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Annex 1

Costs of standardisation versus Licensing income

2020-01-07

Pos.	Calculation	2017	2018	Comment/Conclusion
(1)	Cost for standardisation work	48.835.889,34	49.065.460,96	
(2)	Licensing income from the sale of standards and secondary publications as well as other revenues in connection with the sales of standards.	26.046.782,11	27.759.189,09	
	Percentage of licensing income (from the sale of standards and secondary publications) and other revenues in connection with the sales of standards to cover the costs of standardisation	=(2)/(1) 53,3 %	56,6 %	Approx. 55 % of the standardisation costs are covered by licensing income.
	Remaining uncovered costs	=(2)-(1) -22.789.107,23	-21.306.271,87	
(3)	External project funds (private project funding and public project funding) directly linked to standardisation work	23.310.898,03	22.900.282,87	
	Percentage of project funds (private project funding and public project funding) to cover the costs of standardisation	=(3)/(1) 47,7 %	46,7 %	There are other revenues for DIN not included in this table. Since these other revenues are not used to cover the costs of standardisation work but to finance other costs, they are not part of this calculation.
	Remaining deficit/surplus	=(3)+(2)-(1) 521.790,80	1.594.011,00	
(4)	Licensing income for harmonised standards [included in (2)]	2.336.000,00	2.117.000,00	
	Percentage of licensing income for harmonised standards to cover the costs of standardisation	=(4)/(1) 4,8 %	4,3 %	Approx. 4,5 % of the standardisation costs are covered by licensing income for harmonised standards.
	Remaining uncovered costs by excluding licensing income for harmonised standards	=(3)+(2)-(1)-(4) -1.814.209,20	-522.989,00	

Annex 2



2018

ANNUAL REPORT



European Committee for Standardization

ANNUAL ACCOUNTS



www.cen.eu

ASSETS (€ x 1000)*	2016	2017	2018
Fixed Assets	191	1 093	1 020
Current Assets	3 238	4 299	3 843
Liquid Assets	11 985	9 532	8 384
Prepaid Expenses and Accrued Income	406	159	153
TOTAL	15 820	15 083	13 400

LIABILITIES (€ x 1000)*	2016	2017	2018
Reserves	3 742	3 475	3 309
Provisions for liabilities and charges	1 371	972	1 909
Payable	3 299	3 731	3 060
Accrued expenses & deferred income	7 408	6 905	5 122
TOTAL	15 820	15 083	13 400

EXPENDITURE (€ x 1000)*	2016	2017	2018
Staff costs	6 828	7 359	6 480
Other operating costs	2 224	2 233	2 192
Contractual expenses	7 731	14 828	12 706
Digital Transformation/Provision	-	-	921
Office move project costs	-	284	166
Office move project/Use of provision	-	-284	-1
Reserve for investment	140	-	-
TOTAL	16 923	24 420	22 464

INCOME (€ x 1000)*	2016	2017	2018
Contributions	6 278	6 808	7 066
Interest	18	3	3
Contractual income	10 454	17 153	15 069
Miscellaneous	173	189	161
Loss of the year / Use of Reserves	-	267	165
TOTAL	16 923	24 420	22 464

FINANCING OF THE CEN-CENELEC MANAGEMENT CENTRE (CEN Part)	2016	2017	2018
Membership fees	69%	71%	74%
EC/EFTA support to standardization	29%	24%	20%
Other support	2%	5%	6%
TOTAL	100%	100%	100%

* Figures are given in thousands of euro.

Annex 3



2017

ANNUAL REPORT



European Committee for Standardization

ANNUAL ACCOUNTS



www.cen.eu

ASSETS (€ x 1000)*	2015	2016	2017
Fixed Assets	196	191	1 093
Current Assets	3 912	3 238	4 299
Liquid Assets	10 691	11 985	9 532
Prepaid Expenses and Accrued Income	143	406	159
TOTAL	14 942	15 820	15 083

LIABILITIES (€ x 1000)*	2015	2016	2017
Reserves	3 602	3 742	3 475
Provisions for liabilities and charges	1 368	1 371	972
Payable	4 741	3 299	3 731
Accrued expenses & deferred income	5 231	7 408	6 905
TOTAL	14 942	15 820	15 083

