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**Legal Compliance
as a part of
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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 14001:2015 and that organisation's degree of compliance with applicable environmental requirements.

Authorship

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 legal 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.

Environmental regulators and the public should have confidence in organizations with an accredited ISO 14001:2015 certificate and be able to perceive them as being able to constantly and consistently manage their legal compliance.

- 1.2 With practically 20 years of experience gained since the publication of the earlier International Standard ISO 14001:1996, its replacement by ISO 14001:2004 and now ISO 14001:2015¹, the main objectives of an EMS have now been clearly stated in its scope: Consistent with the organization's environmental policy, the intended outcomes of an environmental management system include:

- enhancement of environmental performance;
- fulfilment of compliance obligations;
- achievement of environmental objectives.

With these clear outcome statements, 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 The various stages of the environmental regulatory cycle include, at least:
- Development and publication 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 Considering the various view points, and in consultation with IMPEL², the following definition for “legal compliance” is used: “Conformity with the law, in such a way that the intended outcome is realised.”
- 1.7 While certification of an EMS against the requirements of ISO 14001:2015 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 or other forms of certification or verification), it is a proven and efficient tool to achieve and maintain such legal compliance.

Accredited ISO 14001:2015 certification shall 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 its compliance obligations.

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.

- 1.8 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 other consequences/impacts include:

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

- 1.9 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.
- 1.10 This document does not seek to develop interpretations of the requirements of ISO 14001:2015 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.
- 1.11 The term “should” is used in this document to indicate recognised means of meeting the requirements of the standard. A Conformity Assessment Body (CAB) can meet these in an equivalent way provided this can be demonstrated to an Accreditation Body (AB). The term “shall” is used in this document to indicate those provisions which, reflecting the requirements of the relevant standard, are mandatory.

- 1.12 ISO 14001 defines and refers to “compliance obligations” in a general way. “Legal requirement and other requirements” is another admitted term for the same concept (ref. ISO 14001:2015, clause 3.2.9). Since the term “compliance obligations” is not limited to legal requirements alone, to emphasize the purpose of this document (the relationship of legal compliance and EMS certification), sometimes the term “legal requirements” is used.

2 THE REQUIREMENTS OF ISO 14001:2015 WITH RESPECT TO LEGAL COMPLIANCE

- 2.1 ISO 14001:2015 requires an organization to make a “commitment” in its environmental policy to fulfil its compliance obligations that relate to its environmental aspects. The organization shall establish, implement and maintain process(es) for periodically evaluating compliance with applicable legal requirements that is consistent with realising this commitment.
- 2.2 The specific clauses of ISO 14001:2015, which are most important with respect to legal compliance are the following EMS elements:
- 1) public environmental policy commitment to fulfilment of compliance obligations (clause 5.2d);
 - 2) understanding the needs and expectations of interested parties, which lead to compliance obligations (clause 4.2);
 - 3) identification and having access to applicable legal requirements and other requirements related to its environmental aspects (clause 6.1.3 a);
 - 4) how those legal requirements apply to the organisation's environmental aspects (clause 6.1.3 b);
 - 5) objectives/targets/programs (clause 6.2.1)
 - 6) how legal obligations are routinely managed and monitored (clauses 8.1 and 9.1.1);
 - 7) evaluation of legal compliance (clause 9.1.2);
 - 8) the organisation is required to reliably communicate with external stakeholders where required by its compliance obligations (clause 7.4.3)
 - 9) corrective actions where necessary (clauses 9.1.2 b and 10.2);
 - 10) internal audit (clause 9.2.2); and
 - 11) management review (clause 9.3 b, c, d, f).

