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2004 certification**

PURPOSE

The text of this document has been produced by a working group in the European co-operation for Accreditation (EA). The purpose of this document is to provide useful information on the relationship between an organisation's accredited Environmental Management System (EMS) certification according to ISO 14001:2004 and that organisation's degree of compliance with applicable environmental requirements..

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The publication has been prepared by the Certification Committee

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1 INTRODUCTION

- 1.1 This document is intended to provide useful information on the relationship between an organisation's accredited Environmental Management System (EMS) certification and that organisation's degree of compliance with applicable environmental requirements.

The intended audience for this document includes organisations that have or are implementing an EMS, government authorities and environmental regulators, accreditation bodies, accredited certification bodies (or CABs – Conformity Assessment Bodies) and other stakeholders.

- 1.2 With ten years of experience gained since the publication of the earlier International Standard ISO 14001:1996 and its replacement by ISO 14001:2004¹, the main objective of an EMS remains to improve the organisation's environmental performance with respect to its management of direct and indirect environmental aspects and associated impacts, whether or not they are linked to legal requirements.

As part of this improved environmental performance, there have been many examples of organisations, which have reached and maintained their legal compliance as a result of implementing and maintaining an EMS that conforms to the standard.

- 1.3 National and regional Governments and environmental regulators have, also, recognized the potential contribution of the implementation and maintenance of an EMS to enhanced environmental performance.

There are examples of the use of an EMS in relation to specific environmental legislation or as a condition made by an environmental regulator. In cases of the implementation and maintenance of an EMS, there is a growing interest in the relaxation of regulatory oversight.

- 1.4 Legal compliance has been defined as: "Full implementation of applicable environmental legislation. Compliance occurs when requirements are met and desired changes are achieved."²

The various stages of the environmental regulatory cycle include, at least:

- Development of the legislation,
- Issue of an environmental permit (e.g. licence and authorizations etc.),
- Implementation,
- Compliance checking (e.g. inspection)
- Enforcement actions, in non-compliance situations.

The understanding and implementation of each of these stages may vary from country to country.

Legal compliance with respect to the interface between the organization and the environmental regulators can be understood as the situation when no reactive enforcement actions are made or can be expected by the organisation. These enforcement actions may include: warnings, compliance and prohibition notices and administrative, criminal or civil actions.

- 1.5 However, the wider concerns of interested parties will expect that there is absolute legal compliance with the applicable legal requirements irrespective of the view of the environmental regulator.
- 1.6 While certification of an EMS against the requirements of ISO 14001:2004 is not a guarantee of legal compliance, (neither is any other means of control, including government or other type of control and/or legal compliance inspections), it is a proven and efficient tool to achieve and maintain such legal compliance.

Accredited ISO 14001:2004 certification should demonstrate that an independent third-party (certification body) has evaluated and confirmed that the organisation has a demonstrably effective EMS to ensure the fulfilment of its policy commitments including legal compliance.

Ongoing or potential non-compliances with the applicable legal requirements will show a lack of management control within the organisation and its EMS and the conformity with the standard should be carefully reviewed.

- 1.7 It is recognised that legal compliance is not the sole determinant of whether an EMS is effective. An EMS is an important tool to control environmental risks, where legal consequences/impacts from non-compliance performance is only one of at least four potential consequences/impacts.

The others consequences/impacts are:

1. Environmental consequences (e.g. ecological damage),
2. Stakeholder consequences (e.g. corporate reputation); and,
3. Business consequences (e.g. financial, competitive position).

- 1.8 This document is published as an EA document and is written to reflect the common understanding of EMS certification of the EA MLA Accreditation Body Members. It is recognised that in other regions there might be an alternative understanding to the views described in this document.
- 1.9 It does not seek to develop interpretations of the requirements of ISO 14001:2004 but identifies the requirements of the International Standard, which directly relate to legal compliance and explores what the accredited certification process should cover in order to support a set of reasonable expectations by stakeholders and interested parties.