EXPENDITURE (€ x 1000)*	2015	2016	2017
Staff costs	6 549	6 828	7 359
Other operating costs	2 677	2 224	2 233
Contractual expenses	13 110	7 731	14 828
Office move project costs	–	–	284
Office move project / Use of provision	–	–	- 284
Reserve for investment	–	140	–
TOTAL	22 336	16 923	24 420

INCOME (€ x 1000)*	2015	2016	2017
Contributions	5 816	6 278	6 808
Interest	36	18	3
Contractual income	16 366	10 454	17 153
Miscellaneous	118	173	189
Loss of the year / Use of Social Reserve	–	–	267
TOTAL	22 336	16 923	24 420

FINANCING OF THE CEN-CENELEC MANAGEMENT CENTRE (CEN Part)	2015	2016	2017
Membership fees	63%	69%	71%
EC/EFTA support to standardization	35%	29%	24%
Other support	2%	2%	5%
TOTAL	100%	100%	100%

* Figures are given in thousands of euro.

Annex 4



POLICY FOR THE DISTRIBUTION, SALES AND REPRODUCTION OF ISO PUBLICATIONS AND THE PROTECTION OF ISO'S COPYRIGHT

(As approved under Council Resolution 08/2017)

1. Introduction

ISO was created by its members to jointly develop standards, encourage their use and adoption, and make them available worldwide. ISO Members play a fundamental role in the development of ISO Standards by contributing their own resources to manage the work of technical committees and sometimes contributing standards that they have developed at a national level.

The ISO Council is responsible for setting ISO's policy for the distribution of ISO Publications, National Adoptions, their Drafts and Other Works and for the protection of ISO's Copyright. The ISO Council is also responsible for monitoring the implementation of the policy.

This Policy for the Distribution, Sales and Reproduction of ISO Publications and the Protection of ISO's Copyright (POCOSA), approved by ISO Council on 15 March 2017 under Resolution 08/2017, defines the conditions for reproducing and distributing ISO Publications and their associated Metadata published by ISO. It also includes provisions about copyright, and the exploitation of copyright, in all ISO Publications or parts of ISO Publications, and in National Adoptions of ISO Standards. It replaces all prior versions of POCOSA and related Annexes and may be complemented by written guidance published by the Commercial Policy Advisory Group (CPAG) (where CPAG is authorized by this Policy to issue such guidance) and/or by decisions by the ISO Council based on recommendations made by its Commercial Policy Advisory Group (CPAG) where necessary.

The conditions for the use and protection of the ISO trademarks (name and logo) remain as described in the current version of ISO/GEN 31.

This Policy is based on the ISO Statutes, the Rules of Procedure of Council, the ISO Code of Ethics, the ISO Fundamental Principles, the ISO/IEC Guide 21:2005 and other related decisions of the ISO Council. It is binding on ISO and all ISO Members. If any commercial or intellectual property issue arises that is not covered by this Policy or related documents, it will be referred to the Secretary-General for decision, subject to the ISO Council approval.

This Policy does not affect any existing arrangements signed by the ISO Central Secretariat, or an ISO Member, with End Users or Third-Party Distributors before the date decided by the ISO Council for its entry into force, until the next possible term for the renegotiation of these contracts. Any difficulty in implementing this Policy should be reported to the ISO Central Secretariat who will assist on a case-by-case basis.

2. Definitions

In this Policy, the following terms and definitions mean:

Active Sales

Sales resulting from active marketing, namely actively approaching End Users (e.g. by direct mail or email, unsolicited visits or other forms of unsolicited promotional activity) or actively approaching a specific End User group or End Users in a specific National Territory (e.g. by advertisements in the media or on the internet, such as paying a search engine to show adverts to End Users in a particular National Territory, or through other specifically targeted promotions).

Copyright

Rights owned by authors to exploit their literary, scientific and artistic works.

Copyright Fee(s)

Fee resulting from the application of the rules and formulas contained in Annex 7 and Annex 8 upon which a Royalty is due to the ISO Central Secretariat in accordance with Annex 5.

Drafts

Documents prepared by ISO Technical Committees, subcommittees, working groups and other technical bodies during the various stages of developing ISO Standards, as defined in the ISO/IEC Directives. Drafts are protected by copyright and therefore this Policy also applies to them. For the purpose of this Policy, Drafts means Draft International Standards (DIS) and Final Draft International Standards (FDIS) only.

Internal Network

Private network of a company or an organization meant for the exclusive use of the company or organization and its employees, protected from unauthorized external access with security systems such as firewalls.

