

# Setting standards for sustainable business

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## Introduction

The nature, scope and speed of economic change presents new strategic challenges for organisations and their stakeholders. There is greater demand that companies disclose information on issues that are material to their operations, and there are an increasing number of national and international standards that aim to encourage organisations to make more sustainable production and purchasing choices. The financial and economic crises, coupled with the perceived increase in the impact of natural catastrophes have prompted companies to move away from a business-as-usual model. The move towards aligning financial interests with environmental objectives has also been driven by stakeholder and investor activism and investors.<sup>2</sup> Sustainability as referred to in the context of this article means the level of a company's success in providing an enduring, balanced approach to economic activity, environmental responsibility and social progress.<sup>3</sup>

With a growing legislative framework underpinning the principles of sustainable development (such as regulation of compliance with environmental standards in respect of electronic goods) there is often uncertainty about the nexus between legislation and voluntary standards, and whether standards have a greater or lesser impact on the way business behaves. International standards provide requirements, specifications, guidelines or characteristics that ensure that products and services are safe, reliable and of good quality. For businesses, they are strategic tools that reduce costs by increasing productivity and providing a level playing field.<sup>4</sup>

## Standards pre-empting legislative measures

The majority of international standards focus on management systems, specifying internal processes and management practices that firms need to implement to obtain certification. Standards are highly comparable in the manner they operate and are also voluntary.

The publication of ISO 20121,<sup>5</sup> which addresses how companies can deliver sustainable events management systems, marks the first ISO standard<sup>6</sup> that delves more

comprehensively into sustainability. It requires organisations that are involved in the events sector to address their social, environmental and economic impacts by creating management systems that reflect the organisation's sustainable development principles.

Although standards like ISO 14001 (for environmental compliance) and ISO 20121 require a company to comply with legislation – and demonstrate compliance – it is not the law that necessarily ensures that certified companies are compliant. Instead the driver is a 'beyond-compliance approach' that encourages the company to obtain ISO certification to differentiate that company from its competitors.

It could be argued that such a standards-led approach to sustainability has gradually permeated into legislation. For example, ISO standards have long required an attention to equality and diversity from organisations regardless of activity/sector. As growing numbers of companies comply with such ISO requirements, the visibility of equality and diversity activity in commercial situations has increased. Legislators, seemingly keen not to be left behind, have subsequently responded. Changes implemented in September 2012 to the UK's Corporate Governance Code<sup>7</sup> require companies to publish details of their policy on boardroom gender diversity. Companies must include quantifiable objectives by which such policies are assessed and the progress they have made towards achieving those objectives in the section of the annual report covering the nomination committee's activity. The Code is more specific than the ISO standards that often have a generic, open comment that diversity must be considered in the social sustainability considerations of companies.<sup>8</sup> Although the legislative requirement has not directly incorporated the requirements of a standard in this instance, it does illustrate a tendency for standards to pre-empt legislation in both aim and subject.

Carbon-footprint verification (CFV) provides another such example. The impact of climate change has influenced a number of forward-thinking organisations to voluntarily declare their greenhouse gas (GHG) emissions. In the UK, the British Standards Institute (BSI) has offered the CFV for eight years in accordance with ISO 14065.<sup>9</sup> The standards were created to help companies understand how to manage their carbon emissions and legislation is now being drafted to mandate listed companies to state their GHG emissions in their annual reports.<sup>10</sup>

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2 Colleen Theron 'The impact of sustainability and corporate responsibility on company reporting' (2010) 22 ELM.

3 Taken from BS8901, a specification for a sustainability management system for events.

4 See [www.iso.org/iso/home/standards.htm](http://www.iso.org/iso/home/standards.htm).

5 [www.iso20121.org/](http://www.iso20121.org/). International standard ISO 20121 specifies the requirements for an event sustainability management system to improve the sustainability of events.

