

Morrison & Foerster and FP Logue achieve full reset of European Standardization System

Berlin, 5. März 2024 - Morrison Foerster and FP Logue LLP scored a major victory today before the Court of Justice of the European Union (ECJ), representing Public.Resource.Org, Inc. and Right to Know CLG. This brings more than 5 years of litigation to an end that dealt with fundamental issues about free access to the law and harmonized standards.

Our clients are non-profit organizations whose focus is to make the law freely accessible to all citizens. Harmonized standards are technical specifications adopted by one of the three recognized European Standardization Organization (ESOs).¹ Harmonized standards are vital to protecting the public from defective products like toys or other consumables, for which they contain critical safety requirements. Often, however, binding EU law (regulations or directives) only sets some abstract “essential requirements” but leaves the technical details to the harmonized standards. As a consequence, EU citizens do not know what the relevant requirements are for products (like toys) unless they are also aware of the necessary harmonized standards that the EU law is referring to. However, the harmonized standards can generally only be obtained for a fee from the standardization organizations (in Germany, for example, DIN).

The current dispute derived from an access to documents request under EU Regulation No. 1049/2001, filed by Public.Resource.Org, Inc. and Right to Know CLG, seeking disclosure of four different harmonized standards. The EU Commission refused to grant access in January 2019, arguing that harmonized standards are copyright-protected. Our clients’ action for annulment brought before the General Court was dismissed in July 2021 ([Case T-185/19](#)).

On March 5, 2024, the Grand Chamber of the ECJ overruled ([Case C-588/21 P](#)) the General Court’s judgment. The ECJ decided that the EU Commission must indeed grant access to the four requested harmonized standards. The ECJ decided that harmonized standards form part of EU law and that the rule of law requires that access to harmonized standards (as part of EU law) must be freely available without charge. There is thus an overriding public interest in free access to the harmonized standards.

The ECJ’s final judgment has a major impact far beyond the specific dispute at hand. The EU Commission should now have to grant access to all harmonized standards free of charge since they form part of EU law. This will require a full reset of the European Standardization System. The ESOs, as well as national standardization organizations like DIN in Germany may no longer require companies and individuals to purchase harmonized standards for substantial amounts of money.

¹ The three ESOs are: CEN (responsible for standardization in most sectors); Comité européen de normalisation électrotechnique (CENELEC, European Committee for Electrotechnical Standardisation), which is responsible for standardization in electrical engineering); and European Telecommunications Standards Institute (ETSI), which is responsible for standardization in information and communications.

With that, the law will finally become freely accessible in the European Union, as it has been our clients' mission for years.

The Morrison Foerster team representing Public.Resource.Org, Inc. and Right to Know CLG is led by counsel Dr. Jens Hackl with support from partner Dr. Andreas Grünwald and counsel Christoph Nüßing.

Morrison Foerster co-counsel is FP Logue LLP with managing partner Fred Logue. The case is *Public.Resource.Org, Inc., Right to Know CLG vs. European Commission (C-588/21 P)*.