ISO Members

For the purpose of this Policy, ISO Members are ISO Member Bodies and Correspondent Members, but not Subscriber Members, together with their publishing, sales and marketing companies entitled to reproduce, sell and market or otherwise use ISO Publications, National Adoptions, their Drafts and Other Works provided that the member holds a majority of shares and/or is the controlling body. ISO Members invest and contribute jointly in the development of ISO Standards and for this reason do not include Third-Party Distributors, under separate ownership, appointed by ISO Members.

ISO Publications

Publications, including ISO Standards and their official translations, and derived products published by the ISO Central Secretariat products, as defined in Annex 1, in which ISO asserts copyright either solely or jointly with other organizations.

ISO Standards

Standards developed within the ISO standardization process in accordance with the procedures of the ISO/IEC Directives, including their amendments and technical corrigenda, at all stages of their development. The complete list and definitions of these deliverables are given in the ISO/IEC Directives.

ISO Webstore

ISO Central Secretariat's electronic retail store, located at www.iso.org (including ISO's ISolutions product, which provides ISO Members with a branded electronic retail store) at which End Users are able to purchase ISO Publications, Drafts and Other Works over the Internet using a web browser.

ISO, we, us, our

The International Organization for Standardization (ISO), a worldwide network of standards bodies. ISO's headquarters are in Geneva (Switzerland), where the ISO Central Secretariat is based.

Licensee

Third-Party Distributors and End Users authorized by an ISO Member or the ISO Central Secretariat to distribute or otherwise use ISO Publications, National Adoptions, their Drafts and Other Works.

License Fee

Fee charged by an ISO Member or the ISO Central Secretariat to a Third-Party Distributor or an End User.

List Price

The price for a particular ISO Publication as displayed in the current ISO Catalogue and available at the ISO Webstore, and which is used as the basis for determining Royalty payments as set out in Annex 5. The List Price is adjusted for multiple workstations, networking use and subscriptions. The List Price is not a recommended resale price, and ISO Members and Third-Party Distributors shall individually determine the prices at which they sell ISO Publications.

Metadata

A set of information elements, structured and compiled by ISO and its members as a database, that help to describe or identify ISO Publications. Metadata include titles, designations, editions, dates of publication and similar descriptive elements.

National Adoptions

National publications that are based on ISO Standards, prepared in accordance with ISO Guide 21-1:2005 or ISO Guide 21-2:2005 and so contain ISO intellectual property, or endorsements of ISO Standards, where the ISO Standard has been given the status of a national normative document, with any deviations from the ISO Standard identified. National publications derived from ISO Standards but not equivalent as per the definition in ISO Guide 21-1:2005 are not considered as National Adoptions.

ISO Members may accredit or mandate organizations to develop at national level the content in, and contribute to the elaboration of, ISO Publications and prepare such National Adoptions.

ISO Members may authorize such organizations to further license, publish and distribute such National Adoptions in accordance with rights assigned by their ISO Member provided that the ISO Member requires the organization to comply with the terms and conditions of this Policy.

National Territory

The country in which an ISO Member's headquarters are located, including any of the country's territories outside its main boundaries.

Other Works

Any type of creative works, other than ISO Publications and their Drafts developed by or under the supervision of the ISO Central Secretariat and that are copyrighted by ISO. These works may include, but are not limited to, training material, presentations, videos, the contents of ISO's web site.

Passive Sales

Sales resulting from passive marketing, namely responding to unsolicited requests from End Users wherever they are located. General advertising or promotion which is a reasonable way to reach End Users in a Member's National Territory but also reaches End Users in other National Territories is passive marketing. Advertising or selling ISO Publications, National Adoptions, their Drafts and Other Works on an internet website is also passive marketing, except where it falls within the definition of Active Sales.

Public Network

Network shared and accessed by End Users not belonging to a single company or organization. A public network is set up for public use, such as the Internet for example.

Reproduction

Act of copying ISO Publications, National Adoptions, their Drafts or Other Works.

Royalty Rate

A percentage calculated on the List Price in accordance with the Annexes to this Policy.

Shared copyright

Copyright shared between two or more parties, for example between an ISO member and ISO.

End User

Any company, organization or person other than an ISO Member, a Third-Party Distributor or the ISO Central Secretariat using ISO Publications, National Adoptions, their Drafts or Other Works for its own benefit.

