

Multinational operators, safety management systems and enforcement

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Multi-national operators are a widespread phenomenon in all branches of manufacturing not only the chemical and petroleum industries. This has led to questions being raised concerning the uniform behaviour by multi-nationals within the EU with respect to fulfilling the requirements of the Seveso II Directive and also regarding uniform requirements and enforcement strategies by the competent authorities. The following text attempts to provide an introduction to the subject and also to highlight issues which require further discussion and clarification.

Introduction

The safety management systems (SMS) is the means by which an operator of a Seveso establishment should ensure that the major accident prevention policy (MAPP) is implemented and that responsibilities are defined, processes and procedures developed, and that management audit and review is carried out. For a Seveso establishment which is operated by a multi-national company (or corporation) it is a reasonable expectation that the parent company or head office would have substantial influence on the major accident prevention policy as well as on the structure of the SMS and the management audit. However the degree to which this takes place will depend to a large extent on how much autonomy is granted to the individual establishments by the head office. The commercial and organisational reasons driving these decisions are diverse and include:

- **History:** some locations may have been acquired through merger and acquisitions over a number of years. This can lead to legacy cultures which diverge from that of the parent organisation.
- **Production / activity diversity:** some multi-national operators operate very diverse establishments across Europe and indeed around the world. Some establishments may be batch operations or blending, packaging and distribution; others may be continuous processes producing a completely different set of products. There may be a conscious decision to see the multi-national company as a set of different businesses, with their own individual business cultures.
- **Capabilities and competencies of the individual establishments:** within a multi-national operator the individual establishments will have different sizes and due to their varying operations will also maintain different skill sets and capabilities. Not all establishments will be able to carry out inspection and maintenance activities with in-house staff; others may have special knowledge, for example in the field of risk assessment. This will mean that some establishments provide services throughout the whole company or it may mean that some establishments are dependent on third-party consultants and contractors to ensure safe operation is maintained.

In addition to the organisational and structural variation across the individual units of a multinational operator there is an additional requirement that every establishment must comply with the laws and regulations of the locality in which it is situated. These regulations may be national, but also local.

Therefore the simple answer to whether multi-national operators behave differently in different countries and whether competent authorities enforce different requirements in different Member States is “yes” on both accounts. The reasons for this rather simplistic statement however require a more complex analysis. In addition it is necessary to be able to demonstrate that the standard of safety which is achieved across the European Union is of a consistently high level.

Corporate Governance

With regard to the prevention of major accidents there is a need for senior leaders within the high-hazard industries to take a decisive role. To this effect the OECD has published guidance for senior leaders (including CEO) to address corporate governance for process safety. The elements of corporate governance for process safety are *risk awareness*, *information*, *competence* and *action* centred around a fifth element *leadership & culture*.



Some of the principles listed in the document are given in the following:

Senior leaders need to create an open environment where they keep process safety on the agenda, prioritise it strongly and remain mindful of what can go wrong. They need to delegate appropriate process safety duties to competent personnel whilst maintaining overall responsibility and accountability.

Senior leaders need to understand what it is that makes the establishments for which they are responsible hazardous facilities. They should understand the critical layers of protection that are in place between a hazards and an accident. They should personally involve themselves in risk assessing proposed budget reductions for process safety impacts. In addition they should provide incentive schemes which don't encourage production at the expense of process safety risk.

Senior leaders need to ensure that the organisation analyses audit and assessment results. In doing so, they monitor site and corporate level process safety key performance indicators and near misses. Metrics should be developed which help to monitor the health of the process safety culture and management systems. They actively share experiences and learning within their own organisation, and within other high hazard sectors and ensure appropriate, high quality follow up. Senior leaders should establish safety management systems and monitor/review their implementation, seeking continuous improvement.

Senior leaders should assure the competence of their organisation to manage the hazards of its operations. In doing so they should understand which questions to ask their people and know which follow up actions are necessary. They should ensure there are competent management, engineering, and operational personnel at all levels. They should ensure that the organisation monitors and reviews the process safety competency of contractors and third parties. Senior leaders should be capable of openly communicating critical aspects of process safety with all internal and external audiences.

Senior leaders engage in articulating and driving active monitoring and plans and assure practices are consistent with corporate process safety policies. Incorporate process safety considerations into major capital investments, long range planning and integration of mergers or acquisitions. Ensure process safety risk mitigation plans and emergency response plans are developed and maintained for all sites within their business and at an organisation-wide level, with appropriate levels of competent resources available to execute the plans.

Considering the accepted fundamentals of the OECD Guidance, how much variance is possible between the individual sites of a multi-national operator? It is clear that there is a need for the most senior levels of management to have clear oversight of the operations and to maintain responsibility. Can a multi-national operator sustain these goals and still allow a wide divergence of behaviours and attitudes? To what extent can the differences be seen to be nuances in the path taken to achieve a common goal?

