

Translation

In all cases of interpretation the German-language version of this document shall be taken as authoritative.

CONTRACT

between the Federal Republic of Germany, represented by the Federal Minister of Economics, and DIN German Standards Institution (DIN Deutsches Institut für Normung e.V.) represented by its President.

Article 1

(1) The Federal Government recognizes the DIN Deutsches Institut für Normung e.V. (DIN) in accordance with the provisions of DIN 820, Part 1, Section 3, edition February 1974 (Appendix 1) as the competent Standards Organization for the Federal Territory and Berlin (West), and also as the National Standards Body in non-governmental International Standards Organizations.

(2) DIN undertakes to consider the public interest in all its work in the preparation of Standards. When drafting DIN Standards it will ensure in particular that the standards can be quoted in legislative measures, in matters affecting public administration and in legal actions, as documents which describe technical requirements.

(3) The Federal Government intends to continue to support the standardization activities within the available resources of the Federal budget. In this connection the benefit accruing to the Federal Government, either directly or indirectly, as a result of DIN's work, must also be taken into account.

Article 2

(1) DIN shall allow the Federal Government, on the basis of the latter's technical responsibilities, and on its request, seats on the Management Boards of the Technical Standards Committees.

(2) DIN undertakes to invite the relevant official bodies to take part in the work of preparing Standards.

Article 3

DIN guarantees that the provisions of DIN 820, together with the directives laid down for Technical Standards Committees, will be observed by its various bodies, and that decisions made by the supervisory board of DIN shall be binding on them. In the event of any amendments to DIN 820, DIN shall ensure that the obligations which it has accepted under this Contract are not thereby prejudiced.

Article 4

(1) DIN undertakes to give preferential treatment to requests from the Federal Government to carry out work on Standards projects which the Federal Government considers to be in the public interest. The latter can set a time limit, in agreement with DIN, for the completion of a project in accordance with the first sentence. DIN shall ensure that this time limit is maintained by its appropriate Working Groups.

(2) During this period the Federal Government shall not itself make corresponding regulations, nor allow them to be made by third parties, unless they are to be the subject of legislative action or concern the enforcement of laws or are otherwise required in the public interest.

(3) If a DIN Standard is not completed within the time limit fixed, DIN shall submit a report. The Federal Government shall decide whether to agree to an extension of the time limit or to prepare its own regulations.

(4) In the event of a regulation being issued by the Federal Government, DIN undertakes to amend, withdraw or withhold publication of any Standard which may be contrary to such regulation.

Article 5

(1) DIN shall inform the appropriate Federal Government Departments of activities in the field of standardization - insofar as the public interest is affected - and shall hold itself available to provide advice and expert opinion in the field of standardization, if so requested.

(2) The Federal Government shall inform DIN of the main events and developments in regard to standardization, the associated activity on technical regulations and the technical directives issued by the European Communities, insofar as they concern DIN's interests and unless there are important reasons for not doing so.

(3) The Federal Government shall inform DIN of the main events and developments in connection with any intergovernmental agreements and any task being undertaken by official intergovernmental bodies concerned with standards and the associated technical regulations, or shall invite DIN to participate therein, insofar as this is necessary for the execution of DIN's tasks, and unless there are important reasons for not doing so.

(4) The Federal Government can invite DIN experts to become members of its Advisory Committees, insofar as the activities of DIN are affected.

Article 6

(1) DIN shall endeavour to contribute to international understanding in the field of standardization. It shall do everything in its power to ensure that commitments entered into by the Federal Government under intergovernmental agreements for the purpose of promoting freer trade and removing technical barriers to trade are not prejudiced by DIN Standards.

(2) DIN shall assist the Federal Government to fulfil its obligations under intergovernmental Agreements in the field of Standards and the associated technical regulations.

Article 7

DIN shall make its Technical Information System (Informationssystem Technik - DINST) available as a central generally accessible information and documentation centre to provide information, against payment, on German Standards including technical regulations dealing with safety requirements, as well as on other types of technical regulations, including regulations issued by Standards Organizations in other countries, and any other relevant documentation.

