



Date of acceptance : 26/11/2019



ОБЩ СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
TRIBUNAL GENERAL DE LA UNIÓN EUROPEA
TRIBUNÁL EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONS RET
GERICHT DER EUROPÄISCHEN UNION
EUROOPA LIIDU ÜLDKOHUS
ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
GENERAL COURT OF THE EUROPEAN UNION
TRIBUNAL DE L'UNION EUROPÉENNE
CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH
OPĆI SUD EUROPSKE UNIJE
TRIBUNALE DELL'UNIONE EUROPEA

EIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA
EUROPOS SĄJUNGOS BENDRASIS TEISMAS
AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE
IL-QORTI ĠENERALI TAL-UNJONI EWROPEA
GERECHT VAN DE EUROPESE UNIE
SĄD UNII EUROPEJSKIEJ
TRIBUNAL GERAL DA UNIÃO EUROPEIA
TRIBUNALUL UNIUNII EUROPENE
VŠEOBECNÝ SÚD EURÓPSKEJ ÚNIE
SPLOŠNO SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN
EUROPEISKA UNIONENS TRIBUNAL

ORDER OF THE PRESIDENT OF THE FIFTH CHAMBER OF THE
GENERAL COURT

20 November 2019 *

-25-

(Access to documents of the institutions — Intervention — Interest in the result of
the case)

- 920 416 -

In Case T-185/19,

Public.Resource.Org, Inc., established in Sebastopol, California (United States),

Right to Know CLG, established in Dublin (Ireland),

represented by F. Logue, Solicitor, and by A. Grünwald, J. Hackl and C. Nüßing,
lawyers,

applicants,

v

European Commission, represented by G. Gattinara, F. Thiran and S. Delaude,
acting as Agents,

defendant,

ACTION pursuant to Article 263 TFEU for the annulment, first, of the decision of
15 November 2018 by which the European Commission refused to grant the
application for access to certain documents lodged by the applicants on
25 September 2018 and, second, of the decision of 22 January 2019 by which the
Commission confirmed that refusal,

THE PRESIDENT OF THE FIFTH CHAMBER OF THE GENERAL COURT

makes the following

* Language of the case: English.

Order

Background to the dispute

- 1 On 25 September 2018, the applicants, Public.Resource.Org, Inc. and Right to Know CLG, lodged an application with the Directorate-General for the Internal Market, Industry, Entrepreneurship and SMEs of the European Commission, on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43) and of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13), for access to documents held by the Commission ('the application for access').
- 2 The application for access concerned four harmonised standards adopted by the European Committee for Standardisation (CEN) pursuant to Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/24/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ 2012 L 316, p. 12), namely EN standard 71-5:2015, entitled 'Safety of toys — Part 5: Chemical toys (sets) other than experimental sets', EN standard 71-4:2013, entitled 'Safety of toys — Part 4: Experimental sets for chemistry and related activities', EN standard 71-12:2013, entitled 'Safety of toys — Part 12: N-Nitrosamines and N-nitrosatable substances' and EN standard 12472:2005+A1:2009, entitled 'Method for the simulation of wear and corrosion for the detection of nickel release from coated items' ('the requested harmonised standards').
- 3 By letter of 15 November 2018, the Commission refused to grant the application for access on the basis of the first indent of Article 4(2) of Regulation No 1049/2001 ('the initial refusal decision').
- 4 On 30 November 2018, the applicants lodged a confirmatory application with the Commission pursuant to Article 7(2) of Regulation No 1049/2001. By decision of 22 January 2019, the Commission confirmed the refusal to grant access to the requested harmonised standards ('the confirmatory decision').

Procedure

- 5 By application lodged at the Registry of the General Court on 28 March 2019, the applicants brought the present action.
- 6 By document lodged at the Court Registry on 10 July 2019, the CEN and certain national standards bodies, namely the Asociación Española de Normalización (UNE), the Asociația de Standardizare din România (ASRO), the Association française de normalisation (AFNOR), the Austrian Standards International (ASI), the British Standards Institution (BSI), the Bureau de normalisation/Bureau voor Normalisatie (NBN), the Dansk Standard (DS), the Deutsches Institut für Normung e.V. (DIN), the Koninklijk Nederlands Normalisatie Instituut (NEN), the Schweizerische Normen-Vereinigung (SNV), the Standard Norge (SN), the Suomen Standardisoimisliitto r.y. (SFS), the Svenska institutet för standarder (SIS) and the Institut za standardizaciju Srbije (ISS) applied for leave to intervene in the present proceedings in support of the form of order sought by the Commission.
- 7 The application to intervene was served on the main parties in accordance with Article 144(1) of the Rules of Procedure of the General Court.
- 8 By document lodged at the Court Registry on 4 October 2019, the applicants raised objections with respect to the application to intervene.
- 9 The Commission did not submit any observations within the prescribed period.

The application to intervene

- 10 It must be noted that, in accordance with the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union, which applies to the proceedings before the General Court by virtue of the first paragraph of Article 53 of that Statute, any person who can establish an interest in the result of a case, other than a dispute between Member States, between institutions of the European Union or between Member States and institutions of the European Union, may intervene in the case. An application to intervene is to be limited to supporting the form of order sought by one of the parties.
- 11 In accordance with settled case-law, the concept of ‘an interest in the result of the case’, within the meaning of the second paragraph of Article 40 of the Statute of the Court of Justice, must be defined in the light of the precise subject matter of the dispute and be understood as meaning a direct, existing interest in the ruling on the forms of order sought. In that regard, it should be ascertained in particular whether the intervener is directly affected by the contested measure and whether his or her interest in the result of the case is established (order of the President of the Court of Justice of 8 June 2012, *Schenker v Deutsche Lufthansa and Others*, C-602/11 P(I), not published, EU:C:2012:337, paragraph 10 and the case-law cited).

