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Our ref

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**To the Members of
ISO/PC 283
Occupational health and safety management systems**

ILO's concerns regarding the development of ISO 45001

During recent discussions between the ILO and ISO, the Chairman of ISO/PC 283 invited the ILO to submit a paper outlining their concerns over the development of ISO 45001.

Please find the ILO's response to this invitation attached below.

This should be noted in conjunction with document PC283/N117, which seeks to clarify the relationship between ISO and the ILO.

Yours sincerely

Charles Corrie
For the BSI Secretariat of
ISO/PC 283
charles.corrie@bsigroup.com

NOTE OF THE INTERNATIONAL LABOUR OFFICE

To the Members of

ISO/PC 283

Occupational health and safety management systems – Requirements

Follow up to ILO Comments on ISO 45001 / WD under the ILO/ISO Agreement, N. 31

1. As requested by PC 283 Chairman, this Note identifies areas in the draft ISO 45001 in which insufficient consideration has been given to ILO comments on the WD involving international labour standards and related ILO instruments. Under the ILO-ISO Agreement, ISO 45001 should respect and support ILS, which include ILO Conventions, Recommendations and ILO Guidelines on Occupational Safety and Health Management Systems (ILO-OSH 2001).
2. ISO 45001 should use ILS as the source of reference on ILO issues in case of conflict. ISO processes of consensus-building are guided by ISO decisions and rules; these include ISO's decision to commit to the ILO-ISO Agreement, vetted by TMB. As with other ISO decisions, this Agreement guides the PC's drafting. As N117 notes, Clause 4 states "ISO standards that relate to issues within ILO's mandate (ILO issues) should respect and support the provisions of ILS and related ILO action, including by using ILS as the source of reference with respect to ILO issues in case of conflict." This means that *where there is a conflict with ILS on an ILO issue, the drafters will give priority to a solution that avoids such conflict.*
3. ILO comments on the WD identify issues where the text or other comments would conflict with or fail to respect ILS; they do not include subjective opinions. Where these comments flag conflicts, the conflict should be recognized and, under the Agreement, given priority consideration over any other comments in conflict with ILS. ISO's consensus-building process should make every effort to find a solution in line with ILS as decided by ISO and ILO remains ready to offer alternative suggestions in line with ILS where needed.
4. The Agreement also helps ISO to implement the ISO/IEC Directives Annex SO, Principles for developing ISO and IEC Standards related to or supporting public policy initiatives. Annex SO prescribes that ISO standards involving public policy matters (such as ISO 45001) should (a) not to be based on subjective judgments, (b) not seek to drive public policy, regulations, or social and political agenda and (c) recognize that development of regulation, public policy and interpretation of international treaties is a role of treaty organizations (like ILO) (SO.2). Active participation of experts representing regulatory authorities is necessary to ensure a clear understanding among all concerned parties on the relationship between the standard and the public policy initiative (SO.2). This aligns with the WTO TBT Code of Good Practice.
5. Under the Agreement, ILO's participation can ensure clear understanding of PC 283 on relevant aspects of public OSH standards within ILO's mandate that are adopted for use in 185 countries, as the basis for national laws, regulations and policies. This active participation is possible if ILO has access to comment on all draft texts in time to ensure the drafters are aware of any issues to consider in relation to ILS. ILO still needs access to all draft sections to send comments on all parts as needed, including clauses 1-2 and 9-10.

6. ISO PC 283 should find a consensus solution to the OHS/OSH issue. The ballot on OHS/OSH, sent without ILO's relevant comments at N.89, brought mixed results. The normal consensus-building processes can now resolve the conflict between ILS' exclusive use of "occupational safety and health (OSH)" and, if accepted, the ballot result which demonstrated broad support for both "occupational health and safety (OHS)" (a few more votes there) and "occupational safety and health (OSH)". The PC may wish to review the ballot result in light of N117, or it may wish to provide for a Note in the standard (terminology) recognizing the equivalence of OHS and OSH, a technical point on which the PC leadership based their decision to launch a ballot rather than discuss which term to use. The Note could read:

3.04A

OH&S management system

Part of the management system (3.04) used to achieve the OH&S policy (3.07A)

Note X to entry: The term OH&S (occupational health and safety) is equivalent to the term OSH (occupational safety and health).

SPECIFIC DRAFTING ISSUES

7. ISO/PC 283 should reconsider ILO issues for which insufficient consideration was given on how to avoid conflict with ILS before the CD is established. These issues should be incorporated in the requirements text as a matter of priority, and not left to the Annex. ILO suggestions for how they can be addressed in a way to not conflict with ILS appear below. ILO separately commented on some issues for the Annex to complement those in the text.
8. ILO suggested "OHS/OSH risk" replace "risk" whenever such type of risk is referred to. This comment should be considered now in line with definition of OSH risk of TG5 (3.09a)
9. **Clauses 1-2 (Scope and Introduction):** The ILO provided oral comments in the April 2 plenary in Morocco on Clauses 1 and 2 as then revised by PC leadership and put on the screen. ILO requests the work-in-progress draft to provide further comment as relevant so that priority may be given to ILS relevant to any ILO issues, before the CD is established.
10. **Clause 3 (Definitions and terms):** The term "worker" as defined by TG 5 should be maintained throughout the CD. Issues pertaining to the terms below should be considered for resolution consistently with ILS before the CD is established.
- a) Worker:** The definition of "worker" proposed in WD 3.02A3, Choice 3 supported by ILO is consistent with ILS. This definition was accepted in TG 5 and should be maintained by the WG and PC as a result that fully respects and supports ILS. Upon request of PC leadership, an explanation of the relevant meaning and use of the term "worker" in ILS and its usage in German has been sent separately to the TG 5 leader.
- b) Hazard:** The definition of "hazard" as drafted by TG2 -- "source, situation or act with a potential to cause human injury or ill health" -- conflicts with ILS in two respects: the word "act" is inconsistent with the accepted notion that a hazard has an inherent potential to do harm, a notion that is not reflected in the definition; and the word "inherent" should

