

## In depth description of the 5 good practices selected dealing with regulatory reliefs, incentives or other simplification measures

### MINISTRY FOR ENVIRONMENT AND SPATIAL PLANNING OF ANDALUSIA

#### 1. Reduction of the inspection frequency for EMAS-registered organisations in the industrial Emissions Directive (IED) framework

<b>N. assigned in the mapping phase</b>	4
<b>Promoting institution(s)</b>	<p>Unit of Environmental Inspections.</p> <p>General Directorate for Prevention and Environmental Quality.</p> <p>Ministry for Environment and Spatial Planning of Andalusia.</p>
<b>Type of measure</b>	Reduced inspection frequency
<b>Background</b>	<p>Starting from the suggestion of the <b>Recommendation 2001/331/EC</b> on the EMAS valorization in the inspections plans many European Countries adopted regulatory reliefs for inspection reduction: Germany, Italy, Spain and Denmark, among other, have introduced measures reducing the inspections in the EMAS or ISO14001 companies in their environmental legislation.</p> <p>EMAS-registered or ISO14001-certified organizations receive an annual verification by external verifiers that monitors the environmental legal compliance</p>

	<p>of firm and the EMS efficacy. The periodical audit in the EMAS or ISO14001 organizations can be considered a guarantee element for Public Administration that allows awarding the companies commitment in the sustainability.</p> <p>Therefore, presumably, when the institutions should express their belief in environmental management systems self-monitoring capability (especially when guaranteed by a third party certification), they will probably reduce controls intensity and frequency on organizations voluntarily undertaking these inspections.</p> <p>Planning less controls for EMAS-registered or ISO14001-certified organizations is consistent with the Community approach and is intended to "control more" the non-certified companies. In this way the current approach of making controls to check the compliance is inverted. Thus enterprises have to demonstrate that they take care about the environment and then they can get a control frequency reduction.</p> <p>Taking into account this Recommendation and following the requirements established by the <b>Industrial Emissions Directive</b> (Directive 2010/75/UE), the Ministry for Environment and Spatial Planning of Andalusia has defined an environmental risk assessment methodology in order to determine the frequency of inspection of facilities having IED operating in Andalusia.</p>
<p><b>Detailed description of the measure</b></p>	<p>Taking as a reference the proposal made by the Environmental Inspection Network (REDIA) for the establishment of a homogeneous environmental risk assessment practice at the national level, the Unit of Environmental Inspections from the Ministry for Environment and Spatial Planning of Andalusia has adapted this proposal to the environmental information available, by publishing the methodology to be applied in this region in order to define the frequency of inspection of facilities</p>

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having the Integrated Environmental Authorizations (IEA).

The method considers risk as the activity's potential impact on the environment or health, together with compliance with environmental standards and the conditions of the IEA on the part of the operator. In this way, the risk will be determined by considering, on the one hand, impact criteria (which depend on the source and the receiving environment), on the other hand, the operator's performance (level of compliance with legislation, age of the installation, operator's attitude, etc.).

One of the criteria to assess the operator's performance is the participation in an Environmental Management System (EMS) in accordance with the EMAS Regulation provided that the EMAS register is in force the moment the Risk Assessment is carried out and the scope of the EMS coincides with that of the IEA.

In the case that the installation does not show repeated non-conformities in compliance with the conditions established in the IEA and have an EMS certified in accordance with the EMAS Regulation, the assessment of the operator's performance will be (-1), that is, the risk level will decrease 1 point.

Once the installation's impact category has been fixed and the operator's performance has been assessed, the environmental risk of every installation will be defined. This will determine the minimum frequency of inspection in the Annual Inspection Programme of installations with IEA in Andalusia.

The benefit installations registered in EMAS and not having any repeated unfulfilment will obtain is that the frequency of inspections changes from annual to biannual or from biannual to triennial, as appropriate in each case.

The **BENEFITS** related to the simplification of environmental control activities can be

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immediately and easily pointed out.

First of all control activities engage **HUMAN RESOURCES** both in the inspection authorities and the companies. A reduced commitment of these resources means respectively that:

- The inspection authorities can assign resources to other control activities at non-certified organizations, thus broadening the range of monitored companies and increasing controls productivity and efficiency;
- The certified organizations, subjected to the controls, can commit less frequently their dedicated resources, specialized in environmental management, to prepare, educate and support inspections; this should optimize their commitment and let them undertake other tasks.

It should also be pointed out that, both for companies and for inspection authorities, the lower inspections frequency, either administrative or analytical, result in **LOWER COSTS** to support in the following areas:

- Costs related to laboratories for running analysis;
- Costs related to technical specialists support and to external consulting, associated with the inspections;
- Costs related to machineries downtime or to use of equipment or parts of the production process to conduct online testing or to allow samples removal for analysis.

