

FITNESS CHECK MANDATE FOR EU-EMAS AND EU-ECOLABEL REGULATIONS

INTRODUCTION.....	1
ABOUT ECOLABEL AND EMAS.....	2
SCOPE OF THE FITNESS CHECK.....	3
AIM OF THE FITNESS CHECK.....	4
QUESTIONS TO BE ADDRESSED BY THE FITNESS CHECK.....	6
WORKING METHODS – THE FITNESS CHECK AS PART OF THE REVIEW PROCESS OF EMAS AND EU ECOLABEL.....	7
STEERING GROUP.....	8
NEXT STEPS	8

INTRODUCTION

In 2010 the Commission announced the evolution of its approach to better regulation into a new agenda for smart regulation¹. Smart regulation is a continuous process, affecting the whole policy cycle - from the design of a piece of legislation, to implementation, enforcement, evaluation and, where justified, to revision. Within this process, evaluation is a key, retrospective exercise – it assesses what has happened and looks at what caused any change and how much might reasonably be credited to EU action. Evaluation provides an evidence-based critical analysis of whether EU actions are fit for purpose and delivering as expected. Robust evaluations help to identify key learning points which can then be fed back into the decision-making process, leading to actions being dropped or developed and improved.

The Commission initiated its Regulatory Fitness and Performance Programme (REFIT) in December 2012². REFIT demonstrates the Commission's ongoing commitment to a simple, clear, stable and predictable regulatory framework for businesses, workers and citizens. It emphasises the importance of EU regulation efficiently pursuing only those public policy objectives which are clearly best achieved at the EU level. EU regulation needs to be proportionate to its objectives and respect the principle that action should be taken as close to the citizen as possible – 'subsidiarity'. It seeks to ensure the best possible cost/benefit ratio for EU regulation. Under the first stages of the REFIT programme, the Commission reviewed the entire stock of EU legislation and proposed four categories of follow-up actions. One of the resultant actions was this Fitness Check.

Fitness checks are comprehensive policy evaluations assessing whether the regulatory framework for a policy sector is “fit for purpose”. Their goal is to assess the effectiveness, efficiency, coherence, relevance and EU added value of specific parts of the EU acquis, thus promoting better/smart legislation, making it more responsive to current and future challenges and helping improve implementation. This includes identifying excessive administrative burdens, overlaps, gaps, inconsistencies and/or obsolete measures which may have appeared over time, and considering the cumulative impact of EU legislation and activities. Their findings will serve as a basis for drawing policy conclusions on how well EU policies have been performing and feed into possible consideration on the future of the relevant regulatory framework.

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Smart Regulation in the European Union. COM(2010)543, 08.10.10.

² COM (2012) 746

ABOUT ECOLABEL AND EMAS

The regulations aim to minimise the environmental impact of consumption and production and increase the efficient use of resources. The EU Ecolabel Regulation is designed to do so through actions to promote products with a reduced environmental impact during their entire lifecycle and to provide consumers with accurate, non-deceptive, science- based information on the environmental impacts of products. The EU EMAS Regulation is designed to do so through actions to improve the environmental performance of organisations.

Both the EMAS and EU Ecolabel regulations aim at bridging the information gap between producers and consumers as well as in business to business relations. As voluntary instruments the regulations give companies and organisations an opportunity to advertise and market their products and organizations based on enhanced environmental performance across Europe. In addition, the regulations facilitate information sharing about the environmental impact of products and organizations to consumers, in business to business relations, between businesses and their stakeholders as well as between producers and non-governmental organisations and consumer organisations, thereby focusing on stimulating market activities and creating a potential competitive edge for participating businesses both internally and on global markets..

Both the EU Ecolabel and the EU EMAS Regulations are voluntary instruments that originated more than 20 years ago as non-mandatory tools, complementary, to legal (environmental) obligations. Both regulations are part of the policy framework for sustainable consumption and production (SCP) presented in 2008 with the Action Plan for Sustainable Consumption and Production and Sustainable Industrial Policy (SCP/SIP Action Plan) that also includes policies on Ecodesign, Energy label, Green Public Procurement, Eco-Innovation, working with retailers and more.