be added before "potential" to ensure predictability of hazard identification and avoid subjectivity. ILO-OSH 2001 defines hazard in the context of OSH Management System as: "the inherent potential to cause injury or damage to people's health". While a source or situation may have an inherent potential to cause harm, an act does not. Proper distinction between hazards with inherent potential to cause harm, and risks such as acts in managing hazards is necessary for effective OSH-MS planning, performance and evaluation. An act involving use or contact with a hazard is not itself a hazard but can present a risk depending on how it is controlled (or not). This approach also aligns with the definition of "hazard" in ISO 12100. To be consistent with ILS, the word "act" should be deleted and "inherent" added to "hazard".

- c) Workers' representatives:** ILO proposed a definition for workers' representatives in 6.2 which was deferred for lack of time to coordinate the draft between TG 5 and TG 1. The concept is used in the standard (e.g. sec. 5.1, 7.4.2(a)) and is central to MS processes for worker participation. A pending comment (line 320, JDG) was incorrectly reported "not accepted". "Workers' representatives" should be defined in line with ILS.

- d) Incident:** The definition of "incident" drafted by TG 5 covers both situations resulting in injury and those not resulting in injury (despite 3 opposing comments - ILO, FR, JDG - all for 319A3 - and only 2 supporting comments - GB and IIOC). This result is contrary to ILS which distinguishes events causing injury ("occupational accident" in P155, art. 1) from events not causing injury ("incident: unsafe occurrence arising out of or in the course of work where no personal injury is caused." ILO-OSH 2001, Glossary). The current TG5 definition risks unnecessary confusion on a fundamental concept and divergence with public policy and regulations that routinely require organizations to record and report occupational accidents and diseases. Unsafe occurrences that do not result in injury or disease are also less likely to be recorded where injury and non-injury events are blended together. Since there is no clear meaning of "incident" in OSH, one could give effect to ILS by adopting its definition of "incident", or simply avoid the term "incident" altogether, for example by using "unsafe occurrence" and adding "with personal injury" or "without personal injury" as needed. Either approach will avoid conflict with ILS.

- e) Contractor:** ILO suggested a definition of "contractor" in relation to 6.1.1 b) (WD, line 477) but this was not reviewed by TG5 for lack of time. Clarity on this term is important for protection of workers of contractors who are given equivalent protection in the MS. ILO requests consideration of the definition of contractor before the CD is established.

- f) OH&S equivalence with OSH:** See paragraph 6 above.

- 11. **Clause 5 (Leadership):** In its WD comments, ILO suggested that the text of ISO 45001 include several processes essential to consultation and active participation of workers and workers' representatives. These comments should be considered for insertion in the text; introducing them in the Annex alone does not recognize the centrality of these measures to the MS. In particular, ILO suggests that, in completing consideration, a Note be added to 5.1 that "processes to protect workers from reprisals shall include protecting workers from disciplinary or other adverse measures for action such as reporting, as well as removing themselves from, situations presenting imminent and serious danger to life or health."

12. **Clause 7 (Support):** In its WD comments, ILO suggested that the text of ISO 45001 include established elements of worker participation and representation. These four comments should be further considered for insertion in the text provisions or Notes. Introducing them in the Annex would not recognize the centrality of these measures to the MS (detail if any could go there).

a) Appropriate training on OSH should be given to workers and their representatives because it is a prerequisite for their effective participation (ILO WD comments after line 569 and at line 577). This point should be added to the requirements text, such as a Note under 7.4.2 after the Note on personal protective equipment. The point that training should be given during working hours to maximum possible may be put here or go to Annex.

b) Mechanisms to facilitate effective participation and consultation take such forms as workers' safety delegates, workers' safety and health committees, or joint safety and health committees (ILO WD comment after 616). To complete the existing Note under 7.4.2, the form "workers' safety delegates" should be added, "workplace" replaced by "workers' or joint" and the word "existing" deleted.

c) Where management agrees, workers may bring in **external technical advisors**. (ILO WD lines 617-618). This phrase summarizes ILS (C 155 art. 19 e) and should be added e.g. to the paragraph under 7.4.2 about relevant external interested parties.

13. **Clauses 9 and 10:** The ILO cannot actively participate in review of the work-in-progress text for Clauses 9 and 10 because it has not been given access upon its request. ILO reiterates its request for the work-in-progress text for any comment on ILS if needed, and to participate in this TG's discussion on ILO issues, if any, before the CD is established. The WD text of clauses 9-10 contains no references to worker participation. If these clause in the CD similarly lack this essential element of an MS, ILO requests the following comments be reconsidered in particular to avoid conflict and ensure consistency with ILS:

a) Worker participation in audit process. Insert after line 765 a second paragraph: "All stages of the workplace audit, including analysis of results, are subject to worker participation, as appropriate."

b) Worker participation in management review. Insert a new paragraph after 783: "The results of the management review shall be formally communicated to: the persons responsible for the relevant element of the OSH management system so that they may take appropriate action, (b) workers and workers' representatives."

c) Content is needed for the clause on **continual improvement** to address how to continually improve the MS with examples (see ILO WD Comment with suggested text, line 807 re ILO-OSH 2001, 3.16.1).