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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the review of implementation of Regulation (EC)No 122/2009 of the European Parliament and of the Council on 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) and the Regulation (EC) No 66/2010 of the parliament and of the Council of 25 November 2009 on the EU Ecolabel

{SWD(2017) 252 final}
{SWD(2017) 253 final}

1. Purpose of the report

EMAS and the EU Ecolabel are part of the EU policy framework for sustainable consumption and production. The EU Ecolabel was created in 1992 and EMAS in 1995. Both were re-launched as part of the Communication on sustainable consumption and production and the sustainable industrial policy action plan (SCP action plan)[1] in 2008. The objective for the EU Ecolabel is: *'...to promote products with a reduced environmental impact during their entire life cycle and to provide consumers with accurate, non-deceptive, science-based information on the environmental impacts of products'*; the objective for EMAS is: *'...to promote continuous improvements in the environmental performance of organisations by establishment and implementation of environmental management systems by organisations, the systematic, objective and periodic evaluation of the performance of such systems, the provision of information on environmental performance, an open dialogue with the public and other interested parties and the active involvement of employees in organisations and appropriate training.'*

Article 14 of Regulation (EC) No 66/2010 on the EU Ecolabel[2] (the EU Ecolabel Regulation) requires the Commission to submit to the European Parliament and the Council a report on the implementation of the EU Ecolabel scheme, and also to identify elements for a possible review of the scheme.

Article 47 of Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)[3] (the EMAS Regulation) requires the Commission to submit to the European Parliament and Council a report containing information on the actions and measures taken under this Chapter (Chapter VIII) and the information received from the Member States pursuant to Article 41. Article 50 of the Regulation requires the Commission to review EMAS in the light of the experience gained during its operation and international developments. It is to take into account the reports transmitted to the European Parliament and to the Council in accordance with Article 47.

This Commission report and its annexes fulfil these requirements. They also provide the findings of the Fitness check that has been carried out on the legislation as part of the European Commission's Regulatory Fitness and Performance Programme (REFIT[4]). The REFIT objective of the Fitness check is to understand how the Regulations perform against their intended benefits for citizens, businesses and society.

EMAS and the EU Ecolabel are integrated parts of the product policy framework as presented in the 2008 Communication on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan[5]. Since then the 7th Environment Action Programme[6] has pointed to the need for a policy framework that gives more appropriate signals to producers and consumers to promote resource efficiency and circular economy and the Communication

[1] COM (2008) 397
[2] Regulation (EC) 66/2010
[3] Regulation (EC) 1221/2009
[4] COM(2012) 746
[5] COM (2008) 397
[6] Decision No 1386/2013/EU

on the Circular Economy Action Plan[7] pointed to the need to support efforts on both production and consumption to achieve a transition to a circular economy – including making better use of EMAS and the EU Ecolabel. At the same time, the Regulations are clearly relevant in delivering the UN's 2030 Agenda and its 17 Sustainable Development Goals and in particular Goal 12 to *'ensure sustainable consumption and production patterns'*.

As well as delivering environmental objectives, EMAS and Ecolabel have the potential to support economic objectives. For example, firms, including SMEs that participate in EMAS can boost their financial performance and competitiveness by increasing their resource efficiency. If widely used and appropriately implemented EMAS and Ecolabel could drive innovation and deliver real market change.

This report evaluates the performance of EMAS and the EU Ecolabel in this wider context.

2. Assessment of relevance, effectiveness, efficiency, coherence and EU added value

In 2013, the Commission committed to undertake a Fitness check of the EU Ecolabel and EMAS Regulations. In line with the Commission's Better Regulation guidelines, the Fitness check examined the two schemes in terms of their relevance, effectiveness, efficiency, coherence and their EU value added. It also paid specific attention to understand how the Regulations perform against the intended benefits for citizens, businesses and society.

In terms of the process, the Fitness check was supported by two separate evaluation studies[8] that were supported by stakeholder-engagement including an open public consultation for the EU Ecolabel and a focused stakeholder consultation for EMAS. This stakeholder consultation was particularly important because the comprehensiveness of the Fitness check exercise was limited to some extent by the voluntary nature of the schemes and the lack of data to quantify the schemes' impacts. The absence of a commonly agreed method to quantify and benchmark environmental performance of organisations and products also means that it is not possible to compare systematically products and organisations that are participating in the schemes with those that are not. Moreover, the Regulations did not define clear objectives for their uptake and therefore, it is not possible to evaluate quantitatively whether the schemes have delivered what was expected of them or not.

Nevertheless, the Fitness check allowed an assessment of the functioning and performance of the schemes, allowing conclusions to be drawn on what is - and/or isn't - working well.