6 ISO (International Organization for Standardization) is the world's largest developer of voluntary international standards. See [www.iso.org/iso/home/about.htm](http://www.iso.org/iso/home/about.htm).

7 [www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Corporate](http://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Corporate).

8 See ISO 26000.

9 ISO 14065:2007 specifies principles and requirements for bodies that undertake validation or verification of greenhouse gas (GHG) assertions.

10 [www.defra.gov.uk/consult/2012/07/25/ghg-reporting-draft-regs/](http://www.defra.gov.uk/consult/2012/07/25/ghg-reporting-draft-regs/).

### Commercial approaches to CSR: responding to consumer concerns or sustainability standards and legislation?

Since the 1990s, the number of companies disclosing information on their environmental, social and governance performance has grown significantly. Sustainability reporting for many large multinational companies has become mainstream. The Global Reporting Initiative (GRI) provides a reporting framework for companies and more than 4000 organisations from 60 countries use the GRI guidelines to produce sustainability or corporate social responsibility (CSR) reports on a voluntary basis. While there is a growing trend towards non-financial reporting being mandatory, it is important to note that in many instances CSR policies adopted by companies exceed the compliance requirements imposed under legislation, particularly in relation to labour and environmental issues.<sup>11</sup>

Isolating the source of these developments is challenging; the growth in CSR as a mainstream business concern is attributed to a combination of developing self-regulation by companies (such as ISO standards), regulation (for example mandatory reporting on environmental and social impacts required under the UK Companies Act 2006) and consumer pressure.

One of the concerns arising from a global economy is the ability of national governments to regulate multinational corporations' environmental impacts and working practices. In the absence of law, organisations can take advantage of differences in national regulations by shifting polluting or labour-intensive activities to countries with less stringent regulations.

Standards, however, provide potential governance mechanisms beyond legal compliance.<sup>12</sup> For example, Primark has had to consider changing its practices following consumer and media pressure. In response to demonstrations against the use of so-called 'sweatshops' and allegedly employing child labour in 2008,<sup>13</sup> coupled with news coverage revealing poor treatment of employees in 2009,<sup>14</sup> it has made efforts to ensure its supply chain is sustainable from raw materials to finished products on sale. Besides the allegations of unethical business conduct abroad, one of Primark's suppliers was alleged to have employed asylum seekers for as little as £3 per hour in Manchester. Primark had to find a way to address these issues in the wake of a sharp drop in the share price of its parent company, ABF. In response to the accusations, Primark joined the Ethical Trading Initiative (ETI).<sup>15</sup> It also published a renewed mission statement and has

appointed an Ethical Trade Director, who conducts audits on new and current suppliers and trains them to maintain their stance on corporate social responsibility. The response from Primark in its Ethical Trading policy and practice outstrips the minimum legal requirements.

It can be argued that consumer pressure and companies' 'licence to operate' has encouraged businesses to comply with standards covering issues yet to be comprehensively addressed in law in some jurisdictions. Clearly, national laws have limitations; Westminster has no power to dictate legal standards for factory workers outside the UK, but standards can transcend borders as signifiers of good practice. The UK Bribery Act 2010 on corrupt practices abroad may yet be the exception as it is forcing companies operating abroad to consider how they manage and monitor the actions of their employees in relation to bribery and corruption.

The definition of CSR and the extent of legislative requirements are key issues. Until 2011, the European Commission's definition of CSR did not include activities to ensure compliance with legislation. CSR was restricted to voluntary activities. However, under the influence of ISO 26000 (which provides guidance on how organisations can operate in a socially responsible way) the EU 2011 strategy for CSR<sup>16</sup> includes the following definition: 'the responsibility of enterprises for their impacts on society'. It states that respect for applicable legislation and for collective agreements between social partners is a prerequisite for meeting that responsibility. There is no definition of CSR in law but this is a step in that direction.

