JUDGMENT OF THE COURT (Grand Chamber)

5 March 2024 (*)

(Appeal – Access to documents of the institutions of the European Union – Regulation (EC) No 1049/2001 – Article 4(2) – Exceptions – Refusal to grant access to a document whose disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property – Overriding public interest in disclosure – Harmonised standards adopted by the European Committee for Standardisation (CEN) – Protection deriving from copyright – Principle of the rule of law – Principle of transparency – Principle of openness – Principle of good governance)

In Case C-588/21 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 23 September 2021,

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

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

represented by J. Hackl, C. Nüßing, Rechtsanwälte, and F. Logue, Solicitor,

appellants,

the other parties to the proceedings being:

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

defendant at first instance,

European Committee for Standardisation (CEN), established in Brussels (Belgium),

Asociación Española de Normalización (UNE), established in Madrid (Spain),

Asociația de Standardizare din România (ASRO), established in Bucharest (Romania),

Association française de normalisation (AFNOR), established in La Plaine Saint-Denis (France),

Austrian Standards International (ASI), established in Vienna (Austria),

British Standards Institution (BSI), established in London (United Kingdom),

Bureau de normalisation/Bureau voor Normalisatie (NBN), established in Brussels,

Dansk Standard (DS), established in Copenhagen (Denmark),

Deutsches Institut für Normung eV (DIN), established in Berlin (Germany),

Koninklijk Nederlands Normalisatie Instituut (NEN), established in Delft (Netherlands),

Schweizerische Normen-Vereinigung (SNV), established in Winterthour (Switzerland),

Standard Norge (SN), established in Oslo (Norway),

Suomen Standardisoimisliitto ry (SFS), established in Helsinki (Finland),

Svenska institutet för standarder (SIS), established in Stockholm (Sweden),

Institut za standardizaciju Srbije (ISS), established in Belgrade (Serbia),

represented by K. Dingemann, M. Kottmann and K. Reiter, Rechtsanwälte,

interveners at first instance,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, E. Regan and N. Piçarra, Presidents of Chambers, M. Ilešič (Rapporteur), P.G. Xuereb, L.S. Rossi, I. Jarukaitis, A. Kumin, N. Jääskinen, N. Wahl, I. Ziemele and J. Passer, Judges,

Advocate General: L. Medina,

Registrar: M. Siekierzyńska, Administrator,

having regard to the written procedure and further to the hearing on 15 March 2023,

after hearing the Opinion of the Advocate General at the sitting on 22 June 2023,

gives the following

Judgment

1 By their appeal, Public.Resource.Org Inc. and Right to Know CLG seek to have set aside the judgment of the General Court of the European Union of 14 July 2021, *Public.Resource.Org and Right to Know* v *Commission* (T-185/19, EU:T:2021:445, 'the judgment under appeal'), dismissing their action for annulment of Commission Decision C(2019) 639 final of 22 January 2019 ('the decision at issue'), by which the European Commission refused to grant their request for access to four harmonised standards adopted by the European Committee for Standardisation (CEN).

Legal context

Regulation (EC) No 1049/2001

2 Article 1 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), entitled 'Purpose', provides, in paragraphs (a) and (b) thereof:

'The purpose of this Regulation is:

(a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to European Parliament, Council [of the European Union] and Commission (hereinafter referred to as "the institutions") documents provided for in Article [15 TFEU] in such a way as to ensure the widest possible access to documents,

(b) to establish rules ensuring the easiest possible exercise of this right, …

…'

3 Article 2 of that regulation, entitled 'Beneficiaries and scope', lays down, in paragraphs 1 to 3 thereof:

'1. Any citizen of the [European] Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.

2. The institutions may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.

3. This Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union.'

4 Article 4 of that regulation, entitled 'Exceptions', provides, in paragraphs 1, 2 and 4 thereof:

'1. The institutions shall refuse access to a document where disclosure would undermine the protection of:

(a) the public interest as regards:

– public security,

– defence and military matters,

– international relations,

– the financial, monetary or economic policy of the Community or a Member State;

(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

2. The institutions shall refuse access to a document where disclosure would undermine the protection of:

– commercial interests of a natural or legal person, including intellectual property,

– court proceedings and legal advice,

– the purpose of inspections, investigations and audits,

unless there is an overriding public interest in disclosure.

…

4. As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.'

5 Article 7 of that regulation, entitled 'Processing of initial applications', provides, in paragraph 2 thereof:

'In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.'

6 Article 12 of Regulation No 1049/2001, entitled 'Direct access in electronic form or through a register', lays down, in paragraph 2 thereof:

'In particular, legislative documents, that is to say, documents drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States, should, subject

to Articles 4 and 9, be made directly accessible.'