3 WHAT COMPETENCE IS REQUIRED WITH RESPECT TO EMS CERTIFICATION AND COMPLIANCE OBLIGATIONS

- 3.1 Both auditors and those personnel reviewing audit reports and making certification decisions are expected to comply with the certification body competence requirements for such functions (ISO/IEC TS 17021-2⁴). The required knowledge of the compliance obligations applying to the organisation's environmental aspects shall be described by the certification body for the every technical area in which operates.
- 3.2 In particular for every EMS auditor (who is responsible for auditing the compliance obligation requirements related to ISO 14001:2015, clauses 6.1.3, 8.1 and 9.1.2), the competence criteria for the compliance obligations shall cover the knowledge and understanding of the relevant legal and other requirements sufficient to know if the organization has adequately firstly identified and secondly implemented all of its compliance obligations.

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

4.0.1 Through the certification assessment process, a certification body shall evaluate an organisation's conformity with the requirements of ISO 14001:2015 as they relate to its compliance obligations and shall not grant certification until conformity can be demonstrated, taking into account the provisions of clause 4.

After certification, the subsequent surveillance and recertification audits conducted by the certification body shall be consistent with the above audit methodology, taking into account the considerations under 4.0.4 and 4.0.5.

4.0.2 With respect to the balance between review of documents and records and the evaluation of the EMS implementation during on-site audit activities (e.g. tour of facilities, audit at work floor), the certification body shall ensure that an adequate audit of the effectiveness of the EMS is undertaken.

4.0.3 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 compliance obligations based on demonstrated implementation of the system and not rely only on planned or expected results.

4.0.4 Any organization failing to demonstrate their initial or ongoing commitment to compliance obligations through the key elements discussed below, shall not be certified or continued to be certified as meeting the requirements of ISO 14001:2015 by the certification body.

4.0.5 Deliberate or consistent non-compliance shall be considered a serious failure to support the policy commitment to achieving compliance obligations and shall 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.

4.1 A environmental policy commitment to legal compliance (clause 5.2 d)

4.1.1 The certification body shall determine if all of 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 clause 5.2 of ISO 14001:2015 and specifically:

- 3) it includes a commitment to fulfil its compliance obligations;
- 4) it includes a commitment to the protection of the environment, including prevention of pollution;
- 5) it is communicated to employees and other persons working for or on behalf of the organisation; it is available to interested parties;
- 6) it is established, implemented and maintained by top management;
- 7) that it is subject to periodic management review of its suitability, adequacy and effectiveness.

4.2 Identification of, and access to, legal requirements (clause 4.2 and 6.1.3)

- 4.2.1 The certification body shall establish that the organisation has been effective in determining the needs and expectations of interested parties, specifically those which become compliance obligations (ISO 14001:2015, clause 4.2.c). This means that the certification body has effectively confirmed that the organisation has complete knowledge of the various competent authorities that establish compliance obligations for the organisation (e.g. European Authorities, national (Ministry of Environment) and regional authorities, such as province, county or municipality).
- 4.2.2 The certification body shall determine whether the organisation has identified and has access to all the specific applicable legal requirements, related to its environmental aspects, that each of these stakeholders have established.
- 4.2.3 Additionally, the certification body shall verify that identification of these legal requirements is maintained by periodical review (ISO 14001:2015, clause 9.3.b) in order to identify new or changed requirements and to implement any changes to the EMS.
- 4.2.4 The certification body shall check whether 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.
- 4.2.5 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.

4.3 How legal requirements apply to the organisation's environmental aspects (clause 6.1.3)

- 4.3.1 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.

- 4.3.2 Considering the organisation's risks, the audit shall actually demonstrate that the legal requirements have been effectively taken into account, by:
- evaluating the verified evidence on the organisation's legal requirements, including, but not limited to documented information, records, direct observations and interviews;
 - and concluding whether the output (the organisation's monitoring and control) demonstrates that all compliance obligations (including legal requirements) are managed.
- 4.3.3 The certification body audit shall establish that the EMS is capable of fulfilling compliance obligations (i.e. 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. The certification body shall confirm (as part of its audit), that the organisation's monitoring and control mechanisms have been effectively implemented and achieve relevant insight into its performance vis-à-vis its compliance obligations.

