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A new ISO standard for occupational health and safety management systems: is this the right approach?

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Background

The International Organization for Standardization (ISO) has been trying for well over a decade to develop an international certifiable standard on occupational safety and health (OSH) management systems to replace OHSAS 18001, which was introduced in 1999.

The ISO's attempts to develop what is now ISO45001 were initially met with strong opposition[1] from international employer and union bodies, on the basis that this was a matter that should be dealt with through social dialogue. In addition, the International Labour Organisation (ILO), which has its own guidelines on OSH management systems (ILO 2001), refused to support it; they believed that health and safety standards should be developed by governments, unions and employers through the ILO process, which gives an equal voice to each of these groups to ensure that the views of the social partners are closely reflected in labour standards. Unions agreed and believed that ILO-OSH 2001 guidelines should be the starting point for this, although there was a need for some updating and strengthening of the current document. The ILO agreed to proceed with an elaboration of its own standard, but this did not happen; hence the ISO tried again and succeeded in co-opting the ILO into the process in 2013 when the two organisations signed a Memorandum of Understanding on the development of ISO 45001 (ILO 2013), on the basis of a number of assurances that the ISO standard would be consistent with the ILO guidelines.

In October 2013 a project committee met in London to create the first working draft of ISO 45001. Around 50 national standards bodies (NSBs) were involved in the first meeting, along with the ILO, the ITUC and the International Organisation of Employers (IOE), whose status as a 'liaison' organisation meant that they could participate, but not vote. Three further meetings were held in Casablanca, Dublin and Geneva. Those present report that very few of the national delegations had trade union representation, and many did not even have employer representation.

Following the Geneva meeting, the ISO developed a draft international standard (DIS). This was published in early 2016 for consultation with NSBs, in a process which ends on 12th May.

The standard-setting process

There are a range of national, European and international standards. NSBs represent the country at the ISO and also at its European equivalent, the European Committee for Standardization (CEN). All of these bodies develop standards through a complex process which can take several years to complete[2]. The decisions on the content of international standards are not made by governments or social partners but by those NSBs that decide to get involved and who are willing to pay for their representatives to attend the meetings, although all NSBs can vote on them. Nearly 20,000 international standards have been set, covering everything from manufactured products and technology, to food safety, agriculture and healthcare.

However, NSBs not only set standards; some, such as the French and British bodies, also certify them. Companies pay to be audited to ensure that they meet a national or international standard. There is a charge for this. The British Standards Institute (BSI), the largest

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European NSB, operates in 150 countries. Last year it made over €200 million from certification work (BSI 2015), over two-thirds of its income. It is the BSI that has led the efforts to develop ISO45001 and that has supplied the secretariat. It is clear therefore that when these bodies are looking at developing a particular standard, they will also have at the front of their mind the potential to certify it.

Standards committees that develop standards at national level, or which get involved in European or international standards, are not representative. They are made up of 'technical experts' who are often self-nominated. While unions are told that they can participate in standards committees, often there is a fee involved. Some countries have over a thousand such committees so it is not possible for unions to be involved in all or even most of them. Even those who do have union representation find that unions are only one voice out of perhaps a couple of dozen, and most of the rest will be manufacturers (in the case of product standards) or consultants who have their own commercial interests at heart.

Standards bodies also make money out of selling standards. While the regulations and laws of countries are often available for free, standards are not. The only way you can check whether a piece of machinery or equipment meets a standard, and whether that is the appropriate standard for what it is being used for, is to know what the standard says. Yet buying a standard can cost hundreds of euros. There is no way that a union workplace representative can have access to them, but employers often respond to safety concerns by simply telling the representative that they comply with the European or international standard.

While ISO45001 will not be binding or have any legal status initially, the status of standards is changing and they are increasingly being used as an alternative to regulation. The status and use of international standards is likely to grow as new international trade agreements are developed; in particular TTIP, where US companies may seek to claim that the possession of ISO45001 is sufficient to demonstrate compliance with OHS requirements, regardless of national laws.

ISO45001 – Relationship and comparisons with the EU 1989 Framework Directive

There will be concern as to how ISO45001 will impact on enterprises within Europe. All EU member states have enacted legislation based on the 1989 Framework Directive. This outlines the minimum health and safety requirements which employers (and employees) must adhere to and requires member states to ensure that these minimum standards are enshrined in national law.

The DIS is around 24 pages long with a similar number of pages of guidance. There are seven main sections (plus definitions and scope): Context of the organization; Leadership and worker participation; Planning; Support; Operation; Performance evaluation; Improvement.

The scope of the Framework Directive is much wider than just an OHS management system and includes areas such as health surveillance. ISO45001 does not claim to be any more than an occupational health and safety management system, while the Framework Directive is a legal instrument providing a minimum requirement for governments to enact, and covers all aspects of health and safety in the workplace. Any comparisons between the two should therefore reflect the different role and purpose of each.