Regulation (EC) No 1367/2006

7 Article 2 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), entitled 'Definitions', provides, in paragraph 1(d)(i) thereof:

'For the purpose of this Regulation:

…

(d) "environmental information" means any information in written, visual, aural, electronic or any other material form on:

(i) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

…'

8 Article 6 of that regulation, entitled 'Application of exceptions concerning requests for access to environmental information', lays down, in the first sentence of paragraph 1 thereof:

'As regards Article 4(2), first and third indents, of Regulation [No 1049/2001], with the exception of investigations, in particular those concerning possible infringements of Union law, an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment.'

Regulation (EC) No 1907/2006

9 Entry 27 of the table set out in Annex XVII to 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), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1, and corrigendum OJ 2007 L 136, p. 3), as amended by Commission Regulation (EC) No 552/2009 of 22 June 2009 ('Regulation No 1907/2006'), provides in respect of the conditions of restrictions of nickel:

'1. Shall not be used:

(a) in any post assemblies which are inserted into pierced ears and other pierced parts of the human body unless the rate of nickel release from such post assemblies is less than 0.2 [microgram(μg)]/cm^2/week (migration limit);

(b) in articles intended to come into direct and prolonged contact with the skin such as:

– earrings,

– necklaces, bracelets and chains, anklets, finger rings,

– wrist-watch cases, watch straps and tighteners,

– rivet buttons, tighteners, rivets, zippers and metal marks, when these are used in garments,

if the rate of nickel release from the parts of these articles coming into direct and prolonged contact with the skin is greater than 0.5 μg/cm^2/week.

(c) in articles referred to in point (b) where these have a non-nickel coating unless such coating is sufficient to ensure that the rate of nickel release from those parts of such articles coming into direct and prolonged contact with the skin will not exceed 0.5 μg/cm^2/week for a period of at least two years of normal use of the article.

2. Articles which are the subject of paragraph 1 shall not be placed on the market unless they conform to the requirements set out in that paragraph.

3. The standards adopted by [CEN] shall be used as the test methods for demonstrating the conformity of articles to paragraphs 1 and 2.'

Regulation (EU) No 1025/2012

10 Pursuant to recital 5 of 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, 98/34/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):

'European standards play a very important role within the internal market, for instance through the use of harmonised standards in the presumption of conformity of products to be made available on the market with the essential requirements relating to those products laid down in the relevant Union harmonisation legislation. Those requirements should be precisely defined in order to avoid misinterpretation on the part of the European standardisation organisations.'

11 Article 2 of that regulation, entitled 'Definitions', lays down, in paragraph (1)(c) thereof:

'For the purposes of this Regulation, the following definitions shall apply:

(1) "standard" means a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory, and which is one of the following:

…

(c) "harmonised standard" means a European standard adopted on the basis of a request made by the Commission for the application of Union harmonisation legislation'.

12 Article 10 of that regulation, entitled 'Standardisation requests to European standardisation organisations', provides, in paragraph 1 thereof:

'The Commission may within the limitations of the competences laid down in the Treaties, request one or several European standardisation organisations to draft a European standard or European standardisation deliverable within a set deadline. European standards and European standardisation deliverables shall be market-driven, take into account the public interest as well as the policy objectives clearly stated in the Commission's request and based on consensus. The Commission shall determine the requirements as to the content to be met by the requested document and a deadline for its adoption.'

13 Article 11 of that regulation, entitled 'Formal objections to harmonised standards', provides, in paragraph 1 thereof:

'When a Member State or the European Parliament considers that a harmonised standard does not entirely satisfy the requirements which it aims to cover and which are set out in the relevant Union harmonisation legislation, it shall inform the Commission thereof with a detailed explanation and the Commission shall, after consulting the committee set up by the corresponding Union harmonisation legislation, if it exists, or after other forms of consultation of sectoral experts, decide:

(a) to publish, not to publish or to publish with restriction the references to the harmonised standard concerned in the *Official Journal of the European Union*;

(b) to maintain, to maintain with restriction or to withdraw the references to the harmonised standard concerned in or from the *Official Journal of the European Union*.'

14 The possible grant of EU financing to the European standardisation organisations for standardisation activities is governed by Article 15 of Regulation No 1025/2012.

Directive 2009/48/EC

15 Article 13 of Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (OJ 2009 L 170, p. 1), entitled 'Presumption of conformity', is worded as follows:

'Toys which are in conformity with harmonised standards or parts thereof, the references of which have been published in the *Official Journal of the European Union*, shall be presumed to be in conformity with the requirements covered by those standards or parts thereof set out in Article 10 and Annex II.'