- 12 As regards access to documents, it has been held that the direct, existing interest of persons is to be recognised where disclosure of the documents to the person requesting them would harm the commercial interests of the applicant for leave to intervene (order of 6 March 2009, *Éditions Odile Jacob v Commission*, T-237/05, not published, EU:T:2009:58, paragraph 14).
- 13 In the present case, in order to establish their interest in the result of the case, the applicants for leave to intervene submit that disclosure of the requested harmonised standards would undermine the exploitation of their copyright over those standards, and consequently, their economic interests arising from that exploitation. In that regard, they argue, first, that the revenues of the national standards bodies generated from the sale and licensing of the respective standards would significantly decline in the event of disclosure since economic operators would not be willing to pay a fee to obtain a copy of the requested harmonised standards, if they could obtain them from the Commission free of charge on the basis of Regulation No 1049/2001. Secondly, as regards the CEN more specifically, the latter submits that it is funded by the contributions of its members, which are generated, to a considerable extent, from the revenues related to the licensing and sale of standards, such that the foreseeable decline of those revenues for the reasons mentioned above would also affect its economic situation directly.
- 14 In the first place, it is apparent from both the initial refusal decision and the confirmatory decision ('the contested decisions') that the Commission's refusal to grant access to the applicants is based, inter alia, on safeguarding the commercial interests of the CEN and its national members to the extent to which the requested harmonised standards are protected by copyright.
- 15 In the second place, it is common ground that the requested harmonised standards were first adopted by the CEN and then transposed by each national standards body, that is to say, inter alia, the other applicants for leave to intervene, as identical national standards that the public may access in return for payment of a fee via points of sale managed by those bodies.
- 16 Under those circumstances, if the Court were to decide to uphold the action, the Commission might, in the context of the execution of the annulment judgment, be required to provide the applicants with the requested harmonised standards free of charge and without the applicants for leave to intervene being given an opportunity to express their point of view in that regard.
- 17 The applicants' objection, according to which communication of the requested harmonised standards cannot adversely affect the interests of the applicants for leave to intervene since the documents at issue are not protected by copyright, relates to the merits of the case and must, at this stage, be rejected as being premature (see, to that effect and by analogy, order of 6 December 2007, *Agrofert Holding v Commission*, T-111/07, not published, EU:T:2007:368, paragraph 32).

- 18 As for the applicants' claims that the CEN is not representative, those claims are irrelevant for the purposes of the assessment of the CEN's interest in intervening, since the CEN has established an interest of its own in the result of the case as a beneficiary of the revenue paid to it by its members by virtue of the exploitation of its claimed copyright over those standards.
- 19 Under those circumstances, the Court finds, following the case-law cited in paragraphs 11 and 12, that the applicants for leave to intervene, namely the CEN and its national members referred to in paragraph 6 above, have demonstrated that they have an established, direct and existing interest in the ruling on the contested decisions.
- 20 Therefore, as the application to intervene has been brought in accordance with Article 143 of the Rules of Procedure and the applicants for leave to intervene have demonstrated an interest in the result of the case in accordance with the second paragraph of Article 40 of the Statute of the Court of Justice, their application to intervene must be granted.

On those grounds,

THE PRESIDENT OF THE FIFTH CHAMBER OF THE GENERAL COURT

hereby orders:

1. **The European Committee for Standardisation (CEN), the Asociación Española de Normalización (UNE), the Asociația de Standardizare din România (ASRO), the Association française de normalisation (AFNOR), Austrian Standards International (ASI), the British Standards Institution (BSI), the Bureau de normalisation/Bureau voor Normalisatie (NBN), the Dansk Standard (DS), the Deutsches Institut für Normung e.V. (DIN), the Koninklijk Nederlands Normalisatie Instituut (NEN), the Schweizerische Normen-Vereinigung (SNV), the Standard Norge (SN), the Suomen Standardisoimisliitto r.y. (SFS), the Svenska institutet för standarder (SIS) and the Institut za standardizaciju Srbije (ISS) are granted leave to intervene in Case T-185/19 in support of the form of order sought by the European Commission.**
2. **The Registrar shall send a copy of all of the procedural documents notified to the parties to the CEN, the UNE, the ASRO, the AFNOR, the ASI, the BSI, the NBN, the DS, the DIN, the NEN, the SNV, the SN, the SFS, the SIS and the ISS.**
3. **A period shall be prescribed within which the CEN, the UNE, the ASRO, the AFNOR, the ASI, the BSI, the NBN, the DS, the DIN, the NEN, the SNV, the SN, the SFS, the SIS and the ISS may submit a statement in intervention.**

4. Costs are reserved.

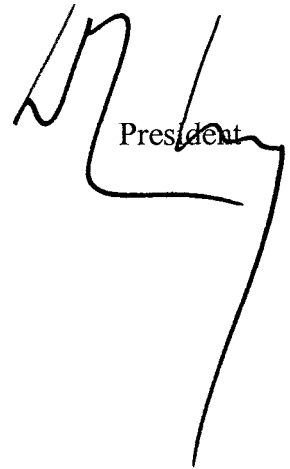
Luxembourg, 20 November 2019.

E. Coulon



Registrar

D. Spielmann



President