

Our Reference: FPL/624/03172/1

Your Reference:

29 May 2024

**By email only**

DG GROW  
European Commission  
[GROW-ACCES-DOCUMENTS@ec.europa.eu](mailto:GROW-ACCES-DOCUMENTS@ec.europa.eu)

**Re: Request for Access to Documents**  
**Our clients: Public.Resource.Org Inc and Right to Know CLG**

Dear Sir or Madam

We make this request for access to documents on behalf of our clients:

1. Public.Resource.Org, Inc. a charity incorporated in California, USA; and
2. Right to Know CLG, a non-governmental organization incorporated in Dublin Ireland.

On behalf of our clients we request copies of the following technical standards (**Requested Documents**)

ESO <sup>1</sup>	Reference and title of the standard	First publication in OJ
CEN	EN 71-5:2015 Safety of toys - Part 5: Chemical toys (sets) other than experimental sets	13/11/2015
CEN	EN 71-4:2013 Safety of toys - Part 4: Experimental sets for chemistry and related activities	28/05/2013
CEN	EN 71-12:2013 Safety of toys - Part 12: N-Nitrosamines and N-nitrosatable substances	29/06/2013
CEN	EN 12472:2005+A1:2009 Method for the simulation of wear and corrosion for the detection of nickel release from coated items	13/01/2017

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<sup>1</sup> European standardisation organisation

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## Background

Our clients note that the Requested Documents were previously requested on 25 September 2018. The request was refused by the Commission on 15 November 2018 and this decision was confirmed in a decision of 22 January 2019. Our clients brought an action for annulment of the confirmatory decision on 28 March 2019 before the General Court (Case T-185/19) which upheld the Commission's decision in a judgment dated 14 July 2014 (EU:T:2021:445). Our clients appealed against this judgment on 28 March 2019 (Case C-588/21 P) with the Court of Justice giving judgment on 5 March 2024 setting aside the judgment of the General Court and annulling the Commission's decision of 22 January 2019 (EU:C:2024:201).

The Court of Justice ruled that the Requested Documents formed part of EU law and that there was an overriding public interest within the meaning of Article 4(2) of Regulation 1049/2001 justifying the disclosure of the Requested Documents.

We contacted the Commission on 23 March 2024 to request a new decision in light of the judgment of the Court of Justice, which was unambiguous in its finding that there were no grounds upon which the Commission could refuse to grant access to the Requested Documents. The Commission initially treated the request as a new request with a time limit of 18 April 2024, but subsequently informed us by email on 5 April 2024 that the Secretariat General of the European Commission would draft a new confirmatory reply to the initial case registered as 2018/5137 which it said was currently open again without specifying a time limit. Several follow up emails to the Commission dated 18 and 29 April 2024 seeking confirmation of the time limit remain unanswered. This violates our clients' rights since the Commission has to decide within 15 working days.

In the interim our clients wrote on 23 March 2024 to Commissioner Breton and senior DG Grow officials requesting a meeting to discuss how the judgment of the Court of Justice could be implemented, suggesting that the Commission should consider publishing the text of Harmonised Standards in the Official Journal, essentially in the same way that other laws of the European Union are promulgated.

Our clients are yet to receive a response to this letter.

Notwithstanding our clients' approach to the Commission, it appears that the Commission has been in consultation with standardisation bodies. In particular Director General Jorna issued a public statement around the end of April 2024 on LinkedIn indicating that the Commission and standardisation bodies are "working together on an approach to implement [the judgment]"<sup>2</sup>. Ms Jorna specifically referred to the roll out of "readability platforms" without explaining precisely what functionality these platforms would have.

## Format

Given the circumstances mentioned above, and the fact that the request filed on 25 September 2018 did not specify the applicants' format preference, it is appropriate that a new request be made for the Requested Documents so that the form of access may be specified.

With reference to Article 10 of Regulation 1049/2001 our clients therefore specifically request an electronic copy of the Requested Documents in a format that is equivalent to the format through which the Union institutions make EU law generally available via the Eur-Lex service, for example as PDF or HTML files.

In the alternative, the Commission should provide the Requested Documents in the same format in which they were received. The Commission should particularly take into account that it must provide the documents "*in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) with full regard to the applicant's preference*" (cf. Article 10(3) Regulation 1049/2001).

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<sup>2</sup> <https://www.linkedin.com/posts/kerstin-jorna-12117328a-industrial-standards-are-a-key-feature-in-activity-7188550020093157376-hlvy/>

We look forward to receipt of the Requested Documents in the format specified above by email to [info@fplogue.com](mailto:info@fplogue.com).

Yours faithfully,

A handwritten signature in black ink, appearing to read "FP Logue". The signature is written in a cursive, flowing style.

**FP LOGUE LLP**