

The influence of the ecomanagement scheme EMAS on managing legal compliance in organizations – Differences with ISO 14001:2004 (by Matthias Friebe, VNU, D)

Experience from a new approach

Getting cleaner air, soil and water in Europe was the consequence of more and more Environmental Regulations since the early 70's.

Since then, irrespective of the existence of modern EMS-certificates, compliance with Environmental Regulations is a “must” in every European nation from the legal point of view and its observance is generally expected by interested parties and stakeholders (regulators, shareholders, administration, **clients**, workers, etc)..

As international competition becomes tougher, and with higher standards expected by the customers and the general public, the „ecological quality“ of european and national economies are a vital factor in future success.

Every day we understand better that the clean air, soil and water standards which legislators and public institutions since decades have sought to encourage in the interests of a healthy environment have primarily been achieved thanks to “end-of-pipe” technologies. A regulatory and technical strategy of the eighties. This has generated costly environment protection measures in the past such as sewage units and effluent treatment within manufacturing plant,

expensive flue gas detoxication, and complicated systems of waste disposal. This costly behavior fitted into a world end of the century with ever growing markets. Under management situations in organizations of that time without up to date environmental management systems, solving problems of an environmental nature can/could be delegated to a “specialist”. Management itself was excluded from the quest to come up with precautionary, sustainable, intelligent, economic, integrated solutions to these problems, having neither the brief nor the training to become involved. As a result, environmental aspects have been tacked onto the agenda once the planning and production process has been dealt with, leaving barely any potential for ongoing improvement, and subordinating prevention to cure (for example, in the form of waste disposal and reduction strategies).

Today, however, **we know by 30 years of experience** that repairing the damage **after the event**, is a passive form of environment protection which **costs too much money and resources**, since it is only able to take effect indirectly or after the production process has run its course (by means of rehabilitation).

Since 10 years one key instrument for companies seeking systematically to improve environment protection in a market economy context are the Environmental Management Standards ISO 14001:1996 (now 14001:2004) and the European Community European Eco Management and Auditing System, EMAS.

In the future customers, society, owners and investors will demand the existence of those eco-management systems. Why? An **Environmental Management System** (EMS) is the most cost conscious problem identification and problem solving tool that provides organizations with a method to systematically identify and manage their environmental activities and helps to achieve their environmental obligations, performance goals and procurement cost for resources used. The EMS provides a systematic way of addressing and managing immediate and long-term impacts of an organization's products, services and processes on the environment and gives order and consistency to address environmental concerns through the allocation of resources, assignment of responsibility and ongoing evaluation of practices, procedures and processes.

The EU Eco-Management and Audit Scheme (**EMAS**) is the EU-management tool for companies and other organizations to evaluate, report and improve their environmental performance. The scheme has been available for participation by companies since 1995 (Council Regulation (EEC) No 1836/93 of 29 June 1993) and since 2001 EMAS (Regulation (EC) No 761/2001) was strengthened by the integration of EN/ISO 14001 as the environmental management system required by EMAS; by adopting an attractive EMAS logo to signal EMAS registration to the outside world; and by considering more strongly **indirect effects** such as those related to services or administrative and planning decisions. Participation is voluntary. An increasing number of new member countries are also implementing the scheme following their accession to the EU.

The influence of EMAS on managing legal compliance in organizations.

EMAS is most respected with its impact on managing **Legal Compliance**. Why?

With today's experience we can say that two main strings have to be followed up within any organization using environmental management: String No. 1 is the **assessment and continual improvement of the environmental performance of all organizational processes** that have to be addressed which would **not** be experienced by "normal" establishments, i.e. those which do not seek to apply environment standards.

String No. 2 still to follow is the problem of managing and **ensuring legal compliance in organizations**.

EMAS **expects the "top management"** of a company or organization to be fully integrated into the eco-management system. The various internal and external procedures designed to verify the system also make a point of examining the extent to which **management "understands", "lives", supports and monitors the system**. The environmental management scheme must ensure that defined requirements are fulfilled in all spheres of company activity. In other words, it is part and parcel of the overall corporate management system, and cannot simply tag along under its own steam. The efficiency of the scheme is monitored by means of a periodic, systematic, documented, objective review to establish the impact of company activity on the environment.

So **managing and ensuring legal compliance in organizations is not only a task for specialised experts but for all management.**

The greatest effectiveness and economic benefit will be derived from the scheme if management ensures that environmental effects are taken into account right from the development stage of products or services.

This means that there must be an interplay within the company of knowledge and skills in the fields of operations, technology, management, law and ecology.

Remember: an EMS is a cost conscious problem identification and problem solving tool. This tool can also be used for avoiding costly solutions to meet legal compliance or costly risks and mistakes in not meeting the Regulatory Standards.

EMAS does **require actual compliance with the law** as a pre-requisite to validation. So it is one of the rewarding tasks of top-management to find less costly but legal way's through a jungle of thousands of environmental laws to improve products, production, services and processes by environmental conscious planning. The less laws are touched, the better is the result for economy and environment.

Additionally one of the main stages to receive **EMAS-registration** an organization must conduct an internal **environmental review** considering all environmental aspects of the organization's activities, products and services, methods to assess these, **its legal and regulatory framework** and existing environmental manage-

ment practices and procedures. This internal review is a typical internal controlling and risk management tool.

