

## **Policy paper on the role of standards in the health and safety of workers at work**

The following policy paper was drawn up by the working group on “Standardization in the health and safety of workers at work”. The working group was set up by Germany’s Federal Ministry of Labour and Social Affairs and consisted of representatives of the federal states’ supreme labour protection authorities, the Federal Agency for Occupational Safety and Health (BAuA), the Secretariat of the Commission for Occupational Health and Safety and Standardization (KAN), the umbrella associations of the social accident insurance institutions, the social partners, DIN (German Institute for Standardization) and of VDE (Association for Electrical, Electronic and Information Technologies).

### **I. Background and objectives**

As part of efforts to create a single European market, EU law makers have issued directives with the intention of achieving complete harmonization of technical rules and regulations on the basis of Articles 114 and 115 of the Treaty on the functioning of the European Union (TFEU). These directives set out the essential requirements concerning the characteristics of products that are placed on the EU market. They therefore also cover products used at work. Consequently, the safety of such products is a key concern for those involved in occupational safety and health.

The essential requirements of the Single Market Directives are supported by harmonized European standards. These are developed by the European standardization bodies, CEN, CENELEC and ETSI, in line with standardization mandates issued by the European Commission. Where these standards are applied, there is a “presumption of conformity”, i.e. it can be presumed that the essential requirements set out in the related Single Market Directives are met. Besides these mandates, the EU has established other instruments for quality-assuring harmonized standards (consultants and formal objections).

As part of the “social flanking measures to accompany the internal market”, European law makers have also enacted numerous directives containing minimum requirements designed to ensure workers’ health and safety (“occupational safety and health directives”), in accordance with Article 153 of the TFEU. Unlike with the Single Market Directives described in Articles 114 and 115 of the TFEU, there is no provision for the minimum requirements of the

occupational safety and health directives described in Article 153 of the TFEU to be supported by standards. As a result, standards developed in this area by the European standardization bodies, CEN, CENELEC and ETSI, despite this lack of provision cannot themselves give rise to a presumption of conformity even if they were developed on the basis of a standardization mandate issued by the European Commission. The above-mentioned quality assurance instruments for standards (consultants and formal objections) do not exist for the area to which Article 153 of the TFEU applies.

Occupational safety and health (OSH) directives have to be transposed into national OSH legislation. In Germany, these OSH regulations often only define objectives – in line with European law. In the interests of legal security and practicability, they need to be fleshed out. To this end, they can be supplemented by rules issued by the state committees<sup>1</sup> (with a “presumption of conformity”) or accident prevention regulations and rules issued by the social accident insurance institutions. In addition, information documents produced by other institutions can give explanations and examples of how to apply rules and regulations in practice and how to design OSH measures. Overall responsibility for the functioning of such a system of rules, regulations and information documents lies with the government. This is also reflected in the German Occupational Safety and Health Act, Section 20a of which requires the federal government, federal states and social accident insurance institutions to produce a comprehensible, well-structured and coordinated body of rules and regulations as part of the Joint German OSH Strategy (the “GDA”). In August 2011 the parties to the GDA and the social partners adopted a guideline paper on the body of rules and regulations – an essential contribution to meeting that requirement. The guidelines do not deal explicitly with standards.

In practice, it is evident that standards are applied in a variety of areas. Terminological standards (terminology, definitions, symbols) and standards intended to ensure the comparability of a certain level of occupational safety and health (testing, measuring, sampling and statistical methods, etc.) are also used in the area covered by Article 153 of the TFEU. More detail on this aspect is set out in the 1993 “German Consensus Statement concerning standardization within the scope of directives pursuant to Article 118a of the EC Treaty (now Article 153 of the TFEU)”, reflecting the consensus established at the time between the Federal Ministry of Labour and Social Affairs, the federal states, the social accident insurance institutions, the social partners and the German Institute for Standardization (DIN). It is also evident that the rules and regulations issued by the federal

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<sup>1</sup> State committees are referred to generically as “committees” in the following.

government, the federal states and the social accident insurance institutions have referenced and continue to reference standards in different ways and to differing degrees. Furthermore, international and European standardization institutions adopt standards that have a direct or indirect effect on the health and safety of workers at work as well as on other areas. This trend has become significantly more pronounced in recent years.