Background to the dispute

16 The background to the dispute, as set out in paragraphs 1 to 4 of the judgment under appeal, is as follows.

17 The appellants are non-profit organisations whose main focus is to make the law freely accessible to all citizens. On 25 September 2018, they made a request to the European Commission Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, on the basis of Regulation No 1049/2001 and Regulation No 1367/2006, for access to documents held by the Commission ('the request for access').

18 The request for access concerned four harmonised standards adopted by CEN, in accordance with Regulation No 1025/2012, namely, standard EN 71-5:2015, entitled 'Safety of toys – Part 5: Chemical toys (sets) other than experimental sets'; standard EN 71-4:2013, entitled 'Safety of toys – Part 4: Experimental sets for chemistry and related activities'; standard EN 71-12:2013, entitled 'Safety of toys – Part 12: N-Nitrosamines and N-nitrosatable substances'; and standard EN 12472:2005+A 1:2009, entitled 'Method for the simulation of wear and corrosion for the detection of nickel released from coated items' ('the requested harmonised standards').

19 By letter of 15 November 2018, the Commission, on the basis of the first indent of Article 4(2) of Regulation No 1049/2001, refused to grant the request for access.

20 On 30 November 2018, the appellants, pursuant to Article 7(2) of Regulation No 1049/2001, submitted a confirmatory application to the Commission. By the decision at issue, the Commission confirmed the refusal to grant access to the requested harmonised standards.

The action before the General Court and the judgment under appeal

21 By application lodged at the Registry of the General Court on 28 March 2019, the appellants brought an action for annulment of the decision at issue.

22 By order of 20 November 2019, *Public.Resource.Org and Right to Know* v *Commission* (T-185/19, EU:T:2019:828), CEN and 14 national standardisation bodies, namely, the Asociación Española de Normalización (UNE), the Asociaţia 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), Dansk Standard (DS), the Deutsches Institut für Normung eV (DIN), the Koninklijk Nederlands Normalisatie Instituut (NEN), the Schweizerische Normen-Vereinigung (SNV), Standard Norge (SN), the Suomen Standardisoimisliitto ry (SFS), the Svenska institutet för standarder (SIS) and the Institut za standardizaciju Srbije (ISS) (together, 'the interveners at first instance'), were granted leave to intervene in Case T-185/19 in support of the form of order sought by the Commission.

23 In support of their action, the appellants put forward two pleas in law. By their first plea, they submitted, in substance, that the Commission had made errors of law and of assessment in the application of the exception laid down in the first indent of Article 4(2) of Regulation No 1049/2001, on the grounds that, first, copyright protection could not be applicable to the requested harmonised standards and, second, no harm to the commercial interests of CEN and its national members had been established.

24 By their second plea, the appellants claimed that the Commission had erred in law as regards the absence of an overriding public interest, within the meaning of the last clause of Article 4(2) of that regulation, and infringed the obligation to state reasons, since it had considered that no overriding public interest, within the meaning of that provision, justified the disclosure of the requested harmonised standards and it had failed to give sufficient reasons for its refusal to recognise the existence of such an overriding public interest.

25 In response to the first plea, the General Court, after noting, in paragraph 29 of the judgment under appeal, that the purpose of Regulation No 1049/2001 is to give the public the widest possible right of access to EU institutions' documents and that, in accordance with Article 2(3) of that regulation, that right covers both documents drawn up by those institutions and documents received from third parties, which include any legal person, held, in paragraphs 30 and 31 of that judgment, that that right is subject to certain limits based on public or private interest grounds.

26 In the first place, as regards the possible harm to the protection of commercial interests deriving from copyright in the requested harmonised standards, and the eligibility of those harmonised standards for copyright protection even though they form part of EU law, the General Court, in paragraphs 40 to 43 of the judgment under appeal, held, in substance, that it was for the authority in receipt of a request for access to third-party documents to identify objective and consistent evidence capable of confirming the existence of the copyright claimed by the third party concerned.

27 In that regard, the General Court held, in paragraphs 47 and 48 of the judgment under appeal, that the Commission was entitled, without committing any error, to find that the threshold of originality to constitute a 'work', for the purposes of the case-law, and accordingly to be eligible for that protection, had been met in the case at hand so far as concerns the harmonised standards in question.

28 In addition, the General Court found, in paragraph 54 of the judgment under appeal, that the appellants were wrong to claim that, since the Court of Justice had held, in the judgment of 27 October 2016, *James Elliott Construction* (C-613/14, EU:C:2016:821), that those standards formed part of 'EU law', they should be freely accessible without charge with the result that no exception to the right of access can be applied to them.

