

Registry of the European Court of Justice of the European Union
Rue du Fort Niedergrünwald
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LUXEMBOURG

Filed via e-Curia (<https://curia.europa.eu/e-Curia>)

C-588/21 P

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Request to conduct an oral hearing (Article 76 of the Rules of Procedure)

8 June 2022

In the name and on behalf of the Appellants, we respectfully request to conduct an oral hearing in the present case.

- 1 The Appellants explained in their Appeal that the case at hand concerns a fundamental issue of the EU, namely the free access to the law for all EU citizens and the consequences for harmonised standards (“**HS**”) as a result of the ECJ’s judgment in *James Elliot Construction* (case C-613/14) according to which HS “*form part of EU law*”.
- 2 Free access to the law for all EU citizens and thus to the HS is a (fundamental) right following from the rule of law, which is one of the common values on which the EU is founded (cf. Art. 2 TEU).
- 3 The Appellants have requested access to four important HS (concerning toy safety and the maximum rate of nickel release from certain products) under Regulation (EC) No 1049/2001 (the “**Transparency Regulation**”). The key question of the case is whether the European Commission (“**EC**”) was correct to refuse access under Art. 4(2) Transparency Regulation with the argumentation that HS are protected by copyright.
- 4 In the Appellants’ view, this is not the case since HS are part of EU law and the law must be freely accessible under the rule of law (i.e. the law cannot be copyrightable). In any event, in the Appellants’ view, there would be an overriding interest in the disclosure of the HS since the law must be freely accessible under the rule of law and since the HS concern

important topics for society. The current “pay-per-law” or “paywall” system for HS contradicts these principles.

- 5 Advocate General Campos Sánchez-Bordona in his opinion in *James Elliot Construction* confirmed the importance and significance of these questions, which have not been addressed in the Court’s case law. He concluded that it is an “***important question*** *whether the complete publication of standards is necessary in order for those standards to have legal effect and for the principle of publication of legislation to be observed*”, and that such “[publication] requirement would have a ***very significant impact*** on the European standardisation system, and in particular on the sale of harmonised technical standards by national standardisation bodies” (C-613/14, ECLI:EU:C:2016:63, para. 51).
- 6 As also explained in the Appeal, the General Court (“GC”), however, has ignored the rule of law including the related consequences for the case at hand. The GC’s judgment seems to be inspired solely by the alleged protection of the standardization system including the alleged copyright protection of HS (under Regulation (EU) No 1025/2012, the “**Standardization Regulation**”). But as the Appellants have shown, the Standardization Regulation cannot be the basis for the copyright protection of HS. In any event, the GC misjudged that the rule of law directly follows from the EU Treaties as EU primary law and thus takes precedence over any EU secondary law, like the Standardization Regulation establishing the standardization system and allegedly providing for copyright protection of HS.
- 7 The importance of the case at hand is further supported by the fact that CEN and 14 national standardisation bodies intervened in this proceeding.
- 8 The Court should deal with these fundamental questions following from the rule of law not only in writing, but also during an oral hearing. This is – in the Appellants’ view – necessary to properly deal with the novel legal questions including the importance of the case for the public as well as the corresponding free access to all rules having legal effects. These are issues which have not been addressed in the Court’s case law before.
- 9 For the reasons set out above, the Appellants respectfully request to conduct an oral hearing in the case at hand under Article 76 of the Rules of Procedure.