. Often authorities are forced to optimise the use of their resources e.g. for monitoring sites. If resources are in short supply, this may prevent efficient monitoring and control, leading to unintentional failures of enforcement.

The Regulation sets out strict requirements regarding compliance with environmental legislation since it requests the independent and external verifiers to ensure that the organisation can demonstrate legal compliance. In compensation, some Member

States have granted regulatory flexibility to EMAS-registered organisations so as to alleviate the burden of regulatory pressure and streamline their own resources.

Objectives

The degree of regulatory flexibility varies from one country to another, so for the purpose of this report the term *regulatory flexibility* includes both *regulatory relief*, construed as substitution of legal requirements without changes in environmental legislation as such, and *deregulation*, which involves changes in the legislation itself.

The main objectives of regulatory flexibility are:

- to simplify and reduce the regulatory framework in cases of redundancy;
- to remove procedural impediments;
- to reduce the need to submit unnecessary and repetitive documents to the regulator;
- to foster responsible behaviour by operators.

General types

Regulatory flexibility has been applied by some Member States in the following fields:

- Information required for permits: streamlining applications

Flexibility regarding permitting procedures may be possible for registered companies. Much of the information required for permit applications is already collected through the EMAS system. The environmental information provided by it can be regarded as reliable, up to date and suitable for use.

- Reduced reporting and monitoring requirements

If an EMAS company can demonstrate significant compliance history or superior performance over a period of time, then less information would need to be reported to the enforcement authorities to verify its performance. This could also justify requiring this information less frequently.

- Consolidated reporting and monitoring requirements

The implementation of EMAS presents the regulator with an opportunity to take advantage of the environmental information available from the Environmental Statement. In fact, this Statement provides the competent authorities with data and information that can be used for subsequent reporting and/or monitoring purposes thus, avoiding duplication of tasks.

- Reduced inspections

In some cases, national enforcement resources are scarce. Given that the implementation of EMAS facilitates the compliance with environmental legislation,

it could be suggested that registered companies be subject to fewer inspections and/or inspections that are narrower in scope.

2.2. Promotional incentives

Introduction

Article 11 of the Regulation lays down requirements to ensure the promotion of organisations' participation in EMAS by providing incentives in the fields of support funds, public procurement, technical and information support. This Article makes a special reference to the promotion of EMAS amongst SMEs.

There are three main areas where promotional incentives can be provided:

- Public procurement
- Funding support
- Technical and information support

2.2.1. Public procurement

Public purchasers and other entities covered by the public procurement Directives constitute an important group of consumers; some €1,000 billion or about 16% of the Union's GDP is spent on public procurement. Integrating environmental considerations alongside economic and social considerations into public procurement could substantially contribute to sustainable development. If, wherever appropriate, public purchasers referred to EMAS in their calls for tenders, this would help create awareness of the scheme and act as an incentive for contractors to join it.

Taking into account environmental considerations like environmental management systems in public procurement should be linked to the subject matter of the contract and comply with the general principles of Community law such as the rule on transparency or equal treatment³.

Article 11(2) of the Regulation provides the basis for promoting EMAS widely through procurement practices. To this end, it requires public authorities to consider, without prejudice to Community law, how registration under EMAS could be taken into account when setting criteria for their procurement policies.

The European Commission interpretative Communication on public procurement⁴ explains the existing possibilities for public authorities to take EMAS registration into account during the tendering process. It states that environmental management systems such as EMAS cannot be specifically requested as a procurement criterion but, as proof of the organisation's technical capacity in dealing with environmental issues.

³ "Buying Green" - A Handbook on environmental public procurement, Commission staff working document, SEC(2004) 1050 of 18 August 2004.

⁴ COM(2001) 274 final of 4.7.2001.

This was confirmed by the amended public procurement Directives,⁵ which is designed to simplify, clarify and modernise existing EU procurement legislation. The new public procurement directives have introduced a new technical selection criterion whereby bidders have to show, in appropriate cases and if it is requested by the public authorities that they can apply environmental management measures when executing specific works or service contracts e.g. a contract to build a bridge in a nature reserve implies the need for continuous environmental management and adoption of specific protection measures during the works. In these cases the Directives state that EMAS or any other equivalent environmental management system could be provided as evidence of compliance with the requirement to adopt environmental management measures.

2.2.2. *Support funding*

Article 11(1) of the Regulation emphasises the need for Member States to guarantee the participation of SMEs in the scheme. One way of doing this is by facilitating support funds and ensuring reasonable registration fees.