### Cross-border standards: supply chain issues

International standards can be applied and implemented internationally in a manner that national legislation cannot emulate. International legislation on such issues is limited and not easily enforceable. For multinational companies, complying with ISO standards is comparatively straightforward. For example, under ISO 20121, the adoption of standards by a multinational company may help to address supply chain issues in setting up a centralised system that can be adopted in its various global divisions. A central sustainability policy may be developed and appropriate changes made in each locality. Compliance with sustainability legislation, such as employment and environmental laws, may, by contrast, impose radically different requirements in each of the jurisdictions where a company is active. English legislation carries no weight in New Delhi. However, many such organisations source at least some products and/or materials overseas where different regimes apply. Even if legislation falls in step with standards, it may have a limited effect on just how sustainable the activities of multinational entities are across their international supply chain.

Apple Inc. provides another example of companies moving beyond the scope of national legislative compliance. The company's sustainability policy encompasses a

11 See Theron (note 2) for a more detailed discussion on mandatory and voluntary non-financial reporting.

12 Petra Christman 'Firm Self-Regulation through International Certifiable Standards: Determinants of symbolic versus substantive implementation' 14 November 2005 *Journal of International Business Studies* (2006) at 1.

13 [www.telegraph.co.uk/finance/newsbysector/retailandconsumer/2792753/Primark-faces-customer-exodus-after-BBC-child-labour-allegations.html](http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/2792753/Primark-faces-customer-exodus-after-BBC-child-labour-allegations.html).

14 <http://news.bbc.co.uk/1/hi/7824291.stm>.

15 [www.primark-ethicaltrading.co.uk/howwework](http://www.primark-ethicaltrading.co.uk/howwework).

16 [http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm).

supplier responsibility sub-policy to ensure sustainability is embedded in the company's activities. During 2011, Apple conducted 229 audits of elements of its supply chain to assess sustainability.<sup>17</sup> Part of its approach is based on suppliers properly implementing environmental management systems. Interestingly, the report reveals that part of Apple's sustainability drive involved educating supply chain employees on local laws covering environmental policy and workers' rights. In this respect, the company's policy is focussed on ensuring local compliance. However, in other regards the policy reaches far beyond minimum legislative requirements. Environmental sustainability was brought to the fore in the company's Chinese activities. Fourteen audits were carried out and several violations of Apple's policy revealed; the company is currently working alongside those suppliers to ensure those violations are corrected. Apple has also taken steps to ensure suppliers' hiring policy meets strict social sustainability standards and persists in its refusal to hire underage workers.

These examples do highlight, nevertheless, the 'execution gap' that exists in many companies where internal policies do not meet the operational side. Most recently, Odfjell<sup>18</sup> (a global shipping company) has had its operations in Rotterdam shut down for ongoing compliance and operational failures.

To ensure practices are truly sustainable, company policies must move beyond the requirements of national legislation. In particular, the supply chain element makes ensuring a genuinely sustainable corporate operation via legislative measures difficult for companies with international supply chains. This is perhaps why standards tend to move ahead of legislation; they are endowed with the kind of breadth and reach which is simply impossible on an international legal basis.

The international weight of the UN may provide an answer. The influence of the UN's guiding principles on business and human rights, if implemented by the business community, could carry enough weight to encourage universal legal developments common to all signed up countries in the interests of sustainability.

### Legislation mimicking standards

Perhaps, because they tend to move quicker than legislation, requirements first established by specific standards have sometimes been incorporated into legislation. A good example is eco-labelling. Eco-labelling is a legal requirement in the US and Canada for cars and white goods, and in the EU there is an eco-label award scheme whereby goods complying with the criteria in Regulation 1980/2000 can be certified with an eco-label testifying to sustainability credentials.

Companies producing goods covered by Regulation 1980/2000 are not bound to ensure their products comply with the standards set out, but it is a nevertheless a

binding, legal set of values designed to encourage companies to focus on sustainability.

