

Limits of and scope for standardization of the health and safety of workers at work

As a matter of principle, the health and safety of workers at work should not be governed by standards. This principle is set out in the German Consensus Statement on Standardization in the Field of the Health and Safety of Workers at Work¹, which in turn is based upon essential provisions of European social policy (Article 137 of the EC Treaty). Since the German Consensus Statement has repeatedly been the subject of different interpretations, however, KAN has drawn up an explanatory document which is intended to describe the current limits of and scope for standardization in this area.

Notwithstanding the general principle, standards are possible in this area under certain conditions. One example is where they are intended to promote understanding in day-to-day plant practice (symbols, definitions) or the comparability of measurement results by setting out uniform measurement methods (for example for exposure to workplace noise or vibration).

Standardization is also tenable in certain cases for which it would normally be excluded by the German Consensus Statement: when a standards project is launched in defiance of the German vote, or when KAN expressly consents to a standardization topic, OSH experts may participate in development of the standard with the involvement of KAN. In both cases, participation in standardization activity is intended to ensure that the national level of occupational safety and health is maintained.

The interpretative document was adopted by KAN in March 2009, and is reproduced in full below.

Support in the addressing of OSH aspects in standards within the scope of Article 137 of the EC Treaty



In the European Union, occupational safety and health is governed within two separate legal areas. Where products are concerned, identical requirements based upon directives under Article 95 (formerly Article 100) of the EC Treaty and which must be observed by manufacturers apply throughout the entire European Single Market. With regard to the use of these products, however, for example as work equipment, the national provisions of the Member States take precedence in accordance with Article 137 (formerly Article 118a) of the EC Treaty.

The health and safety of workers at work is one of the areas in which provision is not currently made for full harmonization. Any Member State may adopt regulations over and above the minimum requirements formulated in EC directives under Article 137 of the EC Treaty.

In directives under Article 137 – unlike those under Article 95 – European legislation does not generally assign the function of supporting the minimum health and safety requirements to standards. No provision is made for procedures and instruments such as the issuing of mandates for standards projects, the review of draft standards by Consultants, the listing of standards in the Official Journal of the EU, or the safeguard clause.

Is standardization within the scope of Article 137 of the EC Treaty possible in spite of this?

The “German Consensus Statement” was adopted in Germany in 1993, and has remained in force unamended. It sets out the principle that Germany may not launch standardization activity within the scope of directives under Article 137 of the EC Treaty. However, the German Consensus Statement deviates from this principle in that

it does not exclude standardization activity governing the health and safety of workers at work under all circumstances.

At the same time, the existing scope for standardization in this area has been the subject of different interpretations in the past. The following information is therefore intended to assist individuals working in standardization activity, whether on a salaried or voluntary basis, to exploit the scope for standardization of the health and safety of workers at work.

What parties support this position on standardization within the scope of Article 137 of the EC Treaty?

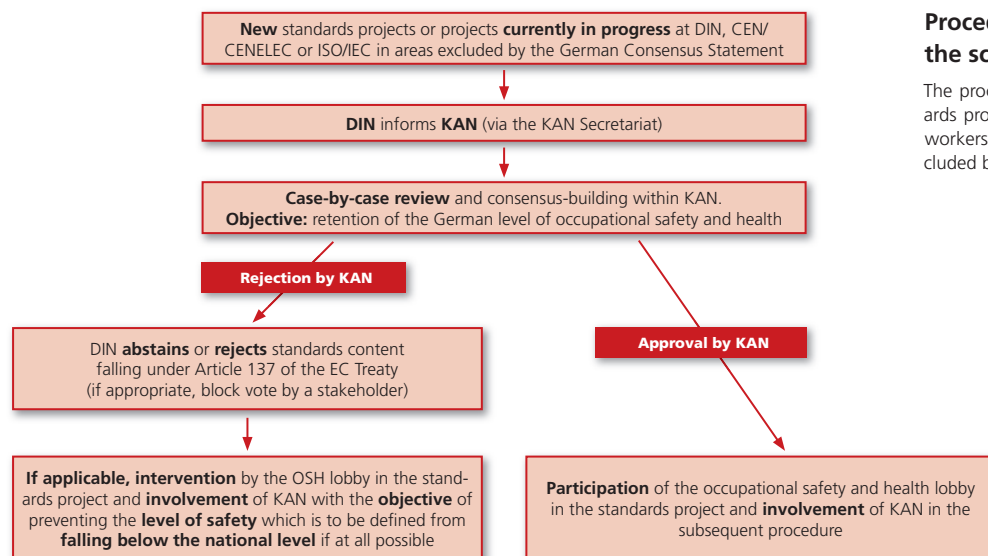
In 1993, the following parties with an interest in OSH adopted the German Consensus Statement: the state (federal and regional administrations), the employers, the employees, the statutory accident insurance institutions, and DIN (German Institute for Standardization). In 1994, these stakeholders joined together to form KAN (the Commission for Occupational Health and Safety and Standardization, www.kan.de/en). KAN thus represents the parties with an interest in OSH named in the German Consensus Statement.