Third-Party Distributor

Third-Party appointed by an ISO Member to distribute ISO Publications, National Adoptions, their Drafts or Other Works in its National Territory, or by the ISO Central Secretariat to distribute ISO Publications, Drafts and Other Works in a particular National Territory.

3. Guiding principles

3.1. Distributing ISO Publications and National Adoptions

The main objective of ISO and ISO Members is to achieve the widest possible distribution and use of ISO Publications throughout the world that is consistent with the protection of ISO's copyright and the ISO

business model. Distribution of ISO Publications and National Adoptions is primarily the task of ISO Members in their own National Territories and of the ISO Central Secretariat in a National Territory where there is no ISO Member, or where the ISO Member agrees they are not able or authorized to distribute ISO Publications effectively.

The work and contributions by ISO and ISO Members result in ISO Publications and National Adoptions that contain intellectual property of demonstrable economic value. ISO's funds derive primarily from the dues and contributions of the ISO Members and from the sale of ISO Publications and services, in accordance with the ISO Statutes and Rules of Procedure. Moreover, while the exploitation rights defined in Clause 5.1 are not important to the funding of some ISO Members, they are vital to other ISO Members, including Members that contribute significantly to the development of ISO Standards. It is therefore critical that the ISO business model supports the standardization process and the development of standards at both international and national levels.

For this reason, the ISO Central Secretariat, ISO Members and Third-Party Distributors have an obligation to protect the value of ISO Publications and National Adoptions. In particular, ISO Publications and National Adoptions, or parts of them, must not be made available to End Users free of charge, other than for the purposes of further standards development as explained in Annex 3, unless it is explicitly authorized by ISO Council.

ISO Members have a responsibility to continuously promote the understanding of the value of standards, their economic and social importance, the costs of their development and maintenance, and the crucial role of the exploitation of ISO copyright to the ISO system as a whole, to their national governments and to other national stakeholders. The ISO Central Secretariat will assist members by providing regular information and data, together with promotional and explanatory material, for adaptation and use by ISO Members in their National Territories.

3.2. Governing Laws and Settling Disputes

Except as otherwise agreed, the laws of Switzerland govern all matters between ISO Members and ISO concerning POCOSA.

Except as provided in Section 6.2.b) below, any dispute between two or more ISO Members concerning this Policy, must be referred to the ISO Central Secretariat, who will work with them to try to reach a settlement. If the dispute is not settled at that stage, it will be referred to third-party mediation and then third-party arbitration. The parties involved in the dispute must at all times and in good faith make all reasonable effort to reach a mutually acceptable settlement. The ISO Council may sanction any ISO Member in violation of this Policy and these sanctions might ultimately result in exclusion from ISO and the loss of all rights to exploit ISO copyright, in accordance with Clause 5.1 below.

4. Protecting ISO's Copyright and Trademarks

4.1. Objectives

ISO Publications and their National Adoptions are works constituting individuality and originality, and are therefore copyright-protected under the law of Switzerland, which is the country of origin of the works.

This protection of copyright is fundamental. It allows ISO Members and ISO to ensure the proper use of ISO Publications and their National Adoptions, so that their integrity is not compromised and their authority not weakened. It also ensures that income can be derived from their distribution and sale in order to help fund their maintenance and further development. For the same reason, ISO's Code of Ethics states that ISO and all its Members must in good faith make all reasonable efforts and take all appropriate actions to ensure the proper use of the ISO name, trademarks and logo and prevent unauthorized reproduction or distribution of ISO intellectual property in their countries.

Annex 5

public.resource.org

law.resource.org



Agency Directory

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[IRS Determination](#)

Our People

The Board of Trustees of Public.Resource.Org presently includes Heather Joseph, Carl Malamud, Pam Samuelson, Tim Stanley, and Ed Walters. The former board included Dale Dougherty, Carl Malamud, Marshall T. Rose, Tim Stanley, and Hal Varian.

Carl Malamud is the President and Founder of Public.Resource.Org. The author of 8 books, Malamud was previously founder of the Internet Multicasting Service, a nonprofit that started the first radio station on the Internet and was responsible for making the SEC EDGAR database available. He is the recipient of the Berkman Award from Harvard, the Pioneer Award from the EFF, and the Bill Farr Award from the First Amendment Coalition.