The main findings about how the Regulations meet their objectives as identified and investigated through the Fitness check intervention logic are that they:

[7] COM (2015) 614

[8] Final Report Supporting the Evaluation of the Implementation of EMAS (June 2015), Adelphi and S. Anna School of Advanced Studies
Project to Support the Evaluation of the Implementation of the EU Ecolabel Regulation (April 2015), Ricardo Energy & Environment

- Contribute to reducing the environmental impact of consumption and production *(general objective).*
- Contribute to promoting continuous improvements in the environmental performance of organisations and promote products with reduced environmental impact (*specific objectives*) through the EU Ecolabel criteria and through the environmental improvements observed in EMAS organisations *(operational objective).*

However this contribution is:

- Substantially limited by the level of uptake of EMAS and the EU Ecolabel by producers and organisations *(operational objective)* largely linked to the limited awareness by external stakeholders including business partners, consumers but also authorities resulting in limited market and administrative/regulatory reward for participation as well as due to participation criteria that may in some cases be difficult to reach by EU industry.
- Limited compared to the overall breadth of the challenges to be addressed in terms of reducing the overall environmental impacts of consumption and production.

Despite these limits, the Regulations remain **relevant** as part of a package of EU policy responses to a growing need to change current consumption and production patterns, as reflected in current strategic policy objectives, including the Europe 2020 strategy[9], the Roadmap to a Resource Efficient Europe[10], the 7th Environment Action Programme[11] and the EU action plan for the Circular Economy[12]. Among EU policy tools, EMAS and the EU Ecolabel (together with green public procurement) are unique in that they aim to address the environmental impact along the whole life cycle, including the increasing number of impacts of European consumption that happens in countries outside the EU where products and materials are often produced and from which they are imported to the EU. For EMAS, there is a question over its future relevance as ISO 14001, revised in 2015, increasingly adopts many, but not yet all its main elements.

The Regulations have been **partly effective** as they ensure:

- Enhanced environmental performance for those products that carry the EU Ecolabel. However, the quantitative benchmark of environmental excellence (top 10-20 % of environmental performance of products on the market) cannot be verified due to the lack of an agreed methodology for comparison and in the absence of comprehensive data. Also, in some cases, when the validity of EU Ecolabel criteria is extended without a thorough analysis of the evolution of the market situation, the EU Ecolabel may no longer reflect environmental excellence.
- Enhanced environmental performance on the majority of the core indicators including on energy, water and CO2 for EMAS certified organisations. On the core indicators

[9] COM(2010)2020 final
[10] COM(2011)571 final
[11] DECISION No 1386/2013/EU
[12] COM(2015)614final

waste and materials the picture is mixed with more than 75% of EMAS registered companies experiencing a positive performance impact on waste and materials on one side and a negative average performance calculated from an a sample of reports on the core indicators on the other. Studies show that EMAS generally delivers a better increase in environmental performance than ISO 14001[13].

However the overall effectiveness of the instruments is reduced by the limited uptake:

- The uptake of EMAS and the EU Ecolabel is not sufficient to achieve significant changes in overall consumption and production patterns and, through this, deliver significant environmental benefits beyond the companies and organisations deciding to be part of the schemes. The limits in uptake for both Regulations can be linked to a lack of awareness and market recognition; lack of recognition in public policy; and compliance and verification costs.

  For the EU Ecolabel, there is a: lack of promotional activities at all levels, Commission, Member State and (voluntary action) by companies; high number and stringency of criteria requirements; the challenge of compliance with Article 6(6) prohibiting the use of hazardous substances. There are also significant differences in the uptake for different types of products, with several product groups having no - or only marginal - uptake, reflecting barriers for some specific product groups on one side, and on the other side a lack of a strategic approach for selecting for which groups to develop/revise criteria.

  For EMAS additional barriers are a: lack of integration into public policy in the form of incentives and relief from other regulatory requirements ('regulatory relief'); lack of promotional activities, again at all levels; the existence of a globally recognized and less demanding (in terms of reporting / validation) environmental management system (ISO 14001) which is the market leader.

The effectiveness for both schemes varies between Member States with some achieving no or very low uptake while others - such as Germany and Spain with respectively 1882 and 1289 registered EMAS sites and France with 555 and Italy with 359 registered EU Ecolabel licenses - achieving better results. Such differences can be mainly attributed to the level of resources invested by Member States as well as to whether initiatives are taken to integrate the instruments into the wider set of environmental policies. For example, linking EMAS to rules on environmental inspections could provide an incentive to adopt EMAS and obtain 'regulatory relief'[14]; likewise, Ecolabel could be incentivised through a link to Green Public Procurement.