2 THE REQUIREMENTS OF ISO 14001:2004 WITH RESPECT TO LEGAL COMPLIANCE

- 2.1 ISO 14001:2004 requires an organization to make a “commitment” in its environmental policy to comply with applicable legal requirements that relate to its environmental aspects. The organization shall establish, implement and maintain a procedure(s) for periodically evaluating compliance with applicable legal requirements that is consistent with realising this commitment.
- 2.2 The specific clauses of ISO 14001:2004, which are most important with respect to legal compliance are the following EMS elements:
- 1) public environmental policy commitment to legal compliance (sub-clause 4.2);
 - 2) identification and having access to applicable legal requirements and other requirements related to its environmental aspects (sub-clause 4.3.2 a));
 - 3) how those legal requirements apply to the organisation's environmental aspects (sub-clause 4.3.2 b));
 - 4) objectives/targets/programs (sub-clause 4.3.3)
 - 5) how legal obligations are routinely managed and monitored (sub-clauses 4.4.6 and 4.5.1);
 - 6) evaluation of legal compliance (sub-clause 4.5.2);
 - 7) corrective and preventive actions where necessary (sub-clause 4.5.3);
 - 8) internal audit (sub-clause 4.5.5); and
 - 9) management review (sub-clause 4.6).

3 HOW SHOULD A CERTIFICATION BODY AUDIT AN EMS WITH RESPECT TO LEGAL COMPLIANCE

- 3.0.1 Through the certification assessment process, a certification body shall evaluate an organisation's conformity with the requirements of ISO 14001:2004 as they relate to legal compliance and should not grant certification until conformity can be determined.

After certification, the subsequent surveillance and reassessment audits conducted by the certification body shall be consistent with the above audit methodology.

- 3.0.2. With respect to the balance between office-based review of documents and records and the evaluation of the EMS implementation during normal activities, the certification body shall ensure that an adequate audit of the effectiveness of the EMS is undertaken.
- 3.0.3. There is no formula to define what the relative proportions should be, as the situation is different in every organisation. However, there are some indications that too much of the audit time is dedicated to an office-based review is a problem that occurs with some frequency. This could lead to an inadequate assessment of the effectiveness of the EMS with respect to legal compliance issues, and potentially to poor performance being overlooked, leading to a loss of stakeholder confidence in the certification process.

The certification body shall, through an appropriate surveillance program, assure that conformity is being maintained during the certification cycle, normally three-years. The certification body auditors shall verify the management of legal compliance based on demonstrated implementation of the system and not rely only on planned or expected results.

- 3.0.4. Any organization failing to demonstrate their initial or ongoing commitment to legal compliance through the key elements discussed below, shall not be certified or continued to be certified as meeting the requirements of ISO 14001:2004 by the certification body.
- 3.0.5. Deliberate or consistent non-compliance shall be considered a serious failure to support the policy commitment to achieving legal compliance and should preclude certification or cause an existing ISO 14001 certificate to be suspended, or withdrawn.

The following sections of this document identify what should reasonably be expected on the part of the certification body in evaluating the EMS with respect to legal compliance.

3.1 A public environmental policy commitment to legal compliance (sub-clause 4.2)

- 3.1.1. The certification body shall determine if the following specific points are demonstrated with regard to the organization's environmental policy statement, that:
 - 1) there is a policy;
 - 2) it meets the requirements of sub-clause 4.2 of ISO 14001:2004 and specifically:
 - 3) a commitment to comply with applicable legal requirements and other requirements;
 - 4) it is communicated to employees and other persons working for or on behalf of the organisation; and
 - 5) it is publicly available;
 - 6) it is approved and supported by top management; and,
 - 7) that it is subject to periodic management review of its suitability, adequacy and effectiveness.

3.2 Identification of, and access to, legal requirements (sub-clause 4.3.2 a)

- 3.2.1. The certification body shall determine whether the organisation has identified and provides access to all the specific applicable legal requirements in relation to its environmental aspects to establish objective evidence of the development and control of the management system and to enable a complete evaluation of compliance (see sub-clause 4.5.2).
- 3.2.2. Additionally, the certification body shall verify that identification of these legal requirements is maintained by periodical review in order to identify new or changed requirements and to implement any changes to the EMS.
- 3.2.3. The certification body shall check the organization's identification and access to applicable legal requirements is complete. The certification body is not responsible for approving the identified legal requirements as being final or definitive. This sole responsibility lies with the organisation.
- 3.2.4. Certification body audit teams shall be competent with relevant knowledge of the applicable legal requirements for the location and environmental aspects of the organization to identify errors or omissions and any deficiencies in the access to the organisation's identified legal requirements.