The Framework Directive imposes a basic and absolute requirement on all employers to take measures to protect the health and safety of their workers. They must do this by avoiding risk and, where that is not possible, evaluating and controlling risk. The DIS talks about reducing risk or meeting the requirements of the management system; it also emphasises the identification of hazards, with risk assessment deriving from that. It has a hierarchy of control that seems to be compatible with that in the Framework Directive, and is clearly founded on the risk assessment process. Possibly the most positive part of the DIS is the requirement that the OHS policy 'includes a commitment to provide safe and healthy working conditions for the prevention of work-related injury and ill health'.

There are also considerable differences in the approach to training, consultation and information. In each of these the DIS and Framework Directive requirements are at variance. With respect to training, the DIS deals with the issue through requiring assessments of competency rather than the provision of training. While that may be seen as simply a different approach to the same end, the areas where competency is required in the DIS are very different from the areas where training is required in the Framework Directive.

When dealing with the issue of consultation, the DIS, because of the restrictions imposed by the intent of the document, simply requires participation or involvement in the decision-making process in the OHS management system, rather than in the wider health, safety and welfare agenda. However, within that context, the sections on worker involvement are a considerable step forward from earlier drafts, although in some places the DIS does emphasise the need to make employees 'aware', as opposed to *consulting* them.

On information, the DIS puts strong emphasis on management control, and the requirements to provide information are restricted to the safety management system and emergency planning, rather than the much wider requirements of the Framework Directive.

On some areas the DIS has requirements that are more detailed than those in the Framework Directive. Examples of this include leadership and planning. The DIS also emphasises throughout the document that organisations must obey national law and need to comply with all legislative requirements, such as those imposed as a result of the Framework Directive.

Concerns over the structure and approach

The DIS uses the ISO 'high-level structure' (i.e. clause sequence, common text and terminology) required in all new standards of this type, and which is used in other recent management system standards such as the newly revised ISO 9001 (quality

management), ISO 14001 (environmental management) and ISO/IEC 27001 (information security management) standards. This is because the ISO believes that the commonalities among the standards should enable organisations to integrate them more easily into their business processes (BSI 2016). This is one of the main drivers for the development of a standard on occupational health and safety management. The requirement to use the 'high-level structure' is one of the factors which led to the DIS having its current structure, which from the outside may seem overly complex and may suit the needs of the certifiers rather than the enterprises. It is interesting to note that it is the BSI that has been at the forefront of championing this new group of management systems standards, and which also stands to gain the most financially out of the certification process.

There is also concern that the primary aim of ISO45001 is to ensure that there is a compliant OHS management system for the organisation which can be audited and that fits in with other ISO standards, rather than actually ensuring the safety and health of workers. The ISO of course believes that higher standards will be the result of the implementation of a successful OHS management system, but there will be concern that certification and auditing will look, not at the levels of protection given to workers and the public, or at the record of the organisation, but instead at the administrative systems that are in place. If they meet the standard then that is sufficient. The exercise is driven by process rather than outcome.

It may be that, should ISO45001 become the normal basis for the development of OHS management systems, employers and safety professionals will develop OHS systems with the primary aim of achieving accreditation to ISO45001, rather than to control risks. However, certification to the standard of ISO45001 will not give any useful indication of the effectiveness of an organisation in reducing and managing risk.

A major concern for trade unions is that that certification could be used by regulators as an indicator of the level of compliance or the standard of the safety culture of an employer (although this is not a stated aim of ISO). Initiatives such as 'Voluntary Protection Programs' in the US have shown that regulators have been willing to allow a level of self-regulation, often with disastrous results (AFL-CIO 2014). Within Europe some governments have also indicated a desire to consider greater self-regulation. It could be that they will consider using certification to ISO 45001 as evidence of compliance, even though it is clear that achieving certification will be no guarantee of meeting the requirements of the Framework Directive, and therefore of national legislation.

A certifiable ISO standard will also restrict the ability of union health and safety representatives to challenge the approach that their employer is taking on health and safety issues. Employers will claim that they have been audited and are compliant with ISO45001. However, unless they pay for it, the representative will be unable to obtain a copy of the standard to check whether they are compliant and, even if the employer does meet the requirements of ISO45001, what gaps there are between the management system that has been audited and national laws.

ILO position and relationship with MoU

There is concern that the DIS has not met the basic conditions contained in the 2013 agreement with the ILO, one of which was that no ISO standard should conflict with international labour standards. It is clear from reports to the ILO Governing Body in 2015 that they have been unhappy with the way that the standard has been developed (ILO 2015). Some of their concerns have been addressed but others, such as seeking to ensure that the standard requires the independence of safety representatives, have been less successful (there is a mention in the non-binding guidance).

In February 2016, the ILO issued a detailed paper on the DIS. It identified a number of areas of concern. Some of these are technical but most of them mirror areas that the ITUC and others had already identified over issues such as training and personal protective equipment (PPE) being free of charge, the right to leave the job, and the importance of consultation and worker involvement.