Focus on sustainable consumption and production continues to be relevant. Economic growth has driven billions of people out of extreme poverty; however it also caused increased global material and energy per capita consumption. This, together with a fast growing world population, have been drivers for increasing pressure on resources and a wide range of environmental and social impacts including air pollution, acidification of ecosystems, biodiversity loss and climate change as well as impacts on health and quality of life.

With the Europe 2020 strategy the European Commission launched a dedicated effort to increase resource-efficiency through, among others, the Roadmap to a Resource efficient Europe. Both the EMAS and the EU Ecolabel regulations should also be seen in this context as well as in the context of more recent policy initiatives including resource efficiency, circular economy and the single market for green products as well as in the context of the guidelines laid out in the 7th Environmental Action Programme (7EAP) or in consumer policy³. The 7th Environment Action Programme to 2020, that introduces the general guiding

³ The Roadmap to a Resource Efficient Europe (COM(2011) 571) outlines how we can transform Europe's economy into a sustainable one by 2050; Towards a Circular Economy: a zero waste programme for Europe (COM (2014) 398) highlights that Europe can benefit economically and environmentally from making better use of resources including by more circular models for products and services and a more coherent product policy; Decision No 1386/2013/EU on a General Union Environment Action Programme to 2020 outlines the need for appropriate signals to producers and consumers to promote resource efficiency and circular economy, improve the environmental performance of products and services, increase the supply of environmentally sustainable products and stimulate a significant shift in consumer demand for such products; The European Consumer Agenda (COM (2012) (225)) highlighted that consumers should be empowered, assisted and encouraged to make sustainable and healthy choices which will lead to cost savings for themselves and for society as a whole. Consumers have the right to know the environmental impacts throughout the life-cycle of the products (goods and services) they intend to buy. Consumers should be supported in easily identifying the truly sustainable choice.

vision that an innovative circular economy supports a prosperous and healthy environment, supports the idea that (fully) sustainable products can only be produced in companies that are competitive, innovative and sustainable themselves. Both instruments should continue to play a strong supportive role in this regard.

With the prospect of continued growth in world population, more middle class consumers, and increased economic activity following the recovery of the financial crisis a further increase in demand for finite resources and in environmental and social impacts can be expected if a shift to more sustainable consumption and production patterns is not facilitated.

Furthermore an increased focus on the economic savings and business opportunities originating from more efficient use of resources, the cost of environmental and social impacts, consumer concerns about the future of our planet, the dependence on global resource flows and the potential for eco-innovation has added to the relevance of effectively supporting more resource efficient production and products with reduced environmental impact. Many EMAS registered organisations have recognised the benefits of a more productive use of resources and realise that it makes a lot of business sense. They use EMAS to facilitate an efficient use of resources and improve their competitiveness and profitability in the process.

The importance of clear, relevant, reliable and transparent consumer information on environmental performance of products was also highlighted in the report of the Multi-stakeholder Dialogue on Environmental Claims presented at the 2013 European Consumer Summit⁴. It also showed that there are cases of unsubstantiated and misleading environmental claims (so called "greenwashing"), in different product markets, which undermine consumers' ability to assess correctly environmental claims and contribute to green growth through the choices they make in the marketplace.

SCOPE OF THE FITNESS CHECK

This fitness check will cover the EMAS and EU Ecolabel regulations.

- Regulation (EC) No 66/2010⁵ of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel.
- 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.

