

Standard regulation

Colleen Theron and Sean MacKenzie argue that voluntary standards are helping to drive the introduction of legislation on sustainability

The nature, scope and speed of economic change present new strategic challenges for organisations and their stakeholders. There is greater demand for companies to disclose information on issues that are material to their operations, and there are more national and international voluntary standards that aim to encourage companies to make more sustainable production and purchasing choices.

With a growing legislative framework underpinning the principles of sustainable development, there is often uncertainty about the nexus between the two and whether standards have a greater or lesser impact on the way businesses behave.

Ahead of legislation?

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

The publication of ISO 26000, which addresses how organisations can deliver events in a more sustainable way, is the first ISO standard to delve more comprehensively into sustainability.

Although standards such as ISO 14001 – the international benchmark for environment management systems – and 26000 require a company to demonstrate compliance, meeting the letter of the law isn't enough to ensure certification. Instead, the driver for many companies to certify against an ISO standard is in showing a "beyond compliance approach" to differentiate themselves from their competitors.

Since the 1990s, the number of companies disclosing information on their environmental, social and governance performance has grown significantly. Sustainability reporting has for many large multinational companies become mainstream.

The Global Reporting Initiative (GRI) provides a reporting framework for companies and more than 4,000 organisations from 60 countries use GRI guidelines to produce sustainability or corporate social

responsibility (CSR) reports on a voluntary basis. And, while there is a growing trend towards mandating non-financial reporting, it is important to note that in many instances CSR policies adopted by companies exceed the requirements imposed by legislation.

Isolating the source of these developments is challenging; the growth in CSR as a mainstream business concern is attributed to a combination of increasing self-regulation by companies (by applying ISO standards, for example), legislation (mandatory reporting on environmental impacts) and consumer pressure.

One of the concerns of a global economy is the ability of national governments to regulate corporations' environmental impacts and working conditions. 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 legislation. Standards, however, provide potential governance mechanisms beyond legal compliance.

Consumer pressure and companies' "licence to operate" has encouraged businesses to comply with standards covering issues yet to be comprehensively addressed by legislation 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, which covers corrupt practices abroad, may be the exception.

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. Yet, under the influence of ISO 26000 (which provides guidance on how organisations can operate in a socially responsible way), the EU 2011 strategy for corporate social responsibility includes the following definition: CSR is "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, however.

Supply chain

While international legislation on CSR issues is limited and not easily enforceable, complying with voluntary standards, such as 14001, is comparatively straightforward for multinational companies.

For example, standards such as 20121 may help address the supply chain issues of a transnational firm, in that they require a centralised system to be set up that can then be adopted in its various global divisions. A central sustainability policy may be developed and changes made at each locality.

Meanwhile, compliance with sustainability legislation may impose radically different requirements in each jurisdiction a company is active. Many organisations source products or materials overseas where different regimes apply. However, even if legislation falls in step with standards, legal requirements may have a limited effect on just how sustainable the activities of multinational entities are across their international supply chains.

To ensure practices are truly sustainable, company policies must move beyond the requirements of national legislation. This is perhaps why voluntary management standards tend to move ahead of legislation; they are endowed with the kind of breadth and reach that is impossible on an international legal basis.

Legislation mimicking standards

Perhaps, because they tend to move quicker than legislation requirements first established by management standards have sometimes been incorporated into legislation. A good example is eco-labelling. It is a legal requirement in the US and Canada for cars and white goods to have a label detailing their energy performance; 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. Eco-labelling in North America began as a way of revealing to consumers the impact of individual goods on the environment. At first the standards were voluntary, but they have steadily been adopted as a legal requirement. The establishment of legal guidance as to what constitutes an eco-friendly product in the EU seems a first step to similar compulsory systems. In both instances, legislation is, in effect, incorporating long-standing voluntary standards.

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

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 better define what “beyond compliance” means. The law and respect for the rule of law ultimately ensures a framework within which companies can operate with certainty.

Sustainability standards and sustainability legislation seem to be converging. Voluntary initiatives can influence regulations, which in turn find new ways to support and use such creativity. In a climate where businesses are increasingly judged on how they implement fair practices, laws and standards are playing a significant role in shaping sustainable markets.

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