The **environmental review**, the EMS, audit procedure and the environmental statement for the public must be approved by an accredited EMAS verifier and the **validated statement** needs to be sent to the EMAS Competent Body for registration and made publicly available before an organization can use the EMAS logo.

These and many more minor effects lead to top management results for the global competition situation of tomorrows world.

Differences of EMAS with ISO 14001:2004 concerning the compliance with regulatory requirements.

ISO 14001:2004, the global management standard covers many of the points mentioned above, however, not explicit enough. With EMAS internal auditors/managers of the organisations as well as the external verifier have to make **a comprehensive evaluation of compliance, like a regulatory auditor**, to determine the organization's compliance with regulatory requirements. Therefore, it remains the responsibility of the EMAS Environmental Verifier (an accredited environmental auditor) to check, i.e. through an on site assessment whether the organisation is in full regular compliance.

Without compliance with the law validation and registration cannot be granted. In difficult or doubtful cases the organizations have to demonstrate a written acceptance of the situation by the regulators.

Otherwise the verifier can not sign the environmental statement. He would risk his accreditation.

The philosophy of ISO 14001 is different: ISO 14001 requires only a public management commitment to comply with legal requirements. It does not require actual compliance with the law as a pre-requisite to certification, or for maintaining certification. Consistently with this commitment the organization shall establish, implement and maintain a procedure(s) for periodically evaluating compliance with applicable legal requirements.

Certification confirms **(only)** that there is an effective environmental management system established that provides an ongoing foundation and support for an organization's legal compliance.

ISO 14001-auditors assess conformance of an EMS to the requirements of a standard, not to the requirements of law. They do **not make a comprehensive evaluation of compliance, like a regulatory auditor**, to determine the organization's compliance with regulatory requirements.

The ISO-approach is more indirect. The auditor should determine whether the organization has established the necessary procedures and has fully evaluated its compliance with each of the applicable regulatory requirements. Part of this determination should consider that persons performing the compliance evaluation have appropriate knowledge of the legal requirements and their application.

In an organization, using only ISO 14001:2004 as its eco-management system objectives, targets and programs would normally be

the appropriate way to resolve identified non-compliances in a controlled and/or managed way.

In a case where the organization is not in full compliance with regulatory requirements (excluding minor, transitory deviations), in order to be considered in conformance with the standard, the objective of achieving compliance supported by appropriate targets and programs should have been established.

The assessors should determine that the organization has developed an appropriate corrective action procedure(s) and that regulatory non-compliances find expression in the corrective and preventative actions within the EMS. In the absence of such a connection, the assessors should be concerned about the overall effectiveness of the EMS, and its ability to support the organization's environmental policy, objectives and targets.

If a non-compliance situation is more than a minor temporary deviation, then objectives, targets and programs should have been established. In any case the EMS should demonstrate the ability to resolve non-compliances in a controlled and/or managed way.

With these and many more instruments ISO 14001:2004 is a very valuable management system to achieve Legal Compliance. **However, it is not as strict and as credible as EMAS.**

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Benefits of EMAS

Environmental concerns, growing public pressure and regulatory measures are changing the way people do business around the world. Consumers and shareholders are increasingly demanding environmentally-friendly products and services that are delivered by socially responsible companies. It is becoming increasingly important for organizations to demonstrate that not only their philosophies but also their investment strategies and day-to-day operations are sustainable.

- quality environmental management due to the use of a highly developed scheme
- contribution to environmental risk management of the organization
- resource savings and lower costs according to the organization's needs
- reduction of financial burdens due to reactive management strategies such as remediation, cleanups and paying penalties for breach of legislation
- financial benefits through better control of operations
- incentive to eco-innovate production processes while environmental impacts are rising world-wide
- compliance check with environmental legislation by EMAS verifier
- learn from good examples of other companies and organizations
- new business opportunities in markets where green production processes are important
- added credibility and confidence with public authorities, other businesses and customers / citizens
- improved relations with the local community
- improved quality of workplaces, employee morale and incentive to team building
- marketplace advantage and improved company image by improving stakeholder relations

The requirements of ISO 14001:2004 with respect to legal compliance

- 2.1 ISO 14001:2004 requires an organization to make a “commitment” to comply with applicable legal requirements that relate to its environmental aspects. **And Consistently with this commitment the organization shall establish, implement and maintain a procedure(s) for periodically evaluating compliance with applicable legal requirements.**
- 2.2 The specific clauses of ISO 14001:2004 most important with respect to legal compliance are the following:
- a) public commitment to comply with applicable legal requirements (subclause 4.2);
 - b) identification and having access to applicable legal requirements and other requirements related to its environmental aspects (subclause 4.3.2 a);
 - c) how those legal requirements apply to the organization's environmental aspects (4.3.2 b);
 - d) objectives/targets/programs (subclause 4.3.3)
 - e) how legal obligations are routinely managed and monitored (4.4.6 and 4.5.1);
 - f) evaluation of legal compliance (subclause 4.5.2);
 - g) corrective and preventive actions where necessary (subclause 4.5.3);
 - h) internal audit (subclause 4.5.5); and
 - i) top management review (subclause 4.6).