[Point.B Studio](#) does our design, [mdkail](#) does our system support, and we'd like to thank the [Internet Systems Consortium](#) for their previous hosting and transit. [O'Reilly Media](#) was our landlord for 12 years. David Halperin serves as Of Counsel.

Our Contributors

Pro bono legal support for our activities has been provided by the following law firms: [Electronic Frontier Foundation](#), [Fenwick & West](#), [Alston & Bird](#), [Davis Wright Tremaine](#), [iRights law](#), [Nishith Desai Associates](#), [Morrison Foerster](#), [Chambers of Salman Khurshid](#), [Chambers of Fred P. Logue](#), [Goldstein & Russell](#), Chambers of Jawahar Raja, and [Calliope Legal](#).

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Annex 6

[Translation]

Ruling
22 June 2012
First Chamber
11/01017
RM/MD

Supreme Court of the Netherlands

Judgment

in the case of:

KNOOBLE B.V.,
established at Arnhem,
CLAIMANT in cassation,
attorney: M.E. Gelpke LL.M. ¹

versus

1. THE STATE OF THE NETHERLANDS (Ministry of Infrastructure and the Environment),
headquartered at The Hague,
RESPONDENT in cassation,
attorneys: M.W. Scheltema LL.M. and S.M. Kingma LL.M.,
2. STICHTING NEDERLANDS NORMALISATIE-INSTITUUT,
established at The Hague²,
RESPONDENT in cassation,
attorney: originally R.A.A. Duk LL.M., currently P.A. Ruig LL.M.³

Parties will also be referred to as 'Knooble', 'the State' and 'NNI'.

1. The case on its merits

For the course of the case on its merits the Supreme Court refers to the following documents:

¹ Instructed by Dirkzwager advocaten & notarissen, attorneys in first instance and in appeal

² This is an error in the judgment and should be "Delft"

³ Instructed by Ploum Lodder Princen, attorneys in first instance and in appeal

- a. the judgment in the case 274010/HA ZA 06-3308 of The Hague District Court of 31 December 2008;
- b. the judgments in the case 200.029.693/01 and 200.031.136/01 of The Hague Appeals Court of 9 June 2009 and 16 November 2010.

The judgments of the Appeals Court of 16 November 2010 is appended to this judgment.

2. The case in cassation

Against the judgment of the Appeals Court of 16 November 2010 Knooble lodged an appeal in cassation. The notice of appeal in cassation is appended to this judgment and forms part of it.

The State and NNI have independently filed for rejection of the appeal.

The attorneys of Knooble and the State explained the case to the Court both orally and in writing.

On behalf of NNI V. Rorsch LL.M., attorney at Amsterdam, explained the case to the Court both orally and in writing.

The conclusion of the Advocate General F.F. Langemeijer is that the appeal must be dismissed.

In letters of 13 April 2012 Gelpke LL.M. attorney on behalf of Knooble and V. Rorsch LL.M. attorney at Amsterdam on behalf of NNI have responded to said conclusion.

3. Assessment of the arguments

3.1 In cassation the following may be taken as given:

(i) Knooble is involved with giving advice about and conducting supervision of building projects. Through its website it provides data useful for preparing and carrying out building projects.

(ii) *De Stichting Nederlands Normalisatie-Instituut* (hereinafter: NNI) [= The Netherlands Standardization Institute (NEN)] has as its goal the realisation of standards, establishing and maintaining standards and promoting the introduction of standards. In doing so it describes standardization as the process whereby rules become established voluntarily through agreement between interested parties.

(iii) The standards that come about in the context of NNI are referred to as "NEN standards". They are available for inspection at NNI's offices. NNI provides the NEN standards in exchange for payment without prejudice to copyright.

(iv) Article 2 of the *Woningwet* [= 1992 Housing Act] stipulates that building regulations can be given by or pursuant to governmental decree. Under Article 3 of the *Woningwet* reference may be made to (parts of) standards. In this connection pursuant to Article 1 paragraph 1, preamble and under 'h' (till 1 October 2010: under 'i') *Woningwet* understood under "standard": a document, issued by an expert, independent institute,

which describes what criteria a building material, building part or building construction must meet or in which a description is given of a method of testing, measuring or calculating.