3.3 How legal requirements apply to the organisation's environmental aspects (sub-clause 4.3.2 b)

- 3.3.1. During the on-site audit, the certification body shall verify that the organisation complies with applicable legal requirements, by considering examples of significant environmental aspects as well as regional, national and local legal requirements.
- 3.3.2. The certification body shall audit whether:
 - 1) the organisation has determined how legal requirements apply to the environmental aspects; and,
 - 2) those legal requirements have been taken into account in the establishment, implementation and maintenance of the EMS and subsequent control measures.
- 3.3.3. The audit should be undertaken by examining activities controlled by environmental permits and other applicable legislation through a risk-based assessment using sampling to confirm that environmental compliance is realized.
- 3.3.4. The certification body audit shall establish that the EMS is capable of achieving legal compliance. This may be achieved by audit trails from a direct on-site assessment covering the operational activities and surroundings using either an audit of examples of significant environmental aspects and the audit trail through the EMS to the specific legal requirements or, the reverse, the sampling of the legal requirements and the audit trail through the EMS to the significant environmental aspects.

3.4 Objectives, targets, programmes (sub-clause 4.3.3)

- 3.4.1. Objectives and targets and their supporting programmes are established and implemented to improve the environmental performance of the organisation beyond the issue of legal compliance or in areas where no legal requirements exists (e.g. energy consumption in production or product related aspects.)
- 3.4.2. Objectives and targets can, also, be an environmental policy tool for managing the environmental risk of non-compliance with legal requirements. For instance, the planning for the implementation of future legal requirements or where an isolated or sporadic non-compliance with legal requirements occurs, objectives, targets and programmes may be an appropriate way to resolve the non-compliances in a controlled and/or managed way. Nevertheless, too much reliance on general objectives to reach compliance with legal requirements is not likely to conform to the standard.
- 3.4.3. The certification body shall determine whether the objectives, targets and programmes established, implemented and maintained within the EMS take into account the current legal requirements and any changing circumstances identified in the management review (sub-clause 4.6).

3.5 Operational control (sub-clause 4.4.6)

3.5.1. Operational control is a fundamental part of the management control of the organisation's operational activities and their emissions to the environment and has a direct impact upon the achievement of legal compliance.

3.5.2. The certification body shall confirm that the organization has identified and planned its operations that are associated with the identified significant environmental aspects consistent with its environmental policy and the commitment to legal compliance.

The documented procedures should control situations where their absence could lead to a deviation from legal compliance and define the operating criteria, which is consistent with legal compliance.

3.5.3. These procedures should take into account the communication of applicable procedures and requirements to suppliers, including contractors.

3.6 Monitoring and measurement (sub-clause 4.5.1)

3.6.1 Monitoring and measurement is an important part of Operational control and the audit of this area is, therefore, important for legal compliance. The output from monitoring and measurement provides data for the evaluation of compliance (sub-clause 4.5.2.) and corrective and preventative action (sub-clause 4.5.3.).

3.6.2 Where a non-compliance with legal requirements is discovered, the organisation is required to take immediate corrective action (including root cause analysis, correction and measures to prevent recurrence), which may include actions to immediately inform the environmental regulator dependent on the specific legal requirements and magnitude of the non-compliance.

3.6.3 The certification body shall audit whether the corrective action and, if necessary, preventative action, taken is effective and timely to the nature and magnitude of the environmental impact of the non-compliance.

3.7 Evaluation of legal compliance (sub-clause 4.5.2)

3.7.1. Certification body auditors are required to audit conformity of an EMS to the requirements of ISO 14001:2004. They are not required to make a direct evaluation of legal compliance since this is the requirement for the organisation arising from this sub-clause nor is the certification body auditor required to conduct a compliance audit, which would be the role of the environmental regulator or an auditor/inspector contracted specifically for this purpose.