The **BARRIERS**

This Good Practice is feasible to be transferred to any Member State because it is legal requirement targeted by IED. This requirement has to be

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	<p>transposed by each Member State to their national/regional/local legislative framework (as appropriate). In fact, this measure is widely implemented in other Member States (Italy, Germany, Greece, Denmark, France, etc.).</p> <p>In the same way that Andalusia has done it, the rest of Member States must transpose the IED to their national/regional/local legislative framework (as appropriate). Therefore, this methodology (applied at regional level in the case of Spain) is feasible to be transferred to any Member State. But, it will be necessary to overcome the following encountered barriers:</p> <ul style="list-style-type: none"> <li>• The methodology must adapt, as well as possible, to the needs and particularities of the industrial facilities of each Member State.</li> <li>• All units/areas/departments affected by the methodology must participate in their definition and establishment in order to unify criteria, avoid misunderstandings and know what is the role of each involved actors.</li> <li>• Criteria to define scope of environmental permits (in this case, IEA) and environmental certifications (EMAS or ISO 14001) must be homogenized.</li> <li>• The kind of non-compliances and sanctions must be categorised.</li> <li>• All the function and responsibilities must be well-known and clear.</li> <li>• A clear and feasible communication procedure to exchange information among units/areas/departments must be established.</li> </ul>
<p><b>Legislative reference</b></p>	<p><i>At European level:</i></p> <ul style="list-style-type: none"> <li>• Directive 2010/75/EU of the European Parliament and the Council of 24<sup>th</sup> November 2010 on Industrial Emissions (IED).</li> </ul>

	<ul style="list-style-type: none"> <li>Recommendation 2001/331/EC of the European parliament and of the Council of 4<sup>th</sup> April 2001 providing for minimum criteria for environmental inspections in the Member States.</li> </ul> <p><i>At national level:</i></p> <ul style="list-style-type: none"> <li>Royal Decree 815/2013, of 18<sup>th</sup> October, approving the Regulation for Industrial Emissions.</li> </ul> <p><i>At regional level:</i></p> <ul style="list-style-type: none"> <li>Resolution of 15<sup>th</sup> June 2015, approving the Environmental risk assessment methodology defined by the Ministry for Environment and Spatial Planning of Andalusia.</li> </ul>
<b>Level of Application (regional, national, etc.)</b>	Regional
<b>Score obtained in the first level assessment</b>	2,92
<b>Score obtained in the second level assessment</b>	5,64
<b>Final Score</b>	10,64
<b>Legal feasibility</b>	
<b>Description</b>	It does not require a high legislative effort to be adopted as it has references in European Directive on Industrial Emissions (IED), so it should be only transferred into a national or regional decree, if appropriate.

### **Economic feasibility**

#### **Description**

It does not require high costs to adopted due to the fact it enables high time savings for Regional Ministry on Environment. The frequency of inspections will be reduced, so less facilities have to be inspected, therefore the staff needed to carry out the inspections could be reduced.

### **Technical feasibility**

#### **Description**

The technical feasibility is considered medium because new skills may be required in order to know and understand the EMAS requirements for simplifying the inspection procedure.

### **Achieved results**

#### **Description**

It is very welcome by the EMAS registered organizations and it's a potential measure to increase the number of EMAS.

### **Environmental benefit**

#### **Description**

The environmental benefit is high, as it's a scalable solution with high impact on certain environmental aspects generated by the activity.

## 2. Reduction of the inspection frequency for EMAS-registered organisations in the cross-border waste transfer

<b>N. assigned in the mapping phase</b>	6
<b>Promoting institution(s)</b>	<p>Unit of Environmental Inspections in close collaboration with Unit of Waste and Contaminated Soil.</p> <p>General Directorate of Environmental Prevention and Quality.</p> <p>Ministry for Environment and Spatial Planning of Andalusia.</p>
<b>Type of measure</b>	Reduced inspection frequency
<b>Background</b>	<p>The Regulation (CE) No. 1013/2006 of the European parliament and of the Council of 14<sup>th</sup> June 2006, on shipments of waste, establishes in its article 50 that the Member States will enhance Inspection Programmes have been established following an assessment of risks.</p> <p>In this sense, the Ministry for Environment and Spatial Planning of Andalusia has developed a methodology for the risk assessment based on systematic analysis of risks derived from waste transfer, enhancing the compliance of Regulation (EC) No. 1013/2006 and establishing the minimum number of required inspections. These inspections include physical control activities to facilities, companies, agents, merchants, and the waste transfer activities or valorization or disposal.</p> <p>This Methodology has been development by the Unit of Environmental Inspections in close collaboration with the Unit of Waste and Contaminated Soils.</p> <p>The risks assessment takes into account the information available of the 2 last years and it will be applied in annual way, and it will be reviewed</p>



