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Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC

REGULATION (EC) No 1221/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 November 2009

on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)],

Whereas:

(1) Article 2 of the Treaty provides that the Community is to have among its tasks the promotion of sustainable growth throughout the Community.

(2) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme[(4)] identifies the improvement of collaboration and partnership with enterprises as a strategic approach to meeting environmental objectives. Voluntary commitments are an essential part thereof. Encouraging wider participation in the Community's eco-management and audit scheme (EMAS) and the development of initiatives to encourage organisations to publish rigorous and independently verified environmental or sustainable development performance reports is regarded as necessary in this context.

(3) The Commission Communication of 30 April 2007 on the Mid-term review of the Sixth Community Environment Action Programme recognises that there is a need to improve the functioning of the voluntary instruments that have been designed for industry and that those instruments have a great potential but have not been fully developed. It calls upon the Commission to revise the instruments in order to promote their participation and reduce the administrative burden in their management.

(4) The Commission Communication of 16 July 2008 on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan recognises that EMAS helps

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organisations to optimise their production processes, reducing environmental impacts and making more effective use of resources.

(5) For the purpose of promoting a coherent approach between the legislative instruments developed at Community level in the field of environmental protection, the Commission and the Member States should consider how registration under EMAS may be taken into account in the development of legislation or used as a tool in the enforcement of legislation. They should also, in order to raise the appeal of EMAS for organisations, take account of EMAS in their procurement policies and, where appropriate, refer to EMAS or equivalent environmental management systems as contract performance conditions for works and service.

(6) Article 15 of Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)[(5)] provides that the Commission is to review EMAS in the light of the experience gained during its operation and propose appropriate amendments to the European Parliament and the Council.

(7) Application of environmental management schemes, including EMAS as set out in Regulation (EC) No 761/2001, demonstrated their effectiveness in promoting improvements of the environmental performance of organisations. There is, however, a need to increase the number of organisations participating in the scheme in order to achieve a better overall impact of environmental improvements. To this effect, the experience gathered from the implementation of that Regulation should be used to enhance the ability of EMAS to bring about an improvement in the overall environmental performance of organisations.

(8) Organisations should be encouraged to participate in EMAS on a voluntary basis and may gain added value in terms of regulatory control, cost savings and public image provided that they are able to demonstrate an improvement of their environmental performance.

(9) EMAS should be made available to all organisations, in and outside the Community, whose activities have an environmental impact. EMAS should provide a means for those organisations to manage that impact and to improve their overall environmental performance.

(10) Organisations, in particular small organisations, should be encouraged to participate in EMAS. Their participation should be promoted by facilitating access to information, to existing support funds and to public institutions and by establishing or promoting technical assistance measures.

(11) Organisations which implement other environmental management systems and want to move to EMAS should be able to do so as easily as possible. Links with other environmental management schemes should be considered.

(12) Organisations with sites located in one or more Member States should be able to register all or a number of those sites under one single registration.

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(13) The mechanism for establishing an organisation's compliance with all applicable legal requirements relating to the environment should be strengthened in order to enhance the credibility of EMAS and, in particular, to enable Member States to reduce the administrative burden of registered organisations by way of deregulation or regulatory relief.

(14) The process of implementation of EMAS should include involvement of employees and workers of the organisation as this increases job satisfaction, as well as knowledge of environmental issues which can be replicated in and outside the work environment.

(15) The EMAS logo should be an appealing communication and marketing tool for organisations, which raises the awareness of buyers and other stakeholders to EMAS. Rules for the use of the EMAS logo should be simplified by the use of one single logo and existing restrictions should be removed save for those relating to the product and packaging. There should be no confusion with environmental product labels.

(16) Costs and fees for registration under EMAS should be reasonable and proportionate to the size of the organisation and the work to be done by the Competent Bodies. Without prejudice to the rules of the Treaty on State aid, exemptions or reductions of fees should be considered for small organisations.

