COMPLIANCE EXPERTS

PROJECT COMPLIANCE

Hype? Or a permanent project management component of the future?

Huib Roskam

When you service your car at a garage, the mechanics will call you for permission should they need to carry out extra work, and upon completion, you will receive a breakdown with a check-list of all the work that has been carried out. They will also check whether your car still fulfils the legal requirements. The garage, your contractor in this case, hereby states that your vehicle adheres to all expectations in terms of good workmanship and the law. Consequently, you as a driver/owner then comply with the laws and regulations.

Nowadays, cars fresh off the conveyor belt are designed in such a way that they automatically check these elements; oil level, status of the air-bags, tyre pressure and wear, lighting and maintenance intervals are all continuously monitored.

If during use, one of the measurements does not fulfil one of the pre-determined requirements, the on-board computer reports this directly to the driver. The vehicle handbook will contain the required control measures. You can therefore assume that, as long as the on-board computer does not report anything to the contrary, all measurements should fulfil the pre-set requirements. In other words: the car is compliant as long as the on-board computer does not report non-compliance.

Projects however are not always quite as transparent. Demonstrable fulfilment of project requirements has become an increasingly important topic within project management. The Dutch Society for Efficient Maintenance (Nederlandse Vereniging voor Doelmatig Onderhoud (NVDO)) regularly asks its members for their top 10 most important topics. In 2015, compliance came out of nowhere to claim first place.

WHAT IS COMPLIANCE?

Compliance means demonstrable fulfilment of all applicable requirements. Since the corporate and accounting scandals at the beginning of the 2000s, in the financial world the term has primarily become associated with ethical conduct and proven correct behaviour.
In the world of technical projects, stops and maintenance, in which I have worked for many years, compliance means demonstrably fulfilling all project requirements which have been agreed upon between parties. Whenever we mention project requirements, we are referring to all

terms and conditions, contractual requirements, design briefs, licences, laws and regulations, health and safety regulations, environmental requirements, safety requirements, stakeholder requirements, financial requirements, insurance requirements, etc.

WHY COMPLIANCE?

> *If you want to service a pump but it appears that the HCl pipeline has not been flushed or blinded, then you have a serious problem on your hands..*

> *You have constructed an underground pipeline and cannot prove that all welds are 100% approved as prescribed in the contract. Than it is a hell of a job to dig it up for re-inspection.*

> *If you want to commence the construction of a new installation, but the environmental permit has yet to be granted, then your first delay is already a given.*

> *You want to sell an installation for €100 million, then all of a sudden during the due diligence checks, it turns out that your contractor, when building the plant 10 years ago, did not fulfil all the requirements stipulated in the construction permit of the contract. Your installation is now worth perhaps just €25 million: that's a hard pill to swallow.*

In the above-mentioned examples, at some point someone will have to foot the bill.

Failure to comply with the requirements could come to cost you a tremendous amount of money. The BP oil spill in the Gulf of Mexico has

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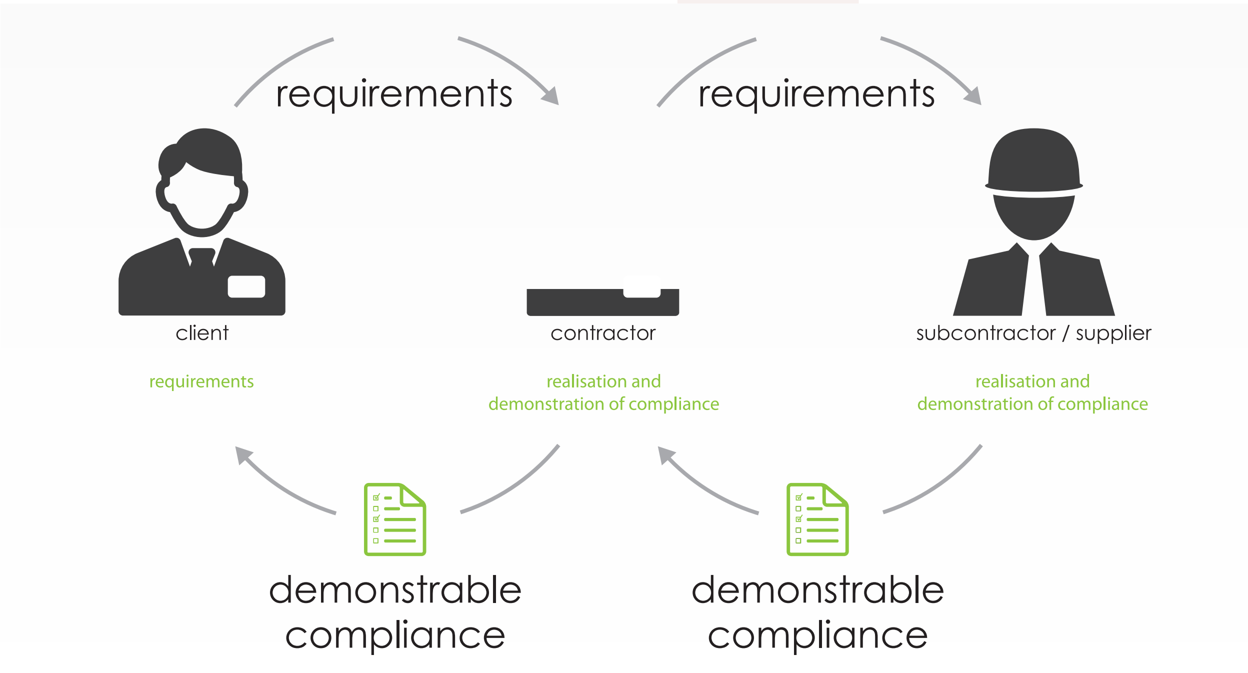