	<p>when more information about waste transfer are available.</p>
<p><b>Detailed description of the measure</b></p>	<p>The risk assessment methodology developed in Andalusia is based on the IRAM (Integrated Risk Assessment Method) Methodology, instructions provided by the Working Group of the Environmental Inspection Network (REDIA), and the conclusions established in the document "Planning of inspection of shipments of waste" (Report number: 2015/04-2016/05), prepared by the network IMPEL (European Network for the Implementation and Application of Environmental Law).</p> <p>This methodology will be applied to all operators and waste streams involved in the cross-border transfer waste activities developed within the framework of the "Inspection Plan for Cross-border transfer waste in Andalusia" (PITTRA).</p> <p>In its development has been taken into account the following parts:</p> <ul style="list-style-type: none"> <li>• Operators and facilities that initiate the transfer (source point).</li> <li>• The transfer itself, which includes the transit of waste through roads: land, including all categories of roads and railways; maritime and air.</li> <li>• Operators and facilities that complete the transfer, including the valorization or the intermediate or final disposal.</li> </ul> <p>Taking into account these inputs, the Methodology has been established specifically for each involved actor, considering that the environmental risk assessment associated with the cross-border waste transfer will be obtained according to the category of impact and the assessment of the operator's behaviour. Based on this assessment, the minimum number of inspections required will be determined in the corresponding Inspection</p>

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Programme.

Within the operator's behaviour, the voluntary implementation of the EMAS scheme will be valued. The Environmental Declaration is considered as a way of control and management of the environmental risk of an activity.

Likewise, it is considered as a responsible attitude on the part of the operator and, at the same time, committed to improve the environmental behaviour of the activity or facility.

To apply this criterion, the operator has had to maintain its EMAS registration in force during the last two annuities and the cross-border waste transfer activities must be included in the scope of your Environmental Management System (EMS).

The assessment of this criterion is shown in the following table:

EMS	Score
Non-EMAS registration	(+1)
With EMAS registration	(-1)

The **BENEFITS** related to the simplification of environmental control activities can be immediately and easily pointed out.

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- The inspection authorities can assign resources to other control activities at non-certified organizations, thus broadening the range of monitored companies and increasing controls productivity and efficiency;
  - The certified organizations, subjected to the
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	<p>controls, can commit less frequently their dedicated resources, specialized in environmental management, to prepare, educate and support inspections; this should optimize their commitment and let them undertake other tasks.</p> <p>It should also be pointed out that, both for companies and for inspection authorities, the lower inspections frequency, either administrative or analytical, result in <b>LOWER COSTS</b> to support in the following areas:</p> <ul style="list-style-type: none"> <li>• Costs related to laboratories for running analysis;</li> <li>• Costs related to technical specialists support and to external consulting, associated with the inspections;</li> <li>• Costs related to machineries downtime or to use of equipment or parts of the production process to conduct online testing or to allow samples removal for analysis.</li> </ul>
<p><b>Legislative reference</b></p>	<p><i>At European level:</i></p> <ul style="list-style-type: none"> <li>• Regulation (CE) No. 1013/2006 of the European parliament and of the Council of 14<sup>th</sup> June 2006, on shipments of waste.</li> </ul> <p><i>At national level:</i></p> <ul style="list-style-type: none"> <li>• Royal Decree 815/2013, of 18<sup>th</sup> October, approving the Regulation for Industrial Emissions.</li> </ul> <p><i>At regional level:</i></p> <ul style="list-style-type: none"> <li>• Resolution of 26<sup>th</sup> June 2017 of the General Directorate for Prevention and Environmental Quality, that approves the methodology for the risk assessment of cross-border waste transfer inspection.</li> <li>• Inspection Programme of cross-border waste transfer in Andalusia (PITRA) for 2017-2019,</li> </ul>

	approved by Resolution of 24 <sup>th</sup> March 2017.
<b>Level of Application (regional, national, etc.)</b>	Regional
<b>Score obtained in the first level assessment</b>	2,92
<b>Score obtained in the second level assessment</b>	5,00
<b>Final Score</b>	14,00

#### Legal feasibility

#### Description

It does not require a high legislative effort to be adopted as it has references in European Regulation on cross-border waste transfer, so it should be only transferred into a national or regional decree, if appropriate.

#### Economic feasibility

#### Description

It does not require high costs to adopted due to the fact it enables high time savings for Regional Ministry on Environment. The frequency of inspections will be reduced, so less facilities have to be inspected, therefore the staff needed to carry out the inspections could be reduced.

#### Technical feasibility

<b>Description</b>	The technical feasibility is unclear due to the fact the new skills could be required.
<b>Achieved results</b>	
<b>Description</b>	It is very welcome by the EMAS registered organizations and it's a potential measure to increase the number of EMAS.
<b>Environmental benefit</b>	
<b>Description</b>	The environmental benefit is high, as it's a scalable solution with high impact on certain environmental aspects generated by the activity.