(v) In the *Bouwbesluit* [= Buildings Decree] 2003 (that meanwhile has been replaced by the *Bouwbesluit* 2012, and that hereinafter for the sake of brevity will be referred to as the *Bouwbesluit*) and the *Regeling Bouwbesluit* [= Building Regulations] 2003 based on it (that meanwhile has been replaced by the *Regeling Bouwbesluit* 2012, and that hereinafter for the sake of brevity will be referred to as the *Regeling Bouwbesluit*) in many places refer to the NEN standards, often though not exclusively to establish the method by which is to be decided whether instructions contained in the *Bouwbesluit/Regeling Bouwbesluit* have been carried out.

(vi) The State did not publish the NEN standards referred to in the *Bouwbesluit* or in the *Regeling Bouwbesluit* in the *Staatsblad* [= the Bulletin of Acts and Decrees], the *Staatscourant* [= the Government Gazette], or in any other place, standard.

3.2 Knooble has taken the State and NNI to Court and, after a change of claim on appeal briefly restated here, has claimed the following:

1. that it should be stated in Court,

primarily that the NEN standards to which reference is made in the *Bouwbesluit/Regeling Bouwbesluit*, or at least the contents thereof, are not binding because they are generally binding regulations that do not accord with the stipulations contained in the *Bekendmakingswet* [= 1988 Publication Act] and have therefore not come into effect or alternatively that these NEN standards, or at least the contents thereof, form no part of the *Bouwbesluit/Regeling Bouwbesluit*, and are not generally binding on the relevant parties;

2. that it should be declared in Court that the NEN standards to which reference is made in the *Bouwbesluit/Regeling Bouwbesluit*, or at least the contents thereof, as far as concerns the basic text of said standards, in accordance with Article 11 *Auteurswet* are free of copyright;

3. that the State, NNI respectively will be ordered to place at the disposal of Knooble a copy of all the NEN standards to which reference is made in the *Bouwbesluit/Regeling Bouwbesluit*, or at least the contents thereof, in writing or in digital form, irrespective of the question whether said generally binding regulations have already come into force.

3.3 The District Court awarded only the primary claim under 1. On appeal the Appeals Court quashed the judgment of the District Court and dismissed Knooble's claims as altered on appeal.

3.4 In the judgment under 7. the Appeals Court has assumed - in cassation not contested on specific grounds - that NEN standards come into existence as follows: after it has been pointed out that there is a need for a standard in a specific area, a NEN

standard is designed by a standard committee consisting of representatives of organisations who have an interest in said standard coming into existence, such as manufacturers, traders, users, governments or consumer organisations. NNI arbitrates when weighing up the various interests, arranges impartial process supervision and monitors consistency between the already existing standards. The design of the standard is published to subject it to a public round of criticism. Once any criticisms have been processed the standard committee acting on the basis of consensus then fixes the standard. NNI manages the fixed standards and arranges for the NEN standards to be available to the interested parties in exchange for payment and without prejudice to copyright. Moreover interested parties may take cognizance of the NEN standards in NNI's own library.

3.5 The Appeals Court based its dismissal of Knooble's claims as altered on appeal on the following grounds.

The *Woningwet* (whereby the Appeals Court apparently has its eye on Articles 2 and 3) makes provision for reference being made to standards such as NEN standards in implementing regulations. The reference in said implementing regulations, which are generally binding regulations (the *Bouwbesluit* and the *Regeling Bouwbesluit* based on it), to NEN standards does indeed make said standards under public law generally applicable standards (for example as standards which have at least to be fulfilled or fulfilled in an equivalent way) but does not make them generally binding regulations in the more limited sense in which that is understood in the *Grondwet* [=Constitution] or the *Bekendmakingswet*. For the latter to occur it would be necessary to have said standards laid down based on a regulatory power. The NEN standards do not fulfil said criterion because they are not laid down by the agency authorised to set regulations established by the *Bouwbesluit/Regeling Bouwbesluit* but on the grounds of agreements made under private law by representatives of organisations who have an interest in everyone using the same standard and who have no regulatory powers under public law (ground 8).

The ability of representatives of regulatory bodies to initiate the laying down or the altering of NEN standards does not mean that NNI as a private organisation has regulatory powers. A regulatory body referring to NEN standards that have been implemented based on private law agreements thus making the standards generally applicable does neither mean that NNI has regulatory powers (ground 9).