Article 8

The Federal Government shall, without prejudice to its international obligations, apply DIN Standards in its administrative departments, when issuing invitations to tender or placing orders, and shall use its influence to ensure that other public authorities placing contracts shall take similar action. It reserves the right, however, to issue any instructions which may be necessary in order to amplify or to qualify the DIN Standards covering its own sphere.

Article 9

The Federal Government shall ensure that a list of recently published DIN Standards and DIN Draft Standards, together with a reference to any proposed standards projects or changes in the collection of German Standards appears in the Federal Official Gazette (Bundesanzeiger).

Article 10

(1) This Contract shall cover subject areas for which the Federation according to the constitution is responsible. Without prejudice to the validity of this Contract separate arrangements or agreements covering individual technical fields may be concluded direct between the appropriate official Departments and DIN with the concurrence of the competent Technical Standards Committee

(2) For definitions of the concepts:

National Standards Organization
International Standards Organization
DIN Standards
Standardization work

reference is made to DIN 820, Part 1, edition February 1974 (Appendix 1) and DIN 820, Part 3, edition March 1975 (Appendix 2), as detailed below:

National Standards Organization	DIN 820, Part 3, edition March 1975, Appendix A, Page 11, No. A. 11
International Standards Organization	DIN 820, Part 3, edition March 1975 Appendix A, Page 11, No. A. 12
DIN Standards	DIN 820, Part 1, edition February 1974, Section 4.1
Standardization work	DIN 820, Part 3, edition March 1975, No. 5

(3) For the interpretation of this Contract the Explanatory Notes attached as Appendix 3 are authoritative.

Article 11

This Contract is concluded for an unspecified period. Either of the Parties may terminate the Contract at the end of any one year, providing one year's notice of the intention to terminate has been given.

Appendix 1 DIN 820 Part 1: edition February 1974: "Standardization work - Basic Principles"

Appendix 2 DIN 820 Part 3: edition March 1975: "Standardization work - Concepts"

Appendix 3 Explanatory Notes on the Contract

Bonn, the 5th of June 1975

The Federal Minister of Economics

(Dr. Friderichs)

The President of DIN
German Standards Institution

(Dr. Leitz)

EXPLANATORY NOTES

on the Contract between the Federal Republic of Germany
and DIN Deutsches Institut für Normung e.V.

I General

Standardization in the Federal Republic of Germany is a responsibility of the economic partners. As the central standards body, DIN is the competent standards organization for the Federal Territory and Berlin (West). The results of DIN's work appear in the form of DIN Standards, their totality forms the German Standards Collection. Insofar as this Contract is concerned with provisions relating to standards, the latter are to be understood as the standards published by DIN (DIN Standards).

In view of the fact that technology has already penetrated and is continuing to penetrate many fields of human activity, Standards represent an important regulating factor in controlling technology and its further development, particularly in regard to safety, health, the protection of the environment and consumer protection. They are of prime importance both in matters affecting the total economy (e.g. energy saving) and in the elimination of trade barriers which arise because of the existence of varying types of technical regulations. This importance extends to economic transactions throughout the world, but particularly in the European Communities.

For a number of individual areas affecting the public interest the European Communities formulate Directives in accordance with Article 100 of the EEC Treaty for the purposes of harmonizing the legal and administrative measures adopted in Member States. As far as possible, these Directives make provision for a link between legal requirements and technical Standards.

In addition, the United Nations' Economic Commission for Europe (ECE) has drawn up proposals for relating the statutory requirements to technical standards which will be recommended for implementation by Member States (ECE/Stand/14 dated 1974-06-26). International obligations to remove technical

barriers to trade are to be entered into by Member States of the General Agreement on Tariffs and Trade (GATT) in the form of a standardization Code, and opportunities will be created for influencing standards organizations, if such opportunities have not already been established by law.