### 3. Technical Environmental Solvency in Public Procurement and accreditation of compliance with Environmental Management Standards

<b>N. assigned in the mapping phase</b>	13
<b>Promoting institution(s)</b>	Approved by Head of State (at national level) Applied by General Directorate on Heritage from Regional Ministry for Tax and Public Administration in Andalusia (at regional level)
<b>Type of measure</b>	Green Public Procurement (GPP)
<b>Background</b>	<p>Europe's public authorities are major consumers. By using their purchasing power to choose environmentally friendly goods, services and works, they can make an important contribution to sustainable consumption and production - what we call Green Public Procurement (GPP) or green purchasing.</p> <p>Although GPP is a voluntary instrument, it has a key role to play in the EU's efforts to become a more resource-efficient economy. It can help stimulate a critical mass of demand for more sustainable goods and services which otherwise would be difficult to get onto the market. GPP is therefore a strong stimulus for eco-innovation.</p> <p>To be effective, GPP requires the inclusion of clear and verifiable environmental criteria for products and services in the public procurement process. The European Commission and a number of European countries have developed guidance in this area, in the form of national GPP criteria. The challenge of furthering take-up by more public sector bodies so that GPP becomes common practice still remains. As does the challenge of ensuring that green purchasing requirements are somewhat compatible between Member States - thus helping create a level playing field that will</p>

	<p>accelerate and help drive the single market for environmentally sound goods and services.</p>
<p><b>Detailed description of the measure</b></p>	<p>Green Public Procurement is the procurement of products or services by the Public Administrations, where not only economic or technical aspects are considered, but also their environmental impact; that is why the EMS certified according to the European EMAS Regulation could be considered as a way to show the contractors' professional and technical solvency in cases of public procurement for work or services contracts.</p> <p>The new Law 9/2017 (article 94) explicitly recognise that environmental management measures can serve as a means of proof for companies to demonstrate their technical capacity for services and works contracts, in appropriate cases, especially those in which the nature of the works and/or services justifies applying environmental management measures or schemes during the performance of a public contract. Naturally, those measures are directly linked to the performance of the contract. It is not permitted to ask for compliance with selection criteria which are unrelated to the performance of the contract.</p> <p>In particular, in contracts under to harmonized regulation, when the contracting authorities require the presentation of certificates issued by independent bodies that prove the tenderer's compliance with Environmental Management Standards as a means to prove technical or professional solvency, they will make reference to the EMAS scheme or other environmental management systems recognized.</p> <p>Contracting authorities could explicitly mention in their contract documents or the tender notice that whenever companies have an Environmental Management and Audit System which covers the requirements as to the technical capacity, this system will be accepted as a sufficient means of</p>

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proof. At the same time, contracting authorities may not exclude other means by accepting only an EMAS registration as means of proof: any other certificate (e.g. ISO 14001) or any other means of proof should also be accepted.

Public Administration may establish technical specifications contained in certification standards to be submitted, but not require certification, since it is necessary that tenderers are allowed to provide documentary evidence of compliance or equivalence of these standards with other documentation. Thus, whenever criterion appears to have a system EMAS or ISO14001 environmental management, is always accompanied by the words "or equivalent". Asking directly to have a certified environmental management system EMAS or ISO 14001 would be a discriminatory criterion would prevent free competition.

For the introduction of EMAS model in GPP is necessary that the staff responsible for the implementation of GPP know the basis for these management systems and more correct way to introduce the need for proper environmental management of the tenderers. Evidence of the environmental management measures which an economic operator will be able to apply in carrying out a contract can be requested as part of the tender procedure. There are several different stages at which this may be relevant:

- *At specification stage*, the procurer may stipulate that certain environmental management measures are to be applied in carrying out a service or work as for example the management of waste on site in a construction contract of a building, etc. An EMS would be one means of demonstrating compliance with such requirements. This should not have the effect of restricting competition.



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- *At selection stage*, for services and works contracts and in appropriate cases only, economic operators can be asked to indicate the environmental management measures which they will be able to apply in carrying out the contract.
  - *At award stage* an EMS may be considered as evidence of the economic operator's performance against relevant award criteria, and marks awarded on this basis.
  - *In contract performance clauses*, it is possible to include a requirement for the contractor to work progressively towards certification – or to demonstrate the specific environmental management measures they apply in carrying out the contract. Contract performance clauses must be clearly indicated in the notice or tender documents.

It is important to ensure that the same aspect is not assessed twice in one tender procedure – so if ability to apply environmental management measures is assessed at selection stage this should not be repeated at specification or award stage.

Including environmental considerations in GPP has, in general, a wide number of benefits. EMAS registered organisations are expected to show a continuous improvement of environmental impacts of its activities, products and services.

