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Organisation de Coopération et de Développement Économiques
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ENVIRONMENT DIRECTORATE
ENVIRONMENT POLICY COMMITTEE

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Working Party on National Environmental Policies

Strategies and Instruments to Regulate and Promote Environmental Compliance of Small and Medium-sized Enterprises

Concept Note

21 May 2010

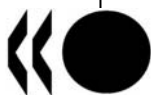
This concept note outlines the Secretariat's proposal for a project on environmental compliance assurance under the Programme of Work and Budget for 2011-2012. It is submitted to the Working Party at its present session in order to allow sufficient time for consultations and fundraising with the member countries.

ACTION REQUIRED: For discussion and guidance.

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Background

OECD work on environmental compliance assurance has been underway since 2007. Its first phase resulted in the 2009 report “Ensuring Environmental Compliance: Trends and Good Practices”¹ which identified good practices in compliance promotion, monitoring and enforcement observed in eight OECD and non-OECD countries and pointed to the key trends across the different legal and institutional systems.

Representatives of 17 countries at the international conference on environmental compliance assurance (Paris, November 2008) highlighted several priorities for further work in this field, including:

- Strategic planning and performance indicators;
- National coherence and establishing a level playing field in compliance assurance; and
- Compliance promotion, especially among small and medium-sized enterprises (SMEs).

Two of these priority areas were addressed by the following projects:

1. Seven OECD countries participated in the study “*Outcome Performance Measures of Environmental Compliance Assurance*” (March 2009-June 2010) that analysed the existing experience in the design and implementation of quantitative indicators of compliance assurance and recommended ways to improve the effectiveness of specific categories of such indicators.
2. The project “*Mechanisms to Promote National Coherence of Environmental Enforcement*” (2009-2011) involves several OECD countries with decentralised systems of environmental governance. It aims at identifying good practices in establishing coordination, oversight and capacity development mechanisms between competent authorities at different administrative levels and ensuring consistency of compliance assurance strategies and tools across jurisdictions.

The present project, to be implemented as part of the OECD Environment Programme of Work and Budget for 2011-2012, deals with another priority area for OECD countries – regulation and compliance promotion targeted at SMEs.

Why This Project?

SMEs can be defined in different ways, based on the number of employees, the size of financial turnover or, for environmental purposes, the volume of their pollution releases. In this document, the term SMEs refers to facilities not covered by site-specific environmental permitting requirements.

The cumulative impact of SMEs on the environment is considerable, and they must be subject to effective environmental regulation. The key challenge, however, is that SMEs are often unaware of the environmental impacts of their own activities and the environmental legislation affecting them, thereby aggravating their threat to the environment. For example, only 7% of British SMEs thought their business was harming the environment and 38% had not heard of relevant environmental regulations². On the other hand, SMEs can benefit from economic opportunities presented by better environmental management (e.g., energy and materials efficiency). SMEs are also important players in innovation, including eco-innovation.

¹ www.oecd.org/env/policies/compliance

² SME-environment 2009 survey of 7,000 SMEs across the UK, www.netregs.gov.uk

SMEs are increasingly regulated through General Binding Rules (GBRs) – standard conditions set in a statutory document covering certain sectors or activities. GBRs are implemented through a much simpler, transparent and cheaper process (e.g. notification) than customised permitting. However, several criteria should be met to make GBRs a feasible tool:

- GBRs can only apply to well-defined categories of facilities that use similar, widely accepted technologies that are unlikely to change rapidly;
- There must be a sufficient number of facilities in a sector to justify the costs of producing a GBR;
- The environmental impact of facilities subject to a GBR should be relatively uniform (i.e. not depend significantly on local environmental conditions, making standard norms impractical).

As a result, many SMEs are not regulated by environmental authorities. They may be subject to rules defined by municipalities (as in France and Finland) or must simply conform to general legal requirements to use best practicable means to prevent environmental nuisances (e.g. “duty of care” principles in the UK). The challenge is to choose the best regulatory regime, especially for fast-growing sectors.

Ensuring environmental compliance among SMEs is a huge issue because of their sheer number and diversity (even within a business sector), the limited compliance monitoring resources of competent government authorities, and the knowledge and resource capacity constraints of SMEs to cope with the regulatory burden. These factors make compliance promotion instruments particularly suitable for this important segment of the regulated community.

Compliance promotion includes assistance, incentives, and other activities designed to promote observance of environmental requirements. Assistance may include education, training, outreach, and other activities to help regulated entities understand and meet their obligations. Incentives provide concrete benefits to individual operators when they comply or voluntarily report non-compliance. Other instruments, including market mechanisms, can also be used to encourage compliance.

With the help of these various tools, SMEs should be encouraged to adopt integrated process solutions, including effective management techniques, to reduce their impact on the environment and contribute to the overall greening of the economy. Furthermore, compliance promotion can reduce compliance costs to businesses by allowing them to achieve and maintain compliance as efficiently as possible, and may allow a reduction of compliance assurance costs to regulators by increasing the efficiency and effectiveness of compliance monitoring and enforcement activities.

Project Objective and Scope

The objective of this project is to assist competent authorities in OECD countries by:

- a) Identifying good practices in the design of environmental regulatory requirements for SMEs – to make them more effective while reducing the administrative burden; and
- b) Suggesting ways in which packages of compliance promotion instruments can be designed to encourage small businesses to achieve and go beyond regulatory compliance (by adopting cleaner technologies and adjusting their knowledge and skills to green growth needs).

The project would focus on such compliance promotion tools as dissemination of information on both regulatory requirements and compliance means to the regulated community, promotion of good corporate environmental management, financial incentives, and using public pressure to encourage compliance. These instruments would be considered in the context of the legal and institutional frameworks in different

countries (especially with respect to setting environmental requirements) and the ways in which compliance assurance programmes are managed.

Project Activities and Outputs

The work would be conducted in 2011-2012 in close partnership with national environmental and other competent authorities as well as business associations in the participating OECD countries. The OECD Public Governance and Territorial Development Directorate and the Business and Industry Advisory Committee to the OECD (BIAC) will also be invited to collaborate on this project.

In the information collection phase in the first half of 2011, country stakeholders' responses to a concise questionnaire developed by the OECD Secretariat will be complemented by literature research and interviews with key government and regulated community stakeholders.

The issues to be covered include, but are not limited to:

- Challenges of identifying and classifying the regulated SME community;
- Optimisation of regulatory regimes (permitting, GBRs, general “duty of care” rules) for SMEs;
- Linkages between ways of setting regulatory requirements for SMEs and tools to promote compliance with them;
- Criteria for selection of compliance promotion instruments for specific segments of the regulated SME community;
- Factors of effectiveness of compliance promotion tools;
- Institutional aspects of the design of compliance promotion programmes (e.g., delivery agents, stakeholder cooperation);
- Impact of compliance promotion on the targeting of compliance monitoring and enforcement and related efficiency gains for regulators;
- Performance measurement of compliance promotion activities; and
- Contribution of promoting better environmental behaviour among SMEs to the overall greening of the economy, including by their involvement in national innovation programmes.

The comparative analysis of country practices and experiences will be undertaken in late 2011-early 2012 and will result in an *analytical report* which will be discussed at an OECD *workshop* for government and business stakeholders in the second half of 2012.

Required Resources

According to the Environment Programme of Work and Budget³, the resources required to implement the project are estimated at 125,000 EUR over two years. It almost entirely relies on voluntary contributions.

³ ENV/EPOC(2010)1/ANN1