



EUROPEAN COMMISSION

Brussels, 1.7.2024  
C(2024) 4759 final

Mr Fred Logue  
7 Riverside Cottages  
Julianstown NA Co Meath  
Ireland

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE  
IMPLEMENTING RULES TO REGULATION (EC) NO 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under  
Regulation (EC) No 1049/2001 – EASE 2018/5137**

Dear Sir,

I refer to your letter of 30 November 2018, registered on the same day, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>2</sup> (hereafter ‘Regulation (EC) No 1049/2001’).

**1. SCOPE OF YOUR REQUEST**

On 25 September 2018 you submitted, on behalf of your clients<sup>3</sup>, an initial application for access to documents under Regulation (EC) No 1049/2001, in which you requested public access to copies of the following four technical standards, I quote:

- ‘CEN EN 71-5:2015 Safety of toys – Part 5: Chemical toys (sets) other than experimental sets,
- CEN EN 71-4:2013 Safety of toys – Part 4: Experimental sets for chemistry and related activities,
- CEN EN 71-12:2013 Safety of toys – Part 12: N-Nitrosamines and N-nitrosatable substances,

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<sup>1</sup> OJ L 345, 29.12.2001, p. 94.

<sup>2</sup> OJ L 145 of 31 May 2001, p. 43.

<sup>3</sup> Public.Resource.Org and Right to know CLG.

- CEN EN 12472:2005+A1:2009 Method for the simulation of wear and corrosion for the detection of nickel release from coated items’.

The European Commission identified the following documents, prepared by the European Committee for Standardisation<sup>4</sup>, as falling under the scope of your application:

- European Committee for Standardisation harmonised European standard of 13 November 2015, EN 71-5:2015 ‘Safety of toys – Part 5: Chemical toys (sets) other than experimental sets’ (hereafter ‘document 1’);
- European Committee for Standardisation harmonised European standard of 25 May 2013, EN 71-4:2013 ‘Safety of toys – Part 4: Experimental sets for chemistry and related activities’ (hereafter ‘document 2’);
- European Committee for Standardisation harmonised European standard of 29 June 2013, EN 71-12:2013 ‘Safety of toys – Part 12: N-Nitrosamines and N-nitrosatable substances’ (hereafter ‘document 3’); and
- European Committee for Standardisation harmonised European standard of 13 January 2017, EN 12472:2005+A1:2009 ‘Method for the simulation of wear and corrosion for the detection of nickel release from coated items’ (hereafter ‘document 4’).

Documents 1-4 are registered with reference Ares(2024)4291811.

Your initial application was attributed to the Commission’s Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, which provided its reply on 15 November 2018. In its reply, the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs refused access to documents 1-4, based on the exception provided for in the first indent (protection of commercial interests of a natural or legal person) of Article 4(2) of Regulation (EC) No 1049/2001.

In your confirmatory application of 30 November 2018, you requested a review of this position.

## **2. THE FIRST CONFIRMATORY DECISION AND THE JUDGMENT OF THE COURT IN CASE C-588/21 P**

In response to your confirmatory application, on 22 January 2019, the Commission adopted a confirmatory decision<sup>5</sup>, refusing access to the documents requested based on the exception laid down in the first indent (protection of commercial interests of a natural or legal person) of Article 4(2) of Regulation (EC) No 1049/2001. That confirmatory

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<sup>4</sup> The European Committee for Standardization is one of three European Standardization Organizations (together with CENELEC and ETSI) that have been officially recognised by the European Union and by the European Free Trade Association (EFTA) as being responsible for developing and defining voluntary standards at European level, <https://www.cencenelec.eu/about-cen/>.

<sup>5</sup> Decision C(2019) 639 final of the European Commission of 22 January 2019.

decision (C(2019) 639 final) has been annulled by the Court of Justice by its judgment of 5 March 2024 in Case C-588/21 P<sup>6</sup>.

Pursuant to Article 266 of the Treaty on the Functioning of the European Union, the Commission is required to take the necessary measures to comply with the above-mentioned judgment of the Court of Justice in Case C-588/21 P.

Against this background, the Secretariat-General re-assessed your confirmatory application in light of the findings of that judgment and adopted the present implementing confirmatory decision on behalf of the Commission.

### **3. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a review of the reply given by the Directorate-General concerned at the initial stage.

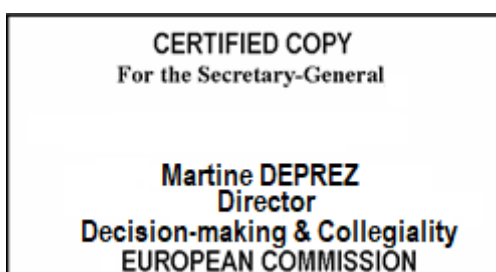
Following this review and in light of the judgment of the Court of Justice in case C-588/21 P, I can inform you that full access is hereby granted to documents 1-4.

Please note that documents originating from third parties are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The Commission does not assume any responsibility from their reuse.

### **4. MEANS OF REDRESS**

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



*For the Commission*  
*Ilze JUHANSONE*  
*Secretary-General*

Enclosures: (4)

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<sup>6</sup> Judgment of 5 March 2024, *Public.Resource.Org, Inc. and Right to Know CLG v European Commission*, C-588/21, EU:C:2024:201.