This is also taken into account as one of the measures regarding to the environment (Chapter III, Law 18/2003 of 29<sup>th</sup> December, on Fiscal and Administrative Measures in Andalusia), specifically, the certification of the environmental management system.

**BENEFITS** for the GPP implementation:

Environmental benefits:

- GPP can be instrumental in addressing
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environmental problems such as GEI, water use, energy efficiency and resource use, etc.

- GPP sets an example to private consumers. GPP raises awareness of environmental issues.

Social/Health benefits:

- GPP improves quality of life.
- GPP helps establish high environmental performance standards for products and services.

Economic benefits:

- GPP saves money and resources when life-cycle costs are considered.
- GPP provides incentives to industry to innovate.
- GPP can reduce prices for environmental technologies.

Political benefits for Public Administration:

- GPP is an effective way to demonstrate the public sector's commitment to environmental protection and to sustainable consumption and production.

Benefits enterprises with EMAS register:

- In some cases an EMS's may also serve as evidence when assessing award criteria. At award stage, Public Administration is looking at how a contract will be performed, so an offer to carry out certain measures in accordance with an EMS may be relevant.

**BARRIERS** for the GPP implementation:

- Lack of political support.
  - Green products are perceived to cost more.
  - Lack of legal expertise in applying environmental criteria.
  - Lack of practical tools and information.
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	<ul style="list-style-type: none"> <li>• The need for systematic implementation and integration into management systems.</li> <li>• Lack of training in Public Authorities Staff and Policy Makers.</li> <li>• Lack of co-operation between authorities.</li> </ul>
<p><b>Legislative reference</b></p>	<p><i>At European level:</i></p> <ul style="list-style-type: none"> <li>• Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Public procurement for a Better Environment.</li> <li>• Commission Interpretative Communication on the Community law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement.</li> <li>• Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.</li> <li>• Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.</li> <li>• Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.</li> <li>• Regulation (EU) 2015/1986 of 11 November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011</li> <li>• Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common</li> </ul>

	<p>Procurement Vocabulary (CPV).</p> <ul style="list-style-type: none"> <li>• Proposal for a Regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries.</li> <li>• Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November on the voluntary participation by organization in a Community Eco-Management and Audit Scheme (EMAS).</li> </ul> <p><i>At national level:</i></p> <ul style="list-style-type: none"> <li>• Royal Legislative Decree 3/2011, of 14<sup>th</sup> November, approving the consolidated text of the Public Sector Contracts Law. (repealed by Law 9/2017, of 8<sup>th</sup> November, on Public Sector Contracts, transposing Directives 2014/23/EU and 2014/24/EU, of 26<sup>th</sup> February 2014).</li> </ul> <p><i>At regional level:</i></p> <ul style="list-style-type: none"> <li>• Law 18/2003 of 29<sup>th</sup> December, on Fiscal and Administrative Measures in Andalusia (Chapter III).</li> </ul>
<p><b>Level of Application (regional, national, etc.)</b></p>	<p>This measure has been approved by Head of State (at national level), but it will be applied by each Public Administration at regional level.</p>
<p><b>Score obtained in the first level assessment</b></p>	<p>2,92</p>

<b>Score obtained in the second level assessment</b>	6,57
<b>Final Score</b>	14,57
<b>Legal feasibility</b>	
<b>Description</b>	The promotional incentive does not require a high legislative effort to be adopted as it has references in European Directives on public procurement.
<b>Economic feasibility</b>	
<b>Description</b>	The cost required to adopt it is unclear since it's necessary to make a previous selection of the products and services of interest, and in the short term, the time savings of the Competent Authority if the measure will be adopted are unclear.
<b>Technical feasibility</b>	
<b>Description</b>	The promotional incentive doesn't require high technical effort to be adopted in the administrative clauses and technical requirements for the contract of services and supplies, and each administration will have to define how to proceed according to their competencies.
<b>Achieved results</b>	
<b>Description</b>	It is very welcome by the EMAS registered organizations and it's a potential measure to increase the number of EMAS.

**Environmental benefit****Description**

The environmental benefit is high, as it's a scalable solution with high impact on certain environmental aspects generated by the activity.