Not all generally applicable standards with external effect are generally binding regulations in the legal sense and nor can it ever have the intention of the legislator to have the current NEN standards become such regulations. Such is clear because many of the said NEN standards set no demands whatsoever but only standardize technical methods of calculating, measuring or regulating. The standard used to determine whether any generally binding regulation is complied with does not itself constitute the generally binding regulation also not when a legislator refers to said standard in a

generally binding regulation and so draws in said standard into the assessment framework (ground 10).

In addition under Article 1.5 of the *Bouwbesluit* that refers to the NEN standards these do not have to be met where an at least equivalent result as intended by the regulation can be achieved by some other means rather than application of said standards (ground 11).

The Appeals Court also sees no reason for any other opinion. The NEN standards are aimed at persons and companies who are professionally involved in building work and the costs of taking cognizance and observing the NEN standards is discounted in the design, building and maintenance processes. Cognizance of the NEN standards can be taken at NNI and you can acquire them for a fee. This way the NEN standards become sufficiently widely known. It has neither been argued nor shown that this system has unacceptable consequences for society nor that this threatens the continued existence of companies such as Knooble (ground 12).

The circumstance that, as Knooble has argued, many have expressed their endorsement of its position and that the government is being urged by society to have the “standards referred to” made available to the public free of charge, does not bring the Appeals Court to any other opinion. It would be up to the legislator to bring about any such system change, as this would fall beyond the remit of the judge whose task it is to focus on the development of the law (ground 13).

Whilst the NEN standards referred to in the *Bouwbesluit/Regeling Bouwbesluit* must indeed be regarded as generally applicable, the stipulations in the *Bekendmakingswet* are not applicable. The State has not breached any rules that apply to it in terms of notification/publication of any generally binding regulations. Knooble’s claims under I primarily and alternatively will not be allowed (ground 14).

NNI carried out notification/publication of the NEN standards. Knooble did not provide any arguments to support its position that NNI would have to be regarded as forming part of the public authorities if it cannot be determined that the relevant NEN standards have been recorded in the *Bouwbesluit/Regeling Bouwbesluit*. The second part of Knooble’s claim will therefore also not be allowed (ground 15).

Given the above, the points of departure for Knooble’s third and fourth claims are incorrect so that these claims too will not be eligible to be awarded (ground 16).

3.6 Part 1a is a ground for appeal to the effect that the Appeals Court has stepped beyond the ambit of the legal dispute or has provided an incomprehensible explanation of Knooble’s claims and arguments in the grounds 7-15 of its judgment by assuming that Knooble bases its claims on the argument that the NEN standards that NNI has laid down would in and of themselves have to be designated generally binding regulations that NNI has laid down as the public law body authorised for the purpose with regulatory powers and that in accordance with the *Bekendmakingswet* should be

notified/published prior to their coming into force. This ground for appeal is lacking in factual foundation because neither from the Appeals Court's grounds as mentioned nor from its judgment can be deduced that the Appeals Court held that Knooble bases its claims on any such argument.

3.7 Part 1b relates to the central issue in the dispute.

The ground for appeal amounts to this: the Appeals Court's judgment that a reference to NEN standards in a generally binding regulation whilst this does make them generally binding standards in public law but does not make them generally binding regulations in the limited sense of the *Grondwet* or the *Bekendmakingswet*, is incorrect and argues that the NEN standards referred to in the *Bouwbesluit* or in the *Regeling Bouwbesluit*, or at least the relevant parts thereof, by said reference become an inseparable part of the relevant generally binding regulations in the sense of the *Grondwet* or the *Bekendmakingswet*, and that pursuant to Article 1.4 of the *Bouwbesluit* the same holds for NEN standards that on the grounds of the European guideline for building products are replaced by NEN-EN standards, emanating from a European Standardization Institute.