4.4 Environmental Objectives and planning to achieve them (clause 6.2)

- 4.4.1 Environmental objectives and their planning to achieve them 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).
- 4.4.2 Environmental objectives 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, planning to achieve environmental objectives may be an appropriate way to resolve the non-compliances in a controlled and/or managed way. Nevertheless, reliance on general objectives to reach compliance with legal requirements is not likely to conform to the standard.
- 4.4.3 The certification body shall determine whether the environmental objectives and planning established, implemented and maintained within the EMS take into account the current legal requirements and any changing circumstances identified in the management review (ISO 14001:2015, clause 9.3).

4.5 Operational planning and control (clause 8.1)

- 4.5.1 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.
- 4.5.2 The certification body shall verify that the organization has identified and planned its operations that are associated with the actions to address risks and opportunities and those

associated with achieving its environmental objectives, in line with its policy commitment to fulfil its compliance obligations.

The process(es) should control situations where their absence could lead to a deviation from legal compliance and define the operating criteria, which are consistent with legal compliance.

- 4.5.3 The certification body shall verify that appropriate documented information is maintained to demonstrate that the processes have been carried out as planned.
- 4.5.4 These processes should take into account the communication of applicable requirements to suppliers, including contractors.

4.6 Monitoring, measurement, analysis and evaluation - general (clause 9.1.1)

- 4.6.1 Monitoring and measurement should provide the organisation with the insight required to evaluate compliance obligations 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 (clause 9.1.2) and corrective action (clause 10.2).
- 4.6.2 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.
- 4.6.3 The certification body shall audit whether the corrective action and, if necessary, prevent recurrence, taken is effective and timely to the nature and magnitude of the environmental impact of the non-compliance.

4.7 Evaluation of legal compliance (clause 9.1.2)

- 4.7.1 Certification body auditors are required to audit conformity of an EMS to the requirements of ISO 14001:2015. They are not required to make a direct evaluation of legal compliance since this is the requirement for the organisation arising from this 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.
- 4.7.2 It is the organisation's responsibility, and a function of the EMS, to ensure that the organisation periodically evaluates compliance with all of its compliance obligations, has documented this evaluation and that it is aware of its compliance status. An EMS certified as meeting the requirements of ISO 14001:2015 is expected to be able to identify the organisation's compliance status.
- 4.7.3 The certification body shall determine whether the organisation has established the necessary process(es), whether it has fully evaluated its compliance with each of the applicable legal requirements and whether it has appropriately documented the results of this evaluation. 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 clause 7.2 ISO 14001:2015 is also relevant for legal compliance).

- 4.7.4 The certification body should audit the effectiveness of the evaluation through:
- 1) checking 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 organisation's evaluation (competence of personnel involved, scope of evaluation in relation to activities of the organisation, etc.).
- 4.7.5 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 9.3 of ISO 14001:2015. It is unlikely that any of these sources on its own provide sufficiently objective evidence, but a combination of these (e.g. cross-checking information between these sources) may provide the required assurance.
- 4.7.6 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).

4.8 Nonconformity and corrective action (clause 10.2)

- 4.8.1 The organization should demonstrate through its EMS that it has the ability to resolve non-compliances in a controlled and managed way.
- 4.8.2 The certification body shall determine that the organization has appropriately managed corrective action(s) and non-compliance(s) within the EMS. In the absence of this, 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.
- 4.8.3 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.
- 4.8.4 The certification body shall audit the above situation for conformity with at least clauses 6.1.3 and 9.1.2 of ISO 14001:2015. The consequences for the integrity of the certification shall be analysed with regard to the level of environmental risk assumed by the certification body and the certificate's value for the interested parties.
- 4.8.5 Where noncompliance exists during the period of validity of the certificate, the certification body shall ensure that the organisation's corrective actions are sufficient to still meet the

expectations of the stakeholders. This could for instance be achieved by a confirmation that the organisation has a documented consent from the competent authority to implement an agreed corrective action plan to return to full compliance; this can be considered as conforming to the commitment to comply with its compliance obligations made in the organization's environmental policy. For deliberate or consistent noncompliance, please refer to 4.0.5.

