



Date of acceptance : 13/08/2020

Case T-185/19

Public.Resource.Org, Inc. and Right to Know CLG
v
European Commission
European Committee for Standardisation and Others, intervener

Questions for the Applicants

1. The first head of claim in the application is worded, at the beginning and in paragraph 7 of the application, as follows: ‘annul the decision of the European Commission of January 22, 2019, in case C(2019) 639 final (including the initial decision of November 15, 2018 in case GROW/D3/ALR/dr (2018) 5993057) (in the following referred to as the “Contested Decision”, attached as Annex A.1)’.

The applicants, Public.Resource.Org, Inc. and Right to Know CLG, are asked to clarify their first head of claim by specifying whether it seeks annulment of both the decision of 15 November 2018, by way of which the Commission refused to grant their request for access to the harmonised standards requested, and of the decision of 22 January 2019, by which the Commission confirmed that refusal, or of the latter decision only.

2. Paragraph 7 of the application contains a head of claim in which the applicants request ‘... (ii) corresponding access to certain harmonised standards to which the [Commission] refused to grant access ...’.

The applicants are asked to clarify that head of claim in the light, in particular, of the first head of claim set out at the beginning of the application under the heading ‘Form of order sought by the Applicants’, and to specify whether there are two different heads of claim or a single head of claim.

Questions for the parties

3. In the present case, it is common ground between the parties that, under the European standardisation system, it is possible to access harmonised standards free of charge through certain libraries.

In paragraph 53 of the application, the applicants claim that, in Germany, for example, the harmonised standards requested can, however, only be accessed via the so-called ‘Normen-Infopoints’ system, a group of 90 free display locations that can be found only in metropolitan areas of Germany. The applicants add that over 90% of the ‘Normen-Infopoints’ are located in university libraries to which only students or holders of a special reader pass or library card have access.

The parties are asked to provide a specific summary of the main constraints and limitations on that possibility of accessing harmonised standards free of charge.

4. In paragraphs 19 to 21 of their statement in intervention, the interveners argue that the action is inadmissible as the applicants have no standing to bring proceedings. By contrast, although it seeks to have the action dismissed, the Commission does not dispute the applicants' standing to bring proceedings.
 - 4.1. The parties are asked to inform the Court of their position as to the admissibility of the objection of inadmissibility raised by the interveners, in so far as its purpose is not to support the form of order sought by the Commission.
 - 4.2. The parties are also asked to submit their observations on the objection of inadmissibility relied upon by the interveners in paragraphs 19 to 21 of the statement in intervention, in relation to the applicants' lack of standing to bring proceedings.
5. The parties are invited to take a position on the possible consequences to be drawn for the present action from the case-law arising from the judgment of 13 January 2017, *Deza v ECHA* (T-189/14, EU:T:2017:4), in so far as concerns, in particular, the scope of the exception provided for in the first indent of Article 4(2) of Regulation No 1049/2001, in the light of the considerations set out in paragraphs 117 to 120 of that judgment.
6. The parties are invited to take a position on the applicants' argument, set out in paragraph 18 of the reply, regarding the relevance of issues of copyright arising under national law in the present proceedings.

Question for the Commission

7. In paragraph 22 of the rejoinder, the Commission argues that copyright protection 'is also contractually guaranteed to the CEN and its members'.

The Commission is asked to provide the Court with relevant information relating to the existence and content of such contracts.