The growing importance of standardization makes it imperative to intensify the previous collaboration between the Federal Government and DIN. In this connection DIN is being required to give increasing assistance to the Federal Government by way of advice and, by drawing up DIN Standards, in particular in the areas referred to in the foregoing, to formulate generally accepted rules of the art which will enable reference to Standards to be made in all statutory regulations. This possibility of associating statutory regulations with technical Standards relieves the Federal Government of having to draft technical regulations itself for each individual case.

A number of industrialized countries have regulated the relationship between the State and the Standards Organization by law (e.g. Belgium, France, Austria). Other industrialized countries have adopted the solution of a contractual or semi-contractual agreement (e.g. Denmark, UK, Sweden). Up to now the relationship between the Federal Government and DIN has not been governed by judicial provisions.

In view of the position indicated above it is appropriate that this relationship should be judicially clarified. When deciding whether this should be achieved by passing a specific Act or by a Contract, the Federal Government and DIN preferred the more flexible form of a Contract. As a Contract under public law it is intended to operate in areas not subject to law, and to assist coordination.

The main obligation of the Federal Government under this Contract is the "recognition" of DIN in the sense of para 1 of Article 1; for its part DIN undertakes mainly to consider the public interest in all its activities. The

standardization work traditionally undertaken by private associations will neither be regarded as Government work by virtue of the individual provisions of this Contract nor will the collaboration of Federal Government representatives and public authorities, or any other provision of the Contract, result in such work being given an official character.

Other collections of technical regulations are not affected by this Contract. The technical requirements contained in such documents can, as in the case of DIN Standards, be referred to in statutory regulations, if the criteria applicable to them are fulfilled. The work, together with the results of such work, undertaken by the Technical Committees set up under the Industrial Code, by the Nuclear Engineering Committee, or by comparable committees, will also be unaffected by the Contract. Nor does this Contract affect the applicability of the provisions of the Restrictive Trade Practices Act to DIN Standards.

II Specific Points

Re Article 1

Under its Articles of Association DIN represents standardization interests in the Federal Territory and Berlin (West) and also to countries outside the Republic. Meanwhile the important technical fields of electrical engineering and gas technology have also been included in DIN's work. It is essential that the Federal Government should take this into account in its relationship with DIN, since the international and regional activities in the field of standardization, mentioned in these Explanatory Notes under the heading of "General", may lead to certain commitments by national Standards Organizations.

Recognition of DIN does not include the delegation of official authority. Nor does it affect DIN's membership of international and regional non-governmental Standards Organizations. The Contract likewise has no effect on the Federal Government's relationship with other organizations of the economy and other bodies which issue collections of technical regulations. DIN does not become the

exclusive adviser of the Federal Government under the Contract, nor is DIN the only organization to receive support, since public funds are used both for the promotion of standardization systems and for the preparation of other collections of technical regulations.

Sub-paragraph 2 is intended to express the principle that the public interest is to be taken into account in standardization work, particularly in the fields of safety, health, protection of the environment and consumer protection, as well as in those fields in which there is a particular overall economic (e.g. energy saving) or labour-economic interest, or which are of special internal interest to administrative departments, or for public contract and procurement procedures (electronic data processing, information and documentation systems, construction engineering).

All this - within the existing legal restrictions - involves reference to Standards as described in the Contract (e.g. a strict reference or a general reference).

Sub-paragraph 3 represents a statement of intent by the Federal Government to promote standardization work also in future out of the Federal budget. The Federal Government will benefit directly by being able to use Standards when formulating legislative or administrative measures. In the field of public contracts the use of Standards will have a considerable rationalizing effect. The indirect benefits will lie in the extent to which standardization contributes to the pursuit of its own objectives, and particularly those concerned with economic policy.

Re Article 2

The provision in sub-paragraph 1 corresponds to the present status. It should however result in increased participation by public authorities in standardization work, insofar as a particular interest is involved. The appropriate Committees will deal with requests from public authorities on the basis of the principles contained in DIN 820.