Where relevant interlinked EU policies should be taken into consideration; based on relevance in terms of scope and objective these may include:

⁴ http://ec.europa.eu/consumers/archive/events/ecs_2013/docs/environmental-claims-report-ecs-2013_en.pdf

⁵ As amended by Commission regulation (EU) No 782/2013

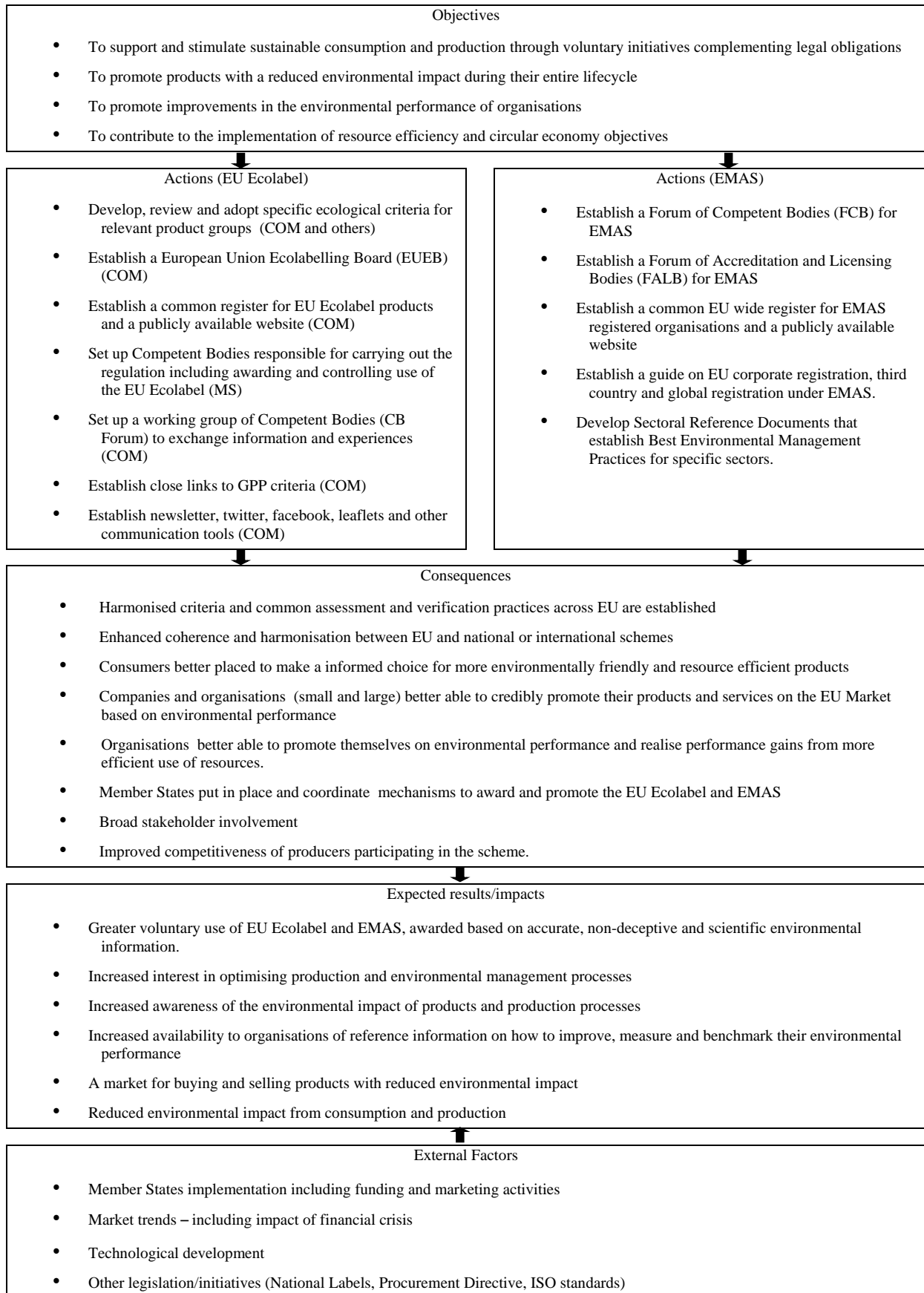
- Decision No 1386/2013/EU on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet'
- COM (2014) 398 Towards a circular economy: A zero waste programme for Europe
- COM (2011) 571 Roadmap to a Resource Efficient Europe
- COM (2008) 397 on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan
- COM (2012) 225 A European Consumer Agenda
- COM (2013) 196 Building the Single Market for Green Products
- COM (2011) 681 A renewed EU strategy 2011-14 for Corporate Social Responsibility; including proposal (COM/2013/0207 final) of the EU Commission of 16 April 2013 for a directive regarding the disclosure of non-financial and diversity information by certain large companies and groups (amending Council Directives 78/660/EEC and 83/349/EEC).
- Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control)
- Directive 2009/125/EC - establishing a framework for the setting of ecodesign requirements for energy related products (Ecodesign Directive)
- Directive 2010/30/EU – on the indication by labelling and standard product information of the consumption of energy and other resources by energy related products (Energy label Directive)
- Decision No 1600/2002/EC laying down the Sixth Community Environment Action Programme
- COM(2014)014 - For a European Industrial Renaissance

