



EUROPEAN COMMISSION

Brussels, 18.11.2024
C(2024) 8196 final

Mr Fred Logue
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**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 – EASE 2024/2823**

Dear Sir,

I refer to your letter of 23 July 2024, registered on 25 July 2024, 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 documents² (hereafter ‘Regulation (EC) No 1049/2001’).

Please accept our apologies for the delay in the handling of your request.

1. SCOPE OF YOUR REQUEST

On 30 May 2024 you submitted, on behalf of your clients³, an initial application for access to documents under Regulation (EC) No 1049/2001, in which you requested public access to copies of the following 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,

¹ OJ L 345, 29.12.2001, p. 94.

² OJ L 145 of 31 May 2001, p. 43.

³ Public.Resource.Org and Right to know CLG.

- CEN EN 71-12:2013 Safety of toys – Part 12: N-Nitrosamines and N-nitrosatable substances,
- CEN EN 12472:2005+A1:2009 Method for the simulation of wear and corrosion for the detection of nickel release from coated items’.

The abovementioned documents had previously been requested by your clients on 25 September 2018. In response to that request for public access, registered under reference Gestdem 2018/5137, on 22 January 2019, the Commission adopted a confirmatory decision (C(2019) 639 final)⁴ refusing access to the documents 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 decision was annulled by the Court of Justice in its judgment of 5 March 2024 in Case C-588/21 P⁵. In light of the findings of that judgment, the Secretariat-General subsequently reassessed the request and granted full access to the documents in its decision C(2024)4759 of 1 July 2024, which was notified to you on 2 July 2024.

In your initial request of 30 May 2024, you noted that, I quote, ‘[g]iven [...] 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’. You stated that, I quote, ‘[w]ith 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’.

You added that, I quote, ‘[i]n 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)’.

Your initial application was attributed to the Commission’s Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, which replied on 10 July 2024. In its reply, the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs pointed out that the documents requested were already provided to you on 2 July 2024 as part of the Commission’s decision C(2024)4759.

In your confirmatory application of 25 July 2024, you challenge the reply of the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs.

⁴ Decision C(2019) 639 final of the European Commission of 22 January 2019.

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

The arguments that you provide in support of your request will be addressed in the section below.

2. 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.

The European Commission identified the following documents, prepared by the European Committee for Standardisation⁶, 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 were registered by the Commission with the reference Ares(2024)4291811.

In your confirmatory application, you argue that the Commission is in breach of Article 10(3) of Regulation (EC) No 1049/2001 on the ground that, I quote, ‘the documents disclosed on 3 July 2024 are neither in the format requested nor do they appear to be in an existing version and format’. In your view, the Commission did not have full regard to your clients’ preference ‘which was for a format equivalent to the format through which the Union institutions make EU law generally available via the Eur-Lex service, which does not use passwords or restrict the functionality of the PDF or HTML files that are made available, or alternatively an existing version and format’.

⁶ 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/>.

In particular, you argue that the documents that were disclosed in the Commission's confirmatory decision C(2019) 639 final 'appear to be new documents that have been specifically created in response to the request'. You argue that 'the new documents each contain a watermark "DO NOT COPY" and an entry in the left margin "Copyright (c) CEN USE ONLY FOR INTERNAL AND INFORMATION PURPOSES"'.

Please note that the Commission received the standards requested in 'pdf' format with watermarks added by the third party from which the documents originate, including the watermarks 'DO NOT COPY' and "Copyright (c) CEN USE ONLY FOR INTERNAL AND INFORMATION PURPOSES". Therefore, the Commission did not introduce these watermarks, nor does it hold the requested documents without these watermarks.

The Court has held that the right of access to documents of the institutions applies only to existing documents in the possession of the institution concerned. Therefore, Regulation (EC) No 1049/2001 cannot be relied upon to oblige an institution to create a document⁷.

In your confirmatory application, you also note that the documents 'contain a header "Regulation (EC) No 1049/2001 – Access to Documents – Case 2018/5137". It appears that virtually all functionality has been disabled in the pdf documents, so that the documents cannot be printed, the content cannot be directly copied or copied for accessibility purposes'.

The Commission's decision C(2024)4759 of 2 July 2024 provided free and full access to the four standards requested while clarifying that the 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'.

Indeed, the Commission must apply Regulation (EC) No 1049/2001 in a way which is consistent with the rules on intellectual property. Article 16 of Regulation (EC) No 1049/2001 ('Reproduction of documents') provides that '[t]his Regulation shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents'.

Therefore, the Commission disclosed the documents in a format that ensures the transparency of the standards requested while preventing their unauthorised reproduction or exploitation.

Please also note that when handling a request for public access to documents, the Commission may need to process the document(s) requested, for instance, to redact parts of the document(s) such as personal data, clarify the type of redactions performed, sanitise the document(s) and remove metadata, without however altering the format or version of the document(s) requested.

⁷ Judgment of 11 January 2017, *Typke v Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.

If you are interested in obtaining the documents requested without headings and watermarks, you can obtain them via the following link:

https://single-market-economy.ec.europa.eu/single-market/european-standards/harmonised-standards/access-documents_en.

From this Commission's website, you can navigate to the European Committee for Standardization (CEN)'s national readability portals for European standards (<https://harmonized.standards.eu/>), where you can then select the language and national readability platform of your choice. Please note that registration on that platform is required to view the document requested.

As explained above, please note that documents originating from third parties are disclosed on this platform in accordance with 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 it. The Commission does not assume any responsibility from their reuse.

3. 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

