

Our Reference: FPL/624/03172/2

Your Reference:

31 May 2024

By email only

DG GROW
European Commission
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 harmonised standards listed in the annex to this letter (**Requested Documents**). The request is based on Regulation 1049/2001 and Regulation 1367/2006.

Background

The Court of Justice 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 (judgment of 27 October 2016, James Elliott Construction, C-613/14, paragraph 40).

The Court of Justice further ruled in its judgment of 5 March 2024 in Case C-588/21, *Public.Resource.Org and Right to Know v Commission* that 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.

The Court pointed out that 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. That free access must in particular enable any person whom legislation seeks to protect to verify, within the

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limits permitted by law, that the persons to whom the rules laid down by that law are addressed actually comply with those rules.

The Court ruled that 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.

In light of the above considerations, the Court of Justice ruled that there was an overriding public interest within the meaning of the last clause of Article 4(2) of Regulation 1049/2001 justifying the disclosure of the four harmonised standards at issue in case C-588/21. However, it is clear from the logic of the Court's judgment, which was based on the general characteristics and legal effect of harmonised standards, that this overriding public interest applies generally to harmonised standards.

Environmental Information

In our clients' view the Requested Documents contain environmental information since they are in essence part of EU law relating to the environment and are therefore measures affecting or likely to affect the elements or factors referred to in Article 2(1)(d)(i) and (ii) of Regulation 1367/2006 and/or measures designed to protect those elements.

Each of the 15 harmonised standards requested are based on Regulation 765/2008 setting out requirements for accreditation and market surveillance relating to the marketing of products. It is apparent from Recitals 1 and 4 to this Regulation as well as Article 1(2) that the objective is aimed *inter alia* at ensuring that products benefitting from free movement within the EU fulfil requirements providing protection of the environment.

The Requested Documents in particular concern harmonised standards applicable to Environmental Management and to Greenhouse Gases, with the latter consisting of information relating to emissions into the environment.

It is also relevant to point out that the Requested Documents are "texts of Community legislation on the environment or relating to it" within the meaning of Article 4(2)(a) of Regulation 1367/2006 and therefore are to be made available and disseminated under Article 4(1), which means "in electronic databases that are easily accessible to the public through public telecommunication networks" where the databases should be equipped "with search aids and other forms of software designed to assist the public in locating the information they require."

Format

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).

We look forward to receipt of the Requested Documents in the format specified above by email to 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