Sub-paragraph 2 is also intended to ensure direct participation by public authorities in the execution of standardization work. Reference should be made to DIN 820, Part 1, Section 3.4 according to which Federal Government representatives no longer become members in their own name of DIN's Working and Steering Committees (i. e. in a personal capacity), but must be authorized and given powers of decision by the bodies who appoint them, thus becoming representatives of the delegating bodies.

The Federal Government will be kept informed by publication in DIN Mitteilungen and by invitation to representatives of public authorities to attend the meetings concerned.

Re Article 3

The bodies within DIN are bound by a decision of the Governing Body (Präsidium) to comply with the provisions of DIN 820 as stated in a currently valid text. This obligation which is internal to the Institution is to be supplemented by a corresponding obligation by DIN to the Federal Government. The DIN bodies bound by the provision in Article 3 are, under DIN's Articles of Association, the following: the General Assembly, the Supervisory Board, the President, the Director, the Technical Standards Committees.

Re Article 4

This provision lays down a specific procedure for cases in which the Federal Government wishes a Standard to be prepared. It does not, however, oblige the Federal Government to propose in each case the drafting of a Standard. If the Federal Government intends to use a DIN Standard, DIN must, whenever a public interest is involved, keep to the time limits agreed by the Parties of the Contract. In addition, DIN must not publish any Standard the content of which is contrary to a technical regulation issued by the Federal Government under Article 4. No restriction on the Federal Government's legal powers of initiative is to be inferred from this provision. The same applies to cases in which the Federal Government issues Decrees. If, during the time limit

a matter of public interest in the sector concerned arises, the Federal Government is free to issue its own regulations, particularly in cases where for this very reason it cannot wait for the expiry of the time limit.

Re Article 5

The obligation in sub-para 1 to keep the Federal Government informed is of a general nature. It supplements DIN's obligation in sub-para 2 of Article 2, to invite the Federal Government to participate in standardization work and to inform it in due course of the inclusion of such work in the collection of DIN Standards. (See also comment on Article 6.) The provisions in sub-paras 2 and 3 are also of a general nature.

The provisions in sub-paras 1 to 3 correspond to practices adopted so far, e.g. by the European Communities, the Economic Commission for Europe (ECE) and GATT.

In addition, the provisions of sub-para 4 reproduce the present position, e.g. participation by DIN experts in the work of the Committees referred to in Article 24 of the Industrial Code.

Re Article 6

Sub-para 1 is meant to take account of the obligations in regard to standardization which arise for example out of the EEC Treaty and the future GATT standardization code. The efforts to facilitate the exchange of goods and to promote international understanding represent the objectives laid down in international trade policy and are being taken into account to an ever-increasing extent in the field of standardization.

Sub-para 2 amplifies the provisions in sub-para 2 of Article 2 and sub-para 1 of Article 5 with regard to obligations arising out of intergovernmental agreements. This paragraph too corresponds to previous practice.

Re Article 7

DIN's Information Centre - DINST - has already been set up, and will be further extended in the future. It represents a source of information also for the Federal Government.

Re Article 8

This provision affects the placing of Government contracts. In principle, Government contracts are to be based on DIN Standards. There will be exceptions, however, particularly in the defence field. The reservation in sub-paragraph 1 allows for international obligations in regard to the placing of Government contracts, e.g. on the European Communities' level.

Re Article 9

Publication in the Federal Official Gazette (Bundesanzeiger) of new DIN Standards and DIN Draft Standards, together with references to proposed Standards projects and changes to the Collection of German Standards, helps to disseminate the idea of standardization in administrative Departments as well, and to highlight its importance in economic life. Publishing the source of the Standards does not in any way make DIN Standards "mandatory".

Re Article 10

Sub-paragraph 1, sentence 1 is necessary because of the division of responsibility between the Federation and the States, enshrined in the constitution. Under sub-paragraph 1, sentence 2, supplementary clauses can be included in the Contract to cover special cases. They must not, however, alter the basic principles of the Contract.

Sub-paragraph 2 contains definitions of concepts, covering those on which the Contract is based. The purpose of sub-paragraph 3 is to make these Explanatory Notes an integral part of the Contract.