

Compliance assurance through company compliance management systems

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1. Introduction

Companies develop in their day to day important work, technical and scientific, being underused by the authorities. This work, supported in a trust relationship, could contribute significantly to the optimization of the resources involved in the process control of legal compliance of activities with environmental impacts, particularly by reducing the inspective charge either by the number of physical inspections whether the intensity of each inspective action, still promoting the overall improvement of the environmental performance of industrial organizations beyond mere legal compliance.

Although certain regulated companies need a deterrent approach, most are willing to comply with public regulations. Some of them, especially the bigger regulated organizations, so called top companies, are responsive to new forms of regulation. For these companies, a traditional command and control approach is not very effective because it does not recognise the company's own capabilities and may undermine the intrinsic motivation, so assessing the way they organise compliance rather than just measure compliance becomes more effective.

2. Development of a supervision model based on the system (SBS) of compliance management (CMS)

In carrying out their daily activity, companies produce an important technical and scientific work resulting of the internal processes for monitoring and environmental control. This work can be used by the authorities in verifying the environmental legal compliance of those companies.

Traditionally, the control system of the legal compliance of activities with environmental impact focuses on the verification results produced (outputs) by

comparison with reference standards adopted (fig. 1), usually environmental quality standards and emission limit values (ELV). If nonconformity is observed, it is promoted to fix and adjust the compliance with the applicable standards without necessarily proceeding to the exam of the causes, or internal control system applied.

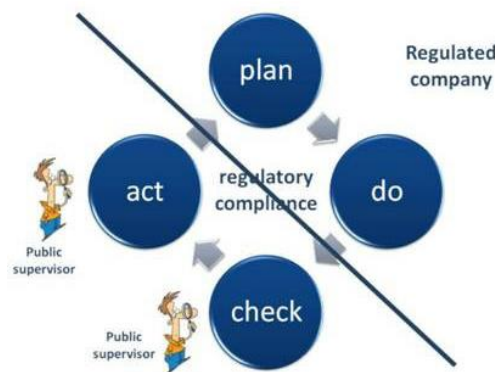


Figure 1: Traditional verification on outputs.

The voluntary use by companies of a set of processes in an integrated manner, designed to ensure their legal compliance in environmental matters - Compliance Management System (CMS) - independent or integrated on standardized management systems, as are EMAS Regulation and ISO 14001, will allow the official authorities adjust their activity to a supervisory level based on the compliance management system (CMS), here called system based supervision (SBS).

SBS is designed to stimulate companies to improve their internal processes in such a way that they assure compliance. This means that companies should organise to assure compliance, check their compliance, identify and correct violations themselves and learn from it. By applying CMS supervision the focus of the public supervisors shifts from compliance to compliance assurance. However, CMS supervision is not effective for every company. Only those companies which are willing and able to implement an effective CMS should be given access to CMS supervision.

In the model SBS, the official control process is carried out through the evaluation and classification of CMS in progress in the company (fig. 2), founded in a set of performance indicators, in particular internal control processes, policies and strategies formally adopted in order to achieve compliance, but also the organizational structure, training and technical skills, resource management, among others. By assessing the CMS as a public supervisor we can:

- i. find out to what degree the company is assuring compliance, and
- ii. stimulate the company to improve its performance through compliance assurance and improve the understanding between government and companies.

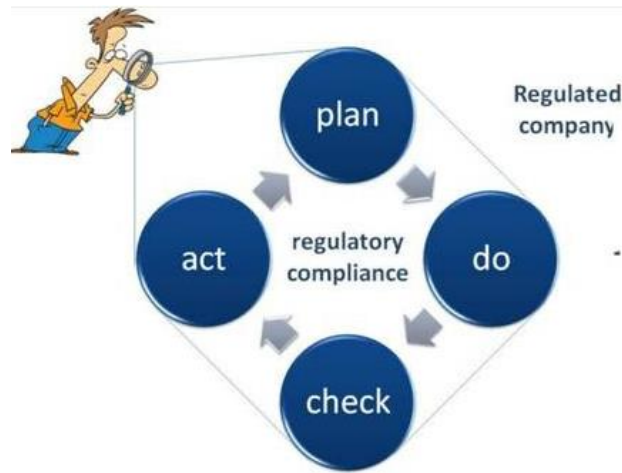


Figure 2: System based supervision.

