



European Union Network for the Implementation
and Enforcement of Environmental Law

***Interim report: Working Together public and private
supervisor assessing Environmental management
systems/compliance management systems***

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1. Introduction

In an earlier IMPEL project (2011, 2013-2014) about compliance assurance through company compliance management systems, we found out under which conditions environmental management systems (EMS) like EMAS can lead to a better compliance record and to better environmental performance. In 2014 a guidance document for CMS supervision was delivered. This guidance is a practical digital tool / flow chart for the supervisor and the inspection authority to help them decide when and how CMS supervision can be applied. Background information for working with this tool and the outcome of the total project is laid down in the Report Compliance assurance through Company Compliance/ Environmental Management Systems (CMS).

In the report the discussion is summarized about the critical control mechanisms in the accreditation structure so a public supervisor can rely on the assessment of EMS/CMS by third parties. An important outcome of the discussion 2013-2014 is the advice to start a dialogue between the private and the public supervisors about the assessment of EMS /CMS. This means a discussion between partners on the one hand related to the European Accreditation Association and the Association of industries like the chemical industry, CEFIC. And the other hand the public supervisors who work together within IMPEL. Also it is important that the European Commission, DG Environment is involved in this dialogue; especially in relation to the EMAS review.

As the recourses of private parties involved in certification and public supervisors differ significantly, starting a dialogue was not expected to be like pushing a button. We choose to spend time and effort to explore each other's views and considerations thoroughly before attempting to make further steps.

2. Objective

The objective of this project was to explore how public supervisors and private parties involved in certification / accreditation can co-operate to improve EMS CMS supervision.

3. Activities

3.1 Management

The project is divided over two years (2015-2016). The project part 2015 ran within the budget and milestones were achieved. During the project the Expert group was informed about the progress and a project abstract was delivered.

3.2 Position paper

Following a meeting of the core team (Den Bosch, The Netherlands, June 2015) a position paper was drafted in preparation of the workshop, later in 2015. This position paper was meant to articulate the notion of the potential co-operation between private and public parties regarding certification. The position paper was sent as an annex to the invitation for the workshop (Annex I).

3.3 Workshop

In an international two-days workshop in Brussels on October 27 & 28, 2015, 24 representatives (Annex II) from different stakeholders and member states discussed the subject. The agenda of the workshop is in Annex III. All participants first contributed to the field of views and considerations by a Socratic dialogue.

During this session, short presentations were given by all present and everyone was given the opportunity to ask questions about the presentations of others. This resulted in a collection of themes to be addressed later on.

During the second part of the workshop, a presentation was given about the iDepend modelling tool. This tool was presented as a means to create a model for the use of certification of environmental management systems in public supervision. Participants were divided into three groups and asked to give input on specific issues regarding the core subject.

The last part of the workshop consisted of the formulation of an end statement (Annex IV). This end statement marks the principles, conditions and points to address in the further development of a model for using EMSs in public supervision.

3.4 Use of iDepend modelling tool

In a meeting on December 14 a small working group¹ further developed the model using iDepend. The resulting model is built in two main components:

1. Companies being willing and competent to use an EMS-CMS approach
2. Regulators/supervisors being willing and competent to use an EMS-CMS approach.

The dependencies for these components are essentially the same, reflecting the fact that all of the parts of the framework are interconnected. Annex V shows a simplified and integrated EMS-CMS model. The remodelling has brought out six critical factors which are (see Annex VI) :

1. Communication channels exist and are used
2. Data and information on compliance is generated by EMS-CMS
3. Staff (regulator and company) are competent and trained to use EMS-CMS
4. Accreditation is effective in assuring impartial and consistent external audits
5. Internal and external audit teams are environmentally and legally competent
6. Rules, standards and guidance set out how to comply using EMS/CMS

In the following figure, the main stakeholders are shown.

¹ Consisting of Duncan Giddens, Han de Haas, Paul Meerman & Martin de Bree



4. Conclusion

- I. The project shows promising perspective of a closer cooperation between public supervisors and private parties involved in certification / accreditation to improve EMS CMS supervision.
- II. The workshop has resulted in a joint end statement which paves the way for a common goal and practical steps to an effective way of cooperation.
- III. The modelling shows which factors are essential to shape more intense cooperation.
- IV. Both the joint discussion in Brussels and the modelling thus offer beneficial conditions for further development.

