



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Director-General

Brussels,
GROW/D3/ALR/dr (2018) 5993057

***By registered letter with
acknowledgment of receipt***

Mr Fred Logue
FP Logue Solicitors
8-10 Coke lane
Smithfield, Dublin 7
Ireland

***Advance copy by email:
info@fplogue.com***

Subject: Your application for access to documents – Ref GestDem No 2018/5137

Dear Mr Logue,

We refer to your e-mail dated 25/09/2018 in which you make a request for access to documents, registered on 02/10/2018 under the above-mentioned reference number.

You request access to the following documents:

CEN EN 71-5:2015
Safety of toys - Part 5: Chemical toys (sets) other than experimental sets 13/11/2015

CEN EN 71-4:2013
Safety of toys - Part 4: Experimental sets for chemistry and related activities 28/05/2013

CEN EN 71-12:2013
Safety of toys - Part 12: N-Nitrosamines and N-nitrosatable substances 29/06/2013

CEN EN 12472:2005+A1:2009
Method for the simulation of wear and corrosion for the detection of nickel release from coated items 13/01/2017

We have identified the documents requested in an internal database of the European Commission, under the following reference numbers:

- 00052103

- 00052083
- 00052091
- 00347006

The first three standards mentioned above are harmonized standards in support of Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys¹ (hereafter referred to as 'Toy Safety Directive'). The fourth standard (EN 12472:2005+A1:2009) is one of several standards developed in support of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)², more specifically related to restriction entry 27 in Annex XVII to REACH.

European Standards (ENs) are adopted by either one of the three recognized European Standardisation Organisations (ESOs): CEN (European Committee for Standardization), CENELEC (European Committee for Electro-technical Standardization) and ETSI (European Telecommunications Standards Institute) which are private organizations.

Given their status as private organisations, they are the owners of their products. In other words, they possess the copyright on all documents, technical deliverables and publications, including European standards that are developed by them. As owners of the copyright, they are also free to decide whether they offer the use of their publications for a fee or free of charge.

As a result, CEN and CENELEC charge a fee for their standards whilst ETSI publications are generally freely available.

The standards quoted in your e-mail are European Standards (EN) produced by CEN. Thus, they are subject to a charge.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that the documents requested cannot be disclosed, as disclosure is prevented by an exception to the right of access laid down in Article 4 of this Regulation.

Disclosure of the requested document could undermine the protection of commercial interests of a legal person, including intellectual property, which are protected under Article 4, paragraph 2, 1st indent of Regulation (EC) No 1049/2001, as CEN is the copyright owner of all deliverables produced by their respective technical committees. Consequently, the copyright and exploitation rights (distribution and sales) on any CEN publication (including draft European standards) belong exclusively to CEN and its national members from whom the (draft) standards can be obtained.

Please note that the texts of European standards in the EN 71 series can only be purchased from a national standardisation body against payment. The following site of CEN (European Standardization Committee) provides links to the national standardisation bodies' websites: <http://standards.cen.eu/dyn/www/f?p=CENWEB:5> .

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02009L0048-20171124>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02006R1907-20140410>

If you decide to purchase copies of the standards requested, I would warmly recommend that you compare prices before actually placing an order, as experience shows that the price for the same text can differ significantly between national standardisation bodies.

However, to the best of our knowledge, it is also possible to gain access to European standards for free. We were informed that there are public libraries that have the texts of standards at their disposal and make them available free of charge. The national standardisation bodies might be in a position to provide you with further information on this.

We have considered whether partial access could be granted to the document/documents requested. However, the disclosure of only some parts of the documents requested cannot be granted as the documents requested are covered by the exception mentioned above in their entirety.

The exceptions laid down in Article 4(2) and 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. In the present case, we could not identify any public interest in disclosure of the requested documents

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 5/282
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

Lowri Evans

ANTTI PELTOMÄKI
Deputy Director-General
DG INTERNAL MARKET, INDUSTRY,
ENTREPRENEURSHIP AND SMEs