come to cost in excess of $45,000,000,000 in terms of clean-up operations and claims up to this day. On top of that, BP recently received a fine of over $10,000,000,000. After something like that, you will certainly want to ensure things do not go wrong during your next project. We read almost daily in the newspapers what goes wrong during projects. Could better compliance management have prevented this?

Whether it is a chemical or petrochemical maintenance project, an infrastructural project, construction or renovation of a hospital, the implementation of the Fyra, building an amusement park in Poland, a new pier at Schiphol, a railway tunnel project or an offshore wind farm: clients and contractors enter into a contract with each other, agree under which legal system the project must be carried out and firm up all project requirements. From the moment the contract is signed, it is necessary to prove that all of these project requirements will be fulfilled.

Compliance is a chain-management process between client, contractor, sub-contractors and suppliers.

Timely measuring of whether everything in practice corresponds to the agreements offers the possibility from the very start of the project to work towards a demonstrably good delivery of the project.

WHEN DO YOU START WITH COMPLIANCE?

Good compliance management does not mean that mistakes will no longer be made. It does mean however that you can better prepare ahead, that non-compliance can be spotted earlier and that client and contractor are in a position to adopt control measures much earlier. It does entail that you already have to check which requirements contractors, sub-contractors and suppliers need to fulfil throughout the chain in the initiation phase. The traceability for the fulfilment of all requirements has to be established from the tender phase onwards. In this, both the client and contractor(s) share the responsibility. It is often thought that demonstrable compliance only plays a role at the end of the project when finalising it, but that is not the case. On the one hand, the client must already make clear during the tender phase which project requirements the contractor must fulfil. On the other, the potential contractor must indicate how they will prove that they are fulfilling said requirements. Parties will have to come to an agreement on this during questions and answers sessions prior to the contract being signed. This is therefore not the responsibility of just one party.

Analysing and drawing up project requirements already begins during risk analysis in the initiation phase and during the preparations for the requests for tender. It is a continuous process, which runs from the initiation phase up to the implementation phase of the project. Because you are demonstrating that requirements are being met from day one, it automatically means that acceptance does not only have to take place solely at the end of the project.

Is the compliance route always taken?

In practice, it often seems to work differently. Looking back at 25 years of contract and claim management, there is a clear trend in the last couple of years: an ever increasing portion of claim consultancy work consists of analysing what went wrong with regards to demonstrably complying with project agreements and laws and regulations. This does not appear to only be a problem for contractors. Not everything can be recovered at the end of the project.

The client then does not get everything for which they signed and paid for. A dispute, and therefore work for claim consultants, is born. On a regular basis it seems as though the client, during implementation of the project, emphasised a different interpretation or give a different explanation to the contractor than that which was agreed on when the contract was signed. This may lead to plenty of quibbling regarding the principles which were agreed on. It is a well-known phenomenon in the infrastructure sector that the client, for example, signs a DBM or DBFM contract wherein the contractor is to a large extent free in determining the way the project is implemented, as long as the qualitative requirements are fulfilled. Then another department of the client organisation or a stakeholder comes along with a load of supplementary requirements which contain, in fine detail, the way in which the project must actually be carried out. Whenever these supplementary requirements are contradictory to previous requirements,

At the end of the project, not everything can be recovered.

there is no longer a consistent contract philosophy. There is then the possibility of additional or less work, changes in scope, delays and other disruptions, which all affect the demonstrability. The contractor remains responsible for delivering the project 'fit for purpose', but is no longer free to choose how the project is to be carried out in the most efficient and economical manner.

These sorts of situations arise when compliance management has not been organised properly during the initiation and tender phases.

WHAT CAN YOU DO ABOUT IT?

Demonstrably fulfilling all project requirements is taking an ever greater role in the manageability of projects because the price of 'non-fulfilment' is often very high. Demonstrable fulfilment of project requirements is not a simple matter; project teams which are responsible for the demonstrability often have dozens to hundreds of regulations to deal with, each regulation having multiple requirements itself. As a result, they are sometimes faced with the task of managing thousands of project requirements. In addition, project requirements can take on a variety of forms and are often written in a way that cannot be easily understood by the people on the shop floor. It is clear that a translation needs to be made in order to make the project requirements verifiable.