It was this trend in Europe that prompted the move back in 1993 to establish a national consensus in the form of the German Consensus Statement. It states that Germany is not to initiate any European standards in the area covered by the directives that are based on Article 118a (now Article 153 of the TFEU). Later, Germany also used the Consensus Statement to argue against European and international standards projects initiated by other countries. In 2008, in response to the increase in such standards projects in the preceding few years and the negligible success of attempts to use the German Consensus Statement to put a stop to them, the Commission for Occupational Health and Safety and Standardization (KAN) commissioned a working group to examine whether and to what extent it made sense to continue with the German Consensus Statement. The working group produced an interpretation paper on it, which KAN published in 2009. The paper explores what approach German OSH experts should take when faced with European or international standards projects that the Consensus Statement would really require to be rejected. It also became clear that the Consensus Statement could only be interpreted and applied in an appropriate manner if the role and function of standards in the rules and regulations concerning the health and safety of workers at work had been properly defined. Consequently, recognising the government's responsibility for coherent rules and regulations as mentioned above, KAN adopted a resolution at its meeting on 26/27 March 2012 ("meeting 1/12"), in which it welcomed the fact that the Federal Ministry of Labour and Social Affairs was to install a working group to formulate fundamental principles, based on the guideline paper mentioned above, on the use of standards in rules and regulations issued by the government and by social accident insurance institutions.

## **II. Use of standards in the field of health and safety of workers at work**

The system of government-issued rules and regulations, the guideline paper, the German Consensus Statement in combination with the KAN interpretation paper on the approach to be taken for international and European standards projects, and the developments described

in Section I form the backdrop for the following observations concerning the role of standardization in the health and safety of workers at work.

This document looks at standards developed in the “conventional” manner, i.e. with a high level of consensus, public comments resolution meetings and stakeholder involvement. New deliverables which were not drawn up in the circumstances mentioned above (e.g. CWAs, PASs, IWAs) must not be referenced.

## **1. Precedence of rules and regulations over standards**

In the field of health and safety of workers at work, government-issued rules and regulations take precedence over standards. This is also true of rules and regulations issued by social accident insurance institutions since they are comparable to public law, perform the tasks mentioned above and are drawn up by OSH and prevention experts who are specialists in their particular field. Moreover, the system of rules issued by the state committees is laid down in the German Occupational Safety and Health Act and the related OSH ordinances and the “presumption of conformity” arising from these rules means that they are the primary means of fleshing out those OSH ordinances. In addition, the powers of the social partners’ OSH and prevention experts in the shaping of these rules and in the expert committees<sup>2</sup> of the German Social Accident Insurance (DGUV) and the Social insurance scheme for agriculture, forestry and horticulture (SVLFG) are greater than in the general system of standardization.

The system of rules and regulations has developed constantly since 1980, influenced by European OSH directives, and has proved successful. Its current form, in line with the GDA, is defined in the revised 2011 version of the guideline paper. There is no reason to change this system of rules and regulations. The European legal regime in the area of OSH allows and calls upon the member states to continue to decide for themselves, through their own specific OSH rules and regulations, how the minimum European requirements can best be transposed at the national level. This includes deciding whether further national regulations are required in addition to the minimum requirements and whether and how the national regulations need to be supported or explained beneath regulation level.

Other EU member states also use standards that affect the health and safety of workers at work to support or explain regulations. In Germany, standards can be used to support the

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<sup>2</sup> Expert committees of the Deutsche Gesetzliche Unfallversicherung (DGUV) and the Sozialversicherung für Landwirtschaft, Forsten und Gartenbau (SVLFG) are referred to generically as “DGUV expert committees” in the following.

rules and regulations issued by the government and the social accident insurance institutions, subject to the conditions described in Section 2, provided the specifics of the dual OSH system are taken into account.