Where relevant for the respective regulations considerations to relevant regional, national or international schemes will be taken into account; this involves e.g. regional, national Ecolabel or EMAS like schemes and/or international schemes like e.g. ISO standards or the Global Reporting Initiative.

AIM OF THE FITNESS CHECK

The purpose of the fitness check is to analyse the relevance, effectiveness, efficiency and the EU added value of the EU Ecolabel and EMAS regulations including possible coherence issues and to evaluate and assess the contribution to competitiveness, sustainable consumption and production. In doing so, the fitness check will assess if these regulations are fit for purpose, whether the objectives of these regulations have been met and whether implementation has been done in a cost-effective way. This analysis will consider the relationship between policy objectives, actions, consequences and the impacts/expected results as illustrated in figure 1.

Figure 1:



QUESTIONS TO BE ADDRESSED BY THE FITNESS CHECK

In the context of this fitness check the European Commission will assess the following questions for both EMAS and the EU Ecolabel.

- **Effectiveness**⁶

- Based on any observed changes since the Regulations were introduced what links can be drawn between the implementation of the measures they required and progress toward achieving their stated objectives?
- What have been the main drivers and barriers to achieving the objectives; and how are these addressed by the regulations?
- What, if any, additional changes (positive or negative) can be linked to the measures in the regulations beyond what was expected? Why have they occurred?
- What modified scenarios could contribute to more effective regulations?

- **Efficiency**⁷

- To what extent can the costs and benefits associated with the implementation in various Member States and at the EU level be linked to observed results and impacts? How proportionate are the costs to the benefits?
- If any significant differences (including cost differences) in e.g. implementation, administration, including the costs for businesses, compliance or monitoring, can be identified across sectors (with significant uptake versus no uptake) what is causing them?
- What good practices in terms of cost-effective implementation of the regulations in MS can be identified?
- What, if any, specific provisions in the regulations can be identified that make a cost-effective implementation more difficult and hamper the maximisation of the benefits?
- How have the regulations been kept fit for purpose through regular adaptation to technical and scientific progress?
- To what extent can the resources spent on developing criteria and resources spent on publicity be said to be well balanced?
- What were the challenges to SMEs in participating in the schemes?

- **Coherence**⁸

- To what extent do the voluntary regulations satisfactorily complement other linked SCP instruments including Ecodesign and Energy label?
- What, if any specific inconsistencies and unjustified overlaps, obsolete provisions and/or gaps can be identified with other pieces of EU legislation e.g. in terms of definitions, reporting and key concepts; and if so how are they affecting the performance of the regulations
- What would be the scope for aligning key aspects across the regulations concerned?

⁶ The degree to which something is successful in producing a desired result and the degree to which objectives are achieved and the extent to which targeted problems are solved

⁷ The ability to do something or produce something without wasting materials, time, or energy : the quality or degree of being efficient

⁸ Forming a unified whole. Coherence comes from a Latin word meaning “to stick together. When you say policies, arguments and strategies are coherent, you’re praising them for making sense

- To what extent has the scope for policy integration with other policy instruments been fully exploited?
- To what extent do the voluntary regulations support the EU internal market and the creation of a level playing field for economic operators?
- How could any possible obsolete provisions in the regulations be explained? Are there any provisions that would need more flexibility?
- To what extent are both voluntary regulations as policy tools consistent with current and new policy objectives in the 7th EAP, the Roadmap to a Resource efficient Europe and the Single Market for Green Products: are there opportunities to align further?