29 In the second place, so far as concerns the argument alleging the lack of copyright protection for the requested harmonised standards, in the absence of 'personal intellectual creation', for the purposes of the case-law of the Court of Justice, which is necessary in order to benefit from such protection, the General

Court held, in essence, in paragraph 59 of the judgment under appeal, that that argument was not sufficiently substantiated.

30 In the third place, as regards the existence of an error of assessment as to whether protected commercial interests had been undermined, the General Court pointed out, in paragraphs 65 and 66 of the judgment under appeal, that the sale of standards is a vital part of the standardisation bodies' business model. To the extent that the Commission was justified in finding that the requested harmonised standards were covered by copyright protection, under which they were accessible to interested parties solely after the payment of certain fees, their disclosure for free on the basis of Regulation No 1049/2001 was such as to specifically and actually affect the commercial interests of CEN and its national members. The General Court added, in paragraph 71 of that judgment, that the fact that the European standardisation organisations contributed to the performance of tasks in the public interest by providing certification services relating to compliance with the applicable legislation did not alter in any way their status as private entities engaged in an economic activity.

31 Accordingly, the General Court rejected, in paragraph 74 of the judgment under appeal, the first plea in its entirety.

32 The appellants' second plea was divided into three parts.

33 Concerning the third part of that plea, alleging an inadequate statement of reasons for the Commission's refusal to recognise the existence of an overriding public interest, the General Court noted, first of all, in paragraph 86 of the judgment under appeal, that, in the decision at issue, the Commission had stated that the judgment of 27 October 2016, *James Elliott Construction* (C-613/14, EU:C:2016:821), did not create an obligation of proactive publication of the harmonised standards in the *Official Journal of the European Union*, nor did it establish an automatic overriding public interest in their disclosure. Next, in paragraphs 87 and 88 of the judgment under appeal, the General Court also noted that the Commission had rebutted the appellants' claims related to the obligations of transparency in environmental matters, deemed to be in the overriding public interest, compared with the interest in protecting the commercial interests of a natural or legal person, and that the Commission had added that it had not been able to identify any overriding public interest justifying such disclosure. Lastly, in paragraph 91 of the judgment under appeal, the General Court added that, even though the Commission was required to set out the reasons justifying the application to the particular case of one of the exceptions to the right of access provided for by Regulation No 1049/2001, it was not however required to provide more information than was necessary in order for the person requesting access to understand the reasons for its decision and for the Court to review the legality of that decision.

34 As for the existence of an overriding public interest requiring free access to the law, the General Court found, first, in paragraphs 99 to 101 of the judgment under appeal, that, in the case at hand, the appellants were seeking to remove entirely the category of harmonised standards from the scope of application of the system of substantive exceptions established by Regulation No 1049/2001, without however substantiating the specific grounds which would have justified the disclosure of the requested harmonised standards or explaining to what extent the disclosure of those standards ought to have prevailed over the protection of the commercial interests of CEN or its national members.

35 Second, the public interest in ensuring the proper functioning of the European standardisation system, the aim of which is to promote the free movement of goods while guaranteeing an equivalent minimum level of safety in all European countries, prevails over the guarantee of freely available access to the harmonised standards without charge.

36 Third, Regulation No 1025/2012 expressly provides for a system of publication which is limited to the references of harmonised standards and allows for paid access to those standards for those wishing to benefit from the presumption of conformity attached to them.

37 Fourth, the General Court held, in paragraphs 104 and 105 of the judgment under appeal, that the Commission had not erred in finding, in the decision at issue, that there was no overriding public interest justifying the disclosure of the requested harmonised standards under the last clause of Article 4(2) of Regulation No 1049/2001. The General Court added, in paragraph 107 of that judgment that, apart from the fact that the appellants did not state the exact source of a 'constitutional principle' which would require access that is freely available and free of charge to harmonised standards, they did not in any way explain the reason why those standards should be subject to the requirement of publication and accessibility attached to a 'law', inasmuch as those standards are not mandatory, they produce the legal effects attached to them solely with regard to the persons concerned, and they may be consulted for free in certain libraries in the Member States.

38 So far as concerns the existence of an overriding public interest arising from the obligation of transparency in environmental matters, the General Court found, in paragraph 119 of the judgment under appeal, that both the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1) and Regulation No 1367/2006 provide for public access to environmental information either on request or as part of active dissemination by the authorities and institutions concerned. However, since those authorities and institutions may refuse a request for access to information where that information falls within the scope of a number of exceptions, they are under no obligation actively to disseminate that information.