Potential effect on SMEs

One potential effect of IOS45001 will be to create unnecessary complexity and bureaucracy for small and medium sized enterprises, which may result in an increased reliance on the use of external consultants to do work that could be done in-house. While the ISO claims the DIS is based on the 'Plan, Do, Check, Act' approach used by some other OSH standards such as HSG65, smaller organisations will find it difficult to develop and maintain a health and safety management system based on this standard and may instead require specialist assistance. In some places it seems the structure is more aimed at the assessors than those who have to use it.

The result of the way that the ISO development process has worked is that the DIS is a document that, at times, seems overcomplicated. Within Europe, a lot of emphasis has been put on simplifying the OSH process with initiatives such as OiRA, the European Agency's on-line risk assessment tool. The process of seeking to achieve certification to the ISO45001 standard may impose bureaucratic requirements that are not a necessary part of good health and safety management.

In the event of the DIS of ISO45001 becoming an international standard, many employers will seek to gain certification and it may well become a requirement for many contracts. This will be of most benefit to larger, cross-national organisations and could reduce the ability of smaller organisations, which are unable to afford the initial outlay to achieve accreditation, to compete. Certainly under the current wording of the DIS, sole traders will not even be able to become certified.

Crucial steps in the process during 2016

The DIS was published in early February; NSBs will have three months to respond. They will be asked not just to indicate whether they approve the DIS or not, but also to make comments. If there is overwhelming support it will be approved with only

minor changes. If not, the ISO project committee will consider further changes and there is likely to be a further working group meeting and a vote. There may be a consultation on the Final Draft International Standard (FDIS) if significant further changes are made, but otherwise the standard could be published in September or October 2016. If, however, there are further changes needed, or there is a FDIS stage, this may not be until early 2017.

Conclusion

Beyond the wider issue of the suitability of private standards bodies to address issues of public interest, European trade unions also need to consider whether ISO45001 will help or hinder attempts to ensure safe and healthy workplaces. The Framework Directive imposes strong, yet simple, requirements on member states. A recent evaluation has found that it has been effective in helping reduce levels of injury and, to a certain level, ill-health across Europe[3]. The DIS, which aims to be a fully international standard, does not relate directly to the European model, but its authors see it as being compatible and not in contradiction with any national laws or requirements. That may broadly be true, but the approach is one which is likely to lead to a move away from an emphasis on prevention based on risk management, developed and delivered though consultation and social dialogue, towards a much more bureaucratic, process-driven approach, where the emphasis is on achieving and maintaining accreditation. This will greatly reduce the ability of unions and others to propose approaches which do not fit into this model and, where better models exist, it is likely to result in them being replaced by the ISO45001 approach.

In the past it has been the view of employers and union organisations in Europe that issues around employment relations and health and safety are matters best dealt with through social dialogue and agreement. This is still the case, which is why ISO45001 will be seen as an unwelcome and unhelpful development.

That being said, the current draft has been improved considerably because of the input of the ILO, ITUC and those few trade unionists who managed to be involved and who punched well above their weight. Certainly, on issues such as consultation, it is much better than the original proposals, and that in itself has meant that some members of the secretariat and other leading players have said that it has gone too far. There will be concern that, should it be revised further, these improvements could be watered down.

On the basis of the current draft, ISO45001 could, indirectly, lead to reduced levels of protection and greater bureaucracy and burdens as contractors, employers and regulators focus on certification of a standard rather than on the real indicators of a strong safety system: effective risk management, good outcomes, and full consultation and involvement with unions, underpinned by strong regulation and enforcement activity.

Policy recommendations

–   National centres, individual unions, global union federations (GUFs) and others should oppose any attempts to reduce the requirements in the DIS. They should call for stronger worker involvement within the standard; in particular they should ask for even stronger wording on issues such as the independence of safety representatives, paid time off for them to undertake their activities and for training (for both representatives and workers), and the need for meaningful consultation and participation in all health and safety issues. They should also call for a requirement that personal protective equipment and other safety equipment be provided free of charge.

–   Union bodies should seek to update and strengthen the ILO guidelines and work for a full convention in occupational health and safety prevention, all the while using any leverage we can to push for better national legislation and enforcement.

–   If ISO45001 becomes a certifiable standard, there will be a need to provide guidance to enterprises and unions across Europe. Unions, both in Europe and internationally, will also have to develop an audit tool and guidance for union activists to use, to ensure that those employers that do adopt ISO45001 fully guarantee active worker involvement and risk removal. Such guidance could also provide a means to counteract the predatory nature of many consultancy businesses, while making employers aware that compliance with the standard does not automatically mean compliance with relevant legislation.

–   The European and international trade union movements must consider the role of trade unions in relation to certification and accreditation and develop a strategy dealing with the range of standards now being developed, in particular those dealing with management systems and 'human resources' issues.

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