- ***Relevance***⁹

- To what extent are the objectives of the regulation still relevant and valid. – How far do the issues addressed by the voluntary regulations still match the needs? To what extent are other factors that may have influenced the implementation and the potential effects sufficiently integrated into the regulations?
- To what extent are the voluntary regulations consistent with recent Commission policies in this field?
- How relevant are the regulations for driving improvements in the environmental performance of products and public and private organisations, making them more resource efficient and reducing their environmental footprint?

- ***EU added-value***¹⁰

- What is the additional value resulting from the EU intervention(s)? Do the issues addressed by the regulation continue to require action at EU level?
- What is the perception of the regulations among different stakeholders, including SMEs and consumers?

WORKING METHODS – THE FITNESS CHECK AS PART OF THE REVIEW PROCESS OF EMAS AND EU ECOLABEL

The fitness check will be based on an evidence-based approach and cover legal (legal base, coherence in terminology and legal concepts) as well as environmental, economic and social aspects of the two voluntary regulations described above. Extensive and recent studies and implementation reports already exist on many of the aspects covered by the fitness check. The most pertinent studies and background reports are listed in the Annex. Further relevant information is provided on DG ENV's web pages:

<http://ec.europa.eu/environment/ecolabel/> and
http://ec.europa.eu/environment/emas/index_en.htm.

The fitness check will build on separate and comprehensive studies of both voluntary instruments conducted by contractors. Both studies has been started in January 2014 and are expected to be concluded by the end of 2014. As part of the studies, extensive consultation with a broad range of stakeholders has been planned. Two questionnaires have been online

⁹ To know the relevance of something is to know why it matters or how it is important.

¹⁰ EU added value is the value resulting from EU support to establish the EU Ecolabel scheme to promote products with a reduced environmental impact and to establish the EMAS scheme to promote continuous improvements in the environmental performance of organisations.

and open for contributions during the summer 2014 and extensive interview activities will be conducted by the contractors to gather relevant information. In addition workshops have been planned for October 2014 to discuss the preliminary results of the two studies.

Both studies involves a backward looking part focused on implementation and performance of the respective regulations and a forward looking part looking at different future scenarios for the respective regulations. As part of this issues such as cost and coherence with other policies are integrated in the studies.

The results of the fitness check will be presented in a Commission Services' report that summarises and concludes on the basis of the findings of the evaluations and of the provisions in this draft mandate. This report will be presented to Council and Parliament thereby fulfilling the requirements in EMAS Regulation article 47 and EU Ecolabel Regulation article 14.

STEERING GROUP

The Commission's Eco-Innovation & Circular Economy Unit (Unit A1 in DG Environment) has set up an interdepartmental Steering Committee inviting staff from SG, CLIMA, SANCO, ENER, ENTR, ECFIN, ESTAT, MARKT and JRC as well as colleagues from the Resource Efficiency & Economic Analysis Unit (F1) in DG ENV and the Commission's EMAS Coordination Team in DG HR.

NEXT STEPS

This mandate has been discussed and agreed in the Steering Group for the fitness check and will be published on the Europe website: www.europa.eu

The Steering Group will hold three meetings to discuss:

1. Will discuss the draft mandate for the fitness check. In addition DG ENV A.1 will inform about the ongoing studies
2. Will discuss the results of the studies and the template for the Commission Service Report
3. Will discuss a draft version of the Commission Service Report

If needed additional meetings may be organised. Before each meeting, Steering Group Members will be invited also to give written comments to the papers for discussion.