3.7.2. It is the organisation's responsibility, and a function of the EMS, to ensure that the organisation periodically evaluates compliance with each and every applicable legal requirement & it is aware of its compliance status. An EMS certified as meeting the requirements of ISO 14001:2004 is expected to be able to identify the organisation's compliance status.

- 3.7.3. The certification body should determine whether the organisation has established the necessary procedures and has fully evaluated its compliance with each of the applicable legal requirements. A key element of this auditing should be the competence of the persons performing the compliance evaluation with respect to the legal requirements and their application (so indirectly sub-clause 4.4.2 ISO 14001:2004 is also relevant for legal compliance).
- 3.7.4. The certification body should audit the effectiveness of the evaluation through:
- 1) sampling the organisation's determination of compliance with examples of specific legal requirements;
 - 2) looking for evidence of compliance or non-compliance during other assessment activities (on-site assessments and audit of operational controls, etc.);
 - 3) checking that the organisation's evaluation of compliance has covered all of the identified legal requirements;
 - 4) verifying the capability of the evaluation (competence of personnel involved, scope of evaluation in relation to activities of the organisation, etc.)
- 3.7.5 The conformity of the organisation's evaluation and the status of compliance may be determined from a number of sources, including on-site observations, reports of specific instances of non-compliance, reports by the environmental regulator and the items provided in the Management Review as described in Clause 4.6 of ISO 14001:2004.
- 3.7.6 The certification body may use risk management techniques in order to sample parts of the EMS during certification assessments and to target environmental aspects that have significant legal compliance implications for the organisation (e.g. areas that would attract significant fines, imprisonment of Directors and management, or that may result in stakeholder and/or communications issues).

3.8 Corrective and preventive actions where necessary (sub-clause 4.5.3)

- 3.8.1. The organization should demonstrate through its EMS that it has the ability to resolve non-compliances in a controlled and managed way.
- 3.8.2. The certification body shall determine that the organization has developed an appropriate corrective action procedure(s) and non-compliance(s) are managed through corrective and preventive actions within the EMS. In the absence of such a connection, the certification body should be concerned about the overall effectiveness of the EMS, and its ability to support the organization's environmental policy & its objectives and targets.
- 3.8.3. Corrective actions taken by the organization should be appropriate to the magnitude of the non-compliance. Where the magnitude exceeds the organisation's ability to correct the non-compliance, there should be an immediate notification to the environmental regulator of the non-compliance and agreement on the actions needed to return to compliance (e.g. action plan) and mitigate any harm to the environment.
- 3.8.4. The certification body should audit the above situation for conformity with at least clauses 4.3.2. a), b), and 4.5.2 of ISO 14001:2004. The consequences for the integrity of the certification should be analysed with regard to the level of environmental risk assumed by the certification body and the certificate's value for the interested parties.

- 3.8.5. The certification body should confirm that the organisation has a documented consent from the environmental regulator to implement an agreed corrective action plan to return to full compliance, this can be considered as conforming to the commitment to comply with the applicable legal requirements made in the organization's environmental policy.

3.9 Internal audit (sub-clause 4.5.5)

- 3.9.1. The certification body shall determine that the organisation's internal audit assess the organisation's commitment to comply with legal requirements related to its environmental aspects.
- 3.9.2. In conducting the certification body's audit of the organisation's internal audit, it is expected that it covers all of the issues identified in this document.
- 3.9.3. The certification body shall ensure that the internal audits assess the extent to which the organisation has evaluated its legal compliance status against applicable legal requirements, and that the procedure for identifying those requirements is effective and robust.
- 3.9.4. The result of the internal audit does not alone provide information with regard to the evaluation of legal compliance (sub-clause 4.5.2). The focus on the internal audit is on the conformity of the EMS and its proper implementation and maintenance.

This should be distinguished from a legal compliance audit or the evaluation of compliance that the organisation may commission separately. The results of legal compliance audits may be an input into the evaluation of legal compliance under clause 4.5.2 of ISO 14001:2004 and, in turn, to the management review.

3.10 Management review (sub-clause 4.6)

- 3.10.1. The certification body should determine whether the organisation has included the results of the evaluations of compliance (sub-clause 4.5.2) in its management reviews. This is to ensure top management are aware of the risks of potential or actual non-compliance and have taken appropriate steps to meet the organisation's commitment to legal compliance.
- 3.10.2. The certification body shall determine that the organisation's management review has reviewed any changing circumstances, including developments in legal and other requirements related to its environmental aspects.