## **2. Use of standards in the area of health and safety of workers at work**

### **2.1 New standards projects**

#### **2.1.1 General aspects**

Since anyone can apply to their national standardization institute for a national, European or international standards project, OSH stakeholders are free to do so too. The general principle is that no standards projects should be initiated within the scope covered by the rules and regulations issued by the government and social accident insurance institutions (UVT)<sup>3</sup>. The German procedure for dealing with standards projects initiated elsewhere in Europe or the world is specified in Section 2.1.2.1. In exceptional cases, standards projects can be initiated by Germany; the procedure for these cases is stipulated in Section 2.1.2.2.

#### **2.1.2 Initiation of standards projects**

When a new standards project is applied for, the relevant secretariat of the standards committee of DIN or DKE (German Commission for Electrical, Electronic and Information Technologies of DIN and VDE)<sup>4</sup>, the working committee concerned and the secretariat of the DIN Commission on Safety Engineering together examine whether, and to what extent, the project affects the area of health and safety of workers at work or whether it is solely intended to support European single market legislation (Article 114 of the TFEU) and/or national product safety legislation (e.g. the German Product Safety Act and related ordinances). If it is clear that the standards project falls into one of the latter two categories, the procedure to be taken is defined by the legal system and is not given further consideration here (cf. Section I above). In the former case, DIN informs KAN as soon as possible. The same applies to official documents submitted in advance of a new project application. For instance, KAN must be informed promptly of any formal requests for new standards projects that affect the area

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<sup>3</sup> The term “rules and regulations” as used here refers to all government-issued OSH regulations, the rules issued by state committees for the purpose of supporting the legal requirements laid down in said regulations, and the autonomous legislation issued by the social accident insurance institutions for the purpose of accident prevention (accident prevention regulations) plus any related rules drawn up by the DGUV and/or SVLFG. These are referred to generically as “rules and regulations” in the following.

<sup>4</sup> For reasons of linguistic simplicity, the name “DIN” is used instead of “DIN/DKE” until Section 2.2.2.1.

of health and safety of workers at work. KAN then checks whether the application for the new project is permissible and beneficial from an OSH point of view; the procedure for this is described in Sections 2.1.2.1 and 2.1.2.2 below.

### **2.1.2.1 Initiation elsewhere in Europe or the world**

Having been informed by DIN as described in Section 2.1.2, the KAN Secretariat examines whether the content of the planned standard affects the remits of any state committees and/or DGUV expert committees and, where appropriate, asks the relevant committees and KAN stakeholders to submit comments. The state committees' and DGUV expert committees' examination of the project takes into account the following questions:

1. Does the project deal with aspects of social protection such as maternity protection, annual leave, breaks, leisure time and working hours?
2. Does the project deal with fundamental OSH duties (e.g. concerning risk assessment, OSH organisation, occupational preventive medicine or OSH briefings)?
3. Are there any rules or rules and regulations that a state committee or DGUV expert committee has announced, is working on or has planned that cover the subject matter or part of the subject matter of the standard? If so, which ones are they?
4. Would it be beneficial to workplace practice to flesh out the subject matter of the standard but rules and regulations are not considered a suitable place to do so? Terminology standards, standards for test methods, measuring, analytical, sampling and statistical methods, measurement planning and data interchange can be beneficial, for example.
5. Is the quality of the content of the application such that the standard can be expected to be appropriate and useful in terms of occupational safety and health?
6. Is at least one of the stakeholder groups represented in KAN, including the state committees and DGUV expert committees, willing to work on the standards project? If so, who is to do the work?
7. Based on the answers to questions 1 to 6, should the project be rejected or approved conditionally/unconditionally?

The KAN Secretariat assesses the documents on the basis of these questions and the comments submitted in response to them and, if necessary, establishes a consensus among the OSH stakeholders represented in KAN. The KAN Secretariat then presents a proposed resolution to KAN. Taking this proposal into account, KAN either rejects the project or approves it conditionally or unconditionally. If it proves impossible to establish a consensus among the OSH stakeholders, KAN abstains from voting but keeps the project on its agenda. It informs DIN of the results of its assessment. The approval or rejection must be backed up with a written justification (in English, if possible).

If KAN chooses to abstain, the individual stakeholder groups are free to present their standpoint to DIN.