3.8 The ground for appeal is without foundation. The generally binding regulations in Article 89 paragraph 4 of the *Grondwet* and Articles 3 and 4 of the *Bekendmakingswet* are rules that have external effect, are binding on citizens, and emanate from a body that derives its regulatory powers from an Act of Parliament. Article 2 of the *Woningwet* makes provision for technical terms and conditions to be given about such things as the construction of a building by or by virtue of governmental decree. Article 3 *Woningwet* adds to this that by or by virtue of governmental decree as under Article 2 reference may be made to standards or part standards. By doing so Article 3 does not intend, as confirmed by the parliamentary history as cited in the conclusion of Advocate General under Nos. 3.16-3.18, to empower the institute that sets up said standards to establish generally binding regulations. Where in other respects NNI does not by or pursuant to an Act of Parliament establish generally binding regulations the NEN standards cannot be designated generally binding regulations as under Article 89 paragraph 4 *Grondwet* and Articles 3 and 4 *Bekendmakingswet*, not even to the extent that the *Bouwbesluit/Regeling Bouwbesluit* refer to it. The judgment by the Appeals Court that said reference does not make the relevant NEN standards into generally binding regulations in the limited sense of the *Grondwet* or the *Bekendmakingswet*, that would first come into force on publication/notification as arranged in the *Bekendmakingswet*, is thus correct. The circumstance that, as Knooble has argued, some prior attuning takes place as between the minister and the NNI as to whether a NEN-standard will be used for reference in the *Bouwbesluit/Regeling Bouwbesluit*, such that the terminology and NNI's elaboration of the standard is attuned to the legislative regulations, does nothing to change this.

3.9 Part 1c assumes that the NEN standards referred to in the *Bouwbesluit/Regeling Bouwbesluit*, are part of the generally binding regulations emanating from the central government i.e. substantive law. It follows from the above that this point of departure is incorrect due to which the grounds of appeal of this part, namely, that the Appeals Court has ignored the fact that only a clear statutory provision or an apparently unambiguous meaning on the part of the legislator recorded in a formal statutory provision arising out of the history of how the *Bekendmakingswet* or *Woningwet* came into existence could bring about a situation whereby with due regard for the *Bekendmakingswet* the standards would not have to be published, fail.

3.10 The opinion held in this part as well as under part 2 that on the grounds of Article 11 *Auteurswet* no copyright rests on the NEN standards referred to in the *Bouwbesluit/Regeling Bouwbesluit* is incorrect. As deliberated upon earlier in 3.8 said standards do not emanate from the public authorities and they cannot be designated as generally binding regulations in the sense in which that is understood in the *Grondwet* or the *Bekendmakingswet*. It would therefore not hold that the public authorities had issued them as intended in Article 11 of the *Auteurswet*.

3.11 Alongside parts 1a-1c, part 1d is lacking in independent significance.

3.12 Part 1e is a grievance to the effect that the Appeals Court incorrectly disallowed the claim (under 1 alternatively) that it should be declared in Court that the NEN standards referred to are not generally binding on the parties concerned. This part is without foundation. The Appeals Court correctly judged that there are generally applicable standards that are not at one and the same time "generally binding regulations" in the sense of the *Bekendmakingswet*, and that in the current case it concerns such standards. As a corollary the Appeals Court correctly disallowed the claim under 1 alternatively.

3.13 The remaining grounds for appeal from part 2 as well as those of part 3 are also not allowed because of the above reasons.

3.14 NNI has claimed costs to cover the legal proceedings at the end of Article 1019h Rv. [= *Rechtsvordering* = Code of Civil Procedure] because it is essentially defending the enforcement of its intellectual property rights. This claim, that Knooble disputes, is well founded because NNI adopts the position that it is entitled to copyright in respect of the NEN standards, in cassation has conducted a defence aimed at preventing Knooble's claim to have declared in Court that the NEN standards referred to in the *Bouwbesluit/Regeling Bouwbesluit* are free of copyright. At the same time Knooble argued that if Article 1019h can be applied in the case, NNI has neglected to make clear

what part of the costs it has incurred relates to the copyright aspects in the case. This argument, that apparently extends to it only having to pay a part of NNI's costs at the end of Article 1019h, is unfounded because points of dispute relating to Article 89 paragraph 4 *Grondwet* and Articles 3 and 4 *Bekendmakingswet* determine the result of the copyright point of dispute (see under 3.10 above for this).

3.15 NNI finds an amount of €60,000 in legal costs as reasonable and proportionate. Knooble disputed the amount NNI specified, though without providing any arguments for so doing, such that the legal costs that fall on the side of NNI as mentioned hereinafter will be allowed.

4. Ruling

The Supreme Court hereby:

dismisses the appeal;

orders Knooble to pay the costs of the case in cassation, to the point of this judgment on the State's side estimated at €781.34 in disbursements and €2,200 in attorney fees and at €60,000 on NNI's side.

This judgment is made by the vice-president E.J. Numann as presiding justice and the justices A.M.J. van Buchem-Spapens, J.C. van Oven, C.A. Streefkerk and C.E. Drion, and pronounced in open session by justice J.C. van Oven on 22 June 2012.