Eco-labelling began in North America in the 1970s as a way to illustrate the environmental impact of goods to consumers. Though at first the standards for goods were voluntary, they have steadily been adopted as legislative requirements in different US states and in Canada. The Canadian Office of Energy Efficiency regulates both car and white goods manufacturers.<sup>19</sup> Presently, the EnerGuide label that shows highway and city fuel consumption and an estimated annual fuel cost for all non-haulage vehicles is a legal requirement for vehicles less than 3855 kg in weight.<sup>20</sup> The Energy Efficiency Regulations also require home appliances to have an EnerGuide label showing the appliance's energy consumption.<sup>21</sup> Similarly in the US, all major home appliances must comply with the Department of Energy's Appliance Standards Programme. This requires producers to use standard test procedures to prove the energy use and efficiency of products.<sup>22</sup>

The establishment of firm legal guidance for what constitutes an eco-friendly product in the EU seems a first step to similar compulsory systems to those of North America. In both instances, legislation is effectively incorporating long-standing voluntary standards. However, where standards become de facto obligations for market access they may act as barriers to trade, excluding the smallest producers or companies.

In those fields exempt from regulation in both North America and outside the scope of Regulation 1980/2000, such as food, voluntary standards are common. The Rainforest Alliance labels, commonly displayed by coffee producers, and Marine Stewardship Council labels evidencing sustainable fishing practice are two of the most prominent examples. There is no requirement to display such labels, but the groundswell of concern for sustainable food production again suggests a bottom-up influence on the development of standards that may eventually drive legislation.

### Legal and other requirements in standards

Most standards require that an organisation establishes and implements a procedure for identifying and having access to applicable legal and other requirements to which the organisation subscribes. The ISO 14001 standard mentions that it (like other ISO standards) is not intended to create trade barriers or to increase or change an organisation's legal obligations. An exception to that may be the new obligation set out in ISO 20121 that requires an organisation to aspire to achieve best practice in countries where the law or its implementation does not provide for minimum environmental, social or

17 <http://www.apple.com/supplierresponsibility/auditing.html>.

18 <http://www.odfjell.com/PressRoom/NewsAndPressReleases/Pages/Safetyshutdownandrec>.

19 See the most recent regulations implemented at <http://oee.nrcan.gc.ca/regulations/11239>.

20 <http://oee.nrcan.gc.ca/cars-light-trucks/buying/energuide-label/5744>.

21 <http://oee.nrcan.gc.ca/regulations/16802#products>.

22 [http://www1.eere.energy.gov/buildings/appliance\\_standards/laws\\_regs.html](http://www1.eere.energy.gov/buildings/appliance_standards/laws_regs.html).

economic safeguards.<sup>23</sup> Whilst standards are not placing additional legal requirements on organisations, they often result in companies having to demonstrate legislative compliance (in the event of third party accreditation). In the case of ISO 20121, these measures are arguably more demanding than mere compliance and the requirement to comply with relevant law also suggests that CSR is more than a voluntary measure. The impact of ISO 20121 will have to be measured over a period of time to see if best practice is attained by companies operating in countries that do not have minimum environmental, social or economic safeguards.

### What about enforcement?

Standards are developed and overseen by the ISO and advocacy organisations. Organisations can obtain third-party certification to verify their compliance with standards. Where a company fails to keep its management system compliant, the effect could be the withdrawal of the certificate. Breach of regulation, such as failing to comply with the proper shipment of waste, however, will lead to an enforcement body taking action against the company or director, resulting in fines and reputational damage and possibly a criminal record. There is a body of publications addressing concerns about enforcement which is outside the realm of this article. Although no enforcement action can be taken against a company failing to uphold the standards set out in a certificate, a breach of legislation or the withdrawal of the certification is likely to give rise to reputational risk that companies will seek to avoid.