#### 4. Exemption of financial guarantees for EMAS-registered or ISO-certified organisations

<b>N. assigned in the mapping phase</b>	14
<b>Promoting institution(s)</b>	<p>General Directorate for Environmental Quality and Assessment of the Ministry of Agriculture, Fisheries, Food and Environment (at national level)</p> <p>Ministry for Environment and Spatial Planning of Andalusia (at regional level)</p>
<b>Type of measure</b>	Financial Guarantee
<b>Background</b>	<p>Financial guarantees are primary regulatory requirements, mandatory for high environmental risk activities. A guarantee should ensure that the operator has adequate financial resources to incur all costs arising from the adoption of measures to prevent, avoid or repair possible environmental damages associated with its activities.</p> <p>Legislation shall define the amount of financial guarantee and this happen, in most cases, proportionally to the size of the enterprise and to its plants and facilities. Many administrative procedures, concerning permits and authorizations on waste, mining and thermal energy activities, include the request for financial guarantees.</p> <p>To acquire financial guarantees, companies refer to banks, to which they pay out an annual interest rate on top of the preliminary investigation costs. Therefore the bank provides the company with the availability of a pre-established amount, in the event of environmental harms, caused by its actions.</p> <p>With the Directive 2004/35/CE, the Commission implemented the financial liability for operators in case of environmental damage. This Directive, in fact, encourages States to implement into their</p>

	<p>legislation financial instruments, thanks to which, economic operators are able to cope with its responsibilities. Article 14 concerns possible financial guarantees; the EU legislation, though, does not mention amounts, application procedure and technical aspects.</p> <p>The framework nature of this directive gives a wide degree of freedom for each Member States to legislate, assuming that regulatory decisions are to be made only at the time of national transposition.</p> <p>The introduction of this additional burden represents for the organizations a cost that adds up to other taxes which already affect the businesses, especially in the start-up stage. Provide a benefit to the EMAS-registered organizations could be a strong incentive to spread this environmental management tool in addition to reducing enterprises financial commitment. The inclusion of any incentive for EMAS organizations with regard to environmental damage guarantees is justified on the basis of the better risk management within EMAS systems, if compared with contexts where these systems are not applied</p>
<p><b>Detailed description of the measure</b></p>	<p>The financial guarantees brought in by Directive 2004/35 art. 14 demand risk assessments for sectors and operators but depend on various national provisions, ruling on matters such as coverage caps, exemptions etc.</p> <p>Therefore each State can decide not only whether to enforce them or not, but also it can define the amount and possible rebates. States implemented various forms of guarantees: in Spain the Law 26/2007 and Royal Decree 2090/2008 require mandatory guarantees in case that the potential damage estimate, calculated within the environmental risk assessment, exceed 300,000 €.</p> <p>Only the Spanish legislation offer incentives for EMAS-registered and ISO 14001-certified organizations; the threshold for financial</p>



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guarantees application for these companies increase up to 2,000,000€ instead of 300,000. This measure both rewards the businesses implementing environmental management systems and responds to the EC input to value the instrument.

There can be two main way for the legislator to include regulatory reliefs proposals on financial guarantees relating to environmental liability for environmental damage:

- Mandatory financial guarantees with regard to estimated damage exceeding given amounts and increase the threshold values for EMAS and ISO14001 organizations.
- Offer financial guarantee rebate (in percentage) for organizations with EMAS registration or holding other environmental certifications.

The first case refers to the Spanish experience, the second example of rebate can be found in the legislation of countries like Italy and Germany in the waste sector.

Nevertheless, the introduction of these incentives, regardless of the form and magnitude, requires the inclusion of a section or a paragraph into the national laws enacting the directive on environmental damage or in other environmental regulations governing this aspect.

In this sense, in Spain, the Law 26/2007 concerning Environmental Liability is the legislation that transposes the Directive 2004/35/EC into the national legal system.

This Law is partially developed by Royal Decree 2090/2008 that ensures the capacity of the Autonomous Communities (regional competent authorities) to develop and implement the state grounds and also to adopt additional regulations for protection. In particular, the Autonomous Communities will be able to adopt, in the extent of

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their competence, more discerning decisions in environmental damage prevention, avoidance or repair. They will also be able to establish offences and penalties, as well as to submit other activities or people to the environmental liability regime established under the National Law.

This legal framework establishes the three elements which are needed for the successful implementation of the Environmental Liability Directive:

- 1) Exclusion of low-risk activities, having been determined that they will be exempt from the establishment of the mandatory financial guarantee (article 28 of Law 26/2007):
  - a) The operators of those activities likely to cause damages whose reparation costs are lower than 300.000 €.
  - b) The operators of those activities likely to cause damages whose reparation costs are between 300.000 and 2.000.000€ and that are implementing an EMS according to ISO 14001 or EMAS.
- 2) The maximum limit of coverage of the financial guarantee that operators should provide, having been set an upper limit of 20 million euro (article 30 of Law 26/2007).
- 3) The gradual implementation by which the introduction of the financial guarantee would be progressively carried out for the different types of risk, industrial sectors or responsibilities (Orden ARM/1783/2011).