Position Paper

Certification and Compliance Management System Supervision

Introduction

New ways of public supervision are needed to enable regulators to cope with the growing dynamics and complexity of society and businesses and their potential impact on environment. IMPEL aims at developing such innovative approaches by carrying out projects and design new generation environmental supervision and enforcement tools. One of the areas in which IMPEL has been active is the potential for compliance assurance by regulated companies by means of compliance management systems (CMS). More information can be found at:

<http://impel.eu/projects/compliance-assurance-through-company-compliance-management-systems-phase-2/> .

These systems are supposed to assure regulatory compliance, not only on paper, but in the real world as well. For this purpose a guidance has been issued enabling public supervisors to (a) determine the feasibility of this approach in a certain business-supervision setting and (b) how to actually formulate and implement a supervision strategy based on the CMS rather than compliance alone. One of the challenges is how public supervisors can assess the quality of the CMS of a regulated company. One of the possibilities to be considered is that private (certification) auditing of management systems could contribute to the assessment of CMSs.

Goal

Our goal is to bring together the main stakeholders to find out if there is support to optimise synergy between private certification and CMS supervision and how this may be realised. The way we want to do this is by organising a workshop October 27th and 28th 2015 for which we will invite certified companies, accreditation bodies, public supervisors and other stakeholders. A possible outcome of this workshop is a decision to jointly develop a model for best use of certificates in public supervision.

Problem definition

We have observed that the interaction between accreditation and certifying bodies (ABs and CBs) on one side, and public supervisors on the other, is often far from ideal. It seems a clash between two different paradigms. Public supervisors find it difficult to understand why certified companies sometimes do not comply with the law. Whilst ABs and CBs emphasize that assessing the

management system does not imply a 100% guarantee for compliance, something public supervision by the way has also problems in realizing.

The consequence is that private certifiers and public supervisors are doing double work by accumulating inspections and audits. This causes a serious burden for regulated companies, with little room for the company's own potential to be in control. Presumably the root problem can be understood as a lack of constructive dialogue between private parties involved in certification and public supervisors, stemming from miscomprehension of each others way of reasoning.

Potential benefits

Obviously, if management system certificates and registrations like ISO 14001 and EMAS are recognised by public supervisors this would increase the value of these certificates. Especially so, when supervisors follow the suggestions done by the IMPEL guidance² mentioned earlier to adjust their inspection and enforcement policy for companies with effective CMSs. Both ABs, CBs and certified and registered companies could benefit from this added value.

If certificates would reliably reflect the effectiveness of management systems in terms of risk control and compliance assurance this would clearly support the goal of public supervisors. Public supervisors could then make use of the third party assessment and reduce their inspection efforts accordingly, reallocating their resources on the areas where these are most needed.

Issues to address

Apart from the benefits all parties involved could enjoy there are several issues to solve of which we mention two in particular.

First of all, a well recognised danger of management systems (MSs) is the potential gap between the system on paper and how the system is implemented and used in daily practice. Certification should effectively distinguish well from poorly implemented systems if it is supposed to be relied upon by public supervisors. This means that the MS should effectively minimise risks and breaches and demonstrate sufficient self-correction and learning. The CBs should only certify or register companies with such well implemented systems. Balancing the unbiased critical attitude of CBs needed for this with the commercial goals of private CBs is one of the major issues to be discussed.

Second, public supervisors should understand CMS supervision and accept its implications. This means that supervisors are able to give feedback on a management system level rather than only on the level of individual breaches and incidents. Furthermore, it implies that supervisors should postpone interventions if there is a breach and the CMS demonstrates self-correction and accelerated intervention if there is no breach but poor risk control. Developing this targeted approach whilst maintaining a fair, level playing field is one of the challenges faced.

Possible solutions

We think that we should make a journey together with you (our colleagues from the accreditation and certifying bodies and companies with a certified CMS / EMS) and start a constructive dialogue about how to join forces. We believe that certification and public supervision are no mutual exclusive

² IMPEL Guidance CMS Supervision: <http://impel.eu/wp-content/uploads/2014/04/FR-2014-16-2013-15-CMS-Supervision-Guidance-Document.pdf>

alternatives but should be complementary so they could strengthen each other in a way that makes life easier for all parties who are prepared to take responsibility. An open, self-critical attitude is essential to depart.