IT IS BETTER TO PREVENT RATHER THAN MEND

The smart compliance applications now available on the market make it possible for full transition from project requirements and agreed standards, rules and regulations to milestones, verifiable processes, clear and answerable questions, and measurement values before the implementation of the project is started.

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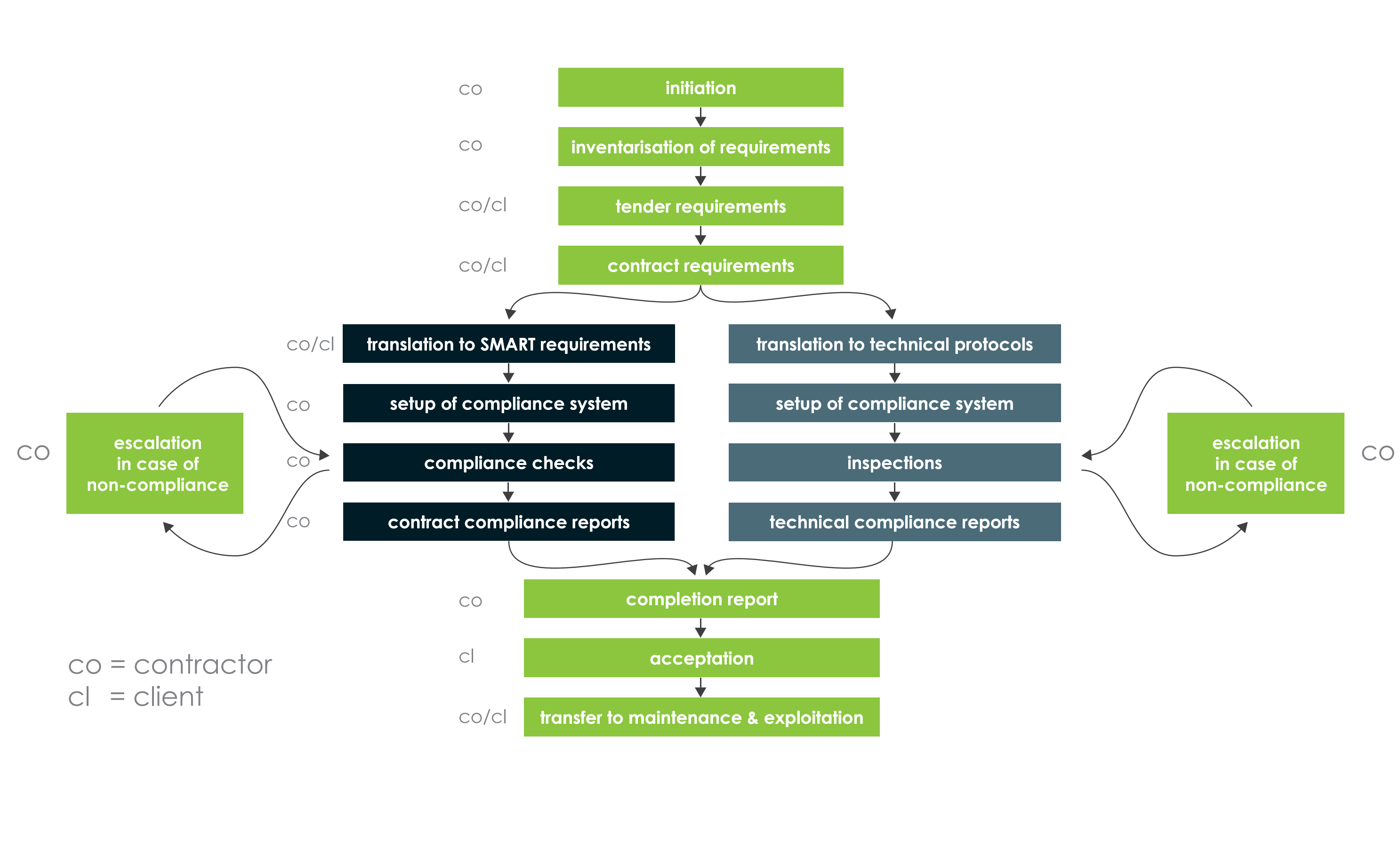

When you carefully carry out this painstaking task at the beginning of the project, you create clarity in regards to satisfying the agreed project requirements during the implementation of the project. Once this task is complete, then it is a simple matter of tracking changes in the contract, design brief, laws and regulations, permits and the like in the compliance management system. Aided by this system, the project team members can check that project requirements are being adhered to. A good transition can save millions of euros per project. A good compliance management system offers the advantage that checks are carried out at the right time and that these can be provided along with reports, certificates, photos and notes. This allows the compliance to be recorded per objective, location, system and unit of process. This leads to reports that demonstrate compliance, laying the foundation for correct close-out and acceptance documentation.

A well organised compliance management system saves large amounts of money in implementation and thus pays off very quickly.

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Huib Roskam is active as claim consultant, dispute adjudicator, mediator, coach and trainer since 1991. Huib is specialised in claim prevention and claim management.