

German Consensus Statement on standardization in the field of directives based on Article 118a of the EC Treaty¹

I. Preliminary remarks

International and European standardization penetrate into fields which, in the Federal Republic of Germany, are usually covered by legal provisions and supporting technical regulations or accident prevention regulations.

On the basis of the existing contracts between the Federal German Government and the German Standards Institute as well as the convention between the Federation of the Statutory Accident Insurance Institutions of the Industrial Sector/Federal Association of the Statutory Accident Insurance Institutions of the Public Sector and the German Standards Institute, the Federal Minister for Labour and Social Affairs, the Supreme Labour Protection Authorities of the Laender, the Federation of the Statutory Accident Insurance Institutions of the Industrial Sector, the Federal Union of the Statutory Accident Insurance Institutions of the Agricultural Sector, the Federal Association of the Statutory Accident Insurance Institutions of the Public Sector, the social partners and the German Standards Institute will coordinate their activities, especially in the field of directives based on Article 118a of the EC Treaty. The following principles should be used as a guideline.

II. General remarks

The strategy that has been developed by the European Commission for completing the Single Market is based in particular on Article 100a of the EC Treaty and takes the reasons for commercial barriers into account. It relies on the following principles:

- The harmonization of legal provisions will concentrate on the definition of compulsory requirements for health and safety, that have to be prescribed in all Member States and must be respected for the free movement of products.
- Considering the state of the art, the standards bodies are hitherto responsible for the development of technical specifications, which are necessary to manufacture and circulate products complying with the essential requirements stipulated in the directives.
- As far as products manufactured according to harmonized standards are concerned, the authorities are obliged to presume the conformity of these products with the essential requirements of the directives based on Article 100a of the EC Treaty.

Whereas Article 100a mainly relates to foreign trade policy, Article 118a of the EC Treaty aims at the improvement of the working environment, in order to protect the safety and health of workers. The intended harmonization is achieved by the definition of minimum requirements in the directives. Nevertheless, the Member States are in a position to maintain or adopt more stringent measures for the protection of workers.

Neither the EC Treaty nor the directives as such provide for the preparation of standards in support of the minimum requirements specified in the directives based on Article 118a of the EC Treaty. The instruments for the implementation of standards defined by the directives based on Article 100a (mandating, notification, invocation of the safeguard clause to object

¹ Consensus Statement delivered by the German Federal Minister of Labour and Social Affairs, the Supreme Labour Protection Authorities, the statutory accident insurance institutions, the social partners and the German Standards Institute (DIN) on standardization in the field of directives based on Article 118A of the EEC Treaty, in: *Bundesarbeitsblatt* 1/1993, pp. 37-39.

to a harmonized standard) are not applicable to the directives based on Article 118a of the EC Treaty, either.

Principle

In the field of directives relating to occupational health and safety based on Article 118a of the EC Treaty, the Federal Republic of Germany will not initiate the development of European standards. This principle results from the assumption that these directives supply minimum requirements which may be exceeded when transposed into national legislation in order to maintain or increase the national occupational health and safety level. European standards in this field, however, could fix an actual ceiling that is provided for neither in the Single European Act nor within the directives themselves.

Exceptions

Regardless of this principle, harmonized standards may improve the occupational safety and health of workers at work; this applies in particular to those directives based on Article 118a of the EC Treaty that contain requirements on the nature of a product and are prescribed or accepted in all Member States (e.g. Annex I to Directive 90/270/EC - minimum safety and health requirements for work with display screen equipment). These sorts of requirements of the nature of a product described by technical specifications may indirectly result from essential requirements in the field of occupational health and safety (e.g. suction). Standardization in this field should, however, be guided by different modules in order to allow the bodies responsible for dealing with occupational health and safety sufficient leeway.

Moreover, the directives based on Article 118a of the EC Treaty may be supported by European standards

- for general comprehension (terms, definitions, symbols)
- for assuring the comparability of a particular occupational health and safety level (e.g. testing methods, measuring, analysis and sampling procedures, statistical methods, measurement planning, data exchange).

Chapter IV. supplies a framework for further exceptions.

According to Article 118a of the EC Treaty, the Member States are allowed to place higher demands, going beyond the directives based on Article 118a; i.e. the Member States are also allowed to draw up technical specifications. Therefore, the German Standards Institute is able to prepare standards, as long as they keep to these guidelines and provided that they are not incompatible with the standards prepared by CEN/CENELEC. Before starting standardization in this field, however, agreement should be reached with the bodies mentioned in section I.