(17) Organisations should produce and make publicly available periodic environmental statements providing the public and other interested parties with information on their compliance with applicable legal requirements relating to the environment and their environmental performance.

(18) In order to ensure relevance and comparability of the information, reporting on the organisations' environmental performance should be on the basis of generic and sector-specific performance indicators focusing on key environmental areas at the process and product level using appropriate benchmarks and scales. This should help organisations compare their environmental performance both over different reporting periods and with the environmental performance of other organisations.

(19) Reference documents including best environmental management practice and environmental performance indicators for specific sectors should be developed through information exchange and collaboration between Member States. Those documents should help organisations better focus on the most important environmental aspects in a given sector.

(20) Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products[(6)] organises accreditation at the national and European levels and sets the overall framework for accreditation. This Regulation should complement those rules in so far as necessary, while taking into account the specific features of EMAS such as the need to ensure a high level of credibility towards stakeholders, especially Member States and, where appropriate, should set more specific rules. The EMAS provisions should ensure and steadily improve the competence of environmental verifiers by providing for an independent and neutral accreditation or licensing system,

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training and an appropriate supervision of their activities and thus guarantee the transparency and credibility of organisations participating in EMAS.

(21) When a Member State decides not to use accreditation for EMAS, Article 5(2) of Regulation (EC) No 765/2008 should apply.

(22) Promotion and support activities should be undertaken by both the Member States and the Commission.

(23) Without prejudice to the rules of the Treaty on State aid, incentives should be given by Member States to registered organisations such as access to funding or tax incentives in the framework of schemes supporting environmental performance of industry, provided that organisations are able to demonstrate an improvement of their environmental performance.

(24) Member States and the Commission should develop and implement specific measures aimed at greater participation in EMAS by organisations, in particular small organisations.

(25) With the aim of ensuring a harmonised application of this Regulation, the Commission should produce sectoral reference documents in the area covered by this Regulation following a priority programme.

(26) This Regulation should be revised, if appropriate, within five years of its entry into force in the light of experience gained.

(27) This Regulation replaces Regulation (EC) No 761/2001 which should therefore be repealed.

(28) Given that useful elements of Commission Recommendation 2001/680/EC of 7 September 2001 on guidance for the implementation of Regulation (EC) No 761/2001 of the European Parliament and of the Council allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)[(7)] and of Commission Recommendation 2003/532/EC of 10 July 2003 on guidance for the implementation of Regulation (EC) No 761/2001 of the European Parliament and of the Council allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) concerning the selection and use of environmental performance indicators[(8)] are included in this Regulation, those acts should no longer be used as they are superseded by this Regulation.

(29) Since the objectives of this Regulation, namely to create a single credible scheme and avoid the establishment of different national schemes, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(30) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(9)].

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(31) In particular the Commission should be empowered to establish procedures for the peer evaluation of Competent Bodies, to develop sectoral reference documents, to recognise existing environmental management systems, or parts thereof, as complying with corresponding requirements of this Regulation and to amend Annexes I to VIII. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(32) Since a period of time is required to ensure that the framework for the proper functioning of this Regulation is in place, Member States should have a period of 12 months following the date of entry into force of this Regulation to modify the procedures followed by Accreditation Bodies and Competent Bodies under the corresponding provisions of this Regulation. Within that 12-month period, Accreditation Bodies and Competent Bodies should be entitled to continue to apply the procedures established under Regulation (EC) No 761/2001,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Objective

A Community eco-management and audit scheme, hereinafter referred to as 'EMAS', is hereby established, allowing voluntary participation by organisations located inside or outside the Community.

The objective of EMAS, as an important instrument of the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan, is to promote continuous improvements in the environmental performance of organisations by the 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 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

1. 'environmental policy' means the overall intentions and direction of an organisation relating to its environmental performance as formally expressed by top management including compliance with all applicable legal requirements relating to the