In fulfilling the role of overseeing the operations, to what extent are the head offices of multi-national operators aware of what the local enforcement structure (which authorities) and regulatory framework exists for its individual establishments? If information is gathered is this purely a documentary, fact-finding exercise or is an effort made to understand the reasoning and purpose of specific regulations surrounding the local context? Inspectors encounter the negative side of this communication when the response to an enforcement requirement is:

“In XYZ we don’t have to do that”, or

“The authorities in ABC accept these documents”.

Closer questioning and investigation show a variety of backgrounds to these claims:

1. The simplest of these is, sadly, the statement is patently not true. Authorities know that this occurs, however it is to be hoped that it is limited to individual cases. Competent authorities do not appreciate “games being played”, particularly as they

are often in a weaker position as regards verification of the claims. Safety should not be about one side gaining an advantage over the other, but about trust and cooperation towards major accident risk reduction and enhancing good risk management.

2. Other cases show that whilst the claims are true, the context is so different, that the case is not comparable.
3. In some cases there is an opportunity to use an open discussion to improve the local practice, or to develop alternative approaches to dealing with a situation. Authorities should be open to a discussion, where it can be demonstrated that alternative approaches are applied and that they achieve at least the same level of safety as existing requirements. Enforcement requirements are generally the result of the national and local enforcement regime in the country in which the establishment is situated. Head offices should use the opportunity to share the experiences of subsidiaries to develop a richer and better informed approach to major hazard control.

It is important to recognise that enforcement by the competent authorities is not a mechanism to restrict the freedoms of economic activities, but the complementary element to the requirement placed on operators to demonstrate safe operation of their establishments.

National and local enforcement

The enforcement strategies within the individual Member States very much depends on the organisational structure of the competent authorities and the legislative structure within which they operate. The multitude of parameters affecting the constellation of and the execution of the tasks by the competent authorities is so great that it would be truly surprising to discover totally uniform approaches by the authorities throughout the EU. These variables include:

- Whether the competent authorities are national authorities or local (regional) authorities (or a mixture of both).
- Whether the competent authority is a single body or whether a number of different authorities are jointly or individually responsible for various aspects of the implementing regulations.
- The degree to which the implementing regulations are prescriptive or descriptive (goal setting).
 - Whether the regulations are implemented within as environmental, occupational safety or civil protection framework, or combinations of these. Alternatively a separate “Seveso” framework may exist.

In addition to these systemic elements which may lead to different approaches there are also elements which may be due to the individual understanding and competency of an individual or group of inspectors. This latter issue is less desirable and is a question of governance within the competent authorities and as such is addressed in the Seveso III Directive,

Preamble (26) and Article 20 (10). It is also a reason for the work of the Mutual Joint Visit (MJV) Programme and of Technical Working Group 2 on Inspections which seek to share experience and establish common criteria and understandings where necessary. However the fact that two individuals will possibly see the same situation in two different ways is a fact of life and should not necessarily be seen as one being right and the other wrong. It may be a question of difference of emphasis.

Challenges to achieving a consistent approach to safety management systems and enforcement

To ensure a consistent approach to safety management systems and an overall high level of safety throughout the EU there are certain challenges which need to be addressed by industry and competent authorities.

The following suggests some of the topics which could be considered:

- Multinational corporations should develop good corporate governance for process safety within the whole organisation. This should be reflected in an approach to the safety management system which whilst internally consistent is able to demonstrate to the competent authorities that compliance with the respective national and local regulations is achieved and that the goals of the SMS are effectively pursued.
- Multi-national operators should be aware that different organisational and regulatory frameworks may lead to different requirements for compliance being set in different countries across the EU. This should not lead to different levels of safety performance in different countries.
- Competent authorities need to ensure that they achieve and maintain competency in the assessment of SMS amongst their inspectors. This is a particular challenge as generally, although not exclusively, Seveso inspectors have a technical (engineering or natural science) education and are not always well informed about management and organisational issues.
- Competent authorities, that is both enforcement and policy sections, should where possible develop agreed enforcement strategies which are clearly understood, transparently communicated and are acted upon.

Issues to be considered

How can the inspection at the local establishment take account of the multinational organisation and those elements of the Safety Management System which are rooted in the head office?

How can inspectors identify the degree to which the local establishment and the head office maintain a consistent communication with regard to major accident prevention and identify a strong corporate governance in this regard?

How can inspectors communicate better with each other within the European Union to share experience in dealing with multinational operators in general and where common operators exist with regard to specific operators? What are the barriers to this communication and what would the advantages be?

How can consistency in performance by multinational operators be improved throughout the EU, together with consistency of the assessment by the authorities' inspectors. How can the level of consistency be identified and assessed?

Literature

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