This paradigm shift will contribute with benefits of efficiency and effectiveness for the activity of official control, by reducing costs and by reducing the number of physical inspections, either by reducing the intensity to accomplish each inspective action. On the other hand, when transferring to businesses the responsibilities of monitoring and control of their own compliance, companies' responsible self-regulation and continuous improvement of environmental performance is promoted, beyond the mere legislative compliance, and penalties are only given if the company fails to correct violations and learn from it, preventing reoccurring. The model is based on four fundamental pillars: compliance, commitment, confidence and communication (fig. 3).

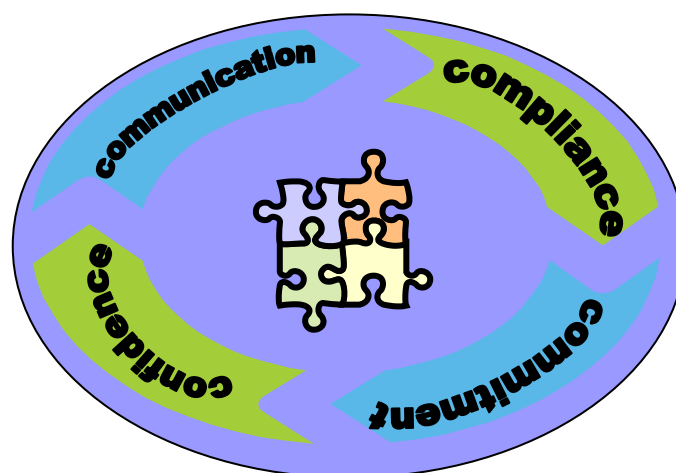


Figure 3: Four pillars of SBS model.

In this propose, CMS is the part of a management system that is aimed at assuring that an organisation can fulfil all tasks required to achieve compliance. Are key requirements of CMS:

- i) top management commitment,
- ii) identification and registration system of requirements,
- iii) definition of skills, knowledge and experience,
- iv) evaluation model and risk management,
- v) self-correcting system and learning,
- vi) continuous improvement process (PDCA).

The main operating mechanism of CMS supervision is to evoke double loop learning. CMS supervision is meant to structurally improve compliance by improving compliance assurance by the regulated company using a compliance management system (fig. 4).

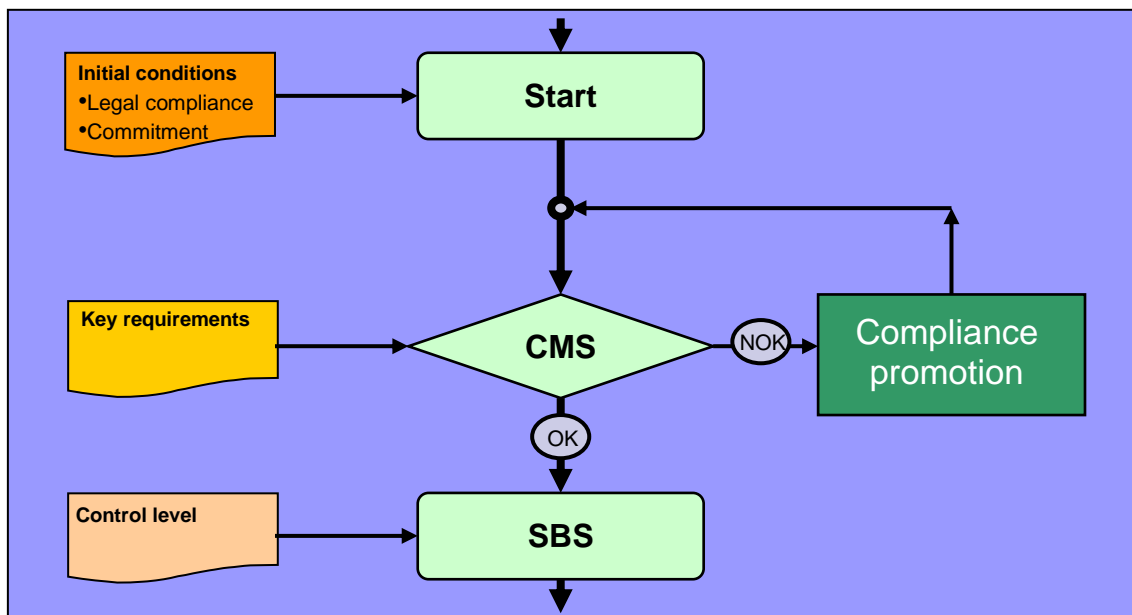


Figure 4: Decision tree on CMS supervision.