ANNEX: DOCUMENTS AND DATA SOURCES

The following documents and data sources are considered to be relevant in the context of the Fitness Check:

- The European Commission's SCP Action Plan and its mid-term review: <http://ec.europa.eu/environment/eusds/pdf/14.%20SCP-SIP%20AP%20Mid%20Term%20-%20Final%20Report.pdf>
- The EC Communication on Roadmap to a resource Efficient Europe: http://ec.europa.eu/environment/resource_efficiency/about/roadmap/index_en.htm
- The EC communication on "Building the Single Market for Green Products": <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0196:FIN:EN:PDF>
- The seventh Environment Action Programme entitled "Living well, within the limits of our planet": http://ec.europa.eu/environment/newprg/pdf/7EAP_Proposal/en.pdf and http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/envir/139603.pdf
- EVER - Evaluation of EMAS and Ecolabel for their Revision (report on the outcome of the evaluation of the EMAS II Regulation in 2005) http://ec.europa.eu/environment/emas/pdf/everfinalreport1_en.pdf.
- Work that the European Commission is currently undertaking in the field of Organisational Environmental Footprints (OEF) and Product Environmental Footprints (PEF) (available at: <http://ec.europa.eu/environment/eusds/smgp/index.htm>)
- The Communication "Towards a circular economy; a zero waste programme for Europe": http://eur-lex.europa.eu/resource.html?uri=cellar:50edd1fd-01ec-11e4-831f-01aa75ed71a1.0001.01/DOC_1&format=PDF
- The report of the Multi-stakeholder Dialogue on Environmental Claims presented at the European Consumer Summit 2013: http://ec.europa.eu/consumers/archive/events/ecs_2013/docs/environmental-claims-report-ecs-2013_en.pdf

EU Ecolabel

- EU Ecolabel for Food and Feed Products – Feasibility Study: http://ec.europa.eu/environment/ecolabel/about_ecolabel/reports/futerra_pres_230909.pdf
- EU Ecolabel Masterclass by Solitaire Townsend, Futerra Sustainability Communications Ltd. (September 2009): http://ec.europa.eu/environment/ecolabel/about_ecolabel/reports/futerra_pres_230909.pdf

- EU Ecolabel Revision – Final Report of Stakeholders Consultation (2007): http://ec.europa.eu/environment/ecolabel/about_ecolabel/revisions/revision_report2007.pdf

EMAS

- Brave Study: The BRAVE project aims at connecting the approach of Better Regulation policies with the new EMAS Regulation and ECAP priorities, emphasising the commitment of companies registered EMAS by granting them administrative and economic benefits. Companies' decision whether to join EMAS depends on the net benefits they expect from EMAS participation. Enhancing EMAS, companies are encouraged to implement this tool and improve their environmental regulatory compliance. <http://www.braveproject.eu/>
- Results of the study "Step up to EMAS - Guidelines for Transition from Non-Formal EMS and ISO 14001 to EMAS": http://ec.europa.eu/environment/emas/documents/kit_en.htm
- Results IMPEL project on Compliance Management Systems (http://impel.eu/wp-content/uploads/2012/06/Final-Report_Compliance-assurance-through-company-CMS_2012-05-03.pdf)
- Preliminary outcome of an inventory on CO2-reporting by EMAS registered organisations as reported in their environmental statements (on-going work by the EMAS Helpdesk).
- Need for improvement of EMAS III identified by the EMAS evaluation in Germany (source: <http://www.bmu.de/europa-und-umwelt-download/artikel/emas-in-deutschland-evaluierung-2012/>)
- Results of a survey executed by the EMAS Helpdesk under 3,322 EMAS registered organisations in order to provide input from the EMAS community for the on-going revision of the ISO 14001 standard.
- http://www.sniffer.org.uk/files/5013/6749/5161/ER34_Project_Report_FNL.pdf
- Environmental governance in Europe – A comparative analysis of new environmental policy instruments by R.K.W. Wurzel, A.R. Zito and A.J. Jordan, April 2013
- The 2011 policy of the European Commissions on Corporate Social Responsibility. Title: 'A renewed EU strategy 2011-14 for Corporate Social Responsibility': <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>
- JRC Report on the development of the EMAS Sectoral Reference Documents on Best Environmental Management Practice: <http://susproc.jrc.ec.europa.eu/activities/emas/documents/DevelopmentSRD.pdf>