Based on current limited cost and benefit data it is not possible to answer the question of **efficiency**. There is some evidence linking the investments made (costs) and the effects generated and in general estimates related to the cost of running the scheme are relatively low.

[13] Remas Study (2006), *Linking environmental management and performance* and Testa et al. (2014) *EMAS and ISO 14001: the differences in effectively improving environmental performance*. In: Journal of Cleaner Production 68:1, pp. 165-173.

[14] Regulatory relief is understood as an ease in regulatory or administrative burden (such as frequency of environmental inspection, fast track procedures, lower fee or taxes etc.) resulting from compliance with EMAS.

- A rough estimate of the average annual management cost to the European Commission (i.e. cost excluding staff costs) is EUR 500 000 for EMAS and EUR 1 100 000 for the EU Ecolabel. These costs cover a system of 33 product groups, 2 000 licenses and 44 000 products for the EU Ecolabel and 4 000 organisations and 7 500 sites for EMAS.

- Significant differences in implementation efforts at Member States' level reflect differing evaluations of the cost/ benefit ratio. Given their voluntary nature, the schemes cannot be considered to impose any disproportionate burdens on Member States or on companies and organisations, both of which invest in them only to the extent that they believe it is beneficial. However, low investment also leads to limited uptake and limited impact.

- For some EMAS registered organisations – especially those involved with energy production – energy efficiency measures can result in significant savings (according to the evaluation study this amounts to approximately EUR 1.3 billion for all EMAS registered organisations over two years).

However efficiency is reduced:

- When compliance and verification cost for individual companies and organisations outweigh the benefits and so reduce the value for producers and organisations and discourage their participation in the schemes. The impact of this is stronger with small operators. The low uptake of EMAS compared to ISO 14001 also indicates that the experience of cost/benefits by organisations between the two schemes is different.

- Where there is low or no uptake of specific product groups. Under the EU Ecolabel a number of product groups have no or marginal uptake indicating that the market is immature and/or that the administrative burden or verification cost for compliance with certain set of criteria may be too high and act as a barrier for participation.

Both schemes are considered to be **broadly coherent** with and complementing other relevant EU policies linked to EU Sustainable consumption and production. However, the evaluation points towards issues regarding the need to:

- Further explore synergies with EU policies that could make better use of the opportunities provided by the EU Ecolabel and/or EMAS including but not limited to the circular economy action plan, the Unfair Commercial Practice Directive, the Public Procurement Directive and the Industrial Emissions Directive.

With regards to the coherence between the two schemes the evaluation shows that they are complementing each other with focus on different targets, but a slight overlap can appear when both EMAS and EU Ecolabel address specific service sectors – such as for tourism and camping. In this case care should be taken not create confusion for consumers that can choose based on both schemes.

The EU added value delivered by the schemes is uneven. The Regulations **delivered EU added value to the extent limited by the voluntary nature of the schemes**. Added value is delivered by providing a framework for harmonised rules and procedures across the internal market, which gives credibility and transparency to environmental claims and can support

intra-EU trade. The framework delivers information on the environmental performance of products and organisations and the opportunity for integration and streamlining with other EU policies. In this way, the framework supports producers and organisations that are willing to go beyond mandatory measures; including especially SMEs who would not have the internal capacity to build their own systems.

A full quantitative cost/benefit assessment has not been possible. However, the tools operate in a context of general public support for sustainable production and consumption: 77% of the EU population surveyed for Eurobarometer indicated that they are willing to pay more for environmentally friendly products if they feel that the claims can be trusted. Whilst responses to the public consultations specific to these tools tended to come from those already actively engaged in the tools, they were also generally positive about them. For example, 79% of the EU Ecolabel stakeholders found that the EU Ecolabel was a valuable tool to facilitate higher uptake and free circulation of green products across Europe and 95 % wanted to keep it either as it is or with changes. At the same time more than 70 % of all EMAS organisations surveyed found that they had improved or significantly improved performance on energy efficiency, use of materials, water consumption and waste production.

The uptake of EMAS is significantly lower compared to ISO 14001. However, the evaluation shows that EMAS companies perform as well or better than ISO 14001 organisations in terms of environmental performance; that the specific EMAS requirements for transparent reporting and control by public authorities (not required by ISO 14001) give higher credibility and a better potential for integration into environmental policy. Evidence from the experience of a number of EU Member States, which have actively pursued this, confirms this potential.