### **2.1.2.2 German-initiated projects**

The general principle is that Germany should not initiate any standards that lie completely or partially in the area of health and safety of workers at work. Where there are good reasons to make an exception, Germany may initiate a standards project if it is beneficial to occupational safety and health. To establish whether this is the case, the KAN Secretariat examines whether the application for a standards project considers the following aspects adequately:

1. Conclusive answers to questions 1 to 5 in Section 2.1.2.1
2. Has a document been drafted as the basis of the standard? If not, the content and objectives of the standards project must be described in a meaningful manner, drawing on other sources (e.g. research reports). If the project is to be put forward at the European or international level, an assessment must be provided as to how much support the content of the standard is expected to receive there.
3. Have any stakeholders expressed a willingness to be involved in the standards project? Are there OSH stakeholders among them?

If the questions above cannot be answered conclusively on the basis of the application for the standards project, the KAN Secretariat contacts DIN to request the information it still requires.

If the content of the planned standard affects the remit of any state committees and/or DGUV expert committees, the KAN Secretariat supplies the relevant bodies and KAN

stakeholders with the information it has available and asks them to submit comments on the new project application. When assessing the project, the state committees and DGUV expert committees take the following questions into account:

1. Have questions 1 to 6 in Section 2.1.2.1 been answered conclusively?
2. Taking into account the answers to the aforementioned questions, should the project be rejected or conditionally/unconditionally approved?

The KAN Secretariat assesses the project application on the basis of the knowledge available, the documents and the comments and, if necessary, establishes a consensus among the OSH stakeholders represented in KAN. The KAN Secretariat then presents a proposed resolution to KAN. Taking this proposal into account, KAN either rejects the project or approves it conditionally or unconditionally. If it proves impossible to establish a consensus among the OSH stakeholders, KAN abstains from voting but keeps the project on its agenda. It informs DIN of the results of its assessment. The approval or rejection must be backed up with a written justification (in English, if possible).

If KAN chooses to abstain, the individual stakeholder groups are free to present their standpoint to DIN.

### **2.1.3 Ongoing standards projects**

If an application for a standards project is approved at the European or international level despite a German vote against it, the stakeholders represented in KAN decide whether they wish to be involved in the project.

The following aspects can influence this decision:

- the topic of the project is of particular importance to the stakeholder(s) and
- there is an overlap with the scope of existing rules and regulations and thus a need to ensure the standard does not conflict with them.

The German OSH view is that DIN can approve the finished standard if it does not conflict with national rules and regulations and if its contents are appropriate, irrespective of whether Germany backed the application for the standards project and whether German OSH experts were involved in its drafting. The process of forming an OSH opinion on this takes place in KAN.

If there is no conflict and the standard's contents are appropriate, the requirement is that DIN should reference the relevant rules and regulations in the national foreword. In particular, this can be used to explain that the standard can serve as an additional source of information for the field of OSH but that compliance with the requirements of the standard does not equate to compliance with national legal requirements.

Where a finished standard conflicts with national rules and regulations, DIN ensures that the national foreword is drafted in consultation between the relevant working group and KAN. The national foreword then provides information – adapted to the standard in question – concerning the precedence of rules and regulations and any conflicts and overlaps with the standard, which is not legally binding. If there are known contradictions and overlaps, they are mentioned in the national foreword. In the case of conflicts with legal requirements, it is also sometimes possible to apply for an A deviation<sup>5</sup>.

## **2.2 Use of existing standards**

### **2.2.1 General aspects**

Standards can provide useful input for rules and regulations. Such standards can relate to the characteristics of products (product safety) but also to the health and safety of workers at work. Using standards as a source of information can help improve the process of drafting rules and regulations and the way they are used in practice as well as helping to determine the state of the art. The conditions under which standards can be used are described in Section 2.2.2.