39 The General Court inferred therefrom, in paragraph 129 of that judgment, that the requested harmonised standards did not come within the sphere of information which relates to emissions into the environment and could not therefore benefit from the application of the presumption laid down in the first sentence of Article 6(1) of that regulation, according to which the disclosure of standards of that nature is deemed to be in the overriding public interest within the meaning of Article 4(2) of Regulation No 1049/2001.

40 Consequently, in paragraph 130 of the judgment under appeal, the General Court rejected the second plea in its entirety, and dismissed the action.

Forms of order sought by the parties to the appeal

41 By their appeal, the appellants claim that the Court of Justice should:

– set aside the judgment under appeal and grant access to the requested harmonised standards;

– in the alternative, refer the matter back to the General Court; and

– order the Commission to pay the costs.

42 The Commission and the interveners at first instance contend that the Court should:

– dismiss the appeal and

– order the appellants to pay the costs.

The application for the oral part of the procedure to be reopened

43 By a document lodged at the Registry of the Court of Justice on 17 August 2023, the interveners at first instance requested that the oral part of the procedure be reopened, in accordance with Article 83 of the Rules of Procedure of the Court of Justice.

44 In support of their application, they submit that the Advocate General's Opinion, delivered on 22 June 2023, is based on numerous assumptions which are factually unsubstantiated, or even erroneous, which would require, at the very least, a more thorough discussion. In addition, they consider that an in-depth debate is all the more necessary since the Advocate General relied on incorrect assumptions and the approach which she adopted in her Opinion, in particular that according to which 'the EU standardisation system does not actually require paid access to [harmonised technical standards]', creates a risk for the functioning of that system.

45 Pursuant to Article 83 of its Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to have a decisive bearing on the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

46 That is not the situation here. The interveners at first instance and the Commission set out, at the hearing, their assessment of the factual context of the dispute. In particular, they had the opportunity to express their views on the presentation of the facts as set out in the judgment under appeal and the appeal, and to specify the reasons why, in their view, the European standardisation system requires paid access to the requested harmonised standards. Accordingly, the Court considers, after hearing the Advocate General, that it has before it all the information necessary to give judgment.

47 Furthermore, as regards the claim that the Advocate General's Opinion contains guidelines posing a risk to the functioning of the European standardisation system, it must be borne in mind that the Statute of the Court of Justice of the European Union and the Rules of Procedure make no provision for interested parties to submit observations in response to the Advocate General's Opinion (judgment of 25 October 2017, *Polbud – Wykonawstwo*, C-106/16, EU:C:2017:804, paragraph 23 and the case-law cited).

48 Under the second paragraph of Article 252 TFEU, it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General's involvement. In this regard, the Court is not bound either by the conclusion reached by the Advocate General or by the reasoning which led to that conclusion. Consequently, a party's disagreement with the Opinion of the Advocate General, irrespective of the questions that he or she examines in his or her Opinion, cannot in itself constitute grounds justifying the reopening of the oral part of the procedure (judgment of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraph 31 and the case-law cited).

49 In the light of the foregoing, the Court considers that there is no need to reopen the oral part of the procedure.

The appeal

50 The appellants put forward two grounds in support of their appeal. The first ground of appeal alleges that the General Court erred in law in holding that the requested harmonised standards fall within the exception provided for in the first indent of Article 4(2) of Regulation No 1049/2001, which seeks to protect the commercial interests of a natural or legal person, including intellectual property. The second ground alleges an error of law as regards the existence of an overriding public interest, within the meaning of the last clause of Article 4(2) of that regulation, justifying the disclosure of those standards.

51 It is appropriate to begin by examining the second ground of appeal.

Arguments of the parties

52 By their second ground of appeal, the appellants claim that the General Court erred in law in holding that there was no overriding public interest, within the meaning of the last clause of Article 4(2) of Regulation No 1049/2001, justifying the disclosure of the requested harmonised standards.

53 In the first place, the appellants criticise, in substance, the General Court for holding, in paragraphs 98 to 101 of the judgment under appeal, that they had not demonstrated the specific reasons justifying their request for access, based on the existence of an overriding public interest in disclosure of the requested harmonised standards.

54 In that regard, they claim, first of all, that the requested harmonised standards form part of EU law, which must be freely available. Next, they maintain that those standards concern fundamental issues for consumers, namely, the safety of toys. Lastly, they argue that such standards are also very important for manufacturers and all other participants in the supply chain, since there is a presumption of conformity with EU legislation, applicable to the products concerned when the requirements laid down in those standards are met.

55 In the second place, the appellants complain that the General Court erred in law, in paragraphs 102 and 103 of the judgment under appeal, in finding that the public interest in ensuring the functioning of the European standardisation system prevails over the guarantee of freely available access to the harmonised standards without charge.