The degree of risk associated to the legal compliance assurance demonstrated by the company, through the CMS verification and evaluation, translates to a measure of confidence. Based on the degree of confidence, the authorities may respectively suit their control level to the company's environmental compliance performance (fig 5).

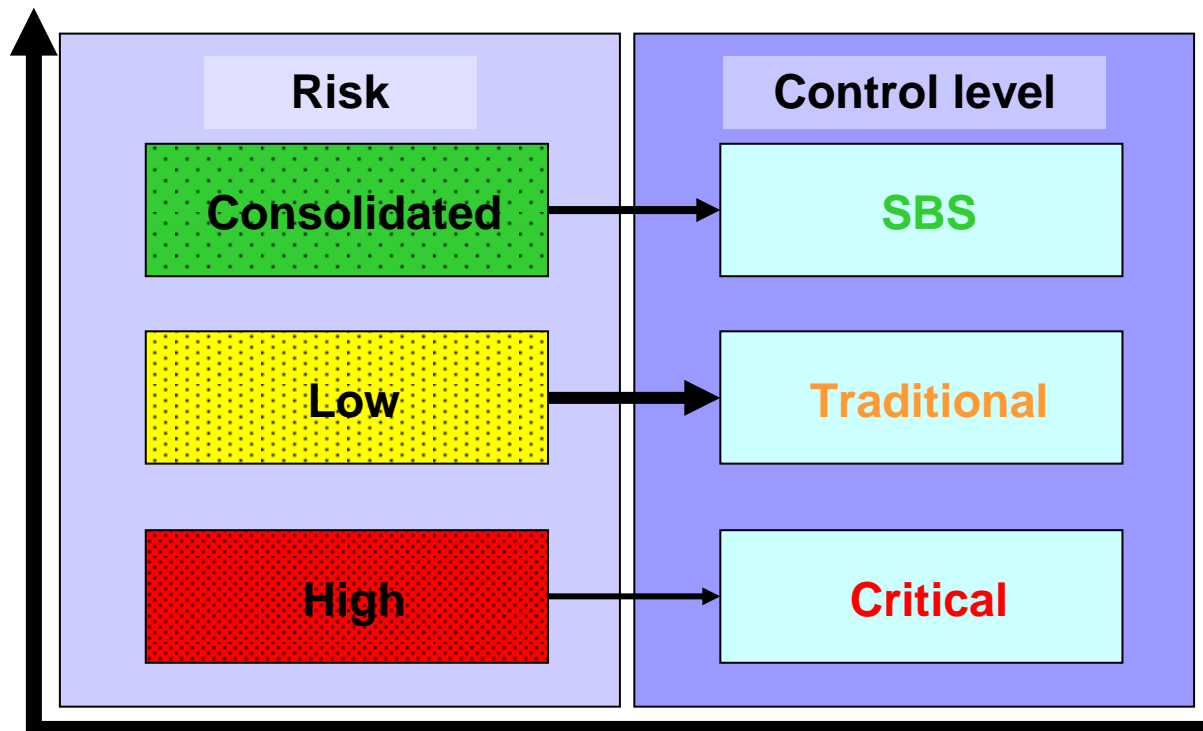


Figure 5: Authorities control level regarding to the legal compliance assurance.

A system of incentives and counter-parts, particularly through the customization of the regime and intensity of inspections, or by extending the expiration date of environmental licenses, publicizing of exemplary best practices, among others, could be used to promote adherence to this model of compliance control by regulated companies, encouraging them to improve regulatory compliance and risk management in a structural and sustainable way, but this should be used wisely.

3. Advantages of CMS supervision

If applied well in suitable situations CMS supervision can bring the following advantages:

- For inspectors and inspectorates
 - a. It stimulates companies' compliance assurance, including self-monitoring and self-correction
 - b. It allows allocating time and capacity to those companies who really need it
 - c. It brings a better understanding of a company and industry
 - d. It results in prevention in stead of cure
- For companies:
 - a. It supports being in control
 - b. Recognition by the public authorities of their management system
 - c. It builds upon standards already familiar (ISO 14001, EMAS)
 - d. It reduces chances of unexpected non-compliance and penalties.