These legislative guidelines, together with further procedural guidelines developed by the Ministry of Agriculture, Food and Environment for the technical and economic assessment of the environmental risks, as well as other procedures and risk manuals<sup>1</sup> will allow the successful implementation of the Environmental Liability

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	<p>Directive in Spain.</p> <p>In Andalusia, any legislative act developing the national policy framework has been published yet, waiting for these new publications to assess the need to develop explanatory and more discerning guidelines at regional level. Meanwhile, the adoption of a requirements procedure of Environmental Liability (adoption of preventive and restoration measures, if applicable) is being required from the affected operators.</p> <p>The introduction of financial guarantees for EMAS organizations could represent a real economic incentive for the adoption of the EC scheme. The main <b><i>BENEFIT</i></b> of this measure is the possible costs savings for organizations that perform their activities, highly regarding the assessment of possible environmental damage. The adoption of financial guarantees reductions may also promote EMAS awareness and encourage businesses to adopt this instrument. Another benefit expected is to increase the number of EMAS registrations in States adopting such measures, without additional burden for administrations that manage documentation and permits and authorizations issuing for organizations subject to the payment of any such guarantee.</p>
<p><b>Legislative reference</b></p>	<p><i>At European level:</i></p> <ul style="list-style-type: none"> <li>• Directive 2004/35/CE of the European Parliament and of the Council of 21<sup>st</sup> April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.</li> </ul> <p><i>At national level:</i></p> <ul style="list-style-type: none"> <li>• Law 26/2007 of 23<sup>rd</sup> October on Environmental Liability.</li> <li>• Royal Decree 2090/2008 of 22<sup>nd</sup> December 2008 approving the Regulation for the</li> </ul>

	<p>development of Law 26/2007.</p> <ul style="list-style-type: none"> <li>• Law 11/2014, of 3<sup>rd</sup> July, amending the Law 26/2007.</li> <li>• Royal Decree 183/2015, of 13<sup>rd</sup> March amending the Royal Decree 2090/2008.</li> <li>• Order ARM/1783/2011, of 22<sup>nd</sup> June, establishing the order of priority and the deadline for the approval of the Ministerial Orders as of the constitution of the mandatory financial guarantee foreseen in Law 26/2007.</li> <li>• Order APM/1040/2017, of 23<sup>rd</sup> October, establishing the date in which the constitution of the financial guarantee will be compulsory for the activities of the annex III of the Law 26/2007, classified as level of priority 1 and 2.</li> </ul>
<b>Level of Application (regional, national, etc.)</b>	This measure has been approved by Ministry of Agriculture, Fisheries, Food and Environment (at national level), but it will be applied by each Competent Authority at regional level.
<b>Score obtained in the first level assessment</b>	2,83
<b>Score obtained in the second level assessment</b>	5,79
<b>Final Score</b>	12,79

**Legal feasibility**

<b>Description</b>	This measure does not require a high legislative effort to be adopted as it has references in European Directive 2004/35/CE on Environmental Liability.
<b>Economic feasibility</b>	
<b>Description</b>	The cost required to adopt the promotional incentive is unclear but time savings of the Competent Authority are potentially low.
<b>Technical feasibility</b>	
<b>Description</b>	The same is true of the technical feasibility to adopt this measure, it is unclear.
<b>Achieved results</b>	
<b>Description</b>	The measure will be very welcome by the EMAS registered organizations and it's possible that it may contribute to the spread of EMAS.
<b>Environmental benefit</b>	
<b>Description</b>	The regulatory relief involves sectors listed in the high and special complexity, so the environmental benefits would be high.

**5. Discount of the 25% of the investment when the affected facilities have an EMS certified in accordance with EMAS Regulation or ISO14001 Standard**

<b>N. assigned in the mapping phase</b>	1
<b>Promoting institution(s)</b>	<p>Andalusian Tax Agency of the Ministry for Tax and Public Administration in Andalusia (responsible for the establishment of taxes)</p> <p>Ministry for Environment and Spatial Planning of Andalusia (responsible for the environmental certification)</p>
<b>Type of measure</b>	Tax breaks
<b>Background</b>	<p>Taxes are a fiscal burden that natural and fiscal persons have to pay for financing of the Public Administration. These are characterized by not requiring consideration by the Public Administration.</p> <p>There are several types of taxes, such as income taxes, business taxes and taxes related to development of the activities (licenses).</p> <p>The amount of these taxes is established by sectorial regulation and it is generally calculated based on percentages (%) of a particular value (also known as the tax base).</p> <p>There are several fiscal tools promoted by the Public Administration to reduce the payment of these taxes or increase the return for investments made by the organizations oriented to pollution prevention and control. Therefore, it could reduce the payment of these taxes or increase the return for those facilities with a certified EMS according to the International Standard ISO 14001 or the European EMAS Regulation.</p>
<b>Detailed description of the measure</b>	The measure is based in the Polluter Pay Principle (PPP), so the fact of dealing with potential

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problems of pollution and environmental impact from prevention. The PPP is an environmental policy principle which requires that the costs of pollution be carried by those who cause it or who could cause it. In its original gradual appearance the PPP aims at determining how the costs of pollution prevention and control must be allocated: the polluter must pay. Most of the time, the PPP takes the form of a tax collected by government and levied per unit of pollution emitted into the air, water, etc.