56 Furthermore, according to the appellants, the functioning of the European standardisation system is not covered by the exception laid down in the first indent of Article 4(2) of Regulation No 1049/2001, which concerns only the protection of the commercial interests of a natural or legal person, including intellectual property. By considering that the public interest in ensuring the functioning of the European standardisation system falls within the scope of that provision, the General Court wrongly created an exception, which is not provided for in that regulation.

57 In the third place, the appellants complain that the General Court erred in law, in paragraphs 104 and 105 of the judgment under appeal, by endorsing the Commission's assessment according to which the judgment of 27 October 2016, *James Elliott Construction* (C-613/14, EU:C:2016:821), does not create an obligation of proactive publication of the harmonised standards in the *Official Journal of the European Union* or establish an automatic overriding public interest in their disclosure.

58 In that regard, the requested harmonised standards should be considered to be legislative documents since the procedure for their adoption constitutes a form of 'controlled' legislative delegation. In particular, references to such standards are published in the *Official Journal of the European Union* and the Commission requires Member States to adopt each harmonised standard as a national standard without amendment, within six months. Furthermore, publication in the *Official Journal of the European Union* has the effect of conferring on products which are covered by EU legislation and satisfy the technical requirements defined in the harmonised standards the benefit of a presumption of conformity with EU legislation.

59 In the fourth place, the appellants claim that the General Court erred in law, in paragraph 107 of the judgment under appeal, when it stated that harmonised standards produce the legal effects attached to them solely with regard to the persons concerned. That conclusion runs counter to the case-law of the Court of Justice according to which harmonised standards form part of EU law.

60 The Commission, supported by the interveners at first instance, contends, as a preliminary point, that the appellants' line of argument is so general that it could apply to any request for disclosure relating to a harmonised standard.

61 As regards the reasons specifically relied on by the appellants, the Commission observes, first, that, although it considers that the requested harmonised standards do indeed form part of EU law, that does not mean that they must be freely available. Second, as for the fact that those standards relate to issues that are

fundamental to consumers, it observes that that argument is too general to take precedence over the reasons justifying the refusal to disclose the documents at issue. Third, the interest in harmonised standards that manufacturers and other participants in the supply chain have in order to gain access to the internal market cannot be regarded as an overriding public interest justifying the disclosure of those standards.

62 In addition, it submits that freely available access to the harmonised standards without charge would have systemic effects on the interveners at first instance, their intellectual property rights and their commercial income. In this respect, the European standardisation system cannot operate without paid access to those standards, with the result that the exception provided for in Article 4(2) of Regulation No 1049/2001 is applicable. In any event, there is no overriding public interest justifying the disclosure of those standards.

63 Finally, the Commission states that harmonised standards are not drafted in the course of legislative procedures, but on the basis of a mandate given by the Commission to a standardisation body following the adoption of a legislative act. Moreover, once adopted by a standardisation body, harmonised standards must be transposed into the national legal systems by the national members of that body, and in accordance with the internal procedural rules of that body. In any event, the direct access provided for in Article 12(2) of Regulation No 1049/2001 is also subject to the exception laid down in the first indent of Article 4(2) of that regulation.

64 Consequently, the Commission considers that the second ground of appeal should be rejected.

Findings of the Court

65 By their second ground of appeal, the appellants submit, in substance, that the General Court erred in law in holding that no overriding public interest, within the meaning of the last clause of Article 4(2) of Regulation No 1049/2001, justified disclosure of the requested harmonised standards. In their view, there is, by virtue of the principle of the rule of law, which requires free access to EU law, an overriding public interest justifying access to those standards for all natural or legal persons residing or having their registered office in a Member State, on the ground that those rules form part of EU law.

66 As a preliminary point, it should be recalled that the right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium, is guaranteed to any citizen of the Union, and to any natural or legal person residing or having its registered office in a Member State, by Article 15(3) TFEU and by Article 42 of the Charter of Fundamental Rights of the European Union ('the Charter'). The exercise of that right is, as regards access to Parliament, Council and Commission documents, governed by Regulation No 1049/2001, the purpose of which, according to Article 1 thereof, is, inter alia, to 'define the principles, conditions and limits' of that right, 'in such a way as to ensure the widest possible access to documents' and to 'establish rules ensuring the easiest possible exercise of [that] right'.

67 Article 2(1) of that regulation specifically provides for a right of access to documents of the Parliament, Council and Commission. Under Article 2(2) of that regulation, the institutions may, subject to those principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.

68 According to the first indent and the final clause of Article 4(2) of Regulation No 1049/2001, those institutions are to refuse access to a document where its disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.