General types

The main current areas for financial support can be listed as follows:

- Subsidies to new EMAS registrations in the form of lump sums or a percentage of total costs incurred;
- Tax breaks on purchases designed to improve environmental performance are an indirect way of providing funds;
- Special funds for technical assistance, staff training and external consulting;
- Reduced registration fees;
- Finally, preferable conditions for EMAS-registered companies negotiated with bankers and insurers.

2.2.3. *Technical and information support*

Article 11(1) of the Regulation not only invites Member States to promote participation in EMAS, but it also stresses the need to ensure more participation by SMEs by providing proper technical assistance and facilitating access to information.

General types

On **technical assistance** the main areas of support are as follows:

- Educational programmes in co-operation with relevant associations, e.g. Chambers of Industry and Commerce, or under the supervision of the national EMAS body;

⁵ Directive 2004/17/EC and Directive 2004/18/EC of 31 March 2004.

- Phased implementation programmes especially designed for SMEs.. These systems are designed to help SMEs reach environmental excellence at different levels depending on their particular needs;
- Synergies involving all the actors in environmental management systems, e.g. working groups, partnerships, peer reviews and customised coaching;
- Short- and long-term investment by the authorities to educate and train professionals through specialised programmes;
- Guidelines and toolkits for specific sectors.

On **information** the main areas are as follows:

- Specific information programmes customised for economic operators, small industries and craft trades, trade unions, public authorities, and the general public, etc;
- Information campaigns aimed at specific interest groups and the general public, supported by television campaigns, articles in specialist publications and local newspapers, promotional campaigns or any other means of promoting general awareness;
- Conferences and workshops to foster active participation, and exchange of experiences and best practices.

3. CONCLUSIONS

By providing external incentives, national authorities can do much to ensure the success of EMAS. Through targeted policies and programmes, supported by valid incentives, they can attract organisations and encourage new EMAS registrations.

This report reveals that practically all Member States apply measures that provide some sort of external incentives for EMAS-registered organisations. The fact that the business community regularly complains about the shortage of substantial measures is an indicator that there is potential for improvement. Nevertheless, whatever combination of incentives a country decides to apply, they need to be designed in such a way that they meet the aspirations of the organisations concerned and the needs of national regulators.

Who does what? - A quantitative assessment

Annex II gives an overview of the incentives provided by each Member State.

In addition to this quantitative assessment, there should also be a qualitative assessment of existing incentives. This will require a detailed study which is being commissioned under the ongoing revision of the Regulation. It is expected that the study will show which incentives prove to be most beneficial and useful for operators.

Priorities need to be established by national authorities. When designing external incentives some Member States have given EMAS more recognition and promotion than other formal (e.g. EN ISO 14001) and less formal environmental management systems while other countries took a different approach supporting systems other than EMAS. It is noted that, in general, incentives are designed for the benefit of private organisations. As EMAS is also available to public organisations it is relevant that Member States provide also incentives in this sector especially to local authorities.

Countries may learn from each other and where necessary step up efforts to provide substantial incentives for EMAS organisations. Member States have developed policies on incentives together with long-term incentive programmes to encourage the best practices. Consultations with the main stakeholders e.g. the managers of organisations usually facilitate establishing future measures taking into account their needs and expectations.

Newcomers

With a couple of exceptions, incentives in the new Member States are negligible or even non-existent. These countries have had to implement a large body of EU environment law, and although administrative capacity building and the transposition of legislation is now practically complete, national authorities and private operators alike now have to deal successfully with the new legal obligations.

Against this background, the authorities may consider EMAS as an adequate management tool for addressing these legal issues and therefore encourage both public and private organisations to participate. Real incentives for EMAS implementation and registration are a powerful way of doing this.

The Commission will continue to provide the technical assistance and information support necessary for the implementation of EMAS in private and public organisations.

Turning challenges into opportunities

This report identifies a number of challenges being faced by the scheme that cannot be overlooked.

The Commission has launched a revision of EMAS which will include, amongst other elements, looking at the legal requirements on incentives in order to strengthen their scope and efficiency. The revision process should ensure that all interested parties are consulted, thereby guaranteeing that national regulators and operators alike will be able to provide their views.

The revision of EMAS represents a turning point for the scheme, and an opportunity to make incentives play a crucial role. The Commission and national regulators need to work to identify the most appropriate policy choices for encouraging efficient management and rational use of the environment.