Since the German Consensus Statement was adopted, the work for a large number of standards projects relevant to occupational safety and health has shifted from the European to the international level. The German OSH lobby is to remain able to carry through its objectives effectively in spite of this and other changes in circumstances. KAN is therefore currently discussing further development of the procedure for standardization activity performed under Article 137 of the EC Treaty.

¹ Consensus Statement adopted by the German Federal Minister of Labour and Social Affairs, the supreme labour protection authorities of the Länder, the statutory accident insurance institutions, the social partners and the German Institute for Standardization (DIN) on standardization in the field of directives based on Article 118a of the EEC Treaty (now Article 137 of the EC Treaty), in: Bundesarbeitsblatt 1/1993 (Federal Labour Gazette), p. 37-39

Procedure for standards projects within the scope of Article 137 of the EC Treaty

The procedures are shown which are possible when standards projects deal with aspects of the health and safety of workers at work which in the first instance are expressly excluded by the German Consensus Statement.



In what areas is the standardization of the health and safety of workers at work possible and advantageous?

- Standards may support the health and safety of workers at work for example in the areas of the comparability of measurement results, terminology and definitions, or requirements for the properties of equipment, workplaces or the working environment (cf. Section IV of the German Consensus Statement).
- Even in areas in which the German Consensus Statement permits no standardization activity whatsoever, German experts may participate in European and international standards projects concerning the health and safety of workers at work:

- When the parties represented in KAN agree to the standardization of a certain topic.

The German Consensus Statement states that *where they are necessary, exceptions to this principle must be reviewed on a case-by-case basis and must also have the approval of the stakeholders named in Section I; this is to be achieved by consensus among the stakeholders.*

- Alternatively, where such projects are launched by other countries despite having been rejected by the German vote.

The German Consensus Statement states that *where standards projects have been launched in defiance of the German vote, the parties stated in Section I must participate such that the safety level to be defined is if at all possible not lower than the national level.*

In its wording, the German Consensus Statement is limited to the launching of standards. In the past however it has been applied by analogy to existing standards, for example at the revision stage, and to standards projects in progress. It should continue to be interpreted in this way.

Does this position also apply to international standards projects?

The German Consensus Statement does not explicitly refer to international standardization activity. At the same time, the principles developed within it for European standardization can be applied by analogy to international standardization.

- This is particularly the case where parallel voting in accordance with the Vienna or Dresden Agreements is planned or standards are intended for adoption unchanged into the European body of standards upon completion.
- However, even in international standards projects the impact of which upon the European standardization or legal system is not clear from the outset, a procedure consistent with the German Consensus Statement should be followed in the interests of clarity and harmonization with aspects of the health and safety of workers at work.

At the international level, a distinction should be made at least between product requirements and requirements upon the health and safety of workers at work under Articles 95 and 137 of the EC Treaty respectively, for example by the use of separate parts of standards. The international standards organizations ISO and IEC support this position, for example in the ISO/IEC directives. They expressly call for all means to be exploited to enable their standards to be adopted unchanged at regional and national level. Standards in modular form, as also required by the European Commission, facilitate on the one hand the adoption of international product standards at European level. On the other, they leave scope for standards governing the health and safety of workers at work not necessarily to be adopted should they prove incompatible with the European requirements.