4.9 Internal audit (clause 9.2)

- 4.9.1 The certification body shall determine that the organisation's internal audit assesses the organisation's commitment to fulfil the compliance obligations related to its environmental aspects.
- 4.9.2 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.
- 4.9.3 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 process or processes for identifying those requirements are effective and robust.
- 4.9.4 The result of the internal audit does not alone provide information with regard to the evaluation of legal compliance (clause 9.1.2). 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 9.1.2 of ISO 14001:2015 and, in turn, to the management review.

4.10 Management review (clause 9.3)

- 4.10.1 The certification body shall determine whether the organisation has included the results of the evaluations of compliance (clause 9.1.2) 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 fulfil compliance obligations.
- 4.10.2 The certification body shall determine that the organisation's management review has reviewed any changing circumstances, including changes in the needs and expectations of interested parties, including compliance obligations.

5 COMPLIANCE CRITERIA FOR THE CERTIFICATION DECISION

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 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 having been fully implemented.
- 5.5 Through the requirements of ISO/IEC 17021-1, clause 9.4.8.3 a) and the intended outcomes being explicitly stated in ISO 14001:2015, the certification body shall ensure that its audit reports contain a statement on the conformity and the effectiveness of the organization's EMS together with a summary of the evidence with regards to the capability of the EMS to meet its compliance obligations.

6. SUMMARY

- 6.1 Accredited certification of an organization's EMS indicates conformity with the requirements of ISO 14001:2015 and includes a demonstrated and effective commitment to fulfil its compliance obligations.
- 6.2 The control of legal compliance by the organisation is an important component of the EMS assessment and remains the responsibility of the organization.
- 6.3 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 shall "verify the evaluation of legal compliance" in order to assess conformity with ISO 14001:2015.
- 6.4 Accredited certification of an EMS as fulfilling the requirements in ISO 14001:2015 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.
- 6.5 ISO 14001:2015 requires a commitment to comply with its compliance obligations. The organisation should be able to demonstrate that it can fulfil its compliance obligations through its own evaluation of compliance prior to the certification body granting certification.
- 6.6 Certification of an EMS as fulfilling the requirements in ISO 14001:2015 confirms that the environmental management system has been shown to be effective in achieving its policy

commitments including fulfilment of compliance obligations and provides the foundation and support for an organization's continued legal compliance.

- 6.7 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 *has demonstrated effectiveness* before granting, maintaining or renewing certification.
- 6.8 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 the historical adversarial “them and us” relationship.

Environmental regulators and the public should have confidence in organizations with an accredited ISO 14001:2015 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 14001:2015;

“**certification body**” means a Conformity Assessment Body (CAB) that performs conformity assessment services against ISO 14001:2015;

“**accreditation**” means third-party attestation related to a conformity assessment body conveying formal demonstration of its competence to carry out specific conformity assessment tasks, in this case the attestation that the certification body conforms to the requirements of ISO/IEC 17021-1;

“**legal requirements**” refer to applicable legal requirements that relate to an organization’s environmental aspects and associated impacts; See also ISO 14001:2015, 3.2.9. “Compliance obligations” as a term that comprises the legal requirements.

“**conformity**” means conformity of the organisation’s EMS with the requirements of ISO 14001:2015 or conformity of the certification body with ISO/IEC 17021-1³: in relation to the International Accreditation Forum Mandatory Documents as applicable.

ANNEX 2 - REFERENCES

- 1 ISO 14001:2015 - Environmental management systems – Requirements
- 2 Information on IMPEL (European Union Network for the Implementation and Enforcement of Environmental Law) may be found at www.impel.eu
- 3 ISO / IEC 17021-1 Conformity assessment – Requirements for bodies providing audit and certification of management systems
- 4 ISO/IEC 17021-2 Conformity assessment - Requirements for bodies providing audit and certification of management systems - Part 2: Competence requirements for auditing and certification of environmental management systems