### Sustainable procurement: law versus practice

Managing supply chains responsibly is arguably a 'mega trend' of this century. Examples in this article show the effect that poor supply chain management has on organisations. ISO 20121 has supply chain management and procuring sustainably at the core of the standard. For example, the guidance to the standard states that tender submissions should be evaluated using sustainability criteria. Across the EU, legislation is driving sustainable procurement, particularly in the public sector. An increased uptake of certification by companies is likely to drive change in supply chain management in the private sector. The private sector's role in implementing voluntary standards and ensuring local compliance, particularly in countries or sectors where the monitoring and control of environmental and social regulations lag, cannot be downplayed. In some instances, the legal requirements in specific jurisdictions, such as the US Lacey Act (2008) (banning commerce in illegally sourced plants and their products including timber and wood products) and the EU Timber regulation<sup>24</sup> have been triggers for the

development of standards like the Forest Stewardship Council (FSC)<sup>25</sup> and legal verification.

### The value of standards

The following is a non-exhaustive list of the benefits brought by voluntary standards in terms of sustainability:

- Codes and standards play an important role in encouraging companies to adopt sustainable practices, as they can provide a common understanding of CSR issues and a more uniform approach to managing environmental, social and economic risks.
- ISO 26000 and ISO 20121 with their emphasis on sustainable development principles have changed the way organisations think about social and environmental impacts.
- Certification also informs customers that a supplier has implemented a management system conforming to certain standards.
- The use of standards to reduce adverse environmental impacts is established.
- Standards can have hard and soft impacts. The hard impacts are those that can be quantified or measured. Soft impacts are those that affect culture and attitudes that in turn will have an influence on behaviour.<sup>26</sup>
- Standards tend to be designed so that they are useful to organisations of all sizes, including small and medium-sized enterprises.
- Organisational governance is also often positively impacted by the adoption of standards. Whilst corporate governance is regulated by various pieces of legislation, notably the Companies Act 2006 in the UK, the traditional regulatory approach to governance is solely focussed on shareholder interests and formal management mechanisms. Organisational governance, however, in ISO 26000 identifies a set of stakeholders beyond merely shareholders.

### Does the law still matter?

An existing regulatory framework does not preclude the development of voluntary initiatives. On the contrary, the existence of common indicators, definitions and methodologies can help to define what 'beyond compliance' means. Examples of this are developments in the shipping industry. The International Maritime Organization manages 52 treaty instruments, most of them having direct social or environmental relevance. Prevention and control of pollution is covered by 21 agreements, the best known of which is the MARPOL Convention.<sup>27</sup> However, sustainability standards that

23 ISO 20121 clause 6.1.3.

24 Regulation No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market OJ L 295/23.

25 [www.fsc.org/](http://www.fsc.org/).

26 IIED A Henriques 'Standards for Change?' (2012) at 20.

27 International Convention for the Prevention of Pollution from Ships (MARPOL) 1973.

have been set beyond the requirements of MARPOL are the Green Award (certifying oil tankers)<sup>28</sup> and the Environmental Ship Index (awarding certificates to ships that can prove 'beyond compliance' in reducing emissions).<sup>29</sup>

The law and respect for the rule of law ultimately ensures a framework in which companies and individuals are able to operate with certainty. In many instances, it is only the law that will ensure some standards are met and enforced.

## Conclusion

The nexus between sustainability standards and sustainability legislation seems to be converging. Voluntary initiatives can influence regulations, which in turn find new ways to support and use voluntary initiatives. In a climate where companies are increasingly judged on how they implement fair practices, both laws and standards are playing a significant role in shaping sustainable markets and driving business to become more sustainable.

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28 [www.greenaward.org/file.php?id=163&hash=c227d89e9748d5a504bdaaf32cf4e7](http://www.greenaward.org/file.php?id=163&hash=c227d89e9748d5a504bdaaf32cf4e7).

29 [www.wpci.nl/projects/environmental\\_ship\\_index.php](http://www.wpci.nl/projects/environmental_ship_index.php).