4 COMPLIANCE CRITERIA FOR THE CERTIFICATION DECISION

- 4.1 Full legal compliance is expected by stakeholders and interested parties of an organization claiming conformity with an EMS standard. The perceived worth of accredited certification in this field is closely related to the achieved satisfaction of the interested parties in relation to legal compliance.
- 4.2 The organisation should be able to demonstrate that it has achieved compliance with environmental legal requirements through its own evaluation of compliance prior to the certification body granting certification.

- 4.3 Where the organization may not be in legal compliance, they should be able to demonstrate a documented agreement with the environmental regulator on a plan to achieve full compliance. The successful implementation of this plan should be considered as a priority within the management system.
- 4.4 Exceptionally the certification body may still grant certification but shall seek objective evidence to confirm that the EMS is capable of achieving the required compliance through the above documented agreement is fully implemented.

5. SUMMARY

- 5.1 Accredited certification of an organization's EMS indicates conformity with the requirements of ISO 14001:2004 and includes a demonstrated and effective commitment to compliance with applicable legal requirements.
- 5.2 The control of legal compliance by the organisation is an important component of the EMS assessment and remains the responsibility of the organization.
- 5.3 It should be stressed that certification body auditors are not inspectors of the environmental regulator. They should not provide “statements” or “declarations” of legal compliance. Nevertheless they can “verify the evaluation of legal compliance” in order to assess conformity with ISO 14001:2004.
- 5.4 Accredited certification of an EMS as fulfilling the requirements in ISO 14001:2004 cannot be an absolute and continuous guarantee of legal compliance but neither can any certification or legal scheme guarantee ongoing legal compliance. However, an EMS is a proven and efficient tool to achieve and maintain legal compliance and provides top management with relevant and timely information on the organisation's compliance status.
- 5.5 ISO 14001:2004 requires a public commitment to comply with legal requirements. The organisation should be able to demonstrate that it can achieve compliance with its applicable legal requirements through its own evaluation of compliance prior to the certification body granting certification.
- 5.6 Certification of an EMS as fulfilling the requirements in ISO 14001:2004 confirms that the environmental management system has been shown to be effective in achieving its policy commitments including legal compliance and provides the foundation and support for an organization's continued legal compliance.
- 5.7 In order to maintain the confidence of interested parties and stakeholders in the above attributes of the accredited certification of an EMS, the certification body shall assure that the system *demonstrates effectiveness* before granting or continuing certification.
- 5.8 The EMS can act as a tool for dialogue between the organisation and its environmental regulators and form the basis for a trusting partnership, replacing historical adversarial “them and us” relationship.

Environmental regulators and the public should have confidence in organizations with an accredited ISO 14001:2004 certificate and be able to perceive them as being able to constantly and consistently manage their legal compliance.

ANNEX I - GLOSSARY

For the purposes of this document, the following terms are used:

“EMS” is used to represent an environmental management system conforming to the requirements of ISO 14001:2004;

“certification body” means a Conformity Assessment Body (CAB) that performs conformity assessment services against ISO 14001:2004;

“accreditation” means third-party attestation related to a conformity assessment body conveying formal demonstration of its competence to carry out specific conformity assessment tasks;

“legal requirements” refer to applicable legal requirements that relate to an organization’s environmental aspects and associated impacts;

“conformity” means conformity of the organisation’s EMS with the requirements of ISO 14001:2004 or conformity of the certification body with ISO / IEC 17021:2006 ³ in relation to the International Accreditation Forum Mandatory Documents as applicable;

“compliance” means compliance by the organisation with applicable legal requirements.

ANNEX 2 - REFERENCES

- 1 ISO 14001:2004 - Environmental management systems – Requirements
- 2 *'Principles of Environmental Enforcement'* (Implementation and Enforcement of Environmental Law (IMPEL), 1992) can be found at:
<http://europa.eu.int/comm/environment/impel>
- 3 ISO / IEC 17021:2006 Conformity assessment – Requirements for bodies providing audit and certification of management systems