Coreteam IMPEL project Working together; public and private supervisor assessing EMS /CMS

Den Bosch, Netherlands

July 2, 2015

Annex II Participants of the Workshop on October 27 & 28, 2015

1	Han de Haas	Provincie Noord Brabant	NLD
2	Paul Meerman	OMWB	NLD
3	Martin de Bree	Next Step Management	NLD
4	Duncan Giddens	EPA UK	UK
5	Theresa Steyrer	Arqum GmbH	GERMANY
6	Martin Baxter	IEMA	UK
7	Janet Gascoigne	UKAS	UK
8	Nigel Carter	ISO	UK
9	Rick Gould	EA MCERTS	UK
10	Mark Modlich	Dau GmbH	GERMANY
11	Berith Nielsen	Danish EPA	DENMARK
12	Lennart Schleicher	Schaeffler AG	GERMANY
13	Lina Segrell	Swedish EPA	SWEDEN
14	Elisabeth Leu	Swedish Board for Accreditation and Conformity Assessment	SWEDEN
15	Anne Gaëlle Collot	Chemicals Industries Association - CIA	UK
16	Albert de Haas	Sabic Bergen op Zoom	NLD
17	Susan Hunter	Scottish EPA	SCOTLAND
18	Bibiana da Silva	Igamaot, Portugal	PORTUGAL
19	Lydia Putseys	OVAM	BELGIUM
20	Anne van Riet	LNE	BELGIUM
21	Charlotte Stewart	EPA, Northern Ireland	NORTHERN IRELAND
22	Jan Van Hoeymissen	LNE	BELGIUM
23	Aleksandra Skąpska-Piekarczyk	Chief Inspectorate for Environmental Protection	POLAND
24	Sebastian Paquet	EU Commission	FRANCE

Annex III Agenda Brussels Workshop October 27 & 28, 2015



Provincie Noord-Brabant



IMPEL WORKSHOP

Working together; public and private supervisor assessing EMS /CMS
October 27th and October 28th 2015, Brussels, Belgium

Day 1: October 27th 2015

Location:

Huis van de Nederlandse Provincies

Trierstraat 59-61

1040 Brussels, BELGIUM

<http://www.nl-prov.eu>

0. Walk in	12.30 hrs
1. Welcome at the Huis der Provincies (Home of the Dutch Provincies) A word of welcome by Ms. Lieke van Alphen, Province of Noord-Brabant Tour du table IMPEL, Project history – goals and follow up Program day 1 Signing attendee list.	13.00 hrs
2. Working together: vision & thoughts – part I - A Socratic Dialogue; Explanation and coordination by Mr. Han de Haas	13.45 hrs
Tea, coffeebreak	15.15 hrs
3. Working together: vision & thoughts – part II Questions and Answers	15.30 hrs
4. Working together: vision & thoughts – Part III Group discussion	17.15 hrs
5. Closing Statement	17.30 hrs
6. i-Depend – an introduction of the tool	17.40 hrs
7. Closure day 1	18.10 hrs



IMPEL WORKSHOP

Working together; public and private supervisor assessing EMS /CMS
October 27th and October 28th 2015, Brussels, Belgium

Day 2: October 28th 2015

Location:

Huis van de Nederlandse Provincies
Trierstraat 59-61
1040 Brussels, BELGIUM
<http://www.nl-prov.eu>

0. Walk in: coffee and/or tea	09.00 hrs
1. Welcome, goodmorning Program day 2 Signing attendee list	09.15 hrs
2. Looking back on day 1	09.20 hrs
3. i-Depend part I: demonstration	09.30 hrs
Tea, coffeekbreak	10.30 hrs
4. i-depend part II: in groups	10.45 hrs
short break	11.15 hrs
5. i-Depend part III: plenary report	11.25 hrs
6. i-Depend part IV: feedback, what have we collected	12.10 hrs
7. Closing Workshop	12.30 hrs
8. Closure day 2	12.45 hrs

Annexes:

- ToR *Working together, public and private supervisor assessing EMS/CMS;*
- Position Paper*

Annex IV End statement Brussels Workshop

October 27 & 28, 2015

We agree that:

There are opportunities if public supervisors would acknowledge and constructively use accredited ISO 14001 certification and EMAS registration

In order to achieve this, a constructive dialogue between public and private stakeholders should be initiated and maintained to join forces

An open and self-critical attitude is essential to make this dialogue work

Public supervisors should understand that accredited certification is not a guarantee for 100% compliance but that it should reflect effective compliance assurance

Public supervisors should be willing to exchange information about the effectiveness of accredited certification from a professional comprehension of management systems

The certification process should effectively scrutinize and disclose the degree of consistency between the documentation and the implementation of a management system with regard to compliance assurance