However, **because the schemes have not achieved major uptake across Europe it is difficult to demonstrate full EU added value** beyond the environmental improvements for the products, services and organisations that participate. In particular, the impact of EMAS has suffered from the competition with ISO14001 which provides a globally recognised alternative to EMAS. Nevertheless, the interaction between the two schemes has been constructive and EMAS has inspired new and improved developments under the global ISO 14001 standard brining it closer to EMAS although significant differences remain. EMAS, unlike ISO 14001, provides a compliance and reporting platform that makes environmental performance of the organisation transparent to the public and authorities. This platform also has the capacity to facilitate the recognition of best performers by the authorities, the development of supportive measures and trigger a decrease of administrative burden. This capacity is explained by the fact that authorities and other third parties unlike with ISO are given access to and need to sign off information on environmental performance and legal compliance, thus providing sufficient security to delegate relief from other regulatory burdens.

3. Conclusions

EU Ecolabel and EMAS are part of a wider package of product policy instruments that contribute to the Circular Economy. The Fitness Check (evaluation study and stakeholder consultation) confirms the useful – even if limited- role of the schemes as voluntary instruments for businesses that facilitate transition to a circular economy and provide

information on environmental performance of products and organisations to consumers and in business to business transactions.

The Fitness check results show that the uptake of the schemes could be better and more efficient. It identifies clear limitations of the two instruments given their voluntary nature and the limited level of uptake for a number of product groups and the low awareness of the two schemes. There is a need for a more focused approach to maximize impacts on the ground.

The Commission will therefore improve the performance of the **EU Ecolabel Regulation** scheme and make it more focused to ensure bigger cumulative impact, by taking the following actions:

- Develop a more strategic approach for the EU Ecolabel which would include:
  - The definition of product groups, including streamlined criteria for selecting products and for the discontinuation, revision and prolongation of existing criteria for each product group, linked to the rate of uptake for existing criteria. A more targeted approach also includes bundling of closely related product groups where appropriate (e.g. various paper-related products with high potential such as Newsprint and Tissue paper).
  - The discontinuation of the following product groups: flushing toilets and urinals, sanitary tapware and imaging equipment, as those product groups have very limited uptake.
  - Setting specific operational objectives, targets and adequate monitoring activities.
  - A communication strategy, towards both producers and consumers, identifying target audiences and division of responsibilities for promotional activities shared with the Member States, industry participants and relevant multipliers, in line with the ten priorities, notably the jobs and growth agenda.

- Examining options to reduce administrative and verification costs, simplifying the consultation process and developing a practical modus operandi for the implementation of Article 6.6 and 6.7.

- Options and best practices to increase the role of the EU Ecolabel in public procurement as well as a benchmark for environmental excellence.
- Undertake some preparatory studies on product groups jointly for Green Public Procurement, Ecodesign, Energy labelling and Ecolabel tools. This will be saving costs and prevent inconsistency across studies commissioned by different DGs for different tools.
- Improving consistency and integration between the EU Ecolabel and existing national/regional labels

With respect to **the EMAS Regulation**, and the mixed results of the Fitness Check, the commitment and support of Member States for the scheme will be a decisive factor for continuing the scheme. Therefore, in 2017, the Commission will seek confirmation of the Member States' commitment to:

1) the continuation of the scheme and
2) the implementation of measures supporting a better take-up.

Depending on the support of Member States, the Commission will develop actions to further increase the added value of the scheme:

- Develop, in collaboration with Member States, additional opportunities to use EMAS as a tool for decreasing administrative burden and regulatory relief. The potential for using the tool to decrease administrative burden by providing greater regulatory relief remain large and have been unevenly tapped into across Member States.
- Use the compliance validation and transparency on environmental performance required by EMAS to facilitate the implementation of environmental policies under energy, emissions to air, biodiversity, water or waste management.
- Examine how the implementation of EMAS can be better integrated into the implementation of the Green Action Plan for SMEs[15].
- Set out a clear strategy for communicating, including identification of relevant target audiences and division of responsibilities for promotional activities shared with the Member States, industry participants and relevant multipliers, in line with the ten priorities, notably the jobs and growth agenda.
- European business promotion with focus on front runners and competitiveness advantages in collaboration with Member States with EMAS as the "premium" environmental management scheme.
- Take into account the evolution of ISO Standard 14001 in 2015 and interaction between the revised standard and EMAS.
- Replication of the measures implemented by the Member States that achieved a significant number of EMAS registrations and recognized as best practices.
- Ensure efficient reporting channels from organisations to authorities so that EMAS verified environmental performance and legal compliance can be used to facilitate the implementation of other environmental policies.

[15] COM (2014) 440