69 It is thus apparent from the wording of that provision that the exception provided for therein is not applicable where there is an overriding public interest in disclosure of the document concerned.

70 In that regard, it should, in the first place, be recalled that the Court has already held that a harmonised standard, adopted on the basis of a directive and the references to which have been published in the *Official*

Journal of the European Union, forms part of EU law owing to its legal effects (see, to that effect, judgment of 27 October 2016, *James Elliott Construction*, C-613/14, EU:C:2016:821, paragraph 40).

71 In particular, first, the Court has already held that harmonised standards may be binding on the public generally as long as they themselves have been published in the *Official Journal of the European Union* (see, to that effect, judgment of 22 February 2022, *Stichting Rookpreventie Jeugd and Others*, C-160/20, EU:C:2022:101, paragraph 48).

72 Second, as regards the procedure for drawing up harmonised standards, it should be noted that that procedure was laid down by the EU legislature in Regulation No 1025/2012 and that, in accordance with the provisions set out in Chapter III of that regulation, the Commission plays a central role in the European standardisation system.

73 Thus, it should be noted, as the Advocate General did in points 23 to 31 of her Opinion, that even if the development of those standards is entrusted to a body governed by private law, only the Commission is empowered to request that a harmonised standard be developed in order to implement a directive or a regulation. Under the last sentence of Article 10(1) of Regulation No 1025/2012, the Commission determines the requirements as to the content to be met by the requested harmonised standard and a deadline for its adoption. That development process is supervised by the Commission, which also provides financing in accordance with Article 15 of that regulation. In accordance with Article 11(1)(a) of that regulation, it is to decide to publish, not to publish or to publish with restriction the references to the harmonised standard concerned in the *Official Journal of the European Union*.

74 Third, although Regulation No 1025/2012 provides, in Article 2(1) thereof, that compliance with harmonised standards is not compulsory, products which comply with those standards benefit, as is apparent from recital 5 of that regulation, from a presumption of conformity with the essential requirements relating to them laid down in the relevant EU harmonisation legislation. That legal effect, conferred by that legislation, is one of the essential characteristics of those standards and makes them an essential tool for economic operators, for the purposes of exercising the right to free movement of goods or services on the EU market.

75 More specifically, it may prove difficult, or even impossible, for economic operators to have recourse to a procedure other than that of compliance with such standards, such as an individual expert report, in the light of the administrative difficulties and additional costs arising therefrom (see, to that effect, judgment of 12 July 2012, *Fra.bo*, C-171/11, EU:C:2012:453, paragraphs 29 and 30)

76 Consequently, as the Advocate General observed in point 43 of her Opinion, where EU legislation provides that compliance with a harmonised standard gives rise to a presumption of conformity with the essential requirements of that legislation, that means that any natural or legal person who wishes effectively to challenge that presumption in respect of a given product or service must demonstrate that that product or service does not meet that standard or, alternatively, that that standard is not fit for purpose.

77 In the present case, three of the four requested harmonised standards, namely, standard EN 71-5:2015, entitled 'Safety of toys – Part 5: Chemical toys (sets) other than experimental sets', standard EN 71-4:2013, entitled 'Safety of toys – Part 4: Experimental sets for chemistry and related activities' and standard EN 71-12:2013, entitled 'Safety of toys – Part 12: N-Nitrosamines and N-nitrosatable substances' refer to Directive 2009/48. Their references were published in the *Official Journal of the European Union* of 13 November 2015 (OJ 2015 C 378, p. 1). In accordance with Article 13 of that directive, toys which have been manufactured in compliance with those standards enjoy a presumption of conformity with the requirements covered by those standards.

78 As for standard EN 12472:2005+A 1:2009, entitled 'Method for the simulation of wear and corrosion for the detection of nickel released from coated items', it refers to Regulation No 1907/2006.

79 Although, as is apparent from paragraph 74 of the present judgment, compliance with harmonised standards is not generally mandatory, that standard is, in the present case, manifestly mandatory, since Regulation No 1907/2006 provides, in paragraph 3 of entry 27 of the table set out in Annex XVII thereto, that, as regards nickel, the standards adopted by CEN are to be used as test methods for demonstrating the conformity of the products concerned with paragraphs 1 and 2 of entry 27.

80 In the light of the foregoing considerations, it must be held, in accordance with the case-law referred to in paragraph 70 of the present judgment, that the requested harmonised standards form part of EU law.

81 In the second place, as the Advocate General noted in point 52 of her Opinion, Article 2 TEU provides that the European Union is based on the principle of the rule of law, which requires free access to EU law for all natural or legal persons of the European Union, and that individuals must be able to ascertain unequivocally what their rights and obligations are (judgment of 22 February 2022, *Stichting Rookpreventie Jeugd and Others*, C-160/20, EU:C:2022:101, paragraph 41 and the case-law cited). That free access must in particular enable any person whom legislation seeks to protect to verify, within the limits permitted by law, that the persons to whom the rules laid down by that law are addressed actually comply with those rules.