III. Procedure

The principle not to initiate the preparation of standards in the field of directives based on Article 118a of the EC Treaty is of general significance. Before an exception from this principle can be made, each particular case has to be examined individually and agreement with the bodies mentioned in section I has to be reached in accordance with the parties concerned. The problems standardization involves have to be borne in mind from the very beginning of the harmonization process to make sure that possible exceptions are recognized systematically and at an early stage. This means in detail:

- The Federal German Government supports the fact that the content of the directives actually complies with the aims of Article 118a of the EC-Treaty.
- When a draft directive is presented, the following aspects have to be analysed and clarified:
 - to what extent does the regulation content comply with national legislation,
 - which legal provisions and regulations already fulfil the minimum requirements,
 - what kinds of provisions or regulations (occupational health and safety provisions, accident prevention regulations, technical regulations, standards) are required.
- The German Standards Institute advocates the national position towards CEN/CENELEC, taking paragraph 1, section 2 of the standardization contract between the Federal Government and the German Standards Institute into consideration.
- If, contrary to the German position, standardization projects are agreed upon and initiated, the parties concerned have to be informed by the German Standards Institute.
- As far as standardization projects that have been initiated contrary to the German position are concerned, the institutions mentioned in section I have to participate in the standardization process with the aim of establishing a safety level that is at least as high as the existing national level.
- This does not affect the legal competences of the State, the Laender or the statutory accident insurance institutions. Possible measures taken by the Federal German Government and directed to the European Commission (e.g. invocation of the safeguard clause to object to a harmonized standard) are not affected, either.

IV. Guidance on the assessment of standardization projects in the field of directives based on Article 118a of the EC Treaty

Fields of regulation relating to the directives based on Article 118a of the EC Treaty	Fields in which standardization is possible/reasonable but not covered by the basic principle	Fields that have to be excluded from standardization in any case
1. Organisation of the company		
<ul style="list-style-type: none"> • instructions for operation and technical controls • instruction of workers • organisation of first aid 	<ul style="list-style-type: none"> • terminological standards (terms, definitions) • method to ensure the comparability of a particular occupational health and safety level (testing methods, measuring, analysis and sampling procedures, statistical methods, measurement planning, exchange of data) • features of security/hand signs and emergency signals • requirements concerning instructions for use/operation aimed at the manufacturer, including general rules for maintenance and handling 	<ul style="list-style-type: none"> • compulsory definition of specific measuring procedures • classification or assessment of test, measurement or analysis results in the sense of the protection of workers • classification of the health hazards resulting from working substances (biological agents) in the sense of a risk assessment • provisions for the installation of security signs • company regulations concerning maintenance • operators' instructions for the operation of machinery and plant

2. Duties of employers and workers for ensuring occupational safety		
<ul style="list-style-type: none"> • provision of safe and ergonomic working equipment • application of safe and ergonomic working methods • occupational medical care • obligation to inform the workers • provision of personal protective equipment, weather-proof clothing • co-ordinating employer activities 	<ul style="list-style-type: none"> • use of modules to sum up different features for the selection of working equipment and working procedures • requirements concerning the nature/composition of working equipment, if no 100a directive exists and the standards reflect the current state of science and technology (standardization running parallel to general development) • calculation methods (relating to stability for example) 	<ul style="list-style-type: none"> • conditions for the installation of machinery and plant • equipping the workplace with secondary safety technology, safety signs • examination cycles (occupational medical care) • employment restrictions (except for No. 4) • employers' obligations concerning the features of a job (organization and contents) • definition of schedules for safety specialists and company doctors
3. Layout of working environment		
<ul style="list-style-type: none"> • layout of premises and workplaces • health protection and occupational hygiene • limiting values for pathogenic factors, restrictions for use • specific requirements (ventilation, lighting, noise control) 	<ul style="list-style-type: none"> • modules to sum up features for the selection of technical equipment • requirements regarding the nature of the workplace and the working environment (ergonomics) • emission values • manufacturer information on safe installation 	<ul style="list-style-type: none"> • operator instructions for the installation of devices, plant and equipment • providing the workplace with secondary safety technology • immission limit values
4. Initial and continuous training		
<ul style="list-style-type: none"> • requirements for content and organization 	<ul style="list-style-type: none"> • requirements for specific jobs, if they have a strong bearing on safety (welder, electrician) • criteria for the certification of personnel (qualification criteria) • requirements for testing personnel 	<ul style="list-style-type: none"> • qualification requirements for inspecting personnel (execution) • qualification requirements for safety specialists and company doctors