Organizations with a certified EMS have under control their environmental impact, with specific procedures, and make investments to improve environmental performance according to their environmental programme, that contains information on specific environmental objectives and targets to be achieved. So, these EMAS registered organizations are less polluter than the rest. In fact EMS are included in BAT (Best Available Techniques) Reference Documents (BREF) as the best techniques applicable across many groups of plants as generic BATs, as confirmed the Directive on Industrial Emissions (Directive 2010/75/EU).

So, the fact of being less polluter is the reason to decrease taxes that must be paid by those organisations with a certified EMS.

As the measure could be applied to national or to regional/local taxes, the reduction must be approved just by legislative provisions of national or local level. Once the measure is adopted organisations could have access to the profit just with the demonstration of an active and certificate EMS for all the duration of the calendar year.

Governments could define the measure under two different modes:

- Reduction of the percentages (%) of a particular value, also known as the tax base.

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- A higher return from the taxable income, so reduction of the tax base, in an amount that could allow the organization to face the costs of implementation, maintenance or certification of the EMS; it usually will be a fixed amount, maybe different for small, medium or big firms. So, these costs are eligible for the reduction from the taxable income.

In the case of Andalusia, the Law 18/2003 and the Decree 509/2004 are the regulations which regulate Tax on Gas Emissions to the Atmosphere and on Discharges to Coastal Waters applicable to facilities affected by the IPPC Directive.

These fees taxes the emissions to the atmosphere and discharges of certain substances generated in the production processes carried out in facilities located in Andalusia in order to promote practices which respect the air and coastal waters as well as improve their quality. They were created as regional fees in Andalusia by Law 18/2003 of 29<sup>th</sup> December, on Fiscal and Administrative Measures in Andalusia (Chapter I).

These facilities will have a deduction in the total tax because of the investments made in the tax period in infrastructures and equipment designed to monitor, prevent and correct atmospheric and water pollution, after obtaining the corresponding certification proving the environmental suitability of the investment given by the Ministry on Environment and Spatial Planning of Andalusia. This deduction will be applied in the following percentages:

- 25% of the investment when the affected facilities have an EMS certified in accordance with the EMAS Regulation or the ISO14001 standard.
  - 15% of the investment when the previous certificates have not been obtained.
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	<p><b><u>DIRECT BENEFITS</u></b>, quantifiable, for the organizations are the cost that they save in paying taxes could be used in defining new objectives to include in the environmental programme.</p> <p><b><u>INDIRECT BENEFITS</u></b> for the community (improvement of the environment).</p>
<b>Legislative reference</b>	<p><i>At European level:</i></p> <ul style="list-style-type: none"> <li>• There is not a specific legal framework for taxes at European level; this issue is regulated by national or regional legislation (depending on the authority of national and regional governments of different Member States). Moreover, the sectorial legislation establishes the obligation to pay these taxes, but frequently it does not establish the amounts or percentage of reduction. The measure is based on the Polluter Pay Principle (PPP), ratified by the Treaty on the Functioning of the European Union (TFUE), article n. 191.</li> </ul> <p><i>At regional level:</i></p> <ul style="list-style-type: none"> <li>• Decree 503/2004 of 13<sup>rd</sup> October, on Tax on Gas Emissions to the Atmosphere and Tax on Discharges to Coastal Waters in Andalusia.</li> <li>• Law 18/2003 of 29<sup>th</sup> December, on Fiscal and Administrative Measures in Andalusia (Chapter I).</li> </ul>
<b>Level of Application (regional, national, etc.)</b>	Regional
<b>Score obtained in the first level assessment</b>	2,75

<b>Score obtained in the second level assessment</b>	7,50
<b>Final Score</b>	12,50
<b>Legal feasibility</b>	
<b>Description</b>	It requires a medium legislative effort due to it has not references in European Directives, although the process to adopt it is almost simple.
<b>Economic feasibility</b>	
<b>Description</b>	The cost required to adopt it is unclear since it's necessary to make investments for the control, prevention and correction of air or water pollution by operators and in the short term, the time savings of the Competent Authority if the measure will be adopted are unclear. In addition, the scopes of IEAs and EMAS registration must be the same in order to can apply this discount.
<b>Technical feasibility</b>	
<b>Description</b>	It doesn't require high technical effort to be adopted in the administrative clauses and each administration will have to define how to proceed according to their competencies.
<b>Achieved results</b>	
<b>Description</b>	It is very welcome by the EMAS registered organizations and it's a potential measure to increase the number of EMAS.
<b>Environmental benefit</b>	
<b>Description</b>	The environmental benefit is high, as it's a scalable solution with high impact on certain environmental

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	aspects generated by the activity.
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