82 Accordingly, by the effects conferred on it by EU legislation, a harmonised standard may specify the rights conferred on individuals as well as their obligations and those specifications may be necessary for them to verify whether a given product or service actually complies with the requirements of such legislation.

83 In the third place, it must be recalled that the principle of transparency is inextricably linked to the principle of openness, which is enshrined in the second paragraph of Article 1 and Article 10(3) TEU, in Article 15(1) and Article 298(1) TFEU and in Article 42 of the Charter. It makes it possible, inter alia, to ensure that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system (see, to that effect, judgment of 22 February 2022, *Stichting Rookpreventie Jeugd and Others*, C-160/20, EU:C:2022:101, paragraph 35 and the case-law cited).

84 To that end, a right of access to documents is ensured under the first subparagraph of Article 15(3) TFEU and enshrined in Article 42 of the Charter, a right which has been implemented, inter alia, by Regulation No 1049/2001, Article 2(3) of which provides that it applies to all documents held by the Parliament, the Council or the Commission (see, to that effect, judgment of 22 February 2022, *Stichting Rookpreventie Jeugd and Others*, C-160/20, EU:C:2022:101, paragraph 36).

85 In those circumstances, it must be held that there is an overriding public interest, within the meaning of the last clause of Article 4(2) of Regulation No 1049/2001, justifying the disclosure of the requested harmonised standards.

86 Therefore, the General Court erred in law in holding, in paragraphs 104 and 105 of the judgment under appeal, that there was no overriding public interest in the disclosure, pursuant to that provision, of the requested harmonised standards.

87 Consequently, the second ground of appeal must be upheld and, without it being necessary to examine the first ground of appeal, the judgment under appeal must be set aside.

The action before the General Court

88 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court of Justice is to quash the decision of the General Court if the appeal is well founded. It may itself give final judgment in the matter, where the state of the proceedings so permits. That is the situation in the present case.

89 As is apparent from paragraphs 65 to 87 of the present judgment, the Commission should have acknowledged, in the decision at issue, the existence of an overriding public interest, within the meaning of the last clause of Article 4(2) of Regulation No 1049/2001, arising from the principles of the rule of law, transparency, openness and good governance, and justifying the disclosure of the requested harmonised standards, since those standards form part of EU law owing to their legal effects.

90 In those circumstances, the decision at issue must be annulled.

Costs

91 Under Article 184(2) of the Rules of Procedure, where an appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs.

92 Under Article 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

93 In the present case, since the appellants have applied for costs and the Commission has been unsuccessful, the Commission must be ordered to pay the costs relating to both the proceedings before the General Court and the proceedings on appeal.

94 According to Article 184(4) of the Rules of Procedure, where the appeal has not been brought by an intervener at first instance, he or she may not be ordered to pay costs in the appeal proceedings unless he or she participated in the written or oral part of the proceedings before the Court. Where an intervener at first instance takes part in the proceedings, the Court may decide that he or she is to bear his or her own costs. Since the interveners at first instance participated in the written and oral parts of the appeal proceedings before the Court, they must be ordered to bear their own costs.

On those grounds, the Court (Grand Chamber) hereby:

1. Sets aside the judgment of the General Court of the European Union of 14 July 2021, *Public.Resource.Org and Right to Know* v *Commission* (T-185/19, EU:T:2021:445);

2. Annuls Commission Decision C(2019) 639 final of 22 January 2019;

3. Orders the European Commission to pay the costs relating to both the proceedings before the General Court of the European Union and the appeal proceedings;

4. Orders 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), Dansk Standard (DS), the Deutsches Institut für Normung eV (DIN), the Koninklijk Nederlands Normalisatie Instituut (NEN), the Schweizerische Normen-Vereinigung (SNV), Standard Norge (SN), the Suomen Standardisoimisliitto ry (SFS), the Svenska institutet för standarder (SIS) and the Institut za standardizaciju Srbije (ISS) to bear their own costs both in connection with the proceedings at first instance and the appeal proceedings.

Lenaerts Bay Larsen Arabadjiev

Prechal Regan Piçarra

Ilešič	Xuereb	Rossi
Jarukaitis	Kumin	Jääskinen
Wahl	Ziemele	Passer

Delivered in open court in Luxembourg on 5 March 2024.

A. Calot Escobar	K. Lenaerts
Registrar	President

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* Language of the case: English.