It is possible to use either the complete contents of a standard or parts thereof. Non-consensus-based new deliverables (e.g. CWAs, PASS, IWAs), which are not necessarily developed with the involvement of all stakeholders, must not be referenced. When deciding whether and how to reference a standard, the bodies that make the rules and regulations must carefully weigh up the positive and negative aspects. On the one hand, they need to consider such points as the benefits provided by the expertise reflected in standards, the use of referencing to keep rules and regulations lean and the possibility of drafting rules and regulations more quickly. On the other hand, they have to bear in mind that standards do not always adequately reflect OSH interests and/or that the instruments used to quality-assure

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<sup>5</sup> A deviations are a tool used in European standards to inform the reader of member-state legal requirements that conflict with certain normative requirements in the European standard in question.

standards (mandates, consultants and formal objections) are not always an integral part of the structure. Moreover, costs can be incurred when using standards (see 2.2.2.2).

## **2.2.2 Identification of standards to serve as input for rules and regulations**

### **2.2.2.1 Analysis of standards**

As a rule, product safety standards cited by the European Commission or the German Product Safety Committee can be assumed to provide a quality-assured, high level of protection. They can be used for rules and regulations if such use is deemed useful for workplace practice.

Other standards related to the health and safety of workers at work must be reviewed by the relevant state committee or DGUV expert committee based on the points covered in questions 1 to 5 in Section 2.1.2.1. To this end, the state committee or DGUV expert committee can request further information on specific standards from the secretariat of the relevant DIN standards committee or the KAN Secretariat.

### **2.2.2.2 Forms and conditions of use of standards in rules and regulations**

There are various ways in which state committees or DGUV expert committees can use standards.

During the rule/regulation drafting phase, members of the state committees or DGUV expert committees can draw on standards to check whether and in what form (see 1 to 4 below) they can be used to help determine the state of the art for the rule/regulation being drafted. Such use of standards does not require permission from DIN or VDE, nor does DIN or VDE charge a fee for such use. If the state committee or DGUV expert committee determines that the standard is suitable for use as mentioned above, the following options are possible:

1. Referring to a standard by merely citing it as a source that backs up what has already been explained in the rules/regulations does not require DIN's or VDE's permission either, nor does the state committee/DGUV expert committee incur a fee. This is also true of standards mentioned in a bibliographical reference. Such references to standards are not involved in the presumption of conformity arising from a rule issued by a state committee or the legal effect of an accident prevention regulation.
2. Referring to a standard without quoting from it, for example when describing a product or a measurement method, does not require DIN's or VDE's permission either, nor does the state committee/DGUV expert committee incur a fee. References of this nature,

which only name the standard in the rules and/or regulations without quoting from it, do not constitute copyright infringement. The reference to the standard must be dated.

3. Incorporating parts of a standard, e.g. certain passages of text quoted verbatim, tables, formulas or drawings/images, into rules and regulations does require the permission of DIN/VDE due to potential copyright infringement issues. The provisions for the granting of such permission to state committees and DGUV expert committees are stipulated in special agreements between DIN/VDE and the Federal Ministry of Labour and Social Affairs/the Federal Institute of Occupational Health and between DIN/VDE and DGUV or SVLFG<sup>6</sup>.
4. Citing standards in full in rules/regulations is subject to the requirements described in 3 above.

The committee decides which of the above options to choose, based on the expert opinions of its members.

In the rule/regulation application phase, users of the rules/regulations can, in the cases outlined in 3 and 4 above, make ordinary use of the included standards or parts of standards free of charge in the form of the rule and/or regulation. Consequently, they do not need to purchase the included standard in order to understand the rule/regulation. In cases such as that described in 2 above, however, users might have to purchase the standards.

Where standards are used in rules and regulations, the quality assurance (particularly with regard to ensuring up-to-date content) is done by the relevant state committee or DGUV expert committee in cooperation with DIN/VDE and is governed by special provisions in the agreement with DIN/VDE.

*Note by the Federal Ministry of Labour and Social Affairs:*

The German Consensus Statement concerning standardization within the scope of directives pursuant to Article 118a of the EC Treaty (Federal Labour Gazette 1/1993, p.37-39) and the KAN interpretative document on the limits of and scope for standardization of the health and safety of workers at work are currently being reviewed by a KAN working group in the light of the above policy paper on the role of standards in the health and safety of workers at work.

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<sup>6</sup> If standards are used to a significant degree in rules and regulations issued by SVLFG, an agreement can be concluded with DIN/VDE to cover this use.