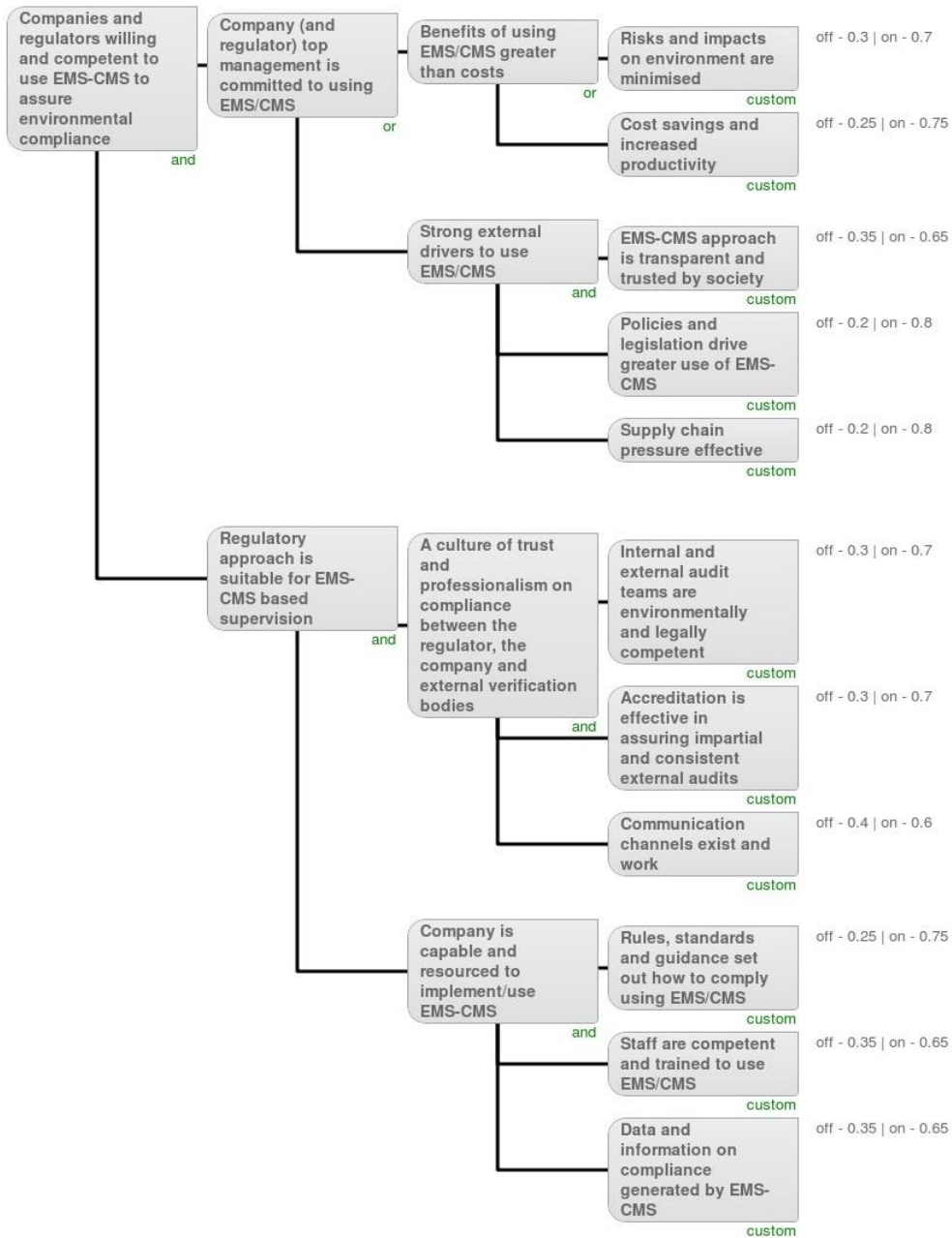
We shall take practical steps to initiate this constructive dialogue in a follow up project being:

- give our input with regard to updating the EA-7/04
- use of a practical tool like iDepend as a modelling tool to (further) develop a framework for arranging alignment between public and private parties,
- plan two meetings in 2016 to achieve this,
- define the stakeholders and
- invite certification bodies and other stakeholders for these meetings and
- collect good examples and analyse these examples

Intended results are:

- a joint practical guidance for using the model and
- promotion of the implementation within your stakeholder community

Annex V Simplified and integrated EMS-CMS model



Annex VI Critical dependencies

